



KAAP AGULHAS MUNISIPALITEIT  
CAPE AGULHAS MUNICIPALITY  
U MASIPALA WASECAPE AGULHAS

**NOTULE VAN 'N SPESIALE RAADSVERGADERING IN DIE MUNISIPALE  
RAADSAAL, BREDASDORP GEHOU OM 10:00 OP DINSDAG  
31 JANUARIE 2023**

**MINUTES OF A SPECIAL COUNCIL MEETING HELD ON TUESDAY,  
31 JANUARY 2023 AT 10:00 AT THE MUNICIPAL COUNCIL CHAMBERS,  
BREDASDORP**

**RAADSLEDE / COUNCILLORS**

Me	J August-Marthinus	
Mnr	D Burger	(Speaker)
Me	K Donald	
Mnr	D Jantjies	
Mnr	R Louw	
Me	M Matthysen	
Mnr	R Mokotwana	
Mnr	J Nieuwoudt	
Mnr	R Ross	(Onder-Burgemeester)
Mnr	P Swart	(Burgemeester)

**AMPTENARE / OFFICIALS**

Mnr	E Phillips	Munisipale Bestuurder / Municipal Manager
Mnr	S Cooper	wnd Direkteur: Infrastruktuurdienste
Mnr	H Van Biljon	Direkteur: Finansiële Dienste
Mnr	H Kröhn	Direkteur: Bestuursdienste
Mnr	B Swart	Interne Ouditeur
Mnr	M Moelich	Bestuurder: Administrasie
Me	N Mhlati-Musewe	Divisional Head: HR and OD
Me	S Nel	Stadsbeplanner
Me	T Stone	Afdelingshoof: Strategiese Dienste

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1. **OPENING**

Die Speaker heet die teenwoordiges welkom en die Munisipale Bestuurder open die vergadering met gebed.

2. **AANSOEKE OM VERLOF TOT AFWESIGHEID / APPLICATIONS FOR LEAVE**

Geen.

3. **VERKLARINGS EN/OF MEDEDELINGS DEUR DIE VOORSITTER**

Die Speaker versoek dat Raadslede, waar nodig, hulle belange verklaar.

4. **BRIEWE ONTVANG**

Skrywe ontvang word aangeheg op **bladsy 1 en 2** van die bylaes.

**BESLUIT 1/2023**

Dat die Raad kennis neem van die skrywe ontvang vanaf die Wes-Kaapse Provinsiale Parlement insake die "2023 Official Opening of the WCPP and State of the Province Address".

5. **ITEMS NA DIE RAAD VERWYS VIR OORWEGING**

5.1 **CAPE AGULHAS MUNICIPALITY DRAFT ANNUAL REPORT 2021/22**

**REPORT FROM THE OFFICE OF THE MUNICIPAL MANAGER : STRATEGIC PLANNING AND ADMINISTRATIVE DIVISION**

**PURPOSE OF REPORT**

To table the Draft Annual Report for the 2021/22 financial year to Council for adoption in terms of section 127 (2) of the Municipal Finance Management Act, (Act 56 of 2003).

**BACKGROUND**

Following the tabling of the 2021/22 Draft Annual Report to Council, it will be made public and submitted to the relevant organs of state. It will also be referred to MPAC to perform the oversight process which shall include the consideration of any representations received from the public and organs of state and the compilation of the oversight report.

**The Draft Annual Report for 2021/22 has the following Annexures:**

- The final Annual Financial Statements for 2021/22 as signed-off by the Auditor-General: **Annexure A (separately attached to this Agenda)**.
- The final Audit Report from the Auditor- General: **Annexure B** (attached on **page 3 to 8**).
- The Audit Committee report for 2021/22: **Annexure C** (attached on **page 9 to 14**).
- The Performance Audit Committee report for 2021/22: **Annexure D** (attached on **page 15 to 17**).

**DISCUSSION**

The most important documents of the Municipality are the Integrated Development Plan (IDP), Budget, Service Delivery Budget Implementation Plan (SDBIP) and Annual Report. The IDP, Budget and SDBIP are planning documents that focus on the year ahead; the IDP identifies the objectives, strategies and projects that the Municipality will achieve and implement in the year, the budget indicates how they will be funded and the SDBIP indicates the key performance indicators against which performance will be measured. The Annual Report is retrospective and focuses on the year's actual performance as measured against the key performance indicators set out in the SDBIP during the year under review.

**LEGAL IMPLICATIONS**

The submission of the Annual Report is regulated by the Municipal Systems Act, Act 32 of 2000 and the Municipal Finance Management Act, Act 56 of 2003. The following table provides an overview of the main provisions:

<b>MUNICIPAL SYSTEMS ACT NO. 32 OF 2000</b>	
Section 46: Annual performance reports	<ol style="list-style-type: none"> <li>1) A municipality must prepare for each financial year a performance report reflecting -               <ol style="list-style-type: none"> <li>(a) the performance of the municipality and of each external service provider during that financial year;</li> <li>(b) a comparison of the performances referred to in paragraph (a) with targets set for and performances in the previous financial year; and</li> <li>(c) measures taken to improve performance.</li> </ol> </li> <li>2) An annual performance report must form part of the municipality's annual report in terms of Chapter 12 of the Municipal Finance Management Act.</li> </ol>

<b>MUNICIPAL FINANCE MANAGEMENT ACT NO 56 OF 2003</b>	
Section 121: Preparation and adoption of annual reports	<ol style="list-style-type: none"> <li>1) Every municipality and every municipal entity must for each financial year prepare an annual report in accordance with this Chapter. The council of a municipality must within nine months after the end of a financial year deal with the annual report of the municipality and of any municipal entity under the municipality's sole or shared control in accordance with section 129.</li> <li>2) The purpose of an annual report is -               <ol style="list-style-type: none"> <li>(a) to provide a record of the activities of the municipality or municipal entity during the financial year to which the report relates;</li> <li>(b) to provide a report on performance against the budget of the municipality or municipal entity for that financial year; and</li> <li>(c) to promote accountability to the local community for the decisions made throughout the year by the municipality or municipal entity.</li> </ol> </li> <li>3) The annual report of a municipality must include-               <ol style="list-style-type: none"> <li>(a) the annual financial statements of the municipality, and in addition, if section 122 (2) applies, consolidated annual financial statements, as submitted to the Auditor-General for audit in terms of section 126 (1);</li> <li>(b) the Auditor-General's audit report in terms of section 126 (3) on those financial statements;</li> <li>(c) the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Municipal Systems Act;</li> <li>(d) the Auditor-General's audit report in terms of section 45 (b) of the Municipal Systems Act;</li> <li>(e) an assessment by the municipality's accounting officer of any arrears on municipal taxes and service charges;</li> <li>(f) an assessment by the municipality's accounting officer of the municipality's performance against the measurable performance objectives referred to in section 17 (3) (b) for revenue collection from each revenue source and for each vote in the municipality's approved budget for the relevant financial year;</li> <li>(g) particulars of any corrective action taken or to be taken in response to issues raised in the audit reports referred to in paragraphs (b) and (d);</li> <li>(h) any explanations that may be necessary to clarify issues in connection with the financial statements;</li> <li>(i) any information as determined by the municipality;</li> <li>(j) any recommendations of the municipality's audit committee; and</li> <li>(k) any other information as may be prescribed.</li> </ol> </li> </ol>
Section 127: Submission and tabling of annual reports	<ol style="list-style-type: none"> <li>1) The accounting officer of a municipal entity must, within six months after the end of a financial year, or on such earlier date as may be agreed between the entity and its parent municipality, submit the entity's annual report for that financial year to the municipal manager of the entity's parent municipality.</li> <li>2) The Mayor must within seven months (by end January) of the financial year, table in the municipal council the annual report of the municipality.</li> <li>3) If the mayor, for whatever reason, is unable to table in council the annual report of the municipality, or the annual report of any municipal entity under the municipality's sole or shared control, within seven months after the end of the financial year to which the report relates, the mayor must:</li> </ol>

<b>MUNICIPAL FINANCE MANAGEMENT ACT NO 56 OF 2003</b>	
	<p>a) Promptly submit to the council a written explanation referred to in section 133(1)(a) setting out the reasons for the delay, together with any components of the annual report listed in section 121(3) or (4) that are ready; and</p> <p>b) Submit to council the outstanding annual report or the outstanding components of the annual report as soon as may be possible.</p> <p>(4) The Auditor-General may submit the financial statements and audit report -</p> <p>(a) of a municipality directly to the municipal council, the National Treasury, the relevant provincial treasury, the MEC responsible for local government in the province and any prescribed organ of state, if the mayor fails to comply with <u>subsection (2) or (3)</u>; or</p> <p>(b) of a municipal entity directly to the parent municipality, the National Treasury, the relevant provincial treasury, the MEC responsible for local government in the province and any prescribed organ of state, if the accounting officer of the entity fails to comply with <u>subsection (1)</u>.</p> <p>5) Immediately after an annual report is tabled in the council in terms of subsection (2), the accounting officer of the municipality must -</p> <p>(a) in accordance with section 21A of the Municipal Systems Act -</p> <p>(i) make public the annual report; and</p> <p>(ii) invite the local community to submit representations in connection with the annual report; and</p> <p>(b) submit the annual report to the Auditor-General, the relevant provincial treasury and the provincial department responsible for local government in the Province.</p>
Section 129: Oversight reports on annual reports	1) The council of a municipality must consider the annual report of the municipality and of any municipal entity under the municipality's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the council in terms of section 127 adopt an oversight report.
Section 130 Council meetings open to the public and certain officials	<p>1) The meetings of a municipal council at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, must be open to the public and any organs of state, and a reasonable time must be allowed -</p> <p>a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and</p> <p>b) for members of the local community or any organs of state to address the council.</p> <p>2) Representatives of the Auditor-General are entitled to attend, and to speak at, any council meeting referred to in subsection (1).</p> <p>3) This section, with the necessary modifications as the context may require, is also applicable if only components of the annual report were tabled in terms of section 127 (3).</p>

### **FINANCIAL IMPLICATIONS**

None.

### **PERSONNEL IMPLICATIONS**

None.

### **MANAGEMENT RECOMMENDATION**

- (i) That Council adopts the 2021/22 draft Annual Report as tabled by the Mayor in terms of Section 127(2) of the MFMA.
- (ii) That the 2021/22 draft Annual Report be made public and submitted to the relevant organs of state in terms of Section 127 of the MFMA.
- (iii) That the 2021/22 draft Annual Report be referred to the MPAC to perform the oversight process and compile the Oversight Report.

**RESOLUTION 2/2023**

- (i) That Council adopts the 2021/22 draft Annual Report as tabled by the Mayor in terms of Section 127(2) of the MFMA.
- (ii) That the 2021/22 draft Annual Report be made public and submitted to the relevant organs of state in terms of Section 127 of the MFMA.
- (iii) That the 2021/22 draft Annual Report be referred to the MPAC to perform the oversight process and compile the Oversight Report.

5.2 **PERFORMANCE EVALUATIONS 2021/22: MUNICIPAL MANAGER AND SENIOR MANAGERS AND PAYMENT OF PERFORMANCE BONUSES**

**REPORT BY THE MUNICIPAL MANAGER****PURPOSE OF REPORT**

To submit the 2021/22 performance reviews of the Municipal Manager and Senior Managers to Council, and to request approval to pay performance bonuses. The full performance reviews report is attached on **page 18 to 24**.

**LEGAL IMPLICATIONS**

The Municipal Manager and senior managers reporting directly to the Municipal Manager are required to conclude an annual performance agreement for each financial year in terms of Section 57 (1) (b) of the Local Government: Municipal Systems Act. Performance evaluations are done twice a year in terms of the Local Government Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers (2006).

**Performance bonuses are payable in terms of Sub regulation 8 of the aforementioned regulations that state that:**

*“a performance bonus, based on affordability, may be paid to the employee, after -*

- 1) *the annual report for the financial year under review has been tabled and adopted by the municipal council;*
- 2) *an evaluation of performance in accordance with the provisions of regulation 23; and*
- 3) *approval of such evaluation by the municipal council as a reward for outstanding performance.*

**The bonus structure is as follows:**

<b>RATING</b>	<b>LEVEL</b>	<b>BONUS CALCULATION</b>
0% - 64%	Poor performance	0% of Total package
65% - 69%	Average Performance	5% of Total Package
70% - 74%	Fair Performance	8% of Total Package
75% - 79%	Good Performance	11% of Total Package
80% - 100%	Excellent Performance	14% of Total Package

**DISCUSSION**

The performance reviews for the full 2021/22 financial year were done on 7 November 2022 and were done by a panel which was constituted in terms of legislation and the performance agreements of the respective managers.

**The following officials were evaluated:**

1. Municipal Manager - Mr E Phillips
2. Director: Infrastructure Services - Mr A A Jacobs
3. Director: Finance and IT Services - Mr H van Biljon
4. Director Management Services - Mr H Krohn

**PERFORMANCE EVALUATION PROCESS**

The officials were given an opportunity to make a presentation to the panel and scoring was done in terms of evidence provided. The following information was considered during the evaluation:

- The presentation of the official.
- The actual achievements in terms of the key performance indicators based on the performance agreements (80%).
- Core competencies (20%).

The supporting evidence was audited in full by the Internal Auditor prior to the evaluation to ensure that the achievements were accurately reported.

**EVALUATION OUTCOMES**

The evaluation outcomes following the assessment were as follows:

Employee	Operational % (80%)	Competencies % (20%)	Final Score (100%)
Mr E Phillips	51.40%	18.67%	70.07%
Mr H van Biljon	62.60%	18.33%	80.93%
Mr H Krohn	49.80%	18.00%	67.80%
Mr A Jacobs	69.00%	18.00%	87.00%

These outcomes were communicated to the employees and signed off immediately following the evaluation. No appeals were received.

**PERFORMANCE BONUSES PAYABLE**

Bonuses payable in terms of clause 11.3 of the performance agreements are a percentage of the official's annual remuneration package. The proposed bonus allocation based on the performance achieved and the input of the panel, is as follows:

Employee	Operational % (80%)	Competencies % (20%)	Final Score (100%)	Bonus % of total package
Mr E Phillips	51.40%	18.67%	70.07%	9%
Mr H van Biljon	62.60%	18.33%	80.93%	14%
Mr H Krohn	49.80%	18.00%	67.80%	5%
Mr A Jacobs	69.00%	18.00%	87.00%	14%

**A prerequisite for the payment of bonuses is that the Draft Annual Report for 2021/22 is tabled and adopted prior to or at the same council meeting.**

**FINANCIAL IMPLICATIONS (Director: Finance and IT)**

A provision was made on the 2021/22 Annual Financial Statements for the payment of full performance bonuses.

**PERSONNEL IMPLICATIONS**

1. Regulated in terms of the 2021/22 performance agreements
2. MFMA
3. Municipal Systems Act.

**MANAGEMENT RECOMMENDATION**

- (i) That Council takes note of the content of the 2021/22 performance evaluation report.
- (ii) That Council approves the payment of performance bonuses to the Municipal Manager and Senior Managers for the 2021/22 financial year as per the outcome of the performance evaluations.

**RESOLUTION 3/2023**

- (i) That Council takes note of the content of the 2021/22 performance evaluation report.
- (ii) That Council approves the payment of performance bonuses to the Municipal Manager and Senior Managers for the 2021/22 financial year as per the outcome of the performance evaluations.
- (iii) That Council approves the payment of 9% of the Municipal Manager's total package.

*(Raadsheer Jantjies teken sy teenstem aan teen die persentasie evaluering van mnr A Jacobs.)*

*(Mnre Van Biljon en Kröhn en die Munisipale Bestuurder nie teenwoordig tydens bespreking van die aangeleentheid nie.)*

5.3 **MID-YEAR BUDGET AND PERFORMANCE ASSESSMENT REPORT: ADJUSTMENT BUDGET FOR 2022/23 FINANCIAL YEAR (DFS)**

The Director: Finance reports as follows:

In terms of section 72 of the MFMA, the accounting officer must by 25 January of each year assess the performance of the Municipality during the first half of the financial year and report to the Mayor of the municipality, National Treasury and relevant Provincial Treasury, taking into account:

- The monthly financial performance statements referred to in section 71 of the MFMA.
- The municipality's service delivery performance as per approved Service Delivery and Budget Implementation Plan.
- The past year's annual report, and progress on resolving problems identified in the annual report.
- The performance of every municipal entity under the sole or shared control of the municipality

**Mid-year report must also include explanations of:**

- Any material variances from the municipality's projected revenue by source and expenditure per vote;
- Any variances from the service delivery and budget implementation plan
- Any remedial corrective steps taken or to be taken to ensure that the projected revenues and expenditures remain within the approved budget; and
- A projection of the relevant municipality's revenue and expenditure for the rest of the financial year and revision from the initial projections.

The focus of the mid-year report is to assess the Municipality's performance during the first half of the financial year based on the approved budget and service delivery plans in respect of the 2022/23 financial year.

**An overview of Council's actual performance for the first six months of the year as well as projected revenue and expenditure for the rest of the financial year follows below:**

**1. FINANCIAL- POSITION AND PERFORMANCE**

**1.1 MONTHLY YEAR TO DATE (YTD) PERFORMANCE REPORT**

The monthly report on Council's financial position and actual performance for the year to date till December 2022 reflects on page 9 of the mid-year report attached on **page 25 to 58**.

**1.2 PROJECTED ESTIMATES: REVENUE AND EXPENDITURE - 2022/2023**

In terms of section 71 of the MFMA the following information must be taken into account when assessing the financial performance of the municipality:

- Actual revenue per source
- Actual expenditure per vote
- Actual capital expenditure per vote
- The amount of any allocations received and the expenditure on those allocations



The actual expenditure versus the budgeted amount reflects on page 27 - 34 and the projected operating results per vote as required reflect on the mid-year report.

### 1.3 ADJUSTMENT BUDGET 2022/23

As part of the review and performance assessment process the accounting officer must make recommendations as to whether an adjustment budget is necessary based on the following considerations:

#### **An adjustment budget -**

- a) Must adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- b) May appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending on programmes already budgeted for;
- c) May within a prescribed framework, authorize unforeseeable and unavoidable expenditure recommended by the mayor of the municipality;
- d) May authorize the utilization of projected savings in one vote towards spending under another vote;
- e) May authorize the spending of funds that were unspent at the end of the past financial year where under-spending could not reasonable have been foreseen at the time to include projected roll-overs when the annual budget for the current year was approved by the council;
- f) May correct any errors in the annual budget; and
- g) May provide for any other expenditure within a prescribe framework.

#### **When an adjustment budget is tabled, it must be accompanied by -**

- (a) An explanation of how the adjustment budget affects the annual budget;
- (b) A motivation of any material changes to the annual budget;
- (c) An explanation of the impact of any increased spending on the annual budget and the annual budgets for the next two financial years; and
- (d) Any other supporting documentation that may be prescribed.

In order to reflect the outcome of the adjustment budgets submitted by the various unit / section managers, the following concerns / challenges relating to the proposed budget changes, projected spending patterns, oversight and internal controls measures needs to be reported for council's notification:

- Poor planning during the budget process which relates to the approval of unrealistic budgets and / or unauthorized expenditure as a result;
- Lack of project management in terms of clear implementation strategies, cash flow projections and target dates;
- Slow spending and / or changes to DORA funded and capital projects that might posed a risk of non-completion by financial year end ;
- Lack of responsibility by section / unit managers to take ownership of its approved budgets for implementation
- Lack of hands-on monitoring and internal control measures with regard to the implementation of approved unit / section budgets which relate to unrealistic budget projections towards spending at financial year; and
- Amendment / Change of project link to the SDBIP with the risk of not considering any adjustment on the performance management objectives.

#### **The following corrective steps in terms of council's oversight responsibility are suggested:**

- Apply strong leadership in terms of monthly oversight and monitoring role - Executive Management / Council;
- Account for poor and / or non performance;
- Arrange internal awareness workshops for councilors / officials on financial management;
- Ensure an effective internal audit, audit committee and MPAC in order to identify and address gaps in consultation with management; and
- Reduce possible unauthorized, irregular, wasteful and fruitless expenditure.

The proposed adjustment is bound separately as Annexure B for Council's consideration and approval.

## 2. **SERVICE DELIVERY PERFORMANCE**

Performance on the budget and service delivery plans for the first half of the financial year reflects on pages 35 - 60 of the mid-year performance report attached as annexure to this item.

The Municipal Manager, in consultation with the Director: Finance, recommends as follows:

### **MANAGEMENT RECOMMENDATION**

- (i) Council considers the content of the **Mid-Year Assessment Report** attached as annexure.
- (ii) Council considers the approval of the adjustment budget (*Adjustment Budget Report*) for the financial year 2022/23 MTREF, and indicative for the projected outer years 2023/24 and 2024/25 attached as annexure.
- (iii) Council considers the content of the **Mid-Year Performance Information** as per the **Service Delivery and Budget implementation plan (SDBIP)**, attached on **page 59 to 84**.

### **RESOLUTION 4/2023**

- (i) That Council approves the content of the **Mid-Year Assessment Report** attached as annexure.
- (ii) That Council approves the adjustment budget (*Adjustment Budget Report*) for the financial year 2022/23 MTREF, and indicative for the projected outer years 2023/24 and 2024/25 attached as annexure.
- (iii) That Council adopts the content of the **Mid-Year Performance Information** as per the **Service Delivery and Budget implementation plan (SDBIP)**, attached on **page 59 to 84**.
- (iv) That the Masakhane Policy be reviewed and communicated to the public before the next budget cycle.

*(Raadsheer Jantjies teken sy teenstem aan, aangesien die Masakhane Beleid geïmplementeer is sonder publieke insette en konsultasie.)*

## 5.4 **AMENDMENT OF THE 2021/22 SERVICE DELIVERY BUDGET IMPLEMENTATION PLAN (SDBIP) IN TERMS OF SECTION 54 (1) (C) OF THE MUNICIPAL FINANCE MANAGEMENT ACT (ACT 56 OF 2003)**

### **PURPOSE OF REPORT**

To propose amendments to the key performance indicators as contained in the 2022/23 Service Delivery Budget Implementation Plan (SDBIP) that was approved by the Mayor on 1 July 2022.

### **LEGAL AND REGULATORY FRAMEWORK**

Section 54 of the Municipal Finance Management Act, 56 of 2003 (MFMA) regulates budgetary control and the early identification of problems. Subsection (1) (b) and (c) provides interalia that -

- "1. On receipt of a statement or report submitted by the accounting officer of the municipality in terms of section 71 or 72, the mayor must -
  - b) check whether the municipality's approved budget is implemented in accordance with the service delivery and budget implementation plan;
  - c) consider and, if necessary, make any revisions to the service delivery and budget implementation plan, provided that revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the council following approval of an adjustments budget;"

**Section 54 (3) provides that:**

*“3. The Mayor must ensure that any revisions of the Service Delivery Budget Implementation Plan are made public promptly.”*

MFMA Circular 13 provides that; “The top-layer of the SDBIP and its targets cannot be revised without notifying the council, and if there is to be changes in service delivery targets and performance indicators, this must be with the approval of the council, following approval of an adjustments budget (section 54(1)(c) of MFMA). This council approval is necessary to ensure that the mayor or municipal manager do not revise service delivery targets downwards in the event where there is poor performance”

**DISCUSSION**

The Mid-Year Budget and Performance Assessment was compiled in terms of Section 72 of the Municipal Finance Management Act, 56 of 2003 (MFMA) and submitted to the Mayor on 25 January 2023 with the recommendation that an adjustment budget be submitted to Council. The Mid-Year Budget and Performance Assessment and adjustment budget will be submitted to Council on 31 January 2023.

**The Municipality’s SDBIP comprises two distinct components, namely a financial and non-financial component. The financial component of the SDBIP comprises:**

- Monthly projections of revenue by source and expenditure by type.
- Monthly projections of expenditure and revenue (municipal vote).
- Monthly capital expenditure per municipal vote.
- Three-year capital works programme.

The schedules comprising the financial information are contained in the adjustment budget.

The non-financial component comprises pre-determined objectives with key performance indicators and service delivery targets, which are coupled to the national key performance areas of local government and the strategic goals, and objectives of the IDP.

It has become necessary to make amendments and improvements to the Municipality's SDBIP. The proposed amendments will be presented to the Municipality's Performance Audit Committee on 27 January 2023.

**Amendments fall within the following broad categories:**

- The targets of the National KPI's relating to delivery of services to households and indigents is adjusted annually in line with the actual reported in the 2021/22 Annual Report. (TL 9,10,11,12,13,14,15).
- The target of the National KPI relating to the percentage of the municipality's personnel budget spent on implementing its Workplace Skills Plan by 30 June is adjusted in line with the available budget (TL 1).
- The KPI relating to the implementation of Chapter 4 of the Municipal Staff Regulations is deleted and replaced as the implementation date was postponed (TL 6).
- Minor corrections to the wording of KPI's (TL 25 and 37).

The proposed amendments to the SDBIP (Key performance indicators) are attached on **page 85 to 93**. All amendments are in shaded blocks. The reason for amendments is indicated in the Reason for amendment Column.

**MANAGEMENT RECOMMENDATION**

- (i) That the amended 2022/23 SDBIP attached as **Annexure A** be approved in terms of Section 54(1)(c) of the Municipal Finance Management Act, 56 of 2003.
- (ii) That the amended 2022/23 SDBIP made public in terms of Section 54(3) of the Municipal Finance Management Act, 56 of 2003.
- (iii) That addendums be concluded on the performance agreements of the Municipal Manager and Directors where necessary.

**RESOLUTION 5/2023**

- (i) That the amended 2022/23 SDBIP be approved in terms of Section 54(1)(c) of the Municipal Finance Management Act, 56 of 2003.
- (ii) That the amended 2022/23 SDBIP made public in terms of Section 54(3) of the Municipal Finance Management Act, 56 of 2003.
- (iii) That addendums be concluded on the performance agreements of the Municipal Manager and Directors where necessary.

5.5 **SPATIAL DEVELOPMENT FRAMEWORK: APPROVAL OF STATUS QUO REPORT****REPORT FROM OFFICE OF THE MUNICIPAL MANAGER: SENIOR TOWN PLANNER****PURPOSE OF REPORT**

For Council to approve the Spatial Development Framework's Status Quo Report in terms of Section 7(1) of the Municipal Land Use Planning By-Law, 2022 (*report separately attached to this agenda*).

**BACKGROUND**

The Municipality appointed a service provider, Asika Consulting Pty (Ltd), to undertake the re-drafting of the SDF.

**In terms of Section 7(1) of the Municipal Land Use Planning By-Law, 2022, the Municipality must -**

- "(a) compile a draft status quo report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and submit it to the Council for adoption."*

**LEGAL FRAMEWORK**

According to Section 3 of our Municipal Land Use Planning By-Law, the Municipal Systems Act and Section 11 of the Land Use Planning Act, Council has decided to compile/re-draft the MSDF based on the current MSDF, 2017.

**The purpose of a MSDF is to, for a specific geographical area -**

- (a) provide detailed spatial planning guidelines.
- (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework.
- (c) meet specific land use planning needs.
- (d) provide detailed policy and recommended development parameters for land use planning.
- (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; and
- (f) guide decision-making on land use applications.

**PROGRESS TO DATE**

- a) A notice was published on the 22<sup>nd</sup> of July 2022, concerning the intention to compile a new 5-year MSDF; and the process to be followed, in accordance with section 28(3) and 29 of the Municipal Systems Act.
- b) The Municipality has registered relevant stakeholders, to comment on the draft MSDF as part of the process.
- c) The MSDF process aligns to the IDP and budget process and is included in the IDP's Process Plan.
- d) Public participation for the SDF took place concurrently with the IDP Process during August / September. The following engagements took place:

- (i) Preparatory meeting with all Ward Committees where we provided background information as well as planning templates for members to complete with their sectors.
- (ii) Special Ward Committee meetings with each ward committee to assess their needs and spatial priorities in detail and establish linkages with the SDF.
- (iii) Inclusion of a IDP / SDF item on the Ward Councillors Feedback Meeting agendas to affirm the needs identified by Ward Committees and pose additional needs and spatial priorities.
- (iv) Sector engagements with the following sectors to assess needs and spatial priorities:
  - 1. Faith-based cluster
  - 2. Youth cluster
  - 3. Sport cluster
  - 4. Business cluster
  - 5. Agriculture cluster
  - 6. Fishing community Arniston
  - 7. Fishing community Struisbaai
  - 8. Social Cluster: (Including but not limited to safety, gender, the aged, people with disabilities, substance abuse and LDAC)
- e) A comprehensive needs analysis is being developed and mapped from this which will inform the SDF. A Draft Status Quo Report was submitted on the 28th of October 2022.
- f) A CAMAF meeting was held on the 8<sup>th</sup> of November 2022, discussions focused on CAM's progress with IDP & SDF, vision, mission, and priorities as identified per Ward.
- g) The 1st Stakeholder Engagement was held in Struisbaai on the 12<sup>th</sup> of December 2022 from 12:00-20:00. The Status Quo Report was discussed with municipal departments, public entities, community representatives and all other related bodies based on the context of the municipality.
- h) On the 13<sup>th</sup> of December 2022 progress was given on the SDF to Council. It was decided that the Status Quo Report be updated for approval by Council in its next meeting.
- i) The Municipality may establish a project committee to assist to compile or amend its MSDF. The project committee must consist of the Municipal Manager, or a municipal employee designated by the Municipal Manager; and municipal employees appointed by the Municipal Manager from relevant internal departments.

**ITEMS OUTSTANDING IN TERMS OF THE LEGAL FRAMEWORK AND WAY FORWARD**

- (a) The Municipality must -
  - compile a draft status quo report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and submit it to the Council for adoption.
  - after adoption of the status quo report, compile a first draft of the MSDF and submit it to the Council to approve the publication thereof for public comment.
  - submit the first draft of the MSDF to the Provincial Minister for comment in terms of section 13 of the Land Use Planning Act; and
  - after consideration of the comments received from the public and the Provincial Minister, submit the final draft of the MSDF, with any further amendments, to the Council for adoption.
- (b) The Council must adopt the final draft of the MSDF with or without amendments and must within 14 days of its decision give notice of its decision in the media and the Provincial Gazette.
- (c) The Way Forward is stipulated in the Communication Plan:

Spatial Development Framework Communication Plan		
Event/Action	Date	Purpose
Notice of intention to compile new 5-year MSDF Invited interested and affected parties to registered	22 July 2022	In terms of Section 28(3) and 19 of the Municipal Systems Act 2000.
Public Participation for SDF concurrently with IDP Process	July-September 2022	Meetings with all Wards and Clusters
Kick off Meeting	4 October 2022	Electronic PowerPoint presentation and PDF
Finalisation of Inception Report	14 October 2022	Electronic copy (Word & PDF)
Draft Status quo Analysis and Development vision Report	28 October 2022	Electronic copy (Word & PDF)

Event/Action	Date	Purpose
CAMAF Meeting	8 November 2022 Thusong Centre	(Discussion on CAM's progress with IDP & SDF, vision, mission and priorities as identified per Ward)
Draft Narrative Report with final Development vision (Spatial sectoral Analysis)	30 November 2022	Electronic copy (Word & PDF)
Meeting with Councillors and PSC members	8 December 2022 Bredasdorp Council Chamber	Draft Status Quo Report (as input to public participation; area based through ward committees and municipal wide through CAMAF) PowerPoint presentation.
1 <sup>st</sup> Stakeholder Engagement Open house public engagement with all interested and affected parties	12 December 2022 Struisbaai Dienssentrum 14:00-20:00	Status Quo Report Engage with municipal departments, public entities, community representatives and all other related bodies based on the context of the municipality.
Draft Status Quo Report to Council for approval	End January 2023	Draft Status Quo Report to Council for approval
Report on Draft Spatial proposals	17 February 2023	Electronic copy (word)
2 <sup>nd</sup> Project Steering Committee Meeting	22 February 2023	Electronic copy (word) and PowerPoint presentation
Public consultation period	28 February - 29 April 2023 <ul style="list-style-type: none"> <li>Public Participation CAM's budget with all Wards</li> <li>4 SDF public meetings in (Struisbaai, Arniston, Bredasdorp and Napier)</li> </ul>	Before adopting the MSDF, the Council must - (a) give notice of the proposed MSDF in the Gazette and the media. (b) invite the public to submit written representations to the Council within 60 days after the publication of the notice referred to in paragraph (a); (c) consider all representations received in respect of the proposed MSDF.
2 <sup>nd</sup> Stakeholder Engagement Open house public engagement with all interested and affected parties	8 March 2023 Bredasdorp Glaskasteel 14:00-20:00	Draft SDF Report Engage with municipal departments, public entities, community representatives and all other related bodies based on the context of the municipality.
Submission of Draft IDP to Council (SDF a core component)	By 30 March 2023	SDF a core component of the IDP
Report on Draft CEF	25 April 2023	Electronic copy (Word and PDF)
Final MSDF- closeout Report	4 May 2023	Electronic copy (Word and PDF)
3 <sup>rd</sup> Project Steering Committee Meeting	5 May 2023	FINAL SDF <b>Sector Alignment</b> Provide the spatial expression of the coordination, alignment, and integration of sectoral policies of all municipal departments. <b>Priority Local Plans</b> Identify the designation of areas in which: (i) more detailed local plans must be developed; (ii) shortened land use; development procedures may be applicable and land use schemes may be so amended. <b>Capital Expenditure</b> Determine a capital expenditure framework for the municipality's development programmes, depicted spatially. Electronic copy (Word and PDF)
4 <sup>th</sup> Project Steering Committee Members and Councillors Presentation	23 May 2023 Council Chamber	FINAL MSDF MSDF must include a written and spatial representation of a five-year spatial development plan for the spatial form of the municipality. PowerPoint presentation
SDF adoption by Council	May 2023	Final MSDF
Give notice of decision within 14 days of adoption in media and provincial Gazette	June 2023	

**FINANCIAL IMPLICATION**

ASIKA Consulting Pty (Ltd) was appointed for R784 116,00

**MANAGEMENT RECOMMENDATION**

That the attached Status Quo Report be approved by Council in terms of Section 7(2) of the Municipal Land Use Planning By-Law, 2022.

**RESOLUTION 6/2023**

That the Spatial Development Framework Status Quo Report be approved by Council in terms of Section 7(2) of the Municipal Land Use Planning By-Law, 2022.

5.6 **APPLICATION FOR PURCHASE OF PORTION ERF 513, NAPIER (COLLAB: 417138) (WARD 1)**

**PURPOSE OF REPORT**

To consider the application by Bertus du Plessis Architecture, Construction and Town Planning Pty Ltd to close and purchase a portion of Erf 513, Napier in order to consolidate it with Erf 1359 Napier. The property is indicated on the locality plan below.

**To be noted that this application is subject to the approval of a land use application submitted in terms of the Municipal Planning By-Law. The application is open for public comment until 9 February 2023.**

**GENERAL INFORMATION**

- Owners : CAM
- Property : Portion of Erf 513, Napier
- Address : Trade Street
- Current zoning : Undetermined
- Proposed Size : 587m<sup>2</sup>



**BACKGROUND**

The applicant made a submission as well as a presentation to Council during October 2022, whereafter it was resolved as follows:

**“RESOLUTION 253/2022**

- (i) *That Council gives approval for the closure, alienation and sale of the proposed section of Erf 513, Napier which is indicated as a portion of Trade Street.*
- (ii) *That Council in principle approves the disposal (at a market related value), subject to the land use application.*
- (iii) *A complete public participation process will be followed and surrounding neighbours will be informed accordingly.*
- (iv) *The application will serve on the tribunal or the delegated official for final decision.”*

The application was advertised from the 28th of October - 25 of November 2022. An extension was granted to submit comments/ objections until the 9th of December 2022.

**Objections/comments (attached on page 94 to 126) were received and are summarised as follows:**

PERSOON	BESWAAR
1. S E Jansen	<ul style="list-style-type: none"> <li>▪ Dat daar'n servituut in my titetakte geregistreer word wat die gebruik van 'n pad, wat Mnr. du Plessis be-oog om te ontwikkel op sy erf, stipuleer. Die registrasie van die servituut op my titetakte is vir Mnr. du Plessis se koste.</li> <li>▪ Dat daar nie enige bouptanne goedgekeur word en met enige bouwerk op sy eiendom begin sal word nie alvorens die bg. regsdokumente afgehandel is nie.</li> <li>▪ Wat sal my posisie ten opsigte van toegang tot my eiendom wees sou Mnr du Plessis se ontwikkeling om een of ander rede deur die mat val en die padreserwe Oradestraat) reeds ten gunste van sy erf vervreem is. Sal daar 'n servituut in sy titetakte ingeskryf word wat enige toekomstige eienaars van die erf sal verptig om my van toegang tot my eiendom te voorsien en in stand te hou?</li> <li>▪ Ek graag die munisipaliteit se posisie met betrekking tot dienstewering aan my eiendom synde die lees en herstel van etekrisiteits- en watervoorsiening asook die suig van my riootbergingstenk na sodanige vervreemding van die bestaande toegangspad op skrif sal wil hê.</li> </ul>
2. Y Szokendi	<ul style="list-style-type: none"> <li>▪ Die erf is langs my erf, Erf 55, met Tradestraat tussen die twee erwe. Ek wil beswaar maak oor die nalatigheid van die munisipaliteit om my in te lig van die aansoek om vervreemding van Tradestraat.</li> <li>▪ Ek is teen die vervreemding van Tradestraat, wetende dat daar altyd n dienspad, tew l, Tradestraat, was tussen die twee eindomme en dat die water pype en elektriese toevoering daardeur loop.</li> <li>▪ Verder wil Bertus Du Plessis die bloekombome op my erf afkap sodat hy n muur kan bou. Ek is nie bereid om die bome te verloor nie en sou hy teen my heining bou sal hy die wortels beskadig en die dood van die bome veroorsaak.</li> <li>▪ Die uitgrawe van die wortels sal ook die bestendigheid van die grond belemmer en erenstige erosie veroorsaak. Dit is iets wat die munisipale ingenieur dringend moet na kyk.</li> <li>▪ Ek wil graag u aandag daarop vestig dat erf 55 en die geboue daarop een van die oudste erwe op die dorp is en dus van historiese waarde is.</li> </ul>
3. A J Gardner	<ul style="list-style-type: none"> <li>▪ Mr Du Plessis is planning to build 8 houses on his plot, and has told us that intends buying the adjacent erf 357 on which he wants to build another 4 houses. It goes without saying that the number of motor-vehicles using the road daily, will increase to at least 12 (or probably more) from the current 1 motor-vehicle of Mrs Jansen. This drastic rise in the volume of traffic on a small road in a tranquil residential area would be most objectionable.</li> <li>▪ My property has an access gate off the road in question. My concern is that once the said portion of road no longer belongs to CAM, we would have to access private property to get to our gate.</li> </ul>



PERSOON	BESWAAR
	<ul style="list-style-type: none"> <li>▪ Moreover, should Mr Du Plessis's planned development be, for whatever reason, either indefinitely delayed or totally abandoned, we would no longer be able to call on CAM to maintain the road in a usable state. This, naturally, is an even bigger concern for Mrs Jansen, whose sole access to her property is off the portion of road in question.</li> <li>▪ Although I am aware that my husband met with Mr du Plessis and undertook to at least consider the closure of this gate when I sell the property, I as owner of the property do not agree to this closure and will not sign any document to that effect.</li> </ul>
4. Napier Residents Association	<ul style="list-style-type: none"> <li>▪ The development on ERF has not been approved and has not gone out for public comment. The proposal for the acquisition of the land seemed to imply that the development was approved or that the intent is to go ahead with this. Should the road be sold and transferred to Mrs Du Plessis prior to the approval of the development and the development is rejected what would happen with the road that is acquired and access for the residents.</li> <li>▪ Our viewpoint is the CAM retain the Southern section of Trade Street for access by the neighbouring properties. The considerations of the three Erfs next to the road needs to be considered and therefore should the decision of not only selling the Northern section be made we would propose that the road is not sold.</li> </ul>
5. A J Gardner	<ul style="list-style-type: none"> <li>▪ I write to confirm my unequivocal objection to the possible closure and sale of a portion of Trade Street bordering on my property, Erf 57 (55 Hoog Street, Napier)</li> </ul>
6. Napier Heritage and Conservation Body	<ul style="list-style-type: none"> <li>▪ The NHCBC would like to point out that it is not opposed to development, but that the application and supporting annexures for the development of Erf 1359 are lacking in several crucial aspects which would allow the NHCBC to objectively assess its impact on the Heritage, Precinct and surrounding cultural, architectural and natural landscape and assets as well as its compliance with the relevant CAM by-laws.</li> <li>▪ The NHCBC also objects to the subdivision of Erf 1359 into 9 erven, with the smallest 341 square meters and the largest 524 square meters. Not only is this far below the average erf size in Hoog and Sarel Cilliers Streets, but places the proposed erven at the very bottom of the range for Medium Density Residential according to CAM's zoning bylaws. Such subdivisions will create an anomaly in the fabric of the Heritage Precinct of Napier and will not be in keeping with the unique character of Hoog/High and Sarel Cilliers Streets.</li> </ul>

All comments and objections were provided to the applicant to give a response. The comments and responses are attached on **page 127 to 146**.

#### **MOTIVATION FROM THE APPLICANT**

*"The closure of the public road is based on two reasons:*

- (i) *Only a portion of the road is usable as a road and does not comply to the norms and standards of traffic and road engineering guidelines thus constituting an unsafe road for users.*
- (ii) *There is no additional road reserve available to upgrade the existing infrastructure to comply with general traffic safety guidelines as well as the minimum road width requirements in the relevant zoning conditions pertaining to Medium Density Residential land use.*

*With specific reference to point (i): The portion of Trade Street between High Street and Sarel Cilliers Street is merely a 3.78-meter-wide gravel public road, abutting the site on the western side.*

***View down Trade Street from High Street***



***View from the gate of Erf 1296 up Trade Street towards***



***View from Sarel Cilliers Street towards the gate of Erf 1296***



*Judging by the width, it must have been envisaged as a one-way road connecting High Street with Sarel Cilliers Street. The steep gradient, namely 1 to 4 (a change in height of 1 meter over 4 meters), is not safe. The ideal gradient is 1 to 10. The gravel surface of this public road is in a bad state of repair due to a lack of maintenance and constant water erosion due to a lack of stormwater infrastructure.*

From a traffic safety perspective, the existing gravel surface of the road is not the ideal finish for a road at such a steep gradient. The steep gradient and the narrow width of the road makes it difficult for medium to large motor vehicles to negotiate. The municipality’s sewer truck for instance, finds it very difficult to negotiate the existing road surface, so much so that a crash barrier was erected halfway down to protect vehicles travelling down this road. The width of said public road makes no allowance for two-way traffic.

The above facts constitute that any person travelling down this road has no alternative but to turn onto Erf 1359, without the proper consent, to exit back up to High Street. Even the owner of Erf 1296 utilizes a portion of Erf 1359 to turn. The steep gradient, poor road surface, lack of a pedestrian pavement on High Street abutting the site, and no provision for proper turning circles at the junction with High Street, makes this a hazardous street junction. The dense vegetation and fencing arrangement of Erf 57 enhances the hazard exponentially.

**There are two ways of widening the public road:**

- (ii)(a) Expropriate a portion off Erf 1359 and consolidate it with the public road, thus leaving the Municipality with the burden of maintaining the small public road with a very low trip generation. The construction cost and maintenance bill on this small piece of road is very high due to the natural topography of the landscape.
- (ii)(b) Close the public street, make provision for the ownership to vest in the name of the owner of the abutting Erf 1359, then consolidate it with Erf 1359, and lastly subdivide a portion off to establish a private road in order to provide access to Erf 1296 and the proposed development.

It is necessary to upgrade the existing infrastructure to comply with general traffic safety guidelines as well as the minimum road width requirements in Regulation 112 of the relevant zoning regulations pertaining to Medium Density Residential land use. Access to the proposed development will be off High Street. The topography of the site and the existing road infrastructure makes it impossible to provide one single entrance to the entire development. The proposed new gated private road will service Erf 1296 and the Portions F to K. Portions D and E will each have a separate entrance directly from High Street.



***In conclusion, a few special mitigating facts to be considered by the Council with specific reference to the change of ownership and the price of the land unit:***

- *The public road is mostly dysfunctional to accommodate all types of motor vehicles and or pedestrians.*
- *The steep gradient at the bottom of Sarel Cilliers Street especially makes it unsafe to be utilized by pedestrians and very few four-wheel drive vehicles with experienced off-road drivers will be able to drive up.*
- *The area of the portion of road is approximately 272m<sup>2</sup> in size.*
- *There are bulk services, two electrical cables and one waterline, running along the middle of the total length of the portion of public road.*
- *This portion of public road as a land unit, has **no** development potential.*
- *None of the other erven abutting it can benefit from it except from an unsafe entry perspective.*
- *The Municipality will be able to divert valuable resources to other important maintenance and or upgrading projects.*
- *Access to the municipal engineering services will be protected by means of a servitude in favour of the Municipality.*
- *The top half of the closed road will remain a road, though it will be upgraded as a gated private road to provide access to Erf 1296 and the Portions F to K. Portions D and E will each have a separate entrance directly from High Street.*
- *It is the considered opinion of the writer that both the proposed closure of the public road and the special request to have the portion of the closed road vest in the Bertus du Plessis Familie Trust will have no negative impact on any private or public person in general and that the advantages of said applications to the Municipality will motivate the Municipality to look favourably at the applicants request in this regard."*

**COMMENTS**

**SENIOR TOWN PLANNER**

The two most affected owners are S E Jansen and Mrs Gardner as their access will be affected.

The applicant in his response to objections claimed that, a directly affected owner, S E Jansen (Erf 1296) agreed to the proposed road closure and right of way servitude over Erf 1359. However, no written proof from S E Jansen, was submitted, as confirmation of the applicant's proposed agreement. The road serves as a permanent access road to Erf 1296, and the bottom half of Erf 1359.

**As quoted by the applicant:** *"The applicant consulted with the owner of Erf 1296; the only landowner reliant on the public road to access their property. The owner of Erf 1296 has no objection to the closure of the public road and is satisfied with the proposed right of way servitude across the private road to ensure access to her property".*

The owner of Erf 57, Mrs Gardner never reached any agreement with the applicant to the proposed road closure and right of way servitude over Erf 1359. Erf 57 has a formal street access directly from High Street, and access gate in Trade Street to remove garden refuge.

**As quoted by the applicant:** *"The owners of Erven 57, 1296 and 1359 had a meeting pertaining to the road.*

*The owner of Erf 1359 was not aware of the fact that Mr. Gardner was not the registered owner but acting on his wife's behalf. It is disappointing that Mr. Gardner, as Mrs. Gardner's representative made an agreement with the owner of Erf 1359 pertaining the road and she now fails to acknowledge it".*

There are two options which can be considered: From a Town Planning point of view. Option A is recommended with Option B as an alternate.

**OPTION A**

That the portion of Trade Street measuring approximately (587m<sup>2</sup>) be alienated to Bertus Du Plessis Family Trust, as requested, subject to the following conditions:

1. Written confirmation from the directly affected owners, S E Jansen (Erf 1296 ) and Gardener (Erf 57) that an acceptable agreement has been reached in respect of the registration of access servitudes to be registered in favour of their property within 30 days of being requested to do so. (If no confirmation is submitted, **Option B** be proceeded with.
2. That the proposed Portion of Trade Street be transferred to Bertus Du Plessis Family Trust:
  - a. Once the Town Planning/ Land Use application is approved.
  - b. The Service Level Agreement is signed, and all conditions have been met.
  - c. That all servitudes been registered, as part of the SLA. (Right of way servitudes in favour owners of Erven 57 and 1296) and Service servitudes in favour of the Municipality, in terms of Section 15(2)(d), of the Municipal Land Use Planning By-Law, 2015.

**OPTION B**

That only the Northern portion of Trade Street measuring approximately (272m<sup>2</sup>) be alienated to Bertus Du Plessis Family Trust, and the Southern portion remain the property of the Municipality:

- a. Once the Town Planning/ Land Use application is approved.
- b. The Service Level Agreement is signed, and all conditions have been met.
- c. That all servitudes been registered, as part of the SLA. (Service servitudes in favour of the Municipality, in terms of Section 15(2)(d), of the Municipal Land Use Planning By-Law, 2015.

**INFRASTRUCTURE SERVICES**

Responses from internal Departments, on objections/comments are included on **page 147 to 163**.

**WARD COMMITTEE: (WARD 1)**

The Ward Committee agrees with the application and recommends that the Northern portion of the road be consolidated with erven 1359 and the Southern part of the road remains the property of CAM.

**MARKET VALUE OF LAND**

R127,50 per square metre (VAT incl.)

**LEGAL IMPLICATIONS**

Council policy	Alienation of land
<b>MFMA</b>	1. <b>Sect 14(2)(a):</b> asset not required for minimum level of basic services. 2. <b>Sect 14(2)(b):</b> consider fair market value and economic and community value to be received in exchange for the asset. 3. Items in 1 and 2 only to be complied with if the asset to be transferred is a high value asset (see definition of MATR below). 4. <b>Sect 33:</b> Contracts having long term financial implications.
<b>MATR</b>	1. <b>Definition of “high value asset”:</b> <i>“fair market value of the capital asset exceeds any of the following amounts:</i> a) <i>R50 million;</i> b) <i>One percent of the total value of the capital assets of the municipality....</i> c) <i>An amount determined by resolution of the council of the municipality ..... which is less than (a) or (b).</i> 2. <b>Definition of “realisable value”:</b> fair market value <u>less</u> estimated costs of completion. 3. <b>Definition of “right to use, control or manage”:</b> when granting such rights do not amount to permanent transfer or disposal. 4. <b>Regulation 5</b> (decision-making). 5. <b>Regulation 6</b> (public participation)
<b>SCM Regulations SCM Policy</b>	<b>Regulation 40: (Disposal Management)</b> Project for job creation, skills development, poverty alleviation and economic growth

**COMMENTS BY THE DIVISION HEAD: STRATEGIC PLANNING AND ADMINISTRATION**

The proposal two provide two options is supported. The Service level agreement is generally only concluded when the town planning process is concluded, and the conditions of the agreement can only be determined at that time.

It is therefore proposed that the conditions as mentioned rather be included as suspensive conditions in the sale agreement.

**MANAGEMENT RECOMMENDATION**

- (i) That the alienation of a portion of Trade Street measuring approximately (587m<sup>2</sup>) to Bertus Du Plessis Family Trust be approved subject to the following conditions:
- (a) That the purchase price be determined at (R..... per square metre).
- (b) That the sale be subject to the fulfilment of the following suspensive conditions within 18 months of the date of sale:
- The approval of the Town Planning land use application.
  - The registration of servitudes for municipal services as required by the Infrastructure Directorate in terms of Section 15(2)(d), of the Municipal Land Use Planning By-Law, 2015.
  - The registration of right of way servitudes in favour of Erven 57 and 1296 in terms of Section 15(2)(d), of the Municipal Land Use Planning By-Law, 2015.
- (ii) That Council's attorneys be instructed to compile the deed of sale.
- (iii) That all costs related to this transaction be for the account of the applicant.
- (iv) That the Municipal Manager be delegated to finalise the agreement of sale.
- (v) That the objectors be informed accordingly.
- (vi) That if the town planning land use application is approved, an Engineering Services Agreement be concluded.

**RESOLUTION 7/2023**

- (i) That the alienation of a portion of Trade Street measuring approximately (587m<sup>2</sup>) to Bertus Du Plessis Family Trust be approved subject to the following conditions:
- (c) That the purchase price be determined at (R127,50 per square metre (VAT incl.)).
- (d) That the sale be subject to the fulfilment of the following suspensive conditions within 18 months of the date of sale, before transfer:
- The approval of the Town Planning land use application.
  - The registration of servitudes for municipal services as required by the Infrastructure Directorate in terms of Section 15(2)(d), of the Municipal Land Use Planning By-Law, 2015.
  - The registration of right of way servitudes in favour of Erven 57 and 1296 in terms of Section 15(2)(d), of the Municipal Land Use Planning By-Law, 2015.
- (ii) That Council's attorneys be instructed to compile the deed of sale.
- (iii) That all costs related to this transaction be for the account of the applicant.
- (iv) That the Municipal Manager be delegated to finalise the agreement of sale.
- (v) That the objectors be informed accordingly.
- (vi) That if the town planning land use application is approved, an Engineering Services Agreement be concluded, before transfer.

5.7 **TEMPORARY USE ON ERF 854, STRUISBAAI (WYK 5)****REPORT FROM OFFICE OF THE MUNICIPAL MANAGER: REPORT FROM TOWN PLANNING****PURPOSE OF REPORT**

To consider the request of J Loubser (Homebrew Films) in order to use a portion of erf 854 for the construction of a temporary set for the production of Kokkedoor: Vuur en Vlam.

**GENERAL INFORMATION**

Owners	:	KAM
Property	:	Portion of Erf 854 Struisbaai
Address	:	Camping Site
Current zoning	:	Open Space
Proposed Size	:	Structure: Approximately 580m <sup>2</sup>

**BACKGROUND**

Food can conjure up the past. It transcends us to the glory days of our childhood and the places we have dwelled, evoking the smells, sights, and tastes of yesteryear. Heritage food is fast becoming a worldwide trend, painting a picture of generations past, and serving as a touchstone for a new generation of chefs and gourmands. The reality cooking competition Kokkedoor bears testimony to the trend, having recently kept thousands of South Africans nailed to their television sets for 13 weeks in a row as the second series unfolded. A celebration of Afrikaner culture, heritage and food, the DSTV kykNET show proved to be a hit from the start.

Kokkedoor was born in Prince Albert, a quaint village at the foot of the Swartberg Pass in the Karoo that already boasted a culinary flavour and heaps of character to form the perfect backdrop. The show brought together 10 teams consisting of amateur cooks and qualified chefs – a combination that encouraged innovation yet delivered a flood of memories for South African viewers by featuring old school recipes with a 21st Century twist. It also created a string of benefits for the town, such as the establishment of a Kokkedoor shop that stocks a range of branded handmade products, not to mention publicity spin-offs locally and overseas.

The says setting Kokkedoor in a Karoo town was always part of the plan. "The Karoo holds a certain enchantment for many people, even if they don't have ties with the area. Prince Albert, like Kokkekoor, is a place where the past can join hands with the modern world.

The show now tries to change the focus from home cooking to braai and Struisbaai has been identified as the new home for this production. The Overberg produces a wide range of unique local products from fish, meats, wines and produce ideal for the perfect braai table and its Kokkedoor's vision to promote Struisbaai, as well as the Overberg as the heart of this unique culinary experience.

### **REQUIREMENTS FOR APPLICATION**

The production team have identified the camping site as the ideal location and backdrop of the Kokkedoor set as it integrates the sea, dune and flat area for in visual flow of shots. A structure of approximately 18 x 32 meters will be erected that will house the kitchen which will primarily be used for the challenges. Certain challenges will take place on the beach and other sights special to the area.

The production would like to start with construction of the set in the first week of March. Dry runs with the full cast and team running the week of the 10<sup>th</sup> of April and production of the show starting on the 17<sup>th</sup> of April 2023. The production of the show will take approximately a month to six weeks.

The production team will hire all the chalet's at the normal rate and they will pay for the occupation of sites for the days of filming. The demarcated area will be fenced, and the applicant will pay for municipal services at the normal rate. Permission is granted to connect the sewerage to the existing ablution facilities.

### **MANAGEMENT RECOMMENDATION**

Principle approval to proceed with the public participation process to make the land be made available to the production team from the 1<sup>st</sup> of March 2023 for preparation and erection of the set and the production of the season for Kokkedoor Vuur en Vlam.

### **RESOLUTION 8/2023**

- (i) That approval be given to Homebrew Films to use a portion of erf 854 (Struisbaai Caravan Park) for the preparation and erection of the set as well as the production of the next season of "Kokkedoor Vuur en Vlam" from 6 February 2023 to the end of May 2023.
- (ii) That the Municipal Manager be mandated to finalise the terms and conditions of the usage.
- (iii) That the public be informed of Council's intention.

## 5.8 **VERVREEMDING: ERF 2789, STRUISBAAI (WYK 5)**

### **DOEL VAN VERSLAG**

Om oorweging te skenk aan 'n versoek om Erf 2789, Struisbaai te vervreem vir die aanwending van "Meals on Wheels", Struisbaai.

### **AGTERGROND**

Eienaar	:	CAM
Eiendom	:	Erf 2789, Struisbaai
Adres	:	Stirelitziaweg Struisbaai
Sonering	:	Oop Ruimte
Grootte	:	6529m <sup>2</sup>

'n Aansoek is van Meals on Wheals, Saloma Gouws ontvang om Erf 2789, Struisbaai (of 'n gedeelte daarvan) by die Raad te koop ten einde hul bestaande fasiliteit op Erf 2788, uit te brei.



'n Tereinbesoek is deur die Raad gedoen gedurende September 2021. Tydens sodanige besoek is gevind dat 'n gedeelte van die genoemde Erf beperk word deur grondwater en natuurlike stormwater probleme.

Daar is 'n groot behoefte om die bestaande fasiliteit uit te brei om meer inwoners te akkommodeer.

Meals on Wheels "Wes Kaap", het 'n projekspan aangestel om 'n nuwe uitleg van die bestaande behoefte op te stel en 'n aansoek in te dien om aan die Raad voor gelê te word vir oorweging (sien aangeheg op **bladsy 164 tot 165**).

Sodanige aansoek is nog nie ontvang nie, maar in beginsel goedkeuring vir die vervreemding word versoek. Daar is ook 'n aansoek ontvang van 'n ontwikkelaar om dieselfde stuk grond te koop en te ontwikkel.

### **KOMMENTARE**

Sien aangeheg op **bladsy 166**, waarop die natuurlike stormwaterkanaal aangetoon word.

### **MARKWAARDE VAN DIE EIENDOM**

Markwaarde sal bepaal word sodra die grootte van die eiendom bevestig is.

### **WETLIKE IMPLIKASIES**

<b>Council policy</b>	<b>Alienation of land</b>
<b>MFMA</b>	<ol style="list-style-type: none"> <li><b>Sect 14(2)(a)</b>: asset not required for minimum level of basic services.</li> <li><b>Sect 14(2)(b)</b>: consider fair market value and economic and community value to be received in exchange for the asset.</li> <li>Items in 1 and 2 only to be complied with if the asset to be transferred is a high value asset (see definition of MATR below).</li> <li><b>Sect 33</b>: Contracts having long term financial implications.</li> </ol>
<b>MATR</b>	<ol style="list-style-type: none"> <li><b>Definition of "high value asset"</b>: "fair market value of the capital asset exceeds any of the following amounts:               <ol style="list-style-type: none"> <li>R50 million;</li> <li>One percent of the total value of the capital assets of the municipality....</li> <li>An amount determined by resolution of the council of the municipality ..... which is less than (a) or (b).</li> </ol> </li> <li><b>Definition of "realisable value"</b>: fair market value <u>less</u> estimated costs of completion.</li> <li><b>Definition of "right to use, control or manage"</b>: when granting such rights do not amount to permanent transfer or disposal.</li> <li><b>Regulation 5</b> (decision-making).</li> <li><b>Regulation 6</b> (public participation)</li> </ol>
<b>SCM Regulations SCM Policy</b>	<b>Regulation 40: (Disposal Management)</b> Project for job creation, skills development, poverty alleviation and economic growth

### **BESTUURSAANBEVELING**

- Dat die Raad in beginsel goedkeuring gee vir die vervreemding van 'n gedeelte van erf 2789, Struisbaai.
- Dat alle wetlike prosesse gevolg word.
- Dat die publieke deelname proses voortgaan nadat 'n terreinontwikkelingsplan van die aansoeker ontvang is in terme van Artikel 22 van die Kaap Agulhas Munisipale Soneringskema Verordening, 2022.

### **BESLUIT 9/2023**

- Dat die Raad kennis neem van die aansoek om vervreemding van 'n gedeelte van erf 2789, Struisbaai.
- Dat alle wetlike prosesse gevolg word.
- Dat die publieke deelname proses voortgaan nadat 'n terreinontwikkelingsplan van die aansoeker ontvang is in terme van Artikel 22 van die Kaap Agulhas Munisipale Soneringskema Verordening, 2022.

5.9 **AMENDMENT OF MEMBERSHIP: MUNICIPAL PLANNING TRIBUNAL (MPT)****REPORT FROM OFFICE OF THE MUNICIPAL MANAGER: SENIOR TOWN PLANNER****PURPOSE OF REPORT**

For Council to approve the appointment of a new external member nominated by the Department of Environmental Affairs and Development Planning (DEADP) to serve on the Municipal Planning Tribunal (MPT) for a five-year period.

**BACKGROUND**

A municipality must in terms of section 35 of SPLUMA establish a Municipal Planning Tribunal for its Municipal area to determine land use and land development applications within its municipal area that are categorised as determinable by the MPT. The composition of the Municipal Planning Tribunal in terms of section 36 (3) of SPLUMA must consist of at least 5 members. The Municipal Council must designate a member of the tribunal as chairperson, and another as deputy chairperson to act as chairperson when the chairperson is absent or unable to perform his duties.

The members are appointed for 5 years, or a shorter period as may be determined by the Council but may not be appointed for a continuous period exceeding 10 years. The Council has approved 5-year terms for its members.

**The current composition of the MPT as amended by Council on 31 March 2022 (Resolution 35/2022) is as follows:**

<b>Internal members</b>	Mr Eben Phillips (October 2020 - Resolution 185/2020)	Chairperson
	Mr Abdul Aziz Jacobs (July 2018 - Resolution 105/2018). <i>A report will be submitted on the replacement of this member as soon as the position of Director Infrastructure Services is filled.</i>	Deputy chairperson
	Mr Hendrik Krohn (July 2019 - Resolution 99/2019)	Member
	Mr Deon Wasserman (March 2022 - Resolution 35/2022)	Secundi
	Ms Tracey Stone (March 2022 - Resolution 35/2022)	Secundi
<b>External members</b>	Mr Francois Kotze (Overberg District Municipality) (October 2020 - Resolution 185/2020)	
	Mr Jeremy Benjamin (DEADP) (March 2022 - Resolution 35/2022)	
	Mr Ron Brunings (Swellendam Municipality) (March 2022 - Resolution 35/2022)	Secundi

The Department of Environmental Affairs and Development Planning (DEADP) did not grant Mr Jeremy Benjamin the necessary authorisation to be re-appointed to serve as an external member on the MPT but did allow him to serve until a new nomination was made. The new nominee is Mrs Dalene Carstens.

Mrs Carstens is a Town Planner (Grade C) in the Directorate: Development Management Region 2 and has been with the Department for 24 years. She possesses the requisite skills and expertise and currently serves as an external member on the Eden Joint MPT and more, recently, the Breede Valley MPT. This new nomination requires that Council approve the changes to the Municipal Planning Tribunal prior to the next meeting.

**Section 72(11) of the Cape Agulhas Cape Agulhas By-law on Municipal Land Use Planning 2022 provides that:**

*"The Municipal Manager must -*

- (a) inform the members in writing of their appointment;*
- (b) obtain written confirmation from the Council that the Council is satisfied that the Tribunal is in a position to commence its operations; and*

- (c) *after receipt of the confirmation referred to in paragraph (b), publish a notice in the Provincial Gazette of the following:*
- (i) *the name of each member of the Tribunal;*
  - (ii) *the date on which the appointment of each member takes effect;*
  - (iii) *the term of office of each member; and*
  - (iv) *the date that the Tribunal will commence its operation."*

Failure to comply will constitute a contravention of the Municipal Planning By-law, 2022, which could make any decisions susceptible to judicial review.

### **LEGAL FRAMEWORK**

- Spatial Planning and Land Use Management Act, Act 16 of 2013 (SPLUMA) Section 35 - 39
- Regulation 239 of the Spatial Planning and Land Use Management Act, Act 16 of 2013
- Terms of Reference & Rules of Procedure for our MPT meetings
- Section 72(9) of the Municipal Planning By-Law, 2022

### **FINANCIAL IMPLICATIONS**

According to our MPT, Terms of Reference there will be no financial implications as employees of the Western Cape Provincial Government are not entitled to remuneration".

### **MANAGEMENT RECOMMENDATION**

- (i) That Council approves the appointment of Mrs Daleen Carstens as an external member of the Municipal Planning Tribunal for a period of 5 years.
- (ii) That the Department of Environmental Affairs and Development Planning (DEADP) be notified in writing of the appointment.
- (iii) That the Council confirm that the tribunal is in a position to commence operations and that the applicable notice be published in the Provincial Gazette.
- (iv) That it be noted that the vacant internal position will be filled when the new Director: Infrastructure is appointed.

### **RESOLUTION 10/2023**

- (i) That Council approves the appointment of Mrs Daleen Carstens as an external member of the Municipal Planning Tribunal for a period of 5 years.
- (ii) That the Department of Environmental Affairs and Development Planning (DEADP) be notified in writing of the appointment.
- (iii) That the Council confirm that the tribunal is in a position to commence operations and that the applicable notice be published in the Provincial Gazette.
- (iv) That it be noted that the vacant internal position will be filled when the new Director: Infrastructure is appointed.

## 5.10 **FILLING OF VACANT COMMITTEE POSITIONS: AUDIT- AND PERFORMANCE AUDIT COMMITTEE**

### **PURPOSE OF REPORT**

To inform the Council of the recent advertising and interview results for the filling of the current vacant Committee position, the end of term of the current Chairperson that needs to be filled, and an unexpected further vacancy due to the resignation of a Committee member, and to make a submission to Council for the filling of the vacancies with proposed candidates for Council's consideration.

### **BACKGROUND**

There is currently a vacant position on the Audit- and Performance Audit Committee that was advertised in the past but no suitable candidates could be found, therefore it remained vacant. The second term of the current Chairperson, Mr Pieter Strauss, is coming to an end at the end of January 2023 which will result in a second vacancy.

The Committee decided to advertise again and to throw the net as far as possible and to attract meaningful applications, the advertisement was also placed on the Institute of Internal Auditors' South Africa weekly newsletter. This process was very effective and a total of 54 applications were received of which 19 was from the Western Cape Province. In view of cost effectiveness, preference was given to the Western Cape candidates. Seven of the candidates were selected for interviews.

At the beginning of January 2023 another Committee member resigned due his relocation to Gauteng Province. This resulted in three vacancies to be filled. Although the advertisement was for the filling of only two positions, permission was obtained from the Speaker to fill all three vacancies as we had more than enough applicants and already had seven candidates on the shortlist. This will save cost and time.

The interviews were held on 10 January 2023 with very good results. The process followed in scoring was very clinical to avoid any discussions or influencing of each scorer. The scoring was done individually and summarised by internal audit and the best three candidates were selected based on the highest scores. The Audit Committee was unanimous in its decision on the three candidates proposed for the filling of the Committee vacancies.

**The following are the applicants from the Western Cape who submitted their applications for the vacancies:**

<b>Name</b>	<b>Qualifications</b>
<b>Adri Arendse</b>	<ul style="list-style-type: none"> <li>- CA(SA)</li> <li>- BCom: Accounting</li> <li>- Post Graduate Diploma: Accounting</li> </ul>
<b>Abduragmaan Kariem</b>	<ul style="list-style-type: none"> <li>- Certified Fraud Examiner (CFE) (ACFE)</li> <li>- Post-graduate Diploma: Accounting Science (PGD) (UNISA)</li> <li>- Public sector risk management programme (NT)</li> <li>- Certification in Risk Management Assurance (CRMA) (IIA)</li> <li>- Certification in Control Self-Assessment (CCSA) (IIA)</li> <li>- Quality Assessment Reviewer (QAR) (IIA)</li> <li>- Certified Internal Auditor (CIA) (IIA)</li> <li>- Management Development Programme (MDP) (Wits)</li> <li>- Bachelor of Commerce: Internal Audit (UNISA)</li> <li>- Internal Audit Technician (IAT) (IIA)</li> <li>- Internal Quality Auditor &amp; Quality Management Systems Developer (SQMI)</li> </ul>
<b>Wesley van der Heyde</b>	<ul style="list-style-type: none"> <li>- BCom: Financial Accounting</li> <li>- CoP (Insurance Institute of South Africa)</li> <li>- Post Graduate Diploma: Accounting Sciences</li> </ul>
<b>Werna Oberholzer</b>	<ul style="list-style-type: none"> <li>- General Internal Auditor</li> <li>- BCom: Economics</li> </ul>
<b>Dave Richards</b>	<ul style="list-style-type: none"> <li>- BCom: Arts (Philosophy)</li> <li>- Nine credits for Certificate in Theory of Accounting.</li> </ul>
<b>Bazil Vink</b>	<ul style="list-style-type: none"> <li>- MBA</li> <li>- BCom: Accounting</li> <li>- Advanced Management Development Programme</li> <li>- Certificate in Compliance Management</li> </ul>
<b>Ayanda Vabaza-Mvandaba</b>	<ul style="list-style-type: none"> <li>- BCom: Accounting (honours)</li> <li>- CA(SA)</li> </ul>
<b>Asanda Nkomo</b>	<ul style="list-style-type: none"> <li>- BCom: Accounting (Honours)</li> <li>- Postgraduate Diploma: Accounting</li> </ul>
<b>Ebrahim Petersen</b>	<ul style="list-style-type: none"> <li>- BTech: Internal Auditing</li> <li>- Diploma: Internal Auditing</li> </ul>
<b>William Lourens</b>	<ul style="list-style-type: none"> <li>- B Mil Management Science</li> <li>- Post Graduate – Tax</li> <li>- Certificate in Forensic Examination</li> </ul>
<b>Justin Coerecias</b>	<ul style="list-style-type: none"> <li>- BCom: Accounting (Honours)</li> <li>- BCom: Accounting</li> </ul>

Name	Qualifications
<b>Johan van Rensburg</b>	<ul style="list-style-type: none"> <li>- CA(SA)</li> <li>- Certified Fraud Examiner (CFE)</li> <li>- Certified Internal Auditor (CIA)</li> <li>- Master of Commerce Degree: Taxation</li> <li>- Bachelor of Commerce Honours Degree: Accounting</li> <li>- BTech - Taxation</li> <li>- BTech Internal Auditing</li> </ul>
<b>Zulfah Abrahams</b>	<ul style="list-style-type: none"> <li>- CIA</li> <li>- BCom: Management</li> <li>- BTech – Internal Auditing</li> </ul>
<b>Pierre le Roux</b>	<ul style="list-style-type: none"> <li>- General Internal Auditor (GIA)</li> <li>- Forensic Examination</li> <li>- Certificate</li> <li>- Diploma in Accounting</li> </ul>
<b>Merle Kinnes</b>	<ul style="list-style-type: none"> <li>- LLB</li> <li>- BA</li> <li>- CFE</li> <li>- Certified ISO 31000 Risk Management Lead Trainee</li> </ul>
<b>Vusumzi Zingitwa</b>	<ul style="list-style-type: none"> <li>- General Management Programme</li> <li>- Management Advancement Programme</li> <li>- Certified Internal Auditor (CIA)</li> <li>- BTech: Internal Auditing</li> <li>- Diploma: Internal Auditing</li> </ul>
<b>James Gourrah</b>	<ul style="list-style-type: none"> <li>- CIA- Certified Internal Auditor</li> <li>- CFSA - Certified Financial Services Auditor</li> <li>- CRMA - Certification in Risk Management Assurance</li> <li>- ACDA - ACL Certified Data Analyst</li> <li>- CCSA - Certification in Control Self-Assessments</li> <li>- Accreditation in Internal Quality Assessment/Validation</li> <li>- Postgraduate Diploma: Auditing</li> <li>- Honours Bachelors of Commerce/ Certificate in Theory of Accounting</li> <li>- Bachelors of Commerce (Accounting)</li> </ul>
<b>Isgaak Bull</b>	<ul style="list-style-type: none"> <li>- Advanced Diploma in Accounting Science (CTA)</li> <li>- Degree in Internal Auditing</li> <li>- Diploma in Internal Auditing</li> </ul>
<b>Sinesipho Tom</b>	<ul style="list-style-type: none"> <li>- Post-Graduate Diploma: Internal Auditing</li> <li>- Bachelor of Accounting Sciences</li> <li>- BTech: Internal Auditing</li> <li>- Diploma: Accounting</li> </ul>

**From the seven candidates invited for the interviews, the top three candidates are listed below:**

Name	Qualifications	Experience and value adding
<b>Bazil Vink</b>	<ul style="list-style-type: none"> <li>• MBA</li> <li>• B.Com (Accounting)</li> <li>• Advanced Management Development Programme</li> <li>• Certificate in Compliance Management</li> </ul>	<ul style="list-style-type: none"> <li>• Former Chief Director at Provincial Treasury responsible for development of governance processes and clean audit drive.</li> <li>• Was a CFO at a Local Municipality with vast experience in municipal finances and financial statements.</li> </ul>
<b>James Goorrah</b>	<ul style="list-style-type: none"> <li>• Certified Internal Auditor</li> <li>• Certified Financial Services Auditor</li> <li>• Certification in Risk Management Assurance</li> <li>• ACL Certified Data Analyst</li> <li>• Certification in Control Self Assessments</li> <li>• Certificate in the Theory of Accounting</li> </ul>	<ul style="list-style-type: none"> <li>• Chairperson of the Institute of Internal Auditors South Africa.</li> <li>• Combined assurance</li> <li>• Risk Management</li> <li>• IT experience</li> </ul>
<b>Zulfah Abrahams</b>	<ul style="list-style-type: none"> <li>• B.Com: Management</li> <li>• Certified Internal Auditor</li> </ul>	<ul style="list-style-type: none"> <li>• Audit Manager at University of Cape Town.</li> <li>• Vast public sector experience, including provincial government.</li> </ul>

The Committee is of the opinion that the three proposed candidates are the right people for the positions, will add the necessary value and will make for a strong and capable Audit Committee. The Committee therefore proposed that Council approves the appointment of the said candidates.

#### **STAFF IMPLICATIONS**

Filling of three critical positions on the municipal's Audit- and Performance Audit Committee positions.

#### **FINANCIAL IMPLICATIONS**

None - Provisions has already been made in the 2022/23 budget.

#### **LEGAL IMPLICATIONS**

Compliance to section 166 of the Municipal Financial Management Act, 2003, as well as the National Treasury Circular 65 on Audit Committees.

#### **RECOMMENDATION: AUDIT COMMITTEE**

That Council considers and approves the appointment of the above-mentioned candidates as members of the Audit- and Performance Audit Committee of Cape Agulhas Municipality from 1 February 2023.

#### **RESOLUTION 11/2023**

That Council approves the appointment of the following candidates as members of the Audit- and Performance Audit Committee of Cape Agulhas Municipality from 1 February 2023, namely: Bazil Vink, James Goorrah and Zulfah Abrahams.

### 5.11 **APPOINTMENT OF NEW CHAIRPERSON: AUDIT- AND PERFORMANCE AUDIT COMMITTEE**

#### **PURPOSE OF REPORT**

To submit to Council the proposal for the appointment of a new Audit- and Performance Audit Committee chairperson due to the current Chairperson's term coming to an end at the end of January 2023.

#### **BACKGROUND**

The current Chairperson, mr Pieter Strauss is serving his second term on these Committees. His term comes to an end on the 31<sup>st</sup> of January 2023 and in terms of the National Treasury Circular 65 on Audit Committees, he may not serve more than 2 consecutive terms.

In view of the above, a new Chairperson must now be appointed. As these Committees now consist of three new members as per the previous submission on the appointment of new Committee members, this leaves mrs Louise Stevens as the only continuing member. She is only serving her first term as member and can still contribute much in the future.

In view of continuity, it is proposed that mrs Louise Stevens be appointed as the new Committee Chairperson. She will serve as Chairperson for both the Audit Committee and the Performance Audit Committee.

#### **STAFF IMPLICATIONS**

None.

#### **FINANCIAL IMPLICATIONS**

None - Provision has already been made in the 2022/23 budget.

**LEGAL IMPLICATIONS**

Compliance with the National Treasury Circular 65 on Audit Committees.

**RECOMMENDATION: AUDIT COMMITTEE**

That Council approves the appointment of Mrs Louise Stevens as the new Chairperson of the Audit- and Performance Audit Committee from 1 February 2023 until 31 August 2024 with an option for extension for another three year-term.

**RESOLUTION 12/2023**

That Council approves the appointment of Mrs Louise Stevens as the new Chairperson of the Audit- and Performance Audit Committee from 1 February 2023 until 31 August 2024 with an option for extension for another three year-term.

5.12 **REPORT TO COUNCIL ON THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE'S (MPAC) ACTIVITIES FOR JANUARY 2023**

**PURPOSE OF REPORT**

For the Committee to report to Council on its meeting held on 19 January 2023 and to bring to the Council's attention the recommendations made by the Committee on irregular expenditure of R544 399 relating to the 2020/21 financial year.

**BACKGROUND**

In terms of section I, par. 1 of the MPAC Charter, the Committee must report at least quarterly on the activities of the Committee and any recommendations made by them. As per the same section, the minutes of any meeting will serve as the report and will be tabled at the next Council meeting after the MPAC meeting.

The Committee had a meeting on 19 January 2023 on irregular expenditure of R544 000 that relates to the 2020/21 financial year.

The minutes of that meeting, attached on **page 167 and 168** is now submitted to Council for consideration. The following extract from the minutes is included here for ease of reference on the reasons why this item is only now submitted to Council:

*"During the Council meeting held on 14 December 2021, an UIWF item of R544 399 irregular expenditure relating to the 2020/21 financial year was tabled at Council after the completion of the AG's audit. This matter was referred to MPAC for investigation and consideration.*

*MPAC considered the item and the report of the internal auditors on 17 January 2022 and concluded that the items were of a technical nature as highlighted by the Auditor-General (AG). There were also no loss to the municipality. MPAC accepted the explanations and recommended that Council condones the expenditure.*

*However, during the 2021/22 AG audit it was discovered that the MPAC report to Council on this item did not specify the recommendation clearly and only referred to another matter that was discussed during the MPAC meeting. The implications are that Council never approved the mentioned irregular expenditure.*

*MPAC then held a special meeting on 19 January 2023 to rectify the matter and make a specific recommendation to Council. After consideration of the explanations provided by internal audit, MPAC recommended that the matter be referred to Council to write-off the expenditure."*

**STAFF IMPLICATIONS**

None.

**FINANCIAL IMPLICATIONS**

Writing off of R544 399 irregular expenditure (already included in the 2021/22 annual financial statements).

**LEGAL IMPLICATIONS**

Adherence to section I of the MPAC Charter requiring at least quarterly reporting to Council.

**RECOMMENDATION: MPAC**

The Committee recommends that the irregular expenditure of R544 399 relating to the 2020/21 financial year be accepted and written off.

**RESOLUTION 13/2023**

That the irregular expenditure of R544 399 relating to the 2020/21 financial year be accepted and written off.

5.13 **PREFERENTIAL PROCUREMENT POLICY: REVIEW AND AMENDMENT****PURPOSE OF REPORT**

To obtain Council's approval in respect of the amended Preferential Procurement Policy, attached on **page 169 to 180**.

**BACKGROUND**

Emanating from the Constitutional Court judgment handed down dated 30 May 2022, it was confirmed that suspension of the declaration of the order of invalidity of the 2017 Preferential Procurement Regulations (PPR) is still valid for the remainder of the 12-month period, hence the 2017 Regulations are still enforceable, until 26 January 2023. The court judgement in essence meant that:

- The Minister of Finance must issue regulations within the ambit of his powers in terms of the PPPFA; and
- Each organ of state must develop their own Preferential Procurement Policy in terms of Section 2(1) of the PPPFA. 2.3
- On 4 November 2022, the Minister of Finance gazetted the new Preferential Procurement Regulations of 2022 (PPR's, 22) under the Preferential Procurement Policy Framework Act, 2000 (PPPFA) with effect from 16 January 2023.

The purpose of the 2022 Regulations is therefore to comply with Section 217 of the Constitution on procurement of goods and services by organs of state, the PPPFA of 2000 and the Constitutional Court judgement of 16 February 2022. Following the promulgation of the PPR's,22, municipalities are therefore required to implement its own Preferential Procurement Policy in terms of Section 2(1) of the PPPFA.

**FINANCIAL IMPLICATIONS**

None.



**LEGAL REQUIREMENTS**

1. Local government: Municipal Supply Chain Management Act, 2003
2. Municipal Supply Chain Management Regulations, 2005
3. PPPFA Circular 1 of 2021
4. Preferential Procurement Policy Framework Act (5/2000): Preferential Procurement Regulations, 2022

**MANAGEMENT RECOMMENDATION**

That Council considers the approval of the abovementioned amended Preferential Procurement Policy (SCM), effective from the approval date.

**RESOLUTION 14/2023**

That Council approves the amended Preferential Procurement Policy (SCM), effective from the approval date.

5.14 **MOONTLIKE HERSIENING: GOEDGEKEURDE PLAKKAAT DEPOSITO TARIEF****DOEL VAN VERSLAG**

Om die goedgekeurde plakkaat deposito tarief aan die Raad voor te hou vir maandelikse hersiening, na aanleiding van die onderskeie politieke partye se versoek tydens die "Party Liaison Committee" vergadering op 10 Januarie 2023 insake die voorbereiding gesprek vir die tussen-verkiezing wat moet plaasvind in Wyk 5, Struisbaai.

**Die goedgekeurde tarief vir plakkaat deposito's in terme van Bylaag B - Diverse Tariewe (Paragraaf 5.6) bepaal as volg:**

<b><u>Plakkaatdeposito's:</u></b>		{Minimum
- per plakkaat (nie-politieke doeleindes)	20.00	R300}
		{Minimum
- per plakkaat (politieke doeleindes & verkiesings)	20.00	R600}
Die bedrag betaal minus R150 word as deposito beskou		
<i>(Deposito word gedeeltelik of geheel verbeur verklaar indien die aansoeker(s) nie ten volle voldoen aan die voorwaardes vir die aanbring van plakkate nie)</i>		
<i>Eiendomsagente</i>		
<i>Deposito betaalbaar om borde te vertoon per dorp</i>	390.00	
<i>Onwettige borde verwydering per geval</i>	125.00	

Die versoek vanaf die "Party Liaison Committee" is om die bepaalde tariewe te vergelyk met die omliggende munisipaliteite in die Overberg Distrik na aanleiding van die mening dat die vasgestelde tariewe deur Kaap Agulhas Munisipaliteit te hoog mag wees in vergelyke met die toepassing van die foutiewe tarief gedurende die 2021 se algemene munisipale verkiesing vir die oprig van plakkate.

**Slegs twee van die drie munisipaliteit in die Overberg Distrik het gereageer en die toepas van hul plakkaatdeposito tariewe is as volg, naamlik:**

**Munisipaliteit 1:**

Moet aansoek doen op 'n voorgeskrewe aansoekvorm vir die oprig van plakkate onderhewig aan bepaalde voorwaardes waarna die aansoek by wyse van 'n skriftelike goedkeuring gekommunikeer word deur die munisipaliteit.

Geen fooi is betaalbaar vir die oprigting van 'n plakkaat vir politieke verkiesing / tussen-verkiezing / IEC doeleindes, maar 'n terugbetaalbare deposito van R5 193,65 is betaalbaar onderhewig die nakoming van vasgestelde voorwaardes soos uiteengesit.

Indien die voorwaardes ten volle nagekom word is die deposito bedrag terugbetaalbaar, maar indien nie nagekom word nie is 'n fooi van R98,00 per plakkaat wat verwyder moet word betaalbaar.

**Munisipaliteit 2:**

Moet aansoek doen vir die vertoon van plakkaat op 'n voorgeskrewe aansoekvorm en die oprigting van plakkaat is onderhewig aan die skriftelike goedkeuring deur die munisipaliteit, in terme van toepaslike voorwaardes ter nakoming. 'n Terugbetaalbare deposito van R480,00 is betaalbaar, asook 'n plakkaat deposito fooi van R15,00 (BTW ing.) per plakkaat. Indien die plakkaatvoorwaardes nie nagekom word, is 'n boete ten bedrae van R86,96 per plakkaat betaalbaar.

Behalwe vir munisipaliteit 1 waar geen fooie per plakkaat versoek word nie anders slegs die vasgestelde deposito bedrag van toepassing, blyk die tarief toepassing van munisipaliteit 2 baie in lyn te wees met KAM se toepassing van die plakkaat deposito tariewe. Verder is dit ook belangrik om kennis te neem dat die goedgekeurde Adverstensiebeleid van Kaap Agulhas munisipaliteit verwys na die toepassing van 'n vasgestelde tarief per plakkaat met 'n maksimum van 300 plakkaat per wyk en politieke party. Behalwe vir die moontlike verlies aan inkomste bly dit egter die Raad se prerogatief om die tarief te heroorweeg vir toepassing inaggenome die doel en daargestelling van die genoemde tarief vir plakkaat deposito's.

The Munisipale Bestuurder, in konsultasie met die Direkteur: Finansies, beveel as volg aan:

**BESTUURSAANBEVELING**

Dat die Raad kennis neem van die vasgestelde tarief vir plakkaat deposito's en/of heroorweeg vir aanpassing, gebaseer op die versoek vanaf die onderskeie politieke partye betrokke by die voorgenome tussentydse verkiesing in Wyk 5, Struisbaai.

**BESLUIT 15/2023**

- (i) Dat die Raad kennis neem van die vasgestelde tarief vir plakkaat deposito's, gebaseer op die versoek vanaf die onderskeie politieke partye betrokke by die voorgenome tussentydse verkiesing in Wyk 5, Struisbaai.
- (ii) Dat 'n tarief van R600,00 van toepassing sal wees (wat 100 plakkaat insluit) en daarna R20,00 per plakkaat.
- (iii) Dat die tydperk van die verwydering van plakkaat na die verkiesing na 14 dae verleng word.
- (iv) Dat die beleid ten opsigte van die aanbring van plakkaat weer aan die Raad voorgelê word vir oorweging.

5.15 **AUDITOR-GENERAL AUDIT FINDINGS 2021/22: AUDIT ACTION PLAN (OPCAR)**

**PURPOSE OF REPORT**

To submit the proposed OPCAR on the Auditor-General's (AG) findings for the 2021/22 financial year to Council for consideration and approval.

**BACKGROUND**

The AG's audit on the municipality's records and activities for the 2021/22 financial year highlighted some areas for improvement in internal controls. Although these findings are not items that affected the audit report and opinion, it was included in the AG's management report and needs to be addressed and improved to avoid future repeat findings. These findings are taken up in the OPCAR (attached on **page 181 to 186**) for the monitoring of the implementation of the necessary corrective measures. This plan includes a short description of the finding, the AG's view of the root cause, the proposed corrective measures, and due dates for such actions.

As some of the corrective measures were implemented during the audit, these actions and outcomes are also included in the plan and indicated as finalized where applicable.

The progress with the implementation of the action plan will be submitted to Council at the scheduled Council meetings and is also submitted to the Provincial Treasury for information and monitoring if and when requested. The progress report will also be submitted to the Audit Committee on a quarterly basis as part of their oversight role.

**STAFF IMPLICATIONS**

None.

**FINANCIAL IMPLICATIONS**

None.

**LEGAL IMPLICATIONS**

None.

**MANAGEMENT RECOMMENDATION**

That Council considers and approves the proposed OPCAR for the 2021/22 financial year.

**RESOLUTION 16/2023**

That Council approves the proposed OPCAR for the 2021/22 financial year.

6. **DRINGENDE SAKE DEUR DIE MUNISIPALE BESTUURDER**

Geen.

7. **OORWEGING VAN KENNISGEWING VAN MOSIES**

Die onderstaande mosie van vrae was deur die Diensleweringsparty en ANC ingedien by die kantoor van die Speaker:

- (i) Die mosie van wantroue teen mnr Paul Swart, Uitvoerende Burgemeester van KAM.
- (ii) Die ondersoek deur die "Commercial Crime Unit".

Die Speaker meld dat die finale verslag binne die volgende twee weke aan hom oorhandig sal word. Die Munisipale Bestuurder gee ook terugvoer oor die aangeleentheid wat ondersoek word deur die Provinsiale misdaad eenheid.

8. **OORWEGING VAN KENNISGEWING VAN VRAE**

Geen.

9. **SLUITING**

Die vergadering verdaag om 12h00.

*Hierna gaan die Raad "In Komitee" om sake van vertroulike aard te bespreek.*

BEKRAGTIG op hierdie

dag van

**2023**

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**SPEAKER**

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**DATUM**