

AGENDA

Ordinary Council Meeting

on

THURSDAY

28 NOVEMBER 2013

at

19:00



MUNICIPALITY OF SWAKOPMUND



(064) 4104206



088 614 514



53 Swakopmund
NAMIBIA



agebhardt@swkmun.com.na

Ref No A 2/3/5

Enquiries: A Gebhardt

19 November 2013

The Mayor and Councillors
Municipality
SWAKOPMUND

Dear Sir / Madam

NOTICE: ORDINARY COUNCIL MEETING

Notice is hereby given of an **ORDINARY COUNCIL MEETING** to be held in the Council Chambers, Municipal Office Building, Swakopmund on:

THURSDAY, 28 NOVEMBER 2013 at 19:00,

D Duvenhage
Acting CHIEF EXECUTIVE OFFICER

AG/-

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1. **OPENING**

2. **APPLICATIONS FOR LEAVE OF ABSENCE AND DECLARATION OF INTEREST**

- 2.1 Application for leave of absence.
 - 2.2 Declaration of interest.
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3. **CONFIRMATION OF MINUTES**

(C/M 2013/11/28 - A 2/3/5)

- 3.1 Minutes of an **Ordinary Council Meeting** held on **31 October 2013**.
(pp 129/2013 - 144/2013)
 - 3.2 Minutes of a **Special Council Meeting** held on **11 November 2013**.
(pp 145/2013 - 147/2013)
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4. **INTERVIEWS WITH DEPUTATIONS OR PERSONS SUMMONED OR REQUESTED TO ATTEND THE MEETING**

None.

5. **OFFICIAL ANNOUNCEMENTS, STATEMENTS AND COMMUNICATIONS**

- 5.1 Announcements by the Mayor and Chairperson of Council.
 - 5.2 Long Service Awards.
-

6. **PETITIONS**

None.

7. **MOTIONS OF MEMBERS**

None.

8. **ANSWERS TO QUESTIONS OF MEMBERS OF WHICH NOTICE WAS GIVEN**

None.

9. **FEEDBACK REPORT ON THE EXECUTION OF RESOLUTIONS
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MANAGEMENT COMMITTEE DURING NOVEMBER 2013**

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held on **19 November 2013**

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10. **REPORT TO COUNCIL ON RESOLUTIONS TAKEN BY PREVIOUS
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10 (A) **MINUTES OF AN ORDINARY MANAGEMENT COMMITTEE MEETING
HELD ON NOVEMBER 2013**

2. **CONFIRMATION OF MINUTES**
(M/C 2013/11/19 - A 2/3/5)

2.1 **MINUTES OF AN ORDINARY MANAGEMENT COMMITTEE MEETING
HELD ON 17 OCTOBER 2013**

On proposal of Councillor R N Andreas-Noabes seconded by Councillor N N Salomon it was:-

RESOLVED:

That the Minutes of the Ordinary Management Committee meeting held on 17 October 2013 be confirmed as correct.

5. **REPORTS: HEADS OF DEPARTMENTS**

5.5 **FINANCE**

5.5.1 **TOTAL EXPENDITURE**
(M/C 2013/11/19 - D 7/3/2/1)

RESOLVED:

That the total expenditure of N\$55 136 058.31 from 01-31 October 2013 be accepted and approved as correct.

7. **MATTERS REFERRED BY PREVIOUS COUNCIL- AND
MANAGEMENT COMMITTEE MEETINGS**

7.1 **LEGAL SERVICES: INTRODUCTION OF ADDITIONAL LEGAL
PRACTITIONER**
(M/C 2013/11/19 - A 2/1/5)

RESOLVED:

- (a) That the introduction profile from Messrs LorenzAngula Inc. be noted, and that they be informed that Council will shortly invite proposals from all interested law firms.
- (b) That Council's current legal practitioners be informed that Council will shortly invite proposals from all law firms who are interested in rendering legal services to Council.
- (c) That the status quo continues until Council has resolved on the new legal practitioners.
- (d) That the General Manager: Corporate Services and Human Resources requests the Law Society of Namibia to inform all legal practitioners that should they wish to render services to

Council they can submit their profiles to the Chief Executive Officer before the end of January 2014.

- (e) That suitable criteria for the selection of the new law firms be prepared and submitted to Management Committee for approval in January 2014.
- (f) That the new law firms be submitted for selection to Management Committee in February 2014 and appointed in March 2014 on a 2 (two) year term.

7.4 **APPLICATION FOR PERMISSION TO USE A CONTAINER AT ERF 118, SWAKOPMUND**

(M/C 2013/11/19 - E 118)

RESOLVED:

That an “*in-loco*” inspection be conducted at Erf 118, Swakopmund on 19 November 2013 after the Management Committee meeting.

7.7 **3rd PROGRESS REPORT OF MESSRS SEA GULL’S CRY CC**

(M/C 2013/11/19 - N 7/2/9)

RESOLVED:

- (a) That an “*in-loco*” inspection be conducted at Sea Gull’s Cry at a date to be determined by the Chief Executive Officer.
- (b) That the apology of Mr Michiel Coetzee on behalf of Messrs Sea Gulls’ Cry CC for the late report submission and their commitment to submit future reports timeously and in the requested format be noted.
- (c) That the 3rd progress report for the period ending June 2013 submitted by Messrs Sea Gull’s Cry CC be noted.

7.9 **ENDORSEMENT OF CHEQUE FROM SPIRIT EMBASSY TO MR J PATUUOMASA**

(M/C 2013/11/19 - N 7/3/4, I 1/2, H 2/12)

RESOLVED:

That Mr J Patuuomasa be advised to open a bank account for the church (Spirit Embassy) and deposit the cheque of N\$966.00 in the new account.

7.10 **NOTICE OF MOTION: ALLEGATIONS OR CONCERNS OF A POSSIBLE TENDER COLLUSION BY MESSRS DMA HOLDINGS, MESSRS PRECISION CONSTRUCTION, MESSRS PANDORA'S CONSTRUCTION AND MESSRS ELITE CONSTRUCTION**
(M/C 2013/11/19 - N 8/11, D 16/2)

RESOLVED:

- (a) That the outcome of the application in the High Court of Namibia be awaited.
- (b) That Messrs Kinghorn Associates be instructed to respond to the correspondence received from the Competition Commission since Messrs Kinghorn Associates are already working on the legal matter.

7.11 **SALE OF BUSINESS ERVEN AT THE PDA MONDESA**
(M/C 2013/11/19 - H 5/7)

RESOLVED:

That this item be kept in abeyance and the applicants be requested to provide proof that they can pay the purchase price for the land.

7.15 **DETERMINATION OF CONDITIONS OF SALE OF LAND TO BE SOLD TO SALT COMPANY (PTY) LTD**
(M/C 2013/11/19 - E 466, G 4/2/1/2)

RESOLVED:

That the sale of the unserviced portion of the Remainder of Portion B of the Swakopmund Town and Townlands No. 41 measuring approximately 44 037m² to Messrs Salt Company (Pty) Ltd be turned down and that the previous resolution related hereto be repealed.

7.16 **THE COUNCIL OF THE MUNICIPALITY OF SWAKOPMUND VERSUS DRC SQUATTERS**
(M/C 2013/11/19 - A 2/1/4)

RESOLVED:

That the costs incurred by Council be noted.

7.18 **INVITATION FOR BUSINESS PROPOSALS TO LEASE AND MANAGE THE TAXI RANK ON ERF 4353, MONDESA**
(M/C 2013/11/19 - M 4353)

RESOLVED:

That an "*in-loco*" inspection be conducted before the Council meeting, at a date to be determined by the Chief Executive Officer.

8. **POLICY MATTERS**

8.1 **AIRTIME FOR DRC COMMITTEE MEMBERS**

(M/C 2013/11/19 - H 5)

RESOLVED:

That the request to provide airtime to all the DRC Planning Committee members be turned down.

8.2 **REFUND OF N\$500.00 REGISTRATION FEE WITHOUT ORIGINAL RECEIPT**

(M/C 2013/11/19 - H 4/6/9)

RESOLVED:

That permission be granted to General Manager: Finance to refund the amount of N\$500.00 to Ms S H Thanises without original receipt.

8.3 **APPLICATIONS TO PURCHASE ERVEN 101, 102 AND 103, MILE 4: MESSRS NDI HOLDING (PTY) LTD AND MESSRS TIANANMEN INVESTMENTS CC**

(M/C 2013/11/19 - M4 E 101, M4 E 102, M4 E 103)

RESOLVED:

That this item be withdrawn from the Agenda.

8.8 **SALE OF ERF 5159, SWAKOPMUND: CLOSED BID OF 21 JUNE 2013**

(M/C 2013/11/19 - E 5159)

RESOLVED:

- (a) That the General Manager: Corporate Services and Human Resources submits a location map before the next Council meeting.
 - (b) That in future, all matters destined for Management Committee which are not urgent must be submitted to the Planning Forum first so that the administration is done thoroughly.
-

8.10 **APPLICATION FOR CONSENT TO PRACTICE VARIOUS SUPPORTING USES ON ERF 5371, SWAKOPMUND**

(M/C 2013/11/19 - E 5371)

RESOLVED:

That this item be referred back and that the General Manager: Engineering Services includes the contract and clear background information to the next Management Committee meeting.

9. **PERSONNEL MATTERS**

9.1 **REHOBOTH TOWN COUNCIL: STRATEGIC OPERATIONAL SUPPORT**

(M/C 2013/11/19 - A 3/3/1, A 2/3/1/7/1)

RESOLVED:

- (a) That the strategic operational support with Rehoboth Town Council be approved.
 - (b) That the Rehoboth Town Council compiles a timeline indicating the dates and time required for such a support and if it will be required for the Swakopmund staff members to visit them at Rehoboth.
 - (c) That a co-operation agreement indicating the financial responsibility by both Local Authorities be drafted by Rehoboth Town Council to be forwarded to Council for approval.
-

9.2 **DELEGATION OF POWERS AND ASSIGNMENT OF DUTIES AND RESPONSIBILITIES**

(M/C 2013/11/19 - A 2/3/6)

RESOLVED:

- (a) That the General Manager: Corporate Services and Human Resources presents a power point presentation to Management Committee during January 2014 or February 2014 to discuss and explain the policy before it is approved.
 - (b) That all Councillors be invited to attend the presentation.
-

10 **MATTERS NOT ON THE AGENDA, BUT DISCUSSED WITH PERMISSION OF THE CHAIRPERSON**

10.1 **ERONGO RED: AUTHORISATION TO CONVERT LOCAL AUTHORITY SURCHARGE TO ROYALTIES (13 CENTS/kWh)**

(M/C 2013/11/19 - A 2/3/1/16)

RESOLVED:

- (a) That this item be referred back.
 - (b) That Council's representatives on the Erongo RED Board of Directors be invited to brief Management Committee on the proposal urgently.
-

10.2 **PUBLIC REPRESENTATION ON THE LOCAL TENDER BOARD**
(M/C 2013/11/19 - D 16, D 16/2, A 2/2/0, A 2/2/9/1)

RESOLVED:

That this item be re-submitted to the Management Committee meeting of February 2014.

10.5 **CARENET DEVELOPMENT: ILLEGAL WATER CONNECTION**
(M/C 2013/11/19 - G 3/9/8)

RESOLVED:

- (a) That this item be referred back and be resubmitted to the next Management Committee meeting.
 - (b) That the Chief Executive Officer submits a detailed report on the matter including why the report was delayed and why no theft/ fraud case was made with the Namibian Police.
 - (c) That the General Manager: Corporate Services & Human Resources investigates and recommends how to deal with possible negligence by staff members.
 - (d) That a meeting be arranged with the developer to report on the matter to Council personally.
-

10.6 **FEEDBACK REPORT ON THE REGISTRATION PROCESS OF THE DRC INFORMAL SETTLEMENT RESIDENTS, MONDESA BACKYARD TENANTS AND OTHERS**
(M/C 2013/11/19 - H 5)

RESOLVED:

That this item be referred back and that the General Manager: Community Development Services makes recommendations on the preferred way forward.

10.7 **DAMAGE TO AND THEFT OUT OF STAFF VEHICLE PARKED IN STAFF PARKING AREA ON ERF 2827, SWAKOPMUND**
(M/C 2013/11/19 - E 1/1)

RESOLVED:

That Council compensates the staff member, Ms D Marais, in the amount of N\$598.01 for the damaged rear window of the vehicle resulting from a break-in while it was parked in the staff parking area on 17 October 2013.

11. **RECOMMENDATIONS BY THE MANAGEMENT COMMITTEE**
- 11.1 **ORDINARY MANAGEMENT COMMITTEE MEETINGS HELD ON 19 NOVEMBER 2013**
- 11.1.1 **REQUEST FOR ASSISTANCE: ACCOMMODATION FOR POLICE OFFICERS DURING THE FESTIVE SEASON**
(C/M 2013/11/28 - A 1/3/20, A 2/3/2/1/3)

Ordinary Management Committee Meeting of 19 November 2013, Addendum 7.2 page 20 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached, an application from the office of the Commissioner in Walvis Bay regarding assistance to accommodate additional Police Officers during the festive season in Swakopmund and the Erongo Region.

During the festive seasons the Department of Police brings in additional members of the Police Force to Erongo Region to assist with crime prevention in coastal towns, and Swakopmund in particular.

The Commissioner is requesting Council to assist with payment for accommodation and kitchen facilities for the extra Police Force at a total cost of **N\$18 700.00**. All 25 officers will be deployed in Swakopmund.

Council resolved on **25 October 2012** under item 11.1.4 resolved as follows:

- (a) *That the amount of N\$5 000.00 in kind be donated towards the Namibian Police for the accommodation of the Officers who will be assisting with crime prevention during the festive season.*
- (b) *That the Commissioner be advised to solicit funds from the other coastal towns since they will be serving the 3 (three) coastal towns and not only Swakopmund.*
- (c) *That the funds be defrayed from the Mayoral Development Fund Vote 960120408709 where N\$186 039.00 available.*
- (d) *That the assistance rendered to the Namibian Police during the festive season be budgeted for in future as this has become an annual request.*

Budgetary provision has been made for the amount of N\$5 000.00 on Council General Expenses Running budget 2013/2014 vote, Donations Mayor, Vote: 100510207706.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) **That an amount of N\$18 700.00 be donated, in kind, towards the Namibian Special Police Force for the accommodation of the officers who will be assisting with crime prevention in Swakopmund during the 2013 / 2014 festive seasons.**
 - (b) **That an invoice and bank details be provided for the payment of accommodation and kitchen facilities at the Ernst Rumpf Hostel.**
 - (c) **That the General Manager: Finance source the funding of the additional N\$13 700.00 which is required for the cost and the amount be defrayed from the Donations by Mayor Vote 100510207706 where N\$5 000.00 is available.**
 - (d) **That consideration be given to enlarge the budget amount and that it be budgeted for under an identified vote in future for this purpose.**
-

11.1.2 **AMENDMENTS TO HANGAR LEASE AGREEMENTS: SWAKOPMUND AERODROME**
(C/M 2013/11/28 - N 9/1)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.3 page 25 refers.

A. The following item was submitted to the Management Committee for consideration:

Management Committee on **17 October 2013**, under item 7.11 resolved as follows:

That the matter be referred to the Airport Management Committee for discussion before it is submitted to Council.

The correspondence containing the request from the representatives of the Hangar Owners to amend some of the lease agreement terms (**Annexure “A”**) was tabled at the Airport’s Committee meeting held on **24 October 2013** (minutes **attached** as **Annexure “B”**) where it was recommended as follows:

Clause 2.1

Request: That hangar owners have an option to renew the lease period of 9 years and 11 months on the lapsing thereof. A unilateral option to cancel the lease agreement with 6 months’ notice in favour of the hangar owners was also requested.

Committee’s recommendation: That the lessees be given the choice to conclude an agreement for 9 years and 11 months or a single lease period of 20 years. Should a lessee elect the 20 year period, they are obliged to register a Notarial Deed at their own cost. The 6 month bilateral notice period for the termination of the agreement is to be maintained.

Property Section comments: The benefit to the hangar owners of an extended lease period is clear. Council should however bear in mind that a long term lease of 20 years could potentially be to Council’s detriment and become an obstacle should Council decide to develop or change the property. Even with a 6 month notice period, it will be argued that Council’s intention was one of creating an extended lease relationship and it can potentially be much more difficult for Council to end such a lease term if it is legally challenged. A long term lease of 20 years could also encourage hangar owners to speculate with the lease since a long term lease is a valuable asset especially considering the extremely low lease costs as per **Annexure “C”**.

The shorter lease term of 9 years 11 months lends itself to better administration as conditions and clauses can be revised and changed at the end of the term whereas a 20 year term would mean Council would not have the opportunity to change any terms pertaining to the lease of hangars until 2033. Council can, should it wish to further accommodate lessees in this regard, incorporate a right to negotiate an extension of the agreement allowing lessees the first option to enter into a new lease agreement on the expiration of the 9 year 11 month period. This will then be subject to Council’s new terms (if applicable) should Council at such time decide it wants to continue leasing the relevant property to tenants.

Swakopmund has previously shown that much can change and happen within 20 years and as such Council committing itself so far into the unknown future, is not advisable.

Clause 3.4

Request: The wording of this clause pertaining to the payment of the deposit by the Lessee is to be amended to still have the same effect as previously, but will be better explained and clear in its meaning.

Committee's recommendation: That the reworded paragraph as suggested by Messrs Kinghorn Associates be adopted:

"The Lessee shall pay a deposit of N\$ to the Lessor on date of signature hereof. The Lessee shall adjust the deposit annually on the anniversary of the commencement date of the lease, so that the deposit shall at all times be equal to one month's rental. The Lessor shall be entitled to apply the whole or portion thereof to the payment of the rental or settlement of any other liability for which the Lessee is responsible in terms of this lease. If any portion of the deposit is so applied, the Lessee shall forthwith on demand thereof by the Lessor reinstate the deposit in full. The deposit shall be retained by the Lessor until termination of the lease, the vacation of the premises by the Lessee and the complete discharge of the Lessee's obligations to the Lessor arising from this lease, whereafter it shall be refunded to the Lessee. The Lessee shall not be entitled to set-off against the deposit any rental or any other moneys payable by it in terms of the provisions of this lease."

Clause 6.1

Request: This clause is to be amended to make provision for Council applying reasonableness in its judgment on the determination of the physical condition of a hangar after a lease contract is terminated. Council would have used this standard when making its decision in any event, but it will now be specifically expressed as such in the contract.

Committee's recommendation: The clause is to be amended as suggested by Messrs Kinghorn Associates: "...in good order and condition to the reasonable satisfaction of the Lessor;"

Clause 7.1

Request: That the wording of the clause makes it clear that the lessee has the right to remove the removable improvements subject to the obligation to re-instate the land.

Committee's recommendations: That the opinion of Messrs Kinghorn Associates be supported that it is unnecessary to include this as clause 7.2 adequately deals with this issue.

Clause 7.3

Request: That it be made clear that the lessee will have proprietary rights to the removable parts of the improvements.

Committee's recommendation: That the opinion of Messrs Kinghorn Associates be supported that it is unnecessary to include this as clause 7.2 already places an obligation on the lessees to remove any such immovable property.

Clause 7.3.1

Request: If a hangar owner wants to sell his hangar to a successor-in-title, the approval of such successor-in-title must first be obtained from Council as it is

then requested to lease the land to the new buyer. This clause is to be amended to ensure Council will not unreasonably disapprove the lease to such a successor-in-title. This again would have been standard practice and is now just incorporated in writing in the agreement.

Committee's recommendation: That the clause to be amended as follows: "the Lessor has approved such successor-in-title, *which approval will not be withheld unreasonably.*"

Clause 8.2

Request: That the lessor should not be required to keep Council indemnified against a claim that might be instituted as a result of negligent or wilful misconduct on Council's part.

Committee's recommendation: Council cannot expose itself to such liability and hangar owners should ensure that their personal insurance sufficiently covers liability of this sort.

In the current lease agreement this clause also calls on the Lessee to indemnify Council against any legal action any party might want to take against Council as a result of any incident relating to the Lessee and his rental of the premises at the Aerodrome. It also stipulates the Lessee has to defend such a claim on behalf of Council at its own cost and expense should it be necessary.

Committee's recommendation: It is proposed to amend the clause as recommended by Messrs Kinghorn Associates to allow Council to decide on the appropriate way it wants to defend such matter, although such related costs will still remain for the account of the Lessee. Council will thus be in complete control of how it wants to defend the matter and the related legal process and this would no longer be to the discretion of the Lessee.

The clause is to be amended as follows: "*The Lessee hereby indemnifies and undertakes to keep the Lessor indemnified against any claim for loss or damages of property or person or any claim whatsoever which may be made against the Lessor by any person visiting, employed or present at the premises for whatsoever reason or any conduct or omission occurring at the premises for whatsoever reason or any conduct or omission occurring at the premises irrespective of whether such act was committed or omission occasioned by the Lessee, any person or animal for whose action it is in law liable for, or by any other party whatsoever or any claim made against the Lessor.*"

Clause 8.3

Request: That the wording of this clause is to be amended in support of the above amended clause 8.2 dealing with any legal action that might arise against Council from a 3rd party and makes provision for Council to have the Lessee pay all such legal fees on demand.

Committee's recommendation: The clause is to be reworded according to the suggested wording of Kinghorn Associates as follows: "*This indemnity extends to any order, expense or cost which may be given against or incurred by the Lessor in relation to any claim referred to in this clause 8 and the Lessee shall forthwith on demand thereto by the Lessor, settle any such expense or cost or refund the Lessor in respect of same, as the case may be.*"

Clause 8.4

Committee's recommendation: As per Kinghorn Associates' opinion, in light of the amended contract now giving Council direct and full control of the process of legal action in defence of any claim by any 3rd party against it, this clause can now be deleted from the new agreement.

Clause 8.4 reads as follows:

"For the purpose hereof the LESSOR undertakes to provide the LESSEE with such written claims as soon as reasonably possible after the receipt of such claims"

Clause 13.1.2

Request: That the clause be amended so as to not allow Council to cancel the lease agreement should the lessee be one day late with his payments and allow a reasonable period for the lessee to rectify such a breach.

Committee's recommendation: That the clause be adjusted so as to not exclude the breach of late payment of rent from the requirement of Council having to give 14 days' notice for the lessee to rectify it as follows:

"subject to the provisions of clause 13.1.3, the LESSOR shall not cancel on the ground of the LESSEE'S breach or the LESSEE permitting a breach of any of the provisions of this lease (other than the provisions of clause 4 above), without first having given 14 (fourteen) days' notice in writing calling upon the LESSEE to rectify such breach or to cause the rectification of such breach (as the case may be) and the LESSEE failing to comply with the notice;

It is proposed that the above amendments be made and a new lease agreement sent to all hangar owners which would cancel and replace the existing agreement as the binding document stipulating the terms of lease between Council and the Lessees of the hangars.

Attached as general information is **Annexure "C"** which is a list of the current hangar lessees as well as the monthly lease tariffs they pay for their hangars.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That all existing lease agreements be terminated and that hangar owners be issued with new lease agreements incorporating the changes in (b) (i) to (viii) below and that this new agreement replaces the existing lease agreement as valid contract reflecting the terms and conditions of lease between Council and all hangar lessees at the Swakopmund Aerodrome.**
- (b) That the amendment of the following terms of the lease agreement pertaining to the leases of the hangars at the Swakopmund Aerodrome be approved as follows:**
 - (i) *That Council decides whether the current lease period of 9 years and 11 months be maintained or whether lessees be afforded the choice of a lease period of:***
 - (a) *9 years and 11 months, or***
 - (b) *20 years together with the registration of a Notarial Lease for the account of the lessee.***
 - (ii) *That the 6 month's bilateral notice period to cancel the lease agreement be maintained.***

- (iii) *That clause 3.4 be reworded as follows: "The Lessee shall pay a deposit of N\$ to the Lessor on date of signature hereof. The Lessee shall adjust the deposit annually on the anniversary of the commencement date of the lease, so that the deposit shall at all times be equal to one month's rental. The Lessor shall be entitled to apply the whole or portion thereof to the payment of the rental or settlement of any other liability for which the Lessee is responsible in terms of this lease. If any portion of the deposit is so applied, the Lessee shall forthwith on demand thereof by the Lessor reinstate the deposit in full. The deposit shall be retained by the Lessor until termination of the lease, the vacation of the premises by the Lessee and the complete discharge of the Lessee's obligations to the Lessor arising from this lease, whereafter it shall be refunded to the Lessee. The Lessee shall not be entitled to set-off against the deposit any rental or any other moneys payable by it in terms of the provisions of this lease."*
 - (iv) *That the wording 'complete satisfaction' in clause 6.1 be replaced with 'reasonable satisfaction'.*
 - (v) *That clause 7.1 be left unchanged.*
 - (vi) *That the wording 'which approval will not be withheld unreasonably' be added to the end of clause 7.3.1*
 - (vii) *That clause 8.2 be amended to read: "The Lessee hereby indemnifies and undertakes to keep the Lessor indemnified against any claim for loss or damages of property or person or any claim whatsoever which may be made against the Lessor by any person visiting, employed or present at the premises for whatsoever reason or any conduct or omission occurring at the premises or as a result of any conditions present at the premises irrespective of whether such act committed or omission occasioned by the Lessee, any person or animal for whose action it is in law liable for, or by any other party whatsoever or any claim made against the Lessor."*
 - (viii) *That clause 8.3 be reworded as follows: "This indemnity extends to any order, expense or cost which may be given against or incurred by the Lessor in relation to any claim referred to in this clause 8 and the Lessee shall forthwith on demand thereto by the Lessor, settle any such expense or cost or refund the Lessor in respect of same, as the case may be."*
 - (ix) *That clause 8.4 be deleted.*
 - (x) *That clause 13.1.2 be reworded as follows: "subject to the provisions of clause 13.1.3, the LESSOR shall not cancel on the ground of the LESSEE'S breach or the LESSEE permitting a breach of any of the provisions of this lease (other than the provisions of clause 4 above), without first having given 14 (fourteen) days' notice in writing calling upon the LESSEE to rectify such breach or to cause the rectification of such breach (as the case may be) and the LESSEE failing to comply with the notice;*
-

11.1.3 **CLOSED BID SALE OF 7 JUNE 2013: RESALE OF ERF 5627, EXTENSION 17, DUNES ESTATE**
(C/M 2013/11/28 - E 5627)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.5 page 41 refers.

A. The following item was submitted to the Management Committee for consideration:

Council sold 20 General Residential erven situated in Extension 17, Kramersdorf by Closed Bid Sale on **7 June 2013**. All the erven were sold to registered bidders with the Conditions of Sale allowing them 90 days within which they had to secure the full purchase price.

On **7 October 2013**, the allowed 90 days lapsed and the sale of 5 erven were cancelled due to the purchasers not having secured the full purchase prices.

As per the Conditions of Sale, these erven were then offered for sale to the 2nd highest bidders on the specific properties who had not yet acquired any other property from the Closed Bid Sale on the day. The same terms and conditions that were applicable on the date of the Closed Bid Sale on **7 June 2013** were applicable to the resales. The new purchasers were therefore also given 90 days within which to secure the purchase price and thus have to do so by **5 January 2014**.

The erven in question are:

<i>Erf</i>	<i>Price</i>
5600	N\$ 460 000.00
5604	N\$ 495 000.00
5627	No qualifying bidder
5631	N\$ 450 000.00
5632	N\$ 520 000.00

According to the Conditions of Sale, the principle of one erf per bidder applied. All other bidders who submitted bids on Erf 5627, Swakopmund had however already acquired properties at the Closed Bid sale on **7 June 2013** and no qualifying bidders remain to whom Erf 5627, Swakopmund can be offered. Erf 5627, Swakopmund therefore remains unsold.

It is proposed that Council approves the sale of Erf 5627 via Closed Bid Sale on the Cost Limited Average Price (CLAP) method during 2014.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That it be noted that Erf 5627, Swakopmund was not sold at the Closed Bid Sale of 7 June 2013.
 - (b) That Erf 5627, Swakopmund be sold by means of the Cost Limited Average Price method at a Closed Bid Sale in 2014 together with the remaining unsold Industrial erven.
 - (c) That the Cost Limited Average Price method be adopted and incorporated into Council's property.
 - (d) That staff members be trained to administer the Cost Limited Average Price.
-

11.1.4 **CLOSED BID SALE OF ERF 4884, SWAKOPMUND**
(C/M 2013/11/28 - E 4884)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.6 page 42 refers.

A. The following item was submitted to the Management Committee for consideration:

1) Background

Council on **25 April 2013** under item 11.1.1 resolved as follows:

- (a) *That the upset price for the sale of Erf 4884, Swakopmund located close to the airport, be based on the Municipal valuation of the land and the improvements, i.e. N\$2 532 000.00, keeping in mind that it is not Council's intention to generate high profits and that 15% VAT is payable on industrial land.*
- (b) *That the sale be subject to the conditions approved by the Management Committee on 14 March 2013, except point (d), that the opening of the closed bids be repealed and be replaced with Friday, 14 June 2013.*

A Closed Bid sale was held on **14 June 2013** and the property was allocated to the highest bidder on the day, namely Messrs HHH Investment, an unincorporated partnership, who signed a Declaration of Purchase following the submission of their bid to the amount of N\$7 041 580.00. (**Annexure "A"**)

The Conditions of Sale applicable to this sale allowed the purchaser 90 days within which payment of the full purchase price had to be secured. The purchaser thus either had to pay cash or secure the purchase price by a bank guarantee by **14 October 2013**.

Also applicable to this sale was condition 3 (c) (iii) which stated that:

Nominees: The purchaser will not be given the opportunity to nominate a nominee, therefore all prospective purchasers have to ensure that the Bid Form is completed in the personal name / name of the entity into which the property will be transferred. No changes to the name will be considered.

2) Purchaser's Request

Mr Fritze in his capacity as representative of HHH Investment then visited the offices of the General Manager: Corporate Services & Human Resources and requested that the property be registered in the name of HHH Investment Trust (Pty) Ltd. He also indicated that the purchasers were under the impression that brick making would fall under the allowed uses of the zoning as the last tenants of the property had used the property for this purpose.

Mr Fritze was informed that brick making is allowed as a consent use under the 'light industrial' zoning of the property and that the last tenants had obtained such consent which allowed them to manufacture bricks. The property was also clearly advertised as 'light industrial' and an extract from the Town Planning Amendment Scheme 12 which indicated the permissible usages relating to this

zoning formed part of the Closed Bid document that was issued to all bidders.

A letter was then received from the legal firm Messrs Koep & Partners dated **21 August 2013** on behalf of Messrs HHH Investment. (**Annexure “B”**) A name change for the purchaser from ‘HHH Investment’ to ‘HHH Investment Trust’ was requested in the letter.

The opinion of Council’s legal representatives, Kinghorn Associates was requested on the matter on **28 August 2013**. Their reply was received on **10 October 2013** and expressed the opinion that Council should strictly abide by its Conditions of Sale and not allow the change in name of the purchaser of the property.

A letter informing Messrs HHH Investment dated **14 October 2013** was posted to them informing them that the transaction would have to either proceed in the name of HHH Investment or be cancelled and it was requested that they inform Council whether they wished to proceed with the sale on these terms. (**Annexure “C”**)

Due to the extended period of time it took to receive the legal opinion and to be able to revert to Messrs Koep & Partners with the reply letter, the due date for the payment of the transaction also lapsed on **14 October 2013**. The conditions of sale reflect the following regarding non-compliance with the due date for payment:

*Should the purchase price + 15% VAT not be received at the Municipal Head Office or reflect on Council’s bank account (in the case of a direct deposit) on / before Monday, **14 October 2013** (cash before 15h00 at the Cashiers / electronic at 23h59), the transaction will be cancelled, without the need for the Municipal Council to place the purchaser on terms.*

3) Cancellation of the sale and resale of the property

The purchasers thus failed to meet the deadline for securing the purchase price and in terms of the conditions of sale, the transaction is cancelled and the property should be offered to the second highest bidder. The purchaser has made no indication that he wishes to proceed with the transaction and no written communication has been received from either Messrs HHH Investment or their legal representative to our letter dated **14 October 2013**.

It is therefore suggested that Council takes note of the cancellation of the sale of Erf 4884 to Messrs HHH Investment.

The Conditions of Sale in the event of a cancellation, state that:

Cancellation: Should the full purchase price + 15% VAT not reflect on Council’s bank account on/before Monday, 14 October 2013 (cash before 15h00 at the Cashiers / electronic at 23h59), the transaction will be cancelled, without the need for the Municipal Council to place the purchaser on terms. The erf and the industrial buildings will then be offered for sale to the second highest bidder.

The erf should thus be offered to the 2nd highest successful bidder.

Council on **31 October 2013** under item 11.1.23 resolved as follows:

- (a) *That the intention to rezone Erven 4881 to 4885, Extension 10, Swakopmund, from "Light Industrial" to "General Industrial" be approved.*
- (b) *That the Engineering Services Department attends to all relevant statutory processes involved to finalise the rezoning process.*

Considering that Erf 4884 is therefore subject to have its zoning changed from 'Light Industrial' to 'General Industrial', the property will eventually not have the same zoning as it did when it was offered for sale to bidders. This could potentially result in complications as the property would have had different allowable uses at the time when bidders submitted their bids. Council can invoke its right in terms of the Closed Bid of **14 June 2013** which states that:

The Council for the Municipality of Swakopmund is not obliged to accept the highest, or in fact, any closed bid received in respect of Erf 4884, Swakopmund

It is suggested that Council does not offer the property for sale to the 2nd highest bidder considering the change in status of the property and that it is again offered for sale to the public by means of Closed Bid sale on the conclusion of the rezoning.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) **That the cancellation of the sale of Erf 4884, Swakopmund to Messrs HHH Investment be noted.**
 - (b) **That Council invokes it's right to not offer the property for sale to the 2nd highest bidder.**
 - (c) **That Erf 4884, Swakopmund be offered for sale by means of a Closed Bid sale once the rezoning of the property to "General Industrial" has been finalised.**
-

11.1.5 **LIFE SAVING AT THE MOLE BEACH**

C/M 2013/11/28 - N 7/2/41)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.8 page 71 refers.

A. The following item was submitted to the Management Committee for consideration:

Every year during the December/January holiday season, a number of Namibians, SADC and international visitors flock to Swakopmund to enjoy their festive season.

While in Swakopmund, the majority of them seek relief from the heat at the beach, unfortunately some swimmers happen to be caught unaware by rough seas and heavy swell.

The Swakopmund Fire Brigade is in possession of life saving equipment's, which will enable them to assist with lifeguard duties along the beach and the Mole area however the fire brigade's spectrum of operations during the holiday season expands beyond life guard duties on the beach as additional services would be required elsewhere in town.

The Sea Rescue Institute of Namibia (SRIN) has always rendered lifesaving duties at the beach during the festive season. The Swakopmund Fire Brigade therefore would rely on the proficiency of their organisation for the upcoming festive season as well. The Sea Rescue Institute of Namibia has confirmed their willingness to assist with life guard duties at the beach, (correspondence **attached**).

It is indeed crucial that such services are provided to the public as many inexperienced swimmers visit our beach during the festive season.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That Messrs Sea Rescue Institute of Namibia be permitted to assist with the life guard duties at the beach during the upcoming festive season.
 - (b) That an amount of N\$15 000.00 be paid to Sea Rescue Institute for life saving initiative and that the expenses be defrayed from Life Savers Vote 104010102700 where N\$15 000. 00 is available.
 - (c) That Messrs Sea Rescue Institute of Namibia be informed to submit a report after the festive season.
 - (d) That Messrs Sea Rescue Institute of Namibia be informed that they are working under the auspices of the Fire Brigade.
 - (e) That Messrs Sea Rescue Institute of Namibia be provided with clear identified responsibilities.
-

11.1.6 **INVITATION FOR BUSINESS PROPOSALS TO LEASE TWO KIOSKS
AT ERVEN 503, TAMARISKIA AND 3701, MONDESA**

(C/M 2013/11/28 - T 503, M 3701)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.12 page 102 refers.

A. The following item was submitted to the Management Committee for consideration:

Management Committee on **12 September 2013** under item 7.7 resolved as follows:

- *That permission be granted to the General Manager: Community Development Services to re-advertise the invitation to submit business proposals to lease two (2) kiosks at Erven 3701, Mondesa and 503, Tamariskia in local newspapers.*
- *That the new proposals be submitted to Management Committee.*

Subsequent to the above resolution, the Community Development Services Department re-advertised a notice, in local newspapers inviting local youths to submit business proposals to lease two (2) kiosks situated on erven 3701, Mondesa and 503, Tamariskia.

The conditions contained in proposal documents were as follows:

1. *A detailed business proposal must be submitted. A guiding template is attached for ease of reference. (**Annexure "A"**)*
2. *The offer is limited to youth groups which are registered with the Swakopmund Municipality.*

OR

To unemployed local youths residing in Swakopmund. Proof of residence shall be attached i.e. voters registration card, declaration from the Namibian Police confirming resident ship.

1. *Established Small and Medium Entrepreneurs will not be considered.*
2. *A youth is defined as a person in the age group 16-35 years*
3. *Bidders are requested to specify a kiosk of interest, as only one proposal will be accepted per person or group.*
4. *The kiosk will be leased for a period of two (2) years at a fee of N\$ 10.00 per month which will escalate by 10% a year.*
5. *The LESSEE shall be expected to:*
 - *Clean (rake) the area around the kiosk*
 - *Clean (rake) the nearby playground*
 - *See to the cleanliness of the nearby playground*
 - *Clean the toilets (inside and outside)*
 - *Control the use of toilets, but does not derive any income from the use thereof*
6. *Selling of alcohol beverages or overnighting on the premises will not be allowed.*
7. *The LESSEE must specify his/her trading hours.*

The advert which ran from **27 September to 18 October 2013** attracted 13 proposals (**Annexure “A – N”**). It transpired from the evaluation of the proposals that eight applicants would like to venture in fast food business, one in clothing and hair products and one in groceries as well as in printing. Three (3) of the bidders failed to submit the necessary documents as required.

Based on the given guiding template, the proposals could be summarised as follows:

NO	BIDDER	INFO & SUMMARY OF PROPOSED BUSINESS	FUTURE PLANS	COMMENT
1.	Clive's Printing Solutions (Annexure “B”) - Owner: Clifford Shivute - ID No: 84042810087 - No proof of residence - Bidding for Kiosk on Erf 503 Tamariskia	- T-shirts and cup printing and internet for school going children	- Business grows and acquire own land or bigger place to operate from. Plan to open more branches. - Plan to train and employ more youth to cut down on unemployment rate in the region.	- This could be a viable project, however looking at the location of the kiosk and the target group; the business might not be profitable. - Bidder failed to provide proof of residence.
2.	Erica's Trading Enterprise cc (Annexure “C”) - Owner: Erica !Naibas - ID No: 80061910058 - Voters Registration card copy attached - Bidding for Kiosk on Erf 3701 Mondesa	- Take away - Training youth in math and decorating - Cleaning services	- Create more jobs for the youth - Acquire own land by June 2014	- Take away is a viable project taking the location into consideration - Training youth in math and decorating is not possible as the space is limited.
3.	Tongo Mwazi (Reach out kiosk) (Annexure “D”) - Owner: Tongo Mwazi - ID: 82072210167 - Bidding for Kiosk on Erf 503, Tamariskia - Residence declaration attached	- Selling clothing (chitenges), hair products (wigs), sweets and recharge vouchers	- Fixing computers - Employ 2 additional employees	- The business is viable looking at the demand of hair products and recharge vouchers.
4.	Joyous Investment and Sport Entertaining (Annexure “E”) - Owner: Rauna Kamudulunge - ID: 88062400794 - Bidding for Kiosk on Erf 3701	- To sell groceries, sweets, snacks and refreshment	- Employ more staff on available resources - Upgrade the business and provide internet café/take away - Open new branches in various locations or	- The demand for groceries is high as the formal outlets i.e. Mondesa Woermann Brock is a distance away. Plus the clinic built in the surrounding will boost the business.

	Mondesa - Residence declaration attached		suburbs	
5.	Swakopmund Youth With a Vision (Annexure "F") - Vice President, Piet Carstens applied on behalf of the group - ID: 81042400040 - Did not specify preferred Kiosk, however indicated that they propose the Swakopmund Municipality to install a pre-paid water meter facility, to sell water to nearby DRC community. - No proof of residence	Take Away selling snacks and light meals such as hotdogs, soft drinks, Namibian traditional take away, newspapers, prepaid airtime, selling daily necessities, photo copies and printing	- Will employ one full time youth and the other part time from Mondesa - Plan to acquire land in the business area behind Shell Mondesa - Once acquire own land, the Café will employ 3 youth on full time basis - Will start 3-6 months internship programme for the school drop outs to empower them with skills as waiter/waitress, cooks and customer service program	The business is viable and may perform very well. However, the bidder failed to provide proof of residence and did not specify preferred kiosk.
6.	Huisen Fast Food (Annexure "G") - Owner: Cecil Huseb - ID No: 86032800725 - No proof of residence attached - Bidding for Kiosk on Erf 3701 Mondesa	- Selling fast food for take away - Selling soft drinks, sweets, fudges, biscuits and other consumable		The business is viable looking at the location. The clinic, school and houses in the neighbourhood will appreciate a business of that nature.
7.	Benhard Mauha (Annexure "H") - Owner: Benhard Mauha - ID: 76040910143 - Bidding for kiosk on Erf 3701 Mondesa - Proof of residence attached	To sell fast food, fish & chips, hamburgers, meat products and soft drinks	- Strive to become bigger in future - Possibility of acquiring a business plot for future expansion and growth - Employ unemployed youth	The business is viable looking at the location. The clinic, school and houses in the neighbourhood will appreciate a business of that nature.
8.	Hanganene Grounds Café (Annexure "J") - Owner: Andreas Udishinga - ID: 88042500149 - Proof of residence attached - Bidding for a	Take away selling snacks and light meals such as hotdogs, soft drinks, newspapers and prepaid airtime	- Plans to employ one youth from Mondesa on part-time basis. - Acquire land in Mondesa and expand business - Subsequently employs 3 youth on full time	The business is viable, however the direct competition i.e. Super Save is around the corner.

	kiosk on Erf 503 Tamariskia			
9.	Arise and Shine Too (Annexure "K") - Owner: Leon Linyowoni - ID: 84070410112 - Proof of residence attached - Bidding for a Kiosk on Erf 3701, Mondesa	General dealer on small scale selling reasonably priced groceries and fast food to Mondesa residents	- As the business grows more youth will be employed - Expand the business step by step with a kitchen for take away food, bakery and a butchery - Acquire bigger place - Training young people to become bakers, cooks and butchers	The business is viable looking at the location. The clinic, school and houses in the neighbourhood will appreciate a business of that nature.
10.	VVA Investment CC (Annexure "L") - Owner: Victoria Ananias - ID: 91021100153 - Proof of resident ship attached - Bidding for a Kiosk on Erf 3701, Mondesa	Will sell coffee, tea, soup, home-made, hotdogs, sandwiches, toasts, cup-cakes, milk shakes sweets etc.	- Acquire own land - Own more coffee shops - Create more employment	The business is viable, however the competitors are just around the corner.
11.	Always Catering Investment (Annexure "M") - Owner: Aina Angula - ID: 86071300061 - Proof of residence attached - Bidding for a kiosk on Erf 503 Tamariskia	Will sell different type of food and soft drinks	- Business growth - Employ more youth	The business is viable, however the direct competition i.e. Super Save is around the corner.
12.	Zelda Trading Enterprises (Annexure "N") - Owner: Zelda !Naibas - ID: 91072301040 - Proof of residence attached - Bidding for a Kiosk on Erf 3701 Mondesa	Will sell daily needs such as bread, buns, soft drinks, sweets, chips, hotdogs, pie, hamburger, newspapers, cigarette, coffee and tea and airtime	- Acquire land - Expand business and employ more youth - Selling home made products	The business is viable looking at the location. The clinic, school and houses in the neighbourhood will appreciate a business of that nature.
13.	Tiffany Kavita (Annexure "O") - Owner: Tiffany Kavita - ID: 89063000138 - Proof of residence attached	Catering	Business to expand and employ more youth to reduce poverty and upgrade living standards of local people	Food business is viable looking at the location. The clinic, school and houses in the neighbourhood will appreciate a business of that nature.

	- Did not specify a preferred Kiosk			
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B. After the matter was considered, the following was:-

RECOMMENDED:

(a) That the following applicants be disqualified for failing to submit required documents as stipulated in the proposal document:

- (i) Messrs Clive's Printing Solutions - no proof of voters registration card / declaration of residency. There is no proof that the applicant is a resident of Mondesa.*
- (ii) Messrs Swakopmund Youth With a Vision - no proof of voters' registration card / declaration of residency. There is no proof that the applicant is a resident of Mondesa. Did not clearly specify preferred kiosk.*
- (iii) Messrs Tiffany Kavita - did not specify preferred kiosk.*

(b) That Council approves the following applicants for a period of 2 (two) years at a cost of N\$10.00 per month which will escalate with 10% annually from 1 July:

APPLICANT	ERF NO. OF LESSEE	PROPOSAL
Messrs Hanganene Grounds Café	Erf 503, Tamariskia	<i>Take away selling snacks and light meals such as hotdogs, soft drinks, newspapers and prepaid airtime.</i>
Messrs Zelda Trading Enterprises	Erf 3701, Mondesa	<i>Will sell daily needs such as bread, buns, soft drinks, sweets, chips, hotdogs, pie, hamburger, newspapers, cigarette, coffee and tea and airtime.</i>

(c) That the following conditions apply:

- (i) The LESSEE shall be expected to:*
 - Clean (rake) the area around the kiosk*
 - Clean (rake) the nearby playground*
 - See to the cleanliness of the nearby playground*
 - Clean the toilets (inside and outside)*
 - Control the use of toilets, but does not derive any income from the use thereof*
- (ii) Selling of alcohol beverages or overnighting on the premises will not be allowed.*
- (iii) The LESSEE must specify his/her trading hours.*

A. The following item was submitted to the Management Committee for consideration:

In order to prepare for the finalisation of the **2012/2013** Financial Year end conclusion, the General Manager: Finance requires Council's approval to effect certain transfers involving the Operational Budget e.g. additional funds and over expenditures.

The purpose of this submission is thus to obtain Council's authorization for the following transfers:

1) Messrs Namwater

Due to the increase of the bulk water price as announced by Messrs Namwater at the increased rate applicable from **1 July 2012** of N\$6.90 per m³ as opposed to the previous rate of N\$6.00 per m³. This created a shortage on the Operational Budget and required the additional amount of N\$ 3 973 060.00 to rectify this short fall.

2) 5% Assessment rates payable to Messrs Erongo Regional Council

As a result of annual interim valuation roll/s completed, Council generated additional revenue resulting in the increase of the assessment rates payable to Messrs Erongo Regional Council. An additional amount of N\$139 000.00 is needed to provide for this deficit in the budget.

3) Leave Reserve

The accumulated leave days of the permanent staff in Council's employment as at **30 June 2013** amounted to N\$5 838 088.12. The Leave Reserve Fund's balance was only N\$4 356 638.21 resulting in a shortfall of N\$1 481 357.22 and additional provision was made to compensate therefore.

4) Valuation Costs

Due to the development of new land and properties that was completed, further valuations were requested resulting in additional valuation costs to Council. An additional amount of N\$ 18 000.00 was required to cover this short fall.

5) Over Expenditure

Annexure "A" identifies the transfers required to compensate for over expenditure on the stated accounts.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the additional funds to the value of N\$3 973 060.00 required for payment to Messrs NamWater for bulk water purchases be approved.**
 - (b) That the additional funds to the value of N\$139 000.00 required for payment to Messrs Erongo Regional Council for payment of the supplementary 5% Assessment Rates be approved.**
 - (c) That the additional funds to the value of N\$1 481 357.22 for the Leave Reserve Fund be approved.**
 - (d) That the additional funds to the value of N\$18 000.00 for payment of the increase valuation costs be approved.**
 - (e) That the over expenditure amounting to N\$1 734 847.43 as per Annexure “A” (**attached**) be approved.**
 - (f) That the General Manager: Finance provides additional explanation for over expenditures in future.**
-

11.1.8 **DETERMINATION OF CONDITIONS OF ALIENATION OF LAND TO TRANSNAMIB HOLDINGS LIMITED TO RELOCATE THE RAILWAY STATION**

(C/M 2013/11/28 - E 466, G 4/2/1/2)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.14 page 197 refers.

A. The following item was submitted to the Management Committee for consideration:

Council on **27 June 2013**, under item 11.1.6 (a) and (c) resolved:

- (a) *That the allocation of a portion of the Remainder of Portion B of Swakopmund Town and Townlands No 41 to Messrs TransNamib Holdings Limited for the purpose of relocating the railway station and providing a new siding including rails for shunting operations and supplying the proposed new Salt Company (Pty) Ltd erf with services, be approved in principle, subject to the following:*
- (i) *The completion of the statutory requirements for town planning;*
 - (ii) *A price being determined for the land; and*
 - (iii) *Completion of the statutory requirements for the sale of the property.*
- (c) *That all costs relating to the availing of the portions of land be for the account of the respective applicants, such as, but not limited to, the required town planning procedures, alienation cost and provision of services.*

In execution of (a) (ii) above, a valuation for the relevant portion of land was requested from Council's official valuator. On 7 October 2013 the probable market valuation was received in a communication from Messrs The Trust & Estate Co (Pty) Ltd and the property was valued as follows:

	<i>Remainder of Portion B of Swakopmund Town and Townlands No. 41 to Messrs Trans Namib Limited</i>
<i>Zoning:</i>	<i>Parastatal</i>
<i>Size:</i>	<i>Unknown</i>
<i>Rate for unserviced land:</i>	<i>N\$ 20.00 / m²</i>
<i>Rate for serviced land:</i>	<i>N\$ 80.00 / m²</i>

In the Town Planning Amendment Scheme 12 the zoning "*Parastatal*" is not defined. It is thus recommended that the property be rezoned to "*Authority*" which the Scheme defines as follows:

"AUTHORITY" refers to the Government of the Republic of Namibia.

At the Council meeting of **30 May 2013** under item 8.6 it was resolved:

- (b) *That in future land be donated to parastatals as new townships develop and that parastatals be required to provide the equivalent value as social responsibility.*
- (a) *That all costs involved for the transfer and rezoning of these erven be for the account of the relevant parastatal.*

As per the above resolution, it is thus recommended that Council donates the land required for the establishment of the railway line and railway siding only to Messrs TransNamib Limited. Should they require any additional land for business purposes, it can be sold to them at a rate of N\$20.00/m² being the valuation received from Council's valuator for unserviced parastatal land.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the Engineering Services Department in collaboration with Messrs TransNamib Limited determine the relevant portion of the Remainder of Portion B of the Swakopmund Town and Townlands No. 41 that would be required for the establishment of a railway line and railway siding.**
- (b) That the portion of the Remainder of Portion B of the Swakopmund Town and Townlands No 41. established in (a) be donated to Messrs TransNamib Limited.**
- (c) That the newly created erf be rezoned “*Authority*” at the cost of Messrs TransNamib Limited.**
- (d) That Messrs TransNamib Limited be required to provide the equivalent value of the portion donated to them in terms of (b) above as social responsibility based on the size as per the erf diagram and at a rate of N\$20.00/m²**
- (e) That a submission be tabled to Council in 2014 to define what Council considers within the scope of ‘social responsibility’ together with the relevant guidelines and rules to be made applicable in the enforcement hereof;**
- (f) That should Messrs TransNamib Limited require any other portion of the Remainder of Portion B of the Swakopmund Town and Townlands No 41 that such application be submitted to Council for approval.**
- (g) That the relevant portion identified in (f) be sold at a rate of N\$20.00/m².**
- (h) That Messrs TransNamib Limited must accept that no rights will accrue to them from Council’s resolution unless all the relevant conditions of the Property Policy are complied with in full and all the relevant authorities have given the necessary permission, if applicable.**
- (i) That the requirements regarding the alienation of immovable property as prescribed in terms of the Local Authorities Act 23 of 1992, as amended, and the Townships Ordinance 11 of 1963 respectively, must be complied with in full.**
- (j) That no development or construction will be permitted to commence until the statutory processes have been completed.**

- (k) That all costs relating to the availing of the portion of land, transfer of the erf, (including but not limited to transfer duty, conveyancer's costs, compilation of Agreement of Sale, the required town planning procedures, alienation cost and provision of services as well as any legal or other costs that may arise from this application), shall be for Messrs TransNamib Limited's account.
 - (l) That Messrs TransNamib Limited shall submit layout plans, indicating the civil services infrastructure, building plans, as well as the service demand for the intended project for approval by the General Manager: Engineering Services prior to commencement of installation of the said services.
 - (m) That internal and external services must be completed within 24 months from date of sale, being the date of signing the deed of sale.
 - (n) That Messrs TransNamib Limited shall supply designs for all civil services infrastructure for its own account and to the specifications of the Engineering Services Department and Erongo RED. All costs with regard to the provision of municipal services required for any development shall be paid by Messrs TransNamib Limited prior to any such services being provided by Council.
 - (o) That no subdivision and sale of any portion of the new erf will be considered.
 - (p) That should Messrs TransNamib Limited no longer need the land or wish to sell it:

 - (i) the donated land must be retransferred to Council and the beneficially useful improvements thereon can be purchased by Council at the market value thereof;*
 - (ii) any land purchased by Messrs TransNamib Limited must be offered to Council at the original purchase price and beneficially useful improvements be sold at the market value.*
-

11.1.9 **OBJECTION RECEIVED AGAINST THE LEASE OF A PORTION OF
ERF 2747, AND ERF 1316, SWAKOPMUND TO MESSRS KAZAK
AFRICAN EXPERIENCE CULTURAL TOURISM CC**

(C/M 2013/11/28 - E 2747)

**Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.17 page 213 refers.**

A. The following item was submitted to the Management Committee for consideration:

1. Introduction

Council advertised its intention as per Notices 51 and 61 to lease a portion of Erf 2747 and Erf 1316, Swakopmund to Messrs Kazak African Experience Cultural Tourism CC (Messrs KAECT CC), the closing date for objections was **07 October 2013**.

At the closing date for objections the following objections were received from:

- *Mr Peter B van Ginkel of Swakopmund Adventure Park (Swakopmund Paintball Adventure Centre & Baron Tours), **Annexure "A"***
- *Mr A J L van Biljon of Alte Brücke, **Annexure "B"***

The objections are summarized below:

Mr Peter B van Ginkel

- *The advert notice 49 / 2013 stating that the lease area will be used for an open air restaurant was wrong.*
- *The objector in the past has agreed with Messrs Kazak AECT and not a close corporation to have full security of the common entrance by a reputable security firm.*
- *What are the future plans of Kazak African Experience Cultural Tourism CC as the CC never existed when they initially applied for the portion of land*

Mr A J L van Biljon

- *There is no Council resolution that permits Messrs Kazak African Experience Cultural Tourism CC to lease a portion of Erf 2747 and Erf 1316, Swakopmund – the Council resolution does not refer to a close corporation.*
- *Advert notice did not make provision for the rental charges payable by Messrs Kazak African Experience Cultural Tourism CC*
- *The proposed use is not in line with the current zoning yet Council has granted Messrs Kazak African Experience Cultural Tourism CC permission to lease the area unlawfully in terms of section 48 of the Town Planning Ordinance, 18 of 1954.*
- *Council will rezone the erf to special for purpose of Holiday houses, caravan Park, business use and tourism related activities just to accommodate the business of Messrs Kazak African Experience Culture Tourism.*
- *Council never had meetings with all stakeholders concerned informing them its intention to lease proposed area to Messrs Kazak.*
- *The proposed access route will lead to an increase in traffic congestion.*
- *Council is acting unlawful and not in terms of Town Planning Scheme and the provisions of the scheme (refer to section 43 (3) of the Town Planning Ordinance)*
- *The proposed activities of cultural shows, theatre, music, dance, drama and performance arts are not compatible with the running of the adjacent campsite. The objector is of the opinion that the proposed activities will have effect on his business on Erf 3650, Swakomund.*
- *The proposed activities will cause noise pollution and this will have effect on neighbouring properties.*
- *The area enjoys a unique ambiance as it has remained largely untouched by major corporate development so prevalent in the rest of the town. Therefore the proposed activities will most certainly detract from the unique experience of tourists, quest and visitor to the area.*
- *The zoning indicated in notice 61/2013 as "Special" misleads readers and the public as the notice did not indicated that the proposed area will be rezoned. Council is under the impression that the rezoning is mere formality instead of a legal process.*

- Objector is of the opinion that Council has forced Messrs Kazak to choose the subject portion of land instead of allocating to him his desired site situated next to the Martin Luther referred to the applicant's letter dated 19 November 2010.
- Should Council approve the application of Messrs Kazak to lease the proposed area, as the owner of Erf 384, Swakopmund I will be forced to erect a high boundary wall and this will hide the national monument view.
- His application dated 16 August 2010 to purchase the same portion of land was turned down by Council.
- The Municipal rest camp and the business on Erf 384 will suffer financial loss which losses will far outweigh the relatively low rental income to be gained from the lease should Council approve the application of Messrs KAECT.

2. Objection

Having analysed the objections concerns, it is clear that objectors are mostly concerned about competition and possible change in the use of the area which according to them is not complimentary to their own business ventures.

Mr A J L van Biljon states that he still interested in purchasing the portion of land intended to be leased to Messrs KAECT.

It must be noted that Messrs KAECT intends to lease the proposed land in the name of Messrs Kazak African Experience Tourism CC and not trading as Messrs Kazak African Experience Tourism as previously communicated to Council.

Following are the concerns of the objectors quoted from their letters followed by the comments of the Swakopmund Municipality:

Quoted from Letter	Comments
<p><i>Lease for an open air restaurant to Messrs Kazak as per notice 49/2013 is wrong.</i></p> <p><i>Also the amended notice did not indicate that the property will be rezoned.</i></p>	<p><i>: Notice 49/2013 was cancelled and replaced with notice number 51/2013 and 61/2013 and these notices indicated that the cultural village to be established by Messrs Kazak African Experience Cultural Tourism CC will include: serving African cuisine, cultural shows, theatre, youth activities, education programs, cultural meetings art & crafts, music, dance, drama and performance arts. The open air restaurant as mentioned by the objector was incorrectly advertised per Notice 49/2013 and is therefore irrelevant and no longer applicable, therefore the objection is invalid.</i></p> <p><i>The amended notice did not indicate the proposed zoning as the Local Authority Act, Act 23 of 1992 only states that the current zoning be indicated.</i></p> <p><i>The rezoning process will be advertised as required and is a separate process.</i></p>
<p><i>The objector wants to know if there are plans of leasing the area to Messrs Kazak African Experience Cultural Tourism CC as the closed corporation was never part of Council's approval.</i></p>	<p><i>: There is no hidden agenda for leasing the proposed area to Messrs Kazak African Experience Cultural Tourism CC. The CC was not registered at the time the application was made Mr Ismael Isak #Nawaseb use to trade as Kazak African Experience Cultural Tourism. Attached Annexure "C" is a founding statement of the Close Corporation represented by Mr I #Nawaseb as sole member of the CC. Since the Close Corporation is now registered as an entity all matters related to this transaction will now become part of the CC.</i></p>
<p><i>There is no Council's resolution that permits Messrs Kazak African Experience Cultural Tourism CC to lease a</i></p>	<p><i>: When Mr #Nawaseb initially applied to lease the portion of the Close Corporation was not in existence. At that time he was only trading as Kazak African Experience Cultural Tourism thus</i></p>

Quoted from Letter	Comments
<p>portion of Erf 2747 and Erf 1316, Swakopmund.</p>	<p>the resolutions read as such "CC". Kazak African Experience Cultural Tourism CC was only registered recently on the 19 June 2013 by the Ministry of Trade and Industry which is after Council already approved to lease the area to the applicant, being the sole member of the close corporation.</p>
<p>The notice published in accordance with the provision of section 63 (2) of the Local Authorities Act, Act 23 of 1992 is defective as no mention is made of the rental payable by Messrs Kazak in accordance with the stipulation of Section 63 (2) (a).</p>	<p>Section 63 (2) (a) stipulates as follows:</p> <p>"A Local Authority Council referred to in paragraph (b) of subsection (1) shall before any immovable property so referred to is sold, disposed of, hypothecated or otherwise encumbered, whether by way of public auction or tender or private transaction, cause a notice to be published in at least two newspapers circulating in its area on one occasion in a week for two consecutive weeks-</p> <p>(a) Setting out the zoning and situation of such property and stating the place, dates and times where full particulars relating to the sale, disposal, letting, hypothecation or encumbrance of such property will lie for inspection by interested persons for a period of not less than seven days after the last date of publication of such notice.</p> <p>It is accordingly not required in terms of the Local Authorities Act that the rental payable to Council by the applicant be published.</p>
<p>The proposed use is not in line with the current zoning yet Council has granted Messrs Kazak African Experience Cultural Tourism CC permission to lease the area unlawful in terms of section 48 of the Town Planning Ordinance 18 of 1954.</p> <p>and</p> <p>Council is tasked with effectively enforcing observance of any existing Town Planning Scheme and the provisions of the scheme (refer to section 43 (3)) of the Town Planning Ordinance</p>	<p>The current zoning for the portion is "Special" for purpose of holiday houses and caravan park. The property will be rezoned to "Special" for purpose of holiday houses, caravan park, business use and tourism related activities.</p> <p>Although the rezoning is not finalized, Council on 28 November 2012, approved that Messrs Kazak African Experience Cultural Tourism be permitted to proceed with the lease while the rezoning is in process.</p> <p>Section 48 (a) (i) of the Town Planning Ordinance 18 of 1954 stipulate that:</p> <p>Any person who execute any work or does any other matter or thing contrary to any provision of the scheme without such approval as it may be competent for the responsible authority to grant, or contrary to any condition subject to which such approval was given or uses any land or building in a manner contrary to any provision of the scheme shall be guilty of an offence and liable on conviction to a fine not exceeding N\$ 2000.00 or to imprisonment for a period not exceeding six months. Provided that in case of a continuing offence an additional fine not exceeding N\$ 50.00 for every day upon which the contravention continued may be imposed.</p> <p>The Ministry does however take into consideration the de facto use of the property. In this case a fish cleaning area has been established long ago, a shop / restaurant has similarly been operating from the premises for many years, while Mr Peter van Ginkel's Paintball activities have been going on for long time.</p>

Quoted from Letter	Comments
<i>Council supposed to have meetings with all stakeholders concerned informing them of the proposed lease area to Messrs Kazak African Experience Cultural Tourism CC</i>	<p>Mr #Nawaseb had discussion with Mr. Peter van Ginkel about the lease of the area.</p> <p>The Local Authorities Act does not require consultations with the public, but in terms of section 63 (2) of the Local Authorities Act, Act 23 of 1992 as amended, Council is required to publish a notice in newspaper informing the public of its intention to lease the area to Kazak African Experience Cultural Tourism CC.</p> <p>Council complied with this requirement.</p>
<i>The access road to the lease area will become congested due to the increased vehicular traffic.</i>	<i>This is just an assumption of the objector, it may be that the traffic to this area will not be heavy considering the locality of the area being not easily accessible.</i>
<i>Proposed activities will create noise pollution to the guests and visitors on the adjacent properties.</i>	<p>It is not known how noisy the dancing and performance of dramas will be, but the lessee will be put on terms in order to control the noise level for it not to create nuisance to the adjacent properties.</p> <p>Mr. Peter van Ginkel already carries on events which cause noise but no complaints have been received.</p>
<i>Proposed activities will detract from the unique experience of tourists, guests and visitor to the area.</i>	<i>The proposed activities will attract more people including tourist as the lessee will offer a variety of cultural shows, theatre, youth activities educational training exhibition among others hence the area will offer more benefits to the community as well as to the tourists compare to what it is offering now.</i>
<i>The letter of the Governor of the Erongo Region dated 31 May 2011 in support of the cultural village mislead as the entity did not exist by that time.</i>	<i>The letter of the Governor although it states the name as Kazak African Experience Cultural Tourism, have been trading from home in Mondesa and the business has been known by the residents including the Governor.</i>
<i>Messrs Kazak was forced by Council to choose a portion of Erf 2747, Swakopmund instead of taking the preferable area situated next to the Martin Luther.</i>	<p>The site was offered to Messrs KAECT after he applied for any area that is conducive for his project as per his letter dated 17 November 2010.</p> <p>Council will first have to subdivide the area around Martin Luther before consider selling or leasing to the applicants on record therefore the application of Messrs KAECT together with other application for a site at Martin Luther is kept in abeyance until the subdivision is finalised whereafter they will be submitted to Council for consideration. Messrs KAECT was not forced to do anything.</p> <p>Council's latest resolution in this regard was passed on 31 October 2013.</p>
<i>Should Council approve the application of Messrs Kazak to lease the proposed area, as the owner of Erf 384, Swakopmund I will be forced to erect a high boundary wall and this will block the national monument view.</i>	<p>Building a boundary wall is the choice of the erf owner and it will not be a requirement from Council to build such wall. The building on Erf 384, Swakopmund being a historical building may not restrict adjacent properties from development.</p> <p>No clear motivation is given to why he feels it is necessary to build a high wall.</p>
<i>On 16 August 2010 Mr A J L van Biljon applied to purchase the same portion of land and</i>	<i>The application of Mr A J van Biljon of AM Altern Brunnen (PTY) Ltd was discussed at Council's meeting on</i>

Quoted from Letter	Comments
<i>his application was turned down by Council without have given a reason.</i>	<i>30 September 2010 together with a proposal to lease the area currently leased by the Swakopmund Paintball Adventure Centre whereby Council declined the offer to sell a portion of Erf 2747, Swakopmund to Mr A van Biljon. Council is not selling the land accordingly the issue of selling to Mr van Biljon is irrelevant.</i>
<i>The Municipal rest camp and the business on Erf 3650 will suffer financial loss should Council approve the application of Messrs KAECT.</i>	<i>No motivation is given for this statement and it is possible that they may even increase business because of Messrs KAECT</i> <i>In fact the two adjacent businesses have been in business for many years, it is unlikely that the upcoming business will dominate the existing business. Therefore this objection cannot be supported. Council does not protect existing business from competition.</i>

Some of the objections are based on assumptions of the objectors and opinions and are not based on facts thus they cannot be supported.

In terms of the Swakopmund Town Planning Amendment Scheme 12, Erven 2747 and 1316, Swakopmund is zoned "Special" with the special consents of the local authority for "*Holiday houses and Caravan park*".

In line with the Swakopmund Town Planning Amendment Scheme No.12 and the Town Planning Ordinance No. 18 of 1954 Council must rezone the area before allowing other uses not in line with the current zoning to operate.

Council on **30 September 2010** approved to lease apportion of Erf 2747 and 1316, Swakopmund to Mr P H B van Ginkel of Messrs Swakopmund Paintball Adventure Centre as follow for purpose of camping and recreation/ function facilities:

- (a) *That the proposals of Mr E Brand and Messrs M Maendo and L Campher be turned down as they are in direct competition with the Municipal Restcamp.*
- (b) *That the renewal of the current lease agreement with Mr P H B van Ginkel of Messrs Swakopmund Paintball Adventure Centre for a portion of Erven 2747 and 1316, Swakopmund ($\pm 12\,167\text{ m}^2$ in extent) for a further period of nine (9) years and eleven (11) months at a cost of N\$3 041.75 per month plus 15% VAT be approved.*
- (c) *That the transaction be advertised in terms of the Local Authorities Act, Act 23 of 1992, as amended.*
- (d) *That the offer to sell a portion of Erf 2747, Swakopmund to Mr A van Biljon (Snr) be declined.*

Council also on **25 October 2012**, under item 11.1.25 approved to lease a portion of Erf 2747, Swakopmund to Messrs Fiscon Investments for an open-air timber deck with outside seating.

In addition to the above, the building known as "*Desert Tavern*" is also leased. Although Council currently has three lessees on Erf 2747, Swakopmund, their uses are also not in line with the zoning of the property.

Council will have to be consistent and either permit or terminate all activities which are not in line with the zoning.

3. Background

Messrs Kazak African Experience Cultural Tourism CC (previously known as Messrs Kazak African Experience Cultural Tourism represented by Mr I I # Nawaseb) applied on **17 November 2010** to lease the paintball area at the river site to establish a cultural village. In his letter he mentioned other sites that he is also interested such as Martin Luther or any other area of that will be conducive for his project.

According to Mr #Nawaseb the place where he is currently operating is too small and he needs to expand and bring his business closer to the Central Business District (CBD) thus he is interested to lease an area at the Paintball Adventure Centre.

As indicated in the letter of Messrs Kazak African Experience Cultural Tourism dated **09 March 2011** the following services will be offered by the Cultural village to be established:

- *Provide a facility which will both be significant attractions for tourists and other visitors to the community and represents harmonious and interactive multi-cultural society that exist in the community;*
- *Accommodate, prepare and present a variety of cultural shows, theatre and youth activities, educational program and exhibitions;*
- *Provide an appropriate setting and infrastructure for the variety cultural performance, cultural training and cultural development for many ethnic groups*
- *Provide a culturally safe environment for family cultural meetings and educational programs;*
- *Cultivate the desire for, and interest in art and crafts, music, dance, drama and performance art among others.*

The application of Messrs Kazak African Experience Cultural Tourism was discussed at Council's meeting on **26 July 2012 under item 11.1.13** and the following was resolved:

- | | |
|-----|--|
| (a) | <i>That a portion of Erf 2747, Swakopmund be leased to Messrs Kazak African Experience Cultural Tourism for a period of five (5) years and at a rental price to be determined.</i> |
| (b) | <i>That Messrs Kazak African Experience Cultural Tourism be provided with access via the Paintball area.</i> |
| (c) | <i>That Messrs Kazak African Experience Cultural Tourism be informed that all the other identified areas could not be considered.</i> |
| (d) | <i>That the following conditions be applicable:</i> <ul style="list-style-type: none">(i) <i>That a payment of 2 x rental amount be paid as deposit (exclusive of 15% VAT).</i>(ii) <i>That Council be indemnified against any claims.</i>(iii) <i>That a 3 month termination period be applicable for both parties.</i>(iv) <i>That no construction of permanent structures (a <u>permanent structure</u> is any type of roof whether it's cardboard, netting, asbestos or iron with a cement floor.), be allowed. Any temporary structures erected on the Property shall be constructed to the satisfaction of the Engineering Services Department and be aesthetically acceptable.</i>(v) <i>That no subletting be allowed.</i>(vi) <i>That the lease agreement is not transferable and will not form part of an estate.</i>(vii) <i>That the commencement date be the date of signing the lease agreement.</i>(viii) <i>That the lessee complies with all conditions laid down by the Engineering Services Department and the Health Services Department in terms of the Building Regulations and the Health Regulations of Council, as well as all other relevant municipal regulations.</i>(ix) <i>That Council at all reasonable times have the right of access to the lease property for the purpose of carrying out inspections in order to ensure that all applicable regulations and requirements are being complied with.</i>(x) <i>That in the event of the breach of any of the conditions of the lease, the lease agreement may be cancelled at the entire discretion of Council by giving 30 days notice in writing to the lessee.</i>(a) <u>(xi) That in the event of termination of the lease agreement, the lessee shall have no claim for compensation in respect of any improvements effected on the property.</u> |

Subsequent to the above, Council on **30 August 2012** under item 11.1.5 passed the following resolution:

- (a) *That the proposal for the rezoning of Erf 2747 from "Special" for the purpose of Holiday Houses and Caravan Park to "Special" for the purpose of Holiday Houses, Caravan Park, Business Use and Tourism Related Activities be approved.*
- (b) *That the lease of a portion of land situated on Erf 2747, Swakopmund for a period of five (5) years to Messrs Kazak African Experience Cultural Tourism be held in abeyance until (a) above is completed.*
- (c) *That the rental be N\$0.30/m² which is the same as Messrs Swakopmund Paintball Adventures.*
- (d) *That the exact location and size of the lease area be determined by the Engineering Services Department and be provided to the Property Section to be incorporated and attached to the lease agreement.*
- (e) *That access be provided to the portion and the route be determined by the Engineering Services Department; with permission to be obtained from Mr P H van Ginkel of Messrs Swakopmund Paintball Adventures.*
- (f) *That the lease as set-out in (a) above be advertised in terms of the Local Authorities Act, Act 23 of 1992, as amended, at the cost of the applicant.*

Council on **28 November 2012** reconsidered its decision with reference to point (b) above in order to allow Messrs KAECT to proceed with his venture on a portion of Erf 2747, Swakopmund while the rezoning of the erf is in process of finalization hence the following was resolved:

- (a) *That point (b) of Council's resolution passed on 30 August 2012 under item 11.1.5 be repealed and be replaced with the following:*
- (b) *That the lease of a portion of land situated on Erf 2747, Swakopmund for a period of five (5) years to Messrs Kazak African Experience Cultural Tourism be permitted to proceed while the process in (a) above is completed, subject to (f) below.***
- (b) *That the lease conditions approved by Council on 26 July 2012 under item 11.1.3 remain in place, except that point (d) (i) be amended to read that a deposit of one (1) month's rental be levied; instead of two (2) month's rental to be inline with Council's resolution passed on 28 April 2011.*

The above decision is not in line with Section 48 (a) (i) of the Town Planning Ordinance 18 of 1954 which states that:

Any person who executes any work or does any other matter or thing contrary to any provision of the scheme without such approval as it may be competent for the responsible authority to grant, or contrary to any condition subject to which such approval was given or uses any land or building in a manner contrary to any provision of the scheme shall be guilty of an offence and liable on conviction to a fine not exceeding N\$ 2000.00 or to imprisonment for a period not exceeding six months. Provided that in case of a continuing offence an additional fine not exceeding N\$ 50.00 for every day upon which the contravention continued may be imposed.

Taking the above section into consideration, Council must first obtain approval from the Minister of Regional and Local Government, Housing and Rural Development for all the business activities on the current zoning while the rezoning is in process but this will be unfair to the lessees that are in operation.

4. Proposal

It is proposed that together with the submission of the objections to the Honourable Minister of Regional and Local Government, Housing and Rural Development, permission is sought to allow Messrs KAECT CC to continue with the lease of the area whilst the rezoning is in progress.

Similarly permission be applied for to continue with the following three lessees on Erf 2747, Swakopmund;

	Lessee	Lease Period	Termination Clause
1	<i>Swakopmund Paintball Adventure Centre</i>	<i>1 Nov 2010 until 30 Sep 2020</i>	<i>Clause 2.4.1 - 3 months' notice</i>
2	<i>Desert Tavern</i>	<i>1 Aug 2009 until 30 Jun 2019</i>	<i>Clause 1 - 6 months' notice</i>
3	<i>Fiscon Investments 108 CC</i>	<i>1 Dec 2012 until 30 Nov 2017</i>	<i>Clause 2 - 6 months' notice</i>

Council should also take note that Kazak African Experience Cultural Tourism is now changed to Kazak African Experience Cultural Tourism CC.

The objections received from Mr Peter B van Ginkel of Swakopmund Adventure Park and Mr A J L van Biljon representing various entities be submitted to the Minister of Regional, Local Government, Housing and Rural Development for consideration.

5. Attachments:

Annexure "A"	:	<i>Objection of Mr Peter B van Ginkel of Swakopmund Adventure Park</i>
Annexure "B"	:	<i>Objections of Mr A J. L van Biljon of Baron Tours</i>
Annexure "C"	:	<i>Notice No 49, 51 & 61/2013</i>
Annexure "D"	:	<i>Application letter of Messrs KAECT CC to lease the proposed lease area</i>
Annexure "E"	:	<i>Map indicating the proposed lease area:</i>

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That it be noted that Messrs Kazak African Experience Tourism is registered as a Close Corporation, therefore the name of the sole proprietary as it appears in all Council's previous resolutions regarding leasing a portion of land situated on Erf 2747 and 1316, Swakopmund be replaced with Messrs Kazak African Experience Cultural Tourism CC.
- (b) That Council rejects the objections received and submit same together with Council's motivation to the Honourable Minister of Regional and Local Government, Housing and Rural Development as required in terms of Section 63 of the Local Authorities Act, Act 23 of 1992, as amended.
- (c) That Council applies to the Honourable Minister of Regional and Local Government, Housing and Rural Development for permission in terms of Section 48 (a) (i) of the Town Planning Ordinance 18 of 1954 to proceed with the lease of the area to Messrs Kazak African Experience Cultural Tourism CC located on Erf 2747, Swakopmund and Erf 1316, Swakopmund while the rezoning is in progress; and to continue with the following lease agreements:

	Lessee	Lease Period
1	<i>Swakopmund Paintball Adventure Centre</i>	<i>1 Nov 2010 until 30 Sep 2020</i>
2	<i>Desert Tavern</i>	<i>1 Aug 2009 until 30 Jun 2019</i>
3	<i>Fiscon Investments 108 CC</i>	<i>1 Dec 2012 until 30 Nov 2017</i>

11.1.10 **INVITATION FOR BUSINESS PROPOSALS TO LEASE AND MANAGE THE TAXI RANK ON ERF 4353, MONDESA**

(C/M 2013/11/28 - M 4353)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.18 page 238 refers.

A. The following item was submitted to the Management Committee for consideration:

Background

Community Development Service (CDS) placed a notice in local newspaper (Notice No: 45/2013) inviting proposals from interested companies / individuals to lease and manage the Taxi Rank on Erf 4353, Mondesa along Nelson Mandela Street. A compulsory site meeting was held on **11 October 2013** in the Community Development Services Board room of which eight (8) companies / individuals attended. Closing date for submissions of proposal was **25 October 2013** at 11h00.

Current situation

Only four (3) proposals were received from the following individuals / enterprises:

- Piet Carstens (Mondesa Carwash & Valet Hub./ Logic Trading Enterprises,
- Josef Alexander,
- Seibeb Trading Enterprises

A proposal received from Namibia Public Passenger Transport Association is disqualified, because they did not attend the compulsory site meeting.

Evaluation of the proposals was done in accordance with the general conditions, specifications and management plan proposal format as outlined in the invitation document hereto attached as **Annexure "A"**.

The following are the findings after the evaluation of proposals received and **attached as Annexures "B", "C" & "D"**.

NO	NAME OF SUPPLIER	AMOUNT OFFERED	COMMENTS
1.	Piet Carstens (Mondesa Carwash & Valet Hub. / Logic Trading Enterprises)	N\$2,500.00 (per month)	a) It is a newly established company which is not operating yet, hence no past performance records b) Business plan provided is more for a carwash business than managing taxi rank c) No proper management plan on how the taxi rank will be run / managed. d) No experience in managing taxi ranks or transport industry in general.
2.	Josef Alexander	N\$1,200.00 (per month)	a) Apart from providing personal details and filling in the offer form, nothing else provided e.g. the management plan, financial plan etc. b) No business profile c) No past performance record, hence no experience. d) No proposal on how to manage the taxi rank

3.	Seibeb Trading Enterprises	N\$2,100.00 (per month)	<p>a) Company is a service provider in maintenance, transportation, cleaning, property management and carwash business</p> <p>b) Business is run and managed by the owner</p> <p>c) Has sound business management skills</p> <p>d) No experience in managing taxi rank however the owner worked as a load marshal</p> <p>e) The presented management plan of the taxi rank is quite impressive even though no practical past experience in managing taxi ranks indicated.</p>
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The past experience from the previous lessee of the taxi rank has necessitated the crucial evaluation and critical analysis of the proposals to avoid similar disappointments and breach of contract. Given the above-mentioned findings, it is concluded that although Messrs Seibeb Trading Enterprises did not indicate any practical experience, having worked as a load marshal and also meeting the requirement as outlined in the invitation document made him suitable.

Council discussed the taxi rank matter on the **31 July 2013** under item 11.1.6 and resolved:

- *That Council enters into a PPP agreement with a local partner or one of the tenants operating from the kiosks at the taxi rank to clean the ablution facilities at the Taxi Rank at their own cost.*
- *That the lessee of the ablution facilities be permitted to charge a nominal fee for the usage of the ablution facilities and ensure that the ablution facilities are in a clean hygienic condition at all times.*
- *That Council takes the responsibility of maintenance and payment of services of the ablution facilities at the Taxi Rank.*

Hence water and electricity will be a responsibility of Council.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) **That the management of the Taxi Rank on Erf 4353, Mondesa be awarded to Messrs Seibeb Trading Enterprises which met all the requirements as outlined in the invitation documents, at the offered price of N\$2 100.00 per month.**
- (b) **That the lease agreement be for the period of three (3) years, whereby the Lessee is responsible for the following:**
 - (i) *The upkeep including cleaning and maintenance of the area concerned (loading zones and car wash).*
 - (ii) *Providing security to ensure an orderly and safe site for the parking of taxis and buses embarking and disembarking of passengers as well as the loading and offloading of goods.*
 - (iii) *Providing ancillary services to passengers as required and ensures the proper running and management of the taxi rank.*
 - (iv) *Providing clear sets of rules, guidelines and a pricelist for the use of the property by taxis or buses operators.*
 - (v) *Ensuring that the users, viz. taxi drivers/owners, passengers, employees and members of the public adhere to the rules and regulations for the use of the property (loading zone and car wash).*

11.1.11 **APPLICATION BY CREATOR'S CABIN TO ADMINISTER ACCESS TO AND EXIT FROM THE DAMARA TOWER SITUATED IN THE WOERMANN HAUS**

(C/M 2013/11/28 - E 1/4/1, E 1308)

Ordinary Management Committee Meeting of 19 November 2013, Addendum 8.4 page 21 refers.

A. The following item was submitted to the Management Committee for consideration:

The purpose of this submission is to consider whether to allow access of the public to the Damara Tower of the Woermann Haus taking into consideration the unsafe condition of the tower and the renovation of the facility.

The application was considered and discussed at the **Planning Forum of 15 October 2013**, whereafter it was concluded under item 4.10 that the application of Mr & Mrs Swart of Creator's Cabin not be approved to administer the access and exit to and from the Tower, due to the poor condition of the balustrade on top of the Tower, staircases that lead to the tower and also future renovations that will take place.

1. **Introduction**

A proposal was received on **17 September 2013** attached hereto as **Annexure "A"** from Creator's Cabin to administer the access to and exit from the Tower for daily visitors / tourists alike in the Woermann Haus.

Attached hereto as **Annexure "B"** the layout of the Woermann Haus.

2. **Brief Background**

The Woermann Haus and Damara Tower was designed by architect Friederich Hoft and was built in 1903 and 1904. It first served as a school hostel, known as the Hofmeyer Hostel until 1972. The Woermann Haus was declared a National Monument in 1972 and on **28 February 1973** was handed over to the Municipality.

During 1973/1974 money was raised for the restoration of the Woermann Haus and the transformation of the building into a public library and art centre was assured.

On **30 September 1999** Council resolved that the rent of the rooms at the Woermann Haus/Tower be fixed at N\$15.00/m² with yearly escalation of 10%.

3. **Current Situation**

Ms Le Roux of Stargazing used to lease the Tower from Council and allowed visitors / tourists to the Tower and charged a nominal entrance fee, but Ms le Roux terminated the lease with effect **31 March 2013**.

There was an arrangement with regard to the key of the main door of the Damara Tower between Ms le Roux and Mr Jooste of Swakop Info Crafts Expo who leased the Caretakers flat and the Courtyard. The lease contract between Council and Mr Jooste of Swakop Info was also terminated on **31 July 2013**. The Manager, Mr De Bruin of Swakop Info supports the initiative of Mr & Ms Swart as indicated in his letter dated **17 September 2013, attached as Annexure "C"**.

There is currently no lessee for the Damara Tower.

During **September 2013**, Ms Ramos Viegas received a phone call from the Youth Development Organisation requesting to visit the Tower with grade 8 students, and was informed about the danger of the stairs and that currently nobody has the authority to allow visitors / tourists to the Tower. According to the lady, not long ago one of the staff members of the library allowed them with (grade 6) students to go up to the Tower and charged a fee.

4. **Application**

Mr & Mrs Swart of Creator's Cabin submit a proposal, **attached** hereto as **Annexure "A"** to administer the access to the Tower and exit of visitors / tourists from the Tower situated in the Woermann Haus. Their established business is situated in the Woermann Brock Mall and their operational hours are from Monday, 07:15 to Saturday, 18:00. The reason for submitting the proposal is because of enquiries from tourists who wish to enter the Tower on a daily basis and especially to see the historic building to take photographs.

5. **Comments Engineering**

Comments were obtained from the Engineering Services Department and below are a short summary.

The balustrade on top of the tower is dilapidated and the staircases that lead up to the Tower also holds a danger; however the access though up to the platform is safe. The GM: Engineering Services Department supports Creator's Cabin initiative but appeals that special authorisation must be obtained to the outlook point on top of the Tower. Furthermore, it was also suggested that boards displaying the following wording be placed at the entrance "no unauthorised access and "enter at own risk".

The memo from the Engineering Services Department is **attached** as **Annexure "D"**.

6. **Proposal**

It is proposed that the Management Committee does not support the proposal of Mr & Mrs Swart of Creator's Cabin to administer the access and exit to and from the Tower, due to the danger of the balustrade on top of the Tower, staircases that lead to the tower and also future renovations that will take place.

Furthermore it is also proposed that the Engineering Services Department install boards at the entrance of the door of the Tower, displaying the following words "**no unauthorised access**" and "**enter at own risk**".

Lastly it is proposed that the Works Section of the Engineering Services Department, replace the lock of the entrance door and therefore avoid unauthorised people from entering the tower; and to provide a copy of the key to the following lessees in the Tower:

Room 18	-	Swakopmund Youth Development & Arts Centre
Room 20	-	Ms M Heuschneider-Hofer
Room 21	-	Swakopmund Arts Association

Furthermore that the keys to the tower be handed over to the Corporate Services and Human Resources Department.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the proposal of Messrs Creator's Cabin to administer the access to the Tower and exit from the Tower not be approved due to the poor condition of the balustrade on top of the Tower, staircases that lead to the tower and also future renovations that will take place.**
 - (b) That Mr & Mrs Swart of Creator's Cabin be informed to participate when proposals are invited from the public once renovations are finalised.**
 - (c) That the Engineering Services Department install boards at the entrance of the door, displaying the words "no unauthorised access and *"enter at own risk"*.**
 - (d) That the Works Section of the Engineering Services Department replaces the lock of the entrance door and therefore eliminate unauthorised people from entering the tower; and provide a copy of the key to the following lessees in the Tower:**
 - Room 20 - Ms M Heuschneider-Hofer**
 - Room 18 - Swakopmund Youth Development & Arts Centre**
 - Room 21 - Swakopmund Arts Association**
 - (e) That the tower be locked and that access to the public only be limited to the deck area for viewing.**
 - (f) That the keys to the tower be handed over to the Corporate Services and Human Resources Department.**
-

11.1.12 **REQUEST FOR RENTAL OF THE WATER TOWER
INFRASTRUCTURE AT THE WASTE WATER WORKS**
(C/M 2013/11/28 - G 4/2/2/2)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.5 page 21 refers.

A. The following item was submitted to the Management Committee for consideration:

Introduction

Application was received from Messrs Linx Swakopmund CCTV & Security Services, a sole proprietary, requesting permission to lease space on the water tower situated at the Waste Water Works on Daniel Kamho Street for the purposes of mounting antennae required for signal transmission for their wireless network operations.

Details

Only 1 antenna will be mounted on the water tower at the outset but the applicant has indicated that he might apply for another 3 antennae in the future should it be required. The applicant has been in dialogue with the General Manager: Engineering Services Department who is satisfied to approve the proposed rental. The applicant has verified that the frequency of the equipment would not interfere with any of the existing telecommunication.

Rental Tariffs - BTS Sites

Council currently charges a rate of N\$ 20.92 /m² per month for the lease of its BTS sites. This amounts to rental of approximately N\$ 1694.52 per month considering a lease of property of 81m² in size. These leases run for a period of 5 years and reflect an annual escalation in the rental price of 10%.

In the case where the lessee is required to erect its own towers and buildings on a public open space, the lease of these sites involves additional substantial costs to the lessees with the rezoning of the relevant properties. BTS sites are however different in nature to this application as actual property space measurable in m² is rented whereas here an existing structure belonging to Council is proposed to be made use of. It is therefore suggested that rental agreements involving the erecting of structures on Council's land should be charged at a different rate to rental agreements where only space on existing structures already on Council's land is rented.

Messrs Internet Technologies Namibia recently submitted their application for the leasing of the pylon infrastructure at the Vineta Sports Ground for the purposes of also mounting their antennae onto it. Following a comparison by them of the rental prices they are currently paying in Windhoek for similar infrastructure rentals, they offered Council rental of N\$ 5000.00 per month for this lease. This however also involves the establishment of an equipment room at the bottom of the tower which would not be the case for Messrs Linx Swakopmund CCTV & Security Services' application.

Both the Municipality of Walvis Bay and the City of Windhoek confirmed that they have no rental agreements in place for tenants renting space on any of the structures belonging to their respective Council's.

All entities requesting to mount their telecommunications equipment on Council's structures are businesses that generate profit from telecommunications. As the total space or square meters used in the case of the use of Council's existing structures is not really a valid measuring tool, it is

proposed that a rental rate according to the number of antennae to be mounted on Council's structures be established.

Rental Conditions

It is proposed that Council similarly rents the water tower space to Messrs Linx Swakopmund CCTV & Security Services at a rate of N\$ 1000.00 per antenna per month subject to the following applicable conditions pertaining to Council's BTS site rentals:

- (a) *That the lease be for a period of 5 years;*
- (b) *That the space on the water tower be leased on the explicit condition that the lessee indemnifies Council against any claim for damages resulting from its occupation and usage by the lessee;*
- (c) *That all costs relating to the lease be for the account of the lessee;*
- (d) *That Messrs Linx Swakopmund CCTV & Security Services installs their own electrical meter so that any expenses and costs generated be allocated to them;*
- (e) *That the proposed lease be advertised in terms of Section 63 of the Local Authorities Act, (Act 23 of 1992), as amended; at the cost of Messrs Linx Swakopmund CCTV & Security Services;*
- (f) *That Council's standard conditions as approved on 30 August 2012 be made applicable for the rental of a portion of the pylon space;*

It is proposed that the following additional contractual terms should be incorporated in the lease agreement:

- (a) *That Messrs Linx Swakopmund CCTV & Security Services mount the antennae on the water tower at their own cost with prior approval and supervision of the Engineering Services Department;*
- (b) *That any damages that may be caused to the existing infrastructure as a result of Messrs Linx Swakopmund CCTV & Security Services' lease of space on the tower shall be repaired at their cost and on demand;*
- (c) *Should it be determined that the signal transmitted by the antennae of Messrs Linx Swakopmund CCTV & Security Services in any way interferes with the existing installations, the lease be cancelled should no solution to the satisfaction of Council be offered;*
- (d) *That Council will not reimburse Messrs Linx Swakopmund CCTV & Security Services for any costs relating to the installation of its antennae during or after the termination of the lease agreement and that all related costs will be for the account of the applicant.*
- (e) *That Messrs Linx Swakopmund CCTV & Security Services will be responsible for the proper maintenance of the equipment and should such equipment not be well maintained and thus rust and become unsightly, it will be removed at the cost of the lessee;*
- (f) *That on the termination of the lease, Messrs Linx Swakopmund CCTV & Security Services be required to remove any antennae and related cabling placed by them on the tower to the satisfaction of the Engineering Services Department failing which, it will be removed by Council for their account.*

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) **That Council enters into a lease agreement with Messrs Linx Swakopmund CCTV & Security Services allowing them to mount a maximum of four antennae on the water tower at the Waste Water Works in Daniel Kamho Street.**
- (b) **That the lease tariff be determined at N\$1 000.00 per month (15% VAT excluded) per antenna.**
- (c) **That the lease be for a period of 5 years.**

- (d) That the area on the water tower be leased on the explicit condition that the lessee indemnifies Council against any claim for damages whatsoever resulting from its occupation and usage.
 - (e) That Messrs Linx Swakopmund CCTV & Security Services installs their own electrical meter so that any related expenses and costs generated be allocated to them.
 - (f) That the proposed lease be advertised in terms of Section 63 of the Local Authorities Act, (Act 23 of 1992), as amended at the cost of Messrs Linx Swakopmund CCTV & Security Services.
 - (g) That Council's standard conditions as approved on 30 August 2012 be made applicable for the rental of a portion of the water tower.
 - (h) That the lease tariff for antennae fixed against Council's existing structures be set at N\$1 000.00 per month per antennae.
 - (i) That an annual escalation of 10% be made applicable to the rental.
 - (j) That all costs relating to the lease, including, but not limited to advertising costs, be for the account of the lessee.
 - (k) That the antennae and related cabling be mounted on the water tower with prior approval and supervision of the Engineering Services Department.
 - (l) That Council will not reimburse Messrs Linx Swakopmund CCTV & Security Services for any costs relating to the installation or damage or loss of its antennae or related cabling during or after the termination of the lease agreement.
 - (m) That any damages that may be caused to the water tower (including pipes, etc.) as a result of Messrs Linx Swakopmund CCTV & Security Services' lease of the tower shall be repaired at their cost and on demand.
 - (n) That if it be determined that the signal transmitted by the antennae of Messrs Linx Swakopmund CCTV & Security Services' in any way interferes with any existing installations, the lease be cancelled and antennae removed at their cost should no solution to the satisfaction of Council be offered.
 - (o) That Messrs Linx Swakopmund CCTV & Security Services will be responsible for the proper maintenance of the equipment and should such equipment not be well maintained and thus rust and become unsightly, the lease be cancelled and equipment removed at the cost of the lessee.
 - (p) That on the termination of the lease, Messrs Linx Swakopmund CCTV & Security Services be required to remove any antennae and cabling placed by them on the tower at their cost and to the satisfaction of the Engineering Services Department failing which, Council shall have it removed for their account.
 - (q) That the Engineering Services Department makes the necessary arrangements to allow Messrs Linx Swakopmund CCTV & Security Services access to the tower.
-

- 11.1.13 1. **CANCELLATION: SALE OF ERF 5338, SWAKOPMUND TO MESSRS ZILLA CALEB TRADING ENTERPRISES CC**
2. **NOTICE OF DELAYED TRANSFER: MR A SHIIMI**
(C/M 2013/11/28 - E 5338, E 5304)

Ordinary Management Committee Meeting of 19 November 2013, Addendum 8.6 page 33 refers.

A. The following item was submitted to the Management Committee for consideration:

1. **Introduction**

1.1 The purpose of this submission is for Council to consider the request for cancellation of the sale of Erf 5338, Swakopmund to Messrs Zilla Calleb Trading Enterprises CC and to refund the money paid as the purchaser can no longer afford to pay additional costs plus interests levied as per attached email (**Annexure "A"**);

and

1.2 To take note of a letter received from Mr A Shiimi, the purchaser of Erf 5304, Swakopmund confirming that all Council's requirements were adhered to, but due to unforeseen circumstances he has not yet signed the transfer documents at the conveyancers in order to register transfer. He is currently out of the country (**Annexure "B"**).

2. **Background**

2.1 **Cancellation of the Sale of Erf 5338, Swakopmund**

Messrs Zilla Calleb Trading Enterprises CC represented by Ms Nzila Simataa bought Erf 5338, Swakopmund on the public auction held on **03 August 2012** at the purchase price of **N\$460 000.00**. A deed of sale was concluded on **08 August 2012**.

As per Council resolution passed on 28 February 2013, purchasers were given extension until 30 March 2013 to make payment or secure the purchase price in full, subject to interest to be levied on an outstanding amount secured by bank guarantee backdated from **03 August 2012** until the date of transfer.

Messrs Zilla Calleb Trading Enterprises CC submitted a guarantee in the amount of N\$ 322 000.00 and made cash payment to Council amounting to N\$ 133 0000.00 plus N\$ 5 000.00 deposit in total amounting to N\$ 460 000.00.

Due to purchaser's failure to pay the transfer duty on time, an accumulated interest of **N\$ 43 150.21** (calculated until 31 October 2013) was levied on the amount secured by the bank guarantee.

In terms of the conditions of sale, should the sale be cancelled for whatever reason by the purchaser, all moneys paid to the Municipal Council of Swakopmund shall be forfeited and the sale of the erf be cancelled and offered for sale in terms of Council's Property Policy.

2.2 **Resale**

Following the cancellation of sale for purchasers who failed to pay or secure the purchase price on or before the 30 March 2013, Council on **30 May 2013**, among others passed the following resolution:

- (b) *That the General Manager: Corporate Services and Human Resources advertise the sale of the 57 (fifty seven) "Single Residential" erven in the local newspapers (Namibian and Namib Times) as soon as possible and that the action be condoned.*
- (c) *That the cancelled erven be offered to the public to make offers to purchase and that the General Manager: Corporate Services and Human Resources provide feedback to Management Committee.*

Subsequent to the above resolution, Council advertised its intention to sell the cancelled erven whereafter objections against the sale was received. As soon as the signed minutes are received, same will be provided to the Honourable Minister of Regional and Local Government, Housing and Rural Development for consideration of the future sale of the cancelled erven.

It is proposed that Erf 5338, Swakopmund be added to the list of 57 erven to be sold once the approval is received from the Ministry.

2.3 Delayed Transfer of Erf 5304, Swakopmund to Mr A Shiimi

Mr Abed Shiimi submitted his guarantee for the purchase of Erf 5304, Swakopmund before the due date, whereafter an instruction to transfer the property into his name was given to Messrs Kinghorn Associates.

After requesting the transfer progress from Kinghorn Associates of all erven bought on auction (03 August 2012), Property Section was informed that Mr Shiimi did not sign transfer documents neither did he pay transfer fees.

He was requested to indicate whether he wished to proceed with the sale. In response he indicated that, he is currently out of the country and he will be back mid-January to sign the transfer documents.

In terms of condition of sale, the transfer of the erf into the name of the purchaser shall be given and taken as soon as possible after the purchaser has fulfilled obligation under the agreement.

As per his letter, his credit facility was increased to N\$2 400 000.00.

3. Discussion

3.1 Erf 5338, Swakopmund - Messrs Zilla Calleb Trading Enterprises CC

Messrs Zilla Calleb Trading Enterprises CC adhered to Council's terms and conditions of sale as stipulated which was an indication that they wish to proceed with the sale.

As indicated in the email, she was not aware that registering a property under Close Corporation is much more expensive as opposed to a natural person. Having to raise the additional money to pay for such caused a major setback.

Even though the conditions of sale were made clear to all the purchasers, it is proposed that Council does not invoke the condition that the purchaser forfeits all monies paid as this will amount to unjustified-enrichment under the circumstances.

3.2 Erf 5304, Swakopmund – Mr Abed I Shiimi

Mr Shiimi has indicated his willingness to proceed with the sale, including payment of interest to be levied on full purchase price amount to be backdated from 03 August 2012 until the date of transfer. As required, his guarantee makes provision for payment of interest.

Due to the delayed transfer caused by the purchaser, the interest levied on the purchase price of N\$445 000.00 at 10.75% from 3 August 2012 until 31 January 2014 amounts to **N\$71 559.66**.

Mr A Shiimi's service account is in arrears in the amount of N\$5 232.33; which debt was handed over for collection.

It is not a contravention of the conditions of sale for the transaction to be outstanding for an extended period however it is against the spirit of the agreement. The purchaser secured payment of the purchase price, therefore Council can consider granting the purchaser more time considering that he is currently out of the country and that an extra income will be generated by Council from interest to be levied.

4. **Conclusion**

4.1 Erf 5338, Swakopmund - Messrs Zilla Calleb Trading Enterprises CC

Taking into consideration that the purchaser will not be able to afford paying the accumulated interest, it is proposed that Council considers cancelling the sale of Erf 5338, Swakopmund.

It is also proposed that the sum of **N\$133 000.00** is repaid to the purchaser and that only the N\$ 5 000.00 deposit is forfeited.

4.2 Erf 5304, Swakopmund - Mr Abed I Shiimi

It is also proposed that Council takes note of the outstanding transfer for the sale of Erf 5304, Swakopmund to Mr A Shiimi who is currently out of the country and that he intends to finalize the sale of the erf once he returns from abroad in **January 2014**.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the sale of Erf 5338, Swakopmund to Messrs Zilla Calleb Trading Enterprises CC be cancelled.
 - (b) That Council does not invoke the forfeiture clause but that the amount of N\$133 000.00 paid to Council be refunded to Messrs Zilla Calleb Trading Enterprises CC.
 - (c) That the N\$5 000.00 deposit paid by Messrs Zilla Calleb Trading Enterprises CC be forfeited.
 - (d) That Erf 5338, Swakopmund be sold together with the other cancelled erven in Extension 15, once the Ministerial approval has been granted.
 - (e) That the delayed transfer of Erf 5304, Swakopmund be noted and that Mr A Shiimi be given an opportunity to finalize the transfer by end of February 2014 failing which the transaction be cancelled.
-

11.1.14 **APPLICATION FOR PERMISSION TO USE A CONTAINER AT ERF 118, SWAKOPMUND**

(C/M 2013/11/28 - E 118)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 7.4 page 37 refers.

A. The following item was submitted to the Management Committee for consideration:

1. INTRODUCTION

An application **attached** as **Annexure "A"** was received on **12 September 2013** from Mr Silvanus K Kakoma (a hawker at Erf 118, Swakopmund) to use a container at Erf 118, Swakopmund for storage purposes.

Mr Silvanus K Kakoma, trading as Cle' Pot is leasing a portion of Erf 118, Swakopmund as from **01 October 2013 until 31 January 2014**. According to Mr Kakoma, when he is not around his goods are being stolen for this reason he is requesting Council to give him permission to use a container.

Attached as **Annexure "B"** is a map indicating the location of Erf 118, Swakopmund.

2. BACKGROUND

Erf 118, Swakopmund measures 1 196 m² and is zoned "*undetermined*" in terms of the Town Planning Amendment Scheme No 12. Council on **24 November 2011** under item 11.1.18 among others passed the following resolution:

(b) That Erf 118, Swakopmund be reserved for hawkers, parking and flea markets.

(c) That Erf 118, Swakopmund be paved and demarcated into numbered stalls for hawkers and parking spaces and that a monthly market flea be held on certain weekends.

With reference to point (c) above, no stalls have been demarcated yet.

3. DISCUSSION

If Council allows Mr S K Kakoma to place a container at Erf 118, Swakopmund, it will create a precedent for others to apply for the same and later the erf will be overloaded with containers; and this will have a bad image as the erf is in the proximity of town.

Generally, containers are not recommended in town as they detract from the appearance of the business district.

With reference to the containers at Makalani site, the Planning Forum on **30 September 2013, under item 4.3** proposed as follow:

(a) That the General Manager: Health Services give notice to the Hawkers to remove the metal containers immediately or else Council will remove it at their cost.

4. PROPOSAL

It is proposed that the application of Mr S K Kakoma not be approved since the area is not suitable. It is also proposed that Council considers the relocation of the hawkers from Erf 118, Swakopmund to the envisaged

Cultural Village near the Martin Luther Historical site, once the necessary infrastructure is in place.

It is therefore:-

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the application of Mr S K Kakoma to use a container at Erf 118, Swakopmund be approved as a temporary measure.
 - (b) That the Engineering Services Department provide layout designs for the Cultural Village at Martin Luther Historical site.
 - (c) That Mr S K Kakoma be informed to provide storage facilities to the other hawkers on Erf 118, Swakopmund at a cost.
 - (d) That Erf 118, Swakopmund be rezoned from “Public Open Space” to “Public Parking”.
 - (e) That a design be prepared by Engineering Services regarding the parking area on Erf 118, Swakopmund indicating how the hawking sites and storage issue is dealt with.
-

11.1.15 **PROGRAMME FOR ORDINARY MONTHLY MANAGEMENT COMMITTEE- AND COUNCIL MEETINGS FOR THE YEAR 2014**

(C/M 2013/11/28 - A 2/3/1/1, A 2/3/1/4)

Ordinary Management Committee Meeting of 19 November 2013, Addendum 8.7 page 38 refers.

A. The following item was submitted to the Management Committee for consideration:

1. Ordinary Management Committee- and Council meetings are determined in terms of Sections 14 and 24 of the Local Authorities Act, (Act 23 of 1992, as amended).
2. **Attached as Annexure “A”** is the proposed programme in respect of Ordinary Management Committee- and Council meetings to be held during the year 2014. A calendar for the year 2014 is **attached as Annexure “B”**.
3. In terms of Section 11 (2) (c) and 11 (4) of the Local Authorities Act (Act 23 of 1992, as amended) internal elections are to be conducted once a year, ***“... on a date within a period of 30 days before the date on which the period of office of the Mayor or Chairperson or Vice-Chairperson of a Local Authority Council so elected expires.”***
4. The new office bearers will be sworn-in on **7 November 2014**.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the programme for the Ordinary Management Committee- and Council meetings for the period January until November 2014 (as per attached Annexure “A”), be approved.
 - (b) That the election of office bearers of Council be arranged to take place on Friday, 28 November 2014.
 - (c) That the General Manager: Corporate Services and Human Resources arranges with the district magistrate to chair and facilitate the election of officer bearers at the meeting scheduled for 28 November 2014.
-

11.1.16 **SALE OF ERF 5159, SWAKOPMUND: CLOSED BID OF 21 JUNE 2013**
(C/M 2013/11/28 - E 5159)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.8 page 42 refers.

A. The following item was submitted to the Management Committee for consideration:

Erf 5159, Swakopmund was sold by Closed Bid Sale on **21 June 2013** to the highest bidder on the day, namely Eli Investments Ten CC for the total price of N\$7 662 375.00.

The sale of the general residential property of 10 425 m² was however subject to the approval of the Minister of Local Government, Housing and Rural Development as an objection against the sale was lodged by the Tamariskia Committee. This objection was subsequently withdrawn and the official date of sale was established to be **13 August 2013** which was the date on which Ministerial approval was received to continue with the sale. According to the Conditions of Sale, the purchaser has 90 days to secure the purchase price resulting in the due date being **11 December 2013**.

Mr Randall Louw of Eli Investments Ten CC thereafter contacted the Property Section as he identified that an Erongo RED substation was situated on the property which he was not made aware prior to the sale. It was found that the substation was in fact constructed on the property at the time of the Closed Bid Sale but Property Section was not notified. The presence of the substation now reduces the total area the developer has available and interferes with the layout of the proposed building plans he had drawn up for his project.

The Conditions of Sale of this property stated under item 5 (a) that:

The erven are sold "voetstoots" and in the condition they presently are or shall be at the date of the sale, 21 June 2013.

Even though the property is sold "voetstoots", the fundamental fact of the presence of a substation on this property was however not known at the time of the Closed Bid Sale. As such it has been arranged with Messrs Erongo RED and Mr Louw to with the representatives of Council to discuss the best way forward in order to try and accommodate Mr Louw's plans for the development of the property and incorporate the existing substation successfully therein.

In light of the above fact, it is proposed that Council considers extending the due date for the securing of the purchase price to **28 February 2014** in case the transaction is not cancelled. In terms of Council's resolution passed on **27 September 2012**, Messrs Conradie & Damaseb will attend to the transfer of this erf and confirmed that they will most probably close on **13 December 2013** and open either Wednesday, 8 January or Monday, **13 January 2014**.

It is impossible to register any transfer from Monday, 9 December until earliest Monday, **13 January 2014**, therefore, for the sake of reasonableness it is proposed to extend the period for finalization of the transactions to **28 February 2014**. This would then also allow Messrs Eli Investments Ten CC time to make the necessary adaptations to incorporate the substation in its plans after which it will be in a position to secure the purchase price or cancel the transaction.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That Council takes note of the discussions with Messrs Eli Investment Ten CC and Erongo RED to find an amicable solution without cancelling the transaction.**
 - (b) That Council approves the extension of the due date for securing the purchase price of N\$7 662 375.00 to 28 February 2014.**
-

11.1.17 **APPLICATION FOR ENDOWMENT ERVEN IN THE DRC SETTLEMENT: MINISTRY OF EDUCATION**

(C/M 2013/11/28 - H 5/4)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.9 page 43 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached application was received from the Erongo Regional Council for the allocation of endowment erven marked B & C on the Swakopmund Town map in the DRC settlement for the construction of a new primary school.

On **25 July 2013** a meeting was held between the Directorate of Education (Ministry of Education) - Erongo Regional Council, Bob Mould Architects, Chief Executive Officer of Swakopmund Municipality and other officials to identify the most suitable erven for the construction of a Primary School in the DRC. Many erven were considered and it was found that the most suitable erven will be Erven marked B & C on the Town Map in the DRC.

According to Town Planning Ordinance 11 of 1963, endowment Erven are created by the Local Authority and approved by the Ministry for the purpose of a public body (Erongo Regional Council) established for the township to be devoted to the use and benefit of the inhabitants of the township and subject to conditions as the Minister deems fit.

The erven are zoned "*Institutional*" and measure 31 930m² in total. According to the Swakopmund Town Planning Scheme a primary school (Institutional Building) is a permitted use on an erf zoned "*Institutional*". These 2 erven were identified as the most suitable erven due to the fact that they are centrally located in the future extensions of Swakopmund, closely situated to municipal services and currently unoccupied by informal settlements.

Excerpt from definitions of the Town Planning Amendment Scheme No. 12:

"INSTITUTIONAL BUILDING" means a building or portion of a building used or intended to be used as an old age home, creché, public or private school, community hall, religious or charitable institution and/or the administration thereof, and includes a hospital, clinic or dispensary, whether private or public, used in connection therewith, but does not include:

- (a) sanatorium or clinic for the treatment of infectious or contagious diseases, or
- (b) premises for the detention of mentally disordered persons, or
- (c) a mental hospital.

Conclusion

Transferring ownership of these two erven to the Erongo Regional Council will be to the benefit of the community of Swakopmund especially the DRC community. The majority of primary and secondary schools are located very far from the DRC making it difficult for the children to go to school. Education plays a vital role in the development and future of our children and community as a whole.

B. After the matter was considered, the following was:-

RECOMMENDED:

That the allocation of the endowment Erven B & C in the DRC Settlement to the Ministry of Education for the construction of a Primary School be approved.

11.1.18 **REZONING OF ERF 21, VOGELSTRAND, FROM “SINGLE RESIDENTIAL” WITH A DENSITY OF 1:900 TO “GENERAL RESIDENTIAL 2” WITH A DENSITY OF 1:300**

(C/M 2013/11/28 - VS 21)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.11 page 50 refers.

A. The following item was submitted to the Management Committee for consideration:

Application was received from Stubenrauch Planning Consultants on behalf of their client, M Hartmann Investments Thirty cc, for the rezoning of Erf 21 Vogelstrand from “*Single Residential*” with a density of 1:900 to “*General Residential 2*” with a density of 1:300.

Erf 21 is located in a cul-de-sac (Gannet Street) of Plover Street and neighboured by the Atlantic Villa Boutique Guesthouse. The Erf measures 1218m² in extent and is zoned “*Single Residential*” with a density of 1:900. The Erf is currently vacant.

This area of Swakopmund already consist of many “*General Residential 2*” erven and due to the small scale of the guesthouse no major changes in the day-to-day activities will occur as a result of the intended development. The rezoning of Erf 21 will not have any negative impact on the current and future character of the area.

The intended rezoning was advertised in the Namib Times and New Era on **3rd and 10th of August 2010**. The surrounding neighbours were also notified of the intended rezoning and notices were placed on site and at the municipality. The closing date for objections was on **27 August 2010** and two objections were received.

Objection received from Diana and Geoff Hunter, owners of Erf 17 Vogelstrand:

An objection was received on **25 August 2010** from Mr and Mrs Geoff and Diana Hunter and read as follows:

1. *Standing in a row, erf 14, 15, 16 and 23 are large superior dwellings. Placing two town houses on Erf 21 on erven of a similar size to aforementioned, would look tasteless and completely out of character, and suggests totally bad planning.*

Discussion on objection as received from Mr and Mrs Hunter:

The reason for objection cannot be supported due to the fact that it is an opinion of a person and the objector did not point out as to how the proposed intentions of the developer will negatively impact on his property. By merely say it would look tasteless and that is seen as bad planning is an unsubstantiated claim with no proof of a negative impact.

Objection received from Mr and Mrs Gretschel, owners of Erf 20 Vogelstrand:

Another objection letter was received from Mr and Mrs Gretschel on the **25th of August 2013** for the proposed rezoning of Erf 21 Vogelstrand and reads as follows:

"We the owners of Erf 20, Vogelstrand, Swakopmund and the direct neighbours to Erf 21 Vogelstrand herewith object to the intention to rezone Erf 21 Vogelstrand from "*Single Residential*" with a density of 1:900 to "*General Residential 1*" with a density of 1:300 and object to commence with the construction while the rezoning is in progress.

1. Introduction

We understand and accept that change within a growing urban environment is inevitable and that the demand for higher residential densities will be put to municipalities. However a lower density residential area such as Erven 14, 15, 16, 21, 22 and 23 Vogelstrand has an equally important value within this area. It is against his back ground that we object to the rezoning of Erf 21, Vogelstrand from "*Single Residential 1*" with a density of 1:900 to "*General Residential 1*" with a density of 1:300.

After having received your letter dated **30 July 2010** informing us of the intention to apply for the rezoning of Erf 21, Vogelstrand at the beginning of **August 2010** I immediately phoned Ms Ingrid van Wyk at your office and inquired about the building plans for Erf 21 Vogelstrand, because you invited interested owners to contact your office to further discuss the application for rezoning. I was informed by Ms van Wyk that no plans were available yet but that she would get back to me after she had tried to get hold of the building plans. Unfortunately Ms van Wyk never contacted me again.

2. Reasons for objecting

It is our belief that this increase in density will:

- *Impact negatively onto the character of the area;*
- *Harm the aesthetic unity of the dune ridge consisting of Erven 14, 15, 16, 21, 22 and 23*
- *Decrease the value of our property.*

Urban areas cater for variety of lifestyles, allowing the residents and municipal taxpayers to choose the type of housing they prefer. We decided to invest money in Erf 20, Vogelstrand, because the Swakopmund Development Plan indicated Erven 124, 1103 and Erven 12 to 25 Vogelstrand as "*Single Residential*", as we intended to stay and retire in a "*Single Residential*" area with its unique ambiance and tranquil living environment. It is for this specific reason that we did not sub divide our Erf, although we could have had the opportunity to apply for rezoning as well. Instead of rezoning we decided to upgrade the property by erecting an outbuilding and to beautify the area.

We did not mind the fact that Erven 26 to 28 and 106 and 1095 had been rezoned to "*General Residential 1*" as the buildings erected on these erven did not impact directly on our Erf 20. The same applies to the intended construction of 4 units on erf 124. The increase of density on Erf 21, however, will have a heavy impact on the residential quality for the owners of Erven 16, 17, 20 and 22. Although "*General Residential 1*" with a density of 1/300 might be "*common*" in this reason area, it does not imply ipso facto that all "*Single Residential*" erven should be rezoned to "*General Residential 1*"

It is our firm believe that the municipal that the municipality has the responsibility to formulate and to implement a well-balanced urban expansion and development policy which takes into account the interests of all its residents and thus guarding against an urban development where only one living environment would become predominant. Against the background of the fact that in the meantime Erven 24 and 25 have been rezoned as a Guest House and Erven 26 to 28, 124, 122, 106 and 1095 have been rezoned to "*General Residential*" and have been developed, we are convinced that the increase in density on another Erf within the area will destroy its tranquil and private character. Furthermore, the increase in density on Erf 21 would lead to an imbalance between "*Single Residential*" and "*General Residential*" development in this area.

At present all dwellings constructed on Erven 14, 15, 16 and 23 are single residential buildings giving the dune ridge at the northern part of Vogelstrand a unique aesthetical character. Should four dwelling units be constructed on Erf 21 this aesthetical unity would be harmed. Furthermore with Atlantic Villa as Guest House on Erven 24 and 25 the construction of four dwelling units on Erf 21 will have a heavy impact on traffic in front of and next to our Erf 20, as the proposed units on Erf 21 can only be accessed by a pan handle next to our Erf 20. We therefore cannot exclude that the proposed rezoning of Erf 21 will have negative impacts on the surrounding properties values and the urban environment.

We believe that within the growing urban environment, placing an ever increasing demand on land and densification of urban areas, a demand for lower density residential areas still exists and should be respected. It is our belief, however, that an increase in density to "*General Residential 1*" with a density of 1:300 is an unacceptable increase in density and will result in an unacceptable change of character of the northern Vogelstrand area, thus having a negative impact on the value of our property as the tranquillity, ambiance and the balance between "*Single Residential*" and "*General Residential 1*" areas will be disturbed. The double storey buildings of 4 units (with an erf size of 1413 m² double storey units have to be built) which will be erected on Erf 21, as stipulated in your letter, will tower over the house and outbuilding on Erf 20 on the eastern side of the common boundary. The intended construction of four units on Erf 21 will result in limiting the privacy of the residents on Erf 20 to an unacceptable standard.

It is for these reasons that we, the residents of Erf 20, strongly object against the intended rezoning of Erf 21.

We also object against the application to commence with construction work while the rezoning is in progress. The starting of construction work would have the impression of a *fait accompli*, implying that the application for rezoning has been approved by the City Council of Swakopmund. We believe that construction should start only after the process of rezoning has been completed in favour of the applicant. It should be taken into account that the owners of Erf 20 have the right to appeal with the Honourable Minister of Regional and Local Government, Housing and Rural Development should the City Council of Swakopmund approve the application for rezoning."

Discussion on objection as received from Mr and Mrs Gretschesel.

The concern is noted but cannot be supported. It has now recently become apparent that densification is a priority as pointed out by the Minister. With the ever increasing land prices younger upcoming generation cannot afford to purchase properties and construct dwellings any more. By allowing rezoning to higher densities Council effectively create favourable conditions for the younger generations to acquire a home, whether it is a townhouse or a flat.

There should be a balance and variety of land uses in every extension of town to effectively address the needs of the general public. By just creating large "*Single Residential*" erven close to the ocean with "*General Residential*" properties hidden away does not promote equal opportunity to the all sectors of the community based on their income. The general public should have the privilege of choice as well and it should not be based on monetary values.

To state that the intended rezoning will decrease property values is incorrect and cannot be substantiated. In fact if a property is surrounded by higher intensity uses it will automatically increase in value over time.

It should however be pointed out that if the owner of Erf 21 decides to construct a dwelling to the full potential in accordance with the provisions of the Single Residential zoning it would be no different than the requested zoning and density. The only difference would be that there are more families residing on the premises. The physical structure that could be built has the potential to be exactly the same. The provisions of the zonings as contained in the Scheme are exactly the same. It seems that there is a lack of understanding from the objector in terms of the zoning parameters.

Under no circumstance will the Municipality allow any construction to commence unless the approved rezoning was included in an amendment Scheme, approved by the Minister and gazetted accordingly. The concern of the objector is noted and supported.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the rezoning of Erf 21 Vogelstrand from “*Single Residential*” with a density of 1:900 to “*General Residential 2*” with a density of 1:300m² be approved.
 - (b) That the approved rezoning of Erf 21, Vogelstrand, be included in the next Amendment Scheme for final approval by the Ministry of Regional and Local Government, Housing and Rural Development.
 - (c) That the objectors be informed of their right to appeal (in terms of Clause 8 of the Swakopmund Town Planning Scheme) to the Minister, within 28 days (in respect of resolution (a) above) of this notice against Councils decision, provided that written notice of such an appeal shall be given to the Ministry, as well as Council within the said period.
-

11.1.19 **APPLICATION FOR PERMISSION TO OPERATE A FARM STALL AND A SHOP**

(C/M 2013/11/28 - G 2)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.12 page 83 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached application has been received for the registration of a farm stall and shop in terms of the Swakopmund Town Planning Scheme:

- *Plot 45, Nonidas, Swakopmund - Mr S Holtzhausen t/a Messrs - Mulhausen se Plaas Stal*
(Notice No. 55/2013-10-29)

The owner of the above-mentioned plot has requested Council for permission to operate a farm stall and shop on the property. Plot 45 belongs to Mr Kruger and the farm stall and shop will be operated by Mr Holtzhausen. The property is zoned "Agriculture" and according to the Swakopmund Town Planning Scheme, with special consent from Council a farm stall and shop may be allowed.

Insert from the Town Planning Amendment Scheme No.12:

Table B: Erection and use of buildings and use of land

	ZONE	MAP REFERENCE	PURPOSES FOR WHICH LAND MAY BE USED	PURPOSES FOR WHICH LAND MAY BE USED AND BUILDINGS MAY BE ERECTED AND USED WITH THE SPECIAL CONSENT OF THE COUNCIL ONLY
K	Agriculture	Green outline	Agricultural building	Tourist Facilities, Dwelling Houses, Farm Stall, Place of Instruction, Place of Public Worship, Shop, Tourist Establishment, Private Open Space

"FARM STALL" means a building or structure which does not exceed 100m² in floor space, including storage facilities where a farmer sells products produced and processed on his farm (in other words not products which are purchased), whether to his own employees or to the general public.

"SHOP" means a building designed and/or used for retail trade other than a service station.

All adjacent neighbours were contacted and no objections were received. The proposed consent use was also advertised as per Clause 6 of the Swakopmund Town Planning Scheme (**Notice No. 55/2013-10-29**) and no objections were received.

B. After the matter was considered, the following was:-

RECOMMENDED:

That the following application by Mr S Holtzhausen t/a Messrs Mulhausen se Plaas Stal for permission to operate a farm stall and a shop on Plot 45, Nonidas be approved subject to the following:

- *That the applicant registers with the Health Services Department and that the Standard Health Regulations will apply.*
- *That Council reserves the right, to cancel a consent use should there be valid objections.*
- *That they must operate within the Town Planning Scheme Regulations.*

11.1.20 **APPLICATION FOR CONSENT FOR THE RELAXATION OF BUILDING LINE RELAXATION ON ERVEN 780, 3502 AND 3503, SWAKOPMUND**
(C/M 2013/11/28 - E 780, E 3502, E 3503)

Ordinary Management Committee Meeting of 19 November 2013, Addendum 8.13 page 97 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached application was received from Mr Ivor Bothma Laubscher for a proposed building line relaxation on Erven 780, 3502 and 3503, Swakopmund.

The applicant is requesting Council's permission for consent to relax the rear building line from 3m to 0m. The applicant requested the owners of the neighbouring properties to give consent to relax the building line to which the two neighbours objected.

The erven is zoned *General Business* and has a building line restriction of 3m. According to the Swakopmund Town Planning Scheme Regulations, Council may grant a relaxation, should it feel that it would not interfere with the amenities of the neighbourhood or area.

Excerpt from Town Planning Amendment Scheme No.12, Clause 5/D /2.4 for convenience.

2.4 Building Lines

(a) Street boundary

- (i) All buildings, except service stations, may be erected on the street boundary.
- (ii) Residential units on ground level must be set back at least 3 metres.

(b) Side Boundary

- (i) Buildings may be erected on the side boundary.

Side boundaries for service stations will be according to Clause 10 of this Scheme.

(c) Rear Boundaries

- (i) 3 metres from any rear boundary;

The affected surrounding neighbours were contacted to which two have objected. The objector's both submitted the same objection.

Objections raised by the Body Corporate Haus Germania, owner of Erf 3750 and Rosemarie and Hans Matenar, owners of Erf 274

Point 1:

"The anticipated encroachment of the building line would infringe on the privacy of some owners and deteriorate their quality of living. It would also decrease the value of their property. In addition the proposed relaxation would, at very short distance, expose some owners to the fumes and noise emanating from motor cars moving on the anticipated first floor parking level."

Discussion on Point 1:

It cannot be seen how the proposed increase of height of the rear boundary wall will infringe on the privacy of the owners of Erf 274 or

reduce their quality of living since this erf is located on a side boundary and not the rear boundary.

With regard to the objection of the Body Corporate of Haus Germania, it cannot be seen how the proposed boundary wall height will infringe on the privacy of owners or reduce their quality of living as parking garages are located on this side of the erf with one or two flats. The distance of the actual living space of residents in relation of the proposed wall is quite significant. As mentioned a site visit was conducted on the property and it was discovered that these residents will still have ample space for good quality living. The property value will not be decreased. These erven are all located in the Central Business District where many cars drive and park every day. They also make a noise and releases fumes into the air. The first level parking makes provision for 30 cars to be parked here at a time. It's unlikely that this first level parking will create more fumes and noise than the Central Business District itself.

Point 2:

"The anticipated change of boundary wall height from 1,8 m to 13 m in conjunction with a relaxation of building lines would lead for some owners to an encroachment, a serious loss of daylight and air, a loss of privacy and would in addition reduce the value of their properties."

Discussion on Point 2:

A site visit was conducted to assess the complaint mentioned above and it is the opinion that the proposed height of the boundary wall will have minimum effect on sunlight if any at all. With regard to air being lost, air can never be lost due to a development as it is not a confined space, this statement cannot be substantiated in any way. The erven in question are located in the Central Business District. It is not possible that a boundary wall of 13 meter would decrease the property value of surrounding erven since all erven are zoned "General Business". Business zoned erven are usually associated with high rise buildings and boundary walls.

Point 3:

"The Body Corporate Haus Germania is not aware of any legislation approving a building high of twelve meter above ground level in this area. Kindly investigate."

Discussion on Point 3:

According to the Swakopmund Town Planning Scheme (Clause 5/D/2.3) an Erf zoned "General Business" has a height restriction of 13 meters. A maximum height restriction of 16 meters can be allowed with special consent from Council provided it is not in the Conservation Area. In this case the property is situated in the conservation area and is restricted to 13m. The plans submitted are in line with the height restriction allowed for this specific zoning.

Conclusion

According to the Swakopmund Town Planning Amendment Scheme, all owners of erven have the right to apply for consent for relaxation of building lines to better optimise their Erf.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the application for relaxation of Rear Building Line from 3m to 0m on Erven 780, 3502 and 3503, Swakopmund be approved.**
 - (b) That Council approves the application for relaxation of Boundary Wall Height from 1.8m to 13m on Erven 780, 3502 and 3503, Swakopmund.**
 - (c) That the Body Corporate of Haus Germania and Mr & Mrs Matenar be informed of their right to appeal (in terms of Clause 8 of the Swakopmund Town Planning Scheme) to the Minister, within 28 days (in respect of resolution (a) (b) above) of this notice, against Councils decision, provided that written notice of such an appeal shall be given to the Ministry, as well as Council within the said period.**
-

11.1.21 **APPLICATION FOR PERMISSION TO OPERATE A RESIDENT OCCUPATION (ADMINISTRATIVE OFFICE)**

(C/M 2013/11/28 - M 1381)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.14 page 113 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached application has been received for the registration of an administrative office in terms of the Swakopmund Town Planning Scheme Regulations:

- *Erf 1381, Mondesa (Ext. 3) - Ms Silke Roeder t/a Messrs Silke Financial Services cc-Administrative Office - Cash Loan*
(Notice No. 55/2013-10-29)

The owner of the above-mentioned erf has requested Council for permission to operate an administrative office on the property. The property is zoned "Single Residential" and according to the Swakopmund Town Planning Scheme, with special consent from Council a resident occupation may be allowed.

Table B: Erection and use of buildings and use of land

	ZONE	MAP REFERENCE	PURPOSES FOR WHICH LAND MAY BE USED	PURPOSES FOR WHICH LAND MAY BE USED AND BUILDINGS MAY BE ERECTED AND USED WITH THE SPECIAL CONSENT OF THE COUNCIL ONLY
A	<i>Single Residential</i>	<i>Yellow fill</i>	<i>Dwelling house</i>	<i>Place of Public Worship, Place of Instruction, Resident Occupation, Residential Guest House</i>

Insert from the Town Planning Amendment Scheme No.12:

"RESIDENT OCCUPATION" means any commercial or industrial use conducted within a dwelling and carried on by the inhabitants thereof, subject to the following:

- The resident occupation shall be confined to one third of the total floor area of the said dwelling;*
- The resident occupation must be carried out entirely within the dwelling to include the basement, outbuilding, garage, and/or attic of the dwelling.*
- The home occupation must be clearly incidental and secondary to the residential use of the dwelling;*
- The residential character and appearance of the dwelling and the property on which it is located shall not be changed in any visible manner. No advertisement of the existence of the resident occupation shall be visible from the dwelling or the erf on which it is located, except for one sign as permitted by this Scheme;*
- No materials or products shall be stored on the erf outside in such a manner as to be visible from any adjacent property;*
- Display of merchandise or products of the resident occupation for sale may be permitted at the discretion of Council in keeping with subparagraph (iv) above;*
- The resident occupation shall not create any objectionable noise, odor, vibration or unsightly conditions;*
- The resident occupation shall not create a health or safety hazard;*

- (ix) *The resident occupation shall not create any interference with communication transmission or reception in the vicinity;*
- (x) *Only products that are substantially manufactured or fabricated in the dwelling solely by the inhabitants thereof shall be sold as part of the resident occupation. Products not manufactured or fabricated within the dwelling by the inhabitants may only be sold by catalogue sales and may not be stocked for retail sales within the residence. Incidental sales of products directly associated with the resident occupation may be permitted by Council;*
- (xi) *The resident occupation may employ up to 2 full time employees.*

All adjacent neighbours were contacted and no objections were received. The proposed consent use was also advertised as per Clause 6 of the Swakopmund Town Planning Scheme, **Notice No. 55/2013-10-29**. No objections were received.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) **That the following application for permission to operate an administrative office - cash loan be approved:**
 - *Erf 1381, Mondesa (Ext. 3) - Ms Silke Roeder t/a Messrs Silke Financial Services CC - Administrative Office - Cash Loan*
 - (b) **That the applicant registers with the Health Services Department and the standard Health Regulations will apply.**
 - (c) **That the applicant submits proof of registration as a micro lender/cash loan by Namfisa within two months after approval was granted by Council.**
 - (d) **That the consent use be subject to the following:**
 - *That Council reserves the right, to cancel a consent use should there be valid complaints.*
 - *That they must operate within the Town Planning Scheme regulations.*
 - *That the consent is not transferable.*
 - *That the applicant provides sufficient parking on the premises.*
 - *That no on street parking will be tolerated.*
 - (e) **That inspection be carried out to ensure that a cash loan is in fact being operated.**
-

11.1.22 **APPLICATION FOR PERMISSION TO OPERATE A RESIDENT OCCUPATION (ADMINISTRATIVE OFFICE)**

(C/M 2013/11/28 - M 860)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.15 page 131 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached application has been received for the registration of an administrative office in terms of the Swakopmund Town Planning Scheme Regulations:

- *Erf 860, Mondesa (13th Avenue) Ext. 2 - Ms Z Ndopu t/a Messrs Zita Driving Academy- Administrative Office - Driving School*
(Notice No. 55/2013-10-29)

The owner of the above-mentioned erf has requested Council for permission to operate an administrative office on the property. The property is zoned "Single Residential" and according to the Swakopmund Town Planning Scheme, with special consent from Council a resident occupation may be allowed.

Table B: Erection and use of buildings and use of land

	ZONE	MAP REFERENCE	PURPOSES FOR WHICH LAND MAY BE USED	PURPOSES FOR WHICH LAND MAY BE USED AND BUILDINGS MAY BE ERECTED AND USED WITH THE SPECIAL CONSENT OF THE COUNCIL ONLY
A	<i>Single Residential</i>	<i>Yellow fill</i>	<i>Dwelling house</i>	<i>Place of Public Worship, Place of Instruction, Resident Occupation, Residential Guest House</i>

Insert from the Town Planning Amendment Scheme No.12:

"RESIDENT OCCUPATION" means any commercial or industrial use conducted within a dwelling and carried on by the inhabitants thereof, subject to the following:

- (i) *The resident occupation shall be confined to one third of the total floor area of the said dwelling;*
- (ii) *The resident occupation must be carried out entirely within the dwelling to include the basement, outbuilding, garage, and/or attic of the dwelling.*
- (iii) *The home occupation must be clearly incidental and secondary to the residential use of the dwelling;*
- (iv) *The residential character and appearance of the dwelling and the property on which it is located shall not be changed in any visible manner. No advertisement of the existence of the resident occupation shall be visible from the dwelling or the erf on which it is located, except for one sign as permitted by this Scheme;*
- (v) *No materials or products shall be stored on the erf outside in such a manner as to be visible from any adjacent property;*
- (vi) *Display of merchandise or products of the resident occupation for sale may be permitted at the discretion of Council in keeping with subparagraph (iv) above;*
- (vii) *The resident occupation shall not create any objectionable noise, odor, vibration or unsightly conditions;*
- (viii) *The resident occupation shall not create a health or safety hazard;*
- (ix) *The resident occupation shall not create any interference with communication transmission or reception in the vicinity;*

- (x) *Only products that are substantially manufactured or fabricated in the dwelling solely by the inhabitants thereof shall be sold as part of the resident occupation. Products not manufactured or fabricated within the dwelling by the inhabitants may only be sold by catalogue sales and may not be stocked for retail sales within the residence. Incidental sales of products directly associated with the resident occupation may be permitted by Council;*
- (xi) *The resident occupation may employ up to 2 full time employees.*

All adjacent neighbours were contacted and no objections were received. The proposed consent use was also advertised as per Clause 6 of the Swakopmund Town Planning Scheme, **Notice No. 55/2013-10-29**. No objections were received.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) **That the following application for permission to operate an administrative office be approved:**
- *Erf 860, Mondesa (13th Avenue) Ext. 2 - Ms Z Ndopu t/a Messrs Zita Driving Academy - Administrative Office – Driving School*
- (b) **That the applicant registers with the Health Services Department and the standard Health Regulations will apply.**
- (c) **That the consent use be subject to the following:**
- *That Council reserves the right, to cancel a consent use should there be valid complaints.*
 - *That the applicant must operate within the Town Planning Scheme regulations.*
 - *That the consent is not transferable.*
 - *That sufficient parking will be provided on the premises.*
 - *That no on street parking will be tolerated.*
-

11.1.23 **APPLICATION FOR PERMISSION TO OPERATE RESIDENT OCCUPATIONS (ADMINISTRATIVE OFFICES)**

(C/M 2013/11/28 - T 3, E 2463, E 4338, T 422, E 433)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.16 page 157 refers.

A. The following item was submitted to the Management Committee for consideration:

Attached applications have been received for the registration of administrative offices in terms of the Swakopmund Town Planning Scheme Regulations:

- *Erf 3, Tamariskia - (7 Vrede Rede Street) - Ms N Uris t/a Ngatuponde Parue Trading CC - Administrative Office*
(Notice No. 55/2013-10-29)
- *Erf 2463, Swakopmund (27 Turmalin Street) - Mr P Hooks t/a Messrs Geo Pollution Technologies - Administrative Office (Environmental Science Consultancy)*
(Notice No. 55/2013-10-29)
- *Erf 4338, Ext. 9 Swakopmund (8 Marigold Street) - Ms L Breed t/a Messrs B Construction - Administrative Office*
(Notice No. 55/2013-10-29)
- *Erf 422, Tamariskia (7 Platinum Avenue) - Mr C M Motonane t/a Messrs Moarabi Investment cc - Administrative Office*
(Notice No. 55/2013-10-29)
- *Erf 433, Swakopmund (9 Linden Street) - Mr W Henseler t/a Messrs Coastal Electrical Services - Administrative Office (Electrical installations and contracting)*
(Notice No. 55/2013-10-29)

The owners of the above-mentioned erven have requested Council for permission to operate administrative offices on their properties. The properties are zoned "Single Residential" and according to the Swakopmund Town Planning Scheme, with special consent from Council a resident occupation may be allowed.

Table B: Erection and use of buildings and use of land

	ZONE	MAP REFERENCE	PURPOSES FOR WHICH LAND MAY BE USED	PURPOSES FOR WHICH LAND MAY BE USED AND BUILDINGS MAY BE ERECTED AND USED WITH THE SPECIAL CONSENT OF THE COUNCIL ONLY
A	Single Residential	Yellow fill	Dwelling house	Place of Public Worship, Place of Instruction, Resident Occupation, Residential Guest House

Insert from the Town Planning Amendment Scheme No.12:

"RESIDENT OCCUPATION" means any commercial or industrial use conducted within a dwelling and carried on by the inhabitants thereof, subject to the following:

- (i) The resident occupation shall be confined to one third of the total floor area of the said dwelling;

- (ii) *The resident occupation must be carried out entirely within the dwelling to include the basement, outbuilding, garage, and/or attic of the dwelling.*
- (iii) *The home occupation must be clearly incidental and secondary to the residential use of the dwelling;*
- (iv) *The residential character and appearance of the dwelling and the property on which it is located shall not be changed in any visible manner. No advertisement of the existence of the resident occupation shall be visible from the dwelling or the erf on which it is located, except for one sign as permitted by this Scheme;*
- (v) *No materials or products shall be stored on the erf outside in such a manner as to be visible from any adjacent property;*
- (vi) *Display of merchandise or products of the resident occupation for sale may be permitted at the discretion of Council in keeping with subparagraph (iv) above;*
- (vii) *The resident occupation shall not create any objectionable noise, odor, vibration or unsightly conditions;*
- (viii) *The resident occupation shall not create a health or safety hazard;*
- (ix) *The resident occupation shall not create any interference with communication transmission or reception in the vicinity;*
- (x) *Only products that are substantially manufactured or fabricated in the dwelling solely by the inhabitants thereof shall be sold as part of the resident occupation. Products not manufactured or fabricated within the dwelling by the inhabitants may only be sold by catalogue sales and may not be stocked for retail sales within the residence. Incidental sales of products directly associated with the resident occupation may be permitted by Council;*
- (xi) *The resident occupation may employ up to 2 full time employees.*

All adjacent neighbours were contacted and no objections were received. The proposed consent use was also advertised as per Clause 6 of the Swakopmund Town Planning Scheme (**Notice No 55/2013-10-29**). No objections were received.

B. After the matter was considered, the following was:-

RECOMMENDED:

(a) That the following applications for permission to operate administrative offices be approved:

- ***Erf 3, Tamariskia - (7 Vrede Rede Street) - Ms N Urus t/a Ngatuponde Parue Trading cc - Administrative Office
(Notice No. 55/2013-10-29)***
- ***Erf 2463, Swakopmund (27 Turmaline Street) - Mr P Botha t/a Messrs Geo Pollution Technologies - Administrative Office (Environmental Science Consultancy)
(Notice No. 55/2013-10-29)***
- ***Erf 4338, Ext. 9 Swakopmund (8 Marigold Street) - Ms L Breed t/a Messrs B Construction - Administrative Office
(Notice No. 55/2013-10-29)***
- ***Erf 422, Tamariskia (7 Platinum Avenue) - Mr C M Motonane t/a Messrs Moarabi Investment cc - Administrative Office
(Notice No. 55/2013-10-29)***
- ***Erf 433, Swakopmund (9 Linden Street) - Mr W Henseler t/a Messrs Coastal Electrical Services - Administrative Office (Electrical installations and contracting)
(Notice No. 55/2013-10-29)***

(b) That the applicants register with the Health Services Department and that the standard Health Regulations will apply.

(c) That the consent use be subject to the following:

- *That Council reserves the right, to cancel a consent use should there be valid complaints.*
 - *That the applicants must operate within the Town Planning Scheme regulations.*
 - *That the consent is not transferable.*
 - *That sufficient parking will be provided on the premises.*
 - *That no on street parking will be tolerated.*
 - *That no storage of equipment be done on the premises.*
 - *That only one third of the total floor area of all the buildings on the erf is allowed to be used for the resident occupation.*
-

11.1.24 **UTILISATION OF SAVINGS ON CAPITAL PROJECTS TO DEVELOP DRC INFRASTRUCTURE**

(C/M 2013/11/28 - G 3/9/2, H 5/4)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 8.17 page 255 refers.

- A. The following item was submitted to the Management Committee for consideration:**

INTRODUCTION

The following Votes were identified in the 2013/14 Capital Budget for the development of DRC Infrastructure / Services:

Votes	Amount (N \$)
3025 340 166 00 - New sewer pump	7 500 000
3025 340 167 00 - Main sewers	7 000 000
3025 340 168 00 - Internal sewer network	3 000 000
4020 340 172 00 - Water mains	5 000 000
4020 340 173 00 - Internal water network	3 000 000
Total funds of all votes	25 500 000

Requests for Tenders 40/2013 “Provision of Services to Blocks 1 - 3, 8 - 11 DRC” resulted in bids to the approximate value of N\$ 120 000 000. After analysis of the tenders it was identified that part of the Scope of Works can be awarded, namely:

- Sewage Pump Station
- Mechanical installation for Pump Station
- Water Booster Pump Station
- Electrical supply and control systems integration of Pump Station
- Discharge from Pump Station to Purification Works (Rising Main)
- Primary Sewer reticulation
- Primary Water reticulation

Such award is, however, only possible if savings (unused approved funds) from other Capital Projects may be utilised, as the cost for the partially awarded works is valued to be N\$26 254 418.75 (Including VAT).

Such savings were identified from the following Votes which were approved on the Budget for the development of Tamariskia Extension 3 (in cooperation with Tutangeni).

Votes	Amount (N\$)
2015 340 175 00 - Streets	9 000 000
3025 340 165 00 - Sewage works	3 000 000
4020 340 171 00 - Water supply	3 000 000
Total amount provided	15 000 000
Less: Development Cost for Ext 3 Tamariskia	(13 866 778)
Remainder of funds	1 133 222

The combination of the approved Votes for DRC and the saving on the Votes for Tamariskia will suffice to finance the partial Scope of Works, as follows:

Summary of Funds Available	Amount (N\$)
<i>Total Funds - DRC Votes</i>	25 500 000
<i>Remainder of funds - Tamariskia Ext 3 Votes</i>	1 133 222
Total funds available for the project	26 633 222
<i>Funds Required for Partial Scope of Works - DRC</i>	26 254 419
Remainder	378 803

FURTHER DRC DEVELOPMENT COSTS

Given the urgency for the infrastructure and services development of DRC Area, it is identified that all available Approved Funds not utilised after execution of Capital Projects should be made available for possible application of the development of the DRC services.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the application to use savings on the following Votes; 201534017500 (Streets), 302534016500 (Sewerage Works), 402034017100 (Water supply), identified for the development of infrastructure for Tamariskia Extension 3, to finance the development of infrastructure for the DRC Area be approved.
 - (b) That the application of unused funds, identified as such by the relevant Head of Department, on all completed Capital Projects for the development of infrastructure in the DRC Area be approved.
-

11.1.25 **APPLICATION FOR RELAXATION OF PARKING REQUIREMENTS
FOR ERF 228 C, SWAKOPMUND, IN ACCORDANCE WITH THE
TOWN PLANNING PARAMETERS**

(C/M 2013/11/28 - E 228 C)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum 10.3 page 08 refers.

- A. The following item was submitted to the Management Committee for consideration:

HISTORIC

The dispute between the Municipality and Messrs Vantrimar Properties CC is well known.

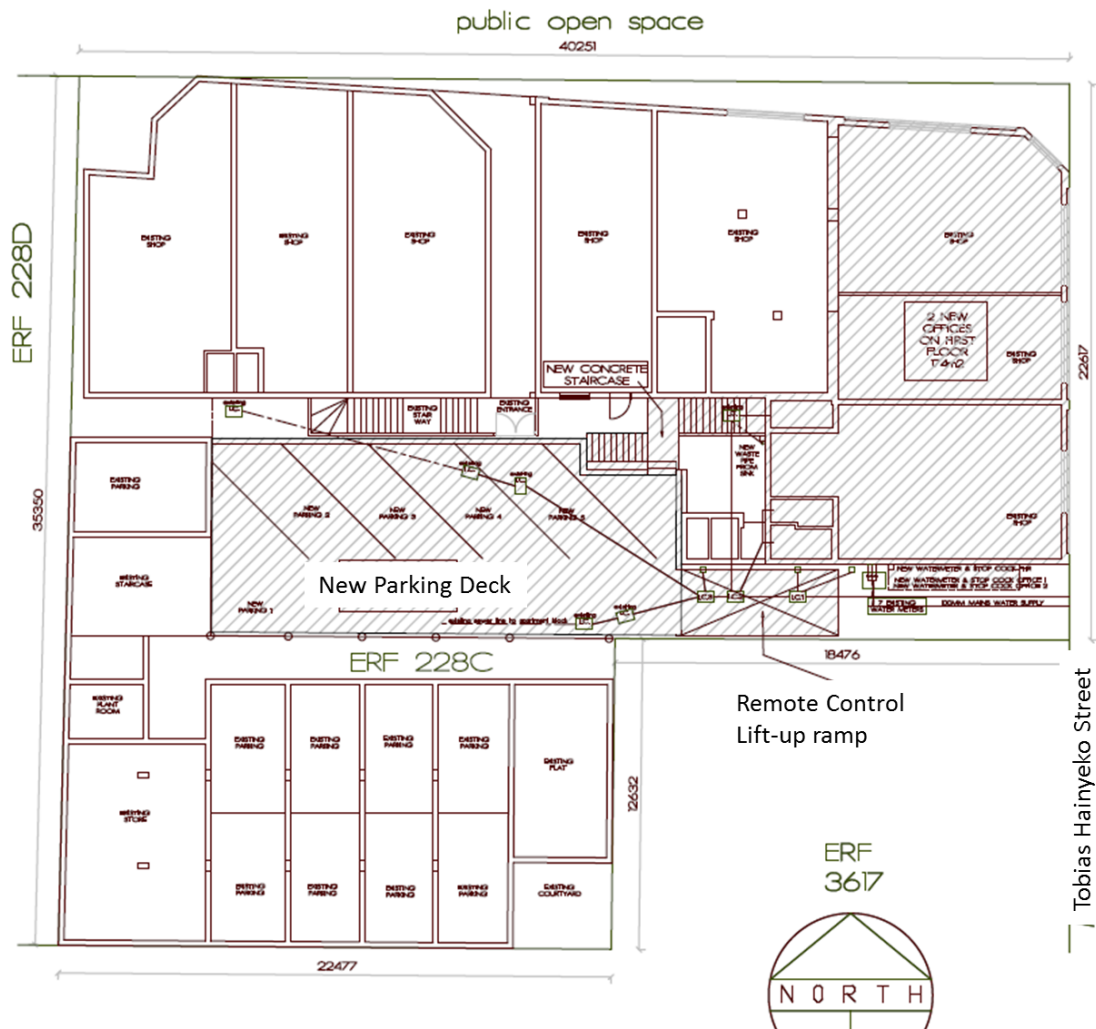
The property is situated in Tobias Hainyeko Street – see below:-



INTRODUCTION

Messrs Vantrimar Properties CC applied (**24 November 2010**) for building approval and received a Building Permit on **10 February 2010**.

Initially, Town Planning indicated that insufficient parking was provide for on the property the proposed development and land use, yet this was rectified by the provision of a parking deck in the erstwhile courtyard – see below:

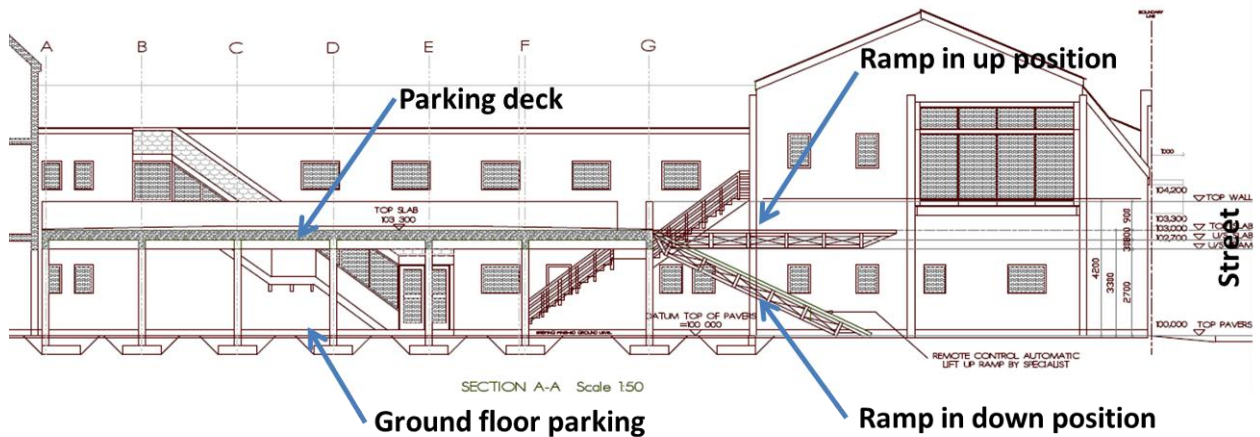


The parking arrangement designed and accepted at that stage came to the attention of the General Manager: Engineering Services late **August 2013** when purported illegal construction was reported by Mr E Lang. The allegation was followed up and Messrs Vantrimar Properties CC was immediately (verbally) instructed to either make good the structure, or to submit appropriate building plans to legalise the works, as well as to appoint an Engineer to ensure that the structural integrity is protected.

Messrs Vantrimar Properties CC submitted acceptable building plans, approved on **16 July 2013**, and tabled appointment letter (SANS 0400-1997) of Structural Engineer (WML Coastal – B Volkmann).

During the site inspection, the drawings of the original construction were perused and the ramp noticed. The ramp functioning and use of the ramp was appraise in terms of the safety of the user, as well as the safety of pedestrians and other road users.

It is to be noted that Tobias Hainyeko is a very busy street, both in terms of pedestrians and vehicular traffic. The street makes complex intersection at a bend with Daniel Tjongarero Avenue just to the north of the exit from the parking at Erf 228 C. Given that vehicles will access the parking up the ramp (see below) to park at an angle, and will exit the parking in reverse down the ramp, into the traffic, it is an obvious hazard which is best avoided.



DEVELOPMENT

Due to the clear hazard involved, Engineering Services forwarded the **attached** letter (dated **02 September 2013**) to Messrs Vantrimar Properties CC indicating that the ramp is not recommended and requesting that an alternative is identified.

ALTERNATIVE IDENTIFIED

Messrs Vantrimar Properties CC met with Engineering Services Department subsequent to the letter to resolve the situation, leading to the proposal to pave the area to the west of the amphitheatre, thereby developing parking area, in lieu of providing on-site parking.

The benefit to Town is identified in the beautification of the area, and the fact that the area will now be more user friendly for applications such as open-air exhibitions / entertainment / functions at the amphitheatre

The area involved is estimated at about 3 300 m², with paving costs estimated between N\$200.00 and N\$250.00/m².

The proposal identifies that Messrs Vantrimar Properties CC will provide interlock pavers, prepare the land and install the pavers and kerbing at their cost. It also identifies that the area be maintained by Messrs Vantrimar Properties CC.

The proposal to provide the materials and construct is considered beneficial, yet this works shall need to be executed to the Specifications of Engineering Services. The proposal to maintain the developed area is considered unpractical to administrate.

RECOMMENDATION

On safety principles and given the identified capital investment to beautify and formalise the amphitheatre parking area in lieu of on-site parking.

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the application for relaxation of parking requirements for Erf 228 C, Swakopmund, be approved on the conditions below.**
 - (b) That Council enters into an agreement with Messrs Vantrimar Properties CC for the provision and construction of an interlocked parking area for the unpaved area of about 3 300 m² between the Amphitheatre and Am Zoll Street as per the attached diagram with the construction done to the specifications and satisfaction of the Engineering Services Department.**
 - (c) That the completion certificate only be given to Messrs Vantrimar Properties CC once the area is paved.**
 - (d) That in future Council adopts a Policy whereby, for the Conservation Area, business enterprises may acquire / develop alternative parking (constructed to specification by Engineering Services Department) at a cost and location to be determined by Council, in lieu of on-site parking.**
-

11.1.26 **REQUESTING FOR EXTENSION OF TIME FOR PAYMENT OF PURCHASE PRICE FOR ERVEN 3289, 3290 AND 3291, MONDESA**
(C/M 2013/11/28 - M 3289, M 3290, M 3291)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum **10.4** page **01** refers.

A. The following item was submitted to the Management Committee for consideration:

1. Introduction

Council on **05 September 2013** under item 11.1.1 allocated three general residential being Erf 3289, 3290 and 3291, Mondesa as follows:

(a) That that the erven be allocated as follows:

- ① Erf 3289, Mondesa measures 4362m² to Ms Josephine Ipupa Kasheeta at a purchase price of N\$890 545.92 to develop Residential and Commercial Accommodation.*
- ② Erf 3290, Mondesa measures 4 529m² to Messrs Evangelical Lutheran Parish (ELCIN) at a purchase price of N\$722 375.50 to develop a Congregational Training Center, Auditorium, Accommodation Facilities, Community Soup Kitchen, Eating Place and IT Center for Youth.*
- ③ Erf 3291, Mondesa measures 4 504m² to Mr Andreas Gawaseb at a purchase price of N\$720 000.00 to develop low cost houses and a small charge office to be leased to NAMPOL staff, after 3 years they will be given an opportunity to purchase.*

subject to Council's standard conditions for sale of erven and that the following applicants be considered should the above applicants not accept the offers:

- Ms Bertha Inodhimbwandje Kadhila*
- Mr Econia Muptomisala Petrus*
- Ms Helvi Mupupa*
- Mr Lukas Dankie Geiseb*

(b) That the erven referred in point (a) may not be sold to third parties without a completion certificate being issued that the property was developed as per the proposal submitted and approved by Council.

(c) That the successful applicants shall commence with structural improvements on their allocated erven within 12 (twelve) months from the date of transfer of the erven in their respective names.

With reference to the conditions of sale, **attached as Annexure "A"** the successful purchasers must pay the purchase price in cash on date of signing the Deed of Sale or secure the purchase price by means of a bank guarantee payable on date of transfer which must be 120 days after Council approved the allocation of the erf to the successful applicant".

2. Discussion

The 120 days as calculated from 05 September 2013 being the date of allocation of the erven to the respective purchase as referred in (a) above is Thursday, **23 December 2013**. In view of the fact that

the last date for submission of transfers at the deeds office is Friday, **06 December 2013**, it is impossible that the erven will be transferred on **23 December 2013**. Messrs Conradie & Damaseb Attorneys will attend to the transfer of these erven and confirmed that they will close on Friday, **13 December 2013** and open Monday, **06 January 2014**.

All three purchasers have paid their deposits of N\$50 000.00 and Messrs Conradie & Damaseb Attorneys is in the process to finalize the compilation of deeds of sale as they were only instructed to compile the Deed of Sale for Erf 3291 on **07 October 2013** after Mr Andreas has paid the deposit .

It is anticipated that the deeds of sale might only be finalized by the end of **November 2013** as the drafts are still being scrutinized whereafter they will be sent to purchasers for signing.

3. **Conclusion**

In view of the above, it is proposed to extend the payment date being **23 December 2013** to **28 February 2014** in line with the Management Committee resolution of **17 September 2013** under item 5.2 quoted below:

That the rescheduling of the due date for payment to be received in respect of the closed bid sale to be held on 4 October 2013 from 2 January 2014 to 28 February 2014 be approved.

B. After the matter was considered, the following was:-

RECOMMENDED:

That the extension of time for the due date for payment of the purchase prices in respect of Erven 3289, 3290 and 3291, Mondesa from 23 December 2013 to 28 February 2014 be approved.

11.1.27 **INTERNAL AUDIT FOLLOW-UP AUDIT REPORT**
(C/M 2013/11/28 - D 10/1)

Ordinary Management Committee Meeting of 19 November 2013,
Addendum **10.8** page **00** refers.

A. The following item was submitted to the Management Committee for consideration:

Attached, a copy of the Internal Audit Follow-Up Report combined with the Chief Executive Officers Internal Tracking Report received from Messrs Ernst & Young on:-

- Tenders, General Administration,
- Rest Camp,
- Planning & Building Control,
- Halls & Sports Grounds,
- Traffic,
- Erven Sales & Rentals,
- Expenditures & Store,
- Housing Services

(a) Objectives of audit

The objectives of the audit were to determine whether management has implemented the agreed corrective action and whether these controls are now operating as intended. The observations noted in the original report were as follows:

Area	No of findings	Risk Category			
		High	Medium	Low	Improvement Idea
Tenders	3	-	1	2	-
General Administration	10	7	3	-	-
Rest Camp	5	-	3	2	-
Planning & Building Control	6	2	2	1	1
Halls & Sports Grounds	7	2	4	1	-
Traffic	5	-	2	1	2
Erven Sales & Rentals	3	1	2	-	-
Expenditures & Stores	5	-	2	2	1
Housing Services	3	2	-	1	-
Total	47	14	19	10	4
% of Total	100%	30%	40%	21%	9%

(b) Period Covered by the Report

The population, from which our testing sample was selected, was transactions that occurred in the period **1 September 2012 to 28 February 2013**. Any events or transactions that occurred outside of this period, which we refer to in this report, were included for information purposes only.

Follow-Up on Findings

In the table below is a summary of the findings raised during the previous audits in 2011/12, and the status of these findings from our follow-up review.

No	Finding	Rating	Corrective action implemented	Corrective action Partially implemented	Corrective action has not yet been implemented	Not Applicable
Tenders						
1	Not all tender recommendations and/or documentation of the various departments are on file.	Medium	✓			
2	No letters to convey to the renderers that the tender has been awarded.	Low	✓			
3	No evidence could be obtained from Archives that all tenders have been published in at least two newspapers	Low	✓			
General Administration						
4	Follow-ups on the execution of Council resolutions not performed.	High		✓		
5	Data incorrectly captured from the Orbit system on to the administration reports.	High		✓		
6	Inadequate or incorrect feedback on the administration report.	High		✓		
7	Incorrect filing or use of file reference numbers.	High	✓			
8	Subsequent documentation relating to initial letters not stored on the Orbit system.	High		✓		
9	File control register not signed by individuals when files are taken from/ returned to the archive.	High		✓		

No	Finding	Rating	Corrective action implemented	Corrective action Partially implemented	Corrective action has not yet been implemented	Not Applicable
10	Non-compliance with the Archives Act, 1992.	High		✓		
11	No formal policies and procedures with respect to the general administration processes.	Medium		✓		
12	Access to the archive not restricted when archive officials are absent.	Medium	✓			
13	Orbit application shortcomings.	Medium		✓		
Rest Camp						
14	Cash-up surplus not recorded	Medium		✓		
15	Key Deposits not obtained	Medium		✓		
16	Semi-permanent' guests not paying within 30 days	Medium	✓			
17	Some formal policies and procedures with respect to the Municipal Rest Camp process does not exist	Low	✓			
18	Inadequate key control (Cleaners)	Low	✓			
Planning & Building						
19	Inadequate communication and controls between the Corporate Property and Finance Departments	High			✓	
20	Building/Application Fees incorrectly calculated	High		✓		
21	No formal and documented procedures with respect to planning and building control process	Medium		✓		
22	Building material delivery notes not filed	Medium		✓		
23	Building Plan approval checklist not adequately completed or on file	Low		✓		
24	Building plan approval time not within the set target of 3 weeks	Improve ment idea			✓	
Halls & Sports Grounds						
25	Events are not recorded on the bookings spreadsheet.	High		✓		

No	Finding	Rating	Corrective action implemented	Corrective action Partially implemented	Corrective action has not yet been implemented	Not Applicable
26	Inconsistent income balances between the monthly income report and the Venus report.	High			✓	
27	Incorrect application of tariffs charged to the clients.	Medium		✓		
28	No standard operating procedures exist for the Halls and Sports Ground Functions.	Medium	✓			
29	Inadequate segregation of duties between the bookings function and custody of keys.	Medium				✓
30	Not all cheques recorded in the cheque register.	Medium		✓		
31	Missing Pre- and Post-Inspection Lists.	Low	✓			
Traffic						
32	Inadequate review of the Vehicle Log Forms	Medium		✓		
33	Inadequate controls to monitor the validity and accuracy of overtime claimed	Medium		✓		
34	Face value books not found	Low			✓	
35	Record room not properly organised	Improve ment Idea	✓			
36	Inability of the Traffic system to generate certain information	Improve ment Idea		✓		
Erven Sales & Rentals						
37	Rentals are not levied promptly	High		✓		
38	Missing documents on the erven file for the sale or lease of property	Medium	✓			
39	No copies of newspaper advertisements placed on the erven file	Medium	✓			
Expenditures & Stores						
40	Orders can be changed by the store staff members without additional HOD authorisation	Medium		✓		
41	Invoices are not collected/returned on a timely basis by the Head of Department	Medium			✓	

No	Finding	Rating	Corrective action implemented	Corrective action Partially implemented	Corrective action has not yet been implemented	Not Applicable
	when certified.					
42	No evidence exists of goods received from the warehouse (stores) by recipient.	Low		✓		
43	Policies and procedures are not comprehensive for the ordering and receiving function	Low		✓		
44	Re-order levels are not reviewed annually	Improve ment Idea			✓	
Housing Services						
45	Approval of a housing loan in excess of what the beneficiary qualifies for.	High	✓			
46	Overdue accounts not administered in line with the Municipality's credit policy	High		✓		
47	No completeness check performed on the monthly statements sent to housing loan account holders.	Low				✓
Total		47	14	25	6	2
% of action plans implemented		100%	30%	53%	13%	4%

Council's Audit & Risk Management Committee therefore:-

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the Internal Audit Follow-up Audit Report combined with the Chief Executive Officers Tracking Report submitted by Messrs Ernst & Young, be noted.
- (b) That the observation made of the 53% partially implemented corrective actions on findings as well as the 13% actions not yet been implemented on findings, be noted and be followed-up by the Chief Executive Officer and Messrs Ernst & Young to ensure that full implementation takes place.

