

**AGENDA of the  
Portfolio Committee: Investment & Infrastructure  
6 April 2022  
(Also the agenda for the Mayoral Committee Meeting: 25 April 2022)**

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**9.  
OPERATIONAL REPORTS**

9/1/2/5

S Muller

Director: Infrastructure and Planning

24 March 2022

(028) 313 8019

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**1. Executive Summary**

This report is to provide the Portfolio Committee with reports on the implementation and progress of the following services:

- Municipal Infrastructure Grant (MIG),
- Bulk Water Services Operation and Maintenance Contract,
- Environmental, and
- Tiny House Policy.

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

Infrastructure and Planning  
Director

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Provision and maintenance of municipal services  
Creation and maintenance of a safe and healthy environment

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

None

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

**Background**

Council requested a report on the implementation of various operation projects.

This report provides information on the following:

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- Municipal Infrastructure Grant (MIG),
- Bulk Water Services Operation and Maintenance Contract,
- Environmental:
  - Baboon Management Programme
  - Co-Management Agreement Hermanus Botanical Society
- Tiny House Policy.

## Discussion

### 6.1 Infrastructure Grant (MIG)

The MIG allocation to the Overstrand Municipality for the 2021/22 financial year is R23 053 000. The following four capital projects are funded by the MIG:

| Project Description                | Budget Rm   | Expenditure at 28 February 2022 |            |              |               |            |
|------------------------------------|---|---------------------------------|------------|--------------|---------------|------------|
|                                    |   | Actual Rm                       | Actual %   | Committed Rm | Total Rm      | Total %    |
| Project Management Unit            | 1,000   | 0,831                           | 83%        | 0,169        | 1,000         | 100%       |
|                                    | MIG office expenditure, on track to spend 100%  |                                 |            |              |               |            |
| Upgrade Hawston Sport Complex      | 4,343   | 0,054                           | 1%         | 0,000        | 0,054         | 1%         |
|                                    | Tender advertised 4 Feb and closed 11 Mar, tender being evaluated. Multi year project. Bulk earthworks to be done from April to June. |                                 |            |              |               |            |
| Blompark Housing Project Bus Route | 4,858   | 3,805                           | 78%        | 1,053        | 4,858         | 100%       |
|                                    | Contractor on site 12 Nov 2021, completion expected Jun 2022, on track to spend 100%  |                                 |            |              |               |            |
| Masakhane: Upgrade Bulk Sewer      | 12,852  | 6,285                           | 11%        | 6,567        | 12,852        | 100%       |
|                                    | Contractor on site 13 Jan 2022, completion expected Apr 22, on track to spend 100%  |                                 |            |              |               |            |
| <b>Total (Rm)</b>                  | <b>23,053</b>   | <b>10,974</b>                   | <b>48%</b> | <b>7,789</b> | <b>18,764</b> | <b>81%</b> |
| <b>Total (%)</b>                   | <b>100%</b>   | <b>48%</b>                      |            | <b>34%</b>   | <b>81%</b>    |            |

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## 6.2 Bulk Water Services Operation and Maintenance Contract

Statistics for February 2022 for this contract is reported below:

### Dam Levels

| Dam  | Level end Feb 2022 | Level end Feb 2021 |
|--|--------------------|--------------------|
| Buffelsrivier (Rooi-Els, Pringle Bay, Bettiesbaai) | 93%                | 86%                |
| Pearly Beach                                       | 40%                | 45%                |
| Koekemoer (Pearly Beach)                           | 90%                | 80%                |
| Kraaibosch (Gansbaai)                              | 89%                | 85%                |
| De Bos (Hermanus)                                  | 91%                | 86%                |

### EME/QSE and Social Responsibility Expenditure per year

| Year                    | EME/QSE Expenditure | Social Responsibility Spent |
|-------------------------|---------------------|-----------------------------|
| 2018/19 (from Dec 2018) | R 3 346 573         | R 83 381                    |
| 2019/20                 | R 9 094 840         | R 82 500                    |
| 2020/21                 | R 9 234 840         | R 25 000                    |
| 2021/22 to date         | R 4 385 878         | R 22 500                    |

### Contract Operational Budget & Expenditure

| Amended Budget 2021/22 | Expenditure to Date | % Spent |
|------------------------|---------------------|---------|
| R 59 596 900           | R 41 734 641        | 70.0%   |

### Water & Effluent Quality

| Treatment Plant             | Total outflow for month (kl) | Water or Effluent Quality Compliance % | Comments  |
|-----------------------------|------------------------------|--|---|
| Water Treatment Plants      |                              |  |   |
| Buffelsrivier WTW           | 74 787                       | 100%                                   |   |
| Kleinmond WTW               | 81 660                       | 100%                                   |   |
| Preekstoel WTW              | 427 599                      | 100%                                   |   |
| Stanford WTW                | 27 757                       | 100%                                   |   |
| De Kelders WTW              | 22 879                       | 100%                                   |   |
| Franskraal WTW              | 99 560                       | 100%                                   |   |
| Pearly Beach WTW            | 17 900                       | 100%                                   |   |
| Baardskeerdersbos WTW       | 1 627                        | 100%                                   |   |
| Buffeljagsbaai WTW          | 401                          | 80%                                    | Only chlorination; cannot currently remove salts from the brackish water. |
| Wastewater Treatment Plants |                              |  |   |
| Kleinmond WWTW              | 44 741                       | 70%                                    | Proposed plant upgrade included in draft Capex budget.                    |
| Hawston WWTW                | 23 965                       | 60%                                    | Proposed plant upgrade included in draft 5 years Capex budget.            |
| Hermanus WWTW               | 195 385                      | 75%                                    |   |
| Stanford WWTW               | 23 723                       | 100%                                   |   |

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|                   |        |     |                            |
|-------------------|--------|-----|----------------------------|
| Gansbaai WWTW     | 26 165 | 88% |                            |
| Pearly Beach WWTW | 2 159  | 70% | Oxidation pond system only |

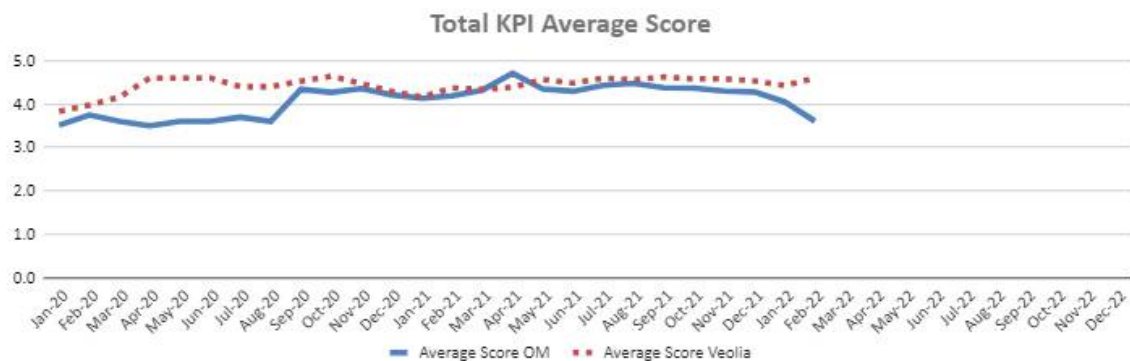
### Maintenance

|   |     |
|---|-----|
| Planned Preventative Maintenance Job Cards    | 198 |
| Planned Maintenance Jobs Completed Water      | 66  |
| Planned Maintenance Jobs Completed Wastewater | 41  |
| Total Planned Maintenance Jobs Completed      | 107 |
| % Planned Maintenance Jobs Completed          | 54% |
| Corrective Maintenance Jobs Completed         | 219 |

### Human Resources

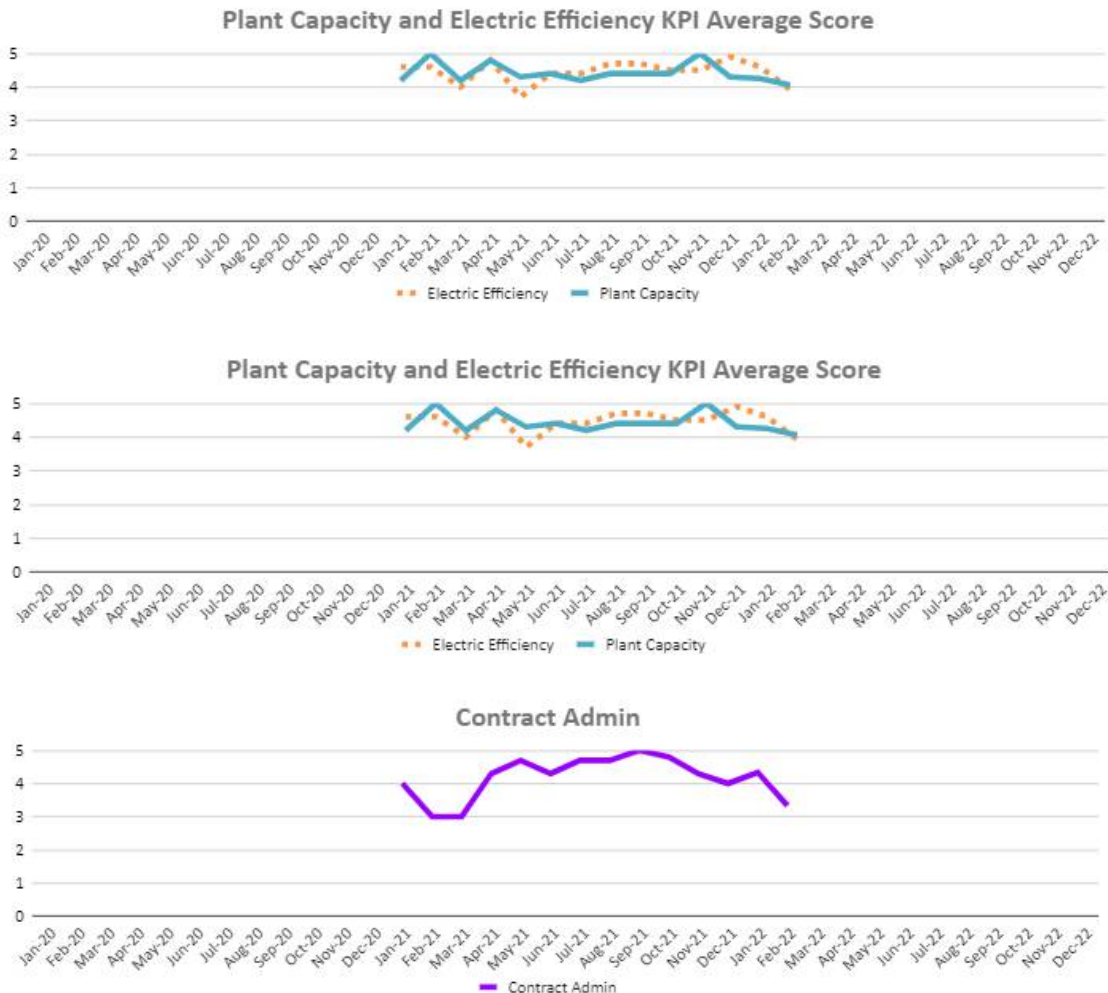
|                                     |                            |
|-------------------------------------|----------------------------|
| Terminations/resignations/transfers | 0                          |
| Recruitments                        | 0                          |
| Training                            | Safety, Policy, Operations |

### Key Performance Indicators



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## 6.3 Environmental

### 6.3.1 Baboon Management Program

The latest monthly progress report (January 2022) for the program is attached as Annexure A.

### 6.3.2 Co-Management Agreement Hermanus Botanical Society

The municipality is in discussions with the Hermanus Botanical Society (HBS) regarding the establishment of a Botanical Garden in the Fernkloof Nature Reserve. To facilitate this, it is proposed that the municipality and HBS enter into a co-management agreement. The concept of a co-management agreement emanates from the National Environmental Management Protected Areas Act.

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A separate item will serve before the Portfolio Committee to address this matter in detail.

#### **6.4 Tiny House Policy**

A global shift towards simplicity and minimalism in the built environment in recent years has birthed the ‘tiny house trend’, which has taken off across the globe and has recently made its way to South Africa.

It must be noted that the present tendency towards smaller sites, it is likely that many more houses of a size much smaller than has been common in the past, will be built. In considering the very small permanent buildings it should be remembered that size cannot be equated to quality.

The National Building Regulation and Building Standards Act (NBR) prescribes that a primary dwelling house on a property must be at least 30 square meters in area. Additional dwelling units on a property (second or third dwelling house) are not limited in size.

The requirements in the NBR reads as follows: (SANS 10400, Part C: Dimensions)

*“4.4 Floor area*

*The overall plan area of any dwelling house shall be not less than:*

- a) 15 m<sup>2</sup> in the case of a temporary building,*
- b) 27 m<sup>2</sup> in the case of permanent category 1 buildings, or*
- c) 30 m<sup>2</sup> in the case of any other permanent building.”*

However, the NBR allows a local authority to exempt an applicant for a building permit from having to comply with a National Building Regulation or a part thereof, including the regulation mentioned above. This exemption can be applied for when a building plan is submitted for approval.

The applicable section in the NBR reads as follows:

NBR Section 18: Deviation and exemption from national building regulations

*“(1) A local authority may, **at the request in writing** of the owner of any building or any person having an interest therein, in respect of the erection of such building or the land on which it is being or is to be erected, in writing **permit a deviation or grant an exemption***

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*from any applicable national building regulation except a national building regulation regarding the strength and stability of buildings.”*

The decision maker considering the application for a deviation or exemption must take into consideration Section 7 of the NBR. Section 7 reads as follows:

*“(1) If a local authority, having considered a recommendation referred to in section 6(1)(a)-*

- (a) is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall grant its approval in respect thereof;*
- (b) (i) is not so satisfied; or*  
*(ii) is satisfied that the building to which the application in question relates-*
  - (aa) is to be erected in such manner or will be of such nature or appearance that:*
    - (aaa) the area in which it is to be erected will probably or in fact be disfigured thereby;*
    - (bbb) it will probably or in fact be unsightly or objectionable;*
    - (ccc) it will probably or in fact derogate from the value of adjoining or neighbouring properties;*
  - (bb) will probably or in fact be dangerous to life or property,*

*such local authority shall refuse to grant its approval in respect thereof and give written reasons for such refusal.”*

The application of Section 7 has been the subject of many disputes and court cases. Annexure B contains a legal opinion the factors to be considered when considering an application in terms of Section 7.

A tiny house as a primary dwelling house in a prosperous suburb will be more likely to trigger Section 7, as it could be argued that such a structure could derogate from the value of adjoining properties. It would therefore be necessary to decide and specify areas and zonings where the municipality will allow tiny houses.

Although the NBR Act allows a local authority to exempt an applicant for a building permit from having to comply with a national building regulation, it is recommended that a Tiny Houses Policy be created that will:

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- guide administrative staff to make an informed decision,
- limit the disqualifying factors of Section 7 of the NBR, and
- include an overlay zone where tiny houses will be allowed.

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: Baboon Management Program: Monthly Report January 2022

Annexure B: National Building Regulations, Section 7: Legal Opinion

**RECOMMENDATION:**

that the report **be noted**.

**RESPONSIBLE OFFICIAL :**

**S MULLER**

**TARGET DATE FOR IMPLEMENTATION :**

**N/A**





## **Human Wildlife Solutions**

### **Overstrand**

#### **Monthly Report**

**January 2022**

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## INTRODUCTION

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This monthly report covers the period from 1 to 31 January 2022.

The Voëlklip Troop did not enter the urban area on a single occasion this month. Although individual baboons still managed to enter the urban area the time spent in town decreased greatly. The troop spent the majority of its time foraging on natural vegetation in the Fernkloof Nature Reserve and on the neighbouring farms.

The Vogelgat, Onrus and Hamilton Russell Troops and their individuals all remained out of town for the whole of January.

The Pringle Bay Troop remained largely in the Buffelstal Nature Reserve this month and only entered the urban area briefly on one occasion. However, it proved to be a month of two halves. After initially leaving the urban area with the troop, several individuals including PBM2, PBF5 and PBF6 left the troop on the 18<sup>th</sup> of January and returned to Pringle Bay. For the rest of the month they proceeded to enter the urban area daily and were responsible for a large number of assertive incursions. Here it must be noted that PBM2 and PBF6 (a female) engaged in 21 and 15 occupied house incursions respectively. Both of these baboons individually made more occupied house raids than any of the Betty's Bay baboons. It must be noted, however, that the latter made many threatening attacks (total 10) directly at humans, whereas the Pringle Bay baboons made none. Three of these threatening incidents were committed by unidentified females.

Although the Betty's Bay Troop may have committed less occupied house raids than the Pringle Bay Troop, as a troop it was much more disruptive. The troop raided town on 24 days this month for an average time of one hour and 23 minutes per visit. As a whole this troop was also responsible for 114 hotline calls out of an Overstrand total of 139 calls during January.

## OVERSTRAND EAST TROOPS

### 1.1 VOËLKLIP TROOP

#### 1.1.1 IN TOWN STATISTICS

- Troop time out of town improved this month to 100% during January.
- Time out of town for individuals increased to 98.2% in January.

|             | % Out of Town | % Up or Down from Previous Month | Days Entered | Total Time in Town | Avg Time in Town | Max Daily Time in Town | Min Daily Time in Town |
|-------------|---------------|----------------------------------|--------------|--------------------|------------------|------------------------|------------------------|
| Troop       | 100,0         | 0,9                              | 0            | 00:00              | 00:00            | 00:00                  | 00:00                  |
| Individuals | 98,2          | 4,2                              | 3            | 7:49               | 2:36             | 03:35                  | 01:59                  |

**Table 2.1:** In Town Statistics for the Voëlklip Troop for January 2022. Time is expressed in hours and minutes. Average daylength in January was 14 hours and 8 minutes.

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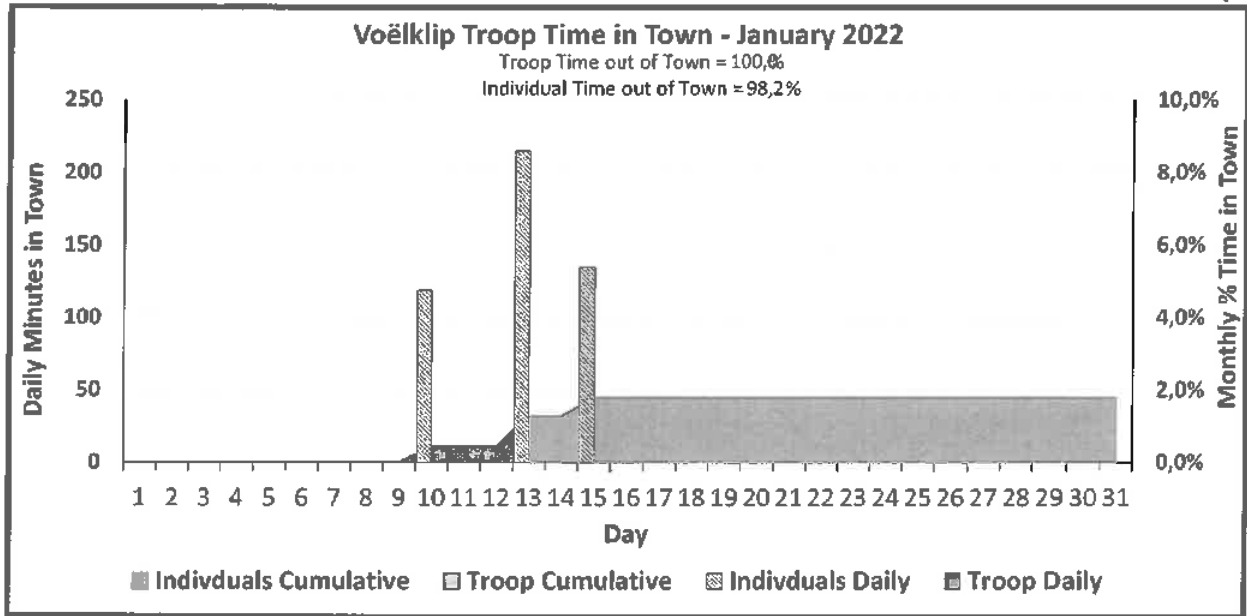


Figure 2.1: Troop and individual daily (bars) and monthly (area) Time in Town by the Voëlklip Troop during January 2022.

**1.1.2 NOTEWORTHY INCIDENTS**

**1.1.2.1 HERMANUS HEIGHTS & GOLF COURSE**

- On 10 January three adult females entered the golf course as they were steered out of town from Fir Avenue.

| HWS: TROOP MONTHLY REPORT |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
|---------------------------|-----|-------------------------------------|------------------------------------|--|-------------|----|-------------|---|-------------|---|--------------|----|-----------|-----|------------|----|-----------|----|---------------|----|------------|----|-------------|----|------------------|----|---------------|----|----------------|----|----------------|----|---------|----|-----------|----|------------------|----|---------------|----|---------|----|---------------|----|----------|----|---------------|----|---------|----|--------|----|------------------|----|------------|----|-------|----|-------------|---|---------|
| SECTOR                    |     | CLASSES OF BEHAVIOUR                |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| OVERSTRAND                |     | 1 In urban area                     | 4 Attacking pets                   | 7 Threatening behaviour/ attacking/stealing food |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| BABOON TROOP: Voëlklip    |     | 2 Raid bins                         | 5 Raid unoccupied house or vehicle | 8 Breaking & Entering/Damaging property          |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| MONTH: January            |     | 3 Non malicious damage              | 6 Raid occupied house or vehicle   | 9 Nocturnal Raiding                              |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| YEAR: 2022                |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| BABOON ID                 | Sex | 1                                   | 2                                  | 3  | 4           | 5  | 6           | 7 | 8           | 9 | 10           | 11 | 12        | 13  | 14         | 15 | 16        | 17 | 18            | 19 | 20         | 21 | 22          | 23 | 24               | 25 | 26            | 27 | 28             | 29 | 30             | 31 | TOTAL   |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| <b>Troop</b>              |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| VG01 BLUE TAG             | M   |                                     |                                    |  |             |    |             |   |             |   |              |    |           | 1   |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 1       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| LINK01                    | M   |                                     |                                    |  |             |    |             |   |             |   |              |    |           | 1   | 1          |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 2       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| VKF4 YELLOW TAG           | F   |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| VKF5 RED TAG              | F   |                                     |                                    |  |             |    |             |   |             |   | 1            |    |           |     |            | 1  |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 2       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| VKF1 GREEN TAG            | F   |                                     |                                    |  |             |    |             |   |             |   |              |    |           | 1   |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 1       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| VKF6 ORANGE TAG           | F   |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     | 1          |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 1       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| <b>UniD Males</b>         |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| UniD Males                | M   |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| <b>UniD Females</b>       |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| UniD Females              | F   |                                     |                                    |  |             |    |             |   |             |   | 1            |    |           | 1   |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 2       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| UniD Female               | F   |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| UniD Individuals          |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| UniD Juveniles            |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           | 1   | 1          |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 2       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
|                           |     | <b>TIME SPENT IN TOWN (Minutes)</b> |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| Troop                     | 0,0 |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 0,00    |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| Individuals               | 1,8 |                                     |                                    |  |             |    |             |   |             |   |              |    | 119       | 215 | 185        |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    | 7,82    |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| Roost:                    |     | AM                                  | 2                                  | 2  | 2           | 2  | 18          | 4 | 2           | 3 | 9            | 2  | 1         | 5   | 24         | 13 | 13        | 6  | ?             | 1  | ?          | 23 | 4           | 5  | ?                | ?  | 22            | 9  | 3              | 9  | 2              | 3  | 5       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| Roost:                    |     | PM                                  | 2                                  | 7  | 7           | 18 | 4           | 2 | 3           | 3 | 18           | 2  | 23        | 8   | 13         | 13 | 10        | 6  | ?             | 1  | ?          | 5  | 4           | 7  | 7                | ?  | 22            | 6  | ?              | 6  | 2              | 3  | 5       |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| Roost Sites               |     | 1                                   | Golf Course                        | 2  | Heights Dam | 3  | Green Kloof | 4 | Phite Kloof | 5 | Adler Ladder | 6  | Lower Dam | 7   | Middle Dam | 8  | Upper Dam | 9  | Dragon's Back | 10 | Droë Kloof | 11 | Blaai Kloof | 12 | Big Titanic/Cave | 13 | Small Titanic | 14 | 10th Ave Kloof | 15 | 11th Ave Kloof | 16 | A-Shape | 17 | Box Kloof | 18 | Hermanus Heights | 19 | Steyn's Kloof | 20 | In Town | 21 | Talie's Kloof | 22 | Kanonkop | 23 | BHB Waterfall | 24 | Roeklip | 25 | ZigZag | 26 | 9th Avenue Kloof | 27 | Shade Rock | 28 | BOŠKO | 29 | Groot Uukyk | ? | Unknown |
| ID Features of Baboons    |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |
| General remarks           |     |                                     |                                    |  |             |    |             |   |             |   |              |    |           |     |            |    |           |    |               |    |            |    |             |    |                  |    |               |    |                |    |                |    |         |    |           |    |                  |    |               |    |         |    |               |    |          |    |               |    |         |    |        |    |                  |    |            |    |       |    |             |   |         |

Figure 2.2: The Voëlklip Troop incident sheet for January 2022.

Asbo

### 1.1.2.2 VOËLKLIP & FERNKLOOF

- On 10 January, three adult females separated from the troop and entered town. One of the females was identified as VKF5.
- On 13 January, multiple individuals entered town. Some of these individuals got a hold of a large bag of birdseed that was left unsecured on the back porch of a house on 1<sup>st</sup> Street. The baboons tore the bag open, and birdseed was scattered across the porch and the lawn. Despite attempts to move the baboons away from the property, the baboons kept returning to eat the bird seed.
- On 15 January multiple individuals entered town around 2<sup>nd</sup> Avenue. These individuals were found foraging from a grape vine on 4<sup>th</sup> Street.

### 1.1.2.3 GENERAL

- On 15 January the troop approached the lower of the three dams in Fernkloof Nature Reserve. Multiple people were swimming at the lower dam and multiple dogs were off lead around the dam. VGM1 briefly chased an off-lead dog that was at the dam. No physical contact was made.
- VGM1 disappeared from the Voëlklip Troop for multiple days towards the end of January. The last confirmed sighting of VGM1 was on 24 January. It was thought that VGM1 had dispersed from the troop as the Voëlklip Troop had encountered another troop on 24 January. On 07 February, VGM1 was however seen back with the Voëlklip Troop, 13 days after his last confirmed sighting.
- The troop frequently spent time in the vicinity of the Hamilton Russell Vineyards and individuals were found foraging on grapes on multiple occasions.
- An unidentified troop was observed on 24 January in a valley, NE of Hamilton Russell Vineyards. Vocalisations were also heard in the same area on 25 and 27 January. This troop was assumed to be the Hamilton Russell Troop.

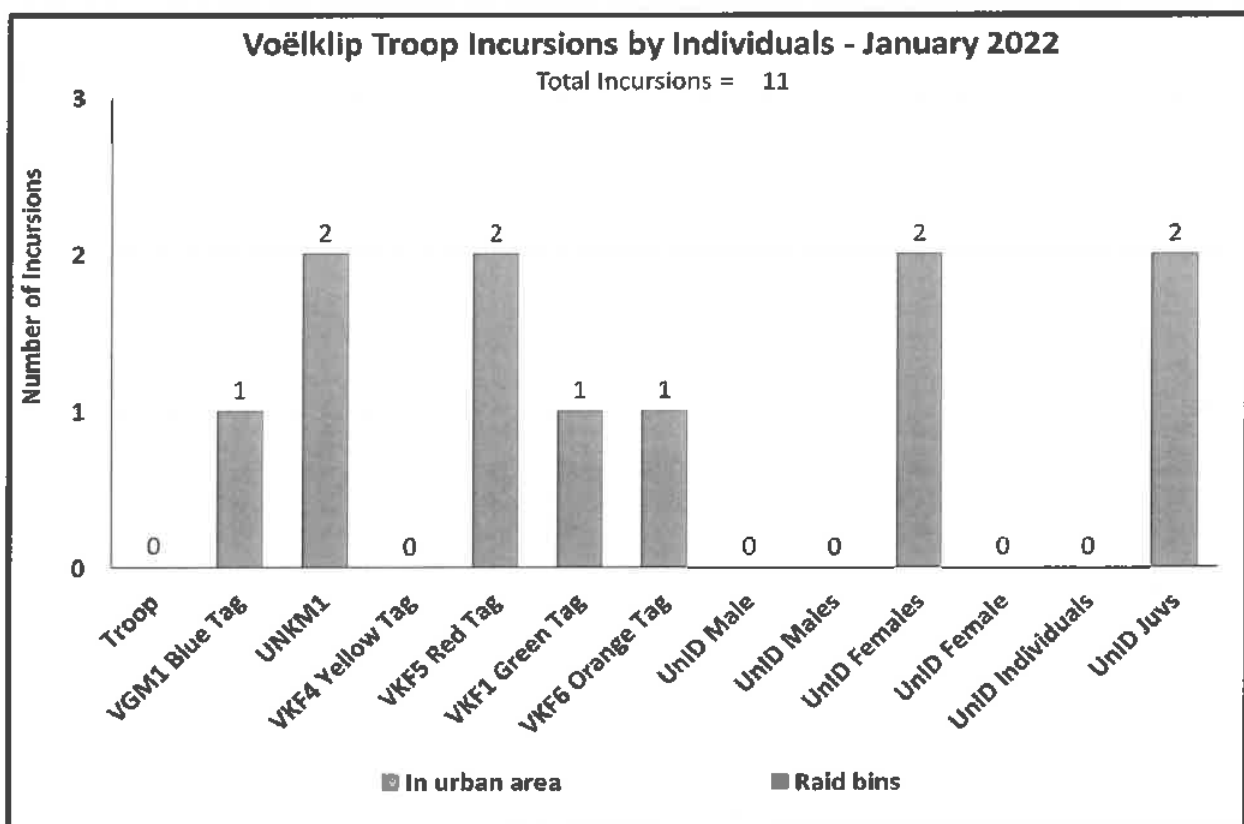


Figure 2.3: Number of incursions by the Voëlklip Troop and individuals during January 2022.

## 1.2 VOGELGAT TROOP

A6/20

### 1.2.1 IN TOWN STATISTICS

- January is the 17th consecutive month the troop has remained 100% out of town.
- Time out of town for individuals remained at 100% for the fifth consecutive month.

### 1.2.2 NOTEWORTHY INCIDENTS

- Individuals from the Vogelgat troop continued to enter the properties along the R43. However, no non-urban house incursions were recorded.

### 1.2.3 VIRTUAL FENCE

- Use of the virtual fence was not required this month as the troop did not approach the urban space.

## 1.3 ONRUS TROOP

- The Onrus Troop was not observed on a single occasion during January.

## 1.4 HAMILTON RUSSEL TROOP

- The Hamilton Russell Troop may have been observed to the northeast of the Hamilton Russell Vineyards on 24 January, but it was not positively identified.

## 1.5 BIRTHS, DEATHS & MIGRATIONS

- On 07 January, VKF1 and two untagged females were reported with new infants.
- On 24 January, VKF6 was reported with an infant.
- On 26 January, five infants were observed in the Voëlklip Troop. VKF1, VKF6 and three untagged females were seen carrying infants. An untagged female with an infant was reported on 07 October 2021. On 26 January a total of five infants were observed in the troop. This would include the infant born in October.

A7/20

**OVERSTRAND WEST TROOPS**

**1.6 PRINGLE BAY TROOP**

**1.6.1 IN TOWN STATISTICS**

- The Pringle Bay Troop entered town once this month. It spent 99,8% time out of town compared to 98.5% in December.
- Time out of town by Pringle Bay Troop individuals increased to 74.9% in January compared to 73.6% last month.

|             | % Out of Town | % Up or Down from Previous Month | Days Entered | Total Time in Town | Avg Time in Town | Max Daily Time in Town | Min Daily Time in Town |
|-------------|---------------|----------------------------------|--------------|--------------------|------------------|------------------------|------------------------|
| Troop       | 99,8          | 1,3                              | 1            | 0:40               | 0:40             | 0:40                   | 00:40                  |
| Individuals | 74,9          | 1,3                              | 16           | 110:14             | 6:53             | 12:28                  | 01:30                  |

Table 3.1: In Town Statistics for the Pringle Bay Troop for January 2022. Time is expressed in hours and minutes. Average daylength in January was 14 hours and 8 minutes.

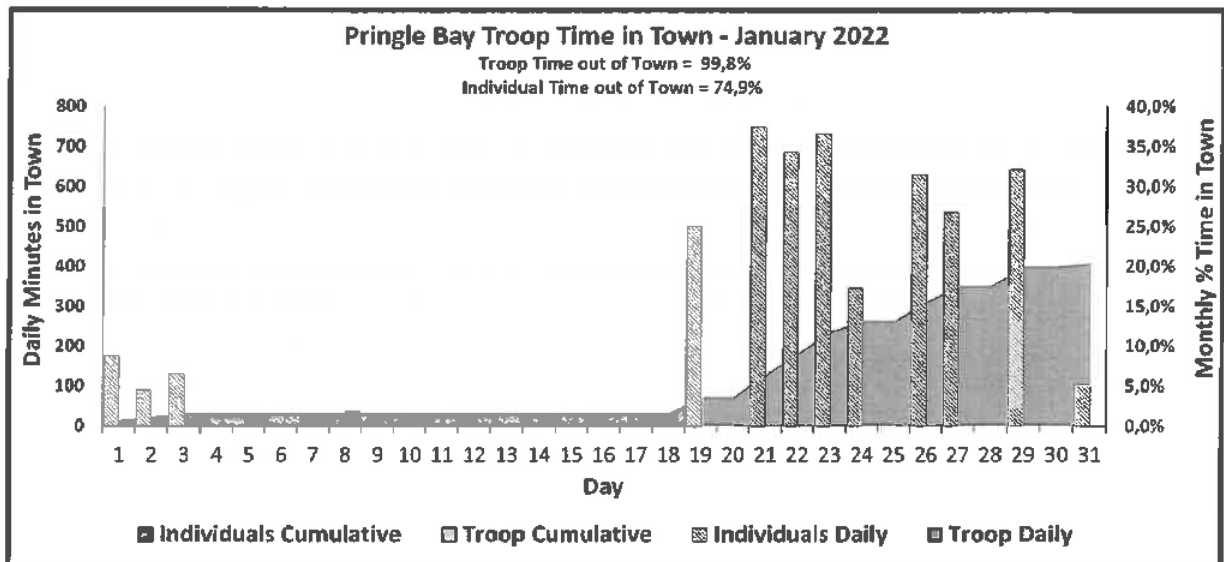


Figure 3.1: Troop and individual daily (bars) and monthly (area) Time in Town by the Pringle Bay Troop during January 2022.

**1.6.2 NOTEWORTHY INCIDENTS**

- The Pringle Bay Troop remained in the Buffelstal Nature Reserve for most of the month, often utilizing the northern part of their range around the Rooiels River valley.
- PBM2's occupied house incursions doubled this month to from 13 in December to 26 in January. These incursions included homes and businesses in Pringle Bay.



A9/20

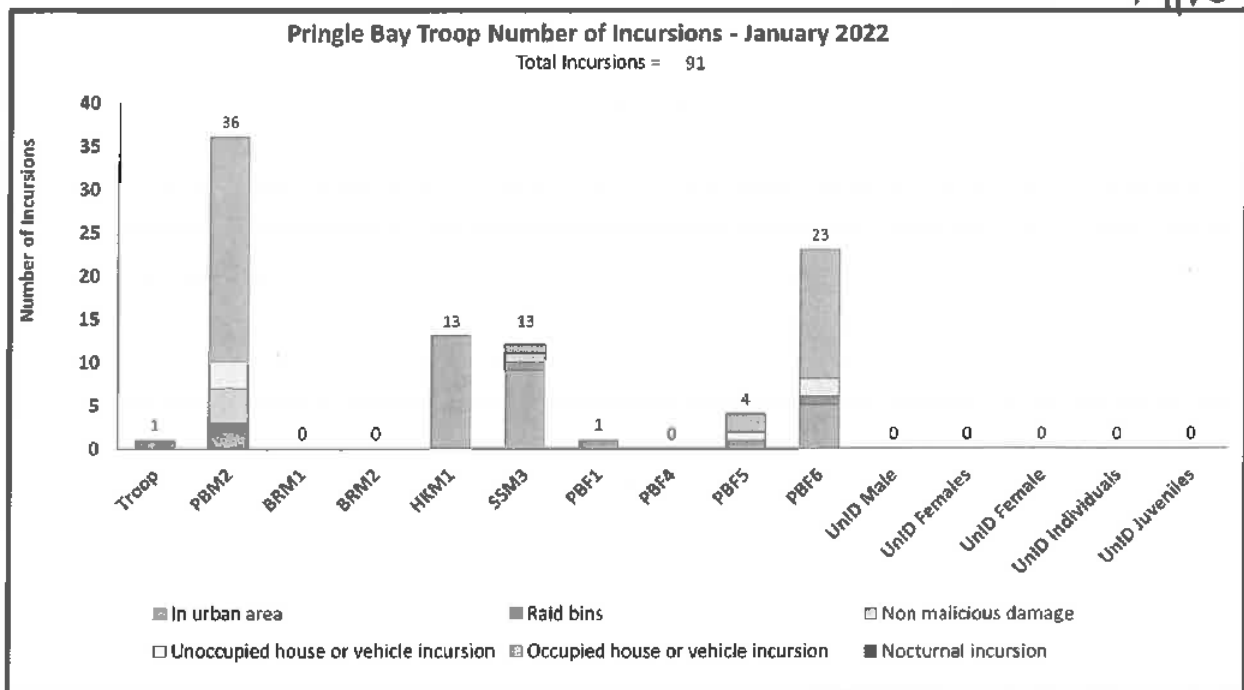


Figure 3.3: Number of incursions for the Pringle Bay Troop and individuals during January 2022.

## 1.7 HANGKLIP TROOP

### 1.7.1 IN TOWN STATISTICS

- January is the fourth consecutive month that no time in town was recorded for the Hangklip Troop or individuals.

### 1.7.2 NOTEWORTHY INCIDENTS

- HKM1 remained in the Pringle Bay area during January associating with Pringle Bay troop members. He has clearly dispersed from the Hangklip Troop although he is not accepted by the adult males in the Pringle Bay Troop.
- The troop utilised their natural home range between Pringle Bay Village and Sea Farm Private Nature reserve.
- There were no raids recorded for the Hangklip Troop in January.

A10/20



Figure 3.4: GPS locations of HKM3 in the Hangklip Troop as determined by the GPS collar during January 2022.

## 1.8 SILVERSANDS TROOP

### 1.8.1 IN TOWN STATISTICS

- The troop spent 100% of its time out of town this month.
- Time out of town by individuals increased to 98% this month compared to 96.6% last month.

|             | % Out of Town | % Up or Down from Previous Month | Days Entered | Total Time in Town | Avg Time in Town | Max Daily Time in Town | Min Daily Time in Town |
|-------------|---------------|----------------------------------|--------------|--------------------|------------------|------------------------|------------------------|
| Troop       | 100,0         | 0,1                              | 0            | 00:00              | 00:00            | 00:00                  | 00:00                  |
| Individuals | 98,0          | 1,4                              | 11           | 9:21               | 0:51             | 03:39                  | 00:13                  |

Table 3.2: In Town Statistics for the Silversands Troop for January 2022. January 2021. Time is expressed in hours and minutes. Average daylength in January was 14 hours and 8 minutes.

A 11/20

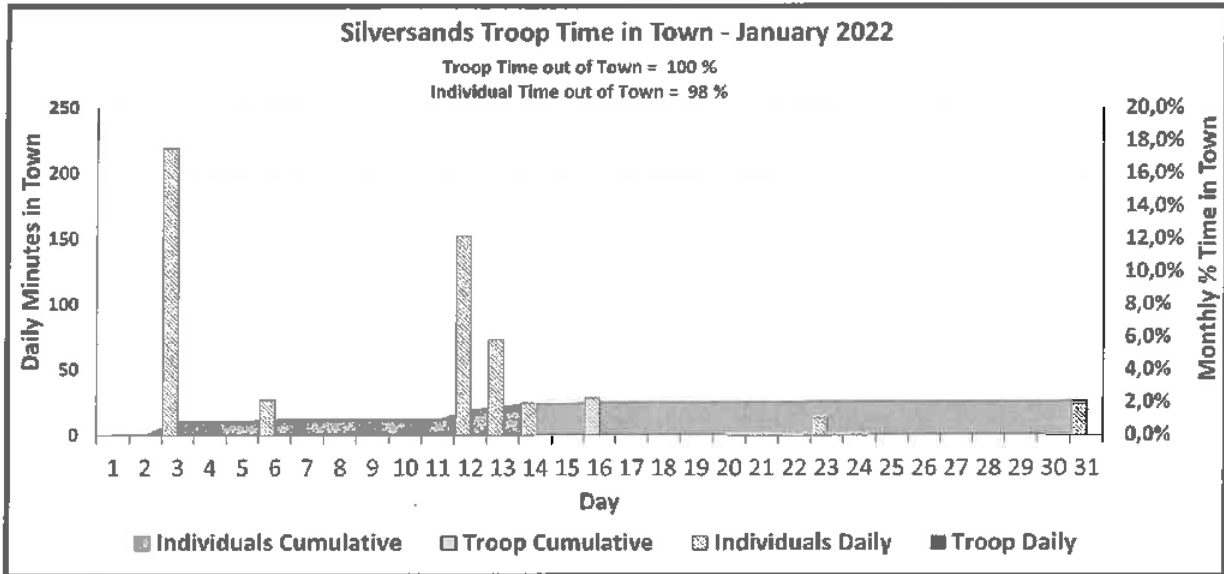


Figure 3.5: Troop and individual daily (bars) and monthly (area) Time in Town by the Silversands Troop during January 2022.

1.8.2 NOTEWORTHY INCIDENTS

- There were overall improvements observed in the behaviour of the troop this month. The troop did not enter the town at all, and individuals entered on 11 days compared to 13 days in December.
- The Silversands Troop was observed utilizing the natural areas between Brodie Link Nature Reserve and Sea Farm Private Nature Reserve.
- No assertive incursions were witnessed this month.

| HWS TROOP MONTHLY REPORT  |     |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
|---------------------------|-----|--|---|---|---|---|---|----|---|---|----|----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|------|----|-------|------|---|
| SECTOR                    |     | CLASSES OF BEHAVIOUR   |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| OVERSTRAND                |     | 1 In urban area  | 4 Anxious pets                          | 7 Threatening behaviour/ attacking/ stealing food |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| BAROON TROOP: Silversands |     | 2 Road pins  | 5 Unoccupied house or vehicle incursion | 8 Breaking & Entering/Damaging property           |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| MONTH: January YEAR: 2022 |     | 3 Non malicious damage   | 6 Occupied house or vehicle incursion   | 9 Nocturnal incursion                             |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| BAROON ID                 | Sex | 1  | 2                                       | 3   | 4 | 5 | 6 | 7  | 8 | 9 | 10 | 11 | 12  | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30   | 31 | TOTAL |      |   |
| Troop                     |     |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| SSM2 (short tail)         | M   |  |   | 1   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    | 1  |    |    |    |    |    |    |    |    |      |    |       | 2    |   |
| SSM2                      | M   |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| UMD Males                 | M   |  |   | 1   |   |   |   | 1  |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      | 3 |
| UMD Male                  | M   |  |   |   |   | 1 |   |    |   |   |    |    | 1   |    | 2  |    | 1  |    |    |    |    |    | 1  |    |    |    |    |    |    |    |      |    |       | 7    |   |
| UMD Sub-Male              | M   |  |   | 1   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       | 1    |   |
| UMD Female                | F   |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| UMD Female                | F   |  |   | 1   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       | 1    |   |
| UMD Individual            |     |  |   |   |   |   |   |    |   |   |    |    | 1   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    | 1     |      |   |
| UMD Juveniles             |     |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
|                           |     | TIME SPENT IN TOWN (Minutes)   |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HRS  |    |       |      |   |
| Troop                     | 0,0 |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 0,00 |    |       |      |   |
| Individuals               | 2,0 |  |   | 210   | * |   |   | 27 |   |   |    |    | 152 | 73 | 25 |    | 28 |    |    |    |    | *  |    |    |    |    |    |    |    |    |      |    | 24    | 5,95 |   |
| Roost:                    | AM  | ?  | ?                                       | ?   | ? | ? | ? | ?  | ? | ? | ?  | ?  | ?   | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?    | ?  | ?     | ?    |   |
| Roost:                    | PM  | ?  | ?                                       | ?   | ? | ? | ? | ?  | ? | ? | ?  | ?  | ?   | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?  | ?    | ?  | ?     | ?    |   |
| Roost Sites               | ?   | Unknown  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
|                           | 6   |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 2    |    |       |      |   |
|                           | 11  |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 7    |    |       |      |   |
|                           | 16  |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 8    |    |       |      |   |
|                           | 21  |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 9    |    |       |      |   |
|                           | 26  |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 10   |    |       |      |   |
| ID Features of Baboons    |     |  |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |
| General remarks:          |     | Please note that numbers in red indicate non-urban sites or incursions.<br>* Indicates individuals were seen in town but were not seen entering and/or leaving. These data were therefore estimated. |   |   |   |   |   |    |   |   |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |      |    |       |      |   |

Figure 3.6: The Silversands Troop incident sheet for January 2022. The asterisk allocated to individual time in town indicates that those individuals were seen entering town but were not seen leaving. These data were therefore estimated.

A12/20

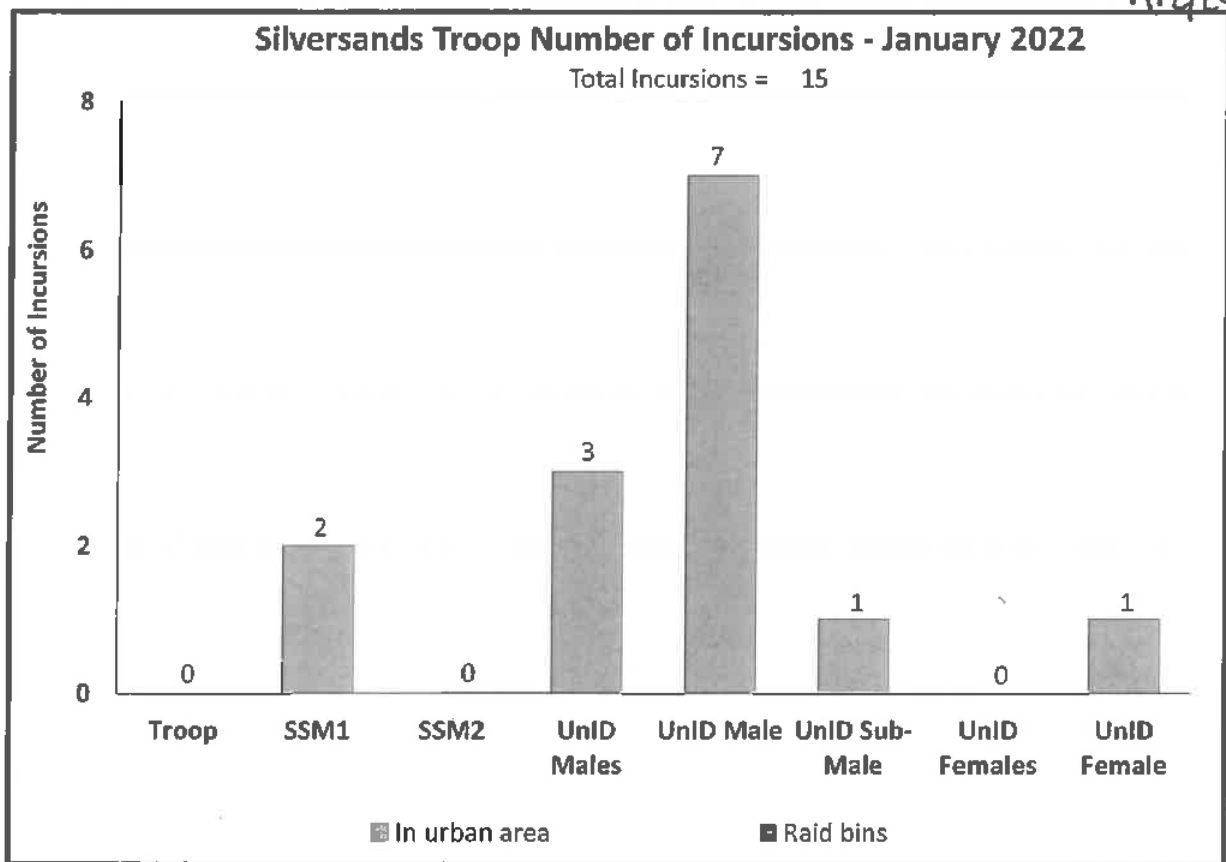


Figure 3.7: Number of incursions by the Silversands Troop and individuals during January 2022.

## 1.9 BETTY'S BAY TROOP

### 1.9.1 IN TOWN STATISTICS

- Troop time out of town declined to 90.9% this month compared to 93% time out of town during December.
- Individual baboons time out of town increased to 83.7% compared to 79.5% during December.

|             | % Out of Town | % Up or Down from Previous Month | Days Entered | Total Time in Town | Avg Time in Town | Max Daily Time in Town | Min Daily Time in Town |
|-------------|---------------|----------------------------------|--------------|--------------------|------------------|------------------------|------------------------|
| Troop       | 90,9          | -2,1                             | 24           | 40:07              | 1:40             | 4:02                   | 00:12                  |
| Individuals | 83,7          | 4,2                              | 30           | 71:34              | 2:23             | 4:36                   | 00:44                  |

Table 3.3: In Town Statistics for the Betty's Bay Troop for January 2022. Time is expressed in hours and minutes. Average daylength in January was 14 hours and 8 minutes.

A13/20

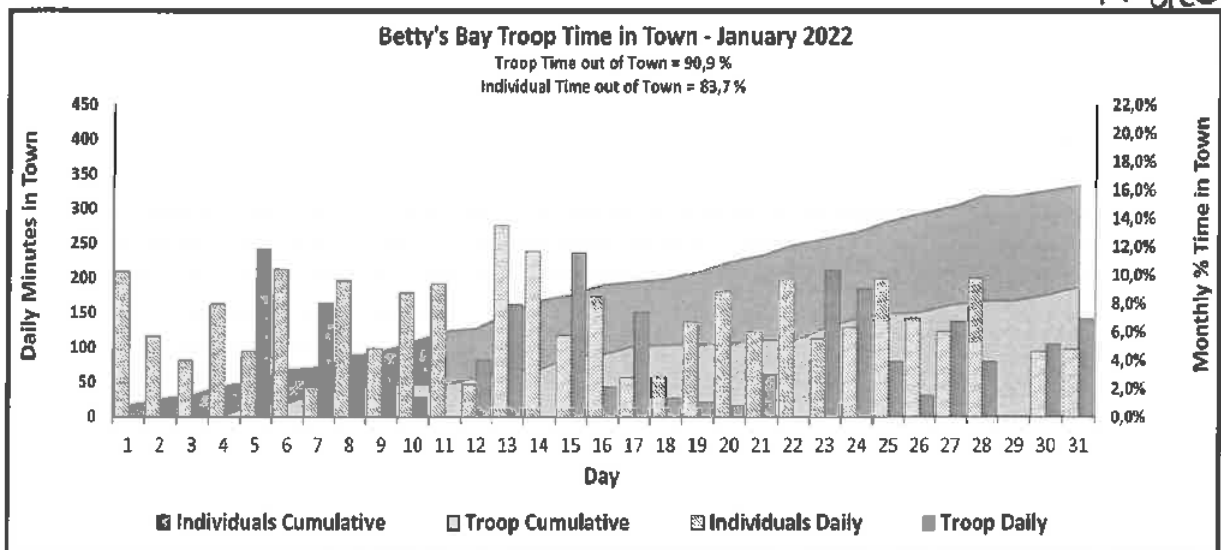


Figure 3.8: Troop and individual daily (bars) and monthly (area) Time in Town by the Betty's Bay Troop during January 2022.

### 1.9.2 NOTEWORTHY INCIDENTS

- There was a significant decrease in bin raids this month, with five bin raids recorded compared to 16 during December. Total incursions also decreased from 182 last month to 163 in January.
- BBM4 continued to enter the urban area and has become a highly assertive habitual raider. The baboon was responsible for 14 occupied and three unoccupied house raids. BBM4 was also observed running directly at HPG staff in the Harold Porter Botanical Gardens or at HWS staff on five different occasions this month.
- Eighty-two incursions were recorded for BBM2, BBM3 and BBM4, these males recorded 23, 24 and 35 incursions respectively.
- Flowering *Leucospermum spp* (pincushions) as well as fruiting *Harpephyllum coffrum* (wild plum) in town also provided easy access to food in the urban area. The troop spent long periods of time foraging in the greenbelts and gardens after entering town.
- Occupied house incursions also increased from 25 in December up to 30 this month. Most of these incursions were made by BBM3 (7 incursions) and BBM4 (12 incursions).
- Picnickers in Harold Porter Gardens were targeted on five different occasions and the restaurant was targeted once this month. All incidents resulted in theft of human derived foods (HDF's).
- As indicated in the previous monthly reports, Betty's Bay residents have continued to provide bird seed in their gardens. Bird seed is a very powerful attractant to mammals, particularly rodents and baboons.



**GENERAL COMMENTS – ALL TROOPS****1.11 POPULATION CHARACTERISTICS**

Five births and one death were recorded this month. Four new infants were observed present in the Voëlklip Troop this month. VKF1 and VKF6 as well as two untagged females were seen carrying infants. No deaths were recorded in the Eastern Overstrand troops.

One birth was recorded in the Betty's Bay Troop during January. This brings the total of births since HWS started managing this troop to seven. There have been no deaths in the troop during this period, apart from the Euthanasia of BBM1 in September 2021. One death was recorded in the Pringle Bay Troop this month. SSM3, a dispersing male which was attempting to join the Pringle Bay Troop was killed by a vehicle on the R44 while he was interacting with HKM1 – another dispersing male that has been attempting to join the Pringle Bay Troop since October 2021. SSM3 had dispersed from the Silversands Troop during December and was attempting to join the Pringle Bay Troop. He regularly associated with Pringle Bay Troop individuals while they were in town but was always chased away from the troop by the resident males when he approached the troop in the Buffelstal Nature Reserve.

| Troop           | October   | June      | June       | January 2022 |          |                          | Total observed Births (1 July 2021 to 31 January 2022) | Total observed Deaths (1 July 2021 to 31 January 2022) | Total observed Migrations (1 July 2021 to 31 January 2022) |
|-----------------|-----------|-----------|------------|--------------|----------|--------------------------|--|--|--|
|                 | 2019      | 2020      | 2021       | Births       | Deaths   | Emigration / Immigration |  |  |  |
| Voëlklip        | 29        | 29        | 27         | 4            | 0        | 0                        | 5  | 0  | -1   |
| Vogelgat        | N/A       | 22*       | 29         | 0            | 0        | 0                        | 1  | 2  | 0  |
| Orrus           | N/A       | N/A       | 25**       | 0            | 0        | 0                        | 0  | 1  | 0  |
| Hamilton Russel | N/A       | N/A       | 21**       | 0            | 0        | 0                        | 0  | 0  | 0  |
| Pringle Bay     | 16        | 16        | 17         | 0            | 1        | +1                       | 0  | 4  | +1   |
| Betty's Bay     | N/A       | 19        | 20         | 1            | 0        | 0                        | 6  | 1  | 0  |
| Hangklip        | N/A       | N/A       | 30         | 0            | 0        | 0                        | 0  | 1  | -1   |
| Silversands     | N/A       | N/A       | 43         | 0            | 0        | 0                        | 0  | 0  | -1   |
| <b>Total</b>    | <b>45</b> | <b>64</b> | <b>166</b> | <b>5</b>     | <b>1</b> | <b>1</b>                 | <b>12</b>  | <b>9</b>   | <b>-2</b>  |

**Table 4.1:** Population data for the managed troops in the Overstrand in January 2022. Emigration /Immigration figures show animal movements between troops. \*Vogelgat Troop was first counted in December 2020. \*\*Hamilton Russel and Orrus troop sizes are estimated, because they were not seen enough to get an accurate count.

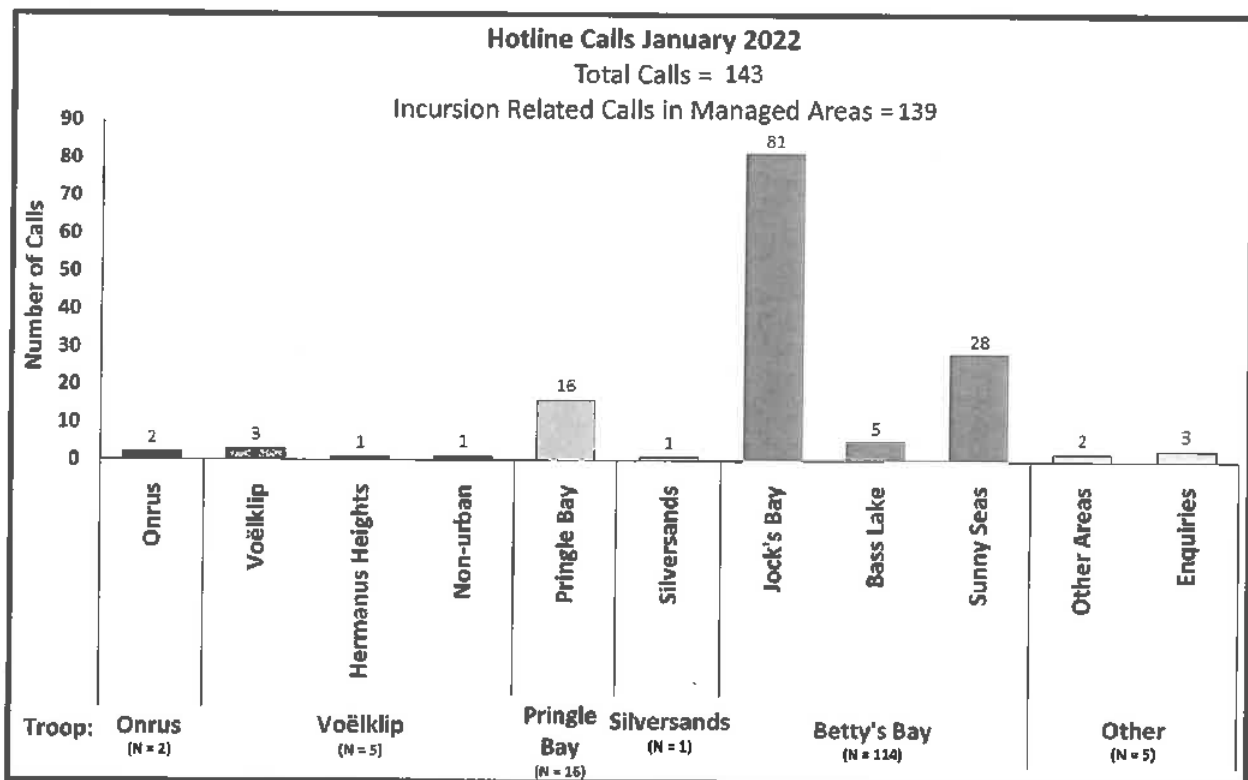
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| Deaths              | 2019/20<br>(October - June) | 2020/21<br>(July - June) | 2021/22<br>(July 2021 - January 2022) | January 2022 | TOTAL<br>(since October 2019) |
|---------------------|-----------------------------|--------------------------|---------------------------------------|--------------|-------------------------------|
| Management          | 3                           | 0                        | 1                                     | 0            | 4                             |
| Human Induced (HID) | 1                           | 2                        | 3                                     | 1            | 6                             |
| Direct *            | 1                           | 2                        | 2                                     | 1            | 5                             |
| Indirect **         | 0                           | 0                        | 1                                     | 0            | 1                             |
| Natural             | 2                           | 7                        | 4                                     | 0            | 13                            |
| Unknown             | 0                           | 0                        | 1                                     | 0            | 1                             |
| <b>TOTAL DEATHS</b> | <b>6</b>                    | <b>9</b>                 | <b>9</b>                              | <b>1</b>     | <b>24</b>                     |

**Table 4.2:** Causes of baboon deaths since October 2019; \*Deaths caused directly by humans, such as motor vehicle accidents, shooting, poisoning and dogs. \*\*Deaths caused indirectly by humans such as electrocutions and fire.

## 1.12 HOTLINE DATA

Incursion related hotline calls increased this month to 139 (from 122). Almost all of these calls came from Betty's Bay which nearly doubled from 63 to 114 in January. The majority (81) of these calls came from Jocks Bay. This is not unusual as some of the favourite sleepsites of the Betty's Bay Troop are located in Disa Kloof and Leopard Kloof. As a result, when the troop enters or leaves town via the Harold Porter Gardens they regularly go through Jocks Bay at the beginning or end of each day.



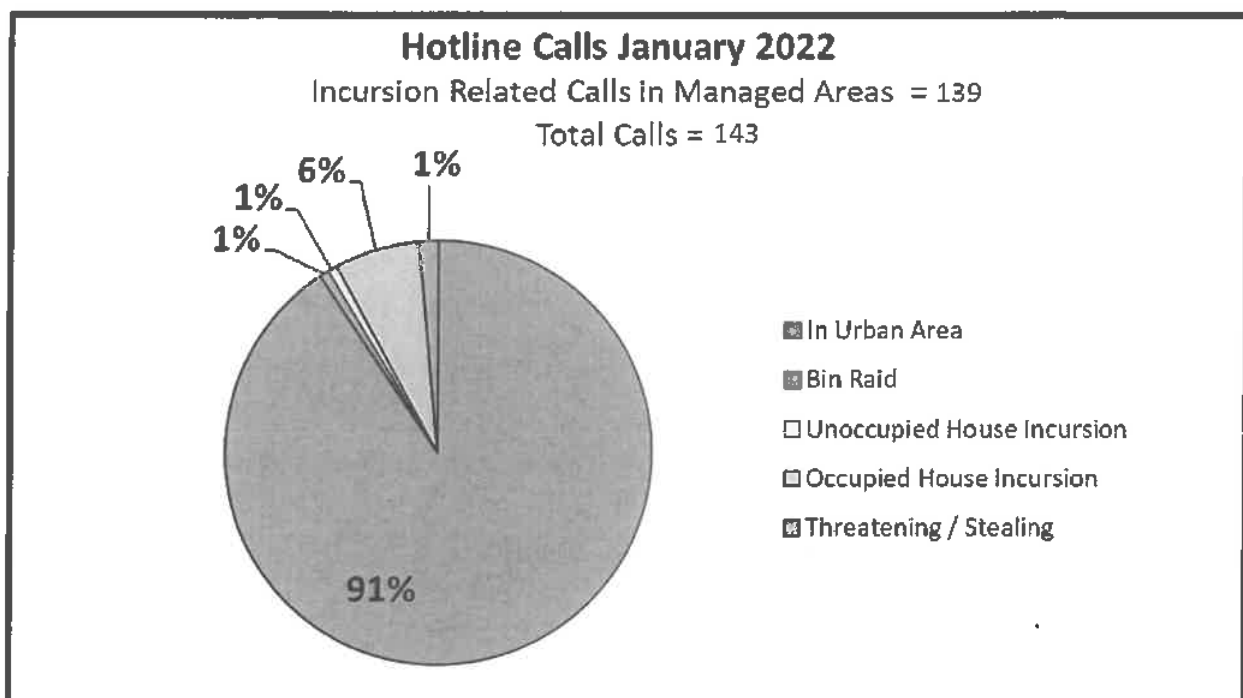
**Figure 4.1:** Hotline calls in baboon affected areas for January 2022. Incursion related hotline calls are calls reporting managed baboons in urban areas. Managed areas are those areas in which baboon troops are known to occur and are actively managed. 'Other Areas' represent those areas beyond the urban edge or the range of managed baboons.

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It should be noted here that hotline calls are not only physical calls to the HWS phone number, but also include group messages (reporting baboon incursions) between residents which have included the HWS number on their groups. This also explains why there has been a sudden increase in 'hotline calls' from Betty's Bay.

By contrast, there was an unusually low number of calls (5) from Hermanus this month. This is not surprising because the troop remained out of town for the whole month and individuals were only recorded in town on three occasions.

Overall, the majority of calls this month again reported the presence of baboons in the urban area, with a reduction in the proportion of calls reporting occupied incursions by baboons into homes. This is likely directly related to the holiday period ending and residents returning to work.



**Figure 4.2:** Composition of incursion-related hotline calls during January 2022. **Note:** This chart represents the composition of hotline calls, not the composition of known incursions by baboons.

### 1.13 RECORDED INCURSIONS

This month the total number of incursions recorded for all the managed troops was 290. The most notable feature of all these incursions, was that 264 (91%) of them were made by just two troops (Pringle Bay and Betty's Bay). In contrast, it is remarkable that the Voëlklip Troop, the troop which provided the original motivation to start the baboon management programme, made only 11 (3.8%) incursions and all of them were simply records of baboons being in town.

The contrast between the majority of troops in the Overstrand, and the Betty's Bay and Pringle Bay Troops is astounding. All the other troops combined made only 26 incursions into the urban areas, and none of these incursions were at all assertive. The Pringle Bay Troop recorded 101 incursions, of which 48 were assertive raids into people's homes or businesses. The Betty's Bay Troop recorded 163 incursions, of which 50 were assertive including ten where the baboons directly challenged or threatened humans.

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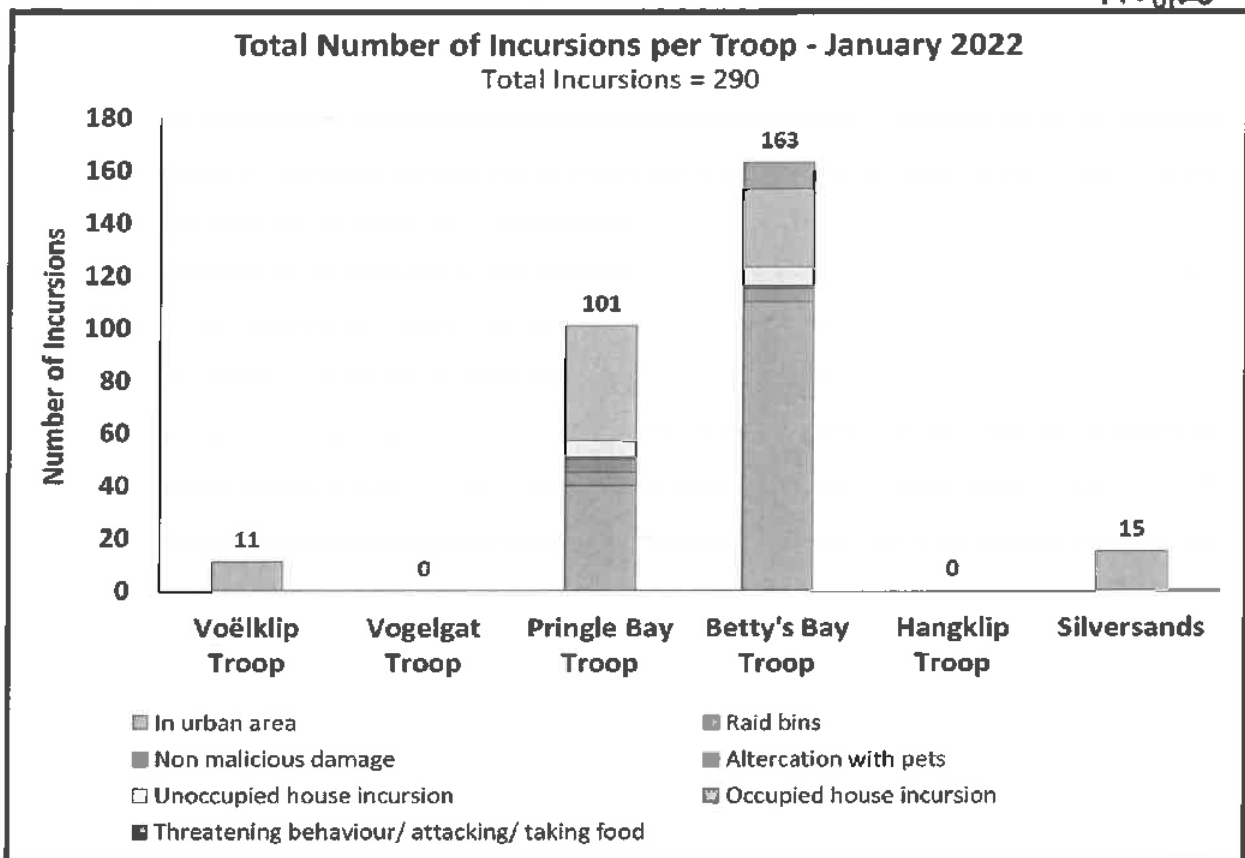


Figure 4:3: Total observed incursions per troop during January 2022. **Note:** Observed incursions are not hotline related, but are incursions observed by HWS field staff.

### 1.14 PERCENTAGE TIME OUT OF TOWN

In January the average time out of town by troops remained unchanged at a very satisfactory 98.8% month. The average time out of town by individuals increased to 95% in January. This was mostly due to an increased time out of town by individuals from the Pringle Bay Troop (4.2% increase). At first glance, this might sound like a credible increase in time out of town. However, a careful look at the actual days and hours spent in town by individuals in this troop, tells a very different story. Individuals in the Pringle Bay Troop were present in Pringle Bay on 16 days. During those 16 days they spent 110 hours in town at an average of 6 hours and 53 min per day in town! The Betty's Bay Troop individuals went into the urban area on 30 of the 31 days in January and averaged 2 hours and 23 minutes per day in town. This is more than enough time for these baboons to meet all their daily nutritional requirements, particularly if they are eating human derived foods (HDF's) which have ten times the energy value of normal fynbos.

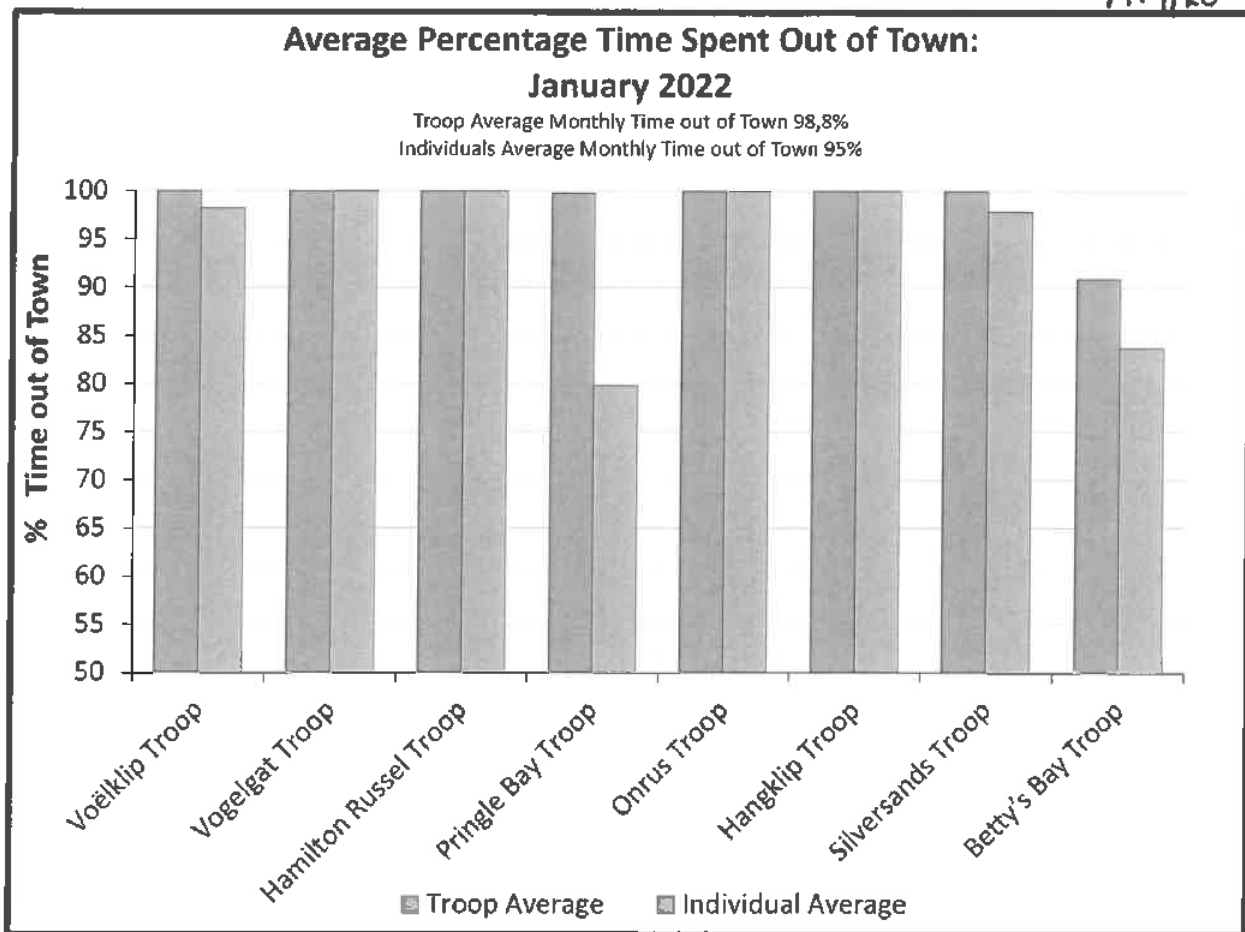


Figure 4.4: Percentage time the managed baboon troops and individuals spent out of town during January 2022.

### 1.15 RECOMMENDATIONS

- **Waste and recycling collection should be prioritised** to take place in the early mornings.
- All bins used in baboon effected areas should be **baboon-proof and locked**.
- Additional **baboon awareness** campaigns focused on tourists during holiday seasons would be beneficial.
- Baboon-proof bins are required throughout the western region of the Overstrand. Betty's Bay should be regarded as a high priority area because there are very few baboons proof bins in place. It is stipulated in the Overstrand Waste Management Bylaw that residents must use baboon proof bins in baboon effected areas.
- **Refuse bags** should not be left lying open on the sidewalk, easily available to baboons.
- Ripening **fruit on fruit trees** in baboon-affected areas should be harvested to remove the attractant for baboons.
- **Open vegetable gardens** should be baboon proofed.
- Residents are encouraged not to feed wildlife, including birds.
- Residents are encouraged to record and report the feeding of wildlife to the municipality, CapeNature, or to the baboon hotline (072 028 0008).

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## CONCLUSION

In January the western troops continued to be the cause of most of the human baboon conflict in the Overstrand, with 279 of the 290 recorded incursions by being committed by the western troops (particularly the Pringle Bay and Betty's Bay Troops). In the eastern Overstrand the management of the Voëlkliip Troop continued to improve as individuals spent less time in the urban area, and no entries were recorded for the troop. This is likely due to a combination of factors. Attractants such as the ripening grapes in the vineyards and pine nuts in the trees to the northwest of town acted as attractants pulling the troop away from the urban edge. Furthermore, the continued implementation of the Virtual Fence near the urban edge also discouraged the troop from attempting to enter the urban area. The troop was noted frequently to forage on natural vegetation in Fernkloof Nature Reserve and the neighbouring farms, and often moved deeper into Fernkloof Nature Reserve behind Kanonkop and Adder Ladder where edible vegetation was abundant.

Since the death of VGM2 in August the behaviour of the Vogelgat Troop has continued to be greatly improved. This is most notable from the fact that there have been no reported incidents of individuals raiding properties between the R43 and the lagoon. The troop and individuals have also remained 100% out of town. The troop has continued mainly to make use of the eastern part of its home range. No hotline calls were received for this troop this month, even from properties along the R43 and no further backpacks belonging to roadworkers were stolen by baboons.

This month the young Pringle Bay sub-adult male, PBM2, continued to go back and forth between his troop in the Buffelstal Nature Reserve and Pringle Bay Village where the two dispersing males HKM3 and SSM3 were regular visitors / residents. On 19 January PBM2 returned to Pringle Bay, taking two young females, PBF5 and PBF6, with him. These baboons immediately resumed their highly assertive raiding behaviour, with PBM2 and PBF6 committing 41 occupied house raids between them over the next 12 days. It is most concerning that PBF6 learnt very quickly from PBM2 and became a fearless assertive raider, committing 15 occupied house incursions (i.e. the residents were at home and inside when the raid occurred) in just 12 days. It is also of great concern that PBF6 has learnt her raiding behaviour from a young sub-adult male, not very much bigger than a female. The fact that PBF5 and PBF6 left their troop and went with a sub-adult male to join to two dispersing adult males in Pringle Bay is even more concerning. These individuals are showing all the signs of forming a new splinter troop which will become resident with Pringle Bay in the middle of their very small home range.

The Betty's Bay troop continued to show the same behavioural patterns as during previous months. Even though individual time out of town increased this month, this troop made 163 incursions with half coming from the three adult males. The most notable differences between the Pringle Bay and Betty's Bay Troops this month were firstly that only a few individuals from the Pringle Bay Troop raided the urban area, while most of the troop stayed 100% out of town. In contrast, the whole Betty's Bay Troop raided regularly, and were also much more aggressive. Ten incidents of baboons charging, or challenging humans were recorded by the Betty's Bay Troop, with half of these being made by the sub-adult male BBM4. It is notable however that three incidents of baboons threatening humans or stealing food directly from them, were made by females. With this troop spending the most time in town and making the most raids, it has definitely regressed the most in terms of baboon management. The troop has quickly learned that they are no longer being hit by paintballs (as a result of the moratorium imposed by the Municipality), and even juveniles are getting more assertive and running past or ignoring the HWS rangers.

**EX PARTE:**

**OVERSTRAND LOCAL MUNICIPALITY**

**IN RE:**

**SECTION 7 OF THE BUILDING ACT**

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**OPINION**

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**ADV ADELE ERASMUS**

**23 April 2019**

## INTRODUCTION

1. Section 4 of the National Building Regulations and Building Standards Act, 103 of 1977 ('the Building Act') requires a municipality to approve building plans before any construction can commence. When approving building plans, the municipality exercises an important public power constituting administrative action.
2. Property development may, depending on scale, have multifarious effects. It may pose health hazards; it may expose people to the risk of physical harm, including loss of life and limb; it may create a nuisance to occupiers of neighbouring properties; it may affect the aesthetics of the area; and it may devalue neighbouring properties. In addition to the possibility of harm to the owner and occupants of the property to be developed, a development may have adverse effects on the rights<sup>1</sup> of owners of neighbouring properties.
3. The Building Act and its Regulations were promulgated to provide for uniformity in the law relating to the erection of buildings within municipal areas<sup>2</sup> and are recognised as being:
  - 3.1. part of the legislative landscape which seeks to ensure the harmonious, safe and efficient development of urban areas<sup>3</sup>, and
  - 3.2. a framework within which the right balance must be struck between, on the one hand, the landowner's right of ownership to

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<sup>1</sup> The possible exposure to danger to life and limb is a threat to the right to life and the right to security of the person (ss 11 and 12 of the Constitution, respectively). The other possible negative effects implicate the right to property (s 25 of the Constitution) – see Turnbull-Jackson CC: fn 120

<sup>2</sup> See the long title of the Building Act, Turnbull-Jackson CC: paras 2 and 73

<sup>3</sup> Da Cruz CC: para 30; Da Cruz appeal: para 80; Da Cruz (HC): para 36

erect a building of his or her own choice on his or her property, and the rights of owners of the neighbouring properties, on the other<sup>4</sup>.

4. In a number of decisions over the last decade, our Courts have interpreted section 7 of Building Act<sup>5</sup>, which governs the approval of building plans<sup>6</sup>.
5. Section 7 of the Building Act provides that:

*'(1) If a local authority, having considered a recommendation referred to in section 6(1)(a)-*

*(a) is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall grant its approval in respect thereof;*

*(b) (i) is not so satisfied; or*

*(ii) is satisfied that the building to which the application in question relates-*

*(aa) is to be erected in such manner or will be of such nature or appearance that:*

*(aaa) the area in which it is to be erected will probably or in fact be disfigured thereby;*

*(bbb) it will probably or in fact be unsightly or objectionable;*

*(ccc) it will probably or in fact derogate from the value of adjoining or neighbouring properties;*

*(bb) will probably or in fact be dangerous to life or property,*

*such local authority shall refuse to grant its approval in respect thereof and give written reasons for such refusal.'*

<sup>4</sup> Walele CC; paras 2, 55

<sup>5</sup> In the main, the cases focus on the disqualifying factor in section 7(1)(b)(ii)(aa)(ccc) – namely, the derogation from the value of adjoining or neighbouring properties.

<sup>6</sup> The main cases in chronological order (oldest to most recent) are: 1) Walele v City of Cape Town and Others 2008 (6) SA 129 (CC) ('Walele CC'); 2) True Motives 84 (Pty) Ltd v Mahdi and Another 2009 (4) SA 153 (SCA) ('True Motives SCA'); 3) Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another 2011 (4) SA 42 (CC) ('Camps Bay Ratepayers CC'); 4) Turnbull-Jackson v Hibiscus Coast Municipality and Others 2014 (6) SA 592 (CC) ('Turnbull-Jackson CC'); 5) Gerstle and Others v City of Cape Town and Others 2017 (1) SA 11 (WCC) ('Gerstle WCHC'); 6) Da Cruz and Another v Cape Town City and Another 2017 (4) SA 107 (WCC) ('Da Cruz WCHC'); 7) City of Cape Town and Others v Da Cruz and Another 2018 (3) SA 462 (WCC) ('Da Cruz Appeal'); 8) Trustees of the Simcha Trust v Da Cruz and Others; City of Cape Town v Da Cruz and Others [2018] ZACC 8 ('Da Cruz CC')

6. The Courts have held that section 7 has two parts<sup>7</sup>, first section 7(1)(a) and secondly, section 7(1)(b)(ii). Both parts of section 7 are dealt with in more detail below.
7. In summary, in the first part (section 7(1)(a)), the building control officer ('BCO') must satisfy him or herself that the proposal is compliant with the necessary legal requirements. If not, the application must be refused and the second part of the enquiry is not reached<sup>8</sup>.
8. If, however, the application is legally compliant, then in the mandatory second part (section 7(1)(b)(ii)), the BCO must satisfy him or herself that the disqualifying factors mentioned in section 7(1)(b)(ii) are not present before recommending the plans for approval<sup>9</sup>.

#### **THE FIRST PART: SECTION 7(1)(a) OF THE BUILDING ACT**

9. As introduced above, section 7(1)(a) imposes a duty on the municipality to 'positively' satisfy itself that a building plan '*complies with the requirements of [the Building Act] and any other applicable law*'. This generally refers to the applicable technical building restrictions and regulatory prescriptions relating to building, town-planning and zoning schemes, amongst others:
  - 9.1. the Overstrand Municipal Planning By-Law, 2015;
  - 9.2. the Overstrand Zoning Scheme Regulations, 2013;
  - 9.3. title deed conditions imposed as the result of an exercise of public authority in relation to land-use planning or building regulation<sup>10</sup>;

<sup>7</sup> Da Cruz Appeal: para 24

<sup>8</sup> Da Cruz WCHC: para 48

<sup>9</sup> Walele CC: para 56

<sup>10</sup> Camps Bay Ratepayers and Residents Association and Others v Minister of Planning, Culture and Administration, Western Cape, and Others 2001 (4) SA 294 (C) 324F-G; Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others 2011 (4) SA 149 (SCA): paras 36-7

- 9.4. the Overstrand's Spatial Development Framework, the Land Use Planning Act 3 of 2014, the Municipal Systems Act, 32 of 2000, and the Spatial Planning and Land Use Management Act, 16 of 2013; and
- 9.5. any other legislation (for example environmental) in terms of which authorisation is first to be granted or restrictions are placed on where buildings may be situated.
10. The above list is not complete, and if the BCO is in any doubt as to the applicability of any other law, he or she should first seek advice before proceeding.
11. The term 'law' or '*other applicable law*' is not defined in the Building Act. Section 2 of the generally-applicable Interpretation Act, 33 of 1957, however, provides that the word 'law' shall, unless the context otherwise requires or unless in the case of any law it is otherwise provided therein, have the following meaning: '*any law, proclamation, ordinance, Act of Parliament or other enactment having the force of law*'.
12. Despite the breadth of the definition of 'law' in section 2 of the Interpretation Act, it does not extend to legal instruments creating or governing private-law relations like contracts or servitudes or restrictive conditions in title deeds that result from private-law dealings between individuals (i.e. are not the result of an exercise of public authority in relation to land use planning or building regulation). A municipality has no authority to enforce private-law relations which are enforceable by the persons in whose favour they operate<sup>11</sup>. It is advisable for the BCO to check if there are any servitudes and title deed conditions pertaining to the property and if in doubt as to their nature (private or public) and enforceability, to seek legal advice.

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<sup>11</sup> Singh and Another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) and Others 2018 (1) SA 615 (KZP)

13. If a municipality is satisfied, the building plan application can be approved<sup>12</sup>. If not so satisfied, section 7(1)(b)(i) mandates the refusal of the application<sup>13</sup>. This may lead to the applicant being able to resubmit the building plans for approval once, and if, it has been able to address whatever was non-compliant about the building plans or submits amended building plans which remove the non-compliant element.

#### **THE SECOND PART: SECTION 7(1)(b)(ii) OF THE BUILDING ACT**

14. A proposed building cannot be approved only because it complies with the legally-imposed restrictions<sup>14</sup>. A positive finding that the plans comply with the applicable legal requirements does not necessarily mean that an applicant should, or will, be entitled or permitted to build within those lawful parameters<sup>15</sup>. A building plan may still be refused if the considerations listed in section 7(1)(b)(ii), referred to in the cases as 'disqualifying factors' or 'undesirable outcomes'<sup>16</sup>, exist or are triggered.

#### **SECTION 7(1)(b)(ii)(aa) OF THE BUILDING ACT**

15. The relevant inquiry is whether the building is to be erected in such manner or will be of such nature or appearance that:
- 15.1. the area in which it is to be erected will probably or in fact be disfigured (section 7(1)(b)(ii)(aa)(aaa));
- 15.2. the building will probably or in fact be unsightly or objectionable (section 7(1)(b)(ii)(aa)(bbb)); or

<sup>12</sup> Da Cruz Appeal: para 28

<sup>13</sup> True Motives SCA: para 19

<sup>14</sup> Walele CC: para 90

<sup>15</sup> Da Cruz Appeal: para 37

<sup>16</sup> True Motives SCA: para 21

- 15.3. the building will probably or in fact derogate from the value of adjoining or neighbouring properties (section 7(1)(b)(ii)(aa)(ccc)).
16. A distinction is drawn between section 7(1)(b)(ii)(aa) and its sub-sections (aaa) to (ccc) on the one hand, and section 7(1)(b)(ii)(bb) on the other hand. Although both sections refer to 'the building to which the application in question relates (emphasis added)', section 7(1)(b)(ii)(aa) deals with the manner in which a building is to be erected or its nature or appearance. Section 7(1)(b)(ii)(bb), on the other hand, deals with whether the building will probably or in fact be dangerous to life or property which must rationally include any particular aspect of the building or its intended and likely usage that would pose such a danger. There are yet no decided cases interpreting section 7(1)(b)(ii)(bb).

What should the inquiry into the disqualifying factors consider?

17. Our Courts have developed what is referred to as '*the legitimate expectations test*'. This is a legal construct which requires the BCO/decision-maker to consider the impact of the proposed building on the neighbouring properties from the perspective of a hypothetical neighbour<sup>17</sup>. The test requires an objective factual inquiry into the hypothetical range of future possibilities which would have been in the mind of a buyer at the time of a hypothetical sale of a neighbouring property.
18. How does the test work?<sup>18</sup> Market value is the price an informed buyer will pay an informed seller, both of them having regard to all the potential risks — both realised and unrealised — pertaining to the subject property. One of the unrealised risks is that a neighbouring property, unimproved at the time of the sale, might be built upon, or even, when built upon, might

<sup>17</sup> Da Cruz CC: para 31

<sup>18</sup> Camps Bay Ratepayers CC: paras 38-40; True Motives SCA: paras 30-31

be replaced by a new building which may, for example, be more obstructive to the view enjoyed from the subject property<sup>19</sup>.

19. As a counterbalance to the risk that a new building may be more intrusive or render the subject property less attractive, the hypothetical buyer will take into consideration that the new building will be constrained by the legal restrictions imposed by the laws referred to in paragraph 9 above. Informed parties would acquaint themselves with the zoning and the permissible limits of height, coverage, bulk, building lines, etc, all of which influence the utility of the property, and, therefore, its inherent value. In this way, the hypothetical informed buyer and seller will always be aware of the inherent advantages and disadvantages flowing from the lawful exercise of rights and will build them into the market price according to how they assess the likelihood that they will occur. Derogation from market value only commences when the likelihood that a disadvantage will occur was not within the contemplation of the hypothetical informed parties. As previously said, this is an objective question.
20. As the Constitutional Court in Camps Bay Ratepayers pointed out, derogation of value can occur both in the first and second parts of section 7(1):

*'Derogation from market value . . . only commences: (a) when the negative influence of the new building on the subject property contravenes the restrictions imposed by law; or (b) because the new building, though in accordance with legally imposed restrictions, is, for example, so unattractive or intrusive that it exceeds the legitimate expectations of the parties to the hypothetical sale. In (a) the cause of the depreciation will flow*

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<sup>19</sup> The Courts have specially commented on a property fronting directly on the ocean as being generally worth substantially more than the property behind it, even when neither has been developed. While the latter bears the risk of being deprived of its view, the former does not (Camps Bay Ratepayers CC: para 38)

from a non-compliance with s 7(1)(a). It is only in the event of **(b)** that s 7(1)(b)(ii) comes into play (emphasis added)<sup>20</sup>.

21. If the alleged derogation flows from negative influences that arise despite the fact that the new development accords with the legally imposed restrictions, then the disqualifying factors in the second part of section 7(1) are in question<sup>21</sup>. For example, a developer builds to maximum bulk in reckless disregard of market opinion. Although his development, falls within the strict confines of existing developmental controls, the proposed building will derogate from the value of an adjoining property because the hypothetical purchaser and seller of that property would have regarded the likelihood of such a development as too remote to influence their price.
22. As listed in paragraph 15.3 above, section 7(1)(b)(ii)(aa)(ccc) specifically deals with the question of a derogation in value. The Constitutional Court in Da Cruz specifically answered the question whether the legitimate expectations test applies to the other disqualifying factors in section 7(1)(b)(ii)(aa) even though these disqualifying factors do not refer to neighbouring or adjoining properties or the derogation of value. The Constitutional Court answered in the positive saying:

*'..we use the phrase "neighbouring property" flexibly and its scope will vary in light of all of the circumstances of the case. The decision-maker should consider whether the proposed building will probably, or in fact, be so disfiguring of the area, objectionable or unsightly that it would exceed the legitimate expectations of a hypothetical owner of a neighbouring property'<sup>22</sup>.*

23. Therefore a municipality has a duty to assess the actual or probable contextual effect of any building to be erected on what is already there - the neighbouring properties or foreseeably what a neighbour might

<sup>20</sup> Camps Bay Ratepayers CC: para 40

<sup>21</sup> Turnbull-Jackson CC: para 49

<sup>22</sup> Da Cruz CC: para 33

reasonably wish to erect in the future<sup>23</sup>. To determine whether a building to be erected will be unreasonably or unduly intrusive, unacceptably overbearing or otherwise unsightly or objectionable, a municipality must consider the effect of the finished contemplated building within:

- 23.1. the broader context (the impact on owners or occupants of any adjacent or neighbouring buildings or the community in general); and/or
- 23.2. the narrower context from the perspective of an existing neighbouring building (as distinct from the impression of street-level users in the general area)<sup>24</sup>; and/or
- 23.3. in the case of town housing, cognizance must be taken that there may be a different answer to the question of 'harmonious architectural entity'<sup>25</sup> depending on whether the examination is

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<sup>23</sup> Da Cruz WCHC: para 48

<sup>24</sup> Da Cruz WCHC: paras 9 and 14

<sup>25</sup> As to what the term '*harmonious architectural entity*' means, the following are some attempts at definition:

- (1) 'The term *harmonious architectural entity* ... does not only require that the buildings in the development, must all have the same colour scheme finishes. The term also means that the buildings together must form a three dimensional perspective, incorporating size, massing, height, building volumes, proximity, placement and proportion in relation to each other. It is only when the buildings all have the same design, shape, angles and features that they together create a *harmonious architectural entity*';
- (2) 'This relates to the architecture of the buildings within the development in relation to each other. This is not primarily determined by whether a building is one storey or not. Furthermore this definition also refers to in which the structures may vary between single and double storey. The proposal to alter an existing single storey dwelling to a double storey in the front row must therefore be assessed on its merits. It is the relationships between the proposed addition and the existing dwellings in the development which must be assessed; this term does not require the buildings in the development to be identical';
- (3) "This term concerns the detailed elements contained within a building, i.e. an architectural theme — it does not mean that the buildings have to be uniformly or identically constructed. Were that the case, the City could not approve the diverse range of houses within group housing developments which fall within its jurisdiction, and in which, while there is architectural harmony, there is not architectural uniformity in relation to the size of the buildings in question.';
- (4) 'all the structures within a group housing development, taken together, must form an orderly or pleasing style of building';
- (5) 'I first viewed the group housing development from a position well to the west, ... From that viewpoint, it initially did not seem to me that the case was strong in the "harmonious

made from the 'outside looking-in (externally)' or from the 'inside looking-out (internally)'; and/or

- 23.4. If the municipality has approved something unusual (for example something different to what the practice is within a particular area<sup>26</sup>), the BCO will have to ask whether the notional parties to a hypothetical sale could reasonably have expected that the municipality - when considering an application for new or additional development on the adjoining erf<sup>27</sup> which would destroy the utility of the amenities<sup>28</sup> of the existing building - would be obliged to take into account the unusual characteristics it had previously permitted.
24. As is evident each application will need to be determined based on the peculiar facts and legal constraints arising in each building plan application<sup>29</sup>. It is not a subjective test determined by the whim of a sensitive neighbour but is objective and based on relevant facts, which

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architectural entity sense, given that high rise and other quite cacophonous developments immediately surrounding the group housing scheme appear to impinge on it, and, moreover, given that the dwelling grouping is, frankly, not that distinguished in architectural terms. However, when a little later I viewed and experienced the scheme [closer], it became clear to me that the scheme was, and is, representative of a coherent, if relatively modest attempt to create an harmonious architectural entity, albeit that the scheme is small and that the architectural coherence is primarily experienced from the inside-out, rather than from the outside-in'.

<sup>26</sup> The situation which arose in the Da Cruz matter was that the municipality had approved a building in the Cape Town City centre which did not adhere to the common practice in mixed-use areas for which the zoning allowed for so-called 100% coverage. The common practice is that habitable spaces with windows or balconies were not usually constructed along common boundaries. In the case of 2 adjoining erven with such coverage rights, façades on the common boundary are ordinarily reserved for non-habitable utility areas such as lifts, stairwells, passages, or storerooms. The unusual building approved made provision for the erection of balconies for the 8th floor apartments (over the roof of the garage level underneath), which extended over the 3m setback up to the common boundary.

<sup>27</sup> Da Cruz WCHC: para 62

<sup>28</sup> In the Da Cruz case, the BCO himself recognized that the 'proposed' building was intrusive and affected the privacy and light of the neighbouring building and would effectively enclose the balconies on the common boundary but despite this approved the plans because they complied with the zoning scheme. The Courts found that derogation of value would be established (see Da Cruz Appeal: para 49)

<sup>29</sup> Da Cruz Appeal: paras 44-45, confirmed by Da Cruz CC: paras 28-29

would in the ordinary course, be placed at the decision-maker's disposal<sup>30</sup>.

25. Our Courts have held that the determination of the disqualifying factors 'is a relatively simple task<sup>31</sup>' which only arises in 'rare occurrences'<sup>32</sup>. The questions that the BCO/decision-maker will have to decide are relatively straightforward and susceptible to 'yes' or 'no' answers<sup>33</sup>. Either the plans do comply with local zoning regulations or they do not. Either the proposed building will in fact or probably give rise to the harmful consequences contemplated by s 7(1)(b) or it will not. The BCO/decision-maker will not have to weigh a range of countervailing considerations.
26. Frequently a proposed building will not yet have been built and in such a case the BCO must take account of how the proposed structure would fit in with the existing developments on neighbouring properties and what might reasonably be anticipated to be the possible future use of such properties. Our courts have held that such an exercise hardly requires conjecture or speculation, and is not unduly onerous and stated that:

*A simple look at the zoning restrictions and the general structure and characteristics of buildings in the area, either by looking at their approved plans or by using aerial or street-view photographs (in this regard free software applications such as Google Maps are in common every-day use), or by means of an inspection of the area, if necessary, will surely do. Such an exercise also does not require the BCO to consider the possible effect of every 'feature' of every proposed building on neighbouring properties. It is the effect of the proposed building works as a whole that will ordinarily need to be considered, not each and every feature thereof. At worst it will surely only be features which may adversely impact on the rights of the owners or occupiers of neighbouring properties, or which may have an adverse effect on their market value (outside*

<sup>30</sup> Da Cruz CC: para 32

<sup>31</sup> Turnbull-Jackson CC: para 109

<sup>32</sup> Turnbull-Jackson CC: para 108

<sup>33</sup> Walele CC: para 107 – would appear to have become very complex but not so, majority required that sufficient information be placed before the decision maker

*of the range of 'legitimate expectations'), that will require consideration. To an experienced and appropriately qualified BCO such features will no doubt be manifest from a simple consideration of the plans, which ordinarily require views from different elevations. One must remember that before the matter comes to the BCO it will pass through the hands of a number of other persons with specialized skills, such as plan examiners, who will consider the plans in the light of the zoning scheme and will have regard for matters such as where the site on which the building is to take place is located with reference to nearby roads, as well as the boundaries, building lines and coverage, and the proposed placement, height and earmarked use of the building'<sup>34</sup>.*

27. In this manner, our Courts recognise that a municipality will, on an incremental basis, play a material role in determining the character of a neighbourhood. Its decisions about the sort of building it is willing to approve on property B, will inevitably have some influence on what it might subsequently allow on the neighbouring properties A and C. This is so because a municipality must take account of what it has permitted on property B when it considers, in the context of subsequent applications, what might acceptably be built on neighbouring properties A and C. If a municipality does not do this, the realisation of co-ordinated and harmonious development will be subverted.

28. Because of this material role, the approval of building plans is described as an important public power<sup>35</sup>. It is also in this context that the Building Act:

28.1. imposes onerous duties on municipalities to ensure that there is a balance of interests within a geographical community<sup>36</sup>. In discharging its building-plan-approval function, a municipality is

<sup>34</sup> Da Cruz Appeal: para 6

<sup>35</sup> Turnbull-Jackson CC: para 18; Camp Bay Ratepayers CC: para 27

<sup>36</sup> Da Cruz Appeal: para 80; Da Cruz WCHC: para 46

required to act as a moderator/ guardian<sup>37</sup>/ caretaker<sup>38</sup> between the exercise of the landowner's rights and the potentially conflicting rights and obligations of neighbouring property owners and the community's interests;

28.2. creates an adequate self-contained protection in section 7(1)(b)(ii) to safeguard the rights of owners of neighbouring properties making it generally unnecessary for such owners to be heard before an approval is granted<sup>39</sup>. The Constitutional Court has held (and confirmed) that the owners of the neighbouring properties have no right to be heard before a municipality decides whether or not to approve a building plan application<sup>40</sup>, unless there is an express promise or a regular practice which is reasonably expected to continue<sup>41</sup>. The neighbouring owners also have no right to appeal the municipality's approval<sup>42</sup>; and

28.3. requires the appointment of a suitably-qualified BCO<sup>43</sup> who is given extensive powers to fulfil this material role. The fact that a municipality may not delegate the appointment of the BCO emphasises the importance of the BCO as a key municipal official as well as that a municipality may not approve building plans without having received the BCO's recommendation<sup>44</sup>.

29. The Courts recognise that the vast majority of building plans can be approved without much effort. I refer to these as 'conforming buildings'.

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<sup>37</sup> Walele CC: para 56; Da Cruz WCHC: para 37

<sup>38</sup> Da Cruz CC: para 30

<sup>39</sup> Walele CC: para 56

<sup>40</sup> Walele CC: para 45

<sup>41</sup> Walele CC: paras 35, 39, 42

<sup>42</sup> Walele CC: para 19

<sup>43</sup> On a BCO's qualifications, see Turnbull-Jackson CC: para 80

<sup>44</sup> Walele CC: paras 84, 86, 89, and 116

Typically conforming buildings are where the characteristics of a proposed development (such as its bulk, height, general aesthetic character, placement and coverage) compare favourably or is harmonious, uniform or cohesive with existing developments in the area or that what is proposed is common place for the adjoining buildings<sup>45</sup>. As a result in the vast majority of building plan applications, notice need not be given to potentially-affected neighbours or any other interested and affected party.

30. However, a higher level of scrutiny will be required in relation to those proposed buildings which:

30.1. raise out-of-the-ordinary questions<sup>46</sup>; or

30.2. are so out of character in relation to what exists in the area; or

30.3. because of an aspect of the building or of the building itself is likely to give rise to a dispute between neighbours because of the proposed building's unduly unattractive, intrusive, overbearing and objectionable character<sup>47</sup>.

31. In relation to these types of buildings a BCO is well-advised to give notice<sup>48</sup> to potentially-affected neighbours or any other interested and affected party.

Arriving at a conclusion on the disqualifying factors:

32. Our Courts have also emphasised that because each disqualifying factor is separately referenced in section 7(1)(b)(ii)(aa), the BCO/decision-maker must make a properly-directed determination of each self-

<sup>45</sup> Turnbull-Jackson CC: para 81

<sup>46</sup> Da Cruz WCHC: para 15

<sup>47</sup> Da Cruz WCHC: para 6; Turnbull-Jackson CC: para 81

<sup>48</sup> Walele CC: para 71

standing disqualifying factor mentioned in paragraphs 15.1 to 15.3 above<sup>49</sup>.

33. The wording in section 7(1)(b)(ii) is that the erection of the proposed building '*will probably or in fact*' result in one of the identified harmful consequences or proscribed consequences. This means that each disqualifying factor must be individually considered and a conclusion reached as to whether that particular factor will be triggered or not after a proper investigation and assessment of the facts on a balance of probabilities<sup>50</sup>. The contextual assessment is not about the risk or mere possibility that one of the disqualifying factors might occur nor must a decision-maker be absolutely certain. The standard is a balance of probabilities.
34. The question about onus, namely, who bears the duty to satisfy the municipality on the disqualifying factors, arises. Although the Constitutional Court has not decided this question, the Western Cape High Court (*per* Binns-Ward J) has held that the Building Act places an obligation on the municipality to satisfy itself that the plans comply with all the applicable statutory requirements and that none of the disqualifying factors will be triggered. The legislative scheme envisages that the BCO will undertake the necessary inquiries and deal with them in his or her recommendation.

#### The BCO's recommendation

35. Sections 6(1) and (2) of the Building Act make it compulsory for the BCO to make a recommendation on the building plan application which must, where necessary, incorporate reports relating to fire-protection plans.

<sup>49</sup> Camps Bay Ratepayers CC: para 25 (40?); Da Cruz WCHC: para 29, 70

<sup>50</sup> Da Cruz WCHC: para 31; Walele CC: paras: 56 and 88; Turnbull-Jackson CC: para 83

Without a recommendation from the BCO, the municipality cannot even consider the question of approving a building plan application<sup>51</sup>.

36. In the past, the BCO's endorsement and signature on the requisite form would have been a sufficient basis on which the decision-maker could approve a building plan. This is no longer permissible<sup>52</sup>.
37. The BCO's recommendation is now required to contain motivated advice which considers and weighs the merits and demerits of the application in relation to what is recommended, particularly concerning the existence or not of the disqualifying factors. The BCO's recommendation is the proper means by which information on disqualifying factors is to be placed before the decision-maker<sup>53</sup> because as a specialist, the BCO is best suited to advise the decision-maker about disqualifying factors because the determination of these factors involves a prediction of what may happen in the future when the proposed building is erected<sup>54</sup>.
38. That information/objective facts the BCO may have reference to arises from amongst others, the following sources:
  - 38.1. any advice in relation to by-laws and town-planning legislation applicable within his or her municipal area;
  - 38.2. the primary facts of the proposed erection will be apparent from the building plan application documents submitted under section 4, and, if they are not, the BCO will seek clarification in writing, by discussion with the applicant or its representative or on the ground by physical inspection;

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<sup>51</sup> Our Courts have characterised the BCO's recommendation as a 'jurisdictional' fact without which a decision-maker cannot properly exercise of his or her power in terms of s 7(1) of the Building Act to approve or not a building plan application – Turnbull-Jackson CC: para 42

<sup>52</sup> Da Cruz Appeal: para 12

<sup>53</sup> Walele CC: paras 70-1

<sup>54</sup> Walele CC: para 70

- 38.3. site inspections with photographs being taken if these will assist the decision-maker;
- 38.4. the BCO's familiarity with the subject property, the neighbouring properties, and the area where the building was to be erected;
- 38.5. whether all of the surrounding properties are developed or, if not, what the zoning scheme for the area contemplates;
- 38.6. whether the proposed building conforms with the existing built environment or is out of character therewith<sup>55</sup>;
- 38.7. the BCO's personal knowledge and experience<sup>56</sup>;
- 38.8. if the evidence available to the BCO justifies such investigations, he or she may consider it appropriate to draw a potentially-affected neighbour into the process. If a third party is given notice, then the BCO must carefully consider and deal with the contents of any objections received in his or her recommendation<sup>57</sup>; and/or
- 38.9. where necessary the BCO should engage with the applicant or its representative or potentially affected parties to obtain the information he or she needs<sup>58</sup>.
39. From this information/objective facts, the BCO would be able to make a reasonable or value judgment (or opinion<sup>59</sup>) on the objectively relevant and established facts<sup>60</sup> and probabilities, applying his or her experience,

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<sup>55</sup> Walele CC: para 96

<sup>56</sup> Turnbull-Jackson CC: para 37 – with regard to this source of information in certain instances fairness may dictate that, where the knowledge of a BCO is likely to play a crucial role in the decision to be taken, the BCO may have to request comment on it from the affected person before taking the decision should notice have been given to third parties (see Turnbull-Jackson CC: para 38)

<sup>57</sup> Gerstle WCHC: para 35

<sup>58</sup> Da Cruz Appeal: para 78

<sup>59</sup> Our courts recognise that there are questions, for example, 'what constitutes a *harmonious architectural entity*' that calls for a fair amount of subjectivity (see Gerstle WCHC: para 26)

<sup>60</sup> Da Cruz WCHC: para 33

as to whether any disadvantage will result to a neighbouring property which would not have been known to nor expected by informed parties in the purchase and sale of that property, which would destroy the sense of scale or streetscape in the area or would cause risks to life because of for example, increased traffic flow. It is this judgment which is expressed in the BCO's recommendation.

How is the conclusion of the inquiry into the disqualifying factors to be expressed?

40. In the past if a BCO/decision-maker was positively satisfied that the proposed building will probably, or in fact, trigger one of the disqualifying factors referred to in section 7(1)(b)(ii), the plans had to be refused. If there was any doubt about whether or not one of the disqualifying factors would be triggered, the decision-maker could approve the plans<sup>61</sup>.
41. Our Courts have interpreted section 7 of the Building Act to place an obligation on a municipality to positively satisfy itself that there are no disqualifying factors present<sup>62</sup>. There are three possible judgments and two possible outcomes:
  - 41.1. If each disqualifying factor does not probably or in fact exist, the building plan must be approved;
  - 41.2. If the existence of one or more of the disqualifying factors probably or in fact exist, the building plan must be refused<sup>63</sup>;
  - 41.3. If the decision-maker is in doubt or is uncertain on the probabilities that one or other of the disqualifying factors may eventuate, the

<sup>61</sup> True Motives SCA: paras 20-21; Turnbull-Jackson CC: paras 53, 77

<sup>62</sup> Da Cruz CC: para 22

<sup>63</sup> Da Cruz WCHC: para 35

decision-maker must investigate so as to be satisfied that the disqualifying factors do not probably or in fact exist<sup>64</sup> and if still in doubt must refuse the application<sup>65</sup>.

42. The Constitutional Court has stated that the correct formulation by a BCO/decision-maker of his or her conclusion on the disqualifying factors is: *'I am satisfied that the area [or whichever disqualifying factor is being dealt with] will not be disfigured'*<sup>66</sup>.
43. Although it has been argued that it is burdensome and impractical for a decision-maker to be satisfied that the disqualifying factors will not eventuate, and will require the municipality to appoint a valuer if a dispute arises, the Constitutional Court has disagreed for the following reason:

*'If derogation of value is raised in the context of an acceptance that there has been compliance with restrictions imposed by law, there will be derogation of value as envisaged in s 7(1)(b)(ii) only if 'the new building ... is, for example, so unattractive or intrusive that it exceeds the legitimate expectations of the parties to the hypothetical sale'. This must be easy to determine for any decision-maker worth their salt. Unattractiveness and intrusiveness are matters of fact on which it should not be difficult to make a judgment call. This is equally true of the other disqualifying factors, such as disfigurement of an area, unsightliness or objectionableness, and danger to life or property'*<sup>67</sup>.

44. This however, does not preclude the appointment of a valuer or other expert, should it be necessary in those rare occasions<sup>68</sup>. There may be instances where a proposed building, if erected, may constitute a danger

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<sup>64</sup> Turnbull-Jackson CC: paras 110

<sup>65</sup> Da Cruz Appeal: para 58; Camp Bay Ratepayers CC: para 27

<sup>66</sup> Da Cruz CC: para 24; Da Cruz Appeal: para 46

<sup>67</sup> Turnbull-Jackson CC: para 79

<sup>68</sup> Turnbull-Jackson CC: para 84

to life or property (in terms of section 7(1)(b)(ii)(bb)) that would require particular expertise which the applicant could also be asked to provide.

The decision-maker's decision and memorandum:

45. The decision-maker's opinion of being 'satisfied' or 'not satisfied' is reached upon a consideration of the BCO's recommendation<sup>69</sup> which is the proper or primary<sup>70</sup> means by which information on disqualifying factors can be placed before the decision-maker<sup>71</sup>.
46. A BCO must ensure that adequate and sufficient information is placed before a decision-maker so that he or she can consider a building plan application properly and in a balanced way<sup>72</sup> and can assess and be satisfied of two things<sup>73</sup> namely that:
  - 46.1. there is compliance with the necessary legal requirements; and
  - 46.2. the erection of the building will not trigger one of the disqualifying factors in section 7(1)(b)(ii).
47. First, the decision-maker must consider the BCO's recommendation made in terms of section 6 of the Building Act<sup>74</sup>.
48. If upon a perusal of the BCO's recommendation, the building plans and other information, the decision-maker concludes that the BCO's recommendation is correct and does not take a different view, he or she is required to approve the plans<sup>75</sup>. There is nothing wrong with the decision-maker following the BCO's recommendation as the BCO is a

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<sup>69</sup> Walele CC: paras 66-67

<sup>70</sup> Walele CC: para 70

<sup>71</sup> Walele CC: para 71

<sup>72</sup> Walele CC: para 72

<sup>73</sup> Walele CC: paras 54-55

<sup>74</sup> Turnbull-Jackson CC: para 75

<sup>75</sup> Walele CC: para 116; Turnbull-Jackson CC: para 75

skilled expert responsible for building development within the municipality's jurisdiction.

49. The decision-maker, however, is not allowed to infer from (or accept without more or merely rubber-stamp<sup>76</sup>) the BCO's recommendation that the disqualifying factors will not be triggered, but must assess and be satisfied himself or herself of these issues<sup>77</sup>.
50. The fact that the BCO had considered the disqualifying factors and reached a conclusion is irrelevant unless it is established that the BCO's conclusions were communicated to the decision-maker. It is no longer correct, for a municipality to assert that, since the BCO had considered the relevant factors, it must be accepted that the decision-maker had also considered them<sup>78</sup>.
51. In cases in which the content of the BCO's recommendation or the additional information otherwise available to the decision-maker raises questions, the decision-maker is required to apply his or her own mind independently and investigate further and may form a different opinion to that of the BCO<sup>79</sup>.
52. There are no Chinese walls separating the BCO and the decision-maker. A decision-maker is at liberty to interact with the BCO who can clarify any issues for the decision-maker. It can even be considered when a proposed building is non-conforming to copy the decision-maker into relevant email correspondence during the processing of the application.

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<sup>76</sup> Tumbull-Jackson CC: para 81

<sup>77</sup> Walele CC: paras 56 and 59

<sup>78</sup> Walele CC: para 61

<sup>79</sup> Da Cruz WCHC: para 30

53. Input from the BCO may, depending on the circumstances, satisfy the decision-maker that none of the disqualifying factors exist. Should it be warranted, an expert, like a valuer, may have to be engaged<sup>80</sup>.
54. If the decision-maker is not satisfied that the application complies with the necessary requirements, he or she shall refuse to grant approval and give reasons for the refusal<sup>81</sup>.

#### The decision-maker's memorandum

55. Our Courts have held that it is important for the decision-maker to record his or her decision. The following pointers as to what should be in the decision-maker's memorandum arises from statements made in the judgments considered, namely:

55.1. a list of the documents/information which served before the decision-maker.

55.1.1. In review proceedings, a Court will have to consider whether the decision-maker had sufficient information on which to be satisfied. The reasonableness of the decision-maker's satisfaction can be determined with reference only to the information he or she had before him or her at the time he or she considered the building plans in question<sup>82</sup>. Even if the BCO had extra information in his or her possession which could, when taken together with the documents in question, have formed an adequate basis for an approval, if such additional information was not placed before the decision-

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<sup>80</sup> Turnbull-Jackson CC: para 82, which the Constitutional Court opines '*will be in rare instances*' (see Turnbull-Jackson CC: para 84)

<sup>81</sup> Walele CC: para 54; Turnbull-Jackson CC: para 75

<sup>82</sup> Walele CC: para 63

maker it cannot be used to rationalise/justify the decision-maker's decision;

- 55.2. as with a BCO's recommendation, a decision-maker's memorandum should deal with each disqualifying factor;
- 55.3. a decision-maker's memorandum should deal with the BCO's recommendation as the BCO's recommendation is foundational to the determination of any building plan application<sup>83</sup>;
- 55.4. should a decision-maker identify any aspects in the BCO's recommendation that he or she found worthy of discussion with that official, those aspects are to be recorded as this illuminates his or her conceptual approach to the task;
- 55.5. it is more likely that with a non-conforming building, notice to third parties would have been given and a decision-maker is required to reflect that he or she has engaged with in any submissions from such third parties, and why he or she accepted or rejected the arguments advanced in these submissions<sup>84</sup>; and
- 55.6. the memorandum should furnish reasons for the decision-maker having reached his or her stated conclusions.
56. Ultimately the question is whether the decision-maker was satisfied (subjective opinion) on reasonable grounds<sup>85</sup> that the disqualifying factors would not eventuate. The documentation serving before a decision-maker must constitute a basis on which he or she will form a rational opinion, in other words, a decision must be rationally connected to the

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<sup>83</sup> Da Cruz (WCHC): para 55 - I point out that the Courts have been disparaging of a decision-maker taking a decision on the same day the BCO's recommendation is dated, particularly if it is a complex application (Da Cruz Appeal: para 52)

<sup>84</sup> Da Cruz (WCHC): para 59

<sup>85</sup> Walele CC: para 60

information before a municipality<sup>86</sup>. If the decision-maker provides detailed, plausible and justifiable reasons/explanations, his or her decision will not be vulnerable to review in terms of the Promotion of Administrative Justice Act, 3 of 2000<sup>87</sup>. If poorly or badly reasoned, the decision is likely not to be rationally connected to the matter in hand and is vulnerable to being set aside.

57. Our Courts have held that respect must be shown to a decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area<sup>88</sup>. In a case of building plan approvals, the expertise of the BCO is an extremely important consideration. Once a decision-maker has set out detailed, plausible and justifiable explanations for a decision at which he or she has arrived, a Court should be extremely cautious before intervening<sup>89</sup>.

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<sup>86</sup> Walele CC: para 80

<sup>87</sup> See in particular section 6(2)(e)(iii); (e)(vi); (f)(ii)(cc) and (f)(ii)(dd) of PAJA (see Da Cruz (WCHC): para 32)

<sup>88</sup> Gerstle WCHC: para 35 quoting Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (4) SA 490 (CC) [2004 (7) BCLR 687; Turnbull-Jackson CC: para 109

<sup>89</sup> Gerstle WCHC: para 36