

Ward 10 Committee Members  
Knysna

13 August 2018

The Knysna Executive Mayor &  
The Municipal Manager  
Knysna Municipality  
P.O. Box 21  
KNYSNA  
6570

Delivery on the 13 08 2018 and by email to the Ward 10 Council Representative, P Myers, the Mayor and the Municipal Manager.

Dear Sirs,

**KNYSNA MUNICIPALITY PLANNING TRIBUNAL (“KMPT”) AND APPOINTMENT OF  
DIRECTOR PLANNING & DEVELOPMENT FOR KNYNSNA**

We as the Ward 10 Committee would like to welcome you and wish you well with the huge responsibility to “turn around” the Knysna Municipality.

We as a Committee would like to offer our assistance, knowledge and support to you to “steer the ship” in the right direction.

We are aware that in terms of the Constitution of South Africa, a local authority has to **create an enabling environment for economic development** and a local authority must strive, within its financial and administrative capabilities, to promote social and economic development. We as the Ward 10 Committee believe that this has not been the situation in Knysna over the past few years which has left all of us with a feeling of frustration.

There are a number of examples of problems that have arisen during this period and in this communication want to focus on one specific issue. We would like to bring the following information to your attention concerning KMPT and ask that you investigate these matters urgently and report back to us as a Committee:

**1. KMPT**

When the Spatial Planning Land Use Management Act (SPLUMA) came into effect during 2013 all local authorities had to adopt a Municipal Land Use Planning Bylaw. The Provincial Government prepared a draft “Model Land Use Planning Bylaw” and all Municipalities in the Western Cape could adopt that draft bylaw.

Knysna Municipality adopted its Planning Bylaw, during February 2016. The new planning legislation states that each municipality should appoint a Municipal Planning Tribunal for decision making on land development applications. The SPLUMA makes provision for joint **or** individual tribunals.

Other than Knysna all municipalities in the Eden District decided to form a joint Planning Tribunal. The joint tribunal then consists of representatives and Planning Officials from all the municipalities and, to ensure independence, officials from different municipalities serve on each other's tribunals (e.g. officials from Mossel Bay would serve on the joint George Municipal Tribunal).

The benefit of the joint tribunal is **independent decision making at no further cost** to the municipality as the Tribunal Members are already salaried staff from the various municipalities.

Knysna Municipality decided to appoint an independent Tribunal with external members who must be paid for time served on the joint tribunal (*unnecessary wasteful expenditure for a cash trapped local authority*).

### **1.1. Appointment of members of KMPT**

1.1.1. On 30 June 2016, the Council resolved to implement LUPA and on 1 July 2016 establish KMPT and to appoint the following members on the KMPT:

- Mr Carl Mattheus, The Manager: Administration;
- Mr Eben Phillips, The Manager: Integrated Development Planning;
- Ms Marlene Boyce, The Acting Director: Planning and Development;
- Ms Zinhle Twala, The Town Planner;
- Ms Susan Campbell (external);
- Mr G Benjamin (Provincial Government)
- Mr L Gericke (external);
- Mr D Lambrechts (external).

1.1.2. Members of the public were invited to nominate external members of the tribunal and several applications were received. An evaluation panel was appointed to evaluate the applications and a recommendation was tabled to Council (*evaluation attached for ease of reference*).

1.1.3. Section 72(9)(a) of the Knysna Municipal Planning Bylaw states that The Council may not appoint any person to the Tribunal if “...**that person was not nominated in accordance with the provisions of this section...**”

1.1.4. Section 72(10) of the Knysna Municipal Planning Bylaw states that “...**The Council must designate from among the members of the Tribunal the chairperson of the Tribunal; and another member as deputy chairperson, to act as chairperson of the Tribunal when the**

***chairperson is absent or unable to perform his or her duties...***” - At the time Council appointed Mr C Mattheus as Chairperson of the KMPT but did not appoint a Deputy Chairperson.

1.1.5. The evaluation clearly indicated that Ms S Campbell had conflicts of interest as at the time she was involved in various litigation matters against approved development decisions. Examples of these include:

- Pending litigation against the mosque application in Rawson Street;
- Pending litigation against the development approval of Erf 4015 Knysna;
- An appeal against the environmental authorisation of the Oakhill Sports campus in Welbedacht;
- Lobbying the public to appeal / object to the Lake Brenton Caravan Park Development,
- Actively lobbying against the Council to stop the process of compiling an Integrated Strategic Development Framework (ISDF) for Knysna, and various other matters.
- After the ISDF process was cancelled Ms Campbell and Boyce were intimately involved in the compilation of a new SDF for Knysna. This new SDF did not follow a proper public participation process approved by Council. The Western Cape Minister of Local Government, Environmental Affairs and Development Planning then wrote a 20-page letter to highlight the shortcomings of the Knysna SDF.
- It should be noted that a few of approved developments in the Knysna area were removed as “development areas” in the amended, approved SDF.
- How can an “Independent” and “unbiased” member of the KMPT be so intimately involved in the SDF process of the Knysna Municipality?

1.1.6. Section 74(3)(a) states that “...***A member of a Tribunal must make full disclosure of any conflict of interest, including any potential conflict...***” There is no record that S Campbell disclosed any of these conflicts of interest in her nomination to be appointed on the KMPT. The Evaluation Committee pointed these conflicts out and recommended that she should not serve on the KMPT. Council ignored the recommendation of the Evaluation Committee and proceeded to appoint her onto the KMPT. **By appointing a member with a known conflict of interest to the KMPT we are of the view that the Council was acting unlawfully.**

1.1.7. Certain of our Committee members have listened to the recordings of the June 2016 Council meeting of and have confirmed that Councillor Myers was the one who fought very hard for the inclusion of Ms. S Campbell onto

the KMPT. He also indicated to the meeting that she had no proven conflict of interest.

- 1.1.8. At the end of 2016 Mr C Mattheus resigned from the Committee. Section 74(6) of the Municipal Planning Bylaw states that “...***If a member's appointment is terminated or the member resigns, the Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, in accordance with sections 71 and 72...***” This means that the same procedure had to be followed to appoint a new member on the KMPT. This process was **NOT** followed and Council appointed P Booth onto the KMPT during the Council meeting of September 2017. Again the Council's conduct pertaining to the KMPT was unlawful the implication being that all the decisions of the KMPT are basically invalid making all decisions of the KMPT vulnerable to legal review. Put another way the KMPT was and still is improperly constituted.

## **1.2. Conflict of Interest of the members of the KMPT**

We have already pointed out that the Knysna Municipal Planning Bylaw clearly states that KMPT Members may not have any conflict of interest or even potential conflict of interest.

- 1.2.1. We have also pointed out in Par 1.1.5 above S Campbell's conflict of interest.
- 1.2.2. At the time of her nomination M Boyce was acting as the Manager Waste Department and had no perceived conflict of interest. However at the time of her appointment to the KMPT she was the Acting Director: Planning & Development which in our view constitutes a massive conflict of interest.
- 1.2.3. All applications for development are assessed within her Department of Planning & Development. As the currently appointed Director of that Department M Boyce has insight into the assessment of the applications but then also adjudicates these applications as Chairperson of the KMPT! This for us as a committee is such a clear conflict of interest that we find it surprising that it ever took place. We would ask you to investigate how and why this arose and why, after protests were made, it was allowed to continue.
- 1.2.4. An example of her obvious conflicted position is an item that was drafted for the rezoning for Erf 5048 Knysna early in February. The item was recommended for approval by the Department duly supported and signed off by M Boyce as the Director Planning & Development and due for a decision by the Section 80 Committee of which Councillor Myers was the Chair at the time. Councillor Myers ruled that the item had to be referred to the KMPT for a recommendation, and then M Boyce, now in her capacity as the Chairperson of the KMPT, recommended that the item be refused?

- 1.2.5. The clear conflict of interest is unacceptable and we request that you investigate the matter and advise us if we have misunderstood the facts or if our assessment of the situation is correct. If the latter then we would ask you to advise us how you plan to remedy the untenable situation.

### **1.3. Decisions of the Various Tribunals in the Eden District**

We investigated the statistics of decision making of the KMPT, the Joint Eden Tribunal for George, Mossel Bay and Hessequa and compared it. The results are shocking and in our view reflect a dysfunctional KMPT:

#### **1.3.1. KMPT**

From the date that the KMPT commenced its activities, 63 applications were tabled before it. Of these applications:

- (i) only 16 x applications were approved
- (ii) 17 x applications were refused
- (iii) 29 x applications were referred back, and
- (iv) only 21 x decisions were made in line with the Town Planning Department's recommendations.

1.3.2. To date, there are already 9 x appeals against the KMPT's decisions.

It can be concluded that the KMPT only made 33% of its decisions in line with the municipal official's recommendation. This means that in 67% of its decisions, the KMPT disagreed with the Town Planning Department's decisions! Either the Council is wasting money on the appointment of incompetent, but qualified, registered Professional Town Planners, or the KMPT has its own anti-development agenda or have another hidden agenda.

#### **1.3.3. Eden Joint Planning Tribunal for George**

From the date that the Joint MPT commenced its activities, 75 applications were tabled before the MPT. Of these applications:

- (i) 8 x appeals were received, of which 2x were successful
- (ii) 1 x application was referred back, and
- (iii) 3 x applications were made in conflict of the officials' recommendations.

It is interesting to note that the Joint Tribunal for George made only 4% of decisions in conflict with the Municipal Official's recommendation. Hence, 96% of decisions were made in line with the Officials' recommendation. Why the huge discrepancy between them and for the KMPT?

#### 1.3.4. Eden Joint Planning Tribunal for Mossel Bay

From the date that the Joint MPT commenced its activities, 12 applications were tabled before the MPT. Of these applications:

- (i) 12 x decisions were made
- (ii) No application was refused
- (iii) 1 x decision was appealed by an objector
- (iv) Zero decisions were made in conflict of the officials' recommendations.

Again, why the huge discrepancy between them and for the KMPT?

#### 1.3.5. Eden Joint Planning Tribunal for Hessequa

From the date that the Joint MPT commenced its activities, 29x applications were tabled to the MPT. Of these applications:

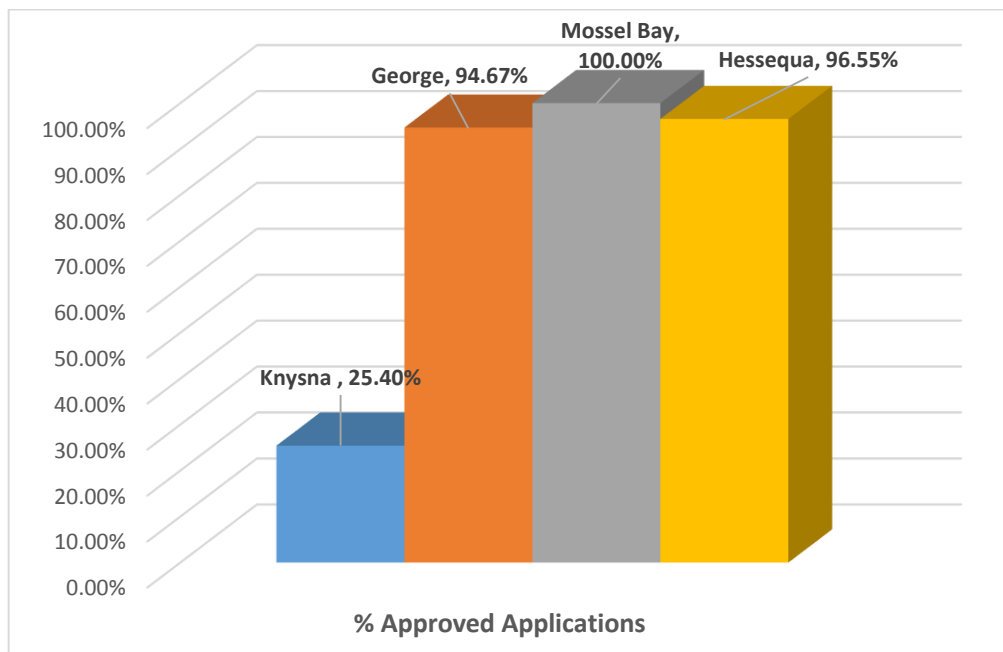
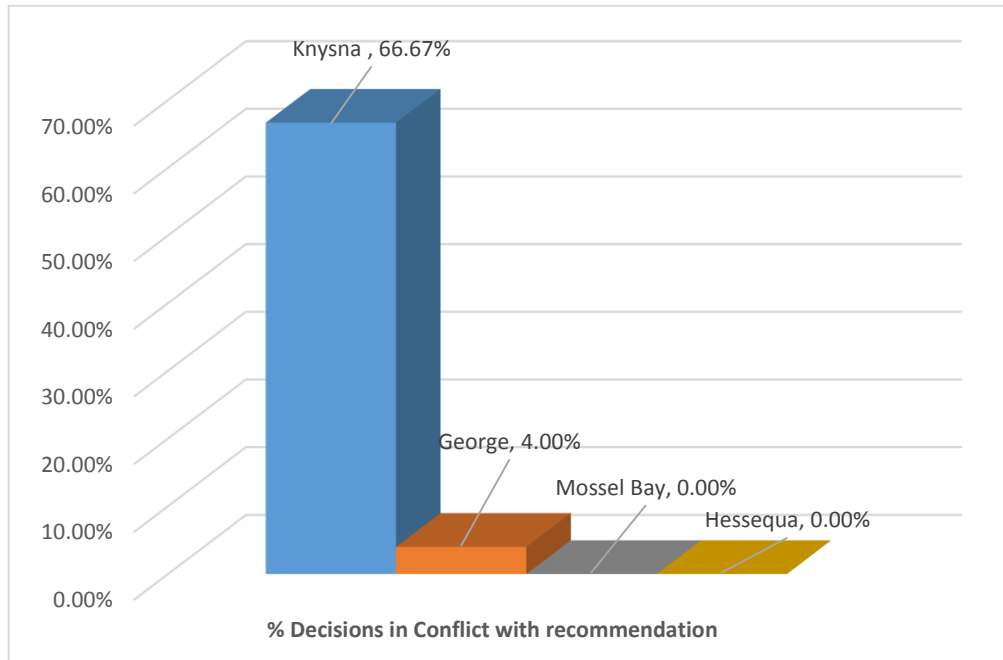
- (i) 28 x decisions were made.
- (ii) 1 x application was referred back, because the Tribunal was not authorised to make the decision
- (iii) 4 x applications were refused
- (iv) Zero decisions were made in conflict of the officials' recommendations.

Again, why the huge between them and for the KMPT?

#### 1.3.6. Conclusion

- (i) It appears that the KMPT is the only Tribunal that makes a disproportionate number of decisions in conflict with the officials' recommendations.
- (ii) There is either a problem with the KMPT or with the Planning Officials of the Knysna Municipality. How can it be that the KMPT disagrees with 67% of the recommendations made to it or does the problem lie with the Director of Planning & Development who is also the Chairman of the KMPT? If she executes her function competently as Director of Planning & Development why is her success rate with the KMPT only 33%? This percentage clearly indicates failure on the part of her department and we as ratepayers must finance this dismal performance! Clearly something is amiss and should be seriously and urgently investigated.
- (iii) Why in other municipalities where the Eden Joint Tribunal is operating are there so few conflicting decisions?

- (iv) Who is the common denominator? Can it be that all the other municipalities' officials are competent and Knysna's incompetent, or is the KMPT maybe the problem?
- (v) We ask you to investigate these matters and revert to us as soon as possible.



#### **1.4. Costs incurred as a result of the KMPT**

Besides the fact that our cash strapped Council is paying external members to serve on the KMPT while there are other alternatives available the KMPT decisions have additional financial implications for Council. Some that we are aware of include:

- 1.4.1. The KMPT was directly involved in the refusal of the development application on Erf 5084 Knysna. When the applicant brought an application for legal review against the decision Council conceded that their decision was wrong. They settled out of Court and agreed to cover the applicant's legal costs in an amount of approximately R95,000. This is wasteful expenditure of Council funds.
- 1.4.2. Eskom is currently preparing a legal review against an application of the Council that followed a similar path to the one mentioned above – more pending wasteful expenditure for Council.

## **2. Appointment of the Director of Planning & Development**

When Mr Mike Maughan Brown resigned from the position of Director Planning & Development of Knysna Municipality the position was advertised with detailed criteria and requirements for the candidate to fill the position.

A copy of the advert as published, is attached. The closing date for submission of applications for the position **was on 27 September 2016**. We were informed that the current Director, Ms M Boyce, **did not apply for the position** of Director: Planning & Development, within the prescribed period. If we are incorrect then we would ask you to investigate and advise us of the date when M Boyce did in fact apply.

### **2.1. Requirements for the Position**

The advertisement for the vacancy of Director Planning & Development clearly spelt out the requirements for the position. These included:

- 5 years' experience at middle management level with proven successful professional developmental/town and regional planning experience.
- Knowledge of Geographical Information Systems (GIS);
- Project management certificate or diploma will be an added advantage;
- Registration as a Professional Planner in accordance with the Planning Professions Act, 2002 (Act No. 36 of 2002) will be an added advantage;
- Local Government experience preferably at a senior level would be an added advantage;
- Certificate in Municipal Minimum Finance Management (SAQA Qualification ID No 48965) for Senior Managers of Municipalities, as is provided for in Regulation GN R493, dated 15 June 2007.



We know that Ms Boyce only had 4 months of acting experience in the Waste Department, and then a few months; of acting experience as Director Planning & Development and definitely not the required 5 years' experience in middle management. How could her application have been considered without her having the required minimum experience?

We are not aware of any proven development experience that Ms Boyce had at the time of her appointment, and this was a specific requirement for the position. Kindly investigate and advise what proven development experience Ms Boyce had at the time of her appointment?

## **2.2. Regulations for the Appointment of Senior Personnel**

To our knowledge Municipal legislation prescribes that new Senior staff members may only commence in their new position, within 30 days of the decision to appoint the person. The reason for this regulation is to allow sufficient time for the MEC to confirm whether or not he agrees with the appointment.

Why in the case of the appointment of Ms Boyce did she commence her new position only 3 days after the Council's decision to appoint her as Director: Planning & Development? This was a blatant contravention of the regulations and a failure by Council to follow due process when appointing her.

Please investigate and advise why Ms Boyce officially commenced her new position within only 3 days after the Council decision, and not the prescribed 30 days?

The purpose of this 30-day period, is for the Minister to appoint / confirm the appointment of Ms Boyce within this 30-period. Please advise whether the Minister did indeed confirm the appointment of Ms Boyce.

## **2.3. SCM Process to appoint an HR Consultant for the Evaluation and Appointment of the Director: Planning & Development**

It seems that the Knysna Municipality embarked on a SCM Process to appoint a HR consultant to oversee the appointment of the position. We have been told that, the company "Ignite" was appointed, and another consultant "Rhoy Steele" objected to the appointment. Ignite had commenced the process, scheduled interviews, did the required checks on the applicants, etc. and then the Municipality decided to appoint "Rhoy Steele" and the scheduled interviews arranged by Ignite were cancelled. The applicants were informed that the interviews were cancelled and that the position will be re-advertised. We can find no evidence of the publication of a second advert.

With regard to the selection process we would ask you to investigate and advise us on the following aspects:-

- Did the selection panel comprise of a person, who is not a councillor or a staff member of the municipality, who has **expertise or experience in the area** of the advertised posts?

- The closing date for applications was on 27 September 2016. Was the shortlisting done within 30 days of that date?
- Did the screening of candidates take place within 21 days of the finalisation of the shortlisting?
- Did all the shortlisted candidates **hold a degree that is relevant to the position** and listed in the competency regulations for this position as well as hold the proven professional developmental/Town and regional planning experience?

It appears that the selection panel for the position for Director: Planning & Development, did not include the required expert to do the short listing. Kindly investigate and advise whether this is true.

To our knowledge the external person was of the opinion that Ms Boyce did not have the required minimum experience for the position but apparently the Knysna Municipality's HR Manager instructed that Ms Boyce be included on the shortlist? Is this this case?

We have been advised that the Mayor and Ms L Phillips were on the selection panel and Councillor Myers was also present. All three of these individuals were close friends of Ms M Boyce at the time but none of this was declared in Ms Boyce's application. The selection process should be conducted impartially and should be seen to be conducted impartially. We are concerned that this is not the case and ask that you also investigate this aspect and advise.

It appears that the selection panel did not keep to the prescribed strict time lines for the selection process. Kindly confirm whether the selection process complied with the strict timelines, and if not, why not?

To our knowledge, the external person that was used on the selection panel, was previously a Director Corporate Services and Municipal Manager, not a Development Planner. The external person on the selection panel did not have the knowledge and experience of Planning and Development, to assess whether the candidates had the required knowledge and experience for the positions. Why was a suitably experienced person not appointed to the selection panel?

We understand that during June 2017, the Municipality's HR Department, cancelled the selection process for the position of Director Corporate Services, because the Municipality did not adhere to the prescribed strict timelines of the selection process. Why was it not the case with the appointment of the Director: Planning & Development?

## **2.4. Conclusion**

With the above taken into consideration, we will appreciate a response to the following:

- 2.4.1. Kindly investigate and advise the date of Ms Boyce's application for the position of Director: Planning & Development.

- 2.4.2. We are not aware of any proven development experience that Ms Boyce had at the time of her appointment, and this was a specific requirement for the position. Kindly investigate and advise what proven development experience Ms Boyce had at the time of her appointment?
- 2.4.3. It appears that the selection panel for the position for Director: Planning & Development, did not include the required expert to do the short listing. Kindly investigate and advise whether this is correct or not.
- 2.4.4. It appears that the selection panel did not keep to the prescribed strict time lines for the selection process. Kindly investigate and advise whether the selection process complied with the strict timelines, and if not, why not?
- 2.4.5. To our knowledge, the external person was of the opinion that Ms Boyce did not have the required minimum experience for the position, but apparently, the Knysna Municipality's HR Manager instructed that Ms Boyce be included on the shortlist? Is this the case?
- 2.4.6. We note that a big fuss was made about the "illegal" appointment of the Director of Community Services. Refer: <https://www.iol.co.za/capetimes/news/protector-asked-to-probe-adoniss-position-9264485>. Why was a similar fuss not made about the appointment of the Director Planning & Development?
- 2.4.7. Kindly investigate and advise why Ms Boyce officially commenced in her new position within only 3 days after the Council decision, and not the prescribed 30 days?
- 2.4.8. Please advise whether the Minister did indeed confirm the appointment of Ms Boyce.

Your urgent response to the matters raised above will be appreciated.

Yours sincerely,

**WARD 10 Ward Committee Members**

**Andrew Finn**

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**Catherine Hollely**

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**Peter Hollely**

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**Maurice Kruger**

**Peter Lay**

**Felix Meyburgh**

**Richard Sohn**

**Schalk Van der Merwe**

**Marike Vreken**