



TRANSMITTED BY EMAIL

TO: **Overstrand Municipality** Date: 3 March 2023

ATT: Municipal Manager Dean O'Neill Your ref: Overstrand Baboon Management Plan

EMAIL: mm@overstrand.gov.za Our ref: E040-028

CC: Director : Infrastructure & Planning
Stephen Muller

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CC: **The Baboon Management Joint Task Team**

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CC: **CapeNature Overberg**

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CC: **Human Wildlife Solutions**

ATT: Phil@hwsolutions.co.za

FROM: Sarah Kvalsvig sarah@greencounsel.co.za

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*****URGENT*****

Dear Mr O'Neill

DECISION TO MOVE PRINGLE BAY BABOON TROOPS OUT OF PRINGLE BAY

1. As you know, we act for the EMS Foundation.

Expertise grounded in experience

Cullinan & Associates Incorporated (2001/001024/21)

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2. We refer to previous correspondence between Mr Ricky Stone of our offices, yourself and your Mr Andre Olivier.
3. While our client is grateful that no action has been taken to remove certain baboons from the troop, it has now come to our client's attention that at some point last weekend HWS has driven the baboons out of the Pringle Bay town, across the R44 and into the area known as Buffelsdam. It has done so using paintball guns, among other methods.
4. Our instructions are as set out in the paragraphs following:
 - 4.1. The Buffelsdam area is outside the baboons natural range, has very little in the way of food and is windy and exposed with little shelter.
 - 4.2. You are no doubt aware that in November 2020 the same troop was forcibly relocated beyond their natural range to this area which severely restricted its access to food sources. When the troop returned to Pringle Bay it comprised only 10 members out of the original 19. Lynne Richardson of HWS admitted that there was insufficient food in the area after the 2019 fire.
 - 4.3. We are further instructed that the troop is extremely vulnerable as it includes at least two pregnant females , one in the 3rd trimester, and at least one very young infant.
 - 4.4. It is possible and feasible to manage the behaviour of the baboons satisfactorily without driving them out of their natural range. This can be achieved if the HWS rangers are given the proper training, some steps are taken towards proper waste management and residents take some practical steps towards baboon proofing their properties.
5. In our view, the decision to instruct HWS or to permit it to force the baboons out of town and into the Buffelsdam area is a contravention of section 2(q) of the Animals Protection Act in that the Municipality has wantonly or unreasonably or negligently caused the commission or omission of an act which causes any unnecessary suffering to an animal.
6. The decision to instruct HWS or to permit it to force the baboons into an area which is likely to cause suffering and possible loss of life to the troop is also decision which may significantly affect the environment and as an organ of state the Municipality ought to have considered the principles in section 2 of the National Environmental Management Act, 107 of 1998, in particular that "[s]ustainable development requires the consideration of all relevant factors including...that the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied."(Section 2(4)(a)(i)).

7. Finally, since the 2016 Constitutional Court case brought by the NSPCA,¹ it has been settled law that “[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general” and that “[a]nimal welfare and animal conservation together reflect two intertwined values.” The North Gauteng High Court took this principle further in a second case brought by the NSPCA² and effectively found that considerations of welfare must inform decisions taken by those implementing legislation which affects biodiversity, and that the welfare of South Africa’s indigenous animals is a matter of public concern. The Court also referred to section 3 of the National Environmental Management: Biodiversity Act, 10 of 2004, which makes the State the trustee of South Africa’s biodiversity on behalf of all South Africans.
8. The decision to drive the troop out of town is therefore inconsistent with the legal duty of the Municipality to protect the welfare of the baboons in the troop. Our client therefore requests that you immediately instruct HWS to withdraw their rangers and do whatever is necessary to allow the troop to return to its natural range area.
9. We look forward to hearing from you urgently.
10. Our client’s rights are explicitly reserved.

Yours faithfully,



CULLINAN & ASSOCIATES INC.

Per SD Kvalsvig

¹ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another (CCT1/2017)*.

² *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others 2020 (1) SA 249 (GP)*.