



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/1/5

2021-12-10

NOTICE OF A SPECIAL MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY FRIDAY, 2021-12-10 AT 10:00

TO The Speaker, Cllr Q Smit [Chairperson]
The Executive Mayor, Ald GMM Van Deventer (Ms)
The Deputy Executive Mayor, Cllr JS Fasser

COUNCILLORS	RA Adams	NE Mcombring [Ms]
	J Andrews	XL Mdemka (Ms)
	Ald JC Anthony	NM Mkhontwana (Ms)
	FJ Badenhorst	RS Nalumango [Ms]
	PR Crawley (Ms)	ZR Ndalasi
	A Crombie (Ms)	CD Noble
	ZJ Dalling (Ms)	L Nkamisa
	MM Danana	M Nkopane [Ms]
	I De Taillerfer (Ms)	N Ntsunguzi (Ms)
	R Du Toit (Ms)	N Olayi
	A Ferns (Ms)	WC Petersen [Ms]
	E Groenewald (Ms)	RO Pheiffer
	AJ Hanekom	WF Pietersen
	RB Hendrikse (Ms)	MG Rataza
	P Johnson	JP Serdyn [Ms]
	J Joon	A Tomose [Ms]
	O Jooste	RB Van Rooyen
	X Kalipa	M Van Stade
	N Mananga-Gugushe (Ms)	CA Van Wyk
	C Manuel	E Vermeulen
	EP Masimini	J Williams

Notice is hereby given in terms of Section 29, read with Section 18(2) of the *Local Government: Municipal Structures Act, 117 of 1998*, as amended, that a **SPECIAL MEETING** of the **COUNCIL** of **STELLENBOSCH MUNICIPALITY** will be held in the **TOWN HALL, PLEIN STREET, STELLENBOSCH** on **FRIDAY, 2021-12-10** at **10:00** to consider the items on the Agenda.


SPEAKER
CLLR Q SMIT

A G E N D A

SPECIAL MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2021-12-10

ITEM	SUBJECT	PAGE
1.	OPENING AND WELCOME	
2.	MAYORAL ADDRESS	
3.	COMMUNICATION BY THE SPEAKER	
4.	COMMUNICATION BY THE MUNICIPAL MANAGER	
5.	DISCLOSURE OF INTEREST	
6.	APPLICATIONS FOR LEAVE OF ABSENCE	
7.	APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING	
7.1	NONE	
8.	STATUTORY MATTERS	
8.1	STRUCTURING OF COUNCIL: ESTABLISHMENT OF SECTION 79 - / STATUTORY COMMITTEES	
8.1.1	ESTABLISHMENT OF A MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) AND OVERSIGHT COMMITTEE	5
8.1.2	MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR OCTOBER 2021	27
8.1.3	MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR NOVEMBER 2021	30
9.	ITEMS FOR CONSIDERATION FROM THE EXECUTIVE MAYOR OR MAYORAL COMMITTEE: [ALD. G VAN DEVENTER (MS)]	
9.1	COMMUNITY SERVICES (PARKS, OPEN SPACES AND ENVIRONMENT): [PC: CLLR J JOON]	
	NONE	
9.2	CORPORATE SERVICES: [PC: CLLR L NKAMISA]	
	NONE	
9.3	FINANCIAL SERVICES: [PC: CLLR P JOHNSON]	
	NONE	
9.4	HUMAN SETTLEMENTS: [PC: CLLR JS FASSER]	
	NONE	
9.5	INFRASTRUCTURE: [PC: CLLR ZJ DALLING]	
	NONE	
9.6	LOCAL ECONOMIC DEVELOPMENT AND TOURISM: [PC: CLLR R DU TOIT (MS)]	
	NONE	

ITEM	SUBJECT	PAGE
9.7	PLANNING, LOCAL ECONOMIC DEVELOPMENT AND TOURISM: [PC: CLLR C VAN WYK (MS)]	
	NONE	
9.8	PROTECTION SERVICES: [PC: CLLR FJ BADENHORST]	
	NONE	
9.9	RURAL MANAGEMENT: [PC: CLLR J WILLIAMS]	
9.9.1	APPROVAL OF EXCHANGE OF THE LEASE PORTIONS NAMELY, FARM No.: 502S AND 502V, STELLENBOSCH DIVISION: GIELIE HANEKOM FAMILIE TRUST & HYLTON P ARENDSE	33
9.10	YOUTH, SPORTS AND CULTURE: [CLLR RA ADAMS]	
	NONE	
10.	REPORT/S BY THE MUNICIPAL MANAGER	
10.1	RECRUITMENT AND SELECTION PROCESS OF THE DIRECTOR: INFRASTRUCTURE SERVICES	97
10.2	SALGA PROVINCIAL CONFERENCE 18-19 JANUARY 2022: GEORGE	101
10.3	REPORT ON THE DECISIONS TAKEN BY THE EXECUTIVE MAYOR ON MATTERS RESOLVED UNDER AUTHORITY DELEGATED TO THE EXECUTIVE MAYOR IN CONSULTATION WITH THE MAYORAL COMMITTEE [JULY 2021 – OTOBER 2021]	159
10.4	REPORT ON THE DECISIONS TAKEN BY THE EXECUTIVE MAYOR FOR THE QUARTER: JULY 2021 – SEPTEMBER 2021	165
10.5	REPORT IN TERMS OF SECTION 126 (4) OF THE MUNICIPAL FINANCIAL MANAGEMENT ACT: REASONS FOR THE DELAY IN COMPLETING THE AUDIT OF STELLENBOSCH MUNICIPALITY FOR THE FINANCIAL YEAR ENDED 30 JUNE 2021	211
10.6	QUARTERLY REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE OF STELLENBOSCH MUNICIPALITY FOR THE PERIOD 01 JANUARY 2021 TILL 31 MARCH 2021	213
10.7	QUARTERLY REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE OF STELLENBOSCH MUNICIPALITY FOR THE PERIOD 01 April 2021 TILL 30 JUNE 2021	227
11.	URGENT MATTERS	
12.	MATTERS TO BE CONSIDERED IN-COMMITTEE	
	(SEE PINK DOCUMENTATION)	

1.	OPENING AND WELCOME
2.	MAYORAL ADDRESS
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4.	COMMUNICATION BY THE MUNICIPAL MANAGER
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6.	APPLICATION FOR LEAVE OF ABSENCE
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8.	STRUCTURING OF COUNCIL: ESTABLISHMENT OF SECTION 79 COMMITTEES / STATUTORY COMMITTEES
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8.1	ESTABLISHMENT OF A MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) AND OVERSIGHT COMMITTEE
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Collaborator No:

IDP KPA Ref No: Good Governance and Compliance

Meeting Date: Council: 15 November 2021

1. SUBJECT: ESTABLISHMENT OF A MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) AND OVERSIGHT COMMITTEE

2. PURPOSE OF REPORT

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

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

The former Council had established an 8-member Municipal Public Accounts Committee (MPAC), which was fully functional.

By virtue of the termination of the 2016-2021 Council's term of office, the former MPAC has also dissolved. Council is obliged to establish a MPAC that also acts as an oversight committee to exercise oversight over the executive obligations of council.

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

5. RECOMMENDATIONS

- (a) that Council establishes a Municipal Public Accounts Committee (MPAC) in accordance with Section 79 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and as per the "Guideline for Establishment of Municipal Public Accounts Committees" issued by the Department of Cooperative Governance (CoGTA) and National Treasury;
- (b) that the function of an oversight committee in relation to the Annual Report be incorporated into the roles and responsibilities of MPAC;
- (c) that Council determines the amount of Councillors and their secundi to serve on the Municipal Public Accounts Committee (MPAC), based on the following principles:
 - (i) Membership of MPAC may consist of up to 11 Councillors selected from all parties represented in Council;

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- (ii) MPAC must be represented by a wide range of experience and expertise available in Council and should reflect the various political parties represented in Council;
 - (iii) The Executive Mayor, Deputy Executive Mayor, Speaker, Whip or a member of the Mayoral Committee be excluded from membership of MPAC;
 - (d) that Council elects a Chairperson for the Municipal Public Accounts Committee (MPAC); and
 - (e) that the Chairperson of this Committee be designated as a full-time Councillor.

6. DISCUSSION AND BACKGROUND

6.1 Section 79 Committees

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

6.2 SCOPE OF MPAC OPERATIONS

The establishment, overarching purpose, function and Terms of Reference of the Municipal Public Accounts Committee are defined in the SALGA Guideline for the Establishment of MPACs (March 2012) **attached as APPENDIX 1**.

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

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

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5. MPAC shall consider and evaluate the content of the Annual Report and make recommendations to Council when adopting an Oversight Report on the Annual Report;
 6. In order to assist with the conclusion of matters that may not have been finalized, information relating to past recommendations made on the Annual Report, information relating to current in-year reports including quarterly, mid-year and Annual Reports, shall be reviewed by MPAC;
 7. MPAC shall examine the financial statements and audit reports of Stellenbosch Municipality, and in doing so, consider improvements from previous statements and reports and evaluate the extent to which the Audit Committee's and the Auditor-General's recommendations have been implemented;
 8. MPAC shall promote good governance, transparency and accountability on the use of municipal resources;
 9. MPAC shall recommend or undertake any investigation in its area of responsibility, after reviewing any investigation report already undertaken by Stellenbosch Municipality or the Audit Committee;
 10. MPAC shall request the support of both the internal and external auditors in an advisory capacity when necessary;
 11. MPAC shall conduct investigations into unauthorized, irregular and/or fruitless and wasteful expenditure in accordance with Section 32(2)(a)(ii) of the MFMA and Regulation 74 of the Municipal Budget and Reporting Regulations;
 12. MPAC shall perform any other functions within its area of responsibility assigned to it through a resolution of Council; and
 13. The Rules of Order of Stellenbosch Council shall be applicable to all meetings of MPAC.

6.3 PROCEDURE FOR THE APPOINTMENT OF MPAC MEMBERS AND MPAC CHAIRPERSON

6.3.1 Membership of MPAC

The previous MPAC membership (8 members) was determined along the following principles:

1. Membership of MPAC may consist of up to 11 Councillors selected from all parties represented in Council. Council must determine the amount of members;
2. MPAC must be represented by a wide range of experience and expertise available in Council and should reflect the various political parties represented in Council;
3. The Executive Mayor, Deputy Executive Mayor, Speaker, Whip or a member of the Mayoral Committee must be excluded from membership of MPAC; and
4. Secundi for the members of MPAC may be designated by Council.

6.4 Chairperson of MPAC

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

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

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

The Chairperson can be from the ruling or an opposition party at the choice of the Municipal Council.

6.5 MSA Schedule 3 Election Procedure

"SCHEDULE 3

Application

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

Nominations

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

Formal requirements

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

Announcement of names of candidates

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

Single candidate

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

Election procedure

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

Elimination procedure

7. (i) *If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with Item 6. This*

procedure must be repeated until a candidate receives a majority of the votes.

- (ii) *When applying sub item (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.*

Further meetings

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

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

FOR FURTHER DETAILS CONTACT:

NAME	<i>Geraldine Mettler</i>
POSITION	<i>Municipal Manager</i>
DIRECTORATE	<i>Municipal Manager</i>
CONTACT NUMBERS	<i>021 808 8025</i>
E-MAIL ADDRESS	<i>municipal.manager@stellenbosch.gov.za</i>
REPORT DATE	<i>10 November 2021</i>

ITEM 8.1.1

**ESTABLISHMENT OF A MUNICIPAL
PUBLIC ACCOUNTS COMMITTEE
(MPAC) AND OVERSIGHT COMMITTEE**



STELLENBOSCH
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MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

NOMINATION FORM:

ELECTION OF THE MPAC CHAIRPERSON

We, the undersigned, hereby nominate the following person:

FULL NAME OF NOMINEE:

Signed at Stellenbosch this day of2021.

Name of Mover

Nominator 1: Name:

Signature:

Seconder: Name:

Signature:

I,(full name)(ID number)

the undersigned, hereby accept the nomination / do not accept the nomination*

Signed at Stellenbosch this day of2021.

.....

SIGNATURE OF NOMINEE

*delete the part that is not applicable

In terms of Section 3(1) of Schedule 3 of the Structures Act



SALGA
South African Local Government Association

March 2012

MUNICIPAL
PUBLIC
ACCOUNTS
COMMITTEE
(MPAC)

Enhancing oversight in the Municipality

Practical Guide

TABLE OF CONTENT

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

ENHANCING OVERSIGHT IN MUNICIPALITIES

A PRACTICAL GUIDE

1. INTRODUCTION

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

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

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

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

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

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

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

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

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

2. INTERNAL OVERSIGHT

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

2.1 Internal Audit Unit

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

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

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

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

2.2 **Audit Committee**

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

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

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

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

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

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

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

3. EXECUTIVE OVERSIGHT

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

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

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

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

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

Part 1

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

1. Establishment of the MPAC

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

2. Functions and terms of reference of the committee

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

3. Delegation of functions to the MPAC

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

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

4. The procedures and rules of order of the committee

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

5. Appoint of the members of the MPAC

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

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

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

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

6. Appointment of the chairperson of the MPAC

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

7. Co-opting of advisory members to the MPAC

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

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

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

9. Availability of resources for the MPAC

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

10. Minutes and Agendas

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

11. Meetings of the MPAC

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

12 Reporting

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

Part 2

Terms of reference for the MPAC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

council; and

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

1.12 **Audit Committee (Section 166)**

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 3

Delegations to the MPAC

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

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

2. The authority to consider all presentations made by the community on the annual report and the authority to have interviews with members of the community to obtain input on the annual report, as

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

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

4. CONCLUSION

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

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

8.2	MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR OCTOBER 2021
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance and Compliance

Special Council: 10 December 2021

1. SUBJECT: MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR OCTOBER 2021

2. PURPOSE

To comply with Regulation 36(2) of the Municipal Supply Chain Management Regulations and Section 36 of the Supply Chain Management Policy 2021/2022 to report the deviations to Council.

3. DELEGATED AUTHORITY

Council. FOR NOTING.

4. EXECUTIVE SUMMARY

Regulation 36(2) of the Municipal Supply Chain Management Regulations and Section 36 of the Supply Chain Management Policy (2021/2022) stipulate that SCM deviations be reported to Council. In compliance thereto, this report presents to Council the SCM deviations that occurred during October 2021.

5. RECOMMENDATIONS

that Council notes the deviations as listed for the month of October 2021.

6. DISCUSSION / CONTENTS

6.1 Background/Legislative Framework

The regulation applicable is as follows:

GNR.868 of 30 May 2005: Municipal Supply Chain Management Regulations

Deviation from and ratification of minor breaches of, procurement processes

36. (1) A supply chain management policy may allow the accounting officer—
(a) To dispense with the official procurement processes established by the policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only—
 (i) in an emergency;
 (ii) if such goods or services are produced or available from a single provider only;
 (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 (iv) acquisition of animals for zoos; or
 (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
(b) to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

(2) The accounting officer must record the reasons for any deviations in terms of sub regulation (1) (a) and (b) and **report them to the next meeting of the council**, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.

6.2 Discussion

Reporting the deviations as approved by the Accounting Officer for October 2021:

The following deviations were approved with the reasons as indicated below:

DEVIATION NUMBER	CONTRACT DATE	NAME OF CONTRACTOR	CONTRACT DESCRIPTION	REASON	SUBSTANTIATION WHY SCM PROCESS COULD NOT BE FOLLOWED	TOTAL CONTRACT PRICE R
D/SM 02/21	06/10/2021	MAD Architechts	Provision of professional engineering services for the internal refurbishment of the office building located on ERF 1852, Stellenbosch, known as the NPK Building.	Exceptional case and it is impractical or impossible to follow the official procurement processes	The construction phase for the refurbishment of the NPK Building is estimated for completion by end April 2022, and therefore the professional team must finalise the tender documentation, which include the Bill of quantities ("BoQ") in order to submit to the Bid Specifications Committee. To embark on a procurement process to a professional engineering service provider would be impractical as it would not only delay the finalisation of the tender specifications, but also the construction phase of the project. This could in turn result in possible escalation in costs. and continued obligation of Council to rent offices.	R 562 018.8 (VAT Incl.)
D/SM 03/22	15 October 2021	Nu-Law Firearms Compliance (PTY) LTD	Firearms training for a period until June 2022	Exceptional case and it is impractical or impossible to follow the official procurement processes	Firearms training (competency and refresher) according to Firearms Regulation 21, is compulsory for officials to carry their firearms lawfully. Protection Services department's firearms permits have expired, and an extension was issued until end October 2021. The training needs to take place immediately or else the relevant officials will not be allowed to carry firearms. The need for such training	R 14 700.00 (VAT incl) per learner

					has been addressed in the tender B/SM 32/21. The tender has been evaluated, served at the BEC, however there are no responsive/successful bidders for the Firearms. Therefor it is impractical to follow another competitive bidding process as there were no successful bidders the first time around.	
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6.3 Legal Implications

The regulation applicable is:

GNR.868 of 30 May 2005: Municipal Supply Chain Management Regulations: Deviations from and ratification of minor breaches of, procurement processes.

6.4 Staff Implications

No staff implications

6.5 Previous / Relevant Council Resolutions

None

6.6 Risk Implications

That the market may not be tested.

The measures in place to deal with deviations mitigate the risk to an acceptable level. The auditor general also audit the deviations during the yearly audit

6.7 Comments from Senior Management

The item was not circulated for comment except to Municipal Manager.

6.8.1 Municipal Manager

Supports the recommendations.

FOR FURTHER DETAILS CONTACT:

NAME	Dalleel Jacobs
POSITION	Senior Manager: Supply Chain Management
DIRECTORATE	Financial Services
CONTACT NUMBERS	021 808 8528
E-MAIL ADDRESS	Dalleel.Jacobs@ Stellenbosch.gov.za
REPORT DATE	06 December 2021

8.3	MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR NOVEMBER 2021
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance and Compliance

Special Council: 10 December 2021

1. SUBJECT: MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR NOVEMBER 2021

2. PURPOSE

To comply with Regulation 36(2) of the Municipal Supply Chain Management Regulations and Section 36 of the Supply Chain Management Policy 2021/2022 to report the deviations to Council.

3. DELEGATED AUTHORITY

Council. For Noting.

4. EXECUTIVE SUMMARY

Regulation 36(2) of the Municipal Supply Chain Management Regulations and Section 36 of the Supply Chain Management Policy (2021/2022) stipulate that SCM deviations be reported to Council. In compliance thereto, this report presents to Council the SCM deviations that occurred during November 2021.

5. RECOMMENDATIONS

that Council notes there was no deviations for the month of November 2021.

6. DISCUSSION / CONTENTS

None

6.1 Background/Legislative Framework

The regulation applicable is as follows:

GNR.868 of 30 May 2005: Municipal Supply Chain Management Regulations

Deviation from and ratification of minor breaches of, procurement processes

36. (1) A supply chain management policy may **allow the accounting officer—**

(a) To **dispense with the official procurement processes** established by the policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only—

(i) in an emergency;

(ii) if such goods or services are produced or available from a single provider only;

(iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;

(iv) acquisition of animals for zoos; or

(v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

(b) to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

(2) The accounting officer must record the reasons for any deviations in terms of sub regulation (1) (a) and (b) and **report them to the next meeting of the council**, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.

6.2 Discussion

No deviations for the months of November 2021.

6.3 Legal Implications

The regulation applicable is:

GNR.868 of 30 May 2005: Municipal Supply Chain Management Regulations: Deviations from and ratification of minor breaches of, procurement processes.

6.4 Staff Implications

No staff implications

6.6 Previous / Relevant Council Resolutions

None

6.7 Risk Implications

That the market may not be tested.

The measures in place to deal with deviations mitigate the risk to an acceptable level. The auditor general also audit the deviations during the yearly audit

6.8 Comments from Senior Management

The item was not circulated for comment except to Municipal Manager

6.8.1 Municipal Manager

Supports the recommendations.

FOR FURTHER DETAILS CONTACT:

NAME	Dalleel Jacobs
POSITION	Senior Manager: Supply Chain Management
DIRECTORATE	Financial Services
CONTACT NUMBERS	021 808 8528
E-MAIL ADDRESS	Dalleel.Jacobs@stellenbosch.gov.za
REPORT DATE	06 December 2021

9.	ITEMS FOR CONSIDERATION FROM THE EXECUTIVE MAYOR OR MAYORAL COMMITTEE: [ALD. G VAN DEVENTER (MS)]
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9.1	COMMUNITY SERVICES (PARKS, OPEN SPACES AND ENVIRONMENT): CLLR J JOON
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NONE

9.2	CORPORATE SERVICES: [PC: CLLR L NKAMISA]
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NONE

9.3	FINANCIAL SERVICES: [PC: CLLR P JOHNSON]
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NONE

9.4	HUMAN SETTLEMENTS: [PC: CLLR JS FASSER]
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NONE

9.5	INFRASTRUCTURE: [PC: CLLR ZJ DALLING]
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NONE

9.6	LOCAL ECONOMIC DEVELOPMENT & TOURISM: [PC: CLLR R DU TOIT (MS)]
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NONE

9.7	PLANNING, LOCAL ECONOMIC DEVELOPMENT AND TOURISM: [PC: CLLR C VAN WYK (MS)]
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NONE

9.8	PROTECTION SERVICES: [PC: CLLR FJ BADENHORST]
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NONE

9.9	RURAL MANAGEMENT: [PC: CLLR J WILLIAMS]
9.9.1	APPROVAL OF EXCHANGE OF THE LEASE PORTIONS NAMELY, FARM No.: 502S AND 502V, STELLENBOSCH DIVISION: GIELIE HANEKOM FAMILIE TRUST & HYLTON P ARENDSE

Collaborator No:

IDP KPA Ref No: **Valley of Opportunity**

Meeting Date: **Special Council: 10 December 2021**

1. SUBJECT: APPROVAL OF EXCHANGE OF THE LEASE PORTIONS NAMELY, FARM No.: 502S AND 502V, STELLENBOSCH DIVISION: GIELIE HANEKOM FAMILIE TRUST & HYLTON P ARENDSE

2. PURPOSE

To provide Council with the pertinent factors to consider the request to transfer / exchange the land parcels allocated between the Gielie Hanekom Familie Trust (Farm No. 502S, Stellenbosch Division) and Hylton P Arendse (Farm No. 502V, Stellenbosch Division), and to register a right-of-way servitude over Farm No(s). 502S and 502T in favour of Farm No(s). 502T and 502V, respectively.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

4.1 The Lessees of both portions entered into an exchange of land agreement without the prior written approval of Stellenbosch Municipality as the Lessor as stipulated in Clause 13 of the Lease Agreement entered into with the Gielie Hanekom Familie Trust, copy attached as **APPENDIX 2** to this report, and Clause 10 of the Lease Agreement entered into with Hylton P Arendse, copy attached as **APPENDIX 3** to this report.

4.2 Therefore, the proposed report and recommendations aims to remedy the unlawful exchange of the lease areas, in accordance with the existing lease period. Thereby, allocating Farm No. 502S in the extent of 23,60ha to Hylton P Arendse for the remainder of the lease period, and allocating Farm No. 502V in the extent of 21,6ha to Gielie Hanekom Familie Trust for the remainder of the lease period. This exchange includes all rights, which include the water rights, etc as per the agreed terms of the respective original lease agreements.

5. RECOMMENDATIONS

(a) that Council take note of the 'Memorandum van Ruil Ooreenkoms' which was entered into by Hylton P Arendse and Gielie Hanekom during November 2019, copy attached as **APPENDIX 4**;

(b) that Council approve the exchange of the two (2) lease portions, Farm No(s). 502S and 502V between the parties concerned, whereby the portions will be re-allocated as follows:

(i) Farm No. 502S, Stellenbosch Division in the extent of 23,60ha with 7.9ha of water be awarded to Hylton P Arendse for the remainder of such lease period of 9 years and 11months, calculated from 01 January 2020;

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- (ii) Farm No. 502V, Stellenbosch Division, to the extent of 21,6ha with 8ha of water be awarded to the Gielie Hanekom Familie Trust for the remainder of his lease until 31 March 2041; and
 - (iii) That all monetary obligations for each respective lease agreement as per the tariff structure.
 - (c) that Council approve the registration of a right-of-way servitude over Farm No(s) 502S in favour of Farm No.(s) 502T and 502V, respectively, and that the Section: Property Management with the assistance of the Department: Development Planning be tasked to ensure that the processes to register the aforementioned servitude be implement within a reasonable timeframe; and
 - (d) that Council approves, if one of the parties contest the exchange as indicated above, that Council mandate the Municipal Manager to commence with the required process to cancel both the leases due to the breach of the lease agreements not to lease to another person/entity without Council approval.

6. DISCUSSION / CONTENTS

6.1 Background

- 6.1.1 On 17 September 1992, Stellenbosch Municipality entered into a lease agreement with GJ Hanekom to lease Farm No. 502S, Stellenbosch Division in the extent of 23,60ha, for a period as from 01 April 1991 to 31 March 2041, as stipulated in Clause 1 of the Lease Agreement, attached as **APPENDIX 2**.
- 6.1.2 On 23 December 2019, Stellenbosch Municipality entered into a lease agreement with Hylton P Arendse to lease Farm No. 502V, Stellenbosch Division in the extent of 21,6ha, for a period as from 01 January 2020 for nine (9) years and eleven (11) months as stipulated in Clause 4 of the Lease Agreement, attached AS **APPENDIX 3**.
- 6.1.3 On 25 October 2019, Mr Arendse informed the Manager: Property Management, Mr Piet Smit through email communication, that he, Mr Arendse does not have access to the Farm No. 502V, which was allocated to him. He further noted that he, Mr Arendse was aware that Mr Smit, and the Then Manager: Economic Development & Tourism, Mr Widmark Moses, had a meeting with Mr Hanekom, lessee of Farm No. 502S regarding the access to Farm No. 502V. Mr Smit responded through email communication to Mr Arendse, informing him that further discussion will be held with Spier which Messrs Smit and Moses will schedule.
- 6.1.4 On 19 November 2019, through an email communication to Councillor Badenhorst, Mr Arendse noted that he has not received any feedback regarding the accessibility concern to Farm No. 502V.
- 6.1.5 On 21 November 2019, through an email communication sent by Mr Arendse to Stellenbosch Municipality, Mr Arendse informed Councillors Badenhorst & Peters that a meeting occurred between Messrs Moses, Smit and Hanekom, the latter being the Lessee of Farm No. 502S, Stellenbosch Division, whereafter Mr Arendse and Mr Hanekom enter into a lease agreement, copy attached as **APPENDIX 4**.
- 6.1.6 The agreement of exchange, attached as Appendix 4, which was signed during November 2019 by both Messrs Hanekom and Arendse, stipulate that Mr Arendse be permitted to use a portion of 7,48ha of Farm No. 502S which was allocated to Mr Hanekom, and that Mr Hanekom use the entire Farm No. 502V to the extent of 21,6ha. The agreement further note in Clause 4 that each party will be responsible for payment of the rental amount for the properties allocated as per the lease agreement with the municipality,

therefore Mr Hanekom is liable to pay the rental amount for Farm 502S and Mr Arendse the rental amount for Farm No.: 502V, although only having access to farm a portion of 7,48ha of Farm No. 502S.

- 6.1.7 The agreement further notes in Clause 6 that should any party be in breach of this agreement, the parties may claim back their respective properties as allocated by the municipality.
- 6.1.8 Clause 7 further note that any improvements on the property, which is implemented on the respective property, in terms of the exchange agreement, will be at the risk of the party, who did such improvements, and Clause 8 further note that no claims will be lodged against each other for such improvements.
- 6.1.9 On 06 August 2021, Mr Arendse obtained approval for funding from the CASP / Ilima Letsema Programme, funded by the Western Cape Government Department of Agriculture, colloquially known as Elsenburg in the amount of R3 155 450.00 for improvements in the form of infrastructure, irrigation, equipment and products. The letter of confirmation is attached as **APPENDIX 5** to this report.
- 6.1.10 These improvements will thus be implemented on Farm No. 502S, Stellenbosch Division, which currently is the property leased to Mr Hanekom, therefore state monies which was earmarked for Mr Arendse, an emerging farmer, will thus be used to do improvements on another farmer's (Mr Hanekom) property. Mr Arendse has also commenced with his farming activity on Farm No. 502S and currently holds contract as a supplier to a number of franchises which include Woolworths.

6.2 Discussion

- 6.2.1 During January 2021, the then Senior Economic Development Officer: Agricultural Support and Rural Development, Ms Tamzin Lakey was tasked to monitor and evaluate the lease agreements issued by the municipality in terms of the Stellenbosch Municipality: Policy for Management of Municipal Land, specifically to monitor the progress of the emerging farmers activities, determine the causes for the non-payment of rent by certain farmers, and also to evaluate and determine the financial and non-financial mechanisms to assist the emerging farmers.
- 6.2.2 Through this process and engagements with the respective emerging farmers and specifically through the process of facilitating financial assistance to Mr Arendse, Ms Lakey discovered that Mr Arendse was farming on a portion of Farm No.: 502S, Stellenbosch Division, and not the property allocated to him through the lease agreement with the municipality.
- 6.2.3 Through, the further investigation it was found that Mr Arendse was the most successful farmer of the emerging farmers, and that the exchange agreement was not endorsed or approved by the Municipal in writing as required in terms of both lease agreements for Messrs Hanekom and Arendse.
- 6.2.4 The reason for the exchange, as indicated through the correspondence attached to this report, was as a result of Farm No. 502V not being accessible. Although correspondence suggest that, the municipal officials, Messrs Moses and Smit had meetings with Spier and with Mr Hanekom, no written record of such meetings could be found by the Department.
- 6.2.5 Mr Arendse however on 23 June 2021, on the request of the Department to provide written correspondence and a record of events, submitted an affidavit, which is attached as **APPENDIX 6** to this report. The affidavit broadly outlined the terms of the agreement between Messrs Hanekom and Arendse and also note that municipal officials knew and supported this agreement.

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- 6.2.6 It is however clear that both parties, were in breach of the respective lease agreements, as any subletting, ceding may only occur with the prior written approval of the Lessor, in this instance, the Municipal Manager as the representative of the municipality.
- 6.2.7 The clauses within the lease agreement also note that the lease agreement may be cancelled and / or terminated should Council require the respective properties for municipal purposes, and therefore the municipality had the right to inform Mr Hanekom of its intention to register a right-of-way servitude over Farm No. 502S, Stellenbosch Division in favour of Farm No(s) 502T and 502V to provide access to the aforementioned properties.
- 6.2.8 Based on the observations and site inspection by the Section: Economic Development & Tourism, Mr Hanekom was using Farm No. 502V for grazing purposes, whilst Mr Arendse had used the portion allocated to him through the exchange agreement to farm with herbs and vegetables and had thus commenced his farming activity of this portion.
- 6.2.9 Both properties have respective water rights allocated with Farm No. 502S having access to 7,9ha water and Farm No. 502V having 8ha of water.
- 6.2.10 The major concern at this stage, other than the breach of lease agreement by both parties, is the fact that funding was approved in the amount of R3 million for Mr Arendse on Farm No. 502S by Elsenburg. Thus, should the improvement be implemented it would be based on the exchange agreement, in the property of Mr Hanekom, as he is the rightful lessee on Farm No. 502S.
- 6.2.11 It is therefore imperative that Council based on the exchange agreement wholly allocate Farm No. 502S, Stellenbosch, in the extent of 23,26ha with the 7,9ha of water to Mr Arendse for the remainder of his lease period of 9 years and 11 months, calculated from 01 January 2020; and that Council wholly allocate Farm No. 502V, Stellenbosch Division, in the extent of 21,6ha with 8ha of water to Mr Hanekom for the remainder of his lease until 31 March 2041. Both parties' lease agreement must remain the same, which include the rental amount.
- 6.2.12 It must however be noted, that the Section: Property Management with the assistance of the Department: Development Planning must be tasked to register a right-of-way servitude over Farm No. 502S, Stellenbosch Division in favour of Farm No(s). 502T and 502V, this right-of-way servitude, and that the cost of the maintenance of such servitude road be at the cost of the Lessor, in this case Stellenbosch Municipality.
- 6.2.13 The Department further proposes that Messrs Hanekom and Arendse be informed of the proposal of the exchange of the lease portions, based on the agreement entered into between the parties, and that after conclusion that the Municipal Manager be authorised to undertake such amended lease agreements with both parties.

6.3 Financial Implications

There are no financial implications, as the proposed recommendations note that the original terms in respect of monetary obligations will remain the same. The cost for registration of the required servitude, is operational cost, and may be seen as insignificant and may be financed through the current operational budget for the Section: Property Management.

6.4 Legal Implications

The legal implications are contained within the Section 6.1 and 6.2 of this report. The Department is thus of the opinion that should both or either party object to the proposed recommendations, that both parties were in any event in breach of the respective lease agreement, and provide grounds for such lease agreement to be terminated and / or cancelled.

6.5 Previous / Relevant Council Resolutions:

The 30th Council meeting dated 28 August 2019 resolved the following:

- (a) *that Council notes the process undertaken and the final recommended outcomes as listed below.*

No	Portion	Size (ha)	Water (ha)	Highest scorer	Recommended
5	502 V	21.6	8	Hylton P Arendse	That Hylton P. Arendse be the preferred applicant for 502 V.
13	502 AP	7	2	Chris Jacobs	That Chris Jacobs be the preferred applicant for 502 AP and AM. The two pieces of land lay adjacent to each other and will make economic sense to farm as one unit
12	502 AM	8.56	3	Chris Jacobs	
4	502 AW	6	0	Bradley Cortereal	That Bradley Cortereal be the preferred applicant for 502 AW.
	502 AU	8.9		Re advertise for beekeeping	Portion 502AU is regarded as a nature conservation area by Cape Nature, the only farming purpose this land could be utilized for is beekeeping as the property is overgrown by fynbos.
	502 M	5.1	3	Re advertise 502 M & 502 W as one unit	The portion is located next to 502W, and should be utilised as a water resource for 502M as it is a wetland area, which will not be suitable for farming on its own.
	502 W	9	3		
5	502 BFN	15.5	6	Elsenburg Khoisan Farmers	That Elsenburg Khoisan Farmers be the preferred applicant for 502BFN. More than 10ha of land have been already allocated to both Hilton Arendse and Chris Jacobs.
18	619/1	26	0	Jeremy van Niekerk	That Jeremy van Niekerk be the preferred applicant for 619/1. More than 10ha of land have been already allocated to both Chris Jacobs and Elsenburg Khoisan Farmers.
27	279 BN	25.3	0	Re-advertised	Recommended to be re-advertised.
	165/1	10.5	0	Re-advertised	No responsive application was received for this portion of land. The land in its current state should be utilised for grazing purposes Recommended to be re-advertised

- (b) *that the Policy be reviewed to address the unintended consequences; and*

- (c) *that the Administration continue with the implementation of the Policy in regard to vacant land.*

6.6 Risk Implications

The risks associated with the recommendations has been noted throughout the report.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2021-10-15: ITEM 7.8.1

- (a) that Council takes note of the 'Memorandum van Ruil Ooreenkoms' which was entered into by Hylton P Arendse and Gielie Hanekom during November 2019, copy attached as **APPENDIX 4**;
- (b) that Council approves the exchange of the two (2) lease portions, Farm No(s). 502S and 502V between the parties concerned, whereby the portions will be re-allocated as follows:
- (i) Farm No. 502S, Stellenbosch Division in the extent of 23,60ha with 7.9ha of water be awarded to Hylton P Arendse for the remainder of such lease period of 9 years and 11months, calculated from 01 January 2020;
 - (ii) Farm No. 502V, Stellenbosch Division, to the extent of 21,6ha with 8ha of water be awarded to the Gielie Hanekom Familie Trust for the remainder of his lease until 31 March 2041; and
 - (iii) That all monetary obligations for each respective lease agreement as per the tariff structure.
- (c) that Council approves the registration of a right-of-way servitude over Farm No(s) 502S in favour of Farm No.(s) 502T and 502V, respectively, and that the Section: Property Management with the assistance of the Department: Development Planning be tasked to ensure that the processes to register the aforementioned servitude be implement within a reasonable timeframe; and
- (d) that Council approves, if one of the parties contest the exchange as indicated above, that Council mandates the Municipal Manager to commence with the required process to cancel both the leases due to the breach of the lease agreements not to lease to another person/entity without Council approval.

APPENDICES

Appendix 1: Locality Maps and Diagram for the subject Properties

Appendix 2: Lease Agreement Between Stellenbosch Municipality and Gielie Hanekom Familie Trust

Appendix 3: Lease Agreement Between Stellenbosch Municipality and Hylton P Arendse

Appendix 4: Exchange of Land Agreement Between Gielie Hanekom Familie Trust and Hylton P Arendse

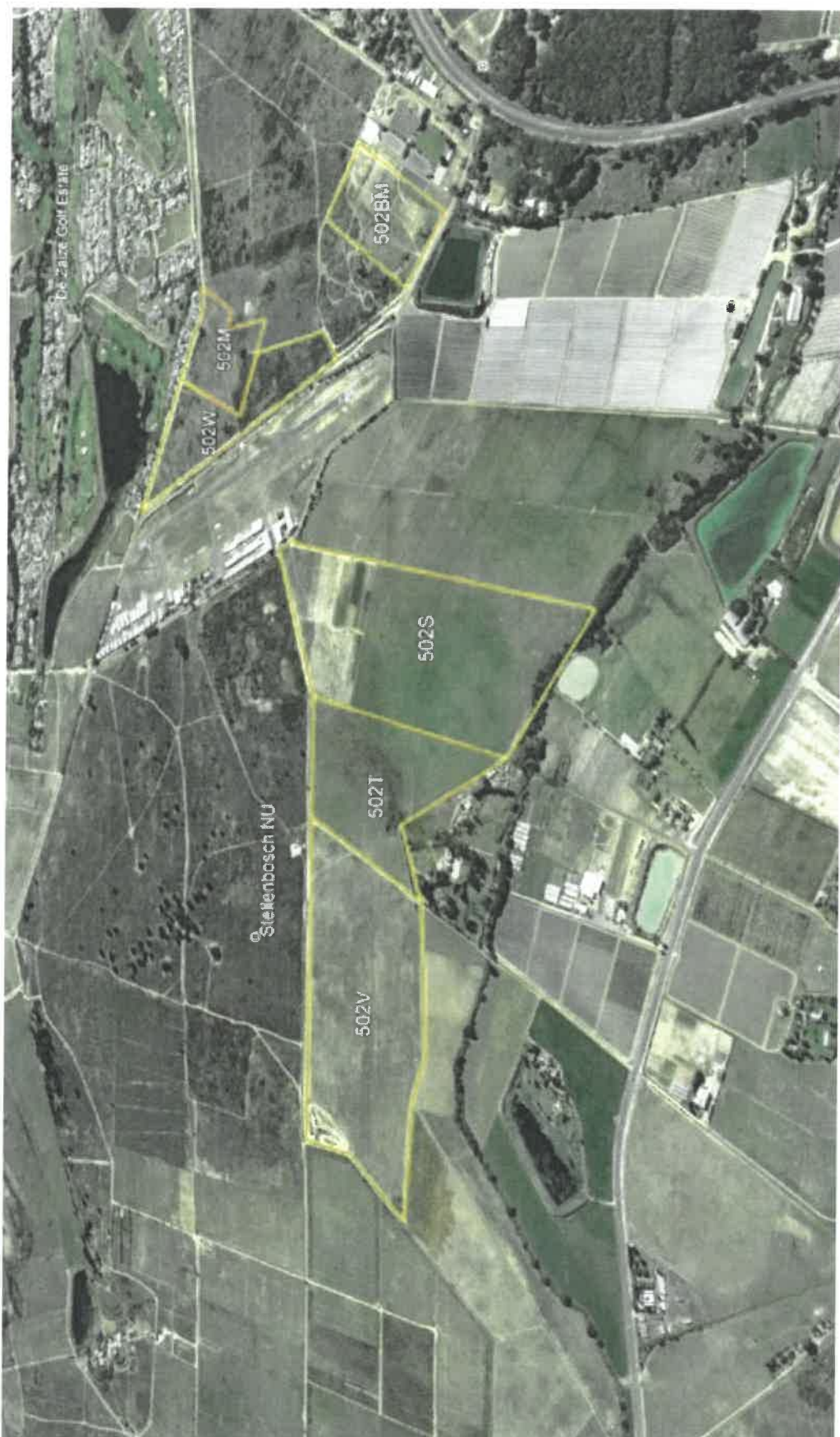
Appendix 5: Confirmation of Funding Approval from Elsenburg dated 06 August 2021

Appendix 6: Affidavit from Mr Arendse i.r.o. Exchange of Land Agreement

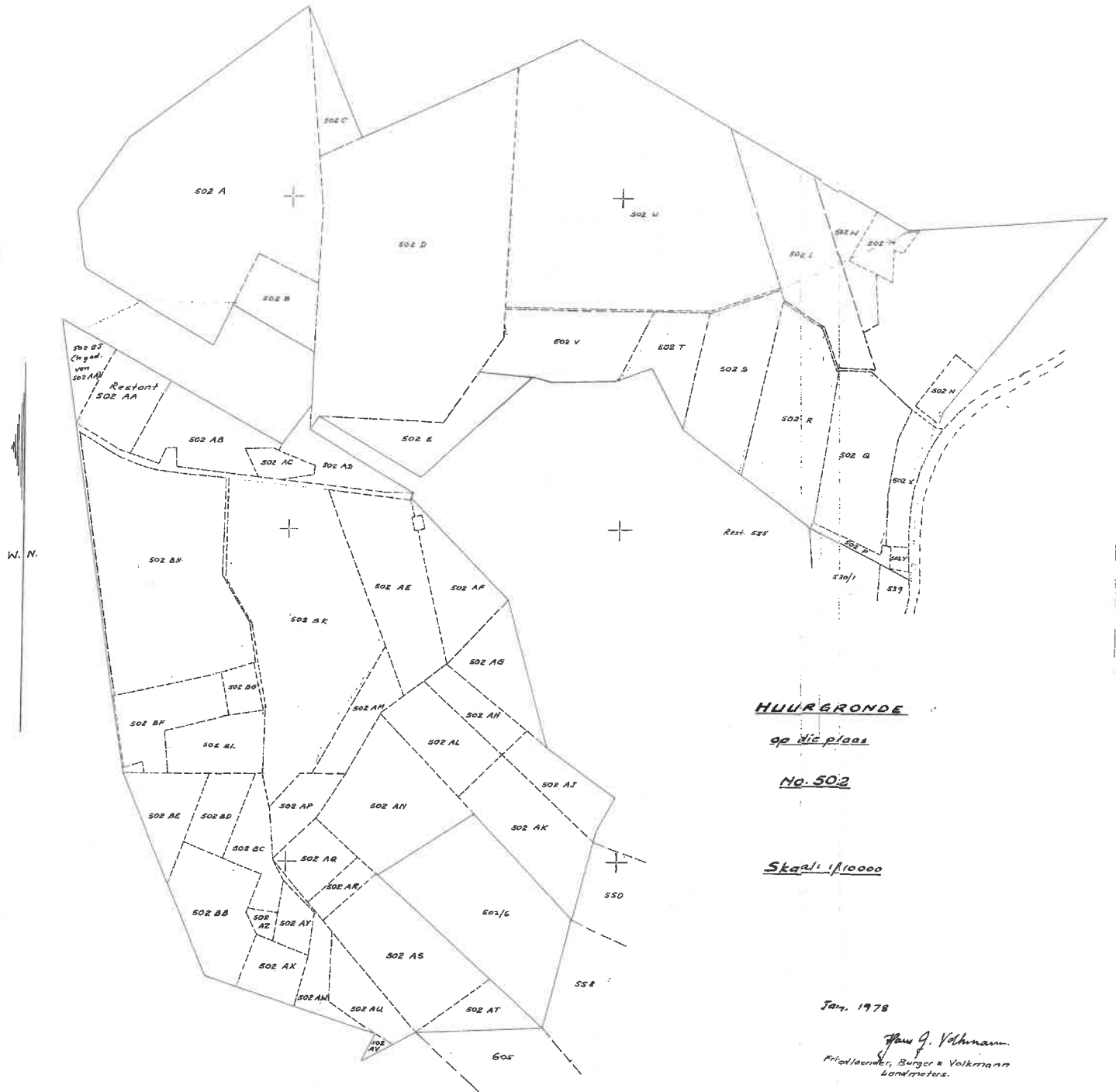
FOR FURTHER DETAILS CONTACT:

NAME	Craig Alexander Pr Pln
POSITION	Senior Manager: Development Planning
DIRECTORATE	Planning and Economic Development
CONTACT NUMBERS	021 808 8196
E-MAIL ADDRESS	Craig.alexander@stellenbosch.gov.za
REPORT DATE	01 September 2021

APPENDIX 1



Huurgronde op 502 011



HUURGRONDE

op die plaats

No. 502

Skaal: 1:10000

Jan. 1978

J. G. Volkmann
Friedlaender, Burger & Volkmann
Landmeters.

APPENDIX 2

7/2/1/2/55

Page 43

A/5a/220

MEMORANDUM VAN HUUROOREENKOMS

Aangeaan deur en tussen

DIE MUNISIPALITEIT STELLENBOSCH

hierin verteenwoordig deur

JACOBUS ABRAHAM MOUTON VAN SCHOOR
GERHARDUS MATTHYS STRYDOM EN ~~ERASMUS PETRUS SMITH TALJAARD~~

in hul onderskeie hoedanighede as Uitvoerende Hoof/Stadsklerk en/of Burgemeester van
gemelde Munisipaliteit

("die VERHUURDER")

en **GJ HANEKOM**

hierin verteenwoordig deur

as synde die gevolmagdigde verteenwoordiger ingevolge 'n besluit van die

gedateer waarvan 'n afskrif as Bylae A aangeheg is.

("die HUURDER")


NADEMAAL die VERHUURDER die eienaar is van die eiendom bekend as

PLAAS NO 502 S

GROOT 23,60 HEKTAAR

soos aangedui op die aangehegte kaart

("die EIENDOM")



EN NADEMAAL die **VERHUURDER** begerig is om die **EIENDOM** aan die **HUURDER** te verhuur en om 'n gedeelte van die verhuurde eiendom te laat inlys ooreenkomstig die bepalinge van die Besproeiingsraad ("die **BESPROEIINGSRAAD**") vir daardie distrik geproklameer by die Theewaterkloof Staatswaterskema ("die **SKEMA**") kragtens die bepalinge van die Waterwet, Nr 54 van 1956 ("die **WET**")

EN NADEMAAL die **HUURDER** begerig is om die **EIENDOM** te huur en om die waterregte wat as gevolg van sodanige inlysting ten opsigte van die verhuurde eiendom verkry word, op die verhuurde eiendom aan te wend

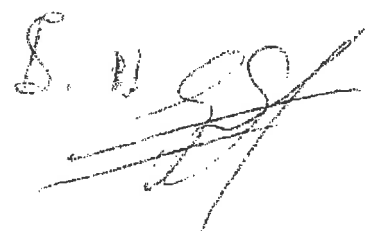
EN NADEMAAL die verhuring van die **EIENDOM** aan die **HUURDER** sowel as die inlystingsvoorwaardes op 'n vergadering van die Stadsraad gehou op 1990-05-15 (item 3.1.B) goedgekeur is.

NOU DERHALWE KOM DIE PARTYE ONDERLING SOOS VOLG OOREEN

1 TERMYN VAN VERHURING

Die **VERHUURDER** verhuur hiermee aan die **HUURDER** die **EIENDOM** wat deur die **HUURDER** in huur aangeneem word vir 'n tydperk wat begin op die eerste (1) dag van April 1991 en afsluit op die 31ste dag van Maart 2041 dog is steeds onderworpe aan die bepalinge van subklousules 4.4 (laat betaling), 13.1 (sessie), klousule 20 (opsegging) en die bepalinge van Bylae B hiervan.

- 2** Die **VERHUURDER** onderneem om alles te doen, of te laat doen, om **7,9** hektaar van die **EIENDOM**, of sodanige kleinere gedeelte wat goedgekeur mag word, soos uitgewys tussen die partye, kragtens die bepalinge van die Wet by die **SKEMA** te laat inlys vir die verkryging van besproeiingswater soos deur die Besproeiingsraad per hektaar toegesê.



- 3 Die **HURDER** sal geregtig wees om gedurende die huurtermyn in klousule 1 bepaal die waterregte wat as gevolg van sodanige inlysting verkry word ten opsigte van die verhuurde eiendom, op die verhuurde eiendom aan te wend op sodanige wyse soos goedgekeur deur die **VERHUURDER** en onderhewig aan alle terme en voorwaardes kragtens die bepalings van die Wet, of andersins bepaal, welke terme en voorwaardes aan die **HURDER** bekend is.
- 4 **HURGELD, MUNISIPALE BELASTING EN INLYSTINGSKOSTE**
- 4.1 Die **HURDER** betaal eenmalig voor of op die 30ste dag van April 1992 by die kantoor van die Stadstesourier die bedrag van [REDACTED] (welke bedrag bereken is vir die tydperk vanaf die datum waarop die ooreenkoms 'n aanvang neem tot die 31ste dag van Maart 1993. Die **HURDER** betaal daarna jaarliks voor of op die 31ste dag van Maart van elke daaropvolgende jaar die basiese huurgeld plus verhoging plus addisionele huurpremie soos bereken volgens die voorwaardes wat as Bylae B hierby aangeheg is;
- 4.2 Die **HURDER** sal verder aanspreeklik wees om op aanvraag deur die **VERHUURDER** die volgende bedrae ("Inlystingsgeld") aan die **VERHUURDER**, of sy genomineerde, te betaal, naamlik:
- 4.2.1 enige en alle belastings, heffings en vorderings van welke aard en omvang ook al gehef te word deur die Besproeiingsraad vir die gebied wat jurisdiksie het oor die verhuurde eiendom, die Departement van Waterwese en Bosbou of enige ander owerheidsliggaam, vir of ten opsigte van, maar nie uitsluitend nie -
- 4.2.2.1 bedryfs- en onderhoudskoste van die watervoorsieningskema;
- 4.2.2.2 administratiewe koste;
- 4.2.2.3 verpligte bydraes ten opsigte van 'n reserwefonds;
- 4.2.2.4 verpligte bydraes tot die Waternavorsingsraad;
- 4.2.2.5 die aankoopprys van water uit die **SKEMA**;

[Handwritten signature]

[Handwritten signature]

- 4.2.2.6 voorlopige uitgawes en tussentydse heffings wat deur die Besproeiingsraad en/of die Departement van Waterwese en Bosbou, opgelê word; en
- 4.2.2.7 die VERHUURDER beskou die voorlegging van 'n rekening van die Besproeiingsraad en/of die Departement van Waterwese en Bosbou as afdoende stawende bewys van die bedrag wat deur die HURDER verskuldig is, opvallende foute en weglatings uitgesluit
- 4.3 Die VERHUURDER kan, indien nodig, vereis dat die HURDER 'n bankwaarborg of ander garansie verskaf wat vir die VERHUURDER aanneemlik is ten opsigte van die huurgeld en inlystingsgelde wat betaalbaar is, en in die geval van 'n HURDER wat 'n maatskappy, beslote korporasie of trust is, sal die direkteure, Iede of trustees daarvan skriftelik, gesamentlik en afsonderlik, as borge en mede-hoofskuldenare aanspreeklik wees vir die huurgeld en inlystingsgelde wat betaalbaar is.
- 4.4 Enige huurgeld of inlystingsgelde wat na die vervaldatum in subklousule 4.1 en 4.2 vermeld deur die HURDER aangebied word, indien die VERHUURDER dit aanvaar, is onderworpe aan 'n rente wat maandeliks vooruit bereken sal word teen die standaardrentekoers soos artikel 214 van die Munisipale Ordonnansie, Ordonnansie nr 20 van 1974, soos gewysig of enige ander toepaslike ordonnansie van tyd tot tyd bepaal ten opsigte van elke maand of gedeelte daarvan.
- 4.5 Dit is 'n spesiale voorwaarde van hierdie ooreenkoms dat die VERHUURDER die reg voorbehou om hierdie ooreenkoms summier te kanselleer, sonder enige voorafgaande skriftelike kennisgewing, indien die HURDER sou versuim om enige verskuldigde huur- of inlystingsgeld binne sewe dae vanaf die vervaldatum te vereffen, en so 'n kansellering affekteer generwyse die reg van die VERHUURDER om enige bedrag wat die HURDER skuld of verskuldig mag word van hom te vorder nie.

- 4.6 Die **HUURDER** sal aanspreeklik wees om die belastinge deur die Stadsraad op die **EIENDOM** gehef te betaal, onderworpe aan die voorwaardes en vereistes soos bepaal mag word in terme van die Munisipale Ordonnansie, Ordonnansie nr 20 van 1974, soos gewysig of enige ander vervangende of toepaslike ordonnansie.

5 **STREEKSDIENSTERAADHEFFING**

Die **HUURDER** onderneem om alle heffings wat deur die Streeksdiensteraad op die **EIENDOM** gehef word, regstreeks aan daardie owerheid te betaal.

6 **MYN- EN ANDER REGTE**

Die **VERHUURDER** behou voor alle regte op metale, minerale, steenkool, klip van alle soorte, klei en gruis, met inbegrip van die reg van toegang tot die eiendom te alle tye om sodanige metale, minerale of steenkool te myn of om klei, gruis en klip te verwyder, onderworpe aan 'n vermindering van die huurgeld in verhouding tot die oppervlakte wat deur die **VERHUURDER** vir sodanige mynwerk of verwydering teruggeneem word.

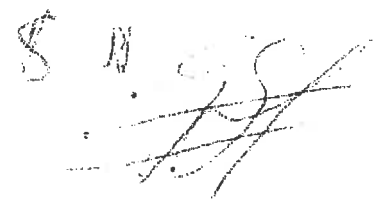
7 **BESKERMING VAN BOME**

- 7.1 Alle bome, wingerde of dergelike verbeteringe op die verhuurde perseel bly die eiendom van die **VERHUURDER** en mag nie deur die **HUURDER** beskadig of verwyder word nie.
- 7.2 Die **HUURDER** moet die geskrewe toestemming van die **VERHUURDER** vooraf verkry vir die verwydering van enige bome, wingerde en dergelike verbeteringe op 'n terrein wat hy vir verbouing nodig het, en as sodanige toestemming verleen word, behou die **VERHUURDER** die reg voor om oor die hout vir sy eie voordeel te beskik.

- 7.3 Die VERHUURDER behou die reg voor om deur sy amptenare periodieke inspeksies van bome, wingerde en dergelike verbeteringe op die eiendom uit te voer en om sodanige stappe ter beskerming daarvan te neem as wat hy nodig mag ag.
- 7.4 Die VERHUURDER behou die reg voor om self enige bome op die eiendom wat nie deur die HUURDER aangeplant is nie, te kap en te verwyder, en hiervoor het hy vrye toegang tot die eiendom.
- 7.5 Die HUURDER onderneem om geen mak wingerdstokke op die eiendom te plant nie, en enige wynkwota wat deur die Ko-operatiewe Wijnbouwers Vereniging van Zuid-Afrika Beperk, aan die EIENDOM toegeken is, mag onder geen omstandighede met enige ander kwota gekonsolideer word nie, tensy die VERHUURDER dit vooraf goedkeur, met of sonder bepaalde voorwaardes.

8 WATERBRONNE

- 8.1 Die VERHUURDER waarborg geen voorraad van oppervlakte- of ondergrondse water nie.
- 8.2 Die HUURDER onderneem om nie met fonteinne of met die natuurlike vloei van oppervlakte afloopwater in te meng nie deur kanale, vore of damme te bou of om enige ander werke uit te voer sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie, en vir die toepassing van hierdie subklousule is 'n opinie van die betrokke Staatsdepartemente en/of onderafdelings daarvan bindend en finaal.
- 8.3 Die VERHUURDER behou die reg voor om water op die EIENDOM op te gaar of om die gebruik van water uit fonteinne of strome te beperk, indien sodanige opgaring of beperking na sy mening noodsaaklik is ter beskerming van die regte van derde partye.
- 8.4 Die HUURDER onderneem om alle strome, fonteinne of opgaardamme teen besoedeling te beskerm, en om sodanige instruksies uit te voer as wat die VERHUURDER periodiek te dien einde mag uitreik.

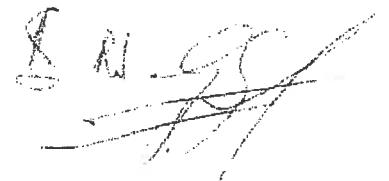
9 **GRONDBEWARING**

- 9.1 Die **HURDER** onderneem om die **EIENDOM** te gebruik deur die verbouing van die grond op 'n versigtige en sorgsame wyse, en ook om verswakking van die natuurlike vrugbaarheid en kwaliteit teen te werk.
- 9.2 Die **HURDER** onderneem om gronderosie teen te werk en om stiptelik uitvoering te gee aan die bepalinge van enige grondbewaringskema wat volgens wet op die **EIENDOM** van toepassing mag wees, en te dien einde behou die **VERHUURDER** die reg voor om periodieke instruksies uit te reik.
- 9.3 Die **VERHUURDER** behou die reg voor om sodanige werke uit te voer as wat hy nodig mag ag vir die bestryding van gronderosie, en wel op die koste van die **HURDER** as laasgenoemde versuim om dit op die **VERHUURDER** se versoek te doen.
- 9.4 Die **HURDER** onderneem om geen sand, grond of gruis vanaf die **EIENDOM** vir verkoping of gebruik elders te verwyder nie.
- 9.5 Die **HURDER** onderneem om toe te sien dat geen vullis, rommel of afval op die **EIENDOM** gestort word nie.

10 **SKADELIKE GEWASSE**

- 10.1 Die **HURDER** onderneem om die **EIENDOM** van skadelike gewasse skoon te hou.
- 10.2 Die **VERHUURDER** behou die reg voor om sodanige stappe as wat hy dienlik mag ag, te doen ter verwydering van dergelike geproklameerde onkruid, en wel op die koste van die **HURDER** ingeval laasgenoemde versuim om dit op die **VERHUURDER** se versoek te doen.





11 BRANDBESTRYDING

11.1 Die **HURDER** onderneem om die uiterste sorg uit te oefen ter beskerming van die **EIENDOM** teen veldbrande, en die **VERHUURDER** kan vereis dat die **HURDER** op sy eie koste sodanige brandpaaie bou as wat die **VERHUURDER** nodig mag ag.

11.2 Die **HURDER** is aanspreeklik vir vergoeding aan die **VERHUURDER** vir enige uitgawe aangegaan om brande te voorkom of te blus. Brandskade aan bome of ander plante op die **EIENDOM** wat aan die **VERHUURDER** behoort, word deur 'n taksateur wat deur die **VERHUURDER** aangestel en wie se bevinding bindend is, bepaal, en aan die **VERHUURDER** deur die **HURDER** vergoed.

12 OMHEINING

12.1 Die **HURDER** is verantwoordelik vir die oprigting en koste van enige omheining wat hy vir die beskerming van sy oeste of diere op die **EIENDOM** nodig mag ag.

12.2 Omheining wat deur die **HURDER** opgerig word, kan binne een maand na die afloop van die huurooreenkoms verwyder word, maar die **VERHUURDER** kan uitstel vir sodanige verwydering verleen totdat die **EIENDOM** weer verhuur is om onderhandelinge met die opvolger vir die verkoping of oordrag daarvan moontlik te maak, met dien verstande dat die **VERHUURDER** eienaar van sodanige omheining word indien geen finale reëlings binne sestig dae vanaf die datum van herverhuring deur die **HURDER** getref is nie, en in so 'n geval is die **HURDER** nie geregtig tot enige vergoeding vir die omheining wat aldus deur hom verbeur is nie.

S. M. G. C.

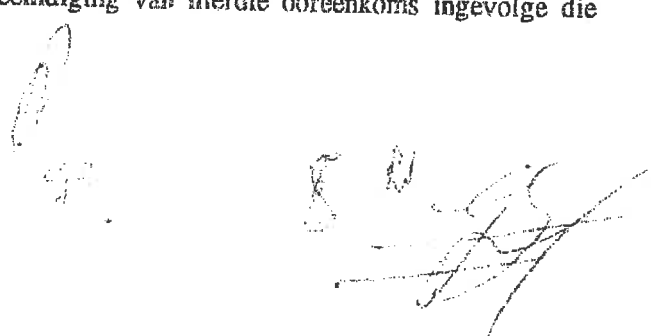
- 13 **ONDERVERHUURING, SESSIES OF OORDLAAGTE, ENS**
- 13.1 Die **HURDER** sal nie hierdie huurooreenkoms sedgeer of oordra nie, en onderverhuur nie die **EIENDOM** of enige deel daarvan sonder die voorafverkree skriftelike toestemming van die **VERHUURDER** nie.
- 13.2 Die **VERHUURDER** kan 'n sertifikaat as bewys vereis dat 'n maatskappy, beslote korporasie of trust wat 'n **HURDER** is, wel as sodanig geregistreer is.
- 13.3 Dit word op rekord geplaas dat die **VERHUURDER** toestemming verleen vir die sessie en delegasie van hierdie huurkontrak aan en ten gunste van 'n erfge naam of erfgename van die **HURDER** as sodanig deur die **HURDER** be noem.
- 13.4 By verandering van die beherende aandeelhouding of beherende belange in 'n maatskappy of beslote korporasie wat 'n **HURDER** is, of by verandering van direkteure of by likwidasie van die maatskappy of beslote korporasie of ingeval die maatskappy of beslote korporasie onder geregtelike bestuur geplaas word, bly die oorspronklike borge ten behoeve van die maatskappy of beslote korpo rasie gesamentlik en afsonderlik en as mede-hoofskuldenaars teenoor die **VER HUURDER** aanspreeklik, tensy die **VERHUURDER** op skriftelike aansoek van die **HURDER** toestem tot vervanging van sodanige borge.
- 13.5 Verandering van die beherende aandeelhouding of beherende ledebelaag, direk teure of trustees van 'n maatskappy, beslote korporasie of 'n trust wat 'n **HURDER** is, word geag 'n onderverhuuring te wees.

14 **GEBOU EN STRUKTURELE VERBETERINGE**

- 14.1 Enige gebou of strukturele verbeteringe wat op die **EIENDOM** by die aanvang van die huurooreenkoms bestaan, of mettertyd gedurende die huurtermyn opgerig mag word, sal deur die **HURDER** op sy eie koste hetsy binne of buite in 'n goeie toestand gehou word en wel tot die bevrediging van die **VER HUURDER** en indien die **HURDER** versuim om dit te doen kan die **VER HUURDER** sodanige reparasies as wat hy nodig mag ag, laat aanbring terwyl die **HURDER** vir die uitgawe aanspreeklik bly.

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- 14.2 Geen nuwe gebou, struktuur of ander permanente verbetering sal op die EIENDOM aangebring, opgerig of uitgevoer word sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie, en sonder dat bouplanne ten opsigte van sodanige verbeteringe vooraf deur die VERHUURDER goedgekeur is nie en laasgenoemde kan gelas dat sodanige gebou, struktuur of verbetering wat inderdaad sonder sy skriftelike goedkeuring en toestemming opgerig, aangebring of gebou is deur die HURDER op sy eie koste verwyder word.
- 14.3 Goedgekeurde verbeteringe van 'n permanente aard sal deur die HURDER op sy eie risiko aangebring of opgerig word.
- 14.4 Die VERHUURDER sal enige geboue of ander verbeteringe wat by die aanvang van die huurtermyn op die EIENDOM is in sy uitsluitlike diskresie teen skade verseker en sodanige versekering instand hou, met dien verstande dat die HURDER verantwoordelik sal wees vir die volle kostes en premies verbonde aan sodanige versekering, en die VERHUURDER sal derhalwe die kostes en premies direk van die HURDER vorder.
- 14.5 Indien die VERHUURDER kontant van 'n versekeringsmaatskappy sou ontvang ter vergoeding van 'n eis ten opsigte van skade aan enige verbetering op die EIENDOM soos in subklousule 14.4 van hierdie ooreenkoms genoem, kan hy die verbetering herstel of die kontant hou, na gelang hy dit dienlik ag.
- 14.6 Behuising kan, met behoud van die bepalings van subklousules 14.1, 14.2, 14.3 en 14.4 van hierdie ooreenkoms aan werkers wat die HURDER op die EIENDOM in diens het, met inbegrip van hul onmiddellike afhanklikes, op die EIENDOM voorsien word, onderworpe aan die voorafverkreë skriftelike toestemming van die VERHUURDER, en die stiptelike nakoming van die bepalings en vereistes van die toepaslike wetgewing met betrekking tot behuising.
- Enige plakkery op die EIENDOM is ten strengste verbode.
- 14.7 Die HURDER sal geen reg of aanspraak hê of vergoeding kan eis ten opsigte van verbeteringe, met inbegrip van landboukundige verbeteringe wat tydens die huurtermyn op die EIENDOM aangebring is nie, en die VERHUURDER behou die reg voor om, by beëindiging van hierdie ooreenkoms ingevolge die



bepalings van klousule 3, subklousules 4.4, 20.1.1, 20.1.2 en 20.2 of andersins volgens sy eie diskresie en goeiddunke te besluit of die VERHUURDER bereid is om die HUURDER enigsins te vergoed vir sodanige verbeteringe. Voorts kan die VERHUURDER in die alternatief toestem tot die verwydering van enige verbetering binne 'n tydperk soos deur die VERHUURDER voorgeskryf, by gebreke waarvan die HUURDER enige reg op verwydering van sodanige verbeteringe of enige verdere aanspraak van watter aard ookal sal verbeur, ten gevolge waarvan die betrokke verbeteringe sonder enige aard van vergoeding die EIENDOM van die VERHUURDER word.

15 BAKENS

15.1 Deur die huurooreenkoms te onderteken erken die HUURDER dat hy bewus is van die werklike ligging van alle bakens wat die EIENDOM se grense bepaal en enige onkunde of misverstand aan sy kant in hierdie verband raak nie die geldigheid van die huurooreenkoms of maak hom nie geregtig tot 'n vermindering van die huurgeld of tot kompensasie in enige vorm nie.

15.2 Indien enige bakens wat die grense van die EIENDOM bepaal na ondertekening van hierdie ooreenkoms nie gevind kan word nie, is die HUURDER aanspreeklik vir alle opmetings- en ander kostes verbonde aan die herplasing van sodanige bakens.

16 PAAIE

Die HUURDER onderneem om alle bestaande paaie op die EIENDOM in 'n goeie toestand te hou, en voorts om geen verdere paaie te bou of oop te maak sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie.

17 INSPEKSIES

Die gemagtigde amptenare van die VERHUURDER kan te eniger tyd die EIENDOM betree om sodanige inspeksies as wat hulle nodig mag ag, uit te voor en om vas te stel of die voorwaardes en bepalinge van die huurooreenkoms stiptelik nagekom word.

18 ADVERTENSIE TEKENS

Die HUURDER sal geen advertensietekens hoegenaamd op die EIENDOM oprig nie, en sal ook nie toelaat dat sulke tekens opgerig word sonder die voorafverkreë skriftelike toestemming van die VERHUURDER nie.

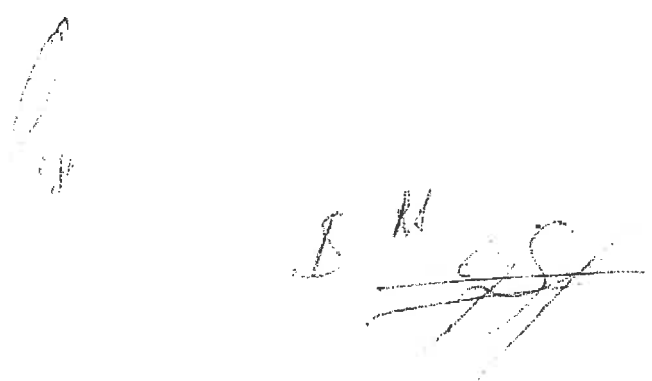
19 ERFDIENSBAARHEID EN VERJARING

19.1 Die huur is onderworpe aan enige erfdiensbaarheid wat aan die EIENDOM kleef, en as dit te eniger tyd sou blyk dat die VERHUURDER nie daartoe geregtig was om die EIENDOM of enige deel daarvan te verhuur nie, het die HUURDER geen eis vir skadevergoeding behalwe dat die huurgeld *pro rata* verminder word ten opsigte van daardie deel van die EIENDOM wat nie vir okkupasie of gebruik deur die HUURDER beskikbaar is nie.

19.2 Die HUURDER erken hiermee dat hy geen aanspraak op eiendomsreg by wyse van verjaring ten opsigte van die EIENDOM wat verhuur word sal verkry nie.

20 OPSEGGING EN BEÏNDIGING VAN HUUROOREENKOMS

20.1 Die VERHUURDER kan, sonder om afbreuk te doen aan enige bepaling of vereistes van hierdie ooreenkoms, met spesifieke verwysing na die bepalinge van klousule 4 hiervan, en nadat 'n skriftelike kennisgewing op die HUURDER beteken is, hierdie ooreenkoms beëindig -

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- 20.1.1 indien die HURDER versuim om enige voorwaarde of bepaling ten opsigte van hierdie ooreenkoms na te kom; of
- 20.1.2 indien die VERHUURDER daarvan oortuig is dat die HURDER die grond op onbehoorlike of onverantwoordelike wyse benut; of
- 20.1.3 indien die VERHUURDER daarvan oortuig is dat die HURDER deur sy handeling op die EIENDOM 'n oorlas vir ander uitmaak; of
- 20.1.4 indien die HURDER teenstrydig met enige bepaling van die soneringskema van die Munisipaliteit van Stellenbosch afgekondig by PK 73 van 1979-07-20, soos vervang of gewysig, optree; of
- 20.1.5 indien die EIENDOM in sy geheel of gedeeltelik vir *bona fide* munisipale doeleindes, waarby dorpsstigting ingesluit is, benodig word

met dien verstande dat 'n grasiëperiode van hoogstens een (1) jaar in die gevalle soos in subklousules 20.1.1; 20.1.2; 20.1.3; 20.1.4 en 20.1.5 genoem aan die HURDER verleen word, ten einde die HURDER in staat te stel om die oeste wat op daardie stadium uitstaande mag wees te in, op voorwaarde dat die HURDER gedurende die grasiëperiode aan al die bepalings en vereistes van hierdie ooreenkoms, of ander voorwaardes wat die VERHUURDER in hierdie verband mag stel moet voldoen, by gebreke waarvan die toegestane grasiëperiode sonder verdere kennisgewing deur die VERHUURDER, in sy uitsluitlike diskresie, in heroorweging geneem sal word.

- 20.2 die HURDER kan, sonder om afbreuk te doen aan enige bepaling of vereiste van hierdie ooreenkoms, met spesifieke verwysing na subklousules 4.1, 4.2, 4.3 en klousule 24, hiervan, en nadat 'n skriftelike kennisgewing van ses (6) maande

deur die **HURDER** aan die **VERHUURDER** gegee is, hierdie ooreenkoms beëindig.

21 **SKADELOOSSTELLING**

Die **HURDER** onderneem hierby om die **VERHUURDER** te vrywaar en gevrywaar te hou teen alle gedinge, stappe, eise, vorderings, koste, skadevergoeding en uitgawes wat gehef, gebring of gemaak mag word teen die **VERHUURDER** of wat die **VERHUURDER** mag betaal, opdoen of aangaan as gevolg van enige handeling of versuim aan die kant van die **HURDER**, sy werknemers of persone wat onder sy beheer handel.

22 **KOSTE VAN OOREENKOMS**

22.1 Alle kostes wat deur die **VERHUURDER** aangegaan is vir die voorbereiding en opstel van hierdie ooreenkoms, plus die koste van die verhuringsadvertensie, opmetingskoste en ander toevallige uitgawes sal deur die **HURDER** gedra word, en die **HURDER** kan nie die korrektheid van die bedrag wat deur die **VERHUURDER** in hierdie verband geëis word, betwis nie.

22.2 Die huurooreenkoms sal slegs op die uitdruklike versoek van die **HURDER** en op sy koste notarieël verly en in die akteskantoor geregistreer word. Die **HURDER** moet in sodanige geval 'n deposito betaal soos deur die **VERHUURDER** bepaal ten opsigte van die kostes hierbo vermeld.

23 **ARBITRASIE**

23.1 Enige geskil wat te eniger tyd tussen die partye mag ontstaan in verband met enige aangeleentheid voorspruitende uit hierdie ooreenkoms, sal onderwerp word aan en besleg word deur arbitrasie.

- 23.2 Iedere sodanige arbitrasie moet plaasvind -
- 23.2.1 te Stellenbosch;
- 23.2.2 op 'n informele summere wyse sonder enige pleitstukke of blootlegging van dokumente en sonder die noodsaaklikheid om aan die strenge reëls van die bewysreg te voldoen;
- 23.2.3 onverwyld, met die oog daarop om dit af te handel binne drie (3) maande vanaf die datum waarop die geskil na arbitrasie verwys is;
- 23.2.4 onderworpe aan die bepalings van die Wet op Arbitrasie, no 42 van 1986, of sodanige ander Arbitrasiewette as wat van tyd tot tyd mag geld, behalwe waar die bepalings van hierdie klousule anders voorskryf.

23.3 Die arbiter moet 'n persoon wees op wie deur die partye onderling ooreengekom is en, by onstentenis van 'n ooreenkoms, een aangestel deur die diensdoenende President van die Wetsgenootskap van die Kaap die Goeie Hoop.

23.4 Die partye kom hiermee onherroeplik ooreen dat die beslissing van die arbiter in sodanige arbitrasieverrigtinge finaal en bindend op hulle sal wees.

24 INVORDERINGSKOSTE

Indien die **VERHUURDER** opdrag aan sy prokureurs sou gee om enige gelde wat kragtens hierdie ooreenkoms betaalbaar is, op die **HUURDER** te verhaal, is die **HUURDER** aanspreeklik vir die betaling van alle koste deur die **VERHUURDER** in hierdie verband aangegaan, bereken op 'n prokureur/klënt-basis.

[Handwritten signature]

[Handwritten signature]

25 **DOMICILIUM CITANDI ET EXECUTANDI**

Die domicilium citandi et executandi van die **HURDER** vir die toepassing van hierdie ooreenkoms is:

Gowaly Lymech

en die van die **VERHUURDER**

Stadhuiskompleks, Pleinstraat, Stellenbosch

GETEKEN TE STELLENBOSCH HIERDIE
AS GETUIES

17 *September*
DAG VAN 1992

1 *B. Bippel*

[Signature]
BURGEMEESTER

2 *Lj Robinson*

[Signature]
**UITVOERENDE
HOOF/STADSKLERK**

GETEKEN TE STELLENBOSCH HIERDIE
AS GETUIES

3 *September*
DAG VAN 1992

1 *B. Bippel*

2 *Lj Robinson*

[Signature]
HURDER

(#SPROEI/KONTRAK/II)

BYLAEB

BELEID EN TOEPASSING VAN DIE HUURGELDBEREKENING

- 1 (a) Vir die doeleindes van hierdie ooreenkoms word die huurgeld gebaseer op die onverbeterde waarde van die Landbougrond in welke geval die volgende woordbepaling van toepassing sal wees:

"Onverbeterde grond" - beteken grond soos in sy natuurlike staat, met of sonder natuurlike plantegroei, waarop geen spesifieke struik of gewasse voorkom en verbou word met die doel om dit te oes nie;

- 1 (b) die waarde van die onverbeterde Landbougrond sal deur die KWV bepaal word; en

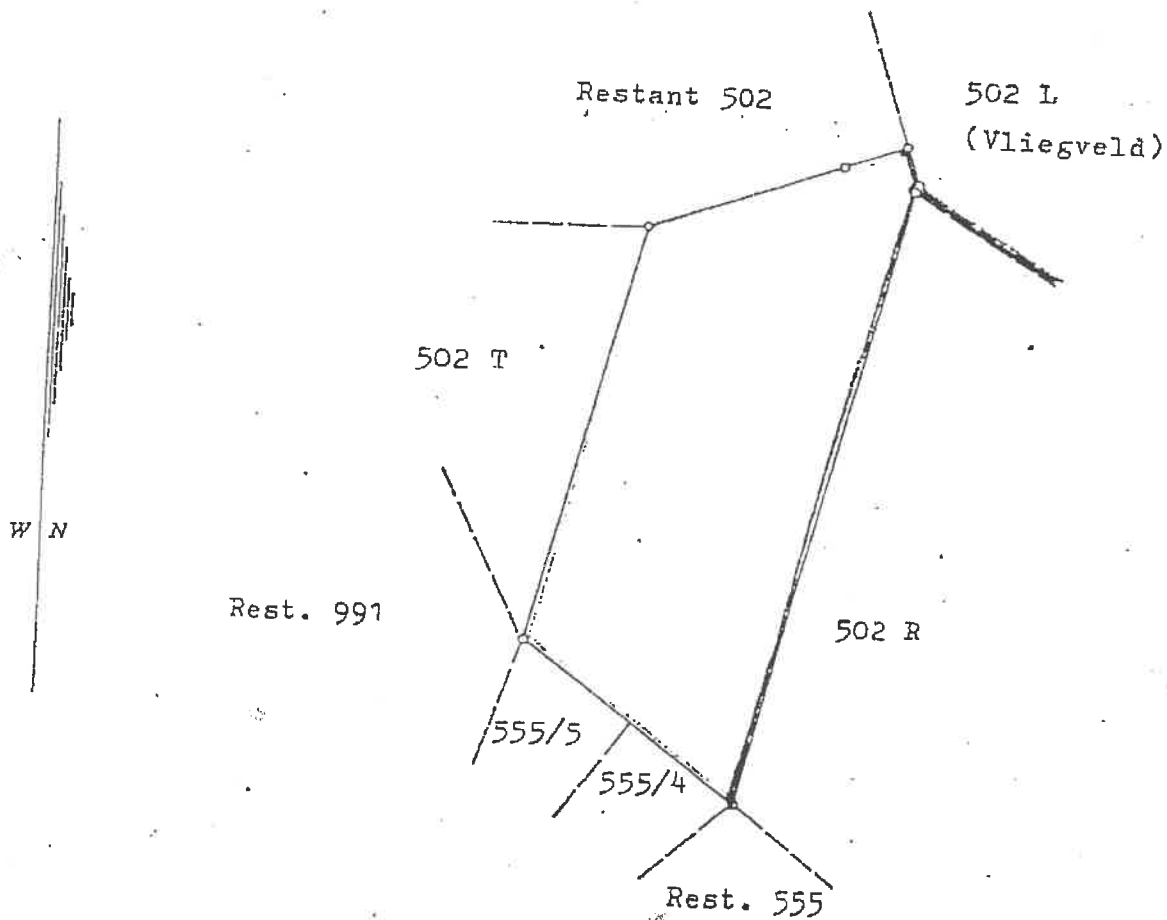
- 1 (c) vir die jaar 1989 word die waarde van die grond vasgestel op R7 200,00 per hektaar, waarop die Stadsraad 'n opbrengs van 5 % verwag.

2 **Huurgeld betaalbaar in eerste termyn van vyf (5) jaar**

- (a) Die jaarlikse basiese huurgeld ingevolge klousule 4.1 van die huurooreenkoms betaalbaar, is [redacted] per hektaar per jaar;
- (b) die basiese huurgeld sal [redacted] met 70 % van die styging van die ampelike verbruikersprysindeks soos op 31 Desember van die vorige jaar eskaleer, welke eskalاسie vanaf 1990-04-01 opgeskort word vir vyf (5) jaar of totdat die water beskikbaar is, watter gebeure ookal eerste plaasvind.

3 **Aangepaste huurgeld na vyf (5) jaar**

Die basis van die huurgeld sowel as die persentasie aanpassing soos beskryf in paragrawe 1 en 2 sal elke vyf (5) jaar herbepaal word ooreenkomstig die basis beskryf in par. 1 of op 'n ander basis waarop onderling ooreengekom word. Indien die partye nie konsensus kan bereik oor die huurgeld nie, sal sodanige kwessie verwys word vir arbitrasie ingevolge klousule 23 van die hoofooreenkoms.



Skaal: 1) 10 000

Die figuur a b c d e f g stel voor
 23,6 ha (benaderd tot die naaste $\frac{1}{2}$ ha) grond synde
Munisipale Huurgrond Perseel 502 S

geleë in die Munisipaliteit en Afdeling Stellenbosch
 Provinsie Kaap die Goeie Hoop.

Opgestel deur my in Junie 1980

Janus G. Volkmann
 Landmeter.

Oorspronklike Kaart

Nr. 9133/57

T/A Stel F5-34

BH-8DCD

Burgermeester
 Sladsklerk
 Getuie 1. *B. D. Appel*
 2. *G. J. ...*

[Signature]
 Getuie 1. *B. D. Appel*
 2. *[Signature]*

4.1 Addisionele Huurpremie

Die **HURDER** sal vir dertig (30) jaar 'n vaste addisionele huur per hektaar per jaar betaal ter bestryding van die rente en delgingsbedrae, bereken teen 15 % per jaar, ten opsigte van die kapitale verpligting aangegaan ter vestiging van die waterreg op die **EIENDOM**. Die **HURDER** kan te eniger tyd met die **VERHURDER** onderhandel om die kapitale verpligting af te los voor die verstryking van 30 (**DERTIG**) jaar.

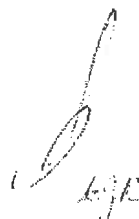
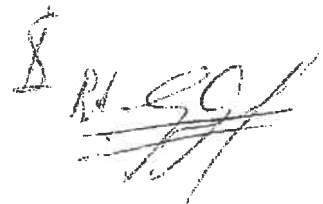
4.2 Vergoeding by huuropsegging ten opsigte van bona fide munisipale behoeftes

Wanneer subklousule 20.1.5 in werking tree sal die volgende van toepassing wees:

- 4.2.1 indien die kapitale verpligting (*par 4.1 hierbo*) reeds ten volle deur die **HURDER** afgelos is, sal die kapitaalgedeelte daarvan op 'n streng pro rata-basis vergoed word in die verhouding waarin die onverstreke termyn ten opsigte van die kapitale verpligting tot die volle termyn van 30 (**DERTIG**) jaar (*par 4.1 hierbo*) staan; of
- 4.2.2 indien die kapitale verpligting nog nie ten volle deur die **HURDER** afgelos is nie, sal hy vanaf datum van kansellasië van hierdie ooreenkoms, van die betaling van verdere addisionele huurpremies kwytsgekeld word, met dien verstande dat sodanige kwytskelding slegs betrekking sal hê op bedrae wat nog in die toekoms verskuldig en betaalbaar sou word; en
- 4.2.3 die **HURDER** sal geregtig wees om vergoeding vir die direkte koste wat hy gehad het ten opsigte van die noodsaaklike infrastruktuur, beperkend tot pypleidinge, kleppe, krane en meters en die koste van die vestiging, koppeling en installing daarvan, wat as 'n direkte gevolg en gepaardgaande met die vestiging van die waterreg, op die verhuurde eiendom aangebring is. Die vergoeding sal soos volg bereken word:

die gemiddelde waardasie van 2 (**TWEE**) onafhanklike buitelanders van die historiese koste van die noodsaaklike infrastruktuur (soos hierbo beskryf) minus waardevermindering, bereken in gelyke paaielemente oor 'n periode van 20 (**TWINTIG**) jaar.

(#SPROEI/KONTRAK/ii)

APPENDIX 3



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

LEASE AGREEMENT

Entered into by and between

STELLENBOSCH MUNICIPALITY

Herein represented by **Geraldine Mettler** in her capacity as

Municipal Manager, being duly authorised

(herein after called the **LESSOR**)

AND

HYLTON P ARENDSE

Herein represented by **Hylton Arendse** in his capacity as

Lessee, being duly authorised

(herein after called the **LESSEE**)

For the lease of Lease Farms 502V

(herein after called the **PROPERTY**)

H.A.


MS.



AGREEMENT OF LEASE

1. PARTIES

- 1.1 The parties to this lease are:-
- 1.1.1 (Stellenbosch Municipality) ("the LESSOR"); and
- 1.1.2 (Hylton Arendse) ("the LESSEE").

2. INTERPRETATION

- 2.1 In this lease agreement, except in a context indicating that some other meaning is intended,
- 2.1.1 "*the Lease Period*" means the period for which this lease subsists, including any period for which it is renewed;
- 2.1.2 "*month*" means a calendar month, and more specifically;
- 2.1.2.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
- 2.1.2.2 in any other context, a month of the calendar, that is, one of the 12 months of the calendar, and "monthly" has the corresponding meaning;
- 2.1.3 "*the parties*" means the parties to this lease, and "party" means one of them;
- 2.1.4 "*the PROPERTY*" means Lease Farm 502V, with improvements, meaning 21.6 hectares;
- 2.1.5 "*the Rates*" means the assessment rates payable on the **PROPERTY**;
- 2.1.6 "*the Premises*" has the same meaning as the **PROPERTY**;
- 2.1.7 "*year*" means a period of 12 consecutive months, and "yearly" refers to a year commencing on the date on which the lease comes into operation or any anniversary of that date;
- 2.1.8 references to notices, statements and other communications by or from the **LESSOR** include notices by or from the **LESSOR's** agent;
- 2.1.9 expressions in the singular also denote the plural, and vice versa;

 H.A.
 MS 

- 2.1.10 words and phrases denoting natural persons refer also to juristic persons, and vice versa; and
- 2.1.11 pronouns of any gender include the corresponding pronouns of the other genders.
- 2.2 Any provision of this lease imposing a restraint, prohibition or restriction on the **LESSEE** shall be so construed that the **LESSEE** is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Premises or any other part of the **PROPERTY** through, under, by arrangement with, or at the invitation of, the **LESSEE**, including (without limiting the generality of this provision) its Associates and the directors, members, officers, employees, agents, customers and invitees of the **LESSEE** or its Associates.
- 2.3 Clause headings appear in this lease for purposes of reference only and shall not influence the proper interpretation of the subject matter.
- 2.4 This lease shall be interpreted and applied in accordance with South African law.

3. **LETTING AND HIRING**

- 3.1 The **LESSOR** lets and the **LESSEE** hires the Farm 502 V on the terms of this lease for bona fide farming purposes only.

4. **DURATION**

- 4.1 This lease shall come into operation on 01 January 2020 and shall subsist for 9 years 11 months, notwithstanding the date of signature hereof.
- 4.2 Notwithstanding the above, should the **LESSOR** require the property for any *bona fide* municipal purposes, this agreement can be terminated by giving the **LESSEE** 6 months written notice, in which event the **LESSEE** will have no claim for compensation or otherwise against the **LESSOR**.
- 4.3 Notwithstanding the above, should the **LESSEE** want to terminate the agreement for whatever reason, it can do so by giving the **LESSOR** 3 month written notice, in which event the **LESSOR** will have no claim for compensation or otherwise against the **LESSEE**.
- 4.4 Upon expiring of the lease period, the **LESSEE** may apply for renewal of the lease. The **LESSOR** agrees not to unreasonably withhold /or deny the **LESSEE** a new lease period on the proviso that the farming business of the **LESSEE** functions to the satisfaction and approval of the **LESSOR**, and that the **LESSEE** does not stand in breach of any of the provisions in this Lease Agreement.

H.A.
MS GM

5. RENT

5.1 The rent shall be

5.1.1 ~~£229 per month (inclusive of VAT) for the year ending 30 June 2020~~

5.1.2 On the 01st July 2020 the rental will be amended to reflect 20% of new market rents to be determined by the Municipal Council;

5.1.3 shall thereafter, on an annual basis escalate by CPI based on the 12 months from 01st July to 30th June of the previous year;

5.1.4 On the 01st July 2025 the rental shall be amended to reflect 20% of new market rents to be determined by the Municipal Council; and

5.1.5 shall thereafter, on an annual basis escalate by CPI based on the 12 months from 01st July to 30th June of the previous year

6. PAYMENTS

6.1 The rent payable by the **LESSEE** to the **LESSOR** in terms of this Agreement shall be payable monthly in advance.

6.2 The **LESSOR** shall have the right, notwithstanding any instruction given by the **LESSEE**, to appropriate any amount paid by the **LESSEE** hereunder to whatsoever indebtedness of the **LESSEE** as the **LESSOR** may decide upon in its absolute discretion.

7. RATES

7.1 It is specifically recorded that the **LESSEE** will be responsible for the payment of rate and taxes on the property as levied from time to time.

8. ADDITIONAL CHARGES

8.1 It is specifically recorded that the **LESSEE** will, in addition to the rent and rates, be responsible for the cost of water consumed on the property.

9. INSURANCE

9.1 It is specifically agreed that the **LESSEE** is responsible for insurance of any kind.

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10. SUB-LETTING AND RELATED MATTERS

10.1 The **LESSEE** shall not, without the **LESSOR's** prior written consent:

10.1.1 sub-let the whole or any part of the **PREMISES** or cede, assign, transfer, alienate, or otherwise dispose of any of its rights and/or obligations under this Lease or pledge or hypothecate this Lease;

10.1.2 give up, for either a definite period or at all, occupation or possession of the **PREMISES** or any part thereof to any person or permit any person whether as licensee, sub-tenant, agent, occupier, custodian or otherwise to take possession or occupation of the **PREMISES** or any part thereof either for a definite period or at all.

10.2 Should the **LESSEE** wish to sub-let the whole or any part of the **PREMISES** at any time during the currency of the Lease, then the **LESSEE** shall apply to the **LESSOR** in writing for its consent thereto given, in regard to the proposed sub-lease, the name of the sub-tenant, the guarantors if any of the sub-tenant date of commencement, the duration of the proposed sub-lease, the exact premises and the consideration payable there under. The **LESSOR** at its option may:

10.2.1 consent to the sub-lease, in which case the **LESSEE** may on receipt of written confirmation by the **LESSOR** sub-let the **PREMISES** or part thereof as the case may be in accordance with the written application submitted to the **LESSOR** in terms of this Clause 10.2, or

10.2.2 provided the proposed sub-tenant wishes to lease the whole of the **PREMISES**, give the **LESSEE** written notice of its intention to enter into a direct lease with the proposed sub-tenant in which event on the commencement date of the new written lease entered into between the **LESSOR** and the proposed sub-tenant this Lease shall be cancelled and of no further force or effect, provided that such cancellation shall in no way detract from the **LESSOR's** rights to enforce performance of any obligations of the **LESSEE** arising, prior to the date of cancellation, or the **LESSOR's** rights to recover arrear payments from the **LESSEE**.

11. MAINTENANCE BY THE LESSOR

11.1 It is specifically recorded that the **LESSOR** has no maintenance obligations with regard to the property.

12. OBLIGATIONS OF LESSEE

12.1 The **LESSEE** shall remove alien and/or invasive plants, failure of which will lead to the municipality removing such plants and the **LESSEE** will reimburse such costs to the municipality.

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- 12.2 The **LESSEE** shall not without the prior written consent of the **LESSOR**, which shall not be unreasonably withheld, store, harbour or use, or permit the storage, harbouring or use in the **PROPERTY** of any goods, chattels, furniture, fixture, fittings or effects which are subject to any hire purchase or lease agreement and which are not the **LESSEE's** own **PROPERTY**.
- 12.3 The **LESSEE** must create fire-path for preventing fire spreading to neighbouring farms and must refrain from keeping materials that is conducive to fire hazards.
- 12.4 The **LESSEE** must comply with all relevant National and Provincial legislations.
- 12.5 It is specifically recorded that the **LESSEE** shall at all-times actively cultivate and maintain the Lease Area for farming.
- 12.6 Should the **MUNICIPALITY** be of the view that the **LESSEE** is not actively cultivating the land or not optimally using it for agricultural purposes the **MUNICIPALITY** may cancel this Agreement and allocate the lease area to someone else, after having followed due process.
- 12.7 Before cancelling this Agreement as a result of not optimally using it, the **LESSEE** will be given a reasonable period to rectify the situation. Any such notice of non-compliance or under performance shall be in writing and must spell out the remedial actions to be taken by the **LESSEE** within the specified timeframe(s), failing which the Agreement may be cancelled.

13. IMPROVEMENTS

- 13.1 The **LESSEE** shall not make any improvements to the Premises without the **LESSOR's** prior written consent, but the **LESSOR** shall not withhold its consent unreasonably to an alteration or addition which is not structural.
- 13.2 If the **LESSEE** does improve the Premises in any way, whether in breach of clause 13.1 or not, the **LESSEE** shall, if so required in writing by the **LESSOR**, restore the Premises on the termination of this lease to their condition as it was prior to such alteration, addition or improvement having been made. The **LESSOR's** requirement in this regard may be communicated to the **LESSEE** at any time, but not later than the (30th) day after the **LESSEE** has delivered up the Premises pursuant to the termination of this lease; and clause 13.2 shall not be construed as excluding any other or further remedy which the **LESSOR** may have in consequence of a breach by the **LESSEE** of clause 13.1.
- 13.3 Save for any improvement which is removed from the Premises as required by the **LESSOR** in terms of clause 10.2, all improvements made to the Premises shall belong to the **LESSOR** and may not be removed from the Premises at any time. The **LESSEE** shall not, whatever the circumstances, have any claim against the **LESSOR** for compensation for any improvement to the Premises, unless such improvements were made with the **LESSOR's** prior written consent which compensation shall be

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Handwritten signatures and initials, including a large signature and the initials 'H.A', 'M', and 'G'.

limited to the costs of the improvement, or as otherwise agreed to in writing by the LESSOR, nor shall the LESSEE have a right of retention in respect of any improvements.

14. LESSOR'S RIGHTS OF ENTRY AND CARRYING OUT OF WORKS

14.1 The LESSOR's representatives, agents, servants and contractors may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the LESSEE or any other occupier of the Premises

14.1.1 enter the leased Premises in order to inspect them, to carry out any necessary repairs, replacements, or other works, or to perform any other lawful function in the *bona fide* interests of the LESSOR or any of the occupiers of the PROPERTY; or

14.1.2 carry out elsewhere on the PROPERTY any necessary repairs, replacements, or other works, but the LESSOR shall ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the Premises by those in occupation thereof.

15. DAMAGE TO OR DESTRUCTION OF PREMISES

15.1 If the Premises are destroyed or so damaged that they can no longer be beneficially occupied, this lease shall terminate when that happens unless the parties agree in writing otherwise.

15.2 If the Premises are significantly damaged but can still be beneficially occupied, this lease shall remain in force and the LESSOR shall repair the damage without undue delay but the rent shall be abated so as to compensate the LESSEE fairly for the effects of the damage and repair work on the enjoyment of the Premises. Failing agreement on such abatement or on the applicability of this clause to any particular circumstances, the matter shall be referred to an expert appointed by the parties jointly or, if they do not agree on such appointment, nominated by the President for the time being of The Institute of Estate Agents of South Africa, and the decision of such expert shall be final and binding. The expert's fees and disbursements, including any inspection costs, shall be borne and paid by the parties in equal shares. Pending determination of the abatement the LESSEE shall continue to pay the full rent for the Premises as if they had not been damaged and as soon as the matter has been resolved the LESSOR shall make the appropriate repayment to the LESSEE.

15.3 If any damage to the Premises or the destruction thereof is caused by an act or omission for which either party is responsible in terms of this lease or in law, the other party shall not be precluded by reason of any of the foregoing provisions of this clause from exercising or pursuing any alternative or additional right of action or remedy available to the latter party under the circumstances (whether in terms of this lease or in law).

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16. **SPECIAL REMEDY FOR BREACH**

- 16.1 Should the **LESSEE** default in any payment due under this lease or be in breach of its terms in any other way, and fail to remedy such default or breach within (30) days after receiving a written demand that it be remedied, the **LESSOR** shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the **LESSOR** under the circumstances, to cancel this lease with immediate effect, be repossessed of the Premises, and recover from the **LESSEE** damages for the default or breach and the cancellation of this lease.
- 16.2 In the event of the **LESSOR** having cancelled this lease justifiably but the **LESSEE** remaining in occupation of the Premises, with or without disputing the cancellation, and continuing to tender payments of rent and any other amounts which would have been payable to the **LESSOR** but for the cancellation, the **LESSOR** may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on account of the damages suffered by the **LESSOR** by reason of the unlawful holding over on the part of the **LESSEE**.

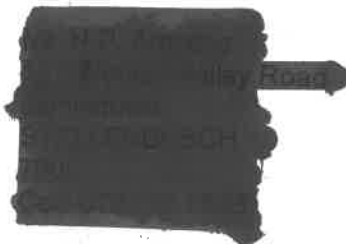
17. **DOMICILIA AND NOTICES**

17.1 The parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 17.2, provided that such *domicilium* of either party may be changed by written notice from such party to the other party with effect from the date of receipt or deemed receipt by the latter of such notice.

17.2

17.2.1 The **LESSOR**:
Town Hall Complex
Plein Street
STELLENBOSCH

17.2.2 The **LESSEE**:



17.3 Any notice, acceptance, demand or other communication properly addressed by either party to the other party at the latter's *domicilium* in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the 5th business day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, acceptances,

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demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

18. WHOLE AGREEMENT

- 18.1 This is the entire agreement between the parties.
- 18.2 Neither party relies in entering into this agreement on any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this agreement as warranties or undertakings.
- 18.3 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.

19. NON-WAIVER

- 19.1 Neither party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this lease by reason of such party having at any time granted any extension of time for, or having shown any indulgence to, the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other party.
- 19.2 The failure of either party to comply with any non-material provision of this lease shall not excuse the other party from performing the latter's obligations hereunder fully and timeously.

20. WARRANTY OF AUTHORITY

- 20.1 The person signing this lease on behalf of the LESSOR expressly warrants his authority to do so.

21. SALE OF PREMISES

- 21.1 The validity of this lease shall not in any way be affected by the transfer of the Premises from the LESSOR pursuant to a sale thereof. It shall accordingly, upon registration of transfer of the Premises into the name of the purchaser, remain of full force and effect save that the purchaser shall be substituted as LESSOR and acquire all rights and be liable to fulfil all the obligations which the LESSOR, as LESSOR, enjoyed against or was liable to fulfil in favour of the LESSEE in terms of the lease.

22. BREACH

- 22.1 Should any payment of rent or any other amount due hereunder not be paid on or before due date or should the LESSEE commit or suffer or permit the commission of a breach of any of the other terms of this Lease,

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whether or not such breach goes to the root of this contract, and fail to remedy such breach within 7 (seven) days after having been required in writing to do so, or should the LESSEE be placed in liquidation, whether provisional or final and whether voluntary or compulsory, or under judicial management, whether provisional or final, or under sequestration, whether provisional or final, or should the LESSEE effect a general compromise with its creditors or any other arrangements with its creditors necessitated by the inability of the LESSEE to pay its debts, or should the LESSEE commit any act which is, or would if committed by a natural person be, an act of insolvency in terms of Section 8 of the Insolvency Act, 1936, as amended, the LESSOR shall be entitled but not obliged, notwithstanding any previous waiver or anything to the contrary herein provided and without prejudice to any other rights of the LESSOR in terms of this Lease or in law, to cancel this Lease forthwith, eject the LESSEE from the PREMISES and recover from the LESSEE any damages suffered by the LESSOR as well as all amounts which became due for payment by the LESSEE hereunder prior to the date of such cancellation.

22.2 Notwithstanding anything to the contrary herein contained, it is specifically recorded that in the event of that LESSEE failing at any time to comply with any of its obligations in terms of this lease, the LESSOR shall be entitled, but not obliged, and without prejudice to any other rights of the LESSOR in terms of this Lease or in Law arising from such breach, to carry out such obligations on behalf of the LESSEE and to incur any costs in connection therewith and to claim immediate reimbursement from the LESSEE of all such costs.

22.3 In the event of the LESSOR instructing its attorneys to take measures for the enforcement of any of the LESSOR's rights under this Lease the LESSEE shall pay to the LESSOR on demand such collection legal and other costs, on the attorney and client scale, as shall be lawfully charged by such action in respect of or arising from the measures to taken by the said attorneys.

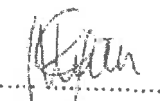
SIGNED at Stellenbosch on this 23 of October 2019 in the presence of the undersigned witnesses

Witnesses:

1 

2 

(Signatures of witnesses)



(Signature of LESSOR)

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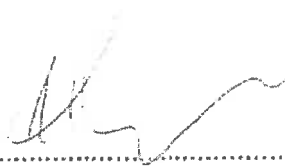
SIGNED at Stellenbosch on this 23 of December 2019
in the presence of the undersigned witnesses

Witnesses:

1 

2 

(Signatures of witnesses)



(Signature of LESSEE)

H-19.



APPENDIX 4

MEMORANDUM VAN RUIL OOREENKOMS

AANGEGAAN DEUR EN TUSSEN

GIELIE HANEKOM FAMILIE TRUST

(hierin verteenwoordig deur **GILIAM JOHANNES ESTERHUYSE HANEKOM**
in sy hoedanigheid as en behoorlik gemagtigde
van die Trust)

van: [REDACTED]

(hierna genoem Gielie)

EN

HYLTON ARENDSE

Identiteitsnommer: [REDACTED]

van: [REDACTED]

(hierna genoem Hylton)

1. NADEMAAL Gielie reeds 'n huuroorkoms gesluit het met Stellenbosch Munisipliteit om perseel 502S, groot 7,48 hektaar te huur.
2. NADEMAAL Hylton ook 'n huuroorkoms gesluit het met Stellenbosch Munisipliteit om ook erf 502V groot 21,6 hektaar te huur vir 'n periode van 9 jaar.
3. Aangesien Hylton nie direkte toegang tot sy perseel naamlik 502V kan verkry nie het Gielie en Hylton onderlings ooreengekom dat Gielie Hylton se perseel bewerk en dat Hylton Gielie se perseel bewerk.
4. Elke party sal aanspreeklik wees om die huurgeld te betaal ten opsigte van die persele wat hulle huur van Stellenbosch Munisipliteit.
5. Hylton sal ook geregtig wees om die water wat aan sy perseel toegeken is te gebruik vir besproeiing en sal ook verantwoordelik wees vir betaling van enige bedrae wat gehef word deur Wynland Waterraad.

6. Bogemelde ruil transaksie is slegs afdwingbaar tussen die partye en indien enige een van die partye die ooreenkoms verbreek sal elke party geregtig wees om die grond wat hulle by die Munisipaliteit huur op te eis.
7. Enige verbeteringe wat deur Gielie en/of Hylton op die persele, wat hulle bewerk in terme van hierdie Ruilooreenkoms, aangebring word, word gedoen op eie risiko.
8. Die partye sal nie onderling enige eise teen mekaar instel vir verbeteringe nie.
9. Die Huurders sal alle munisipale regulasies ten opsigte van die persele nakom.
10. Die Huurders sal self reelings tref met Eskom vir die aansluiting van elektrisiteit na die persele. Die Huurders sal self aanspreeklik wees vir betaling aan Eskom vir die gebruik van elektrisiteit.
11. Geen wysigings of toevoegings tot hierdie Ooreenkoms sal geldig wees tensy op skrif gestel en onderteken deur beide partye.

GETEKEN te STELLENBOSCH deur beide partye op hierdie dag
van NOVEMBER 2019.

AS GETUIES:

1.

2.

GIELIE

AS GETUIES:

1.

2.

HYLTON

APPENDIX 5



VEGETABLE & SEED COMMODITY PROJECT ALLOCATION COMMITTEE

6 August 2021

Application Reference No.: CW0819

HLA Boerdery (Pty) Ltd
PO Box 563
Stellenbosch
7599

Dear Mr Arendse

APPLICATION FOR FUNDING OF FARMING ENTERPRISE HLA BOERDERY (PTY) LTD – CASP FUNDING PROGRAMME 2021/22

Your request for funding was considered at the meeting of the Vegetable CPAC on 26 August 2020 and approved on 24 June 2021. The request for funding from the CASP/ Ilima Letsema programme, funded by the Western Cape Department of Agriculture (WCDoA), is herewith **approved**, subject to the following conditions:

Approved budget items:

DELIVERABLES	BUDGET
Infrastructure / Greenhouse (Poly-tunnels)	R1 617 150
Infrastructure / Greenhouse (1ha Netting)	R951 154
Irrigation / Infield irrigation	R96 405
Irrigation / water tanks (3 x 10 000L)	R35 135
Equipment / Tools	R19 637
Equipment / bakkie	R210 000
Production inputs / Fertilizers (incl. chicken manure)	R85 300
Production inputs / Pesticides	R60 698
Production inputs / Seeds & plants	R79 971
Total	R3 155 450

(Note that the fund is a grant and not registered for VAT, therefore no VAT invoices will be supplied)

- * Please note that due to the scheduled transfer payments from DAFF, implementation of the above mentioned budget items is planned to start in quarter 2.
- * In addition, adherence to new laws that comes into effect after or before this correspondence will receive priority which may affect the implementation.
- * If important information i.e. selling of farm, sub leasing, illegal water rights, transgressing NEMA and CARA and or other laws was withheld from the application or the committee – then the funding process will be cancelled immediately.

SPECIAL CONDITIONS:

- i) Should the project not be able to commence within 6 months after signing the MOA or due to non-compliance by the beneficiary, the allocation can be cancelled by the CPAC.
- ii) Critical to this approval is that you will be included in the Financial Record Keeping (FRK) programme of the WCDoA and that the Department will be granted access to such financial records so as to ensure compliance and performance, as well as business support to the enterprise.
- iii) Please note that approval must be sought from the Department in writing should you wish to exit the FRK programme for any reason/s.
- iv) The production inputs are for the expenses related to the approved project.
- v) In case of fixed assets above R650 000, a notarial deed will be registered on your property for a period of 5 years.

Please note that no cash will be made available directly to you as a project beneficiary. The grant is in the form of goods, services and infrastructure in line with the above budget, to be procured by an **IMPLEMENTING AGENT**, whose terms and conditions will be supplied to you in writing by means of the **MEMORANDUM OF AGREEMENT** signed between you and the Implementing agent.

Please note, you may not order or purchase any item/s based on this approval unless a written permission is obtained from implementing agent. The **implementing agent** for your project is *Casidra* and the contact person for the implementation will be communicated to you.

The officials from the WCDoA will have a **Monitoring and Evaluation (M&E)** function during the project and will be responsible for registration of your project on the Agriculture Information Management System (AIMS), conduct skills audits and provide extension and advisory services.

It is important to note that the grant is towards the business venture planned to assist the applicant to implement his/her business plan as approved, and under no circumstances does the **implementing agent** or the **Department** accept any responsibility or liability for the operation or the outcome of the venture, whether it be physically or financially.

This grant may have financial and tax implications on your enterprise and you are advised to seek advice from your bookkeeper / auditor on how to accommodate this and the influence it may have on the enterprise's financial performance.

Please do feel free to engage the secretariat on telephone **021 863 5000** should you require further clarity.

Wishing you the best.

Kind regards,



Signed: Secretariat

06/08/2021

Date



Signed: Chairperson

06/08/2021

Date

Copy to: District manager : Ms. Dikeledi Pitso
Senior Manager : Mr. Frederick Mpona
Project office : Mr. Shaun Cleophas
Manager production economics : Mr Mfusi Mjonono
Training Coordinator : Ms Rosemary Rabie

APPENDIX 6

Verklaaring : Ruiling van porsies 502V en 502S

Ek, Hylton Arendse [redacted] het tans 'n huur kontrak met Stellenbosch Munisipaliteit vir die porsie 502 V wat 21.6 hektaar in grootte is en die termyn daarvan is 9 jaar en 11 maande ,wat 1 Januarie 2020 in werking getree het.

Mr. Gielie Hanekom huur tans 502 S by Stellenbosch Munisipaliteit vir 'n termyn van 50 jaar en dit het 1 April 1991 in werking getree.

Ek ,Mr.Hylton Arendse , verklaar dat daar 'n Ruil ooreenkoms tussen myself en Mr. Gielie Hanekom geteken was gedurende November 2019. Die rede vir die ruiling is omdat Ek (Hylton Arendse) nie direkte toegang tot die perseel 502 V kon verkry nie.

Die Ooreeknom tussen Myself en Mr Hanekom is dat ek op 7.48 hektaar van porsie 502 S (23.6 hektaar in totale grootte) boer en Mr. Hanekom op 502 V (21.6 hektaar) boer. Elke huurder betaal die huurgeld ten opsigte van die perseel wat hul huur by Stellenbosch Munisipaliteit en is geregtig om die water te gebruik wat aan die persele toegeken is maar is verantwoordelik vir die betaling daarvan.

Ek wil verklaar dat amptenare van Stellenbosch Munisipaliteit kennis gedra het van die Ruil ooreenkoms en het dit ondersteun.Aangeheg saam met die ruil ooreenkoms is daar eposse wat kan dien as bewyse dat amptenare bewus was van my toegangs tot my grond problem en dat amptenare kennis gedra het van die Ruil Ooreenkoms.


Hylton Arendse

Datum



23 / 06 / 2021

I CERTIFY THAT THIS DOCUMENT IS A REPRODUCTION (COPY) OF THE ORIGINAL WHICH WAS HANDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT THIS DOCUMENT IS NOT A REPRODUCTION OF AN AMENDMENT OR A CHANGE THAT WAS MADE FROM THE ORIGINAL DOCUMENT.

HANDWRITING SIGNATURE: 

PERSAL NUMBER: 0085210

NAME IN PRINT: H. Arendse



Tamzin Lakey

From: Hylton Arendse <hparendse1@gmail.com>
Sent: Tuesday, 22 June 2021 09:08
To: Tamzin Lakey
Subject: Fwd: FW: [EX] Re: Toegang tot 502V
Attachments: image001.png; image003.png; image002.png; 119112116103200889.png; 119112116103201089.png; 119112116103200689.png

Goeie Môre Tamzin,

In verband met toegang tot 502V.

Sien epos hieronder vir jou aandag.

Groete
Hylton

----- Forwarded message -----

From: Hylton Arendse <hparendse1@gmail.com>
Date: Thu, Nov 21, 2019 at 4:11 PM
Subject: Re: FW: [EX] Re: Toegang tot 502V
To: Rikus Badenhorst <Rikus.Badenhorst@stellenbosch.gov.za>
Cc: Lizanne Arendse <lizanne.arendse@gmail.com>, Nelmar Williams <Nelmar.Williams@stellenbosch.gov.za>, Salie Peters <Salie.Peters@stellenbosch.gov.za>

Baie dankie Raadslid

Groete
Hylton

On Thu, 21 Nov 2019, 16:10 Rikus Badenhorst, <Rikus.Badenhorst@stellenbosch.gov.za> wrote:

Goed om te hoor, sterkte vorentoe!

Kind regards, Vriendelike Groete

Rikus Badenhorst

Councillor: Ward 21

**Mayco: Community & Protection
Services**

T: +27 21 808 8350 Ward Office

T: +27 21 808 8012 Mayco Office C:
+27 82 654 1048

Email:

Rikus.Badenhorst@ Stellenbosch.gov.za

Plein Street, Stellenbosch, 7600

www.stellenbosch.gov.za

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http://www.stellenbosch.gov.za/main/areas/disclaimer/areas_e.htm

About Stellenbosch Municipality

Our mission is to deliver cost-effective services that will provide the most enabling environment for civil and corporate citizens.

[Africa](#) [more information](#)

Disclaimer:

The information contained in this communication from rikus.badenhorst@ Stellenbosch.gov.za sent at 2019-11-21 16:10:32 is confidential and may be legally privileged. It is intended solely for use by hparendse1@gmail.com and others authorized to receive it. If you are not hparendse1@gmail.com you are hereby notified that any disclosure, copying, distribution taking in of the contents of this information is strictly prohibited and may be unlawful. Powered by Afrevation

From: Hylton Arendse [<mailto:hparendse1@gmail.com>]

Sent: Thursday, 21 November 2019 16:09

To: Rikus Badenhorst

Cc: Lizanne Arendse; Nelmar Williams; Salie Peters

Subject: Re: FW: [EX] Re: Toegang tot 502V

Middag Raadslede , Badenhorst en Peters

Daar het vanoggend n vergadering tussen Mr Moses , Mnr Smit en Gielie Hanekom op sy plaas plaasgevind

Mr Moses het my gekontak om net paar punte te kom bespreek en ek en Mr Hanekom het daarna n ooreenkoms aangeaan.

Dit klink nou beter as die afgelope paar weke en ek kan nou meer begin in diepte met beplanning vorentoe , net die water punt wat moet aangebring word daarna sal produksie begin.

Baie dankie Raadslede vir die vinnige optrede om ons te help tot dusver.

Groete

Hylton & Lianne

On Thu, 21 Nov 2019, 15:50 Rikus Badenhorst, <Rikus.Badenhorst@stellenbosch.gov.za> wrote:

Dag Hylton

Sien hieronder – ek neem aan alles is in orde?

Laat weet asb

Kind regards, Vriendelike Groete

Rikus Badenhorst

Councillor: Ward 21

**Mayco: Community & Protection
Services**

T: +27 21 808 8350 Ward Office

T: +27 21 808 8012 Mayco Office C:
+27 82 654 1048

Email:

Rikus.Badenhorst@stellenbosch.gov.za

Plein Street, Stellenbosch, 7600

www.stellenbosch.gov.za

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http://www.stellenbosch.gov.za/main/14/es_disclaimer_a_e.htm

Tamzin Lakey

From: Hylton Arendse <hparendse1@gmail.com>
Sent: Tuesday, 22 June 2021 09:13
To: Tamzin Lakey
Subject: Fwd: FW: [EX] Re: Toegang tot 502V

fyi

----- Forwarded message -----

From: Rikus Badenhorst <Rikus.Badenhorst@stellenbosch.gov.za>
Date: Thu, Nov 21, 2019 at 3:50 PM
Subject: FW: [EX] Re: Toegang tot 502V
To: Hylton Arendse (hparendse1@gmail.com) <hparendse1@gmail.com>, lizanne.arendse@gmail.com <lizanne.arendse@gmail.com>
Cc: Nelmari Williams <Nelmari.Williams@stellenbosch.gov.za>, Salie Peters <Salie.Peters@stellenbosch.gov.za>

Dag Hylton

Sien hieronder – ek neem aan alles is in orde?

Laat weet asb



Kind regards, Vriendelike Groete

Rikus Badenhorst

Councillor: Ward 21

Mayco: Community & Protection Services

T: +27 21 808 8350 Ward Office

T: +27 21 808 8012 Mayco Office C:
+27 82 654 1048

Email:

Rikus.Badenhorst@stellenbosch.gov.za

Plein Street, Stellenbosch, 7600

www.stellenbosch.gov.za



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http://www.stellenbosch.gov.za/main/areas/disclaimer_area.htm



g
p @a

From: Salie Peters
Sent: Thursday, 21 November 2019 13:15
To: Rikus Badenhorst; Esther Groenewald
Cc: Tabiso Mfeya
Subject: RE: [EX] Re: Toegang tot 502V

Good day Councillors,

Farm allocation for Mr Hylton Arendse and the neighbourhood farmers has been resolved.

Thank you for your co-operation.

Kind regards,



Salie Peters

MAYCO MEMBER:

RURAL MANAGEMENT & TOURISM

T: +27 21 808 8313

Email: Salie.Peters@stellenbosch.gov.za

2nd Floor, Main Building, Plein Street,
Stellenbosch, 7600

www.stellenbosch.gov.za



www.facebook.com/stellenboschmunicipality

twitter.com/StellMun

From: Rikus Badenhorst
Sent: Wednesday, 20 November 2019 12:19
To: Esther Groenewald; Salie Peters
Cc: Tabiso Mfeya
Subject: RE: [EX] Re: Toegang tot 502V

Thank you Colleagues (Apologies Cllr Groenewald)

I trust timeous feedback will find its way to Mr Arendse

Kind regards, Vriendelike Groete



Rikus Badenhorst

Councillor: Ward 21

**Mayco: Community & Protection
Services**

T: +27 21 808 8350 Ward Office

T: +27 21 808 8012 Mayco Office C:
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Rikus.Badenhorst@stellenbosch.gov.za

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<http://www.stellenbosch.gov.za/disclaimer/indexe.htm>

From: Esther Groenewald
Sent: Wednesday, 20 November 2019 11:43
To: Rikus Badenhorst; Salie Peters
Cc: Tabiso Mfeya
Subject: RE: [EX] Re: Toegang tot 502V

Dear Cllr Salie

Could you please revert back to Cllr Badenhorst regarding the said matter?



Vriendelike Groete, Regards,

Esther Groenewald

Mayco: Planning & LED

T: +27 21 808 8032 | C: +27 78 288 9655

Plein Street, Stellenbosch, 7600

www.stellenbosch.gov.za



From: Rikus Badenhorst
Sent: Wednesday, 20 November 2019 10:54
To: Esther Groenewald
Cc: Tabiso Mfeya
Subject: FW: [EX] Re: Toegang tot 502V

Dear Cllr Groenewald

Could someone (I suspect Mr Moses) please regularly update Mr Arendse with regards to attempts to give him rightful access to his allocated farm?

May I ask to be copied into correspondence for reference purposes?

Kind regards, Vriendelike Groete

Rikus Badenhorst

Councillor: Ward 21



Mayco: Community & Protection Services

T: +27 21 808 8350 Ward Office

T: +27 21 808 8012 Mayco Office C:
+27 82 654 1048

Email:

Rikus.Badenhorst@stellenbosch.gov.za

Plein Street, Stellenbosch, 7600

www.stellenbosch.gov.za



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From: Rikus Badenhorst
Sent: Wednesday, 20 November 2019 10:50
To: 'Hylton Arendse'; Lianne Arendse
Cc: Nelmarie Williams
Subject: RE: [EX] Re: Toegang tot 502V

Dankie vir jou epos Mnr Arendse

Jammer dat die proses so lank neem en vir die gebrek aan kommunikasie – ek volg onmiddellik op

Kind regards, Vriendelike Groete



Rikus Badenhorst

Councillor: Ward 21

**Mayco: Community & Protection
Services**

T: +27 21 808 8350 Ward Office

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http://www.stellenbosch.gov.za/main/areas/disclaimer/areas/disclaimer_e.htm

From: Hylton Arendse [mailto:hparendse1@gmail.com]
Sent: Tuesday, 19 November 2019 21:00
To: Rikus Badenhorst; Lizanne Arendse
Subject: Fwd: [EX] Re: Toegang tot 502V

Goeie Naand Raadslid Rikus

Hoop dit gaan goed met u , ek wil net hoor wat staan my te doen met die 502V excess probleem wat ek nou al n geruime tyd so moet oor en weer veg

Aangeheg onder is n mail wat ons aan die MUNICIPAL MANAGER ook gestuur het vir n vergaderring maar nog geen reply tot op hierdie stadium van haar af nie , daar was hoeveel emails al deur ons uitgestuur maar soos jy kan sien is daar niks wat gebeur nie

Sal my my asb kan help om uit te vind wat daar aangaan en veral dat die MM en die Mayor nie eens moeite maak om iets te se nie ek dink dus regtig n swak selfbeeld wat Stellenbosch Municipality hom in die gesig staar op die oomblik

Groete

Hylton & Lizanne Arendse

----- Forwarded message -----

From: **Lizanne Arendse** <lizanne.arendse@gmail.com>

Date: Wed, 13 Nov 2019, 15:18

Subject: Fwd: [EX] Re: Toegang tot 502V

To: mm <Municipal.Manager@stellenbosch.gov.za>

Cc: Hylton Arendse <hparendse1@gmail.com>

Middag Geraldine Mettler,

In verband met insake verwys na e-pos hieronder, kan u asseblief vir my n tyd en datum bevestig wanneer ons u kan kom sien.

Groete

Hylton Arendse

----- Forwarded message -----

From: **Lizanne Arendse** <lizanne.arendse@gmail.com>

Date: Mon, 11 Nov 2019, 09:27

Subject: Re: [EX] Re: Toegang tot 502V

To: <Widmark.Moses@stellenbosch.gov.za>

Cc: Piet Smit <Piet.Smit@stellenbosch.gov.za>, Rikus Badenhorst <Rikus.Badenhorst@stellenbosch.gov.za>, mm <Municipal.Manager@stellenbosch.gov.za>, Mayor (Gesie Van Deventer) <Mayor@stellenbosch.gov.za>, Hylton Arendse <hparendse1@gmail.com>, <Esther.Groenewald@stellenbosch.gov.za>, <salie.peters@stellenbosch.gov.za>

Geagte Mnr Moses

Met betrekking tot Piet Smit se e-pos gedatteeer 30 Oktober 2019 in verband met die vergadering geskeduleer tussen Spier en die munisipaliteit.

Ek wag nog op die skrywe van die besluite wat op hierdie vergadering bespreek en geneem was. Kan daar asseblief terugvoering gegee word. Dit voel of ek van bakboord na stuurboord gestuur word.

Vriendelike groete
Hylton Arendse

072 536 6645/082 888 8929

On Wed, Oct 30, 2019 at 3:05 PM Esther Groenewald <Esther.Groenewald@stellenbosch.gov.za> wrote:

Beste Mnr Moses

Kan u asb reageer?



Vriendelike Groete, Regards,

Esther Groenewald

Mayco: Planning & LED

T: +27 21 808 8032 | C: +27 78 288 9655

Plein Street, Stellenbosch, 7600

www.stellenbosch.gov.za



From: Piet Smit
Sent: Wednesday, 30 October 2019 15:00
To: 'Lizanne Arendse'; Esther Groenewald; Widmark Moses; Rikus Badenhorst
Cc: mm; Mayor (Gesie Van Deventer); Hylton Arendse
Subject: RE: [EX] Re: Toegang tot 502V

Hylton,

Soos by n vorige geleentheid aan jou uitgewys, moet jy jou versoek met Widmark opneem. Ons het met Mnr. Hanekom ontmoet, en daar was besluit om eers met Spier te konsulteer oor moontlike toegang oor hul grond. Indien dit nie vrugte afwerp nie, sal ons terug gaan na Mnr. Hanekom. Volgens my laaste gesprek met Widmark, is daar n vergadering geskeduleer met Spier vir volgende week.....

Piet


From: Lizanne Arendse [mailto:lizanne.arendse@gmail.com]
Sent: 30 October 2019 01:11 PM
To: Esther Groenewald; Piet Smit; Widmark Moses; Rikus Badenhorst
Cc: mm; Mayor (Gesie Van Deventer); Hylton Arendse
Subject: [EX] Re: Toegang tot 502V

Vir wie dit mag aangaan

My vorige e-pos het betrekking. Ek het dringend toegang nodig tot die 502V land wat aan my toegeken is. Ek weet nie meer aan wie ek my verhoë om toegang kan rig nie.

Die aansoek om die stuk grond was reeds 'n lang proses en nou dat dit afgehandel is kan ek steeds nie voortgaan om die land begin te verwerk nie.

U spoedige terugvoering sal waardeer word.

By voorbaat dank
Groete
Hylton Arendse


On Fri, 25 Oct 2019, 16:24 Hylton Arendse <hparendse1@gmail.com> wrote:

Middag Mnr Smit

My naam is Hylton Arendse, ek het 'n week terug die Lease Agreement geteken vir 502V Agriculture Land.

Op hierdie oomblik het ek nog geen toegang tot die land nie en dit maak dinge ontmoontlik want ek moet werk aan beplanning en daarvoor het ek toegang asap nodig.

Enige terugvoering rondom dit sal waardeer word. Mr Moses help my ook waar hy kan maar dinge haak op een of ander plek vas.

Ek dra wel kennis dat Mr Smit en Mr Moses reeds paar weke terug vergader het met Gielie Hannekom oor toegang na 502V.

Hoop ek kry terugvoering asap

Groete

Hylton Arendse



STELLENBOSCH
STELLENBOSCH MUNISIPALITEIT
MUNICIPALITY



About Stellenbosch Municipality

Our mission is to deliver cost-effective services that will provide the most enabling environment for civil and corporate citizens.

Our head office is at Town House Complex, Plain Street, Stellenbosch, 7600, South Africa. For more information about Stellenbosch Municipality, please call +2721-806-8111, or visit <https://protect->



[za.mimecast.com/s/CAuGCr0aGVI801LyCNplyb?domain=stellenbosch.gov.za](https://protect-za.mimecast.com/s/CAuGCr0aGVI801LyCNplyb?domain=stellenbosch.gov.za)

Disclaimer:

The information contained in this communication from esther.groenewald@stellenbosch.gov.za sent at 2019-10-30 15:05:27 is confidential and may be legally privileged. It is intended solely for use by lizanne.arendse@gmail.com and others authorized to receive it. If you are not lizanne.arendse@gmail.com you are hereby notified that any disclosure, copying, distribution or taking action in reliance of the contents of this information is strictly prohibited and may be unlawful. Powered by [Afrovation](#)

9.10	YOUTH, SPORT AND CULTURE: [CLLR RA ADAMS]
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NONE

10.	REPORTS BY THE MUNICIPAL MANAGER
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10.1	RECRUITMENT AND SELECTION PROCESS OF THE DIRECTOR: INFRASTRUCTURE SERVICES
-------------	---

Collaborator No:

IDP KPA Ref No: Good governance and Compliance

Meeting Date: Special Council: 10 December 2021

1. RECRUITMENT AND SELECTION PROCESS OF THE DIRECTOR: INFRASTRUCTURE SERVICES

2. PURPOSE OF REPORT

To obtain Council approval to start recruitment and selection process for Director Infrastructure Services.

3. DELEGATED AUTHORITY

Municipal Council

4. EXECUTIVE SUMMARY

The contract period of Mr Deon Louw, Director Infrastructure Services comes to an end on 30 April 2022. It is therefore critical to commence with the recruitment and selection process for the Director Infrastructure Services to cultivate stability within the Directorate.

5. RECOMMENDATIONS

- a) that Council approves the recruitment and selection process of the Director Infrastructure Services;
- b) that Council approves the recruitment and selection panel of the Director Infrastructure Services as set out in the Government Gazette 37245: Local Government Regulations on Appointment and Conditions of Employment of Senior Manager that constitute as follows:
 - The Municipal Manager;
 - A member of the Mayoral Committee responsible for the Portfolio under this directorate (council to indicate which member);
 - At least one person who is not a councillor or staff member, and who has expertise or experience in the area;
- c) that an independent external consultant be appointed to assist with the recruitment and selection process in line with abovementioned Regulations (name to be provided at Council);

-
- d) that the advertisement indicates a term of 10 years and/or a negotiated period for the preferred candidate; and
 - e) that Council request permission from the Minister of Local Government for a further extension of the contract of Director Louw until a replacement can be appointed, should the process not be finalised.

6 DISCUSSION / CONTENTS

6.1 Background

The contract period of Mr Deon Louw, Director Infrastructure Services comes to an end on 30 April 2022.

6.2 Discussion

The recruitment and selection process can take up to 3 to 6 months to finalise and to ensure proper planning, the process of the recruitment and selection of the Director Infrastructure Services must commence as soon as possible.

The Regulations on the appointment and conditions of employment of Senior Managers was Gazetted on 17 January 2014. (Gazette No. 37245 dated 17 January 2014).

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

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

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

Chapter 3 of the Regulations on the Appointment and Conditions of Employment of Senior Managers Section, 2014, 8 (1) states that:

No person may be appointed as a senior manager on a fixed term contract on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she –

- (a) Is a South African citizen or permanent resident; and
- (b) Possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these Regulations.

It further stipulates that such manager reporting to the Municipal Manager's term of employment may not exceed the manager turning 65, unless the Minister (COGTA) granted permission to exceed the age provision.

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

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

- A vacant senior manager post must be advertised in a newspaper circulating nationally and, in the province, where the municipality is located.
- An advertisement for a vacant senior manager post must specify the:

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

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

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

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

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

The selection panel for the appointment of a manager directly accountable to a municipal manager in terms of Section 12(4) must consist of at least three (3) and not more than five (5) members, constituted as follow:

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

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

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

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

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

It is with the abovementioned legislative prescripts in mind that it is recommended that the appointment period for the Director Infrastructure Services be advertised for a period of 10 years. This will ensure the much-needed stability in the Directorate.

To ensure transparency in the recruitment and selection process, it is further recommended that a recruitment and selection agency be appointed to assist with the process in line with the Regulation on the appointment and conditions of employment of Senior Managers.

6.3 Financial Implications

The post is budgeted for.

6.4 Legal Implications

Regulations on the Appointment and Conditions of employment of Senior Managers was Gazetted on 17 January 2014. (Gazette No. 37245 dated 17 January 2014).

6.5 Staff Implications

Filling of S56 Senior Managers.

6.6 Previous / Relevant Council Resolutions:

None

6.7 Risk Implications

The process of the recruitment and selection process has to be finalised to ensure stability and continuity within the organisation.

6.8 Comments from Senior Management:

Comments from Departments are not applicable as this process is governed by Regulations. The appointment of a S56 Senior Manager is prescribed by law and only Council can consider the outcome of such process in deciding on whether to make an appointment or not.

FOR FURTHER DETAILS CONTACT:

<i>NAME</i>	Geraldine Mettler
<i>POSITION</i>	<i>Municipal Manager</i>
<i>DIRECTORATE</i>	<i>Municipal Manager</i>
<i>CONTACT NUMBERS</i>	021 808 8025
<i>E-MAIL ADDRESS</i>	municipal.manager@ Stellenbosch.gov.za
<i>REPORT DATE</i>	29 November 2021

10.2	SALGA PROVINCIAL CONFERENCE 18-19 JANUARY 2022: GEORGE
-------------	---

Collaborator No:

IDP KPA Ref No: Good governance and Compliance

Meeting Date: Special Council: 10 December 2021

1. SALGA WESTERN CAPE PROVINCIAL CONFERENCE 18 -19 JANUARY 2022: GEORGE

2. PURPOSE OF REPORT

To inform Council of the notice of the sitting of the SALGA Western Cape Provincial Conference scheduled for 18 – 19 January 2022 in George. Council needs to appoint representatives to represent Stellenbosch Municipality as a member of SALGA at the conference.

3. DELEGATED AUTHORITY

Municipal Council

4. EXECUTIVE SUMMARY

The SALGA constitution in clause 22.2 (attached as **APPENDIX 1**) determines that a Provincial Conference must be held within 90 days after every general local government election. To meet the constitutional requirements a provincial conference must be constituted before 1 February 2022. SALGA send out a notice (attached as **APPENDIX 2**) to invite Municipalities to the Western Cape provincial Conference set for 18 and 19 January 2022 in George. Every Municipality is entitled to one (1) vote but may send up to three (3) delegates. The preferred delegates are Executive Mayor; Speaker; Municipal Manager.

Council must appoint representatives to represent the Municipality at the conference.

5. RECOMMENDATIONS

For Consideration

6. DISCUSSION / CONTENT

6.1 Background

Stellenbosch Municipality is a member of SALGA who operates as the voice of Organised Local Government. The Municipality is bound by the collective agreements that flows from negotiations by Organised Labour and SALGA (Section 71 of the Municipal Structures Act (32/200 as amended))

6.2 Discussion

The SALGA constitution in clause 22.2 (attached as **APPENDIX 1**) determines that a Provincial Conference must be held within 90 days after every general local government election. To meet the constitutional requirements a provincial conference must be constituted before 1 February 2022. SALGA send out a notice (attached as **APPENDIX 2**) to invite Municipalities to the Western Cape provincial Conference set for 18 and 19 January 2022 in George. Every Municipality is entitled

to one (1) vote, but may send up to three (3) delegates. The preferred delegates are Executive Mayor; Speaker; Municipal Manager.

Council must appoint representatives to represent the Municipality at the conference.

6.3 Financial Implications

The Municipality is obliged to pay all travel and subsistence costs for the Councillors.

6.4 Legal Implications

The Organised Local Government Act (52/1997) provides for the recognition of organisations that represent the different categories of municipalities through which participation on different levels takes place with Local government.

The recommendations is in line with the provisions of the SALGA constitution and legislation.

6.5 Staff Implications

The Municipal Manager is one of the preferred delegates to the conference.

6.6 Previous / Relevant Council Resolutions

None

6.7 Risk Implications

The risks are addressed through the item.

6.8 Comments from Senior Management

None required.

APPENDICES

Appendix 1: SALGA Constitution

Appendix 2: Notice of the sitting of the Provincial Conference.

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	Corporate Services
CONTACT NUMBERS	021 808 8018
E-MAIL ADDRESS	Annalene.deBeer@stellenbosch.gov.za
REPORT DATE	6 December 2021

ITEM 10.2

APPENDIX 1

CONSTITUTION



**RECOGNISED IN TERMS OF SECTION 2 (1) (A)
OF THE ORGANISED LOCAL GOVERNMENT
ACT, 1997 (ACT NO. 52)**

As amended and adopted by the 5th SALGA
National Conference 29 November 2016

TABLE OF CONTENTS

ARTICLE NO.	PAGE
PREAMBLE	5
SCHEDULE A	
PART I: DEFINITIONS, INTERPRETATION AND PRELIMINARY	
Article 1.....	6
Definitions, Interpretation & Preliminary	
PART II: NAME, ROLE AND MANDATE	
Article 2.....	8
Name & Status	
Article 3.....	8
Role and Mandate	
PART III: MEMBERSHIP	
Article 4.....	9
Membership	
Article 5.....	10
Members' Compact	
Article 6.....	10
Code of Conduct	
Article 7.....	12
Membership Fees and Levies	
Article 8.....	12
Participation and Voting	
PART IV: GOVERNANCE STRUCTURES	
Article 9.....	13
Governance Structure	
Article 10.....	13
National Conference	
Article 11.....	14

National Members Assembly	
Article 12.....	14
National Executive Committee	
Article 13.....	16
Election of National Executive Committee	
Article 14.....	17
Office Bearers	
Article 15.....	18
Disqualification & Privileges of National Executive Committee Members	
Article 16.....	18
National Working Groups	
PART V: PROVISIONS APPLICABLE TO PROVINCIAL MEMBERS	
Article 17.....	20
Membership	
Article 18.....	20
Provincial Governance Structure	
Article 19.....	20
Provincial Conference	
Article 20.....	21
Provincial Members Assembly	
Article 21.....	21
Provincial Executive Committee	
Article 22.....	23
Provincial Working Groups	
SCHEDULE B	
PART VII: GENERAL RULES OF PROCEDURE AND MISCELLANEOUS PROVISIONS	
Article 23.....	24
Right of Members to inspect books of SALGA	
Article 24.....	24
Notices	



Article 25.....24
Copies of Constitution & Inspection thereof

Article 26.....24
Amendment of Constitution

Article 27.....25
Dissolution or Winding Up of SALGA

Article 28.....26
General Rules of Procedure

ANNEXURE A.....27
Proceedings at the National Conference and National Members' Assembly

ANNEXURE B.....29
Conduct of Elections to SALGA Governance Structures

ANNEXURE C.....30
Proceedings of the National Executive Committee

ANNEXURE D.....32
Code of Ethics for National and Provincial Executive Committee members and Deployees of SALGA

ANNEXURE E.....34
Dispute Resolution Procedures

ANNEXURE F.....36
Disciplinary Procedures

PREAMBLE

We, the representatives of Local Government:

- 1.1 Declare that we will respect and uphold the Constitution of our country;
- 1.2 Appreciate that the text of the Constitution of the Republic of South Africa, Act 108 of 1996, as amended, and in particular, section 40 thereof constitutes government as national, provincial and local spheres of government which are distinctive, independent and interrelated;
- 1.3 Commit ourselves to deepening democracy, promote racial, gender and all other forms of equality, and the empowerment of the people of our country through local government;
- 1.4. Recognise that the local government elections held during the years 1995, 1996, 2000, 2006, 2011 and 2016 represent the beginning of democratic local government which needs to be both strengthened and deepened;
- 1.5. Commit ourselves to the principles and values of inclusivity, unity, consultation, respect, mutual trust and good faith, and loyalty in our relations both with internal and external stakeholders; and
- 1.6. Consider it necessary for local government to be able to speak with a single authoritative voice.

Now therefore resolve to establish the South African Local Government Association ("SALGA") as mandated in terms of section 163 of the Constitution of the Republic of South Africa Act No.108 of 1996, as amended.

SCHEDULE A**PART I: DEFINITIONS. INTERPRETATION AND PRELIMINARY****1. DEFINITIONS. INTERPRETATION AND PRELIMINARY**

The headings to the articles in this constitution are for the purpose of convenience and reference only and shall not be used in the interpretation, nor to modify or amplify the terms of, this constitution nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1 Words importing any one gender include the other genders, the singular include the plural and vice versa, and natural persons include created entities (corporate or unincorporated) and vice versa;
- 1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely –
 - 1.2.1 “Act” means the Organised Local Government Act, 52 of 1997;
 - 1.2.2 “administration” means the day to day administration of the affairs of SALGA from time to time;
 - 1.2.3 “Associate member” means an organisation which is not a municipality or a provincial association, but is strongly concerned with or involved in local government matters and complies with such criteria as may be determined by the National Executive Committee from time to time;
 - 1.2.4 “member” means any member of SALGA recognised in terms of article 4 of this constitution;
 - 1.2.5 “Minister” means the Minister responsible for Local Government or his or her successor in title;
 - 1.2.6 “National Conference” means a duly constituted National Conference of SALGA as provided herein;
 - 1.2.7 “National Members Assembly ” means a duly constituted National Members Assembly of SALGA;
 - 1.2.8 “National Executive Committee” means a duly elected and constituted National Executive Committee of SALGA;
 - 1.2.9 “organisation” means SALGA;

- 1.2.10 **“Presidency” means the President and 3 Deputy Presidents duly elected by the National Conference in terms of article 13 hereof;**
- 1.2.11 “provincial association” means any provincial local government association which has constituted itself in terms of this constitution;
- 1.2.12 “Provincial Office Bearers” means the Chairperson and 3 Deputy Chairpersons duly elected by the Provincial Conference in terms of article 19 hereof;
- 1.2.13 “provincial member” means any provincial association which is affiliated to SALGA;
- 1.2.14 “SALGA” means the South African Local Government Association recognised by the Minister in terms of section 2(1)(a) and (b) of the Act.
- 1.2.15 “Working Groups” means the governance structure established to make strategic and policy recommendations to the National Executive Committee or Provincial Executive Committee, as the case may be.
- 1.3 any reference to an enactment is as at the date of signature thereof and as amended or re-enacted from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the constitution;
- 1.5 when any number of days is prescribed in this constitution, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 expressions defined in this constitution shall bear the same meaning as in the schedules or annexures to this constitution which do not themselves contain their own definitions;
- 1.8 where any term is defined within the context of any particular article in this constitution, the term so defined, unless it is clear from the article in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this constitution, notwithstanding that that term has not been defined in this interpretation article.

PART II – NAME, ROLE AND MANDATE OF SALGA**2. NAME AND STATUS**

- 2.1. The name of this association shall be the South African Local Government Association, hereinafter referred to as SALGA.
- 2.2. SALGA is an association not for gain. It is a juristic person recognised in terms of section 2(1) of the Act with the power to own property, sue and be sued in its own name.
- 2.3. The liability of the members, where applicable, in view of article 7.1 below, shall be limited to the payment of membership fees and levies as determined by the National Executive Committee from time to time in terms of this constitution.

3. ROLE AND MANDATE

The role and mandate of SALGA is to:

- 3.1. Represent, promote and protect, the interests of local government in the intergovernmental system;
- 3.2. Transform local government to enable it to fulfil its developmental role;
- 3.3. Enhance the role and status of its members and be a consultative body of local government;
- 3.4. Enhance the role and status of municipalities;
- 3.5. Develop common approaches for local government as a distinct sphere of government;
- 3.6. Enhance cooperation, mutual assistance and sharing of resources among **members**;
- 3.7. Find solutions for problems relating to local government generally;
- 3.8. Ensure the full participation of women in organised local government, including striving for parity (fifty percent) of representation in SALGA's governance structures;
- 3.9. Increase knowledge sharing and improve the communications capacity as well as vertical and horizontal connectivity of organised local government and municipalities;
- 3.10. Be the National Employers' Association representing all municipal members and, by agreement, associate members;

- 3.11. Regulate the relationship between its members and their employees within the meaning of section 213 of the Labour Relations Act 66 of 1995, as amended;
- 3.12. Encourage the settlement of disputes among its members and between them and their employees or trade unions through co-operative governance or labour law principles.
- 3.13. Affiliate with and participate in the affairs of any international organisation, that will serve the interests of the members;
- 3.14. To ensure that South African local government plays a critical role in furthering Africa's development at regional, continental and international levels; and
- 3.15. Do such lawful things as may appear to be in the interest of the organisation and its members which are not inconsistent with the objects or any matter specifically provided for in this constitution.

PART III: MEMBERSHIP

4. MEMBERSHIP

- 4.1. SALGA shall have the following categories of members:
 - 4.1.1 Municipalities established in terms of the Municipal Structures Act, Act 117 of 1998;
 - 4.1.2 Provincial associations; and
 - 4.1.3 Associate members.
- 4.2 Any application, whether for admission or readmission to membership of SALGA shall be lodged in writing with the **President** or a person duly delegated by the **President** for consideration by the National Executive Committee together with the annual membership fee, where applicable.
- 4.3 The National Executive Committee shall consider every application for membership within a period of 6 (six) weeks of receipt thereof by the **President** or a person duly delegated by the **President** and shall accordingly advise each applicant of the outcome of its application.
- 4.4 An applicant to whom admission to membership is refused shall be provided with reasons for such refusal and shall be entitled to a refund of the membership fee paid.

- 4.5 In the event of such refusal, the applicant concerned shall have a right of appeal to the next National Members Assembly or National Conference (whichever occurs first), which shall have the power to confirm or reverse the decision of the National Executive Committee.
- 4.5.1 Such an appeal shall be in writing and shall be submitted to the **President** or a person duly delegated by the **President** 4 (four) weeks before the National Members Assembly or National Conference (whichever occurs first).
- 4.5.2 The decision of the National Members Assembly or National Conference shall be final and binding on the applicant.
- 4.6 Every member shall notify the **President** or a person duly delegated by the **President**, in writing, of its postal address and any change thereof within 4 (four) weeks of the date on which the change occurred.
- 4.7 A member may resign by giving not less than 3 (three) months' written notice to the National Executive Committee or a person duly delegated by the National Executive Committee, provided that no resignation shall take effect until all money due by the member concerned to SALGA has been paid in full.
- 4.8 Any member who has resigned or been expelled from SALGA may be readmitted to membership on such terms and conditions as the National Executive Committee may deem fit.
- 5. MEMBERS' COMPACT**
- 5.1. Members shall, subject to this Constitution, be entitled to participate in the various activities and programmes of SALGA.
- 5.2. Members shall have equal access to information, data and documentation on local government matters, the activities and decisions of SALGA.
- 5.3. Members shall abide by this Constitution and the resolutions of its constitutional decision-making structures, and shall promptly comply with all membership obligations due in terms hereof.
- 5.4. Disputes between SALGA and any member or members must be declared in writing and set out the grounds of the dispute and proposed resolutions. Dispute resolution procedures must be provided for in the Rules of Procedure (**Annexure "E"**) to this Constitution.

6. CODE OF CONDUCT

- 6.1. All members, without exception, must abide by the Constitution of SALGA and this Code of Conduct.
- 6.2. This Code of Conduct shall be applicable to all members, without exception.
- 6.3. The National Executive Committee or a Provincial Executive Committee shall establish ad hoc Disciplinary Committees for the purpose of enforcing the Code of Conduct and disciplining members.
- 6.4. A member shall be entitled to appeal the decisions of a Disciplinary Committee to the National Executive Committee or Provincial Executive Committee, as the case may be. The National or Provincial Executive Committee, in such case, may establish an appeals committee to consider the appeal.
- 6.5. In exceptional situations arising out of serious breaches of this Constitution or Code of Conduct, the National Executive Committee itself may exercise jurisdiction to investigate and determine a complaint.
- 6.6. Disciplinary proceedings against a member shall be confined to violations of the SALGA Constitution or Code of Conduct, or the commission of offences.
- 6.7. All disciplinary proceedings shall be conducted in accordance with Annexure F.
- 6.8. A serious offence shall be committed by any member who prejudices the integrity or repute of the organisation, its personnel or its operational capacity.
- 6.9. The following shall also be regarded as serious offences, without prejudice to the right of the National Executive Committee to add to this category of offences:
 - 6.9.1. Impeding the activities of the organisation;
 - 6.9.2. Misappropriation of the funds of the organisation or destruction of its properties;
 - 6.9.3. Creating division within the membership ranks of SALGA;
 - 6.9.4. Deliberately disrupting meetings and interfering with the orderly functioning of the organisation.

- 6.10. If, in the opinion of the National or Provincial Executive Committee, as the case may be, in exercising its right to invoke disciplinary proceedings under this Constitution, a member is guilty of the following offences, disciplinary proceedings may follow:
- 6.10.1. Bringing the organisation into disrepute or manifesting a flagrant violation of the moral integrity expected of members or conduct unbecoming that of a member;
 - 6.10.2. Sowing racism, sexism, tribal chauvinism, religious and political intolerance, regionalism or any form of discrimination;
 - 6.10.3. Behaving in such a way as to provoke serious divisions or a break-down of unity in the organisation;
 - 6.10.4. Undermining the respect for or impeding the functioning of the structures of the organisation.
- 6.11. Penalties for proven violations of the Constitution, principles, norms and decisions of SALGA shall include reprimand, payment of compensation and/or the performance of useful tasks, suspension and expulsion.
- 6.12. The National Executive Committee or Provincial Executive Committee, as the case may be, having regard to the nature and seriousness of an alleged violation or offence by a member, may summarily suspend the membership of any member pending the preparation of a charge against the member and the finalisation of disciplinary proceedings against such member. The member shall be informed of such suspension.
- 6.13. The temporary suspension shall lapse if no disciplinary proceedings are instituted against the member within 30 days of the date of the temporary suspension. Such disciplinary proceedings shall be attended to as quickly as possible and completed within a reasonable period.

7. MEMBERSHIP FEES AND LEVIES

- 7.1. Each member, except a provincial association, shall be liable to pay an annual membership fee and/or levies.
- 7.2. Membership fees and levies determined in terms of article 7.1 above shall be due and payable by members on 1 April but before 31 July of that calendar year and shall be payable to SALGA at its national office.
- 7.3. The National Executive Committee, in consultation with Provincial Executive Committees, shall formulate a policy to regulate the determination of membership fees and may amend that policy as and when the need arises.

- 7.4. The National Executive Committee shall further determine the fees due by each category of member (or the formula in terms of which such levies are calculated, as the case may be) on a multi-year basis, which shall be reviewed annually and which shall be circulated to all members by no later than the last day of December of the year prior to which the new levies will be applicable.
- 7.5. In addition to membership fee or levy payable in terms of article 7.1 above, a member shall also be liable for the payment of such other fees as may be prescribed.
- 7.6. All money received by SALGA from membership fees, levies and other sources shall be used in pursuance of its objectives as set out in article 3 above.

8. **PARTICIPATION AND VOTING**

- 8.1. Each member shall be represented in the National Conference or National Members Assembly by a number of delegates and who shall present their credentials as such to the Secretariat at the commencement of the session, including identifying the voting member(s) of the delegation who shall exercise the right to vote.
- 8.2. Each member shall be entitled to vote in the National Conference and National Members Assembly of SALGA in accordance with a formula **based upon SALGA's membership fees, the member's municipal income, municipal boundaries, population and grading**, to be determined by the National Executive Committee, in consultation with Provincial Executive Committees.
- 8.3. Notwithstanding the above, each member shall be entitled to at least one vote in the National and Provincial Conferences and Members' Assemblies of SALGA.
- 8.4. A member may send such additional delegates, up to a maximum prescribed by the National Executive Committee, who may attend the National Conference or Members Assembly as observers, but may not vote.
- 8.5. Each member shall be entitled, through its representatives, to participate in sessions of the National Conference or National Members Assembly by speaking, expressing its opinions and submitting proposals.
- 8.6. Associate members shall enjoy no voting rights in the National Conference and the National Members Assembly.
- 8.7. A member who fails to pay levies shall remain a member with lesser rights, surrender voting rights and the right to have any of its councillors in executive positions of SALGA, until all due membership levies have been paid.

PART IV: GOVERNANCE STRUCTURE OF SALGA**9. NATIONAL GOVERNANCE STRUCTURES**

The governance of SALGA is vested and executed by:

- 9.1 National Conference;
- 9.2 National Members Assembly;
- 9.3 National Executive Committee;
- 9.4 **Presidency**;
- 9.5 National Working Groups;
- 9.6 **Committee on Statutory Affairs**;
- 9.7 **Council of Mayors**; and
- 9.8 **Council of Speakers**.

10. NATIONAL CONFERENCE

- 10.1. The ultimate authority of SALGA shall reside in its National Conference.
- 10.2. SALGA shall within a period of **120 (hundred and twenty)** days after every general local government election hold a meeting of members to be known and described in the notice calling such meeting as the National Conference.
- 10.3. The National Conference shall:
 - 10.3.1. Elect the members of the National Executive Committee **in terms of article 13 below**;
 - 10.3.2. Establish and review SALGA's oversight bodies as may be required by law; and
 - 10.3.3. Consider audited financial statements **since the last National Members Assembly**, approve the programme of action in respect of the ensuing **five years** and review SALGA's financial performance.
- 10.4. Every National Conference shall be held at a venue, **on a rotational basis amongst the provinces**, as resolved by the National Executive Committee.
- 10.5. The proceedings of the National Conference shall be regulated in terms of the procedure laid down in Annexure "A" hereto.

11. NATIONAL MEMBERS ASSEMBLY

- 11.1. SALGA shall at least **twice** in between National Conferences, **with the first** no later than 18 months after the last National Conference, hold meetings of members to be known and described in the notice calling such meeting as the National Members Assembly.
- 11.2. The National Members Assembly shall, except for the provisions in articles 10.3.1 and 10.3.2 above, exercise the authority of SALGA between National Conferences.
- 11.3. The National Members Assembly shall:-
- 11.3.1. act in accordance with the directions of the National Conference;
 - 11.3.2. consider audited financial statements **since the last National Conference or National Members Assembly**;
 - 11.3.3. adopt SALGA's programme of action, business plan and the budget as approved by the National Executive Committee;
 - 11.3.4. adopt positions on key policy and legislative matters impacting on local government, for implementation by the National Executive Committee;
 - 11.3.5. review SALGA's financial performance;
 - 11.3.6. consider reports from the **National Executive Committee**; and
 - 11.3.7. deal with any other issues emanating from the provisions of this constitution.
- 11.4. Notwithstanding anything contained in article 10.2 above, the National Executive Committee shall call a National Members Assembly:
- 11.4.1. at the written request of the majority of provincial associations containing the reasons for such a request and setting out the matters to be discussed at the proposed meeting; or
 - 11.4.2. if it resolves that there are special circumstances which require a National Members Assembly .
- 11.5. Every National Members Assembly shall be held at a venue, **on a rotational basis amongst the provinces**, as resolved by the National Executive Committee.
- 11.6. The proceedings of the National Members Assembly shall be regulated in terms of the procedure laid down in Annexure "A" hereto.

12. THE NATIONAL EXECUTIVE COMMITTEE

- 12.1. The National Executive Committee shall exercise the authority of SALGA between National Conferences and National Members Assemblies.
- 12.2. The National Executive Committee shall consist of:
 - 12.2.1. The **President** of SALGA;
 - 12.2.2. 3 (three) **Deputy Presidents**;
 - 12.2.3. **14 (fourteen)** additional members;
 - 12.2.4. Provincial Chairpersons of SALGA, who shall be ex-officio members of the National Executive Committee;
 - 12.2.5. **The Chairperson of the SALGA National Women's Commission, who shall be an ex-officio member of the National Executive Committee**; and
 - 12.2.6. The Head of Administration, who shall have no vote.
- 12.3. The National Executive Committee may co-opt no more than 3 (three) further additional members.
- 12.4. The National Executive Committee shall:
 - 12.4.1. Meet at least once every three months and when the need arises;
 - 12.4.2. Exercise day-to-day executive authority;
 - 12.4.3. Act in accordance with the directions of the National Conference or National Members Assembly;
 - 12.4.4. Submit a report of its activities during the previous financial year to the National Conference or National Members Assembly or **Extended National Executive Committee**, whichever occurs first; and
 - 12.4.5. Develop, review and adopt SALGA's administrative policies.
- 12.5. An extended National Executive Committee, comprising of all National Executive Committee and Provincial Executive Committee members, shall be convened annually, except in the year that the National Conference or National Members Assembly is scheduled.
- 12.6. At least fifty percent plus one (50% + 1) of the National Executive Committee members must be present to form a quorum.

- 12.7. The National Executive Committee shall have the power from time to time to:
- 12.7.1. acquire and control property;
 - 12.7.2. open any banking account and invest money;
 - 12.7.3. determine the signatories required for the operation of any banking account;
 - 12.7.4. appoint the head of administration, who will also act as a secretary in terms of section 95 of the Labour Relations Act No. 66 of 1995, as amended;
 - 12.7.5. make representations to both the provincial and national governments;
 - 12.7.6. develop the criteria for associate membership;
 - 12.7.7. recruit, appoint, promote, discharge employees and **amend or determine job designations as may be required from time to time;**
 - 12.7.8. take disciplinary action against any employee;
 - 12.7.9. establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of employees of SALGA;
 - 12.7.10. provide for pensions, gratuities and allowances to and make payments for or towards the insurance of any persons who are employees or ex-employees of SALGA and the wives, widows, families and dependants of such persons;
 - 12.7.11. establish and review the Working Groups as deemed necessary;
 - 12.7.12. appoint the chairpersons of the National Working Groups from amongst the additional and/or co-opted members;
 - 12.7.13. stipulate that the holder of an office from amongst the office bearers shall attend exclusively to the business of SALGA, during such period, or for a minimum amount of time during a period, and on such conditions as to payment or otherwise, as may be determined by it from time to time; and
 - 12.7.14. determine, **appoint or recall** representation of SALGA in all national intergovernmental structures and other national forums. Such representatives shall table reports to the National Executive Committee at least quarterly.
- 12.8. Representation of SALGA in National Council of Provinces
- 12.8.1. Each provincial association shall nominate no less than six (6) councillors for designation as representatives to participate in the National Council of Provinces, in accordance with the provisions of section 3 of the Act and the provincial legislatures.

- 12.8.2 The National Executive Committee shall, in accordance with section 3(2)(a) of the Act, from among the provincial nominees, designate nine (9) members (one per province), and a national office bearer, as Organised Local Government's ten (10) representatives in the National Council of Provinces, giving effect to section 163 (b)(ii) of the Constitution of the Republic of South Africa, Act 108 of 1996.
- 12.8.3 The Head of Administration shall, in accordance with section 3(3) of the Act, communicate the designation to the Secretary of the National Council of Provinces.
- 12.9 The National Executive Committee may, from time to time:
- 12.9.1 establish sub-committees for such time and on such terms and limitations as it may deem fit, and delegate any of its powers or functions, to such sub-committees to assist the National Executive Committee in the execution of its duties, in accordance with the delegations framework of the organisation.
- 12.9.2 entrust to and confer upon any of the governance structures or functionaries, including the administration, such of the powers vested in it as it may deem fit and as set out in the delegations framework of the organisation;
- 12.9.3 revoke or vary any or all of the powers so delegated.
- 12.10 The governance structures or functionaries, including the administration, granted powers pursuant to the provisions in terms hereof shall be regarded as an agent or delegate of the National Executive Committee, and after such powers have been conferred by the National Executive Committee, shall be deemed to derive such powers directly from this clause.
- 12.11 Save as aforesaid, the meetings and proceedings of a committee consisting of more than 1 (one) member shall be governed by the provisions of this constitution regulating the meetings and proceedings of the National Executive Committee.
- 12.12 Every member of the National Executive Committee shall be indemnified by SALGA against all liability incurred in his capacity as such, in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted.
- 12.13 The proceedings of the National Executive Committee shall be regulated in accordance with the procedure laid down in Annexure "C" hereto.



13 ELECTION OF NATIONAL EXECUTIVE COMMITTEE

- 13.1 Every National Conference shall, from amongst the 18 (eighteen) provincial nominees, elect the following members of the National Executive Committee, who shall be councillors:-
- 13.1.1 the President;
 - 13.1.2 3 (three) Deputy President; and
 - 13.1.3 14 (fourteen) additional members.
- 13.2 The nomination and election procedure of the National Executive Committee is set out in annexures B and C, Schedule B of this Constitution.
- 13.3 The National Executive Committee members shall serve as such until the election of the ensuing National Executive Committee at the National Conference, irrespective of whether or not members are re-elected as councillor.
- 13.4 Before a general local government election, a National Executive Committee member will lose his or her position ipso facto if he or she ceases to be a councillor.
- 13.5 Any vacancy, which occurs in the office of any of office bearers and/or additional members between National Conferences, shall be filled by the National Executive Committee.

14 PRESIDENCY

- 14.1 There shall be a President and three Deputy President.
- 14.2 Collectively they constitute the Presidency.
- 14.3 The three Deputy Presidents must be comprised of a representative from each category of municipality; and must be from different provinces to ensure representivity.
- 14.4 The duties of the **Presidency** are to:
- 14.4.1 Oversee the implementation of decisions of the National Conference, National Members Assembly and the National Executive Committee by all SALGA governance structures and functionaries;
 - 14.4.2 Present reports on the state and performance of the governance structures of the organisation;

- 14.4.3 Ensure the implementation and management of the Members' Compact as provided in this Constitution;
- 14.4.4 Present reports on enforcement of the Code of Conduct by relevant SALGA structures;
- 14.4.5 Ensure effective relationship building with members and resolution of disputes between SALGA and members;
- 14.4.6 Politically oversee the development and execution of the SALGA Strategic Plan for term of National Executive Committee;
- 14.4.7 Be politically responsible for communication between the organisation, its members and stakeholders;
- 14.4.8 Be politically responsible for overseeing fundraising and sponsorship plans for SALGA events; and
- 14.4.9 Perform such other functions as delegated by National Executive Committee in accordance with delegations framework of the organisation.

14.5 PRESIDENT

The President shall:

- 14.5.1 preside at all meetings of the National Conference, National Members Assembly and National Executive Committee;
- 14.5.2 be the custodian of the decisions taken by the National Conference, National Members Assembly and National Executive Committee;
- 14.5.3 Present to the National Conference, National Members Assembly and extended National Executive Committee a comprehensive report on the state and performance of the governance structures of the organisation;
- 14.5.4 sign minutes of the meetings;
- 14.5.5 delegate such other functions as are necessary to the Deputy Presidents;
- 14.5.6 perform such other duties as may be associated with this office;
- 14.5.7 represent SALGA at all formal or ceremonial occasions; and
- 14.5.8 perform such other functions as may be delegated by the National Executive Committee from time to time.



14.6 DEPUTY PRESIDENTS

The Deputy Presidents shall:

- 14.6.1 carry out such functions as are delegated to them by the President in terms of 14.5.5 above;
- 14.6.2 carry out the functions outlined in 14.4; and
- 14.6.3 act as President in the event that the President is unable to fulfil his or her obligations for a temporary period.

15 DISQUALIFICATION AND PRIVILEGES OF NATIONAL EXECUTIVE COMMITTEE MEMBERS

- 15.1 A member of the National Executive Committee shall cease to hold office as such if –
 - 15.1.1 (s)he is medically certified to be of unsound mind; or
 - 15.1.2 if (s)he infringes any of the provisions of this constitution, including the Code of Ethics for NEC members set out in Annexure D; or
 - 15.1.3 (s)he is removed from office by a resolution of the National Executive Committee; or
 - 15.1.4 (s)he resigns his or her office by not less than 30 (thirty) days' written notice to the chairperson or a person duly delegated by the chairperson; or
 - 15.1.5 (s)he ceases to be a councillor; or
 - 15.1.6 (s)he fails to attend 3 (three) consecutive meetings of the National Executive Committee without leave of absence from the National Executive Committee; or
 - 15.1.7 a notice removing him or her from office is signed by members who hold not less than 51% (fifty one per cent) of the total voting rights of all the members of the National Conference who are at that time entitled so to attend and vote and is delivered to SALGA or lodged at its registered office.
- 15.2 No member of the National Executive Committee may be removed from office unless he or she has been afforded an opportunity to state his or her case.
- 15.3 Disciplinary proceedings concerning National Executive Committee members shall be dealt with in accordance with the provisions of Annexure "D" (Code of Ethics).

16 NATIONAL WORKING GROUPS**16.1 Composition and quorum**

- 16.1.1 The Working Groups (national and provincial) are established by the National Executive Committee, with the chairperson of the Working Groups appointed from amongst the additional National Executive Committee members.
- 16.1.2 In determining the number of Working Groups, the National Executive Committee shall have due regard to the key functional areas of local government.
- 16.1.3 The National Working Groups shall comprise of the Chairperson and all provincial working group chairpersons of that portfolio.
- 16.1.4 A quorum of forty percent (40%) shall apply in National Working Group meetings.

16.2 Purpose, objectives and functions

- 16.2.1 The key purpose and objective of working groups is to:
 - 16.2.1.1 facilitate coordination, consultation and inclusive decision-making between SALGA and its members;
 - 16.2.1.2 serve as a forum through which organised local government members can consult with one another, at a political level, to contribute in so far as providing ideas, advice, political insight and support on the assigned areas of focus to SALGA's political governance structures, namely the National Executive Committee.
- 16.2.2 The functions of the Working Groups are to:
 - 16.2.2.1 discuss and develop policies, strategies and programmes to address critical local government issues;
 - 16.2.2.2 monitor the process of local government policy conceptualisation, design and implementation;
 - 16.2.2.3 effect meaningful participation of Working Group members in political and intergovernmental structures as mandated by SALGA;
 - 16.2.2.4 within the Strategy of SALGA, facilitate the determination of organised local government priorities, which should be pursued in the short, medium and long term; and
 - 16.2.2.5 make strategic and policy recommendations to the National Executive Committee.



17. COMMITTEE ON STATUTORY AFFAIRS

- 17.1 A Committee on Statutory Affairs shall be established with the composition and responsibilities set out herein.
- 17.2 The Committee on Statutory Affairs shall comprise of the following members, as appointed by the National Executive Committee:-
- (a) One (1) Deputy President (who shall act as Chair);
 - (b) Three (3) additional Members of the NEC; and
 - (c) Three (3) Provincial Chairpersons.
- 17.3 The responsibilities of the Committee on Statutory Affairs are as follows:-
- (a) To ensure that the principles and requirements set out in this constitution for elections are complied with, and to encourage consensual working and good practice amongst members in relation to elections;
 - (b) To consider proposals that reflects the requisite equitable geographical representation to determine the basis if election within each province and nationally, to ensure that the principles are met and the correct balances achieved;
 - (c) To ensure the validity of the electoral process;
 - (d) To report to the National Executive Committee on the validity of the electoral process and in particular the results of the elections in the provinces;
 - (e) To process proposed amendments of the SALGA Constitution and Governance Framework; and
 - (f) To pro-actively deal with challenges that may be experienced in the implementation of key principles and requirements of the constitution.

18. COUNCIL OF MAYORS

- 18.1 A Council of Mayors shall be established with the composition and responsibilities set out herein.
- 18.2 The Council of Mayors shall comprise:-
- (a) All Executive Mayors;
 - (b) Mayors; and
 - (c) Speakers called Mayors in Plenary type municipalities.
- 18.3 The Council of Mayors shall at least meet annually and shall be chaired by a member of the Presidency.
- 18.4 The responsibilities of the Council of Mayors are as follows:-
- (a) To serve as a forum through which Executive Mayors and Mayors of organised local government members can consult with one another in so far as to contribute to ideas, advice, insight and support on matters directly affecting the role and function of the Executive Mayors and Mayors.
 - (b) To be consulted on an ad hoc basis should the need arise with regard to specific aspects to be addressed affecting municipalities.
 - (c) As the Council of Mayors will consider a number of multi-disciplinary matters, the Council of Mayors makes recommendations to the relevant National Working Group.

19. COUNCIL OF SPEAKERS

- 19.1 A Council of Speakers shall be established with the composition and responsibilities set out herein.
- 19.2 The Council of Speakers shall comprise of all member municipal Speakers.
- 19.3 The Council of Speakers shall at least meet annually and shall be chaired by a member of the Presidency.

19.4 The responsibilities of the Council of Speakers are as follows:-

- (a) To serve as a forum through which Speakers of member municipalities can consult with one another in so far as to contribute to ideas, advice, insight and support on matters directly affecting the role and function of the Speakers.
- (b) To be consulted on an ad hoc basis should the need arise with regard to specific aspects to be addressed affecting municipalities.
- (c) As the Council of Speakers will consider a number of multi-disciplinary matters, the Council of Speakers makes recommendations to the relevant National Working Group.

PART VI: PROVISIONS APPLICABLE TO PROVINCIAL MEMBERS

20 MEMBERSHIP

Municipal members of SALGA shall ipso facto be members of the provincial association for the province in which they are situated.

21 PROVINCIAL GOVERNANCE STRUCTURE

The governance of Provincial Members is **vested and executed** by:

- 21.1 Provincial Conference;
- 21.2 Provincial Members Assembly;
- 21.3 Provincial Executive Committee;
- 21.4 Provincial Office Bearers;
- 21.5 Provincial Working Groups.

22 PROVINCIAL CONFERENCE

- 22.1 The ultimate authority of the provincial member shall reside in its Provincial Conference.
- 22.2 The provincial members shall within a period of 90 (ninety) days after every general local government election hold a meeting of members to be known and described in the notice calling such meeting as the Provincial Conference. Such Provincial Conference shall be held at least 30 (thirty) days before the National Conference.

- 22.3 The Provincial Conference shall:
- 22.3.1 Elect the members of the Provincial Executive Committee;
 - 22.3.2 Nominate 2 (two) Members to the National Executive Committee;
 - 22.3.3
 - 22.3.4 Establish and review provincial oversight bodies as required by law; and
 - 22.3.5 Approve the provincial programme of action, business plan and budget in respect of the ensuing five years.
- 22.4 In nominating the 2 (two) members to the National Executive Committee, the following principles shall apply:
- 22.4.1 The 2 (two) members nominated to the National Executive Committee shall be from the different categories of municipalities prevalent in the province;
 - 22.4.2 The Chairperson and the 2 (two) members nominated to the National Executive Committee shall also be representative of the categories of municipality prevalent in the province and from different districts/metros in the province.
- 22.5 Every Provincial Conference shall be held at a venue as resolved by the Provincial Executive Committee.
- 22.6 The provisions of article 8, regulating participation and voting in SALGA governance structures, shall apply mutatis mutandis to provincial members.
- 22.7 The proceedings of the Provincial Conference shall be regulated in terms of the procedure laid down in Annexure "A" in the Rules of Procedure, mutatis mutandis.

23 PROVINCIAL MEMBERS ASSEMBLY

- 23.1 A provincial member shall, at least once a year, hold a meeting of members to be known and described in the notice calling such meeting as the Provincial Members Assembly. In the year of a National Members Assembly, such meeting must be held at least 30 (thirty) days before the National Members Assembly.
- 23.2 The Provincial Members Assembly shall, except for the provisions of articles 20.3.1 and 23.3.2, exercise the authority of the provincial member between Provincial Conferences.
- 23.3 The Provincial Conference shall:
- 23.3.1 Act in accordance with the directions of the Provincial Conference;

- 23.3.2 Adopt the provincial member's programme of action, business plan and budget in respect of the ensuing year;
 - 23.3.3 Consider reports from the provincial working groups and oversight bodies; and
 - 23.3.4 Deal with any other issues emanating from the provisions applicable to provincial members in this Constitution.
- 23.4 Every Provincial Members Assembly shall be held at a venue as resolved by the Provincial Executive Committee.
- 23.5 The provisions of article 8, regulating participation and voting in SALGA governance structures, shall apply mutatis mutandis to provincial members assemblies.
- 23.6 The proceedings of the Provincial Members Assembly shall be regulated in terms of the procedure laid down in Annexure "A" in the Rules of Procedure annexed to this Constitution, mutatis mutandis.

24 PROVINCIAL EXECUTIVE COMMITTEE

- 24.1 The Provincial Executive Committee shall exercise the authority of the Provincial member between Provincial Conferences and Provincial Members Assemblies.
- 24.2 The Provincial Executive Committee shall consist of:
- 24.2.1 Chairperson;
 - 24.2.2 Three (3) deputy chairpersons;
 - 24.2.3 Six (6) additional members; and
 - 24.2.4 Chairperson of the SALGA Provincial Women's Commission.
- 24.3 The Provincial Executive Committee may co-opt no more than 3 (three) further additional members.
- 24.4 The Provincial Executive Committee may further co-opt the Chairperson of the Provincial House of Traditional Leadership or his/her nominee to the Provincial Executive Committee.
- 24.5 In electing Provincial Executive Committee members, the following principles shall apply:
- 24.5.1 All categories of municipalities prevalent in a province must be represented on the Provincial Executive Committee.

- 24.5.2 The 3 (three) deputy chairpersons must also be representative of the categories of municipality prevalent in the province.
- 24.5.3 The provisions of 13.3, 13.4 and 13.5 shall apply mutatis mutandis to provincial executive committees.
- 25.6 The Provincial Executive Committee shall:
- 25.6.1 Meet at least once every three months and when the need arises;
 - 25.6.2 Exercise day-to-day executive authority of the provincial member;
 - 25.6.3 Act in accordance with the directions of the Provincial Conference or Provincial Members Assembly;
 - 25.6.4 Submit a report of its activities during the previous financial year to the Provincial Conference or Provincial Members Assembly; and
 - 25.6.5 Cause reports of its activities in the province to be tabled quarterly at the National Executive Committee.
- 25.7 The Provincial Executive Committee shall have the power to:
- 25.7.1 Exercise oversight of the provincial administration, including human resource management, supply chain management, business planning and the provincial budget, to the extent set out in the delegations framework of the organisation.
 - 25.7.2 Determine, appoint and recall representation of SALGA in all provincial intergovernmental structures and other provincial forums.
 - 25.7.2.1 Such representatives shall table reports to the Provincial Executive Committee in accordance with the Governance Framework.
 - 25.7.3 Make representations to provincial government.
 - 25.7.4 Appoint the chairpersons of Provincial Working Groups from amongst additional or co-opted members.
 - 25.7.5 Provincial Executive Committees may also create such other sub-committees and as may be necessary to assist it in the execution of its duties, as outlined in this Constitution, Delegations Framework and Governance Framework of SALGA.
 - 25.7.6 Every member of the Provincial Executive Committee shall be indemnified by SALGA against all liability incurred in his or her capacity as such.

- 25.7.7 The proceedings of the Provincial Executive Committee shall be regulated in accordance with the procedure laid down in the Rules of Procedure annexed to this Constitution.
- 25.7.8 The provisions of articles 14 and 15 shall apply mutatis mutandis to provincial members.
- 25.7.9 The Provincial Executive Committee shall serve until the next ensuing Provincial Conference, irrespective of whether or not members are re-elected as councillors.
- 25.7.10 During the term of office of the Provincial Executive Committee, other than during the transition period immediately after a general local government election, any loss of the position of councillor by a Provincial Executive Committee member shall ipso facto, and without conditions, result in the immediate termination of membership of the Provincial Executive Committee.
- 25.7.11 Any vacancy, which occurs in the office of any of the office bearers and/or additional members, shall be filled by the Provincial Executive Committee.

26. PROVINCIAL OFFICE BEARERS

- 26.1 There shall be a Provincial Chairperson and three Deputy Chairpersons.
- 26.1.1 Collectively they constitute the provincial office bearers.
- 26.1.2 The three Deputy Chairpersons must be comprised of a representative from each category of municipality in the province.
- 26.2 The duties of the provincial office bearers are to:
- 26.2.1 Oversee the implementation of decisions of the Provincial Conference, Provincial Members Assembly and the Provincial Executive Committee by all SALGA governance structures and functionaries in the province;
- 26.2.2 Present reports on the state and performance of the governance structures of the organisation;
- 26.2.3 Ensure the implementation and management of the Members' Compact as provided in this Constitution;
- 26.2.4 Present reports on enforcement of the Code of Conduct by relevant SALGA structures;
- 26.2.5 Ensure effective relationship building with members and resolution of disputes between SALGA and members in the province;

- 26.2.6 Politically oversee the development and execution of the SALGA Strategic Plan for term of Provincial Executive Committee;
- 26.2.7 Be politically responsible for communication between the organisation, its members and stakeholders in the province;
- 26.2.8 Be politically responsible for overseeing fundraising and sponsorship plans for SALGA events in the province; and
- 26.2.9 Perform such other functions as delegated by Provincial Executive Committee in accordance with delegations framework of the organisation.

26.3 CHAIRPERSON

The Chairperson shall:

- 26.3.1 preside at all meetings of the Provincial Conference, Provincial Members Assembly and Provincial Executive Committee;
- 26.3.2 be the custodian of the decisions taken by the Provincial Conference, Provincial Members Assembly and Provincial Executive Committee;
- 26.3.3 Present to the Provincial Conference, Provincial Members Assembly and extended Provincial Executive Committee a comprehensive report on the state and performance of the governance structures of the province;
- 26.3.4 sign minutes of the meetings;
- 26.3.5 delegate such other functions as are necessary to the Deputy Chairpersons;
- 26.3.6 perform such other duties as may be associated with this office;
- 26.3.7 represent SALGA at all formal or ceremonial occasions in the province; and
- 26.3.8 perform such other functions as may be delegated by the Provincial Executive Committee from time to time.

27 PROVINCIAL WORKING GROUPS

27.1 Composition and quorum

- 27.1.1 The Provincial Working Groups are established by the Provincial Executive Committee, with the chairperson of the Working Groups appointed from amongst the Provincial Executive Committee members.

- 27.1.2 Each provincial member shall be entitled to representation on Provincial Working Groups, as determined by the Provincial Executive Committee in terms of a model approved by the National Executive Committee.
- 27.1.3 The quorum for Provincial Working Groups shall be forty percent (40%) of the total number of provincial members that must be present.
- 27.2 Purpose, objectives and functions
- 27.2.1 The key purpose and objective of working groups is to:
- 27.2.1.1 facilitate coordination, consultation and inclusive decision-making between SALGA and its provincial and municipal members;
 - 27.2.1.2 serve as a forum through which organised local government members can consult with one another, at a political level, to contribute in so far as providing ideas, advice, political insight and support on the assigned areas of focus to SALGA's political governance structures, namely the Provincial Executive Committee.
- 27.2.2 The functions of the Working Groups are to:
- 27.2.2.1 discuss and develop policies, strategies and programmes to address critical local government issues in the province;
 - 27.2.2.2 monitor the process of local government policy conceptualisation, design and implementation in the province;
 - 27.2.2.3 effect meaningful participation of Working Group members in provincial intergovernmental structures as mandated by SALGA;
 - 27.2.2.4 within the provincial strategy of SALGA, facilitate the determination of organised local government priorities, which should be pursued in the short, medium and long term; and
 - 27.2.2.5 make strategic and policy recommendations to the Provincial Executive Committee.

SCHEDULE B**PART VII: GENERAL RULES OF PROCEDURE AND MISCELLANEOUS PROVISIONS****28 RIGHT OF MEMBERS TO INSPECT BOOKS OF SALGA**

- 28.1 The books of account and other books and documents of SALGA shall be kept at the registered office of SALGA and, subject to the reasonableness as to the time and manner of inspecting same that may be imposed by a resolution of the National Executive Committee, shall be open to inspection of the members during the hours of business.
- 24.2 The audited financial statements and other books of account should be published on the SALGA website.

29 NOTICES

- 29.1 A notice by SALGA to any member shall be regarded as validly given, if sent by prepaid post or transmitted by telegram, telex or telefax to its registered address.
- 29.2 Any notice, if given by registered post, shall be deemed to have been served on the day following that to which the letter or envelope containing such notice is posted.

30 COPIES OF CONSTITUTION AND INSPECTION THEREOF

- 30.1 A copy of this constitution and of every amendment thereto or any amended constitution, shall at all times during normal business hours be available for inspection by SALGA members at its registered office and on its website.
- 30.2 Any member shall be entitled to receive from SALGA a copy of this constitution and of every amended constitution thereto on making request thereof to SALGA.

31 AMENDMENT OF CONSTITUTION

- 31.1 This constitution may be amended by the national conference only if:
- 31.1.1 21 (twenty one) days written notice of the proposed amendment or amendments is given to all members; and
- 31.1.2 approved by two thirds of the members entitled to be present and vote at the National Conference.

- 31.2 During the year of the National Conference when the SALGA Constitution is eligible for review and is amended, and such amendment has an impact on the structures or composition of the governance structures at provincial or national level, the National Executive Committee, in consultation with Provincial Executive Committees, must adopt transitional arrangements aimed at giving effect to the approved amendments.
- 31.3 The business of a National and Provincial Conference in such case shall be conducted in accordance with the provisions of the Constitution in effect at the time of the National or Provincial Conference.
- 31.4 No amendment shall be of any force or effect until certified in terms of subsection (3) of section 101 of the Labour Relations Act. 66 of 1995, as amended.

32 DISSOLUTION OR WINDING UP OF SALGA

- 32.1 SALGA may only be dissolved or wound up for whatever reason by a resolution passed by at least two thirds of the members entitled to be present and vote at the National Conference.
- 32.2 The president or a deputy president shall within 7 (seven) days from the date of the dissolution or winding up submit to the Labour Court a resolution approving the dissolution or winding up of SALGA and request the Labour Court to grant an order in terms of section 103 of the Labour Relations Act 66 of 1995, as amended.
- 32.3 The president or a deputy president shall within 7 (seven) days from the date of the appointment of a liquidator by the Labour Court in terms of section 103(3) of the Labour Relations Act 66 of 1995, as amended, deliver to the said liquidator:
- 32.3.1 all books of accounts of SALGA showing the assets and liabilities together with the register of members showing, for the 12 (twelve) months prior to the date on which the resolution for the dissolution or winding-up was passed, the membership fees paid by each member and its last known registered address; and
- 32.3.2 all unexpended funds, assets and all other documents of SALGA.
- 32.4 The liquidator may divide amongst the members the whole or any part of the assets of SALGA (whether they shall consist of property of the same kind or not) and may, for such purpose, set such values as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members.

- 32.5 After the payment of all the liabilities of SALGA any assets that cannot be disposed of in accordance with the provisions of 28.4 above shall be realised by the liquidator and the proceeds shall, in the sole discretion of the liquidator, either be paid to the Commission for Conciliation Mediation and Arbitration in accordance with section 103(5) of the Labour Relations Act 66 of 1995, as amended, or to any entity with similar objects to SALGA or to both.
- 32.6 The liability of each member shall be limited to the amount of subscription fees and levies due by it to SALGA in terms of this constitution as at the date of dissolution or winding up.
- 32.7 Notwithstanding anything contained in 28.6 above, if the assets of SALGA are on dissolution or winding up insufficient to cover all money due to its employees, each member shall be liable to contribute a proportionate share of the remaining deficit.

33 GENERAL RULES OF PROCEDURE

- 33.1 The Rules of Procedure, annexed to this Constitution, shall regulate:
- 33.1.1 Proceedings at the National Conference and National Members Assembly (Annexure A);
 - 33.1.2 Conduct of elections to SALGA governance structures (Annexure B);
 - 33.1.3 Proceedings of the National Executive Committee (Annexure C);
 - 33.1.4 Code of Ethics for National and Provincial Executive Committee members, and deployees of SALGA (Annexure D);
 - 33.1.5 Dispute resolution procedures between SALGA and its members (Annexure E); and
 - 33.1.6 Disciplinary Procedures (Annexure F).
- 33.2 The Rules of Procedure may be amended by the National Conference in accordance with article 26.

ANNEXURE A: PROCEEDINGS AT THE NATIONAL CONFERENCE AND NATIONAL MEMBERS ASSEMBLY

1. In this annexure, the "constitution" means the constitution of SALGA.
2. Every National Conference and National Members Assembly shall be called by 21 (twenty one) days' notice in writing at the least setting out the agenda for the meeting. The accidental omission to give notice of a National Conference or National Members Assembly to, or the non-receipt of notice of such a meeting by, any member entitled to receive notice shall not invalidate the proceedings of that meeting.
3. Any additional matter not appearing in the notice calling for the National Conference or National Members Assembly contemplated in 2 above may be placed on the agenda of a National Conference or National Members Assembly upon 7 (seven) days' written notice to all members on the written request of any member, which request shall have been received by the President or a the person duly delegated within a period of 14 (fourteen) days before the date of the meeting.
4. A matter which has not been placed on the agenda of the National Conference or National Members Assembly may be discussed by that meeting only if the majority of members consent thereto.
5. Each member shall be entitled to so many delegates at the National Conference and National Members Assembly as determined by the National Executive Committee in accordance with article 8.
6. All delegates appointed by municipal members or provincial members to attend a National Conference or National Members Assembly shall be municipal councillors.
7. The quorum at the National Conference or National Members Assembly shall be a majority of members entitled to attend and vote at the meeting.
8. If, within the time period as may be determined by the National Executive Committee from the appointed time for the meeting, a quorum is not achieved, the meeting, in case of a National Members Assembly convened upon the requisition of members, shall be dissolved.
 - 8.1. In any other case it shall stand adjourned to the same day in the next month, or if that day be a public holiday, to the next succeeding day other than a public holiday.

- 8.2. If, at such adjourned meeting, a quorum is not present within the time period determined by the National Executive Committee from the time appointed for the meeting then the members present shall be a quorum.
9. The President shall preside as chairperson at every National Conference or National Members Assembly. If at any National Conference or National Members Assembly the President is not present within the time period determined by the National Executive Committee after the time appointed for holding the meeting, or is unwilling or unable to act as such, a Deputy President shall act as the chairperson of the meeting, or if none of the deputy President are present within the time period determined by the National Executive Committee or is unwilling to act as chairperson, the members present shall choose any delegate present to be chairperson of the meeting.
10. The chairperson may, with the consent of any National Conference or National Members Assembly at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, to deal with any business left unfinished at the meeting from which the adjournment took place. It shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
11. At any National Conference or National Members Assembly a resolution put to the vote of the meeting shall be decided on a show of hands (or the use of assistive devices for that purpose).
12. A declaration by the chairperson that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of SALGA, shall be conclusive evidence of the number of the votes recorded in favour of, or against, such resolution.
13. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
14. In the case of an equality of votes, the chairperson of the meeting shall be entitled to a second or casting vote.
15. Notwithstanding anything contained in this annexure, the head of administration shall act as the chairperson of the meeting at the National Conference during the election of the National Executive Committee but shall have no vote.

16. In any ballot conducted in connection with any election of office bearers, the candidates, up to the required number, receiving the highest number or votes shall be declared elected.
17. The National Executive Committee shall be bound to take action according to the decision of a majority of the members or delegates voting.

ANNEXURE B: CONDUCT OF ELECTIONS TO SALGA GOVERNANCE STRUCTURES

1. In the election of the National Executive Committee and Provincial Executive Committee, the following process shall apply:
 - 1.1 National Conference voting delegates will, from amongst the 18 nominations from the Provincial Conferences, vote only for the directly elected National Executive Committee members, being 4 (four) candidates for the Presidency, namely the President and three (3) Deputy Presidents, and the fourteen (14) additional members.
 - 1.2 All categories of municipality must be represented among the presidency.
 - 1.3 Thus, every vote at the National Conference to elect the Deputy Presidents must include a metropolitan, district and local representative.
 - 1.4 All four (4) members of the presidency must be from different provinces.
 - 1.5 But for Provincial Chairpersons, who are ex officio, no member of a Provincial Executive Committee may hold dual portfolio's ie. be a Provincial and National Executive Committee member at the same time.
 - 1.6 If a Provincial Executive Committee member is directly elected as a member of the National Executive Committee, such member shall relinquish (automatically) his or her provincial position.
2. The election of directly elected members shall be conducted in accordance with the voting procedures outlined in Annexure "A".

ANNEXURE C: PROCEEDINGS OF THE NATIONAL EXECUTIVE COMMITTEE

1. In this annexure, the "Constitution" means the constitution of SALGA.
2. The President, on the requisition of any member of the National Executive Committee shall, at any time, summon a meeting of the National Executive Committee.
3. The National Executive Committee may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it deems fit.
4. Unless otherwise resolved by the National Executive Committee, all its meetings shall be held at SALGA's registered office.
5. The President shall have a second or casting vote at the meeting of the National Executive Committee.
6. The head of administration shall have no vote in the proceedings or decisions of the National Executive Committee.
7. The National Executive Committee may determine what period of notice shall be given of its meetings and may determine the means of giving such notice, which may include telephone, telegram, telex or telefax. It shall not be necessary to give notice of a meeting of the National Executive Committee to any of its members for the time being absent from the Republic.
8. A quorum of the National Executive Committee shall consist of the majority of the members constituting it.
9. Subject to this Constitution-
 - 9.1. a resolution in writing, including through the medium of telefax, signed by the members of the National Executive Committee for the time being present in the Republic and, being not less than are sufficient to form a quorum, shall be as valid and effectual as if it had been passed at a meeting of the National Executive Committee duly called and constituted; and
 - 9.2. in the case of matters requiring an urgent resolution or, if for any reason it is impracticable to meet as contemplated herein or pass a resolution as contemplated in 9.1 hereof, proceedings may be conducted by utilising conference telephone facilities, provided that the required quorum is met.

- 9.2.1. A resolution agreed to during the course of such proceedings shall be as valid and effectual as if it had been passed at a meeting of the National Executive Committee duly called and constituted.
- 9.2.2. The President shall as soon as is reasonably possible after such meeting has been held, be notified thereof by the relevant parties to the meeting, and the President shall prepare a written minute thereof.
- 9.3. No member unable to attend a National Executive Committee meeting shall be entitled to appoint a proxy in his stead.
- 9.4. If at any meeting of the National Executive Committee the President is not present within the time period as may be determined by the National Executive Committee in the circumstances after the time appointed for holding it, one of the Deputy Presidents shall act as the chairperson of the meeting or, if none of them are also not present within the time period determined by the National Executive Committee, the members present may choose one of their number to be chairperson of the meeting.
- 9.5. The provisions hereof shall apply mutatis mutandis to Provincial Executive Committees.

ANNEXURE D: CODE OF ETHICS FOR ELECTED NATIONAL AND PROVINCIAL EXECUTIVE COMMITTEE MEMBERS AND DEPLOYED REPRESENTATIVES OF SALGA

1. This Annexure sets out the Code of Ethics and procedures for breaches of thereof for elected National and Provincial Executive Committee members and deployed representatives of SALGA.
2. Before the National and Provincial Executive Committee members begin to perform their functions, they must swear or affirm faithfulness to SALGA and obey, respect, uphold, and maintain the Constitution of the Republic of South Africa, the constitution of SALGA and all other laws of the Republic, as follows:-

“OATH OR SOLEMN AFFIRMATION”

*“In the presence of everyone assembled here, I [NAME AND SURNAME], swear / solemnly affirm that I will be faithful to SALGA and will obey, respect, uphold, and maintain the Constitution of the Republic of South Africa, the constitution of SALGA and all other laws of the Republic, and I undertake to hold my office as [POSITION] with honour and dignity; to be true and faithful; not to divulge directly or indirectly any confidential information entrusted to me by virtue of my position at SALGA; and to perform the duties and functions of my office to the best of my ability”
(In the case of an Oath: “So Help Me God”).*

3. Elected National and Provincial Executive Committee members and deployed representatives of SALGA must:
 - a. Be true and faithful to SALGA and uphold the highest ideals of honour and integrity in order that SALGA may merit the respect and confidence of all stakeholders and the public;
 - b. obey, respect, uphold, promote and maintain the Constitution of the Republic of South Africa, the constitution of SALGA and all other laws of the Republic,
 - c. effectively and efficiently work with governmental agencies, political subdivisions and other organizations in order to further the interest of the local government;
 - d. discharge the duties and functions as the representatives of SALGA diligently and to the best of their knowledge and ability; and
 - e. devote themselves to the wellbeing of SALGA and all of its members.
4. Elected National and Provincial Executive Committee members and deployed representatives of SALGA may not:

- a. divulge directly or indirectly any confidential information entrusted to them by virtue of their position at SALGA;
 - b. engage in outside interests that are not compatible with the impartial and objective performance of their duties;
 - c. improperly influence or attempt to influence other elected members or representatives from member municipalities to act in their own personal benefit; nor
 - d. accept anything of value from any source which is offered to influence their actions as representatives of SALGA.
5. When becoming aware of a possible violation of one or more of the obligations under 2 or 3 above, the National Executive Committee or Provincial Executive Committee, as the case may be, may institute disciplinary proceedings against the National or Provincial Executive Committee member or deployed representatives of SALGA and duly inform the municipality whom such National or Provincial Executive Committee member or deployed representative of SALGA is representing.
6. The National Executive Committee or Provincial Executive Committee shall establish ad hoc disciplinary committees to deal with such cases.
7. The National Executive Committee or Provincial Executive Committee, as the case may be, may suspend the relevant National or Provincial Executive Committee member or deployed representative of SALGA to allow the disciplinary proceedings to take its course.
8. National Executive Committee and/ or Provincial Executive Committee members, as the case may be, may not discuss or divulge information with anyone about pending or ongoing ethics cases. Failure to observe this may result in such National Executive Committee or Provincial Executive Committee member being in breach of this Code and liable to disciplinary action.
9. If any National or Provincial Executive Committee member or deployed representative of SALGA is found, in terms of the outcomes of the disciplinary proceedings, to be unfit to hold SALGA office or be deployed as a SALGA representative, the National or Provincial Executive Committee member or deployed representative of SALGA may appeal as follows:
- a. In the event of a Provincial Executive Committee member found guilty of breaching this Code, such member shall be entitled to appeal to the National Executive Committee, whose decision shall be final and binding.

- b. In the event of a National Executive Committee member or deployed representative of SALGA found guilty of breaching this Code, such member or deployee shall appeal to an ad hoc appeals committee established by the National Executive Committee which must comprise of at least:
 - i. The President; and
 - ii. Two (2) Deputy Presidents.
 - c. If the President or a Deputy President is charged with violation of this Code, the ad hoc disciplinary committee and the appeals committee (if required) must comprise of at least:
 - i. Two (2) members from among the office bearers; and
 - ii. Three (3) provincial Chairpersons, excluding the provincial Chairperson representing the province where such individual's member municipality is situated.
10. The National Executive Committee or Provincial Executive Committee must inform the relevant member (Provincial Association or municipal member, as the case may be) or deployee of the outcome of the disciplinary proceedings and that such individual is unfit to hold SALGA office or be deployed as a SALGA representative.
 11. In such case, the National Executive Committee may invite the Provincial Association to nominate another person to fill the vacancy (if a provincial representative) or may fill the vacancy at the next sitting of the extended National Executive Committee meeting or National Members Assembly (for directly elected members), whichever comes first.
 12. The Provincial Executive Committee may fill the vacancy in accordance with article 21.6.11.

ANNEXURE E: DISPUTE RESOLUTION PROCEDURES

1. This Annex sets out an internal dispute resolution procedure to resolve disputes between SALGA and its members regarding their “rights, duties, or liabilities” in terms of this Constitution. This procedure is an “internal” dispute resolution mechanism and must be distinguished from “alternative” dispute resolution.
2. Its purpose is to provide a mechanism for members to resolve disputes with the Association, and does not apply to disputes between members, save as provided for below.
3. The procedure may be invoked by a provincial member or any individual municipal member with either its provincial association or the national association directly. Parties to a dispute must attempt to resolve such dispute speedily and in good faith.
4. In accordance with the provisions of article 5 (Members Compact), disputes between SALGA and its members shall be resolved as follows:
 5. Disputes between member municipalities and provincial associations
 - 5.1 In the first instance, municipal members shall have the right to approach its provincial association raising its concerns, in writing, with regard to the alleged non-fulfillment of such member’s rights, or obligations imposed on the provincial association in terms of articles 19, 20 and 21 in terms of this Constitution.
 - 5.2 A copy of the letter must be submitted to the national Association for its notification.
 - 5.3 Within 30 (thirty) days of receiving the notification of concern, the provincial association must respond, in writing, to the concerns raised, including proposed steps or actions to address same.
 - 5.4 If, after a period of 60 (sixty) days, the member’s concerns have not been addressed to its satisfaction, such member shall have the right to declare a formal dispute with the provincial association.
 - 5.5 Such dispute must be declared in writing and set out the grounds for the dispute, including steps taken in attempting to address the concerns so raised. A copy of the dispute declared shall be forwarded to the national association for its notification by fax, mail or email.

- 5.6 Within 30 (thirty) days of the dispute being declared in writing and received by the provincial association, a meeting between the provincial association and municipal member to discuss the grounds for the dispute, present their responses and proposed steps to resolve same must be duly convened.
 - 5.7 The provincial association in such instance shall be represented by the provincial Chairperson or one of the Deputy Chairpersons.
 - 5.8 In the event that the grounds for the dispute are not addressed within 60 (sixty) days, the member shall have the right to appeal to the full Provincial Executive Committee.
 - 5.9 In the event that the dispute is still not resolved thereafter, the member shall have recourse to the National Executive Committee, who shall be represented by one of the office bearers.
6. Disputes between municipal members and provincial associations with the National Association
- 6.1 In the case of either a provincial member or municipal member, both shall have the right to approach the national association raising its concerns, in writing, with regard to the alleged non-fulfillment of its rights, or obligations imposed on the national association in terms of articles 10, 11, 12 and 13 in terms of this Constitution.
 - 6.2 In the case of a municipal member, a copy of the letter must be submitted to the provincial Association for its notification.
 - 6.3 Within 30 (thirty) days of receiving the notification of concern, the national association must respond, in writing, to the concerns raised, including proposed steps or actions to address same.
 - 6.4 If, after a period of 60 (sixty) days, the member's concerns have not been addressed to its satisfaction, such member shall have the right to declare a formal dispute with the national association.
 - 6.5 Such dispute must be declared in writing and set out the grounds for the dispute, including steps taken in attempting to address the concerns so raised.

- 6.6 Within 30 (thirty) days of the dispute being declared in writing and received by the national association, a meeting between the national association and municipal or provincial member must be duly convened to discuss the grounds for the dispute, present their responses and proposed steps to resolve same.
- 6.7 The national association in such instance shall be represented by one of the office bearers.
- 6.8 In the event that the grounds for the dispute are not addressed within 60 (sixty) days to the member's satisfaction, the member shall have the right to appeal to the full National Executive Committee.
- 6.9 If the member (who has invoked the procedure) requests the participation of a mediator, the association should work with the member to select a mediator.

ANNEXURE F: DISCIPLINARY PROCEDURES

1. This Annex gives effect to article 6 and provides for disciplinary procedures to be followed in accordance with article 6.7.
2. The ad hoc disciplinary committees which shall be established by the National Executive Committee or Provincial Executive Committee, as the case may be, must consist of:
 - a. In the case of the National Executive Committee -
 - i. One (1) member of the Presidency;
 - ii. One (1) provincial Chairperson; and
 - iii. One (1) additional member of the National Executive Committee.
 - b. In the case of a Provincial Executive Committee -
 - i. One (1) office bearer; and
 - ii. Two (2) additional members of the Provincial Executive Committee.
3. If a member has been summarily suspended in accordance with the provisions of article 6.12, disciplinary proceedings must be instituted against such member within 30 (thirty) days of the suspension.
 - a. A notice of suspension, stating the nature of the charges as well as a date for preliminary hearing of the matter must be communicated to the member concerned within 30 (thirty) days of suspension.
 - b. A member shall be entitled to call witness(es) in support of its case when appearing before a Disciplinary Committee contemplated in article 6.3.
4. As provided for in article 6.4, a member shall be entitled to appeal the decisions of a Disciplinary Committee to the National Executive Committee or Provincial Executive Committee, as the case may be. The National or Provincial Executive Committee, as the case may be, may establish an appeals committee to consider the appeal.
5. The member concerned shall lodge notice of any such appeal, including the grounds upon which its appeal is founded, with the President or a person duly delegated by the President, or Provincial Chairperson or a person duly designated by the provincial Chairperson, as the case may be, in writing within 14 (fourteen) days of the date on which the decision of the National Executive Committee or Provincial Executive Committee was communicated to it.

6. As provided for in article 6.4, save for suspension or expulsion of a member, the decision of the National Executive Committee or Provincial Executive Committee is final and binding.
7. A member may be suspended or expelled from SALGA if it violates the Code of Conduct set out in article 6.
8. Any member, who has been suspended or expelled by the National Executive Committee, shall have a right to appeal against such suspension or expulsion to the extended National Executive Committee, National Members Assembly or National Conference (whichever occurs first).
9. A member shall cease to be entitled to any benefits of membership, including but not limited to the right to vote during meetings in the period in which it is under suspension in terms of this constitution.
10. The member concerned shall lodge notice of any such appeal, including the grounds upon which its appeal is founded, with the President or a person duly delegated by the President in writing within 14 (fourteen) days of the date on which the decision of the National Executive Committee was communicated to it.
11. The extended National Executive Committee meeting, National Members Assembly or National Conference (whichever occurs first) shall appoint an ad hoc committee to consider the appeal.
 - a. The committee so appointed shall submit a report with its recommendation(s) to the extended National Executive Committee, National Members Assembly or National Conference (whichever appointed it).
 - b. The decision of the extended National Executive Committee, National Members Assembly or National Conference (whichever deals with the matter) shall be final and binding on the member concerned.
12. Upon the expulsion of a member, all money due and owing by such member to SALGA shall become payable within a period of 30 (thirty) days of such expulsion. If a member in question fails to make such payment to SALGA within the period contemplated herein, the National Executive Committee may take such steps as it deems necessary to recover such money.

Telephone: 012 369 8000 | Fax: 012 369 8001

Physical Address:

Menlyn Corporate Park, Block B, 175 Corobay
Avenue, Cnr Garsfontein and Corobay, Waterkloof
Glen ext11, PRETORIA 0001

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SALGA details:

website: www.salga.org.za



Facebook: South African Local
Government Association (SALGA)



Twitter: @SALGA_Gov



YouTube: SALGA TV

ITEM 10.2

APPENDIX 2

Provincial Conference Notice

**TO EXECUTIVE MAYORS
SPEAKERS
MUNICIPAL MANAGERS**

NOTICE OF THE SITTING OF THE SALGA WESTERN CAPE PROVINCIAL CONFERENCE 18 – 19 JANUARY 2022: GEORGE

1. The SALGA Constitution [copy attached] makes provision for the convening of Provincial Conferences to be held within 90 [ninety] days after every general local government election [refer to Clause 22.2]. This effectively means that all Provincial Conferences [PC's], to meet the constitutional requirements, should be convened by 1 February 2022.

Notice is hereby given that the next formal sitting of the SALGA Western Cape Provincial Conference will be held as follows –

DATE : **18 – 19 JANUARY 2022**

- *Registration will start at 08:00 and proceedings will start t 10:00 on 18 January*
- *Proceedings will start at 09:00 and will close at 12:30 on 19 January 2022.*

VENUE : **Exact venue TBC** (Proceeding will take place in George)

RSVP : Registration link to follow

2. In terms of the SALGA Constitution *“each member shall be entitled to so many delegates as determined by the PEC with at least 1 voting delegate at the Provincial Conferences / National Conference”*. In addition, it provides that ***“a member shall cease to be entitled to any benefits of membership, including but not limited to the right to vote during meetings in the period in which membership fees or other charges due by it to SALGA are in arrears”***.

Members are entitled to be represented by up to a maximum of three [3] delegates. The delegates should preferably be as follows –

- Executive Mayor
- Speaker
- Municipal Manager.

3. The SALGA Constitution provides that **every municipal member shall have one vote only** at the PC and each member should designate the voting delegate at a Council meeting.
4. Please note that **delegates will attend the SALGA Conference on their own costs**, viz. travelling and accommodation costs will be for the account of each respective municipality. Enclosed for your convenience, is a list of accommodation in George.
5. In terms of the SALGA Constitution the Provincial Conference will meet to, amongst others –
 - Elect members of the Provincial Executive Committee
 - Consider Audited financial statements in respect of the previous financial year
 - Review SALGA's financial performance and
 - Consider the SALGA 2017 – 2022 Strategic Framework.

The theme of the Conference is: **“The Journey of the 4th Term of Democratic Local Government: Opportunities to renew as we start the 5th Term of Local Government”**

Any enquiries may be directed to Mrs Magda Marais at mmarais@salga.org.za / 082 – 717 – 7885. The closing date for all registrations are Monday, 10 January 2022.



Mr KHALIL MULLAGIE

PROVINCIAL DIRECTOR OF OPERATIONS

ENCL

10.3	REPORT ON THE DECISIONS TAKEN BY THE EXECUTIVE MAYOR ON MATTERS RESOLVED UNDER AUTHORITY DELEGATED TO THE EXECUTIVE MAYOR IN CONSULTATION WITH THE MAYORAL COMMITTEE [JULY 2021 – OTOBER 2021]
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Collaborator No:

IDP KPA Ref No: Good Governance

Meeting Date: Special Council: 10 December 2021

1. SUBJECT: REPORT ON THE DECISIONS TAKEN BY THE EXECUTIVE MAYOR ON MATTERS RESOLVED UNDER AUTHORITY DELEGATED TO THE EXECUTIVE MAYOR IN CONSULTATION WITH THE MAYORAL COMMITTEE [JULY 2021 – OTOBER 2021]

2. PURPOSE

To inform Council of the decisions taken by the Executive Mayor on matters resolved under the authority delegated to the Executive Mayor, in consultation with the Mayoral Committee, for meetings from July 2021 to June 2021 (see **APPENDIX 1**).

3. DELEGATED AUTHORITY

As per the delegations from Council and powers vested in the Executive Mayor by legislation. In terms of the Stellenbosch Municipality System of Delegations (2019) EM12 and section 56(5) of the Structures Act, the Executive Mayor must report to Council at such intervals as the latter may determine on decisions taken.

The Executive Mayor is herewith reporting on the decisions taken by the Executive Mayor in consultation the Mayoral Committee.

4. EXECUTIVE SUMMARY

In terms of the Municipal Structures Act 117 of 1998 Section 56 (5) it is stated that:

“An Executive Mayor must report to the municipal council on all decisions taken by the Executive Mayor.”

5. RECOMMENDATIONS

that Council take note of the decisions by the Executive Mayor taken in consultation with the Mayoral committee meeting from July 2020 until June 2021.

6. DISCUSSION / CONTENTS

6.1 Background and discussion.

In terms of the Municipal Structures Act 117 of 1998 Section 56 (5) it is stated that:

“An Executive Mayor must report to the municipal council on all decisions taken by the Executive Mayor.”

Council approved delegations to the Executive Mayor as per EM 12 of the Stellenbosch Municipality Systems of Delegations, and legislation also contains powers that are vested in the Executive Mayor on which reports are made for notification.

6.3 Financial Implications

Dealt with in terms of the approved budget.

6.4 Legal Implications

The decisions are in line with approved delegations or powers vesting in the Executive Mayor.

6.5 Staff Implications

This report has no additional staff implications to the Municipality.

6.6 Previous / Relevant Council Resolutions

None.

6.7 Risk Implications

Addressed through the content of the item.

6.8 Comments from Senior Management

The report was not circulated for comment. The Executive Mayor discusses relevant issues with the Municipal Manager who takes up actions with the Directors directly.

ANNEXURES

Appendix 1: Decisions taken by the Executive Mayor in the period July 2021 to October 2021 at Mayoral Committee meetings.

FOR FURTHER DETAILS CONTACT:

NAME	DONOVAN MULLER
POSITION	MANAGER: COUNCIL SUPPORT
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021 8088314
E-MAIL ADDRESS	<u>Donovan.Muller@ Stellenbosch.gov.za</u>
REPORT DATE	08 November 2021

ITEM 10.3

APPENDIX 1

**MATTERS RESOLVED UNDER AUTHORITY DELEGATED TO THE MAYOR / MAYORAL COMMITTEE:
JULY 2021– OCTOBER 2021**

MAYCO Meeting Date	Agenda Item no.	Report Subject	Date Resolved	Resolution
21 July 2021	7.2.1	PROPOSED LEASE AGREEMENT: ERF 1281, CORNER CHURCH AND REYNEVELD STREETS, STELLENBOSCH: KNAR PROPERTIES (PTY) LTD	EXECUTIVE MAYORAL COMMITTEE: 2021-07-21: ITEM 7.2.1	<p>(a) that the land as indicated on Fig 1 and 2, measuring approximately 113m². in extent, be identified as land not needed to provide the minimum level of basis municipal services during the period that the rights are awarded;</p> <p>(b) that a lease agreement for a period of 3 years be approved with the specific conditions that it be used for outdoor dining purposes as per the agreement to be concluded.</p> <p>(c) that the application to use a portion of Council-owned land for outdoor dining purposes be approved, subject thereto; -</p> <p>a) that an Application for a Temporary Departure be approved by the Planning and Economic Development Department; and</p> <p>b) further subject to the conditions imposed by the Engineering Department namely:</p> <p>b i) The Municipality concludes an lease agreement with the applicant, detailing the conditions of approval.</p> <p>b ii) The leased area is zoned as road reserve and cannot be enclosed to exclude the public, the municipality or other services provider from accessing the area.</p> <p>b iii) The deck must be constructed within the leased area and as per Drawing No.: Concord R11 OPT2 -Meraki1-100 01 Terrace.pdf</p> <p>b iv) During the construction phase as well as during its operational phase, the deck must not hinder pedestrian movements on the sidewalk.</p> <p>b v) The deck remains the property of the applicant, the applicant must:</p> <ul style="list-style-type: none"> • Attend to maintenance and repairs of the deck. • Ensure public risk and liability insurance is in place to cover 3rd party claims. <p>b vi) Council is indemnified against all possible 3rd party claims.</p> <p>b vii) The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.</p> <p>b viii) The deck must be constructed and installed in manner that aids removal and re-installation as and when required.</p>

**MATTERS RESOLVED UNDER AUTHORITY DELEGATED TO THE MAYOR / MAYORAL COMMITTEE:
JULY 2021– OCTOBER 2021**

				<p>b ix) The desk or portion of the deck must therefore be removable to gain access to the leased area, as and when required by the Municipality or other public service provider.</p> <p>b x) For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove the deck or portion of the deck for the Municipality or any public service provider to gain access.</p> <p>b xi) For emergency works the applicant will be required to remove the deck or portion of the deck immediately for the municipality or other public service provider to gain access.</p> <p>b xii) The applicant to re-install the deck once the works on the public services are complete.</p> <p>b xiii) The cost for the removal and re-installation for the deck will be for the account of the applicant.</p> <p>b xiv) The municipality reserves the right to end the lease agreement when the leased area is required for municipal services.</p> <p>(c) that the Municipal Manager be authorised to conclude a Lease Agreement for a period of three (3) years, with the option of renewal.</p> <p>(d) that the municipal Manager be authorised to determine the rental amount and escalation.</p>
21 July 2021	7.5.1	REVISED ELECTRICITY TARIFFS FOR 2021/22 FINANCIAL YEAR	EXECUTIVE MAYORAL COMMITTEE: 2020-09-16: ITEM 7.5.1	that this item be withdrawn from the agenda.
15 October 2021	7.2.1	PROPOSED LEASE AGREEMENT: PORTION OF ERF 104, LA MOTTE	EXECUTIVE MAYORAL COMMITTEE: 2020-09-16: ITEM 7.2.1	<p>a) that it be noted that a portion (office) of the building the portion of erf 104 La Motte is not needed for the provision of municipal services for the period of the proposed lease;</p> <p>(b) that it is noted that the municipality is not the owner of the property yet and that the possession has been passed to the Municipality and the risks;</p>

**MATTERS RESOLVED UNDER AUTHORITY DELEGATED TO THE MAYOR / MAYORAL COMMITTEE:
JULY 2021– OCTOBER 2021**

				(c) that Junaid Johnson be allowed to the use of an internet Café for a period ofmonths; (d) that they must pay for any services used during the period and (e) that they will be allowed to use the building free of charge provided that they upgrade the building.
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10.4	REPORT ON THE DECISIONS TAKEN BY THE EXECUTIVE MAYOR FOR THE QUARTER: JULY 2021 – SEPTEMBER 2021
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Collaborator No:

IDP KPA Ref No: Good Governance

Meeting Date: Special Council: 10 December 2021

1. SUBJECT: SUBJECT: REPORT ON THE DECISIONS TAKEN BY THE EXECUTIVE MAYOR FOR THE QUARTER: JULY 2021 – SEPTEMBER 2021

2. PURPOSE

To inform Council of the decisions taken by the Executive Mayor from July 2021 to September 2021 (see **APPENDIX 1**).

3. DELEGATED AUTHORITY

As per the delegations from Council and powers vested in the Executive Mayor by legislation.

For Notification

4. EXECUTIVE SUMMARY

In terms of the Municipal Structures Act 117 of 1998 Section 56 (5) it is stated that:

“An Executive Mayor must report to the municipal council on all decisions taken by the Executive Mayor.”

5. RECOMMENDATIONS

5.1 that Council takes note of the decisions by the Executive Mayor.

6. DISCUSSION / CONTENTS

6.1 Background

In terms of the Municipal Structures Act 117 of 1998 Section 56 (5) it is stated that:

“An Executive Mayor must report to the municipal council on all decisions taken by the Executive Mayor.”

6.2 Discussion

Council approved delegations to the Executive Mayor and legislation also contains powers that are vested in the Executive Mayor on which reports are made for notification.

The Executive Mayor also takes decisions in consultation with the Mayoral committee. The decisions of the 2020/21 financial year will be reported in a separate item.

6.3 Financial Implications

Dealt with in terms of the approved budget.

6.4 Legal Implications

The decisions are in line with approved delegations or powers vesting in the Executive Mayor.

6.5 Staff Implications

This report has no additional staff implications to the Municipality.

6.6 Previous / Relevant Council Resolutions:

Item 10.1.1 – Council meeting: 2021-07-28

6.7 Risk Implications

Risk implications are mitigated when decisions taken are in line with approved powers and functions.

6.8 Comments from Senior Management

The report was not circulated for comment. The Executive Mayor discusses relevant issues with the Municipal Manager who takes up actions with the Directors directly.

ANNEXURES

Annexure 1: Decisions taken by the Executive Mayor in the period July to September 2021.

FOR FURTHER DETAILS CONTACT:

NAME	DONOVAN MULLER
POSITION	<i>MANAGER: COUNCILLOR SUPPORT</i>
DIRECTORATE	<i>CORPORATE SERVICES</i>
CONTACT NUMBERS	<i>021 8088314</i>
E-MAIL ADDRESS	<i><u>Donovan.Muller@stellenbosch.gov.za</u></i>
REPORT DATE	<i>08 November 2021</i>

ITEM 10.4

APPENDIX 1

DELEGATIONS EXERCISED FOR PERIOD [JULY - SEPTEMBER 2021]

EXECUTIVE MAYOR

Delegation	Category	Report Subject and Recommendations	Date Received	Date Resolved	Resolution and Comments (if any)
110	FINANCE	S 71 monthly budget monitoring report for June 2021	14/07/2021	28/07/2021	Approved
110	FINANCE	S 71 monthly budget monitoring report for July 2021	17/08/2021	24/08/2021	Approved
110	FINANCE	S 71 monthly budget monitoring report for August 2021	14/09/2021	14/09/2021	Approved
110	FINANCE	S 71 monthly budget monitoring report for September 2021	14/10/2021	14/10/2021	Approved
110	FINANCE	S 52 Quarterly budget monitoring report 4 th quarter	22/07/2021	26/07/2021	Approved
LUP 63	PLANNING	Appeal in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning By-Law (2015) against the decision of the authorised decision maker to approve the application for consent use and amendment of an approved site development plan: erf 16523 (previously known as remainder of farm 961), Trumali Street, Stellenbosch.	03/03/2021	15/07/2021	Vary [see attached document – APPENDIX 1]
LUP 63	PLANNING	Appeal in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning By-Law (2015) against the decision of the authorised decision maker to refuse the application for a temporary departure: farm 334/5, Stellenbosch Division	03/03/2021	19/07/2021	Confirm [see attached document – APPENDIX 2]
LUP 63	PLANNING	Appeal lodged in terms of section 79(2) of the Stellenbosch Municipal land Use Planning By-Law (2015): Application for a removal of a restrictive title deed condition, special development and departures on erf 1197, Stellenbosch	12/04/2021	13/08/2021	Confirm [see attached document – APPENDIX 3]
LUP 63	PLANNING	Appeal lodged in terms of section 79(2) of the Stellenbosch Municipal land Use Planning By-Law (2015) against the application for consolidation, subdivision, rezoning, departure establishment of home owners association, approval of development name, approval of site development plan, allocation of street names, approval of the	19/04/2021	13/07/2021	Revoke [see attached document – APPENDIX 4]

		architectural and landscaping guidelines: portion 52, 53, 54 and 71 of farms no. 510, Stellenbosch [LU/8567].			
LUP 63	PLANNING	Appeal in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning By-Law (2015) against the decision of the authorised decision maker to approve the application for rezoning and departure: erf 1628, De La Rey Street, Franschhoek [LU/7650].	19/04/2021	19/07/2021	Confirm [see attached document – APPENDIX 5]
LUP 63	PLANNING	Appeal lodged in terms of section 79(2) of the Stellenbosch Municipal land Use Planning By-Law (2015): Application for a removal of restrictive conditions, consolidation, rezoning and departures: erven 2151, 2152, 2153 and 11191, Stellenbosch.	07/06/2021	28/07/2021	Vary [see attached document – APPENDIX 6]
LUP 63	PLANNING	Appeal in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning By-Law (2015) against the decision of the Municipal Planning Tribunal to approve the application for subdivision, consolidation, rezoning and amendment of the Municipal Urban edge: erf 2175, Kayamandi.	29/06/2021	13/07/2021	Confirm [see attached document – APPENDIX 7]
LUP 63	PLANNING	Appeal in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning By-Law (2015): Application for removal of a restrictive title deed condition, rezoning, subdivision, phasing, street name and numbering and departure: erf 1692, Franschhoek.	02/07/2021	01/10/2021	Revoke [see attached document – APPENDIX 8]

APPENDIX 1



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE DECISION OF THE AUTHORISED DECISION MAKER TO APPROVE THE APPLICATION FOR CONSENT USE AND AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN: ERF 16523 (PREVIOUSLY KNOWN AS REMAINDER OF FARM 961), TRUMALI STREET, STELLENBOSCH

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	VARY	X	REVOKE
<p>THE DECISION OF THE AUTHORISED DECISION MAKER, ON THE 02nd OF JUNE 2020, TO APPROVE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR CONSENT USE AND AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN: ERF 16523 (PREVIOUSLY KNOWN AS REMAINDER OF FARM 961), TRUMALI STREET, STELLENBOSCH</p>			
<p>1. The abovementioned appeal refers.</p> <p>2. The Authorised Decision maker, on the 02nd of June 2020, approved in whole, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for the erection of a 25 m high freestanding cellular communication based station (FSBTS), disguised as a tree Mast, and for the amendment of the approved SDP (Annexure A).</p> <p>3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015).</p>			

MS



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4. Ms Nelmari Williams lodged an appeal on behalf of the Ward 21 Committee in terms of Section 79(2) of the By-Law, with the Municipality on the 23rd of June 2020, against the decision of the Authorised Decision maker (**Annexure B**).
5. The appeal assessment report was drafted based on all documentation provided.
6. In order to comply section 81 (6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making, however as the report was completed during the National Lockdown period, the report was forwarded electronically to all relevant parties on the 12th of November 2020.
7. Mr Adriano Rodrigues from WPP Town and Regional Consultants , on the 18th of November 2020 submitted comments in respect of the appeal assessment report, where after all documentation was handed over to the Appeal Authority for decision making (**Annexure C**).
8. After careful consideration of the written appeal, as well as all the relevant documents, information and submissions made available to me as Appeal Authority, I have decided, in terms of Section 81(7) (b) of the By-Law to **VARY** the decision of the Authorised Decision maker attached and marked as **Annexure A** and replace the following :
 - 8.1. Paragraph 2.1.1 - Consent use in terms of Section 15(2) (o) of the said Bylaw to allow for the erection of **20m** high freestanding base telecommunication station.
 - 8.2. Paragraph 2.1.2 - Amendment of an approved Site Development Plan in terms of Section (15)(h)of the said Bylaw as shown on drawing number Trumali (sheet 2 of 8), drawn by A. Rodrigues (WPP Town and Regional Planning Consultants), dated 09 November 2017, to include the erection of a **20m** high freestanding base telecommunication station.



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8.3. Paragraph 2.3(i) - The type of the freestanding base telecommunication must be a tree mast.

REASONS FOR THE DECISION

1. The objectives, guidelines and requirements laid down in the Stellenbosch Telecommunications Mast Infrastructure Policy serves as a guideline for decision making, but every application must be considered on its own merit. The said policy specifically recognises that potential visual impact on human health and wellbeing are two overriding concerns of the public and the approach to be taken is to protect the visual character and impact as far as possible.
2. The visual impact assessment states that the base station and mast would not fit in with the existing character, but can be mitigated by limiting it to 20 m. It is absolutely demonstrated by the visuals in Annexure A of the of the appeal assessment report which is the land use application of WPP planning.
3. In an area with office park buildings, a 25 m mast will appear overbearing and not in keeping with the character of the area. It will detract from the aesthetic quality of the immediate area.
4. A tree mast will furthermore mitigate the visual effect of the 20m high freestanding mast.
5. Hence, whilst recognising the importance of the service to be provided in a modern society, it is of the utmost importance to mitigate the visual impact as far as possible in order to protect and preserve the present character. The Stellenbosch Heritage Survey 2018, underlines this principle.

SIGNATURE:  DATE: 13/07/2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 2



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE DECISION OF THE AUTHORISED DECISION MAKER TO REFUSE THE APPLICATION FOR A TEMPORARY DEPARTURE: FARM 334/5, STELLENBOSCH DIVISION

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	X	VARY		REVOKE	
<p>THE DECISION OF THE AUTHORISED DECISION MAKER, ON THE 28TH OF MAY 2020, TO REFUSE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR A TEMPORARY DEPARTURE: FARM 334/5, STELLENBOSCH DIVISION</p>					
<p>1. The abovementioned appeal refers.</p>					
<p>2. The Authorised Decision maker on the 28th of May 2020, refused, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application to establish a camping site consisting of 38 sites (Annexure A).</p>					
<p>3. Mr. Wagener Hanekom from TV3 Town Planners lodged an appeal in terms of Section 79(2) of the By-Law, with the Municipality on the 17th of June 2020, against the decision of the Authorised Decision maker (Annexure B).</p>					
<p>4. The appeal assessment report was drafted based on all documentation provided.</p>					
<p>5. In order to comply section 81(6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover</p>					



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to the Appeal Authority for consideration and decision making, however as the report was completed during the National Lockdown period, the report was respectively forwarded electronically to all relevant parties on the 09th and the 13th of November 2020.

6. The Stellenbosch Interest Group (SIG), submitted their comments in respect of the appeal assessment report on the 20th of November 2020 where after all documentation was handed over to the Appeal Authority for consideration and decision making (**Annexure C**).

7. After careful consideration of the written appeal, as well as all the relevant documents, information and submissions made available to me as Appeal Authority, I have decided, in terms of Section 81(7) (b) of the By-Law, that the appeal submitted against the refusal of the Authorised Decision maker on the 28th of May 2020 of the application for a temporary departure to to establish a camping site consisting of 38 sites on Farm 334/5 Stellenbosch Division, **BE DISMISSED** and that the following decision **BE CONFIRMED** in terms of section 81 (7) (b) of the Stellenbosch Municipal Land Use Planning By-law, 2015.

REASONS FOR THE DECISION

1. The Jonkershoek is of an area with an agricultural, rural and scenic character and the conservation of biodiversity in this area is of importance. Agri-tourism can be approved, but is not a primary right. It should only be permitted if it is complimentary and not affecting the rural and agricultural character of the area.

2. The proposed camping site will result in the increase in noise levels generating from the property in daytime and nighttime. Inadequate noise mitigating measures was submitted in the application.



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3. The application area will be visible from Jonkershoek Road and will detract from the agricultural rural character.
4. It is highly unlikely that the proposed landscaping will serve as a noise barrier between the possible noise source (the camping site) and the noise sensitive area (agricultural area and residential dwellings) and would mitigate the noise impact at night from the camping site.
5. The effect of light pollution has also not been addressed effectively by the application and would have a detrimental negative impact on the rural gateway to the valley at night.
6. The proposal is in conflict with the Jonkershoek Spatial Development Framework, as the subject property falls within the agricultural precinct of Jonkershoek and should be maintained, as it is seen as the "gateway" to the Valley.
7. The proposal will not be compatible with the rural and scenic character of the area, as no overnight facilities are prevalent in the area. All similar uses are located in close proximity of the Jonkershoek Nature Reserve.
8. The grounds of appeal submitted by the appellant against the refusal of the Authorised Decision maker to allow for the establishment of a camping site comprising of 38 sites, are viewed as not sufficient grounds for the successful review of the decision.

SIGNATURE: _____

Gesie van Deventer

DATE: _____

19/07/2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 3



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015): APPLICATION FOR A REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, SPECIAL DEVELOPMENT AND DEPARTURES ON ERF 1197, STELLENBOSCH

DECISION OF APPEAL AUTHORITY

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	X	VARY		REVOKE	
<p>THE DECISION OF THE AUTHORISED OFFICIAL OF 25 AUGUST 2020 TO REFUSE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, AN APPLICATION FOR A SPECIAL DEVELOPMENT AND VARIOUS DEPARTURES ON ERF 1197, STELLENBOSCH</p>					
<p>A: BACKGROUND</p>					
<ol style="list-style-type: none"> 1. The abovementioned appeal refers. 2. The Authorised Official on 25 August 2020, refused, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for a special development to use a portion of the dwelling for a home-enterprise and departures in terms of the height and floor factor (Annexure A). 3. The Municipality received an appeal in respect of the abovementioned application in terms of Section 79(2) of the Stellenbosch Municipality By-Law against the decision of the Municipal Planning Tribunal. 4. The appeal assessment report was drafted based on all documentation provided. 					



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5. In order to comply with section 81(6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making and the report was forwarded electronically to all relevant parties on the 8th of February 2021.
6. The applicant, Arch Town Planners submitted their comments in respect of the appeal assessment report where after all documentation was handed over to the Appeal Authority for consideration and decision making.
7. Arch Town Planners requested an oral hearing which was held on 21 May 2021.
8. A site inspection of the property took place on the 6th of July 2021.
9. After careful consideration of the written appeal, as well as all the relevant documents, information and submissions made available to me as Appeal Authority, I have taken the following decision.

B. APPEAL RESOLUTION

1. The appeal submitted against the refusal by the Authorised Official on 25 August 2020 of the application for a special development to use a portion of the dwelling for a home-enterprise and departures in terms of height and floor factor on Erf 1197, Stellenbosch, **BE DISMISSED** and that the subject decision **BE CONFIRMED** in terms of section 81(7)(b) of the Stellenbosch Municipal Land Use Planning By-law, 2015, as follows:



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- a) The special development in terms of Section 15(2)(o) of the said Bylaw for the utilization of a portion of the dwelling house for purpose of a home-enterprise of $\pm 45,1\text{m}^2$ (medical consulting rooms); and
- b) The departure in terms of Section 15(2)(b) of the said Bylaw to permit a portion of the building to be 3 storeys in lieu of 2 storeys and to permit a floor factor of 0.65 in lieu of 0.63.

NOT BE APPROVED in terms of Section 60 of the said Bylaw.

2. The above decision was made for the following reason(s) in terms of section 81(7)(c) of the said By-law:

- a) The proposed development (home-enterprise) does not conform to all the special conditions listed in the zoning scheme for special developments of this nature as the medical consulting rooms will not only be operated by the owner/resident of the property.
- b) The use of the property for medical consultation rooms, which is not operated by the owner, is best suited on a property which is zoned for business purposes.
- c) The proposed activity will have a detrimental impact on the character of the surrounding area as patients/clients will be parked in the street due to the fact that no sufficient parking will be available on the subject property.
- d) The height restriction of buildings on single residential zone properties is two storeys (ground floor plus first floor) only and the applicant failed to motivate the need for a third storey.
- e) The departure for the increase in height and total floor area, as well as the home-enterprise, represents an overdevelopment of a single residential zone property which will have a detrimental impact on the character of the area (overspill of parking in the street).



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- f) Such use does not fall within the ambit of a home occupation but rather office use and such scale of use will also result in parking requirements which can readily not be accommodated on the site.
- g) It is thus held that the original municipal assessment in respect of these grounds of appeal was accurate and rational and that the appeal does not provide compelling grounds to review this decision.

SIGNATURE: *Gesie van Deventer* DATE: 13.08.2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 4



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTURE ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTION 52, 53, 54 AND 71 OF FARMS NO. 510, STELLENBOSCH (LU/8567)

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM		VARY		REVOKE	X
<p>THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL, ON THE 12TH OF DECEMBER 2021, TO REFUSE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTURE ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTION 52, 53, 54 AND 71 OF FARMS NO. 510, STELLENBOSCH (LU/8567)</p>					
<p>1. The abovementioned appeal refers.</p>					
<p>2. The Municipal Planning Tribunal, on the 12th of December 2020, Refused, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for a Group Housing Estate(See ANNEXURE 1).</p>					
<p>3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015).</p>					
<p>4. Mr. Justin Truter from Werksmans Attorneys lodged an appeal on behalf of Blaauwklippen Agricultural Estates in terms of Section 79(2) of the By-Law, with the</p>					



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Municipality on the 21st of December 2020, against the decision of the Municipal Planning Tribunal.

5. The appeal assessment report was drafted based on all documentation provided.
6. In order to comply section 81(6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making, however as the report was completed during the National Lockdown period, the report was forwarded electronically to all relevant parties on the 18th of March 2021.
7. Comments relating to the appeal assessment report were received from Professor Eggers on behalf of Friends of the Stellenbosch Mountain on the 23rd of March 2021. Further comments were received from Mr Justin Truter from Werksmans Attorneys on the 14th of April 2021, where after all documentation was handed over to the Appeal Authority for decision making.
8. An oral hearing was requested by Professor Eggers from the Friends of the Stellenbosch Mountain as well as Mr Clifford Heyes from TV 3 Planners to be heard prior to the Appeal Authority taking a decision in respect of the appeal. The oral hearing was granted and subsequently took place on the 27th of May 2021 where all relevant parties attended, including Professor Eggers, Mr Heyes and Mr February on behalf of Jamestown Erfenis.
9. The Appeal authority carefully considered all relevant documents, the written appeal, information and submissions made during the oral hearing and listened to the recording of the MPT meeting. Having weighed the merits and demerits off all this information, the Appeal Authority, decided, in terms of Section 81(7) (b) of the Stellenbosch Municipality Land Use Planning By-Law to **UPHOLD** the appeal and



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REVOKE the decision of the Municipal Planning Tribunal dated 27 November 2021 to refuse the Application for Consolidation, Subdivision, Rezoning, Departure Establishment of Home Owners Association, Approval Of Development Name, Approval of Site Development Plan, Allocation Of Street Names, Approval of the Architectural and Landscaping Guidelines: Portion 52, 53, 54 And 71 of Farms No. 510, Stellenbosch.

10. That the decision of the Stellenbosch Municipal Planning Tribunal **BE REPLACED** in terms of section 81(9) (b) of the Stellenbosch Municipality Land Use Planning Bylaw(2015) with the following decision:

10.1 That the application for:

- a. The consolidation of Portions 52, 53, 54 and 71 of the Farm No. 510, Stellenbosch Division in terms of Section 15(2)(e).
- b. the rezoning of the consolidated property from Agricultural Zone I to Sub-divisional area for 55 Residential Zone III (townhouses) erven and 1 Residential Zone IV erf (24 flat units), 2 Private Open Space erven (1 private road and 1 private open space) and 1 Transport Zone II erf (public road widening purposes) in terms Section 15(2)(a).
- c. The subdivision of the consolidated property into 59 erven, namely 55 Residential Zone III (townhouses) erven and 1 Residential Zone IV erf (24 flat units), 2 Private Open Space erven (1 private road and 1 private open space) and 1 Transport Zone II erf (public road widening purposes) in terms of Section 15(2)(d).
- d. Departure on the Residential Zone IV erf to relax the internal side building lines from 4m to 3m and the street building line from 8m to 3m in terms of Section 15(2)(b).

BE APPROVED in terms of section 60 of the Bylaw, and subject to conditions of approval in terms of section 66(1) of the said Bylaw.



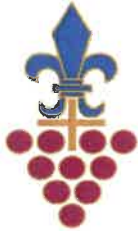
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CONDITIONS OF APPROVAL

- a. The approval applies only to the consolidation, rezoning, subdivision, departures, establishment of Home Owners Association, approval of the estate name and allocation of street names and numbers in question (See **ANNEXURE 2**) and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council and external departments;
- b. Erf diagrams/general plans must be submitted to the municipality for record purposes.
- c. The approvals will lapse if not implemented within 5 years from final notification.
- d. A Home Owners Association is established in terms of Section 29(1) of the Land Use Planning By-law, 2015.
- e. The constitution of the Home Owners Association be submitted to the Director: Planning and Economic Development for approval and which constitution must make provision for the matters provided for in Section 29(3) of the Land Use Planning By-law, 2015.
- f. Submit the final detailed Architectural and Landscaping Guidelines for the Blaauwklip-aan-Rivier Residential Estate to the Director: Planning and Economic Development for approval.
- g. The final Site Development and Landscaping Plan, indicating the street names Blaauwklip Avenue, Malbec Close, Zinfandel West Street, Zinfandel East Close, Pinot West Street, Pinot East Close, Merlot West Street and Merlot East Close to the internal private roads and the allocation of street numbers be submitted to the Director: Planning and Economic Development for approval.
- h. Should any heritage resources, including evidence of graves and human burials, archaeological material and paleontological material be discovered during the execution of the activities above, all works must be stopped immediately, and Heritage Western Cape must be notified immediately.
- i. Adhere to the conditions of approval from the **National Department of Water and Sanitation** in their letter dated 05/07/2019 (See **ANNEXURE 3**).



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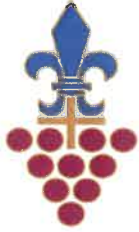
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- j. Adhere to the conditions of approval from **Eskom** in their letter dated 08/07/2019 (See **ANNEXURE 4**).
- k. That the applicant conclude an engineering services agreement with the municipality which service agreement must contain and be in compliance with all the conditions of approval from the **Municipal Directorate Infrastructure Services** in their memorandum dated 01/07/2020 (See **ANNEXURE 5**) and to the satisfaction of the Director Infrastructure Services.
- l. Development charges is payable and which contributions will be calculated in terms of the relevant policy and the prevailing tariff structure for such development contributions at the time of payment of the applicable charges.

REASONS FOR THE DECISION

1. The site is located within the Stellenbosch urban edge and has been since 2010. The Municipality has throughout the last ten years not changed this status, hence the site remains inside the proclaimed urban edge.
2. Heritage Western Cape endorsed the Stellenbosch Heritage Inventory but in spite of it, stated in their impact assessment the development will not impact on the heritage resources.
3. The development is supported by Western Cape Agricultural Department.
4. The development is not inconsistent with the Stellenbosch Municipal Spatial Development Framework (MSDF).
5. An important site specific circumstance is presented in the fact that this site was "urbanised" and lost its rural and agricultural character through an illegal invasion, changing it to an informal residential area that lasted for a period of over 20 years. This factor distinguishes this erf from the other water erven that remained rural and agricultural to some extent.
6. The site is only 2.4 hectares and not a viable agricultural unit, and after 20 years of residential use no longer of agricultural nature.
7. The La Clemence development, which is a similar development, was approved next to the proposed development.



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8. This decision will not create a precedent as every application has to be judged on its own merits.

SIGNATURE: Adv. Gesie van Deventer DATE: 13/07/2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 5



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE DECISION OF THE AUTHORISED DECISION MAKER TO APPROVE THE APPLICATION FOR REZONING AND DEPARTURE: ERF 1628, DE LA REY STREET, FRANSCHHOEK(LU/7650)

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	X	VARY		REVOKE	
<p>THE DECISION OF THE AUTHORISED DECISION MAKER, ON THE 04TH OF JUNE 2020, TO APPROVE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR REZONING AND DEPARTURE: ERF 1628, DE LA REY STREET, FRANSCHHOEK</p>					
<p>1. The abovementioned appeal refers.</p> <p>2. The Authorised Decision Maker, on 4 June 2020, approved in whole, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application to utilize the property as a guesthouse (Annexure A).</p> <p>3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015).</p> <p>4. Mr. Jan Hanekom an appeal lodged an appeal in terms of Section 79(2) of the By-Law, with the Municipality on 22 June 2020, against the decision of the Authorised Employee (Annexure B).</p>					



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5. The appeal assessment report was drafted based on all documentation provided.
6. In order to comply section 81 (6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making, however as the report was completed during the National Lockdown period, the report was forwarded electronically to all relevant parties on the 10th of February 2021. It should be noted that no comments were received in respect of the appeal assessment report, which was subsequently handed over to the Appeal Authority for consideration.
7. After careful consideration of the written appeal, as well as all the relevant documents, information and submissions made available to me as Appeal Authority, I have decided, in terms of Section 81(7) (b) of the By-Law, that the appeal submitted against the approval by the Authorised Decision maker on the 04th of June 2020 for the the application for rezoning and departure to permit to utilise the property as a guest house on Erf 1628 Franschhoek, **BE DISMISSED** and that the following decision **BE CONFIRMED** in terms of section 81(7) (b) of the Stellenbosch Municipal Land Use Planning By-law, 2015.

REASONS FOR THE DECISION

1. The application was submitted to Stellenbosch Municipality on 6 April 2018. The Stellenbosch Municipality Zoning Scheme By-law, 2019 was adopted by Council on 29 May 2019 and was implemented in the Municipality on 1 November 2019. Section 8 of the 2019 By-law clearly states that any application in terms of a former zoning scheme submitted prior to the implementation of this Scheme and which is still in process at the date of



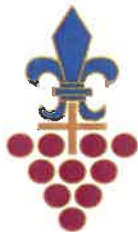
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commencement of this Scheme, will be assessed and finalised within the provisions of such former zoning scheme, unless the applicant has informed the Municipality in writing of the withdrawal of the application.

2. The applicant did not withdraw the application and the application was thus evaluated and finalised in terms of the Franschhoek Town Planning Scheme Regulations.
3. The Stellenbosch Municipality Zoning Scheme By-law, 2019 can, however, be referenced in order to understand the current thinking of the Municipality in respect of land use planning. Whilst a guesthouse is permitted as a consent use under the Single Residential zoning in terms of the 2019 By-law, it should be noted that the definition of a guesthouse specifically precludes self-catering facilities.
4. A tourist dwelling unit, also permitted as a consent use under the Single Residential zoning, does, however, permit the rental of a furnished dwelling house and/or second dwelling for the accommodation of transient guests, where accommodation is only provided on a self-catering basis. The current proposal for three self-catering units, would, therefore, not comply with this definition and would necessitate a rezoning.
5. Although the scale of the proposal has been reduced, by way of decreasing the number of residential units to three and the height to a single storey, the coverage of the building remains high, necessitating several substantial building line departures. Notwithstanding this, it is possible to approve guesthouses by way of rezoning to General Residential (with departures) and several guesthouses were approved in the surrounding area.
6. The Planning Report states that provided a guesthouse remains residential in nature, it will not significantly alter the character of the area. Moreover, it is said, that the location of the property in close proximity to the CBD makes it a suitable location for tourist related activities.




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7. However, the main reason for refusing the application, is that the proposed rental of the individual units as an Airbnb guest house facility does not comply with the definition of a 'residential building', which specifically precludes dwelling units and a block of flats.
8. Although the rezoning to General Residential is deemed to be correct, the purpose for which the buildings may be erected and used should have been for a block of flats rather than a residential building, or guest house facility as was advertised for comment.
9. On the balance of all considerations, the original decision by the Authorised Decision maker is considered rational and reasonable. Although the proposed use of a guest house is not considered to be undesirable within the specific location, the development proposal which are in effect a total of three self-catering units cannot be permitted within the definition applied for and the original decision should be confirmed, for the following reasons:
 - 9.1 The decision is rationally connected to the information contained in the application and the municipal assessment of the application.
 - 9.2 The appellant did not provide any compelling arguments or new information that warrants an alternative decision on the matter.

SIGNATURE:  DATE: 19/07/2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 6



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015): APPLICATION FOR A REMOVAL OF RESTRICTIVE CONDITIONS, CONSOLIDATION, REZONING AND DEPARTURES: ERVEN 2151, 2152, 2153 AND 11191, STELLENBOSCH

DECISION OF APPEAL AUTHORITY

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	VARY	X	REVOKE
THE DECISION OF THE AUTHORISED DECISION MAKER, ON THE 3rd of NOVEMBER 2020 AND THE 21st of JANUARY 2021, TO APPROVE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, AN APPLICATION FOR A REMOVAL OF RESTRICTIVE CONDITIONS, CONSOLIDATION, REZONING AND DEPARTURES: ERVEN 2151, 2152, 2153 AND 11191, STELLENBOSCH			
A: BACKGROUND			
<ol style="list-style-type: none"> 1. The abovementioned appeal refers. 2. The Authorised Decision maker on the 23rd of October 2020 (as communicated on 3 November 2020) and the 21st of January 2021, partly approved, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application to allow the development of residential apartments (Annexure A). 3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015). 			



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4. The Municipality received 15 appeals in respect of the abovementioned application in terms of Section 79(2) of the Stellenbosch Municipality By-Law against the decision of the Authorised Employee (**Annexure B**).
5. The appeal assessment report was drafted based on all documentation provided.
6. In order to comply with section 81(6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making and the report was forwarded electronically to all relevant parties on the 13th and the 14th of May 2021.
7. Mr Maritz, Mr Botha, Mr Truter, Mr Hugo and Ms Smart submitted their comments in respect of the appeal assessment report where after all documentation was handed over to the Appeal Authority for consideration and decision making (**Annexure C**).
8. After careful consideration of the written appeal, as well as all the relevant documents, information and submissions made available to me as Appeal Authority, I have taken the following decision.

B. APPEAL RESOLUTION

1. The appeal submitted against the approval by the authorised decision maker on 23 October (communicated on 3 November 2020) and 21 January 2021 of the application for a removal of restrictive conditions, consolidation, rezoning and departures to permit the development of residential apartments on Erven 2151, 2152, 2153 & 11191, Stellenbosch, **BE UPHELD** and that the subject decision **BE VARIED** in terms of section 81(7) (b) of the Stellenbosch Municipal Land Use Planning By-law, 2015, as follows:



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1.1 That the following applications in terms of the Stellenbosch Municipal Land Use Planning By-Law (2015), for the proposed development of town housing on erven RE 2151, 2152, 2153 and 11191, Stellenbosch:

- a) The **consolidation**, in terms of Section 15(2)(e) of the Stellenbosch Municipal Land Use Planning By-Law (2015), of the following properties, to create an unregistered property of $\pm 4\,059\text{m}^2$ in size consisting of Rem Erf 2151, Erf 2152, Erf 2153 & Erf 11191, Stellenbosch;
- b) The **rezoning** of the unregistered consolidated property, in terms of Section 15(2)(a) of the Stellenbosch Municipal Land Use Planning By-Law (2015), from Single Residential Zone to Group Housing to accommodate a town housing development;
- c) The **removal of the following restrictive title deed conditions**, in terms of Section 15(2)(f) of the Stellenbosch Municipal Land Use Planning By-Law (2015):

Property Description	Title Deed	Removal Condition No.
Re/Erf 2151 Stellenbosch	T37247/2009	H
		J(G)
		I(iv)(d)
		I(iv)(b)
		I(iv)(c)
		I(ii)
		I(iii)
		J(D)
		J(E)
		J(F)
Erf 2152 Stellenbosch	T24042/2011	H
		J(g)
		I(iv)(d)
		I(iv)(b)
		I(iv)(c)
		I(iv)(a)



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			I(ii) F G I(iii) J(d) J(e) J(f)
Erf 2153 Stellenbosch	T37432/2010		E F(II)(4)(7) F(I)(4)(d) F(I)(4)(b) F(I)(4)(c) F(I)(4)(a) F(I)(2) F(I)(3) F(II)(4) F(II)(5) F(II)(6)
Erf 11191 Stellenbosch	T35568/2012		H J(7) F G I(4)(d) I(4)(b) I(4)(c) 3 I(2) J(4) J(5) J(6)

BE APPROVED in terms of Section 60 of the said Bylaw and subject to conditions of approval in terms of Section 66 of the said Bylaw.

1.2 That the following applications in terms of the Stellenbosch Municipal Land Use Planning By-Law (2015), for the proposed development of town housing on erven RE 2151, 2152, 2153 and 11191, Stellenbosch:

- a) A **permanent departure**, in terms of Section 15(2)(b) of the Stellenbosch Municipal Land Use Planning By-Law (2015), pertaining to the provisions of Section 10.2.3(c) of the Stellenbosch Zoning Scheme Regulations (1996), to



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permit a height of 3 storeys, in lieu of 2 storeys and to permit a height of 9.79m in lieu of 8.0m, for residential units within a Group Housing Zone to accommodate a town housing development;

- b) A **permanent departure**, in terms of Section 15(2)(b) of the the Stellenbosch Municipal Land Use Planning By-Law (2015), pertaining to the provisions of Section 10.3.3(e)(ii) of the Stellenbosch Zoning Scheme (1996), to permit a density of 103 units per ha, in lieu of 50 units per hectare within a Group Housing Zone to accommodate a town housing development comprised of 42 units;
- c) A **permanent departure**, in terms of Section 15(2)(b) of the the Stellenbosch Municipal Land Use Planning By-Law (2015), pertaining to the provisions of Section 10.2.3(a)(i) of the Stellenbosch Zoning Scheme (1996), to allow the following building lines:
- (i) A street building line of 1m in lieu of 5m, to accommodate the proposed wooden deck only;
 - (ii) A lateral building line of 1m in lieu of 3m, to accommodate the proposed wooden deck only;
 - (iii) A lateral building line of 0m, to accommodate a refuse area as required by the Municipality;

NOT BE APPROVED in terms of Section 60 of the said Bylaw.

1.3 Conditions of approval

- 1.3.1 The approval applies only to the application in question and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council.



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- 1.3.2 The basement parking area may not protrude above ground level at any point of the subject properties.
- 1.3.3 The refuse room be relocated / placed on the north western side of the property adjoining the servitude area and still complies to the street building line.
- 1.3.4 A boundary wall be constructed along Schoongezicht that complies with the current parameters applicable to a street boundary wall. (Stellenbosch Municipality Zoning Scheme By-Law, 2019).
- 1.3.5 An Urban Designer be formally appointed by the applicant at his cost to undertake an urban design study to aid in reducing the impact of the building on the surrounding area.
- 1.3.6 A revised Site Development Plan with detailed landscaping plan be submitted for approval by the Director: Planning and Economic Development which is endorsed by the urban designer.
- 1.3.7 The revised landscaping plan to include sidewalk planting plan but also make provision for pedestrian movement on the sidewalk area of Schoongezicht Street.
- 1.3.8 The applicant submits an electronic copy (shp, dwg, dxf) or A4 hard copy of the SG diagrams, which was preliminary approved by the SG. The following information be indicated:
 - (a) Newly allocated Erf Numbers;
 - (b) Co-ordinates;
 - (c) Survey Dimensions.
- 1.3.9 The consolidated property be registered with the Deeds Office prior to building plan approval being granted by the Building Department.
- 1.3.10 The building plans may only be submitted once the revised Site Development Plan has been approved.
- 1.3.11 That the conditions imposed by the Director: Infrastructure Services in its memo dated 10 December 2019 be adhered to as attached as Appendix G.



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1.3.12 That development contributions are payable before the approval of building plans for the new building and which amount will be calculated in accordance with the approved council tariffs in force at the time of payment.

1.4 The above decision was made for the following reason(s) in terms of section 81(7)(c) of the said By-law:

1.4.1 The proposed infill development adheres to the general recommendations in the MSDP for densification for the subject area and can be supported.

1.4.2 The specific properties are well located with good access for the intended redevelopment and densification.

1.4.3 The proposed departures for height, density as well as building lines will however result in the over-development of the subject properties to the extent that it will have a detrimental impact on the area and adjoining properties.

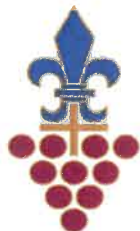
SIGNATURE: *Adv. Gesie van Deventer* DATE: 28/07/2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 7



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL TO APPROVE THE APPLICATION FOR SUBDIVISION, CONSOLIDATION, REZONING AND AMENDMENT OF THE MUNICIPAL URBAN EDGE: ERF 2175, KAYAMANDI

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81 (7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	X	VARY		REVOKE	
<p>THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL , ON THE 27TH OF NOVEMBER 2020, TO APPROVE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR SUBDIVISION, CONSOLIDATION, REZONING AND AMENDMENT OF THE MUNICIPAL URBAN EDGE: ERF 2175, KAYAMANDI</p>					
<ol style="list-style-type: none"> 1. The abovementioned appeal refers. 2. The Municipal Planning Tribunal, on the 27th of November 2020, approved in whole, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for the upgrading of an existing informal settlement within Kayamandi (Annexure A). 3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015). 4. Mr. Roelof Feenstra from Feenstra Incorporated lodged an appeal on behalf of Moongate 144 Pty (Ltd) in terms of Section 79(2) of the By-Law, with the Municipality on the 22nd of December 2020, against the decision of the Authorised Employee (Annexure B). 5. The appeal assessment report was drafted based on all documentation provided. 6. In order to comply section 81 (6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover 					



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to the Appeal Authority for consideration and decision making, however as the report was completed during the National Lockdown period, the report was forwarded electronically to all relevant parties on the 07th of June 2021.

7. Mr Feenstra from Feenstra Incorporated, submitted his comments in respect of the appeal assessment report on the 14th of June 2021, where after all documentation was handed over to the Appeal Authority for decision making (**Annexure C**).
8. After careful consideration of the written appeal, as well as all the relevant documents, information and submissions made available to me as Appeal Authority, I have decided, in terms of Section 81(7) (b) of the Stellenbosch Land Use Planning By-Law (2015) to **CONFIRM** the decision of the Municipal Planning Tribunal.

REASONS FOR THE DECISION

1. The proposed development will formalise an existing informal settlement.
2. The proposal is not inconsistent with the provincial and municipal policies and legislation.
3. The proposal will result in the implementation of basic services, including the construction of roads.
4. The application is consistent with the Stellenbosch Spatial Development Framework (SDF).

SIGNATURE:  DATE: 13/07/2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

APPENDIX 8



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015): APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, REZONING, SUBDIVISION, PHASING, STREET NAME AND NUMBERING AND DEPARTURE: ERF 1692, FRANSCHHOEK

DECISION OF APPEAL AUTHORITY

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM		VARY		REVOKE	X
<p>THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL, ON THE 26th of JUNE 2020, TO APPROVE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, AN APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, REZONING, SUBDIVISION, PHASING, STREET NAME AND NUMBERING AND DEPARTURE: ERF 1692, FRANSCHHOEK</p>					
<p>A: BACKGROUND</p>					
<ol style="list-style-type: none"> 1. The abovementioned appeal refers. 2. The Municipal Planning Tribunal, on 26 June 2020 as communicated on 18 August 2020, approved in whole, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for Application for Removal of a Restrictive Title Deed Condition, Rezoning, Subdivision, Phasing, Street Name and Numbering and Departure: Erf 1692, Franschhoek for a Residential Development (Annexure A). 					



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3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015).
4. The Municipality received an appeal from the Franschhoek Aggrieved Land Claims Group in respect of the abovementioned application in terms of Section 79(2) of the Stellenbosch Municipality By-Law against the decision of the Municipal Planning Tribunal (**Annexure B**).
5. The appeal assessment report was drafted based on all documentation provided.
6. In order to comply with section 81(6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making and the report was forwarded electronically to all relevant parties on the 01st of June 2021.
7. It should be noted that no comments were received in respect of the appeal assessment report.
8. The Appeal Authority requested an oral hearing to be scheduled which subsequently took place on the 26th of August 2021 where all relevant parties attended via MS Teams.
9. After careful consideration of the written appeal, and having regard to all the relevant documents, information and submissions made available to me as Appeal Authority, I have taken the following decision.



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B. APPEAL RESOLUTION

1. The appeal submitted by the Franschhoek Aggrieved Land Claims Group against the approval of the Municipal Planning Tribunal dated 26 June 2020 (communicated on 18 August 2020) of the application for Removal of a Restrictive Title Deed Condition, Rezoning, Subdivision, Phasing, Street Name and Numbering and Departure: Erf 1692, Franschhoek, **BE UPHELD** and that the subject decision **BE REVOKED** in terms of section 81(7)(b) of the Stellenbosch Municipal Land Use Planning By-law, 2015.

- 1.2 The above decision was made for the following reason(s) in terms of Section 81(7)(c) of the said By-law:
 - a) Section 79 of Stellenbosch Municipality Land Use Planning By-Law address appeals and Section 79(5) prescribes what the Appeal Authority MUST consider when deciding an appeal. Section 79(5)(a) stipulates that the Appeal Authority must have regard for Section 65 of the said By-Law.
 - b) Section 65 (1) of the By-Law prescribes the general criteria to consider an application. Section 65(1)(a) specifically states the following: "When the Municipality considers an application, the application must be submitted in terms of this By-Law".
 - c) Section 38 (b) of the Stellenbosch Municipality Land Use Planning By-Law states an application must be accompanied by the following information and documents and an agent MUST submit a power of attorney authorising the agent to make the application on behalf of the owner.
 - d) Section 38(c) of the By-Law specifically states if the landowner is a Trust, "...proof be provided that the person is authorised to act on behalf of the Trust".
 - e) Furthermore, Section 38(d) also requires proof of registered ownership. The Proof of ownership as envisaged in this subsection was submitted (**Annexure C**).



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- f) Consent was submitted as a power of attorney. The highlight of this is "Signatures" of some landowners/beneficiaries in control of land or authorised representatives". Some signatures appear on the consent document and a date of 23/08/2017 in the middle of the signatures. Nowhere is a reference to these names as being Trustees and no proof as envisaged in Section 38 (c) was submitted. There is also no reference to where this document was signed. **(Annexure D).**
- g) The document LETTERS OF AUTHORITY dated 27 July 2016 also does not assist as it was issued some time before the application was submitted **(Annexure E)**. This is particularly unacceptable as the subject property is the result of a land claim and belongs to a group of beneficiaries as spelled out in the Deed of Trust.
- h) It was argued that the Trustees has an open discretion to act on behalf of the Trust. However, a close look at, and interpretation of Sections 4,13 and 32 of the Trust Deed may not grant that authority to the Trustees **(Annexure F)**.
- i) Having regard for all of the above, cognisance should be taken that the Appeal Authority has a mandate and scope of authority to only act in terms of the provisions of the By-Law which is very prescriptive and mandatory in the information and documentation required in an application. These were not fulfilled as prescribed by Section 79,65 and 38 of the Stellenbosch Municipality Land Use Planning By-Law (2015).

SIGNATURE:  DATE: 01.10.2021

Adv. Gesie van Deventer

EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

10.5	REPORT IN TERMS OF SECTION 126 (4) OF THE MUNICIPAL FINANCIAL MANAGEMENT ACT: REASONS FOR THE DELAY IN COMPLETING THE AUDIT OF STELLENBOSCH MUNICIPALITY FOR THE FINANCIAL YEAR ENDED 30 JUNE 2021
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Collaborator No:

IDP KPA Ref No: Good Governance and Compliance

Meeting Date: Special Council: 10 December 2021

1. SUBJECT: REPORT IN TERMS OF SECTION 126 (4) OF THE MUNICIPAL FINANCIAL MANAGEMENT ACT: REASONS FOR THE DELAY IN COMPLETING THE AUDIT OF STELLENBOSCH MUNICIPALITY FOR THE FINANCIAL YEAR ENDED 30 JUNE 2021

2. PURPOSE OF REPORT

To notify Council on the communication received from the Auditor-General for the delay in completing the Audit of the municipality for the financial year ended 30 June 2021.

3. DELEGATED AUTHORITY

Municipal Council

4. EXECUTIVE SUMMARY

The Accounting Officer received notification from the Auditor General on the challenges currently being experienced with the audit, which leads to non-compliance with the legislative deadlines.

5. RECOMMENDATION

For Council notification.

6. DISCUSSION / CONTENTS

6.1 Background

In terms of section 126(4) of the Local Government: MFMA, the Auditor-General must promptly submit a report to the relevant municipality, outlining the reasons for the delay if the Auditor-General is unable to complete the audit within three months of receiving the financial statements from the Accounting Officer.

6.2 Discussion

Attached is the communication received from the Auditor-General.

6.3 Financial Implications

No financial implication.

6.4 Legal Implications

S126 (4) MFMA

6.5 Staff Implications

None

6.6 Previous / Relevant Council Resolutions

Item 16.1 – Council meeting: 2021-03-31

ANNEXUREANNEXURE A: Communication received from the Auditor-General **(TO BE DISTRIBUTED
UNDER SEPARATE COVER IN DUE COURSE)****FOR FURTHER DETAILS CONTACT:**

<i>NAME</i>	Kevin Carolus
<i>POSITION</i>	Chief Financial Officer
<i>DIRECTORATE</i>	Financial Services
<i>CONTACT NUMBERS</i>	021 808 8528
<i>E-MAIL ADDRESS</i>	kevin.carolus@ Stellenbosch.gov.za
<i>REPORT DATE</i>	10 December 2021

10.6	QUARTERLY REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE OF STELLENBOSCH MUNICIPALITY FOR THE PERIOD 01 JANUARY 2021 TILL 31 MARCH 2021
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Collaborator No:

File No:

IDP KPA Ref No: Good Governance

Meeting Date:

1. SUBJECT: QUARTERLY REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE OF STELLENBOSCH MUNICIPALITY FOR THE PERIOD 01 JANUARY 2021 TILL 31 MAY 2021

2. PURPOSE

To inform Council of the activities of the Audit Committee for the period 01 January 2021 till 31 March 2021 (3rd Quarter). The Minutes of the meeting held for this period mentioned is herewith attached as **APPENDIX 1** which outlines the activities of the Audit and Performance Audit Committee.

3. DELEGATED AUTHORITY

Audit and Performance Audit Committee reports to Council periodically.

4. EXECUTIVE SUMMARY

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

The Audit Committee has executed its duties and responsibilities during the period under review in accordance with its terms of reference as they relate to Council's accounting, internal auditing, internal control and financial reporting practices.

5. RECOMMENDATION

that Council take note of the concerns and the report of the Audit Committee for the period 01 January 2021 till 31 May 2021

6. DISCUSSION / CONTENTS

6.1 Background

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

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

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

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

6.2 Discussion

During this period the committee, amongst other matters, considered the following and would like to report the following in conjunction with the minutes of the meeting attached:

In respect of the external auditors and the external audit:

- Noted the delay experienced with concluding the AG reports and advised that meetings be held on planned dates irrespective of outstanding items from the AG. Special meetings should be scheduled to deal with outstanding matters.
- Noted that AG reports are currently not concluded on due technical matters surrounding SCM which have been submitted to National Treasury for clarity.

In respect of financial statements:

- Audit Committee reviewed the quarterly section 52 report for the 3rd quarter;
- Noted the salient factors that impacted on the performance for the quarter, such as the effect of Covid-19 on operating revenue;
- Noted the improvements made with the new demand management plan and the projected capital expenditure target of 90%.

In respect of internal control and internal audit:

- Reviewed critical and significant issues raised by the internal audit processes and the adequacy of corrective action in response to such findings as detailed in reports and follow-up reports;
- Noted the progress made with Internal Audit operational plan implementation and requested that Internal Audit highlight any risks in the event any emerge;
- Reviewed and recommended the Internal Audit Charter to Council for approval;
- Reviewed and recommended the Audit and Performance Audit Committee Charter for Council to approval;
- Reviewed the draft Combined Assurance Policy Framework.
- Noted the Quality Assurance Review conducted by an external independent service provider as required by the IIA Standards;
- Noted that Internal Audit will be conducting the year-end inventory review on behalf of the AG as a direct assistance engagement same as the previous financial year and that the AG would place reliance on the work of Internal Audit for the Inventory Review.

In respect of Pre-determined Objectives

- Noted the report in relation to Quarter 1 and 2 PDO's as reviewed by Internal Audit;
- Recommended to management that KPI formulation be reviewed to ensure ease of reporting in terms of accuracy and reliability.

In respect of risk management:

- Reviewed the fraud and risk management project plan;
- Noted the updated strategic and operational risk registers;

In respect of Investigations:

- Noted the updated fraud incidents register;
- Noted the feedback by the Municipal Manager;
- Raised concerns around the protection of personal information act (POPI) and recommended a policy be developed.

6.3 Financial Implications

As per the approved budget.

6.4 Legal Implications

The recommendations comply with legislation.

6.5 Staff Implications

N/A.

6.6 Previous / Relevant Council Resolutions

N/A

6.7 Risk Implications

N/A

6.8 Comments from Senior Management

The Municipal Manager and Senior Managers are in support of this item.

APPENDICES

Appendix 1: Minutes of the Audit and Performance Audit Committee Meeting dated 5 May 2021

FOR FURTHER DETAILS CONTACT:

NAME	<i>Faiz Hoosain</i>
POSITION	<i>Chief Audit Executive</i>
DIRECTORATE	<i>Municipal Manager's Office</i>
CONTACT NUMBERS	<i>021-808 8555</i>
E-MAIL ADDRESS	<i>Faiz.Hoosain@ Stellenbosch.gov.za</i>
REPORT DATE	

APPENDIX 1

CONFIDENTIAL



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2021-05-05

MINUTES

AUDIT AND PERFORMANCE AUDIT COMMITTEE MEETING [IN-COMMITTEE]

2021-05-05

[IN-COMMITTEE]

PRESENT: Dr NL Mortimer (Chairperson)
Mr V Botto (from 16:00)
Mr T Lesihla
Ms J Williams

Also Present: Councillor WF Pietersen

Office of the A-G: Ms L Klue-Knipe

Officials: Municipal Manager
Chief Financial Officer
Director: Corporate Services (till 16:00)
Director: Infrastructure Services
Acting Director: Community & Protection Services (C Kitching)
Chief Audit Executive
Senior Manager: Governance
Chief Risk Officer
Senior Internal Auditor
Manager: Financial Statements
Manager: IDP/PMS
Manager: Secretariat/Committee Services

1.	OPENING AND WELCOME
-----------	----------------------------

The Chairperson welcomed everyone present.

1.1	COMMUNICATION BY THE CHAIRPERSON
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The Chairperson confirmed that, as agreed, the Audit Committee had its In-Committee discussion on Monday, 03 May 2021. Serious concern was raised by the Audit Committee about the shifting of meeting dates, and it was agreed with Management that, henceforth, the schedule of meetings will be strictly adhered to, and if need be, additional meetings may be convened.

1.2	COMMUNICATION BY THE MUNICIPAL MANAGER
------------	---

The Municipal Manager thanked the Audit Committee for its understanding during the past number of months in terms of short notice changes to the meeting schedule, but reiterated that, going forward, the meetings will take place as scheduled.

[IN-COMMITTEE]

1.3	DISCLOSURE OF INTERESTS
------------	--------------------------------

NONE

It was noted that the necessary documentation in respect of Declaration of Interest and Confidentiality will be completed and signed by all Audit Committee members present.

2.	APPLICATIONS FOR LEAVE OF ABSENCE
-----------	--

The following apologies were tendered:

The Executive Mayor

Director: Planning and Economic Development

Director: Community & Protection Services

Mr V Botto --- to join the meeting at 16h00

Director: Corporate Services --- to be excused at 16h00

3.	CONFIRMATION OF MINUTES AND MATTERS ARISING
-----------	--

3.1	Confirmation of minutes The minutes of the Audit & Audit Performance Committee held on 2020-12-07. (APPENDIX 1)
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The minutes of the Audit and Performance Audit Committee held on 2020-12-07 were **confirmed as correct.**

3.2	MATTERS ARISING FROM PREVIOUS MINUTES / ACTION POINTS FOR CONSIDERATION
------------	--

AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 3.2

NOTED

that all the previous action points have been actioned.

[IN-COMMITTEE]

4.	AUDITOR-GENERAL
	NONE

5.	FINANCIAL STATEMENTS
5.1	Quarterly Budget Monitoring Report: 3 rd Quarter, 2020/21 (APPENDIX 2) FOR CONSIDERATION

AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 5.1

The Chief Financial Officer highlighted salient factors that impacted on the performance for the quarter, such as the effect of Covid-19 on operating revenue, as well as the depreciation charges that must still be factored into the operating expenditure totals. In comparison to the same quarter of the previous financial year, the actual operating revenue shows a significant improvement. Indications are that the annual Capex target of 90% is within reach. The CFO also mentioned that a committee has been established within the municipality to monitor the progress on capital expenditure and the implementation of the Demand Management Plan.

The Audit Committee highlighted the need for ongoing and thorough communication with the public, and that this constitutional imperative should not be skimmed on under the banner of "cost containment".

Management agreed with the Audit Committee's sentiment on communication, and assured the Audit Committee that communication with the public, as well as public participation requirements, are receiving the attention it demands; alternative modes of communication are utilized, electronic platforms are fully functional, social media and applications (apps) are optimally used, and these innovations -- along with efficiencies in utilizing printed media -- have contributed to a substantial cost reduction without compromising the scope, extent or quality of our communication.

RESOLVED

that the Quarterly Budget Monitoring Report: 3rd Quarter, 2020/21, be noted.

[IN-COMMITTEE]

6.	INTERNAL AUDIT AND INTERNAL CONTROL	
6.1	Internal Audit Progress Report FOR CONSIDERATION	(APPENDIX 3)

AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 6.1

The Chief Audit Executive spoke to the business processes that needed further clarification, such as the following:

- DORA Compliance: this process will be handled in line with the expanded combined assurance framework, and by engaging all assurance providers.
- A-G Follow-up Review: will be done as soon as the final Management Report comes to hand.
- Bi-annual Stores Stock take: As was the case the previous financial year, the A-G's Office' request for assistance from Internal Audit, is agreed to.
- Asset Management: The Municipal Manager requested that this process be deferred to the next financial year in favour of allocating time for an ad-hoc "Mont Rochelle Review", which has been identified as a potential risk area. (The Audit Committee acceded to the proposal of assigning time to the "Mont Rochelle Review".)

Mr Lesihla reminded Internal Audit of the absolute necessity to audit the Information Technology General Controls (ITGC) to ensure the integrity of the data and processes that the systems support.

The meeting noted that the Audit Committee Chairperson will meet with the Municipal Manager and the Chief Audit Executive to finalize outstanding matters relating to the annual Audit, as well as matters relevant to Internal Audit operations and support.

Several suggestions were proffered on how practical support can be rendered to the Executive Mayor (as the Appeal Authority) on the prep work and technical matters relating to the handling of such appeals, but the final position taken by the Audit Committee is that the status quo remains for now until further deliberation.

The Audit Committee remarked on the seemingly low performance to-date (2823 actual hours against 8060 budgeted hours), and requested that Audit Reports depict by way of a pie chart or graph the actual performance against the budgeted hours.

RESOLVED

- (a) that the Internal Audit Progress Report be noted;
- (b) that the status quo in terms of procedural arrangements with Council Appeal matters, be retained until further deliberation; and
- (c) that the Audit Committee Chairperson will meet with the Municipal Manager and the Chief Audit Executive to finalize outstanding matters relating to the annual Audit, as well as matters relevant to the Internal Audit function and support.

[IN-COMMITTEE]

6.2	Internal Audit Report: PDO's -- Quarter 1 & Quarter 2 FOR CONSIDERATION	(APPENDIX 4)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 6.2**RESOLVED**

that the Internal Audit Report: PDO's -- Quarter 1 & Quarter 2, be noted.

6.3	Draft Internal Audit Charter FOR CONSIDERATION	(APPENDIX 5)
-----	--	---------------------

AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 6.3

The Chief Audit Executive informed the meeting that the suggestions and inputs emanating from the Quality Assessment Review (QAR) have been incorporated; hence this revised Internal Audit Charter.

RESOLVED

that the Draft Internal Audit Charter be submitted to Council for approval.

6.4	Draft Audit and Performance Audit Committee Charter FOR CONSIDERATION	(APPENDIX 6)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 6.4

The Chief Audit Executive informed the meeting that the suggestions and inputs emanating from the Quality Assessment Review (QAR) have been incorporated; hence this revised Audit and Performance Audit Committee Charter.

RESOLVED

that the Draft Audit and Performance Audit Committee Charter be submitted to Council for approval.

[IN-COMMITTEE]

6.5	Draft Combined Assurance Policy Framework FOR CONSIDERATION	(APPENDIX 7)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 6.5

The Chief Audit Executive informed the meeting that, as per the Quality Assessment Review (QAR), the need exists for a Combined Assurance Policy Framework. Inputs from the Audit Committee and Management are now solicited; these inputs are ideally required by the end of June 2021, in order for same to be incorporated into the framework, whereafter a comprehensive final draft Combined Assurance Policy Framework will be submitted to the Audit Committee.

RESOLVED

that an updated Draft Combined Assurance Policy Framework be tabled at the first Audit Committee meeting after the end of June 2021.

7.	QUALITY ASSURANCE AND IMPROVEMENT	
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7.1	Quality Assurance Review Report	(APPENDIX 8)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 7.1

The Chief Audit Executive confirmed that the recommendations in the Quality Assurance Review Report in terms of improvements to the Internal Audit function, are conscientiously acted upon. The recommendations that warranted immediate intervention have already been effected. The responsibility of the Audit and Performance Audit Committee in relation to oversight of Enterprise Risk Management (ERM) is a moot point that will be discussed in an off-line session between the Chairperson, the Municipal Manager and the Chief Audit Executive.

RESOLVED

- (a) that the Quality Assurance Review Report, be noted; and
- (b) that the matter of Audit Committee representation in Enterprise Risk Management oversight, be determined in a separate in-Committee session between the Chairperson, the Municipal Manager and the Chief Audit Executive.

[IN-COMMITTEE]

8.	RISK MANAGEMENT AND ICT
8.1	Risk Assessment and Progress Report: Q2: Oct – Dec 2020 (APPENDIX 9) FOR CONSIDERATION

AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 8.1**RESOLVED**

that the Risk Assessment and Progress Report: Q2: Oct – Dec 2020, be noted.

8.2	Revised Strategic and Operational Risk Register 2021 ---- 13 Jan 2021 (APP 10) FOR CONSIDERATION
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 8.2

The Audit Committee is of the view that Business Continuity should be elevated to the status of a Strategic Risk (not purely an operational risk). Digital transformation is a matter that has to be high up on the agenda. The Audit Committee also suggested that one of its members (as was previously recommended) be included in the forum where business continuity and ICT-related matters are discussed.

Management noted the above inputs from the Audit Committee, and assured the Committee that several systems, processes and initiatives have been put in place to either mitigate or absorb the risk associated with ICT and Business Continuity. Initiatives such as e-services, digital and electronic communications, ICT systems, and financial system modifications have been developed and implemented incrementally since November 2017, which have proven to be adequate for managing the risk environment.

RESOLVED

- (a) that the Revised Strategic and Operational Risk Register 2021, be noted; and
- (b) that Mr T Lesihla, as representative of the Audit Committee, be invited to Risk Management engagements where enterprise risk- and ICT-related matters are discussed.

[IN-COMMITTEE]

9.	FRAUD RESPONSE COMMITTEE: INVESTIGATIONS AND FRAUD
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9.1	Fraud Management Report --- Q2: October – December 2020 (APPENDIX 11) FOR CONSIDERATION
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 9.1

It was noted that, due to the unfortunate shift in meeting dates, this report has become outdated; an updated report will be interrogated at the next meeting.

RESOLVED

that the Fraud Management Report --- Q2: October – December 2020, be noted.

9.2	Fraud Register Status Report: (Senior Managers and Municipal Manager) --- as at 31 December 2020 (APPENDIX 12)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 9.2

It was noted that, due to the unfortunate shift in meeting dates, this report has become outdated; an updated report will be interrogated at the next meeting.

RESOLVED

that the Fraud Register Status Report: Senior Managers, be noted.

9.3	Fraud Register Status Report: (Micro-Organisational structure --- as at 31 Dec 2020 (APPENDIX 13)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 9.3

It was noted that, due to the unfortunate shift in meeting dates, this report has become outdated; an updated report will be interrogated at the next meeting.

RESOLVED

that the Fraud Register Status Report: (Micro-Organisational structure), be noted.

[IN-COMMITTEE]

10.	DATE OF NEXT MEETING
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-05-05: ITEM 10

NOTED

that the date of the next meeting is 29 June 2021.

The meeting adjourned at 16:40.

CHAIRPERSON:

DATE:

Confirmed on **with/without amendments.**

10.7	QUARTERLY REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE OF STELLENBOSCH MUNICIPALITY FOR THE PERIOD 01 April 2021 TILL 30 JUNE 2021
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Collaborator No:

File No:

IDP KPA Ref No: Good Governance

Meeting Date: Special Council: 10 December 2021

1. SUBJECT: QUARTERLY REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE OF STELLENBOSCH MUNICIPALITY FOR THE PERIOD 01 APRIL 2021 TILL 30 JUNE 2021

2. PURPOSE

To inform Council of the activities of the Audit Committee for the period 01 April 2021 till 30 June 2021 (4th Quarter). The Minutes of the meeting held for this period mentioned is herewith attached as **APPENDIX 1** which outlines the activities of the Audit and Performance Audit Committee.

3. DELEGATED AUTHORITY

Audit and Performance Audit Committee reports to Council periodically.

4. EXECUTIVE SUMMARY

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

The Audit Committee has executed its duties and responsibilities during the period under review in accordance with its terms of reference as they relate to Council's accounting, internal auditing, internal control and financial reporting practices.

5. RECOMMENDATION

that Council takes note of the concerns and the reports of the Audit Committee for the period 01 April 2021 till 30 June 2021

6. DISCUSSION / CONTENTS

6.1 Background

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

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

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

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

6.2 Discussion

During this period the committee, amongst other matters, considered the following and would like to report the following in conjunction with the minutes of the meetings attached:

In respect of the external auditors and the external audit:

- Monitored the progress made with AG action plan and noted the presentation of the Senior Manager of the AG in relation to the overview of audit findings and noted that there were no material findings which resulted in the Municipality receiving a Clean Audit Outcome.
- Reviewed the Draft Management Report and noted the concerns raised by the AG relating to matters that could impact the municipality in future.
- Recommended that a credible action plan be drawn up and followed up by Internal Audit

In respect of financial statements:

- There were no AFS submissions for this meeting

In respect of internal control and internal audit:

- Reviewed critical and significant issues raised by the internal audit processes and the adequacy of corrective action in response to such findings as detailed in the reports and follow-up reports;
- Reviewed the progress made by Internal Audit in the execution of its operational plan and the delay with completion certain areas due to lockdown and approved certain roll overs.
- Approved the Operational Plan of Internal Audit for the 2020-2021 financial year.
- Reviewed the report from Internal Audit relating to Allowances and recommended that a Standard Operating Procedure (SOP) be developed.
- Reviewed the report from Internal Audit relating to ICT Governance and noted that the ICT Control environment was well managed and controls in place were effective.
- Noted the amendment to Municipal Structures Act and the revised role of MPAC.

In respect of Pre-determined Objectives

- Noted the reports in relation to Quarter 3 PDO's and Quarter 3 PDO's as reviewed by Internal Audit.
- Recommended that findings be structured to directly address the cause of the risk.

In respect of risk management

- Reviewed progress reports on Risk Management;
- Reviewed minutes of the Risk management Committee;
- Reviewed the updated and revised strategic and operation risk registers;
- Reviewed the Covid-19 Risk adjusted strategy and noted the control implemented by management.

In respect of Fraud, Investigations and Consequence management:

- Noted the risk and fraud management project plan;
- Noted the updated fraud allegations register and closure of resolved matters;
- Noted the comparative analysis year on year but requested only a summary of this for 1 year.

6.3 Financial Implications

As per the approved budget.

6.4 Legal Implications

The recommendations comply with legislation.

6.5 Staff Implications

N/A.

6.6 Previous / Relevant Council Resolutions

N/A

6.7 Risk Implications

N/A

6.8 Comments from Senior Management

The Municipal Manager and Senior Managers are in support of this item.

APPENDICES

Appendix 1: Minutes of the Audit and Performance Audit Committee Meeting dated 29 June 2021

FOR FURTHER DETAILS CONTACT:

NAME	<i>Faiz Hoosain</i>
POSITION	<i>Chief Audit Executive</i>
DIRECTORATE	<i>Municipal Manager's Office</i>
CONTACT NUMBERS	<i>021-808 8555</i>
E-MAIL ADDRESS	<i>Faiz.Hoosain@stellenbosch.gov.za</i>
REPORT DATE	

APPENDIX 1

CONFIDENTIAL



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

2021-07-01

MINUTES

AUDIT AND PERFORMANCE AUDIT COMMITTEE MEETING [IN-COMMITTEE]

2021-06-29

[IN-COMMITTEE]

PRESENT: Dr NL Mortimer (Chairperson)
Mr V Botto
Mr T Lesihla
Ms J Williams

Office of the A-G: Ms L Klue-Knipe
Mr Y Alexander

Officials: Municipal Manager
Director: Corporate Services
Director: Infrastructure Services
Director: Planning and Economic Development
Director: Community & Protection Services
Chief Audit Executive
Senior Manager: Governance
Senior Internal Auditor
Chief Risk Officer
Manager: Financial Statements (deputizing for CFO)
Manager: Secretariat/Committee Services

1.	OPENING AND WELCOME
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The Chairperson welcomed everyone present.

1.1	COMMUNICATION BY THE CHAIRPERSON
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The Chairperson expressed appreciation for the fact that the Audit Committee meeting could go ahead as per scheduled date and time.

1.2	COMMUNICATION BY THE MUNICIPAL MANAGER
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NONE

[IN-COMMITTEE]

1.3	DISCLOSURE OF INTERESTS
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NONE

In was noted that the necessary documentation in respect of Declaration of Interest and Confidentiality will be completed and signed by all Audit Committee members present.

2.	APPLICATIONS FOR LEAVE OF ABSENCE
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The following apologies were tendered:

The Executive Mayor

Cllr WF Pietersen (MPAC Chairperson)

Chief Financial Officer

3.	CONFIRMATION OF MINUTES AND MATTERS ARISING
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3.1	Confirmation of minutes The minutes of the Audit & Audit Performance Committee held on 2021-05-05. (APPENDIX 1)
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The minutes of the Audit and Performance Audit Committee held on 2021-05-05 were **confirmed as correct.**

3.2	MATTERS ARISING FROM PREVIOUS MINUTES / ACTION POINTS
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 3.2

NOTED

that all the previous action points have been actioned.

[IN-COMMITTEE]

4.	AUDITOR-GENERAL	
4.1	Draft Audit Report for the period ending 30 June 2020	(APPENDIX 2)

AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 4.1

Ms L Klue-Knipe from the Auditor-General's Office gave a high level overview of the Audit findings. The Audit Opinion for the 2019/2020 financial year is an unqualified opinion with no findings, i.e. a *Clean Audit*.

RESOLVED

That the Audit Report for the period ending 30 June 2020, be noted.

4.2	Draft Management Report for the period ending 30 June 2020	(APPENDIX 3)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 4.2

A snapshot of the Audit Outcomes reflecting a progression over the prior years was presented to the meeting. Management was urged to improve and tighten up its finalization procedures to detect possible misstatements prior to submitting the final set of financial statements for auditing purposes. Disclosure of irregular expenditure on multi-year contracts ought to be carefully monitored and reported. Management was advised to adequately address the control deficiencies identified under the category of "other matters", which, while not having a direct impact on the current audit, might well escalate to become material matters that could affect the next audit outcome. Such "other matters" should also be captured in a credible Action Plan for monitoring, resolution and implementation.

RESOLVED

- (a) that the Management Report for the period ending 30 June 2020, be noted; and
- (b) that a credible Action Plan be developed to outline the way forward in addressing all matters raised in the Management Report.

5.	FINANCIAL STATEMENTS	
	NONE	

[IN-COMMITTEE]

6.	INTERNAL AUDIT AND INTERNAL CONTROL
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6.1	Internal Audit Progress Report	(APPENDIX 4)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.1

The Chief Audit Executive reported on progress made in the respective planned audit areas, and confirmed that an Action Plan to address matters raised by the AG will be compiled as soon as the final Management Report is signed off. The Status of Records Review (SORR), as well as the Mont Rochelle review, will be reported on at the next APAC meeting scheduled for August 2021.

RESOLVED

that the Internal Audit Progress Report, be noted.

6.2	Internal Audit Report: Predetermined Objectives (PDO's): Quarter 3	(APPENDIX 5)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.2**RESOLVED**

that the Internal Audit Report: Predetermined Objectives (PDO's): Quarter 3, be noted.

6.3	Internal Audit Report – Allowances Review	(APPENDIX 6)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.3

The Audit Committee aired the view that the irregularities which were rife, stemmed from misunderstandings, misinterpretations, and the lack of clarity in terms of roles and responsibilities. An urgent need exists for Standard Operating Procedures (SOPs) to be developed – and subsequently unpacked and thoroughly workshopped – in order to eliminate any blurring of roles and functions of the relevant user departments.

RESOLVED

- (a) that the Internal Audit Report – Allowances Review, be noted; and
- (b) that Standard Operating Procedures (SOPs) be developed to ensure proper handling of Allowances.

[IN-COMMITTEE]

6.4	Internal Audit Report – ICT – Governance Review	(APPENDIX 7)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.4

The Chief Audit Executive confirmed that the ICT-related recommendations emanating from the Quality Assessment Review (QAR) have been incorporated into the revised Audit and Performance Audit Committee Charter, and that all ICT risks are being escalated to Senior Management.

RESOLVED

that the Internal Audit Report – ICT – Governance Review, be noted.

6.5	Internal Audit Report – Follow-Ups	(APPENDIX 8)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.5

The Audit Committee remarked that the matter of managing revenue from unsolicited bids is not well addressed in the report; it could potentially lead to loss of income if not properly managed and accounted for. Internal Audit will revisit this aspect and report back at the next APAC meeting.

RESOLVED

that the Internal Audit Report – Follow-Ups, be noted.

6.6	Internal Audit Operational & Strategic Risk-based Plan	(APPENDIX 9)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.6**RESOLVED**

that the Internal Audit Operational & Strategic Risk-based Plan, be approved.

[IN-COMMITTEE]

6.7	Structures Act Amendments	(APPENDIX 10)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 6.7

The Chief Audit Executive highlighted -- as a matter of concern which was raised with provincial Treasury for further clarity -- amendment 79A of the Structures Act, as it relates to the relationship between Internal Audit and MPAC, specifically in terms of reporting lines, as well as reports submitted by Internal Audit to Council. The Chief Audit Executive undertook to provide feedback at the next Audit Committee meeting after his pending engagements with other role-players in the province.

The Audit Committee agreed that some unpacking is called for in relation to the mandate of MPAC vis-à-vis the role and function of Internal Audit. An item to Council has to be carefully drafted wherein the mandate and responsibilities of MPAC are clearly defined in accord with the Sec.79A amendment of the Structures Act. The impact to the workings of the Audit Committee will be studied and taken on board after Council has resolved on the functions of MPAC in line with the Sec.79A amendment.

RESOLVED

- (a) that the Structures Act Amendments, be noted; and
- (b) that an item be tabled to Council in relation to the mandate and responsibilities of MPAC in accord with the Sec.79A amendment of the Structures Act.

7.	QUALITY ASSURANCE AND IMPROVEMENT
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	NONE
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8.	RISK MANAGEMENT AND ICT
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8.1	Minutes of Risk Management Committee Meeting: – 11 November 2020	(APP 11)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 8.1**RESOLVED**

that the Minutes of Risk Management Committee Meeting: 11 Nov. 2020, be noted.

[IN-COMMITTEE]

8.2	Minutes of Risk Management Committee Meeting: – 25 May 2021	(APP 12)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 8.2

The Senior Manager: Governance mentioned that the most notable matters were the updated/new template for the Risk Register (where Corona-19 Pandemic is elevated from priority 9 to priority 3 as a Strategic Risk), as well as the Quality Assurance Review that was successfully completed.

RESOLVED

that the Minutes of Risk Management Committee Meeting: – 25 May 2021, be noted.

8.3	Risk Assessment and Progress Report: Quarter 3	(APPENDIX 13)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 8.3**RESOLVED**

that the Risk Assessment and Progress Report: Quarter 3, be noted.

8.4	Risk and Fraud Management Project Plan: 30 June 2021	(APPENDIX 14)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 8.4**RESOLVED**

that the Risk and Fraud Management Project Plan: 30 June 2021, be noted.

8.5	Revised Strategic and Operational Risk Register: 2020/2021	(APPENDIX 15)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 8.5**RESOLVED**

that the Revised Strategic and Operational Risk Register: 2020/2021, be noted.

[IN-COMMITTEE]

9.	FRAUD RESPONSE COMMITTEE: INVESTIGATIONS AND FRAUD
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9.1	Fraud Management Report - Q3: 1 Jan 2021 – 31 March 2021 (APPENDIX 16)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 9.1

RESOLVED

that the Fraud Management Report - Q3: 1 Jan 2021 – 31 March 2021, be noted.

9.2	Fraud Register Status Report: -- as at June 2021 (APPENDIX 17)
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 9.2

RESOLVED

that the Fraud Register Status Report: -- as at June 2021, be noted.

10.	DATE OF NEXT MEETING
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AUDIT & PERFORMANCE AUDIT COMMITTEE MEETING: 2021-06-29: ITEM 10

NOTED

that the dates of meetings for the 2021/22 financial year are as follows:

27 August 2021

26 November 2021

18 February 2022

14 April 2022

28 June 2022

The meeting adjourned at 17:05.

CHAIRPERSON:

DATE:

Confirmed on **with/without amendments.**

11.	URGENT MATTERS
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12.	MATTERS TO BE CONSIDERED IN-COMMITTEE
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(See pink documentation)

***THE AGENDA HAS BEEN DISCUSSED WITH THE SPEAKER,
CLLR Q SMIT AND HE AGREES WITH THE CONTENT.***
