

10. CITY IMPROVEMENT DISTRICT : HERMANUS PUBLIC PROTECTION (HPP)

12/2/3/8

**S Reyneke-Naude
2019/06/14**

(028) 313 8040

Hermanus Administration

1. Executive Summary

The purpose of this report is to inform Council of the latest developments regarding the HPP City Improvement District.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Finance: Director Finance

3. Compliance with Strategic Priorities

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

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)
Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004)
By-law for the Establishment of Improvement Districts

6. Background/Discussion/Evaluation/Conclusion

In October 2018 the municipality received an email from the Manager of the HPP, stating that they received various inquiries to investigate the extension of the central improvement district to other adjoining areas. The Manager further raised concerns relating to the legality of the HPP still existing under the context of old order legislation.

A meeting subsequently took place with senior management concerning the legality of the HPP in considering the expansion of its geographical area and in general, due to the promulgation of new legislation, including the Municipality's Special Rating Area By-law and the Property Rates Act. In terms of the second concern relating to the legality of the HPP, we requested a copy of the business plan which formed the basis of the non-profit company's operations.

The position was clear that the management body will not be in a position to expand the geographical area of the existing area, due to promulgation of new

legislation, including the Special Rating Area By-law and the Property Rates Act, subsequent to the HPP's establishment.

In terms of the continued existence of the HPP, it was agreed that an external opinion be obtained on the matter, with a specific focus on the following:- Whether the existence and operation of HPP is advisable, in consideration of all existing legislation and policy governing special rating areas, with specific reference to the by - law and business plan of the improvement district.

The HPP came into being against the following background. On 25 August 2000 the Western Cape Minister of Local Government published in the Provincial Gazette a By-law for the Establishment of Improvement Districts adopted by the then greater Hermanus Transitional Local Council.

Subsequent to the promulgation of the by-law, HPP was formed to manage, on behalf of the Municipality, an improvement district covering an area in Hermanus from 17th Avenue, Voëlklip to Stil Street and Swartdam Road, Westcliff in the western side, inclusive of the central business area.

These services are funded by additional property rates imposed by the Municipality on the owners of all immovable properties in the improvement district.

The external opinion furthermore emphasized that Section 22 of the Property Rates Act requires that before determining a special rating area, a municipality must consult the local community on the proposed boundaries of the area and its proposed improvement or upgrading, and obtain the consent of the majority of the members of the local community in the proposed area who will be liable for paying the additional rate.

With the Municipality's adoption and promulgation on 21 October 2016 of a Special Rating Area By-law and the approval with effect from 1 July 2018 of a Special Rating Area Policy, to regulate the establishment and operation of special rating areas, the Municipality can consider applications for such areas.

If that is not done, the Municipality cannot impose the additional rate for the community improvement district for the 2019/2020 municipal financial year commencing on 1 July 2019.

A follow-up meeting was arranged to take place on 16 January 2019 at the municipal offices in Hermanus, with the senior management of the Municipality and a number of HPP Directors and the HPP Manager in attendance.

It was discussed and confirmed that the municipality will not be in a position to charge the HPP levy on municipal accounts after 30 June 2019. It was confirmed that the By-Law for the Establishment of Improvement Disstricts dictates the dissolution of the improvement district, inclusive of the winding up and transfer of nett assets to the municipality.

In replying to a question posed at the meeting, it was pointed out that the CID cannot be changed into an SRA, but that the specific legislative requirements as provided for in the respective Overstrand Municipal Special Rating Area By-Law and Special Rating Area Policy as approved by Council, must be followed for the establishment of a Special Rating Area.

On 17 January 2019, further discussions took place at the municipality between various members of the senior management team and the HPP Manager, in considering the practical implications of the winding down process of HPP. We requested HPP to provide the municipality with detail regarding current operations/projects and agreements in place, as well as the budget projections with regard to the proposal of HPP in relation to the anticipated surplus and remaining cash inflow as at 1 July 2019.

A Notice of intended Termination of the Improvement District in terms of section 11 of the By-Law for the Establishment of Improvement Districts, gazetted on 25 August 2000 ("the HPP By-Law"), was communicated with HPP Board Members on 5 April 2019 (ANNEXURE A) to advise in this regard and to advise and direct a formal request in terms of comprehensive information to be made available by HPP in order to assist the administration to finalise the required report to Council. The information as requested is however still awaited and will necessitate a further report to Council in due course as soon as the submission of HPP is received.

7. Financial Implications

The collection of a HPP Levy of 10% from property owners and payment thereof to HPP in funding operations will be discontinued as from 1 July 2019.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Legal Services: L Wallace:

The Improvement District as a vehicle cannot function on the basis of the discrepancies in its establishment and what is required by the Property Rates Act. The adoption of a Special Rating Area By-law and policy underscore the establishment and operation of special rating areas. As highlighted in previous opinions, a special rating area is the only vehicle that can be used to allow the Municipality to levy an additional rate to property owners for supplemented services. No additional rate can be levied with effect from 1 July 2019 in respect of supplemented services rendered by the improvement district.

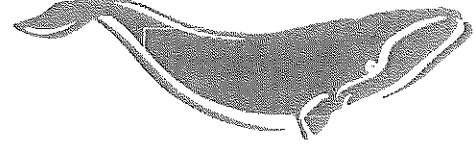
10. Annexures

Annexure A: Notice of intended Termination of the Improvement District in terms of section 11 of the By- Law for the Establishment of Improvement Districts, gazetted on 25 August 2000 (“the HPP By-Law”)

RECOMMENDATION TO THE COUNCIL:

1. that the recent developments regarding Hermanus Public Protection (HPP) **be noted**; and
2. that a follow-up report indicating the timeline for the dissolution and wind-up of the HPP be submitted to Council.

RESPONSIBLE OFFICIAL :**S REYNEKE-NAUDE****TARGET DATE FOR IMPLEMENTATION :****1 JULY 2019**



Navrae:
Enquiries: Ms Santie Reyneke-Naudé

Ons Verw./Our Ref:
U Verw./Your Ref:

Datum:
Date: 5 April 2019

KANTOOR VAN DIE MUNISIPALE BESTUURDER /
OFFICE OF THE MUNICIPAL MANAGER

HPP Board Members

By e-mail: nobody@telkomsa.net

Dear Rodger and other HPP Board Members

Notice of intended Termination of the Improvement District in terms of section 11 of the By- Law for the Establishment of Improvement Districts, gazetted on 25 August 2000 ("the HPP By-Law")

Various written communications as well as meetings that took place between HPP Board Members and the Overstrand Municipality over the past few weeks regarding above matter, refer.

The Overstrand Municipality wish to conform the following position, inclusive of the process that will have to follow, based on senior council legal advice obtained by the municipality:

- The HPP must be dissolved in terms of section 11 of the By- Law for the Establishment of Improvement Districts, gazetted on 25 August 2000 ("the HPP By-Law").

Section 11.1 of the HPP By-Law provides:

"The Council may dissolve the HPP either:

11.1.1 upon written application supported signed by no less than 50% of the owners of the rateable property who represents not less than 50% of the rates base in the value within the boundaries of the improvement district, or

11.1.2 on any other good cause shown,

Where-upon the Council shall cause the management body to be wound up."

- Section 11.1.2 will be considered by the municipal Council to dissolve the HPP, based on the legal opinion of Adv. Breitenbach SC of 4 December 2018, that it can

no longer be the vehicle which allows the Municipality to levy additional rates for additional services.

- The report to the municipal council as mentioned will therefore culminate with a proposed Council resolution to the effect that the HPP be dissolved and wound down in accordance with a timeline to be specified in the report.
- Section 11.2 of the HPP By-Law adds that the nett assets of the HPP, once all creditors are paid, and subject to the insolvency laws, shall accrue to and be transferred to the Council.
- It thus follows from section 11.2 that the HPP has to pay all of the debts of HPP and transfer its assets that remain at the end of the process to the Municipality
- Once the HPP has dissolved, the municipality will repeal the HPP By-law.

Further emphasis should once again be placed on the following principles:

- 1) There is no impediment to the improvement district continuing to operate after 1 July 2019 on its reserve funds whilst it is the process of winding down;
- 2) The Municipality cannot collect any additional property rates from rate payers in the improvement district area after 30 June 2019;
- 3) We require an assessment from the improvement district on exactly how much reserve funds are available for the improvement district, with a revised time line, which is in line with the provided assessment;
- 4) It is critical that it is clearly understood that HPP cannot exceed its reserve funds unless it is topped up by voluntary funding, and that is a realistic prospect;
 - a. The municipality urgently require clear milestones from the management body for the dissolution process, in order to finalise the report to Council with regard to the dissolution of the improvement district;
- 5) It is suggested that a performance audit be done on an urgent basis, jointly by the Municipality and the management body (with both the Director Protection Services and Management Services included) and a joint working committee be established.
- 6) The purpose and objective of such a performance audit is to determine inter alia the following:
 - i. Detail of services currently rendered and whether any gaps exist in important services;

- ii. Execute a full asset count, inclusive of equipment, furniture, other assets;
- iii. Confirmation of creditors and liabilities, inclusive of settlement projections/any other relevant details;
- iv. Receipt of an assessment from the improvement district on exactly how much reserve funds are available for the improvement district, with a revised time line (inclusive of comprehensive detail of contractors, projected monthly expenditure projections per budget line item, et cetera) for operational activities to come to an end.
- v. Due regard needs to be given to section 11 (2) of the by – law, which prescribe that the net assets of the HPP, once all creditors are paid, and subject to the insolvency laws, shall accrue to and be transferred to the Council.

Please provide me with the necessary comprehensive information as discussed above, in order to assist the administration to finalise the required report to Council.

Yours sincerely,



MCC GROENEWALD
MUNICIPAL MANAGER