STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/2/5

2019-07-05

MAYORAL COMMITTEE MEETING

WEDNESDAY, 2019-07-10 AT 10:00

TO The Executive Mayor, Ald G Van Deventer (Ms)

The Deputy Executive Mayor, Cllr N Jindela

COUNCILLORS P Crawley (Ms)

AR Frazenburg

E Groenewald (Ms)

XL Mdemka (Ms)

S Peters

M Pietersen

Q Smit

Notice is hereby given that a Mayoral Committee Meeting will be held in the Council Chamber, Town House, Plein Street, Stellenbosch on **Wednesday, 2019-07-10 at 10:00** to consider the attached agenda.

EXECUTIVE MAYOR, ALD GM VAN DEVENTER (MS)

CHAIRPERSON

AGENDA

MAYORAL COMMITTEE MEETING

2019-07-10

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APPENDIX 1

Confirmation of Minutes: Mayoral Committee Meeting: 2019-05-21

STELLENBOSCH
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MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/2/5

2019-05-21

MINUTES

MAYORAL COMMITTEE MEETING:

2019-05-21 AT 10:00

M I N U T E S

MAYORAL COMMITTEE MEETING

2019-05-21

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PRESENT: Executive Mayor, Ald GM Van Deventer (Ms) **(Chairperson)**

Councillors: PR Crawley (Ms)
A Frazenburg
E Groenewald (Ms)
XL Mdemka (Ms)
S Peters
M Pietersen
Q Smit

Also Present: Councillor FJ Badenhorst
Alderman PW Biscombe (Chief Whip)
Cllr WC Petersen (Ms) (Speaker)
Alderman J Serdyn (Ms)

Officials: Municipal Manager (G Mettler (Ms))
Chief Financial Officer (K Carolus)
Director: Community and Protection Services (G Boshoff)
Director: Infrastructure Services (D Louw)
Director: Corporate Services (A de Beer (Ms))
Acting Director: Planning and Economic Development (W Moses)
Manager: Land Use Management (H Dednam (Ms))
Manager: Secretariat (EJ Potts)
Senior Administration Officer (T Samuels (Ms))
Committee Clerk (N Mbali (Ms))
Interpreter (J Tyatyeka)

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1.	**OPENING AND WELCOME**

The Executive Mayor welcomed everyone present.

2.	**COMMUNICATION BY THE CHAIRPERSON**

"Goeiemore, Good Morning, Molweni, A-salaam Alaikum.

- Verkiesings is uiteindelik verby! Dankie aan al die inwoners wat die gure weer op stemdag getrotseer het om hul demokratiese reg uit te oefen.
- Baie geluk dan ook aan die nuwe inkomende Premier, Mnr Alan Winde.
- Die nuwe provinsiale kabinet word, na verwagting, die week aangekondig en ons sien uit na die voorsetting van die goeie verhoudings wat ons met al die departemente opgebou het.
- Een van ons raadslede is verkies tot Nasionale Parlement:
- Burgemeesterskomiteelede: Raadslid Jan De Villiers
- Een raadslid tot Provinsiale Parlement: Raadslid Ntombezanele Bakubaku-Vos (Ms)
- Baie geluk aan hierdie Raadslede!

- A massive congratulations also goes out to Stellenbosch FC!
- Our local soccer team has become the pride of the broader Stellenbosch by winning the National First Division Championship.
- By winning, they also qualified to take part in the Premier League next season.
- This is a tremendous accomplishment for our local soccer team!
- They now form part of the top division of South African teams in the country and they will have the opportunity to participate at that level.
- I also attended a team practice before their final game, and I was so inspired by this team of young, local players.
- Congratulations, and we are looking forward to the new season, as well as the PSL games that will now be played locally!
- Verlede week het Rietenbosch Primêre Skool vir ou laas, uitgaande Premier, Helen Zille, ontvang by die skool.
- Ek het die voorreg gehad om ook die geleentheid by te woon.
- Dit was ‘n wonderlike geleentheid en die gemeenskap het ook die Premier bedank vir haar 10 jaar van diens aan die provinsie.
- ‘n Ikoon van Stellenbosch, Oom Samie se Winkel, het gisteraand ‘n geleentheid gehad om die 115de bestaansjaar van die ikoniese landmerk te vier.
- Oom Samie se winkel is ‘n instelling wat daagliks deur inwoners en toeriste besoek word en is ‘n herinnering aan ‘n tyd van lank gelede.
- Baie geluk met die 115de bestaansjaar! Mag daar nog baie jare wees waar u ons herinner en inspireer met items en artikels uit die verlede.

3.	**OFFICIAL NOTICES**

3.1	**DISCLOSURE OF INTERESTS**

NONE

3.2	**APPLICATIONS FOR LEAVE OF ABSENCE**

The following applications for leave were approved in terms of the Rules of Order of Council:-

Deputy Executive Mayor, Cllr N Jindela – 2019-05-21
Director: Planning and Economic Development: Mr T Mfeya – 2019-05-21

4.	**CONFIRMATION OF PREVIOUS MINUTES**

4.1 The minutes of the Mayoral Committee Meeting held on 2019-04-16 were **confirmed as correct.**

5.	STATUTORY MATTERS

5.1	APPROVAL OF THE FINAL SECOND REVIEW OF THE FOURTH GENERATION IDP 2017 – 2022

Collaborator No: ***643969***
IDP KPA Ref No: ***Good Governance and Compliance***
Meeting Date: **Mayco 21** ***May 2019 and Council 29 May 2019***

1. SUBJECT: APPROVAL OF THE FINAL SECOND REVIEW OF THE FOURTH GENERATION IDP 2017 – 2022

2. PURPOSE

To submit the following to Mayco and Council for consideration:

(a) The Final Second Review of the 2017 – 2022 Fourth Generation Integrated Development Plan (IDP), attached as **APPENDIX 1;** and

(b) The public participation inputs, written submissions and Provincial Government LGMTEC findings on the Draft Second Review of the 2017 - 2022
Fourth Generation IDP, attached as **APPENDIX 2.**

3. DELEGATED AUTHORITY

For approval by the Municipal Council.

4. LEGISLATIVE CONTEXT

In terms of Section 34 of the Local Government: Municipal Systems Act No 32 of 2000 (MSA) prescribes that the Municipal Council:–

"(A) must review its Integrated Development Plan-

(i) annually in accordance with an assessment of its performance measurements in terms of section 41; and

(ii) to the extent that changing circumstances so demand".

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 5.1

(a) that the Stellenbosch Municipality's final Second Review of the 2017 – 2022 Fourth Generation Integrated Development Plan (IDP), attached as **APPENDIX 1,** be adopted;

(b) that the public participation inputs and written submissions on the Draft Second Review of the 2017 – 2022 Fourth Generation Integrated Development Plan (IDP) attached as **APPENDIX 2**, be noted; and

(c) that an advertisement be placed on the official website of the Municipality, municipal notice boards and in the local newspapers notifying the public that the final Second Review of the Fourth Generation IDP 2017 – 2022 has been adopted by Council.

NAME	Shireen de Visser
POSITION	Senior Manager Governance
DIRECTORATE	Office of the Municipal Manager
CONTACT NUMBERS	021 – 808 8035
E-MAIL ADDRESS	Shireen.devisser@stellenbosch.gov.za
REPORT DATE	9 May 2019

5.2	MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK 2019/2020-2021/2022

Collaborator No:
IDP KPA Ref No: ***Good Governance and Compliance***
Meeting Date: **Mayco 21** ***May 2019 and Council 29 May 2019***

1. SUBJECT: MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK 2019/2020-2021/2022

2. PURPOSE

The purpose of this report is three fold:-

a) To consider the views/submissions of the local community in terms of Section 23(1)(a) of the Municipal Finance Management Act (Act 56 of 2003), herein after called the MFMA and to allow the Executive Mayor to respond to the views of the public as envisaged in terms of Section 23 (2) (a) and (b).

b) To approve the Medium Term Revenue and Expenditure Framework for 2019-2022, the prescribed appendices, property tax increases, tariffs and tariff structures and revisions to the Budget and related Policies (where appropriate) in terms of Section 17 (1) – (3) of the MFMA (Act 56 of 2003); and

c) That Council specifically note and consider the need to take up external loans to fund critically needed refurbishment of infrastructure to the amount of R 380 million of which over the MTREF R160 million will be required in year 1, R120 million in year 2 and R100 million in year 3 (refer to Section G: High Level Budget Overview and Table A1 Budget Summary) and confirms final approval of same in order for the Chief Financial Officer to attend to the necessary legislative requirements.

3. DELEGATED AUTHORITY

FOR APPROVAL BY MUNICIPAL COUNCIL

4. EXECUTIVE SUMMARY

Attached as **APPENDIX 1** is an executive summary by the Accounting Officer.

MAYORAL COMMITTEE MEETING: 2019-05-21: ITEM 5.2

The following addendums were handed out in the meeting for inclusion in the Council Agenda:

That **PAGE 2** of the Tariff Book (**APPENDIX 3**) be replaced with the page attached.

That **APPENDIX 2** of the Medium Term Revenue and Expenditure Framework be replaced with the attached pages.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 5.2

(a) that the High Level Budget Summary, as set out in **APPENDIX 1** – PART 1 – SECTION C; be approved;

(b) that the Annual Budget Tables as prescribed by the Budgeting and Reporting Regulations, as set out in **APPENDIX 1** – PART 1 – SECTION D, be approved;

(c) that the proposed Grants-In-Aid allocations as set out in **APPENDIX 1** – PART 2 – SECTION J, be approved;

(d) that the three year Capital Budget for 2019/2020, 2020/2021 and 2021/2022, as set out in **APPENDIX 1** – PART 2 – SECTION N, be approved;

(e) that in terms of MFMA Section 19 and Municipal Budget Reporting (MBRR) Regulations 13, projects above a prescribed value set at R50 million, as set in **APPENDIX 1**- PART 1- SECTION B; be individually approved;

(f) that the proposed rates on properties in WCO24, tariffs, tariff structures and service charges for water, electricity, refuse, sewerage and other municipal services, as set out in **APPENDIX 3** , be approved;

(g) that the proposed amendments to existing budget-related policies and other policies as set out in **APPENDICES 4 - 30**, be approved;

(h) that Council specifically notes and considers the need to take up an external loan needed for investment in income-generating infrastructure to the amount of R380 million, of which R160 million will be required in year 1, R120 million in year 2 and R100 million in year 3 (refer to Section G: High Level Budget Overview and Table A1 Budget Summary) and confirm approval of same;

(i) that Council specifically takes note of the fact that the proposed electricity charges and tariff structure is subject to NERSA approval that could change materially;

(j) that Council takes note of MFMA circulars 93 and 94 that were published to guide the MTREF for 2019/2020 to 2021/2022 as set out in **APPENDICES 31 – 32**; and

(k) that Council takes note that the public comments and submissions were taken into account in the compilation of the final budget.

FOR FURTHER DETAILS CONTACT:

NAME	**KEVIN CAROLUS**
POSITION	***CHIEF FINANCIAL OFFICER***
DIRECTORATE	***FINANCIAL SERVICES***
CONTACT NUMBERS	***021 808 8528***
E-MAIL ADDRESS	***kevin.carolus@stellenbosch.gov.za***
REPORT DATE	***29 May 2019***

6.	**REPORT/S BY THE MUNICIPAL MANAGER RE OUTSTANDING RESOLUTIONS TAKEN AT PREVIOUS MAYORAL COMMITTEE MEETINGS**

NONE

7.	**CONSIDERATION OF ITEMS BY THE EXECUTIVE MAYOR: [ALD G VAN DEVENTER (MS)]**

7.1	**COMMUNITY AND PROTECTION SERVICES: : (PC: CLLR Q SMIT)**

7.1.1	**STELLENBOSCH MUNICIPALITY CLOSED CIRCUIT TELEVISION POLICY**

Collaborator No:
IDP KPA Ref No: **Safest valley**
Meeting Date: **21 May 2019**

1. SUBJECT: STELLENBOSCH MUNICIPALITY CLOSED CIRCUIT TELEVISION POLICY

2. PURPOSE

To submit the Stellenbosch Municipality Closed Circuit Television (CCTV) Policy to Council for approval.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

This policy has been drafted to ensure that Stellenbosch Municipality, its employees and contractors, comply with good practice, transparency and accountability in respect of the requirements of The Protection of Personal Information Act, Act No.4 of 2013, when operating Council CCTV and LPR cameras.

It also outlines the process for managing all access to CCTV and LPR data, the delegated authorities of municipal staff and municipal obligations in regard to CCTV and LPR data storage, security and signage.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.1.1

(a) that Council notes that no public comments were received for consideration; and

(b) that Council approves the Stellenbosch Municipality Closed Circuit Television Policy.

FOR FURTHER DETAILS CONTACT:

NAME	**Neville Langenhoven**
POSITION	
DIRECTORATE	***COMMUNITY & PROTECTION SERVICES***
CONTACT NUMBERS	***X8497***
E-MAIL ADDRESS	***Neville.langenhoven@stellenbosch.gov.za***
REPORT DATE	***25 March 2019***

7.2	CORPORATE SERVICES: (PC: CLLR AR FRAZENBURG)

7.2.1	APPLICATION TO ACQUIRE AN ADDITIONAL PORTION OF LAND FOR THE PURPOSE OF EXTENDING THE CLINIC IN KLAPMUTS: CORRECTION OF PROPERTY DESCRIPTION

Collaborator No:

IDP KPA Ref No: ***Good Governance***

Meeting Date: **21 May 2019 and 29 May 2019 Council meeting**

1. SUBJECT: APPLICATION TO ACQUIRE AN ADDITIONAL PORTION OF LAND FOR THE PURPOSE OF EXTENDING THE CLINIC IN KLAPMUTS: CORRECTION OF PROPERTY DESCRIPTION

2. PURPOSE

To amend the previous Council resolution in order to rectify the property description.

3. DELEGATED AUTHORITY

For decision by Municipal Council.

4. EXECUTIVE SUMMARY

On 2017-09-27 Council considered a request from the Provincial Government for an additional portion of land in Klapmuts, to enable them to enlarge the current Clinic in Klapmuts.

Although Council approved the donation of a portion of land, measuring approximately 2272 m² in extent, it has now been brought to our attention that the property description is incorrect, as it only refers to a portion of erf 342, whilst it should have referred to a portion of erf 342 and the remainder portion of erf 1331 (crèche area).

Council must amend their previous decision to include both portions of land, as was the initial idea.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.2.1

that the decision taken by Council on 2017-09-27 (12th Council meeting, item 7.5.1) regarding the disposal/donation of a portion of erf 342 be rescinded and replaced with the following:

a) that a portion of erf 342 and Remainder portion of erf 1331, as indicated on Fig 2, measuring 2272m² in extent, be identified as land not needed to provide the minimum level of basic municipal services;

b) that, seeing that the provision of a new clinic for the area is of critical importance, and seeing that the land in question was donated to Stellenbosch Municipality by the Provincial Housing Board in 1972, the land be made available to the Provincial Government free of charge;

a) that approval be granted that the land, as indicated in figure 2, be transferred to the Western Cape Government (Chief Directorate Property Management) for the purpose of constructing a health facility, on condition that the Provincial Government of the Western Cape:

(i) be responsible for all costs related to the transfer of the land, including, but not limited to survey and legal costs;

(ii) be responsible for the subdivision and rezoning cost;

(iii) be responsible for the upgrading of bulk infrastructure, should the need arise, and for making a contribution towards the Bulk Infrastructure Fund, as per the approved tariff structure at the time of approval of the site development plan;

(iv) be responsible for all service connections at the prevailing rates;

b) that the Provincial Government be given occupancy of the land with immediate effect, to enable them to attend to planning/building plan approval(s); and

c) that the Municipal Manager be authorised to sign the Deed of Donation and all documents necessary to effect the transfer of the property.

FOR FURTHER DETAILS CONTACT:

NAME	**Piet Smit**
POSITION	***Manager: Property Management***
DIRECTORATE	***Corporate Services***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2019-04-12***

7.2.2	PROPOSED DISPOSAL OF ERF 347, LE ROUX (GROENDAL)

Collaborator No:
IDP KPA Ref No: **Good Governance**
Meeting Date: **21 May 2019**

1. SUBJECT: PROPOSED DISPOSAL OF ERF 347, LE ROUX (GROENDAL)

2. PURPOSE

To obtain the necessary approval/authorisation to dispose of erf 347, Le Roux, Groendal.

3. DELEGATED AUTHORITY

Council must consider the matter.

4. EXECUTIVE SUMMARY

Erf 347, Le Roux (Groendal) has been identified as surplus to the municipality's own needs, i.e. the municipality does not require the property to provide the minimum level of basic municipal services.

For this reason Council is requested to authorise the disposal of this property by way of a Call for Proposal.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.2.2

(a) that Erf 347, Le Roux (Groendal) be identified as land not needed to provide the minimum level of basic municipal services, i.e. that it can be disposed of in principle;

(b) that Council resolves to dispose of the property by going out on a Call for Proposal, soliciting proposals to develop the land for high density gap housing opportunities; ensuring optimal use of the land, and thereby creating more opportunities for residents of the area. This may include apartments, flats or town houses of different typologies;

(c) that the market value of the property be determined by two independent valuators and be taken into consideration in the SCM determination and reported to Council when the item is tabled for final consideration as indicated in (d) below; and

(d) that, following the supply chain process, the matter be brought back to Council for a final decision on whether to dispose of the property under the conditions set in the supply chain process.

FOR FURTHER DETAILS CONTACT:

NAME	**Piet Smit**
POSITION	***Manager: Property Management***
DIRECTORATE	***Corporate Services***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2018-08-21***

7.2.3	ERF 13246, STELLENBOSCH: DUTCH REFORM CHURCH: WELGELEGEN: APPLICATION TO ENFORCE FALL-BACK CLAUSE

Collaborator No:
IDP KPA Ref No: ***Good Governance***
Meeting Date: **21 May 2019**

1. SUBJECT: ERF 13246, STELLENBOSCH: DUTCH REFORM CHURCH: WELGELEGEN: APPLICATION TO ENFORCE FALL-BACK CLAUSE

2. PURPOSE

To obtain Council's approval for the enforcement of the fall-back clause in the Exchange of Land Agreement 12 May 1995 and to decide on the market value of the land.

3. DELEGATED AUTHORITY

For decision by Council.

4. EXECUTIVE SUMMARY

Stellenbosch Municipality and the Dutch Reform Church: Welgelegen concluded an Exchange of Land Agreement in 1995 in terms whereof erf 13246, Stellenbosch (municipal land) was exchanged for two residential erven in Die Boord, being erven 12758 and 12759 (church land) on an equal in value basis. The Agreement, however, has a fall-back clause, indicating that the land must be transferred back to the Municipality should it no longer ne needed for church purposes. Seeing that the Dutch Reform Church: Welgelegen does not want to use the property for church purposes (due to the stabilisation of members) they have requested that the fall-back clause be enforced, as per the Agreement. Council must agree on the basis of compensation, as per the Agreement.

MAYORAL COMMITTEE MEETING: 2019-05-21: ITEM 7.2.3

RESOLVED

that this matter be referred back to allow the Administration to obtain additional information, whereafter same be resubmitted to Mayco for recommendation to Council.

FOR FURTHER DETAILS CONTACT:

NAME	**PIET SMIT**
POSITION	***Manager: Property Management***
DIRECTORATE	***Corporate Services***
CONTACT NUMBERS	***021-8088750***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2019-04-02***

7.3	FINANCIAL SERVICES: (PC: CLLR P CRAWLEY (MS))

NONE

7.4	HUMAN SETTLEMENTS: (PC: CLLR N JINDELA)

NONE

7.5	INFRASTRUCTURE SERVICES: (PC: CLLR Q SMIT)

7.5.1	REPLACEMENT OF EXISTING PIPE SYSTEMS EMPLOYING CONVENTIONAL AND SPECIALISED TRENCHLESS CONSTRUCTION TECHNOLOGY IN THE STELLENBOSCH MUNICIPAL AREA, FOR A CONTRACT PERIOD ENDING 30 JUNE 2019

Collaborator No: **642474**
IDP KPA Ref No: **Good Governance and Compliance**
Meeting Date: **21 May 2019**

1. SUBJECT: REPLACEMENT OF EXISTING PIPE SYSTEMS EMPLOYING CONVENTIONAL AND SPECIALISED TRENCHLESS CONSTRUCTION TECHNOLOGY IN THE STELLENBOSCH MUNICIPAL AREA, FOR A CONTRACT PERIOD ENDING 30 JUNE 2019

2. PURPOSE

To obtain the necessary approval for the intended amendment of the contract for the replacement of existing pipe systems.

3. DELEGATED AUTHORITY

MUNICIPAL COUNCIL.

4. EXECUTIVE SUMMARY

BSM 67/17 was awarded in the 2017/18 financial year as a rate tender for a three (3) year contract period. At the time of the tender award, the total estimated value was capped on R10 million. This estimated amount was far too low for the three year period. The directorate wishes to remove this threshold in order to stay compliant with its expected expenditure on the contract, minimize water losses and provide continued service delivery in light of the recent water scarcity.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.5.1

(a) that Council notes in terms of MFMA Section 116(3) the reasons for the increase of the capped amount;

(b) that the tender amount (B/SM 67/17) for the construction of civil services be allowed to exceed R10 million until 30 June 2019;

(c) that Council gives reasonable notice of the intention to amend the contract or agreement in terms of Section 116(3) (b)(i);

(d) that the local community be invited to submit representations to the Municipality in terms of Section 116 (3)(b)(ii); and

(e) that a new tender process for the replacement of existing pipe systems employing conventional and specialised trenchless construction technology in the Stellenbosch municipal area be initiated during July 2019.

FOR FURTHER DETAILS CONTACT:

NAME	Deon Louw
POSITION	***Director***
DIRECTORATE	***Infrastructure Services***
CONTACT NUMBERS	***021 808 8213***
E-MAIL ADDRESS	***Deon.louw@stellenbosch.gov.za***
REPORT DATE	***18 March 2019***

7.6	PARKS, OPEN SPACES AND ENVIRONMENT: (PC: XL MDEMKA (MS))

7.6.1	PARADYSKLOOF NATURE AREA ENVIRONMENTAL MANAGEMENT PLAN

Collaborator No: 640919
IDP KPA Ref No: D 435
Meeting Date: 2019-05-21

1. SUBJECT: PARADYSKLOOF NATURE AREA ENVIRONMENTAL MANAGEMENT PLAN

2. PURPOSE

To present the Paradyskloof Nature Area Environmental Management Plan for Council approval.

The Paradyskloof Nature Area Environmental Management Plan (EMP) (**ANNEXURE A**) has been prepared to establish a distinct vision and overarching goal for the management of the Paradyskloof Nature Area in context off, and giving effect to, the relevant legislation and associated regulations. Following the Council Resolution of 2018-10-31, referred to in section 6.6 below, this document was advertised for public comment for a period of 60 days between December 2018 and January 2019 (**ANNEXURE B**). Comment received during this period (**ANNEXURE C**) has been considered and various amendments made (**ANNEXURE D**) culminating in the above document herewith presented to Council for approval.

3. DELEGATED AUTHORITY

For decision by the Council of Stellenbosch Municipality (the Municipality).

4. EXECUTIVE SUMMARY

Paradyskloof Nature Area (NA), an approximately 550 ha area consisting of Portion 2 of Farm 368 and portions of Farms 369 and 366 (municipal property), is situated on the south-eastern edge of Stellenbosch town above the neighbourhoods of Brandwacht and Paradyskloof. Most of the area (with specific reference to the northern and eastern mountainous area) is in a natural state with ±40 ha of mature pine still left within the old forestry area. The vegetation type of Paradyskloof NA is Cape Winelands Shale Fynbos and is a vulnerable terrestrial ecosystem

The area is currently used for a range of outdoor recreational activities, research, events as well as for service delivery purposes. With regards to the latter a number of municipal infrastructure, including a water treatment works and reservoir, is located within the above area. Recently the clubhouse within the Paradyskloof NA has been refurbished by the Municipality.

Because of the area's ecological value, its value as public resource and its vulnerability to degradation due to past and present use it is important that an overarching management plan for the area be put in place to ensure that the Paradyskloof NA is managed in a sustainable manner. The proposed Paradyskloof NA EMP is to serve this purpose.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.6.1

that Council approves the Paradyskloof Nature Area Environmental Management Plan (March 2019) as the document to guide the management of the Paradyskloof Nature Area.

FOR FURTHER DETAILS CONTACT:

NAME	***Schalk van der Merwe***
POSITION	***Environmental Planner***
DIRECTORATE	***Community and Protection Services***
CONTACT NUMBERS	***021 808 8679***
E-MAIL ADDRESS	***schalk.vandermerwe@stellenbosch.gov.za***

7.6.2	USE OF PUBLIC OPEN SPACE (ERF 3931) AND PLAYGROUND AT UNIEPARK (ERF 3363) REQUESTING FOR THE CONSTRUCTION OF A MOUNTAIN BIKE CYCLING PATH AND JUNIOR CYCLING TRACK IN THE PLAY PARK IN UNIEPARK

Collaborator No: 632965
IDP KPA Ref No:
Meeting Date: 2019-05-21

1. SUBJECT: USE OF PUBLIC OPEN SPACE (ERF 3931) AND PLAYGROUND AT UNIEPARK (ERF 3363) REQUESTING FOR THE CONSTRUCTION OF A MOUNTAIN BIKE CYCLING PATH AND JUNIOR CYCLING TRACK IN THE PLAY PARK IN UNIEPARK

2. PURPOSE

2.1 To inform Council about a request received from a group of residents to construct a mountain bike cycling path and junior cycling track in Uniepark.

2.2 To request Council to accept the recommendations by the Department Community Services, namely that the request for the construction of a mountain bike cycling track and junior cycling track in the play park in Uniepark not be approved.

2.3 That permission be granted to construct a junior cycling track on the area as indicated in **ANNEXURE E**.

3. DELEGATED AUTHORITY

Municipal Council

4. EXECUTIVE SUMMARY

A request was received from a group of residents to construct a mountain cycling path and junior cycling track in Uniepark (See **ANNEXURE A**). This request is supported by a group of residents via their signatures. However, when other residents became aware of the application, objections were received against the construction of a mountain cycling path and junior cycling track in Uniepark (See **ANNEXURE B**).

Council needs to take note that during 2010, an investigation was completed for the development of an Arboretum on the same park. A Landscape Architect was appointed to design a layout of the Arboretum. A public participation process was followed and based on the outcome of this process, a decision was taken to proceed with the development of the Arboretum. **ANNEXURE C** is a layout plan of the Uniepark Arboretum. Two of the five proposed blocks have already been planted with trees.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.6.2

(a) that the application for the construction of a mountain bike cycling path and junior cycling track in the play park in Uniepark not be approved; and

(b) that approval be granted for the construction of a junior cycling track in the area east of the play park in Uniepark, between the pine trees (See **ANNEXURE E**).

FOR FURTHER DETAILS CONTACT:

NAME	Albert van der Merwe
POSITION	***Manager: Community Services***
DIRECTORATE	***Community and Protection Services***
CONTACT NUMBERS	***021 808 8161***
E-MAIL ADDRESS	***albert.vandermerwe@stellenbosch .gov.za***
REPORT DATE	***April 2019***

7.7	PLANNING AND ECONOMIC DEVELOPMENT: (PC:CLLR E GROENEWALD (MS)

7.7.1	DRAFT LAND USE ENFORCEMENT POLICY FOR STELLENBOSCH MUNICIPALITY , MARCH 2019

Collaborator No: 643770
IDP KPA Ref No:
Meeting Date: 2019-05-21

1. SUBJECT: DRAFT LAND USE ENFORCEMENT POLICY FOR STELLENBOSCH MUNICIPALITY, MARCH 2019

2. PURPOSE

To request Council's approval for public consultation of the draft Land Use Enforcement Policy for Stellenbosch Municipality, March 2019, attached as **APPENDIX 1**.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

The increased number of land use complaints within the district of Stellenbosch Municipality, necessitated the formulation of the Land Use Enforcement Inspectorate, within Land Use Management. The positions within the Land Use Inspectorate include the following positions:

- Senior Land Use Inspector (x2)
- Land Use Inspector (x2)
- Administrative Officer (x2)

Once the unit was formed it became clear that identifiable processes and procedures were required, in order to ensure effective and efficient land use enforcement methods. The formulation and approval of a Land Use Enforcement Policy will set the standard for uniformity when these enforcement methods are applied.

MAYORAL COMMITTEE MEETING: 2019-05-21: ITEM 7.7.1

During deliberations on the matter, the following amendments were proposed and included on the Land Use Enforcement Policy:

Section 3: Complaints Process 3.1.1 (c) (Page 6 of 15)

Where it reads: "a formal letter must be faxed for the attention….." as mentioned in (c), additional methods of delivery were added.

Table 1: Land Use Contravention Category (Page 14 of 15)

Added a paragraph on air pollution and noise related matters (including reference to the applicable legislation).

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.7.1

(a) that the draft Land Use Enforcement Policy for Stellenbosch Municipality, March 2019, be approved in principle; and

(b) that the Land Use Enforcement Policy for Stellenbosch Municipality, March 2019, be advertised for public comment for a period of 60 days, whereafter same be submitted to Council for final consideration and subsequent adoption in terms of the Local Government Municipal Systems Act No. 32 of 2000.

FOR FURTHER DETAILS CONTACT:

NAME	Errol Williams
POSITION	***Senior Land Use Inspector***
DIRECTORATE	***PLANNING and ECONOMIC DEVELOPMENT SERVICES***
CONTACT NUMBERS	***021 - 808 8688***
E-MAIL ADDRESS	***Errol.Williams@stellenbosch.gov.za***
REPORT DATE	***021 808 8688***

7.7.2	RECOMMENDATION AND FINDING IN RESPECT OF THE APPOINTMENT OF EXTERNAL MUNICIPAL PLANNING TRIBUNAL MEMBERS AS DETERMINED BY THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015)

Collaborator No: 644889
IDP KPA Ref No: Good Governance and Compliance
Meeting Date: 21 May 2019 (Mayco) and 29 May 2019 (Council)

1. SUBJECT: RECOMMENDATION AND FINDING IN RESPECT OF THE APPOINTMENT OF EXTERNAL MUNICIPAL PLANNING TRIBUNAL MEMBERS AS DETERMINED BY THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015)

2. PURPOSE

To obtain the approval from Council by accepting the appointment of external Municipal Planning Tribunal members for a maximum period as determined by Council in terms of the Stellenbosch Municipal Land Use Planning By-law (2015) (herein after referred to as "the By-law").

3. DELEGATED AUTHORITY

For decision by Council.

In terms of the Stellenbosch Municipality Land Use Planning By-law 2015; the Spatial Planning Land Use Management Act No 16 of 2013 [SPLUMA] and the Western Cape Land Use Planning Act No 3 of 2014 [LUPA], as well as regulations governing these pieces of legislation (SPLUMA/LUPA).

4. EXECUTIVE SUMMARY

In terms of Section 70(1) of Stellenbosch Municipality Land Use Planning By-law (2015), read with Section 35 (1) of SPLUMA, the Municipality must establish a Municipal Planning Tribunal to consider and decide on land use applications made in terms of the By-law.

Council resolved, per item 8.6 on 27 May 2015 that the term of office for the current Stellenbosch MPT shall be a period of three years which period came to an end on 1 March 2019. Subsequently Council resolved, per item 8.6 on 25 November 2015 to appoint external Municipal Planning Tribunal members as recommended by the evaluation panel for the three year period referred to above. Council recently resolved, per item 8.2.2 on 27 February 2019 to extend the term of office of the current Municipal Planning Tribunal for a further period of four months until 1 July 2019.

On 27 March 2019 Council resolved that the invitation and call for nominations in terms of Section 72 (1)*(b)* of the By-law of suitably experienced and qualified external professionals to serve as members of the Municipal Planning Tribunal in terms of the provisions of the Stellenbosch Municipal Land Use Planning By-law (2015) be approved (attached as **ANNEXURE F**).

In line with the above, adverts were placed in various local and regional newspapers on 4 April 2019, calling on nominations of suitably experienced and qualified professionals to serve on the Municipal Planning Tribunal. These adverts were placed on the Stellenbosch Municipal Website and in the following newspapers:

- Eikestadnuus
- Paarl Post
- Die Burger
- Cape Times

In total 21 nominations were received, which are attached as **ANNEXURE A**. The purpose of this report is to make recommendations to Council.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.7.2

(a) that the nominations made by the evaluation panel for the commencement of appointment for the following external Municipal Planning Tribunal Members be accepted as:

- Christine Havenga
- Jason Michael Juries
- Hedwig Crooijmans-Lemmer
- Dr Daniël Jakobus Du Plessis
- Dr Ruida Pool-Stanvliet
- Jacobus Eddie Delport
- Christiaan Klopper Rabie

(b) that Council takes cognizance that the following Internal Municipal Planning Tribunal Members have been appointed in accordance with Council resolution (Item 7.3.3 (d)), dated 26-07-2017, which appointment memorandum is attached as **Annexure G**:

(i) Manager: Spatial Planning, Directorate Planning and Economic Development;

(ii) Senior Manager: Infrastructure Planning, Development and Implementation, Directorate Infrastructure Services;

(iii) Senior Legal Advisor, Directorate Corporate Services;

(iv) Senior Manager: Community Services, Directorate Community and Protection Services;

(v) Senior Environmental Planner, Environmental Management, Directorate Community and Protection Services;

(vi) Manager: IDP and Performance Management, Department Governance, Office of the Municipal Manager;

(vii) Manager Infrastructure Implementation Services, Directorate Infrastructure Services; as well as

(viii) The Technical Advisor and *secundus* from the Department of Environmental Affairs and Development Planning;

(c) that in terms of Section 72.10 *(a) & (b)* of the Stellenbosch Municipal Land Use Planning By-law, Council supports and approves the recommendation for the appointment of Dr Daniël Jakobus Du Plessis as Chairperson and Ms Christine Havenga as Deputy Chairperson.

FOR FURTHER DETAILS CONTACT:

NAME	Hedre Dednam
POSITION	Land Use Manager
DIRECTORATE	Planning and Economic Development
CONTACT NUMBERS	021 808 8674
E-MAIL ADDRESS	hedre.dednam@stellenbosch.gov.za
REPORT DATE	15 May 2019

7.8	RURAL MANAGEMENT AND TOURISM: (PC: CLLR S PETERS)

NONE

7.9	YOUTH, SPORTS AND CULTURE: (PC: M PIETERSEN)

NONE

7.10	REPORTS SUBMITTED BY THE MUNICIPAL MANAGER

7.10.1	REVISED PERFORMANCE MANAGEMENT POLICY

Collaborator No:
IDP KPA Ref No: **Good Governance and Compliance**

Meeting Date: **21 May 2019 (MayCo) and 29 May 2019 (Council)**

1. SUBJECT: REVISED PERFORMANCE MANAGEMENT POLICY

2. PURPOSE

To submit the Revised Performance Management Policy for approval.

3. DELEGATED AUTHORITY

Municipal Council.

Stellenbosch Municipality has been mandated in terms of section 40 of the Local Government Municipal Systems Act, 32 of 2000 (MSA), to manage the development of a performance management system and submit it to Council for adoption.

4. EXECUTIVE SUMMARY

To table the revised Performance Management Policy for consideration and approval by Council. This policy has been revised to be applicable for the 2019/10 financial year to improve service excellence.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.10.1

that Council considers the Revised Performance Management Policy for release for public comment in terms of section 21A of the MSA.

FOR FURTHER DETAILS CONTACT:

NAME	Gurswin Cain
POSITION	***IDP Manager***
DIRECTORATE	***Office of the Municipal Manager***
CONTACT NUMBERS	***(021) 808-8174***
E-MAIL ADDRESS	***Gurswin.Cain@stellenbosch.gov.za***
REPORT DATE	***9 May 2019***

7.10.2	PROPOSED TRANSFER OF MANAGEMENT AND OWNERSHIP OF VAALDRAAI (ELSENBURG) FROM PROVINCIAL GOVERNMENT OF THE WESTERN CAPE TO STELLENBOSCH MUNICIPALITY

Collaborator No:
IDP KPA Ref No: **Good Governance and Compliance**
Meeting Date: **21 May 2019 (Mayco) and 29 May 2019 (Council)**

1. SUBJECT: PROPOSED TRANSFER OF MANAGEMENT AND OWNERSHIP OF VAALDRAAI (ELSENBURG) FROM PROVINCIAL GOVERNMENT OF THE WESTERN CAPE TO STELLENBOSCH MUNICIPALITY

2. PURPOSE

To consider an application from the Provincial Department of Transport and Public Works, requesting that Stellenbosch Municipality take over the management of Vaaldraai with the view of township establishment and ultimate transfer of ownership to individual residents / beneficiaries.

3. DELEGATED AUTHORITY

For decision by Municipal Council.

4. EXECUTIVE SUMMARY

On 2010-04-13 Council considered a request from the Provincial Department of Transport and Public Works to take over the Management of Vaaldraai, with the view of attending to the township establishment and ultimate transfer of land to residents/beneficiaries. Having considered the report, Council (at the time) decided not to approve of the application but to advise the Provincial Government to attend to the township establishment themselves. A new request has now been received, for consideration by Council.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2019-05-21: ITEM 7.10.2

(a) that Council, in principle, agrees to take over the Management of the Vaaldraai Settlement, as an interim arrangement;

(b) that Council, in principle, agrees to attend to the township establishment of Vaaldraai, subject thereto that additional land be made available, the detail to be agreed upon;

(c) that before any final decision in this regard is made (i.e. (a) and (b) above) the Department: Planning and Economic Development be requested to conduct a feasibility study, which study must also attend to the availability (or not) of bulk infrastructure as well as the identification of additional land to be transferred, taking into account the number of residents/backyard dwellers already on the property; and

(d) that, following the feasibility study, a progress report be submitted to Council with the view of making a final determination on the matter.

FOR FURTHER DETAILS CONTACT:

NAME	
POSITION	***Municipal Manager***
DIRECTORATE	***Municipal Manager***
CONTACT NUMBERS	***021-8088025***
E-MAIL ADDRESS	
REPORT DATE	***16 May 2019***

8.	REPORTS SUBMITTED BY THE EXECUTIVE MAYOR

NONE

9.	URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER

NONE

10.	MATTERS TO BE CONSIDERED IN-COMMITTEE

NONE

The meeting adjourned at 11:35.

CHAIRPERSON: ……

DATE: ……

Confirmed on ……

5.	**STATUTORY MATTERS**

NONE

6.	**REPORT/S BY THE MUNICIPAL MANAGER RE OUTSTANDING RESOLUTIONS TAKEN AT PREVIOUS MAYORAL COMMITTEE MEETINGS**

NONE

7.	**CONSIDERATION OF ITEMS BY THE EXECUTIVE MAYOR: [ALD G VAN DEVENTER (MS)]**

7.1	**COMMUNITY AND PROTECTION SERVICES: : (PC: CLLR Q SMIT)**

7.1.1	**POWERS AND APPOINTMENT OF LAW ENFORCEMENT OFFICERS APPOINTED BY MUNICIPALITIES**

Collaborator No: **646370**
IDP KPA Ref No: **Safest valley**
Meeting Date: **10 July 2019**

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1. SUBJECT: POWERS AND APPOINTMENT OF LAW ENFORCEMENT OFFICERS APPOINTED BY MUNICIPALITIES

2. PURPOSE

To inform Council of the additional powers and functions of Law Enforcement officers appointed by a municipality.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

On 19 October 2018 the Minister of Justice and Correctional Services published the requirements for the appointment of Law Enforcement officers by municipalities in terms of Declaration no. 1114 of Government Gazette no. 41982. (Refer to attached **ANNEXURES A AND B**).

5. RECOMMENDATION

that Council takes note of the additional powers and functions of Law Enforcement officers as per Declaration no. 1114 of Government Gazette 41982.

6. DISCUSSION/ CONTENTS

6.1 Background

The present powers of Law Enforcement Officers were outlined in Government Notice R209 of 2002, and their enforcement capability commensurate with these powers and their Peace Officer appointment.

Apart from the interpretative challenge relating to the R209 schedules, the restrictions on the Peace Officer powers of Law Enforcement Officers were not conducive to effective and decisive enforcement capability or the general combating of crime.

The R209 noticeably omitted conferring the power to effect arrests for by-laws and regulations made by and on behalf of municipalities. Enforcing by-laws and regulations made by and for the municipalities is fundamental to the mandate of Law Enforcement Officers and this restriction was a serious obstacle to the effective enforcement or the resolution of cases. The Government Notice R209 was proclaimed in 2002 and there has not been a subsequent amendment or conferring of powers since then.

IMPS-SA (Institute for Municipal Public Safety of Southern Africa) in cooperation with the City of Cape Town took it upon themselves to apply to the Minister of Justice and Correctional Services for an amendment to the powers and functions of Law Enforcement officers in terms of R209.

6.2 Discussion

The Minister extended the powers of Law Enforcement officers appointed by municipalities. It is of importance to note that Law Enforcement officers now also have the powers in respect of the following offences, namely;

- Possession and dealing in drugs in terms of the Drugs and Drugs Trafficking Act, Act 140 of 192,
- Possession of car breaking/ house breaking implements in terms of Section 82 of General Law Third Amendment Act, Act 129 of 1993,
- Possession and receipt of suspected stolen property in terms of Section 36 and 37 of the General Law Amendment Act, Act 62 of 1955,
- Offences relating to the supply, possession and conveyance of intoxicating liquor,
- Unlicensed possession of firearms/ ammunition, carrying a firearm in public in terms of the Firearms Control Act, Act 60 of 2000,
- Any offence in terms of Section 3 of the Criminal Matters Amendment Act, Act 18 of 2015 (Essential Infrastructure),
- Road Traffic and Road Transportation legislation applicable in a specific municipal area.

It should be noted that a certificate of appointment referred to in Section 334 (2) (a) of the Criminal Procedure Act, Act 51 of 1977) shall be issued to a person referred to in Column 1 of the Schedule only if the employer of that person has been furnished with a certificate of competency issued by the National Commissioner of the South African Police Service. This means that before a Law Enforcement officer can exercise the powers extended by the declaration of the Minister the employer must be furnished with a competency certificate issued by the National Commissioner of the Police before a certificate of appointment is issued to that officer.

Further comments by the Department:

This item was submitted on 21 November 2018 by the Department and signed off by the previous Director, Mr Gerald Esau. However, it is evident that the item did not serve

before Council notwithstanding the fact that the Department made numerous enquiries to the status of it.

It should be mentioned that the Department arranged with the Legal Section of the South African Police Services for a full day training session with our law enforcement officers in terms of the additional powers. The training was presented by Col Grundling and his assistant W/O Naidoo on 11 December 2018. Based on this training the South African Police issued a competency certificate for each of the officers who attended the training session.

However, a further formal training will be done in conjunction with the Skills Development Division of HR in due course.

6.3 Financial Implications

None

6.4 Legal Implications

Legal Services has advised that the item is legislatively correct. However, it is important that the peace officers receive the necessary training to avoid wrongful acts.

6.5 Staff Implications

In terms of the declaration the necessary training must be undergone by the Law Enforcement officers with regard to the powers to be exercised.

6.6 Previous / Relevant Council Resolutions:

None

6.7 Risk Implications

It is vital that the Law Enforcement officers undergo the formal training as soon as possible as determined by the declaration. It is important to note that with the declaration of 19 October 2018 part 5 (a) of R209 of 2002, the section that deals with powers of Law Enforcement officers, has been repealed.

6.8 Comments from Senior Management:

6.8.1 Director: Infrastructure Services

Agree with the recommendations.

6.8.2 *Director: Planning and Economic Development*

Agree with recommendations.

ANNEXURES

Annexure A: Declaration of Peace Officers in terms of Section 334 of the Criminal Procedure Act, Act 51 of 1977.

Annexure B: Letter of the office of the Provincial Commissioner of the South African Police Services.

FOR FURTHER DETAILS CONTACT:

NAME	Neville Langenhoven
POSITION	
DIRECTORATE	***COMMUNITY & PROTECTION SERVICES***
CONTACT NUMBERS	***X8497***
E-MAIL ADDRESS	***Neville.Langenhoven@stellenbosch.gov.za***
REPORT DATE	***14 May 2019***

DIRECTOR: COMMUNITY & PROTECTION SERVICES

The contents of this report have been discussed with the Portfolio Committee Chairperson and the Councillor agrees with the recommendations.

ANNEXURE A

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 1114 19 OCTOBER 2018

DECLARATION OF PEACE OFFICERS IN TERMS OF SECTION 334 OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977): LAW ENFORCEMENT OFFICERS APPOINTED BY A MUNICIPALITY

I, Tshililo Michael Masutha, Minister of Justice and Correctional Services—

(*a*) in terms of section 334(1)*(a)* of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), hereby declare that every person who, by virtue of his or her office, falls within a category defined in Column 1 of the Schedule to this notice, shall, within the area specified in Column 2 of the Schedule, be a peace officer for the purpose of exercising, with reference to the offences specified in Column 3 of the Schedule, the powers defined in Column 4 of the Schedule;

(*b*) in terms of section 334(3)*(a)* of the Criminal Procedure Act, 1977, hereby prescribe that—

(i) a certificate of appointment referred to in section 334(2)*(a)* of the Criminal Procedure Act, 1977, shall be issued to a person referred to in Column 1 of the Schedule only if the employer of that person has been furnished with a certificate of competency issued by the National Commissioner of the South African Police Service;

(ii) it must be stated in the certificate of competency contemplated in subparagraph (i) that, in the opinion of the National Commissioner of the South African Police Service, such person is competent to exercise the powers defined in Column 4 of the Schedule; and

(iii) for the purposes of the issuing of a certificate of competency by the National Commissioner of the South African Police Service, the following criteria shall be considered:

(*aa*) The previous criminal convictions of the applicant;

(*bb*) whether the applicant has been declared unfit to possess a firearm as contemplated in the Firearms Control Act, 2000 (Act No. 60 of 2000), or other relevant legislation; and

(*cc*) the training undergone by the applicant with regard to the powers to be exercised;

(*c*) in terms of section 334(3)*(b)* of the Criminal Procedure Act, 1977, hereby prescribe that the following information shall, in addition to that which the employer may include, appear in or on the certificate of appointment referred to in section 334(2) of the Criminal Procedure Act, 1977:

(i) The full names of the person so appointed;

(ii) his or her identity number;

(iii) his or her signature;

(iv) his or her photograph;

(v) a description of the capacity in which he or she was appointed;

(vi) the name of the employer who made the appointment; and

(vii) the signature and official stamp of the employer or responsible person; and

(*d*) hereby repeals Part 5(*a*) of the Schedule to Government Notice No. R. 209 of 19 February 2002.

T M MASUTHA

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

SCHEDULE

Column 1	Column 2 Area	Column 3 Offences	Column 4 Powers
Law enforcement officer appointed by a municipality.	(*a*) The area of jurisdiction of the municipality which made the appointment. (*b*) In respect of the power mentioned in paragraphs (*c*), (*d*) and (*e*) of Column 4, the Republic of South Africa, in respect of paragraphs (*h*), (*i*), (*l*) and (*m*) of Column 3.	(*a*) Any by-law or regulation made by or for such a municipality. (*b*) Any offence contemplated in section 5 of the Business Act, 1991, (Act No. 71 of 1991) or regulations made thereunder. (*c*) Any offence specified in section 38 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) or regulations made thereunder. (*d*) Any offence contemplated in section 24 of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977). (*e*) Any offence contemplated in section 21 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), or any by-laws or regulations made thereunder. (*f*) Any offence contemplated in section 4 of the Control of Access to Public Premises and Vehicles Act, 1985 (Act No. 53 of 1985).	(*a*) The power to issue a written notice in terms of section 56 of the Criminal Procedure Act, 1977. (*b*) The power to issue a written notice in terms of section 341 of the Criminal Procedure Act, 1977. (*c*) The powers conferred upon a person in terms of section 23 of the Criminal Procedure Act, 1977, to search a person arrested in terms of section 40(1) of the Criminal Procedure Act, 1977, and to seize an article. (*d*) The powers conferred upon a peace officer in terms of section 40(1)(*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*h*) and (*j*) of the Criminal Procedure Act, 1977. (e) The powers conferred upon a peace officer under section 41(1) of the Criminal Procedure Act, 1977. (*f*) The execution of warrants of arrest in terms of section 44 of the Criminal Procedure Act, 1977.

		(*g*) A contravention of sections 4 and 5 of the Drugs and Drugs Trafficking Act, 1992 (Act No. 140 of 1992). (*h*) A contravention of section 82 of the General Law Third Amendment Act, 1993 (Act No. 129 of 1993). (*i*) A contravention of sections 36 or 37 of the General Law Amendment Act, 1955 (Act No. 62 of 1955). (*j*) Any offence relating to the supply, possession or conveyance of intoxicating liquor. (*k*) A contravention of section 120(1) (in so far as it relates to sections 3, 84, 90 and 94(2)), (3), (4), (5), (6), (7) and (10)) of the Firearms Control Act, 2000 (Act No. 60 of 2000). (*l*) Any offence, with the exclusion of the offences of "treason" and "sedition", listed in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977). (*m*) Any offence contemplated in section 3 of Criminal Matters Amendment Act, 2015 (Act No. 18 of 2015). (*n*) Any offence applicable to town or townships planning or	

		land use planning legislation which is operative in an area of a municipality. (*o*) Applicable road traffic and road transportation legislation that is operative in the area of a municipality. (*p*) Any offence contemplated in section 7 of the Tobacco Products Control Act, 1993 (Act No. 83 of 1993).	

ANNEXURE B

SOUTH AFRICAN POLICE SERVICE

SUID-AFRIKAANSE POLISIEDIENS

Privaatsak/Private Bag X9004, CAPE TOWN, 8000

Verwysing
Reference 31/12/1

Navrae
Enquiries :Colonel M Cloete
Telefoon
Telephone : 021 417 7369

Faksnommer
Facsimile : 021 417 7278

E-Pos
E-Mail : CloeteM@saps.gov.za

OFFICE OF THE PROVINCIAL COMMISSIONER
S A POLICE SERVICE
WESTERN CAPE
CAPE TOWN
8000

23 October 2018

All Provincial Heads
All Cluster Commanders
All Station Commanders
WESTERN CAPE

POWERS AND APPOINTMENT OF LAW ENFORCEMENT OFFICERS APPOINTED BY MUNICIPALITIES

1. On 19 October 2018 the Minister of Justice and Correctional Services published the requirements for the appointment of Law Enforcement officers by Municipalities in Government Gazette No. 41982 and Government Notice No. 1114.

2. The Minister extended the powers of law enforcement officers appointed by municipalities. It is of importance to note that law enforcement officers now also have powers in respect of the following offences namely:

- Possession and dealing in drugs in terms of the Drugs and Drugs Trafficking Act, No 140 of 1992;
- Possession of car breaking / house breaking implements in terms of Section 82 of the General Law Third Amendment Act, No. 129 of 1993;
- Possession and receipt of suspected stolen property in terms of Sections 36 and 37 of the General Law Amendment Act, No 62 of 1955;
- Offences relating to the supply, possession, conveyance of intoxicating liquor;
- Unlicensed possession of firearms/ammunition, carrying a firearm in public in terms of the Firearms Control Act, No. 60 of 2000;
- Any offence in terms of Section 3 of the Criminal Matters Amendment Act, No 18 of 2015 (Essential Infrastructure);

31/12/1

POWERS AND APPOINTMENT OF LAW ENFORCEMENT OFFICERS APPOINTED BY MUNICIPALITIES

- Road traffic and road transportation legislation applicable in a specific municipal area.

3. The Minister extended some of the powers to the whole Republic of South Africa and not only the specific municipal area.

4. Attached herewith find the relevant Government Notice as published.

5. All commanders are to ensure that the contents of this letter are brought to the attention of all members under their command, specifically the CSC personnel. Kindly ensure that a copy of this letter is available in the CSC.

MAJOR GENERAL
PROVINCIAL HEAD: LEGAL AND POLICY SERVICES
WESTERN CAPE
F M MBEKI

DATE: 2018-11-12

7.2	**CORPORATE SERVICES: (PC: CLLR AR FRAZENBURG)**

7.2.1	**APPLICATION TO LEASE UNIT 1 OF BOSMANSHUIS (PART OF THE DORP STREET FLATS UNITS) TO THE IEC: CONSIDERATION OF WRITTEN INPUTS RECEIVED**

Collaborator No:

IDP KPA Ref No: ***Good Governance***

Meeting Date: **10 July 2019**

1. SUBJECT: APPLICATION TO LEASE UNIT 1 OF BOSMANSHUIS (PART OF THE DORP STREET FLATS UNITS) TO THE IEC: CONSIDERATION OF WRITTEN INPUTS RECEIVED

2. PURPOSE

To consider the written inputs received as a consequence of the public notice and to make a final determination on whether to conclude a lease agreement with the IEC or not.

3. DELEGATED AUTHORITY

Council must consider the item.

4. EXECUTIVE SUMMARY

An application to lease a premise from Stellenbosch Municipality was received from the IEC. They originally indicated their interest in an office in the Town Hall, but that office is needed for the Municipality's own operations. One of the Dorp street flats was identified as a possible option. The premise that was identified for possible leasing by the IEC is Unit 1 in Bosmanshuis. The IEC inspected the premises and is happy that it will fulfil their needs. The IEC is a chapter 9 institution.

Council considered the matter on 2019-03-27 and, approved the proposed lease in principle, subject to a public participation process. The advertisement of the proposed leased for inputs were published on 9 May 2019. Input was received from the Stellenbosch Interest Group (**APPENDIX 3**).

Council must now consider the written inputs received and must make a final determination in this regard.

5. RECOMMENDATIONS

(a) that Council takes note of the written submission received from Stellenbosch Interest Group; and

(b) that approval be granted to enter into a 3 year lease agreement with the IEC at an initial monthly rental of R5940, being 30% of fair market value, subject to the following conditions:

(i) IEC to take full responsibility for all internal maintenance as well as any functional upgrades needed for their own purposes;

(ii) That no upgrades or changes may take place without approval of the Municipality and taking into account the heritage status of the building;

(iii) That an early termination clause be inserted indicating that the contract can be terminated with a six (6) months written notice, should Council need the property for its own use, or should Council decide to dispose of the property or for any other legal reason want to cancel the lease;

(iv) An annual escalation on 1 July 2020 and 2021 of 7% apply;

(v) That the Municipal Manager be authorised to conclude the Lease Agreement.

6. DISCUSSION / CONTENTS

6.1. Background

6.1.1 Application for IEC

An application was received from the IEC to conclude a lease agreement with Stellenbosch Municipality for rental of office space. They are currently in Worcester, but is looking for new office space at a more affordable rate. The initial request was in relation to an office and some storage space at the town hall. That office space is however needed for our own staff and the storage space is used by people who rent the town hall from time to time especially when there are exhibitions. One (1) of the Dorp Street flats, situated on a portion of erf 1134, Stellenbosch was identified as a possible alternative. The request is further to rent the space at a discounted rate.

6.1.2 Council resolution

Having considered the application on 2019-03-27, Council resolved as follows:

RESOLVED (nem con)

"(a) that Unit 1 Bosmanshuis, situated on a portion of erf 1134, as shown on Fig.2, be identified as property not required for the municipality's own use during the period for which the right is to be granted;

(b) that approval be granted, in principle, to enter into a 1 year lease agreement with an option to renew with the IEC at a monthly rental of R 9950, being 50% of fair market rental given that the IEC is a Chapter 9 (of the Constitution) institution;

(c) that Council's intention to enter into an agreement with the IEC be advertised for public comments/inputs;

(d) that, following the public notice period, an item be submitted to Council to make a final determination; and

(e) that the normal rules in terms of maintenance of the inside of the building will be included in the rental agreement to be concluded".

A copy of the agenda item that served before Council is attached as **APPENDIX 1**.

6.1.3 Official Notice

Following the above resolution, an official notice was published in the Eikestad News of 09 May 2019, soliciting inputs/comments from interested and affected parties. A copy of the Notice is attached as **APPENDIX 2**.

6.1.4 Written submissions received

Following the above one (1) submission was received from the Stellenbosch Interest Group (SIG), a copy of which is attached as **APPENDIX 3**.

6.2 Discussion

The written inputs received from SIG is effectively an objection to making further residential units available for office space. They are also concerned about the possible heritage issues, should the IEC decide to upgrade the building, taking into account the conservation status of the buildings.

Provision is made that no upgrades or changes may be made without the Municipality's approval and taking the heritage aspects into account. Taking into account that the proposed lease is for a short period, with an early termination clause, the objections of the Interest Group should be accommodated and should not pose any risks to the municipality.

6.3 Financial Implications

All upgrades and maintenance inside the building is for the costs of the lessee. Maintenance on the outside is part of the normal maintenance provisions in the budget.

6.4 Legal Implications

The recommendations in this report comply with Council's policies and all applicable legislation.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions:

Council resolution on 27 March 2019 as indicated above.

6.7 Risk Implications

The risks are addressed in the item recommendations.

6.8 Comments from Senior Management:

The recommendations are supported.

ANNEXURES

Appendix 1: Agenda Item 27 March 2019

Appendix 2: Notice published 9 May 2019

Appendix 3: Input from the Stellenbosch Interest Group

FOR FURTHER DETAILS CONTACT:

NAME	PIET SMIT
POSITION	***MANAGER: PROPERTY MANAGEMENT***
DIRECTORATE	***CORPORATE SERVICES***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2019-07 -03***

APPENDIX 1

STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Collaborator No:	***(To be filled in by administration)***
IDP KPA Ref No:	**Good Governance**
Meeting Date:	**13 March and 27 Match 2019**

1. SUBJECT:

APPLICATION TO LEASE UNIT 1 OF BOSMANSHUIS (PART OF THE DORP STREET FLATS UNITS) TO THE IEC

2 PURPOSE

To obtain approval from Council to conclude a lease agreement with the IEC in relation to unit 1 of Bosmanshuis situated on a portion of erf 1134, Stellenbosch.

3. DELEGATED AUTHORITY

Council must consider the item.

4. EXECUTIVE SUMMARY

An application to lease a premises from Stellenbosch Municipality was received from the IEC. They originally indicated their interest in an office in the Town Hall, but that office is needed for the Municipality's own operations. One of the Dorp street flats was identified as a possible option. The premises that was identified for possible leasing by the IEC is Unit 1 in Bosmanshuis. The IEC inspected the premises and is happy that it will fulfil their needs. The IEC is a chapter 9 institution. Given that the National and Provincial election takes place in May the date of occupation is proposed as 1 June 2019.

Council must consider the application, taking into account the prescripts of the Asset Transfer Regulations, read with the provisions of the Property Management Policy.

5. RECOMMENDATIONS

a) that Unit 1 Bosmanshuis situated on a portion of erf 1134, as shown on Fig.2, be identified as property not required for the municipality's own use during the period for which the right is to be granted;

b) that the approval be granted, in principle, to enter into a 3 year lease agreement with the IEC at a monthly rental of R5940, being 30% of fair

market rental given that the IEC is a Chapter 9 (of the Constitution) institution;

c) that Council's intention to enter into an agreement with the IEC be advertised for public comments/inputs;

d) that following the public notice period, an item be submitted to Council to make a final determination.

e) That the normal rules in terms of maintenance of the inside of the building will be included in the rental agreement to be concluded.

6. DISCUSSION / CONTENTS

6.1. Background

An application was received from the IEC to conclude a lease agreement with Stellenbosch Municipality for rental of office space. They are currently in Worcester, but is looking for new office space at a more affordable rate. The initial request was in relation to an office and some storage space at the town hall. That office space is however needed for our own staff and the storage space is used by people who rent the town hall from time to time especially when there are exhibitions. One (1) of the Dorp Street flats, situated on a portion of erf 1134, Stellenbosch was identified as a possible alternative. The request is further to rent the space at a discounted rate. A copy of the application is attached as **APPENDIX 1**.

6.2 Discussion

6.2.1 Location and context

Unit no 1 Bosmanshuis is situated on a portion of erf 1134, as shown on Fig.1 and 2, below.

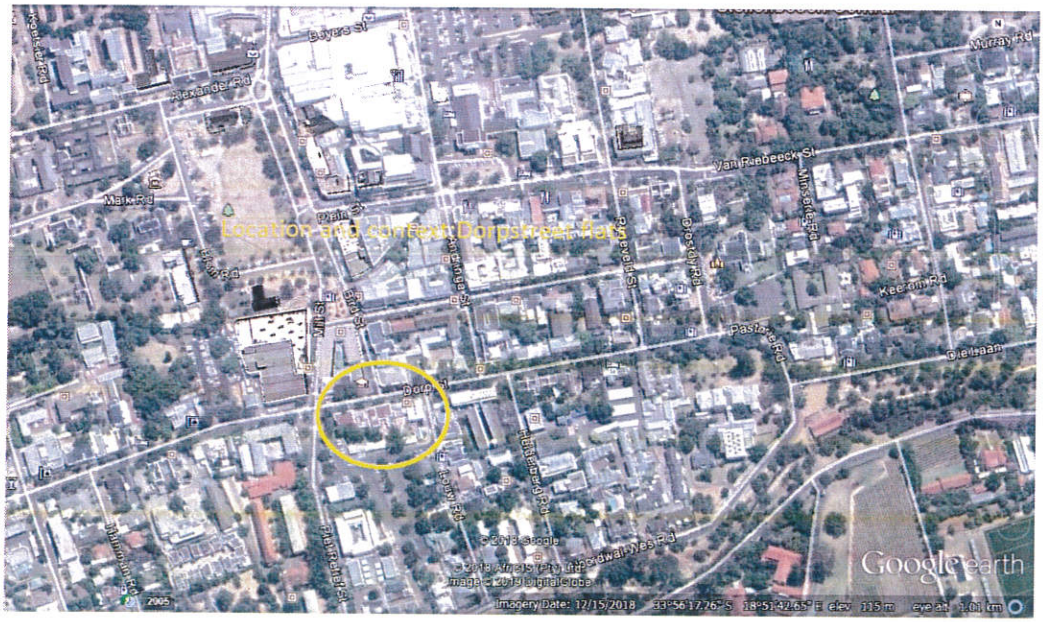

Fig.1: Location and context

Fig. 2: Position of the flat

The unit is ±110m² in extent.

6.2.2 Ownership

The ownership of erf 1134 vests with Stellenbosch Municipality by virtue of Title Deed G19/1971. See Windeed record hereto attached as **APPENDIX 2.**

6.2.3 Fair Market rental

Based on recent valuations being obtained for erven 2498 and 2499 (Animal Hospital) the fair market rental is ±R180/m². The unit is ±110m² in size, that would equate to a monthly rental of R19 800.00.

The IEC specifically requested that the property be made available at a discounted rate. Taking into account that the IEC is a chapter 9 (of the Constitution) institution, it is recommended that the rental be determined at 30% of fair market rental, i.e. R5940 per month.

6.3 Legal Implications

6.3.1 Chapter 4 of the Asset Transfer Regulations

In terms of Regulation 34(2) a municipality may grant a right to use, control or manage a capital asset, but only after:

a) The accounting offices has in terms of regulation 35 conducted a public participation process* regarding the proposed granting of the right; and

b) The municipal council has approved in principle that the right may be granted.

*However, sub regulation (1)(a) (public participation process) must be complied with only if-

a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and
b) a long term right is proposed to be granted in respect of the capital asset.

This property's value is not in excess of R10million, and therefore the public participation process may be disposed off. Given that the IEC has indicated telephonically that they have to give notice at the current offices and the elections in May the proposed occupation date in 1 July 2019. It is therefore recommended that the intention to lease be advertised for comments or inputs. The municipal council must, when considering the **in principle approval** take into account—

(a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
(b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
(c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;
(d) any comments or representations on the proposed granting of the right received from the local community and other interested persons (not applicable);
(e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury (not applicable);
(f) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
(g) compliance with the legislative regime applicable to the proposed granting of the right.

In terms of Regulation 40 an approval **in principle** in terms of regulation 34(1)(b) or 37(1)(b) that a right to use, control or manage a capital asset may be granted, may be given subject to any conditions, including conditions specifying—

(a) the type of right that may be granted, the period for which it is to be granted and the way in which it is to be granted;
(b) the minimum compensation to be paid for the right; and
(c) a framework within which direct negotiations for the granting of the right must be conducted, if granting of the right is subject to direct negotiations.

Further, in terms of Regulation 41, If approval in principle has been given in terms of regulation 34(1)(b) that a right to use, control or manage a capital asset may be granted, the relevant municipality may grant the right only in accordance with the disposal management system of the municipality, irrespective of—

(a) the value of the asset;
(b) the period for which the right is to be granted; or
(c) whether the right is to be granted to a private sector party or organ of state.

The disposal management system of a municipality, however, does not apply to the granting of a right to use, control or manage a capital asset if the right to use, control or manage that capital asset is granted to another organ of state*, provided that the capital asset is determined by resolution of the council of the municipality not needed for the requirements of the municipality.

Before granting the right to use, control or manage a capital asset, the municipality must be satisfied that organ of state to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset.

Lastly, in terms of Regulation 45 a municipality may grant a right to use, control or manage a capital asset to an organ of state only by way of a written agreement concluded between the municipality and the organ of state to whom the right is granted.

Such an agreement much-
(a) set out the terms and conditions on which the right is granted and;
(b) be signed on behalf of the municipality and the organ of state to whom
. the right is granted.

* The IEC is a Chapter 9 of the Constitution Institution.

6.3.2 Property Management Policy

In terms of par.221 of the Property Management Policy, immovable property may only be let at market related rates unless the plight of the poor or the public interest demand otherwise.

In terms of par 9.2.2.1 the Municipal Council may dispense with a competitive process and may enter into a Private Treaty Agreement through direct negotiations, but only in specific circumstances, and only after having advertised Council's intention so to act.

One of the circumstances that are mentioned in sub-par. (e) of the policy is *"in exceptional cases where the Municipal Council is of the opinion that a public compensation would not serve a useful purpose"*

6.4 Staff Implications

This report has no staff implications to the Municipality.

6.5 Previous / Relevant Council Resolutions:

None

6.6 Risk Implications

This risks are addressed through the recommendation sin the report.

6.8 Comments from Senior Management:

The Acting Director Community and Protection Services supports the recommendations and confirms that the Town Hall is not a viable option as it is needed for municipal use.

The Municipal Manager supports the recommendations.

ANNEXURES

a) A copy of the application is attached as **APPENDIX 1**.
b) Windeed record attached as **APPENDIX 2**

FOR FURTHER DETAILS CONTACT:

NAME	PIET SMIT
POSITION	***MANAGER: PROPERTY MANAGEMENT***
DIRECTORATE	***CORPORATE SERVICES***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	*Piet.smit@stellenbosch.gov.za*
REPORT DATE	***2019-03-07***

25TH COUNCIL MEETING: 2019-03-27: ITEM 7.2.1

RESOLVED (nem con)

(a) that Unit 1 Bosmanshuis, situated on a portion of erf 1134, as shown on Fig.2, be identified as property not required for the municipality's own use during the period for which the right is to be granted;

(b) that approval be granted, in principle, to enter into a 1 year lease agreement with an option to renew with the IEC at a monthly rental of R 9950, being 50% of fair market rental given that the IEC is a Chapter 9 (of the Constitution) institution;

(c) that Council's intention to enter into an agreement with the IEC be advertised for public comments/inputs;

(d) that, following the public notice period, an item be submitted to Council to make a final determination; and

(e) that the normal rules in terms of maintenance of the inside of the building will be included in the rental agreement to be concluded.

FOR FURTHER DETAILS CONTACT:

NAME	PIET SMIT
POSITION	***MANAGER: PROPERTY MANAGEMENT***
DIRECTORATE	***CORPORATE SERVICES***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	*Piet.smit@stellenbosch.gov.za*
REPORT DATE	***2019-03-07***

APPENDIX 2

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OFFICIAL NOTICE

PROPOSED LEASE AGREEMENT: IEC: PORTION OF ERF 11345, DORP STREET, STELLENBOSCH

Notice is hereby given of Stellenbosch Municipality's intention to conclude a 12 month lease agreement with the IEC in relation to Unit 1, Bosmanshuis, situated on a portion of erf 1134, on a private treaty basis, i.e without following a tender process, for a monthly rental of R9 950.00, being 50% of fair market value.

Further particulars, including the agenda item that served before Council, is available from the Manager: Property Management. Any person/interested and affected party who wished to submit written inputs/comments, may do so in writing on or before **30 May 2019** to the Manager: Property Management during working hours.

Inputs/comments may be submitted in hard copies or by e-mail to:

Physical Address: 3rd Floor
Absa (Oude Bloemhof) Building,
Corner of Plein and Rhyneveld Street
Stellenbosch
7600

09 Mei 2019

e-mail: piet.smit@stellenbosch.gov.za

In terms of the provisions of Section 21(4) of the Municipal Systems Act, anyone who cannot read or write is welcome to contact the office of the Manager: Property Management for assistance.

G METTLER
MUNICIPAL MANAGER

APPENDIX 3

Belangegroep Stellenbosch Interest Group

2010-05-29

The Manager: Property Management
Stellenbosch Municipality

piet.smit@stellenbosch.gov.za
cc Municipal Manager

Dear Sir

WITH REFERENCE TO THE OFFICIAL NOTICE IN THE EIKESTAD NEWS OF 9 MAY 2019: PROPOSED LEASE AGREEMENT: IEC: PORTION OF ERF 11345, DORP STREET, WITHOUT FOLLOWING A TENDER PROCESS.

The Stellenbosch Interest Group (SIG) vehemently opposes the above proposal for two reasons:

1. There seems to be a disconnect between the Department of Property Management and the department responsible for overseeing the smooth development and planning of Stellenbosch. Whilst the property management department thinks it is a great idea to rent out one of the most strategic and centrally located historical buildings in Dorp Street to another public institution (IEC), it is the town planning department's stance that we should steer away from adding more offices to Dorp Street. We are in agreement with the planning department that buildings should rather be utilised for the benefit of the broader general public through making such municipal properties available to entrepreneurs or NGOs to utilise it for tourism or other non-office type businesses. The renting out of municipal properties to other public bodies seems to be the easy option to manage the property portfolio of the municipality. Once private individuals enter the discussion, it opens up major challenges in how and to whom the space should be allocated to, and it seems that the municipality does not want to be accommodative in this regard. Stellenbosch cannot afford to lease it's historic jewels to organisations/institutions that would not add value to the place identity and character of the historic core. Another good example of prime property "gone to waste" in terms of not making any significant contribution to the cityscape is the building abutting the Braak (leased by the Department of Education).

2. Closely linked to the above argument is the economic loss that the municipality is willing to make (leasing the property at 30% below market value) for the sake of leasing the property to another state institution. It simply does not make sense economically.

✉ 2217, Dennesig 7601 021 886 4741 info@stellenboschinterestgroup.org

We are also concerned about the way in which the building will be maintained (at present it is hardly maintained at all) and how the building will be retrofitted inside to meet the needs of the IEC office.

To conclude, we oppose the proposed use of the building as office space by the EIC as it would be detrimental to the streetscape of the area. We propose that Bosman's House as well as all the other adjacent municipal owned properties be put on a call for proposals (similar to what has been done for the Braak recently).

Yours faithfully

PE Botha

Patricia Botha
(Chairperson)

7.2.2	**PROPOSED EXCHANGE OF LAND: DISPOSAL OF ERF 1523 TO THE SEVENTH DAY ADVENTIST CHURCH IN EXCHANGE FOR ERF 718, KAYAMANDI: CONSIDERATION OF INPUTS RECEIVED**

Collaborator No:
IDP KPA Ref No: **Good Governance**
Meeting Date: **10 July 2019**

1. SUBJECT: PROPOSED EXCHANGE OF LAND: DISPOSAL OF ERF 1523 TO THE SEVENTH DAY ADVENTIST CHURCH IN EXCHANGE FOR ERF 718, KAYAMANDI: CONSIDERATION OF INPUTS RECEIVED

2. PURPOSE

To make a final determination on the proposed exchange of land after considering the inputs received as a consequence of the public notice.

3. DELEGATED AUTHORITY

The Municipal Council must consider the matter.

4. EXECUTIVE SUMMARY

Following the allocation of erf 718 to the Seventh Day Adventist Church in 1997, they paid the sales price of R11 286.00 in full during 2002.Before the property could be transferred to them, it became evident that the Municipal Clinic Building (now a Provincial clinic) was encroaching onto erf 718.Following a request by the Provincial Government of the Western Cape to acquire erf 718, in order for them to extend the current building, the Seventh Day Adventist Church was approach to accept an alternative site (erf 1523, Kayamandi).

They have subsequently confirmed in writing that they will accept the exchange of land, subject to certain conditions.

When Council considered the matter on 2019-02-27, they resolved, as follows:

RESOLVED (nem con)

"a) that erf 1523 be identified as land not needed to provide the minimum level of Municipal Services;

b) that Council in principle approve the exchange of erf 718 for erf 1523 at equal value;

c) that Council's intention to do the exchange of land be advertise for public inputs/objections.

d) that following the public notice period, Council make a final decision in this regard".

A notice was published on 25 April 2019 and one (1) input was received. Council must now consider this input and make a final determination on the proposed exchange of land.

The objection raised was on the availability of a play area for children that will be affected. Erf 1522 zoned a public open space will not be affected and can still be used as a play park.

5. RECOMMENDATIONS

(a) that Council takes note of the written submission received and the concerns raised therein;

(b) that Council approves the exchange of erf 718, Kayamandi for erf 1523 at equal value to the Seventh Day Adventist Church, subject to a fall-back clause, should the church not use the property for institutional use anymore; and

(c) that the Municipal Manager be authorised to sign all documents necessary to attend to the transfer of erf 1523 to the Seventh Day Adventist Church.

6. BACKGROUND AND DISCUSSION

6.1 Background

Following a public tender process (tender 14/1996) erf 718, measuring 990m², was awarded to the Seventh Day Adventist Church on 21 May 1996 at a Sales Price of R10/m². A Sales Agreement was concluded on 3 January 1997, indicating the sales price at R11286.00 (Inclusive of VAT).

During May 2011, however, it was brought to our attention that the clinic (erf 719 and 720) was encroaching onto erf 718.

This left the Municipality with three choices:

a) demolish a portion of the clinic;
b) cut off the encroachment area from the church site; or
c) Offer the church an alternative site.

On 28 September 2011 a letter was written to the church requesting them to consider an alternative site. They decided at the time not to consider the alternative site.

On 2018-09-04 a further letter was send to the church, requesting them to consider erf 1523, Kayamandi as an alternative for erf 718.

On 2018-11-08 the church confirmed in writing that they will indeed accept the alternative site, being erf 1523, Kayamandi, subject to certain conditions.

6.2 Discussion

On 2019-02-27 Council considered the possible exchange of land. Having considered the matter, Council resolved as follows:

RESOLVED (nem con)

"(a) that Erf 1523 be identified as land not needed to provide the minimum level of Municipal Services;

(b) that Council in principle approves the exchange of Erf 718 for Erf 1523 at equal value;

(c) that Council's intention to do the exchange of land be advertised for public inputs/objections/alternative proposals;

(d) that the item be brought back to Council following the public notice period, to make a final decision in this regard; and

(e) that Council notes the concerns indicated in the letter of the Seventh Day Adventist Church, and that Council commits to fencing the substation and attempt to find alternative land for the play park".

The agenda item that served before Council is attached as **APPENDIX 1**.

6.2.1 Public notice

Following the above Council resolution an official notice was published in the Eikestad news of 25 April 2019 soliciting public input/objections or alternative proposals from interested and effected parties, a copy of which is attached as **APPENDIX 2.**

6.2.2 Inputs received

Following the above notice one (1) written submission was received, that of Mr J Maqhashu, an apparent concerned member of the Seventh Day Adventist Church and member of the community affected by the proposed exchange, a copy of which is attached as **APPENDIX 3**.

The written submission basically deals with the fact that, should the proposed exchange of land be approved, it will result in the local community "*losing out*" on a play park and that this might harm the integrity of the church.

Mr Maqhashu is also of the view that all alternatives have not been considered. He is of the opinion that there are more suitable sites available, but without identifying such alternative sites.

As can be seen in Fig 1 and 2 below, the area that is currently used as a playing park actually consists of two/portions of land, i.e.:

a) Erf 1522, being a Public Open Space, measuring 600m² in extent; and

b) Erf 1523, measuring 1140m² in extent

Fig 1: Extent of properties

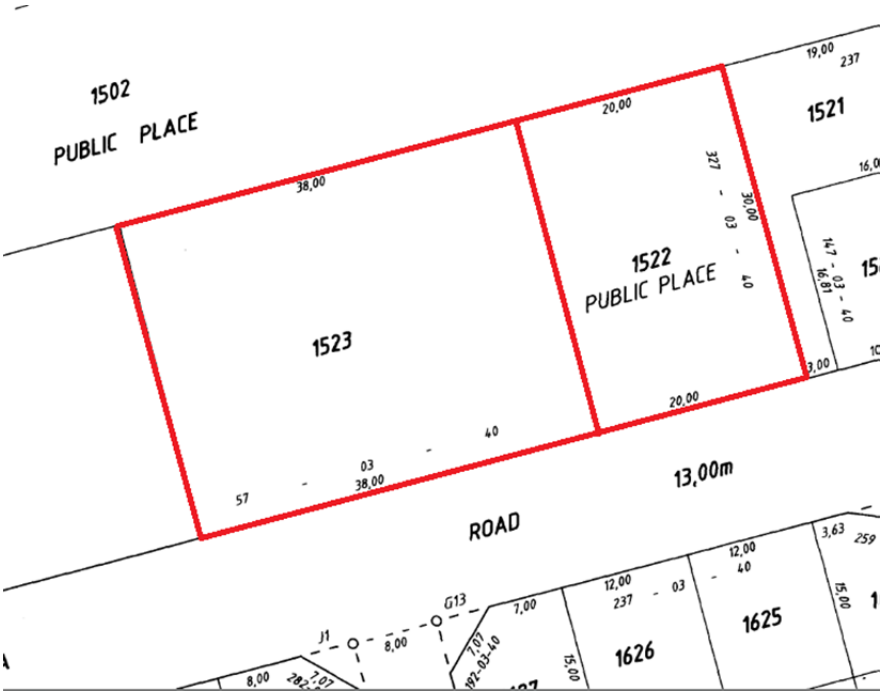

Fig 2: General Plan

From the above it is clear that, although the area currently used as a play park are ±1740m² in extent, only a portion thereof (600m²) is zoned as a Public Open Space.

The play park – erf 1522 (public open space) is not affected by the exchange of land.

6.3 Legal Requirements

The recommendations in this report comply with Council's policies and all applicable legislation.

6.4 Financial implications

All transfer costs if for the cost of the church.

6.5 Staff Implications

There are no staff implication.

6.6 Previous / Relevant Council Resolutions

Council resolution on 2019-02-27

6.7 Risk Implications

The risks are addressed in the report.

6.8 Comments from Senior Management

Supports the recommendations.

ANNEXURES:

Appendix 1: Agenda item that served before Council

Appendix 2: Official notice

Appendix 3: Public comment/inputs

FOR FURTHER DETAILS CONTACT:

NAME	**Piet Smit**
POSITION	***Manager: Property Management***
DIRECTORATE	***Corporate Services***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2019-06-12***

APPENDIX 1

STELLENBOSCH
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MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Collaborator No:	***(To be filled in by administration)***
IDP KPA Ref No:	**GOOD GOVERNANCE AND COMPLIANCE**
Meeting Date:	**13 February 2019 and 27 March 2019**

1. SUBJECT

PROPOSED EXCHANGE OF LAND: DISPOSAL OF ERF 15323 TO THE SEVENTH DAY ADVENTIST CHURCH IN EXCHANGE FOR ERF 718, KAYAMANDI

2. PURPOSE

To authorise the exchange of erf 1523 for erf 718, Kayamandi to the Seventh Day Adventist Church.

3. DELEGATED AUTHORITY

The Municipal Council must consider the matter.

4. EXECUTIVE SUMMARY

Following the allocation of erf 718 to the Seventh Day Adventist Church in 1997, they paid the sales price of R11 286.00 in full during 2002.

Before the property could be transferred to them, it became evident that the Municipal Clinic Building (now a Provincial clinic) was encroaching onto erf 718.
Following a request by the Provincial Government of the Western Cape to acquire erf 718, in order for them to extent the current building, the Seventh Day Adventist Church was approach to accept an alternative site (erf 1523, Kayamandi).

They have now confirmed in writing that they will accept the exchange of land, subject to certain conditions.

Council must now decide on the matter.

5. RECOMMENDATIONS

5.1 that erf 1523 be identified as land not needed to provide the minimum level of Municipal Services;

5.2 that Council in principle approve the exchange of erf 718 for erf 1523 at equal value;

5.3 that Council's intention to do the exchange of land be advertise for public inputs/objections/alternative proposals

5.4 that the item be brought back to Council following the public notice period to make a final decision in this regard.

6. DISCUSSION

6.1 Background

6.1.1 Allocation of tender

Following a public tender process (tender 14/1996) erf 718, measuring 990m², was awarded to the Seventh Day Adventist Church on 21 May 1996 at a Sales Price of R10/m². A copy of the agenda item is attached as **APPENDIX 1**.

6.1.2 Sales Agreement

A Sales Agreement was concluded on 3 January 1997, indicating the sales price at R11286.00 (Inclusive of VAT).

On 4 September 2002 the Finance Department confirmed that the sales price of R11 286.00 was paid in full. A copy of the memo is attached as **APPENDIX 2.**

Cluver Markotter Attorneys were subsequently requested to attend to the transfer of erf 718 to the Seventh Day Adventist Church.

6.1.3 Transport Documents

On 2011-08-19 a Power of Attorney to pass transfer was submitted to Stellenbosch Municipality for signature, copies of which are attached as **APPENDIX 3**.

6.1.4 Encroachment of Clinic onto erf 718

During May 2011, however, it was brought to our attention that the clinic (erf 719 and 720) was encroaching onto erf 718. See attached letter (**APPENDIX 4**) received from CWA Surveys, who was appointed by the Provincial Government to attend to the transfer of the various clinic sites.

This left the Municipality with three choices:

a) demolish a portion of the clinic;

b) cut off the encroachment area from the church site; or

c) Offer the church an alternative site.

On 28 September 2011 a letter was written to the church requesting them to consider an alternative site, a copy of which is attached as **APPENDIX 5.**

On 27 October 2011 the Seventh Day Adventist Church indicated in writing that they would not be interested in an alternative site, but would be willing to take transfer of the remainder portion measuring ±823m² in extent, on condition that the sales price be adjusted downwards in proportion to the smaller area.

A copy of their letter is attached as **APPENDIX 6**. The Provincial Government and the Transferring Attorney were informed accordingly, copies of which is attached as **APPENDIX 7.**

6.1.5 Valuation

During 2015 two (2) independent valuers were appointed to advise the Municipality on a reasonable re-imbursement, taking into account the portion of land to be cut off from erf 718. Hereto attached as **APPENDIX 8** and **9**, respectively valuations compiled by Cassie Gerber Property Valuers cc and Knight Frank.

In terms hereof they valued the difference in price as follows:

- Cassie Gerber: R18 370.00*
- Knight Frank: R5 000.00

*This valuation does not take into account the fact that the land was sold at 20% of market value. Should this be taken into account the valuation should look as follows:

- Cassie Gerber: R3674.00
- Knight Frank: R5000.00

Weighted average: R4337.00 (Exclusive of VAT)

6.1.6 Subdivision

On 3 November 2017 David Hellig & Abrahams Land Surveyors confirmed that the subdivision of erf 718, to allow for the encroachment area to be cut off, was approved. A copy of the letter and diagrams are attached as **APPENDIX 10**.

Although these diagrams have been approved and registered at the Surveyor General's Office, it must still be registered at the Deeds Office.

6.1.7 Consideration of request

During August 2018 the Mayoral Committee considered a report, recommending that the church be reimburse for the area that was encroached upon. Having considered the report, the Mayoral Committee decided to refer the matter back to the Administration with the request to (again) offer the church an alternative site, or "*buy back*" erf 718, as to allow the Provincial Department of Public Works to extend the clinic.

6.1.8 Offer to consider alternative site

On 2018-09-04 a letter was send to the church, informing them of the outcome of the Mayoral Committee meeting. They were requested to consider erf 1523, Kayamandi as an alternative for erf 718. A copy of the letter is attached as **APPENDIX 11**.

6.1.9 Acceptance of alternative offer

On 2018-11-08 the church confirmed in writing that they will indeed accept the alternative site, being erf 1523, Kayamandi, subject to certain conditions. Their letter is attached as **APPENDIX 12**.

6.2 Location and context

Erf 718, meaursing 990m² in extent, is situated in Bassi Street, as shown on Fig 1 and 2 below.

Fig 1: Location and context

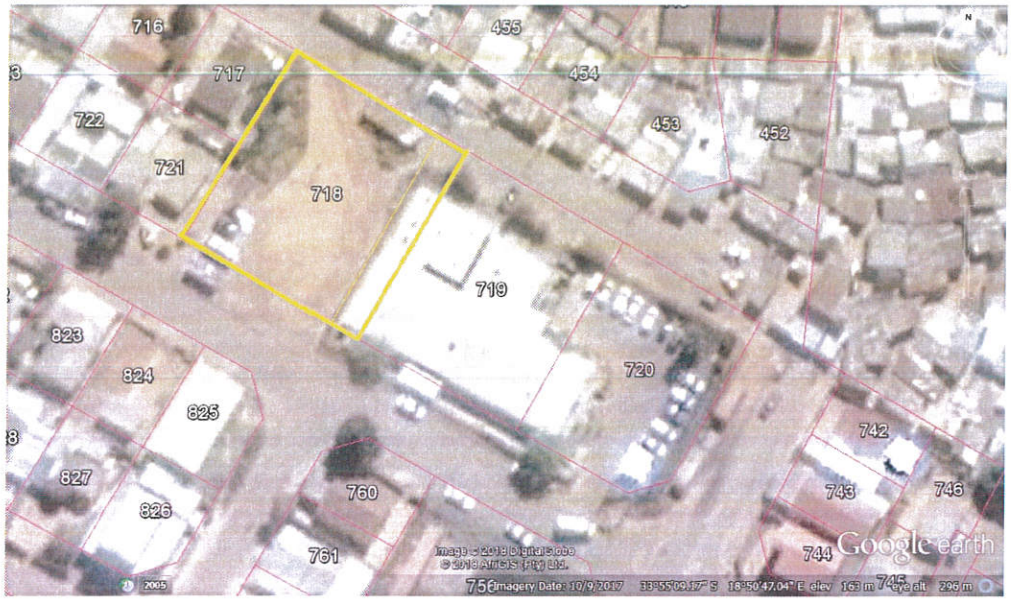

Fig 2: Erf 718

Erf 1523, alternatively site, measuring 1140m² in extent, is situated in Sokuquala Street, as shown on Fig 3 and 4 below.

Fig 3: Location and context

Fig 4: Erf 1523

6.3 Legal Requirements

6. 3.1 MFMA

In terms of section 14(1) a municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

In terms of subsection (2), a municipality may transfer ownership or otherwise dispose of a capital asset other than those contemplated in subsection (1), but only after the municipal council, in a meeting open to the public-

(a) has decided on reasonable grounds that **the asset is not needed to provide the minimum level of basic municipal services**; and

(b) has considered the **fair market value** of the asset and the **economic and community value** to be received in exchange for the asset.

6.3.2 Asset Transfer Regulation (ATR)

6.3.2.1Transfer or disposal on non-exempted capital assets

In terms of Regulation 5(1)(b) a municipal Council may transfer or dispose of a non-exempted capital asset only after-

a) the accounting officer has in terms of regulation 6 conducted a public participation* process to facilitate the determinations a municipal council must make in terms of Section 14(2)(a) and (b) of the Act; and

b) the municipal council-
   i) has made determinations required by section 14(2) (a) and (b)* and
   ii) has, as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

6.3.2.2 Consideration of proposals to transfer or dispose of non-exempted capital assets

In terms of Regulation 7 the municipal council **must**, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 5(1)(b)(i) and (ii), **take into account**—

(a) whether the capital asset may be **required for the municipality's own use** at a later date;
(b) the **expected loss or gain** that is expected to result from the proposed transfer or disposal;
(c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a **significant economic or financial cost or benefit** to the municipality;
(d) the **risks and rewards** associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
(e) the **effect** that the proposed transfer or disposal will have on the **credit rating** of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
(f) any **limitations or conditions** attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
(g) the estimated **cost** of the proposed transfer or disposal;
(h) the transfer of any **liabilities** and reserve funds associated with the capital asset;
(i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons; (if applicable)
(j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury; (if applicable)
(k) the interests of any affected organ of state, **the municipality's own strategic, legal and economic interests** and the interests of the local community; and
(l) **compliance** with the **legislative regime** applicable to the proposed transfer or disposal.

6.3.2.3 Conditional approval of transfer or disposal of non-exempted capital assets

Further, in terms of Regulation 11, an **approval in principle** in terms of regulation 5(1)(b)(ii) or 8(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, **may be given subject to any conditions**, including conditions specifying—

(a) **the way in which the capital asset is to be sold or disposed** of;
(b) a **floor price or minimum compensation for the capital asset**;
(c) whether the capital asset may be transferred or disposed of for **less than its fair market value**, in which case the municipal council must first consider the criteria set out in regulation 13(2); and
(d) **a framework within which direct negotiations** for the transfer or disposal of the capital asset **must be conducted** with another person, if transfer or disposal is subject to direct negotiations.

6.3.2.4 Transfer or disposal of non-exempted capital assets to be in accordance with disposal management system

In terms of Regulation 12(1); if approval has been given in terms of regulation 5(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, the relevant municipality may transfer or dispose of the asset only in accordance with its **disposal management system**, irrespective of—

(a) the value of the capital asset; or
(b) whether the capital asset is to be transferred to a private sector party or an organ of state.

*In the case of Stellenbosch Municipality the Policy on the Management of Council-owned property is deemed to be the disposal management system.

6.3.2.5 Compensation for transfer of non-exempted municipal capital assets

In terms of Regulation 13, the compensation payable to a municipality for the transfer of a non-exempted capital asset must, subject to sub regulation (2)—

(a) be consistent with criteria applicable to compensation set out in the disposal management system of the municipality or municipal entity; and

If a municipality on account of the public interest, in particular in relation to the plight of the poor, **intends to transfer a non-exempted capital asset for less than its fair market value, the municipality** must, when considering the proposed transfer, **take into account**—

(a) the **interests of**—
    (i) the State; and
    (ii) the local community;
(b) the strategic and economic interests of the municipality or municipal entity, including the long-term effect of the decision on the municipality or entity;
(c) the constitutional rights and legal interests of all affected parties;
(d) whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and
(e) **whether the local community would be better served if the capital asset is transferred at less than its fair market value**, as opposed to a transfer of the asset at fair market value.

6.3.2.6 Transfer agreements

In terms of Regulation 17, a municipality may transfer assets approved for transfer to a private sector party or organ of state, **only by way of a written transfer agreement** concluded between the transferring municipality and the receiving private sector party or organ of state.

A transfer agreement must set out the terms and conditions of the transfer, including, as a minimum—

(a) a sufficient **description** of the capital asset being transferred in order to identify the asset;
(b) particulars of any subsidiary assets that are transferred with the capital asset;
(c) particulars of any liabilities transferred with the asset;

(d) the **amount of compensation** payable to the municipality or municipal entity for the transfer of the asset or assets, and the terms and conditions of payment; and
(e) the **effective date** from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.

6.3.3 Policy on the management of Council-owned property

6.3.3.1 General principles

In terms of paragraph 7.2.1, unless otherwise provided for in the policy, the disposal of Viable Immovable property shall be effected-

a) by means of a process of **public competition**; and
b) at **market value** except when the public interest or the plight of the poor demands otherwise.

6.3.3.2 Exchange of land

In terms of paragraph 9.2.3 the disposal by exchange of land will be appropriate when it is advantageous to the Municipality and other parties to exchange land in their ownerships and will achieve best consideration for the municipality.

The Municipal Council must authorise the disposal of land by exchange with another land owner for alternative land. Reasons for justifying this manner of disposal must be recorded in writing.

The exchange should be equal in value. However, an inequality in land value may be compensated for by other means where appropriate. In such circumstances the Municipality must seek an independent valuation to verify that "*best consideration*" will be obtained.

6.4 Market value of land

In terms of the two (2) valuations in 2015 obtained (for erf 718) the (weighed average) value of church sites is R130-00/m². If this value is applied the market value of the two properties are as follows:

Erf 718: 990m²@ R130-00/m²	= R128 700.00
Erf 1528: 1140m² @ R130-00/m²	= R148 200.00
Difference in value	= R19 500.00

Over the past years church sites were sold at 20% of market value.

If this is applied, the difference in price amounts to R3900.00.

In their letter of acceptance of the exchange the Seventh Day Adventist church indicated that they will only accept the exchange of land (alternative land) if no further consideration is payable, seeing that they have paid for erf 718 in full and had no part in allowing the encroachment of the clinic onto their land. Under the circumstances it is recommend that they two erven are exchange at equal value, i.e no further consideration be payable by the church.

6.5 Financial implication

As indicated under 6.4, *supra*, it is recommended that the two erven are exchange at equal value, i.e there should be no financial implications to Council.

6.5 Legal Implications

See par. 6.3, *supra*.

6.6 Staff Implications

There are no additional staff implications.

6.7 Previous / Relevant Council Resolutions

MAYCO meeting 21/5/1996

MAYCO meeting 18 July 2018

6.8 Risk Implications

This report intends to mitigate any risks for the Municipality.

6.9 Comments from Senior Management

The item was not re- circulated to management as this a return item to inform Council of the response of the Church after the items served in July 2018.

ANNEXURES:

1-12

FOR FURTHER DETAILS CONTACT:

NAME	**Piet Smit**
POSITION	***Manager: Property Management***
DIRECTORATE	***Corporate Services***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2018-03-23***

DIRECTOR: CORPORATE SERVICES

The contents of this report have not been discussed with the Portfolio Committee Chairperson, councillor Frazenburg, before the agenda was distributed due to time constraints.

7.2	CORPORATE SERVICES: (PC: CLLR AR FRAZENBURG)

7.2.1	PROPOSED EXCHANGE OF LAND: DISPOSAL OF ERF 1523 TO THE SEVENTH DAY ADVENTIST CHURCH IN EXCHANGE FOR ERF 718, KAYAMANDI

Collaborator No:
IDP KPA Ref No: *Good Governance and Compliance*
Meeting Date: 13 February 2019

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1. SUBJECT: PROPOSED EXCHANGE OF LAND: DISPOSAL OF ERF 1523 TO THE SEVENTH DAY ADVENTIST CHURCH IN EXCHANGE FOR ERF 718, KAYAMANDI

2. PURPOSE

To authorise the exchange of Erf 1523 for Erf 718, Kayamandi to the Seventh Day Adventist Church.

3. DELEGATED AUTHORITY

The Municipal Council must consider the matter.

4. EXECUTIVE SUMMARY

Following the allocation of Erf 718 to the Seventh Day Adventist Church in 1997, they paid the sales price of R11 286.00 in full during 2002.

Before the property could be transferred to them, it became evident that the Municipal Clinic Building (now a Provincial clinic) was encroaching onto Erf 718.

Following a request by the Provincial Government of the Western Cape to acquire Erf 718, in order for them to enlarge the current building, the Seventh Day Adventist Church was approach to accept an alternative site (Erf 1523, Kayamandi).

They have now confirmed in writing that they will accept the exchange of land, subject to certain conditions. Council must now decide on the matter.

24TH COUNCIL MEETING: 2019-02-27: ITEM 7.2.1

RESOLVED (nem con)

(a) that Erf 1523 be identified as land not needed to provide the minimum level of Municipal Services;

(b) that Council in principle approves the exchange of Erf 718 for Erf 1523 at equal value;

(c) that Council's intention to do the exchange of land be advertised for public inputs/objections/alternative proposals;

(d) that the item be brought back to Council following the public notice period, to make a final decision in this regard; and

(e) that Council notes the concerns indicated in the letter of the Seventh Day Adventist Church, and that Council commits to fencing the substation and attempt to find alternative land for the play park.

FOR FURTHER DETAILS CONTACT:

NAME	**Piet Smit**
POSITION	***Manager: Property Management***
DIRECTORATE	***Corporate Services***
CONTACT NUMBERS	***021-8088189***
E-MAIL ADDRESS	***Piet.smit@stellenbosch.gov.za***
REPORT DATE	***2018-03-23***

APPENDIX 2

PROPOSED DISPOSAL OF ERF 1523, KAYAMANDI TO THE SEVENTH DAY ADVENTIST CHURCH IN EXCHANGE FOR ERF 718, KAYAMANDI

Notice is hereby given in terms of par. 9.2.2.1 of Stellenbosch Municipality's Policy on the Management of Council-owned property of the Municipality's intention to dispose of erf 11523, Kayamandi, to the Seventh Day Adventist Church in exchange for erf 718, Kayamandi.

Background

Following the allocation of Erf 718 to the Seventh Day Adventist Church in 1997, they paid the sales price in full during 2002.
Before the property could be transferred to them, it became evident that the Municipal Clinic Building (now a Provincial clinic) was encroaching onto Erf 718.
Following a request by the Provincial Government of the Western Cape to acquire Erf 718, in order for them to enlarge the current building, the Seventh Day Adventist Church was approach to accept an alternative site (Erf 1523, Kayamandi).
They have now confirmed in writing that they will accept the exchange of land, subject to certain conditions.

Having considered the matter on 2019-02-13, Council resolved, inter alia, as follows:

" *(a) that erf 1523 be identified as land not needed to provide the minimum level of Municipal Services;*
(b) that Council in principle approves the exchange of erf 718 for erf 1523 at equal value;
(c) that Council's intention to do the exchange of land be advertised for public inputs/objections/alternative proposals;
(d) that the item be brought back to Council following the public notice period, to make a final decision in this regard".

Further Particulars:

Further particulars, including the agenda item that served before Council, are available at the office of the Manager: Property Management during office hours.

Invitation to submit written inputs

Any interested and effected party who wishes to submit inputs/objections or alternative proposals to the proposed exchange of land, can do so by submitting it in writing to the Manager: Property Management on or before 16 May 2019.

Inputs/Objections/alternatives can be submitted by hand, posted or send by e-mail to:

Physical Address: 3rd Floor
Absa (Oude Bloemhof) Building, Corner of Plein and
Rhyneveld Street
Stellenbosch
7600

25 April 2019

Postal address: PO Box 17
Stellenbosch
7599

E-mail: piet.smit@stellenbosch.gov.za

APPENDIX 3

252 Mgabadeli Street

Kayamandi

Stellenbosch

7600

16 May 2019

The Manager

Property Management

Stellenbosch Municipality

7600

Dear Sir

RE : PROPOSED EXCHANGE OF LAND ERF 718 FOR ERF 1523

LETTER OF OBJECTION:

This letter serves to respond to the official notice on Eikestadnuus, inviting inputs/objections/alternatives, on proposed exchange of land Erf 718 for Erf 1523.

1. The letter dated on 2018 /11 / 08 from SDA church requested your office to consider the following concern's see point 3 in the letter, has the ward committees informed the community around the play park concerned and what was the response from the community affected by the move. (there is no report back provided yet, SDA Church)
2. The above point is informed by the fact that, the general understanding of the community is, that Erf 1523 is a play park.
3. The Property manager office should provide us with report whether community agrees point (a) see resolution of 24 council meeting 2019-02-27.
4. Whether community agrees with alternative site proposal, as suggested on letter from your office dated 2019-09-04. (report back)
5. The exchange proposal of land made by your office as important as it is, for the sake of bringing services delivery to the people, it needs to be treated with serious consideration it deserves, since the integrity of the SDA Church could be at stake if this matter is loosely handled.
6. The office of property manager gives contradicting information, how? They claim that, the open space in discussion is composed of two sites implying that, allocation of Erf 1523 will not affect the play park, interesting enough, diagram Fig 4 on allocation and context shows us the opposite.
7. This exchange proposal exercise has not been exhausted in terms of looking for better suitable site; Erf 1523 is and could not be the last option. (In the context of future development of Kayamandi there is more suitable sites that can be considered for the purpose at hand)

The above concern's should not be totally viewed as an obstacle, rather be seen as encouragement to do all things to be done orderly, transparent and healthy/open communication to all parties affected by the exchange proposal of land, Erf 718 for Erf 1523.

I write this letter as a concerned member of the Seventh Day Adventist church and a member of the community affected by this initiative.

Hope that my concerns will find consideration it deserves.

Yours in community work

JMaqhashu

JUDITH MAQHASHU

Cell: 078 673 6134

7.2.3	**PROPOSED CONCLUSION OF LEASE AGREEMENTS: LEASE FARMS 502 AX AND AY**

Collaborator No:
IDP KPA Ref No: ***Good Governance***
Meeting Date: **10 July 2019**

1. SUBJECT: PROPOSED CONCLUSION OF LEASE AGREEMENTS: LEASE FARMS 502 AX AND AY

2. PURPOSE

To obtain Council approval for the conclusion of a lease agreement with Mr Jacques Olivier in relation to Lease Farms 502 AX and AY, following the public participation process.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

Stellenbosch Municipality concluded three (3) long-term Lease Agreements with HC Myburgh Boerdery on 1 April 1991.

During 2013 Mr Myburgh approached the Municipality with a written request to cede the lease agreements to the Heldervalley Farming Association, which, at the time included Mr Jacques Olivier. Before a formal agreement in this regard could be reached, Mr Myburgh passed away. Although the ceding was never formalised, women used the land for farming purposes as from 2008 under the supervision of Mr Olivier.

On 2019-01-30 Council considered a report, to approve, in principle, the leasing of the properties to Mr Jacques Olivier for a period of 9 years and 11 months, subject thereto that Council's intention so to act be advertised for public inputs. Council approved the recommendations, subject thereto that Council's intention to enter into the lease agreement be advertise for public inputs.

A formal notice was published; inviting interested and effected parties/individuals to submit written inputs by not later than 23 April 2019.

No such input/objections/comments were received and Council must now make a final determination.

5. RECOMMENDATIONS

(a) that it be noted that no written submissions/input/objections were received, following the public notice;

(b) that Council approves the leasing of Lease Farms 502 AX and AY to Mr Jacques Olivier for a period of 9 years and 11 months at a rate of 20% of market value, (R438.85 ha/per annum), provided that the current farming continues and that the land only be used for *bona fide* farming purposes;

(c) that the rental be increased by CPI (based on 12 months July to June) on a yearly basis. That it be noted that when a new evaluation (every 5 years) takes place the rental be 20% of that market value with the same escalation provision until the end of the contract;

(d) that Mr Olivier ensures that the current people who farms on the land under his supervision continues to farm and that any changes to the people who use the land for farming be reported to the Municipality;

(e) that Mr Olivier provides the Municipality with proof of the agreement that he has with the current people who farm on the property; and

(f) that a separate report on the outstanding debt be provided to council by the finance department.

6. DISCUSSION / CONTENTS

6.1 Background

6.1.1 Existing Lease Agreements

On 1 April 1991 Stellenbosch Municipality concluded three (3) long term Lease Agreements with HC Myburgh Boerdery in relation to the following properties:

Property description	Size	Water rights	Contract period
Lease Farm 502 AX	6.96 ha	2.3ha	1991-04-01 to 2041-03-31
Lease Farm 502AY	4.28 ha	1.3ha	1991-04-01 to 2041-03-31
Lease Farm 502 BC*	8.5 ha	2.5ha	1991-04-01 to 2041-03-31

*Lease Farm 502BC is currently not being used. It has been identified as an environmentally sensitive area by the Provincial Department of Environmental Affairs

6.1.2 Application from Heldervalley Farming Association

During 2013 a written request was received from Mr Johan Myburgh, on behalf of HC Myburgh Boerdery, to cede the abovementioned lease agreements.

At the time Mr Myburgh disputed his liability to pay the rent as he was not farming the land and he indicated that the people who farms the land should pay the rent, despite the fact that the rental agreement was between himself and the Municipality. Mr Myburgh indicated that he cannot be hold responsible for the outstanding rental, as the Farming Association was benefitting from the land and should be liable and the municipality held the Lessee liable for the rent in terms of the agreement. Before the matter could be resolved, Mr Myburgh passed away.

6.1.3 Council resolution

On 2019-01-30 Council considered a report dealing with this long outstanding matter. Having considered the report, Council resolved as follows:

"23RD COUNCIL MEETING: 2019-01-30: ITEM 7.2.6

RESOLVED *(majority vote with abstentions)*

(a) that it is noted that Mr H C Myburgh passed away and that the current lease agreements with HC Myburgh Boedery with regard to the lease agreements for Lease Farms 502AY; AX and BC, therefore be cancelled;

(b) that the following properties be identified as land not needed for own use during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulation 5:

Property description	*Size*	*Water rights*
Farm 502 AX	*6.96 ha*	*2.3ha*
Farm 502AY	*4.28 ha*	*1.3ha*

(c) *that Council, in principle, approves the leasing of the properties to Mr Jacques Olivier provided that the current farming continues and that the land is only used for bona fide farming for a period of 9 years and 11 months, subject thereto that Council's intention to lease the properties be advertised for public inputs, as provided for in paragraph 9.2.2 of the Property Management Policy;*

(d) *that Council determines the rental at 20% of market value, that is R438.85 ha/per annum, as provided for in paragraph 22.1.4 of the Property Management Policy (below market value rental);*

(e) *that the matter be referred back to Council after the public participation process indicated in (c) above; and*

(f) *that the outstanding debt in relation to Lease Farms 502AY, AX and BC* ***be investigated by the acting CFO*** *and a report be provided as to whether it can be recovered or should be written off as irrecoverable".*

A copy of the agenda item that served before Council is attached as **APPENDIX 1**.

6.1.4 Official Notice

Following the above resolution an Official Notice was published in the Eikestad News of 2019-03-28, a copy of which is attached as **APPENDIX 2**.

In terms hereof any interested and effected party who wishes to submit comment/inputs/objections to the proposed lease Agreement, could do so by submitting same in writing to the Department by not later than 2019-04-23.

No such submissions were received.

6.2 DISCUSSION

Seeing that no written submissions were received, it is recommended that Council now approve the lease agreement with Mr Olivier.

6.3 Financial Implications

The report on the outstanding rent must still serve before council.

6.4 Legal Implications

The recommendations in this report comply with Council's policies and all applicable legislation.

6.5 Previous/Relevant Council resolution

23RD COUNCIL MEETING: 2019-01-30: ITEM 7.2.6

6.6 Staff Implications

No additional staff is needed.

6.7 Risk Implications

The risks are addressed in the recommendations.

6.8 Comments from Senior Management:

Recommendations are supported.

ANNEXURES

Annexure 1: Agenda item
Annexure 2: Official Notice

FOR FURTHER DETAILS CONTACT:

NAME	**ANNALENE DE BEER**
POSITION	***DIRECTOR: CORPORATE SERVICES***
DIRECTORATE	***CORPORATE SERVICES***
CONTACT NUMBERS	***021-808 8106***
E-MAIL ADDRESS	***Annalene,deBeer@stellenbosch.gov.za***
REPORT DATE	***2019-06-14***

ANNEXURE 1

	PROPOSED CONCLUSION OF LEASE AGREEMENTS: LEASE FARMS 502 AX AND 502 AY

Collaborator No:
IDP KPA Ref No: Institutional Transformation
Meeting Date: 23 and 30 September 2018

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1. SUBJECT: PROPOSED CONCLUSION OF LEASE AGREEMENTS: LEASE FARMS 502 AX AND AY

2. PURPOSE

To obtain Council approval for the cancelation of the lease agreements with HC Myburgh Boerdery and the in principle approval of a lease agreement for the identified properties be concluded with Mr Jacques Olivier.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

Stellenbosch Municipality concluded three (3) long-term Lease Agreements with HC Myburgh Boerdery on 1 April 1991.

During 2013 Mr Myburgh approached the Municipality with a written request to cede the lease agreements to the Heldervalley Farming Association, which, at the time included Mr Jacques Olivier. Before a formal agreement in this regard could be reached, Mr Myburgh passed away. Although the ceding was never formalised, women used the land for farming purposes as from 2008 under the supervision of Mr Olivier. The lease agreements with HC Myburgh Boerdery has not been formally terminated nor has the estate chosen to take over the rights and responsibilities in terms of the agreements.

We received a request from Heldervalley Farming Association to rent the farm **Appendix 1.** Item served before Mayco and was referred back to determine exactly who the members of Heldervalley Farming Association is and what type of legal entity is applicable. We have, despite several attempts not received feedback from the association. Councillors on Mayco was requested to investigate the matter including the reference to the Eco sensitive area. It is confirmed that the land pieces referred to above excludes the eco sensitive area.

We have received feedback from Councillor Crawley and also received a letter from Mr Jacques Olivier explaining his involvement and the empowerment farming currently done by women. Appendixes 2- 4.

5. RECOMMENDATIONS FROM THE EXECUTIVE MAYOR IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE

5.1 that it is noted that Mr H C Myburgh passed away and that the the current lease agreements with HC Myburgh Boedery with regard to the lease agreements for Lease Farms 502AY; AX and BC therefore be cancelled.

5.2 that the following properties be identified as land **not needed for own use** during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulation 5:

Property description	**Size**	**Water rights**
Farm 502 AX	6.96 ha	2.3ha
Farm 502AY	4.28 ha	1.3ha

5.3 that Council, in principle, approves the leasing of the properties to Mr Jacques Olivier provided that the current farming continues and that the land is only used for bona fide farming for a period of 9 years and 11 months, subject thereto that Council's intention to lease the properties be advertised for public inputs, as provided for in paragraph 9.2.2 of the Property Management Policy;

5.4 that Council determines the rental at 20% of market value, that is R438.85 ha/per annum, as provided for in paragraph 22.1.4 of the Property Management Policy (below market value rental);

5.5 that the matter be referred back to Council after the public participation process indicated in 5.3 above; and

5.6 that the outstanding debt in relation to Lease Farms 502AY, AX and BC be investigated by the acting CFO and a report be provided as to whether it can be recovered or should be written off as irrecoverable.

6. DISCUSSION / CONTENTS

6.1 Background

On 1 April 1991 Stellenbosch Municipality concluded three (3) long term Lease Agreements with HC Myburgh Boerdery in relation to the following properties:

Property description	Size	Water rights	Contract period
Lease Farm 502 AX	6.96 ha	2.3ha	1991-04-01 to 2041-03-31
Lease Farm 502AY	4.28 ha	1.3ha	1991-04-01 to 2041-03-31
Lease Farm 502 BC*	8.5 ha	2.5ha	1991-04-01 to 2041-03-31

*Lease Farm 502BC is currently not being used. It has been identified as an environmentally sensitive area by the Provincial Department of Environmental Affairs

The Lease Areas form part of the bigger Farm 502, situated to the South of the Annandale Road, as shown on Fig 1 and 2, below.

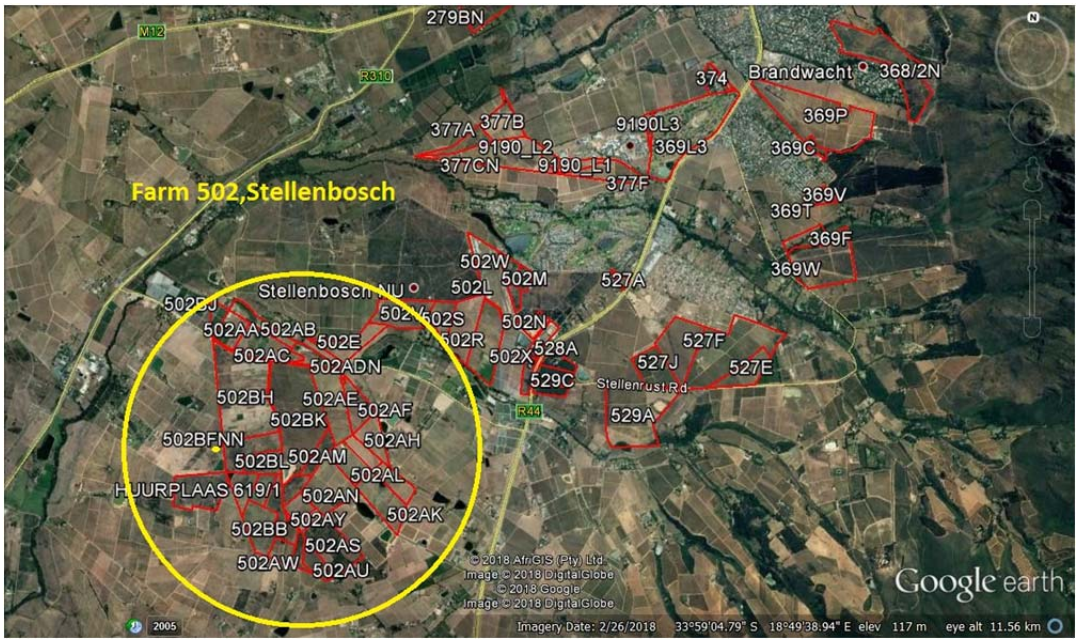

Fig 1: Location

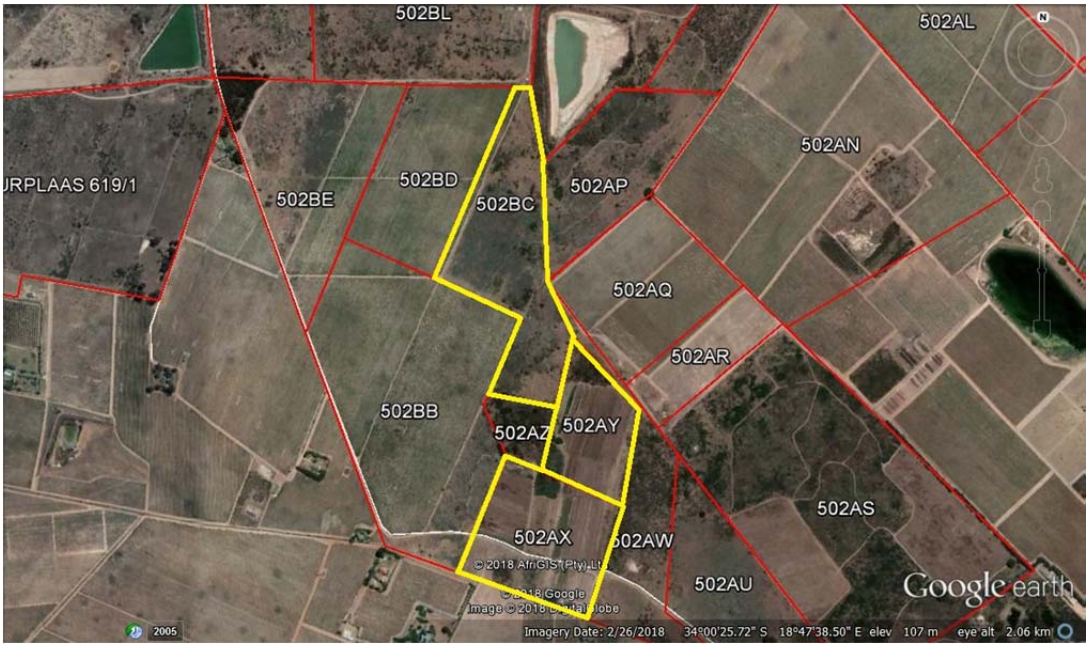

Fig 2: Extent of properties

6.2 Discussion

6.2.1 Application from Heldervalley Farming Association

During 2013 a written request was received from Mr Johan Myburgh, on behalf of HC Myburgh Boerdery, to cede the abovementioned lease agreements to the Heldervalley Farming Association. At the time of the request, members of the Heldervalley Farming Association were already using the leased land. They concluded an agreement with Mr Myburgh, and the Provincial Department of Agricultural. The sub-lease was never approved by Stellenbosch Municipality.

At the time there was a dispute between the parties with regard to outstanding monies. Mr Myburgh indicated that he cannot be hold responsible for the outstanding rental, as the Farming Association was benefitting from the land and should be liable and the municipality held the Lessee liable for the rent in terms of the agreement. Before the matter could be resolved, Mr Myburgh suddenly passed away.

This department later met with the Attorney handling the estate of the late Mr Myburgh, explaining that the proposed ceding were never concluded, and that they should indicate in writing whether they would like to proceed with the process. Notwithstanding a number of follow-up requests, they never responded. During 2015 further attempts were made, by involving the late Mr Myburgh's brother, to finalise the matter, but without success. From the above one can only assume that the estate did not want to continue with the lease agreements nor did they formally indicate that they want to continue with the ceding thereof. It is our understanding that the estate has in the meantime been wrapped up, without making any payments to the Municipality. The Municipality did not put a claim in against the estate. The contracts have not been formally terminated and it is proposed that the contracts with H C Myburgh Boerdery,be terminated

A letter was received from the Heldervalley Farming Association, hereto attached as **APPENDIX 1**, requesting that the lease agreements be ceded to them, as they are utilising the land from 2008. This would enable them to approach Government for financial assistance and would provide them with legal certainty.

The legal concept of a cession or assignment of a lease agreement is where, by agreement, and after obtaining the written consent of the landlord (Lessor), the Lessee (cedent) surrender or transfer its rights and/or obligations to a third party (cessionary). Once the cession is effected, the cedent falls out of the picture and the cessionary effectively becomes the (new) Lessee.

The legal requirements for a valid cession are:

a) Written consent by the landlord, if the Lease Agreement provided therefor;
b) Agreement * between the cedent and the cessionary to give and accept transfer of the rights (and obligations); and
c) Compliance with any formalities in law;

*Although an agreement for a cession or assignment need not to be in writing, it is always preferable. The only requirement is that the parties must have consensus *(wilsooreenstemming)* on the terms and conditions of such an agreement.

In the circumstances under discussion:

a) The Lessee (Myburgh) indeed requested the written consent of the Lessor (Stellenbosch Municipality);
b) Consensus on the proposed ceding was indeed reached, but agreement was never reached on the issue of taking over the obligations (outstanding debt) of the Lessee. For this reason no agreement was ever concluded.
c) The lessee has passed away before an agreement was reached and his estate has not taken up the rights and responsibilities under the leases and the state has been finalised.

6.2.2 Further information made available

This item first served before Mayco in July 2018, and was referred to Council for a decision. The item, however, was withdrawn from the Council agenda and was referred back to the department for refinements. The item again served before Mayco in September 2018, but questions were raised on portion 502 BC, being an environmental sensitive area. There were also questions raised regarding the membership of the Heldervalley Farming Association and the status of their legal entity.

Although various attempts were made to meet with representatives of the Association, this department was unable to set up such a meeting. During December 2018 a site meeting was scheduled. The purpose of the meeting was to ascertain

whether the land is in fact optimally used and whether members of the Association was indeed active on the ground.

Following this site meeting various correspondence were received, i.e.:

- **Letter from Jacques and Maria Olivier**, indicating that he is in fact the only person that is utilising the Lease Areas from as long back as 16 years ago, when the family farm was sold. He subsequently requested that a lease agreement be concluded with him (and by implication not the Heldervalley Farming Association), a copy of which is attached as **APPENDIX 2**.
- **Letter from N.J.Myburgh**, a brother of the late Johan Myburgh, confirming that Jacques Olivier is in fact the only person working on the land, a copy of which is attached as **APPENDIX 3**.
- **A memo from Councillor Crawley**, requesting that the land not be allocated to the Heldervalley Farming Association, but to Jacques Olivier, a copy of which is attached as **APPENDIX 4**.

6.3. Legal implications:

Asset Transfer Regulations

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

a) The Accounting officer has concluded a public participation process*; and

b) The municipal council has approved in principle that the right may be granted.

*Sub regulation (1) (a) (public participation process), however, must be complied with only if-

a) The capital asset in respect of which the right is to be granted has a value in excess of R10M*; and

b) A long-term right is proposed to be granted (i.e. longer than 10 years).

*None of the land parcels has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

a) whether such asset may be required for the municipality's **own use** during the period for which such right is to be granted;

b) the extent to which any compensation to be received will result in a significant economic or **financial benefit** to the municipality;

c) the **risks and rewards** associated with such right to use; and

d) the **interest of the local community.**

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality (read Mayco) may grant the right only in accordance with the **disposal management system*** of the municipality, irrespective of:-

a) the value of the asset; or

b) the period for which the right is granted.

*The Policy on the Management of Council-owned property is deemed to be Stellenbosch Municipality's Disposal Management System.

Policy on the Management of Council owned property

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may **dispense** with the prescribed, **competitive process**, and may enter into a **private treaty agreement** through any convenient process, which may include **direct negotiations**, but only in **specific circumstances**, and only after having **advertised** Council's intentions.

One of the circumstances listed in (l) is **lease contracts with existing tenants**. In the current circumstances, however, the Heldervalley Farming Association is not the legal tenants, although they are occupying the land since 2008.

Another condition is listed in paragraph 9.2.2.1 (e), and reads as follows:

*"(e) in **exceptional cases** where the Municipal Council is of the opinion **the public competition would not serve a useful purpose** or that it is in the interest of the community and the Municipality, and where none of the conditions as set out in the policy provides for such exception, is permitted, and where they are not in conflict with any provision of the policy. In such cases reasons for preferring such out-of hand sale or lease to those by public competition, must be recorded".*

Under the circumstances described above, this Department is of the view that a direct Lease Agreement with the Heldervalley Farming Association would fall into this criteria. For this reason it is recommended that Council approve, in principle, the conclusion of a lease agreement with the Heldervalley Farming Association on a private treaty basis, subject thereto that Council's intentions be advertised for public inputs/objections.

Further, in terms of paragraph 9.2.2.2, the reasons for any such deviation from the competitive process must be recorded.

In terms of paragraph 22.1.4 the fair market rental will be determined by the average of the valuations sourced from two service providers, **unless determined otherwise** by the Municipal Manager, taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

In the current circumstances it is important to note that Council has already approved a tariff of 20% of the fair market rental (as approved by Council from time to time) for other emerging farmers. It is therefore recommended that the rental be determined at 20% of market rental, i.e. R 438.85/ha per annum.

6.4 Financial Implications

The current outstanding debt on the three Lease Agreements is as follows:

- Lease Farm 502 AY: R122 116.45
- Lease Farm 502 AX: R141 566.34
- Lease Farm 502 BC: R219 784.20

Total R483 466.99

Should Council agree to lease the portions indicated above to Mr Olivier, it is recommended that the outstanding rental of Mr Myburgh be written off. Although the

Heldervalley Farming Association used the land leased to HC Myburgh Boerdery there is no legal agreement with them and there is no legal claim against them. With the conclusion of the Myburgh estate without a claim been lodged by the Municipality, the Municipality lost it right to claim for this outstanding debt,

The proposed rental of 20% of market rental can be justified, as other emerging farmers already receive this benefit, and it is in line with our Property Management Policy, authorising a below market value/rental "*where the plight of the poor*" demands as such.

6.5 Staff Implications

This report has no staff implications for the municipality.

6.6 Risk Implications

It is necessary to comply with Council Policies and applicable legislation.

6.7 Comments from Senior Management:

6.7.1 **Director: Infrastructure Services**

I notice that some of these farm portions are close to Annandale Road. They seem to be mostly south of this road but it must be noted that the intended Western Bypass is to originate from Annandale Road. We need to ensure that should the Western Bypass become live and when WCG decides to promulgate this road, that those properties upon which the Road Reserve is to be placed must understand that we reserve the right to allow a promulgation on the applicable properties regardless of this lease and should the construction of such road commence upon any of these properties that such construction will be allowed with, say, a 12-month warning. Apart from the above and therefore the impact on recommendation (a), I support the other recommendations.

Please note that the properties under consideration are located to the south of Annandale Road, and will therefore not be affected by the proposed western bypass.

6.7.2 Director: Planning and Economic Development

No comments received

6.7.3 **Chief Financial Officer**

No comments received

6.7.4 Municipal Manager

Supports the recommendations

ANNEXURES

Annexure 1: Letter received from Heldervalley Farming Association
Annexure 2: Letter addressed to Councillor Crawley
Annexure 3: Letter from NJ Myburgh
Annexure 4: Memorandum from Councillor Crawley

FOR FURTHER DETAILS CONTACT:

NAME	**ANNALENE DE BEER**
POSITION	***DIRECTOR: CORPORATE SERVICES***
DIRECTORATE	***CORPORATE SERVICES***
CONTACT NUMBERS	***021-808 8106***
E-MAIL ADDRESS	***Annalene,deBeer@stellenbosch.gov.za***
REPORT DATE	***2019-01-22***

ANNEXURE 2

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OFFICIAL NOTICE

PROPOSED CONCLUSION OF LEASE AGREEMENT WITH JACQUES OLIVIER: LEASE FARMS 502 AX AND AY, STELLENBOSCH

Notice is hereby given in terms of par. 9.2.2.1, read with sub-paragraph (m) of Stellenbosch Municipality's Policy on the Management of Council-owned property, of the Municipality's intention to conclude a Lease Agreement with Mr Jacques Olivier in relation to Lease Farms 502AX and AY for a period of 9 years and 11 months.

Background
Stellenbosch Municipality concluded long-term Lease Agreements with the late Mr J Myburg on 1 April 1991 for the lease of the above-mentioned properties.
During 2013 Mr Myburg approached the Municipality with a written request to cede the Lease Agreement to Mr Olivier. Before a formal agreement could be reached, Mr Myburg passed away.
A request to enter into a new agreement(s) has now been received from Mr Olivier, who is farming on the properties for the past ±15 years.

At a Council meeting held on 30 January 2019, having considered the request, they resolved, inter alia, as follows:

(a) **that it is noted that Mr H C Myburgh passed away and that the current lease agreements with HC Myburgh Boedery with regard to the lease agreements for Lease Farms 502AY; AX and BC, therefore be cancelled;**

(b) **that the following properties be identified as land not needed for own use during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulation 5:**

Property description	*Size*	*Water rights*
Farm 502 AX	*6.96 ha*	*2.3ha*
Farm 502AY	*4.28 ha*	*1.3ha*

(c) **that Council, in principle, approves the leasing of the properties to Mr Jacques Olivier provided that the current farming continues and that the land is only used for bona fide farming for a period of 9 years and 11 months, subject thereto that Council's intention to lease the properties be advertised for public inputs, as provided for in paragraph 9.2.2 of the Property Management Policy; and-**

(d) **that Council determines the rental at 20% of market value, that is R438.85 ha/per annum, as provided for in paragraph 22.1.4 of the Property Management Policy (below market value rental);**

Further Particulars:
Further particulars, including the agenda item that served before Council, are available at the office of the Manager: Property Management during office hours.

Invitation to submit written inputs
Any interested and effected party who wishes to submit comment/inputs/objections to the proposed renewal of Lease Agreements can do so by submitting it in writing to the Manager: Property Management on or before 23 April 2019.

Objections/inputs can be submitted by hand, posted or by e-mail to:
Physical Address: 3rd Floor
Absa (Oude Bloemhof) Building, Corner of Plein and Rhyneveld Street
Stellenbosch, 7600

Postal address: PO Box 17
Stellenbosch, 7599

e-mail: piet.smit@stellenbosch.gov.za

In terms of the provisions of Section 21(4) of the Municipal Systems Act, anyone who cannot read or write is welcome to contact the office of the Manager: Property Management for assistance.

.....
G METTLER
MUNICIPAL MANAGER

.....
DATE

7.3	**FINANCIAL SERVICES: (PC: CLLR P CRAWLEY (MS))**

NONE

7.4	**HUMAN SETTLEMENTS: (PC: CLLR N JINDELA)**

NONE

7.5	**INFRASTRUCTURE SERVICES: (PC: CLLR Q SMIT)**

NONE

7.6	**PARKS, OPEN SPACES AND ENVIRONMENT: (PC: XL MDEMKA (MS))**

NONE

7.7	**PLANNING AND ECONOMIC DEVELOPMENT: (PC:CLLR E GROENEWALD (MS)**

NONE

7.8	**RURAL MANAGEMENT AND TOURISM: (PC: CLLR S PETERS)**

NONE

7.9	**YOUTH, SPORTS AND CULTURE: (PC: M PIETERSEN)**

NONE

7.10	**REPORTS SUBMITTED BY THE MUNICIPAL MANAGER**

7.10.1	**CONSEQUENCE MANAGEMENT POLICY**

Collaborator No:
IDP KPA Ref No: **Good Governance and Compliance**
Meeting Date: **10 July 2019**

1. SUBJECT: CONSEQUENCE MANAGEMENT POLICY

2. PURPOSE

To adopt the Consequent Management Policy for immediate implementation and strengthen the Council commitment to good governance and a clean administration.

3. DELEGATED AUTHORITY

Council.

4. EXECUTIVE SUMMARY

The Draft Consequence Management Policy with which Stellenbosch Municipality seeks to formalise and consolidate the principles of consequence management (encompassing remedial and recourse measures) that will be implemented. In line with the objectives of the MFMA the policy seeks to, amongst others, improve the internal control processes relating to the reporting of allegations of financial misconduct and financial offences to Council.

5. RECOMMENDATION

that Council approves the Consequence Management Policy for immediate implementation.

6. DISCUSSION

To demonstrate its commitment and adherence to the highest levels of good and effective corporate governance, the consequence policy is proposed to enhance the core values and ethical principles as envisaged in the IDP. Although Council has not formally adopted King IV and its guiding principles, it strives as far as possible to achieve these principles. King IV that the Municipality continually assess, and appropriately respond to, the negative consequences of the organisational activities and outputs in relation to the inputs thereto. The organisational commitment to good governance is further evidenced by the Municipal Manager not only setting, but also driving the tone from the top by, inter alia, holding the delegated officials accountable and for, officials to act responsibly within their respective functional areas.

In addition to the above, the objective of the policy is, inter alia, to provide guidelines to enable effective consequence management on matters relating to incidents of unauthorised, irregular and fruitless and wasteful expenditure, abuse of the Supply Chain Management processes/systems (including fraud, corruption and improper conduct), allegations of financial misconduct, and ensuring that these are appropriately dealt with. The policy was discussed at the management meeting at the 11 June 2019 and also submitted to the Audit Performance Committee for input by 27 June 2019. The

Audit committee suggested that section 78 of the MFMA be included in the policy which deals with the accountability of all officials exercising financial responsibilities.

Due to the inward-facing nature of this policy, and the fact that it has no direct implications for the general public, it is not required to undergo a public engagement process.

7. Financial Implications

Investigation might require the appointment specialised service providers which has been budgeted for under the operational budget.

8. Legal Implications

Policy is in line with the MFMA and regulations

9. Staff Implications

None

10. Risk Implications

The policy will assist with the combined assurance and not accepting the policy can potentially create a policy vacuum.

11. Previous council resolutions

None

12. Comments from Senior management

Senior Management agrees with the policy.

Annexure:

Draft Consequent Management Policy

FOR FURTHER DETAILS CONTACT:

NAME	Geraldine Mettler
POSITION	Municipal Manager
DIRECTORATE	Office of the Municipal Manager
CONTACT UMBERS	021 – 808 8025
E-MAIL ADDRESS	mm@stellenbosch.gov.za
REPORT DATE	28 June 2019

ANNEXURE 1

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CONSEQUENCE MANAGEMENT POLICY

APPROVED BY COUNCIL: DATE

24 July 2019

Contents

1. POLICY TITLE

Consequence Management Policy of 2019

2. DOCUMENT CONTROL

Responsible Official	Version
Version Control	Draft 1
Document Status	Submission to MayCo
Review Dates	New Policy
Contact Details	021-808 8025

3. DEFINITIONS

'APAC', means the Municipality's Audit and Performance Audit Committee, a Committee established in terms of section 166 of the MFMA in order to advise Council, Municipal Manager and management staff on matters relating to internal financial control and internal audits, risk management, accounting policies, adequacy and reliability of financial reporting, performance management, effective governance, compliance with MFMA and other applicable legislation.

'assurance provider', means the assurance providers referred to in sections 10.2.5, 10.2.6 and 10.2.7;

'Chief Financial Officer" means a person designated in terms' of section 80(2)(a) of the MFMA;

'Code of Conduct for Councillors', means the Code of Conduct for Councillors contained in Schedule 1 of the MSA;

'Code of Conduct for Municipal Staff Members', means the Code of Conduct for Staff Members of the Municipality contained in Schedule 2 of the MSA;

'Combined Assurance', means integrating and aligning **assurance** processes in the Municipality to maximise risk and governance oversight and control efficiencies, thereby optimising overall **assurance** to Council, APAC, MPAC, Risk Management Committee (Risk Co) and Management taken into account the Municipality's risk acceptance level;

'Constitution', means the Constitution of the Republic of South Africa, 1996;

'Corporate Governance', means the structures and processes utilised to determine the organisational direction and control of the Municipality. Corporate governance concerns the relationships among the management, Council, stakeholders and staff of the Municipality.

'Council', means the Municipal Council of the Municipality;

'Councillor', means a Councillor of the Municipal Council of the Municipality;

'Criminal action', means legal proceedings in which the state prosecutes a person who is charged with an offence;

'Delegation', in relation to a duty, includes an instruction or request to perform or to assist in performing the duty, and "delegate" has a corresponding meaning;

"Designated Official" means the official identified in a municipality to receive reports of allegations of financial offences against Councillors or members of the board of directors of municipal entities;

'Disciplinary Board', means a disciplinary board established in terms of regulation 4(1) of the MRFMPCP a disciplinary board or referred to in regulation 4(8) thereof;

'Employee' means -

(a) any person, excluding an independent contractor, who works or worked for the Municipality and who receives or received, or is entitled to receive, any remuneration;
(b) any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an employee;

'MT', means the Management Team which consists of the Municipal Manager, Directors and those Municipal officials who serve together as the top management committee of the Municipality's administration;

'Financial Misconduct', means any act of financial misconduct referred to in(a) section 171 of the MFMA committed by an official of a municipality; or
section 172 of the MFMA committed by an official of a municipal entity;

"Financial Offence", means any offence referred to in section 173 of the MFMA committed by (a) an official of a municipality or municipal entity; (b) a councillor of a municipality; (c) a member of the board of directors of a municipal entity; or (d) any other person;

'Fraud', means the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another;

'Governance Department', means a department within the Office of the Municipal Manager which includes the Forensic Services; Risk, Ethics and Governance;

'IDP', means the Integrated Development Plan of the Municipality;

'Internal Control', means the process that is effected by Council or MT to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) effectiveness and efficiency of operations, and

(b) reliability of financial and non-financial reporting,

(c) compliance with applicable laws and regulations, and policies and procedures;

'Investigator' means the board, treasury, person or team conducting a full investigation in terms of regulation 5(4) of the MRFMPCP.

'Irregular Expenditure' means-

(a) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170

(b) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act

(c) expenditure incurred by a municipality in contravention of, or that is not in accordance with a requirement of the Public Office-Bears Act, 1998 (Act 20 of 1998); or

(d) expenditure incurred by a municipality in contravention of, or that is not in accordance with a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law;

but excludes expenditure by a municipality which falls within the definition of 'unauthorised expenditure';

'Line Management', means any staff member in reporting levels 1 to 4 and includes all Municipality staff members that exercise a management or supervisory function, including MT;

'Mayoral Committee', means the Committee appointed by the Mayor, in terms of section 60 of the Structures Act, abbreviated to MayCo;

'MFMA', means the Local Government: Municipal Finance Management Act, Act, 2003 (Act No. 56 of 2003), and the Regulations promulgated in terms thereof;

'MPAC', means the Municipality's Municipal Public Accounts Committee, a Committee established in order to enhance political accountability and legislative oversight of the Municipality's accounts;

'MRFMPCP', means the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014, published under GN R430 in GG 37699 of 30 May 2014.

"MSA", means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and the Regulations promulgated in terms thereof;

'Municipal Manager', means a person appointed in terms of section 82(1)(a) or (b) of the Structures Act and 'Accounting Officer' shall have the same meaning;

'Opinion', means a statement of advice by an expert on a professional matter;

'Policy', means the Consequence Management Policy of the Municipality;

'SAPS', means the South African Police Service;

'SCM', means the Supply Chain Management Department of the Municipality;

'SCM Policy', means the Municipality's Supply Chain Management Policy as contemplated in the MFMA Supply Chain Management Regulations and as adopted by Council;

'Senior Manager', means a manager referred to in section 56 of the Municipal Systems Act and those members of management that are referred to in terms of Section 77 and 78 of the Municipal Finance Management Act;

'Structures Act', means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and

'System of Delegations', means the Municipality's System of Delegations as contemplated in section 59 of the Municipal Systems Act, Act 32 of 2000 in terms of which a municipal council must develop a system of delegations that will maximise administrative and operational efficiency and provide adequate checks and balances and is approved and amended by Council from time to time.

4. PROBLEM STATEMENT

4.1 In terms of section 62 of the MFMA for the general financial management responsibilities of the Municipal Manager, the Municipal Manager is required to take all reasonable steps to ensure that:

4.1.1 the resources of the municipality are effectively, efficiently and economically utilised;

4.1.2 full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards;

4.1.3 the municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control

4.1.4 unauthorised, irregular, fruitless and wasteful expenditure are prevented;

4.1.5 disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of the Chapter 15 of the MFMA.

4.2 A defined, appropriate approach to address accountability and responsibility for, inter alia, non-compliance, financial misconduct, misconduct, and codes of conduct/ethical dilemmas, required formalisation in the Municipality. While not designed to alter or add particular consequence to specific situations of non-compliance, this Policy aims to formalise and consolidate the principles of consequence management which encompasses remedial and recourse measures. The objective of this Policy is to:

4.2.1 Provide limited guidelines to enable effective consequence management on matters relating to, inter alia; issues, risks and opportunities identified and reported by the various assurance providers e.g. incidents of unauthorised, irregular and fruitless and wasteful expenditure; the possible abuse of the Supply Chain Management (SCM) system (including fraud, corruption and improper conduct); and allegations of financial misconduct and financial offence; and ensuring that these are appropriately dealt with;

4.2.2 Address non-compliance actions identified which could include, but is not limited to, the following:

a) Disregard or failure to implement preventative or corrective measures imposed to address risks;
b) Lack of willingness to comply with legal obligations;
c) Perpetrated or participated in negligent, deceitful or otherwise discreditable practices;
d) Seriously or persistently fail to execute assigned duties;
e) Non-compliance with internal policies, procedures, legislation and regulations;
f) Having acted dishonestly, with negligence, mismanaged responsibility, unprofessionally, unethically and in breach of Municipal policies;
g) Participation in illegal acts, including theft, violence, fraud and corruption;
h) Unethical, malicious or other improper conduct which may be in breach of the Municipality's Code of Ethics and/or Municipal values, the municipal Code of Conduct or in breach of the law generally;
i) Breach of administrative procedures, including the Municipal Delegation of Authority; or
j) Any other conduct that may cause financial or non-financial loss, or is otherwise detrimental, to the interests of the Municipality.

4.2.3 Hold management accountable for the execution of their delegated duties, functions and powers;

4.2.4 Provide management with direction when instituting recourse measures for established financial misconduct; and

4.2.5 Provide limited universal direction and guidance to govern the high level phases of consequence management as well as key concepts and principles with regards to the treatment of issues (various incidents and red flags), risks and opportunities identified that could negatively impact the operations, reporting processes, and compliance to legislative frameworks applicable to the Municipality.

4.3 Managing compliance includes making appropriate rules that are known, understood and followed and for which consequences of non-compliance are clear and commensurate with risk and context. The processes and procedures to be followed with regards to the different aspects of consequence management in the Municipality, are

specified in the relevant, existing Municipal documents and enhancements (if required) will be effected.

5. DESIRED OUTCOMES

5.1 In line with the various legislative frameworks promoting fundamental principles of effective and efficient utilisation of public resources and transparent and accountable financial management practices, the Municipality is committed to implementing an effective consequence management system. The Policy is designed to assist the Municipality to:

5.1.1 Improve the Municipality's internal control processes for reporting allegations of financial misconduct and financial offences to Council to ensure compliance to legislative and regulatory requirements;

5.1.2 Reduce risk exposure by ensuring all matters incurring unauthorised, irregular, fruitless and wasteful expenditure; the possible abuse of the SCM system (including fraud, corruption and improper conduct); and allegations of financial misconduct or financial offence are appropriately identified, investigated and reported on.

5.1.3 Provide for comprehensive tracking and follow-up of all remedial actions, including those stemming from issues (various incidents and red flags), risks and opportunities raised and reported by the various assurance providers;

5.1.4 Provide for improved and consolidated reporting to the various stakeholders and governance structures to assist with the effective monitoring of the Municipality's consequence management system and desired governance and ethical conduct outcomes;

5.1.5 Take appropriate action in accordance with the law, including legal or criminal action, against any person that is found to have committed financial misconduct and financial offences; and

5.1.6 Provide clarity with regard to the roles and responsibilities of various role players and stakeholders, encompassing responsibilities, accountability, consultation and information related to consequence management.

6. STRATEGIC ALIGNMENT

6.1 The development of a Consequence Management Policy is one of the proactive step that is aligned with the Strategic Pillars as detailed in the Municipality's Integrated Development Plan (IDP).

6.2 The Strategic Pillars are categorised into the following five pillars:

6.2.1 Valley of Possibility
6.2.2 Green and Sustainable Valley;
6.2.3 Safe Valley;
6.2.4 Dignified living; and
6.2.5 Good governance and Compliance.

6.3 One of the objectives of the IDP is delivery of services and creation of value for customers in an operationally sustainable manner. In order to deliver on this objective, the Municipality is committed to taking steps to provide effective consequence management i.e.:

6.3.1 Promoting and enhancing transparent governance through ethical leadership;

6.3.2 Working towards eradicating corruption so that the Municipality can remain financially stable and resilient to shocks in a changing and volatile environment; and

6.3.3 Improving the internal control processes insofar as it relates to identifying, investigating and reporting allegations of financial misconduct to Council and improving the tracking and monitoring of all remedial actions, including those stemming from various assurance providers.

7. REGULATORY CONTEXT

7.1 The Policy is informed by the following legislation and regulations:

7.1.1 The Constitution;

7.1.2 White Paper on Transforming Public Service Delivery, 1997;

7.1.3 White Paper on Local Government, 1998;

7.1.4 Structures Act;

7.1.5 MSA and the Regulations;

7.1.6 MFMA and Regulations;

7.1.7 Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

7.1.8 Criminal Procedure Act, l077 (Act No. 51 of 1977);

7.1.9 Promotion of Equality and the Prevention of Unfair Discrimination Act, *2000 (Act No. 4 of 2000);*

7.1.10 Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);

7.1.11 Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);

7.1.12 Protected Disclosures Act, 2000 (Act No. 26 of 2000);

7.1.13 Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings;

7.1.14 MFMA Circular 68 - Unauthorised, Irregular, Fruitless and Wasteful Expenditure;

7.1.15 MFMA Circular 76 (not adopted by council but used as a guide)- Financial Misconduct Regulations;

7.1.16 SALGA Guidelines Document on the Roles and Responsibilities of Councillors, Political Structures and Officials;

7.1.17 Municipal Code of Conduct for Councillors;

7.1.18 Municipal Code of Conduct for Municipal Staff Members;

7.1.19 System of Delegations; and

7.1.20 Any other legislation, Municipal by-law, policy or standard operating procedure that may be applicable to consequence management.

7.2 The following Municipal policies and delegations in the System of Delegations are further applicable:

7.2.1 The System of Delegations as amended from time to time;

7.2.2 SCM Policy,

7.2.3 Declaration of Financial Interest for Councillors;

7.2.4 Private Work and Declaration of Interest Standard Operating Procedure;

7.2.5 Unforeseen and Unavoidable Expenditure Policy;

7.2.6 Gift register for officials;

7.2.7 Gift register for Councillors;

7.2.8 Integrated Risk Management Policy;

7.2.9 Internal Audit Charter;

7.2.10 Fraud Prevention Policy (and Fraud Response Plan);

7.2.11 Whistle Blowing Policy;

7.2.12 MPAC Terms of Reference

7.2.13 Disciplinary Board Terms of Reference; and

7.2.14 Audit and Performance Audit Committee Terms of Reference.

8. POLICY PARAMETERS

This Policy applies to:

8.1 All issues (various incidents and red flags), risks and opportunities identified that could negatively impact the Municipality's operations, reporting and compliance to legislation;

8.2 All remedial actions to be taken to curtail the impact and prevent re-

occurrence;

8.3 The following persons:

8.3.1 Employees of the Municipality; and

8.3.2 All Public Office Bearers of the Municipal Council.

8.4 The geographical area throughout the municipal boundary of the Municipality and any official travelling (local, national and international) required of Public Office Bearers and Officials; and

8.5 The working environment within the administration, every effort must be made by line management to have business processes documented, with knowledgeable staff for the appropriate application. Line management supervision is to ensure adherence and where the duties and functions are a miss, appropriate remedial and corrective action is to follow to respectively curtail the impact and prevent re-occurrence.

9. ROLE PLAYERS AND STAKEHOLDERS

9.1 The following section provides a high level summary of the roles and responsibilities of the key role-players in consequence management, inter alia;

- The identification of issues (various incidents and red flags), risks and opportunities;
- Remedial actions and control improvements;
- Risk/ issue reporting details and escalation;
- Follow-up and progressive reporting;
- Application; and
- Disclosure.

9.2 The Speaker

The Speaker has a political oversight function in respect of the conduct of councillors as well as committees of Council. The Speaker is accountable for effective consequence management in respect of reports against Councillors, ensuring that these are appropriately addressed and resolved.

To this extent, and in line statutory duties and delegations conferred by Council as the "designated official" for councillors, the Speaker must:

(a) Identify breaches of the Code of Conduct by Councillors, in terms of the

Code of Conduct for Councillors in schedule 1 of the MSA as well as receive reports of alleged financial misconduct in the case of Councillors who may have committed financial misconduct and/or financial offence(s) in terms of regulation 9(1) and 9(2) of the MRFMPCP;

(b) Authorise investigations into –

- ❖ financial irregularities where Councillors may be implicated
- ❖ financial misconduct or financial offence where Councillors may be implicated (per regulation 11(1)(a) of the MRFMPCP, or breaches of the Code of Conduct by Councillors

(c) Based on reports from preliminary investigations, make recommendations to Council in respect of the way forward ensuring that appropriate remedial action is taken and the control environment is improved;

(d) Table reports to Council dealing with the outcomes of full investigations in respect of allegations of financial misconduct, financial offences or breaches of code of conduct by Councillors (per regulation 14(2) and 15(1) of the MRFMPCP; and

(e) Make appropriate disclosures in respect of the outcome of all investigations into the alleged misconduct or financial irregularities of Councillors to the relevant authorities e.g. Executive Mayor, Municipal Manager, Minister for Local Government in the Province, National and Provincial Treasury (per regulation11(4)of the MRFMPCP.

In performing these responsibilities, the Speaker will be guided by the relevant recommendations by -

i. the MPAC;
ii. the investigator(s); and
iii. the Disciplinary Board.

In addition, consideration will be given to the Financial Misconduct and Criminal Procedure Regulation –

- 3(4) - laying criminal charge with the South African Police Services;
- 3(5) - give the accused an opportunity to make written representation to the municipality (with regard to suspension) within 7 days:
- (3) - financial offenses successfully prosecuted, the judgement must be reported to the National Treasury;

- 11 (1) - authorise investigation of facts and give Councillor (5 days) to make written submission regarding financial offence; and
- 18 - protection of officials reporting allegations of financial misconduct and financial offenses.

9.3 Executive Mayor, in consultation with the Mayoral Committee (MayCo)

In line with the requirements for good corporate governance outlined in the King IV Report and in recognition of the way in which the Municipality is currently structured, the Executive Mayor and MayCo are accountable to Council, the community, and other stakeholders at a strategic level for:

a) Managing risks to the Municipality and ensuring that an effective consequence management process is implemented to reduce risk exposures and improve the control environment;
b) Limiting consequential losses to the Municipality from issues (various incidents and red flags), risks and opportunities;
c) Promoting, developing, and sustaining a culture of integrity, service excellence, accountability, trust and accessibility which would support the Municipality's appetite of zero tolerance to fraud, corruption and other criminal activity, maladministration and/or negligence and financial misconduct;
d) Developing and implementing appropriate strategies, policies and action plans to achieve effective consequence management of issues, risks and opportunities thereby curtailing the potential negative impact on the Municipality;
e) Monitoring, evaluating and reviewing the success of such consequence management strategies, policies and action plans; and
f) Making appropriate disclosures in respect of the outcome of financial misconduct to the relevant authorities e.g. Minister for Local Government in the Province, National and Provincial Treasury.

9.3.1 Members of the Municipal Council

a. Councillors are legally bound by the Code of Conduct for Councillors - per Schedule I of the MSA, to fulfil their obligations to their communities and support the municipal objectives, and must comply with and actively promote this Policy.
b. Councillors must strive to set the tone to sustain a culture of zero tolerance to fraud, corruption and other criminal activities.

9.3.2 Municipal Manager

In terms of section 62 of the MFMA, the Municipal Manager has statutory responsibilities with regards to the general financial management of the municipality. In addition, as the "designated official" for municipal officials in terms of in the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, the Municipal Manager must ensure that any allegations of financial misconduct or financial offence against municipal officials are timeously investigated and appropriately treated and reported. Considering the above, the Municipal Manager is therefore ultimately responsible for proper consequence management of all issues (various incidents and red flags), risks and opportunities that have been identified and reported against municipal officials that can have a potential negative impact on the Municipality's operations, reporting and compliance.

The Municipal Manager's role in consequence management in the Municipality is therefore to:

a) Receive reports highlighting issues (various incidents and red flags), risks and opportunities that could potentially negatively impact the Municipality's operations, reporting (specifically finance) or compliance to legislation and regulations, including tabled reports to Council of alleged financial misconduct in the case of senior managers who may have committed financial misconduct or financial offence(s);
b) Consider recommendations made by combined assurance providers and the Financial Misconduct Disciplinary Board (in terms of municipal officials) and ensure that appropriate remedial actions are taken to address the risk exposure and improve the control environment;
c) Consider the results of combined assurance providers' systems that track and follow-up on the implementation

of recommendations made to line management, and obtain reasons for delays in implementation of remedial actions (in terms of leadership and accountability);

d) In cases of allegations of unauthorised, irregular and fruitless and wasteful expenditure; the possible abuse of the SCM system (including fraud, corruption and improper conduct); and allegations of financial misconduct and financial offence, the Chief Audit Executive in consultation with the Municipal Manager must:

i) Report the allegation to SAPS;
ii) Refer the matter to the appropriate mechanism - disciplinary board for a preliminary investigation or Council for MPAC investigation;
iii) Maintain the necessary register(s) of all issues (various incidents and red flags),
iv) Submit reports to Council on the way forward, based on preliminary report;
v) Appoint an appropriate specialist expert or expert team, if the seniority of the transgressor and the seriousness or sensitivity of the allegations warrants such a step (sourced in assistance);
vi) Table reports to Council dealing with the outcomes of full investigations relating to allegations of financial misconduct, or financial offences; and
vii) Make appropriate disclosures in respect of the outcome of all investigations into the alleged financial misconduct or financial irregularities to the relevant oversight authorities e.g. Executive Mayor, Council, Minister for Local Government in the Province, National and Provincial Treasury.

9.3.3 Senior Managers and other officials

In terms of section 78 of the Municipal Finance Management Act, each senior manager of a municipality and each official of a municipality exercising financial management responsibilities must take all reasonable steps within their respective areas of responsibility to ensure:

(a) that the system of financial management and internal control established for the municipality is carried out diligently;
(b) that the financial and other resources of the municipality are utilised effectively, efficiently, economically and transparently;
(c) that any unauthorised, irregular or fruitless and wasteful expenditure and any other losses are prevented;
(d) that all revenue due to the municipality is collected;
(e) that provision of this Act, to the extent applicable to the senior manager or official, including any delegations in terms of section 7, are complied with.

9.3.4 First Level of Assurance Provider

Line management are first level assurance providers as per the Municipality's Combined Assurance Policy and are responsible for providing assurance on all areas within their span of control. This includes establishing, maintaining and ensuring proper governance, risk management and internal control processes, as well as addressing issues (various incidents and red flags), risks and opportunities identified and reported.

a) Line managers, per their accountability and responsibility duties, must:

i. Identify and immediately report any issues (various incidents and red flags), risks and opportunities that can have a potential negative impact on the Municipality to the appropriate level of authority, including the Municipal Manager;
ii. Consider recommendations made by combined assurance providers and ensure that appropriate remedial actions are taken to address the risk exposure and improve the control environment timeously;
iii. If there is a concern that the Municipal manager, a senior manager or the Chief Financial Officer may be involved, report the matter to the next appropriate delegated authority e.g. Executive Mayor/ Speaker/ Council/ Provincial Treasury/ National Treasury; and.

b) Employee's responsibility:

i. Municipal employees are bound by South African law (both statutory, common law and case law), the terms and conditions of their employment and also the Code of Conduct for Municipal Staff Members, the Municipal Code of Ethics, Municipal policies, standard operating procedures, and instructions issued periodically;
ii. Every Municipal employee has a duty to ensure that public funds are safeguarded and Municipal ethical values are upheld. Where issues (various incidents and red flags), risks and opportunities arise that could be deemed financial misconduct or a financial offence, these must be reported to the employee's line manager. Should the line manager potentially be implicated, the next reporting level must be informed;
iii. Key ambassadors for the successful implementation and execution of the Municipal value system are its employees as their conduct is often the basis on which the Municipal is judged. The actions and spirit of employees must purport the core values and principles governing the Municipal in a credible manner that does not compromise ethical behaviour; and
iv. Failure by any employee(s) of the Municipal to comply with this Policy or to display the Municipal core values of Trust, Integrity, Accountability, Excellence and Accessibility in the fulfilment of their duties and functions, could result in consequence management, disciplinary or criminal action being taken against such individual(s) in line with the relevant HR policies.

9.3.5 Second Level Assurance Provider

The second level of assurance providers are comprised of risk, control and compliance assurance providers, reporting primarily to management and advisory or oversight bodies, with limited independence in relation to the activity on which assurance is required. These assurance providers have the responsibility to, inter alia;

a) Identify and immediately report any issues (various incidents and red flags), risks and opportunities that can have a potential negative impact on the Municipality to the appropriate level of authority, including the Municipal manager;
b) Make recommendations to ensure remedial action is taken and that risk exposures and control weaknesses are addressed;
c) Implement comprehensive systems to track and follow-up on all recommendations/ remedial actions those stemming from the issues (various incidents and red flags), risks and opportunities reporting to ensure that risk exposures have been adequately addressed;
d) Provide progressive reporting to the relevant stakeholders and advisory and oversight bodies on the related outcomes to assist with the effective monitoring of consequence management in the Municipality; and
e) If there is a concern that the Municipal Manager, a senior manager or the Chief Financial Officer may be involved, the matter must be reported to the next appropriate delegated authority e.g. Executive Mayor/ Speaker/ Council/ Provincial Treasury/ National Treasury.

9.3.6 Third and Fourth Level Assurance Provider

The third and fourth level of assurance providers include assurance providers who have greater independence, such as Internal Audit, various provincial and national departments (e.g. Treasury) and external auditors (The Auditor General of South Africa (AGSA)), who report to advisory and oversight bodies. In line with the Combined Assurance Plan and under the guidance and leadership of the relevant director (excluding the AGSA), all these assurance providers have the responsibility to, inter alia;

a) Identify and immediately report any issues (various incidents and red flags), risks and opportunities that can have a potential negative impact on the Municipality to the appropriate level of authority, including the Municipal Manager;
b) Make recommendations to ensure remedial action is taken and that risk exposures and control weaknesses are

addressed;

c) Implement comprehensive systems to track and follow-up on all recommendations/ remedial actions stemming from the issues (various incidents and red flags), risks and opportunities reported to ensure that risk exposures have been adequately addressed;
d) Provide progressive reporting to the relevant stakeholders and advisory and oversight bodies on the related outcomes to assist with the effective monitoring of consequence management in the Municipality; and
e) If there is a concern that the Municipal Manager, a senior manager or the Chief Financial Officer may be involved, the matter must be reported to the next appropriate delegated authority e.g. Executive Mayor/ Speaker/ Council/ Provincial Treasury/ National Treasury.

9.3.7 Oversight Bodies (and advisory bodies to oversight bodies)

Under the directive of the relevant delegations and approved terms of reference, these oversight bodies have the responsibility to, inter alia;

a) Identify and immediately report any issues (various incidents and red flags), risks and opportunities that can have a potential negative impact on the Municipal, to the appropriate delegated authority;
b) Make decisions regarding remedial actions to be taken in respect of instances of unauthorised, irregular and fruitless and wasteful expenditure; possible abuse of the SCM system (including fraud, corruption and improper conduct); and allegations of financial misconduct and financial offences;
c) Provide oversight over the effectiveness of consequence management in the Municipal, by considering progressive reports submitted and by making recommendations in respect of areas for improvement; and
d) Provide assurance to the community and other stakeholders for the sound management and governance practices of the Municipal.

The oversight bodies listed below have an additional oversight responsibility as specified in their terms of reference and charters insofar as it relates to consequence management:

MPAC

MPAC has an oversight role to review the Municipal's Integrated Annual Report with specific focus on the financial aspects as contained in the Auditor-General's Report on the Annual Financial Statements of the Municipality and also when instructed by Council to advise Council in respect of unauthorised, irregular or fruitless and wasteful expenditure.

Issues (various incidents and red flags), risks and opportunities relating to unauthorized, irregular or fruitless and wasteful expenditure will be directed to MPAC to investigate in terms of section 32 and 102 of the MFMA, as instructed by Council, and as guided by the National Treasury Circular 68: Unauthorised, Irregular and Fruitless and Wasteful Expenditure and advise Council in respect of such unauthorised, irregular or fruitless and wasteful expenditure in terms of section 32(2) of the MFMA. Refer to the approved Terms of Reference of MPAC for more detail.

Financial Misconduct Disciplinary Board

The establishment of a Financial Misconduct Disciplinary *Board is* compulsory in terms of the Municipal Regulations for Financial Misconduct Procedures and Criminal Offences, GN 425 of 30 May 2014). The objective of the Financial Misconduct Disciplinary Board is to act as an independent advisory body that assists designated officials/persons with the investigation of allegations of financial misconduct, and provide recommendations on the further steps to be taken regarding disciplinary proceedings, or any other relevant step to be taken in terms of regulation 4(1) of the MRFMPCP.

The Disciplinary Board's responsibility in respect of consequence management is therefore limited to investigating issues (various incidents and red flags), risks and opportunities relating to allegations of financial misconduct. Refer to the approved Terms of Reference of the Disciplinary Board: Financial Misconduct for more detail.

APAC

APAC responsibility is to advise Council, Municipal Manager and senior management staff on all matters relating to internal financial control and internal audits, risk management, accounting policies, adequacy and reliability of financial reporting, combined assurance, performance management, effective governance, compliance with MFMA and other applicable legislation. To this extent, APAC's role in consequence management is to provide oversight over the adequacy and effectiveness thereof, ensuring the timely identification, appropriate treatment and proper reporting of issues (various incidents and red flags), risks and opportunities that could have a potential negative impact on the Municipal's operations, reporting and compliance to legislation, regulations, policies and procedures. Where risk exposures remain unresolved or issues are not addressed

9.3.8 Service providers

(a) Service providers (incl. suppliers, contractors and consultants) are required to act honestly and fairly in all their dealings with the Municipality and in accordance with their own ethical values that they ascribe to.

(b) Non-adherence to this Policy and any relevant Municipal policies, their own ethical values, the Municipal SCM processes (inter alia, requests for quotations, tender process and contract terms and conditions, etc.) or acts of alleged fraud, corruption or collusion could result in the following consequences:

i. The cancellation or suspension of any tenders or contracts awarded to them;

ii. Being restricted in terms of the Combatting of Abuse in the Supply Chain Management System Policy; and

iii. Being reported to the SAPS and any other applicable body responsible for sound business practices in the interest of safeguarding public funds.

(c) Service providers (incl. suppliers, contractors and consultants) are encouraged to report suspected fraud, corruption and other criminal activity, maladministration or negligence involving employees of the Municipal or other services providers to the Municipality. Refer to the Municipal's Whistle Blowing Policy.

10. POLICY DIRECTIVES

10.1 The Municipal must create an environment and culture that promotes ethical, transparent, effective and efficient public administration that conforms to Constitutional accountability principles.

10.2 It is envisaged that through the development and implementation of this Policy, the relevant stakeholders and role-players will be provided with sufficient guidance and direction to enable them to provide effective oversight with regards consequence management and related outcomes.

10.3 Where it occurs, non-compliance requiring consequence management can result from numerous factors, including, lack of knowledge and training, gaps in oversight, inaccurate and incomplete interpretation and application of policies, and in some instances, culpable misconduct. It is imperative that we differentiate between culpable behaviour and non-culpable behaviour.

10.4 In line with the Municipal's zero-tolerance approach to fraud and corruption, culpable behaviour will not be tolerated and corrective measures, including, disciplinary actions, where merited, will be taken.

10.5 The phases of the Municipal's consequence management can be depicted as follows:

Phase 1: Risk/ Issue Reporting

This phase deals with the reporting of issues (various incidents and red flags), risks and opportunities identified.

Reporting that can have a potential negative impact on the effectiveness and efficiency of the Municipal's operations, the reliability of its reporting (financial and non-financial) and compliance with applicable laws and regulations, can be identified from various sources, including the following:

10.5.1 Public complaints

10.5.2 Whistle blowers (See the Whistle Blowing Policy);

10.5.3 Declarations of Interest Process (See the Declaration of Financial Interests for Councillors);

10.5.4 Declaration of Interest for Employees (See Private Work and Declaration of Interest Standard Operating Procedure);

10.5.5 Risk Registers (See the Integrated Risk Management Policy);

10.5.6 Combined Assurance Plan;

10.5.7 Reports from the Municipal's combined assurance providers; and

10.5.8 Reports from the Office of the Auditor General (AGSA) issues (various incidents and red flags), risks and opportunities can vary in their significance as well as the Municipal's tolerance levels. This will need to be considered when identifying, treating and reporting these, also ensuring that they are dealt with in accordance with the relevant and existing legislative frameworks and Council policies.

10.6 **Phase 2: Control Activities**

This phase focusses on the identification and implementation of remedial actions to be taken to curtail and prevent the issue, risk or opportunity from re-occurring. Remedial actions need to ensure control improvements to the Municipality's systems and processes and personnel behaviour and conduct. These actions need to be assigned to responsible officials, with specific deliverables and timeframes to ensure timeous implementation and impact reduction.

The remedial actions will vary from one issue, risk and opportunity to another, given the nature and extent of the case. The Municipality's tolerance levels as well as punitive requirements defined in legislated frameworks will need to be considered. Refer to the table below for examples:

Appetite				
Triggers	**Legal**	**Finance**	**Orginisational**	**Reputation/media**
Non-compliance to the MFMA	Non-Compliance – Zero Tolerance	Disclosure: Additional Notes	Audit Report	Impaired Governance
Fails to comply with duty imposed by MFMA	Non-Compliance – Zero Tolerance	Section 32 Expenditure - Disclosure	Audit Report Opinion - •System of Delegation •Section 78 of MFMA •Leadership	Impaired Governance
Makes irregular unauthorised, fruitless & Wasteful expenditure	Non-Compliance – Zero Tolerance	Section 32 Expenditure -	Audit Report Opinion – •AFS •Notes – Table •Leadership	Impaired Governance
Provides incorrect or misleading information	Non-Compliance – Zero Tolerance	Disclosure: Additional Notes	Audit Report Opinion	Impaired Governance
Fails to carry out delegated duties	Non-Compliance – Zero Tolerance	Disclosure: Additional Notes	Section 32 Expenditure - Disclosure	Impaired Governance
Reporting	Reporting non-compliance to: * The Municipal manager * The Mayor *Council *Auditor General of SA * National Treasury * MEC for Local Government * Provincial Executive * Provincial Legislature * Provincial Treasury * MEC for	Reporting Section 32 expenditure to: * Municipal Manager * Council	Reporting neglect of duty, power and authority to: * Executive Director * Municipal manager * Council	Integrated Annual Report Statement

Appetite				
Triggers	**Legal**	**Finance**	**Orginisational**	**Reputation/media**
	Finance in the Western Cape			
Consequence Management:	* Disciplinary Steps / Coaching / Reprimand - Written Instructions / Training / Verbal Warning / Resolving Problems and Identifying corrective action * Suspension / Demotion / Termination of Services / Adverse outcome * Financial Misconduct Charges * Criminal Charges	* Disciplinary Steps / Coaching / Reprimand - Written Instructions / Training / Verbal Warning / Resolving Problems and Identifying corrective action * Suspension / Demotion / Termination of Services/ Adverse outcome * Reduction or elimination of discretionary remuneration (Individual Performance Management Monetary implications) * Adverse impact to promotion opportunities * Recovery * Financial Misconduct Charges * Criminal Charges	* Disciplinary Steps / Coaching / Reprimand - Written Instructions / Training / Verbal Warning/ Resolving Problems and Identifying corrective action * Suspension / Demotion / Termination of Services/ Adverse outcome * Financial Misconduct Charges	* Disciplinary Steps / Coaching / Reprimand - Written Instructions / Training / Verbal Warning/ Resolving Problems and Identifying corrective action * Suspension / Demotion / Termination of Services/ Adverse outcome * Financial Misconduct Charges

Bold =Core Category Impact, with related implications

Resource				
Consequence Management: Supervision over Local Government Finance Management (per Section 133 of the MFMA	1. Provincial Executive may intervene in the Municipality in terms of 139 of the Constitution 2. NT - may take appropriate steps against the municipality in terms of section 5(2) (e) 3. PT - may take appropriate steps against the municipality in terms of section 5(4) (d)			
Process	*Labour Relations *Financial Misconduct Disciplinary Board * Finance: Treasury * Records management	*Labour Relations *Financial Misconduct Disciplinary Board *MPAC *Finance: Treasury *Records management	*Labour Relations *Financial Misconduct Disciplinary Board * Finance: Treasury * Records management	*Labour Relations *Financial Misconduct Disciplinary Board *Corporate Services * Records management

Remedial actions in the context of this consequence management efforts can be identified from documented processes of various existing management tools, such as:

10.6.1 Management actions included in Municipal Risk Registers;

10.6.2 Management actions included on the Municipality's Combined Assurance Plan;

10.6.3 Recommendations and agreed management actions included in reports from the Municipal's second level assurance providers (i.e. Legal Services, Occupational Health and Safety, Environmental Resource Management, Business Continuity Management, etc.);

10.6.4 Recommendations and agreed management actions included in assurance reports from third and fourth level

assurance providers (i.e. Internal Audit, Forensic Services - Investigations, Ethics – Investigations, Auditor General of South Africa, and other external assurance providers);

10.6.5 Directives issued from the Office of the Municipal Manager or CFO;

10.6.6 Municipal Manager correspondence directed to Management Team Members;

10.6.7 Recommendations included in reports from independent investigators appointed by the Municipal Manager (sourced service providers);

10.6.8 Recommendations from advisory and oversight bodies - MPAC, Financial Misconduct Disciplinary Board, APAC, etc.;

10.6.9 Resolutions by Council and Council Committees; and

10.6.10 Directives and instructions issued by Provincial and National Treasury.

The establishment and enforcement of control activities is the responsibility of line management, who have an intrinsic duty to fulfil their job function, powers and delegations in a responsible manner.

10.7 Phase 3: Information and Communication

After issues (various incidents and red flags), risks and opportunities have been identified and reported to the first line of defence to action (refer to phase 1 above), key or significant cases may need to be reported or escalated to the relevant advisory or oversight bodies as per their specific terms of reference or delegations.

The importance is to keep these bodies informed of:

- Significant issues;
- Emerging trends;
- Escalating requirements; and
- Unresolved risk exposures.

Stakeholders have an expectation of the governance structures in the Municipal to exercise good governance. Sometimes however, such governance structures could form part of the decision-making chain and thus are required to make the final decision or final recommendation to Council. Oversight bodies could include RiskCo,

APAC, MPAC, Financial Misconduct Disciplinary Board, Executive Mayor, Speaker and Council.

See table below:

Source/remedial action	First level of reporting	Second level of reporting or advisory and oversight body
Issue, risk and opportunity		
First Level Assurance Provider • Municipal Manager (Directives and EMT communications)	*Line management for action*	
Second Level Assurance Provider • IRM (Risk Registers) • CA (Combined Assurance Plan) • BCM (Business Continuity Plan) • OHS (Compliance Reports) • ERM (Environmental Reports) • Legal Services (Compliance Issues) • Ethics (Declaration of Interests) • Forensic Services (Reports) • OCO (Investigation outcomes)	Line management for action, including the Municipal manager (where applicable).	RiskCo for information and/ or escalation (for risk issues only) APAC for: • information and/ or escalation • potential advice to Municipal Manager and Council
Third Level Assurance Provider • Internal Audit (Assurance Reports) • Ethics (Investigation Reports) • Forensic Services (Reports) • OCO (Investigation outcomes) • AGSA (Management Reports and AG Opinion	Line management for action including the Municipal Manager (Where applicable)	APAC for: • Information or escalation • potential advice to Municipal Manager and Council
Unauthorised, irregular and fruitless and wasteful expenditure		
Municipal Manager's Irregular, Unauthorised and Fruitless and Wasteful Expenditure Register (Issues i.r.o. officials discovered by various sources / triggers)	Line Management Executive and Councillor Support	Council for referral to MPAC for investigation

Source/remedial action	First level of reporting	Second level of reporting or advisory and oversight body

Source/remedial action	First level of reporting	Second level of reporting or advisory and oversight body
• Recommendations (remedial actions) included in reports from task team appointed by MPAC	MPAC	Council
• Recommendations (remedial actions) from MPAC	Council	APAC
Resolutions by Council • Disciplinary charges • Criminal charges	• Line Management, including the Municipality Manager where applicable • SAPS (where criminal charges are warranted	• MEC for Local Government • Auditor General of South Africa
Possible abuse of the SCM system: Including fraud, corruption and Improper conduct (Refer to Fraud Prevention Policy)		
• Municipal manager (Issues i.r.o officials reported to the Municipal manager or administrative mechanism mobilised for this purpose) • Speaker (Issues i.r.o councillors reported to the Speaker)	• Line Management for information • SAPS (where criminal charges are warranted)	• Governance/ Internal Audit/ External investigator for independent investigation • Second level of assurance
• Governance Recommendations (investigations into allegations fraud, corruption and other criminal activity, maladministration or negligence and financial misconduct against officials) • Ethics Recommendations (investigations into allegations of unethical behaviour against officials)	• Municipal Manager (i.r.o. of officials) • Speaker (i.r.o of councillors)	Officials: • Council for information and/ or escalation • Provincial and National Treasury for information • Auditor General of South Africa • SAPS (where criminal charges are warranted) Councillors:

Source/remedial action	First level of reporting	Second level of reporting or advisory and oversight body
• SCM and Legal Services sanction in terms of Municipal SCM Policy abuse		• Provincial MEC for Finance

10.8 Phase 4: Monitoring and Reporting

Comprehensive systems must be implemented to track and follow-up on the implementation of all remedial actions stemming from the various role players in the consequence management process.

This is to:

- Ensure that risk exposures have been adequately and timely addressed to curtail the impact and prevent the issue, risk and / or opportunity from re-occurring; and
- Assist the advisory and oversight bodies in their assessment of the effectiveness of consequence management in the Municipality, enable them to provide assurance to the stakeholders in this regard.

It is therefore the responsibility of:

- Those recommending the remedial actions and the Directors issuing directives to ensure that:
    - the implementation of corrective action is tracked and monitored;
    - overdue actions are reported on; and
    - follow-ups are performed to confirm/verify successful implementation of corrective action.

The following practices should be applied to ensure a comprehensive tracking and follow-up processes are implemented:

a) Registers should be maintained by each role-player responsible for making recommendations, documenting the issues [various incidents and red flags}, risks and opportunities and related remedial actions, including the estimated implementation date and responsible action owners;

b) Nodal representatives should be appointed in each directorate to provide information with regards to the status of implementation of remedial actions relevant to their

directorate;

c) Role-players should provide feedback to nodal representatives in terms of the implementation status of remedial actions, and escalate those that are overdue to the next reporting level or delegated authority, if necessary;

d) Perform follow-ups / checks to confirm whether remedial actions have indeed been implemented/ actioned successfully by the responsible officials;

e) Successful implementation of remedial actions can be measured in terms of a key operating indicator on Director's and Directorate performance scorecards; and

f) Progressive reporting to the appropriate delegated authority and advisory and oversight bodies who can be tasked to take action against management for tardiness (failure to implement the remedial action(s) successfully and timeously).

Source/remedial action	First level of reporting	Second level of reporting or advisory and oversight body
•Independent External Investigator(s) appointed by the Municipal Manager (officials) •Investigator(s) appointed by the Speaker (councillors		•Minister for Local Government in the Province •Minister of Finance •Minister responsible for Local Government •Provincial & National Treasury for information •SAPS (where criminal charges are warranted
Allegations of financial misconduct and financial offence		
•Municipal Manager's Register of Financial Misconduct (Issues i.r.o officials reported to the Municipality Manager) •Speaker (Issues i.r.o councillors reported to the Speaker)	•Executive Mayor •Deputy Executive Mayor	•Council for referral to Disciplinary Board for investigation
•Disciplinary Board Preliminary Investigation Recommendations (investigations into allegations of financial misconduct by officials and / or councillors)	Council	•National & Provincial Treasury for information •SAPS (where criminal charges are warranted)

Source/remedial action	First level of reporting	Second level of reporting or advisory and oversight body
•Disciplinary Board Full Investigation Recommendations (investigations into allegations of financial misconduct by officials or councillors) •Independent External Investigator(s) appointed by the Municipal Manager if necessary (officials) •Investigator(s) appointed by the Speaker if necessary (councillors)	•Municipal manager •Executive Mayor •Deputy Executive Mayor •Speaker (Councillors)	Officials: •National & Provincial Treasury for information •SAPS (where criminal charges are warranted) Councillors: •MEC for Finance in the Province •Minister for Local Government in the Province •Minister of Finance
Source/remedial action	**First level of reporting**	**Second level of reporting or advisory and oversight body**
		•Minister responsible for Local Government •Provincial & National Treasury for information •SAPS (where criminal charges are warranted)

10.9 Phase 5: Conclusion / Closure

This phase deals with the correct application and appropriate disclosure of remedial actions. Remedial actions impacting the control objectives i.e. the efficiency and effectiveness of the Municipality's operations, the reliability of the Municipality's reporting (financial and non-financial), the Municipality's compliance to legislation, regulations, policies and procedures; will be disclosed in the following formats:

10.9.1 Second Level Combined Assurance Providers Reports;

10.9.2 Internal Audit Assurance Reports (including Quarterly Reports to APAC);

10.9.3 AGSA Report;

10.9.4 Corporate Performance Scorecards;

10.9.5 Municipal Manager and Directors Personal Performance Scorecards;

10.9.6 Municipal's Integrated Annual Report;

10.9.7 Municipal's Annual Financial Statements;

10.9.8 Municipal's Annual Oversight Report

10.9.9 Management Responsibility Letter;

10.9.10 Combined Assurance Reporting;

10.9.11 Internal Control Environment Report; and

10.9.12 Governance Committee Annual Reports.

In order to ensure that Council and its officials take ownership and accountability for the good financial management of the Municipal, the following corporate documents need be periodically updated to incorporate aspects of consequence management:

10.9.12.1 Council, - Accountability and/ or responsibility in respect of oversight role and/ or decision making role regarding consequence management to ensure good corporate governance;

10.9.12.2 IDP - Refer to consequence management as a key initiative under Strategic Pillar;

10.9.12.3 Directorate and Departmental Business Plans - Commitment in respect responsibility and/ or accountability regarding consequence management to ensure good corporate governance; and

10.9.12.4 Service Delivery Budget and Implementation Plan - Inclusion of a Consequence Management Key Performance Indicator.

Managing compliance encompasses making appropriate rules that are known, understood and followed and for which consequences of non-compliance are clear and commensurate with risk and context. The processes and procedures to be followed with regards to the different aspects of consequence management in the Municipal, are specified in the relevant, existing Municipal documents and enhancements (if required) will be detailed in Consequence Management Standard Operating Procedures.

10.10 Assumptions to the Policy includes:

10.10.1 Investigators shall have free access to all staff, records and premises in order to carry out investigations.

10.10.2 If there is a suspicion that fraud, corruption and other criminal

activity, maladministration and/or negligence has been perpetrated or attempted, line management must promptly follow the procedures provided in the Municipal's Fraud Prevention Policy, which must be read in conjunction with this Policy and all relevant appendixes.

10.10.3 If there is a concern that the Municipal Manager may be involved in any allegations of financial misconduct and financial offence, this should be reported to the Executive Mayor.

10.10.4 A Whistleblowing Policy is in place to safeguard whistle blowers against intimidation and/or victimisation. No person will suffer any penalty or retribution for good faith reporting of any suspected or actual incident of fraud and corruption.

11. IMPLEMENTATION PROGRAMME

11.1 This Policy will be implemented once approved by Council and will be championed within the Office of the Municipal Manager.

11.2 Key dependencies to the successful implementation of the Policy include:

11.2.1 Awareness;

11.2.2 Registers;

11.2.3 Terms of Reference;

11.2.4 Standard Operating Procedures;

11.2.5 Records;

11.2.6 Reporting; and

11.2.7 Roles and Responsibilities.

11.3 Challenges faced by the Municipal for the successful implementation of the Policy include the following:

(a) The lack of understanding of the various legislation and regulations relating to consequence management, and the impact thereof on the:

- Municipality's policies and procedures;
- Operations;
- Due care; and
- Leadership expectations.

(b) The limited Municipal resources with knowledge, skills and

capacity to comply with legislation and its related regulations.

(c) The gravity of the law and the consequences of failure to comply is not yet fully understood or recognised by all Municipal employees.

(d) The absence of the adoption of MFMA Circular 76 on Financial Misconduct Regulations by Council, and the impact on Municipal resources.

(e) The establishment of the required committees/ boards to provide advisory and oversight over the various aspects of consequence management and the formalisation of their roles and responsibilities (Terms of Reference/ System of Delegations).

(f) The development and approval of Standard Operating Procedures in respect of the various aspects relating to consequence management.

12. MONITORING, EVALUATION AND REVIEW

13.1 Monitoring and evaluation

The reduction of AGSA findings in respect of poor consequence management will be one of the key indications of the successful implementation of the Policy. Other indicators could include the following:

a) Reduced reported issues (various incidents and red flags), risks and opportunities relating to non-compliance to sections 32, 62, 78,102, 115, 171, 172, 173, 174, 175 of the MFMA and the related regulations;

b) Improved percentage of Probity function recommendations implemented;

c) Increased understanding of the gravity of the law and the consequences of failure to comply recognised by all Municipality employees; and

d) Improved service delivery through good governance.

13.2 Review

This Policy will be reviewed regularly, at least once per annum, considering feedback received from the various stakeholders and role players. Where necessary, the required amendments will be made and submitted to Council.

8.	**REPORTS SUBMITTED BY THE EXECUTIVE MAYOR**

NONE

9.	**URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

10.	**MATTERS TO BE CONSIDERED IN-COMMITTEE**

NONE