



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

A G E N D A

I-AJENDA

DATE / DATUM / UMHLA : 24 JUNE / JUNIE / JUNI 2020
VENUE / PLEK / INDAWO : VIRTUAL
TIME / TYD / IXESHA : 11:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

19 June / Junie / Juni 2020

NOTICE TO ALL ALDERMEN & COUNCILLORS

ORDINARY MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN that, due to the Covid-19 Lockdown, an **ORDINARY MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held by means of a virtual platform on **WEDNESDAY, 24 JUNE 2020 at 11:00**, of which the agenda will be available on the Overstrand Website (www.overstrand.gov.za).

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

C GROENEWALD
MUNICIPAL MANAGER

KENNISGEWING AAN ALLE RAADSHERE & RAADSLEDE

GEWONE VERGADERING VAN DIE OVERSTRAND MUNISIPALE RAAD

KENNIS GESKIED HIERMEE dat, weens die Covid-19 grendeltydperk, 'n **GEWONE VERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word by wyse van 'n virtuele platform op **WOENSDAG, 24 JUNIE 2020** om **11:00**, welke agenda op die Overstrand Webtuiste (www.overstrand.gov.za) beskikbaar sal wees.

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

C GROENEWALD
MUNISIPALE BESTUURDER

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO YESIQHELO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

OKU KUKWAZISA ukuba, ngenxa yokuvakwa okubangelwe yintsolongwana i-COVID-19, **INTLANGANISO YESIQHELO yeBHUNGA LIKAMASIPALA WE-OVERSTRAND**, iyakubanjwa ngeqonga elibonakalisayo ngo**LWESITHATHU, Umhla we 24 JUNI 2020 ngeye-11:00**. I-ajenda iya kufumaneka yona kwiwebhusayithi ye-Overstrand (www.overstrand.gov.za).

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

C GROENEWALD
UMPHATHI KAMASIPALA

AGENDA/...

- 1. OPENING**

- 2. APPLICATIONS FOR LEAVE OF ABSENCE**

- 3. CONFIRMATION OF MINUTES**
 - 3.1 Minutes of an **Ordinary Meeting** of the **Council** held on **Wednesday, 27 May 2020** at **11:00**
 - 3.2 Minutes of a **Special Meeting** of the **Council** held on **Friday, 12 June 2020** at **11:00**

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

5. CONSIDERATION OF RECOMMENDATIONS MADE BY THE EXECUTIVE MAYOR TO COUNCIL, IN TERMS OF SECTION 160(2) OF THE CONSTITUTION, 1996, AND SECTION 59(1)(a) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 2000 (ACT 32 OF 2000)

REMARK

Please note that the following recommendations contained in this agenda are subject to confirmation or amendment by the Executive Mayor in view of the fact that the **compilation of the Council agenda** was done before the Mayoral Committee of 24 June 2020 had formally sat.

5.1

OVERSTRAND: AMENDMENT OF THE OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, ADOPTION OF THE OVERSTRAND MUNICIPALITY LAND USE SCHEME AND OVERLAY ZONES AND INCORPORATION INTO THE SAID BY-LAW

(ITEM 5, PAGE 1 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)

RECOMMENDATION TO COUNCIL :

1. that the Reviewed Overstrand Municipality By-Law on Municipal Land Use Planning and the Overstrand Municipality Land Use Scheme and Overlay Zones **be adopted** by Council;
2. that the following policies **be rescinded**:
 - Overstrand Policy on Playschools on Single Residential erven, dated 2001 (Executive Committee Meeting, dated 7 August 2001)
 - Policy on Guidelines and requirements in respect of applications for the erection/establishment of additional dwelling units and accommodation for farm workers/ staff on agricultural land units within the jurisdiction area of the Overstrand Municipality, dated 2009 (Council dated 1 September 2009) and
 - Policy for conducting an accommodation establishment on a single residential erf, dated 2001(Executive Committee meeting, dated 31 May 2001)
3. that the determination of the zoning of various erven to be aligned with Fernkloof Nature Reserve Proclamation, 2000, **be approved**;

4. that the determination of bulk areas of the towns of Hermanus, Kleinmond and Gansbaai, **be approved**, and
5. that minor amendments, excluding amendments to the text, **be delegated** to the Municipal Manager, should it be required.

RESPONSIBLE OFFICIAL :

R KUCHAR

TARGET DATE FOR IMPLEMENTATION :

8 JULY 2020

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

5.2**REPORTS OF THE JOINT AUDIT AND PERFORMANCE AUDIT COMMITTEE (JAPAC) TO THE OVESTRAND MUNICIPAL COUNCIL****(ITEM 6, PAGE 377 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)****RECOMMENDATION TO THE COUNCIL:**

that the reports from the Joint Audit and Performance Audit Committee to the Overstrand Municipal Council **be noted**.

RESPONSIBLE OFFICIAL :**DC VAN DER HEEVER****TARGET DATE FOR IMPLEMENTATION :****24 JUNE 2020**

**5.3
COMBINED ASSURANCE POLICY FRAMEWORK**

(ITEM 7, PAGE 440 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)

RECOMMENDATION TO THE COUNCIL:

that the Combined Assurance Policy Framework **be approved.**

RESPONSIBLE OFFICIAL : Z MAZUTHU

TARGET DATE FOR IMPLEMENTATION : 1 JULY 2020

5.4**FRAUD PREVENTION & ANTI-CORRUPTION STRATEGY, POLICY AND PLAN****(ITEM 8, PAGE 450 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the Fraud Prevention & Anti-Corruption Strategy **be approved**;
2. that the Fraud Prevention & Anti-Corruption Policy **be approved**; and
3. that the Fraud Prevention & Anti-Corruption Plan **be approved**.

RESPONSIBLE OFFICIAL :**Z MAZUTHU****TARGET DATE FOR IMPLEMENTATION :****1 JULY 2020**

5.5

A PORTION OF ERF 775 FISHERHAVEN: DEVIATION FROM PARAGRAPHS 18, 20.1(b) AND 24 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FUTURE TEMPORARY LEASE AGREEMENT WITH LAKE MARINA YACHT AND BOAT CLUB

(ITEM 9, PAGE 510 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club for a further period of 7 (SEVEN) months without following a competitive process, **be approved**;
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club for a further period of 7 (SEVEN) months without following a public participation process, **be approved**; and
3. that the deviation from paragraph 24 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club without having a new market related valuation being done, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 JULY 2020
TARGET DATE TO INFORM APPLICANT :	30 JUNE 2020
TARGET DATE TO INFORM OBJECTOR :	N/A

5.6**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR MAY 2020****(ITEM 10, PAGE 517 : MAYORAL COMMITTEE MEETING : 24 JUNE
2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the deviations from the procurement processes, approved in terms of the delegated authority for May 2020, **be noted**; and
2. that the awards made in terms of Paragraph 16(1)(b) and 17(1)(c), approved in terms of the delegated authority for May 2020, **be noted**.

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

5.7

ERF 8643 KLEINMOND - KLEINMOND COMMUNITY INVESTMENT HOLDINGS (PTY) LTD (KCIH): TRANSFER OF PROPERTY TO THE MUNICIPALITY AND WRITE OFF OF AMOUNTS RAISED

(ITEM 11, PAGE 524 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)

RECOMMENDATION TO THE COUNCIL:

that Council **approves** the writing off of the amount of R77 616.57 (SEVENTY SEVEN THOUSAND SIX HUNDRED AND SIXTEEN RAND AND FIFTY SEVEN CENTS), representing the municipal rates and taxes, services charges, interest, penalties and collection costs levied on the municipal account number 311864300011 in order for the Municipality to attend to the transfer of Erf 8643 Kleinmond as ordered by the Court.

RESPONSIBLE OFFICIAL :**A LE ROUX
E HOONENBERG****TARGET DATE FOR IMPLEMENTATION :****30 JUNE 2020****TARGET DATE TO INFORM APPLICANT :****N/A**

5.8**PROPOSED AMENDMENT OF TWO CONTRACTS REGARDING GEOGRAPHIC INFORMATION SYSTEMS SERVICES:**

**CONTRACT SC1634A/2015: PROVISION OF GEOGRAPHICAL INFORMATION SYSTEMS (GIS) SERVICES IN THE OVERSTRAND MUNICIPAL AREA; AND
CONTRACT SC1793/2017: THE ACQUISITION OF CAPPED ELA LICENSING FEE FOR THE GIS SYSTEM FOR A CONTRACT PERIOD ENDING 30 JUNE 2020**

(ITEM 12, PAGE 529 : MAYORAL COMMITTEE MEETING : 24 JUNE 2020)

RECOMMENDATION TO THE COUNCIL:

1. that cognisance be taken of the reason for the proposed amendments of the following contracts:
 - (a) SC1634A/2015 for the GIS Services Level Agreement Contract; and
 - (b) SC1793/2017 for the GIS Enterprise License Agreement Contract;
2. that cognisance be taken that no recommendations or representations were received from the local community by the closing date 28 April 2020; and
3. that Council consents to these amendments.

RESPONSIBLE OFFICIAL :**L RAUCH****TARGET DATE FOR IMPLEMENTATION :****1 JULY 2020****TARGET DATE TO INFORM APPLICANT:****1 JULY 2020**

6. CONSIDERATION OF REPORTS**6.1
APPOINTMENT OF MUNICIPAL MANAGER**

4/3/R

DS Arrison

Director : Management Services

07 June 2020

(028) 313 8001

1. Executive Summary

The purpose of this report is to consider the appointment of a Municipal Manager with effect 1 November 2020.

2. Service Delivery and Budget Implementation Plan Reference - IGNITE

Directorate: Management Services

3. Compliance with Strategic Priority

Provision of democratic and accountable governance

4. Delegated Authority

None

5. Legal Requirements

- Sub-section 160(1)(d) of the Constitution of the Republic of South Africa, 1996
- Sections 60, 67 and 72 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) [Systems Act]
- Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) [Structures Act]
- Chapter 3 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000): Local Government Regulations on Appointment and Conditions of Employment of Senior Managers, (GN 21 dated 17 January 2014) [Appointment Regulations]
- Local Government: Upper Limits Payable to Municipal Managers and Managers Directly Accountable to Municipal Managers (GN 351 dated 20 March 2020 [Upper Limit Regulations]

6. Discussion

The Municipal Manager, Mr Coenraad Groenewald (Coenie), will reach retirement age on 6 October 2020, and his fixed term contract of employment terminates on 31 October 2020.

The vacancy that will arise was advertised nationally as is provided for in sub-regulation 10(2) of the Appointment Regulations. A copy of the English version of the advertisement is attached as Annexure A.

A total of 28 applications (with one late) were received for the position. Messrs. Roy Steele and Associates were, after following due processes, appointed as professional consultants to facilitate the recruitment and selection process.

The selection process consisted of the following two primary components:

- ❖ Case Study Evaluation (40% weighting); and
- ❖ A Structured Interview (Presentation and 14 competency areas interrogated 60% weighting) was administered.

The scores derived from the above processes were combined to arrive at an aggregate score that depicts the candidates deemed to be the most competent amongst the applicants. Thus, establishing an order of suitability from where the Selection Panel was to seek consensus on the recommendation for appointment of a suitable candidate to Council.

A total of three candidates were, after proper screening, invited to attend the evaluation and interview sessions for the post, of which one candidate withdrew from the interview session.

The Selection Processes were attended by:

Ald D Coetzee	- Executive Mayor (Chairperson)
Adv G Mettler	- Specialist (Municipal Manager, Stellenbosch Municipality)
Cllr E Gillion	- Deputy Executive Mayor
Mr G Paulse	- HoD Provincial Department of Local Government
Cllr V Pungupungu	- Observer
Mr R Steele	- Facilitator
Ms DS Arrison	- Director: Management Services & Secretariat

The Executive Mayor will inform Council during the meeting of the selection panel's proposal with regard to the appointment of a Municipal Manager with effect from 1 November 2020.

It is furthermore recommended that the Executive Mayor, as is provided for in section 60(1)(b) of the Systems Act, be authorised to negotiate the terms and conditions of appointment with the successful candidate and to conclude the necessary agreements. Such negotiations are to be guided by the Upper Limit Regulations.

7. Financial Implications

Sufficient funds are available on the municipality's 2020/21 operational budget for the funding of this post.

8. Staff Implications

Filling of vacancy of Municipal Manager.

9. Comments from other Departments, Divisions and Administrations

Not applicable

10. Annexures

Annexure A: Advertisement in respect of vacancy of Municipal Manager

RECOMMENDATION TO THE COUNCIL:

1. that **consideration be given** to the proposal of the interview panel with regard to the appointment of a Municipal Manager for the Overstrand Municipality with effect from 1 November 2020;
2. that, in terms of sub-section 60(1)(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), the Executive Mayor **be authorised** to negotiate the terms and conditions of appointment, as is provided for in Chapter 3 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000): Local Government Regulations on Appointment and Conditions of Employment of Senior Managers, (GN 21 dated 17 January 2014) and the Local Government Regulations: Upper Limits Payable to Municipal Managers and Managers Directly Accountable to Municipal Managers (GN 351 dated 20 March 2020, with the successful candidate and to conclude the necessary contract of employment; and

3. that, as is provided for in sub-regulation 17(3)(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000): Local Government Regulations on Appointment and Conditions of Employment of Senior Managers, (GN 21 dated 17 January 2014) the Minister for Local Government of the Western Cape **be advised** within 14 days of the appointment process and outcome.

RESPONSIBLE OFFICIAL:

DS ARRISON

TARGET DATE FOR IMPLEMENTATION:

1 NOVEMBER 2020

 <p>Overstrand Munisipaliteit is 'n werkgewer met 'n beleid van geleëde geleentheid wat doende streef om 'n dinamiese en effektiewe diens aan sy gemeenskap te lewer. Die Munisipaliteit sluit die Middelplatteland, Hermanus, Stanford en Gansbaai gebiede in. Bevoegte en selfmotiverende persone wat uitdagings geniet soek persone uit die aangewese groepe, word genooi om deel van die tspan te word in vir die volgende pos aan te trek te doen:</p>	 <p>Overstrand Municipality, an equal opportunity employer, strives to render a dynamic and effective service to the community. The Municipality includes the areas of Middelplatteland, Hermanus, Stanford and Gansbaai. Competent and self-motivated people and people from the designated groups who enjoy challenges are invited to join our leading team and to apply for the following vacancy:</p>
<p>MUNISIPALE BESTUURDER (WC0320208)</p>	<p>MUNICIPAL MANAGER (WC0320208)</p>
<p>(PRESTASIE-GEBASEERDE OOREENKOMST VANAF 1 NOVEMBER 2020 TOT EEN JAAR NÁ DIE DATUM VAN DIE 2021 PLAASLIKE REGERINGSVERKIESING)</p>	<p>(PERFORMANCE BASED CONTRACT FROM 1 NOVEMBER 2020 UNTIL ONE YEAR AFTER THE DATE OF THE 2021 LOCAL GOVERNMENT ELECTION)</p>
<p>TOTALE VERGOEDINGSPAKKET, SOOS VAN TOEPASSING OP 'N GRAAD 4 MUNISIPALITEIT WELKE ONDERHANDELBAAR IS OOREENKOMSTIG DIE BEDINGE EN VOORWAARDES SOOS VERVAT IN DIE KENNISGEWINGS INGEVOLGE DIE "PLAASLIKE REGERING: TOTALE VERGOEDINGSPAKKETTE BETAALBAAR AAN MUNISIPALE BESTUURDERS EN BESTUURDERS WAT REGSTREEKS AAN DIE MUNISIPALE BESTUURDER VERANTWOORDBAAR IS".</p>	<p>TOTAL REMUNERATION PACKAGE AS APPLICABLE TO A GRADE 4 MUNICIPALITY WHICH IS NEGOTIABLE WITHIN THE TERMS AND CONDITIONS AS ARE PROVIDED FOR IN THE NOTICES IN TERMS OF THE "LOCAL GOVERNMENT: TOTAL REMUNERATION PACKAGES PAYABLE TO MUNICIPAL MANAGERS AND MANAGERS DIRECTLY ACCOUNTABLE TO THE MUNICIPAL MANAGERS"</p>
<p>WERKPLEK: KORPORATIEWE HOOFKANTOOR – HERMANUS</p>	<p>PLACE OF WORK: CORPORATE HEAD OFFICE - HERMANUS</p>
<p>Die Munisipale Bestuurder, as Rekenpligtige Beampte en Hoof van Administrasie, is verantwoordelik vir die algehele prestasie en die bestuur van die munisipaliteit ten einde te verseker dat die doelstellings van die munisipaliteit bereik word.</p>	<p>The Municipal Manager, as Accounting Officer and Head of Administration, is responsible for the overall performance and the management of the municipality to ensure that the objectives of the municipality are achieved.</p>
<p>Kernfunksies van die pos: Soos voorgeskryf, maar nie beperk nie, in die bepalinge van die Wet op Plaaslike Regering, Munisipale Stelsel, Nr. 32 van 2000, die Wet op Plaaslike Regering, Munisipale Finansiële Bestuur, Nr. 56 van 2003, en die Munisipaliteit se Artikel 53 Relektaringsbeleid.</p>	<p>Core functions of the post: As are provided for but not limited to, in the provisions of The Local Government: Municipal Systems Act, No. 32 of 2000, The Local Government: Municipal Finance Management Act, No. 56 of 2003, and the Municipality's Section 53 Role Clarification Policy.</p>
<p>Minimum kwalifikasies, werkverwante ervaring en kennis- en vaardighedsraamwerk: Soos voorgeskryf in die Plaaslike Regering: Regulasies vir Anstelling en Dienvoorwaardes van Senior Bestuurders (GK 21 in Staatskoerant 37245 gedateer 13 Januarie 2014) en die Munisipale Regulasies vir Minimum Bevoegheidsvlakke (GK 493 in Staatskoerant 29967 gedateer 15 Junie 2007), soos van tyd tot tyd gewysig.</p>	<p>Minimum qualifications, work-related experience and knowledge and competency framework: As are provided for in the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (Government Notice 21 in Government Gazette 37245 dated 13 January 2014) and the Municipal Regulations on Minimum Competency Levels (Government Notice 493 in Government Gazette 29967 dated 15 June 2007) as amended from time to time.</p>
<p>Navrae/Aansoek: D Arrison (Ma) Tel: 028 313 8001 of darrison@overstrand.gov.za</p>	<p>Enquiries/Applications: D Arrison (Ms) Tel: 028 313 8001 or darrison@overstrand.gov.za</p>
<p>Posbus 20, HERMANUS 7200</p>	<p>PO Box 20, HERMANUS 7200</p>
<p>Sluitingsdatum: Vrydag, 27 Maart 2020 om 12:00</p>	<p>Closing Date: Friday, 27 March 2020 at 12:00</p>
<p>KENNISGEWING AAN AANSOEKERS</p>	<p>NOTES TO APPLICANTS</p>
<ul style="list-style-type: none"> • Dankie vir u belangstelling om by ons aansoek te doen om 'n betrekking. • SLEGS AANSOeke OP DIE AMPTELIKE AANSOEKVORM EN VERGESSEL MET 'N CV WAT U AKADEMIESIE KWALIFIKASIE, BEWEESE ERVARING EN VAARDIGHED, AS OOK BESONDERHEDE VAN REFERENTE MET WIE IN VERBINDING GETREE KAN WORD, DUIDELIK AANDUI, SAL VOOR OF OP DIE SLUITINGS DATUM AANVAAR WORD (sien www.overstrand.gov.za onder vakatures). • Ten einde die voorwaardes van die Wet op Geleëde Geleentheid, Nr. 55 van 1998 en die Munisipaliteit se Geleëde Geleentheid te implementeer word kandidate aangemoedig om na, geslag en getrouedheid (indien enige) aan te dui. • Alle aanstellings sal onderhewig wees aan die regulasie van verwydering van vorige en huidige werkgewers, die verifiëring van kwalifikasies, krediet- asook kerklike rekord. • Daar sal van die kandidaat verwag word om alle finansiële belange te verklaar. • Aanstelling is onderhewig aan die ondertekening van 'n dienskontrak en prestasie-ooreenkomstige ingevolge Artikel 57 van die Wet op Plaaslike Regering: Munisipale Stelsel, Nr. 32 van 2000. • Gunstewering van Raadslede of enige ander besluitnemer is nie toelaatbaar nie, en bewys daarvan sal tot diskwalifisering lei. • Verdere kommunikasie sal tot kortdurende kandidaat beperk word. Indien u nie binne twee (2) maande na die sluitingsdatum terugvoer ontvang nie, beskou ons dit as 'n aansoek as onsuksesvol. • Die Raad behou die reg voor om nie 'n aanstelling te maak nie en die vakature te heradverteer. 	<ul style="list-style-type: none"> • Thank you for your interest in seeking employment with us. • ONLY APPLICATIONS ON THE OFFICIAL APPLICATION FORM ACCOMPANIED BY A CV THAT DISCLOSES THE ACADEMIC QUALIFICATIONS, PROVEN EXPERIENCE AND COMPETENCIES AS WELL AS DETAILS OF CONTACTABLE REFERENCES WILL BE ACCEPTED ON OR BEFORE THE CLOSING DATE (see www.overstrand.gov.za under vacancies). • For the implementation of the provisions of the Employment Equity Act, No. 55 of 1998 and the Municipality's Employment Equity Policy candidates are encouraged to indicate their race, gender and disability (if any). • All appointments are subject to reference checks from previous and current employer(s), verification of qualifications, credit record and criminal record check. • The candidate will be required to disclose all financial interests. • Appointment is subject to the signing of an employment contract and performance agreement in terms of Section 57 of the Local Government: Municipal Systems Act, No. 32 of 2000. • Favoritism, Cronyism or any other decision-maker is not permitted, and proof thereof will result in disqualification. • Further communication will be limited to shortlisted candidates. If you have not received a response within 2 (two) months of the closing date, please consider your application unsuccessful. • The Council holds the right to make no appointment and to re-advertise the vacancy.

**6.2
INVESTIGATION INTO COMPLAINT/ACCUSATION OF ALLEGED
MISCONDUCT: MR CC GROENEWALD, MUNICIPAL MANAGER**

4/3/R

D Arrison

Director: Management Services

18 June 2020

(028) 313 8001

1. Executive Summary

The purpose of this report is to inform Council of the outcome of an investigation into a complaint/accusation of alleged misconduct brought by Mr Anton Kruger, on behalf of a group referred to as LiberTAS, against the Municipal Manager, Mr CC Groenewald.

2. Service Delivery and Budget Implementation Plan Reference - IGNITE

Municipal Manager

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

Local Government: Disciplinary Regulations for Senior Managers, 2010 (GN 344 in GG 34213 dated 21 April 2011)

Council's Unauthorised, Irregular or Fruitless and Wasteful Expenditure Policy

6. Discussion

An allegation of misconduct, on a tender award during February 2008, was brought against the Municipal Manager, Mr CC Groenewald, on 5 March 2020.

Regulation 5(1) of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (GN 344 in GG 34213 dated 21 April 2011) prescribes that *any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.*

During a Special Council Meeting of 9 March 2020 where the above alleged allegation of misconduct served, Council resolved as follows:

“that Council has found no evidence supporting the allegations of misconduct against the Municipal Manager, Mr C Groenewald. However, in the event that Council has overlooked anything, an independent investigator must be appointed to investigate the allegations and that the appointment of the investigator takes place within seven (7) days.”

Adv Pieter-Schalk Bothma, a practising advocate from the Cape Town Bar was appointed to investigate the allegations. He was assisted by Messrs VisagieVos Inc Attorneys from Cape Town. Adv Bothma’s report dated 19 June 2020 is attached to this item.

7. Financial Implications

Costs related to the independent investigation. Account awaited.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Report from Advocate P Bothma dated 19 June 2020

RECOMMENDATION TO THE COUNCIL:

that the outcome of the investigation by Adv Pieter-Schalk Bothma from the Cape Town Bar, assisted by Messrs VisagieVos Attorneys from Cape Town, that *there was no evidence found to support the allegation(s) of misconduct against the Municipal Manager*, be noted and that *the allegation(s) of misconduct be dismissed*.

RESPONSIBLE OFFICIAL:

DS ARRISON

TARGET DATE FOR IMPLEMENTATION:

IMMEDIATELY

Annexure A
1/18

TO: VISAGIE VOS ATTORNEYS
ATTENTION: MR FRANCOIS VOS
IN RE: OVERSTRAND MUNICIPALITY INVESTIGATION
DATE: 19 JUNE 2020

REPORT

Introduction

1. I have been appointed to investigate allegations of misconduct levelled against Mr CC Groenewald ("Groenewald"), the municipal manager of the Overstrand Municipality ("the Municipality"), by the organisation, LiberTAS.
2. I was assisted in my investigation by Visagie Vos Attorneys who provided administrative and logistical support.

The complaint and terms of reference

3. The complaint that forms the basis of this investigation is set out in correspondence delivered on behalf of LiberTAS by one of its officers, Anton Kruger ("Kruger"), dated 5 March 2020. It is this complaint that I have been mandated to investigate.

4. It is directed at Groenewald and raises concerns which, if supported, are serious and question his suitability to occupy the office of municipal manager.
5. The concerns raised relate to a tender by the Municipality in 2007 ("the M5/ASLA tender"), which culminated in opposed litigation both in the High Court and Supreme Court of Appeal ("SCA") between M5 Developments (Cape) (Pty) Ltd ("M5"); the Municipality and ASLA Devco (Pty) Ltd ("ASLA"), in which the Municipality and ASLA were unsuccessful ("the M5 tender litigation").
6. LiberTAS' concerns regarding this litigation are set out by Kruger as follows:

"Our concerns regarding the above matter are that:

1. Mr Groenewald demonstrated poor judgment in awarding this tender, occurring great costs to the Ratepayer, delaying (possibly even derailing) the project by his actions and putting a question mark behind Mr. Groenewald's suitability for making this type of decision, or performing this type of Managerial duty.
2. Ratepayers had nothing to gain from the court cases that followed. This matter could have been settled out of court, at a considerably reduced cost.

3. In this case, it seems Mr. Groenewald was using Municipal Money (i.e. Ratepayers Money) for a personal matter, namely trying to clear his own name.
4. Appealing and losing this case in the High Court, apparently against advice of advocate Werner Zybrands, emphasises just how bad Mr. Groenewald's judgement is, and how wasteful this exercise truly was.

Please note that we have already communicated our unhappiness with Mr. Groenewald regarding this matter to him, in the form of an email, but received no response."

7. It is the aforesaid concerns, relating to the M5 tender, that is the focus of this investigation and encompasses its terms of reference.
8. Passing reference is made by Kruger in the correspondence of 5 March 2020 to other litigation concerning Water and Sanitation Services South Africa (Pty) Ltd. However, no direct allegation is levelled against Groenewald in connection therewith and, as LiberTAS elected not to meet with me or provide any further representations, I am unable to investigate an unidentified complaint in connection therewith.
9. Consequently, this investigation is limited to the concerns raised by LiberTAS in connection with the M5/ASLA tender and subsequent litigation.

Methodology

10. The finalisation of this investigation has been delayed by the COVID-19 pandemic and the national lockdown enacted to combat its effects. I am however grateful for the assistance provided by Visagie Vos to finalise this matter.

11. Upon being instructed to conduct this investigation, Visagie Vos presented me with a bundle of documents containing, *inter alia*:
 - 11.1. Correspondence by LiberTAS;

 - 11.2. Newspaper and internet articles pertaining to the M5/ASLA tender;

 - 11.3. The tender documents of M5 and ASLA pertaining thereto;

 - 11.4. Memoranda by Groenewald to Fairbridges Attorneys;

 - 11.5. An opinion by Fagan SC;

 - 11.6. Judgments in the High Court and SCA in relation to the M5 tender litigation; and

11.7. A memorandum of understanding ("the MOU") between the Municipality, M5 and ASLA.

12. I have considered all of the documents provided to me and I have had the benefit of meeting with Groenewald on 12 June 2020.

13. I have, however, not had the benefit of meeting with Kruger, or any other officer of LiberTAS, nor have I received any further submissions on their behalf.

14. It is in my view prudent to record the steps taken by Visagie Vos, at my request, to obtain a meeting with Kruger, or receive submissions on behalf of LiberTAS:

14.1. On 14 May 2020, Visagie Vos contacted Kruger to make arrangements for meeting with me and a meeting was scheduled for 18 May 2020;

14.2. On the morning of 18 May 2020, Kruger requested that the meeting be postponed to 21 May 2020, which request was acceded to;

14.3. On 20 May 2020, Kruger requested that the meeting be further postponed to 25 May 2020, which request was also acceded to;

14.4. On 25 May 2020, Kruger cancelled the meeting of the same day, indicating that a colleague of his would advise on the way forward;

- 14.5. On 26 May 2020, Visagie Vos received an email from Ms Nanandi Albers ("Albers"), proposing a meeting on either 2 or 3 June 2020;
- 14.6. On 29 May 2020, Visagie Vos addressed correspondence to Kruger inviting him to a meeting on either 2, 3 or 4 June 2020;
- 14.7. On the same day, Visagie Vos received an email from Albers to the effect that he was to address all correspondence to her going forward;
- 14.8. On 1 June 2020, Visagie Vos sent an email to Albers, inviting her and Kruger to a meeting on either 2, 3 or 4 June 2020, and received a reply from Albers that she would revert with a suitable date;
- 14.9. On 3 June 2020, and having not received further correspondence, Visagie Vos sent an email to Albers, again inviting her and Kruger to a meeting later that day or on 4 June 2020;
- 14.10. Later in the day on 3 June 2020, Albers telephonically confirmed to Mr Hugo Murray of Visagie Vos ("Murray") that Kruger still intended to meet with me, and that she would revert with proposals for a suitable date;

- 14.11. On 4 June 2020, Albers informed Visagie Vos per email that Kruger would only be available to meet after 9 June 2020, and the next day, 5 June 2020, Visagie Vos invited Albers and Kruger per email to a meeting on either 10 or 11 June 2020;
- 14.12. In addition, Albers and Kruger were invited to make written submissions prior to 11 June 2020, should a meeting not be possible;
- 14.13. Albers noted the invitation and indicated that she would confirm the date of the meeting once Kruger's availability had been ascertained;
- 14.14. On 10 June 2020, Albers informed Visagie Vos per email that LiberTAS no longer wished to meet with me, but that it will make written submissions by 15 June 2020;
- 14.15. No written submissions have been received from LiberTAS.
15. I now turn to sketch the factual matrix, whereafter I evaluate the allegations against Groenewald.

The factual matrix

16. The factual matrix relevant to this investigation is uncontroversial and has been gleaned from that set out in the relevant court judgments and my meeting with Groenewald.
17. At the beginning of 2007, the Municipality invited tenders for the appointment of an implementation agent for a housing project within its jurisdictional area. From all the tender documents submitted, only five tenders were regarded as *bona fide*, which included tenders from M5, ASLA and Blue Whale (Pty) Ltd ("Blue Whale"). The Municipality thereafter appointed an independent consultancy firm, ICE Group (Pty) Ltd ("ICE") to evaluate the tenders.
18. Having evaluated the tenders, ICE compiled a written report to the Municipality, dated 23 March 2007, in which it stated that the two tenders most worthy of consideration were those of M5, which it had scored at 91.6 points (out of a possible 100) and ASLA which had been awarded 91 points.
19. On 20 April 2007, the Municipality addressed correspondence to M5 advising that it had been successful and that a contractual relationship would be established upon completion and signature of a formal contract.

20. On the same day, the Municipality addressed correspondence to the unsuccessful tenderers, including ASLA and Blue Whale, to the effect that it had the right to lodge an appeal against the decision within 21 days. Within the 21 day period Blue Whale lodged an appeal. ASLA also lodged an appeal, but not within the 21 day period.
21. Subsequently, the then serving municipal manager, Mr Koekemoer, had been replaced by Groenewald who acted as municipal manager from 1 November 2007 to 31 March 2008.
22. The appeals by Blue Whale and ASLA had up until that point not received final consideration and it was Groenewald who, after his appointment as acting municipal manager, attended thereto.
23. Upon reviewing the appeals, Groenewald arrived at the conclusion that an error had occurred in the scoring of both the M5 and ASLA tenders which, if corrected, would result in ASLA scoring higher than M5. The error identified was unknown to ASLA and did not form the basis of its appeal.
24. Upon this discovery, Groenewald considered himself to be in a dilemma. On the one hand he was of the view that ASLA's appeal could not be considered as it had been delivered out of time, but on the other he considered it improper and, indeed,

unconstitutional, for M5 to be awarded the tender on what he perceived to be a significant error.

25. Faced with this predicament, Groenewald obtained legal advice.
26. After extensive consultations, and on 23 January 2008, the Municipality's attorneys, Fairbridges, provided Groenewald with an opinion from respected counsel in connection with the tender appeal. The essence of counsel's advice is contained in paragraphs 18 to 20 of the opinion as follows:
 - "18. Asla has not appealed timeously, and in its appeal did not raise as a complaint the fact that it was incorrectly scored in one crucial respect. Asla clearly is unaware of this mistake. The appeal authority is however aware of it, and is seized of the matter of the award of the tender generally by virtue of the appeal of Blue Whale. I do not think that it would be proper for the appeal authority to close his eyes to the true facts. Instead, he should use the opportunity presented by the appeal process – subject to what I advise below regarding how the process should be conducted and the delay in completing the appeal process – to correct the scoring, which will in all probability have the result (since there is no other reason, as far as I am aware, why Asla would not be a suitable contractor) of the tender being awarded to Asla rather than to M5.
 19. I would however suggest to Consultant that the appeal authority follow a process. He should address correspondence to both M5 and Asla – not to the other tenderers, for none of them is affected by this matter – advising them of what he has discovered regarding

the scoring of M5 and Asla. He should then invite both of them to make written representations regarding this finding. Since the appeal process has already been delayed considerably (an aspect with which I shall deal below), it would be advisable to keep them to short time periods. The appeal authority will be able to decide whether he should give M5 and Asla a further opportunity to comment on one another's representations, either again in writing or orally, once he has considered them himself.

20. I find nothing in section 62 of the Systems Act or in Consultant's supply chain management policy that precludes the appeal authority from following such a procedure. It seems to me sensible and appropriate that he should do so. His decision is one of considerable financial significance, and a fair process of this kind will enable him to understand better why the initial scoring was apparently incorrect. It would also be the correct thing to do vis-à-vis M5, which has at least a legitimate expectation at this stage of being heard on the question of whether the tender awarded to it should instead be awarded to Asla."
27. Acting on the aforesaid advice, Groenewald, wrote to both M5 and ASLA on 29 January 2008, informing them of his discovery and inviting them to make written representations in respect thereto on or before 6 February 2008.
28. ASLA responded within the aforementioned timeframe but M5 did not, upon which Groenewald extended the period for its response to 11 February 2008. A request for a further extension of fourteen days by M5 was declined.

29. Taking into account the information furnished by ASLA, Groenewald increased its score rendering it higher than the points he awarded to M5. Against this background, he decided to award the tender to ASLA on 12 February 2008.
30. Groenewald vacated the position of acting municipal manager on 31 March 2008, which position was occupied by Adv Werner Zybrands ("Zybrands") from 1 April 2008 to 31 December 2011.
31. On 10 April 2008, M5 instituted proceedings in the Western Cape Division of the High Court to review and set aside the decision by Groenewald to award the tender to ASLA.
32. Both the Municipality and ASLA opposed this application which was determined in M5's favour on 12 February 2009.
33. ASLA gave notice of its intention to apply for leave to appeal but, initially, the Municipality had advised the Registrar of the High Court that it would abide by the outcome of the appeal process.
34. On 5 March 2009 the Municipality, represented by Zybrands, and M5 and ASLA concluded an agreement aimed at obviating any delay in the implementation of the tender on account of the appeal and, consequently, a delay in the provision of housing for low income communities (the MOU).

35. In the MOU it was agreed that certain aspects of the tender could be implemented notwithstanding the pending appeal.
36. In addition, it was agreed that the Municipality would withdraw its notice to abide by the appeal outcome and, in a further agreement between ASLA and the Municipality, it was agreed that ASLA would indemnify the Municipality in respect to any costs pertaining to the appeal process, which also transpired.
37. Leave to appeal was granted by the court *a quo* to the SCA and the appeal was heard on 12 March 2010. On 31 March 2010 the SCA delivered judgment, dismissing the appeal.
38. The essence of the appeal judgment is that the SCA disagreed with the contention on behalf of ASLA and the Municipality that Groenewald was empowered to award the tender to ASLA in considering the appeal of Blue Whale.
39. The court's reasoning appears from paragraph 25 of the judgment and reads as follows:

"[25] Thus while I accept that the appeal is a wide one in the sense of a re-hearing, it is a re-hearing related to the limited issue of whether the party appealing should have been successful. In the context of a municipal tender, an appeal by a person whose tender was unsuccessful therefore does not entitle the appeal authority to reconsider all the tenders that were lodged and to decide whether

the committee which adjudicated upon the tender ought to have awarded the contract to a person whose tender was not accepted, but who did not appeal against that decision (and who might no longer have any interest in being awarded the contract). In the present case, the appeal related solely to whether the contract should have been awarded to Blue Whale rather than M5 and, having concluded that issue against Blue Whale and declining to consider ASLA's appeal, the appeal should merely have been dismissed and the adjudication committee's decision left undisturbed."

Analysis and evaluation

40. The concerns raised by LiberTAS which form the basis of this investigation may conveniently be divided into two aspects:
 - 40.1. Firstly, LiberTAS contends that Groenewald demonstrated poor judgement in awarding the tender to ASLA. In this regard it is contended that Groenewald's conduct occurred "great costs to the ratepayer", delayed the project by his actions and thereby questions Groenewald's suitability as municipal manager; and
 - 40.2. Concerns two, three and four relate to the process followed in connection with the M5 tender litigation. More particularly, LiberTAS contends that ratepayers had nothing to gain from the litigation as the matter could have

been settled out of court and that it appeared that Groenewald was making use of public funds to clear his own name.

41. I consider these two aspects in turn.

Groenewald's judgement in awarding the tender to ASLA

42. In evaluating the reasonableness of Groenewald's judgement in awarding the tender to ASLA, I have had due regard to the information available to him at the time and his contention that he simply sought, and followed, legal advice.
43. Groenewald's version in this regard is corroborated by the events that followed him obtaining counsel's advice, and it is clear that Groenewald implemented the advice provided.
44. In assessing the reasonableness of his conduct, it is immaterial that the SCA ultimately disagreed with the advice provided to Groenewald, and presumably also obtained independently by ASLA.
45. The issue on which the review application turned was not an uncomplicated one, as evidenced by leave to appeal having been granted by the court *a quo*, and in my view Groenewald cannot be faulted for obtaining, and following, legal advice from a respected firm of attorneys and counsel.

46. Faced with an uncertain legal dilemma, Groenewald acted responsibly in seeking out legal guidance. It is also noteworthy that the opinion obtained from counsel foreshadowed that the tender would be awarded to ASLA.
47. In the circumstances, I can find no evidence to suggest that Groenewald demonstrated poor judgement in awarding the tender to ASLA.
48. On the contrary, there was nothing to suggest that the advice provided to him was incorrect and, in my view having obtained respected legal advice, it would have been peculiar for him to ignore same.

Opposition to review application and prosecution of appeal

49. It is significant that Groenewald did not occupy the office of municipal manager when the decision was taken to oppose the review application, or to prosecute the appeal.
50. Accordingly, while I accept that he may have been consulted by Zybrands in connection with these decisions, his view could not have been determinative and any consequence that may have followed cannot be laid at his door.

51. It further merits to emphasise that the Municipality's acquiescence in the tender litigation was unlikely to provide an early resolution thereof.
52. The tender litigation appears primarily to have been a dispute between M5 and ASLA who, independently advised, opposed the review application and provided the impetus for prosecuting the appeal.
53. In my view the Municipality should be commended for whatever role it played in the conclusion of the MOU aimed at ameliorating any adverse effect the prosecution of the appeal may have had on the implementation of the tender.
54. As Groenewald did not occupy the position of municipal manager between 1 April 2008 and 1 July 2012, the concerns identified by LiberTAS in connection with the tender litigation cannot be attributed to Groenewald.

Finding and conclusion

55. In view of the aforementioned, and after considering evidence provided to me, I find no basis to support the allegations of misconduct levelled by LiberTAS against Groenewald in connection with the M5/ASLA tender.
56. Accordingly, I recommend that the allegations of misconduct against Groenewald in this regard be dismissed.

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Pieter-Schalk Bothma
Chambers
Cape Town

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

8. CONSIDERATION OF NOTICES OF MOTIONS / QUESTIONS

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

9. CONSIDERATION OF MOTIONS OF EXIGENCY (IF ANY)