

**AS APPROVED BY COUNCIL ON 28 NOVEMBER 2007**

**THE CONSTITUTION OF THE DESTINATION MARKETING  
ORGANISATION OF THE OVERSTRAND REGION**

**1. NAME**

- 1.1 The name of the Destination Marketing Organisation (DMO) for the Overstrand region shall be: "Overstrand Marketing".

**2. DEFINITIONS**

- 2.1 "Board" means the Board of Directors nominated and elected in accordance with this Constitution;
- 2.2 "Member" means a registered owner of an erf on which assessment rates are payable due to business which may, or is being conducted on that erf and such rates have been paid to the Municipality for the previous municipal financial year (or current financial year for 2007/8), and/or a person who is paying rental on that erf;
- 2.3 "Municipality" means the Overstrand Municipality or its successors in title; and
- 2.4 "Region" means the Overstrand Municipal area.

### 3. **LOCATION**

The office of the DMO shall be in Hermanus or at a place as determined by the Board with the approval of the Municipality.

### 4. **THE DMO**

4.1 Shall be a non-profit organisation; and

4.2 Shall be a body corporate capable of suing and being sued and capable of performing all such acts as bodies corporate may by law perform and shall have perpetual succession and the capacity to acquire rights as deemed necessary.

### 5. **OBJECTIVES**

The objectives of the DMO shall be:

5.1 to market the region as a tourist destination by formulating, implementing and continually updating a marketing strategy in collaboration with the Municipality;

5.2 to maintain effective tourism bureaus in the region;

5.3 to generate additional funds;

5.4 to develop and maintain a world class website;

- 5.5 to collaborate with local communities on the development and marketing of the area;
- 5.6 to be well-informed of the provincial, national and international trends and expectations of visitors;
- 5.7 to undertake ongoing research on the needs, expectations and satisfaction of visitors;
- 5.8 to establish the region as a platform for leaders in the field of eco-tourism;
- 5.9 to provide an information and assistance service to encourage tourists to visit the region to the benefit of the members, visitors and local community;
- 5.10 to develop and promote tourism skills and awareness within the region to achieve the maximum sustainable benefits from tourism through the widest possible participation in the local tourism industry;
- 5.11 to promote the development of appropriate infrastructure with the municipality to ensure a tourist friendly environment;
- 5.12 to ensure the co-ordinated marketing of events in the region;
- 5.13 to promote and advertise attractions and activities of the region by any possible means, methods and media;

- 5.14 to advance within the tourism industry emerging business and persons or categories of persons disadvantaged by unfair discrimination;
- 5.15 to identify and promote the natural and cultural assets of the region;
- 5.16 to produce and distribute appropriate tourism literature;
- 5.17 to establish and maintain, or cause to be established and maintained, a database of the information required for the formulation and implementation of a tourism policy and strategy ;
- 5.18 to promote tourism initiatives in previously disadvantaged areas;
- 5.19 to undertake other related activities in order to achieve these objects;
- 5.20 to stimulate thought and discussion in workshops on Sustainable Tourism Development and promoting exchange with different sectors;
- 5.21 to provide integrated information gathering, dissemination and access systems that ensure that information about the area is accessible to everyone who reasonably needs it, when they want it, in a form that is most useful to their needs.

## 6. POWERS

The DMO will have the following powers:

- 6.1 to own any movable and immovable property including intangibles; to buy, sell, cede or receive in cession, to rent let or sub-let, to dispose of, to mortgage or to bond, to give or take as security, to give or take over any business or other right, to deal with and in general to undertake any legal action and obtain or relinquish any right pertaining to property in promoting the interests of the DMO;
- 6.2 the Board may from time to time raise loans for the purposes of the DMO, subject to the conditions as may be imposed in terms of clause 13;
- 6.3 the Board may raise or secure the repayment of such loans in such manner and upon such terms and conditions in all respects as they think fit and in particular by the execution of mortgage bonds or other forms of hypothecation upon all of any part of the assets and rights of the DMO, both present and future;
- 6.4 to insure the assets of the DMO against risks;
- 6.5 to employ people or bodies into service on agreed conditions to remunerate them and to terminate their services;
- 6.6 to open and operate bank accounts;
- 6.7 to invest the funds of the DMO with a recognised financial institution in the Republic of South Africa;

- 6.8 to enter into a service level agreement with the Municipality; and
- 6.9 in general to act in any way that enhances or coincides with the abovementioned objectives of the DMO and/or that promotes these objectives.

## 7. FUNDS

- 7.1 The funds of the DMO shall consist of:
  - 7.1.1 an allocation from the Municipality, pursuant to an annual budget submitted by the DMO, in accordance with appropriate legislation and rules laid down by the Municipality;
  - 7.1.2 donations, grants, bequests, sponsorships and/or contributions; and
  - 7.1.3 any other funds generated, excluding commissions paid to the tourism bureaus.
- 7.2 The revenue generated by the tourism bureaus in the respective areas which is used to run these offices will be for the exclusive use of the particular tourism bureau where it is raised. This includes commissions received by the bureaus.
- 7.3 Funds currently held in the respective tourism bureaus remains within the respective bureau for exclusive use by that bureau.

## 8. BOARD OF DIRECTORS

- 8.1 A Board of Directors shall consist of not less than eighteen and not more than twenty-three directors.
- 8.2 The primary consideration for the election of directors to the Board will be their contribution to the expertise of the Board.

The following fields of expertise must as far as possible be represented:

- a) Coordination of events and/or festivals
- b) Tourism and tourism policies
- c) Legal
- d) Marketing and/or publicity
- e) Finance and sponsorship
- f) General management and operations
- g) Conservation and Eco-tourism.

- 8.3 The Board will be made up as follows:

8.3.1 One director appointed by the Overstrand Municipality;

8.3.2 Twenty directors of which twelve must be from the area of the former municipal area of Greater Hermanus, three each must be from the former municipal areas of Gansbaai and Hangklip/Kleinmond and two must be from Stanford. One of the directors from each of these areas must be representative of previously disadvantaged individuals;

8.3.3 Two directors to represent Members in the agricultural sector.

Except in the case of Stanford and agriculture, at least one director from the other areas mentioned in clause 8.3.2 must be representative of business and one of tourism. For this purpose 'tourism' is defined as any undertaking which is conducting or may conduct business as a restaurant, guest house, hotel or any accommodation establishment on an erf in respect of which business assessment rates are payable, and 'business' is defined as a undertaking which is conducting any other business than tourism as defined herein on an erf in respect of which business assessment rates are payable.

- 8.4 Directors may be compensated for their expenses. These expenses will be part of the budget.
- 8.5 The Directors who were appointed or elected under the interim constitution, will remain in office until a fresh election is held within the time as specified on approval of this Constitution by the Municipality.

- 8.6 Except for the first election, the Board will be elected at every Annual General Meeting of the DMO by the Members to serve for a period of two years to manage the affairs of the DMO for the ensuing years. The nominee must be nominated in writing by 10 members and must accept such nomination in writing. Every Member has the same number of votes as the number of directors to be elected. A Member may not bring out more than one vote for the same nominee. The rules for the first election will be determined by the Municipality and subsequently by the Board. A person must be appointed by the Municipality as electoral officer who will have the right to compile and amend the voters roll, issue nomination and ballot papers and decide on any matter regarding the election. Such decision/s will be final. All such decisions must be minuted and must be open for inspection by any Member. Clause 13.8 will not apply to the first election.
- 8.7 The Board will have the authority to co-opt further directors, provided that co-opted directors shall not have any voting rights on the Board.
- 8.8 A director may serve for two terms.
- 8.9 Any vacancy occurring on the Board during the interval between one Annual General Meeting and another may be filled by an appointment made by the Board for the unexpired term or until the first AGM. Should no such appointment be made, the Board shall continue to operate providing no less than 18 directors continue in office. A director so appointed will not be regarded as having served a term for the purposes of paragraph 8.8.

- 8.10 The Board shall have the power to act in terms of the objectives of the DMO, to negotiate a service level agreement with the Municipality, to appoint sub-committees to promote the various objectives of the DMO and may delegate certain functions to these committees as they see fit. All sub-committees appointed by the Board will report to the Board.
- 8.11 The Board shall at its first meeting after the Annual General Meeting, elect from their members a Chairperson and a Deputy-Chairperson. Should two members be proposed and seconded for either appointment, the decision shall be made by ballot. Should more than two members be proposed and seconded for either appointment, the nominee with the lowest number of votes must be eliminated until a person is appointed by a majority of the votes cast. If there is a tie of votes, the election will be determined by lot.
- 8.12 Any vacancy in the office of the Chairperson or Deputy-Chairperson arising during the current year shall be filled at a meeting of the Board from amongst its members.
- 8.13 The Chairperson shall have a casting vote at a Board meeting.
- 8.14 At any Annual General Meeting nominations for vacant posts must be received in writing by the person or persons and at a time or times as determined by the rules of the election.
- 8.15 If the Chairperson of the Board is for any reason unable to act as Chairperson, the Vice-Chairperson of the Board shall perform the functions of the Chairperson and if neither of the two is unable, the meeting may elect a chairperson for the meeting.

8.16 The Board must on a six-month basis report on its activities to a meeting of Members called for this purpose.

9. **TERMINATION OF DIRECTORSHIP**

The term of a director is terminated under the following circumstances:

- 9.1 If he/she resigns in writing; or
- 9.2 If he/she is found to be mentally incapacitated or becomes of unsound mind; or
- 9.3 If he/she is found to be unfit or incapable of acting as a director by a 75% majority decision of the full Board; or
- 9.4 If his/her estate is sequestrated, or if he/she publishes notice of his/her intention to surrender his/her estate as insolvent, or if he/she makes an application for an administration order in respect of his/her debts; or
- 9.5 If he/she commits an act of insolvency as defined in the Insolvency Act (Act no. 24 of 1936) or if he/she makes or offers to make an arrangement with his/her creditors; or
- 9.6 If he/she becomes disqualified in terms of the Companies Act (Act no. 61 of 1973) from acting as a Director of a Company; or
- 9.7 If he/she is convicted of any crime involving dishonesty; or

- 9.8 If he/she fails to attend three consecutive meetings of the Board without an apology, or under circumstances which are not acceptable to the Board, unless his/her absence from such meetings is condoned by the other members of the Board at the next ordinary meeting; or
  - 9.9 If he/she fails to attend six consecutive ordinary meetings of the Board; or
  - 9.10 If he/she is appointed as an employee in any sphere of government; or
  - 9.11 If he/she dies; or
  - 9.12 If he/she has transgressed the code of conduct and the Board decides that such transgression warrants dismissal.
10. **CHIEF EXECUTIVE OFFICER (CEO)**
- 10.1 Within the first year of incorporation it will be the duty of the Board to appoint a CEO and to attach a name to the post as it may deem fit or to appoint a person on contract to fulfil the duties of the CEO.
  - 10.2 The powers and duties of the CEO shall be as determined by the Constitution and delegated to him/her from time to time by the Board.

## 11. ACCOUNTABILITY

11.1 The CEO will be the accounting officer. He/she shall account for all money received, all payments made and all property acquired, received, held or disposed of by the DMO.

11.2 The CEO shall:

- Keep a full and correct record of all money received or spent by the DMO, and of the assets, liabilities and financial transactions of the DMO, and as soon as possible, but not later than three months after the end of the financial year of the DMO, draw up annual financial statements that will be audited by an independent auditor;
- Keep a record of every meeting of the Board;
- Prepare a draft budget for the Board for submission to the AGM in time for submission to the Municipality before 31 January of each year; and
- Report to the Municipal Manager on a monthly basis on actual expenditure against funding received from the Municipality.

11.3 The DMO shall annually:

11.3.1 Not more than two months after the end of its financial year, submit to the Municipal Manager of the Municipality, a report on its affairs and activities during that financial year and its audited annual financial statements, which report and financial statements shall be tabled at a meeting of the Municipality; and

11.3.2 Before or on 31 January submit a budget and business plan for the ensuing financial year to the Municipal Manager, which budget and business plan shall be considered as part of the budget of the Municipality.

## 12. **LIMITATION OF LIABILITY**

### 12.1 Each:

12.1.1 Member, director and the Municipality shall not be liable for any debt, action or omission of the DMO; and

12.1.2 Person employed by the DMO shall be indemnified by the DMO against any liability incurred by him or her from time to time in the course of lawfully acting as a director or employee.

12.2 In the event of any legal proceedings the DMO shall be represented by the Chairperson of the Board or by any other director or official duly nominated by the Chairperson of the Board or as appointed by the Board with the power to sign any documents on behalf of the DMO.

## 13. **MEETINGS**

### 13.1 General Meetings

After the first Annual General Meeting, the DMO shall hold its Annual General Meeting within three months of the beginning of each financial year for the purposes of:

- 13.1.1 Considering the Annual Report of the Board for the past year's activities which must include the Service Level Agreement with the Municipality;
  - 13.1.2 Considering the Audited Financial Statements and considering any other financial matter;
  - 13.1.3 Considering the budget as submitted by the Board;
  - 13.1.4 Electing directors if necessary;
  - 13.1.5 Considering any other matters submitted by the Board or Members;
  - 13.1.6 Considering any motions;
  - 13.1.7 Adopting a Code of Conduct for directors;
  - 13.1.8 Adopting rules of order for meetings and elections (except for the first election).
- 13.2 A Special General Meeting will be held in the following circumstances:
- 13.2.1.1 When the Board decides thereto;
  - 13.2.1.2 On receipt of a written request signed by not less than 100 Members. The reason/s why such a meeting must be held must be set out in the request.

13.3 The CEO shall not less than 30 (thirty) days before a General or Special Meeting issue to all Members a notice of the meeting setting out the time and place thereof and the business to be discussed. A similar notice must also be placed in the local newspapers. The fact that a Member did not receive a notice will not invalidate a meeting.

13.4 Minutes must be kept at all meetings of resolutions taken.

13.4 The quorum at any General Meeting shall be 100 Members. If, however, within 15 minutes of the starting time the meeting is not constituted by virtue of a lack of a quorum, the meeting shall stand adjourned without further notice for one week, thereafter to be held at the same time and place regardless of the number of members present.

13.6 The Chairperson of the Board will act as Chairperson of the Meeting of the DMO or in his/her absence, the Deputy-Chairperson. In the absence of the Chairperson and Deputy-Chairperson, one of the members of the Board can be elected as Chairperson of the Meeting and in the absence of such a member, one of the members of the DMO present can be elected as Chairperson.

13.7 The Board of Directors will meet at least 6 times per year preferably on a bi-monthly basis but the Chairperson, or in his/her absence, the Deputy-Chairperson or CEO, may from time to time call a meeting for the Board. A quorum shall consist of more than 50 % (FIFTY PERCENT) of the Board.

### 13.8 Special Vote

Special Votes will be allowed for members not able to attend General or Special General Meetings. Members must apply in writing or by e-mail for a Special Vote, on receipt of which a Ballot Paper reflecting the matter to be voted on will be sent by fax or e-mail to the Member. This Ballot Paper must be completed and signed by the Member in the presence of a Commissioner of Oaths and delivered to the electoral officer at the addresses reflected on the Ballot Paper and within the time as determined.

## 14. **DISSOLUTION OR AMALGAMATION**

The DMO may dissolve or be liquidated or amalgamate with another body or Association after a decision by a two third majority of the members of the Association present at a Meeting, held in accordance with this Constitution. In the event of the DMO dissolving, the assets of the DMO will be transferred to another Association with similar objectives as determined by the Board or the Municipality. Such a decision must be approved by the Municipality before it will become effective.

## 15. **INSPECTION OF BOOKS**

Every Member or the Municipality shall have access during business hours by appointment to the Minute Books of the Meetings of the DMO, accounts and documents, but will not have the authority to remove such documentation without the consent of the CEO.

16. **AMENDMENT OF THE CONSTITUTION**

This Constitution may be amended by the Members at any Meeting provided that:

- 16.1 Notice of any proposed amendment or addition shall be given to the Members of the Association at least thirty days before the Meeting in question is held;
- 16.2 The proposed amendment or addition to the Constitution be approved by two thirds of the members present at the Meeting; and
- 16.3 Such amendment be approved by the Municipality before or after consideration of the amendment as set out in this clause.