



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

A G E N D A

I-AJENDA

DATE / DATUM / UMHLA : 2 DECEMBER / DESEMBER /
DISEMBA 2016

VENUE / PLEK / INDAWO : BANQUETING HALL / BANKETSAAL
CIVIC CENTRE / BURGERSENTRUM /
IZIKO LOLUNTU
HERMANUS

TIME / TYD / IXESHA : 11:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

25 November 2016

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 **FRIDAY, 2 DECEMBER 2016** at **11:00** to consider the business set forth in the subjoined agenda.

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

C GROENEWALD
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 **VRYDAG, 2 DESEMBER 2016** om **11:00** om die sake op meegaande sakelys te bespreek.

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

C GROENEWALD
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 **Banqueting Hall, kwiZiko LoLUNTU, eHermanus ngoLWESIHLANU, 2 DISEMBA 2016 ngeye-11:00** ukuqwalasela imicimbi ekule ajenda iqhotyoshelwe apha.

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

C GROENEWALD
UMPHATHI KAMASIPALA

AGENDA/...

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of an **Ordinary Meeting** of the Overstrand Municipal **Council** held on **Wednesday, 26 October 2016** at **11:00**

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

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

REMARK

Please note that the following recommendations contained in this agenda are subject to confirmation or amendment by the Mayoral Committee in view of the fact that the **compilation of the Council agenda** was done before the Mayoral Committee of 2 December 2016 had formally sat.

**5.1
WRITING OFF OF IRRECOVERABLE DEBT**

(ITEM 1, PAGE 1 : FINANCE AND ECONOMIC DEVELOPMENT PORTFOLIO - MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)

RECOMMENDATION TO THE COUNCIL:

that the irrecoverable debt to the value of R533 490.32 as listed, be written off as bad debt:

A	First time write off – Indigent Households	R118 834.07
B	Indigent water leakages irrecoverable	R342 073.32
C	Final accounts equal or less than R1,500.00	R3 252.64
D	Other irrecoverable Debt	R27 131.49
E	Interest & Collection Administration Fees	R42 198.80
	TOTAL	<u>R533 490.32</u>

RESPONSIBLE OFFICIAL :

EM HOONEBERG

TARGET DATE FOR IMPLEMENTATION :

9 DECEMBER 2016

5.2

OVERSTRAND JUNIOR TOWN COUNCIL FUNDING FOR 2016/17

(ITEM 1, PAGE 1 : MANAGEMENT SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)**RECOMMENDATION TO THE COUNCIL:**

1. that a deviation from the following restrictions in the Grant-in-Aid Policy **be approved:**
 - (a) no transfer may be made which exceeds R 50,000.00;
 - (b) funding applications will only be considered on an annual basis in response to the annual advertisement; and
 - (c) only applications made on the prescribed form may be considered.

2. that a transfer of R70,000.00 to Enlighten Education Trust for the Management of the Overstrand Junior Town Council, **be approved.**

RESPONSIBLE OFFICIAL:**GG SMIT****TARGET DATE FOR IMPLEMENTATION:****DECEMBER 2016**

5.3

RISK MANAGEMENT IMPLEMENTATION PLAN 2016/2017

**(ITEM 2, PAGE 6 : MANAGEMENT SERVICES PORTFOLIO -
MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)**

RECOMMENDATION TO THE COUNCIL:

that the Risk Management Implementation Plan for 2016/2017 **be approved.**

RESPONSIBLE OFFICIAL :

A RIDDLES

TARGET DATE FOR IMPLEMENTATION :

DECEMBER 2016

5.4

ANTI-CORRUPTION AND FRAUD PREVENTION PLAN 2016/2017

**(ITEM 3, PAGE 22 : MANAGEMENT SERVICES PORTFOLIO -
MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)**

RECOMMENDATION TO THE COUNCIL:

that the reviewed Anti-Corruption and Fraud Prevention Plan **be approved.**

RESPONSIBLE OFFICIAL :

A RIDDLES

TARGET DATE FOR IMPLEMENTATION :

DECEMBER 2016

5.5

HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION OF ERF 243, MOUNTAIN DRIVE, NORTHCLIFF, HERMANUS TO GJ & E FOURIE

(ITEM 5, PAGE 98 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 243 Hermanus (adjacent to Erf 4453 Hermanus), ±126m² in extent, for the erection of a boundary wall to the owners of the adjoining erf, Mr GJ & Mrs E Fourie, at an amount of R698.00 (SIX HUNDRED AND NINETY EIGHT RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion of Erf 243 Hermanus is classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property;
4. that the subject portion of Erf 243 Hermanus must be consolidated with the adjoining property of Mr GJ & Mrs E Fourie, being Erf 4453 Hermanus;
5. that the alienation of the subject portion of Erf 243 Hermanus, be subject to obtaining the necessary closure, subdivision, rezoning and consolidation approvals;
6. that all the costs pertaining to the transaction, e.g. valuation costs, subdivision, consolidation, closure of public road, rezoning, transfer and related costs, advertisements, etc., be paid by the purchaser;
7. that the purchaser must contact the Electrical Department to point out the position of electrical cables before any trenching commences for the foundation of the wall to be built by the purchaser;
8. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated 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); and
9. that the Municipal Manager be authorised to sign all documents relating to the alienation and transfer of the subject portion of Erf 243 Hermanus.

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION :	PROCESS
TARGET DATE TO INFORM APPLICANT :	9 DECEMBER 2016
TARGET DATE TO INFORM OBJECTOR :	N/A

5.6

GANSBAAI: RESCISSION OF CONDITIONS 2, 3 AND 4 OF COUNCIL RESOLUTION DATED 29 SEPTEMBER 2010 FOR THE ALIENATION OF A PORTION OF ERF 611 GANSBAAI AS WELL AS OBTAINING IN PRINCIPLE APPROVAL FOR THE ALIENATION OF TWO PORTIONS OF ERF 611 GANSBAAI BY MEANS OF A COMPETITIVE PROCESS

(ITEM 6, PAGE 108 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)

RECOMMENDATION TO THE COUNCIL:

1. that conditions 2, 3 and 4(a) and (b) of Council resolution dated 29 September 2010, **be rescinded**;
2. that the alienation of unregistered Erf 3905 (a portion of Erf 611) Gansbaai (\pm 1ha in extent) and Portion A (a portion of Erf 611) Gansbaai (\pm 1.25ha in extent) by means of a competitive process at a market related purchase price **be approved in principle**;
3. that unregistered Erf 3905 (a portion of Erf 611) Gansbaai be consolidated with Portion A (a portion of Erf 611) Gansbaai at the cost of the purchaser;
4. that all the costs pertaining to the transaction, e.g. section 14 advertisement, consolidation, transfer and related costs, water- and sewer connections (if applicable), bulk services contribution (if applicable), etc., excluding the valuation costs, be paid by the purchaser;
5. that the costs relating to the necessary advertisement in terms of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003) be paid by the purchaser;
6. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003); and
7. that the Municipal Manager be authorised to sign all documents relating to the alienation and transfer of unregistered Erf 3905 (a portion of Erf 611) Gansbaai (\pm 1ha in extent) and Portion A (a portion of Erf 611) Gansbaai (\pm 1.25ha in extent).

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION :	IN PROCESS
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

5.7

INTEGRATED ENVIRONMENTAL MANAGEMENT SYSTEM: OVERSTRAND MUNICIPALITY**(ITEM 9, PAGE 137 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 2 DECEMBER 2016)****RECOMMENDATION TO THE COUNCIL:**

1. that the Integrated Environmental Management System consisting of the Integrated Environmental Management Plan for Overstrand Municipality, **be approved**; and
2. that the Integrated Environmental Management System, consisting of the Integrated Environmental Management Plan for Overstrand Municipality be included in the Integrated Development Plan as Sectoral Plan.

RESPONSIBLE OFFICIAL:**P APLON****TARGET DATE FOR IMPLEMENTATION:****12 DECEMBER 2016**

5.8

**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36 16(1)(b) AND 17(1)(c) FOR OCTOBER 2016**

**(ITEM 5, PAGE 1 : MAYORAL COMMITTEE MEETING : 2 DECEMBER
2016)**

RECOMMENDATION TO THE COUNCIL:

1. that the deviations from the procurement processes, approved in terms of the delegated authority for October 2016, **be noted**; and
2. that the awards made in terms of Paragraph 16(1)(b) and 17(1)(c), approved in terms of the delegated authority for October 2016, **be noted**.

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

6. CONSIDERATION OF REPORTS**6.1**

APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : ERF 2299, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA : APPEAL SUBMITTED BY JR & E McCLEAN

3/2/3/6**S Swart****18 October 2016****(028) 313 8006****Corporate Head Office**

1. Executive Summary

To submit a resolution of the proceedings of the Appeal Committee to Council for information.

2. Service Delivery and Budget Implementation Plan - IGNITE

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Not applicable. The matter is submitted **for information** only.

5. Legal Requirements

Section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

6. Discussion

The nature of the appeal is as follows:

The appellant appeals against the Executive Mayor's decision dated 29 April 2015 that the application for departure of the height restriction applicable in terms of the Pearly Beach Resort Development Rules be refused.

The Appeal Committee resolved as indicated in the recommendation hereunder.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Not applicable

10. Annexures

Annexure A: Record of Decision of Appeal held on 10 October 2016

RECOMMENDATION TO THE COUNCIL:

that the decision of the Section 62 Committee **be noted**, namely:

1. that the appeal **be dismissed**; and
2. that the Appellant forfeit his deposit.

RESPONSIBLE OFFICIAL :

S VAN DER MERWE/S SWART

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED



RECORD OF DECISION
10 OCTOBER 2016

RE:
APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : ERF 2299, PEARLY BEACH,
OVERSTRAND MUNICIPAL AREA : APPEAL SUBMITTED BY JR & E McCLEAN

PRESENT :

COUNCILLORS

Ald A Coetsee
Cllr V Macotha
Cllr X Msweli

CAPACITY

Chairperson: Appeal Committee
Member : Appeal Committee
Member : Appeal Committee

OFFICIALS

Mr R Kuchar
Mr L Wallace
Mr S van der Merwe
Ms S Swart

Senior Manager : Town Planning
Legal Advisor
Senior Town Planner
Administrative Officer, Secretariat

APPELLANT

Mr J R McClean

APOLOGIES

Cllr M Opperman
Cllr D Botha

Member : Appeal Committee
Member : Appeal Committee

ABSENT

None

APPELLANT:

Mr J R McClean

RESPONDENT:

Overstrand Municipality herein represented by Mr S van der Merwe, Senior Town Planner.

NOTICE OF APPEAL HEARING:

Notices were sent to all parties concerned.

NATURE OF APPEAL:

The appellant appeals against the Executive Mayor's decision dated 29 April 2015 that the application for departure of the height restriction applicable in terms of the Pearly Beach Resort Development Rules be refused.

CONSTITUTION:

With the presence of a quorum, the Appeal Committee was regarded as duly constituted.

The Chairperson, Ald Coetsee, declared that no members of the Appeal Committee have a conflict of interest in the application barring their presence to this meeting.

VALIDITY OF APPEAL:

It was determined by the Appeal Committee that the appeal was lodged within the prescribed time frame viz. within 21 days of written notification of the decision taken by the Executive Mayor, and therefore the appeal was regarded as valid and could proceed.

It was noted that the deposit was paid in terms of the approved tariffs.

SITE VISIT:

None

CONSIDERATION OF APPEAL:

After due consideration of the documents and after hearing arguments by both parties, it was noted by the Committee that the arguments of the Appellant did not introduce any new evidence that was not previously before the Mayor. The Committee enquired from the Appellant whether the Appellant have written proof that the Home Owners' Association agree to the departure. The Appellant could not produce such proof. The Committee pointed out that the property was situated in a private development and the Municipality cannot agree to a transgression of the Architectural Rules and Guidelines of

the Development without the consent of the Home Owners' Association. It was stated clearly in the bundle that the rules of the Home Owners' Association cannot be overruled by the Municipality without their consent. This was the exact same dilemma that the Mayor was confronted with. Having cognisance of this, specifically, no new matters were introduced.

THE MEETING STOOD DOWN AT 12:00 FOR DELIBERATION BY THE PANEL

THE MEETING RESUMED AT 12:15

It had to be determined if the Executive Mayor's decision taken on 29 April 2015 was lawful, reasonable and fair. It was not necessary to deal with lawfulness or fairness, but only with reasonableness. The Committee expressed the view that, if the Appellant brought a letter of consent from the Home Owners' Association to the table, it may have assisted the Appellant to get the Appeal Committee to evaluate the matter afresh. As no new evidence was introduced in the Appeal, the matter had to be considered on exactly the same merits as that which served before the Mayor. It was found that the Executive Mayor's decision was reasonable and therefore did not violate Section 33(1) of the Constitution. As such the Appeal had to fail.

The Committee then –

RESOLVED (UNANIMOUSLY):

1. that the appeal **be dismissed**; and
2. that the Appellant forfeits his deposit.

The session of the Appeal Committee closed at 12:20

SIGNED ON THIS 10TH DAY OF OCTOBER 2016 AT HERMANUS BY THE APPEAL COMMITTEE:

Cllr A Coetsee	Chairman: Appeal Committee 
Cllr V Macotha	Member: Appeal Committee 
Cllr X Msweli	Member: Appeal Committee 

6.2

ERF 995, 39 MUSSON STREET, HERMANUS (EASTCLIFF), OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIONS, SUBDIVISION AND DEPARTURE : MESSRS WRAP CONSULTANCY ON BEHALF OF I SMUTS

3/2/3/6

S Swart

(028) 313 8006

Corporate Head Office

16 November 2016

1. Executive Summary

To submit a resolution of the proceedings of the Appeal Committee to Council for information.

2. Service Delivery and Budget Implementation Plan - IGNITE

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Not applicable. The matter is submitted **for information** only.

5. Legal Requirements

Section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

6. Discussion

The nature of the appeal is as follows:

An appeal has been lodged by Messrs WRAP Consultancy on behalf of I Smuts the owner of Erf 995, Hermanus, in terms of Section 62 of the Local Government: Municipal Systems Act No. 32 of 2000 against the resolution made by the Executive Mayor on 28 May 2015.

The Appeal Committee resolved as indicated in the recommendation hereunder.

7. Financial Implications

The full deposit to be refunded to the appellant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Not applicable

10. Annexures

Annexure A: Record of Decision of Appeal held on 18 October 2016

RECOMMENDATION TO THE COUNCIL:

that the decision of the Section 62 Committee **be noted**, namely:

1. that the appeal **be upheld**; and
2. that the full deposit **be refunded** to the the Appellant.

RESPONSIBLE OFFICIAL :

S VAN DER MERWE/S SWART

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED



KANTOOR VAN DIE SPEAKER
OFFICE OF THE SPEAKER

Navrae
Enquiries
imbuzo

Verwysing
Reference : A COETSEE

Date : 3 November 2016

MEMORANDUM OF FINDING AND REASONS : APPEAL : ERF 995, HERMANUS
18 OCTOBER 2016

Introduction

1. This is the finding and, reasons for such finding, pertaining to an appeal in terms of Section 62 of the Local Government : Municipal Systems Act (Hereinafter referred to as " the Systems Act") regarding Erf 995, situated at 39 Musson Street, Hermanus, Overstrand municipal area : proposed removal of restrictions, sub division and departure : Messrs Wrap Consultancy on behalf of I Smuts.

Background

2. The appeal was initially placed to be heard on 29 August 2016 at 15h00. On the aforesaid date, the appeal was postponed for the committee to obtain further information. The appeal reconvened on 10 October 2016 and was concluded on that day.
3. For purposes of clarity all arguments raised by the appellant and/or Mr Riaan Kuchar on behalf of respondent will not be repeated herein. The information that follows herein, was found to be significant to the members of the committee.

4. After sub division, portion A will be approximately 418 sqm and the remainder approximately 503 sqm. There is also a request for a departure to relax the rear building line from 2m to 0m to accommodate existing outbuildings.
5. The Section 62 appeal committee is essentially tasked with the responsibility to consider and/or evaluate whether the information which served before the Executive Mayor on 28 May 2015 was correct and/or complete enabling the Mayor to take a decision which is supported by sound reasons. As such the rights that stand to be protected is the right to administrative action which is lawful, reasonable and fair.
6. The decision taken by the Executive Mayor on 28 May 2015 is recorded in the bundle on page 2 and is not repeated herein. The reasons provided by the Executive Mayor for her decision was as follows:
 - (a) Not in line with the Overstrand growth management strategy
 - (b) Smaller than the minimum size requirement prevalent from 2000 and is not compliant with the growth management strategy density allocated for the area
 - (c) The Eastcliff township is predominantly an old residential area established in 1932 with the specific character of big erven, established gardens and the creation of smaller erven which influence the character of the area
 - (d) Existing sub divisions smaller than the minimum erf size for the area of 700 sqm occurred before 2000;
 - (e) Illegal structures are applied to establish the extent of the development on Erf 995*

Arguments by the parties

7. The appellant argued that the total area of this precinct is 86,9 hectares less non residential areas of 35,6 hectares leaving a total of 51,2 hectares.

8. The goal is to reach 10 units per hectare therefore 869 units (see page 8 of the bundle) the density currently is 286 erven therefore 3.29 units per hectare and there is 141 additional dwellings. If every Erf has a second dwelling, the density equals 6,58 units per hectare.
9. The Overstrand growth management strategy must have foreseen other forms of densification. Mr Riaan Kuchar on behalf of respondent argued different figures for the total square meterage of the precinct as well as the amount of residential units contained in the precinct and came to the conclusion as per the item that served before the Executive Mayor (see page 9 of the bundle) that 700 sqm per property is the minimum Erf size of 700 sqm.
10. The appellant argued that the densification strategy does not prescribe anywhere in the strategy a minimum Erf size for properties; it only refers to units per hectare and leaves the determination open as to what the ideal size per residential unit should be. This seems to be the correct interpretation.
11. Mr Riaan Kuchar on behalf of respondent refers to the tables in the strategy and confirms that the envisaged unit per hectare is very close to the calculation of the appellant of 6,58 units per hectare. It is also significant that the allegation of a minimum Erf size of 700 sqm for the Eastcliff area which was stipulated in the greater Hermanus sub regional spatial development framework of July 2000 was repealed on 1 August 2012 by the Dept of Environment Affairs & Development Planning with circular 14/2012 (see the bundle page 7 para. 4.2) It is therefore clearly incorrect to mention that the minimum Erf sizes applicable to Eastcliff is 700 sqm.
12. The appellant pointed out that the adjacent Erf to the subject property is 410 sqm and it is furthermore significant that the subject property is developed with two residential units, each unit has an access point on a different street. As far as the character of the subject property in conjunction with the surrounding properties is concerned, the sub division will have a minimum impact on the character of the area, or so the argument goes.

13. It was also pointed out that the appellant is willing to waive the right to construct second dwelling units after sub-division as a condition to the sub-division approval.

The Executive Mayor's reasons

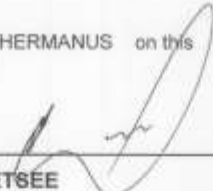
14. We now turn to the reasons supporting the decision of the Executive Mayor on 28 May 2015.
15. With regards to paragraph "a" that the application is not in line with the Overstrand growth management strategy. This reason follows the contents of the item that served before the Executive Mayor. It now seems the information before the Executive Mayor was not correct.
16. With regards to the reason that the subject property is smaller than the minimum size requirement prevalent from 2000 and it is not compliant with both the management strategy density allocated for the area. Once again the Executive Mayor was not placed in a position to consider the effect of circular 14/2012 of the Dept of Environmental Affairs & Development Planning which effectively repealed the minimum Erf size of 700 sqm for the Eastcliff area as stipulated in the greater Hermanus sub regional spatial development framework of July 2000. As such the Executive Mayor could not apply her mind, alternatively applied her mind on incomplete facts.
17. We do not take issue with paragraphs "d" or "e" of the reasons.
18. In that the item that served before the Executive Mayor was incomplete and/or provided incorrect information, specifically on the Erf sizes prescribed by the densification strategy or the Overstrand growth management strategy, the decision taken by the Executive Mayor is unreasonable if tested against the true facts. On this basis, the appeal should succeed.
19. The committee therefore finds as follows:
 - 19.1 Paragraph 1 of the resolution will stand.

19.2 Paragraph 2 is amended to read as follows : that the removal of restrictive title condition B.2.b in Title Deed T84355/93 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) applicable to Erf 995, Hermanus, be recommended for approval by the Department of Environmental Affairs & Development Planning.


19.3 Paragraph 3 is amended to read as follows : that, in terms of Sections 15 and 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a sub division of Erf 995, Hermanus into two even and departure for the relaxation of the rear building line, be approved, subject thereto that no second dwellings may be constructed on either one of the properties after sub division and that such condition be registered as a restrictive Title Deed condition in the relevant Title Deeds of the properties after sub division.

20. In that the appellant was substantially successful in his appeal, the appeal deposit should be repaid to the appellant.

DATED at HERMANUS on this 17TH day of NOVEMBER 2016



ALD. A COETSEE
Chairperson



CLR. D BOTHA (Member)



CLR. X MSWELI (Member)

7. URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER (IF ANY)**8. CONSIDERATION OF NOTICES OF MOTIONS / QUESTIONS**

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

9. CONSIDERATION OF MOTIONS OF EXIGENCY (IF ANY)