



INAUGURAL MEETING OF THE COUNCIL

INHULDIGINGSVERGADERING VAN DIE RAAD

INTLANGANISO YOKUNGENISWA KOCEBA ESIKHUNDLENI

A G E N D A

DATE / DATUM : 12 AUGUST / AUGUSTUS / AGASTI 2016
VENUE / PLEK : AUDITORIUM / OUDITORIUM
BURGERSENTRUM / CIVIC CENTRE
HERMANUS
TIME / TYD : 11:00

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

Office of the Municipal
Manager
Civic Centre
HERMANUS

10 August/Augustus/Agasti 2016

NOTICE TO ALL ALDERMEN AND COUNCILLORS

INAUGURAL MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN in terms of Section 29(2) of the Local Government: Municipal Structures Act 117 of 1998, that the **INAUGURAL MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held in the **Auditorium, Civic Centre, Hermanus**, on **FRIDAY, 12 AUGUST 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 C GROENEWALD
MUNICIPAL MANAGER

KENNISGEWING AAN ALLE RAADSHERE & RAADSLEDE

INHULDIGINGSVERGADERING VAN DIE OVERSTRAND MUNISIPALE RAAD

KENNIS WORD HIERMEE GEGEE ingevolge Artikel 29(2) van die Wet op Plaaslike Regering: Wet 117 van 1998, dat die **INHULDIGINGSVERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word in die **Ouditorium, Burgersentrum, Hermanus**, op **VRYDAG, 12 AUGUST 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 C GROENEWALD
MUNISIPALE BESTUURDER

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO YOKUNGENISWA KOCEBA ESIKHUNDLENI YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

ISAZISO NGENTLANGANISO YOKUNGENISWA KWEBHUNGA lika Masipala ezaku banjelwa **KWI HOLO LIKA MASIPALA** kwizakhiwo ze Bhunga, **NGOLWESIHLANU umhla we 12 AUGUST 2016** **NGENTSIMBI YESIHLANU (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 C GROENEWALD
UMPHATHI KAMASIPALA

AGENDA/...

PLEASE NOTE

In terms of Section 21(2)(b) of the Section 12 notice and Section 36(3) of the Local Government : Municipal Structures Act No 117 of 1998 (LGMSA), the Municipal Manager will preside over the first meeting of the local municipality until the election of the Speaker.

1. OPENING OF MEETING AND READING OF NOTICE CONVENING THE MEETING BY MUNICIPAL MANAGER

The Municipal Manager will read the notice convening the first meeting of the council to formally constitute the meeting.

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. NOTICES AND COMMUNICATIONS : MUNICIPAL MANAGER

**4.
ELECTION OF SPEAKER****3/2/2/1****H van Tonder
12 July 2016****(028) 313 8037****Council Support Services**

1. Executive Summary

The purpose of the report is to grant Council an opportunity to elect a Speaker.

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

5. Legal Requirements

- Part 2 of Chapter 3 and Schedule 3 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) (Structures Act)
- Overstrand Municipality Third Establishment Amendment Notice PN 189/2003 dated 28 May 2003 (Third Amendment Notice)
- Code of Conduct for Councillors: Schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

6. Background/Discussion

The functions and term of office of Speakers and other relevant matters are addressed in Sections 37 to 41 of the Structures Act.

Section 36 of the Structures Act, *inter alia* provides that each municipal council must have a chairperson who will be called the Speaker.

The procedure to be followed for the election of a Speaker is embodied in Schedule 3 of the Structures Act.

The Municipality's Third Amendment Notice provides that the Municipality may designate the Speaker as full-time councillor.

Item 8 of the Code of Conduct provides as follows:

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

“A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.”

Should recommendation 2 be adopted and the Speaker to be designated is undertaking any other paid work, Council must consider granting approval for same.

Remark:

The Elected Speaker will take over as Chairperson immediately after his/her election.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Committee/Offices/Directorates

None

10. Annexures

Annexure A : Part 2 of Chapter 3 of the Structures Act

Annexure B : Schedule 3 of the Structures Act

Annexure C : Nomination Form: Election of Speaker

Annexure D : Overstrand Municipality Third Establishment Amendment Notice

RECOMMENDATION TO THE COUNCIL:

1. that a Speaker **be elected**;
2. that the Speaker **be designated** as a full-time Councillor in terms of Section 3 of the Overstrand Municipality (WC032) Third Establishment Amendment Notice, PN 189/2003 dated 28 May 2003; and
3. that, should recommendation 2 be adopted and the Speaker to be elected is undertaking any other paid work, Council considers **granting approval** for same.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

36. Election of speakers.—(1) Each municipal council must have a chairperson who will be called the speaker.

(2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council must elect its speaker from among the councillors.

(3) The municipal manager of the municipality or, if the municipal manager is not available, a person designated by the MEC for local government in the province, presides over the election of a speaker.

(4) The procedure set out in Schedule 3 applies to the election of a speaker.

(5) A councillor may not hold office as speaker and mayor or executive mayor at the same time, but in a municipality of a type mentioned in section 9 (e) or (f) or 10 (c) the speaker must be called the mayor.

37. Functions of speakers.—The speaker of a municipal council—

- (a) presides at meetings of the council;
- (b) performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

[Para. (b) amended by s. 14 (a) of Act No. 51 of 2002.]

Wording of Sections

- (c) must ensure that the council meets at least quarterly;
- (d) must maintain order during meetings;
- (e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

[Para. (e) amended by s. 14 (b) of Act No. 51 of 2002.]

Wording of Sections

- (f) must ensure that council meetings are conducted in accordance with the rules and orders of the council.

38. Term of office of speakers.—The speaker of a municipal council is elected for a term ending, subject to section 39, when the next council is declared elected.

39. Vacation of office.—The speaker of a municipal council vacates office during a term if that person—

- (a) resigns as speaker;
- (b) is removed from office; or
- (c) ceases to be a councillor.

40. Removal from office.—A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given.

41. Acting speakers.—If the speaker of a municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council must elect another councillor to act as speaker.

Schedule 3

[Schedule 3 amended by s. 34 of Act No. 51 of 2002.]

Wording of Sections

ELECTION OF MUNICIPAL OFFICE-BEARERS

1. Application.—The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a mayor or a deputy mayor.

2. Nominations.—The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

3. Formal requirements.—(1) A nomination must be made on the form determined by the municipal manager.

(2) The form on which a nomination is made must be signed by two members of the municipal council.

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

4. Announcement of names of candidates.—At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

5. Single candidate.—If only one candidate is nominated, the person presiding must declare that candidate elected.

6. Election procedure.—If more than one candidate is nominated—

- (a) a vote must be taken at the meeting by secret ballot;
- (b) each councillor present at the meeting may cast one vote; and
- (c) the person presiding must declare elected the candidate who receives majority of the votes.

7. Elimination procedure.—(1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

(2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

8. Further meetings.—(1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.

(2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

(3) If at the further meeting held in terms of subitem (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must determine by lot who of the two candidates will hold the office for which the election has taken place.

[Subitem (3) added by s. 34 of Act No. 51 of 2002.]



NOMINATION FORM: ELECTION OF SPEAKER

We, the undersigned, hereby nominate the following Councillor:

FULL NAME OF NOMINEE:

Signed at Hermanus this day of20....

NAME OF NOMINATOR:

Nominator 1: Name:

Signature:

Nominator 2: Name:

Signature:

I, the undersigned, hereby accept the nomination/do not accept the nomination. *

Signed at Hermanus this day of20....

.....

SIGNATURE OF NOMINEE

** Delete that which is not applicable*

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998
(ACT 117 OF 1998)

THE OVERSTRAND MUNICIPALITY (WCO32) THIRD ESTABLISHMENT AMENDMENT NOTICE

By virtue of the powers vested in me by section 16 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended by the Local Government: Municipal Structures Amendment Act, 2000 (Act 33 of 2000), the Local Government: Municipal Structures Amendment Act, 2002 (Act 20 of 2002), Local Government Laws Amendment Act, 2002 (Act 51 of 2002) and the Local Government: Municipal Structures Amendment Act, 2003 (Act 1 of 2003), I hereby give notice of the third amendment of the Overstrand Municipality (WCO32) Establishment Notice, Provincial Notice 494 published in Provincial Gazette 5591 dated 22 September 2000 as previously amended in Provincial Notice 680 published in the Provincial Gazette Extraordinary No. 5643 dated 4 December 2000 and Provincial Notice 461 published in the Provincial Gazette Extraordinary No. 5969 dated 19 December 2002 on the terms set out in the Schedule hereto.

Dated this 28th day of May 2003.

J. J. DOWRY, PROVINCIAL MINISTER OF LOCAL GOVERNMENT

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Amendment of section 1 of the principal Notice

1. Section 1 of the Schedule to the Overstrand Municipality Establishment Notice (hereafter referred to as the principal Notice) is hereby amended:—
- (1) by the deletion of the definition "collective executive system" in subsection (3), and
- (2) by the insertion of the following subsections:—
- "(13A) 'mayoral executive system' means a system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the Municipality is vested and who is assisted by a mayoral committee;" and
- "(22A) 'ward participatory system' means a system which allows for matters of local concern to wards to be dealt with by committees established for wards;"

Amendment of section 6 of the principal Notice

2. Section 6 of the Schedule to the principal Notice is hereby amended by the substitution for section 6 of the following section:—

"Type

6. The Local Municipality is a municipality with a [collective] mayoral executive system combined with a ward participatory system as provided for in the Western Cape Determination of Types of Municipalities Act, 2000 (Act 9 of 2000), as amended by the Western Cape Determination of Types of Municipalities Amendment Act, 2002 (Act 4 of 2002)."

Amendment of section 9 of the principal Notice

3. Section 9 of the Schedule to the principal Notice is hereby amended by the substitution for section 9 of the following section:—

"Full-time Councillors

9. The Local Municipality may designate the following councillors as full-time councillors:—
- (a) the executive mayor;
- (b) the members of the mayoral committee, and
- (c) the speaker."

Insertion of section 25B to the text of the principal Notice

4. The Schedule to the principal Notice is hereby amended by the insertion of the following section after section 25A:—

"Executive Deputy Mayor

25B Approval is granted in terms of section 55 of the Municipal Structures Act, as amended, for the election of an executive deputy mayor."

Short title and commencement

5. This Notice is called the Overstrand Municipality Third Establishment Amendment Notice and comes into operation on 10 June 2003.

**5.
BY-LAW ON RULES OF ORDER FOR INTERNAL ARRANGEMENTS****3/2/1/6****H van Tonder
12 July 2016****(028) 313 8037****Council Support Services**

1. Executive Summary

The purpose of the report is for Council to take cognisance of the By-law on Rules of Order for Internal Arrangements (as amended) promulgated per PN 7188 dated 18 October 2013.

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 160 of the Constitution of the Republic of South Africa, 1996 (Constitution)
By-Law on Rules of Order for Internal Arrangements (as amended) promulgated per PN 7188 dated 18 October 2013

7. Background/Discussion

The former Council adopted the By-law on Rules of Order for Internal Arrangements (as amended), which document was made available to Councillors during the workshop on 10 August 2016.

7. Financial Implications

None

8. Staff Implications

None

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that **cognisance be taken** of the By-law on Rules of Order for Internal Arrangements (as amended) promulgated per PN 7188 dated 18 October 2013.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

**6.
ELECTION OF EXECUTIVE AND DEPUTY EXECUTIVE MAYOR****3/2/2/1****H van Tonder
12 July 2016****(028) 313 8037****Council Support Services**

1. Executive Summary

The purpose of the report is to grant Council an opportunity to elect an Executive Mayor and a Deputy Executive Mayor.

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

- Part 2 of Chapter 4 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (Structures Act)
- Overstrand Municipality Third Establishment Amendment Notice, Notice no. 189/2003 dated 28 May 2003 (Third Amendment Notice)
- Code of Conduct for Councillors: Schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

6. Discussion

Section 55 of the Structures Act read with the Overstrand Municipality Third Establishment Amendment Notice provides for an Executive Mayor and Deputy Executive Mayor to be elected within 14 days after the Council's election.

Section 56 to 59 of the Structures Act bears reference to the Executive and Deputy Executive Mayor.

The procedure to be followed for the election of an Executive Mayor and Deputy Executive Mayor is embodied in Schedule 3 of the Structures Act.

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

The Municipality's Third Amendment Notice provides that the Municipality may designate the Executive Mayor and Deputy Executive Mayor as full-time councillors.

Item 8 of the Code of Conduct provides as follows:

"A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld."

Should recommendation 3 be adopted and the Executive Mayor and Deputy Executive Mayor to be elected are undertaking any other paid work, Council must consider **granting approval** for same.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Section 55 to 59 of the Structures Act

Annexure B : Schedule 3 of the Structures Act

Annexure C : Overstrand Municipality Third Establishment Amendment Notice

Annexure D : Nomination Form: Election of Executive Mayor

Annexure E : Nomination Form: Election of Deputy Executive Mayor

RECOMMENDATION TO THE COUNCIL:

1. that an Executive Mayor **be elected**;
2. that a Deputy Executive Mayor **be elected**;
3. that the Executive Mayor and Deputy Executive Mayor **be designated** as full-time Councillors in terms of Section 3 of the Overstrand Municipality (WC032) Third Establishment Amendment Notice, PN 189/2003 dated 28 May 2003; and
4. that, should recommendation 3 be adopted and the Executive Mayor and Deputy Executive Mayor to be elected are undertaking any other paid work, Council considers **granting approval** for same.

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016**RESPONSIBLE OFFICIAL:****H VAN TONDER****TARGET DATE FOR IMPLEMENTATION:****12 AUGUST 2016**

55. Election of executive mayors.—(1) If a municipal council chooses to have an executive mayor it must elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members at a meeting that must be held—

- (a) within 14 days after the council's election;
- (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or
- (c) within 14 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8 (a), (b), (c) or (d), 9 (a), (b), (e) or (f) or 10 (a) or (c) to any of those mentioned in section 8 (e), (f), (g) or (h), 9 (c) or (d) or 10 (b).

[Sub-s. (1) substituted by s. 4 of Act No. 1 of 2003.]

Wording of Sections

(2) A vacancy in the office of executive mayor or executive deputy mayor must be filled when necessary.

(3) The procedure set out in Schedule 3 applies to the election of an executive mayor and executive deputy mayor.

56. Functions and powers of executive mayors.—(1) An executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor's delegated powers.

(2) The executive mayor must—

- (a) identify the needs of the municipality;
- (b) review and evaluate those needs in order of priority;
- (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
- (d) recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The executive mayor in performing the duties of office, must—

- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2) (c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;
- (b) evaluate progress against the key performance indicators;
- (c) review the performance of the municipality in order to improve—
 - (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) the efficiency of credit control and revenue and debt collection services; and
 - (iii) the implementation of the municipality's by-laws;
- (d) monitor the management of the municipality's administration in accordance with the directions of the municipal council;
- (e) oversee the provision of services to communities in the municipality in a sustainable manner;

- (f) perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

[Para. (f) amended by s. 16 (a) of Act No. 51 of 2002.]

Wording of Sections

- (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.
- (4) An executive mayor must perform a ceremonial role as the municipal council may determine.
- (5) An executive mayor must report to the municipal council on all decisions taken by the executive mayor.
- (6) The deputy executive mayor of a municipality exercises the powers and performs the duties of the executive mayor if the executive mayor is absent or not available or if the office of the executive mayor is vacant.
- (7) If the executive mayor is absent or not available and the municipality does not have a deputy executive mayor, or the deputy executive mayor is also absent or not available, the council must designate a councillor to act as executive mayor.

[Sub-s. (7) added by s. 16 (b) of Act No. 51 of 2002.]

57. Term of office of executive mayors.—(1) An executive mayor and a deputy executive mayor must be elected for a term ending, subject to sections 58 and 59, when—

- (a) the type of the municipality has been changed from any of those mentioned in section 8 (e), (f), (g) or (h), 9 (c) or (d) or 10 (b) to any of those mentioned in section 8 (a), (b), (c) or (d), 9 (a), (b), (e) or (f) or 10 (a) or (c); or
- (b) the next council is declared elected.

(2) (a) No person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms in the same council.

(b) No person may hold office as deputy executive mayor or both deputy executive mayor and deputy mayor for more than two consecutive terms in the same council.

(c) If a person is elected—

- (i) to fill a vacancy in the office of executive mayor or deputy executive mayor, the period between that election and the next election of an executive mayor or deputy executive mayor is not regarded as a term; or
- (ii) as executive mayor or deputy executive mayor where the type of the municipality has been changed from any of those mentioned in section 8 (a), (b), (c) or (d), 9 (a), (b), (e) or (f) or 10 (a) or (c) to any of those mentioned in section 8 (e), (f), (g) or (h), 9 (c) or (d) or 10 (b) during the term of the municipal council concerned, the period between that election and the next election of an executive mayor or deputy executive mayor is not regarded as a term.

(3) An executive mayor whose two consecutive terms have expired as provided for in subsection (2) (a), may not immediately after the expiry be elected as deputy executive mayor.

[S. 57 substituted by s. 5 of Act No. 1 of 2003.]

Wording of Sections

58. Removal from office.—A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given.

59. Vacation of office.—An executive mayor or deputy executive mayor vacates office during a term if that person—

- (a) resigns as executive mayor or deputy executive mayor;
- (b) is removed from office as executive mayor or deputy executive mayor; or
- (c) ceases to be a councillor.

Schedule 3

[Schedule 3 amended by s. 34 of Act No. 51 of 2002.]

Wording of Sections**ELECTION OF MUNICIPAL OFFICE-BEARERS**

1. Application.—The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a mayor or a deputy mayor.

2. Nominations.—The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

3. Formal requirements.—(1) A nomination must be made on the form determined by the municipal manager.

(2) The form on which a nomination is made must be signed by two members of the municipal council.

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

4. Announcement of names of candidates.—At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

5. Single candidate.—If only one candidate is nominated, the person presiding must declare that candidate elected.

6. Election procedure.—If more than one candidate is nominated—

(a) a vote must be taken at the meeting by secret ballot;

(b) each councillor present at the meeting may cast one vote; and

(c) the person presiding must declare elected the candidate who receives majority of the votes.

7. Elimination procedure.—(1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

(2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

8. Further meetings.—(1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.

(2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

(3) If at the further meeting held in terms of subitem (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must determine by lot who of the two candidates will hold the office for which the election has taken place.

[Subitem (3) added by s. 34 of Act No. 51 of 2002.]

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998
(ACT 117 OF 1998)

THE OVERSTRAND MUNICIPALITY (WCO32) THIRD ESTABLISHMENT AMENDMENT NOTICE

By virtue of the powers vested in me by section 16 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended by the Local Government: Municipal Structures Amendment Act, 2000 (Act 33 of 2000), the Local Government: Municipal Structures Amendment Act, 2002 (Act 20 of 2002), Local Government Laws Amendment Act, 2002 (Act 51 of 2002) and the Local Government: Municipal Structures Amendment Act, 2003 (Act 1 of 2003), I hereby give notice of the third amendment of the Overstrand Municipality (WCO32) Establishment Notice, Provincial Notice 494 published in Provincial Gazette 5591 dated 22 September 2000 as previously amended in Provincial Notice 680 published in the Provincial Gazette Extraordinary No. 5643 dated 4 December 2000 and Provincial Notice 461 published in the Provincial Gazette Extraordinary No. 5969 dated 19 December 2002 on the terms set out in the Schedule hereto.

Dated this 28th day of May 2003.

J. J. DOWRY, PROVINCIAL MINISTER OF LOCAL GOVERNMENT

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Amendment of section 1 of the principal Notice

1. Section 1 of the Schedule to the Overstrand Municipality Establishment Notice (hereafter referred to as the principal Notice) is hereby amended:—
- (1) by the deletion of the definition "collective executive system" in subsection (3), and
 - (2) by the insertion of the following subsections:—
 - “(13A) **‘mayoral executive system’** means a system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the Municipality is vested and who is assisted by a mayoral committee.”, and
 - “(22A) **‘ward participatory system’** means a system which allows for matters of local concern to wards to be dealt with by committees established for wards.”.

Amendment of section 6 of the principal Notice

2. Section 6 of the Schedule to the principal Notice is hereby amended by the substitution for section 6 of the following section:—
- “Type*
6. The Local Municipality is a municipality with a **[collective] mayoral executive system combined with a ward participatory system** as provided for in the Western Cape Determination of Types of Municipalities Act, 2000 (Act 9 of 2000), as amended by the Western Cape Determination of Types of Municipalities Amendment Act, 2002 (Act 4 of 2002).”.

Amendment of section 9 of the principal Notice

3. Section 9 of the Schedule to the principal Notice is hereby amended by the substitution for section 9 of the following section:—
- “Full-time Councillors*
9. The Local Municipality may designate the following councillors as full-time councillors:—
- (a) the executive mayor;
 - (b) the members of the mayoral committee, and
 - (c) the speaker.”.

Insertion of section 25B to the text of the principal Notice

4. The Schedule to the principal Notice is hereby amended by the insertion of the following section after section 25A:—
- “Executive Deputy Mayor*

25B Approval is granted in terms of section 55 of the Municipal Structures Act, as amended, for the election of an executive deputy mayor.”.

Short title and commencement

5. This Notice is called the Overstrand Municipality Third Establishment Amendment Notice and comes into operation on 10 June 2003.



NOMINATION FORM: ELECTION OF EXECUTIVE MAYOR

We, the undersigned, hereby nominate the following Councillor:

FULL NAME OF NOMINEE:

Signed at Hermanus this day of20....

NAME OF NOMINATOR:

Nominator 1: Name:

Signature:

Nominator 2: Name:

Signature:

I, the undersigned, hereby accept the nomination/do not accept the nomination. *

Signed at Hermanus this day of20....

.....

SIGNATURE OF NOMINEE

**Delete that which is not applicable*



NOMINATION FORM: ELECTION OF DEPUTY EXECUTIVE MAYOR

We, the undersigned, hereby nominate the following Councillor:

FULL NAME OF NOMINEE:

Signed at Hermanus this day of20....

NAME OF NOMINATOR:

Nominator 1: Name:

Signature:

Nominator 2: Name:

Signature:

I, the undersigned, hereby accept the nomination/do not accept the nomination. *

Signed at Hermanus this day of20....

.....
SIGNATURE OF NOMINEE

**Delete that which is not applicable*

**7.
DELEGATED POWERS TO EXECUTIVE MAYOR****2/5/3****H van Tonder
12 July 2016****(028) 313 8037****Council Support Services**

1. Executive Summary

The purpose of this report is to afford Council the opportunity to consider the delegation of certain powers to the newly elected Executive Mayor.

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

5. Legal Requirements

- Local Government: Municipal Systems Act, No 32 of 2000 (Systems Act)
- Section 160(2) of the Constitution of the Republic of South Africa, 1996 (Constitution)
- Section 160(3) of the Local Government: Municipal Structures Act, No 117 of 1998 (Structures Act)

6. Discussion

Section 51(k) of the Systems Act provides that a municipality must within its administrative and financial capacity establish and organise its administration in a manner that would enable the municipality to, *inter alia*:

- delegate responsibility to the most effective level within the administration; and
- involve staff in management decisions as far as is practicable.

Part 3 (sections 59 – 65) of the abovementioned act deals with delegations. Section 59(1)(a) provides as follows:

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

“A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may

- (a) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76(b) and to approve or amend the municipality’s integrated development plan, to any of the municipality’s other political structures political office bearers, councillors or staff members.”*

Section 160(2) of the Constitution furthermore provides:

“The following functions may not be delegated by a municipal council:

- (a) the passing of by-laws;*
- (b) the approval of budgets;*
- (c) the imposition of rates and other taxes, levies and duties; and*
- (d) the raising of loans.”*

Section 60(3) of the Structures Act provides as follows:

“Those of the executive mayor’s powers and functions as may be designated by the municipal council, must be exercised and performed by the executive mayor together with the other members of the mayoral committee.”

This method of delegation, for technical and practical reasons, is not suggested.

The Principles and Conditions of Delegation which are applicable on the municipality’s system of delegation and as approved by the former Council on 28 May 2015, is attached.

The previous Council has furthermore delegated all powers and functions vested with Council, excluding those powers and functions

- mentioned in section 160(2) of the Constitution; and
- mentioned in section 59(1)(a) of the Systems Act,

to the Executive Mayor with the power of sub-delegation in terms of section 59(2)(d) of the Systems Act.

Section 59(4) of the Systems Act provides that any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

delegation referred to in subsection (1). Such a report will be submitted to Council in due course.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Part 3 of Chapter 7 of the Systems Act

Annexure B : Principles and Conditions of Delegation

RECOMMENDATION TO THE COUNCIL:

1. that the Principles and Conditions of Delegation, attached as Annexure B which served before Council on 28 May 2015, **be reconfirmed**; and
2. that all powers not reserved by law for full Council, **be delegated** to the Executive Mayor.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

59. Delegations.—(1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may—

- (a) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76(b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors, or staff members;
- (b) instruct any such political structure, political office bearer, councillor, or staff member to perform any of the municipality's duties; and
- (c) withdraw any delegation or instruction.

(2) A delegation or instruction in terms of subsection (1)—

- (a) must not conflict with the Constitution, this Act or the Municipal Structures Act;
- (b) must be in writing;
- (c) is subject to any limitations, conditions and directions the municipal council may impose;
- (d) may include the power to sub-delegate a delegated power;
- (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
- (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.

(3) The municipal council—

- (a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and
- (b) may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction.

(4) Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).

[Sub-s. (4) added by s. 36 of Act No. 51 of 2002.]

60. Certain delegations restricted to executive committees or executive mayors.—(1) The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:

- (a) decisions to expropriate immovable property or rights in or to immovable property; and
- (b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.

(2) The council may only delegate to the municipal manager the power to make decisions on investments on behalf of the municipality within the municipality's investment policy contemplated in section 13(2) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

[Sub-s. (2) substituted by s. 13 of Act No. 19 of 2008.]

61. Referral of matters to delegating authorities for decision.—A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that political structure, political office bearer, councillor or staff member may, or must if instructed to do so by the relevant delegating authority, refer a matter before the political structure, political office bearer, councillor or staff member to the relevant delegating authority for a decision.

62. Appeals.—(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by—

- (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
- (b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or
- (c) a political structure or political office bearer, or a councillor—
 - (i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or
 - (ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.

(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.

[Sub-s. (6) added by s. 37 of Act No. 51 of 2002.]

63. Duty to report to delegating authorities.—A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub-delegated power or duty since the last report.

64. Withdrawal, amendment or lapsing of delegation or sub-delegation.—The withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

65. Review of delegations.—(1) Whenever it becomes necessary in terms of section 59 (2) (f) to review a municipality's delegations, the municipal manager must submit to the council—

- (a) a report on the existing delegations issued in terms of section 59 by the council and other delegating authorities of the municipality; and
- (b) recommendations on any changes to the existing delegations which the municipal manager

may consider necessary.

(2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor.

1. LEGAL REQUIREMENTS:

1.1 Sections 59 to 65 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) provide as follows:

"59. Delegations.- (1) *A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may-*

- (a) *delegate appropriate powers, excluding a power mentioned in section 160 (2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76 (b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors, or staff members;*
- (b) *instruct any such political structure, political office bearer, councillor, or staff member to perform any of the municipality's duties; and*
- (c) *withdraw any delegation or instruction.*

(2) *A delegation or instruction in terms of subsection (1)-*

- (a) *must not conflict with the Constitution, this Act or the Municipal Structures Act;*
- (b) *must be in writing;*
- (c) *is subject to any limitations, conditions and directions the municipal council may impose;*
- (d) *may include the power to sub-delegate a delegated power;*
- (e) *does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and*
- (f) *must be reviewed when a new council is elected or, if it is a district council, elected and appointed.*

(3) *The municipal council-*

- (a) *in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and*

(b) *may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction.*

(4) *Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).*

60. Certain delegations restricted to executive committees or executive mayors.- (1) *The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:*

(a) *decisions to expropriate immovable property or rights in or to immovable property; and*

(b) *the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.*

(2) *The council may only delegate to the Municipal Manager the power to make decisions on investments on behalf of the municipality within the municipality's investment policy contemplated in Section 13(2) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.*

61. Referral of matters to delegating authorities for decision.- *A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that political structure, political office bearer, councillor or staff member may, or must if instructed to do so by the relevant delegating authority, refer a matter before the political structure, political office bearer, councillor or staff member to the relevant delegating authority for a decision.*

62. Appeals.- (1) *A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.*

(2) *The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).*

(3) *The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*

- (4) When the appeal is against a decision taken by-
- (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
 - (b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or
 - (c) a political structure or political office bearer, or a councillor-
 - (i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or
 - (ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.

63. Duty to report to delegating authorities.- A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub-delegated power or duty since the last report.

64. Withdrawal, amendment or lapsing of delegation or sub-delegation.- The withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

65. Review of delegations.- (1) Whenever it becomes necessary in terms of section 59 (2) (f) to review a municipality's delegations, the municipal manager must submit to the council-

- (a) a report on the existing delegations issued in terms of section 59 by the council and other delegating authorities of the municipality; and
 - (b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.
- (2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to

the municipal council through the executive committee or executive mayor."

- 1.2 Section 160(2) of the **Constitution, 1996** (referred to in section 59 (1)(a) of the Systems Act) provides as follows:

"(2) The following functions may not be delegated by a Municipal Council:

- (a) the passing of by-laws;*
- (b) the approval of budgets;*
- (c) the imposition of rates and other taxes, levies and duties; and*
- (d) the raising of loans."*

- 1.3 Sections 79, 81 and 82 of the **Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)** provide as follows:

"79. Delegations (1) *The accounting officer of a municipality-*

- (a) must, for the proper application of this Act in the municipality's administration, develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration;*
 - (b) may, in accordance with that system, delegate to a member of the municipality's top management referred to in section 77 or any other official of the municipality-*
 - (i) any of the powers or duties assigned to an accounting officer in terms of this Act; or*
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act, and*
 - (c) must regularly review delegations issued in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations.*
- (2) *The accounting officer may not delegate to any political structure or political office-bearer of the municipality any of the powers or duties assigned to accounting officers in terms of this Act.*
- (3) *A delegation in terms of subsection (1)-*
- (a) must be in writing;*

- (b) *is subject to such limitations and conditions as the accounting officer may impose in a specific case;*
 - (c) *may either be to a specific individual or to the holder of a specific post in the municipality*
 - (d) *may, in the case of a delegation to a member of the municipality's top management in terms of subsection (1)(b), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and*
 - (e) *does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.*
- (4) *The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*

81. Role of chief financial officer (1) *The chief financial officer of a municipality-*

- (a) *...;*
 - (b) *must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act;*
 - (c) *...*
 - (d) *must advise senior managers and other senior officials in the exercise of powers and duties assigned to them in terms of section 78 or delegated to them in terms of section 79; and*
 - (e) *must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 79 be delegated by the accounting officer to the chief financial officer.*
- (2) *...*

82. Delegations (1) *The chief financial officer of a municipality may sub-delegate any of the duties referred to in section 81 (1)(b), (d) and (e)-*

- (a) *to an official in the budget and treasury office;*
- (b) *to the holder of a specific post in that office; or*
- (c) *with the concurrence of the accounting officer, to-*

- (i) *any other official of the municipality; or*
 - (ii) *any person contracted by the municipality for the work of the office.*
- (2) *If the chief financial officer sub-delegates any duties in terms of subsection (1) to a person who is not an employee of the municipality, the chief financial officer must be satisfied that effective systems and procedures are in place to ensure control and accountability.*
- (3) *A sub-delegation in terms of subsection (1)-*
- (a) *must be in writing;*
 - (b) *is subject to such limitations or conditions as the chief financial officer may impose; and*
 - (c) *does not divest the chief financial officer of the responsibility concerning the delegated duty.*
- (4) *The chief financial officer may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), but no such variation or revocation of decision may detract from any rights that may have accrued as a result of the decision."*

2. PRINCIPLES OF DELEGATION

- 2.1 All delegations must ensure that the Council retains all legislative powers and those executive powers which cannot be lawfully delegated.
- 2.2 Policy formulation and determination process is as follows:
- 2.2.1 Policy is determined by Council.
 - 2.2.2 Any political office bearer or staff member may initiate the generation of proposed policy.
 - 2.2.3 Policy must first be channelled via the executive mayor for his/her consideration and recommendations.
 - 2.2.4 Notwithstanding the above, if, in the view of the Municipal Manager, any proposed policy has a direct and significant impact on the community, then the comments of that community must be obtained prior to the approval of the policy.
- 2.3 The Council as the legislative and executive authority may exercise no power and perform no function beyond that conferred upon it by law.
- 2.4 No political office bearer or staff member may exercise its authority contrary to any policy approved by Council.

- 2.5 Clear corporate policies in respect of support services such as finance, human resources, procurement and certain administrative functions must inform the delegated powers of relevant political office bearers and staff members. Policies should not serve as ad hoc instructions, but must be universally applicable.
- 2.6 The functions allocated to the municipality's political office bearers or staff members as may be approved by Council from time to time will form the basis for the allocation of delegations of executive decisionmaking power.
- 2.7 All delegations are conditional upon compliance with the municipality's policies, its Integrated Development Plan and budget.
- 2.8 All delegations must be in writing.
- 2.9 All delegations must provide for good governance and allow for adequate checks and balances.
- 2.10 All delegations must enhance service delivery without sacrificing accountability.
- 2.11 Delegations must not oblige a delegatee to exercise his/her delegated power and must therefore allow for the decision to be taken at the next higher level.
- 2.12 In exercising delegated authority, the municipality's political office bearers or staff members must do so in the spirit of utmost good faith.
- 2.13 The political office bearers and staff members must be empowered to perform their functions effectively and to take decisions in the management and administration of their functional areas within the maximum amount of delegated authority, subject to compliance with the following constraints:
 - 2.13.1 Clear operational policies which are determined by Council must govern the actions of the relevant political office bearers or staff members in performing their respective functions and activities. Where it is necessary for relevant political office bearers or staff members to operate in exceptional cases outside a defined policy, the authority of either the Executive Mayor or the Municipal Manager respectively must be obtained.
 - 2.13.2 Relevant political office bearers or staff members must take decisions and implement policy, projects and manage their functional areas in order to give effect to the requirements of their respective business plans.
 - 2.13.3 Relevant political office bearers or staff members must ensure that their proposed business plans give maximum effect to the achievement of the municipality's strategic objectives.
 - 2.13.4 During the implementation of the municipality's business plans, relevant political office bearers or staff members must, when exercising their delegated powers, ensure that council's strategic objectives are achieved.

- 2.13.5 In giving effect to policies, projects and the requirements of business plans, relevant political office bearers or staff members must take decisions and operate within the parameters of their respective operational and capital budgets.
- 2.13.6 Relevant political office bearers and staff members must give effect to the enforcement and observation of all municipal by-laws and other relevant legislation and where changing circumstances so dictate, must recommend the creation or amendment of municipal by-laws.
- 2.14 Although there is a requirement for relevant staff members to be monitored by higher levels of authority in respect of their performance in the implementation of policies, programmes and projects, they must be empowered to take decisions without unnecessary delay. This permits political office bearers and staff members at higher levels to concentrate on policy determination, strategic planning, appropriate interaction with the public and the monitoring of the implementation of individual business plans and the municipality's strategic priorities.

3. CONDITIONS OF DELEGATION

- 3.1 All decisionmaking powers delegated by the Council are subject to the following conditions:
- 3.1.1 Delegated powers are conferred upon the Executive Mayor and posts in the organisation of the municipality and not personally on incumbents.
- 3.1.2 These delegations also apply to acting positions. Persons acting in these positions have the same delegated powers as those serving in a permanent capacity, provided that the competent authority has duly appointed such acting persons and has not excluded certain powers.
- 3.1.3 In executing any delegated power, the delegatee must comply with all relevant legislation, agreements and policy.
- 3.1.4 These delegations do not redefine the municipality's powers and functions.
- 3.1.5 The policies whether existing or future will determine the parameters of any delegation and the delegator is bound to comply therewith. It is the duty of the delegator to ensure that clear and comprehensive policies are drafted.
- 3.1.6 In executing delegated powers, no expenditure may be incurred unless the delegatee is satisfied that the municipality has budgeted for the expenditure and that the funds are still available on the relevant budget.
- 3.1.7 In executing delegated powers all decisions taken must be in support of the municipality's business plans and its strategic objectives.
- 3.1.8 Council or its executive mayor or any part of the municipality's staff members above the delegatee may at any time, subject to applicable law, order a delegated matter not to be proceeded with by the delegatee and then deal with such matter.

- 3.1.9 The chain of authority from the Council to the Executive Mayor to the Municipal Manager and officials below must not be jeopardised by any delegation.
- 3.1.10 The relevant political office bearer or staff members delegated to take a decision, may determine whether a report is needed motivating the decision and whether the decision must be reduced to writing. If a report is required then it must indicate that all legal and financial requirements have been met.
- 3.1.11 A delegation may set out special circumstances in which a delegatee is prohibited from exercising his/her delegated power.
- 3.1.12 Any sub-delegation must be reduced to writing and recorded in the delegation register, contained in this document, which must be kept updated at all times by the Director: Management Services and who must be informed in writing of any sub-delegation.
- 3.1.13 All decisions affecting the rights of others must be in writing and reasons must be recorded for such decisions.
- 3.1.14 The Council or any other delegator, may at any time withdraw, qualify or amend a delegation made by itself.
- 3.1.15 Provision must be made for a separation between the evaluation and recommendation stage of the decisionmaking process and the actual decision itself. This must happen in all cases where the decisionmaking process is reasonably capable of being divided as set out above.
- 3.1.16 Any delegator may require a selected sample of decisions taken by a part of the staff below him/her to be audited.

8. ANNOUNCEMENT OF MAYORAL COMMITTEE

3/2/3/4

H van Tonder
12 July 2016

(028) 313 8037

Council Support Services

1. Executive Summary

The purpose of this report is to grant the Executive Mayor the opportunity to announce his/her Mayoral Committee.

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 executive mayor has original powers to appoint a mayoral committee.

5. Legal Requirements

- Section 60 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (Structures Act)
- Section 160(8) of the Constitution of the Republic of South Africa, 1996 (Constitution)
- Section 4(2)(d) of the Overstrand Municipality Second Establishment Amendment Notice promulgated as per Provincial Notice PN 187/2002 dated 14 August 2002 (Second Establishment Notice)
- Overstrand Municipality Third Establishment Amendment Notice PN 189/2003 dated 28 May 2003 (Third Amendment Notice)
- Code of Conduct for Councillors: Schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

6. Discussion

Section 60 of the Structures Act *inter alia* provides that an Executive Mayor must appoint a Mayoral Committee from among the Councillors to assist him/her.

Section 60 (2) furthermore *inter alia* provides that the Mayoral Committee must consist of the Deputy Executive Mayor and as many Councillors as may

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be necessary for effective and efficient government, provided that no more than 20 percent of the Councillors are appointed.

The aforementioned section 60(2) is ambiguous. The question arises whether a Deputy Executive Mayor is included or excluded in calculating the number of Councillors referred to in the said section. If the emphasis falls on the Deputy Executive Mayor, he/she should be included in the calculation. If the emphasis however falls on the Councillors to be appointed by the Executive Mayor, then the Deputy Executive Mayor should be excluded in the calculation.

The viewpoint of the former WECLOGO was that the Deputy Executive Mayor is in addition to the other Councillors and is not counted with these Councillors for purposes of determining the number. The state legal advisor (consulted by the Provincial Department of Local Government) holds an opposite and more conservative viewpoint, i.e. that the Deputy Executive Mayor must be counted for the purposes of determining the number.

Bearing the above in mind, it is suggested that the more conservative interpretation mentioned above, be followed. It thus follows that, apart from the Deputy Executive Mayor, who is in terms of the aforementioned interpretation regarded to be a member of the Mayoral Committee, no more than four (4) additional Councillors can be appointed on the Mayoral Committee.

Section 60(1) of the Structures Act furthermore provides for the Executive Mayor to appoint a Mayoral Committee from among the Councillors to assist him/her. Although section 160(8) of the Constitution provides for members of a Municipal Council to participate in Council's proceedings and those of its Committees in a manner that *inter alia* allows parties to be fairly represented, it should be borne in mind that the Mayoral Committee is appointed at the discretion of the Executive Mayor and he/she therefore need not include parties on a proportional basis. (Vide DA v Amos Masondo, No 2002, JOL 10476 (C.C.)).

Section 4(2)(d) of the Second Establishment Notice provides *inter alia* that the appointment of the Mayoral Committee must be an item on the first meeting of Council.

The Municipality's Third Amendment Notice provides that the Municipality may designate members of the Mayoral Committee as full-time Councillors.

Item 8 of the Code of Conduct provides as follows:

"A Councillor who is a full-time Councillor may not undertake any other paid work except with the consent of a Municipal Council which consent shall not unreasonably be withheld."

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

Should recommendation 3 be adopted and the members of the Mayoral Committee to be designated are undertaking any other paid work, Council must consider granting approval for same.

7. Financial Implications

Members of the Mayoral Committee are regarded full time Councillors in terms of section 3 of the Second Establishment Notice and will receive remuneration as is provided for from time to time in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Section 60 of the Structures Act

Annexure B : Section 160(8) of the Constitution

Annexure C : Overstrand Municipality Third Establishment Amendment Notice

RECOMMENDATION TO THE COUNCIL:

1. that the Executive Mayor **be afforded** the opportunity to announce his/her Mayoral Committee;
2. that the Executive Mayor **indicates** which Portfolios will be handled by the individual members of the Mayoral Committee;
3. that the members of the Mayoral Committee **be designated** as full-time Councillors in terms of Section 3 of the Overstrand Municipality (WC032) Third Establishment Amendment Notice, PN 189/2003 dated 28 May 2003; and
4. that, should recommendation 3 be adopted and the members of the Mayoral Committee to be designated are undertaking any other paid work, Council considers **granting approval** for same.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

60. Mayoral committees.—(1) If a municipal council has more than nine members, its executive mayor—

- (a) must appoint a mayoral committee from among the councillors to assist the executive mayor;
- (b) may delegate specific responsibilities to each member of the committee;
- (c) may delegate any of the executive mayor's powers to the respective members; and
- (d) may dismiss a member of the mayoral committee.

(2) The mayoral committee must consist of the deputy executive mayor (if any) and as many councillors as may be necessary for effective and efficient government, provided that no more than 20 per cent of the councillors or 10 councillors, whichever is the least, are appointed.

(3) Those of the executive mayor's powers and functions as may be designated by the municipal council, must be exercised and performed by the executive mayor together with the other members of the mayoral committee.

(4) The members of a mayoral committee remain in office subject to subsection (5) and section 26, for the term of the executive mayor who appointed them.

(5) If the executive mayor vacates office, the mayoral committee appointed by that executive mayor dissolves.

(8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that—

- (a) allows parties and interests reflected within the Council to be fairly represented;
- (b) is consistent with democracy; and
- (c) may be regulated by national legislation.

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998
(ACT 117 OF 1998)

THE OVERSTRAND MUNICIPALITY (WCO32) THIRD ESTABLISHMENT AMENDMENT NOTICE

By virtue of the powers vested in me by section 16 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended by the Local Government: Municipal Structures Amendment Act, 2000 (Act 33 of 2000), the Local Government: Municipal Structures Amendment Act, 2002 (Act 20 of 2002), Local Government Laws Amendment Act, 2002 (Act 51 of 2002) and the Local Government: Municipal Structures Amendment Act, 2003 (Act 1 of 2003), I hereby give notice of the third amendment of the Overstrand Municipality (WCO32) Establishment Notice, Provincial Notice 494 published in Provincial Gazette 5591 dated 22 September 2000 as previously amended in Provincial Notice 680 published in the Provincial Gazette Extraordinary No. 5643 dated 4 December 2000 and Provincial Notice 461 published in the Provincial Gazette Extraordinary No. 5969 dated 19 December 2002 on the terms set out in the Schedule hereto.

Dated this 28th day of May 2003.

J. J. DOWRY, PROVINCIAL MINISTER OF LOCAL GOVERNMENT

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Amendment of section 1 of the principal Notice

1. Section 1 of the Schedule to the Overstrand Municipality Establishment Notice (hereafter referred to as the principal Notice) is hereby amended:—
- (1) by the deletion of the definition "collective executive system" in subsection (3), and
- (2) by the insertion of the following subsections:—
- "(13A) **'mayoral executive system'** means a system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the Municipality is vested and who is assisted by a mayoral committee;" and
- "(22A) **'ward participatory system'** means a system which allows for matters of local concern to wards to be dealt with by committees established for wards;"

Amendment of section 6 of the principal Notice

2. Section 6 of the Schedule to the principal Notice is hereby amended by the substitution for section 6 of the following section:—
- "Type*
6. The Local Municipality is a municipality with a [collective] mayoral executive system combined with a ward participatory system as provided for in the Western Cape Determination of Types of Municipalities Act, 2000 (Act 9 of 2000), as amended by the Western Cape Determination of Types of Municipalities Amendment Act, 2002 (Act 4 of 2002)."

Amendment of section 9 of the principal Notice

3. Section 9 of the Schedule to the principal Notice is hereby amended by the substitution for section 9 of the following section:—
- "Full-time Councillors*
9. The Local Municipality may designate the following councillors as full-time councillors:—
- (a) the executive mayor;
- (b) the members of the mayoral committee, and
- (c) the speaker."

Insertion of section 25B to the text of the principal Notice

4. The Schedule to the principal Notice is hereby amended by the insertion of the following section after section 25A:—
- "Executive Deputy Mayor*

25B Approval is granted in terms of section 55 of the Municipal Structures Act, as amended, for the election of an executive deputy mayor."

Short title and commencement

5. This Notice is called the Overstrand Municipality Third Establishment Amendment Notice and comes into operation on 10 June 2003.

9. APPOINTMENT OF COUNCILLORS ON PORTFOLIO COMMITTEES

3/2/3/5

**H van Tonder
12 July 2016**

(028) 313 8037

Council Support Services

1. Executive Summary

The purpose of the report is to grant Council an opportunity to appoint Councillors on Portfolio Committees.

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

The content of sections 79 and 80 of the Structures Act speaks for itself.

Section 79 is an enabling section for the appointment of Committees by Council for the effective and efficient performance of any of its functions or the exercise of any of its powers whilst section 80 provides for the appointment of the so-called "portfolio committees" to assist the Executive Mayor. The number of committees may however not exceed the number of councillors on the mayoral committee, to wit a maximum of 5 (five). This item must however be read with item 8. Councillors must also take cognisance of section 160(8) of the Constitution which section *inter alia* provides that Councillors are entitled to participate in proceedings of its Committees in a manner that allows parties reflected within the Council to be fairly represented.

It is furthermore proposed that a simple majority of members of any one of the Committees constitutes a quorum.

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Section 79 and 80 of the Structures Act

RECOMMENDATION TO THE COUNCIL:

1. that Committees (so-called Portfolio Committees), in terms of section 80, read with section 79, of the Local Government : Municipal Structures Act, No 117 of 1998, **be appointed**; and
2. that a simple majority of members of any one of the Committees constitutes a **quorum**.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

79. Establishment.—(1) A municipal council may—

- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
- (b) appoint the members of such a committee from among its members; and
- (c) dissolve a committee at any time.

(2) The municipal council—

- (a) must determine the functions of a committee;
- (b) may delegate duties and powers to it in terms of section 32;
- (c) must appoint the chairperson;
- (d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
- (e) may remove a member of a committee at any time; and
- (f) may determine a committee's procedure.

80. Committees to assist executive committee or executive mayor.—(1) If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor.

(2) Such committees may not in number exceed the number of members of the executive committee or mayoral committee.

(3) The executive committee or executive mayor—

- (a) appoints a chairperson for each committee from the executive committee or mayoral committee;
- (b) may delegate any powers and duties of the executive committee or executive mayor to the committee;
- (c) is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and
- (d) may vary or revoke any decision taken by a committee, subject to any vested rights.

(4) Such a committee must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor.

10. APPOINTMENT OF COUNCILLORS ON SECTION 62 APPEALS COMMITTEE**3/2/3/6****H van Tonder
12 July 2016****(028) 313 8037****Council Support Services**

1. Executive Summary

The purpose of this report is to grant Council an opportunity to appoint Councillors on the Section 62 Appeals Committee.

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 62 of the Local Government: Municipal Systems Act, No 32 of 2000 (Systems Act)
- Section 79 of the Local Government: Municipal Structures Act, No 117 of 1998 (Structures Act)

6. Discussion

Section 62 of the Systems Act provides inter alia for a person whose rights are affected by a decision taken by a political structure, political office bearer or a Councillor to appeal to a Committee of Councillors who were not involved in the decision and appointed by the Municipal Council for this purpose.

Regard should also be given to section 79 of the Structures Act.

The function of the Committee shall be as provided for in section 62(3) of the Systems Act. It is proposed that five (5) Councillors be appointed on the Section 62 Appeals Committee and that a quorum of the said Committee be a simple majority of the members present.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Section 62 of the Systems Act

Annexure B : Section 79 of the Structures Act

RECOMMENDATION TO THE COUNCIL:

1. that Council **establishes** a Section 62 Appeals Committee consisting of five (5) Councillors;
2. that a **Chairperson** for the Section 62 Appeals Committee **be appointed**;
3. that a **secundus** for the Chairperson of the Section 62 Appeals Committee **be appointed**;
4. that the function of the Section 62 Appeals Committee be as provided for in section 62(3) of the Local Government: Municipal Systems Act, No 32 of 2000; and
5. that the **quorum** of the Section 62 Appeals Committee be a simple majority of the members present.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

62. Appeals.—(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by—

- (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
- (b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or
- (c) a political structure or political office bearer, or a councillor—
 - (i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or
 - (ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.

(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.

[Sub-s. (6) added by s. 37 of Act No. 51 of 2002.]

79. Establishment.—(1) A municipal council may—

- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
- (b) appoint the members of such a committee from among its members; and
- (c) dissolve a committee at any time.

(2) The municipal council—

- (a) must determine the functions of a committee;
- (b) may delegate duties and powers to it in terms of section 32;
- (c) must appoint the chairperson;
- (d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
- (e) may remove a member of a committee at any time; and
- (f) may determine a committee's procedure.

**11.
ESTABLISHMENT OF A DISCIPLINARY COMMITTEE AND THE ADOPTION OF
THE PROCEDURE FOR INVESTIGATION REGARDING ANY ALLEGATION OF
MISCONDUCT AGAINST A MEMBER OF OVERSTRAND MUNICIPAL COUNCIL**

3/2/3/1

H van Tonder

(028) 313 8037

Council Support Services

12 July 2016

1. Executive Summary

The purpose of the report is to consider the establishing of a Disciplinary Committee and to adopt further resolutions in this regard.

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

- Local Government: Municipal Structures Act, No 117 of 1998 (Structures Act)
- Local Government: Municipal Systems Act, No 32 of 2000 (Systems Act)

6. Discussion

Item 14(1)(b) of the Code of Conduct for Councillors (Schedule 1 of the Systems Act) provides for the appointment of a Committee to investigate any contravention of or failure by Councillors to comply with any provision of the Code of Conduct for Councillors.

Besides the aforementioned, Council's By-law on Rules of Order for Internal Arrangements, 2015, as amended, (see item 5 of this agenda) also provide for the appointment of a Committee [*vide* Rule 10(3)] to investigate and make a finding on any breach by a Councillor with regard to the non-attendance of meetings [*vide* Rule 10(1)]. Likewise is paragraph 4 of the Procedure of Investigation regarding any Allegation of Misconduct against a Member of the Overstrand Municipal Council relevant in this matter.

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

Regard should also be given to section 79 of the Structures Act.

The Chairperson of a Municipal Council (the Speaker) must *inter alia* ensure compliance in the Council and Council Committees with the Code of Conduct for Councillors and has specific duties as far as the policy with regard to the Procedure for Investigation regarding any Allegation of Misconduct against a Member of the Overstrand Municipal Council is concerned.

It is proposed that Council determines the functions of the Disciplinary Committee as follows:

- to investigate and make findings on any breach referred to in Rule 10 of Council's By-law on Rules of Order for Internal Arrangements, 2015, as amended; and
- to consider any matter referred to it by the Speaker of any contravention of or failure of a Councillor to comply with any provision of the Code of Conduct for Councillors.

It is furthermore proposed that Council determines the quorum of the Committee to be a simple majority of the members appointed.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Code of Conduct for Councillors (Schedule 1 of the Systems Act)

Annexure B : Section 79 of Structures Act

Annexure C : Procedure for Investigation regarding any Allegation of Misconduct against a Member of the Overstrand Municipal Council

RECOMMENDATION TO THE COUNCIL:

1. that five (5) members of the Disciplinary Committee **be appointed**;
2. that a **Chairperson** and his/her **secundi** be appointed for the Disciplinary Committee;

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

3. that the functions of the Disciplinary Committee be as follows:
 - (a) to investigate and make findings on any breach referred to in Rule 10 of Council's By-law on Rules of Order for Internal Arrangements, 2015, as amended; and
 - (b) to consider any matter referred to it by the Speaker of any alleged contravention of or failure of a Councillor to comply with any provisions of the Code of Conduct for Councillors.
4. that the **quorum** of the Disciplinary Committee be a simple majority of the members; and
5. that the Procedure for Investigation regarding any Allegation of Misconduct against a Member of the Overstrand Municipal Council and attached as Annexure C to the agenda, **be adopted**.

RESPONSIBLE OFFICIAL:**H VAN TONDER****TARGET DATE FOR IMPLEMENTATION:****12 AUGUST 2016**

Schedule 1

CODE OF CONDUCT FOR COUNCILLORS

[Sch. 1 amended by ss. 45 and 46 of Act No. 51 of 2002 and by ss. 20 and 21 of Act No. 19 of 2008.]

Wording of Sections

Preamble.—Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established.

1. Definitions.—In this Schedule “**partner**” means a person who permanently lives with another person in a manner as if married.

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.

3. Attendance at meetings.—A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting.

4. Sanctions for non-attendance of meetings.—(1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:

- (a) not attending a meeting which that councillor is required to attend in terms of item 3; or
- (b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor.

(3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

5. Disclosure of interests.—(1) A councillor must—

- (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
- (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor’s direct or indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.

(3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

6. Personal gain.—(1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(2)

[Sub-item (2) deleted by s. 20 (a) of Act No. 19 of 2008.]

(3)

[Sub-item (3) deleted by s. 20 (a) of Act No. 19 of 2008.]

(4) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

[Sub-item (4) added by s. 20 (b) of Act No. 19 of 2008.]

7. Declaration of interests.—(1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:

- (a) shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business undertaking;
- (g) employment and remuneration;
- (h) interest in property;
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

8. Full-time councillors.—A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.

9. Rewards, gifts and favours.—A councillor may not request, solicit or accept any reward, gift or favour for—

- (a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
- (b) persuading the council or any committee in regard to the exercise of any power, function or duty;
- (c) making a representation to the council or any committee of the council; or

- (d) disclosing privileged or confidential information.

10. Unauthorised disclosure of information.—(1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item "privileged or confidential information" includes any information—

- (a) determined by the municipal council or committee to be privileged or confidential;
- (b) discussed in closed session by the council or committee;
- (c) disclosure of which would violate a person's right to privacy; or
- (d) declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.

11. Intervention in administration.—A councillor may not, except as provided by law—

- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
- (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- (d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

12. Council property.—A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

12A. Councillor in arrears.—A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.

[Item 12A inserted by s. 45 of Act No. 51 of 2002.]

13. Duty of chairpersons of municipal councils.—(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.

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.

(3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation as to the appropriate sanction in terms of subitem (2) if a municipal council does not conduct an investigation contemplated in subitem (1) and the MEC for local government considers it necessary.

[Sub-item (4) substituted by s. 21 of Act No. 19 of 2008.]

(5) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).

[Sub-item (5) substituted by s. 46 of Act No. 51 of 2002.]

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—

- (a) suspend the councillor for a period and on conditions determined by the MEC; or
- (b) remove the councillor from office.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

15. Application of Code to traditional leaders.—(1) Items 1, 2, 5, 6, 9 (b) to (d), 10, 11, 12, 13 and 14 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81 of the Municipal Structures Act.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may—

- (a) issue a formal warning to the traditional leader; or
- (b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional

leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may—

- (a) suspend that right for a period and on conditions determined by the MEC; or
- (b) cancel that right.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81 (3) of the Municipal Structures Act.

79. Establishment.—(1) A municipal council may—

- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
- (b) appoint the members of such a committee from among its members; and
- (c) dissolve a committee at any time.

(2) The municipal council—

- (a) must determine the functions of a committee;
- (b) may delegate duties and powers to it in terms of section 32;
- (c) must appoint the chairperson;
- (d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
- (e) may remove a member of a committee at any time; and
- (f) may determine a committee's procedure.

PROCEDURE FOR INVESTIGATION REGARDING ANY ALLEGATION OF MISCONDUCT AGAINST A MEMBER OF OVERSTRAND MUNICIPAL COUNCIL

EMPOWERING PROVISIONS

Allegations of misconduct against Councillors are dealt with in Schedule 1, Code of Conduct for Councillors, of the Local Government: Municipal Systems Act, Act 32 of 2000 and the By-law on Rules of Order for Internal Arrangements, 2015, as amended.

STANDARD PROCEDURES

1. Whenever the Speaker becomes aware of any contravention of or failure to comply with any provision of the Code of Conduct as contained in Schedule 1 of the Local Government: Municipal Systems Act, Act 32 of 2000, he or she may of own volition, or whenever any allegation is made in a sworn or affirmed statement to the effect that a member of the council has contravened or failed to comply with any provision of the Code, he or she shall-
 - obtain the written comments of the member concerned; and
 - investigate the facts and circumstances informally.
2. If a member fails to furnish the Speaker with his or her comments within 14 days after being requested to do so by the Speaker or after such extension of time as permitted at the discretion of the Speaker, the Speaker may form his prima facie opinion without such comments.
3. If the Speaker is satisfied that a contravention or failure to comply has not prima facie occurred, he shall inform the person who made the allegation or statement and the member implicated of his or her decision.
4. If he or she is satisfied that a contravention or failure to comply has prima facie occurred, he or she shall call a meeting of the committee selected by the Council either in general or specifically for that purpose to consider the matter. Any member implicated in the matter shall not be entitled to serve in the committee.
5. The Speaker shall determine the procedure for the hearing of the matter, provided that the following rules be complied with-
 - (a) Any person giving evidence before the committee may be required to do so under oath or affirmation;
 - (b) The member implicated has the right to be present when any evidence is heard, except as set out in (e), and may ask relevant questions based on the statement to the person, as may the committee;
 - (c) The committee may ask questions from the member implicated;
 - (d) The member implicated will be entitled to representation by a legal representative or other representative approved by the committee as may any person appearing before the committee;

- (e) If the member implicated refuses to attend the meeting, does not attend the meeting or is instructed by the Speaker to leave because of his or her conduct at the meeting, the meeting may continue in the absence of such member;
 - (f) The Speaker and/or committee may be assisted during the proceedings by an official or other adviser;
 - (g) The member implicated will have the right to present evidence on the statements implicating him or her and to call witnesses;
 - (h) The committee may call witnesses to assist them in making a decision.
6. If the Speaker is implicated in any contravention of or failure to comply with the Code of Conduct, the functions in this procedure will be performed by the Mayor and if he or she is also implicated, then by a member appointed by Council.
 7. After consideration of all evidence the committee must make a finding whether the member contravened or failed to comply with the Code of Conduct and inform the person who made the allegation or statement and the member implicated of its finding.
 8. If the finding is that the member did contravene or fail to comply with the Code of Conduct, the committee must report its finding to Council and recommend an appropriate sanction.
 9. After deciding on the appropriate sanction by Council the Speaker must inform the member thereof and inform the member of his or her right of appeal in terms of the Code of Conduct.

Policy Section	Council Support Services
Current update	N/A
Previous review	N/A
Approval by Council	12 August 2016

12.**APPOINTMENT OF MEMBERS: MUNICIPAL PUBLIC ACCOUNTS COMMITTEE AND ADOPTION OF CHARTER****3/2/3/7****H van Tonder
12 July 2016****(028) 313 8037****Council Support Services**

1. Executive Summary

The purpose of this report is to afford Council an opportunity to appoint members to serve on the Municipal Public Accounts Committee (MPAC).

2. Service Delivery and Budget Implementation Plan - IGNITE

None

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Constitution of the Republic of South Africa, 1996 (Constitution)
- Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) (Structures Act)
- Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)
- Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (Systems Act)

6. Background/Introduction/Discussion/Motivation/Proposal/Evaluation

Council is vested with the responsibility to oversee the performance of the Municipality, as required by the Constitution, the MFMA and the Systems Act. This oversight responsibility of Council is particularly important for the process of considering, *inter alia*, annual reports.

The MFMA and Systems Act recognise that Council has a critical role to play to ensure better performance by Municipal directorates. There now exists an explicit linkage between the strategic goals, set by Council through the Integrated Development Plan (IDP), which are translated into the budget, and the delivery of those goals, which is reported in the Annual Report. It is important for Council to ensure that the budget gives effect or expression to

priorities contained in the IDP. A good budget will lay a basis for better oversight and cement the contracts between the executive/Council, the administration and the public.

The MFMA gives effect to financial management reforms that place greater service delivery responsibilities on Directors and Managers and makes them more accountable for performance. Whilst, in the first instance it is left to the Executive Mayor to resolve any performance failures, ultimately the Council is vested with the power and responsibility to oversee both the executive and administration. Oversight occurs at various levels in a Municipality and is explained in the following table:

Financial governance framework applicable to local government

	Responsible for	Oversight over	Accountable to
Council	Approving policy and budget	Executive Mayor	Community
Executive Mayor	Policy, budgets, outcomes, oversight over municipal manager	Municipal Manager	Council
Municipal Manager	Outputs and implementation	The Administration	Council via Executive Mayor
Chief Financial Officer and Senior Managers (Directors)	Outputs and implementation	Financial Management and Operational Functions	Municipal Manager

6.1 Separation of roles

The separation of roles between the Council and Administration is intended to strengthen the oversight function of Councillors. Good governance and effective oversight and accountability are predicted on there being this separation of functions. It is fundamental for the achievement of the objects for local government in the Constitution relating to a democratic and accountable system of local government. Council oversees the performance of the Administration through Council and Committee meetings. The Executive Mayor provides the link between the Council and Administration and is responsible for regular monitoring and for tabling reports before the Council. Therefore, the Administration is responsible for the day-to-day operations. This separation avoids conflict of interest and a “referee/player” situation arising and is similar to the role played by Parliament.

The MFMA further assumes a separation between Councillors serving on the executive (i.e. Executive Mayor in conjunction with the Mayoral Committee) and non-executive Councillors. This separation is vital to ensure Council maintains oversight for the performance of specific responsibilities and delegated powers to the Executive Mayor.

The MFMA gives Council a number of financial management tasks to fulfil its oversight role. The adoption of an "Oversight Report" is one such task.

6.2 Annual report

Each Municipality and each municipal entity must prepare an annual report for each financial year in accordance with the MFMA and the Systems Act. The purpose of the annual report is:

- To provide a record of the activities of the Municipality or entity;
- To provide a report on performance in service delivery and against the budget;
- To provide information that supports the revenue and expenditure decisions made; and
- To promote accountability to the local community for decisions made.

Annual reports are the key reporting instruments for municipalities to report against the performance targets and budgets outlined in their strategic plans. Annual reports are therefore required to contain information on service delivery and outcomes, in addition to financial statements. It is meant to be a backward-looking document, focusing on performance in the financial year that has just ended. It must demonstrate how the budget was implemented and the results of service delivery operations for that financial year.

When tabled, the annual report should include four main components, each of which has an important function in promoting governance and accountability. The main components are:

- The annual performance report as required by section 46 of the Systems Act;
- Annual Financial Statements submitted to the Auditor-General;
- The Auditor-General's audit report on the financial statements in terms of section 126(3) of the MFMA; and
- The Auditor-General's audit report on performance in terms of section 45(b) of the Systems Act.

6.3 Oversight report

The oversight report is the final major step in the annual reporting process of a Municipality. Section 129 of the MFMA requires the Council to consider the annual reports of its municipality and municipal entities and to adopt an “oversight report” containing the Council’s comments on each annual report.

The oversight report must include a statement whether the Council:

- Has approved the annual report, with or without reservations;
- Has rejected the annual report; or
- Has referred the annual report back for revision of those components that can be revised.

The oversight report is thus clearly distinguished from the annual report. The annual report is submitted to the Council by the Accounting Officer and the Executive Mayor and is part of the process for discharging accountability by the executive and Administration for their performance in achieving the goals set by Council. **The oversight report is a report of the Municipal Council** and follows consideration and consultation on the annual report by the council itself. Thus the full accountability cycle is completed and the separation of powers is preserved to promote effective governance and accountability.

6.4 Managing the process and forming committees

Once the annual report is tabled, Council has effectively two months in which to consider the report, invite public submissions and to finalise its oversight report. Given there are a number of steps and many stakeholders, the review can be made more manageable if a committee process is established breaking it down into more easily managed parts.

The MPAC established under section 33 and 79 of the Structures Act and, if needed, Sub-Committees could be responsible for the detailed analysis and review of the *annual report* and then drafting an *oversight report* that may be taken to full Council for discussion. Such a Committee may receive and review representations made by the public and also seek inputs from other Councillors and Council Portfolio Committees.

The MPAC should be made up of only **non-executive** Councillors to deal with the annual report. Municipal officials cannot be members of an Oversight Committee as this would pose a conflict of interest. Assistance from the Municipality’s Joint Audit and Performance Audit Committee in the review process is also recommended as a major source of independent specialist advice.

All meetings of Council and the MPAC at which an annual report is considered must be open to the public and a reasonable time must be allowed for discussion of any written submissions received and for members of the community and organs of state to address the meetings. Representatives of the Auditor-General are entitled to attend and to speak at any meetings held to discuss the annual report. Timely notice of meetings should be given to enable representations to be made. Making representations to the MPAC should not necessarily preclude representations by the same individuals to the full Council as this promotes transparency in the process.

It is suggested that the Chairperson of the Committee be a member of a non-ruling party.

6.5 Matters of Fruitless and Wasteful Expenditure

Council on 30 March 2009 *inter alia* resolved as follows:

- “1. ...
2. ...
3. that a Section 79 Committee be established in terms of the provisions of the Local Government: Municipal Structures Act 117 of 1998 consisting of the Speaker as convener plus two additional non-executive Councillors to investigate matters of fruitless and wasteful expenditure as envisaged in Section 32(2)(b) of the Local Government: Municipal Finance Management Act No 56 of 2003, and
4. ...”

Council, on 1 June 2011, *inter alia* resolved as follows:

- “1. that members of the Section 79 Committee on Fruitless and Wasteful Expenditure **be appointed** as follows:

Ald A Coetsee, Cllrs M Lerm, L Beyers-Cronje, N Nqinata and M Ponoane;
2. that Ald A Coetsee **be appointed** as Chairperson of the Section 79 Committee on Fruitless and Wasteful Expenditure Committee, and
3. ...”

When regard is had to the nature of MPAC’s work, it is recommended that MPAC also be tested with the responsibilities as is provided for in section 32(2)(b) of the MFMA.

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It is recommended that the Chairperson of the Committee be a member of a non-ruling party.

7. Financial Implications

None – members of MPAC will receive no additional remuneration.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Overstrand Municipal Public Accounts Committee Charter

RECOMMENDATION TO THE COUNCIL:

1. that the Overstrand Municipal Public Accounts Charter, attached as Annexure A to the agenda of Council dated 12 August 2016, **be adopted**;
2. that five (5) non-executive members for the Municipal Public Accounts Committee **be appointed**;
3. that the Chairperson be appointed from a **non-ruling political party**; and
4. that a non-executive Councillor be appointed as **secundus** for the Chairperson.

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

OVERSTRAND MUNICIPALITY

OVERSTRAND MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) CHARTER

Munisipaliteit • U-Masipala • Municipality



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1. INTRODUCTION

The roles and responsibilities of Council should always be carried out with a clear distinction between oversight and interference in administration, as defined in the Local Government: Municipal Finance Management Act, 2003, Act No 56 of 2003 (MFMA), section 52(b) and 103 respectively as well as in the Code of Conduct for Councillors, defined in Schedule 1 of the Local Government: Municipal Systems Act, No 32 of 2000.

Section 129(4) of the MFMA further provides for the issuance of guidance on the manner in which municipal councils should consider annual reports and conduct public hearings, and the functioning and composition of any public accounts or oversight committees established by the Council to assist it to consider an annual report.

Section 32(2)(b) of the MFMA further *inter alia* provides for the Municipality to recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless, in the case of irregular or fruitless and wasteful expenditure, the expenditure is, after investigation by a Council Committee, certified by the Council as irrecoverable and written off by Council.

2. INSTITUTIONAL CONTEXT AND FUNCTIONS OF THE OVERSTRAND MUNICIPAL PUBLIC ACCOUNTS COMMITTEE

2.1 *Institutional context*

The Municipal Public Accounts Committee (MPAC) is established in terms of section 79 of the Local Government: Municipal Structures Act, No 117 of 1998 and performs an oversight function on behalf of Council and is not a duplication of other committees of Council, such as the Finance Committee or that of the Audit Committee.

MPAC may undertake and manage similar functions and responsibilities for the municipality, as undertaken by the Standing Committee on Public Accounts in the national and provincial legislature, except for certain powers regarding subpoena of individuals. In the case of irregular expenditure or any fruitless and wasteful expenditure incurred by the municipality, MPAC will have the right to call upon the accounting officer of the municipality or his/her delegatee to appear before it to provide information or clarity.

The MPAC may engage directly with the public and consider public comments when received and will be entitled to request for documents or evidence from the Accounting Officer.

MPAC can request the support of both the internal and external auditors (advisory) when necessary. The standard rules for the Council apply to MPAC. The Committee shall have permanent referral of documents as they become available relating to:

- (i) In-year reports of the municipality;
- (ii) financial statements of the municipality as part of the Committee's oversight process;
- (iii) audit opinion, other reports and recommendation from the Audit Committee;
- (iv) information relating to compliance in terms of sections 32, 128 and 133 of MFMA;

- (v) information in respect of any disciplinary action taken in terms of the MFMA where it relates to an item that is currently serving or has served before the Committee;
- (vi) any other audit report from the municipality; and
- (vii) performance information of the municipality.

The MPAC is not responsible for policy formulation. The MPAC reports directly to Council through the Speaker and interfaces with the other committees of Council through the Speaker, where relevant.

It is emphasised that the Audit Committee is an independent advisory body that advises Council, political office-bearers, the accounting officer and the management of the municipality on matters related to internal control, internal audits, risk management accounting policies and adequacy reliability and accuracy of financial reporting and information, performance management, effective governance compliance with the MFMA and the Division of Revenue Act.

2.2 Functions of MPACs

The primary functions of the Municipal Public Accounts Committee are as follows:

- (i) To consider and evaluate the content of the annual report and to make recommendations to Council when adopting an oversight report on the annual report;
- (ii) In order to assist with the conclusion of matters that may not be finalised, information relating to past recommendations made on the Annual Report, must also be reviewed. This relates to current in-year reports, including the quarterly, mid-year and annual reports;
- (iii) To examine the financial statements and audit reports of the municipality, and in doing so, the Committee must consider improvements from previous statements and reports and must evaluate the extent to which the Audit Committee's and the Auditor-General's recommendations have been implemented;
- (iv) To promote good governance, transparency and accountability on the use of municipal resources;

- (v) To recommend or undertake any investigation in its area of responsibility, after reviewing any investigation report already undertaken by the municipality or the Audit Committee; and
- (vi) To perform any other functions assigned to it through a resolution of Council within its area of responsibility.

2.3 Administrative Support by Council

In order for the MPAC to be effective in executing its functions, MPAC is supported by officials to co-ordinate and undertake research activities as required by the committee work programme and to render a secretarial service.

3. COMPOSITION AND MEMBERSHIP

- 3.1 The MPAC comprises of five (5) Councillors excluding any Councillor who is serving as Executive Mayor or Deputy Executive Mayor, Speaker or a member of the Mayoral Committee.
- 3.2 The Committee may invite representatives of the community and co-opt members of the public who have expertise in relevant specific fields to assist and advise in the deliberations when the need arises. These representatives will have no voting rights as they are not elected Councillors.
- 3.3 Members of MPAC must represent various political affiliations.

Councillors serving on MPAC shall be appointed for a term which corresponds to the term of sitting Council. When a Councillor resigns or is transferred from the Committee, the resignation must be in writing and Council must appoint a replacement by resolution at the next scheduled full Council meeting.

- 3.4 The names of Councillors serving on MPAC shall be published in the annual report.

4. CHAIRING OF MPAC

- 4.1 The Chairperson of the Committee is to be appointed by Council.
- 4.2 When appointing the Chairperson of the Committee, Council must take into consideration the requirements of transparency, ethical behaviour and general good governance prescripts.
- 4.3 In deciding on the Chairperson, the Council may consider appointing Councillors from parties other than the majority parties in Council.

5. MPAC WORK PROGRAMME

- 5.1 MPAC must develop its work programme annually and link such programmes to the overall planning cycle of council.

6. ATTENDANCE OF MEETINGS

- 6.1 Meetings must be held as may be necessary in accordance with the approved work programme. The meetings of MPAC must be included in the annual calendar of Council and the notice requirements should be similar to those of other committees of Council taking into consideration the timeframes in the MFMA for preparation and adoption of the oversight report on the annual report.
- 6.2 If otherwise, the notice of meetings shall be given at least 7 days prior to the meeting and agendas and relevant documents shall be delivered at least 7 days prior to meeting for preparation purposes.

7. REPORTING

- 7.1 The MPAC will report to Council on the activities of the committee; include a report detailing its activities of the preceding and current financial years, the number of meetings held, the membership of the Committee and key resolutions taken.
- 7.2 The Committee must discuss and adopt its report for Council in accordance with the procedures for tabling matters in Council defined in the standing rules of Council.
- 7.3 The MPAC should report to full Council at least bi-annually and may bring items before Council as and when necessary.
- 7.4 The full Council must deliberate on the recommendations from the MPAC, at a meeting open to the public, and must reach finality in the shortest possible time.
- 7.5 Council must evaluate the performance of MPAC on an annual basis.

13. DECLARATION OF INTERESTS : COUNCILLORS, MUNICIPAL MANAGER AND DIRECTORS

2/1

**S Reyneke-Naudé
1 Augustus 2016****(028) 313 8074****Finance**

1. Executive Summary

The purpose of the report is for Council to consider the provisions of items 7 and 5A, respectively, of Schedules 1 and 2 of the Local Government: Municipal Systems Act, No 32 of 2000.

2. Service Delivery and Budget Implementation Plan - IGNITE

Office of the Municipal Manager

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Systems Act, No 32 of 2000 (Systems Act)
Local Government: Municipal Finance Management Act, No 56 of 2003 (MFMA)
Overstrand Municipality: Supply Chain Management Policy

6. Background/Discussion/Evaluation/Conclusion

Item 7 of Schedule 1 of the Systems Act provides as follows:

“7 (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by the councillor:

- (a) Shares and securities in any company;*
- (b) membership of any close corporation;*
- (c) interest in any trust;*
- (d) directorships;*
- (e) partnerships;*
- (f) other financial interests in any business undertaking;*
- (g) employment and remuneration;*
- (h) interest in property;*
- (i) pension; and*

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- (j) *subsidies, grants and sponsorships by any organisation.*
- (2) *Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.*
- (3) *Gifts received by a councillor above a prescribed amount must also be declared in accordance with sub item (1).*
- (4) *The municipal council must determine which of the financial interests referred in sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.”*

Item 5A of Schedule 2 of the Systems Act provides as follows:

- “5A (1) A person appointed in terms of section 56 or a municipal manager must within 60 days after his or her appointment declare in writing to the chairperson of the municipal council the following interests held by that person or municipal manager:*
- (a) Shares and securities in any company;*
 - (b) membership of any close corporation;*
 - (c) interest in any trust;*
 - (d) directorships;*
 - (e) partnerships;*
 - (f) other financial interests in any business undertaking;*
 - (g) interest in property; and*
 - (h) subsidies, grants and sponsorships by any organisation.*
- (2) any change in the nature or detail of the financial interests of a staff member must be declared in writing quarterly to the chairperson of the municipal council.*
- (3) The municipal council must determine which of the financial interests referred to in sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.”*

In both the abovementioned instances it is for the Council to determine which of the financial interests referred to must be made public, having regard to the need for confidentiality and the public interest for disclosure.

Paragraph 44 of the Municipality’s Supply Chain Management Policy, which policy was drafted in accordance with the MFMA, Municipal Supply Chain Management Regulations published under GN 868 dated 30 May 2005, provides that the Municipality may not make any award to a person –

- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principle shareholder, or stakeholder is a person in service of the state;
or
- (c) who is an advisor or consultant contracted with the municipality.

“In service of the state” is defined as –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity, or constitutional institution within the meaning of the Public Finance Management Act, No 1 of 1999;
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

In order to comply with paragraph 44 of the Municipality’s Supply Chain Management Policy, it is important that the Supply Chain Management Department within the Directorate : Finance, has privy to the necessary information.

Thus when regard is had to the above-mentioned as far as Councillors, the Municipal Manager and Directors (i.e. persons appointed in terms of section 56 of the Systems Act) are concerned, it is recommended that the Municipal Manager and Speaker be authorised to make the item 7 and 5A information of the aforementioned office bearers and officials, available to the Head: Supply Chain Management and the Manager: Purchases, such information to be made available as and when same is submitted to the Municipal Manager and Speaker.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

**14.
RULES REGULATING WARD COMMITTEES****3/2/3/1****R Williams****(028) 313 8156****Community Services****12 July 2016**

1. Executive Summary

The purpose of this report is to note the rules regulating Ward Committees.

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

- Overstrand Municipality Third Establishment Amendment Notice PN 189/2003 dated 28 May 2003 (Third Amendment Notice)
- Part 4 of Chapter 4 of the Local Government: Municipal Structures Act, No 117 of 1998 (Structures Act)

6. Discussion

The Overstrand Municipality is, in terms of its Third Amendment Notice, since 28 May 2003 a Municipality with a mayoral executive system combined with a ward participatory system.

Section 73(3) of the Structures Act provides for a Council to make rules regulating –

- The procedure to elect the members of a Ward Committee, taking into account the need –
 - for woman to be equitably represented in a Ward Committee; and
 - for a diversity of interests in the ward to be represented;
 - the circumstances under which those members must vacate office; and
 - the frequency of meetings of Ward Committees.

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The rules adopted by the previous Council were made available to Councillors during the workshop on 10 August 2016.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Overstrand Municipality Third Establishment Amendment Notice

Annexure B : Part 4 of Chapter 4 of the Structures Act

RECOMMENDATION TO THE COUNCIL:

that the Rules regarding Ward Committees as contained in the document which was made available to councillors during the workshop on 10 August 2016, **be noted.**

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998
(ACT 117 OF 1998)

THE OVERSTRAND MUNICIPALITY (WCO32) THIRD ESTABLISHMENT AMENDMENT NOTICE

By virtue of the powers vested in me by section 16 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended by the Local Government: Municipal Structures Amendment Act, 2000 (Act 33 of 2000), the Local Government: Municipal Structures Amendment Act, 2002 (Act 20 of 2002), Local Government Laws Amendment Act, 2002 (Act 51 of 2002) and the Local Government: Municipal Structures Amendment Act, 2003 (Act 1 of 2003), I hereby give notice of the third amendment of the Overstrand Municipality (WCO32) Establishment Notice, Provincial Notice 494 published in Provincial Gazette 5591 dated 22 September 2000 as previously amended in Provincial Notice 680 published in the Provincial Gazette Extraordinary No. 5643 dated 4 December 2000 and Provincial Notice 461 published in the Provincial Gazette Extraordinary No. 5969 dated 19 December 2002 on the terms set out in the Schedule hereto.

Dated this 28th day of May 2003.

J. J. DOWRY, PROVINCIAL MINISTER OF LOCAL GOVERNMENT

GENERAL EXPLANATORY NOTE:

- { } Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE

Amendment of section 1 of the principal Notice

1. Section 1 of the Schedule to the Overstrand Municipality Establishment Notice (hereafter referred to as the principal Notice) is hereby amended:—
- (1) by the deletion of the definition "collective executive system" in subsection (3), and
- (2) by the insertion of the following subsections:—
- "(13A) '**mayoral executive system**' means a system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the Municipality is vested and who is assisted by a mayoral committee;" and
- "(22A) '**ward participatory system**' means a system which allows for matters of local concern to wards to be dealt with by committees established for wards;"

Amendment of section 6 of the principal Notice

2. Section 6 of the Schedule to the principal Notice is hereby amended by the substitution for section 6 of the following section:—

"Type

6. The Local Municipality is a municipality with a [collective] mayoral executive system combined with a ward participatory system as provided for in the Western Cape Determination of Types of Municipalities Act, 2000 (Act 9 of 2000), as amended by the Western Cape Determination of Types of Municipalities Amendment Act, 2002 (Act 4 of 2002)."

Amendment of section 9 of the principal Notice

3. Section 9 of the Schedule to the principal Notice is hereby amended by the substitution for section 9 of the following section:—

"Full-time Councillors

9. The Local Municipality may designate the following councillors as full-time councillors:—
- (a) the executive mayor;
- (b) the members of the mayoral committee, and
- (c) the speaker."

Insertion of section 25B to the text of the principal Notice

4. The Schedule to the principal Notice is hereby amended by the insertion of the following section after section 25A:—

"Executive Deputy Mayor

25B Approval is granted in terms of section 55 of the Municipal Structures Act, as amended, for the election of an executive deputy mayor."

Short title and commencement

5. This Notice is called the Overstrand Municipality Third Establishment Amendment Notice and comes into operation on 10 June 2003.

72. Only metropolitan and local municipalities of certain types may have ward committees.—(1) Only metropolitan and local municipalities of the types mentioned in sections 8 (c), (d), (g) and (h) and 9 (b), (d) and (f) may have ward committees.

(2) If a metropolitan or local municipality of a type referred to in subsection (1) chooses to establish ward committees, the provisions of this Part apply.

(3) The object of a ward committee is to enhance participatory democracy in local government.

73. Establishment of ward committees.—(1) If a metro or local council establishes ward committees, it must establish a ward committee for each ward in the municipality.

[Sub-s. (1) substituted by s. 6 (a) of Act No. 19 of 2008.]

Wording of Sections

(2) A ward committee consists of—

- (a) the councillor representing that ward in the council, who must also be the chairperson of the committee; and
- (b) not more than 10 other persons.

(3) A metro or local council must make rules regulating—

- (a) the procedure to elect the subsection (2) (b) members of a ward committee, taking into account the need—
 - (i) for women to be equitably represented in a ward committee; and
 - (ii) for a diversity of interests in the ward to be represented;
- (b) the circumstances under which those members must vacate office; and
- (c) the frequency of meetings of ward committees.

(4) A metro or local council may make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively.

(5) (a) Out of pocket expenses referred to in paragraph (c) must be paid from the budget of the municipality in question.

(b) A metro or local council must develop a policy and determine criteria for and calculation of the out of pocket expenses referred to in paragraph (c) based on a provincial framework determined by the MEC subject to paragraph (e).

(c) A metro or local council may make arrangements for the payment of out of pocket expenses to members of ward committees in respect of participation by ward committee members in the activities of the ward committees.

(d) A municipal council may allocate funds and resources to enable ward committees to perform their functions, exercise their powers and undertake development in their wards within the framework of the law.

(e) The Minister must determine a national framework including criteria for the calculation of the out of pocket expenses referred to in paragraph (b).

[Sub-s. (5) added by s. 6 (b) of Act No. 19 of 2008.]

74. Functions and powers of ward committees.—A ward committee—

- (a) may make recommendations on any matter affecting its ward—
 - (i) to the ward councillor; or
 - (ii) through the ward councillor, to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan subcouncil; and

- (b) has such duties and powers as the metro or local council may delegate to it in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

[Para. (b) substituted by s. 7 of Act No. 19 of 2008.]

Wording of Sections

75. Term of office of members.—(1) The section 73 (2) (b) members of a ward committee are elected for a term that corresponds with the term referred to in section 24 of this Act.

(2) The Minister may by notice in the *Government Gazette* prescribe regulations for the implementation of subsection (1).

[S. 75 substituted by s.8 of Act No. 19 of 2008.]

Wording of Sections

76. Vacancies.—If a vacancy occurs among the section 73 (2) (b) members of a ward committee, the vacancy must be filled in accordance with a procedure determined by the metro or local council.

77. Remuneration.—No remuneration is payable to the section 73 (2) (b) members of a ward committee.

78. Dissolution of ward committees.—A metro or local council may dissolve a ward committee if the committee fails to fulfil its object.

Part 5: Other committees of municipal councils

**15.
ELECTION OF COUNCIL'S REPRESENTATIVES TO THE OVERBERG DISTRICT
MUNICIPALITY****3/2/2/1****C Groenewald
12 July 2016****(028) 313 8003****Corporate Head Office**

1. Executive Summary

The purpose of the report is to provide guidance to Council with the election of Council's representatives to the Overberg District Municipality in terms of the provisions of items 16 to 23 of Schedule 2 of the Local Government: Municipal Structures Act No 117 of 1998 and based on the determination of the number of Councillors in the District Municipality Establishment Notice.

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

- Items 16 to 23 of Schedule 2 of the Local Government: Municipal Structures Act, Nr 117 of 1998 (Structures Act)
- Overberg District Municipality Establishment Fifth Amendment Notice, PN 465/2010 dated 9 December 2010.

6. Discussion

The Minister for Local Government: Western Cape has determined in terms of the formula in Section 20 of the Structures Act the number of Councillors in the Council of the Overberg District Municipality to be 21 in total of which 9 have already been elected by proportional vote on 3 August 2016. With regard to the remaining seats it was determined in terms of the formula in item 15 of Schedule 2 of the Structures Act, that the number of seats to which the Overstrand Municipal Council is entitled is 4.

Item 16 of the said schedule requires the Chief Electoral Officer of the Electoral Commission to manage the election of these representatives. The

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 12 AUGUST 2016

Chief Electoral Officer's delegated representative, the Municipal Electoral Officer for Overstrand, Mr CC Groenewald, shall manage the election.

As the Council is entitled to more than one seat, the seats will be allocated on a proportional representation basis and filled from the lists provided by parties as required in item 17 of the aforesaid Schedule 2. The Municipal Electoral Officer will provide further guidance during the meeting.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Items 16 to 23 of Schedule 2 of the Structures Act

Annexure B : Nomination form to be submitted by parties

RECOMMENDATION TO THE COUNCIL:

that Council's representatives (4 councillors) to the Overberg District Municipality **be elected.**

RESPONSIBLE OFFICIAL:

H VAN TONDER

TARGET DATE FOR IMPLEMENTATION:

12 AUGUST 2016

16. Electing local councils' representatives to district councils.—(1) The chief electoral officer must manage the election of representatives of a local council to the district council.

(2) If a local council has been awarded one seat—

- (a) any councillor may nominate a candidate;
- (b) each councillor has one vote; and
- (c) the candidate who receives the most votes is elected.

(3) If the council has been awarded more than one seat, the council must elect that number of members according to proportional representation as set out in items 17 to 22.

17. Candidates lists.—(1) Every party or independent ward councillor may submit a candidates' list containing the names of councillors, accompanied by a written acceptance by each listed candidate.

[Subitem (1) substituted by s. 31 (a) of Act No. 51 of 2002.]

(2) A party or independent ward councillor may not submit more than one list; and

[Subitem (2) substituted by s. 31 (b) of Act No. 51 of 2002.]

(3) The candidates' names must appear on the list in order of preference, starting with the first in order of preference and ending with the last.

(4) The name of a councillor may appear on one list only.

(5) Every party or independent ward councillor must seek to ensure that fifty per cent of the candidates on the candidates list are women and that women and men candidates are evenly distributed through the list.

[Subitem (5) amended by s. 31 (c) of Act No. 51 of 2002.]

18. Number of votes.—Each councillor casts one vote for one list only.

19. Determining the quota.—In a local council, the quota of votes for a seat to the district council must be determined in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} + 1$$

Where—

A represents the number of members of the local council; and

B represents the number of seats that the local council has been awarded on the district council in accordance with item 15.

20. Allocating seats.—(1) The number of votes cast in favour of each list must be divided by the quota of votes for a seat and the result is the number of seats allocated to that list.

(2) (a) If the calculation in subitem (1) gives a surplus, that surplus must compete with other similar surpluses of any other lists, and any seat or seats not allocated under subitem (1) must be awarded in sequence of the highest surplus.

(b) If the surplus on one list is equal to the surplus on any other list, the seat or seats must be awarded in sequence of the highest number of votes cast for those lists.

[Subitem (2) amended by s. 32 of Act No. 51 of 2002. Para. (b) added by s. 32 of Act No. 51 of 2002.]

21. Selecting names from the list.—The chief electoral officer, in accordance with the order of preference on a list, must select the number of candidates from the list that is equal to the number of seats allocated to that list.

22. Insufficient lists.—In the case of a list containing fewer names than the number of seats allocated to that list, the corresponding provisions of item 10 must be applied to the extent that that item

can be applied.

23. Filling of vacancies.—If a councillor elected from a candidates' list ceases to hold office or the list has become exhausted, the corresponding provisions of item 11 must be applied to the extent that that item can be applied.

INDEPENDENT ELECTORAL COMMISSION

WESTERN CAPE

NOMINATION FORM

Election of members of a local council to represent that council in the district council
Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

Name of the Local Council:

Name of District Council:

I,(Full names), duly authorised by
(party name)/ or in my capacity as an independent councillor
of the above mentioned council, submit the following candidates' list for the election of
representatives to the district council.

.....

SIGNATURE

.....

DATE

Order of preference	Name of candidate	ID number	Signature: Acceptance of Nomination
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Please note that:

- An Independent councillor or party may not submit more than one list.
- A candidate may not appear on more than one candidates' list.
- Candidates' names must appear in order of preference.
- Use additional sheets if necessary and change the numbering of preferences.

