

**8.**

**MUNICIPAL MANAGER**

**R BOSMAN**

<b>8.</b>	<b>CONSIDERATION OF REPORTS, COMMUNICATIONS, PETITIONS AND APPLICATIONS SUBMITTED BY THE MUNICIPAL MANAGER</b>
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<b>8.1</b>	<b>HAND-OVER REPORT TO THE NEW COUNCIL</b>
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**1. PURPOSE OF REPORT**

To submit to Council a consolidated Hand-over Report as required in terms of MFMA Circular 78 (dd 2015-12-07) issued by National Treasury.

**2. BACKGROUND**

Section 6.5 of MFMA Circular 78 (dd 2015-12-07) issued by National Treasury contains the following guidelines in terms of the hand-over reports for the newly elected council:

*“The aim of the hand-over report is to provide the new councils important orientation information regarding the municipality, the state of its finances, service delivery and capital programme, as well as key issues that need to be addressed.*

*It is proposed that the hand-over report should include:*

- *An overview of the demographic and socio-economic characteristics of the municipality;*
- *An overview of the organisational structure of the municipality, with the names and numbers of senior managers;*
- *An overview of key municipal policies that councillors need to be aware of, and where they can obtain the full text of such policies;*
- *An overview of issues that still need to be addressed in relation to the municipality’s turnaround strategy;*
- *An overview of the municipality’s financial health, with specific reference to:*
  - *Its cash and investments, and its funding of commitments (Table A8);*
  - *Cash coverage of normal operations (see Supporting Table SA10);*
  - *Creditors outstanding for more than 30 days, along with reasons for delayed settlement;*
  - *Current collection levels and debtors outstanding for more than 30 days; and*
  - *Extent of existing loans, and associated finance and redemption payments.*

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- *The municipality's 2014/15 audit outcome, and its strategy to address audit issues;*
  - *An overview of the provision of basic services, including plans to address backlogs;*
  - *An overview of the state of the municipality's assets, with particular reference to the asset management plan, and repairs and maintenance requirements;*
  - *A list of the main infrastructure projects planned for the 2016/17 budget and MTREF;*
  - *A list of key processes requiring council input over the next six months, e.g. revision of the IDP, approval of specific policies etc. and*
  - *Any other information deemed to be important.*

*In addition to the hand-over report, each new councillor should be given the municipality's revised IDP, the adopted 2016/17 budget, the mid-year budget and performance assessment report for 2015/16, and the latest monthly financial statement, and the annual report for 2014/15".*

### 3. KEY DOCUMENTS

Pursuant to the above guidelines, a **CONSOLIDATED HAND-OVER REPORT** as well as the following key documents were previously distributed:

- **IDP 2016/17**
- **2014/15 ANNUAL REPORT**
- **MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK (2016/17 BUDGET)**
- **LATEST ANNUAL FINANCIAL STATEMENT**
- **MID-YEAR BUDGET AND PERFORMANCE ASSESSMENT REPORT FOR 2015/16**

**NB: KINDLY NOTE THAT THE ABOVE SET OF DOCUMENTS WERE DISTRIBUTED AT THE 1<sup>ST</sup> COUNCIL MEETING OF 2016-08-15.**

### RECOMMENDED

that cognisance be taken of the Hand-Over Report and its Appendices.

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**1<sup>st</sup> COUNCIL MEETING: 2016-08-15: ITEM 7.3**

Councillor DA Hendrickse requested that this item be opened for discussion, rather than merely taking cognisance of its content.

**RESOLVED** (nem con)

that this matter stand over until a next Council meeting.

**RECOMMENDED**

that note be taken of the Hand-Over Report and its Appendices.

**KINDLY NOTE THAT THE APPENDICES OF THIS ITEM  
WERE PREVIOUSLY DISTIBUTED**

<b>Meeting: Ref No:</b>	<i>Council: 2016-09-28 1/1/1/1</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: R Bosman EM &amp; MC: 2016-09-21</i>
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8.2	<b>STRUCTURING OF COUNCIL: ESTABLISHMENT OF SECTION 79 - / STATUTORY COMMITTEES</b>
8.2.1	<b>CURRENT STATUS OF STATUTORY COMMITTEE: THE AUDIT AND PERFORMANCE AUDIT COMMITTEE</b>

### 1. PURPOSE OF REPORT

To inform Council of the functions and purpose, as well as the current composition, of the Audit and Performance Audit Committee.

### 2. LEGAL FRAMEWORK

In terms of Section 166 of the Municipal Finance Act (MFMA), Act No 56 of 2003, each municipality must have an Audit and Performance Audit Committee. The Audit and Performance Audit Committee is an independent advisory body which must advise Council, the political office bearers, the accounting officer, the management and staff of the municipality.

#### APPLICABLE LEGISLATION

- Section 166 of the Local Government: Municipal Finance Management Act (MFMA) 56 of 2003;
- National Treasury MFMA Circular No 65
- Section 14 of the Local Government: Municipal Planning and Performance Management Regulations, 2001.

### 3. DISCUSSION

In terms of Section 166 (2) (a) the Audit and Performance Audit Committee must provide advice on matters relating to:

- internal financial control and internal audit;
- risk management;
- accounting policies;
- the adequacy, reliability and accuracy of financial reporting and information;
- performance management;
- effective governance;
- performance evaluation;
- compliance with the MFMA; and
- any issues referred to it by the Council.

The Audit and Performance Audit Committee will also review the annual financial statements in order to advise Council whether its finances are being managed efficiently and effectively. The Audit and Performance Audit Committee may respond to Council on issues raised by the Auditor-General in the audit report and carry out investigations into the financial affairs of the municipality if requested to do so by Council.

**3.1 Functioning of the Audit and Performance Audit Committee**

In order to execute its responsibilities effectively, the Audit and Performance Audit Committee will have access to the financial records and all other relevant information of the municipality.

The Committee must have a minimum of three and a maximum of five members who must be appointed by Council. Stellenbosch's Audit and Performance Audit Committee Charter requires that there be five (5) members. The Audit and Performance Audit Committee must meet as often as may be needed but not less than four times a year. No Councillor may be a member of the Audit and Performance Audit Committee. The Audit and Performance Audit Committee is a politically neutral body. The terms of reference for the Audit and Performance Audit Committee is clearly outlined in the Audit and Performance Audit Committee Charter (attached as **APPENDIX 1**) as approved by Council in July 2015.

The Audit and Performance Audit Committee should according to the Municipal Planning and Performance Management Regulations include at least one (1) performance management expert as the Audit and Performance Audit Committee of Stellenbosch Municipality performs the dual role of Audit and Performance Audit Committee.

**3.2 The Stellenbosch Municipality's Audit and Performance Audit Committee**

The council-appointed members currently serving on the Municipality's Audit and Performance Audit Committee are:

<b>Audit Committee Member</b>	<b>Term expires on:</b>
Ms. R Gani	15 January 2017 (term 1)
Ms. M Van der Merwe	23 March 2017 (term 2)
Ms RLC Strydom	23 March 2017 (term 2)
Mr. J Fairbairn	31 March 2019 (term 1)
Dr. NL Mortimer	31 March 2019 (term 1)

**RECOMMENDED**

- (a) that note be taken of the current composition of the Audit and Performance Audit Committee of Stellenbosch Municipality; and
- (b) that Council notes the Terms Of Reference of the Audit and Performance Audit Committee as outlined in the approved Charter.

<b>Meeting: Ref No:</b>	<i>Council: 2016-09-28 3/3/3/4</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Chief Audit Executive (F Hoosain)</i>
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**8.2.1**

**AUDIT AND PERFORMANCE  
AUDIT COMMITTEE CHARTER**

**APPENDIX 1**



**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

# **Audit and Performance Audit Committee Charter**

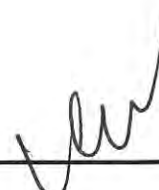
(Terms of Reference)

June 2015



**TABLE OF CONTENTS**

1	OBJECTIVES .....	3
2	MEMBERSHIP.....	3
3	RESPONSIBILITIES AND DUTIES OF THE AUDIT COMMITTEE.....	4
4	REPORTING.....	10
5	MEETINGS .....	11
6	PROCEEDINGS.....	12
7	AUTHORITY OF THE COMMITTEE AND RESOURCES AVAILABLE TO IT.....	13
8	REMUNERATION.....	13



## **1 OBJECTIVES**

- 1.1 The objectives of the Audit Committee are to:
  - 1.1.1 Assist the Council in discharging its duties relating to the safeguarding of Council's assets;
  - 1.1.2 Develop and oversee the operation of an adequate system and internal controls and control processes;
  - 1.1.3 Oversee the preparation of accurate financial reporting and statements in compliance with all applicable legal requirements, corporate governance and accounting standards;
  - 1.1.4 Provide support to the Council on the risk profile and risk management of the Council; and
  - 1.1.5 Ensure that there is an internal audit function in place and that the roles of the internal and external audit functions are co-ordinated.
- 1.2 The membership, resources, responsibilities and authorities (composition, functions and operation) of the Audit Committee to perform its role effectively is stipulated in these terms of reference, which may be amended by Council in consultation with the Audit Committee Chairperson as and when required.
- 1.3 The Audit Committee is constituted in terms of the requirements of King III and sound corporate governance practices and operates within that framework.

## **2 MEMBERSHIP**

- 2.1 The Audit Committee is Statutory Committee of Council and therefore Council should determine its composition.
- 2.2 The recommended composition is that the Audit Committee shall consist of at least 3 (three) and not more than 5 (five) independent audit specialists and/or professionals, who have a working knowledge of one or more of the fields of business, finance, legal, engineering, information technology, governance, auditing and/or performance management.

- 2.3 To ensure efficiency and transparency the Chairperson and other members shall be appointed by Council at a Council meeting.
- 2.4 Members shall be appointed for a term of 3 (three) years and, if re-appointed may only serve for one further 3 (three) year term. The terms of appointment of the members appointed in the first year will vary to ensure continuity of expertise in the future.
- 2.5 When a member of the Audit Committee cannot for any reason continue as a member he / she shall be forthwith replaced by Council. Such a replacement may either be for the balance of the period that the member being replaced would have served for, or a full 3 (three) year period. This shall be at the discretion of the Council on the recommendation of the Municipal Manager in conjunction with the Chief Audit Executive.
- 2.6 The Audit Committee members shall declare any conflict of interest that may arise and remove themselves from any proceedings and/or discussions in relation to the matter giving rise to that conflict.
- 2.7 An agenda with all supporting documents (meeting pack) shall be circulated, at least seven days prior to each meeting, to the members and invitees of the Audit Committee.

### **3 RESPONSIBILITIES AND DUTIES OF THE AUDIT COMMITTEE**

- 3.1 The Audit Committee will be responsible for the oversight of internal controls, financial reporting and compliance with regulatory matters, mainly make recommendations to the Management and Council.
- 3.2 The committee must perform the following responsibilities:
  - 3.2.1 Review the effectiveness of the councils system of internal controls and risk management;
  - 3.2.2 Review the financial reporting;

- 3.2.3 Review of the financial statements;
- 3.2.4 Review the Internal Audit function;
- 3.2.5 Review the Auditor General's report;
- 3.2.6 Review the Council's compliance with legislation and regulation;
- 3.2.7 Review the Compliance with the Council's Code of Conduct and ethics;
- 3.2.8 Performance Management; and
- 3.2.9 Other Responsibilities as determined by legislation and by Council from time to time.

3.3 The Audit Committee shall advise Council, political office bearers, the accounting officer and management of the municipality on the matters pertaining to the duties listed above in accordance with section 166 of the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA).

3.4 **INTERNAL CONTROL**

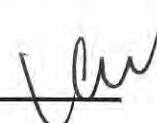
The Audit Committee shall:

- 3.4.1 Review whether management has implemented internal controls and business risk management as well as getting assurance from management that all employees have an understanding of their roles in executing these controls effectively;
- 3.4.2 Review whether management implemented internal controls, as recommended by internal and external auditors;
- 3.4.3 Review management's control of Council assets and the efficient and effective utilisation thereof; and
- 3.4.4 Review whether management has an efficient risk management policy in place as well as the necessary and appropriate personnel to implement same.

3.5 **FINANCIAL, GENERAL**

The Audit Committee shall:

- 3.5.1 Review any activity of the Council, with the full co-operation of all employees as requested by the members of the Committee;



- 3.5.2 Obtain the services of professionals if necessary to assist the Committee in the executing of its responsibilities; and
- 3.5.3 Discuss with management the Council's major financial risk exposures and the steps management has taken to monitor and control such exposures, including proposed future requirements

### 3.6 **FINANCIAL STATEMENTS**

The Audit Committee shall

- 3.6.1 Review and discuss with management and the Auditor General the annual audited financial statements and the results of the audit;
- 3.6.2 Review significant accounting and reporting issues and understand their impact on the financial statements. These issues include:
  - 3.6.2.1 Complex or unusual transactions and highly judgmental areas;
  - 3.6.2.2 Major issues regarding accounting principles and financial statement presentations, including any significant changes in the Council's selection or application of accounting principles;
  - 3.6.2.3 The effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of Council;
  - 3.6.2.4 Review analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GRAP methods on the financial statements;
  - 3.6.2.5 Review with management and the external auditors the results of the audit, including any difficulties encountered. This review will include any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management;
  - 3.6.2.6 Discuss the annual audited financial statements with management and the external auditors; and
  - 3.6.2.7 Review disclosures made by Municipal Manager and Chief Financial Officer about significant deficiencies in the design or operation of internal controls or any fraud that involves management or other employees who have a significant role in the Council's internal controls.

### 3.7 INTERNAL AUDIT

The Audit Committee shall:

- 3.7.1 Review and approve the annual audit plan and charter of the Internal Audit Department and ensure that the audit plan makes provision for effectively addressing the risk areas;
- 3.7.2 Review the activities and organisational structure of the internal audit department and ensure that there are no unjustified restrictions or limitations and that they have independence;
- 3.7.3 Review audit reports by the Internal Auditors and determine whether management acted on recommendations that are made;
- 3.7.4 Determine whether the Internal Audit function is adequately resourced and has appropriate standing in the Municipality, and concur with the Municipal Manager in the appointment, replacement, reassignment or dismissal of the Chief Audit Executive;
- 3.7.5 Ensure that that Internal Audit function is subject to an independent quality review every 5 (five) years and complies with The Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing;
- 3.7.6 Determine whether the Internal Auditors have an effective relationship with the Auditor General's staff;
- 3.7.7 Review significant differences of opinion between management and the Internal Audit function;
- 3.7.8 Review and evaluate the performance of the Internal Audit function and the Chief Audit Executive;
- 3.7.9 Review the independence and objectivity of the Chief Audit Executive; and
- 3.7.10 Meet with the Chief Audit Executive to discuss confidential matters.
- 3.7.11 The Chief Audit Executive shall have unrestricted access to the chairperson or any other member of the Audit Committee as required.
- 3.7.12 The Chief Audit Executive must ensure that sufficient funds are budgeted for the activities of the Audit Committee.

**3.8 AUDITOR GENERAL**

The Audit Committee shall:

- 3.8.1 Review the Auditor General's proposed audit scope and approach and ensure that no unjustified restrictions or limitations are placed on the scope;
- 3.8.2 Make suggestions as to risk areas that the audit can address;
- 3.8.3 Identify key matters arising in the current year's audit report and satisfy themselves that these are properly followed up by management;
- 3.8.4 Consider whether any significant ventures, investments or operations should be subjected to an independent audit;
- 3.8.5 Ensure the independence of the Auditor General;
- 3.8.6 Ensure direct access by the Auditor General to the Audit Committee, the Chairperson of the Audit Committee and the Municipal Manager;
- 3.8.7 Review reports of significant findings and recommendations made by the Auditor General, and management's response and follow-up actions to these reports;
- 3.8.8 Review audited annual financial statements and Auditor General's audit report, prior to submission to Council for approval; and
- 3.8.9 Meet with the Auditor General to discuss confidential matters.

**3.9 COMPLIANCE WITH LAWS AND REGULATIONS**

The Audit Committee shall:

- 3.9.1 Review the effectiveness of the system for monitoring compliance with laws and regulations and the result of management's investigation and follow up of any fraudulent acts (including disciplinary actions);
- 3.9.2 Ensure that all regulatory compliance matters have been considered in the preparation of the financial statements; and
- 3.9.3 The Committee will have the responsibility to discuss legal matters with management that may have a material impact on the financial statements or the Council's compliance policies.

**3.10 COMPLIANCE WITH CODES OF CONDUCT AND ETHICS**

The Audit Committee shall:

- 3.10.1 Advise the Municipal Manager and Speaker in ensuring that all councillors and staff are aware of the codes of conduct;
- 3.10.2 Review the process for monitoring compliance with the codes of conduct; and
- 3.10.3 Monitor the ethical conduct of the Council, executive and senior officials.

**3.11 PERFORMANCE MANAGEMENT**

The Audit Committee shall:

- 3.11.1 Review Council's performance management system, focusing on the key performance indicators and targets set by Council; and
- 3.11.2 Review reports from the Auditor General's audit and Internal Audit reports in respect of Performance Management and make recommendations to Council.

**3.12 OTHER RESPONSIBILITIES**

- 3.12.1 The Committee will have the power to investigate any matter, internal controls, fraud, misconduct and conflict of interest, brought to its attention within the scope of its duties, with the power to obtain outside advice or expertise if necessary.
- 3.12.2 The Audit Committee will review and reassess the adequacy of this Charter and report annually to Council any recommended changes for its (Council's) approval, if necessary.
- 3.12.3 The Audit Committee will annually review the Audit Committee's own performance and present such review to the Council.
- 3.12.4 The Audit Committee shall, with the approval of the Council and at the Council's expense, to the extent it deems necessary or appropriate, obtain the services of special independent legal, accounting or other consultants to advise the Audit Committee in fulfilling its obligations.
- 3.12.5 The Audit Committee shall have:



- 3.12.5.1 Direct access to the Chief Audit Executive;
- 3.12.5.2 Direct access to Council;
- 3.12.5.3 Access to the office of the Executive Mayor; and
- 3.12.5.4 Access to the office of the Municipal Manager.

**3.12.6 Combined Assurance**

3.12.6.1 The Audit Committee is responsible for ensuring that the combined assurance model introduced by King III is applied to provide a coordinated approach to all assurance activities.

3.12.6.2 In particular to King III, the Audit Committee:

- 3.12.6.2.1 Will ensure that the combined assurance received is appropriate to address all the significant risks facing the Council; and
- 3.12.6.2.2 Will monitor the relationship between external service providers and the Council.

3.12.6.3 The Audit Committee is an integral component of the risk management process and shall oversee:

- 3.12.6.3.1 Financial reporting risks;
- 3.12.6.3.2 Internal financial controls;
- 3.12.6.3.3 Fraud risks as it relates financial reporting;
- 3.12.6.3.4 IT risks as it relates to financial reporting; and
- 3.12.6.3.5 Compliance risks

**4 REPORTING**

- 4.1 The Audit Committee must submit quarterly reports to Council for information.
- 4.2 The Committee must report annually to the Council, summarising the activities, recommendations and decisions, which can be included in the annual statements.

- 4.3 The chairperson of the Audit Committee or his/her nominee shall attend the Council meeting when the report is presented to answer questions concerning matters falling within the ambit of the Audit Committee.

## **5 MEETINGS**

- 5.1 Council's Committee Secretariat Department or such other department as responsible for the function determined by the Council, will supply secretarial support to the Audit Committee, including the preparation and distribution of all agendas and minutes of meetings.
- 5.2 The Audit Committee shall meet as often as the Chairperson determines, but not less frequently than 4 (four) times during each a financial year.
- 5.3 The Municipal Manager, Chief Financial Officer and the Chief Audit Executive are obliged to attend all meetings of the Audit Committee, provided that the Chairperson of the Audit Committee may excuse any of these non-members from the meeting.
- 5.4 Other members of management may at the discretion of the Chairperson of the Audit Committee be invited to attend Audit Committee meetings, and shall be obliged to attend.
- 5.5 As necessary or desirable, the Audit Committee may invite such other persons, including a representative from the office of the Auditor General to attend a meeting of the Audit Committee, as it deems necessary and appropriate.
- 5.6 The Chairperson of the Audit Committee shall convene all meetings of the Audit Committee.
- 5.7 The Chairperson and the Chief Audit Executive shall be responsible to compile the agendas. An electronic or written agenda (meeting pack) for

each meeting should be sent to all persons who are to attend the meeting in advance, not less than seven days prior to the date of the Audit Committee meeting, along with any other relevant information or documentation for allowing adequate preparation to contribute to a more effective meeting.

- 5.8 Any member of the Audit Committee may add items to the agenda at least 8 (eight) working days prior to the date of the Audit Committee meeting. Such items shall be provided to the Chairperson or the Chief Audit Executive.
- 5.9 Special meetings of the Audit Committee may be convened with the Chairperson's approval. Any member of the Audit Committee, the Internal or External Auditors may request a special meeting if they consider that one is necessary.
- 5.10 3 (Three) members will form a quorum, and if the chairperson is absent, the members that are present, shall elect 1 (one) of those members present to serve as chairperson for that meeting.
- 5.11 If there is no quorum the meeting will be adjourned to a new date and time as determined by the Chairperson, not exceeding 2 (two) weeks.
- 5.12 The members of the Audit Committee as appointed by Council, and excluding the management of the Municipality, are the only persons with voting rights. Voting shall be by a show of hands unless decided by all members that it be by ballot. The Chairperson shall have a casting vote in the event that the votes are tied.
- 5.13 If a member wishes to dissent or protest against a decision he or she may request that it is recorded in the minutes.

## **6 PROCEEDINGS**

- 6.1 Unless varied by these terms of reference, meetings and proceedings of the Committee will be governed by the Municipality's Rules of Order as adopted

by Council or any other municipal guidelines regulating the meetings and proceedings of committees as adopted by Council from time to time.

- 6.2 The minutes of meetings shall be reviewed and approved by the members of the Committee at the following meeting of the Audit Committee.

**7 AUTHORITY OF THE COMMITTEE AND RESOURCES AVAILABLE TO IT**


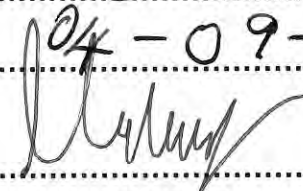
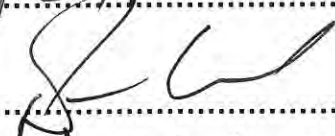
The Audit Committee, in carrying out its tasks under these terms of reference:

- 7.1 Is authorised to investigate any activity within its terms of reference;
- 7.2 May, at the discretion of the Audit Committee, require other employees of the municipality to attend its meetings or any part(s) of its meetings;
- 7.3 May consult with and seek any information it requires from any employee, and all employees shall be required to co-operate with any request made by the Audit Committee in the course of its duties. Such requests shall be directed to the Chairperson of the Audit Committee or the Chief Audit Executive;
- 7.4 Shall meet with external auditors without any officials / politicians in attendance at least once a year; and
- 7.5 Shall meet with the internal auditors without any officials / politicians in attendance at least once year.

**8 REMUNERATION**

- 8.1 Remuneration shall be on the basis of a fixed rate per meeting. This rate will include all preparation time utilised by members for meetings. The rate per meeting for ordinary members is R4 000,00 (four thousand Rand) per meeting and R5 000,00 (five thousand Rand) per meeting for the Chairperson of the Committee. Remuneration will be reviewed on an annual basis effective 1 July every year.

- 8.2 Travel cost will be paid for members travelling outside of the Greater Stellenbosch in line with the Municipality's Travel and Subsistence Policy.
- 8.3 Remuneration will be in accordance with the above tariff as approved by the Council.
- 8.4 The effectiveness of the Audit Committee will be monitored by Council, annually.

**Executive Mayor** :   
**Initials and Surname** : C.J. SIDOGO  
**Date:** : 04-09-2015  
**Chairperson: Audit Committee** :   
**Initials and Surname** : L.C. NENE  
**Date** : 03/09/15  
**Municipal Manager** :   
**Initials and Surname** : DUPRÉ LOMBARD  
**Date** : 03/07/2015

<b>8.2.2</b>	<b>ESTABLISHMENT OF A MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) AND OVERSIGHT COMMITTEE</b>
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**1. PURPOSE OF REPORT**

For Council to establish a Municipal Public Accounts Committee (MPAC) and Oversight Committee.

**2. BACKGROUND**

The former Council had established an 8-member Municipal Public Accounts Committee (MPAC), which was fully functional. As per the Establishment Notice of Stellenbosch Municipality the Chairperson of MPAC was a full-time Councillor. For transparency, ethics and good governance, the Chairperson was from an opposition party.

By virtue of the termination of the 2011-2016 Council's term of office, the former MPAC has also dissolved. Council is obliged to re-establish MPAC as an oversight committee to exercise oversight over the executive obligations of council.

**3. LEGAL FRAMEWORK**

**3.1 Section 79 Committees**

An MPAC is generally a committee of Council established in terms of Section 79 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

In terms of Section 79 of the Structures Act, a municipal council may establish one or more Committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers, and appoint the members of such Committee(s) from among its members.

If Council wishes to establish such Committees, it:-

1. must determine the functions of such Committees;
2. may delegate duties and powers to it in terms of Section 59 of the Systems Act;
3. must appoint the Chairperson(s); and
4. may authorise a Committee to co-opt advisory members who are not members of the Council, within the limits determined by Council.

**3.2 Composition of Committees**

In terms of Section 160(8) of the Constitution of the Republic of South Africa, members of a municipal Council are entitled to participate in its proceedings and those of its Committees in a manner that, inter alia:-

- (a) allows parties and interests reflected within the Council to be fairly represented; and
- (b) is consistent with democracy.

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**4. SCOPE OF MPAC OPERATIONS**

The establishment, overarching purpose, function and Terms of Reference of the Municipal Public Accounts Committee as defined in the *SALGA Guideline for the Establishment of MPACs (March 2012)* (**APPENDIX 1**), is applicable. (Council Resolution: Item 7.11 of the 15<sup>th</sup> Council held on 2013-08-29 is attached as **APPENDIX 2**).

Notwithstanding what is contained in the above, the following specific Terms of Reference are highlighted:

1. MPAC shall not be responsible for policy formulation;
2. MPAC is authorised to co-opt members of the public with expertise in specific fields to assist and advise the Committee when deliberating before it, as and when necessary, taking note of the fact that such non-elected members shall enjoy no status in Council and will have no voting rights in any political structure of Council;
3. MPAC may engage directly with the public and consider public comments when received and will be entitled to request documents or evidence from the Accounting Officer;
4. MPAC shall have permanent referral of documents relating to:
  - (i) In-Year reports of Stellenbosch Municipality;
  - (ii) Financial statements of Stellenbosch Municipality as part of its oversight process;
  - (iii) Audit opinion, reports and recommendations from the Audit Committee;
  - (iv) Information relating to compliance in terms of Section 128 and Section 133 of the Local Government: Municipal Finance Management Act, 2003 (MFMA);
  - (v) Information in respect of any disciplinary action taken in terms of the MFMA where it relates to an item that is currently serving or has served before it;
  - (vi) Any other audit report of Stellenbosch Municipality; and
  - (vii) Performance information of Stellenbosch Municipality;
5. MPAC shall consider and evaluate the content of the Annual Report and make recommendations to Council when adopting an Oversight Report on the Annual Report;
6. In order to assist with the conclusion of matters that may not have been finalized, information relating to past recommendations made on the Annual Report, information relating to current in-year reports including quarterly, mid-year and Annual Reports, shall be reviewed by MPAC;
7. MPAC shall examine the financial statements and audit reports of Stellenbosch Municipality, and in doing so, consider improvements from previous statements and reports and

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evaluate the extent to which the Audit Committee's and the Auditor-General's recommendations have been implemented;

8. MPAC shall promote good governance, transparency and accountability on the use of municipal resources;
9. MPAC shall recommend or undertake any investigation in its area of responsibility, after reviewing any investigation report already undertaken by Stellenbosch Municipality or the Audit Committee;
10. MPAC shall request the support of both the internal and external auditors in an advisory capacity when necessary;
11. MPAC shall conduct investigations into unauthorized, irregular and/or fruitless and wasteful expenditure in accordance with Section 32(2)(a)(ii) of the MFMA and Regulation 74 of the Municipal Budget and Reporting Regulations;
12. MPAC shall perform any other functions within its area of responsibility assigned to it through a resolution of Council; and
13. that the function of an oversight committee in relation to the Annual Report be incorporated into the roles and responsibilities of MPAC;
14. The Rules of Order of Stellenbosch Council shall be applicable to all meetings of MPAC.

Attached as **APPENDIX 3** is the Stellenbosch Municipality Terms of Reference of MPAC.

## **5. PROCEDURE FOR THE APPOINTMENT OF MPAC MEMBERS AND MPAC CHAIRPERSON**

### **5.1 Membership of MPAC**

In terms of the SALGA Guideline the previous MPAC membership (8 members) was determined along the following principles:

1. Membership of MPAC should consist of up to 11 Councillors selected from all parties represented in Council;
2. MPAC must be represented by a wide range of experience and expertise available in Council and should reflect the various political parties represented in Council;
3. The Executive Mayor, Deputy Executive Mayor, Speaker, Whip or a member of the Mayoral Committee must be excluded from membership of MPAC;
4. Council members serving on other Committees of Council should preferably not serve as members of MPAC; and
5. Secundi for the members of MPAC should be designated by Council.



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## 5.2 Chairperson of MPAC

As per the amended Stellenbosch Establishment Notice, published in the Government Gazette 7460 on 31 July 2015 (P.N. 261/2015), the Chairperson of MPAC is a designated full-time Councillor.

Accordingly, at the 33rd Council Meeting held on 2015-08-25, Council resolved that the position of the Chairperson of MPAC be that of a full-time Councillor with effect from 31 July 2015.

Taking into account the principles of transparency, ethics and good governance, the Chairperson of MPAC could be appointed from members of the political parties represented in Council other than the majority party. The directive from SALGA (SALGA Guideline for the Establishment of MPAC: March 2012) is that the Chairperson of MPAC can be from the ruling or an opposition party, at the choice of the municipal Council.

Due to the fact that no other equivalent procedure has been promulgated in terms of relevant legislation, Council could opt to use any appropriate procedure to determine the appointment of the MPAC Chairperson, or alternatively, Council could decide to use the procedures set out in Schedule 3 of the Municipal Structures Act (see below) during the election of the Chairperson for MPAC.

## 5.3 MSA Schedule 3 Election Procedure

### "SCHEDULE 3

#### **Application**

1. *The procedure set out in this Schedule applies whenever a municipal Council meets to elect a Speaker, an Executive Mayor, a Deputy Executive Mayor, a Mayor or Deputy Mayor.*

#### **Nominations**

2. *The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.*

#### **Formal requirements**

3. (i) *A nomination must be made on the form determined by the Municipal Manager.*  
(ii) *The form on which a nomination is made must be signed by two members of the Municipal Council.*  
(iii) *A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.*

**Announcement of names of candidates**

4. *At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.*

**Single candidate**

5. *If only one candidate is nominated, the person presiding must declare that candidate elected.*

**Election procedure**

6. *If more than one candidate is nominated –*
  - (a) *a vote must be taken at the meeting by secret ballot;*
  - (b) *each Councillor present at the meeting may cast one vote; and*
  - (c) *the person presiding must declare elected the candidate who receives a majority of the votes.*

**Elimination procedure**

7. (i) *If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with Item 6. This procedure must be repeated until a candidate receives a majority of the votes.*
- (ii) *When applying sub item (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.*

**Further meetings**

8. (i) *If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.*
- (ii) *If a further meeting is held in terms of sub item (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.*
- (iii) *If at the further meeting held in terms of sub item (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must*

*determine by lot who of the two candidates will hold the office for which the election has taken place."*

In terms of Item 3(1) of Schedule 3, a nomination must be made on a form determined by the Municipal Manager. The nomination form will be distributed in Council.

#### **RECOMMENDED**

- (a) that Council establishes a Municipal Public Accounts Committee (MPAC) in accordance with Section 79 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- (b) that Council considers the following nominations:
  - Cllr DA Hendrickse (EFF)
  - Cllr MC Johnson (DA)
  - Cllr S Louw (DA)
  - Cllr N Mananga-Gugushe (Ms) (ANC)
  - Cllr Ndipiwe Olayi (DA)
  - Cllr W Pietersen (PDM)
- (c) that Council elects a Chairperson for the Municipal Public Accounts Committee (MPAC);
- (d) that Council adopts the Stellenbosch Municipality Terms of Reference of the MPAC, as applicable to the Stellenbosch Municipal Public Accounts Committee; and
- (e) that all members of the Municipal Public Accounts Committee (MPAC) make themselves available for a training session which will be facilitated by SALGA Western Cape on Thursday, 6 October 2016 at 10h30 at the Plein Street Library Hall, Stellenbosch.

<b>Meeting: Ref No:</b>	<i>Council: 2016-09-28 3/3/3/6/7</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: (R Bosman)</i>
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**8.2.2**

**SALGA GUIDELINE FOR THE ESTABLISHMENT  
OF MPAC'S: MARCH 2012**

**APPENDIX 1**



**SALGA**  
*South African Local Government Association*

March 2012

MUNICIPAL  
PUBLIC  
ACCOUNTS  
COMMITTEE  
(MPAC)

Enhancing oversight in the Municipality

**Practical Guide**

**TABLE OF CONTENT**

ITEM	DESCRIPTION	PAGE NO.
1.	INTRODUCTION	3
2.	INTERNAL OVERSIGHT	4
	2.1 Internal Audit Unit	4
	2.2 Audit Committee	5
3.	EXECUTIVE OVERSIGHT	7
<b>PART 1</b>		
<b>GUIDELINES FOR THE ESTABLISHMENT, APPOINTMENT AND GENERAL FUNCTIONING OF MPACS</b>		
1.	Establishment of the MPAC	8
2.	Functions and terms of reference of the committee	8
3.	Delegation of functions to the MPAC	8
4.	The procedures and rules of order of the committee	8
5.	Appoint of the members of the MPAC	8
6.	Appointment of the chairperson of the MPAC	9
7.	Co-opting of advisory members to the MPAC	9
8.	Meetings of the MPAC should be open to the public	9
9.	Availability of resources for the MPAC	9
10.	Minutes and Agendas	10
11.	Meetings of the MPAC	10
12.	Reporting	10
<b>PART 2</b>		
<b>TERMS OF REFERENCE FOR THE MPAC</b>		
<b>PART 3</b>		
<b>DELEGATION OF THE MPAC</b>		
4.	CONCLUSION	15

## ENHANCING OVERSIGHT IN MUNICIPALITIES

### A PRACTICAL GUIDE

#### 1. INTRODUCTION

One of the strategic objectives of the Local Government Turnaround Strategy is to build clean, effective, efficient, responsive and accountable local government. While governance systems and structures are operational in municipalities, its quality and effectiveness is sometimes questionable.

Oversight is a concept that refers primarily to the crucial role of legislatures in reviewing and monitoring the actions of the executive organs of government. The executive in carrying out its tasks, whether by implementing legislation or policy, acquires considerable power (the ability to influence or determine a person's conduct). A condition of the exercise of that power in a constitutional democracy is that the administration or executive is checked by being held accountable to an organ distinct from it (the legislature). This notion is inherent in the concept of the separation of powers, which simultaneously provides for checks and balances on the exercise of executive power, making the executive more accountable to an elected legislature.

While our Constitution gives expression to the principle of separation of powers by recognising the functional independence of the three branches of government (executive, legislature and judiciary), at local government level, however, a municipal council is vested with both legislative and executive authority. Subsequent legislation, in particular the Local Government: Municipal Finance Management Act, 2003, requires a certain level of oversight by the municipality over the executive authority. This entails amongst others, the annual report which includes the financial statements, the SDBIP, and also the performance of the municipal manager and other section 57 employees.

Since there is no neat distinction between the 'executive' and 'legislative' arms of council as it were, effective and proper oversight of the 'executive' at local level thus requires members of Council to fully understand the justifications and rationale behind accountable government and the purpose it serves. The oversight role is often seen as that of opposition parties alone, designed to police and expose maladministration and corruption. Such a view is limited and deficient. Oversight and accountability helps to ensure that the executive implements programmes and plans in a way consistent with policy, legislation and the dictates of the Constitution.

The Local Government: Municipal Structures Act, 1998, provides that a municipality, taking into account the extent of its functions and powers, the need for delegation and the resources available, may establish committees. Clearly, a municipality has substantial discretion on how to structure its committee system. Importantly, the manner in which a municipality uses that discretion can have consequences for the capacity of the council to hold the executive to account, which directly affects the quality of the governance in the municipality and ultimately the sustainability of such a municipality. The important role of committees in assisting the Council (section 79 committees) and Executive Committee or Executive Mayor (section 80 committees) to perform their functions effectively should thus be clearly understood and utilised for that purpose, so as to ensure good governance in the municipality.

Section 129 of the Municipal Finance Management Act requires a municipality to prepare an oversight report over the annual report and to publish the same. However, no further formal oversight requirements are contained in the legislation. Section 129(4) of the MFMA only provides for the issuance of guidance on the manner in which municipal councils should consider annual reports and conduct public hearings, and the functioning and composition of any public accounts or oversight committees established by the council to assist it to consider an annual report.

Section 79 of the Municipal Structures Act provides for committees of the Council reporting directly to the council, in accordance with the terms of reference of such committees are developed by the councils. Such committees, because of its direct reporting lines to the full council, are best suited to do oversight in the municipality, not only in terms of the oversight report referred to above, but general oversight over both the administrative and executive arms of the municipality.

It is against this background that SALGA, as well as National Treasury and DCOG, are promoting the establishment and effective functioning of Municipal Public Accounts Committees (MPACs). This guide is intended to supplement the guidelines on establishment of MPACs issued jointly by National Treasury and the Department of Cooperative Governance in August 2011, after consultation with SALGA. In particular it focuses on internal oversight as well as the establishment and effective functioning of MPACs, its terms of reference and delegations.

The document was approved by the SALGA NEC in March 2012.

## 2. INTERNAL OVERSIGHT

Internal oversight of the municipal administration is done by the internal Audit Division and the Audit Committee.

### 2.1 Internal Audit Unit

Section 165 of the Local Government: Municipal Finance Management Act, 2003, (hereinafter referred to as the MFMA) requires each municipality to have an internal audit unit. As the municipal manager is the accounting officer of the municipality, the internal audit unit is best situated in the office of the municipal manager. The internal audit unit must:

- 2.1.1 prepare a risk-based audit plan and an internal audit program for each financial year;
- 2.1.2 advise the accounting officer and report to the audit committee on the implementation of the internal audit plan and matters relating to
  - internal audit;
  - internal controls;
  - accounting procedures and practices;
  - risk and risk management;
  - performance management;
  - loss control; and
  - compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation; and
- 2.1.3 perform such other duties as may be assigned to it by the accounting officer.



The annual audit plan and internal audit program needs to be submitted to the municipal council for approval. As indicated, the internal audit unit reports to the audit committee on the implementation of its plan and program, but the audit committee only makes recommendations to the municipal council as there is no enforcement mechanism.

In addition to the statutory requirements set out above, internal audit should also ensure that the King III report as far as it relates to local government is implemented in the municipality. The actual implementation will be a cross cutting responsibility in the administration, but the implementation plan and monitoring thereof must rest with internal audit, as it is also interlinked with the internal controls, risk management as well as performance management.

## 2.2 **Audit Committee**

Section 166 of the MFMA requires each municipality to have an audit committee. The audit committee is an independent advisory body which must:

- 2.2.1 advise the municipal council, the political office-bearers, the accounting officer and the management staff of the municipality, or the board of directors, the accounting officer and the management staff of a municipal entity, on matters relating to
  - internal financial control and internal audits;
  - risk management;
  - accounting policies;
  - the adequacy, reliability and accuracy of financial reporting and information;
  - performance management;
  - effective governance;
  - compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation;
  - performance evaluation; and
  - any other issues referred to it by the municipality or municipal entity.
- 2.2.2 review the annual financial statements to provide the council of the municipality or, in the case of a municipal entity, the council of the parent municipality and the board of directors of the entity, with an authoritative and credible view of the financial position of the municipality or municipal entity, its efficiency and effectiveness and its overall level of compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation;
- 2.2.3 respond to the municipal council on any issues raised by the Auditor-General in the audit report;
- 2.2.4 carry out such investigations into the financial affairs of the municipality or municipal entity as the council of the municipality, or in the case of a municipal entity, the council of the parent municipality or the board of directors of the entity, may request; and
- 2.2.5 perform such other functions as may be prescribed.

The members of an audit committee are appointed by the municipal council of the municipality (in the case of a municipal entity, by the council of the parent municipality). It consists of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be; and one of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee.

The committee is a committee of the municipal council, as contemplated in section 79 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the Structures Act), but none of its members are councillors, contrary to the normal nature of a section 79 committee. The committee also advises and makes recommendations to the municipal council, but does not have any executive functions or enforcement powers.

However, the aforesaid does not detract from the requirement of the committee to specifically interrogate the following financial and governance aspects in the municipality:

- internal financial controls in the municipality;
- identification of strategic risks in the municipality;
- the establishment and updating of a municipal risk register;
- management and mitigation of risks contained in the risk register;
- accounting policies in the municipality;
- the frequency, accuracy and reliability of financial reporting by the municipality and where applicable, municipal entities;
- the performance management system of the municipality;
- the implementation and effectiveness of the performance management system;
- evaluation of the actual performance of the municipality;
- compliance with legislation;
- effective governance in the municipality;
- review of the annual financial statements;
- financial position of the municipality;
- the municipal response to the A-G report;
- loss control; and
- implementation of the King III principles.

The view of the audit committee on these matters provides the municipality with an objective and expert view which should guide the municipal council and executive. The development of strategies to address these aspects rests with the internal audit unit. The audit committee therefore casts an expert eye on the strategies developed by the internal audit section and the implementation thereof by the municipality as a whole.

### 3. EXECUTIVE OVERSIGHT

#### **Municipal Public Accounts Committee (MPAC): Appointment and Legal Framework**

Within the context of this guide, it refers to oversight of the ‘executive’ of the municipality by council structures. The MPAC is a committee of the municipal council, appointed in accordance with section 79 of the Structures Act. It is also important to note that in metros and large category B municipalities it is, due to the number of councillors, easier to appoint section 79 oversight committees to provide oversight over the functions of the section 80 committees. Many of the smaller municipalities do not have enough councillors to appoint such section 79 committees and can only appoint one oversight committee tasked with the complete oversight role, but focusing mainly on compliance with the provisions of the Local Government: Municipal Finance Management Act, 2003.

Nevertheless, municipalities are encouraged to establish MPACs as far as is possible and practical. As a section 79 committee, the following principles will apply:

- the municipal council must resolve to establish a MPAC by way of a council resolution;
- the municipal council must determine the functions of the committee and agree on the terms of reference for the committee;
- the municipal council must delegate functions to the MPAC in accordance with the terms of reference of the committee;
- the municipal council may determine the procedure of the committee or allow it to determine its own procedure;
- the municipal council appoints the members of the MPAC from amongst the councillors;
- section 160(8) of the Constitution applies to the committee and therefore its composition must be such that it allows parties and interests reflected within the Council to be fairly represented in the MPAC;
- the municipal council appoints the chairperson of the MPAC;
- the municipal council may dissolve the MPAC at any time;
- the municipal council may remove any member of the committee at any time;
- the municipal council may allow the MPAC to co-opt advisory members who are not members of the council, within the limits determined by the council;
- the meetings of the MPAC should, as far as is possible and practical, be open to the public in accordance with section 160(7) of the Constitution;
- the municipal administration must ensure that adequate financial and human resources are made available to support the functions of the MPAC;
- meetings of the MPAC should be provided for and included in the annual calendar of the council; and
- the MPAC reports directly to the municipal council and the chairperson of the MPAC liaise directly with the Speaker on the inclusion of reports of the MPAC in the council agenda.

What follows is a three-part guide to the establishment and effective functioning of MPACs, its terms of reference and delegations.

## Part 1

### **Guidelines for the establishment, appointment and general functioning of MPACs:**

#### **1. Establishment of the MPAC**

A report needs to be submitted to the municipal council that recommends the establishment of the MPAC. The report also needs to include all the aspects dealt with above, and which will be further unpacked below. The resolution passed by the municipal council must be clear on all powers and functions of the committee in order to prevent disputes in this regard. Disputes must be referred to the municipal council for resolution.

#### **2. Functions and terms of reference of the committee**

The main purpose of the MPAC is to exercise oversight over the executive functionaries of council and to ensure good governance in the municipality. This will include oversight over municipal entities. In order for the MPAC to fulfill this oversight role, it needs to be provided with the necessary information and documentation to interrogate the actions of the executive. Part 2 below provides generic terms of reference for the MPAC.

#### **3. Delegation of functions to the MPAC**

Functions must be formally delegated to the MPAC in accordance with the provisions of section 59 of the Local Government: Municipal Systems Act, 2000 (hereinafter referred to as the Systems Act). The delegations must be included as part of the System of Delegations of the Municipality. It should be noted that with regard to the delegations to the MPAC, the municipality should not allow for a review of the decisions of the MPAC by the Exco or Executive Mayor in accordance with section 59(3)(b) of the Systems Act, as the purpose of the MPAC is to do oversight of the executive. The delegations to the MPAC should specifically exclude the said powers to the executive of the municipality.

The requirement to report on the delegated authorities by the MPAC can be included as part of the quarterly report submitted to the council by the MPAC. The delegations required in this regard are further alluded to in Part 3 below.

#### **4. The procedures and rules of order of the committee**

Due to the nature of the committee, it is proposed that the municipal council determines the procedures of the committee with its establishment, provided that the committee may make recommendations to the council on possible amendments to be approved by the council once the activities of the MPAC commences. Such an arrangement will allow the MPAC to operate efficiently from its appointment and not having to spend time on the development of procedures.

#### **5. Appoint of the members of the MPAC**

There is no prescription on the number of members elected to serve on the MPAC committee. The municipality must determine the number of members that will be appointed, taking into account the number of councillors in the municipality and the fact that no office bearers/ executive councillors in the municipality may serve on the committee. It is ideal that the members be appointed for the term of the council, to ensure

continuity across financial years. However, this is subject to the right of the council to remove committee members by way of council resolution.

The National Treasury and DCOG guidelines propose maximum numbers of committee members but municipalities are not required to follow the guideline and a smaller number can also be appointed, provided that section 160(8) of the Constitution apply to the composition of the committee, which requires that the membership of the committee must be such that it allows parties and interests reflected within the Council to be fairly represented in the MPAC.

Once the number of MPAC members are agreed upon, the actual appointment can take place. The number of members as well as the names of the councillors appointed as members must be specified in the council resolution. The councillors appointed to the committee should have a wide range of experience and expertise in order to enable the committee to exercise its oversight function optimally.

#### **6. Appointment of the chairperson of the MPAC**

The chairperson of the MPAC must be appointed in terms of a council resolution. The chairperson may not be an office bearer/ executive councillor in the municipality. The chairperson of the MPAC should be an experienced councillor, due to the important role to be played by the MPAC in the council. The chairperson can be from the ruling or an opposition party, at the choice of the municipal council.

#### **7. Co-opting of advisory members to the MPAC**

The council must indicate whether it will allow the MPAC to co-opt advisory members, which are not councillors, but based on their expertise. This will be informed by the experience and capacity of members appointed to the MPAC. In the event where such co-option is allowed, the council has to prescribe the number of members that may be co-opted, the expertise required, the manner of co-option as well as the payment of a stipend to such co-opted members.

#### **8. Meetings of the MPAC should be open to the public**

Section 160(7) of the Constitution provides that a municipal council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted. As a principle, the meetings of the MPAC should be open to the public and the rules and procedures of the committee should specify in which instances the meeting can be closed to the public.

#### **9. Availability of resources for the MPAC**

The municipal administration must ensure that adequate financial and human resources are made available to support the functions of the MPAC. As the MPAC is a formal committee of the council, dedicated administrative as well as committee staff members must be made available to assist it in its functions. Formal agendas and minutes of meetings need to be prepared by committee staff under the guidance of the chairperson. Administrative staff should also assist committee members and the necessary infrastructure must be provided to the MPAC as well as all the finances required to fulfill its obligations.

## 10. Minutes and Agendas

Agendas of meetings need to be delivered to members in advance in order for them ample time to prepare for the meeting. Documents produced in the municipality that need to be submitted to the MPAC in terms of its terms of reference, must be submitted to the committee staff as soon as it is finalised in order to include it in the MPAC agenda for the next meeting.

## 11. Meetings of the MPAC

The MPAC needs to meet at least 4 times per annum, each such meeting to be held prior to the quarterly meeting of the municipal council (where applicable) or before the council meeting schedules for the month in which the MPAC meets, to allow ample time to include the report of the MPAC in the agenda for each council meeting. Meeting dates should be set and should be included in the annual calendar of meetings.

## 12 Reporting

The MPAC reports directly to the municipal council and the chairperson of the MPAC must liaise directly with the speaker on the inclusion of reports of the MPAC in the council agenda. As the MPAC is a committee of the council, its reports are submitted directly to the council without being submitted to the Exco or Mayoral Committee. The chairperson of the MPAC liaises directly with the speaker on the inclusion of its report in the council agenda, and the committee staff ensures that the documentation is physically included in the agenda of the council meeting.

## Part 2

### Terms of reference for the MPAC

1. The MPAC must interrogate the following financial aspects addressed in the Municipal Finance Management Act:
  - 1.1 **Unforeseen and unavoidable expenditure** (Section 29)
    - any unforeseen and unavoidable expenditure incurred must be reported to the MPAC;
    - proof of the necessary appropriation in an adjustment budget;
    - the MPAC must consider the expenditure and make recommendations to the council; and
    - where the necessary adjustment budget has not been prepared, the MPAC must report same to the council.
  - 1.2 **Unauthorized, irregular or fruitless and wasteful expenditure** (Section 32)
    - any unauthorized, irregular or fruitless and wasteful expenditure by the council, the executive mayor / mayor, executive committee or any political office bearer of the municipality must also be reported to the MPAC;
    - the municipal manager must report to the MPAC on all steps taken to either authorize or certify the payment or to recover or write off the expenditure;

- the municipal manager must report on whether any criminal action was instituted in this regard; and
- the MPAC must report to the council on the appropriateness of the any criminal or civil steps taken and report where no further action was taken and why.

### 1.3 **The quarterly report of the mayor on the implementation of the budget and the state of affairs of the municipality / SDBIP (Section 52(d))**

- a copy of the quarterly report of the mayor on the implementation of the budget and the state of affairs of the municipality must be submitted to the MPAC;
- where the report is not submitted to the MPAC within 30 days after the end of the quarter, the MPAC must report this to the council;
- where the report is submitted, it must be interrogated and recommendations must be made to the council;
- the MPAC must ensure that the mayor attend to the necessary amendments to the SDBIP and submit the necessary report to the council with proposals for the adjustment budget, and where this is not done by the mayor, report it to the council;
- the MPAC must report any matter of concern regarding the report of the mayor to the council.

### 1.4 **Monthly budget statements (Section 71)**

- the monthly budget statement submitted to the mayor must be submitted to the MPAC;
- the MPAC must interrogate the statement and report any matter of concern on the statement to the council.

### 1.5 **Mid-year budget and performance assessment (Section 72)**

- the mid-year budget and performance assessment report submitted to the mayor must be submitted to the MPAC;
- the MPAC must interrogate the assessment and submit its comments on the assessment to the council.

### 1.6 **Mid-year budget and performance assessment of municipal entities (Section 88)**

- the mid-year budget and performance assessment report submitted by the municipal entity needs to be submitted to the MPAC;
- the MPAC needs to interrogate the report and report matters of concern to the council;
- where the report has not been received or not published, it must be reported to the council.

### 1.7 **Disclosures concerning councillors, directors and officials (Section 124)**

- as part of its interrogation of the annual financial statements, the MPAC must ensure that the necessary disclosures were made in the financial statements, including:

- salaries, allowances and benefits of political office bearers and councilors of the municipality;
- arrears owed by individual councilors by the municipality for more than 90 days;
- salaries, allowances and benefits of the municipal manager, CFO and senior managers;
- salaries, allowances and benefits of the board of directors of municipal entities
- the salaries, allowances and benefits of the chief executive officer and senior managers of municipal entities;

#### 1.8 **Submission and auditing of annual financial statements (Section 126)**

- copies of the financial statements submitted to the A-G must be submitted to the MPAC as well as the financial statements of any municipal entity under the control of the municipality as well as proof of submission thereof to the A-G;
- where the MPAC has not been provided with the financial statements or with proof that it has been submitted to the A-G it must be reported to the council.

#### 1.9 **Submission of the annual report (Section 127)**

- the annual report must be submitted to the MPAC no later than two weeks after the date required for submission to the council;
- where the annual report is not submitted to the council as required, the MPAC must be provided with a copy of the written explanations of the mayor as submitted to the council;
- where neither the annual report nor the explanation has been submitted, the MPAC must report same to the council;
- the MPAC must monitor that the annual report has been submitted to the A-G, as well as the provincial government departments required and has been published for comment; and
- the MPAC must also monitor that all municipal entities have complied with the said requirements.

#### 1.10 **Oversight report on the annual report (Section 129)**

- the MPAC must consider the annual report and prepare a draft oversight report to be submitted to the council for purposes of adopting the oversight report;
- in preparing the draft oversight report, the MPAC must consider all representations in connection with the annual report received from the local community;
- the meeting of the MPAC considering the annual report must be open to the public and members of the local community must be allowed to make representations in connection with the annual report at the meeting;
- National Treasury Circular 32 provides guidance on the preparation of the oversight report and a copy is attached as Annexure "A" hereto. Reference to the oversight committee must be read as the MPAC.

#### 1.11 **Issues raised by the Auditor-General in audit reports (Section 131)**

- the MPAC must be provided with the report prepared to address issues raised by the A-G;
- where the report is submitted, MPAC should interrogate same and make recommendations to the



council; and

- where the report has not been submitted, MPAC should report this to the council.

#### 1.12 **Audit Committee (Section 166)**

- the MPAC must ensure that the municipality at all times have an operational audit committee;
- all reports received from the audit committee need to be submitted to the MPAC to assist it in its functions and to capacitate the MPAC;
- where no audit committee has been appointed or where the audit committee is not operative, the MPAC must report this to the council.

#### 1.13 **Disciplinary action instituted in terms of the MFMA**

- all disciplinary processes instituted for the contravention of the MFMA must be reported to the MPAC;
- MPAC must monitor that all matters are brought to conclusion;
- MPAC must report to council where matters are not dealt with effectively and timeously.

2. The MPAC must interrogate the following aspects addressed in the Municipal Systems Act.

##### 2.1 **Review of the IDP post elections (Section 25)**

- MPAC must monitor whether the Executive mayor / Exco initiate the review of the IDP posts elections;
- Where the review is not done, the MPAC must report same to the council.

##### 2.2 **Annual review of the IDP (Section 34)**

- MPAC must monitor whether the Executive mayor / Exco initiate the annual review of the IDP;
- Where the review is not done, the MPAC must report same to the council.

##### 2.3 **Performance management plan (Section 39)**

- MPAC must monitor whether the annual performance plan is being prepared;
- Where the plan is not prepared, the MPAC must report same to the council.

##### 2.4 **Monitoring that the annual budget is informed by the IDP (Regulation 6 of the Local Government: Municipal Planning and Performance Management Regulations)**

- MPAC must review the draft annual budget and ensure that it is informed by the IDP adopted by the municipal council; but
- Where the draft annual budget is not aligned with the IDP, the MPAC must report same to the municipal council.

- 2.5 **Monitoring that all declaration of interest forms are completed by councillors on an annual basis** (Section 54 read with Item 7 of Schedule 1)
- MPAC must monitor whether all councillors have completed their declaration of interest forms and update it annually;
  - Where declaration of interest forms have not be completed or updated same must be reported to the municipal council.
3. The MPAC must prepare an annual work plan for approval by the municipal council prior to start of the financial year.

### **PART 3**

#### **Delegations to the MPAC**

The following responsibilities are to be delegated to the MPAC in terms of the provisions of section 59 of the Systems Act:

1. The authority to interrogate the following documents and to make recommendations to the municipal council in accordance with the terms of reference of the committee:
  - 1.1 Unforeseen and unavoidable expenditure;
  - 1.2 Unauthorised, irregular or fruitless and wasteful expenditure;
  - 1.3 SDBIP;
  - 1.4 Monthly budget statements;
  - 1.5 Mid-year budget and performance assessment;
  - 1.6 Mid-year budget and performance assessment of municipal entities;
  - 1.7 Disclosures concerning councillors, directors and officials;
  - 1.8 Annual financial statements;
  - 1.9 Annual report;
  - 1.10 Issues raised by the A-G in the audit reports;
  - 1.11 The appointment of the audit committee;
  - 1.12 Disciplinary steps instituted in terms of the MFMA;
  - 1.13 The review of the IDP post elections;
  - 1.14 The annual review of the IDP;
  - 1.15 Performance management plan;
  - 1.16 The draft annual budget with reference to the approved IDP; and
  - 1.17 Declaration of interest forms submitted by councillors.
  
2. The authority to consider all presentations made by the community on the annual report and the authority to have interviews with members of the community to obtain input on the annual report, as

well as the authority to prepare the draft oversight report over the annual report.

3. The authority to instruct any member of the executive or the municipal manager to attend the meeting of the MPAC to address matters specified by the MPAC and to provide the MPAC with copies of documents to be dealt with by the committee in terms of its terms of reference.
4. The authority to instruct any member of the board or the CEO of a municipal entity to attend the meeting of the MPAC to address matters specified by the MPAC and to provide the MPAC with copies of documents to be dealt with by the committee in terms of its terms of reference.
5. The authority to obtain legal, technical and other specialised assistance required to exercise its functions and duties within the budget approved for the committee and subject to the supply chain management policy where applicable.

#### **4. CONCLUSION**

The functionality of the internal governance arrangements in a municipality is to a large extent determined by the effectiveness of its committee system and oversight in the municipality. Accountability and oversight can be most effective if recognised by those in power as promoting accountability and good governance, which in turn are there to enhance performance, effectiveness and efficiency of service delivery. Seen in this light the oversight function complements rather than hampers the effective delivery of services, which is the ultimate aim.

The establishment and effectiveness of MPACs is thus critical for this purpose. Municipalities must ensure that members of oversight committees are continually empowered with the necessary skills, knowledge and information needed to execute the oversight function effectively so as to enhance good governance and ultimately the performance of the municipality, in accordance with the constitutional vision of local government being a developmentally orientated sphere. SALGA will undertake continuous training and coordinate information-sharing sessions periodically for the benefit of our members.

**8.2.2**

**COUNCIL RESOLUTION: 15<sup>TH</sup> COUNCIL:  
2013-08-29 ITEM 7.11**

**APPENDIX 2**

## 7.11 ESTABLISHMENT OF A MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) FOR STELLENBOSCH MUNICIPALITY

15<sup>TH</sup> COUNCIL MEETING: 2013-08-29: ITEM 7.11**RESOLVED** (nem con)

- (a) that Council take cognizance of the “*Guideline for Establishment of Municipal Public Accounts Committees*”, jointly issued by the Department of Cooperative Governance (CoGTA) and National Treasury (NT), attached as **APPENDIX 1**;
- (b) that the Section 32 Committee be disestablished;
- (c) that the Oversight Committee be disestablished and that the function of the Oversight Committee be taken over by the MPAC;
- (d) that it be recommended to the MEC that the Chairperson of the Municipal Public Accounts Committee be designated full-time.
- (e) that the Municipal Public Accounts Committee (MPAC) be established in terms of and in accordance with Section 79 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).
- (f) that MPAC be comprised as follows:
- (i) 5 Councillors of the DA:
- Councillor E Groenewald (Ms)  
Councillor R du Toit (Ms)  
Councillor NE McOmbring (Ms)  
Councillor MC Johnson  
Councillor N August
- 2 Councillors of the ANC
- Councillor RS Nalumango (Ms)  
Councillor MM Ngcofe
- 2 Councillors of the smaller parties
- Councillor HC Bergstedt (Ms)  
Councillor M Wanana
- (ii) that Councillor HC Bergstedt (Ms) be appointed as Chairperson of MPAC on a full-time basis;
- (g) that MPAC be authorised to co-opt members of the public with expertise in specific fields to assist and advise the Committee when deliberating before it, as and when necessary, taking note of the fact that such non-elected members shall enjoy no status in Council and will have no voting rights in any political structure of Council;

- 
- (h) that the Rules of Order of Stellenbosch Council shall be applicable to all meetings of MPAC; and
- (i) that in addition to the other relevant functions and duties set out in the "Guideline for Establishment of Municipal Public Accounts Committees" as well as Circular 32 of National Treasury, the Terms of Reference depicted below, be applicable:
- (1) the Committee shall not be responsible for policy formulation;
  - (2) the Committee may engage directly with the public and consider public comments when received and will be entitled to request documents or evidence from the Accounting Officer;
  - (3) the Committee shall have permanent referral of documents as they become available relating to:
    - (i) In-year reports of Stellenbosch Municipality;
    - (ii) Financial statements of Stellenbosch Municipality as part of its oversight process;
    - (iii) Audit opinion, other reports and recommendations from the Audit Committee;
    - (iv) Information relating to compliance in terms of Sections 128 and 133 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA);
    - (v) Information in respect of any disciplinary action taken in terms of the MFMA where it relates to an item that is currently serving or has served before it;
    - (vi) Any other audit report of Stellenbosch Municipality; and
    - (vii) Performance information of Stellenbosch Municipality.
  - (4) the Committee shall consider and evaluate the content of the Annual Report and to make recommendations to Council when adopting an Oversight Report on the Annual Report;
  - (5) In order to assist with the conclusion of matters that may not be finalized, information relating to past recommendations made on the Annual Report must also be reviewed, relating to current in-year reports, including the quarterly, mid-year and Annual Reports;
  - (6) the Committee shall examine the financial statements and audit reports of Stellenbosch Municipality and in doing so, consider improvements from previous statements and reports and evaluate the extent to which the Audit Committee's and the Audit General's recommendations have been implemented;

- 
- (7) the Committee shall promote good governance, transparency and accountability on the use of municipal resources;
  - (8) the Committee shall recommend or undertake any investigation in its area of responsibility, after reviewing any investigation report already undertaken by Stellenbosch Municipality or the Audit Committee;
  - (9) the Committee shall request the support of both the internal and external auditors in an advisory capacity when necessary;
  - (10) the Committee shall conduct investigations into unauthorized, irregular and/or fruitless and wasteful expenditure in accordance with Section 32(2)(a)(ii) of the MFMA and Regulation 74 of the Municipal Budget and Reporting Regulations; and
  - (11) the Committee shall perform any other functions within its area of responsibility assigned to it through a resolution of Council.
- (j) that Council approve the Section 80 Committees, attached as **APPENDIX 3**.

**(DIRECTOR STRATEGIC AND CORPORATE SERVICES  
TO ACTION)**

**8.2.2**

**STELLENBOSCH MUNICIPALITY  
TERMS OF REFERENCE**

**APPENDIX 3**



**STELLENBOSCH MUNICIPALITY**  
**TERMS OF REFERENCE OF THE MPAC**

1. MPAC may evaluate, direct and supervise investigations into any matters within the scope of its roles and responsibilities as instructed by the Council.
2. MPAC has –
  - (a) an oversight role in respect of the Municipality's Annual Report with specific focus on the financial aspects as contained in the Auditor-General's Report on the Annual Financial Statements, as envisaged in section 129 of the MFMA
  - (b) an investigative and reporting role in respect of unauthorised, irregular or fruitless and wasteful expenditure, as envisaged in section 32 of the MFMA
3. MPAC must consider the Annual Report and in respect of the supporting oversight report, which the Municipal Council must adopt in terms of section 129 of the MFMA, the MPAC must -
  - (a) consider and make recommendations on the report to Council regarding specific reports of the Auditor-General and queries, comments and responses in respect thereof;
  - (b) recommend and make proposals in respect of the oversight process for improving efficiency, effectiveness and economy in the financial sphere of the Municipality; and
  - (c) liaise with the Audit Committee and any other relevant committees and role-players.
4. MPAC is authorised to investigate unauthorised, irregular or fruitless and wasteful expenditure in terms of section 32 of the MFMA and may recommend to Council whether such expenditure –
  - (a) resulted in the Municipality receiving "value-for-money" (i.e. services received within a reasonable price);
  - (b) is recoverable or not (financial implications);
  - (c) resulted from non-compliance in following due process and subsequent disciplinary action is necessary, including whether legal action is appropriate; and /or
  - (d) was a result of control failures or gaps and what remedial and disciplinary actions are proposed.
5. Except in so far Council has delegated oversight to the Municipal Manager and Executive Mayor and except in so far as the Executive Mayor has statutory powers of oversight, MPAC must ensure that corrective action has been taken in respect of the comments and resolutions of MPAC during the oversight reporting process as envisaged in 3 and 4 herein above.

6. In performing its functions the MPAC with reference to the mandate as stipulated in 3 and 4 above:
  - (a) must quarterly report to Council on its activities.
  - (b) may co-opt advisory members who are not members of Council provided that such members may not vote on any matter.
  - (c) may seek any information from, and have access to, any councillor and or/employee with reference to 3 and 4 herein above, and to direct all councillors and employees to co-operate with any request made by the committee.
  - (d) has unrestricted access through the Office of the Municipal Manager/Internal Audit to information relating to all personnel, books of account, records, assets and liabilities of the Council and to any other sources of relevant information that may be required from the Council for the purpose of its duties and responsibilities;
  - (e) request councillors and officials, including the accounting officer to attend any of its meetings for interview and input regarding items on the agenda.
  - (f) has direct access to internal and external auditors and to all accounts and financial statements of the municipality, all reports of the Auditor-General and audit opinions, other reports and recommendations from the Audit Committee.
7. The Municipal Manager must provide MPAC with adequate secretariat services and other resources subject to financial resources provided for this purpose in the budget.

<b>8.2.3</b>	<b>ESTABLISHMENT OF A RULES COMMITTEE</b>
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**1. PURPOSE OF REPORT**

For Council to establish a Rules Committee for the Stellenbosch Council.

**2. BACKGROUND**

By virtue of the termination of the 2011-2016 Council's term of office, the former Rules Committee has also dissolved. It is prudent for the newly elected Council to establish a multi-party Rules Committee to be responsible for developing Rules of Order and amendments thereto, and to recommend same to Council for adoption.

The former Council had established an 8-member multi-party Rules Committee, with The Speaker serving as its Chairperson.

**3. LEGAL FRAMEWORK**

**3.1 Section 79 Committees**

In terms of Section 79 of the Structures Act, a municipal council may establish one or more Committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers, and appoint the Committee members from among its members.

If Council wishes to establish such Committees, it:-

1. must determine the functions of such Committees;
2. may delegate duties and powers to it in terms of Section 59 of the Systems Act;
3. must appoint the Chairperson(s); and
4. may authorise a Committee to co-opt advisory members who are not members of the Council, within the limits determined by Council.

The proposed Rules Committee is to be a committee established in terms of Section 79 of the Structures Act. As such, the provisions of Section 79 referred to above are applicable, namely: that the municipal council determines the functions of the Rules Committee and may delegate powers and duties to it, that Council appoints the members of the Rules Committee, and that Council must also appoint the Rules Committee's Chairperson.

Section 79(2) further provides that Council may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council, may remove a member of a committee at any time, and may determine a committee's procedure.

**3.2 Composition of Committees**

Section 33 of the Structures Act stipulates that, with the establishment of committees, cognisance must be taken of the extent of the functions and powers of the municipality, as well as the need for the delegation of

those functions and powers in order to ensure efficiency and effectiveness in their performance.

In terms of Section 160(8) of the Constitution of the Republic of South Africa, members of a municipal Council are entitled to participate in its proceedings and those of its Committees in a manner that, *inter alia*:-

- (a) allows parties and interests reflected within the Council to be fairly represented; and
- (b) is consistent with democracy.

Furthermore, attention is drawn to the fact that in terms of the Stellenbosch Municipality (WCO24) Establishment Notice, read with the Provincial Gazette: 7460, 31 July 2015, only the following office bearers are designated as full-time councillors:-

- the Executive Mayor;
- the members of the Mayoral Committee;
- the Speaker;
- the Single Whip; and
- the Chairperson of MPAC (Municipal Public Accounts Committee).

#### RECOMMENDED

- (a) that Council considers the following nominations:

Cllr DS Arends (ACDP)  
Cllr P Crawley (Ms) (DA)  
Cllr J Hamilton (DA)  
Cllr DD Joubert (Speaker) (DA)  
Cllr W Petersen (Ms) (DA)  
Cllr P Sitshoti (Ms) (ANC); and

- (b) that Council appoints a Chairperson for the Rules Committee.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05 3/P/8 x 3/4/2/6</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: (R Bosman)</i>
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<b>8.2.4</b>	<b>ESTABLISHMENT OF A DISCIPLINARY COMMITTEE</b>
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**1. PURPOSE OF REPORT**

For Council to establish a Disciplinary Committee for the Stellenbosch Council.

**2. BACKGROUND**

By virtue of the termination of the 2011-2016 Council's term of office, the former 6-member Disciplinary Committee has also dissolved. It is prudent for the newly elected Council to establish a Disciplinary Committee to assist in the discipline of Councillors by conducting disciplinary hearings and to make recommendations to Council in terms of its findings.

**3. LEGAL FRAMEWORK**

**3.1 Section 79 Committees**

In terms of Section 79 of the Structures Act, a municipal council may establish one or more Committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers, and appoint the members of such Committee(s) from among its members.

If Council wishes to establish such Committees, it:-

1. must determine the functions of such Committees;
2. may delegate duties and powers to it in terms of Section 59 of the Systems Act;
3. must appoint the Chairperson(s); and
4. may authorise a Committee to co-opt advisory members who are not members of the Council, within the limits determined by Council.

The proposed Disciplinary Committee is to be a committee established in terms of Section 79 of the Structures Act. As such, the provisions of Section 79 referred to above are applicable, namely: that the municipal council determines the functions of the Disciplinary Committee and may delegate powers and duties to it, that Council appoints the members of the Disciplinary Committee, and that Council must also appoint the Disciplinary Committee's Chairperson.

Section 79(2) further provides that Council may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council, may remove a member of a committee at any time, and may determine a committee's procedure.

**3.2 Composition of Committees**

Section 33 of the Structures Act stipulates that, with the establishment of committees, cognisance must be taken of the extent of the functions and powers of the municipality, as well as the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance.

In terms of Section 160(8) of the Constitution of the Republic of South Africa, members of a municipal Council are entitled to participate in its proceedings and those of its Committees in a manner that, *inter alia*:-

- (a) allows parties and interests reflected within the Council to be fairly represented; and
- (b) is consistent with democracy.

Furthermore, attention is drawn to the fact that in terms of the Stellenbosch Municipality (WCO24) Establishment Notice, read with the Provincial Gazette: 7460, 31 July 2015, only the following office bearers are designated as full-time councillors:-

- the Executive Mayor;
- the members of the Mayoral Committee;
- the Speaker;
- the Single Whip; and
- the Chairperson of MPAC (Municipal Public Accounts Committee).

#### RECOMMENDED

- (a) that Council considers the following nominations:

Cllr DS Arends (ACDP)  
Cllr M De Wet (DA)  
Cllr E Groenewald (Ms) (DA)  
Cllr N Mananga-Gugushe (Ms) (ANC)  
Cllr W Petersen (Ms) (DA)  
Cllr N Sinkinya (Ms) (ANC); and

- (b) that Council appoints a Chairperson for the Disciplinary Committee.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05 3/3/3/6/16</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: (R Bosman)</i>
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<b>8.2.5</b>	<b>ESTABLISHMENT OF APPEAL AUTHORITY (SECTION 62: SYSTEMS ACT)</b>
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**1. PURPOSE OF REPORT**

For Council to establish an Appeal Authority in terms of Section 62 of the Municipal Systems Act.

**2. BACKGROUND**

By virtue of the termination of the 2011-2016 Council's term of office, the former Council Appeal Committee has dissolved, which now necessitates the establishment of a new Appeal Committee. During the previous term, 7 (seven) Councillors were appointed to serve on the Council Appeal Committee, with the Speaker appointed as Chairperson.

**3. LEGAL FRAMEWORK**

**3.1 MUNICIPAL SYSTEMS ACT, Section 62 APPEALS**

In the case of Stellenbosch Municipality which comprises of more than 14 councillors, MSA Section 62(4)(c)(ii) is applicable, which states: *"when the appeal is against a decision taken by a political structure or political office bearer, a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority..."*.

**3.2 Section 79 Committees**

In terms of Section 79 of the Structures Act, a municipal council may establish one or more Committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers, and appoint the members of such Committee(s) from among its members.

If Council wishes to establish such Committees, it:-

1. must determine the functions of such Committees;
2. may delegate duties and powers to it in terms of Section 59 of the Systems Act;
3. must appoint the Chairperson(s); and
4. may authorise a Committee to co-opt advisory members who are not members of the Council, within the limits determined by Council.

The Council Appeal Committee is established as per the provisions of Section 79 of the Structures Act. As such, the municipal council determines the functions of the Council Appeal Committee and may delegate powers and duties to it, and Council appoints the members as well as the Chairperson of the Council Appeal Committee.

**3.3 Composition of Committees**

Section 33 of the Structures Act stipulates that, with the establishment of committees, cognisance must be taken of the extent of the functions and powers of the municipality, as well as the need for the delegation of

those functions and powers in order to ensure efficiency and effectiveness in their performance.

In terms of Section 160(8) of the Constitution of the Republic of South Africa, members of a municipal Council are entitled to participate in its proceedings and those of its Committees in a manner that, *inter alia*:-

- (a) allows parties and interests reflected within the Council to be fairly represented; and
- (b) is consistent with democracy.

Furthermore, attention is drawn to the fact that in terms of the Stellenbosch Municipality (WCO24) Establishment Notice, read with the Provincial Gazette: 7460, 31 July 2015, only the following office bearers are designated as full-time councillors:-

- the Executive Mayor;
- the members of the Mayoral Committee;
- the Speaker;
- the Single Whip; and
- the Chairperson of MPAC (Municipal Public Accounts Committee).

#### RECOMMENDED

- (a) that Council considers the following nominations:

Cllr G Bakubaku-Vos (Ms) (ANC)  
Cllr M De Wet (DA)  
Cllr A Florence (DA)  
Cllr DD Joubert (Speaker) (DA)  
Cllr M Oliphant (ANC);  
Cllr W Petersen (Ms) (DA); and

- (b) that Council appoints a Chairperson for the Council Appeal Committee.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05 3/P/8</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: (R Bosman)</i>
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<b>8.3</b>	<b>STRUCTURING OF COUNCIL: ESTABLISHMENT OF SECTION 80 COMMITTEES (PORTFOLIO COMMITTEES)</b>
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## 1. LEGAL FRAMEWORK

### 1.1 Section 80 Committees

In terms of Section 80 of the Structures Act, if a municipality has an Executive Committee or Executive Mayor, it may appoint Committees of Councillors to assist the Executive Committee or Executive Mayor.

Such Committees may not in number exceed the number of members of the Executive Committee or Mayoral Committee.

The Executive Committee or Executive Mayor, *inter alia*:-

- appoints a Chairperson for each Committee; and
- may delegate any powers and duties of the Executive Committee or Executive Mayor to the Committee.

Such Committee(s) must report to the Executive Committee or Executive Mayor in accordance with the directions of the Executive Committee or Executive Mayor.

### 1.2 Composition of Committees

In terms of Section 160(8) of the Constitution of the Republic of South Africa, members of a municipal Council are entitled to participate in its proceedings and those of its Committees in a manner that, *inter alia*:-

- (a) allows parties and interests reflected within the Council to be fairly represented; and
- (b) is consistent with democracy.

The allocation of Councillors to the various Section 80 Committees shall be such that every Councillor, with the exception of the Executive Mayor, the Deputy Executive Mayor, the Speaker and the Single Whip, is allocated to at least one of the Committees.

## 2. Status Quo

The Portfolio Committees operational during the 2011-2016 term of office were:-

- Finance, Strategic and Corporate Services;
- Engineering Services and Human Settlements;
- Planning, Economic and Community Development; and
- Community and Protection Services.

## RECOMMENDED

- (a) that the establishment of Section 80 portfolio committees be approved, in principle;
- (b) that Council establishes the following eight (8) Section 80 Portfolio Committees, namely:

- Community Development and Community Services Committee
- Corporate and Strategic Services Committee
- Economic Development and Planning Committee
- Financial Services Committee
- Human Settlements Committee
- Infrastructure Committee
- Protection Services Committee
- Youth, Sports and Culture Committee

(c) that Council considers the following nominations:

#### **COMMUNITY DEVELOPMENT & COMMUNITY SERVICES**

- |    |                           |     |
|----|---------------------------|-----|
| 1. | Cllr GN Bakubaku-Vos (Ms) | ANC |
| 2. | Cllr A Crombie (Ms)       | DA  |
| 3. | Cllr AR Frazenburg        | DA  |
| 4. | Cllr E Fredericks (Ms)    | DA  |
| 5. | Cllr M Oliphant           | ANC |

#### **CORPORATE AND STRATEGIC SERVICES**

- |    |                             |     |
|----|-----------------------------|-----|
| 1. | Cllr M De Wet               | DA  |
| 2. | Cllr E Groenewald (Ms)      | DA  |
| 3. | Cllr J Hamilton             | DA  |
| 4. | Cllr L Maseba               | ANC |
| 5. | Cllr F Bangani-Menzina (Ms) | ANC |

#### **ECONOMIC DEVELOPMENT AND PLANNING**

- |    |                      |      |
|----|----------------------|------|
| 1. | Cllr F Adams         | DNCA |
| 2. | Cllr Manuel          | DA   |
| 3. | Cllr L Maseba        | ANC  |
| 4. | Cllr JP Serdyn (Ms)  | DA   |
| 5. | Cllr P Sitshoti (Ms) | ANC  |
| 6. | Cllr S Schäfer       | DA   |

#### **FINANCIAL SERVICES**

- |    |                        |     |
|----|------------------------|-----|
| 1. | Cllr P Crawley (Ms)    | DA  |
| 2. | Cllr A Hanekom         | DA  |
| 3. | Cllr RS Nalumango (Ms) | ANC |
| 4. | Cllr M Oliphant        | ANC |
| 5. | Cllr S Peters          | DA  |

#### **HUMAN SETTLEMENTS**

- |    |                           |     |
|----|---------------------------|-----|
| 1. | Cllr GN Bakubaku-Vos (Ms) | ANC |
| 2. | Cllr PW Biscombe          | DA  |
| 3. | Cllr R Du Toit (Ms)       | DA  |
| 4. | Cllr E Fredericks         | DA  |
| 5. | Cllr L Horsband           | EFF |

**INFRASTRUCTURE**

1. Cllr F Bangani-Menziwa (Ms) ANC
2. Cllr F Badenhorst DA
3. Cllr J De Villiers DA
4. Cllr A Florence DA
5. Cllr N Mananga-Gugushe (Ms) ANC
6. Cllr N Sinkinya (Ms) ANC

**PROTECTION SERVICES**

1. Cllr DS Arends ACDP
2. Cllr J Hendriks DA
3. Cllr NE McOmbring (Ms) DA
4. Cllr Q Smit DA

**YOUTH, SPORT AND CULTURE**

1. Cllr L Horsband (Ms) EFF
2. Cllr XL Mdemka (Ms) DA
3. Cllr MM Pietersen (Ms) DA
4. Cllr N Sinkinya (Ms) ANC
5. Cllr E Vermeulen (Ms) DA

- (d) that the Executive Mayor, in terms of Section 80(3) of the Municipal Structures Act, appoints a Chairperson for each of the Section 80 Committees from the Mayoral Committee.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: (R Bosman)</i>
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<b>8.4</b>	<b>APPOINTMENT OF COUNCILLORS TO SERVE ON THE LOCAL LABOUR FORUM</b>
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**1. PURPOSE OF REPORT**

For Council to consider the appointment of Councillors to serve on the Local Labor Forum.

**2. BACKGROUND**

The termination of the 2011-2016 Council's term of office necessitates the appointment of Councillors to represent the Employer on the Local Labour Forum.

As per the SALGBC Main Collective Agreement, the Employer representatives shall consist of at least 2 (two) Councillors, and Management.

During the previous term of office, 6 (six) Councillors were appointed to serve on the Local Labour Forum.

**RECOMMENDED**

(a) that Council considers the following nominations:

- |    |                        |      |
|----|------------------------|------|
| 1. | Cllr DS Arends         | ACDP |
| 2. | Cllr R Du Toit (Ms)    | DA   |
| 3. | Cllr AR Frazenburg     | DA   |
| 4. | Cllr E Fredericks (Ms) | DA   |
| 5. | Cllr RS Nalumango (Ms) | ANC  |

(b) that Council appoints a Chairperson for the Local Labour Forum.

<b>Meeting: Ref No:</b>	Council: 2016-10-05 3/3/3/6/4	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Office of the Municipal Manager Acting MM: (R Bosman)</i>
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<b>8.5</b>	<b>APPOINTMENT OF REPRESENTATIVES ON SALGA – WESTERN CAPE</b>
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**1. PURPOSE OF REPORT**

For Council to appoint representatives and secundi to serve on the various SALGA Provincial Working Groups.

**2. BACKGROUND**

The Council must appoint representatives to serve on the various SALGA provincial working groups.

The following are the SALGA Working Groups on which nominated councillors from Stellenbosch Municipality should serve:

<b>SALGA Provincial Working Groups</b>	
1	Economic Development and Planning
2	Municipal Finance
3	Community Development
4	Human Resource Development and Collective Bargaining
5	Municipal Infrastructure and Related Services [which includes] – <ul style="list-style-type: none"> <li>• Climate Change, Environmental Affairs and Sustainability</li> <li>• Municipal Infrastructure Planning</li> <li>• Municipal Trading Services</li> </ul>
6	Governance, Intergovernmental and International Relations

**RECOMMENDED**

that Council considers the following nominations for the SALGA Provincial Working Groups:

<b>COUNCILLORS</b>	<b>SALGA Provincial Working Groups</b>
S Schäfer	Economic Development and Planning
P Crawley (Ms)	Municipal Finance
E Fredericks (Ms)	Community Development
R Du Toit (Ms)	Human Resource Development and Collective Bargaining
A Florence	Municipal Infrastructure and Related Services
M De Wet	Governance, Intergovernmental and International Relations

<b>Meeting: Ref No:</b>	Council: 2016-10-05 3/6/3	<b>Submitted by Directorate: Author: Referred from:</b>	Office of the Municipal Manager Acting MM: (R Bosman)
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<b>8.6</b>	<b>APPOINTMENT OF COUNCILLORS TO SERVE ON EXTERNAL BODIES</b>
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**1. PURPOSE OF REPORT**

For Council to consider the appointment of Representatives of Council to serve on external bodies.

**2. BACKGROUND**

The table below indicates the various external bodies where the former Council was represented:

<b>BODY/INSTITUTE</b>	<b>Number of Council Reps</b>
Jan Marais Nature Reserve Advisory Committee	1
Mont Rochelle Nature Reserve Advisory Committee	2
Pension Fund and Retirement Fund	1
Stellenbosch Tourism and Information Bureau	2
Stellenbosch Museum Trustee	1
Franschhoek Museum	1
Franschhoek Valley Tourism	2
Community Police Forum Stellenbosch	3
Community Police Forum Kayamandi	3
Community Police Forum Franschhoek	2
Community Police Forum Klapmuts	2
Community Police Forum Cloetesville	2
Community Police Forum Groot Drankenstein	1
SWOKK (Stellenbosch Welsyns en Ontwikkelings-koördinerings Komitee)	3
FREMCO Trust	3
Hospital Board	1
University Board	1
Winelands Water Utilisation Association	1
Dilbeek Trust Committee	3

**RECOMMENDED**

that Council considers the following nominations to serve on the external bodies:

<b>BODY/INSTITUTE</b>	<b>Name of Councillors</b>
Jan Marais Nature Reserve Advisory Committee	XL Mdemka (Ms)
Mont Rochelle Nature Reserve Advisory Committee	AR Frazenburg C Manuel
Pension Fund and Retirement Fund	XL Mdemka (Ms)
Stellenbosch Tourism and Information Bureau	JP Serdyn (Ms)
Stellenbosch Museum Trustee	JP Serdyn (Ms) S Louw
Franschhoek Museum	S Schäfer W Petersen (Ms)
Franschhoek Valley Tourism	S Schäfer
Community Police Forum Stellenbosch	All Ward Councillors
Community Police Forum Kayamandi	All Ward Councillors
Community Police Forum Franschhoek	W Petersen (Ms) AR Frazenburg

Community Police Forum Klapmuts	E Fredericks (Ms) L Horsband (Ms)
Community Police Forum Cloetesville	DD Joubert E Vermeulen (Ms) NE McOmbring (Ms)
Community Police Forum Groot Drankenstein	MM Johnson C Manuel
SWOKK (Stellenbosch Welsyns en Ontwikkelings- koordinerings Komitee)	W Pietersen D Arends A Crombie (Ms)
Hospital Board	E Vermeulen (Ms)
University Board	G van Deventer (Ms)
Winelands Water Utilisation Association	J De Villiers

<b>Meeting:</b> <b>Ref No:</b>	<i>Council: 2016-10-05</i> <i>3/6/3</i>	<b>Submitted by Directorate:</b> <b>Author:</b> <b>Referred from:</b>	<i>Office of the Municipal Manager</i> <i>Acting MM: (R Bosman)</i>
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<b>8.7</b>	<b>ESTABLISHMENT OF WARD COMMITTEES</b>
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## 1. LEGAL FRAMEWORK

### 1.1 Establishment Notice

In terms of Stellenbosch Municipality's Establishment Notice (as amended), it is a municipality with a mayoral executive system combined with a ward participatory system.

### 1.2 Choice to establish Ward Committees and its composition

In terms of section 73 of the Municipal Structures Act, if a local council decides to have Ward Committees, it must establish such Committees for each ward in the municipality.

A Ward Committee consists of:-

- (a) the Councillor representing that ward in the Council, who must also be the Chairperson of the Committee; and
- (b) not more than 10 other persons.

### 1.3 Rules regulating election procedure, membership and frequency of meeting and term of office

In terms of section 73(3) of the Structures Act, a local council must make rules regulating:-

- (a) the procedure to elect the member of a Ward Committee, taking into account the need-
  - (i) for women to be equitably represented; and
  - (ii) for a diversity of interests in the ward to be represented;
- (b) the circumstances under which those members must vacate office; and
- (c) the frequency of meetings.

In terms of section 75 of the Structures Act a Ward Committee is elected for a term determined by the local Council.

Stellenbosch Municipality has approved a policy dealing with the establishment of Ward Committees as well as the matters mentioned above.

## 2. STATUS QUO

During the previous term, Ward Committees were operational in all 22 wards. However, Ward Committees cease to exist at the end of each term.

Taking into account that Stellenbosch Municipality (in terms of its Establishment Notice, as amended) is a Municipality with a Mayoral



Executive System combined with a Ward Participatory System, new Ward Committees will have to be established.

### RECOMMENDED

- (a) that Council notes that, in terms of Section 73 of the Municipal Structures Act, Ward Committees must be established for each ward;
- (b) that, in terms of the Municipality's System Of Delegations (72-75), Council designates the Speaker to facilitate the establishment of Ward Committees in line with the provisions and stipulations of the Municipal Structures Act and Council's policy for the establishment of Ward Committees; and
- (c) that the Speaker reports back to Council by the end of January 2017 on the establishment of the Ward Committees.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05 3/3/1/1</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Corporate Services Acting Director: Mr V Bowers</i>
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<b>8.8</b>	<b>RECRUITMENT AND SELECTION PROCESS OF THE DIRECTOR: STRATEGIC AND CORPORATE SERVICES</b>
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**1. PURPOSE OF REPORT**

To obtain approval from Council to fill and advertise the post of the Director Strategic and Corporate Services.

**2. BACKGROUND**

The current Director: Strategic and Corporate Services resigned on 08 August 2016 with his last day being 31 August 2016. (See **APPENDIX 1**).

**3. DISCUSSION**

The Regulations on the appointment and conditions of employment of Senior Managers was Gazetted on 17 January 2014. (Gazette No. 37245 dated 17 January 2014). Please note that Senior Manager means a municipal manager or acting municipal manager, appointed in terms of Section 54A of the Act, and includes a manager directly accountable to a municipal manager appointed in terms of Section 56 of the Act (Act means the Local Government: Municipal Systems Act, 2000: Act No.32 of 2000).

In terms of this report the recruitment, selection and appointment of Senior Manager will be discussed as stipulated in Chapter 3 of the Regulations.( Attached as **APPENDIX 2**)

In terms of Section 7.1 when the post of a senior manager becomes vacant, or is due to become vacant, the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such post in its next council meeting or as soon as it is reasonably possible to do so.

In terms of Section 7.2 a vacant senior manager post may not be filled, unless:

- (a) approval to fill the post has been granted by the municipal council; and
- (b) the post has been budgeted for.

In terms of Section 8 no person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she-

- (a) Is a South African citizen or permanent resident; and
- (b) Possesses the relevant competencies, qualifications, experience and knowledge set out in in the regulations.

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An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

In terms of Section 10 the municipal manager must, within 14 days of receipt of the approval referred to in regulation 7, ensure that the vacant post is advertised.

- A vacant senior manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.
- An advertisement for a vacant senior manager post must specify the:
  - (a) Job title;
  - (b) Term of appointment;
  - (c) Place to be stationed;
  - (d) Annual total remuneration package;
  - (e) Competency requirements of the post, including minimum qualifications and experience required;
  - (f) Core functions;
  - (g) Need for signing of an employment contract, a performance agreement and disclosure of financial interest;
  - (h) The need to undergo security vetting;
  - (i) Contact person;
  - (j) Address where applications must be sent or delivered;  
and
  - (k) Closing date which must be minimum 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.

Cognisance must be taken of Section 12 which makes provision for the manner in which the selection panel must be constituted. Section 12(1) provides that:

“A municipal Council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.

Section 12(2) provides that in deciding who to appoint to a selection panel, the following considerations must inform the decision:

- (a) The nature of the post;
- (b) The gender balance of the panel; and
- (c) The skills, expertise, experience and availability of the persons to be involved.

Section 12(4) provides that the selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members, constituted as follows :

- (a) The municipal manager, who will be the chairperson;

- 
- (b) A member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - (c) At least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

Furthermore, Section 12(5) provides that a panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process and that such a panel member Section 12(6) a panel member must recuse himself or herself from the selection panel if-

- (a) His or her spouse, partner, close family member or close friend has been shortlisted for the post;
- (b) The panel member has some form of indebtedness to a short-listed candidate or *visa versa*; or
- (c) He or she has any other conflict of interest.

The Regulations dictates in terms of section 7 that a panel member and staff member must sign a declaration of confidentiality to avert the disclosure of information to unauthorised persons.

The Regulations provides for strict time frames which must be adhered to with regard to the Screening of Candidates in terms of section 14 as well as the Interviewing process in terms of section 15. Due regard must be given to Section 17 which deals with the Resolution of the municipal council on appointment of senior managers and reporting as well as the re-employment of dismissed persons in terms of Section 18.

#### 4. FINANCIAL IMPLICATION

The post is budgeted for.

#### 5. CONCLUSION

In terms of the above-mentioned the post of Director: Strategic and Corporate Services should be advertised.

#### RECOMMENDED

- (a) that Council confirm that the position of Director: Strategic and Corporate is required;
- (b) that the Municipal Manager be mandated to advertise the position of Director: Strategic and Corporate Services as per the Regulations on the appointment and conditions of employment of Senior Managers which was Gazetted on 17 January 2014; and
- (c) that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows :
  - the municipal manager, who will be the chairperson;

- 
- a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

**MAYORAL COMMITTEE MEETING: 2016-08-22: ITEM 6.1.4****RECOMMENDED BY EXECUTIVE MAYOR**

- (a) that Council confirm that the position of Director: Strategic and Corporate is required;
- (b) that the Municipal Manager be mandated to advertise the position of Director: Strategic and Corporate Services as per the Regulations on the appointment and conditions of employment of Senior Managers which was Gazetted on 17 January 2014; and
- (c) that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:
  - the municipal manager, who will be the chairperson;
  - the Executive Mayor;
  - a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

**SPECIAL COUNCIL MEETING: 2016-08-25: ITEM 6**

The Executive Mayor gave the undertaking that observer status will be granted to the Unions and representatives of each political party during the interview process.

**RESOLVED** (nem con)

- (a) that Council confirm that the position of Director: Strategic and Corporate is required;
- (b) that the Municipal Manager be mandated to advertise the position of Director: Strategic and Corporate Services as per the Regulations on the appointment and conditions of employment of Senior Managers which was Gazetted on 17 January 2014; and

- (c) that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:
- the municipal manager, who will be the chairperson;
  - the Executive Mayor;
  - a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - Mr Dave Daniels.

#### **FURTHER COMMENTS BY THE MUNICIPAL MANAGER**

Due to the unavailability of Mr Dave Daniels as part of the Selection Panel, Council must approve a new selection panel for the Director Strategic and Corporate Services.

It is therefore

#### **RECOMMENDED**

that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:

- the municipal manager, who will be the chairperson;
- the Executive Mayor;
- a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05 4/3/2/6 x 4/3/3/6</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Acting Municipal Manager R Bosman Council: 2016-08-25</i>
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**8.8**

**LETTER OF RESIGNATION BY PREVIOUS DIRECTOR:  
STRATEGIC AND CORPORATE SERVICES**

**APPENDIX 1**

PR ESAU  
7 NERINA STREET  
ROBERTSON  
6705

8 August 2016

**Notice of Termination / Resignation: PR Esau (Director Strategic and Corporate Services)**

Please receive my notice of resignation as an employee of Stellenbosch Municipality.

Regulation 42 of the Regulations on Appointment and Conditions of Employment of Senior Managers states that I must give two weeks' notice in the event that I am employed for six months and four weeks' notice if I am employed for less than 12 months. Paragraph 17.1.3 of my employment contract requires that I give two months' notice of termination.

I herewith request the municipal manager to approve that my last day of service at Stellenbosch Municipality, be 31 August 2016.

Sincere thanks to Stellenbosch Municipality for providing me the opportunity to be part of such an excellent team in service to our community.

Yours



P RAYMOND ESAU  
0832995135

*Resignation accepted  
2016/08/08  
Just words  
does  
31 August*

Municipality - Munisipaliteit Stellenbosch
08 AUG 2016
Office of the Municipal Manager Kantoor van die Munisipale Bestuurder



**8.8**

**CHAPTER 3 OF THE REGULATIONS**

**APPENDIX 2**

- (d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

### CHAPTER 3

#### RECRUITMENT, SELECTION AND APPOINTMENT

##### Principles of recruitment

6. (1) The recruitment, selection and appointment of senior managers must take place in accordance with the municipal systems and procedures contemplated in section 67 of the Act that are consistent with sections 54A, 56, 57A and 72 of the Act.
- (2) A senior manager post must be filled through public advertising, in accordance with the procedures contemplated in regulation 10.
- (3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

##### Determination of recruitment needs

7. (1) When the post of a senior manager becomes vacant, or is due to become vacant, the mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such post in its next council meeting or as soon as it is reasonably possible to do so.
- (2) A vacant senior manager post may not be filled, unless—
- approval to fill the post has been granted by the municipal council; and
  - the post has been budgeted for.
- (3) Notwithstanding subregulation (1), the speaker may convene a special meeting to obtain municipal council approval for the filling of a senior manager post.

##### General requirements for appointment of senior managers

8. (1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she—
- is a South African citizen or permanent resident; and
  - possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these regulations.
- (2) An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

##### Competence requirements for senior managers

9. (1) A person appointed as a senior manager in terms of these regulations must have the competencies as set out in Annexure A.
- (2) A person appointed as a senior manager in terms of these regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B.

**Advertising of vacant posts**

10. (1) The municipal manager must, within 14 days of receipt of the approval referred to in regulation 7, ensure that the vacant post is advertised.
- (2) A vacant senior manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.
- (3) An advertisement for a vacant senior manager post must specify the—
- (a) job title;
  - (b) term of appointment;
  - (c) place to be stationed;
  - (d) annual total remuneration package;
  - (e) competency requirements of the post, including minimum qualifications and experience required;
  - (f) core functions;
  - (g) need for signing of an employment contract, a performance agreement and disclosure of financial interest;
  - (h) the need to undergo security vetting;
  - (i) contact person;
  - (j) address where applications must be sent or delivered; and
  - (k) closing date which must be a minimum of 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.
- (4) A municipality may utilise a recruitment agency to identify candidates for posts: Provided that the advertising, recruitment and selection procedures comply with these regulations.
- (5) The mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must provide monthly reports to the executive committee regarding progress on the filling of the vacant senior manager post.

**Application for vacant post**

11. (1) An application for the vacant post of a senior manager must be submitted on an official application form, attached as Annexure C, accompanied by a detailed curriculum vitae.
- (2) Notwithstanding subregulation (1), a municipality that has on-line application procedures in place may use an on-line application form: Provided that the on-line application form substantially corresponds to the application form in Annexure C, and complies with these regulations.
- (3) An application not made on the official form, as contemplated in subregulations (1) or (2) must not be considered.
- (4) An applicant for a senior manager post must disclose—
- (a) his or her academic qualifications, proven experience and competencies;
  - (b) his or her contactable references;
  - (c) registration with a relevant professional body;
  - (d) full details of any dismissal for misconduct; and
  - (e) any disciplinary actions, whether pending or finalised, instituted against such applicant in his or her current or previous employment.
- (5) Any misrepresentation or failure to disclose information contemplated in subregulation (3) and (4) is a breach of the Code of Conduct for Municipal Staff as provided for in Schedule 2 to the Act and shall be dealt with in terms of the Disciplinary Regulations.

(6) The municipality must compile and maintain a record of all applications received, which must contain—

- (a) the applicants' biographical details and contact information;
- (b) the details of the post for which the applicants were applying;
- (c) the applicants' qualifications; and
- (d) any other requirements outlined in the application form.

### **Selection panel**

12. (1) A municipal council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.

(2) In deciding who to appoint to a selection panel, the following considerations must inform the decision:

- (a) the nature of the post;
- (b) the gender balance of the panel; and
- (c) the skills, expertise, experience and availability of the persons to be involved.

(3) The selection panel for the appointment of a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the mayor, who will be the chairperson, or his or her delegate;
- (b) a councillor designated by the municipal council; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(4) The selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the municipal manager, who will be the chairperson;
- (b) a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(5) A panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process.

(6) A panel member contemplated in subregulations (3) and (4) must recuse himself or herself from the selection panel if—

- (a) his or her spouse, partner, close family member or close friend has been shortlisted for the post;
- (b) the panel member has some form of indebtedness to a short-listed candidate or *vice versa*; or
- (c) he or she has any other conflict of interest.

(7) A panel member and staff member must sign a declaration of confidentiality as set out in Annexure D to these regulations, to avert the disclosure of information to unauthorised persons.

(8) A staff member may provide secretarial or advisory services during the selection process, but may not form part of the selection panel.

### **Compiling shortlist of applicants**

13. (1) A mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, in consultation with the selection panel, must compile—

- (a) a list of all applicants who applied for an advertised post; and

- (b) a shortlist consisting of all applications received for a specific post, evaluated against the relevant competency requirements, as set out in Annexures A and B to these regulations.
- (2) The shortlisting must be finalised within 30 days of the closing date of the advertisement.
- (3) The municipality must keep a record of all the applicants who applied for vacant posts.
- (4) The municipal manager must ensure that the information contained in the applications is kept confidential and stored in a secure site on the municipality's premises.
- (5) The lists contemplated in subregulation (1) must be submitted, together with the shortlisted applications, to the selection panel before the interviews.

### **Screening of candidates**

- 14. (1)** Screening of the shortlisted candidates must take place within 21 days of the finalisation of the shortlisting by—
- (a) conducting the necessary reference checks;
  - (b) contacting a candidate's current or previous employer;
  - (c) determining the validity of a candidate's qualifications; and
  - (d) verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.
- (2) A written report on the outcome of the screening process must be compiled by the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, before the interviews take place.

### **Interviews**

- 15. (1)** The selection panel must conduct interviews within 21 days of screening the candidates.
- (2) The selection panel for a specific post must remain the same throughout the screening and interviewing process.
  - (3) The selection panel must keep records of every panel member's individual assessment of the interviewed candidates.
  - (4) The determination of candidates to be recommended for appointment must be considered by way of consensus between the members of the selection panel.
  - (5) If consensus cannot be reached, a dissenting member may record his or her concerns in the minutes, whereafter the issue may be voted upon, with each member of the selection panel entitled to one vote.
  - (6) The selection panel must recommend the second and third suitable candidates to minimise delays that may arise in the filling of the post if the first choice candidate declines or does not accept the offer of employment.

### **Selection**

- 16. (1)** The candidates recommended for appointment to the post of a senior manager must undergo a competency assessment.
- (2) The competency assessment tools must—
    - (a) be capable of being applied fairly; and
    - (b) not be biased against any person or group of persons.
  - (3) A municipality must provide in its medium term budget, funding for purposes of competency assessment and testing.

(4) Notwithstanding subregulation (3) and upon good cause shown, a municipality encountering cash flow problems may apply to the Local Government Sector Education and Training Authority to make use of the discretionary grants to fund the competency assessment for purposes of filling a vacant senior manager post.

(5) The selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexures A and B, in order of preference.

#### **Resolution of municipal council on appointment of senior managers and reporting**

17. (1) Before making a decision on an appointment, a municipal council must satisfy itself that—

- (a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to these regulations;
- (b) screening of the candidates has been conducted in terms of regulation 14; and
- (c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations.

(2) A municipal council must, subject to subregulation (1), take a decision on the appointment of a suitable candidate.

(3) A municipal council must—

- (a) inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and
- (b) within 14 days of the decision referred to in subregulation (2), submit a written report to the MEC for local government regarding the appointment process and outcome.

(4) The report contemplated in subregulation (3)(b) must contain—

- (a) details of the advertisement, including date of issue and the name of newspapers in which the advert was published, and proof of the advertisement or a copy thereof;
- (b) a list of all applicants;
- (c) a report contemplated in regulation 14(2) on the screening process and the outcome thereof;
- (d) the municipal council's resolution approving the selection panel and the shortlisted candidates;
- (e) competency assessment results;
- (f) the minutes of the shortlisting meeting;
- (g) the minutes of interviews, including scoring;
- (h) the recommendations of the selection panel submitted to the municipal council;
- (i) the details of executive committee members and recommendations, if the selection panel comprised of all members of the executive committee;
- (j) the recommendation of the executive committee or executive mayor to the municipal council, if any;
- (k) the municipal council resolution approving the appointment of the successful candidate;
- (l) the application form, curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;
- (m) a written confirmation by the successful candidate that he or she does not hold political office as contemplated in section 56A of the Act, as at the date of appointment;

- (n) the letter of appointment, outlining the term of contract, remuneration and conditions of employment of the senior manager; and
- (o) any other information relevant to the appointment.

#### **Re-employment of dismissed persons**

18. (1) A person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period, as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2.

(2) Subregulation (1) does not apply to a senior manager who has lodged a dispute in terms of applicable legislation.

(3) If a senior manager is dismissed for more than one categories of misconduct as set out in subregulation (1), the periods set out in column 3 of the table attached as Schedule 2, run concurrently.

(4) For purposes of subregulation (1), a person dismissed for misconduct is prohibited from re-employment in any municipality for a period as set out in column 3 of Schedule 2 in respect of such category of misconduct calculated from the date of dismissal or conviction.

(5) Any senior manager who has been dismissed for any misconduct other than the categories of misconduct as set out in column 2 of the table attached as Schedule 2 may not be subjected to a waiting period before such a staff member may be re-employed in a municipality.

(6) A municipality must maintain a record of staff members dismissed for misconduct and staff members who resigned prior to the finalisation of any disciplinary proceedings.

(7) A record contemplated in subregulation (6) must be submitted within 14 days of such dismissal or resignation to the MEC for local government and the Minister.

(8) The record contemplated in subregulation (6) must include the following information:

- (a) The name and surname of the staff member;
- (b) the name of municipality;
- (c) the post title; and
- (d) the nature of the misconduct, including—
  - (i) the date of suspension, if applicable;
  - (ii) the conditions of suspension;
  - (iii) the date of commencement of the disciplinary hearing;
  - (iv) information regarding any pre-dismissal arbitration;
  - (v) the finding and category of misconduct;
  - (vi) the date on which the misconduct was referred for arbitration;
  - (vii) costs incurred by the municipality towards the finalisation of the disciplinary case;
  - (viii) the date of resignation or dismissal of the senior manager; and
  - (ix) whether the dismissal has been appealed and the status of the appeal, if applicable.

#### **Re-advertisement of posts**

19. (1) If no suitable candidate has been identified, the municipal council—
- (a) must inform all shortlisted candidates that their applications were unsuccessful; and
  - (b) may re-advertise the post.

**Secondment**

**20.** (1) If a person is seconded to a municipality to act as a municipal manager in terms of section 54A(6) of the Act, an agreement must be entered into between the relevant seconding authority and receiving municipality.

- (2) The agreement contemplated in subregulation (1) must specify—
- (a) the duration of the secondment;
  - (b) the party responsible for the costs of the secondment; and
  - (c) the job description of the seconded official.

(3) Notwithstanding subregulation (4), the cost of secondment must be borne by the receiving municipality, taking into consideration the financial capacity of the municipality.

(4) A person seconded in terms of subregulation (1) must report monthly to the MEC or the Minister, in terms of section 54A(6), on the following:

- (a) steps taken to fill the vacant post to which he or she is seconded;
  - (b) the development and implementation of any municipal institutional recovery plan for which the seconded official is responsible;
  - (c) monitor and assess the adherence to policy, principles and frameworks applicable to the municipality;
  - (d) develop a turnaround strategy for the municipality including a strategy to promote good governance;
  - (e) ensure implementation of municipal council resolutions by the administration;
  - (f) implement a system to control and approve all expenditure;
  - (g) implement all governance systems and procedures; and
  - (h) ensure implementation of financial systems, policies and procedures.
- (5) A person seconded in terms of subregulation (1) must—
- (a) be paid an allowance equal to the difference between the seconded official's current salary and the minimum budgeted salary of the position that the seconded official acts in; and
  - (b) be compensated for subsistence and travel incurred during the course and scope of his or her duties, in accordance with the relevant policy of the municipality.

**CHAPTER 4****CONDITIONS OF EMPLOYMENT****Ordinary hours of work**

**21.** (1) Except as otherwise provided, a senior manager's ordinary hours of work must be stipulated in the employment contract and be in accordance with the operational requirements of the municipality.

(2) Notwithstanding subregulation (1) a senior manager must work at least 40 ordinary hours per week from Monday to Friday.

**Overtime**

**22.** A senior manager may be required to work overtime without additional remuneration.



<b>8.9</b>	<b>RECRUITMENT AND SELECTION PROCESS OF THE DIRECTOR: ENGINEERING SERVICES</b>
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**1. PURPOSE OF REPORT**

To obtain approval from Council to fill and advertise the post of the Director: Engineering Services. Due to the initial candidate for the Director: Engineering Services withdrawing from the process, it is critical to advertise and fill these positions.

**2. BACKGROUND**

The post of Director: Engineering Services was advertised for the fourth time in national and provincial papers and the closing date was 25 April 2016. (See **APPENDIX 1**).

The process was completed and interviews held. The preferred applicant withdrew from the process after the offer of employment was made to him by the Municipal Manager (**See APPENDIX 3**).

The Acting Municipal Manager then contacted the next candidate which was approved by Council, Mr Jevon Pekeur, to extend an offer of employment to him. Mr Pekeur also withdrew from the process (the Municipal Manager's office will provide the written withdrawal).

**DISCUSSION**

The Regulations on the appointment and conditions of employment of Senior Managers was Gazetted on 17 January 2014. (Gazette No. 37245 dated 17 January 2014). Please note that Senior Manager means a Municipal Manager or Acting Municipal Manager, appointed in terms of Section 54A of the Act, and includes a Manager directly accountable to a Municipal Manager appointed in terms of Section 56 of the Act (Act means the Local Government: Municipal Systems Act, 2000: Act No.32 of 2000).

In terms of this report the recruitment, selection and appointment of Senior Manager will be discussed as stipulated in Chapter 3 of the Regulations. Attached as **APPENDIX 2**.

In terms of Section 7.1 when the post of a Senior Manager becomes vacant, or is due to become vacant, the Municipal Manager, in the case of a manager directly accountable to the Municipal Manager, must, upon receipt of official notification that the post of a Senior Manager will become vacant, obtain approval from the municipal Council for the filling of such post in its next Council meeting or as soon as it is reasonably possible to do so.

In terms of Section 7.2 a vacant Senior Manager post may not be filled, unless:

- (a) approval to fill the post has been granted by the municipal council; and
- (b) the post has been budgeted for.

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In terms of Section 8 no person may be appointed as a Senior Manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she-

- (a) Is a South African citizen or permanent resident; and
- (b) Possesses the relevant competencies, qualifications, experience and knowledge set out in in the regulations.

An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

In terms of Section 10 the Municipal Manager must, within 14 days of receipt of the approval referred to in regulation 7, ensure that the vacant post is advertised.

- A vacant Senior Manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.
- An advertisement for a vacant Senior Manager post must specify the:
  - (a) Job title;
  - (b) Term of appointment;
  - (c) Place to be stationed;
  - (d) Annual total remuneration package;
  - (e) Competency requirements of the post, including minimum qualifications and experience required;
  - (f) Core functions;
  - (g) Need for signing of an employment contract, a performance agreement and disclosure of financial interest;
  - (h) The need to undergo security vetting;
  - (i) Contact person;
  - (j) Address where applications must be sent or delivered; and
  - (k) Closing date which must be minimum 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.

Section 12 makes provision for the manner in which the selection panel must be constituted. Section 12(1) provides that :

“A municipal Council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.

Section 12(2) provides that in deciding who to appoint to a selection panel, the following considerations must inform the decision:

- (a) The nature of the post;
- (b) The gender balance of the panel; and

- 
- (c) The skills, expertise, experience and availability of the persons to be involved.

Section 12 (4) provides that the selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members, constituted as follows :

- (a) The municipal manager, who will be the chairperson;
- (b) A member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- (c) At least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

Furthermore Section 12(5) provides that a panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process and that such a panel member Section 12(6) a panel member must recuse himself or herself from the selection panel if-

- (a) His or her spouse, partner, close family member or close friend has been shortlisted for the post;
- (b) The panel member has some form of indebtedness to a short-listed candidate or *visa versa*; or
- (c) He or she has any other conflict of interest.

The Regulations dictates in terms of section 7 that a panel member and staff member must sign a declaration of confidentiality to avert the disclosure of information to unauthorised persons.

The Regulations provides for strict time frames which must be adhered to with regard to the Screening of Candidates in terms of section 14 as well as the Interviewing process in terms of section 15. Due regard must be given to Section 17 which deals with the Resolution of the municipal council on appointment of senior managers and reporting as well as the re-employment of dismissed persons in terms of section 18.

It is advisable that the Legislative prescripts in its entirety be adhered to avoid potential legal challenges by disgruntled candidates.

### 3. FINANCIAL IMPLICATION

The post is budgeted for.

### 4. CONCLUSION

In terms of the above mentioned the post of Director: Engineering Services be advertised.

### RECOMMENDED

- (a) that Council confirm that the position of Director: Engineering is required;
- (b) that the Municipal Manager be mandated to advertise the position of Director: Engineering Services as per the Regulations on the

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appointment and conditions of employment of Senior Managers which was Gazetted on 17 January 2014; and

- (c) that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:
- the municipal manager, who will be the chairperson;
  - the Executive mayor;
  - a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

#### **MAYORAL COMMITTEE MEETING: 2016-08-22: ITEM 6.1.5**

#### **RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that Council confirm that the position of Director: Engineering is required;
- (b) that the Municipal Manager be mandated to advertise the position of Director: Engineering Services as per the Regulations on the appointment and conditions of employment of Senior Managers which was Gazetted on 17 January 2014; and
- (c) that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:
- the municipal manager, who will be the chairperson;
  - the Executive Mayor (as observer);
  - a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

**(ACTING MUNICIPAL MANAGER TO ACTION)**

#### **SPECIAL COUNCIL MEETING: 2016-08-25: ITEM 7**

The Executive Mayor gave the undertaking that observer status will be granted to the Unions and representatives of each political party during the interview process.

**RESOLVED** (majority vote with 10 abstentions)

- (a) that Council confirm that the position of Director: Engineering is required;
- (b) that the Municipal Manager be mandated to advertise the position of Director: Engineering Services as per the Regulations on the appointment and conditions of employment of Senior Managers which was Gazetted on 17 January 2014; and
- (c) that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:
- the municipal manager, who will be the chairperson;
  - the Executive Mayor;
  - a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
  - Mr Dave Daniels.

**FURTHER COMMENTS BY THE MUNICIPAL MANAGER**

Due to the unavailability of Mr Dave Daniels as part of the Selection Panel, Council must approve a new selection panel for the Director Engineering Services.

It is therefore

**RECOMMENDED**

that a selection panel be appointed as per the Regulations on the appointment and conditions of employment of Senior Managers which must consist of at least three but not more than five members, constituted as follows:

- the municipal manager, who will be the chairperson;
- the Executive Mayor;
- a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

<b>Meeting: Ref No:</b>	<i>Council: 2016-10-05 4/3/2/6 x 4/3/3/6</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Acting Municipal Manager R Bosman Council: 2016-08-25</i>
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**8.9**

**ADVERTISEMENT OF POST:  
DIRECTOR: ENGINEERING SERVICES**

**APPENDIX 1**



# STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

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*Step into superior career opportunities when you discover Stellenbosch Municipality!*

*Widely hailed as one of the most progressive municipalities today, Stellenbosch Municipality, through active green practices and good governance is regarded as the greenest municipality representing the safest valley. Through our continuous innovation, Stellenbosch offers dignified living and a world-class investment destination.*

*Right now, we offer the following senior management positions to likeminded individuals who can add value to our ongoing advancement initiatives, making us the Innovation Capital!*

## DIRECTOR: ENGINEERING SERVICES

**Total-cost-of-employment: R867 460 – R1 173 622 per annum, excluding performance-based bonus (The successful candidate will be appointed on a fixed-term contract for a period of five years.)**

**Minimum requirements:** • Bachelor of Science degree in Engineering/BTech in Engineering, or equivalent qualification • Five years' experience at senior and middle management level or as programme/project manager, of which three to four years' experience must be at professional/management level • Engineering management experience • Sound knowledge and understanding of relevant policy and legislation, as well as institutional governance systems and performance management • Must have extensive knowledge of the public office environment • Good knowledge of the EPWP (Extended Public Works Programme) and labour-based construction methods • Must be able to formulate engineering master planning, project management and implementation • Good knowledge of supply chain management regulations and the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) • Core competencies as set out in the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers, 17 January 2014 • Certificate in Municipal Finance Management (SAQA qualification ID no 48965), as is provided for in Regulations 493 dated 15 June 2007 • Excellent facilitation and communication skills in at least two of the three official languages of the Western Cape • A Code B driver's licence • Own transport.

**Added advantages:** • Registration with a recognised relevant engineering professional body • Certificate of competency as required in terms of the General Machinery Regulations, 1988.

**Core functions:** Management of Water Services (including Sanitation); Electrical Services; Roads; Transport Engineering; Storm Water; Solid Waste Management; Development Services and Project Management; Strategic Management in terms of Stellenbosch's Developments Vision; Engineering Innovation; Financial Management; and Human Resource Management.

1. Appointments will be made according to the Council's Employment Equity Plan, which ensures representation of designated groups in the Municipality, including those with disabilities.
2. All applications must be submitted with a detailed CV, **certified copies of qualifications and ID document**, the names of three references from current and previous employers and a **fully completed official application form**, as available from the municipal website or the Human Resources Department, to be couriered to **ODS Consultants CC, c/o PostNet, Shop 3 & 4, 8 High Street, Rosen Park, Tyger Valley 7536**. Administrative enquiries may be directed to Annalene Barnard at tel. 022 772 1307.
3. It would be expected of candidates to be subjected to thorough evaluations and that previous and current employers and references will be contacted. Verification will be done on his/her qualifications, criminal and credit records. The candidate will be required to disclose all financial interests.
4. **ONLY** hardcopy applications will be considered. **No** electronic or faxed applications will be accepted.
5. Appointment is subject to the signing of an employment contract and performance agreement in terms of Section 57 of the Municipal Systems Act. The appointment will be done in accordance with the Regulations on Appointment and Conditions of Employment of Senior Managers.
6. **Job-related enquiries** may be directed to the Acting Municipal Manager, Mr Richard Bosman, on tel. 021 808 8025.

**CLOSING DATE:** 25 April 2016 at 12:00

The Council reserves the right not to make any appointments.

**8.9**

**CHAPTER 3 OF THE REGULATIONS**

**APPENDIX 2**



- (d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

### CHAPTER 3

## RECRUITMENT, SELECTION AND APPOINTMENT

### Principles of recruitment

6. (1) The recruitment, selection and appointment of senior managers must take place in accordance with the municipal systems and procedures contemplated in section 67 of the Act that are consistent with sections 54A, 56, 57A and 72 of the Act.
- (2) A senior manager post must be filled through public advertising, in accordance with the procedures contemplated in regulation 10.
- (3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

### Determination of recruitment needs

7. (1) When the post of a senior manager becomes vacant, or is due to become vacant, the mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such post in its next council meeting or as soon as it is reasonably possible to do so.
- (2) A vacant senior manager post may not be filled, unless—
- approval to fill the post has been granted by the municipal council; and
  - the post has been budgeted for.
- (3) Notwithstanding subregulation (1), the speaker may convene a special meeting to obtain municipal council approval for the filling of a senior manager post.

### General requirements for appointment of senior managers

8. (1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she—
- is a South African citizen or permanent resident; and
  - possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these regulations.
- (2) An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

### Competence requirements for senior managers

9. (1) A person appointed as a senior manager in terms of these regulations must have the competencies as set out in Annexure A.
- (2) A person appointed as a senior manager in terms of these regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B.

**Advertising of vacant posts**

10. (1) The municipal manager must, within 14 days of receipt of the approval referred to in regulation 7, ensure that the vacant post is advertised.
- (2) A vacant senior manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.
- (3) An advertisement for a vacant senior manager post must specify the—
- (a) job title;
  - (b) term of appointment;
  - (c) place to be stationed;
  - (d) annual total remuneration package;
  - (e) competency requirements of the post, including minimum qualifications and experience required;
  - (f) core functions;
  - (g) need for signing of an employment contract, a performance agreement and disclosure of financial interest;
  - (h) the need to undergo security vetting;
  - (i) contact person;
  - (j) address where applications must be sent or delivered; and
  - (k) closing date which must be a minimum of 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.
- (4) A municipality may utilise a recruitment agency to identify candidates for posts: Provided that the advertising, recruitment and selection procedures comply with these regulations.
- (5) The mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must provide monthly reports to the executive committee regarding progress on the filling of the vacant senior manager post.

**Application for vacant post**

11. (1) An application for the vacant post of a senior manager must be submitted on an official application form, attached as Annexure C, accompanied by a detailed curriculum vitae.
- (2) Notwithstanding subregulation (1), a municipality that has on-line application procedures in place may use an on-line application form: Provided that the on-line application form substantially corresponds to the application form in Annexure C, and complies with these regulations.
- (3) An application not made on the official form, as contemplated in subregulations (1) or (2) must not be considered.
- (4) An applicant for a senior manager post must disclose—
- (a) his or her academic qualifications, proven experience and competencies;
  - (b) his or her contactable references;
  - (c) registration with a relevant professional body;
  - (d) full details of any dismissal for misconduct; and
  - (e) any disciplinary actions, whether pending or finalised, instituted against such applicant in his or her current or previous employment.
- (5) Any misrepresentation or failure to disclose information contemplated in subregulation (3) and (4) is a breach of the Code of Conduct for Municipal Staff as provided for in Schedule 2 to the Act and shall be dealt with in terms of the Disciplinary Regulations.

- (6) The municipality must compile and maintain a record of all applications received, which must contain—
- (a) the applicants' biographical details and contact information;
  - (b) the details of the post for which the applicants were applying;
  - (c) the applicants' qualifications; and
  - (d) any other requirements outlined in the application form.

### Selection panel

12. (1) A municipal council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.

(2) In deciding who to appoint to a selection panel, the following considerations must inform the decision:

- (a) the nature of the post;
- (b) the gender balance of the panel; and
- (c) the skills, expertise, experience and availability of the persons to be involved.

(3) The selection panel for the appointment of a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the mayor, who will be the chairperson, or his or her delegate;
- (b) a councillor designated by the municipal council; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(4) The selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the municipal manager, who will be the chairperson;
- (b) a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(5) A panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process.

(6) A panel member contemplated in subregulations (3) and (4) must recuse himself or herself from the selection panel if—

- (a) his or her spouse, partner, close family member or close friend has been shortlisted for the post;
- (b) the panel member has some form of indebtedness to a short-listed candidate or *vice versa*; or
- (c) he or she has any other conflict of interest.

(7) A panel member and staff member must sign a declaration of confidentiality as set out in Annexure D to these regulations, to avert the disclosure of information to unauthorised persons.

(8) A staff member may provide secretarial or advisory services during the selection process, but may not form part of the selection panel.

### Compiling shortlist of applicants

13. (1) A mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, in consultation with the selection panel, must compile—

- (a) a list of all applicants who applied for an advertised post; and

- (b) a shortlist consisting of all applications received for a specific post, evaluated against the relevant competency requirements, as set out in Annexures A and B to these regulations.
- (2) The shortlisting must be finalised within 30 days of the closing date of the advertisement.
- (3) The municipality must keep a record of all the applicants who applied for vacant posts.
- (4) The municipal manager must ensure that the information contained in the applications is kept confidential and stored in a secure site on the municipality's premises.
- (5) The lists contemplated in subregulation (1) must be submitted, together with the shortlisted applications, to the selection panel before the interviews.

#### **Screening of candidates**

- 14. (1)** Screening of the shortlisted candidates must take place within 21 days of the finalisation of the shortlisting by—
- (a) conducting the necessary reference checks;
  - (b) contacting a candidate's current or previous employer;
  - (c) determining the validity of a candidate's qualifications; and
  - (d) verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.
- (2) A written report on the outcome of the screening process must be compiled by the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, before the interviews take place.

#### **Interviews**

- 15. (1)** The selection panel must conduct interviews within 21 days of screening the candidates.
- (2) The selection panel for a specific post must remain the same throughout the screening and interviewing process.
- (3) The selection panel must keep records of every panel member's individual assessment of the interviewed candidates.
- (4) The determination of candidates to be recommended for appointment must be considered by way of consensus between the members of the selection panel.
- (5) If consensus cannot be reached, a dissenting member may record his or her concerns in the minutes, whereafter the issue may be voted upon, with each member of the selection panel entitled to one vote.
- (6) The selection panel must recommend the second and third suitable candidates to minimise delays that may arise in the filling of the post if the first choice candidate declines or does not accept the offer of employment.

#### **Selection**

- 16. (1)** The candidates recommended for appointment to the post of a senior manager must undergo a competency assessment.
- (2) The competency assessment tools must—
- (a) be capable of being applied fairly; and
  - (b) not be biased against any person or group of persons.
- (3) A municipality must provide in its medium term budget, funding for purposes of competency assessment and testing.

(4) Notwithstanding subregulation (3) and upon good cause shown, a municipality encountering cash flow problems may apply to the Local Government Sector Education and Training Authority to make use of the discretionary grants to fund the competency assessment for purposes of filling a vacant senior manager post.

(5) The selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexures A and B, in order of preference.

#### **Resolution of municipal council on appointment of senior managers and reporting**

**17. (1)** Before making a decision on an appointment, a municipal council must satisfy itself that—

- (a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to these regulations;
- (b) screening of the candidates has been conducted in terms of regulation 14; and
- (c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations.

(2) A municipal council must, subject to subregulation (1), take a decision on the appointment of a suitable candidate.

(3) A municipal council must—

- (a) inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and
- (b) within 14 days of the decision referred to in subregulation (2), submit a written report to the MEC for local government regarding the appointment process and outcome.

(4) The report contemplated in subregulation (3)(b) must contain—

- (a) details of the advertisement, including date of issue and the name of newspapers in which the advert was published, and proof of the advertisement or a copy thereof;
- (b) a list of all applicants;
- (c) a report contemplated in regulation 14(2) on the screening process and the outcome thereof;
- (d) the municipal council's resolution approving the selection panel and the shortlisted candidates;
- (e) competency assessment results;
- (f) the minutes of the shortlisting meeting;
- (g) the minutes of interviews, including scoring;
- (h) the recommendations of the selection panel submitted to the municipal council;
- (i) the details of executive committee members and recommendations, if the selection panel comprised of all members of the executive committee;
- (j) the recommendation of the executive committee or executive mayor to the municipal council, if any;
- (k) the municipal council resolution approving the appointment of the successful candidate;
- (l) the application form, curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;
- (m) a written confirmation by the successful candidate that he or she does not hold political office as contemplated in section 56A of the Act, as at the date of appointment;

- (n) the letter of appointment, outlining the term of contract, remuneration and conditions of employment of the senior manager; and
- (o) any other information relevant to the appointment.

#### **Re-employment of dismissed persons**

18. (1) A person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period, as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2.

(2) Subregulation (1) does not apply to a senior manager who has lodged a dispute in terms of applicable legislation.

(3) If a senior manager is dismissed for more than one categories of misconduct as set out in subregulation (1), the periods set out in column 3 of the table attached as Schedule 2, run concurrently.

(4) For purposes of subregulation (1), a person dismissed for misconduct is prohibited from re-employment in any municipality for a period as set out in column 3 of Schedule 2 in respect of such category of misconduct calculated from the date of dismissal or conviction.

(5) Any senior manager who has been dismissed for any misconduct other than the categories of misconduct as set out in column 2 of the table attached as Schedule 2 may not be subjected to a waiting period before such a staff member may be re-employed in a municipality.

(6) A municipality must maintain a record of staff members dismissed for misconduct and staff members who resigned prior to the finalisation of any disciplinary proceedings.

(7) A record contemplated in subregulation (6) must be submitted within 14 days of such dismissal or resignation to the MEC for local government and the Minister.

(8) The record contemplated in subregulation (6) must include the following information:

- (a) The name and surname of the staff member;
- (b) the name of municipality;
- (c) the post title; and
- (d) the nature of the misconduct, including—
  - (i) the date of suspension, if applicable;
  - (ii) the conditions of suspension;
  - (iii) the date of commencement of the disciplinary hearing;
  - (iv) information regarding any pre-dismissal arbitration;
  - (v) the finding and category of misconduct;
  - (vi) the date on which the misconduct was referred for arbitration;
  - (vii) costs incurred by the municipality towards the finalisation of the disciplinary case;
  - (viii) the date of resignation or dismissal of the senior manager; and
  - (ix) whether the dismissal has been appealed and the status of the appeal, if applicable.

#### **Re-advertisement of posts**

19. (1) If no suitable candidate has been identified, the municipal council—
- (a) must inform all shortlisted candidates that their applications were unsuccessful; and
  - (b) may re-advertise the post.

**Secondment**

20. (1) If a person is seconded to a municipality to act as a municipal manager in terms of section 54A(6) of the Act, an agreement must be entered into between the relevant seconding authority and receiving municipality.

(2) The agreement contemplated in subregulation (1) must specify—

- (a) the duration of the secondment;
- (b) the party responsible for the costs of the secondment; and
- (c) the job description of the seconded official.

(3) Notwithstanding subregulation (4), the cost of secondment must be borne by the receiving municipality, taking into consideration the financial capacity of the municipality.

(4) A person seconded in terms of subregulation (1) must report monthly to the MEC or the Minister, in terms of section 54A(6), on the following:

- (a) steps taken to fill the vacant post to which he or she is seconded;
- (b) the development and implementation of any municipal institutional recovery plan for which the seconded official is responsible;
- (c) monitor and assess the adherence to policy, principles and frameworks applicable to the municipality;
- (d) develop a turnaround strategy for the municipality including a strategy to promote good governance;
- (e) ensure implementation of municipal council resolutions by the administration;
- (f) implement a system to control and approve all expenditure;
- (g) implement all governance systems and procedures; and
- (h) ensure implementation of financial systems, policies and procedures.

(5) A person seconded in terms of subregulation (1) must—

- (a) be paid an allowance equal to the difference between the seconded official's current salary and the minimum budgeted salary of the position that the seconded official acts in; and
- (b) be compensated for subsistence and travel incurred during the course and scope of his or her duties, in accordance with the relevant policy of the municipality.

**CHAPTER 4****CONDITIONS OF EMPLOYMENT****Ordinary hours of work**

21. (1) Except as otherwise provided, a senior manager's ordinary hours of work must be stipulated in the employment contract and be in accordance with the operational requirements of the municipality.

(2) Notwithstanding subregulation (1) a senior manager must work at least 40 ordinary hours per week from Monday to Friday.

**Overtime**

22. A senior manager may be required to work overtime without additional remuneration.

**8.9**

**PREFERRED CANDIDATE:  
LETTER OF WITHDRAWAL**

**APPENDIX 3**



**Richard Bosman**

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**From:** Richard Bosman  
**Sent:** 24 July 2016 08:48 PM  
**To:** 'Heinrich Mettler'  
**Subject:** RE: RE; EMPLOYMENT SITUATION

Good day Heinrich

Thank you for the email and your honesty regarding the situation you find yourself in

The communication is appreciated

I will inform the Executive Mayor tomorrow morning

Kind regards

Richard

**From:** Heinrich Mettler [mailto:heinrich.mettler@gmail.com]  
**Sent:** 24 July 2016 11:21 AM  
**To:** Richard Bosman  
**Subject:** Re: RE; EMPLOYMENT SITUATION

Hi Richard

Pertaining to the employment offer: Director Engineering @ Stellenbosch:

Please be advised that due to personal reasons I have to withdraw from the process. Please relay my apologies to the Council and Management.

I wish you and the Municipality success

Heinrich Mettler

On Fri, Jul 8, 2016 at 7:08 AM, Richard Bosman <[Richard.Bosman@stellenbosch.gov.za](mailto:Richard.Bosman@stellenbosch.gov.za)> wrote:

Thanks Heinrich

Will convey to the colleagues

**From:** Heinrich Mettler [mailto:[heinrich.mettler@gmail.com](mailto:heinrich.mettler@gmail.com)]  
**Sent:** 07 July 2016 09:00 AM  
**To:** Richard Bosman  
**Subject:** Re: RE; EMPLOYMENT SITUATION

Municipality - Munisipaliteit  
Stellenbosch  
19 AUG 2016  
Office of the Municipal Manager  
Kantoor van die Munisipale Bestuurder