



SUPPLEMENTARY AGENDA

ORDINARY COUNCIL MEETING

MONDAY, 5 AUGUST 2024

**at
9:00**

ITEM NO	SUBJECT	PAGE
13.	NEW ITEMS SUBMITTED BY THE ACTING MUNICIPAL MANAGER	
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C13/08/24	SKILLS DEVELOPMENT CENTRE – SOUTH CAPE COLLEGE (A PORTION OF ERF 3801, KNYSNA)
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REPORT FROM THE ACTING MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To request the Municipal Council to consider releasing more properties to be used by South Cape College and extending the lease terms.

BACKGROUND

The Municipal Council on 5 December 2023 *inter alia* resolved the following:

“C10/11/23 REQUEST TO ESTABLISH A SKILLS DEVELOPMENT CENTRE

UNANIMOUSLY RECOMMENDED

- [a] *That Council notes the request made by South Cape College to utilise municipal property for establishment of satellite campus in Knysna;*
- [b] *That Council supports and approves the establishment of the South Cape College Satellite Campus in Knysna;*
- [c] *That Council approves the allocation of Erven 568 and 571 to the South Cape College Satellite Campus in Knysna either through a donation or through a lease agreement for 9 years and 11 months with an option to renew; and*
- [d] *That other properties be identified for South Cape College.*

File Number : 7/2/1/2

Execution : Municipal Manager

Director : Corporate Services”

The South Cape College needs more space to effectively run a successful College in Knysna. During the above-mentioned meeting various possibilities was considered for the college. A portion of Erf 3801, Knysna was identified as a possible solution. Erf 3801, Knysna is situated next to the N2 and is part of our Parks Department in the Industrial area (**see Annexure A**).

The South Cape College have also requested that the Municipality consider the lease terms as same should be longer for example 99 years.

DISCUSSION

The South Cape College has confirmed its readiness to resume its planning as well as marketing of the satellite college in Knysna as soon as the Municipality approves the request to utilise the three properties as a satellite college in preparation for the 2024 intake. On the engagements with the South Cape College, it was recommended that the College should consider opening its

doors to learners in June 2024 to allow time for property acquisition as well as the modification of the identified properties to suite the intended use.

The Municipal Council should also consider rescinding resolution C10/11/23 resolution [c] "That Council approves the allocation of Erven 568 and 571 to the South Cape College Satellite Campus in Knysna either through a donation or through a lease agreement for 9 years and 11 months with an option to renew."

The Municipal Council should consider extending the lease term to 99 years. It should be noted that should Council consider approving a 99-year lease a condition should also be included stating that should South Cape College cease to exist, that the lease automatically terminates.

CURRENT ZONING

As per the Knysna Municipality zoning scheme by-law (2020) Erf 3801, Knysna is zoned as Open Space Zone I.

CURRENT USAGE OF PROPERTY (VIALE OR NON-VIALE MUNICIPAL LAND)

In terms of the Knysna Management of Immovable Property Policy Erf 3801, Knysna is viable property.

CURRENT VALUE OF THE PROPERTY AS PER GENERAL VALUATION ROLL

Erf 3801, Knysna is valued at R 5 185 000 on the General Valuation Roll.

INTENDED FUTURE USAGE OF PROPERTY

The Municipality has no other future intended use for this portion of Erf 3801, Knysna other than the current use.

FINANCIAL IMPLICATIONS

The project does not have direct financial implications to the Municipality, as all the necessary structural modifications will be funded by the South Cape College.

RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act, 2003

Local Government: Municipal Finance Management Act (56/2003): Municipal Asset Transfer Regulations

Management of Immovable Property Policy

Knysna Municipality Supply Chain Management Policy

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

- [a] That the report and annexures regarding the request to the Municipal Council to consider releasing more properties to be used by South Cape College, be noted;
- [b] That the Municipal Council rescind the Council resolution dated 5 December 2023:

"C10/11/23 REQUEST TO ESTABLISH A SKILLS DEVELOPMENT CENTRE

UNANIMOUSLY RECOMMENDED

[a] ;

[b] ;

[c] *That Council approves the allocation of Erven 568 and 571 to the South Cape College Satellite Campus in Knysna either through a donation or through a lease agreement for 9 years and 11 months with an option to renew; and*

[d]

[c] That Council approves the allocation of Erven 568 and 571, Knysna to the South Cape College Satellite campus in Knysna for a long-term lease agreement of 99 years on the following conditions:

- That the rental be R 1,200-00 per annum with no escalation;
- That South Cape College should be responsible to pay all applicable municipal rates and services;
- That dispute resolution mechanisms to settle disputes between the parties be included in the lease agreement;
- That a periodic review be included in the lease agreement of once every three years; and
- That should the South Cape College cease to exist, that the lease be cancelled and the property be handed back to the Knysna Municipality.

[d] That Council approves the allocation of a portion of Erf 3801, Knysna to the South Cape College Satellite Campus in Knysna for a long term lease agreement of 99 years on the following conditions:

- That the rental be R 1,200-00 per month with no escalation;
- That South Cape College should be responsible to pay all applicable municipal rates and services;
- That dispute resolution mechanisms to settle disputes between the parties be included in the lease agreement;
- That a periodic review be included in the lease agreement of once every three years; and
- That should the South Cape College cease to exist, that the lease be cancelled and the property be handed back to the Knysna Municipality.

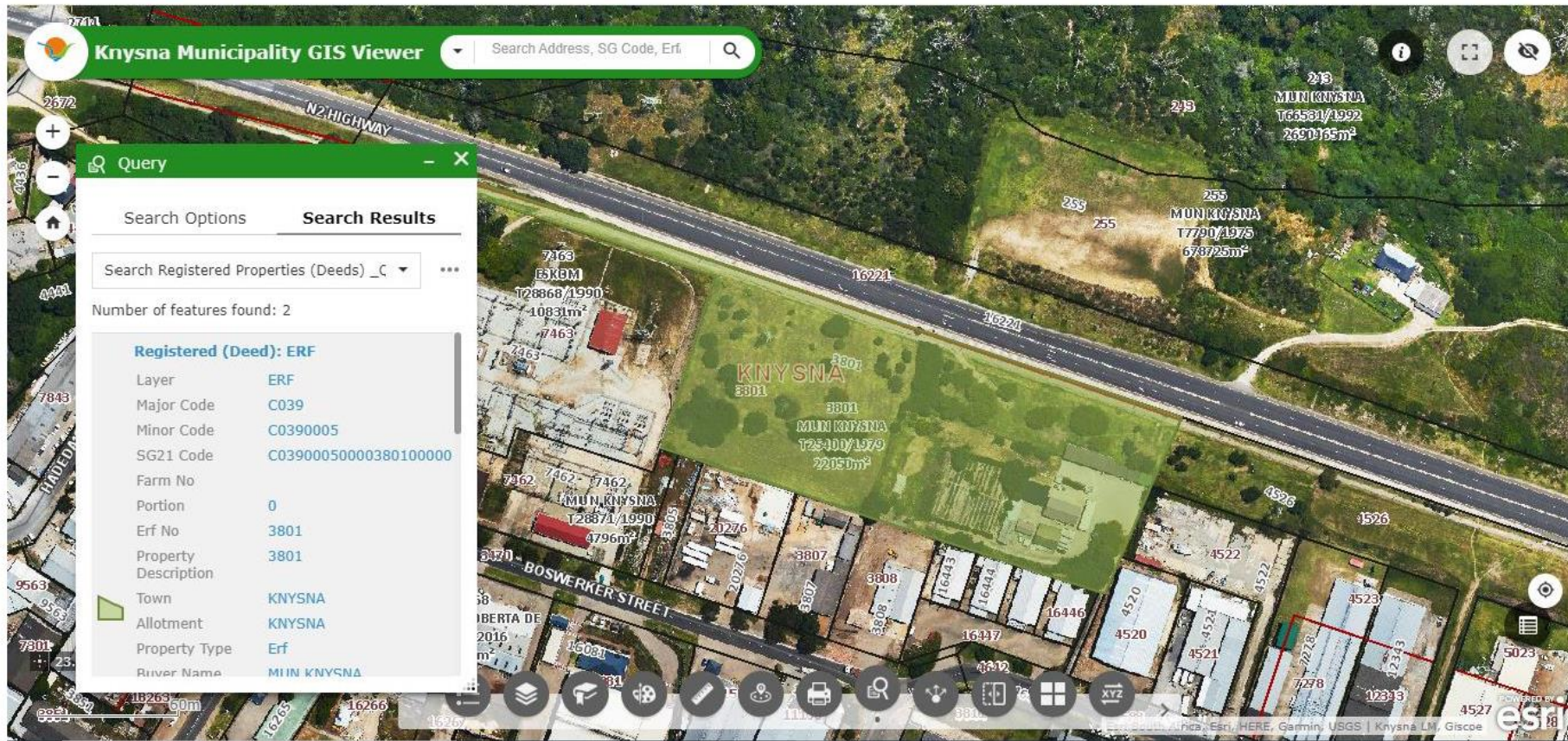
APPENDIX / ADDENDUM

Annexure A – GIS Map Indicating a Portion of Erf 3801, Knysna

File Number: 7/2/1/2

Execution: Acting Municipal Manager
 Acting Director: Corporate Services
 Head: Properties

ERF 3801, KNYSNA



13.14

C14/08/24 REPORT BACK ON APPLICATION FOR LEASE AGREEMENT – FOR A PORTION OF ERF 1316, KNYSNA ABUTTING ERF 3556, KNYSNA
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REPORT FROM THE ACTING DIRECTOR: CORPORATE SERVICES

PURPOSE OF THE REPORT

To request the Municipal Council to consider approving the application from Marike Vreken Town Planners CC on behalf of Owls Head (Pty) Ltd for a lease agreement of a portion of Erf 1316, Knysna abutting Erf 3556, Knysna.

BACKGROUND/DETAILS OF APPLICATION

Marike Vreken Town Planners CC have applied to lease a portion of the remainder of Erf 1316, Knysna measuring 802m² (**see Annexure A**).

This is the area opposite Food Lovers and adjacent to Erf 3402, Knysna, situated along Tide Street. The intention of the application is to do landscaping and beautification of the area. The proposal does not have any impact on the existing municipal services, sight distances or maneuverability of vehicles.

RESOLUTION

The Municipal Council on the 26 March 2024, took the below resolution:

“SF&G06/03/24 REPORT BACK ON APPLICATION FOR LEASE AGREEMENT – FOR A PORTION OF ERF 1316, KNYSNA ABUTTING ERF 3556, KNYSNA

RECOMMENDED BY MAJORITY

- [a] That the report and annexure’s regarding the request for lease agreement on a portion of Erf 1316, Knysna, be noted;*
- [b] That the comments from the Environmental Department be noted;*
- [c] That the applicant acquires the services of an independent environmental practitioner to clarify whether any listed activities will be triggered; and*
- [d] That once the report is received, that a follow up report be submitted in the next Section 80 Committee Meeting.*

File Number: 7/1/2/5”

As per the above-mentioned Municipal Council Resolution, the following was done:

- An independent environmental practitioner’s report has been obtained and states the following;

- *“to the best of the Authors knowledge the proposed turning circle and fencing of Erf 1316 will not trigger any listed activities as per NEMA 2017 Regulations; and*
- *“it is proposed to use grass blocks instead of Asphalt or paving. The grass blocks will assist with storm water infiltration, reduce the risk of embankment erosion and the compaction of soil.”*

CURRENT ZONING

Remainder of Erf 1316, Knysna is currently zoned ‘Transport Zone II’ as per the Knysna Municipality zoning scheme by-law (2020).

CURRENT USAGE OF PROPERTY (VIALE OR NON-VIALE MUNICIPAL LAND)

The subject property is currently being used as open space and is non-viale municipal property.

CURRENT VALUE OF THE PROPERTY AS PER GENERAL VALUATION ROLL

The remainder of Erf 1316, Knysna is valued at R 20 000 on the General Valuation Roll.

INTENDED FUTURE USAGE OF PROPERTY

The Municipality has no future intended use of the property other than the current use.

DISCUSSION

The owner of Erf 3556, Knysna is applying to lease municipal property and offering to beautify the municipal owned property. The proposal leads to urban renewal upgrading of the area and allowing more aesthetically pleasing streetscape along Tide Street. No existing municipal services, sight distances or manoeuvrability of vehicles will be impacted by this proposal.

LEGISLATIVE FRAMEWORK

Section 34 of the Asset Transfer Regulations 2008, deals with Granting of rights to use, control or manage municipal capital assets and reads as follows:

“Granting of rights to use, control or manage municipal capital assets

34. (1) *A municipality may grant a right to use, control or manage a capital asset only after –*

(a) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and

(b) The municipal council has approved in principle that the right may be granted.

(2) Subregulation (1) (a) must be complied with only if –

(a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and

(b) a long term right is proposed to be granted in respect of the capital asset.

(3) (a) *Only the Municipal council may authorise the public participation process referred to in subregulation (1)(a).*

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating –

(i) the reason for the proposal to grant a long term right to use, control or manage the relevant capital asset;

(ii) any expected benefits to the municipality that may result from the granting of the right;

- (iii) *any expected proceeds to be received by the municipality from the granting of the right; and*
- (iv) *any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.”*

The area identified is not valued more than R10 million. The Asset Transfer Regulations describes “a long term” as “a *period of longer than three years*”. A public participation process regarding the proposed granting of the right is thus required.

The application to lease a portion of the remainder of Erf 1316, Knysna measuring 802m² is being brought before the Municipal Council to make sure the process is consistent with the Supply Chain Management Policy of the Municipality.

“Consideration of proposals to grant rights to use, control or manage municipal capital assets
36. *The municipal council must, when considering in terms of regulation 34(1)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account*

–

- (a) whether the capital asset may be required for the municipality’s own use during the period for which the rights is to be granted;*
- (b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;*
- (c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality’s interests;*
- (d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;*
- (e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;*
- (f) the interests of any affected organ of state, the municipality’s own strategic, legal and economic interests and the interests of the local community; and*
- (g) compliance with legislative regime applicable to the proposed granting of the right.”*

A market related rental must be determined and considered. A Municipal Valuer should be appointed to determine the market related rental for the property in question.

It is not intended that the capital asset in question may be required for the municipality’s own use during the period for which the rights is to be considered.

A market related rental is proposed. The rental of the property will result in a significant economic or financial benefit to the municipality.

All risks will be transferred to the owner of Erf 3556, Knysna being Owls Head (Pty) Ltd.

No comments or representations on the proposed granting of the right requested from the local community and other interested persons.

No written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury.

The application is tabled before the Municipal Council for an in-principle approval that the right be granted and that all relevant legislation be complied with.

“39. Disposal management

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets will be subject to Sections 14 of the Act, and asset transfer regulations;*
- (2) Assets may be disposed of by –*
 - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;*
 - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;*
 - (iii) selling the asset; or*
 - (iv) destroying the asset*
- (3) The Accounting Officer must ensure that –*
 - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;*
 - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;*
 - (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;*
 - (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;*
 - (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are reviewed annually;*
 - (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and*
 - (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.”*

The leasing of the property involved should be done at a market related rental.

Section 5 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003): Municipal Asset Transfer Regulations deals with the decision-making process for municipalities when alienating Municipal owned property:

“5. (1) A municipality may transfer or dispose of a non-exempted capital asset only after

–

[a] the accounting officer has in terms of regulation 6 conducted a public participation process to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of the Act; and

[b] the municipal council –

- (i) has made the determinations required by section 14(2)(a) and (b); and*
- (ii) has a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.*

(2) Subregulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value capital asset. If the combined value of any capital assets a municipality intends to transfer or dispose of in any financial year exceeds five per cent of the total value its assets, as determined from its latest available audited annual financial statements, subregulation (1)(a) must be complied with in relation to all the capital assets proposed to be transferred or disposed of during that year.”

The Municipal Asset Transfer Regulations define “**high value**” as, “*in relation to a capital asset of a municipality or municipal entity, means that the fair market value of the capital asset exceeds any of the following amounts:*

- (a) R50 million;*

- (b) One per cent of the total value of the capital assets of the municipality or municipal entity, as determined from the latest available audited annual financial statements of the municipality or entity; or

An amount determined by resolution of the council of the municipality or of the parent municipality of the municipal entity which is less than (a) or (b)."

Section 45 of the Asset Transfer Regulations 2008, which deals with Granting of rights to use, control or manage municipal capital assets and reads as follows:

Agreements granting of rights to use, control or manage municipal capital assets

45. (1) A municipality or municipal entity may grant a right to use, control or manage a capital asset to a private sector party or organ of state only by way of a written agreement concluded between the municipality or entity and the private sector party or organ of state to whom the right is granted.

- (2) An agreement referred to in subregulation (1) must –
- (a) set out the terms and conditions on which the right is granted, including, as a minimum
- (i) a sufficient description of the capital asset in respect of which the right is granted, in order to identify the asset;
 - (ii) particulars of any subsidiary assets that are to be made available with the capital asset;
 - (iii) the period for which the right is granted;
 - (iv) the amount of compensation payable to the municipality or municipal entity for granting of the right, and the terms and conditions of payment;
 - (v) requirements for the private sector party or organ of state to whom the right is granted to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of granting of the right;
 - (vi) where the asset is to be used by the municipality or municipal entity and the public sector party or organ of state to whom the right is granted, the basis of how the asset is to be shared as well as how the costs and benefits of the shared asset will be apportioned between the parties;
 - (vii) the extent to which the public sector party or organ state to whom the right is granted will be required to make improvements or enhancements to the asset, and the terms and conditions regulating such improvements or enhancements;
 - (viii) a statement to the effect that the risk and accountability for the asset is transferred to the public sector party or organ of state to whom the right is granted;
 - (ix) the effective date from which the risk and accountability for the asset is transferred; and
 - (x) a clause disallowing the private sector party or organ of state to whom the right is granted from ceding or subcontracting the right to another person; and
- (b) be signed on behalf of the municipality or municipal entity and the private sector party or organ of state to whom the right is granted.

(3) If a long term right to a capital asset with a value in excess of R10 million is granted following the selection of a service provider for the performance of a municipal service referred to in regulation 41(2)(a) or for the performance of a commercial service referred to in regulation 41(2)(b), the agreement referred to in subregulation (1) –

- (a) must contain provision for –
- (i) contract termination in the case of non- or underperformance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties; and
 - (iii) a periodic review of the agreement once every three years, in the case of an agreement for longer than three years; and
- (a) may be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

- (h) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;*
- (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;*
- (j) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are reviewed annually;*
- (k) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and*
- (l) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment."*

The rental income of market related rental to be received by the Municipality will result in a financial benefit to the municipality.

The owner of Erf 3556, Knysna, Owls Head (Pty) Ltd be responsible for all other costs relating to the leasing of a portion of 1316, Knysna.

FINANCIAL IMPLICATIONS

The lettable area is ±802 square meters. The proposal is that a market related rental to be determined by the Municipal Valuer be accepted. The payment of services, if any must also be for the account of the owner of Erf 3556, Knysna.

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

- [a] That the report and annexures regarding the request for lease agreement on a portion of Erf 1316, Knysna, be noted;
- [b] That the report from an Independent Environmental Practitioner be noted;
- [c] That in terms of Section 14(2)(b) of the Local Government: Municipal Finance Management Act, 2003, the Municipal Manager be directed to appoint a Registered Professional Valuer to determine the fair market value of a portion of Erf 1316, Knysna, t at the applicant's expense;
- [d] That the Municipal Manager further be directed to advertise the intended leasing of a portion of Erf 1316, Knysna to the owner of Erf 3556, Knysna; and
- [e] That after the advertising period the matter must be resubmitted to the next section 80 (Finance and Corporate Service Committee).

APPENDIX / ADDENDUM

ANNEXURE A - Marike Vreken Town Planners CC application for a lease agreement

ANNEXURE B - Environmental Report

File Number: 7/1/2/5

Execution: Acting Municipal Manager

Acting Director: Corporate Services



Eco Route
Environmental Consultancy

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Environmental Screening for the proposed Staff Parking and delivery Trucks turning Circle



Date: 28/05/2024

Compiled by: Janet Ebersohn
EAPASA: 2019/1286

EAP Signature: _____

ISSUED BY:

Eco Route

Submitted to:

Owls Head (PTY)LTD

Document Reference:

2024/04/2023 – Environmental Screening Assessment of a portion of the remainder Erf 1316, Knysna

Document Summary:

Environmental screening to ascertain if any Listed activities in NEMA will be applicable to the proposed lease/sell of Erf 1316.

CONDITIONS OF USE OF THE REPORT

The report is the property of **Eco Route Environmental Consultancy**, who may publish it, in whole, provided that:

1. Eco Route Environmental Consultancy are indemnified against any claim for damages that may result from publication.
2. Eco Route Environmental Consultancy accepts no responsibility by the Applicant/Client for failure to follow or comply with the recommended programme, specifications or recommendations contained in this report.
3. Eco Route Environmental Consultancy accepts no responsibility for deviation or non-compliance of any specifications or guidelines provided in the report.
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STATEMENT OF INDEPENDENCE

I, **Janet Ebersohn** of Eco Route Environmental Consultancy, in terms of section 33 of the NEMA, 1998 (Act No. 107 of 1998), as amended, hereby declare that I provide services as an independent Environmental Assessment Practitioner (EAPASA Reg: 2019/1286) and receive remuneration for services rendered for undertaking tasks required in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), and the Environmental Impact Assessment Regulations, 2014 (as amended). I have no financial or other vested interest in the project.

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1. INTRODUCTION

Eco Route Environmental Consultancy has been appointed by Owls Head (PTY) LTD as an Independent Environmental Consultant to:

1. Identify if any listed Activities will be triggered as defined in terms of the Regulations of the National Environmental Management Act, 107 of 1998: Environmental Impact Regulations, 2014 as amended 2017.

2. LOCALITY

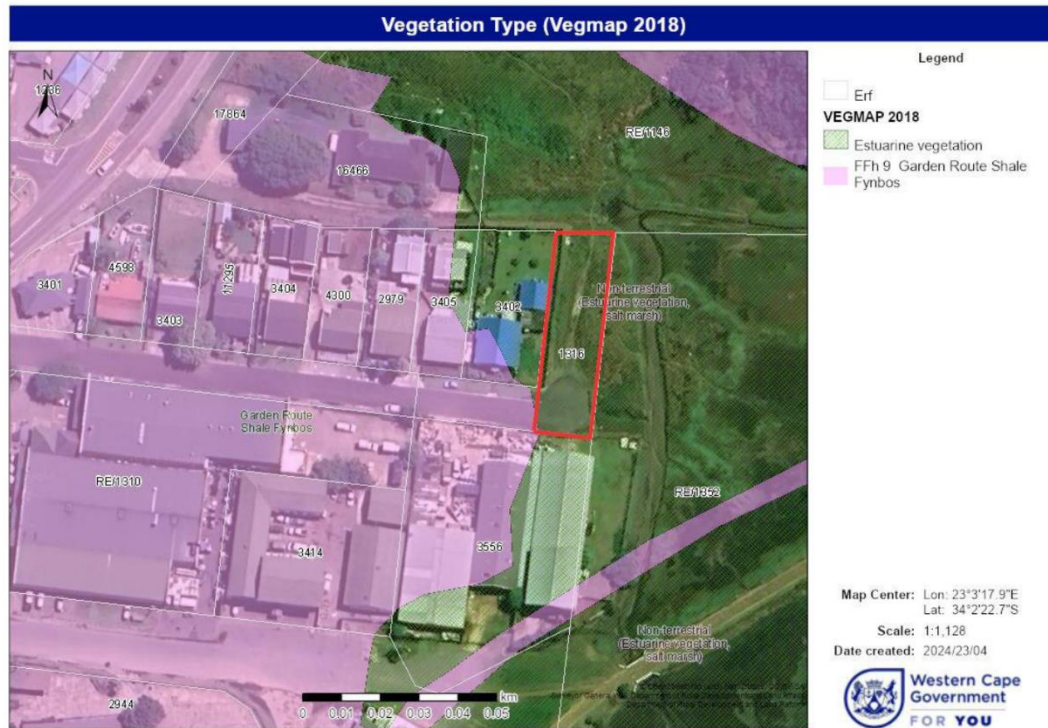
The application area is adjacent to Knysna Erven 3566 which is situated at the eastern end of Tide Street, Knysna.



3. SITE SENSITIVITIES AS PER CAPEFARMMAPPER

CapeFarmMapper is a product of the Western Cape Department of Agriculture. This online mapping tool is designed to assist with spatial information queries and decision making in the fields of agriculture and environmental management.

4.1 VEGETATION TYPE



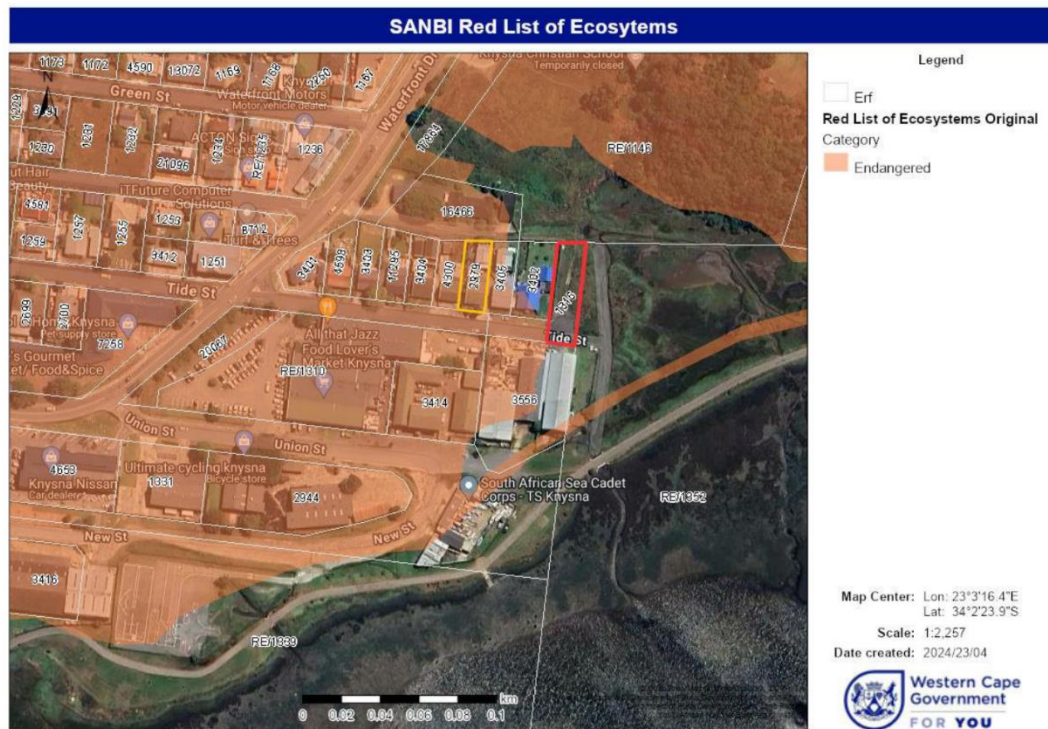
The Vegetation is classed as Non-terrestrial (Estuarine vegetation, salt marsh).

3.2 WETLANDS



The property is in the Estuarine Functional Zone, however as indicated above most of Knysna is located within this zone.

4.3 SANBI RED LIST OF ECOSYSTEMS



The vegetation on the property does not have an Ecological Threat Status.

4.4 PROTECTED AREA



The property does not boarder a Protected Area. SANParks has jurisdiction of protected areas and 50 meters landward of the High-water mark of the Knysna Estuary.

5. Proposal for Tide Street

It is proposed to lease or purchase a portion of the remainder of Knysna Erf 1316 (802m²) from Knysna Municipality to allow for landscaping and beautifying this area, which is the eastern most end of Tide Street.



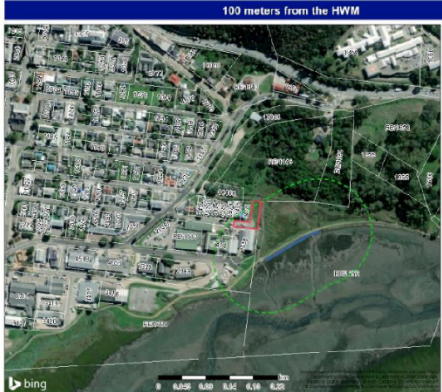
6. Photos

	The area has been disturbed by foot traffic and there is little evidence of indigenous vegetation in the area
	The property borders a salt marsh which is cut off from the Estuary because of a gravel road, however water from the estuary enters the salt marsh through culverts.

7. National Environmental Management Act

In terms of Section 24 and 24D of the National Environmental Management Act (Act 107 of 1998), (NEMA); the National Environmental Management Amended Act (Act 62 of 2008) and the National Environmental Management: Waste Act (Act 59 of 2008) any proposal which triggers a listed activity or activities under Listing Notices 1 and 3 (R 327 & R 324) and / or "Category A" of the Waste Act Listed Activities (i.e. Basic Assessment Report) or Listing Notice 2 (R 325) and/or "Category B" of the Waste Act Listed Activities (i.e. Scoping EIA Report) or Regulations pertaining to an Environmental Management Framework (R 547) as published in the Government Gazette GN No. 33306 of the December 2014 and amended in April 2017 requires that an Environmental Impact Assessment Process be followed in order to secure Environmental Authorisation (EA).

Listing Notice 1	Comments
Activity 12 The development of— (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or (ii) infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs— (a) within a watercourse; (b) in front of a development setback; or (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; — excluding— (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour; (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies; (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies; (dd) where such development occurs within an urban area; (ee) where such development occurs within existing roads, road reserves or railway line reserves; or (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.	This listed activity is NOT triggered as the erf is situated within the urban area

Activity 17 Development— (i) in the sea; (ii) in an estuary; (iii) within the littoral active zone; (iv) in front of a development setback; or (v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater; in respect of— (a) fixed or floating jetties and slipways; (b) tidal pools; (c) embankments; (d) rock revetments or stabilising structures including stabilising walls; or (e) infrastructure or structures with a development footprint of 50 square metres or more — but excluding— (aa) the development of infrastructure and structures within existing ports or harbours that will not increase the development footprint of the port or harbour; (bb) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies; (cc) the development of temporary infrastructure or structures where such structures will be removed within 6 weeks of the commencement of development and where coral or indigenous vegetation will not be cleared; or (dd) where such development occurs within an urban area.	 Erf 1316 is within 100 meters from the High-water mark of the Estuary. This listed Activity is not Applicable as the Erf is in an urban area
Activity 19A The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from— (i) the seashore; (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or (iii) the sea; —	It is proposed to only use grass blocks to prevent compaction of soil and assist with stormwater runoff. The amount of grass blocks used will be below the threshold of 5 cubes. <i>Roughly worked out no more than 204 grass blocks will be permitted if the grass blocks dimensions are:</i> <i>600 x 800mm with a height of 100mm</i> Therefore this listed Activity will Not be triggered.

but excluding where such infilling, depositing , dredging, excavation, removal or moving— (f) will occur behind a development setback; (g) is for maintenance purposes undertaken in accordance with a maintenance management plan; (h) falls within the ambit of activity 21 in this Notice, in which case that activity applies; (i) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.	
Listing Notice 3	Comments
Activity 14 The development of— (i) dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres; or (ii) infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs— (a) within a watercourse; (b) in front of a development setback; or (c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse; excluding the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour. i. Western Cape i. Outside urban areas: (aa) A protected area identified in terms of NEMPAA, excluding conservancies; (bb) National Protected Area Expansion Strategy Focus areas; (cc) World Heritage Sites; (dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority; (ee) Sites or areas listed in terms of an international convention;	Erf 1316 is within 32 meters of a watercourse. This Listed Activity is NOT triggered as Erf 1316 is with the Urban Area.

(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;	
(gg) Core areas in biosphere reserves; or	
(hh) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined.	

8. Conclusion

To the best of the Authors knowledge the proposed turning circle and fencing of Erf 1316 will not trigger any listed activities as per the NEMA 2017 Regulations.

It is proposed to use grass blocks instead of Asphalt or paving. The grass blocks will assist with storm water infiltration, reduce the risk of embankment erosion and the compaction of soil.

13.15

C15/08/24 SAFE SPACES FOR HOMELESS PEOPLE PROGRESS REPORT

REPORT FROM DIRECTOR: COMMUNITY SERVICES

PURPOSE OF THE REPORT

To update Council on the progress in securing a Safe Space for the homeless and to rescind the resolution SC 10.1 (Consideration of Motion of Exigency), for the accommodation facilities for the Homeless People on Erf 1114 and Erf 201, at Special Council Meeting of 25 April 2023. In light of recent directives and pre-directives issued to the Knysna Municipality, including but not limited to the notice of intention to intervene in terms of S139 of the Constitution of South Africa, the need to urgently identify alternative temporary accommodation for the homeless people at the Waste Transfer Station refers.

BACKGROUND

PREVIOUS COUNCIL RESOLUTION:

An item was served at a Special Council Meeting held on the 25th April 2023, where the below resolution was taken:

“10.1 TEMPORARY HOMELESS SHELTER FOR THE AUTUMN/WINTER SEASON

RESOLVED BY MAJORITY

[a] *That Council considers and approve the Accommodation facilities for the Autumn and Winter period for the Homeless people of Greater Knysna; and*

[b] *That a new Tender for a NPO to be finalised before the middle of May 2023.”*

BACKGROUND AND DISCUSSION

During a Special Council Meeting held on the 25th April 2023, a motion of exigency was tabled by the Community Services Portfolio Councilor on the establishment of the temporary homeless shelter and was subsequently approved as above.

Reasons why Council should rescind the decision for Erven 1114 (Heritage House, Clyde Street, Knysna) and 201 (Annex Town Hall, Knysna):

A) Heritage House, Erf 1114 (Clyde Street 3, Knysna):

- Zoning Certificate is needed (current zoning does not allow for habitation);
- Approved Building Plans, and an Architect to be appointed during the next financial book year;
- Certificate of Compliance required from qualified Electrician;
- Confirmation that the building is structurally safe to be done by a qualified Structural Engineer;
- Heritage confirmation from our internal Building Inspector responsible for Heritage and Buildings.

B) Erf 210 (Annex to the Town Hall)

The Town hall is located on Erf 210, Knysna which is zoned, "Transport Zone II" and forms part of the road network in Knysna. A subdivision and zoning application is therefore required to accommodate the municipal offices and homeless shelter. This implies that a Town planner, Heritage specialist and Land Surveyor must be appointed for the subdivisions and rezoning of Erf 210, Knysna.

- **Zoning Correction at Erf 210 needs to be actioned as follows:**
 - (i) *A covering letter detailing the arguments in support of the zoning correction including consideration of the provisions of Section 34 (4) of the Western Cape: Land Use Planning Act, 2014 (Act No.3 of 2014);*
 - (ii) *Copy of the title deed of the subject land portion. (Currently No Title Deed available);*
 - (iii) *Copies of all approved building plan of applicable buildings on the property.*
- The purpose of a zoning correction is to argue that the zoning currently assigned is incorrect and that a new zoning to the land portion of portions of such land must be assigned. Therefore, the covering letter must include a recommendation/suggestion of the correct zoning and reasons as to why that is appropriate.
- The subject land portion (Erf 210) covers the entire half of the town hall premises and therefore, clarity is required regarding the zoning correction which should only apply to the approved building on the property.

The following discrepancies to the undercover building (Erf 210) has been identified by Department of Social Development:

Characteristics of the Building: This building cannot be classified as a "building" it is more an informal structure and is not suitable for human occupancy as outlined in the Shelter Norms and Standards of Department of Social Development.

- Two manholes on the surface of the Undercover parking area;
Removal of the Manholes, registered plumber to be appointed:
- The spaces are inadequate, even with renovations the air vents are not suitable and there is a hole from the roof top to the building;
Windows need to be installed, but a Heritage application needs to be registered before any structural renovation can take place. (Appointment of Heritage specialist for any renovation to the building).
- Gutters overflow during rainy days (inside the building);
Modified Gutters need to be installed to avoid spillage of water in the sleeping area. The gutter needs to be wider than a normal gutter.
- Single access, 1 main gate, another exit door must be in place; not suitable in terms of health and safety (evacuation plan);
The Main gate needs to be closed off with shutter ply board and additional exit door needs to be installed.
- Inadequate space for the NPO (Non-profit organization) staff, they need to have their own secured space, separate toilets;
Do not have sufficient toilets at the site (6 toilets currently on the site).
- The kitchen space: What type of cooking method will be used gas or electrical. Gas needs to be in a secured space, outside of the building.
At this stage cooking method undetermined
- Inadequate shower traps.

Appointment of a registered plumber to install shower traps.

Additional cost will be incurred due to all the above renovations. Cost estimation needs to be determined and time frames as Erf 210 is more complicated especially the zoning correction, in terms of the Town Planning and Land Surveyor conditions. This process can be lengthy, taking up to 1 year to complete, perhaps longer. The homeless shelter is seen as an urgent matter for the Town as the winter season is approaching.

C) Council resolved on the 28th March 2024 during a Community Service Committee Meeting, Collab no:10/03/24:

- That Council takes note of the findings of the on-site assessment visit by Department of Social Development.
- That an Inter-Departmental Steering Committee (Town Planning/Land Use Management Department/Fire Department) will be establish to fast track and guide the user department in all legislative requirements.
- To appoint a Town Planner and Land Surveyor for Erf 210 and for Erf 1114 to appoint an Architect and a Heritage Specialist to assist in all required legislation.
- That Council note the funding requirements to appoint consultant services is estimated at R200 000 for inclusion in the 2024/25 budget.

Permanent Homeless Shelter

Knysna Municipality was approached by the Greater Knysna Business Chamber to support this section in establishing a permanent Homeless Shelter as soon as possible. The GKBC submitted a proposal on the land between Epilepsy Knysna and the Knysna Prison (See attach GIS Map, Erf 211 and 17843). The structures will be modular units that can easily be removed. These premises will be utilised for a permanent homeless shelter.



There are basic services on the existing erven, also concrete slabs where mobile units can be placed.

Old Vehicle Testing Station (c/o Vigilance Drive and Industria Road) Erf 1390

The Greater Knysna Business Chamber also proposed the Old Vehicle Testing Centre, Corner of Vigilance and Industrial Road, as a temporarily homeless shelter, while plans for the permanent homeless shelter are being processed. This site has basic services, electricity and includes 2 outside toilets and 1 inside toilet with a small kitchen. The ablution facilities are currently broken and need to be fixed, by a registered plumber. The old testing building will be revamped into sleeping quarters and the testing pit in the middle of the floor will be covered with a temporary wood floor to create a flat surface conducive to habitation. The site will be fenced off and entry for the homeless people will be from vigilance drive via a footpath to be cleared of encroached vegetation. The main entrance for NPO staff and for deliveries will be the western

side via Industria Road. The wheelie bins will be moved away from the main entrance to the building to allow access, the inside of the building will be partitioned to create a sense of privacy separating males from females. The Solid Waste Department, Community Services will distribute the bins to households that require them.

The Business Chamber has indicated that they will repair and complete the fencing around the structure and install the necessary partitions within the building, according to their own specifications and at their own cost.

It is not the Municipality's mandate to manage facilities but rather the Western Cape Department of Social Development who have a long-term vision and commitment to partner with Non-Governmental, Non-Profit Organisations and related institutions to care for people who find themselves on the Streets. The Department of Social Development does not directly operate Shelters, but rather enters into agreement with NGO's to provide these services through Transfer Payment Agreements and through lease agreements in terms of the property. This section does not have the necessary manpower to manage the homeless shelter, it is therefore imperative that the most suitable, knowledgeable and effective organization is urgently appointed. Once this is achieved the Department of Social Development will be informed of their appointment and invited to ensure the site complies with the Norms and Standard for Shelter for Homeless Adults.

Property Description	Location	Characteristics	Estimated Value
Traffic Vehicle Testing Station (VTS) - Ownership: Knysna Municipality	- Erf 1390 situated along c/o Vigilance Drive and Industria Road. It was earmarked for the establishment of a one-stop-shop for traffic services in future - Closer to the industrial area and not in close proximity of Knysna CBD	- Unutilized building due to the closure of VTS currently used for storage of building material - Size: 1661.8m²	- R 4m as per municipal valuation roll - Zoning: Utility / Split zone

Inputs from Town Planning Section:

- The subject property has a split zoning of "Utility Zone" and "Open Space Zone I" with the subject area having "Open Space Zone I" which allows for "public open space." The proposal is for a temporary shelter for the homeless while permanent accommodation is being secured elsewhere.*
- Public open space means land recreation and outdoor activities such as a playpark, playground, etc. This means that the homeless shelter is not compliant with the land use rights to the subject land portion and in accordance with Section 15(2) of the Knysna Municipality By-law on Spatial Planning and Land Use Management (2021) an application must be made to allow the intended use.*
- At the site meeting of the 20th May 2024, we discussed whether the application requirement can be waived seeing that the homeless shelter is only temporary for a short period of time.*

4. ***Section 64(1)(b) of the Planning By-law (and subject to Section 55 of the Spatial Planning and Land Use Management Act and Section 50 of the Western Cape Land Use Planning Act) allows the Municipality to authorise that a development may depart from the provisions of the Planning By-law in the event of an “emergency situation.”***
5. ***The Planning By-law defines an emergency as a “situation that arises from flood, strong wind, severe rainstorm, fire, earthquake or industrial accident...that requires the relocation of human settlements or people.”***
6. ***Consequently, it may be possible to consider the exemptions as contemplated in the aforementioned legislation in order to waive the requirements of the Planning By-law; however, it should be considered an emergency situation (by Council or Province or National) and permissions may need to be obtained from the Provincial Minister and/or National Minister with such exemption or waiver published in the Gazette.***

Point. 4,5 and 6 in this case is imperative to implement due to recent directives and intervention by the Department of Environmental Affairs and Development Planning and the intention to intervene in terms of Section 139 (1) (a) of the Constitution of the Republic of South Africa, 1996.

FINANCIAL IMPLICATIONS

Appointment of a Service Provide to manage the Homeless Shelter at a cost of R300,000-00 for the 2024/2025 budget.

The project will jointly be funded by the Municipality and the GKBC, as all the necessary structural modification will be funded by the Greater Knysna Business Chamber.

LEGISLATIVE IMPLICATION

The user department to enter into a Memorandum of Understanding with the Greater Knysna Business Chamber in providing the structures and the renovation of the Old Testing Station.

RELEVANT LEGISLATION

- Land Use Planning Act, 2014 (Act. 3 of 2014)
- National Building Regulations and Building Standards Act, No. 103 of 1977.
- Municipal Finance Management Act, 2003 (Act 56 of 2003)
- Knysna Municipality By-law on Spatial Planning and Land Use Management Act (2021)
- Department of Social Development, Norms and Standard for Shelter for Homeless Adults (Final Draft September 2013)
- Constitution of the Republic of South Africa, 1996
- Directives: Knysna Waste Transfer Station: 14/1/1/E3/7/2/3/L1349/23
- The National Environmental Management Act, 1998

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

- [a] That Council rescind the resolution SC.10.1 and C10/03/24 for the accommodation facilities for the Homeless People on Erf 1114 and Erf 201, during a Special Council Meeting held on the 25th April 2023;
- [b] That Council approves the allocation of Erven 211 and 17843 for the permanent homeless shelter;

- [c] That the portion of Erf 1390, Knysna on which the dwelling is situated be provisionally earmarked for the temporary homeless shelter;
- [d] That the intention to utilize the property as mention in [b] and [c] above, be advertised for public comment;
- [e] That Council take note of Greater Knysna Business Chamber that want to support the Municipality to establish a shelter;
- [f] That the User Department enter into a memorandum of understanding with the Greater Knysna Business Chamber in terms of the land and the structures;
- [g] That Council waive the Town Planning regulations as stipulated in Section 64 (1) (b) of the Planning By-law (and subject to Section 55 of the Spatial Planning and Land Use Management Act and Section 50 of the Western Cape Land Use Planning Act); and
- [h] That Council allocates an amount of R300,000-00 on the 2024/2025 budget for the appointment of a Non-Profit Organisation to manage the Homeless Shelter.

APPENDIX/ADDENDUM

- Proposal of the Greater Knysna Business Chamber (GKBC)
- GIS Map, Erven 211, 17843 and Erf 1390

File Number: 9/1/2/5

Execution: Acting Director: Community Services



info@gkbc.co.za

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+27 (0)68 196 6688

Registration Number – 2000/015490/08

Executive Mayor Knysna

Cllr Aubrey Tsengwa

atsengwa@knysna.gov.za

Executive Deputy Mayor

Cllr Alberto Marbi

amarbi@knysna.gov.za

Mr. Ombali Sebola

Municipal Manager

Knysna Municipality

mm@knysna.gov.za

To the Honourable Members of the Knysna Municipality

SUPPORT NOTICE

**URGENT SUPPORT OFFERED TO KLM TO RELOCATE THE HOMELESS AS PART OF WASTE
CLEAN UP**

Recent directives and intervention by the Department of Environmental Affairs and Development Planning by Leigh Kelly Directorate: Environmental Law Enforcement and media releases by the DA Constituency Head, Knysna, we as the Business Chamber offers our help under Section 77 Section 78 of the MFA.

By interpretation and description: Section 78 of the MSA provides that when a municipality undertakes a MSA section 77 review of its delivery mechanisms, it must first assess the provision of that activity through an internal mechanism, after which it may decide to explore the delivery of that activity by an external mechanism. Above clearly failed and the house is literally on fire.

Hence the Directives that followed:

Section 77 & 78 regulations can be applied on:

- *water supply,*
- *sewage collection and disposal,*
- *refuse removal, and accompanies the vagrants occupying the waste transfer station*
- *electricity and gas supply,*
- *municipal health services,*
- *municipal roads and storm water drainage,*
- *street lighting, and*
- *municipal parks and recreation.*

To achieve a successful Section 77 & 78 implementation is primarily a short-term plan and is hereby submitted to relocate the vagrants and removal of the informal dwellings/structures from the WTS towards a permanent Homeless Shelter to be Constructed. The temporary Homeless Shelter will move the current vagrants towards the Knysna Business hub and for a town that relies on tourism this cannot be tolerated. Objections to the current site has been received by the KLM from the community and could lead to legal action should this site be used. Legal action will could drag the implementation out for months, and GKBCV propose a more suitable site.

Full council approval will be required as we as the GKBCV offers support under Section 77 & 78 regulations to be applied on the Waste Transfer Station and the relocation of the vagrants and removal of the informal dwellings/structures from the WTS will include appropriate land, belonging to KLM will be given to the permanent Homeless Shelter to be constructed.

SHORT TERM ACTIONS OF THIS SUPPORT NOTICE (Annexure A) :

The support notice by the GKBC is offering the current support to Knysna for immediate effect by assisting in:

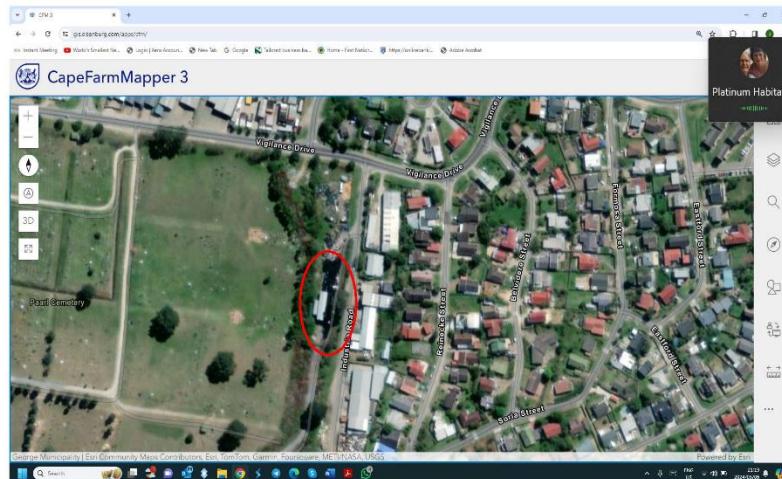
1. Relocation of the homeless and removal of the informal dwellings/structures from the WTS will include appropriate land, belonging to KLM will be given to the permanent Homeless Shelter to be constructed.
2. Identifying KLM owned land for the Construction of the permanent Homeless Shelter
3. Construction of the permanent Homeless Shelter.

- Within Immediate effect the GKBF and Committee structures such as the CPF Spatial framework- and Property- Development can identify the following appropriate land where the homeless can be hosted. Not only sheltered.
- With the help of local Business construct facilities on above identified land to host the homeless on less informal but permanent dwellings and structures.
- With the support of the NPO / NGO and Churches subcommittee the said homeless can be facilitated to support with the needed documents.
- With the support of the Knysna Education and skills Hub (KESH) committee and its Strategic partner the GRDM SKILLS MECCA the homeless can once again be skilled and motivated to once again support society.

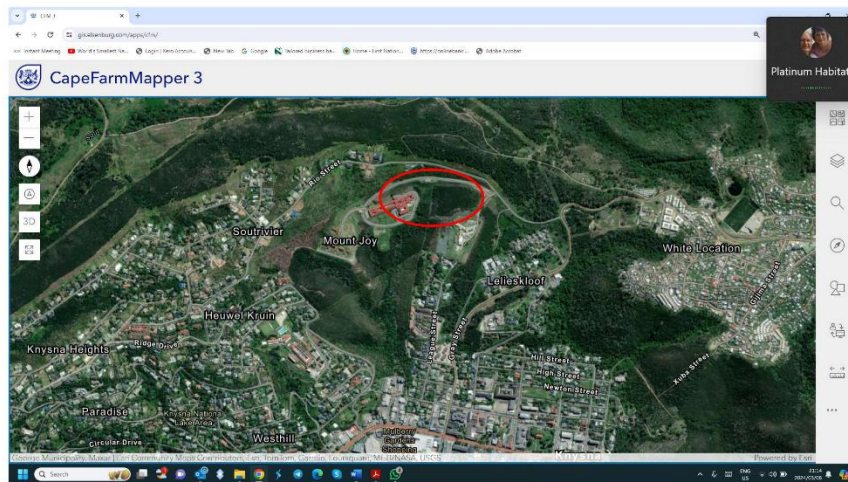
ORDINARY MUNICIPAL COUNCIL MEETING
SUPPLEMENTARY AGENDA
5 AUGUST 2024

The identified land that belongs to the KLM are:

1. Old Test Center Corner Vigilant drive and Industrial Drive



2. Property between Knysna Jail and Knysna Epileptic centrum



We propose that option 1, would be the most suitable site for immediate implementation, as the site has current municipal infrastructure in place and an existing concrete slab where units can be placed on.

For this the GKBF, can assist is establishing the homeless shelter by erecting modular units like classroom structures.



These units can be moved to any long-term permanent shelter site, as in option 2 above, should the current proposed site not be the long-term solution for a permanent shelter.

Looking forward in working with the KLM to in establishing the homeless shelter in a suitable location.

Kind regards,



Jan van der Westhuizen

Chairperson of the Greater Knysna Business Chamber

0834686750 - Jan@waste2energy.co.za



Charmaine Tomè

Chairperson of the Knysna Homeless Committee

0824662252 – naomiministries@live.com

Signed at _____ on this _____ day of _____ 2024.

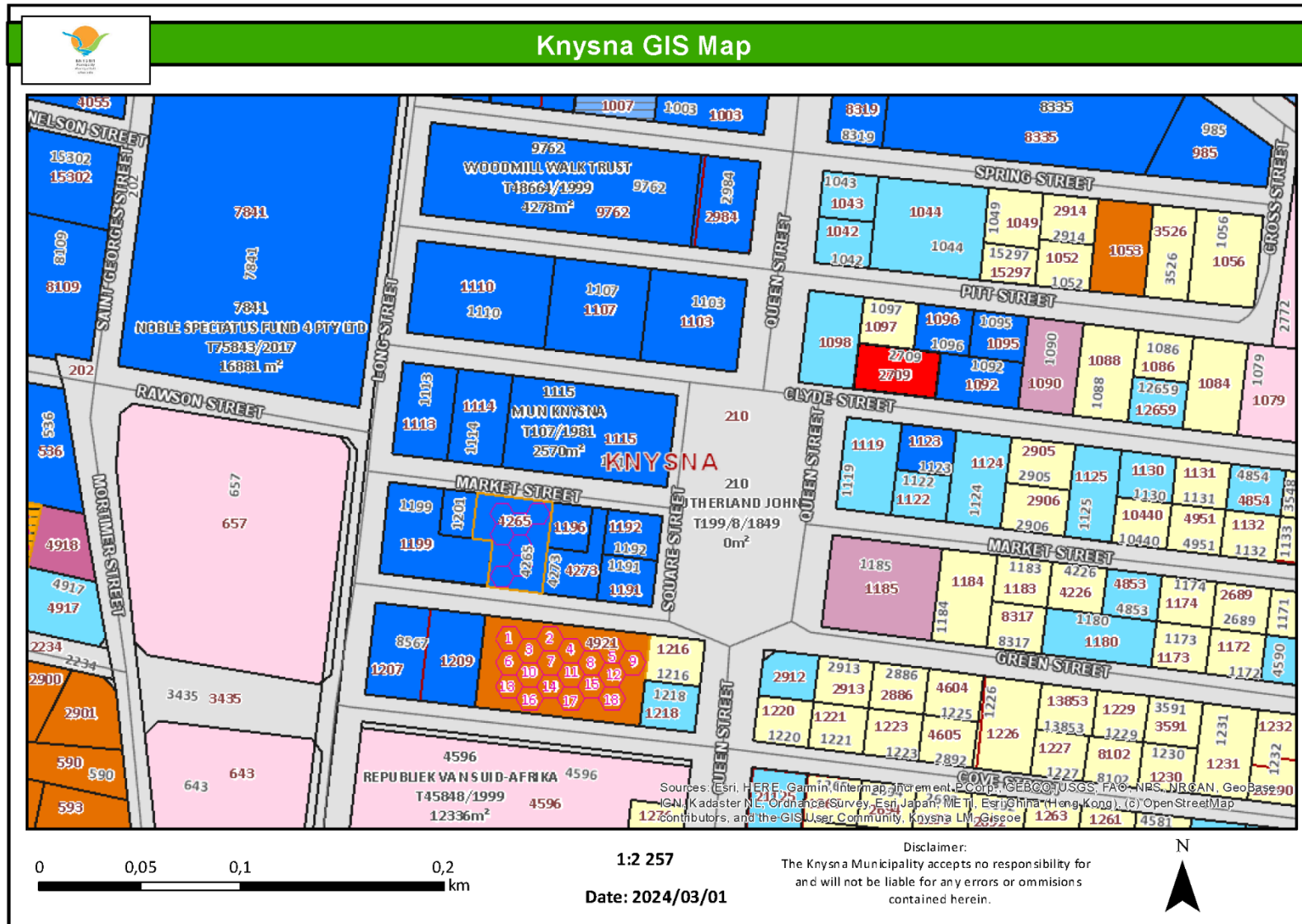
Mr. Ombali Sebola
Municipal Manager Knysna

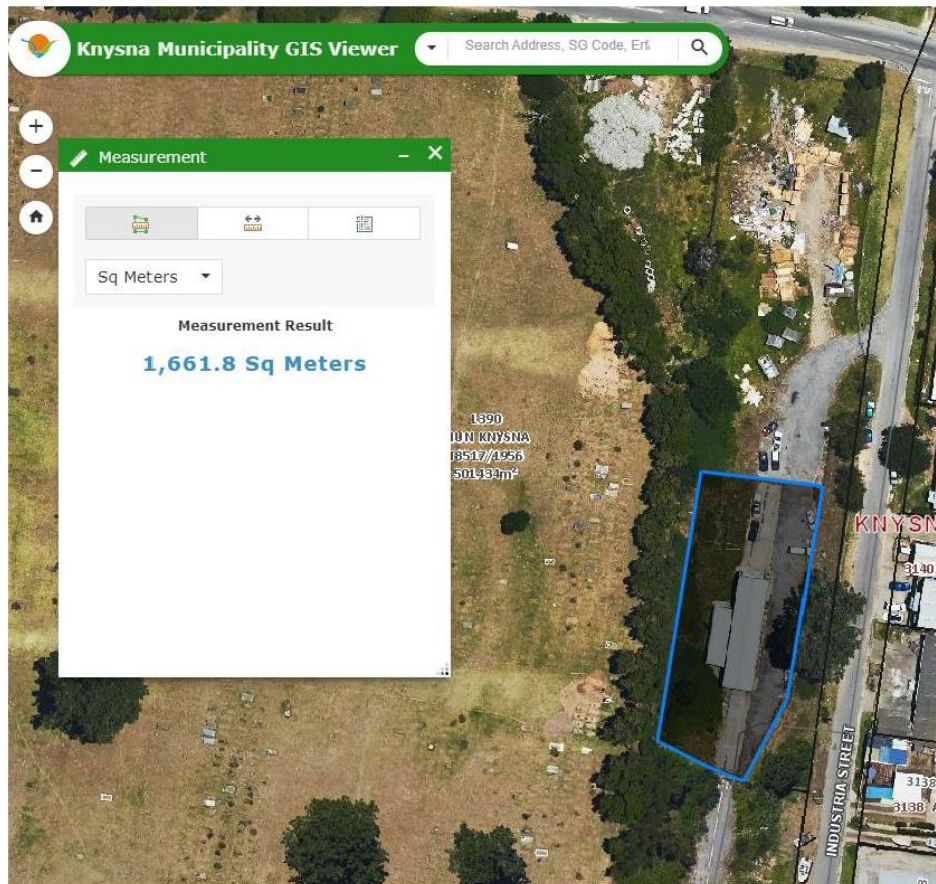
Mr. Nonhlanhla Mndebeta
Director Properties Knysna

ANNEXURE A
Shelter Project Timeline

- 1. Phase One: 25 March 2024**
 - a) Inspection of Premises with KLM present
 - b) Sign off from KLM MM Mr Sebola (mm@knysna.gov.za) and Director Property Nonhlanhla Mndebela mmndebela@knysna.gov.za
- 2. Phase Two: 28 – 31 March 2024**
 - a) Cleaning of site
 - b) Mobile businesspeople to order and deliver mobile homes.
- 3. Phase Three: 1 – 19 April 2024**
 - a) Equip the shelter with sleeping, dining, ablution, kitchen, and laundry facilities
(according to the Norms and Standards of the Department of Social Development there must be 1 toilet and 1 shower for every 8-10 people)
 - b) Delivery of beds, bedding, and other furniture. *(The maximum number of beds in a shelter facility as indicated in the Population Certificate issued by the local government).*
- 4. Phase Four: 22 – 26 April 2024**
 - a) Ensure that the shelter adheres to the:
 1. Occupational Health and Safety Act No 85 of 1993 (Certificate)
 2. The Health Act No 63 of 1997
 3. Fire and Safety By-laws of the local authority.
 - b) Inspection

ORDINARY MUNICIPAL COUNCIL MEETING
SUPPLEMENTARY AGENDA
5 AUGUST 2024





13.16

C16/08/24 APPOINTMENT OF AN ACTING DIRECTOR CORPORATE SERVICES
--

REPORT FROM THE ACTING MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To update Council on the appointment of an Acting Director Corporate Services.

BACKGROUND

Council at its meeting held on 24 June 2024 resolved to appoint Ms Zoleka Moon as the Acting Director Corporate Services for a period of 3 months until the vacancy is filled, whichever period comes first.

In terms of the Regulations on the appointment of Senior Managers, the appointment was submitted to the MEC Bredell, the Provincial Minister of Local Government, Environmental Affairs & Development Planning.

The MEC responded by expressing his satisfaction with the appointment as per the letter received on 25 July 2024.

RELEVANT LEGISLATION

Municipal systems Act 32 of 2000

Regulations on the Appointment of and Conditions of Senior Managers, January 2014

Government Gazette on the Upper Limits of Total Remuneration Packages payable to Municipal Managers and Managers directly accountable to Municipal Managers

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

That Council notes the response from the MEC Bredell regarding the appointment of the Acting Director Corporate Services.

File Number: Sp, Moon, Z

Execution: Acting Municipal Manager

Manager: Human Resources



**Western Cape
Government**

**Ministry of Local Government,
Environmental Affairs & Development Planning**

Tel: +27 21 483 3915
Fax: +27 21 483 6081

REFERENCE: 13/3/1/2/K12 (3/11/2/16 – 2024/119)

The Executive Mayor
Knysna Municipality
PO Box 21

KNYSNA
6570

Per email: atsengwa@knysna.gov.za / bmiamba@knysna.gov.za / knysna@knysna.gov.za

Dear Councillor Tsengwa,

APPOINTMENT OF ACTING DIRECTOR: CORPORATE SERVICES – MS. ZOLEKA MOON

1. I refer to the above, as well as the email correspondence from the Municipality dated 16 July 2024 enclosing an extract of the Knysna Municipal Council resolution dated 24 June 2024. In that resolution, the said Council resolved to appoint Ms. Zoleka Moon as Acting Director: Corporate Services for a period of three (3) months from 27 June 2024 or until such time as the vacant position is filled, whichever period comes first.
2. It is imperative to bring to your attention the provisions of section 56(1)(b) of the Municipal Systems Act, 32 of 2000 ("the Systems Act"), whereby a person appointed in terms of paragraph (a)(i) or (ii) must at least have the skills, expertise, competencies and qualifications as prescribed; read with the Municipal Regulations on Minimum Competency Levels, and the Regulations on Appointment and Conditions of Employment of Senior Managers.
3. In respect of a Director: Corporate Services, Regulation 7 of the Municipal Regulations on Minimum Competency levels, read with Item 7 of Annexure B of the Appointment Regulations, prescribes the following minimum requirements:
 - i. At least a Post Graduate Degree or relevant qualification registered on the National Qualifications Framework at a NQF Level 8 with a minimum of 120 credits in a field relevant for the senior management position; and

APPOINTMENT OF ACTING DIRECTOR: CORPORATE SERVICES – MS. ZOLEKA MOON

www.westerncape.gov.za

9th Floor, 1 Dorp Street, Cape Town, 8001 | Private Bag X9186, Cape Town, 8000.

- ii. Work related experience: a minimum of 7 years at senior and middle management level, of which at least 2 years must be at senior management level.
- 4. After an assessment of Ms. Moon's curriculum vitae and appointment as acting Director: Corporate Services, and based on an application of the prescribed minimum requirements as statutory provided, I am satisfied that Ms. Moon has met the minimum prescribed requirements to act in the post.
- 5. In the circumstances, I therefore note the acting period of Ms. Moon as acting Director: Corporate Services at Knysna Municipality for a period of three (3) months from 27 June 2024 to 26 September 2024 or until such time as the vacant position of Acting Director: Corporate Services is filled, whichever period comes first.

Sincerely,



A BREDELL
MINISTER
DATE: 25/07/2024

13.17

C17/08/24 CONDONATION OF ACTING APPOINTMENTS – ACTING DIRECTORS

REPORT FROM THE ACTING MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To request Council to condone Acting appointments.

BACKGROUND

Council at its meeting held on 9 June 2022 in terms of Council Resolution C11/06/22 resolved as follows:

“UNANIMOUSLY RESOLVED

- [a] That Council note the report regarding the appointment of an Acting Municipal Manager for 8 June 2022;*
- [b] That Council ratify and condone the appointment of the Director Infrastructure Services as Acting Municipal Manager for the day of 8 June 2022; and*
- [c] That Council delegate the authority to the Executive Mayor to appoint an Acting Municipal Manager for a period not less than 10 days if the Municipal Manager or Acting Municipal Manager is unavailable due to an emergency, unforeseen and unavoidable circumstance.”*

In the light of the termination of the acting period for the Acting Director Infrastructure (McKenzie) and the Director Community Services, Dr S Ngqele, the following acting appointments were made by the Acting Municipal Manager in the light of the date for the next Council Meeting being 5 August 2024 and there was an operational requirement for Acting Directors:

- Acting Director: Infrastructure Services, Mr Ezzard Mckenzie for the period 29 July 2024 – 12 August 2024 (until such time that a secondment agreement is concluded); and
- Acting Director: Community Services, Mr Richard Meyer for the period 29 July 2024 – 12 August 2024.

Council is requested to condone the abovementioned acting appointments by the Acting Municipal Manager for the abovementioned periods.

It is recommended that Council approves of a delegated authority to the Acting Municipal Manager to appoint Acting Directors for a period of no more than 10 days to ensure service delivery continuity.

RELEVANT LEGISLATION

Municipal systems Act 32 of 2000

Regulations on the Appointment of and Conditions of Senior Managers, January 2014

Government Gazette on the Upper Limits of Total Remuneration Packages payable to Municipal Managers and Managers directly accountable to Municipal Managers

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

- [a] That Council notes the report from the Acting Municipal Manager regarding the Acting Appointments of Acting Directors;
- [b] That Council condones the following appointments:
- Acting Director: Infrastructure Services, Mr Ezzard Mckenzie for the period 29 July 2024 – 12 August 2024;
 - Acting Director: Community Services, Mr Richard Meyer for the period 29 July 2024 – 12 August 2024; and
- [c] That Council delegate the authority to the (Acting) Municipal Manager to appoint Acting Directors for a period up to 10 days if a Director is unavailable for a period due to leave, emergency, unforeseen and unavoidable circumstance.

File Number: 9/1/2/14

Execution: Acting Municipal Manager
Manager: Human Resources

13.18

C18/08/24 LEGAL OPINIONS ON ACTING APPOINTMENTS
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REPORT FROM THE ACTING MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To update Council on the Legal Opinions received regarding Acting Appointments.

BACKGROUND

Councils' attention is directed to Local Government Circular C09 of 2024 (**Annexure A**) as well as letter dated 03 June 2024 from the Director General of COGTA relating to Acting appointments under the Local Government Municipal Staff Regulations.

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

That Council notes Local Government Circular C09 as well as the letter dated 3 June 2024 from the Director General of COGTA (**Annexure B**) relating to Acting Appointments under the Local Government Municipal Staff Regulations.

APPENDIX / ADDENDUM

Annexure A - Local Government Circular C09 of 2024
Annexure B – Letter from Director General of COGTA

File Number: 9/1/2/14
Execution: Acting Municipal Manager
Manager: Human Resources



**Western Cape
Government**

Department of Local Government

Office of the Head of Department

Mr G Paulse

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File Reference: WCG-2024-06-13-987256

LOCAL GOVERNMENT CIRCULAR C09 OF 2024

THE MUNICIPAL MANAGER, CITY OF CAPE TOWN: MR L MBANDAZAYO
THE MUNICIPAL MANAGER, WEST COAST DISTRICT MUNICIPALITY: MR D JOUBERT
THE MUNICIPAL MANAGER, MATZIKAMA MUNICIPALITY: MR L PHILLIPS
THE MUNICIPAL MANAGER, CEDERBERG MUNICIPALITY: MR G MATTHYSE
THE MUNICIPAL MANAGER, BERGRIVIER MUNICIPALITY: ADV H LINDE
THE MUNICIPAL MANAGER, SALDANHA BAY MUNICIPALITY: MR H METTLER
THE MUNICIPAL MANAGER, SWARTLAND MUNICIPALITY: MR J SCHOLTZ
THE MUNICIPAL MANAGER, CAPE WINELANDS DISTRICT MUNICIPALITY: MR H PRINS
THE MUNICIPAL MANAGER, WITZENBERG MUNICIPALITY: MR D NASSON
THE MUNICIPAL MANAGER, DRAKENSTEIN MUNICIPALITY: DR J LEIBBRANDT
THE MUNICIPAL MANAGER, STELLENBOSCH MUNICIPALITY: MS G METTLER
THE MUNICIPAL MANAGER, BREEDE VALLEY MUNICIPALITY: MR D MCTHOMAS
THE MUNICIPAL MANAGER, LANGEBERG MUNICIPALITY: MR D LUBBE
THE MUNICIPAL MANAGER, OVERBERG DISTRICT MUNICIPALITY: MR R BOSMAN
THE MUNICIPAL MANAGER, THEEWATERSKLOOF MUNICIPALITY: MR R STEVENS (ACTING)
THE MUNICIPAL MANAGER, OVERSTRAND MUNICIPALITY: MR D O' NEILL
THE MUNICIPAL MANAGER, CAPE AGULHAS MUNICIPALITY: MR E PHILLIPS
THE MUNICIPAL MANAGER, SWELLENDAAM MUNICIPALITY: MS A VORSTER
THE MUNICIPAL MANAGER, EDEN DISTRICT MUNICIPALITY: MR M STRATU
THE MUNICIPAL MANAGER, KANNALAND MUNICIPALITY: MR D SEREO (ACTING)
THE MUNICIPAL MANAGER, HESSEQUA MUNICIPALITY: MR A DE KLERK
THE MUNICIPAL MANAGER, MOSSEL BAY MUNICIPALITY: MR C PUREN
THE MUNICIPAL MANAGER, GEORGE MUNICIPALITY: MR D ADONIS (ACTING)
THE MUNICIPAL MANAGER, OUDTSHOORN MUNICIPALITY: MR W HENDRICKS
THE MUNICIPAL MANAGER, BITOU MUNICIPALITY: DR R LINKS (ACTING)
THE MUNICIPAL MANAGER, KNYSNA MUNICIPALITY: MR S MALEPENG (ACTING)
THE MUNICIPAL MANAGER, CENTRAL KAROO DISTRICT MUNICIPALITY: MR M NKUNGWANA
THE MUNICIPAL MANAGER, LAINGSBURG MUNICIPALITY: MR J BOOYSEN
THE MUNICIPAL MANAGER, PRINCE ALBERT MUNICIPALITY: MR A HENDRICKS
THE MUNICIPAL MANAGER, BEAUFORT WEST MUNICIPALITY: MR D WELGEMOED



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LEGAL OPINIONS ON THE INTERPRETATION OF MUNICIPAL STAFF REGULATIONS (MSR) STIPULATIONS REGARDING ACTING ARRANGEMENTS AND THE DEFINITIONS OF "DAYS"

The Minister for Cooperative Governance and Traditional Affairs ("the Minister") promulgated the Local Government: Municipal Staff Regulations and Guidelines per GNR 890 and 891 as published in GG No. 45181 of 20 September 2021 ("MSR") as a response to government's resolve to professionalise local public administration and build a capable local public administration and human resources in fulfilment of the powers conferred upon the Minister in terms of section 154 of the Constitution, read in conjunction with sections 72 and 120 of the Systems Act.

In making the Regulations or issuing the guidelines to provide for or regulate the matters, the Minister took into consideration the capacity of municipalities to comply with the provisions of the Regulations. The Regulations come into operation on 1 July 2022. Except for Chapter 2 (Staff Establishment) and 4 (Performance Management) which come into effect on 1 July 2023, the entire Regulations come into operation on 1 July 2022.

While implementing the MSR, municipalities requested clarity on certain matters relating to the MSR. The purpose of this Circular is thus to inform municipalities about the legal opinions that the Department has obtained regarding the following matters and National COGTA's response to one of the legal opinions:

1. Competencies of Acting Incumbents

According to MSR Regulation 12(1)(b), provides that no person may be appointed as a staff member on a fixed-term contract, permanent basis, or probation, to any post on the approved staff establishment of a municipality, unless he or she possesses the relevant competencies, qualifications, and experience, as set out in the Competency Framework (Addendum to the MSR namely "Annexure A"). In addition, regulation 13(1) prescribes that a person appointed as staff member in terms of these Regulations must, where applicable have the necessary competencies and comply with the minimum requirements for education qualifications, work experience and knowledge as set out in Annexure A. Furthermore, Regulation 20 also prescribes that a person may be appointed as a staff member only if he or she possesses the relevant competencies as prescribed in Annexure A. This Regulation also requires the Municipal Manager or delegate to satisfy himself or herself that the candidate meets the relevant requirements of the post as provided in Annexure A, before making an appointment.

According to Regulation 28, an acting appointment may be made to a funded post, in order to ensure that the disruption of services is minimised. Furthermore, this Regulation only requires that the staff member appointed to act in a post must have the requisite competencies to be able to perform the duties associated with the post.

Legal opinion obtained from the Department of the Premier's Legal Services

The National Department of Cooperative Governance (DCoG) concurred with the legal opinion solicited by the Western Cape Department of Local Government that an employee may act in a post even if s/he does not meet the requirements set out in Annexure A of the Regulations for the post in which s/he is acting, provided that s/he has the skills, knowledge, experience and qualifications required to effectively perform the duties associated with that post. "Annexure B". (Letter received from the DCoG for your records).

2. Interpretation of terms "Working days", "Days", "Month"

The national Minister for Cooperative Governance and Traditional Affairs promulgated the Local Government: Municipal Staff Regulations ("the Regulations") on 20 September 2021. The Regulations cover several critical areas such as selection, performance management, skills development and the procedures for determining the staff establishment of a municipality.

The timelines quoted in the Regulations are ambiguous in that they refer interchangeably to "within one month" and "within 30 days" and "within 14 days" et cetera. The Definitions section does not provide a definition for "days" but does define "working days" as "days upon which a staff member ordinarily works".

This ambiguity has led to numerous inconsistencies in the interpretation of the provisions of the Regulations amongst the municipalities and the Department. The argument is whether the number of days is to be construed as calendar days or working days, or a calendar month, and whether in such computation the weekends and public holidays are excluded or included.

These misinterpretations have resulted in late submissions from the municipalities to the Provincial Minister's office and in turn a delay in the provision of comments from the Provincial Minister's office to some municipalities.

Legal opinion obtained from the Department of the Premier's Legal Services

The computation of time in the Municipal Systems Act (MSA) and MSR must be interpreted in accordance with the Interpretation Act and the principles exposed above which in summary are that:

- a. When computing a number of days, such computation excludes the first days and includes the last day unless such last day falls on a Sunday or public holiday in which case it will be the succeeding calendar day (which is not a Sunday or public holiday).

- b. When computing a calendar month, such computation expires at the end of the day preceding the corresponding calendar day in the subsequent month (i.e., 1 February – 28/29 February, 10 June – 11 July, 4 August – 3 September or 1 November – 30 November).
- c. Saturdays, Sundays and public holidays are not excluded from the computation of time unless:
 - in the case of Sundays and public holidays, such day is the last day in the reckoning of days in which case it must be excluded; or
 - they have been specifically excluded by legislation (such as the definition of working days in the MSR).

3. Whether the period of 30 days in regulation 6(8) starts over when all the documents outlined in regulation 6(7) are not submitted

Clarity was also sought with regards to whether the period of 30 days in regulation 6(8) starts over when all the documents outlined in regulation 6(7) are not submitted or are submitted late by the municipality or the Department has to request additional documents.

a) Regulation 6(7) of the MSR provides that:

"Within 14 days of the municipal council approving the submission referred to in sub-regulation (4), the municipal manager must submit to the MEC a copy of the—

- staff establishment;
- council resolution; and
- reports informing the staff establishment, if any."

b) Regulation 6(8) then provides that:

"Within one month of receiving, the documents referred to in sub-regulation (7), the MEC must consider the proposed staff establishment and submit comments to the municipal council."

Legal opinion obtained from the Department of the Premier's Legal Services

The computation of the 30 days in sub-regulation 6(8) only begins to run on receipt, by the MEC, of all the documents referred to in regulation 6(7) as it is the full complement of these documents that will enable the MEC to provide comprehensive comments on the staff establishment. The running of the days in regulation 6(8) therefore does not begin until all the required information is received

and if information is received in a piecemeal fashion, it is suspended during the time that the MEC does not have all the required information.

It should be noted that both item 2 and 3 above will be submitted to the DCoG for their information.

Kind Regards,



MR G PAULSE

HEAD OF DEPARTMENT

DATE: 2024/07/24



**cooperative
governance**

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Reference: 33512/1

Mr G Paulse

Head of Department: Western Cape Department of Local Government

Private Bag X 9186

CAPE TOWN

8000

Dear Mr Paulse

**OPINION RE ACTING APPOINTMENTS UNDER THE LOCAL GOVERNMENT:
MUNICIPAL STAFF REGULATION**

1. Your letter to the Department of Cooperative Governance (DCoG) dated 3 May 2024 on the above subject matter bears reference¹.
2. The letter seeks response to the legal opinion obtained by Western Cape Department of Local Government (WC DLG) pertaining to acting appointments in line with provisions of Local Government: Municipal Staff Regulations and Guidelines, 2021 ("the Regulations").
3. The legal opinion obtained by Western Cape Department of Local Government was subsequently submitted to DCoG's Legal Services Unit for statutory interpretation and provision of legal opinion on the same matter.
4. In essence, the DCoG's Legal Services confirmed the following:
 - 4.1 Statutory interpretation has four rules that apply: the golden rule, the mischief rule, and the purposive approach. The literal rule requires a statute to be interpreted in its plain, literal, and ordinary sense. The golden rule is used where the literal rule would result in an absurdity or an obnoxious result, and it investigates whether the statute wording conveys the legislator's intention. The mischief rule is used to identify the problem the legislator intended to correct and applies an interpretation that remedies the problem. The purposive approach is implemented to ensure that the law is effective as the legislator would have intended.
 - 4.2 The Regulations are drafted in clear terms and as a result, it is unnecessary to use the golden rule to interpret them. Therefore, this legal opinion mainly uses the literal rule, the mischief rule, and the purposive approach to interpret the Regulations. When using the purposive approach, part of the intention of

¹ Letter from WC DLG attached hereto.

the Regulations is to ensure that a person appointed permanently or on a fixed-term contract meets the requirements set out in Annexure A of the Regulations for that position.

- 4.3 Regulation 12(1)(b) provides that no person may be appointed as a staff member on a fixed-term contract, permanent basis, or probation, to any post on the approved staff establishment of a municipality, unless he or she possesses the relevant competencies, qualifications, and experience, as set out in Annexure A. In addition, regulation 13(1) prescribes that a person appointed as staff member in terms of these Regulations must, where applicable have the necessary competencies and comply with the minimum requirements for education qualifications, work experience and knowledge as set out in Annexure A. Furthermore, regulation 20 also prescribes that a person may be appointed as a staff member only if he or she possesses the relevant competencies as prescribed in Annexure A. This regulation also requires the municipal manager or delegate to satisfy himself or herself that the candidate meets the relevant requirements of the post as provided in Annexure A before making an appointment.
- 4.4 The common thread about regulations 12, 13 and 20 is the requirement to adhere to what is set out in Annexure A when evaluating the competencies, qualifications, experience, or knowledge of a candidate.
- 4.5 According to regulation 28, an acting appointment may be made to a funded post in order to ensure that the disruption of services is minimised. Furthermore, this regulation only requires that the staff member appointed to act in a post must have the requisite competencies to be able to perform the duties associated with the post. Evidently, if the purpose of Regulations was that even staff members appointed to acting positions must meet the same requirements for permanent or fixed-term contract appointments set out in Annexure A, that would have been specified in regulation 28.
- 4.6 Due to the way the Regulations are worded, especially regulations 12, 13 and 20, it appears that the mischief they intended to prevent is the appointment to permanent or fixed-term contract positions of candidates who do not meet the requirements set out in Annexure A. This does not apply to acting appointments, otherwise that would have been stated in regulation 28. Therefore, the DCoG hereof concurs with the legal opinion solicited by the Western Cape Department of Local Government that an employee may act in a post even if s/he does not meet the requirements set out in Annexure A of the Regulations for the post in which s/he is acting, provided that s/he has the skills, knowledge, experience and qualifications required to effectively perform the duties associated with that post.
- 4.7 Since regulation 28 does not specifically require an acting employee to possess the competencies, qualifications, experience and knowledge set out in Annexure A of the Regulations, the municipality has a discretion to determine the skills, knowledge, experience and qualifications such an employee must possess to act in that post. However, such discretion is confined because an employee who is appointed in an acting post must have the skills, knowledge, experience and qualifications required to effectively perform the duties associated with that post.

5. Municipalities are further reminded that, acting staff members must be subjected to the Performance Management and Development system of the Municipality, in line with Regulation 43 of the Regulations which states:

If a staff member is required to act in a post for a period that exceeds three months, the supervisor to whom the acting staff member is reporting, must review the KPAs and KPIs in consultation with the acting staff member, and include the KPAs and KPIs in the staff member's amended performance agreement.

For any clarity in this regard, you are welcome to call Mr Jackey Maepa, the Director: Municipal Human Resource Systems on telephone number: (012) 334 4915 or by e-mail at: JackeyM@cogta.gov.za

Yours Sincerely,


MR M TSHANGANA
DIRECTOR-GENERAL
DATE: 03 JUNE 2024

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