



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

A G E N D A

I-AJENDA

**DATE / DATUM / UMHLA : 27 AUGUST / AUGUSTUS /
AGASTI 2025**
**VENUE / PLEK / INDAWO : BANQUETING HALL /
BANKETSAAL**
**CIVIC CENTRE / BURGERSENTRUM / IZIKO LOLUNTU
HERMANUS**
TIME / TYD / IXESHA : 10:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

19 August / Augustus / Agasti 2025

NOTICE TO ALL ALDERMEN & COUNCILLORS

ORDINARY MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN that an **ORDINARY MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held in the **Banqueting Hall, Civic Centre, Hermanus**, on **WEDNESDAY, 27 AUGUST 2025** at **10:00** to consider the business set forth in the subjoined agenda.

The attention of Councillors is directed to the Code of Conduct for Councillors, Schedule 7 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998).

DR D O'NEILL
MUNICIPAL MANAGER

KENNISGEWING AAN ALLE RAADSHERE & RAADSLEDE

GEWONE VERGADERING VAN DIE OVERSTRAND MUNISIPALE RAAD

KENNIS WORD HIERMEE GEGEE dat 'n **GEWONE VERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word in die **Banketsaal, Burgersentrum, Hermanus**, op **WOENSDAG, 27 AUGUSTUS 2025** om **10:00** om die sake op meegaande sakelys te bespreek.

Raadslede se aandag word gevestig op die Gedragskode vir Raadslede, Skedule 7 van die Wet op Plaaslike Regering : Munisipale Strukture, 1998 (Wet 117 van 1998).

DR D O'NEILL
MUNISIPALE BESTUURDER

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO YESIQHELO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

OKU KUKWAZISA ukuba intlanganiso **YESIQHELO yeBHUNGA LIKAMASIPALA WE-OVERSTRAND**, iza kuba se **I-Banqueting Hall, kwiZiko LoLUNTU, eHermanus, uLWESITHATHU, Umhla we 27 AGASTI 2025, ngeye-10:00** ukuqwalasela imicimbi ekule ajenda iqhotyoshelwe apha.

OCeba bayacelwa ukuba baqwalasele isikhokelo sokuziphatha sooCeba, iShedyuli 7 kaRhulumente wooMasipala: uMthetho weeNkqubo zikaMasipala, uMthetho -1998 (uMthetho we-117 ka-1998).

DR D O'NEILL
UMPHATHI KAMASIPALA

AGENDA/...

1. **OPENING**

2. **APPLICATIONS FOR LEAVE OF ABSENCE**

3. **CONFIRMATION OF MINUTES**
 - 3.1 Minutes of an **Ordinary Meeting** of the **Overstrand Municipal Council** held on **Friday, 27 June 2025 at 10:00**
 - 3.2 Minutes of a **Special Meeting** of the **Overstrand Municipal Council** held on **Wednesday, 30 July 2025 at 10:00**
 - 3.3 Minutes of a **Special Meeting** of the **Overstrand Municipal Council** held on **Thursday, 31 July 2025 at 14:00**

4. **MATTERS ARISING FROM THE MINUTES**

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

Salga:

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

REMARK

Please note that the following recommendations contained in this agenda are subject to confirmation or amendment by the Mayoral Committee in view of the fact that the **compilation of the Council agenda** was done before the Mayoral Committee of 26 August 2025 had formally sat.

6.1

TRANSFER OF UNREGISTERED ERF 8729 (A PORTION OF REMAINDER ERF 5504) KLEINMOND (PORTION OF PUBLIC OPEN SPACE), ADJACENT TO ERF 4711 KLEINMOND, SITUATED IN LOWER BEACH ROAD, KLEINMOND, TO EILEEN THORN FAMILY TRUST

(ITEM 6 PAGE 274 : PLANNING & DEVELOPMENT PORTFOLIO - MAYORAL COMMITTEE MEETING : 26 AUGUST 2025)

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of unregistered Erf 8729 (a portion of Remainder Erf 5504) Kleinmond, situated next to 30 Lower Beach Road, Kleinmond (69m² in extent), to the owner of the adjoining Erf 4711 Kleinmond, Eileen Thorn Family Trust, at an amount of R138,000.00 (ONE HUNDRED AND THIRTY-EIGHT THOUSAND RAND) (VAT excluded) for parking purposes, **be approved**;
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as unregistered Erf 8729 (a portion of Remainder Erf 5504) Kleinmond is classified as a non-viable property;
3. that it be noted that a condition of the alienation will be that the unregistered Erf 8729 (a portion of Remainder Erf 5504) Kleinmond must be consolidated with the adjoining property of Eileen Thorn Family Trust, being Erf 4711 Kleinmond;
4. that a condition be registered against the title deed of the to be consolidated property that no structures of any kind (excluding a boundary wall or fence) may be erected on the portion of property envisaged to be transferred;
5. that all costs pertaining to the transaction, e.g. application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, transfer and related costs, advertisements, etc. be paid by Eileen Thorn Family Trust; and

6. that it be noted that the municipal property herewith envisaged to be transferred is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:

VANESSA OCTOBER

TARGET DATE FOR IMPLEMENTATION :

12 SEPTEMBER 2025

TARGET DATE TO INFORM APPLICANT:

26 SEPTEMBER 2025

6.2

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF REMAINDER ERF 249 HERMANUS (PORTION OF PUBLIC ROAD), ADJACENT TO ERF 6135 HERMANUS, SITUATED IN CLIFF ROAD, HERMANUS, TO P & D TURPIE

(ITEM 7 PAGE 284 : PLANNING & DEVELOPMENT PORTFOLIO - MAYORAL COMMITTEE MEETING : 26 AUGUST 2025)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 249 Hermanus ($\pm 446\text{m}^2$ in extent), situated next to 18 Cliff Road, Hermanus, to the owners of the adjoining Erf 6135 Hermanus, P & D Turpie, at an amount of R2,000.00/m² (TWO THOUSAND RAND PER SQUARE METRE) (VAT excluded) for security and gardening purposes, **be approved in principle**;
2. that it be noted that the direct alienation is possible as the portion of Remainder Erf 249 Hermanus can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicants/purchasers;
4. that it be noted that a condition for the alienation will be that the portion of Remainder Erf 249 Hermanus must be consolidated with the adjoining property of P & T Turpie;
5. that the Applicants/purchasers must at own cost, simultaneous with the transfer of the portion of Remainder Erf 249 Hermanus, register a services pipeline servitude that runs parallel with the property boundary, in favour of the Municipality, for the protection of the existing municipal infrastructure;
6. that the property may only be used for gardening purposes and no structures of any kind (excluding a boundary wall or fence) may be erected on the portion of Remainder Erf 249 Hermanus, which conditions must be registered against the title deed of the consolidated property;
7. that the alienation of the portion of Remainder Erf 249 Hermanus be subject to a suspensive condition that the Applicants/purchasers obtain approval for all the required land use rights, which may include, the closure of a portion of road, subdivision, rezoning and consolidation;

8. that all costs pertaining to the transaction, e.g. application costs, valuation costs, closure of a portion of road, subdivision, rezoning and consolidation, the required public participation, transfer and related costs, etc. be paid by the Applicants/purchasers, P & D Turpie, and
9. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of further basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:**VANESSA OCTOBER****TARGET DATE FOR IMPLEMENTATION :****12 SEPTEMBER 2025****TARGET DATE TO INFORM APPLICANTS:****26 SEPTEMBER 2025**

6.3**OVERSTRAND MUNICIPALITY: HOUSING SELECTION POLICY FOR BENEFICIARIES IN OWNERSHIP-BASED SUBSIDY PROJECTS****(ITEM 2 PAGE 20 : COMMUNITY SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 26 AUGUST 2025)****RECOMMENDATION TO THE COUNCIL:**

that the revised Overstrand Municipality Policy on Selection of Housing Beneficiaries in Ownership-based Subsidy Projects **be adopted** and **be implemented** with immediate effect.

RESPONSIBLE OFFICIAL :**TA GCOTYELWA****TARGET DATE FOR IMPLEMENTATION :****WITH IMMEDIATE EFFECT**

6.4**MONTHLY REPORT TO COUNCIL ON THE SUPPLY CHAIN MANAGEMENT (SCM) POLICY FOR JULY 2025****(ITEM 1 PAGE 1 : FINANCIAL SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 26 AUGUST 2025)****RECOMMENDATION TO THE COUNCIL:**

1. that the deviations from the procurement processes, approved in terms of the delegated authority for July 2025, **be noted**;
2. that the awards made in terms of Paragraph 17(1)(c), approved in terms of the delegated authority for July 2025, **be noted**; and
3. that the awards made through the Bid Committee system and formal written price quotations for July 2025, **be noted**

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

6.5**INCOME FORGONE FOR THE FINANCIAL YEAR ENDED 30 JUNE 2025****(ITEM 2 PAGE 21 : FINANCIAL SERVICES PORTFOLIO - MAYORAL
COMMITTEE MEETING : 26 AUGUST 2025)****RECOMMENDATION TO THE COUNCIL:**

that the income foregone in terms of the Local Government: Municipal Property Rates Act, for the 2024/2025 financial year, **be noted**.

RESPONSIBLE OFFICIALS :**E M HOONEBERG****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

6.6**TIME SCHEDULE FOR THE 2026/27 INTEGRATED DEVELOPMENT PLAN (IDP) REVIEW AND OR AMENDMENT AND BUDGET PROCESS****(ITEM 6 PAGE 11 : - MAYORAL COMMITTEE MEETING : 26 AUGUST 2025)****RECOMMENDATION TO THE COUNCIL:**

that the schedule of key dates for the 2026/27 compilation of an Integrated Development Plan (IDP) review and or amendment and Budget process **be noted**.

RESPONSIBLE OFFICIALS :**RG LOUW****BA KING****TARGET DATE FOR IMPLEMENTATION :****5 SEPTEMBER 2025**

6. Background/Discussion/Evaluation/Conclusion

The possibility of Irregular Expenditure was reported to the SCM department on 17 October 2024. It was brought to the attention of the Supply Chain Management unit that Bidvest Waltons Hermanus delivered stationary by mistake on order 269160, which was awarded to Office for You (Pty) Ltd. The order amounts to R 3 910.00 (Incl. VAT). Upon discovery of the incorrect delivery some of the items have already been opened. The unopened items were returned to Bidvest Waltons Hermanus and the credit note was issued. The expenditure incurred equates R474.61 that must be paid to Bidvest Waltons Hermanus.

The SCM Procurement procedure was explained to the operational staff in the oversight error and to ensure that the official procurement process will be followed in future.

On 12 August 2025 the Municipal Public Accounts Committee (MPAC) consisting of Cllr C Tafu-Nwonkwo, Ald R de Coning, Cllrs M Nomatiti and K Ngqandana considered a report on the matter and came to the conclusion that the Municipality did not suffer any financial loss and was unanimous in its decision to recommend to Council that the expenditure in the amount of R474.61 (VAT incl.) be certified as irrecoverable and be written off.

7. Financial Implications

R474.61 (VAT incl.)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexure

None

RECOMMENDATION TO THE COUNCIL:

that the expenditure of R 474.61 (VAT incl.) be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIAL :

**C LE ROUX
B KING**

TARGET DATE FOR IMPLEMENTATION :

15 SEPTEMBER 2025

7.2**INVESTIGATION INTO IRREGULAR EXPENDITURE SCIE 2024.25.08: FOR NON-COMPLIANCE WITH SUPPLY CHAIN MANAGEMENT POLICY WITH REGARDS TO THE EXECUTION OF A CONTROLLED BURN AT FERNKLOOF NATURE RESERVE, WITHOUT FOLLOWING THE OFFICIAL PROCUREMENT PROCESS****R Kuchar
12 August 2025****Divisional Manager: Town & Spatial Planning****(028) 3138900**

1. Executive Summary

To consider and recommend to Council the write-off of irregular expenditure incurred during the execution of a controlled burn in the Voëlklip Section of the Fernkloof Nature Reserve, which was carried out without adhering to the official procurement procedures.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Development and Planning
Division: Environmental Management and Conservation

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
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Section 32 of the Local Government: Municipal Financial Management Act, Act 56 of 2003
- Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.
- The National Environmental Management: Protected Areas Act 57 of 2003
- The National Veld and Forest Fire Act 101 of 1998

6. Background/Discussion/Evaluation/Conclusion

Background

Section 1 of the Local Government: Municipal Financial Management Act, Act 56 of 2003, defines “irregular expenditure”, in relation to a municipality as, (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in compliance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law but excludes expenditure by a municipality which falls within the definition of “unauthorized expenditure”.

The Voëlklip controlled burn went through under a deviation process for ground and aerial resources for Fernkloof Nature Reserve (Erf 4774) and was captured under the Category of “Any other exceptional case where it is impractical or impossible to follow the official procurement processes”. The date of approval for the deviation was 21 May 2024. During the audit of supply chain management, it was identified that the reason to deviate from the official procurement processes for the deviation, was not justifiable.

The auditor referred to the specifics that was identified by the user department as not sufficient, but these aspects are the most important infield conditions that plays a critical role with any block burn preparation and implementation and is the reason why certain procedures could not take place and why certain decisions had to be made.

The prescribed burn was planned for mid-April, and the chopper from Kishugu would have been contracted during this time. Kishugu is affiliated with Working on Fire, which is the appointed service provider for the Western Cape Provincial Government. Unfortunately, weather conditions were not ideal to conduct the burn during April, and the team had to continue to postpone the burn. At this point Kishugu left the Western Cape to provide aerial support up north where the fire season was starting in that area.

Leading Edge Aviation would then be the only other service provider available to assist with aerial firefighting in the Overstrand area until the end of May 2024. Leading Edge Aviation was appointed on contract by Cape Winelands District Municipality (CWDM). The possibility of doing an intergovernmental payment to CWDM was investigated but was found to not be possible.

The Municipality needed a specialized ground team on site due to the location of the planned block burn e.g. foot of the mountain, steep incline and mountainous terrain adjacent to the urban edge of Voëlklip. Lewis Bush Clearing was the specialised ground team who could work for 24 hours, under self-sustainable conditions with all the necessary equipment, PPE and rations.

The team had to be able to contain and extinguish escaped fires that could possibly burn for days in the mountain, and this was the municipality's biggest risk at that stage. Therefore, whoever the municipality deployed into the mountain had to be self-sustainable for a minimum of 24 hours due to the remoteness and harsh terrain of the site, and the risk that if the fire escaped, it could potentially have an impact on the urban edge as well.

Discussion

On 15 August 2021, an email from Mr. John Tunstall to Ald K Brice ignited a conversation between the Fire department and then Environmental Department regarding the 2019 fires that raged through the Overstrand. Mr. Tunstall was concerned about the overgrown vegetation on the foothills of the Fernkloof mountains above Voëlklip and wanted to know when controlled burns were planned for these areas to reduce the fuel load and risk of similar fires in the Hermanus area. The then Biodiversity Conservation Manager replied with the following:

“Hermanus is essentially surrounded by natural wildland areas and indeed controlled burns in nature reserves must also consider the ecological value of a burn (we burn for ecological reasons – old veldt >15 years and fuel load reduction), ecological burns have a very small window in which we can burn (late September to early April) and takes far more planning for a successful burn. You will note from the attached Google Earth file the areas that are planned for a burn and the biggest concern is above Voëlklip as the veld is very old and it will be a very challenging burn”.

The Biodiversity Conservation Section drafted a “Notice of intent to burn” to inform the public of the possible areas that could be burnt during the 2023/2024 financial year. Fire breaks were prepared and maintained around all the areas. Plans were therefore put in place to start burning the oldest blocks, with the highest fire risk, closest to the urban edge, and with the most important biodiversity areas, in this case, the Fernkloof Nature Reserve Protected area.

The Environmental Management and Conservation (EMC) division allocated budget to burn the Fernkloof/Voëlklip blocks in the 2023/24 financial year but was unable to do any firebreaks around the blocks or any block burn preparation because the General Maintenance Tender under which the EMC do all the municipality's operational maintenance and implementation work, was not awarded yet and the municipality could not spend any of the funds on these activities until the tender was approved.

This led to firebreaks not being cleared and prescribed block burns could not be prepared as planned. This was unavoidable because the tender process took longer than expected due to technical matters in the tender evaluation

process that needed to be reworked over and over until the document was correct.

The municipality also had to wait upon the service providers that had to submit documentation in order to adhere to supply chain policy regulations and this also extended the time frames for the completion of the tender. This process was not in the control of the EMC division, nor was it in the control of the supply chain department. The tender was only awarded in December 2023.

In September 2023, the Heritage Flood caused severe damage to footpaths, boardwalks, riverbanks and bridges in many Open Spaces and Nature Reserves managed by the Environmental Management and Conservation division and the moment the tender was awarded on 1 December 2023, a large portion of the budget that was allocated for maintenance of fire breaks and preparation of prescribed block burns had to be reallocated to repair work on damaged boardwalks, footpaths and infrastructure access to reserves and open spaces. No new firebreaks and new alien clearing blocks could be worked at that stage as our budgets could only cover the cost to maintain areas already worked in the past, in order to secure the gains of our ecological assets. After the maintenance work was completed, the municipality could then allocate budget to the preparation of new firebreaks, like the Fernkloof/Voëlklip block, which was the highest priority block to burn. The total budget included the firebreaks, the removal of the baboon fence, the ground fire teams, the chopper, the standby and overtime for the Environmental and Conservation staff and the advertisement and information leaflets to inform the public of the fire.

The position of the specific block of Voëlklip, Erf 4771 is in a mountain shadow area, or south facing slope, which receives sun much later in the morning and therefore a block burn, should be executed earlier in summer when the sun rises sooner and higher in the sky. The season plays a very important role in the execution of a successful prescribed or controlled burn, including available funding, additional resources, and the availability of knowledgeable staff to conduct the prescribed or controlled burn and most importantly conducive weather conditions.

Conducive weather conditions mean that the wind needs to be blowing in the right direction (away from the town/towards the mountain). The wind should not be too strong, preferably <13km/h in order to control the sparks that could potentially ignite other areas. It should not be too wet or misty or have too much dew on the vegetation, because then the block will not ignite easily or will not burn out properly or ensure a "clean" burn. It should not be too hot and dry as this could cause other areas close by to ignite purely from the radiation caused by the fire and therefore places a very high risk on the perimeter of the site or adjacent urban area. The correct controlled burn

conditions must therefore be very close to absolutely the perfect conditions, or a block/controlled burn will not take place.

Naturally Fynbos vegetation prefers to burn under summer conditions when the veldt is dry and hot, and the fast, rapid spreading fire can run through the veldt, not burning/killing all the vegetation, but allowing the seed cones of the Protea species to open up and spread viable seed and allow trees to sprout after the fire. If a fire burns too slow under cold and wet conditions during the winter months, it will not allow the cones to open properly in order to release the seeds, nor will it activate the seeds in the ground to start growing after the fire. This will end up in poor veldt regeneration, an unsuccessful block burn, and fruitless and wasteful expenditure of funds and resources.

It is clear from the information in the document that the prescribed block burn was planned long in advance but that certain environmental, logistical and administrative factors played a role in delaying the process. The Municipality planned to use KISHUGU AVIATION (Pty) Ltd to provide aerial support for the prescribed block burn of the Voëlklip block, Erf 4771, within the month of April 2024. Based on the appointment of KISHUGU AVIATION (Pty) Ltd by the Department of Local Government, "Aerial Firefighting support services in the Western Cape", it included the area of the Overberg District Municipality. The period was for 1 December 2021 to 31 March 2024; however, the remainder of the year was referred to as on a "as and when needed" basis namely 1 April up to and including 30 November. Because of this agreement, the Municipality also had a cost saving when using this specific service through local government, in other words, when a prescribed block burn is planned, the province would provide aerial support on the standby rates for the planned burn and the Municipality would only have to pay for the hours that the aerial support is actually used. It is for this reason that OM planned to use KISHUGU and requested quotes (with the assistance of the Fire Department) from KISHUGU and at this stage the block burn was still planned to be burnt within the month of April 2024. According to all the factors mentioned above, the plans were in place to use the aerial support, with the cost saving inclusion from KISHUGU AVIATION before they would have left the Western Cape.

In terms of the ground teams, they were essential to assist with the prescribed burn to ensure that should the fire burn out of control that these specialized teams were on site to contain the fire. These teams are specifically trained for 24 hours on ground support and provide their own specialized equipment. To secure the availability of such a specialized ground team is extremely challenging because they are already contracted to a specific municipality and only a limited number of these specialized service providers are available for a controlled burn. Therefore, a competitive procurement process could not be followed for Lewis Bush Clearing.

On 12 August 2025 the Municipal Public Accounts Committee (MPAC) consisting of Cllr C Tafu-Nwonkwo, Ald R de Coning, Cllrs M Nomatiti and K Ngqandana considered a detailed report on the matter and came to the conclusion that the Municipality did not suffer any financial loss and was unanimous in its decision to recommend to Council that the irregular expenditure in the amount of R209 898,00 (VAT incl.) be certified as irrecoverable and be written off.

7. Financial Implications

Irregular expenditure R209 898,00 (VAT incl.)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that the expenditure of R209 898,00 (VAT incl.) be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIAL :**C LE ROUX
B KING****TARGET DATE FOR IMPLEMENTATION :****15 SEPTEMBER 2025**

7.3**NON-COMPLIANCE WITH PARAGRAPH 19 OF THE OVERSTRAND MUNICIPALITY SCM POLICY: TELKOM SA SOC LTD****DS Arrison**
12 August 2025**Director: Corporate Services****(028) 313 8001**

1. Executive Summary

The purpose of this report is to request Council for the writing off of the expenditure in terms of section 32(2)(b). This report contains the following in relation to telecommunication services received from TELKOM SA SOC Ltd.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Corporate Services
Department: Information and Communications Technology (ICT)

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003)
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

6. Background/Discussion/Evaluation/Conclusion

This serves to provide Council with a report regarding the classification of certain telecommunications expenditure as irregular, as concluded by the Auditor-General (AG) during the audit for the financial year ending 30 June 2024. The report provides contextual background, outlines the regulatory and legal framework, summarises the audit finding and management's position, and recommends the write-off of the identified irregular expenditure in accordance with relevant provisions of the MFMA.

Overstrand Municipality procured telecommunication services from Telkom SA SOC Ltd with the assumption that Telkom qualified as an organ of state. This assumption was guided by the National Treasury (NT) guidelines, gazetted notices, and Telkom's inclusion in Schedule 2 of the Public Finance Management Act (PFMA) as a major public entity. At the time of procurement, the municipality believed Section 110(2)(a) of the Municipal Finance Management Act (MFMA) applied, which exempts municipalities from normal procurement procedures when contracting with another organ of state.

After the procurement processes, the Auditor-General (AG), during the 2023/2024 audited conducted a review and concluded that Telkom does not meet the legal definition of an organ of state, as interpreted under the Constitution and MFMA. Following further engagement between the AG and National Treasury, NT aligned with the AG's position, determining that Telkom could no longer be regarded as an organ of state and that procurement through Telkom should have followed a competitive process in accordance with Supply Chain Management (SCM) Regulation 19(a). This change in interpretation had a retrospective effect on all contracts with Telkom concluded after 6 December 2018, resulting in the classification of related expenditure amounting to R4,226,435 as irregular.

Summary of Auditor-General Finding

- The AG found that Telkom had transitioned to a private company in **2018** and no longer satisfied the criteria to be considered an **organ of state**.
- The AG concluded that the municipality incorrectly relied on **Section 110(2)(a) of the MFMA** to justify direct procurement.
- Consequently, the procurement did not follow the applicable SCM procedures and therefore constituted **irregular expenditure**.
- The AG recommended that the municipality:
 - Review SCM procedures to ensure decisions are based on accurate and updated information.
 - Investigate the full extent of the irregular expenditure and disclose it in accordance with the MFMA.

The municipality **disagreed** with the initial audit finding, arguing that:

- Telkom is still **listed under Schedule 2 of the PFMA** as a major public entity.

- The **South African Government holds a combined 54.11% shareholding** in Telkom (directly and via the Public Investment Corporation).
- Telkom is still **reflected as an organ of state on the Central Supplier Database (CSD)**.
- A formal legislative process is required to remove Telkom's listing, and until such time, it remains an organ of state.

Nonetheless, in consultation with National Treasury, and following their revised position aligning with the AG, the municipality acknowledged the change in classification and has rectified its procurement approach going forward by participating in the National Treasury's RT15 transversal contract. NT has granted approval for Overstrand Municipality to utilise RT15 for telecommunications services, and the municipality has now transitioned all services to National Treasury's RT15 transversal contract, thus ensuring future compliance.

Conclusion and Recommendation

The municipality acted in **good faith** based on guidance available at the time, including official listings and NT directives. The retrospective reclassification of Telkom's status and the AG's interpretation created a compliance risk that was not foreseeable by the municipality when the contracts were concluded.

However, given that:

- The AG and NT have clearly confirmed that Telkom is **not currently recognised** as an organ of state,
- The procurement process used **did not comply** with SCM Regulation 19(a),
- And that corrective measures have since been implemented through participation in the **RT15 transversal agreement**,

Section 32 of the MFMA states:

32. (1) Without limiting liability in terms of the common law or other legislation—

(a) ...

(b) ...

(c) any political office-bearer or official of a municipality who **deliberately or negligently** committed, made or authorised an irregular expenditure, is liable for that expenditure; or

(d) ...

(2) A municipality **must recover** unauthorised, **irregular** or fruitless and wasteful expenditure from the person liable for that expenditure **unless the expenditure—**

(a) ...

(b) in the case of irregular or fruitless and wasteful expenditure, is, **after investigation by a council committee, certified by the council as irrecoverable** and written off by the council.

No official deliberately or negligently authorised an irregular expenditure as it was understood that the municipality was contracting with Telkom in terms of section 110(2)(a) of the MFMA as Telkom was an organ of state as reported by National Treasury as a Major Public Entity in Schedule 2 to the PFMA.

No financial loss was incurred by the municipality and the recovery of the irregular expenditure would result in unjustifiable enrichment.

On 12 August 2025 the Municipal Public Accounts Committee (MPAC) consisting of Cllr C Tafu-Nwonkwo, Ald R de Coning, Cllrs M Nomatiti and K Ngqandana considered a report on the matter and came to the conclusion that the Municipality did not suffer any financial loss and was unanimous in its decision to recommend to Council that the irregular expenditure in the amount of R7 958 014.53 (VAT incl.) be certified as irrecoverable and be written off.

7. Financial Implications

Telecommunication Services for 2023/2024 financial year = R4 411 497.15
Telecommunication Services for 2024/2025 financial year = R3 546 517.38

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexure

None

RECOMMENDATION TO THE COUNCIL:

that the expenditure of R7 958 014.53 (VAT incl.) be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIAL :**C LE ROUX
B KING****TARGET DATE FOR IMPLEMENTATION :****15 SEPTEMBER 2025**

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

9. CONSIDERATION OF NOTICES OF MOTIONS / QUESTIONS

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

10. CONSIDERATION OF MOTIONS OF EXIGENCY (IF ANY)