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Hermanus Public Protection
PO Box 1599
Hermanus
For attention of: The Executive Officer

Subject: **Objections to the Hermanus Special Rating Area (HSRA) application to the Overstrand Municipality for the extension of its term for a further five-year period.**

Introduction

Following the notice given by the Hermanus Special Rating Area (HSRA) Non-Profit Company (NPC) (HPP) that the HSRA has submitted an application to the Overstrand Municipality (OM) for the extension of that HSRA term for a further five-year period, I herewith provide my detailed written objections to this extension of the HSRA term.

I request that all objections received by HPP or OM:

- be made public – for all ratepayers to read; and
- are openly, transparently and honestly discussed and resolved before any extension of the HSRA term is considered and voted on by OM.

Notice of application

The HPP notice of extension contains the following paragraph:

The original business plan remains unchanged. The core services - supplementary public safety, camera monitoring, and cleansing - reflect the priorities supported by ratepayers at the time of establishment. These services will continue to complement those of the Overstrand Municipality and will be maintained throughout the extended term without deviation from the original mandate.

Considering the history of HPP and their performance over the last five years, this statement is impossible for me to believe. HPP changed the “original business plan” of the HSRA and substantially deviated from the mandate over the last five years, several times, and neither HPP or OM followed due process regarding this “business plan” in several instances.

The HPP notice of extension mentions the HPP perception survey, conducted to assess ratepayer opinion and guide the extension proposal. In my opinion such a “perception survey” does not provide any feedback on performance or guidance for future direction – it can only serve as a tactic to divert attention.

Realistically, (and, in my opinion, legally) what is required at this stage, is for the HSRA to conduct a program of public engagement including solicitation and resolution of real objections – similar to the one followed during the establishment of the HSRA. I sincerely suspect that HPP may have initially wanted to get an extension of the HSRA term without even bothering to request objections but somebody talked them out of it for fear of possible future challenges.

The HPP notice of extension contains the following stipulation (reasons) and requirement (referencing specific aspects):

The grounds for an objection must including a clear and concise explanation of the reasons for objecting, referencing specific aspects of the term extension application and the relevant policies or regulations applicable.

The notice goes on to ask that ratepayers who issue objections, provide “supporting documents”, so that HPP can “validate the basis of the objection”.

To me, this feels like HPP preparing to reject objections for the reasons of non-compliance. I say this because, in my experience, this is how HPP operates - they previously rejected most of my PAIA applications, for similar spurious reasons. HPP insists on the specific legal right that I am seeking to protect with each of my applications. A response such as “to protect my right to understand exactly what HPP are doing for me with the money that I pay them” is not acceptable – HPP insists on chapter and verse of the law, otherwise they reject the application.

I also mention that HPP past behaviour in spending ratepayer money was to do so in secret and with impunity. Things that are unacceptable to me, a ratepayer.

In my opinion, the proper way to handle the current application for an extension, would be for the HSRA and the OM to engage with all ratepayers (it is not clear whether the HPP email was sent to all ratepayers or only HPP members). Engage with those ratepayers who raise objections, with the aim of finding a way to resolve and address each of their objections.

By example through establishing or adjusting (and open document) HSRA and OM plans and operational procedures. Do so openly, honestly and transparently (the proper way).

What improvements and upgrades were we paying for?

The basic question is and has always been – what things exactly are HPP spending the rates and taxes that OM take from ratepayers to hand over to HPP, have ratepayers had a say in this and how are these things procured and how is delivery managed. For five years now I have asked HPP to “show me” but they have whole heartedly resisted (and the information on the website is not it).

In my opinion, the establishment of the HSRA and agreement that in 2020 was not lawful. I objected to the establishment of the HSRA at that time, in writing. I issued these objections to the HSRA Steering Committee (SC), who never comprehensively addressed my objections. I advised OM that my objections remained unaddressed. OM asked the HSRA SC to resolve my objections. The HSRA SC responded back to OM saying that they had provided me with all the information that I asked for. That was a lie.

I advised OM of this lie but OM elected to ignore my requests for their intervention in this matter. On the strength of this lie, OM approved the HSRA which I challenged. In their response OM claimed “functus officio”, saying that I need to apply to the high court for relief. Considering the costs of such an application, in comparison to the cost of the alternative (pay the additional rates) and my income (pension), I regretfully declined to proceed with a high court action on this matter.

From the start, up to now, my most fundamental issue with the HSRA and its NPC (HPP) has always simply been that, the people who fund HPP (ratepayers), are not informed of exactly what improvements and upgrades they are paying for, how these things are procured and how implementation is managed.

The only information that the HSRA SC ever provided was that ratepayers were going to pay for security and cleaning services – nothing more than that. In my opinion this was not in compliance with the meaning, spirit and intent of the definitions and descriptions of the “Business Plan” (“motivation report”, “implementation plan” and “term budget”) contained in the relevant laws.

Over the last five years HPP have continued to operate in the manner that was established by the HSRA SC at the onset– in secret and without informing ratepayers. Those people who fund HPP to do the things that they do (ratepayers), do not know what their money is buying. HPP have consistently operated on the principle that ratepayers can not know exactly what improvements and upgrades they are paying for, how these things are procured and how delivery is managed– these are HPP secrets.

In addition to the two (unseen) contracts that the HSRA SC proposed, HPP have made several other contracts for the provision of infrastructure, goods and services. Ratepayers have no knowledge of the details, let alone existence of these contracts, because no information was ever provided.

My statements above are not hearsay – they are factual, from my own personal experiences in trying to get information from HPP over that last five years (including my PAIA requests, which HPP have mostly denied).

Who was telling HPP what to do and who is accountable?

In my quest to obtain information on and understand what HPP is actually doing, how as well as who is telling HPP what to do, I issued several requests for access to information to the HPP and OM. OM refused my requests with the stated reason that HPP is a public body. “Public body” is defined in law and it basically means that HPP is a department of government or performing functions for and on behalf of government.

In several HPP AGMs, HPP made statements to the effect that “we will see how much money OM will give us this year”. I examined the HPP budget requests and OM allocations over the last five years. I found little correlation between the HPP budget as approved in their AGM and the actual amount of money that OM paid to HPP every year.

I did ask the OM CFO to explain exactly how the amount of money paid to HPP every year is established and how this relates to the HPP budget request. The CFO has not responded to my request. From the foregoing I can only conclude that the OM sets the HPP budget – how, I do not know. This matter has never been clarified or remedied and I can only assume that the same will continue in future.

Several times over that past five years HPP changed their implementation plan. Many of the additions seemed to be things that OM desired (e.g. homelessness and vagrancy, upgrade of the taxi rank) and not things (improvements and upgrades) that formed a part of the original HSRA/HPP mandate.

There were also several things that appeared to be initiated by individual HPP board members (apparently to suit their own specific agendas) without due and proper consultation of ratepayers and processing of the required changes to the business plan (motivation report, implementation plan and term budget) (e.g. planting and the like).

To me it also appears that HPP board members and insiders with vested interests or connections to outside entities (e.g. security industry, NGOs, neighbourhood watches and other groups) exert an influence over exactly what HPP does. I believe that these groups get their representatives appointed as directors of HPP with a view to furthering their own interest.

HPP appoints directors without officially registering them (with the commissioner of companies). That means (and as admitted by HPP) these “directors” have little or no accountability to members of the HSRA NPC – HPP. In my opinion, the influence of these “directors” is the least transparent part of the HPP operations.

It is clearly evident that, in the last five years, HPP undertook many side projects of which ratepayers were not fully informed. From this I can only conclude that OM and others parties were telling HPP what things they must spend ratepayer money on and how they must operate (in secret).

Whose interests were OM looking after?

In the last five years HPP changed the original HSRA business plan, several times. HPP submits this plan to OM every year for checking and approval. In reviewing the HPP applications, the OM CFO never queried (as I am aware of) the unapproved changes that HPP made to the business plan. To me this looks like a failure in the duty to monitor compliance with legislation. I do know that no changes in the HPP business plan were ever presented to and approved by council. Despite the failure to follow legal requirements to change the SRA NPC business plan, council approved it - every year.

Over the last five years; there is little correlation between that HPP budget approved at the AGM with the actual amount of money that OM gives to HPP every year. I have asked the OM CFO to explain exactly how they calculate the amount of money that they provide to HPP every year and how this relates to the budget that HPP establishes at their AGM. After, several attempts and many months now, the CFO has not yet responded to my request.

In the real world, the party who establishes the budget of an entity has control over what that entity actually does over the term of the budget. As pointed out previously, very troublingly, OM officially considers HPP to be a public body.

Did HPP deliver in a cost-effective manner?

Over the last five years HPP have provided ratepayers with infrastructure, goods and services. I did try, many times, to get HPP to allow me an understanding of exactly what it is that they are delivering and whether these things are being done in an effective manner (cost effective, on time, in budget and with an accepted quality).

HPP have consistently and steadfastly refused to provide me with any real or detailed information on these matters. The few things that I did see raised further concerns with me. Even in the rare instances where HPP publicly promised to provide me with information, they never made good on the promises.

I can unequivocally say that, in addition to ratepayers not being able to know exactly what HPP are spending their money on, they have no way of knowing whether HPP procures and manages delivery in a proper manner (cost effective, on time, in budget and to the required quality).

Over that last five years I asked, numerous times, that HPP be transparent about these matters; inform ratepayers of exactly what they intend to do and do what you said. Motivate and discuss proposals with ratepayers - show them how HPP appoints and manages contractors. The response from HPP directors and management has consistently been – “it’s a secret”.

The recent initiative in Sandbaai, to establish an SRA, highlighted these exact and relevant issues. In the process I witnessed a tussle between some ratepayers and the SRA SC. The main bone of contention between these two parties was the cost of the proposed solutions, the technology to be

used and time required for implementation. Most tellingly, there were significant differences between the prices that ratepayers said systems can be provided for and the costs proposed by the SRA SC. The ratepayer group proposed implementation timeframes were also significantly shorter than those of the SRA SC.

Many other issues were also raised. All these issues were the same as those that I have raised over that last five years regarding HPP, including: openness, honest, transparency, cost-effectiveness, influence of interested parties, municipality influence on budgeting and decision making, and so on.

The Sandbaai SRA SC did not manage to get the requisite majority for implementing an SRA. I believe, because ratepayers looked at the examples of the other SRAs in the area and decided that they did not want to go that way.

Conclusions

Those things which caused me to object to the establishment of the HSRA in 2020 were not addressed and resolved at the time or since. These are principally that ratepayers do not know exactly what improvements and upgrades their money will be spent.

In the last five years HPP have persisted in this approach - acting in a secrecy towards ratepayers and refusing ratepayers access to information. Additionally, HPP board and management have not provided ratepayers with the level of service required and expected of an SRA NPC – they have acted unilaterally, in secret and with impunity. I persisted and tried to convince HPP directors and management to change their way of operation – to no avail.

My request to OM for intervention, information and to just do what the law requires were met with abuse (yelled and shouted out by the mayor at a meeting), unresponsiveness, incorrect positions (HPP is a public body). These things were never acknowledged or corrected and other tactics were employed to dissuade me (spend money to approach the high court) and so forth.

I do not know for what reasons (arrogance, ignorance, competence, fear, vested interests, instruction, etc.), caused HPP or OM not to give the slightest consideration my many requests or to make any changes in their approaches to the running and managing the HSRA NPC.

For the reasons mentioned above I strongly object to the extension of the HSRA term, as proposed by HPP.

The matters that I raised in 2020 were never resolved and, in my opinion, set the stage for all the wrong things that HPP and OM did in that last five years. I would urge all parties to enter into open, honest and frank discussions about how HPP and OM should change their approaches to be legally compliant and meet the requirements and expectations of ratepayers.

Yours Sincerely



Andre du Toit