



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/1/5

2016-06-24

MINUTES

42ND COUNCIL MEETING OF STELLENBOSCH MUNICIPALITY

2016-06-15

MINUTES

42ND MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY

2016-06-15

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**MINUTES OF THE 42ND MEETING OF STELLENBOSCH COUNCIL HELD ON
2016-06-15 AT 15:00 IN THE COUNCIL CHAMBER, TOWN HOUSE, PLEIN STREET,
STELLENBOSCH**

PRESENT The Speaker, Alderman CP Jooste [Chairperson]
The Executive Mayor, Alderman CJ Sidego (until 15:40)
The Deputy Executive Mayor, Cllr MG Smuts

ALDERMEN V Fernandez (Ms)
EL Maree (Ms)
JP Serdyn (Ms)

COUNCILLORS	F Adams	SJ Louw (Ms)
	DS Arends	N Mananga-Gugushe (Ms)
	NM August	C Manuel
	HC Bergstedt (Ms)	NE McOmbring (Ms)
	PW Biscombe	XL Mdemka (Ms)
	A Crombie (Ms)	C Moses (Ms)
	JA Davids	P Mntumni (Ms)
	R du Toit (Ms)	RS Nalumango (Ms)
	JSA Fourie	N Ntsunguzi (Ms)
	AR Frazenburg	WC Petersen (Ms)
	E Groenewald	PJ Retief
	DA Hendrickse	P Sitshoti (Ms)
	JK Hendriks	LN Siwakamisa (Ms)
	N Jindela	Q Smit
	MC Johnson	LL Stander
	DD Joubert	M Wanana
	S Jooste (Ms)	

OFFICIALS Acting Municipal Manager (R Bosman)
Chief Financial Officer
Director: Community and Protection Services
Director: Human Settlements and Property Management
Director: Planning and Economic Development
Director: Strategic and Corporate Services
Chief Audit Executive
Senior Legal Advisor (Ms EA Rhoda (née Williams))
Senior Legal Advisor (M Williams)
Manager: Property Management
Manager: Local Economic Development (LED)
Manager: Budget Office
Head: Budgeting and Costing
Head Committee Services (EJ Potts)
Committee Clerk (Ms T Samuels)
Interpreter

1. APPLICATION FOR LEAVE OF ABSENCE (3/4/1/3)

42ND COUNCIL MEETING: 2016-06-15: ITEM 1

RESOLVED (nem con)

- (a) that leave of absence be granted to Councillor L Ronoti; and
- (b) that permission be granted to the Executive Mayor, Alderman CJ Sidego to leave the meeting earlier.

Absent:

Alderman DC Botha
Councillor MM Ngcofe

(-)

2.1 DECLARATION OF INTEREST (3/6/2/2)

NONE

2.2 PRESENTATION (8/1/4/2/6)

NONE

2.3 COMMUNICATIONS (3/4/1/6)

2.3.1 COMMUNICATION BY THE SPEAKER (3/4/1/6)

2.3.1.1 The Speaker informed the meeting that a special function will be held during July 2016 whereby recognition will be given to Councillors who served during the the 5 year term.

(-)

2.3.1.2 He further congratulated all Councillors who celebrated and will celebrate their birthdays during the months of June and July.

(-)

2.3.1.3 Council will be in recess from 26 June 2016 until 15 July 2016. During the recess period the Executive Mayor has the delegated authority to make urgent decisions on behalf of Council, should the need arise.

(-)

2.3.1.4 The Speaker urged Councillors to schedule their last Ward Committee meetings during June 2016 and not July 2016. He further mentioned that Ward Committee

members will also be honoured with a certificate during the special function that will be held during July 2016. A date in this regard will be communicated in due course.

(-)

2.3.2 COMMUNICATION BY THE EXECUTIVE MAYOR (3/4/1/6)

The communication by the Executive Mayor, Alderman CJ Sidego, is as follows:

“Dear colleagues

Today is one of the final steps of our term as the leadership of the Stellenbosch Municipality.

It was a roller coaster 5 year stint from a political and administrative point of view.

Whatever highs and lows we experienced, I am convinced we learned from it – tremendously.

We got to understand our communities and their challenges so much better.

We got up close with many serious hardships, resulting from dire socio-economic conditions.

At the same time we got to know the resilience of the human being. People who will not give up, whatever` life throws at them.

I have also seen the amount of goodwill in our town. In fact, the majority of citizens have their hearts in the right place.

For all of this I want to express gratitude. It is a time to say thank you.

Ek wil dankie sê vir almal wat die jaar vir my en elke ander politikus en administrateur leefbaar gemaak het.

Ons kan mense soos Flora en haar span – Reza, Carol, Ronald, Lynette en Kimera uitsluit nie.

Hulle was die toegewyde, vriendelike gashere en –vroue wanneer ons besoekers ontvang het.

Ons kantore het ook altyd netjies gelyk.

Hulle is daar agter in die gallery (en ek vra dat hulle net deurkom).

Kom ons gee erkenning aan hulle.

Aan die administratiewe personeel wat ook dikwels in die spervuur beland het, maar altyd gesorg het dat die burokratiese wiele van die organisasie draai, ook ons opregte dankbaarheid.

Dit is maar ‘n ondankbare taak op die beste van tye, maar julle het deurgedruk en hou steeds aan te midde van die druk en frustrasie. Mag julle voortgaan en die volgende groep politici met dieselfde toewyding ondersteun.

Equally frustrating is the role of our councillors. Politicians can never do enough fast enough – even if you are the ruling party.

I therefore have an idea what the frustration levels of opposition politicians are.

Despite these challenges many of you approached your unenviable task with a positive attitude and often in good humour.

I thank you for all your constructive contributions and for always seeing the bigger picture – not only always fighting the opposing parties but fighting for the betterment of society.

To my own colleagues in the ruling party also my sincerest gratitude.

I thank you, not because it was always easy but because of valuable lessons I have learnt while working so closely with you.

I am extremely grateful for what we could achieve – and there are numerous positives – including a new vision for our town and its people to aspire to.

Of course, it was not always easy but politics, by its very nature, is often about differences, but always with honesty and integrity for the greater good of our society with all its needs.

I have the highest regard for councillors with passion and compassion for the communities they represent – all councillors, ruling and opposition.

In conclusion, Speaker and colleagues, while our term is almost over, the fight for justice and equality is far from over. It is still a long walk to freedom – for us here in the Stellenbosch Valley too.

Economic freedom is our number one challenge to final freedom.

The political spotlight has been on Stellenbosch for decades because of the role its leaders played in a previous political dispensation. While we tend to focus on the less positive, Stellenbosch has, over the years, proved it can provide leadership that can break away from group thinking – irrespective of racial divide which defined us.

These leaders, we should and want to acknowledge and honour. This is why I would like to inform Council today that Rev Simon Adams, Prof Laurens du Plessis, Mr Victor Honey and Mr Marius le Roux will receive the Mayor's Certificate of Recommendation at a separate ceremony later this year.

And finally, let us be bold in our efforts to create the more equitable distribution of wealth. This will continue to be what will reconcile or divide our wonderful nation.

At times we must do what is regarded as the seemingly impossible. Something is only regarded as impossible until somebody has succeeded in doing it, as Nelson Mandela reminded us. But if that is what is required of us, then we must be bold and just do it.

We need more Stellenbosch people and South Africans who specialise in doing the so-called impossible.

When Nelson Mandela came out of jail he took the unexpected leap. He did not opt for revenge. He forgave. It was bold and for many unexpected, and that is why he is revered today – here and abroad.

Meagre, in between steps will not take us anywhere. Boldness will!

Nelson Mandela took the unexpected political leap from Robben Island to Table Mountain and he took us all to new heights. Anything short of that bold leap would have ended (by manner of speaking) in the ocean.

There, in the ocean of despair, the hopes and dreams of this nation would have drowned with him.

There are, unfortunately, citizens whom we represent, who are drowning in abject poverty, jobless and who are daily queuing for a cup of soup.

Let us not only fill their stomachs but let us also nourish their spirit, their souls, with hope for a better tomorrow.

On the eve of commemorating 40 years since 16 June 1976, we need to pay special attention to the hopes and dreams of our youth.

We are also approaching the 18th July, when we will remember our beloved Madiba.

Let us in these two months demonstrate boldly that we embrace support for our youth and dignified living, as espoused by Madiba.

I am grateful for what you all helped to achieve in the five year term.

Again, I would like to acknowledge the contributions of those who will not be returning.

For those who continue, my message is: **be bold**.

Let us, in the spirit of our founding father, take that leap from our prison of past history to the mountain top of final freedom.

Be bold.

Thank you.”

(-)

2.3.3 COMMUNICATION BY THE MUNICIPAL MANAGER (3/4/1/6)

NONE

3. CONFIRMATION OF THE MINUTES (3/4/1/5)

3.1 CONFIRMATION OF THE MINUTES OF THE 41ST MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY HELD ON 2016-05-25 (3/4/1/5)

The minutes of the 41st meeting of the Council of Stellenbosch Municipality held on 2016-05-25 were previously distributed.

FOR CONFIRMATION

42ND COUNCIL MEETING: 2016-06-15: ITEM 3.1

RESOLVED (nem con)

that the minutes of the 41st meeting of the Council of Stellenbosch Municipality held on 2016-05-31, be confirmed.

(HEAD: COMMITTEE SERVICES TO ACTION)

4. INTERVIEWS WITH DEPUTATIONS (3/4/1/7)

NONE

5. STATUTORY BUSINESS (3/4/1/7)

NONE

6. REPORT/S BY THE MUNICIPAL MANAGER RE OUTSTANDING RESOLUTIONS TAKEN AT PREVIOUS MEETINGS OF COUNCIL (3/4/1/5)

The report by the Acting Municipal Manager re outstanding resolutions taken at previous meetings of Council is attached as **APPENDIX 1**.

FOR INFORMATION**42ND COUNCIL MEETING: 2016-06-15: ITEM 6****RESOLVED** (nem con)

- (a) that the report by the Acting Municipal Manager on outstanding resolutions, be noted; and
- (b) that it be noted that the Speaker **RULED** that the Acting Municipal Manager provide answers regarding the following outstanding reports to Councillors, by not later than 2016-06-24.
- (i) Percy Sonn report & Legal opinions; and
 - (ii) Lease agreement of MTO in Jonkershoek.

Issue raised by	Page	Response by
<p><u>Cllr: DA Hendrickse: Item 9.4 Question by Cllr DA Hendrickse: Failure of the Administration to, for the past 4 years, bring reports before Council in terms of Section 116(2)(d) of the MFMA</u></p> <p>Advert was placed in December 2015, however feedback states that the position has not been filled and deadline of June 2016 not possible. Please explain.</p>	Pg 5	The Speaker RULED that the Acting Municipal Manager submit a report to Councillors regarding these matters.
<p><u>Cllr: DA Hendrickse: Item 8.4: Eviction: Blaauwklippen Agricultural Estates Stellenbosch (Pty)(Ltd) & Others / Stellenbosch Municipality & Others Case Number: 4042/15</u></p> <p>What was the outcome.</p>	Pg 8	
<p><u>Cllr: DA Hendrickse: Other Outstanding Resolutions</u></p> <p>that it be noted that the following 2 outstanding resolutions were not given effect to:</p> <ol style="list-style-type: none"> 1) The legal opinion and lease agreement between MTO and Jonkershoek; and 2) Percy Sonn and Sweig report. 		

<p><u>Cllr F Adams: Motion Farm 502BL:</u> This item served 2 years ago at Council and was referred back to obtain more information, but did not serve at Council again.</p> <p><u>Cllr F Adams: Commitments and promises by Developers (particularly De Zalze & Stellenbosch Square):</u> This item served 2 years ago at Council.</p> <p><u>Cllr F Adams: Item 9.2: Motion by Cllr F Adams: Debate that focus on racism, discrimination and xenophobia within the greater Stellenbosch</u> Will the workshop still materialize and when?</p>	Pg 7	The Speaker RULED that the Acting Municipal Manager submit a report to Councillors regarding these matters.
<p><u>Councillor S Jooste (Ms): Item 7.3: Writing-off of irrecoverable debt: Meritorious case</u> This item is outstanding for longer than 1 year. How long still?</p>	Pg 1	The Speaker RULED that the Acting Municipal Manager submit a report to Councillors regarding this matter.
<p><u>Cllr N Jindela: Item 7.3: Proposed disposal of church and crèche sites in Watergang, Kayamandi</u> Feels frustrated with slow response. Feedback still on 50%.</p>	Pg 4	The Speaker RULED that the Acting Municipal Manager submit a report to Councillors regarding this matter.
<p><u>Cllr DD Joubert: Motions: Backyard dwellers and public open spaces for tent services</u> Still awaiting feedback, as Speaker previously made a RULING that these two outstanding motions be submitted to Councillor Joubert.</p>		The Speaker RULED that the Acting Municipal Manager submit a report to Councillors regarding this matter.
<p><u>Cllr HC Bergstedt JMs: Item 7.3: MPAC Oversight Report</u> Date for quarterly report as per outstanding resolution.</p>		MM undertook to submit report to Councillors by mid July 2016.

(ACTING MUNICIPAL MANAGER TO ACTION)

7. CONSIDERATION OF REPORTS, COMMUNICATIONS, PETITIONS AND APPLICATIONS SUBMITTED BY THE MUNICIPAL MANAGER (8/1/3/2/7)

7.1 CONSIDERATION OF ALLEGED IRREGULAR EXPENDITURE RELATING TO GRAPEVINE MESSAGING SERVICES RENDERED TO STELLENBOSCH MUNICIPALITY BY DIMENSION DATA / INTERNET SOLUTIONS (IS) IN 2011/2012

File number : 3/3/3/6/7

Compiled by : Director: Strategic and Corporate Services

Report by : Director: Strategic and Corporate Services

Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To consider and recommend for ratification of a transaction and payment to the service provider for services rendered i.e. the grapevine internet messaging services rendered from Dimension Data / Internet Solutions.

2. BACKGROUND

The MPAC Committee was established to deal with expenditure not aligned or non-compliant with Council's approved policies and the Municipal Finance Management Act, herein after referred to as the "Act" and "Policies".

2.1 Legislation

The Act (Section 32) stipulates the following with regard to unauthorised, irregular or fruitless and wasteful expenditure:

"(1) Without limiting liability in terms of the common law or other legislation-

- (a) a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;

- (b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
- (c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or
- (d) any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure”.

In terms of Section 32 (2)

“A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure-

- (a) in the case of unauthorised expenditure, is-
 - (i) authorised in an adjustments budget; or
 - (ii) Certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and
- (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council”.

A further stipulation, Section 32(4) compels the accounting officer to

“promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of-

- (a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;
- (b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
- (c) the steps that have been taken-
 - (i) to recover or rectify such expenditure; and
 - (ii) to prevent a recurrence of such expenditure”.

1.1 Irregular expenditure as defined under Chapter 1 of the Act:

- a) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of Section 170;
- b) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Municipal systems Act, and which has not been condoned on terms of that Act;

- c) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or By-law".

3. DISCUSSION

Based on the information gathered during ICT Manager's investigation to address this matter and recommend a way forward, the following information sufficed:

The Grapevine Internet Messaging Service contract was procured by the previous Acting ICT manager; Mr Michael Dean Appolis in 2011/2012 financial year without following the proper SCM process. This was done during the suspension of the previous ICT Manager, Mr Robert Muller. When Mr Robert Muller was reinstated in his position after serving the suspension as the ICT Manager he explicitly refused to get involved in signing off any invoices or to take any ratifying measures in order to ensure that payment could be made for Dimension Data / Internet Solutions.

On 21 October 2013, the Stellenbosch Municipality was served with a letter of demand (**APPENDIX 2: Letter of Demand (LOD)**) by the debt collection company on behalf of Dimension Data / Internet Solutions. A settlement memo was drafted on 4 May 2016 by the Senior Legal Advisor together with the ICT Manager. The memo with the supporting invoices was approved by the Accounting Officer (Acting Municipal Manager) on 6 May 2016. (**APPENDIX 1: Memorandum: Dimension Data / Stellenbosch Municipality**)

Though the SCM prescripts were not followed, a Contract (**APPENDIX 2: Contract**) was concluded and services were rendered (**APPENDIX 3: Invoices**) and as such, the municipality is legally obligated to pay.

A requisition was generated on 11 May 2016 (**APPENDIX 4: Requisition**) and approved by 16 May 2016 (**APPENDIX 5: Authorisation**). An official work order of R8 755.20 (**APPENDIX 6: Work order**) was submitted to Internet Solution on 16 May 2016 and payment was initiated by the Creditors Office for 20 May 2016. The account with Dimension Data / Internet Solutions should be settled by the end of May 2016.

4. FINANCIAL IMPLICATIONS (Manager Treasury, Andre Treurnich)

Financial Services supports the recommendation of the Legal Services. At below R10 000, the amount involved is small and it will be counterproductive to try and argue a case, which it seems the municipality does not have in any event. Very recent (19 April 2016) claims from the Debt Collector/Attorneys acting on behalf of Internet Solutions claim the amount of R8 755.20 from the Stellenbosch Municipality. This has been paid from Vote 1/9910/0928 (IT Consulting). Sufficient budget provision was made available.

5. LEGAL IMPLICATIONS (Snr Legal Advisor, EA Rhoda)

- 5.1 In terms of the item it is alleged that the service of Internet Solutions, a division of Dimension Data (Pty) Ltd were procured in 2011 without following proper Supply Chain Management Procedures. In terms of the available documentation at my disposal it appears as if the municipality failed to take cognisance of the letter of demand which was served on it on 21 October 2013 to settle the *outstanding amount R8 7 55, 20* as there is no record of any payments, correspondence or any dispute resolution processes which were implemented.

In terms of the principle of legality with reference to Section 217 of the Constitution read with other the legislative framework, regulations and the Municipality's Supply Chain Management Policy, it is in the public interest that parties should comply with their contractual obligations. Though the SCM prescripts were not followed a contract was concluded and services were rendered and as such the municipality is legally obligated to pay.

The municipality does not have a claim against Dimension Data / Internet Solutions and is not in a position to institute a counter claim. Should the municipality decide to defend the matter it will incur exorbitant legal fees and as such it will be advisable to settle the outstanding amount in full and final settlement, failing which the Council may be held liable.

RECOMMENDED

that MPAC take note of the circumstances and particulars as provided in this report and ratify the expenditure to the amount of R8 755.20 to Dimension Data / Internet Solutions (IS) for the services rendered to the Stellenbosch Municipality.

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

**MUNICIPAL PUBLIC ACCOUNTS COMMITTEE MEETING: 2016-06-02:
ITEM 4**

The Senior Legal Advisor, Ms E Rhoda distributed additional information attached as **APPENDIX A**.

RECOMMENDED

that Council take note of the circumstances and particulars as provided in this report and ratify the expenditure to the amount of R8 755.20 to Dimension Data / Internet Solutions (IS) for the services rendered to the Stellenbosch Municipality.

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

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.1**RESOLVED** (nem con)

that Council take note of the circumstances and particulars as provided in this report and ratify the expenditure to the amount of R8 755.20 to Dimension Data / Internet Solutions (IS) for the services rendered to the Stellenbosch Municipality.

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

7.2 APPLICATION FOR APPROVAL OF JONKERSHOEK SPATIAL DEVELOPMENT FRAMEWORK

File number : 15/2/2/2
Compiled by : Spatial Planner (B Henning)
Report by : Director: Planning and Economic Development
Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input checked="" type="checkbox"/>
Greenest municipality	<input checked="" type="checkbox"/>
Safest valley	<input checked="" type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To obtain Council's approval for the Jonkershoek Spatial Development Framework (SDF) in terms of Chapter 5 of the Municipal Systems Act 2000 (Act 32 of 2000) and Section 21 of the Spatial Planning and Land Use Management Act, 2013 (No 16 of 2013).

The SDF will be approved as a local area SDF in terms of Section 9 of the Stellenbosch Municipality Land Use Planning Bylaw, 2015.

2. STUDY AREA

The study area consisting of approximately 61,8km² in extent and comprises of the portion the Jonkershoek Valley immediately south-east of the residential areas of Rozendal and Karindal of Stellenbosch, with the south-western edge being a line joining the peaks of Stellenboschberg, and the north-eastern edge begin a line joining the peaks of Jonkershoekberg. The south-eastern edge of the study follows the cadastral boundary of the Farm Jonkershoek 385.

3. BACKGROUND

The Jonkershoek Valley is a unique area characterized by intensive agriculture and natural beauty, but is currently begin subjected to a broad range of development pressure. It is also the main catchment area for the Eerste River and forms the core of the Jonkershoek Nature Reserve.

The Municipal Spatial Development Framework (MSDF) for the WC024 area was approved by Council in February 2013. A total of 14 nodes were identified, but Jonkershoek was not one of the nodes.

The consultants (CK Rumboll & Partners) were appointed in 2010 to compile a Spatial Development Framework for Jonkershoek. However, due to the occupation of the area, the rights to occupation and ownership of land in Jonkershoek were investigated by Chennells Albertyn Attorneys, Notaries & Conveyancers.

An item was prepared and presented to the Planning and Economic Development Committee meeting on 31 March 2015. It was recommended that the Executive mayor approves the Jonkershoek SDF in terms of the Land Use Planning Ordinance, 1985 (ordinance 15 of 1985) and the Municipal Systems Act 2000, (Act 32 of 2000) as Draft Policy for public participation, before the policy is finally approved.

4. PUBLIC PARTICIPATION

A notice was placed in the Eikestadnuus on 10 September 2015 to notify the public that the Draft Jonkershoek Spatial Development Framework will be available for inspection during office hours at the public libraries, on the municipal website and the Advice Centre for the period from 10 September 2015 to 9 October 2015. The public was invited to submit comments and inputs in writing.

Registered letters with the draft SDF document on a CD were also sent to external departments (Public Works, Cape Pine and Cape Nature) for comment until the closing date of 16 November 2015.

An open day was held on 1 October 2015 from 17:00 – 20:00 at the Cape Nature hall in Jonkershoek.

Several comments received from the community, public and external departments were sent to the consultants at the end of October / beginning of November 2015 in order for them to amend and revise the document.

The first project team meeting for 2016 was held on 19 February 2016 at Stellenbosch Municipality to discuss the comments received from the public participation process and to determine the way forward.

The consultant finalized the Draft Jonkershoek SDF and the amended document was submitted to Stellenbosch Municipality on 18 March 2016. The amended Jonkershoek Spatial Development Framework by CK Rumboll & Partners is attached for your perusal as Appendix 1.

5. PREVIOUS COMMENTS BY RELEVANT DEPARTMENTS

The Jonkershoek SDF was circulated to all the departments on 5 September 2012 and only Engineering Services responded with the following comments:

They support the principle of formalizing and guiding further potential development in the Jonkershoek Valley. The principle of protecting the very sensitive valley by not opening it up to extensive development is also supported.

However, in respect of engineering services, there are currently no formalized engineering services in the valley. In general sewage is handled by means of either soakaways or conservancy tanks.

Water provision is mainly by means of boreholes or extraction from the river, fountains or mountain streams. The existing main water supply pipe supplies raw (untreated) water from Jonkershoek River to the Water Treatment Plant at Idasvallei and is therefore not suitable for water provision in the Valley.

Roads in the Valley is maintained and managed by the District Municipality, to the cost of the District Municipality. The engineering department recommended that the consultants that compiled the Jonkershoek SDF liaise with the Engineering department to agree on logical, practical measure in respect of services provision before the document be finalized as some of the proposal as reflected in the Implementation Plan is not feasible and not practical to implement from a services point of view.

The Jonkershoek SDF was then again circulated to all departments on 21 January 2015 for comments and the following comments were received:

Community & Protection Services: The department supports future development in the area, but recommends provincial engineers to provide input to the current speed zone due to the intended increase of residents.

Financial Services: The plans of the Jonkershoek SDF should be costed and then a cost benefit analyses should be performed on a life cycle basis. The proposals of this SDF should also be viewed in context of the wider WC024 strategies for housing etc.

6. COMMENTS BY RELEVANT DEPARTMENTS ON AMENDED JONKERSHOEK SDF (AFTER PUBLIC PARTICIPATION CONSULTATION)

The amended Jonkershoek SDF was circulated to all departments on 15 April 2016 and the following comments were received:

Department: Planning and Economic Development

Spatial Planning: Please note that the Jonkershoek Spatial Development Framework must be approved in terms of the Stellenbosch Municipality: Land Use Planning Bylaw (not LUPO).

Environment: The Jonkershoek SDF recognises Jonkershoek valley's importance as upper catchment of the Eersteriver as well as its role as conservation area and is supported. The limited development within the valley recommended in the SDF should only occur with the provision of sufficient services to ensure that the surrounding area's integrity is maintained and protected. The sustainability of the recommended settlement will largely depend on the successful implementation of the proposed economic activities.

Director: The SDF is generally compliant with the relevant statutory requirements for a local area spatial development framework (Section 9 of the Stellenbosch Municipality Land Use Planning Bylaw) and in general, the requirements as set out in the Western Cape Land Use Planning Act, 2014, Act 3 of 2014 (LUPA). The process for the preparation of the SDF might not have followed the strict provisions and

requirements, as these were concluded prior to the implementation of LUPA and the municipal bylaw. Nonetheless, the document contains sufficiently detailed plans and an implementation programme to make it useful and implementable and it provides clear guidance for land use planning decisions.

In summary, the SDF recommends for a limited extent of urban development/settlement in Jonkershoek, predominantly to accommodate the historic residents of the area and some accommodation for the influx of residents up until the end of 2012. There is clearly no provision for further settlement, to establish an urban node in the area, with sufficient capacity to accommodate all the residents as this will not be feasible, nor compatible with the overarching goal of retaining Jonkershoek as a conservation and tourism attraction. The implementation programme and the recommendations of the SDF provide sufficient guidelines for integrating the proposed settlement with the tourism attraction, in order to provide exclusive economic opportunities for the residents, which would not be possible if the settlement is allowed to develop into a full-scale urban node.

Recommendations have engineering, financial, legal and property related implications. The relevant recommendations in the draft item to Council are supported.

Department: Engineering

This department fully supports the various statements of effective co-ordination of development and planning initiatives to ensure successful implementation of the SDF action plans.

The use of septic tanks should be eradicated through a phased implementation process seeing that the valley would suffer if this use would continue. The use of conservancy tanks are suggested and where ever possible the implementation of piped sewer systems.

Care should be taken of the effect of illegal dumping and should be monitored and rectified as soon as it is discovered. Should any further housing units be implemented it should be done with the prescribed standards of township establishment as issued by this Directorate.

The high risk road access to the Valley should also form part of the phased implementation programme to ensure that further development of the valley be done in line with upgrading the access to a more safer situation, especially for pedestrians and cyclists.

In summary the Directorate Engineering therefore support the proposals of the Jonkershoek SDF with a proviso that implementation of the suggested infrastructure be done in collaboration with this Directorate but more importantly in line with our priorities of serving the entire WC024 region.

7. LEGAL IMPLICATIONS

Legal comment attached as **APPENDIX 2.**

8. FINANCIAL IMPLICATIONS

Comment not possible – cost of development unknown.

RECOMMENDED

- (a) that Council approve the Jonkershoek Spatial Development Framework in terms of in terms of Chapter 5 of the Municipal Systems Act 2000 (Act 32 of 2000) and Section 21 of the Spatial Planning and Land Use Management Act, 2013 (No 16 of 2013);
- (b) that the SDF be approved in terms of Section 9 of the Stellenbosch Municipality Land Use Planning Bylaw as guiding policy for decision-making; and
- (c) that the implementation plan be reviewed and expanded to include projects, project leaders and budgets.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

**PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-05-31:
ITEM 6.1.2****RECOMMENDED**

- (a) that Council approve the Jonkershoek Spatial Development Framework in terms of in terms of Chapter 5 of the Municipal Systems Act 2000 (Act 32 of 2000) and Section 21 of the Spatial Planning and Land Use Management Act, 2013 (No 16 of 2013);
- (b) that the SDF be approved in terms of Section 9 of the Stellenbosch Municipality Land Use Planning Bylaw as guiding policy for decision-making; and
- (c) that the implementation plan be reviewed and expanded to include projects, project leaders and budgets.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 5.1.3**RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the item be noted and forwarded to Council for information to serve as a basis for the future development initiatives for Jonkershoek area; and

- (b) that the process for a legally compliant SDF for Jonkershoek be commenced with during 2016/2017 financial year.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.2

RESOLVED (nem con)

that this matter be referred back to allow the Administration to give effect to the legal opinion (see **APPENDIX 2**), whereafter same be resubmitted to Council for consideration.

**DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

APPENDIX 2

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THE STELLENBOSCH MUNICIPALITY
Stellenbosch

Your Ref:

Our Ref: GP/AVR/AS

Date: 15 May 2016

Dear Sir / Madam

Re: **Legal considerations in respect to the application for approval of the Jonkershoek Spatial Development Framework (File No. 15/34/34/2)**

1. We have been requested by the Stellenbosch Municipality (*"the Municipality"*) to consider the legal implications of an approval of the latest Jonkershoek Spatial Development Framework (*"the latest SDF"*) in respect to an application for that purposes, under File No. 15/34/34/2 (*"the application"*).
2. The application annexes, as Appendix I, a Spatial Development Framework dated 2011 (*"the 2011 SDF"*) and it accordingly appears that the latest SDF was not annexed to the application.
3. In this regard, the application refers to a consultative process for the drafting of a SDF that commenced in October 2015 and that a draft SDF and amended document was submitted to the Municipality on 18 March 2016.¹
4. We are accordingly not in a position to advise as to the legal implications of adopting the latest SDF and kindly request that our offices be furnished with a copy thereof.
5. In the event that the application correctly refers to the 2011 SDF, it should be pointed out that that SDF was compiled in terms of the, now repealed, Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (*"the Ordinance"*) and the Municipal Systems Act, No. 32 of 2000. The

¹ The application makes reference to 18 March 2015, but we assume for the purposes of this advice, that same was a typing error and should have referred to 18 March 2016.

Attorneys Notaries & Conveyancers

Directors: Jonathan Steytler (Managing) | Stoffel Ackermann | Peter Arnot | Martin Bey | Jacques Bignon | Darren Brander | Luthfeya Cassim | Tim Chase | Jacques Classen | Melanie Coetzee | Kevin Daniel | Thabisile Dlamini | Refqah Fataar Ho-Yee | Harry Friedland | Niel Grundlingh | Warren Hamer | Bev l'Ons-Raeburn | Roux Kemp | Gerhard Kotze | Belinda Lewis | Robert Matlhare | Corlene Mostert | Hennie Mouton | Martine Newman | Neil Parker | James Phillipson | Cris Riego de Dios | Martin Sheard | Roshana Solomon | Philip Steyn | Marlize Swart | Dumisani Tabata | June Theron | Annetjie van Rooyen | Percy van Staden | Ferdinand Verryn | Shereen Volks | Allan White
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Registration No: 1992/003316/21
VAT Reg No: 4670133877

Ordinance was repealed by the Stellenbosch Municipal Planning Bylaw, 2015 (*“the Municipal Planning Bylaw”*) which came into operation on 1 December 2015.

6. In view of the fact that the application in question was submitted after 1 December 2015, the application stands to be considered in view of the Municipal Planning Bylaw and not in terms of the Ordinance.
7. In addition to the repeal of the Ordinance, the Spatial Planning and Land Use Management Act, No. 16 of 2013 (*“the SPLUM Act”*) came into operation during August 2013. Section 21 of the SPLUM Act describes the content for a municipal spatial development framework. In this respect, section 21 reads as follows:

“A Municipal spatial development framework must—

- (a) give effect to the development principles and applicable norms and standards set out in Chapter 2;*
- (b) include a written and spatial representation of a five year spatial development plan for the spatial form of the municipality;*
- (c) include a longer term spatial development vision statement for the municipal area which indicates a desired spatial growth and development pattern for the next 10 to 20 years;*
- (d) identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated;*
- (e) include population growth estimates for the next five years;*
- (f) include estimates of the demand for housing units across different socio-economic categories and the planned location and density of future housing developments;*
- (g) include estimates of economic activity and employment trends and locations in the municipal area for the next five years;*
- (h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs for the next five years;*
- (i) identify the designated areas where a national or provincial inclusionary housing policy may be applicable;*

- (j) *include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips, where applicable;*
- (k) *identify the designation of areas in the municipality where incremental upgrading approaches to development and regulation will be applicable;*
- (l) *identify the designation of areas in which—*
 - (i) *more detailed local plans must be developed; and*
 - (ii) *shortened land use development procedures may be applicable and land use schemes may be so amended;*
- (m) *provide the spatial expression of the coordination, alignment and integration of sectoral policies of all municipal departments;*
- (n) *determine a capital expenditure framework for the municipality's development programmes, depicted spatially;*
- (o) *determine the purpose, desired impact and structure of the land use management scheme to apply in that municipal area; and*
- (p) *include an implementation plan comprising of—*
 - (i) *sectoral requirements, including budgets and resources for implementation;*
 - (ii) *necessary amendments to a land use scheme;*
 - (iii) *specification of institutional arrangements necessary for implementation;*
 - (iv) *specification of implementation targets, including dates and monitoring indicators; and*
 - (v) *specification, where necessary, of any arrangements for partnerships in the implementation process¹.*

8. It is accordingly clear that the provisions of section 21 of the SPLUM Act are peremptory and that any SDF must comply strictly therewith. It is accordingly necessary to evaluate the proposed SDF against the aforementioned requirements prior to the council of the Municipality approving and recommending same.

9. In this regard, section 9 of the Municipal Planning Bylaw provides as follows:

"9. (1) The Municipality may adopt a local spatial development framework for a specific geographical area in a part of the municipal area.

(2) The purpose of a local spatial development framework is to, for a specific geographical area—

(a) provide detailed spatial planning guidelines;

(b) provide more detail in respect of a proposal provided for in the municipal spatial development framework;

(c) meet specific land use planning needs;

(d) provide detailed policy and development parameters for land use planning;

(e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; and

(f) guide decision-making on land use applications".

10. In the event that the application correctly refers to the 2011 SDF, such SDF would not be compliant with the requirements of the Municipal Planning Bylaw or the SPUM Act, and would require consequential amendments. In as far as the latest SDF was omitted from the application, we are unable to advise further in respect to the legal implications of adopting same until such time as we have been furnished with a copy thereof.

We advise accordingly.

Yours faithfully

STBB | SMITH TABATA BUCHANAN BOYES

G Potgieter

7.3 STELLENBOSCH MUNICIPALITY: HOUSING PIPELINE (ANNUAL REVIEW)*File number : 17/4/9**Report by : Director: Human Settlements and Property Management**Compiled by : Manager: New Housing and Manager: Informal Settlements**Delegated Authority : Council***Strategic intent of item**

Preferred investment destination	<input checked="" type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To request Council to approve the Stellenbosch Municipality's Housing Pipeline (projects) for the next 10 financial years, for submission to the Provincial Department of Human Settlements (PDoHS).

2. BACKGROUND

During 2012/13 the current housing pipeline was developed and approved by PDoHS covering a 5 year horizon (2017/2018). Due to the housing shortage and continuous urbanization, the need to extend the pipeline to a 10 year period was identified.

Accordingly, PDoHS appointed a Professional Resource Team (PRT) to assist the municipality with the development of a future pipeline to cover a 10 year horizon and to update the previously approved pipeline of the municipality. This assistance comprised a two pronged approach namely:

- i) Revisiting the existing Human Settlements Plan (HSP) (5 year horizon); and
- ii) Compiling a draft HSP with a 10 year horizon.

Checklist: Phase 1

Review and update the first generation municipal Human Settlements (HS) Pipeline	✓
Determine the housing backlog and land need for the next ten years.	✓
Identification of potential future projects.	✓
Conduct preliminary project pre-feasibility report for the identification of new sites	✓
Produce HS project pipeline for the next 10 years.	✓

Phase 2

The Housing officials and PRT submitted the draft pipeline to the Senior Managers of Stellenbosch Municipality and PDoHS, thereafter to Council and then to the MEC of Human Settlements for final approval.

3. DISCUSSION**3.1 Housing backlog and land need**

In determining the housing backlog the PRT relied on the Municipal Housing Waiting Lists as supplied by the Western Cape Demand Database.

Cognisance must be taken that the waiting list only reflects the individuals/households who registered themselves on a voluntary basis on the list. It does not reflect the means test (income per household) that is performed once a housing project is implemented. Therefore the figures hereunder are only indicative of the housing need and do not necessarily reflect the actual need per housing program.

Table 1: Waiting List

TOWN	Waiting list (hh) Note 3	Future growth at 1% (2024) Note 2	Urban relocation (2024)	Total Need	No of Units up to 2020 (Pipeline)	Backlog	Land Need (ha) – Note 1
KAYAMANDI, IDAS VALLEY & CLOETESVILLE							
Kayamandi – Breaking New Ground (BNG)	4 457	466		4 923			
Kayamandi - GAP	299	31		330			
Idas Valley - BNG	1 345	141		1 486			
Idas Valley - GAP	86	9		95			
Cloetesville - BNG	2 270	237		2 507			
Cloetesville - GAP	139	15		154			
TOTALS	8 596	899		9 495	2 899	6 596	165
FRANSCHHOEK							
Franschhoek - BNG	3 068	0		3 068			
Franschhoek - GAP	164	17		181			
TOTALS	3 232	17		3 249	2 200	1 049	26
KLAPMUTS							
Klapmuts - BNG	2 351	0		2 351			
Klapmuts - GAP	106	11		117			
TOTALS	2 457	11		2 468	676	1 792	45
KYLEMORE & PNIEL							
Kylemore - BNG	732	77		809			
Kylemore - GAP	43	4		47			
Pniel	193	20		213			
Pniel	36	4		40			
TOTALS	1 004	105		1 109	871	238	6
JAMESTOWN							
Jamestown - BNG	641	0		641			
Jamestown - GAP	71	7		78			
TOTALS	712	7		719	583	136	3
OTHER AREAS (STELLENBOSCH)							
Stellenbosch	4 649	486		5 135			
Stellenbosch	218	23		241			

TOTALS	4 867	509		5 376	4 306	1 070	27
Smaller towns (< 100 hh)	230	24		254			
TOTALS	21 098	1 573		22 671	11 535	10 882	272

Note 1 – land need based on a density of 40 units per hectare

Note 2 – the 1% is calculated per annum and summed over a period of 10 years

Note 3 – the information is premised on the waiting list

3.2 New projects added to pipeline

As part of the PRT brief they had to identify a maximum of 10 new projects per Municipality. Subsequently, various workshops were held with the Department and Municipal officials and a list of potential projects were identified. These were referred to Spatial Development Framework (SDF) and IDP's and initially broadly screened where-after a shortlist was compiled.

A desktop pre-feasibility was conducted on each of these sites to identify potential risks, development opportunities, constraints, alignment to policy documents and availability of services. The following new projects were identified by means of a desktop feasibility study by the PRT:

Table2: Projects identified (PRT)

KEY	TYPE	ERF / FARM NO.	TOWN / AREA	OWNERSHIP	SIZE (ha)
1	Infill Development	Ptn 3 Farm Idas Valley 1075	Idas Valley	Stellenbosch Municipality	6
2	Greenfield	Remainder Farm 527	Jamestown	Stellenbosch Municipality (Long term lease agreement in place)	27,6
3	Greenfield	Remainder Ptn 2 Farm Weltevreden	Klapmuts	Private: SAFAMCO	11,2
4	Greenfield	Ptn 4 Farm Old Bethlehem 153	Kylemore	Private: Reside PROP PTY LTD	18,1
		Remainder Ptn 1 Farm Old Bethlehem		Private: Reside PROP PTY LTD	

Council has over the last number of years identified several areas where possible future development can be implemented in the future. (see table 2).

Table3: Projects identified by Council

KEY	TYPE	ERF / FARM NO.	TOWN / AREA	OWNERSHIP	SIZE (ha)
1	Infill Development	*Erf 7001	Cloetesville	Stellenbosch Municipality	5.8
2	Greenfield	Droëdyke: Erven	Stellenbosch	Private Government and	88.8
3	Greenfield	*Nietvoorbij	Stellenbosch	Government	30.26
4	Greenfield	*Northern Extension	Stellenbosch	Private and Stellenbosch	270
5	Infill Development	*Social Housing: Restructuring Zones	Stellenbosch	Private and Stellenbosch	---

**(pre-feasibility studies still to commence)*

In accordance with the above, proposed timelines were developed for the commencement with construction.

Table 3: Proposed timelines for construction

Proposed Projects	Current project per area	2 - 3 years	3 – 5 years	5 – 10 years	More than 10 years
2053(1): Kayamandi Watergang (295 services) UISP	X				
2053(1): Kayamandi Watergang (193 Units) IRDP	X				
3251.01: Stellenbosch Jamestown (162 services & units) IRDP	X				
3110.01: Vlotenburg Longlands (144 services & units) IRDP	X				
3258: Kayamandi Town Centre Regeneration (700 Units)			X		
2053(1): ZONE O (540 services)	X	X			
3256: Franschhoek Langrug Enhanced Services (1200 services) UISP	X				
2053.x Klappmuts Upgrading of informal settlement (Phase 4 of 2053:15)	X	X			
2053(20): Kylemore (171 services & 171 units) IRDP		X			
xxxx : Stellenbosch Meerlust (200 services & 200 units) IRDP			X		
3259: Kayamandi Enkanini Enhanced Services (1300 services) UISP			X		
3257: Stellenbosch Idas Valley (400 services & 400 units) IRDP / FLISP	X	X		X	

Proposed Projects	Current project per area	2 - 3 years	3 – 5 years	5 – 10 years	More than 10 years
xxxx : Stellenbosch Lamotte Old Forest Station (320 services & units) IRDP / FLISP and 106 services & GAP					
xxxx : Stellenbosch Lanquedoc (700 Services & 700 units) IRDP					
3251.03: Stellenbosch Jamestown (265 services & 265 units)		X			
3251.04: Stellenbosch Jamestown (156 services & 156 units)		X			
xxxx : Stellenbosch Jonkershoek (? Services & ? units) IRDP					
3260 : Stellenbosch Droë Dyke (4000 services & 4000 units) IRDP					X
xxxx: Ptn 3 Farm Idas Valley 1075				X	
xxxx: Remainder Farm 527, Jamestown*			X		
xxxx: Remainder Farm 527, Jamestown**				X	
xxxx: Remainder Ptn 2 Farm Weltevreden 744, Klappmuts				X	
xxxx: Ptn 4 Farm Old Bethlehem 153, Kylemore			X		
xxxx: Remainder Ptn 1 Farm Old Bethlehem 153, Kylemore			X		
xxxx: Erf 7001, Cloetesville		X			
xxxx: Nietvoorbij, Stellenbosch					X
xxxx: Northern Extension, Stellenbosch				X	
xxxx: Social Housing: Restructuring Zones, CBD Stellenbosch			X		

- * assumed all planning rights received or are in the process of being obtained
** outside urban edge

Note: IRDP – Integrated Residential Development Programme
UISP – Upgrading of Informal Settlements Programme
FLISP – Finance Linked Individual Subsidy Programme
CBD – Central Business District

3.2.1 Idas Valley Ptn 3 Farm 1075

The proposed project consists of the following properties:

Portion 3 Farm 1075

The site is located in Idas Valley, immediately to the west of the residential suburb of Lindida. It lies to the north-west of Stellenbosch town centre. The site has been vacant for a number of years, which lead to the area being used as breeding grounds for undesired activity in the community. No legal agricultural activities are recorded on site in the past ten years. The original vegetation found in this area is the Cape Winelands Shale Fynbos, however the site has undergone years of transformation and no natural vegetation are left intact. The Krom River passes through the southern portion of the site.



The site potential is for approximately 126 subsidy housing units.



Based on the PRT evaluation the project is **RECOMMENDED** to be added to the Municipality's Pipeline Projects.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
		X	

3.2.2 Jamestown Portion of Remainder Farm 527

The proposed project consists of the following properties:

Portion of Remainder Farm 527

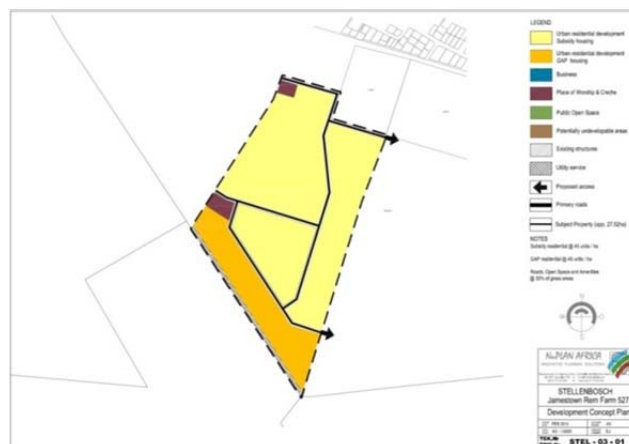
The site is situated on the slopes of the Jonkershoek Nature Reserve, to the east of the R44, linking Somerset West with Stellenbosch, and immediately south of the Jamestown Residential Area.

The 27.6ha is currently and have historically been used for agricultural purposes, mainly for the cultivation of grapes. Therefore no natural Swartland Granite Renosterveld is left on site. To the west of the site (on the existing Jamestown housing development) is a natural water course which flows into an existing dam.



The development potential is ±850 housing opportunities. Premised on the current Phase 1 project of Farm 527 these future opportunities can be summarised as follows:

- GAP housing opportunities : ±400 (FLISP)
- Subsidised housing opportunities : ±450 (UISP and IRDP)
- Total : ±850**



Based on the PRT evaluation the project **IS RECOMMENDED TO PROCEED WITH CAUTION** prior to it being added to the Municipality's Pipeline Projects. Portion of site falls outside of urban edge.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
	X	X	

3.2.3 Klapmuts Remainder Ptn 2 Farm Weltevreden 744

The proposed project consists of the following properties:

Remainder Ptn 2 Farm Weltevreden 744

The proposed site is located on the Western edge of the residential area of Klapmuts, West of the R44, separating the urban area from the neighbouring agricultural landscape. The property covers an area of 10.3ha and is bordered to the East and North by the Klapmuts residential area, and to the South by a small holding.

Currently vacant, the site could have been used for grazing purposes in the past and therefore no natural occurring Swartland Alluvium Fynbos. The northern part of the site falls within a 600m buffer area due to a nearby factory. There appears to be a small watercourse on the northern part of the site but it falls within the buffer area. The closest dam is found approximately 212m south of the Southern border. No drainage lines appear to traverse the site.



The development potential is summarised as follows:

GAP Units (3 storeys)	: 72
GAP / Market units	: 300
Subsidy Units	: 200
Total	: 572

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
		X	

3.2.4 Kylemore Ptn 4 & Remainder Ptn 1 Farm Old Bethlehem 153

The proposed project consists of the following properties:

- Ptn 4 Farm Old Bethlehem 153
- Remainder Ptn 1 Farm Old Bethlehem 153

The site is located directly adjacent to the residential area of Kylemore and consists of two elongated portions of land which is separated by an access road to the site adjacent farm. The total area of the two sites is 29.4ha and was historically covered by Swartland Alluvium Fynbos to the South and Boland Granite Fynbos to the North. The Eastern border is delineated by a stream flowing from the mountain and feeds into the onsite wetland on both portions of land. There are some signs that the wetland has been disturbed due to some minor earthworks.



The development potential is summarised as follows:

GAP Units : 30
 Subsidy Units : 140
Total : 170



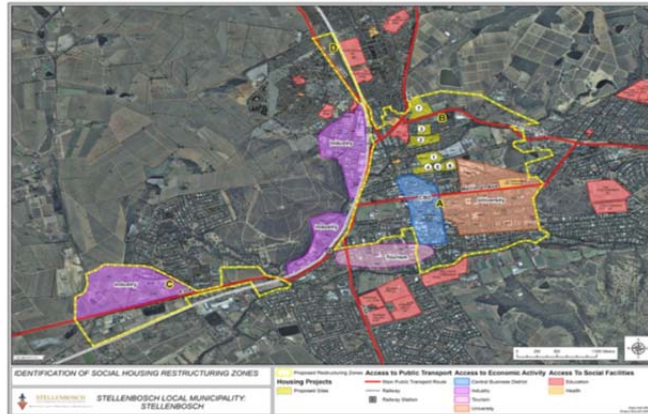
Based on the PRT the project **IS RECOMMENDED** to be added to the Municipality’s Pipeline Projects.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
		X	

3.2.5 Social Housing

This project consists of various sites which is located within the Stellenbosch Municipal area. This project is dependent on the Municipality becoming a restructuring town with restructuring zones.



The development potential is summarised as follows:

Social housing Units : 1000
 GAP Units : 0
Total : 1000

It is suggested that the following time period should be considered for implementation:

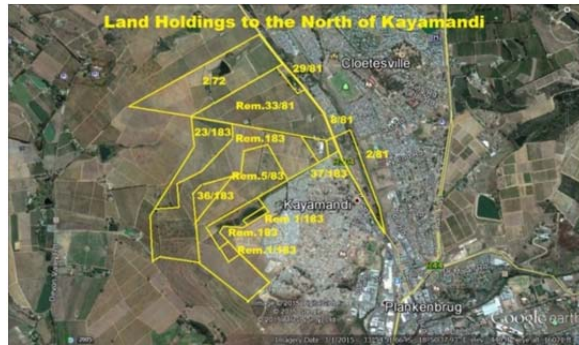
2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
	X		

3.2.6 Northern Extension

This project consists of various sites which are located to the North of Kayamandi and is abutted by the R304. There are some agricultural activities on some of these properties.

The proposed project consists of the following properties:

- Ptn 8/81
- Ptn 2/72
- Ptn 2/81
- Ptn 23/183
- Ptn 36/183
- Ptn 37/183
- Remainder 182
- Remainder 183
- Remainder of 1/183
- Remainder of Ptn 1/182
- Remainder of Ptn 33/81
- Remainder of Ptn 5/83



The development potential of this site is calculated on the assumption that the average is/will be ±100m² and is summarised as follows:

GAP Units : 2000
 Subsidised housing opportunities : 4000
Total : 6000

The initial estimates indicate that the area could yield as much as 11000 mixed use opportunities.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
		X	

3.2.7 Nietvoorbij

This site is located between Idas Valley and Cloetesville. Portions of the farm is cultivated and used as an experimental farm.



The development potential of this site is calculated on the assumption that the average is/will be ±100m² and is summarised as follows:

GAP Units / Social Housing* : 500
 Subsidised housing opportunities : 200
Total : 700

**A portion of the Nietvoorbij land will be utilised for social housing in accordance with the National Minister of Human Settlements Gazetting, that portion as a Restructuring Zone.*

The initial estimates indicate that the area could yield as much as 1200 mixed use opportunities.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
			X

3.2.8 Cloetesville (“Soek – mekaar”) Erf 7001

The proposed project consists of the following property:

- Erf 7001,

This is located in Cloetesville. The site has been vacant for a number of years, which lead to the area being used as breeding grounds for undesired activity in the community. The property is currently zoned public open space.



The development potential of this site is calculated on the assumption that the average is/will be $\pm 100\text{m}^2$ and is summarised as follows:

GAP Units	:	140
Subsidised housing opportunities	:	60
Total	:	200

The initial estimates indicate that the area could yield as much as ± 235 mixed use opportunities.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
X			

3.2.9 Drodyke

This project consists of various sites which are located to the North of Kayamandi and is abutted by the R304. There are some agricultural activities on some of these properties.

The proposed project consists of the following properties:

No.	Property Description	Size (ha)	Ownership	Zoning	Inclusion in Urban Edge
1.	Portion of Remainder Farm 279	25, 3	Stellenbosch Municipality	Agricultural	
2.	Portion 1 of Farm 284	3.31	Hannekom Developers (Pty) Ltd	Agricultural	
3.	Remainder Farm 284	60, 79	JC Botha (Pty) Ltd	Agricultural	
4.	Portion 17 of the Farm 183	10, 22	RSA	Agricultural	Yes
5.	Remainder Portion 35 of the Farm 183	2, 41	RSA	Agricultural	Yes
6.	Portion 8 of Farm 283	13, 23	RSA	Agricultural	Yes
7.	Remainder Farm 283	48, 81	RSA	Agricultural	Yes
8.	Farm 281	28, 27	RSA	Agricultural	

RSA Donates the Republic of South Africa

Sub Total : Private Land	64, 11 ha
Sub Total: Municipal Land	25, 3 ha
Sub Total: State Land	102, 97 ha
TOTAL	192, 37 ha

Source: Drodyke, Stellenbosch Municipality: Status Report: February 2013



The development potential of this site is calculated on the assumption that the average is/will be $\pm 100\text{m}^2$ and is summarised as follows:

GAP Units	:	1050
Subsidised housing opportunities	:	450
Total	:	1500

The initial estimates indicate that the area could yield as much as ± 3550 mixed use opportunities.

It is suggested that the following time period should be considered for implementation:

2 -3 years	3 – 5 years	5 – 10 years	More than 10 years
			X

3.3 Review and update first generation pipeline

The following projects are supported on the current approved pipeline:

(i) 2015/16 Financial Year

	Project name	Housing program	Project phase	No of sites	No of units
1.	Kayamandi Watergang (295 services)	UISP	Construction	295	
2.	Kayamandi Watergang (193 Units)	IRDP	Construction		135
3.	Stellenbosch Jamestown (162 services)	IRDP	Construction	42	90
4.	Kayamandi Zone O (541 services)	UISP	Planning		
5.	Stellenbosch Idas Valley (220 services) (Lindida)	IRDP/FLISP	Await planning approval		
6.	Stellenbosch Idas Valley (240 services) (Erf 13300)	IRDP/FLISP	Await planning approval		
7.	Franschoek Langrug Enhanced Services (1200 services)	UISP	Planning		
8.	Stellenbosch Lamotte Old Forest Station (430 services & 430 units)	IRDP	Await planning approval		
9.	Flottenburg Longlands (144 services)	IRDP	Planning		
10.	Kylemore (171 services & 171 units)	IRDP	Planning		
11.	Kayamandi Town Centre Regeneration (±700 units)	To be determined by feasibility study	Planning		
TOTAL				337	225

(ii) 2016/17 Financial Year

	Project name	Housing program	Project phase	No of sites	No of units
1.	Kayamandi Watergang (295 services)	UISP (Enhance site)	Toilets	295 (toilets)	300 (temporary structures)
2.	Kayamandi Watergang (193 Units)	IRDP	Construction		58
3.	Stellenbosch Jamestown (162 services)	IRDP	Construction		72
4.	Kayamandi Zone O (±541 services) Investigating possible increase of sites	UISP	Planning and Construction	50	0
5.	Stellenbosch Idas Valley (220 services) (Lindida)	IRDP/FLISP	Await planning approval		0
6.	Stellenbosch Idas Valley (240 services) (Erf 13300)	IRDP/FLISP	Construction	140	0
7.	Stellenbosch Jamestown (Phases 2)	IRDP	Planning Phase 2		
8.	Klapmuts (Phase 4 of 2053:15) 219 services & units	IRDP	Construction	100	0
9.	Franschoek Langrug Enhanced Services (1200 services)	UISP	Planning and feasibility study for decanting site		
10.	Longlands, Flottenburg (144 Services and units)	IRDP	Contractual matters to be finalised	100	
11.	Stellenbosch La Motte Old Forest Station (430 services & 430 units)	IRDP/FLISP	Await planning approval		
12.	Kylemore (171 services & 171 units)	IRDP	Await transfer of land and		

			planning approval		
13.	Kayamandi Enkanini Enhanced Services (1300 services)	UIISP	Planning (LUPA & EIA)		
14.	Kayamandi Enkanini (Pilot project)	UIISP	Construction (Electricity and upgrading of toilets)	300 electricity connections and 60 additional communal toilets	

	Project name	Housing program	Planning	No of sites	No of units
15.	Erf 2, La Motte (±70 services)	IRDP	Planning		0
16.	Kayamandi Town Centre Regeneration (700units)	UIISP/ Institutional	Planning		
TOTAL				390	130

Note: LUPA – Land Use Planning Act
EIA – Environmental Impact Assessment

(iii) 2017/18 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Kayamandi Watergang (295 services)	UIISP	Construction		
2.	Kayamandi Zone O (±541 services) Investigating possible increase of sites	UIISP	Construction	50	
3.	Stellenbosch Idas Valley (220 services) (Lindida)	IRDP/FLISP	Construction	62	
4.	Stellenbosch Idas Valley (240 services) (Erf 13300)	IRDP/FLISP	Construction	100	60
5.	Stellenbosch Jamestown (Phases 2)	IRDP	Planning		
6.	Franschoek Langrug Enhanced Services (1200 services)	UIISP	Construction	50	
7.	Stellenbosch Lamotte Old Forest Station (430 services & 430 units)	IRDP/FLISP	Planning		
8.	Kylemore (171 services & 171 units)	IRDP	Planning		
9.	Longlands, Vlottenburg (144 Services and units)	IRDP	Construction	44	50
10.	Kayamandi Enkanini Enhanced Services (1300 services)	UIISP	Planning		
11.	Klapmuts (Phase 4 of 2053:15) 219 services & units	IRDP	Construction	50	
12.	Erf 7001, Cloetesville (140 GAP & 60 BNG)	IDRP/FLISP	Planning		
13.	Kayamandi Town Centre Regeneration (700units)	UIISP/ Institutional	Planning		
TOTAL				356	110

(iv) 2018/19 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Kayamandi Zone O (±541 services) Investigating possible increase of sites	UIISP	Construction	100	
2.	Stellenbosch Idas Valley 1075 (FLISP)	IRDP/FLISP	Planning		
3.	Stellenbosch Jamestown (Phases 2)	IRDP/FLISP	Planning		
4.	Franschoek Langrug Enhanced Services (1200 services)	UIISP	Planning		
5.	Stellenbosch Lamotte Old Forest Station (430 services & 430 units)	IRDP/FLISP	Construction	100	40
6.	Klapmuts (Phase 4 of 2053:15) 219 services & units	IRDP	Construction	69	50
7.	Longlands, Vlottenburg (144 Services and units)	IRDP	Construction	100	33
8.	Kylemore (171 services & 171 units)	IRDP	Planning		
9.	Kayamandi Enkanini Enhanced Services (1300 services)	UIISP	Planning		

10.	Stellenbosch Lanquedoc (700 Services & 700 units)	IRDP	Planning		
11.	Stellenbosch Meerlust (200 services & 200 units)	IRDP	Planning		
12.	Social Housing: Restructuring Zones, CBD Stellenbosch	CRR	Planning	100	
13.	Rectification of existing units in Smartie Town	CRR	Construction		106
14.	Erf 7001, Cloetesville (140 GAP & 60 BNG)	IRDP/FLISP	Planning		
15.	Kayamandi Town Centre Regeneration (700units)	UISP/ Institutional	Construction	100	
TOTAL				569	229

(v) 2019/20 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Kylemore (171 services & 171 units)	IRDP	Construction	171	171
2.	Kayamandi Zone O (±541 services) Investigating possible increase of sites	UISP	Construction	100	
3.	Longlands, Vlotenburg (144 Services and units)	IRDP	Construction		61
4.	Stellenbosch Idas Valley 1075 (FLISP)	IRDP/FLISP	Planning		
5.	Stellenbosch Jamestown 527 (288 services)	IRDP/FLISP	Planning		
6.	Stellenbosch Jamestown (Phases 2)	IRDP/FLISP	Planning		
7.	Franschhoek Langrug Enhanced Services (1200 services)	UISP	Construction	200	
8.	Stellenbosch Lamotte Old Forest Station (430 services & 430 units)	IRDP/FLISP	Construction	200	200
9.	Kayamandi Enkanini Enhanced Services (1300 services)	UISP	Construction	200	
10.	Stellenbosch Lanquedoc (700 Services & 700 units)	IRDP/FLISP	Planning		
11.	Stellenbosch Jonkershoek (? Services & ? units)	IRDP	Planning		
12.	Kayamandi Town Centre Regeneration (±700 units)	To be determined by feasibility study	Planning		
13.	Stellenbosch Meerlust (200 services & 200 units)	IRDP	Construction	50	50
14.	Erf 7001, Cloetesville (140 GAP & 60 BNG)	IRDP/FLISP	Construction	200	60
15.	Kayamandi Town Centre Regeneration (700units)	UISP/ Institutional	Construction	100	
16.	Northern Extension, Stellenbosch (2000 GAP & 4000 BNG)	IRDP/FLISP	Planning		
TOTAL				1221	542

(vi) 2020/21 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Kayamandi Zone O (±541 services) Investigating possible increase of sites	UISP	Construction	191	
2.	Franschoek Langrug Enhanced Services (1200 services)	UISP	Construction	200	
3.	Stellenbosch Idas Valley 1075 (FLISP)	IRDP/FLISP	Construction	126	126
4.	Stellenbosch Jamestown 527 (288 services)	IRDP/FLISP	Planning		
5.	Stellenbosch Jamestown (Phases 2)	IRDP/FLISP	Construction	133	133
6.	Stellenbosch Lamotte Old Forest Station (430 services & 430 units)	IRDP	Construction	130	82
7.	Kayamandi Enkanini Enhanced Services (1300 services)	UISP	Construction	200	
8.	Stellenbosch Lanquedoc (700 Services & 700 units)	IRDP/FLISP	Construction	140	300
9.	Remainder Ptn 2 Farm Weltevreden 744, Klappmuts	IRDP/FLISP	Planning		
10.	Northern Extension, Stellenbosch (2000 GAP & 4000 BNG)	IRDP/FLISP	Planning		
11.	Kayamandi Town Centre Regeneration	UISP/	Construction	200	400

	(700units)	Institutional			
12.	Stellenbosch Meerlust (200 services & 200 units)	IRDP	Construction	150	150
TOTAL				1470	1191

(vii) 2021/22 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Franschoek Langrug Enhanced Services (1200 services)	UISP		200	
2.	Kayamandi Enkanini Enhanced Services (1300 services)	UISP	Construction	200	
3.	Stellenbosch Jamestown 527 (288 services)	IRDP/FLISP	Construction	100	100
4.	Remainder Ptn 2 Farm Weltevreden 744, Klappmuts	IRDP/FLISP	Planning		
5.	Ptn 4 Farm Old Bethlehem 153, Kylemore (30 GAP & 140 BNG)	IRDP/FLISP	Planning		
6.	Northern Extension, Stellenbosch (2000 GAP & 4000 BNG)	IRDP/FLISP	Planning		
7.	Stellenbosch Droë Dyke (4000 services & 4000 units)	UISP	Planning		
8.	Kayamandi Town Centre Regeneration (700units)	UISP/ Institutional	Construction	300	300
9.	Stellenbosch Lanquedoc (700 Services & 700 units)	IRDP/FLISP	Construction	560	300
TOTAL				1360	700

(viii) 2022/23 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Franschoek Langrug Enhanced Services (1200 services)	UISP		200	
2.	Kayamandi Enkanini Enhanced Services (1300 services)	UISP	Construction	200	
3.	Stellenbosch Jamestown 527 (288 services)	IRDP/FLISP	Construction	188	
4.	Remainder Ptn 2 Farm Weltevreden 744, Klappmuts	IRDP/FLISP	Construction	350	100
5.	Ptn 4 Farm Old Bethlehem 153, Kylemore (30 GAP & 140 BNG)	IRDP/FLISP	Planning		
6.	Northern Extension, Stellenbosch (2000 GAP & 4000 BNG)	IRDP/FLISP	Planning		
7.	Stellenbosch Droë Dyke (4000 services & 4000 units)	UISP	Planning		
8.	Nietvoorbij	IRDP/FLISP	Planning		
TOTAL				938	100

(ix) 2023/24 Financial Year

	Project name	Housing program	Planning	No of sites	No of units
1.	Franschoek Langrug Enhanced Services (1200 services)	UISP		200	
2.	Kayamandi Enkanini Enhanced Services (1300 services)	UISP	Constructio n	200	
3.	Remainder Ptn 2 Farm Weltevreden 744, Klappmuts	IRDP/FLISP	Constructio n	150	250
4.	Ptn 4 Farm Old Bethlehem 153, Kylemore (30 GAP & 140 BNG)	IRDP/FLISP	Constructio n	170	170
5.	Northern Extension, Stellenbosch (2000 GAP & 4000 BNG)	IRDP/FLISP	Constructio n	500	
6.	Stellenbosch Droë Dyke (4000 services & 4000 units) IRDP	UISP	Constructio n	500	200
7.	Nietvoorbij	IRDP/FLISP	Planning		
TOTAL				1720	620

4. LEGAL IMPLICATION

The draft item provided, deals with the approved housing pipeline for Stellenbosch Municipality by the Provincial Department of Human Settlements (PDoHS). The approval for the human settlement pipeline was already granted by the Provincial Department of Human

Settlements and no legal input is required in this regard. The Municipality however has to comply with the conditions of approval. The item is thus supported.

5. FINANCIAL IMPLICATION

Human Settlement projects must be implemented within Council prioritisation; Division of Revenue Act (DORA) approved funding limits and Provincial Department of Human Settlements approvals. The item is supported in line with this comment.

6. COMMENTS FROM OTHER RELEVANT DEPARTMENTS

Property Management

The recommendations contained in the report is supported, subject to amendments of Portion of Farm 744 (Klapmuts) to the northern portion of Farm 744 (figure 1), as the southern portion has been earmarked for a school site.



Figure 1

Spatial Planning, Heritage and Environment

In principle, we support the proposed sites for the housing pipeline projects, but please note the following:

- **Idas Valley:** Please note that a portion of this property was declared as a National Heritage Site (see attached **APPENDIX 1**).
- **Vlottenburg:** Please note that a large portion of this proposed site is located outside the urban edge (see attached **APPENDIX 2**).
- **Jamestown:** Please note that a portion of this proposed site is located outside the urban edge (see attached **APPENDIX 3**).

Although the triangle in Langrug, Franschhoek is located outside the urban edge, we support this location for housing.

Engineering Services

Engineering services comments on the new areas identified are compiled in the attached spreadsheet indicating the availability of bulk

services to support the new areas with the necessary engineering services. It is important to note that certain areas identified before are still under severe pressure from an engineering services provision point of view. Areas to be specifically pointed out are:

- Longlands, Vlotenburg development where the water provision capability is still not efficient to cope with the anticipated demand due to limited reservoir capacity.
- The Idas Valley area will also be dependent on the completion of the Plankenburg main outfall sewer phase 1 and 2 implementation scheduled for end December 2019.
- The Kylemore bulk infrastructure needs upgrading and based on the current approved budget both water and sewer will be ready with sufficient capacity by end 2018.

It is therefore critical that constant communication and integrated planning between the housing department and the engineering directorate is maintained throughout in order to synchronize the implementation and proposed delivery dates of bulk engineering infrastructure and new housing projects.

Joint Comment: Director Planning and Economic Development (P & ED) and Director Human Settlements and Property Management (HS & PM)

At a meeting held on 24 May 2016 between the Director: HS & PM and the Director: P & ED it was agreed that the Stellenbosch Municipality: Housing Pipeline can serve with minor amendments before Council, as a compliance item to ensure financial planning for projects. In view thereof and to avoid policy conflicts, it was also agreed that the item on the Shaping Stellenbosch Spatial Perspective will also be amended accordingly. The Stellenbosch Municipality: Housing Pipeline will be adjusted through the SDF process in keeping with the approved urban development strategy in the following financial year and the relevant recommendations will reflect this.

It is proposed that the following changes are made to the Shaping Stellenbosch item recommendations in order to align same with Stellenbosch Municipality: Housing Pipeline.

Table 4: Proposed changes to the Shaping Stellenbosch item

Previous recommendation	Current recommendation
(a) That the Shaping Stellenbosch document be approved as a broad policy guideline for future planning of Stellenbosch Town and that all spatial planning is based on this spatial strategy;	a) That the Shaping Stellenbosch document be approved as a broad policy guideline for discussion related to future planning of Stellenbosch Town and spatial planning in general and the agreed aspects be incorporated into the new WC 024 SDF;
(b) That Stellenbosch Municipality form a partnership with Stellenbosch University via the Rector-Mayor Forum that mandates the University to establish a core group of senior academics and postgraduate researchers to establish an integrated transdisciplinary research programme to support the implementation of the planning policies with funds that will be raised by the University from donors;	b) That Stellenbosch Municipality form a partnership with Stellenbosch University via the Rector-Mayor Forum to establish an integrated transdisciplinary research programme to support the implementation of the planning policies;

It is proposed that all projects mentioned in this item be considered in the SDF of Council.

7. CONCLUSION

It is necessary to prioritise development projects in keeping with the above and to commit to the pipeline, to ensure efficient utilisation of the available resources and the continuous provision of a variety of housing types in a range of markets, spread equitably through the municipal area. Moreover, prioritisation also guides the allocation of Municipal resources to projects, e.g. by leading the applications for bulk infrastructure funding and budgets. The table below indicates the proposed implementation year of the projects as identified on the Housing Pipeline.

PROJECT NAMES	TOTAL UNITS / SITES	Programme	Proposed Implementation Year	Readiness
2053(1): Kayamandi Watergang (295 services) UISP	295	UISP	Roll-over 2015/16	Current project
2053(1): Kayamandi Watergang (193 Units) IRDP	193	IRDP	Roll-over 2015/16	Current Project
3251.01: Stellenbosch Jamestown (162 services & units) IRDP	162	IRDP	Roll-over 2015/16	Current project
3257: Stellenbosch Idas Valley (400 services & 400 units) IRDP / FLISP	400	IRDP/FLISP	Roll-over 2015/16	Await EIA & LUPA approval
2053(1): ZONE 0 (540 services)	540	UISP	2016/17	50% - Consultants appointed to do Planning in beginning 2015.
3256: Franschhoek Langrug Enhanced Services (1200 services) UISP	1200	UISP	2016/17	80% (LUPO and PDoHS approvals outstanding, bulk capacity still to be fully installed)
3110.01: Vlottenburg Longlands (144 services & units) IRDP	144	IRDP	2016/17	90% (Land transfer and PDoHS approval outstanding)
2053.x Klapmuts Upgrading of informal settlement (Phase 4 of 2053:15)	219	UISP	2016/17	50% - all approvals in place, but informal settlement on site.

PROJECT NAMES	TOTAL UNITS / SITES	Programme	Proposed Implementation Year	Readiness
2053(20): Kylemore (171 services & 171 units) IRDP	171	IRDP	2016/20	10% (Land transfer and all planning process outstanding)
3258: Kayamandi Town Centre Regeneration (700 Units)	700	UISP/ INSTITUTIONAL	2016/22	10% (All planning processes outstanding)
3259: Kayamandi Enkanini Enhanced Services (1300 services) UISP	1300	UISP	2017/18	5% (All planning

				process outstanding)
xxxx : Stellenbosch Lamotte Old Forest Station (320 services & units) IRDP/FLISP and 106 services & GAP	426	IRDP	2017/18	1% (Land not obtained and all planning processes outstanding)
Northern Extension, Stellenbosch (2000 GAP & 4000 BNG)	2000 GAP 4000 BNG	IRDP/FLISP	2017/26	1% (Land not obtained and all planning processes outstanding)
xxxx : Stellenbosch Meerlust (200 services & 200 units) IRDP	200	IRDP	2018/19	1% (Land not obtained and all planning processes outstanding)
3251.03: Stellenbosch Jamestown (265 services & 265 units)	265	IRDP	2018/19	50% - LUPA & EIA outstanding
Erf 7001, Cloetesville (140 GAP & 60 BNG)	140 GAP 60 BNG	IRDP/FLISP	2018/20	1% (All approvals outstanding)
Ptn 3 Farm Idas Valley 1075	126	IRDP/FLISP	2018/21	1% (All approvals outstanding)
Social Housing: Restructuring Zones, CBD Stellenbosch	1000 rental	IRDP/FLISP	2018/26	Application for rezoning submitted to MEC of Human Settlements
3251.04: Stellenbosch Jamestown (156 services & 156 units)	156	IRDP/FLISP	2019/20	50% - LUPA & EIA outstanding
xxxx : Stellenbosch Jonkershoek (100 Services & units) IRDP	100	IRDP	2019/20	1% (Land not obtained and all planning processes outstanding)

PROJECT NAMES	TOTAL UNITS / SITES	Programme	Proposed Implementation Year	Readiness
xxxx : Stellenbosch Lanquedoc (700 Services & 700 units) IRDP	700	IRDP	2019/20	1% (Land not obtained and all planning processes outstanding)
Remainder Farm 527, Jamestown (288 services & 100 units)*	288 services 100 units	IRDP/FLISP	2019/23	1% (Land not obtained and all planning processes outstanding)
Remainder Farm 527, Jamestown**				
Remainder Ptn 2 Farm Weltevreden 744, Klappmuts (500 services & 350 units)	500 services 350 units	IRDP/FLISP	2020/24	1% (Land not obtained and all planning processes outstanding)
3260 : Stellenbosch Droë Dyke (4000 services & 4000 units) IRDP	4000	IRDP	2021/24	1% (Land not obtained and all planning processes outstanding)
Ptn 4 Farm Old Bethlehem 153, Kylemore (30 GAP & 140 BNG)	30 GAP 140 BNG	IRDP/FLISP	2021/24	1% (Land not obtained and all planning processes outstanding)
Remainder Ptn 1 Farm Old Bethlehem 153, Kylemore				
Nietvoorbij, Stellenbosch	To be determined	IRDP/FLISP / SOCIAL HOUSING	2022 / -	1% (Land not obtained and all planning processes outstanding)

The following table is an indication of the different housing programmes/projects that can be rolled out over the next 10 financial years pending on the DORA allocation provided by the municipality.

Summary of housing opportunities from 2016 – 2026:

Housing programme	Total
Service sites	5110
Insitu upgrading of informal settlements	3241
BNG	1102
GAP	1839
Institutional	400
Social Housing (rentals)	200-300
Rectification	106
TOTAL HOUSING OPPORTUNITIES	12098

In accordance with the discussion between Director: HS & PM and Director: P & ED it is proposed that all projects mentioned in this item be considered in the SDF of Council.

RECOMMENDED

- (a) that the supported projects by the Provincial Department of Human Settlements, be noted;
- (b) that all projects be considered in the SDF in Council; that the municipality arrange a special meeting with the Minister of Public Works in order to address the transfer of land in areas where municipal land for housing is limited especially areas like Kylemore, La Motte etc;
- (c) that through the necessary funding available a mega project be identified and after Council approval, presented to the Provincial Government for resources and additional funding support; and
- (d) that the housing pipeline be reviewed on an annual basis to align the project readiness with the DORA allocation.

**(DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE MEETING: 2016-06-01: ITEM 6.1.3

RECOMMENDED

- (a) that the supported projects by the Provincial Department of Human Settlements, be noted;
- (b) that all projects be considered in the SDF in Council; that the municipality arrange a special meeting with the Minister of Public Works in order to address the transfer of land in areas where municipal land for housing is limited especially areas like Kylemore, La Motte etc.;

- (c) that through the necessary funding available a mega project be identified and after Council approval, presented to the Provincial Government for resources and additional funding support; and
- (d) that the housing pipeline be reviewed on an annual basis to align the project readiness with the DORA allocation.

**(DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 5.1.8

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the supported projects by the Provincial Department of Human Settlements, be noted;
- (b) that all projects be considered in the SDF in Council; that the municipality arrange a special meeting with the Minister of Public Works in order to address the transfer of land in areas where municipal land for housing is limited especially areas like Kylemore, La Motte etc.;
- (c) that through the necessary funding available a mega project be identified and after Council approval, presented to the Provincial Government for resources and additional funding support; and
- (d) that the housing pipeline be reviewed on an annual basis to align the project readiness with the DORA allocation.

**(DIRECTOR: HUMAN SETTLEMENTS AND PROPERTY
MANAGEMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.3

RESOLVED (majority vote)

- (a) that the supported projects by the Provincial Department of Human Settlements, be noted;
- (b) that all projects be considered in the SDF in Council; that the municipality arrange a special meeting with the Minister of Public Works in order to address the transfer of land in areas where municipal land for housing is limited especially areas like Kylemore, La Motte etc.;

- (c) that through the necessary funding available a mega project be identified and after Council approval, presented to the Provincial Government for resources and additional funding support; and
- (d) that the housing pipeline be reviewed on an annual basis to align the project readiness with the DORA allocation.

The following Councillors requested that their votes of dissent be minuted:

Councillors F Adams; JA Davids; DA Hendrickse; S Jooste (Ms); C Moses (Ms); N Mananga-Gugushe (Ms); P Mntumni (Ms); RS Nalumango (Ms); N Ntsunguzi (Ms); P Sitshoti (Ms); LN Siwakamisa (Ms) and M Wanana.

**(DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

7.4 WRITING-OFF OF OUTSTANDING HOUSING LOANS

File number : 5/18/1/1
Compiled by : Manager: Treasury Office
Report by : Chief Financial Officer
Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To obtain approval from council to write off long outstanding housing loans.

2. DISCUSSION

The matter of housing loans has been a contentious issue and the accompanying loans have been in dispute for more than twenty years now.

Outstanding housing loans are not being paid by many people due to various reasons:

- Financial inability,
- Claims that housing loans have been written off by Provincial Housing Department,
- Claims that certain building material for self-build schemes were not actually received,
- Claims that housing figures taken over by Stellenbosch municipality during amalgamation were not audit, verified or substantiated,
- Claims of fraudulent activities pertaining to self-build housing schemes,
- Claims of a trust that should be in existence, containing certain funds to be used in certain areas for housing purposes.

There is no easy solution for the problem at hand and it can realistically be said that the outstanding housing loans in the books of the municipality will never actually be recovered.

In the meantime, the situation presents the following practical problematic issues:

- Residents of the dwellings are not paying their accounts and practically speaking, there is little to no hope of ever recovering the debt in practise. (Good Governance)
- Due to the fact that these residents are not homeowners, the municipality has no legal recourse in attempting to recover arrears in consumer accounts. (Good Governance)
- People cannot get clearance and can therefore not obtain transfer of their homes. They are consequently deprived of home ownership. (Dignified Living)
- Due to the fact that people are not home owners, they do not qualify for indigent support. (Dignified Living)
- The municipal debt book reflects outstanding assets which are in fact, irrecoverable. (Good Governance)

Housing loans have in fact been written off by Housing Departments, but this was only the funding owed by the municipality to the Housing Departments. Housing loans owed by the individuals to the municipality (current or former) were not written off.

However, due to the fact that the municipality does not have to repay any housing loans, there would be no real loss of funds if the current outstanding loans of individuals were to be written off.

4. LEGAL IMPLICATION

Paragraph 9 of the Irrecoverable Debts Policy makes provision for Council to consider meritorious cases for write off.

5. FINANCIAL IMPLICATION

The table below provides a summary 167 outstanding housing loans totaling R2 442 434.19.

Suburb	Sum of Cap. Bal.	Sum of Total O/S	Sum of Total All	Number of Outstanding Accounts
BDORP	-	-	-	0
CVILL	30 091.69	79 091.35	109 183.04	7
FGDAL	278 868.03	210 607.29	489 475.32	32
GOAKS	-	130 860.10	130 860.10	30
IVAL	-	9 812.69	9 812.69	1
JDAL	-	-	-	0
JTOWN	-	8.12	8.12	1
KMORE	716 789.96	528 640.22	1 245 430.18	64
PNIEL	297 735.36	159 775.04	457 510.40	31
TVILL	-	154.34	154.34	1
Grand Total	1 323 485.04	1 118 949.15	2 442 434.19	167

Attached as **APPENDIX 1** is the list of properties referred to in the table above.

Only outstanding housing loans are depicted in the schedule. It is expected that arrears on municipal services be paid by the respective consumers and that council may approve that only the loan money's be written off.

Department Human Settlement and Property management will be task to administer the write off of the outstanding loan amounts and the transfer of the properties.

The amount for the transfer of properties to the owners still need to be determined therefore a separate item will serve in the new financial year with the cost implications to Council.

Should Council approve that these irrecoverable debts be written off, the funds will be recovered from the Provision for Irrecoverable Debts.

6. **COMMENTS FROM OTHER RELEVANT DEPARTMENTS**

Human Settlements & Property Management

The municipality has a huge backlog on the transfer of title deeds on housing stock that spans the pre-1994 and post 1994 periods. This has invariably meant that households who have occupied their dwellings for decades still do not enjoy homeownership in the true sense of the word and all benefits one derives from it.

The Directorate Human Settlements and Property Management has embarked on a concerted process of fast-tracking the transfer of title deeds and the writing-off of housing loans as recommended in this item will significantly assist in facilitating that targets that have been set in this regard are met.

Legal Department

The writing off of these outstanding debts will enable the Municipality to attend to all outstanding transfers effectively. The beneficiaries are currently obliged to make payment of the outstanding amounts before transfer can be affected. The item and recommendations are supported.

7. **CONCLUSION**

Writing off these housing loans due to them in all likelihood being irrecoverable, will provide people with dignified living. It will enable people to take transfer of their homes, thereby becoming an asset that can be used for security or left as an inheritance. Some people have been waiting for twenty years and longer to experience the joy of home ownership.

Furthermore, the writing off of the arrears cannot be construed as a loss to the municipality. It used to be that the council would pay a loan to the Housing Department and then recover the loan from the owner of the house. This is no longer the case as the Housing Department has written off the municipality's loans in this regard.

All funds that are written off as irrecoverable are written away against the Provision for Irrecoverable Debts.

Realistically speaking, the probability of the municipality recuperating the money in practice remains extremely low.

RECOMMENDED

- (a) that all outstanding housing loans as reflected in the attached documentation be written off as irrecoverable, at the values as reflected in the municipality's records at the time of effecting the transaction; and
- (b) that the municipality facilitate and fund the transfer of the properties to their rightful new owners.

(CHIEF FINANCIAL OFFICER TO ACTION)

**FINANCE AND STRATEGIC AND CORPORATE SERVICES COMMITTEE:
2016-06-07: ITEM 5.1.1**

RECOMMENDED

- (a) that all outstanding housing loans as reflected in the attached documentation be written off as irrecoverable, at the values as reflected in the municipality's records at the time of effecting the transaction; and
- (b) that the municipality facilitate and fund the transfer of the properties to their rightful new owners.

(CHIEF FINANCIAL OFFICER TO ACTION)

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 5.1.10

RECOMMENDED BY THE EXECUTIVE MAYOR

that all outstanding housing loans as reflected in the attached documentation be written off as irrecoverable, at the values as reflected in the municipality's records at the time of effecting the transaction.

(CHIEF FINANCIAL OFFICER TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.4**RESOLVED** (nem con)

- (a) that all outstanding housing loans as reflected in the attached documentation be written off as irrecoverable, at the values as reflected in the municipality's records at the time of effecting the transaction;
- (b) that all people's names that are not appearing on the list attached, but who are part of this project, should be included in the writing-off of outstanding housing loans; and
- (c) that the Administration report back to Council in the September 2016 Council meeting.

(CHIEF FINANCIAL OFFICER TO ACTION)

7.5 REVIEW OF THE DISASTER MANAGEMENT PLAN

File number : 17/8/4

Compiled by : Manager: Fire and Disaster

Report by : Director: Community and Protection Service

Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input checked="" type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To present a reviewed disaster plan (**APPENDIX 5**) to the Committee and Council for approval.

2. LEGAL FRAMEWORK.

The revision of the disaster management plan is done in accordance with section 53 (1) of the Disaster amendment act, act no 16 of 2015 to:

(g) regularly review and update its plan; and

(h) through appropriate mechanisms, processes and procedures established in terms of Chapter 4 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), consult the local community on the preparation or amendment of its plan."

3. DISCUSSION

Disaster management is a continuous function and dynamic in its very nature. As a consequence government has made amendments to the act (see **APPENDIX 1**), as a counter and mitigation strategy through proclamation no. 24 (see **APPENDIX 2**) of the commencement of the Disaster amendment act, act no. 16 of 2015 in the Government Gazette.

Section 43 (1) is of special significance to this communiqué that reads;

A local municipality must establish capacity for the development of a disaster management plan and the implementation of a disaster management function:

Stellenbosch municipality does have an approved disaster plan. The disaster plan, as prescribed, is being review on an annual basis with the

main focus of testing the relevancy of and reprioritising the main risks as depicted in the plan.

Regarding the review:

- (i) Special effort was made to consult as widely as possible and to solicit input regarding the review of the plan. A resultant first Advisory meeting (see minutes **APPENDIX 3**) was held on 28 April in the Council chambers with the aim to:

Sharing advice and making recommendations on disaster related issues and to contribute to disaster risk management and planning.

- (ii) The only major change forthcoming was the reference to newly amendment act in the plan.
- (iii) The key stakeholder contact list has also been updated to reflect the new senior appointments made by Council and that the
- (iv) Power outages plan and Idasvalley dam emergency plan also added as to the existing list of contingency plans.

A Formal Quotation (see **APPENDIX 4**) has been advertised for an Ward based risk assessment: Phase 1 for the whole WC024 area, and will be conducted during the 2016/2017 financial year, in accordance with section 53 (1) (a). The results will be a key instrument and give justification for the re-prioritisation of risks that are reflected in the plan. It was therefore deemed premature to reprioritise the current risks in the plan.

4. LEGAL IMPLICATION SNR LEGAL ADVISOR EA RHODA

In accordance with the Disaster Management Act, national departments, provinces and municipalities must establish their level of capacity to deal with disaster risk reduction, response and recovery. Where necessary, and to strengthen this capacity, they must enter into mutual assistance agreements with their neighbours, the private sector, other organs of state and communities. At provincial and municipal level, co-operation and co-ordination efforts must be supported by cross-boundary mutual assistance agreements (that is, between provinces, between provinces and municipalities and between municipalities), and by creating partnerships within each sphere with the private sector and NGOs through memoranda of understanding. Mutual assistance agreements and memoranda of understanding are legal documents. Their parameters must be clearly defined and they should include details of financial arrangements, reimbursements and liability. They must also be in compliance with the national standard guideline on mutual assistance agreements developed by the Disaster Management Act mandates each municipal entity and organ of state to prepare a disaster risk management plan which must include contingency strategies and emergency procedures to be implemented in the event of a disaster. It mandates all municipalities within an applicable municipal disaster risk management framework to develop disaster risk management plans which must include contingency plans and emergency procedures to be applied in the event of a disaster.

Despite the fact that planning must focus on those hazards that pose the greatest threat, planning must also take into account other threats which are less likely to occur, or those which may not occur at all but cannot be ignored.

I advise accordingly.

5. FINANCIAL IMPLICATION

None required

6. COMMENTS FROM OTHER RELEVANT DEPARTMENTS

Integrated Development Planning and Performance Management
Strategic and Corporate Services:

The guidelines for municipalities to draft the disaster management chapter in the IDP to be taken into consideration (**APPENDIX 6**).

APPENDICES

Appendix 1: Disaster amendment act

Appendix 2: Proclamation

Appendix 3: Minutes of Advisory meeting

Appendix 4: Advertised Risk assessment Formal Quotation

Appendix 5: Revised Disaster Plan

Appendix 6: Guidelines for Municipalities to draft the Disaster Management Chapter in the Municipal IDP

RECOMMENDED

that the revised Disaster Management Plan be adopted by the Committee and approved by Council.

**(DIRECTOR: COMMUNITY &
PROTECTION SERVICES TO ACTION)**

**COMMUNITY AND PROTECTION SERVICES COMMITTEE MEETING:
2016-06-08: ITEM 5.1.1**

RECOMMENDED

- (a) that the revised Disaster Management Plan be adopted by the Committee and approved by Council;
- (b) that Council take note that there is an ongoing evaluation of the contingency plans for the Ida's Valley dam's potential failure;
- (c) that the Contingency Plan (**see APPENDIX 7**) as agreed by the Director: Community and Protection Services be attached to the next Council meeting scheduled for June 2016; and

- (d) that Council note that the Power Outages Plan also forms part of the overall risk assessment.

**(DIRECTOR: COMMUNITY &
PROTECTION SERVICES TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 5.1.11

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the revised Disaster Management Plan be adopted by the Committee and approved by Council;
- (b) that Council take note that there is an ongoing evaluation of the contingency plans for the Ida's Valley dam's potential failure;
- (c) that the Contingency Plan (**see APPENDIX 7**) as agreed by the Director: Community and Protection Services be attached to the next Council meeting scheduled for June 2016; and
- (d) that Council note that the Power Outages Plan also forms part of the overall risk assessment.

**(DIRECTOR: COMMUNITY &
PROTECTION SERVICES TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.5

RESOLVED (nem con)

- (a) that the revised Disaster Management Plan be adopted by the Committee and approved by Council;
- (b) that Council take note that there is an ongoing evaluation of the contingency plans for the Ida's Valley dam's potential failure; and
- (c) that Council note that the Power Outages Plan also forms part of the overall risk assessment.

**(DIRECTOR: COMMUNITY &
PROTECTION SERVICES TO ACTION)**

7.6 DRAFT POLICY FOR THE MANAGEMENT OF MUNICIPAL AGRICULTURAL LAND*File number* : 7/P/2*Compiled by* : *Manager: Local Economic Development**Report by* : *Director: Planning and Economic Development**Delegated Authority* : *Council****Strategic intent of item***

<i>Preferred investment destination</i>	X
<i>Greenest municipality</i>	
<i>Safest valley</i>	
<i>Dignified Living</i>	X
<i>Good Governance</i>	

1. PURPOSE OF REPORT

To obtain approval from Council for the Draft Policy for the Management of Municipal Agricultural Land which will govern the management and allocation of municipal agricultural land based on the principles of sustainable development and with the intent of promoting socio-economic transformation in the agricultural sector.

2. BACKGROUND

The vision of the third generation Integrated Development Plan (IDP) indicates that Stellenbosch strives to be the "Preferred Investment Destination" and to create a place for "Dignified Living". Agriculture has been identified as one of the key economic sectors through which economic growth and job creation can be achieved.

Last year, Council approved the Draft Policy on the Management of Stellenbosch Municipality's Immovable Property (COUNCIL MEETING: 2014-09-02) on condition that a policy is developed for the management of municipal agricultural land.

To this end, an Ad-Hoc Committee was established comprising of representation from all political parties to devise recommendations on the way forward for the management of municipal agricultural land. Consequently, the Ad-Hoc Committee in collaboration with the administration (Property and LED Department) undertook to work together to implement the Council decision.

The purpose of this item is therefore to solicit comments from the Mayoral Committee regarding the policy for the management of municipal agricultural land and provide recommendations for the way forward.

3. DISCUSSION

In May 2014 the Draft Policy on Immovable Property was tabled and approved by Council. The decision was taken by Council that parallel to the process dealing with Immovable Property (overarching policy), an Agricultural /Land Reform Policy should be developed. The overarching policy was advertised for public comments which were incorporated into the draft for final approval from Council. However, the overarching policy will only be approved if it includes an Agricultural Land Reform Policy.

To this end, the Property Management and LED Department decided to work collaboratively on the development of the agricultural policy with the Ad-Hoc Committee providing strategic input including critical issues which need to be taken into consideration and playing an oversight role. In execution of the Council decision, the two departments agreed on the scope of work to be undertaken. It was decided that because of the complexity of such a policy, it would be better if such a policy is developed by competent, experienced service providers. To this end, at the same time in which the Ad-Hoc Committee was established, the administration appointed a group of experienced service providers through the supply chain management process to undertake the development of the policy.

Upon an extensive consultation process with the Ad-Hoc Committee, organised agriculture, government representatives and small farmers, a draft policy was developed based on the scope of work provided. In honouring the scope of work and given the complexity of such a contentious issue, drafting this policy was no easy task. However, the policy provides a balanced approach to guide the municipality in executing its responsibility to manage its property (agricultural land) in a manner that ensures that it achieves the overall developmental objectives of Council.

4. INPUTS BY OTHER DEPARTMENTS / COMMENTS BY RELEVANT DEPARTMENTS

The draft policy was circulated to the relevant departments (Property, Legal, Spatial Planning, Land Use Management, Community Services, Financial Services, Transport and Traffic Services) for comments on 20 October 2015. Since then numerous meetings and consultations occurred, leading to the Draft Policy being tabled herewith. No objections to the submission of this item were received.

The Draft Policy submitted herewith was also vetted by specialists from the University of Stellenbosch in keeping with the MOU and they made a significant contribution in preparing a workable policy.

Subsequent to the resolution as contemplated above, the comments of legal services was obtained and captured whereafter the policy was published for public comments (**APPENDIX 1**).

Thereafter the comments by the public and further inputs of the Manager Property Management were considered by the Municipal Manager, the Director Corporate Services and the Director Planning & Economic Development and where comments were appropriate,

applicable and relevant to the draft Policy for the Management of Municipal Agricultural Land were amended accordingly. (**APPENDIX 2**)

5. CONCLUSION

The Municipality can be pro-active in making land available for the purposes of land reform and ensuring that Council's objectives as the preferred investment destination is achieved through related socio-economic transformation.

RECOMMENDED

- (a) that the Draft Policy for the Management of Municipal Agricultural Land be adopted as Council's Policy for the Management of Municipal Agricultural Land; and
- (b) that the said Policy be published for public notice as Council's Policy.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 6.1.1

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the Draft Policy for the Management of Municipal Agricultural Land be adopted as Council's Policy for the Management of Municipal Agricultural Land; and
- (b) that the said Policy be published for public notice as Council's Policy.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.6

During deliberations on the matter, the DA requested a caucus which the Speaker allowed.

After the meeting resumed, it was

RESOLVED (majority vote)

- (a) that the Draft Policy for the Management of Municipal Agricultural Land be adopted as Council's Policy for the Management of Municipal Agricultural Land; and

(b) that the said Policy be published for public notice as Council's Policy.

Councillor F Adams requested that it be minuted that he supports the item with reservations.

The following Councillors requested that their votes of dissent be minuted:

Councillors DA Hendrickse and M Wanana.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

7.7 PROPOSED POLICY ON THE MANAGEMENT OF STELLENBOSCH MUNICIPALITY'S IMMOVABLE PROPERTY

File number : 7/P/5/Management of Stellenbosch Municipality's
Immovable Property

Compiled by : Director: Human Settlements and Property
Management

Report by : Municipal Manager

Delegated Authority : Council

Strategic intent of item:

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To consider the Draft Policy on the Management of Stellenbosch Municipality's Immovable Property.

2. BACKGROUND

Before the enactment of the Municipal Finance Act, No 56/2003 (MFMA) the disposal of Municipal Property was governed by Section 124 of the Municipal Ordinance, No 20 of 1974 and the directive(s) issued in terms thereof (circular LDC 4/1993). With the enactment of the MFMA in 2003, especially section 14 thereof, a new era dawned insofar as the disposal of Municipal (fixed) assets are concerned.

There were, however a number of uncertainties regarding the interpretation/applicability thereof, respectively taking into account that section 124 of the Municipal Ordinance was not repealed at that stage. (It has subsequently been repealed).

There was also uncertainty as to the applicability of the Preferential Procurement Policy Framework Act, No 5/2000 and the subsequent Preferential Procurement Regulations of 2001, insofar as it relates to the sale and letting of municipal immovable assets.

The Municipal Asset Transfer Regulations (August 2008) and New Preferential Procurement Regulations (2011), however provided much anticipated clarity on a number of issues.

Although the Municipal Asset Transfer Regulations deals in detail with the various aspects of Disposal Management, there are still grey areas which are not covered by the Regulations.

4. DISCUSSION**4.1 Legal Requirements****4.1.1 Constitution****4.1.1.1 Objects of Local Government**

In terms of Section 152(1), the objects of local government are (*inter alia*):

- to provide accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development; and
- to encourage the involvement of communities in the matters of local government.

4.1.1.2 Developmental duties of municipalities

In terms of section 153, a municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.

4.1.1.3 Bill of Rights**(a) Equality**

In terms of section 9 everyone is equal before the law and has the right to equal protection. Equality includes the full and equal enjoyment of all rights and freedoms.

To promote the achievement of equality, legislative and other measures designated to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.

(b) Just administrative action

In terms of section 33, everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(c) Property

In terms of section 25(1), no one may be deprived of property, except in terms of law of general application, and no law may permit arbitrary deprivation of property.

Subsection (2) allows for the expropriation of land in terms of law of general application for a public purpose or in the public interest. Public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africans natural resources.

In terms of subsection (5), the state must take reasonable legislative and other measures to foster conditions which enable citizens to gain access to land on an equitable basis.

In terms of subsection (8), no provision of section 25 may impede the state from taking legislative and other measures to achieve land reform, in order to redress the results of past racial discrimination.

4.1.2 Local Government: Municipal Finance Management Act, No 56/2003

4.1.2.1 Disposal of Capital Assets

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

*"Basic municipal service" is defined as a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment.

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

- (a) has decided on reasonable grounds that **the asset is not needed to provide the minimum level of basic municipal services**; and
- (b) has considered the **fair market value** of the asset and the **economic and community value** to be received in exchange for the asset.

In terms of subsection (5), any transfer of ownership of a capital asset in terms of this section must be **fair, equitable, transparent, competitive** and consistent with the municipality's supply chain management policy (still to be developed).

4.1.2.2 Supply Chain Management

Section 62(1)(f)(iv) requires that the municipal manager must ensure that the municipality has and implements a supply chain management policy in accordance with Chapter 11 of the Act, which allows managers to manage, and make them more accountable.

In terms of section 112, the supply chain management policy of a municipality must, *inter alia*, comply with a prescribed regulatory framework*, which must cover (*inter alia*) the following:

- the range of supply chain management **processes** that may be used, including tenders, quotations, auctions and other types of competitive bidding;

-
- when a municipality may or must use a particular type of process;
 - procedures and mechanisms for each type of process;
 - procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
 - open and transparent pre-qualification processes for tenders or other bids;
 - competitive bidding processes in which only pre-qualified persons may participate.

In terms of subsection (2) such a regulatory framework must be fair, equitable, transparent, competitive and cost effective.

*"Prescribed" is defined as prescribed by regulation in terms of section 168 of the MFMA. In this regard the Minister has published the Municipal Supply Chain Management Regulations.

4.1.3 Supply Chain Management Regulations (G.N.868/2005)

In terms of Section 40, a Municipality's Supply Chain Management Policy must provide for an effective system of disposal management for the disposal or letting of assets.

4.1.4 Municipal Asset Transfer Regulations (MATR)

The purpose of the Regulation is to give effect to the enabling provisions in the MFMA and to regulate all transfers and disposals of municipal assets, including transfers to private sector parties, other municipalities, municipal entities and national and provincial organs of state and the granting of temporary rights to use municipal assets (such as the leasing of assets).

4.1.5 Preferential Procurement Regulations

The new Preferential Procurement Regulations were promulgated on 8 June 2011. In terms hereof a new preference point system "*for acquisition of services, works or goods*" comes into operation on 7 December 2011, i.e. the Regulations is therefore not applicable insofar as it relates to the disposal of immovable property.

4.2 PROPOSED POLICY

4.2.1 Scope and Purpose

The purpose of the Policy is to provide a framework for the management and disposal of the municipality's land and other immovable capital assets that are not needed to provide the minimum level of basic municipal services and that are surplus to the municipality's requirements.

Hereto attached as **APPENDIX 1** is a copy of the Draft Policy on the Management of Stellenbosch Municipality's Immovable Property.

This Policy should be regarded as Stellenbosch Municipality's Disposal Management Policy (Section 40 of the Supply Chain Management Regulations), and once approved, will replace Chapter 5 of the Municipality's Supply Chain Management Policy, insofar as it relates to **immovable** assets.

4.2.2 Preference point system

Although municipalities are not obliged to implement a preference point system when disposing of immovable property or when awarding rights in immovable property, the achievement of equality is a fundamental goal to be attained. The policy therefore provides for a preference point system. The objectives of the preferred points system are to:

- (a) promote broad-based black economic empowerment;
- (b) promote the redress of current, skewed land ownership patterns;
- (c) enhance the economy of the municipal area;
- (d) give preference to marginalised groups in the society, including women and people with disability;
- (e) give preference to people residing in the municipal area;
- (f) ensure that the most appropriate developments take place; and
- (g) further an integrated approach to development.

4.2.3 Management of competitive bids

For Property transactions above a contract value of R1 000 000-00 or where the Municipal Manager deems it appropriate, taking into account the specific nature of the transaction, the Policy provides for the establishment of committees for the preparation of bid documents, the evaluation and adjudication of such bids.

4.2.4 Deviations

In terms of the policy the disposal of viable immovable property shall be affected-

- (a) by means of a process of public competition; and
- (b) at market value,

except when the public interest or the plight of the poor demands otherwise.

The policy however also provides for deviations:-

- (a) in respect of non-viable properties; and
- (b) in cases of emergency; specific circumstances, exceptional cases, where it is impractical or impossible, and other circumstances where the Municipal manager authorise such deviations.

In such circumstances the Municipal Manager must report such deviations to Council and must first advertise Council's intention so to act.

4. INPUTS BY OTHER DEPARTMENTS

4.1 CFO

The recommendations contained in this report are supported.

4.2 Legal Services

The inputs received from the legal department have been implemented.

5. CONCLUSION

The Draft Policy is needed to provide a framework for the future management of the municipality's immovable property.

RECOMMENDED

- (a) that the Draft Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE MEETING: 2013-10-07: ITEM 6.1.6

RECOMMENDED

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2013-10-16: ITEM 5.1.4**RESOLVED** (nem con)

- (a) that this matter be referred back to allow the Administration to conduct a workshop on this matter and to allow the Chief Financial Officer to peruse the document with the view of submitting inputs; and
- (b) that this matter be resubmitted to this Committee during November 2013 for consideration and subsequent recommendation to Council following the above-mentioned workshop.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)****FURTHER COMMENTS BY THE MANAGER: PROPERTY MANAGEMENT**

Following the above resolution, the Policy was workshopped and discussed with the Chief Finance Officer. Find attached hereto as **APPENDIX 1** an updated version of the Policy following the above workshop and inputs by the Chief Financial Officer.

RECOMMENDED

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)****MAYORAL COMMITTEE MEETING: 2013-11-27: ITEM 5.1.2****RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and

-
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

17TH COUNCIL MEETING: 2014-01-16: ITEM 7.4

RESOLVED (nem con)

that the Policy be referred back to the Administration, inter alia, to consider the lease of agricultural land as a separate chapter as very particular criteria should be taken into account.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

**FURTHER COMMENTS BY THE ACTING DIRECTOR: HUMAN
SETTLEMENTS AND PROPERTY MANAGEMENT**

The Manager: Property Management will report verbally at the meeting in this regard.

FOR CONSIDERATION

MAYORAL COMMITTEE MEETING: 2014-04-16: ITEM 5.1.2

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property;
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations; and
- (d) that the Administration, concurrently with the above process, be tasked to draft an Agricultural Land Reform Policy, following a workshop involving all relevant stakeholders for subsequent consideration by Council.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

19TH COUNCIL MEETING: 2014-04-23: ITEM 7.3

During debate on the matter, Councillor DA Hendrickse requested a point of explanation, which the Speaker denied. Councillor Hendrickse then requested a reason why his point of order was denied because the Rules of Order allowed it. The Speaker then gave his reason why he denied Councillor Hendrickse's point of explanation. While voting on the matter, Councillor Hendrickse again asked for a point of explanation, which the Speaker again denied. Councillor Hendrickse again asked why his point of explanation was denied and why he is not allowed to explain, whereby the Speaker requested Councillor DA Hendrickse to leave the Council Chamber. The Speaker then requested the law enforcement officials to remove Councillor DA Hendrickse from the Council Chamber, whereby Councillor DA Hendrickse left the Chamber at 16:35.

RESOLVED (nem con)

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property;
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations; and
- (d) that the Administration, concurrently with the above process, be tasked to draft an Agricultural Land Reform Policy, following a workshop involving all relevant stakeholders for subsequent consideration by Council.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)****COMMENTS BY THE MANAGER: PROPERTY MANAGEMENT****1. Notice calling for public inputs/comments**

Following the above decision by Council, notices were published in the Eikestad News and Paarl Post of 15 May 2014, calling for public inputs/comments by not later than 17 June 2014. A copy of the notice is attached as **APPENDIX 1**.

At the closing date two sets of comments/inputs were received; that of the Friends of Stellenbosch Mountain (FSM) hereto attached as **APPENDIX 2** and the Stellenbosch Ratepayers Association (SRA), hereto attached as **APPENDIX 3**.

Hereunder a discussion on the two sets of inputs/comments received.

2. Friends of Stellenbosch mountain

As indicated in their document, the inputs/comments received from the FSM focus on the role of the Green Economy and Green Growth, i.e. environmental management issues.

2.1 Sustainable development

The FSM rightfully highlighted the importance of a balanced approach, i.e a sustainable development approach when dealing with such an important portfolio of land. They further pointed out the importance of long-term sustainability *vis-à-vis* short term operational requirements. This was indeed the approach when compiling the policy.

In this regard Council's attention is specifically drawn to clause 6 (Guiding principles), which make it clear that the following principles and values should underpin Immovable Property acquisitions and disposals:

- (a) *The use of the Municipality's Immovable Property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment.*
- (b) *The promotion of access by black people to the social and economic benefit of Immovable Property ownership, management, development and use.*
- (c) *The management of the Municipality's Immovable Property as a **sustainable resource**, where possible, by leveraging **environmental, social and economic** returns on such Immovable Property while the Municipality retains ownership thereof'.*

It is further important to note the content of clause 20, which deals with the "*Most Appropriate Use Assessment*", which must be done before any land is earmarked for disposal. Council's attention is specifically drawn to clause 20.2 and 20.3, which read as follows:

"20.2 The most appropriate use for a surplus property is one which achieves an optimum balance between the following three key elements of sustainable development:

- (a) *the **protection of ecological processes and natural systems**;*
- (b) *the **optimum financial return** to and economic development of the municipal area; and*
- (c) *the **enhancement of the cultural, economic, physical and social wellbeing of people and communities**.*

*20.3 **The three elements of sustainability will apply to all surplus Immovable Properties, however their significance and the relationships between them will vary for individual Immovable Properties**".*

2.2 Spatial categories and the law

The FSM suggested that the Policy must take into account and must implement the so-called bioregional planning categories and listed eco systems in the policy.

Although it is indeed important to take cognisance of the various pieces of environmental legislation, it must be emphasized that the purpose of the Draft policy is first and foremost a policy dealing with the management of municipal owned land and not a spatial planning document.

The Department does not agree with the proposal regarding the special categorisation of municipal land.

2.3 Environmental sustainability and the local economy

The department agree with most of the sentiments spelled out by the FSM and want to reiterate that this (sustainable development) was indeed taken serious when compiling the Draft Policy and when compiling the amendments. (2nd Draft)

The department also agree with the FSM statement that sustainability should not be viewed as a threat or irritating burden, but as an opportunity.

2.4 Specific proposals for amendments

Although a number of proposals have been taken up in the 2nd Draft policy, a number of suggestions however, could not be entertained. Council's attention is specifically drawn to paragraph 4.b.5 of the FSM's document, which suggested that the following be inserted as a new clause 2.3.3.

"The Municipality shall not transfer ownership of, or lease out an Immovable Property which

- a) *Hosts a threatened ecosystem as listed in terms of Section 52 (1) of the Biodiversity Act and the Government Notice GN 34809 or*
- b) *Is classified as a Core 1, Core2, or Buffer 1 area in terms of the Western Cape Provincial Spatial Development Framework unless such transfer or lease maintains or enhances the conservation status and environmental sustainability of such eco system or Area on that property, as **determined in a Record of Decision** of the NEMA Competent Authority in terms of the NEMA EIA Regulations".*

After having discussed this specific matter with the Head: Environmental Management, the following compromise proposal was included in the 2nd Draft Policy:

"The Municipality shall not transfer ownership of, or lease out for a period exceeding ten (10) years, any Immovable Property, or portion thereof which is classified as a Core 1, Core 2 or Buffer 1 area in terms of the Western Cape Provincial Spatial Development Framework unless it is satisfied that such

transfer or lease will at least maintain or enhance the conservation status and environmental sustainability of such eco system or Area on that property”.

According to the FSM Section 21.2.2.1, dealing with deviations, attempts to circumvent important checks and balances. They subsequently suggested the scrapping of a number of these deviations. Although this was never the attention of the Draft Policy to circumvent important checks and balances, the Department agree that some of the deviations could be misused.

Accordingly a number of deviations were indeed deleted in the 2nd Draft Policy, as suggested by the FSM. According to the FSM the Points System in Chapter 7 is deficient because they do not differentiate between the bioregional categories and disregard the environmental and sustainability aspects and legislation. They subsequently proposed a new Points System.

This department do not agree with this assumption/proposal.

3. Stellenbosch Ratepayers Association

3.1 Need for a Broad Strategic and Financial Outlook

A lot of emphasis is put on the issue of surplus property and the fact that Council has to decide thereon. It is further implied that the guiding principle must not be to sell immovable property, but to retain and utilise it for the welfare of future generations, by creating sustainable, additional income streams through joint venture, ect.

The department support this notion, but want to emphasise that it was never the intention of the policy to allow for “*asset stripping*” or the disposal of property “*to solve short term deficits or assist political agendas*” as alluded to in the SRA’s input. On the contrary, the Draft Policy is clear that the Municipality should use its Immoveable Property Portfolio as a sustainable resource. The municipality, however, also has an obligation to use its Immoveable Property Portfolio to redress social injustices and promote economic growth and access to housing. In this regard, please see the Guiding Principles contained in clause 6 (see par.2.1, *supra*).

3.2 Need for decision making at the highest level

This department agree that the management of the municipality’s Immoveable Property Portfolio called for “*wise minds and unbiased professional assistance*” and should definitely not be the job of so-called “*property management operatives*”. It is unclear why the assumption was made that the contrary is implied by the Draft Policy.

3.3 Need for public participation

This department agree that public participation is vital, as suggested by the SRA. For this purpose clause 16, dealing with mandatory consultation was specially inserted in the Draft Policy to deal with acquisition of property. The Asset Transfer Regulation, however, deals in detail with the public participation process insofar as it relates to the disposal of municipal owned property and awarding of rights in

Municipal property. For this reason a separate clause, dealing with public participation in general, were not inserted in the Draft Policy.

3.4 Need for a Holistic Approach

The SRA states that “*market forces cannot in all circumstances be the point of departure*”. This department agree with this. The Draft Policy is also very clear, where it states in clause 19.2.1.

“Unless otherwise provided for in this policy, the disposal of Viable Immovable Property shall be effected

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

Council’s intention is also draw to Chapter 7, dealing with a preference point System.

It is unclear why this issue is raised, creating the impression that the Draft Policy does not cater for exemption. Also see clause 44.2, which reads as follows:

“If the Municipality, on account of the public interest, particularly in relation to the plight of the poor, intends to Dispose of a Non-Exempted Immovable Property for less than market value it must take into account the following factors:

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

3.5 Need for Integrated Planning

The Department agree with the statement that the Draft Policy “*cannot be dealt with as if standing apart from a raft of other Municipal, Provincial and National legislation*”. For this purpose clause 4.1 is clear:

*“The legislative framework for the management of the Municipality’s Immovable Property is contained in a **number of legislation, including but not limited to:***

- 4.1.1 *the MFMA, in particular section 14, which deals with disposal of capital assets (i.e Immovable Property as defined herein);*

4.1.2 *the MATR, which governs –*

a) the transfer and disposal of capital assets by municipalities and municipal entities; and

b) the granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets”

Further, clause 20.4 states the following:

“In determining the most appropriate use of surplus properties, regard should be given to:

(a) Spatial development framework(s);

(b) Regional plans;

(c) Sectoral studies/plans;

(d) Government policies;

*(e) **Relevant legislation;** and*

(f) the views of interested and affected parties”.

3.6 Need for capacity

According to the SRA, after having “*carefully considered*” the Draft Policy, they came to the conclusion that there is a pressing need to provide the municipality with adequate capacity and suitably qualified personnel to carry out the important function of managing the municipality’s property portfolio.

This department agree with the notion that suitably qualified staff should be employed for this important function. It is, however not clear how the SRA concluded from the Draft Policy that the current staff is not adequately qualified.

3.7 Need to manage Risk

The reference to the 1988 statutory Guide Plan and the fact that Stellenbosch “*cannot absorb much more development without destroying its asset*” is unclear.

3.8 Need for consultation

This department agree that public participation is vital. For this purpose clause 16, dealing with mandatory consultation was specially inserted in the Draft Policy to deal with acquisition of property. The Asset Transfer Regulation, however, deals in detail with the public participation process insofar as it relates to the disposal of municipal owned property and awarding of rights in Municipal property.

The SRA concluded by stating that “*in light of the above mentioned comments, the Draft Policy should be reviewed to address shortcoming*”, but they do not offer/suggest any specific amendments.

4. Idas Valley Community Development Forum (IVCDF)

Hereto attached as **APPENDIX 4** is a copy of the inputs received from the IVCDF.

Although the comments/inputs received from the IVCDF was received after the closing date of 17 June 2014 (it was hand delivered on 9 July 2014), it was accepted.

4.1 Negative input/results the policy will cause previously disadvantaged communities of Stellenbosch

It is unclear why the IVCDF assume that the policy will have a negative input/result for the previously disadvantaged communities of Stellenbosch.

In the Preamble of the Draft Policy, it is stated clearly that *“the inequitable spread of ownership of Immovable Property throughout the municipal area and the historical causes thereof are recognised and the municipality acknowledge that it has a leading role to play in redressing these imbalances by ensuring that the Immovable Property assets under its control are dealt with in a manner that ensures the greatest possible benefit to the Municipality and the Community that it serves”*

In clause 6 of the Draft Policy, it is stated that the municipality *“should use its Immovable Property to:*

- a) *promote social integration, to redress existing spatial inequalities to promote economic growth, to build strong, integrated and dignified communities and to provide for access to housing, services, amenities, transport and opportunities for employment.*
- b) *to promote access by Black people to the social and economic benefit of Immovable Property ownership, management, development and use”*

For this reason the municipality has introduces a separate Chapter dealing with a Preference Point System, where provision is made, under certain circumstances of a 60/40 points system, meaning that as much as 40 points (out of a total of 100) can be allocated for PDI's.

4.2 It is a fact that previous disadvantaged communities have not enjoyed any benefit in the past

Although the Draft Policy acknowledge the injustices of the past, it is factually wrong to state that previously disadvantaged communities have not received any benefit from municipal land. Many housing projects were successfully implemented in the past, including projects in Idas Valley.

4.3 We cannot allow past apartheid legislation, policies and practices to be revived

This statement is totally unfounded and does not warrant further comment.

4.4 Citizens have the right to know what is happening under their noses

This department agree with this notion. As a matter of fact the Preamble to the Draft Policy states that the Municipality want to “*create a culture of accountability, openness and transparency in its administration and in the exercise of its power of the performance of its function, by giving effect to the right to just administrative action*”.

4.5 The majority of the population had to feed of the crumbs the municipality had to offer, a recent case in point being the open air gym in Ida’s Valley

This statement does not warrant further comments.

4.6 We refuse to participate in providing inputs into a unilaterally pre-authorised by-law

Noted.

4.7 At face value the proposed by-law (*sic*) appears to be just and equitable

This department agree with this comment; this was indeed the purpose of compiling the Draft Policy, to ensure a “*just and equitable*” dispensation when it comes to the management of municipal-owned property. In the Preamble to the Policy it is stated that “*Stellenbosch Municipality is required and committed to manage its Immovable Property in a fair, transparent and equitable manner*”.

4.8 Specific questions

4.8.1 Does the municipality currently have a by-law (dealing) with the management of property management)?

No. For this reason, the other 3 related questions are not applicable. As it is mentioned in clause 4 of the policy, the disposal of municipal assets is currently governed by the MFMA and ATR as well as other property related legislation (e.g. dealing with contracts).

4.8.2 What is meant by a large number of immovable properties?

During 2005 a comprehensive audit of all municipal-owned properties has been compiled. This information is available on request.

4.8.3 Will PDI’s have access to agricultural land?

Yes, if one look at the Preferential Points System, as much as 40 point will be allocated for PDI’s.

4.8.4 Explain “*greater possible benefit to the municipality and the community*”

As indicated in clause 3.2 of the Draft Policy, this means that “*the key consideration, when considering the acquisition, management development or disposal of municipal property, should be the best interest of the municipality (and thus its residents) rather than that of individuals should be paramount in all Immovable Property transaction that the municipality enters into*”

4.8.5 Does custodian not imply that ownership resides with someone else, and that they (the community) should be consulted in this matter?

Please note, however that "*Local Black people*" means Africans, Coloured and Indians, as referred to in the B-BBEE Act, No. 53 of 2005. Yes, indeed the community should be consulted. For this reason the Community was indeed given an opportunity to make input. Also note that elected politicians were part of the consultation process.

4.8.6 Do you agree that public meetings are the only form of participation?

No, this is one way of public participation.

4.8.7 Please unpack the intention of the Municipality in respect of BEE

The intention of the policy is clear, as already described in detail under paragraph 4. The term "BEE" is further described in the definition Section as "the economic empowerment envisaged by the BEE Act of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to-

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers cooperatives and other collective enterprises;
- (c) human resources and skill development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investments in enterprises that are owned or managed by black people.

4.8.8 Provide examples of categories of Immovable Property which is not needed to provide the minimum level of basic municipal services

It is not clear what is meant by the question. "*Basic Municipal Service*" is described in the definition section as "a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment. "*All the agricultural land, e.g is not needed to provide basic municipal services*".

4.8.9 Please define and explain "surplus".

In terms of Section 14(1) of the MFMA the Municipality may not dispose of any municipal land that is needed (or might in future be needed) to provide the minimum level of basic municipal services. By implication,

all other Immovable Property is theoretically "*surplus*", i.e may be disposed of. However, the policy is clear that the Municipality shall only dispose of Immovable Property in "*circumstances where the Municipality is satisfied that it cannot derive a reasonable economic and/or social and/or environmental return from continued ownership of the Immovable Property*". Putting it differently, the disposal of an Immovable Property shall be the last resort.

4.8.10 Does the municipality owns enough land for the housing need of its citizens?

The municipality probably owns enough land, but the problem is that is not necessary situated in the right areas, i.e within the urban edge, earmarked for development. For this reason it might be necessary to dispose of some land and use the proceeds to buy alternative land that is situated within the urban edge.

4.8.11 Have the municipality considered all unintended consequences of disposing of all its farms?

No, because that it definitely not the intention of the Draft Policy to dispose of all its farms.

5. Proposed Amendments

After having studied the inputs/comments referred to above, a number of amendments have been made to the Draft Policy, in an effort to accommodate some of the specific proposals received. A copy of the 2nd Draft Policy, with track changes, is attached as **APPENDIX 4**.

RECOMMENDED

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association and the Idas Valley Community Development Forum be noted;
- (b) that the proposed amendments as indicated in the 2nd Draft Policy (**APPENDIX 1**), be approved;
- (c) that the 2nd Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, attached as **APPENDIX 1**, be approved as Council's Policy; and
- (d) that the Policy on the Management of Stellenbosch Municipality's be regarded as **Stellenbosch Municipality's Disposal Management Policy**, as prescribed by the Supply Chain Management Regulations.

(ACTING DIRECTOR: HUMAN SETTLEMENT TO ACTION)

**ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE
MEETING: 2014-08-06: ITEM 5.1.1****RECOMMENDED**

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association and the Idas Valley Community Development Forum be noted;
- (b) that the proposed amendments as indicated in the 2nd Draft Policy (**APPENDIX 1**), be approved;
- (c) that the 2nd Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, attached as **APPENDIX 1**, be approved as Council's Policy; and
- (d) that the Policy on the Management of Stellenbosch Municipality's be regarded as **Stellenbosch Municipality's Disposal Management Policy**, as prescribed by the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN
SETTLEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2014-08-13: ITEM 5.1.5**RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association and the Idas Valley Community Development Forum be noted;
- (b) that the proposed amendments as indicated in the 2nd Draft Policy (**APPENDIX 1**), be approved;
- (c) that the 2nd Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, attached as **APPENDIX 1**, be approved as Council's Policy; and
- (d) that the Policy on the Management of Stellenbosch Municipality's be regarded as **Stellenbosch Municipality's Disposal Management Policy**, as prescribed by the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN
SETTLEMENT TO ACTION)**

22ND COUNCIL MEETING: 2014-08-20: ITEM 7.7

During debate on the matter, the DA requested a caucus which the Speaker allowed.

After the meeting resumed, it was

RESOLVED (nem con)

that this matter be referred back to the Administration and that same be resubmitted at a next meeting for consideration.

**(ACTING DIRECTOR: HUMAN
SETTLEMENT TO ACTION)**

23RD COUNCIL MEETING: 2014-09-23: ITEM 7.1**RESOLVED** (nem con)

- (a) that an Ad Hoc Committee of Council be established;
- (b) that the latter shall comprise of a member of each political party;
- (c) that the Executive Mayor appoint the Chairperson;
- (d) that the investigation shall include a Policy for immovable property as well as a Policy for agricultural land;
- (e) that external experts be invited to advise the Committee; and
- (f) that an investigation and recommendations be submitted to Council at the meeting to be held on 26 November 2014.

**(ACTING DIRECTOR: HUMAN
SETTLEMENT TO ACTION)**

**FURTHER INPUTS BY THE DIRECTOR: INTEGRATED HUMAN
SETTLEMENTS & PROPERTY MANAGEMENT**

Following the above Council resolution, consultants were appointed by the Director: Planning & Economic Development to compile a Policy on the management of Council-owned Agricultural Land. A draft policy has recently been approved by Council, whereafter it was advertised for public input/comments. A final draft policy will serve at Council on 15 June 2016.

Following a recent presentation to members of the Mayoral Committee and Directors on the Draft Policy for the Management of Stellenbosch Municipality's Immoveable Property (Second Draft), the various Directorates were given an opportunity to make further comments/input.

Further comment/inputs were received from the Director: Strategic and Corporate Services and the Director: Planning and Economic Development, which were incorporated into the policy. (Now Draft 3)

Please find hereto attached as **APPENDIX 1** an updated 3rd Draft Policy, for consideration by Council.

Taken into account that Council has already approved the policy as a draft policy on 2014-04-23, subject to a public participation process, and seeing that the public inputs were discussed in detail above, it is

RECOMMENDED

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association, Idas Valley Community Development Forum, as well as the recent inputs received for the DS&CS and DPED, be noted;
- (b) that the 3rd Draft Policy on the Management of Stellenbosch Municipality's Immovable Properties, attached as **APPENDIX 1**, be approved as Council's Policy with immediate effect; and
- (c) that Chapter 5 of the Supply Chain Management Policy be replaced with the document attached as **APPENDIX 2**, with immediate effect.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 6.1.2

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association, Idas Valley Community Development Forum, as well as the recent inputs received for the DS&CS and DPED, be noted;
- (b) that the 3rd Draft Policy on the Management of Stellenbosch Municipality's Immovable Properties, attached as **APPENDIX 1**, be approved as Council's Policy with immediate effect; and
- (c) that Chapter 5 of the Supply Chain Management Policy be replaced with the document attached as **APPENDIX 2**, with immediate effect.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.7

Councillor Q Smit put a Procedural Motion that the matter be referred back to allow the Administration to give effect to the legal opinion (attached as **APPENDIX 3**).

RESOLVED (majority vote)

that this matter be referred back to allow the Administration to give effect to the legal opinion.

The following Councillors requested that their votes of dissent be minuted:

Councillors F Adams; DA Hendrickse and M Wanana.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

APPENDIX 3

EX PARTE: STELLENBOSCH MUNICIPALITY

IN RE: ASPECTS RELATING TO THE PROPOSED POLICY ON THE
MANAGEMENT OF STELLENBOSCH MUNICIPALITY'S
IMMOVABLE PROPERTY

OPINION

PRIVATE AND CONFIDENTIAL

This opinion contains private, privileged and confidential information and the content hereof may not be quoted, referred to, disclosed, disseminated, copied or in any way published, in whole or in part, without our prior written consent

Furnished by:

Webber Wentzel
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
Ref: RB Africa/ AE Esterhuizen
June 2016

WEBBER WENTZEL

in alliance with > **Linklaters**

1. Introduction and background

- 1.1 Consultant is the Stellenbosch Municipality.
- 1.2 We have been approached by Consultant on an urgent basis to furnish it with advice in respect of its proposed Policy on the Management of Stellenbosch Municipality's Immovable Property ("**the Policy**"), more particularly whether the proposed preference point system in Chapter 7 of the Policy meets the requirements in the Municipal Supply Chain Management Regulations ("**SCM Regulations**") and the Municipal Asset Transfer Regulations ("**the ATR**") promulgated in terms of the Local Government: Municipal Finance Management Act 53 of 2003 ("**MFMA**") and whether Consultant can proceed to approve the Policy as proposed. Put differently, whether, having regard to the relevant legal requirements, it is permissible for Consultant to include its own preference point system in Chapter 7 of the Policy.
- 1.3 To this end, we have been provided with and considered the following:
 - 1.3.1 a copy of Agenda Item 6.1.2 of Consultant's Mayoral Committee Meeting of 10 June 2016; which encloses the Policy as Appendix 1 and the proposed replacement of Chapter 5 of Consultant's Supply Chain Management Policy ("**SCM Policy**") as Appendix 2 ("**the Agenda Item**");
 - 1.3.2 a brief legal opinion by Consultant's Director: Strategic Support Services on whether Consultant can constitutionally provide for measures to achieve redress when it disposes of immovable property or provide for rights in immovable property;
 - 1.3.3 Consultant's 2016/2017 SCM Policy; and
 - 1.3.4 The City of Cape Town's Policy on the Management of Certain of the City of Cape Town's Immovable Property ("**the City Policy**").
- 1.4 We also received further instructions at a consultation with Consultant's Acting Municipal Manager on 10 June 2016.
- 1.5 Chapter 7 of the Policy appears to aim to employ a preference point system in respect of the disposal of immovable property or the granting of a property right in

immovable property by way of public auctions, outright or closed tender and qualified tenders or proposal calls.¹

- 1.6 This preference point system appears to have various objectives *inter alia* to promote broad-based black economic empowerment, to promote the redress of current, skewed land ownership patterns and to give preference to certain groups and people. To this end and dependent on the value of a specific transaction, a number of points are awarded for certain objectives apparently in addressing the aforementioned objectives such as points for local black people and legal entities owned by black people.
- 1.7 Kindly note that due to *inter alia* the urgency and associated time constraints and for the sake of brevity, this opinion is not intended to provide a full exposition or detailed discourse of the relevant legal framework and all possibly relevant legal and/or statutory provisions. It is furthermore focused on and limited to the issues set out in 1.2 above and is not proposed to address any related or derivative questions and/or to review and comment on any other aspect of the Policy and/or any possible shortcomings of the Policy itself, save to the extent that we may do so below.
- 1.8 Moreover, cognisance must be taken of the fact that that due to the aforementioned time constraints we have not had the benefit of requesting and/or considering all information and/or documentation that may be referred to in and/or related to the documents and instructions set out in 1.3 and 1.4 and we therefore reserve the right to revise, amend and/or supplement this opinion to the extent that any such information and/or documentation may have a bearing on any of the conclusions arrived at in this opinion.

2. Relevant legal provisions

- 2.1 Briefly summarised, the relevant legal framework mainly consist of the following provisions:
- 2.1.1 Section 14 of the MFMA which provides as follows:

"14. Disposal of capital assets

.....

¹ Although the relevant legal provisions refers to capital assets (which include movable and immovable capital assets), we will for purposes hereof as far as possible use the terminology in the Policy as it refers to immovable property.

- (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public -
- (a) *has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*
 - (b) *has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.*

.....
(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111....."

(emphasis supplied).

2.1.2 Regulation 40 of the SCM Regulations which provides as follows:

"40. Disposal management

- (1) A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 and 90 of the Act [the MFMA].
- (2) A supply chain management policy must -
- (a) *specify the ways in which assets may be disposed of.....*
 - (b) *stipulate that -*
 - (i) *immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise.....*
 - (c) *provide that -*
 - (i) *immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and*
 - (ii) *all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed....."*

(emphasis supplied).

2.1.3 The provisions of the ATR which primarily aims to facilitate compliance with section 14 of the MFMA and regulation 40 of the SCM Regulations.

3. Consideration and discussion

3.1 Preference point system

3.1.1 We have previously advised Consultant, for reasons that need not be repeated for purposes hereof, that the Preferential Procurement Policy Framework Act 5 of 2000 ("**PPPFA**") and its Regulations ("**Preferential Procurement Regulations**") and therefore the preference point system in the

Preferential Procurement Regulations are not applicable to the sale and letting of immovable property.

- 3.1.2 Based on our previous views, which remain unaltered, and for reasons not necessary to be elaborated upon for present purposes, the preference point system in Chapter 7 of the Policy appears in principle to be permissible, in particular to the extent that it departs from the PPPFA and Preferential Procurement Regulations as to the specific weighting in its scoring system.
- 3.1.3 As the preference point system in the Preferential Procurement Regulations is not applicable, there is no express prohibition on Consultant, when embarking on a disposal process, from attaching greater weight to certain criteria, provided that it is not contrary to and within the framework of the legal provisions alluded to in 2.1.1 to 2.1.3 above.² Whether the Policy itself is in accordance with these provisions is a different question altogether which need not be addressed for purposes hereof and which can only be addressed by a full review of the Policy.
- 3.1.4 Nevertheless, in light of the further conclusions and reasons set out below, it is not necessary to elaborate further on the foregoing conclusions and observations and to express a final and conclusive view. We do, however, wish to make the following observations in respect of the Policy following a cursory perusal thereof:
- 3.1.4.1 Having regard to the Policy and the SCM Policy, it appears that what Chapter 7 of the Policy aims to achieve can be achieved in a less complex manner by merely implementing Chapter 5 of the SCM Policy as the latter allows for Consultant to determine the applicable scoring methodology and/or preference points and/or weights and/or specific goals it wishes to achieve and affords it more discretion.
- 3.1.4.2 It is also doubtful whether the preference points system and weighting in Chapter 7 will indeed meaningfully assist Consult in addressing the issue of broad-based black economic empowerment ("**B-BBEE**"). Only a maximum of 20 of the 40 points in the 60/40 scorecard are allocated to B-BBEE and/or B-BBEE legal entities and as such even the application of this scorecard may result in a non-B-BBEE entity, which can

² We have noted from paragraph 12.2.2 of the City Policy that the City shares this notion, however, it has resolved to apply the PPPFA when following a competitive bidding process in respect of a property transaction.

potentially achieve a score of 80 points without any black ownership, being awarded a tender. In this regard, a proper pre-qualification mechanism for prospective participants in a tender based on B-BBEE requirements will potentially serve a more useful purpose in meaningfully addressing the issue.

3.1.4.3 The Policy also seems to contain various direct references to certain regulations in the ATR which is strictly speaking not necessary as it must in any event be complied with regardless of the provisions of the Policy and it will only create practical difficulties when amendment of the Policy may be necessary in future if the ATR is amended.

3.1.4.4 As alluded to in 3.1.3 in order to determine whether the Policy itself accords with the relevant legal provisions and is therefore lawful, a full review of the Policy is required. However, during the aforementioned cursory perusal of the Policy, we have noted the following deficiencies and/or problematic aspects:

3.1.4.4.1 Chapter 4 of the Policy provides for the acquisition of immovable property and rights in immovable property through various methods such as open market, private treaty and expropriation. Acquisition management together with procurement of goods and services resorts under supply chain management and as such has to be done in accordance with the prescripts of the SCM Regulations and SCM Policy. Therefore, to the extent that the Policy, whose existence is founded in the need for a disposal management system as required by the SCM Regulations, which is vastly different from procurement, aims to provide for acquisition and/or procurement of goods and services outside of the prescribed requirements of the SCM Policy, it would be unlawful. In addition, some of the procedures to be followed in respect of acquisition, in particular in the event of expropriation, seem to curtail the powers afforded to Consultant by the legislation governing expropriation and to impose additional obligations upon Consultant which are not required by the aforementioned legislation.

3.1.4.4.2 The Policy appears to be unworkable as it *inter alia* contains various contradictions such as differences in the meaning and

determination of market value in respect of the various categories of property and property rights. For instance, the terms "reasonable market value", "market value", "fair market value", "upset price" and "current market valuation" are used interchangeably when reference is made to value and are to be determined in certain instances by a "professional valuer" and in others by either 2 service providers or an "independent valuator". The ATR only provides for "fair market value".

3.1.4.4.3 Essential terms and critical concepts are not defined in the Policy at all.

3.1.4.4.4 Furthermore, as regards the terms and condition of leases in Chapter 8 of the Policy, on the one hand it is stated that it will be required that all agreements provide for improvements to revert to Consultant free of charge upon termination whilst on the other hand it will also be required that all agreements contain a clause which provides that Consultant reserves the right to cancel a lease for various purposes in which event the lessee shall be compensated for improvements on a basis to be determined by an independent valuator.

3.1.4.4.5 In general and seemingly due to the amendment of the Policy at various stages, not all provisions of the Policy are consistent and as such will pose practical difficulties for Consultant when it comes to implementation of the Policy in its current form.

3.2 **Procedural and related requirements**

3.2.1 However, irrespective of the aforementioned, should Consultant decide to proceed with approving the Policy, there appears to be fundamental procedural issues which would in actual fact preclude Consultant from approving the Policy at this stage and in its current form, which issues are dealt with further below.

3.2.2 Section 22(a) of the MFMA provides that immediately after an annual budget is tabled in a municipal council, the accounting officer of a municipality must, in accordance with Chapter 4 of the Local Government: Municipal Systems Act 32 of 2000, make public the annual budget and the documents referred to

in section 17(3) of the MFMA, which documents include any proposed amendments to the budget-related policies of the municipality, and invite the local community to submit representations in connection with the budget.

- 3.2.3 Section 1 of the MFMA defines "budget-related policy" as a policy of the municipality affecting or affected by the annual budget of the municipality including the tariffs policy, rates policy and credit control and debt collection policy. In terms of section 20(1) of the MFMA the Minister of Finance, acting with the concurrence of the Cabinet member responsible for local government (collectively "**the Ministers**") must *inter alia* prescribe the form of the annual budget of municipalities and may prescribe the form of resolutions and supporting documentation relating to the annual budget. In terms of section 168 of the MFMA the Ministers may *inter alia* make regulations regarding any matter that may be prescribed in terms of the MFMA.
- 3.2.4 With effect from 17 July 2009 the Ministers published the Municipal Budget and Reporting Regulations of 2008 ("**the Budget Regulations**") of which regulation 1 defines "supporting documentation" in relation to an annual budget *inter alia* as documentation referred to in section 17(3) of the MFMA; therefore including budget-related policies. Regulation 7 of the Budget Regulations (in its footnote) lists the policies that affect or are affected by the annual budget of a municipality to include *inter alia* a supply chain management policy in (h) and any policies dealing with the management and disposal of assets in (i).
- 3.2.5 A supply chain management policy and a policy dealing with the management and disposal of assets, such as the Policy, are therefore budget-related policies and these policies as well as any proposed amendments thereto needs to be tabled and made public together with and as part of a municipality's annual budget process.
- 3.2.6 Even if it is assumed that the Policy is not a budget-related policy, it is readily apparent from the Agenda Item and the recommendation on page 587 thereof, that the Policy is aimed at and/or will necessitate an amendment, albeit arguably indirectly³, of the SCM Policy. It is common cause that Consultant's annual budget process for the 2016/2017 year has been completed and that

³ Although it may be argued that the wording in the recommendation refers to replacement of Chapter 5 of the SCM Policy it will substantially be an amendment of the SCM Policy and should Consultant proceed with the recommendation and ultimate approval, it will in effect have amended its SCM Policy without any public input.

the SCM Policy and the current Chapter 5 of the SCM Policy which Consultant intends to replace has been made public and adopted as part of its aforementioned annual budget process.

3.2.7 It is therefore not open to Consultant to either approve the Policy and to amend, albeit by replacement if the wording of the aforementioned recommendation is followed, the SCM Policy outside of its annual budget process in the manner proposed in the Agenda Item without embarking on a further public participation process. Even if one should argue that the extension of the definition of "budget-related policies" in the Budget Regulations is possibly *ultra vires* in this regard, the Budget Regulations remains in force until it is set aside. We are, however, doubtful that a compelling case can be made out for a challenge of the Budget Regulations on this basis having regard to the wide discretion for regulations afforded to the Ministers in terms of sections 20 and 168 of the MFMA.

3.2.8 Even if we are misguided and the approval of the Policy and amendment of the SCM Policy are not required to be dealt with as part of Consultant's annual budget process or do not require a further public participation process, there appears to be a further fundamental issue which militates against the approval of the Policy. On page 586 of the Agenda Item it is stated that further comments from Consultant were received and incorporated into the Policy resulting in the 3rd draft of the Policy, which draft is recommended and tabled for approval. We are not privy to these comments, however, it is clear that these comments did not form part of the Policy when it was published for comment as far back as 2014. Therefore, at the very least, by virtue of these incorporated comments the Policy in its current form and the amendment to the SCM Policy have to be published for comment before Consultant can approve the Policy and replace Chapter 5 of the SCM Policy in the spirit of meaningful public participation.

3.2.9 Lastly, we wish to point out that it has also become apparent during the consultation referred to in 1.4 above that Appendix 1 to the Agenda Item is not the 3rd draft alluded to in the Agenda Item but in fact the 2nd draft. We have not had the benefit of considering the 3rd draft, however, it appears that compared to the draft that was made public in 2014, even the 2nd draft incorporates further amendments which bear no relation to the comment received pursuant to the draft made public in 2014.

4. Conclusion

4.1 In the circumstances, we conclude as follows:

4.1.1 based on our previous views the preference point system in Chapter 7 of the Policy appears in principle to be permissible;

4.1.2 the Policy and the SCM Policy are budget-related policies and these policies as well as any proposed amendments thereto need to be tabled and made public together with and as part of a municipality's annual budget process, which process have already concluded for the 2016/2017 financial year;

4.1.3 even if it is assumed that the Policy is not a budget-related policy, the Policy is aimed at and/or will necessitate an amendment, albeit arguably indirectly, of the SCM Policy;

4.1.4 it is therefore not open to Consultant to either approve the Policy and to amend, albeit by replacement if the wording of the aforementioned recommendation is followed, the SCM Policy outside of its annual budget process in the manner proposed in the Agenda Item without embarking on a further public participation process;

4.1.5 even if the Policy and amendment of the SCM Policy are not required to be dealt with as part of Consultant's annual budget process or do not require a further public participation process, further comments were received from Consultant and incorporated into the Policy, which comments did not form part of the Policy when it was published for comment previously and therefore, at the very least, by virtue of these comments the Policy and the amendment to the SCM Policy have to be published for comment before Consultant can approve the Policy and replace Chapter 5 of the SCM Policy in the spirit of meaningful public participation; and

4.1.6 having regard to the aspects alluded to in 3.1.4 and although time constraints did not permit us to consider and address every aspect, we have serious reservations as to lawfulness of the Policy in its current form.

4.2 We so advise.

7.8 IDENTIFICATION OF VARIOUS PORTIONS OF MUNICIPAL LAND WITH DEVELOPMENT POTENTIAL: IN PRINCIPLE DECISION TO PREPARE LAND FOR POSSIBLE DEVELOPMENT

File number : 7/2/1/1

Compiled by : *Manager: Property Management (P Smit)*

Report by : *Director: HS & Property Management*

Delegated Authority : *Council*

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

The purpose of this report is two-fold:

- a) To identify municipal land with development potential which can be utilized to achieve the dual purpose of Local Economic Development as well as Black Economic Empowerment; and
- b) To obtain the necessary authorization to start the process of preparing the land for possible development.

2. BACKGROUND

2.1 Initial identification of municipal-owned land earmarked for local economic development initiatives

On 2005-05-19 Mayco considered a report by the then Executive Director: Economic Facilitation Services (EDEFS), identifying a number of Council-owned properties which were available for local economic development initiatives. This report follows a decision by Mayco on 2005-03-03 (when considering a proposed policy framework for a land management policy) to instruct the Municipal Manager and a small Committee to identify Council-owned land for the purpose of addressing Council's obligation in terms of Section 152(1)(c) of the Constitution, i.e. to promote social and economic development.

Mayco approved the list of properties and authorized the EDEFS to go out on open tender to ask for development proposals for the properties.

The 9 properties which was identified are:

- Erf 5652, Die Boord
- Erf 412, Groendal

- Erf 1123 and others, Transvalia
- Erf 1902 and others, Town Hall
- Erf 13426, Technopark
- Farm 739, Klapmuts
- Erf 194, Van der Stel
- Erf 52, Bird Street
- Erf 7001, Cloetesville

2.2 Allocation of tenders

Following a public tender process, 7 of the 9 tenders were awarded, subject to certain conditions. No tenders were awarded for Erf 412, Groendal and Erf 52, Stellenbosch.

2.3 Consideration of Section 124 objections

On 2014-04-23, following lengthy legal disputes, Council eventually, having considered the Section 124 objections, decided not to proceed with the disposal of the various portions of land.

This means that the municipality is free to (again) deal with these properties as they see fit, subject thereto that due process is followed:-

- a) in awarding development rights (if any); and
- b) in awarding rights in such properties or in disposing of such properties.

2.4 Subsequent Council resolutions, dealing with some of the properties

On 2015-10-28 Council considered a report entitled "*Innovation Capital Report: Innovation projects*". The purpose of the report was to obtain approval for the implementation of the various projects listed in the report.

Having considered the report, and following a workshop held on 20 August, Council resolved as follows:

RESOLVED (majority vote)

"a) *that approval be granted for the investigation of the innovation projects as listed herein, with specific reference to the broad project proposals as set out in the item above:*

- *Klapmuts Special Economic Zone/Industrial Area*
- *2016 Triennale*
- *Ida's Valley Dam Sustainable Utilisation Plan*
- *Sustainable Utilisation Plan of the Berg River Dam*
- *Paradyskloof Special Development Area*
- *Stellenbosch CBD parking*

b) *that Council secure the implementation of BBBEE on all these projects to advance Local Economic Transformation, Land Reform and entrepreneurial development in partnership with any local Black Stakeholder as joint facilitators;*

c) *that the Project Manager for each project report back to Council on progress made in the investigation of the decisions and that no*

authorization processes may commence unless approved by Council; and

d) that the Municipal Manager be authorised to conduct public participation processes in order to establish whether the broad project proposals are supported by communities”.

2.5 Informal Mayco: Presentation on various Council-owned properties:

Following a request from the Executive Mayor, a presentation was made to the Informal Mayco meeting on 2016-05-03, identifying the various so-called Tender 34 properties.

Following the above presentation the Directorates Planning and Economic Development, Strategic & Corporate Service, (Legal Service) and Human Settlement and Property Management were requested to compile a *status quo* report, indicating the initial idea with the subject properties and subsequent Council resolutions. A copy of the report is attached as **APPENDIX 1**.

3. DISCUSSION

3.1 Properties where Council resolutions are in place

Regarding the initial 9 properties identified for possible development (see paragraph 2.1, *supra*), by implication, the following properties have subsequently been dealt with, i.e. a process of investigating possible developments has been started.

- a) Erf 1123 and others, Transvalia;
- b) Farm 739, Klapmuts
- c) Erf 7001, Cloetesville

3.2 Remaining properties, where no Council resolutions are in place

The following properties (from the original list of 9 properties referred to in par. 2.1, *supra*) are therefor available for local economic development initiatives, subject to due process being following in*:-

- i) obtaining development rights;
- ii) awarding of rights/disposing thereof:
 - Erf 5652, Die Boord;
 - Erf 412, Groendal
 - Erf 1902 and others, Town Hall
 - Erf 13426, Technopark
 - Erf 194, Van de Stel
 - Erf 52, Bird Street

* For more detail on the location and size of the properties, please see **APPENDIX 1**.

3.3 Way forward

3.3.1 Development rights

There are effectively two ways in dealing with these properties:

- Option 1: a) Obtain development rights; whereafter
b) a Call for proposal (either on a long term lease basis or for disposal) is invited.
- Option 2: a) Agree on broad development framework, whereafter
b) a Call for proposal (either on a long term lease basis or for disposal) is invited

With option two the onus will be on the preferred bidder to obtain the necessary development rights, failing which the awarding of the bid will be cancelled.

3.3.2 Legal regime: disposal or awarding of rights in municipal properties

3.3.2.1 Disposals

In terms of Section 14 of the MFMA:-

- (1) *A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.*
- (2) *A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), **but only after the municipal council**, in a meeting open to the public—*
 - (a) ***has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and***
 - (b) ***has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.***

Further, in terms of Regulations of the Asset Transfer Regulations:

- (1) A municipality may transfer or dispose of a non-exempted capital asset only after—
 - (a) the accounting officer has in terms of regulation 6 conducted a **public participation process** to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of the Act; and
 - (b) the municipal council—
 - (i) has made the determinations required by section 14(2)(a) and (b)10 and
 - (ii) has as a consequence of those determinations approved **in principle** that the capital asset may be transferred or disposed of.
- (2) Sub regulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a **high value capital asset**.*

*"high value", in relation to a capital asset of a municipality, means that the fair market value of the capital asset exceeds any of the following amounts:

- (a) R50 million;
- (b) one per cent of the total value of the capital assets of the municipality

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

- (a) whether the capital asset may be required for the municipality's own use at a later date;
- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
- (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions; Page 12 of 42
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
- (k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

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

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

3.3.2.2 Granting of rights to use, control or manage municipal capital assets

Decision-making process for municipalities

In terms of Regulation 34

- (1) A municipality may grant a right to use, control or manage a capital asset only after—
 - (a) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and
 - (b) the municipal council has approved in principle that the right may be granted.
- (2) **Sub regulation (1)(a) must be complied with only if—**
 - (a) **the capital asset** in respect of which the proposed right is to be granted **has a value in excess of R10 million**; and
 - (b) a long term right is proposed to be granted in respect of the capital asset.

Further in terms of Regulation 36, the municipal council must, when considering in terms of regulation 34(1)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account—

- (a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- (b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or Page 34 of 42 organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
- (c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;
- (d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
- (e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;
- (f) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (g) compliance with the legislative regime applicable to the proposed granting of the right.

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

- (a) the **type of right that may be granted**, the period for which it is to be granted and the way in which it is to be granted;
- (b) the **minimum compensation** to be paid for the right; and

- (c) a **framework** within which direct **negotiations** for the granting of the right must be conducted, if granting of the right is subject to direct negotiations.

4. INPUTS BY OTHER DEPARTMENTS

4.1 CFO

It is proposed that report back is provided by the November 2016 to Council to consider inputs from planning; engineering and in terms of financial planning amongst other in terms of integrated development planning. The optimal procurement strategy should also be contemplated to achieve the goals of Council.

4.2 Senior legal Advisor

The legal department's input has been taken into account in updating the information as per **APPENDIX 1**.

4.3 Planning and Economic Development

The principle of the development and best possible utilisation of the land is supported. Achievement of the objectives should however not follow the route / process in Option 2 above. The rights first need to be established, where after tenders be published. This also increases the competitive nature of the bids and a fairer way of adjudication. Experience has also shown that this shortens the time between offering the land and the actual use and generation of revenue for the Municipality.

4.4 Engineering Services

The developments within the historic CBD and university area must be distinguished from the developments in all other areas when considering the development of the identified sites. The historic CBD and the university area is experiencing shortage of parking space and severe traffic congestion during peak demand periods. The development within the CBD provides an opportunity for the municipality to address these problems in the following manner:

- All developments in the CBD must be mixed use development, where people can live, work and play, resulting in a reduction in parking demand and trip generation.
- The income from the sale of the land can be used for the development of proper NMT infrastructure
- Development contributions towards infrastructure can be levied to improve public transport to allow the customers of the proposed development to reach the developments with ease. The components of the public transport network that can be developed with these contributions are holding areas for Tuk-Tuks and on- and off-loading facilities along public transport routes within the CBD.
- A Traffic Impact Assessment Policy must be developed by Council and each proposed development must be evaluated against that policy, since it is clear that the current road infrastructure cannot accommodate any further development within the Stellenbosch CBD. The policy will have to accept that lower operating conditions will

prevail and that those conditions will be compensated for by the higher benefit of justifying a better NMT.

The developments outside of the CBD and University area must be subjected to the normal processes of meeting the minimum acceptable level of service. Provision should be made for Non-Motorised Transport. Recognition shall be given to the need for NMT during the planning and design stages of all projects.

In general we would request that the normal development planning processes be followed for each of these sites in order for this directorate to effectively comment on each individual development.

4.5 Public Safety & Community Services

None received.

5 CONCLUSION

From the above it is clear that:

- a) the properties listed in paragraph 3.2 (*supra*) are not needed to provide the minimum level of basic municipal services; and
- b) no determination regarding the possible, prescribed public participation process can be made until such time as it can be determined whether any of the properties may be regarded as a high value property (In excess of R50M or R10M respectively, depending on whether Council decide to dispose of or whether rights are awarded).

RECOMMENDED

- (a) that the following properties be identified as properties not needed to provide the minimum level of basic municipal services:

Erf 5652, Die Boord;
Erf 412, Groendal
Erf 1902, Town Hall
Erf 13426, Technopark
Erf 194, Van de Stel
Erf 52, Bird Street

- (b) that the Municipal Manager be requested to:
 - i) Investigate the possible development of the properties listed in (a) (*supra*);
 - ii) Advise on the type of development that could be undertaken (if any); and
 - iii) Advise on specific ways and means to achieve the dual purpose of Local Economic Development as well as Black Economic Empowerment; and

- (c) that a progress report be tabled within a period of 3 months.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 6.1.3

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the following properties be identified as properties for possible development for Black Local Economic Development\BEE:

Erf 5652, Die Boord;
Erf 412, Groendal
Erf 1902, Town Hall
Erf 13426, Technopark
Erf 194, Van der Stel
Erf 52, Bird Street

- (b) that the Municipal Manager be requested to:
- i) Investigate the possible development of the properties listed in (a) (*supra*);
 - ii) Advise on the type of development that could be undertaken (if any); and
- (c) that a progress report be tabled within a period of 3 months.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.8

Councillor Q Smit put a Procedural Motion that the matter be referred back to allow the Administration to give effect to the legal opinion.

RESOLVED (majority vote)

that this matter be referred back to allow the Administration to give effect to the legal opinion.

The following Councillors requested that their votes of dissent be minuted:

Councillors F Adams; DA Hendrickse and M Wanana.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

8. CONSIDERATION OF MATTERS REFERRED TO COUNCIL VIA THE MAYORAL COMMITTEE MEETING/S (3/4/2/5)

8.1 REQUEST TO INCLUDE FURTHER DELEGATION(S) TO THE CURRENT SYSTEM OF DELEGATIONS

File number : 3/P/7

Compiled by : Environmental Planner (S van der Merwe)

Report by : Director: Planning & Economic Development

Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To submit a proposed delegation to be added to the current System of Delegations to Council for approval.

2. BACKGROUND

Section 59 of the Local Government: Municipal Systems Act No 32 of 2000 (the Systems Act) requires that:

“A Municipal Council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances...”

3. DISCUSSION

The current System of Delegations does not allow the municipality to comment on environmental impact assessments undertaken in terms of the National Environmental Management Act, 107 of 1998 (NEMA), within the prescribed legal timeframe.

It is requested that the following delegation be added to the current system of delegations as delegation number 381(2):-

Legislative mandate

S 24 of NEMA

Description of power or function

To submit comment on proposed projects' -

- (a) *basic assessment reports and environmental management programs, and where applicable the closure plans, submitted in terms of regulation 19 (Environmental Impact Assessment Regulations , 2014); and*
- (b) *scoping reports submitted in terms of regulation 21 and the environmental impact assessment reports and environmental management programs submitted in terms of regulation 23 (Environmental Impact Assessment Regulations , 2014),*

as part of such a project's Environmental Impact Assessments undertaken in terms of NEMA.

Delegated to

Manager: Spatial Planning Heritage & Environment.

The basis for the proposed delegation is found in the time frame prescribed by the relevant legislation, being 30 days for submitting comments, which makes it impractical to refer participation by the Municipality to a Section 80 committee of Council to drive the process to conclusion within the time frame.

4. LEGAL DEPARTMENT

The Item and recommendations are supported.

5. FINANCIAL IMPLICATION

No financial implications.

RECOMMENDED

- (a) that the System of Delegations of Council be amended to include the provisions as set out below:

Legislative mandate: *S 24 of NEMA*

To submit comment on proposed projects' –

- (i) *basic assessment reports and environmental management programs, and where applicable the closure plans, submitted in terms of regulation 19 (Environmental Impact Assessment Regulations , 2014); and*
- (ii) *scoping reports submitted in terms of regulation 21 and the environmental impact assessment reports and environmental management programs submitted in terms of regulation 23 (Environmental Impact Assessment Regulations , 2014),*

as part of such a project's Environmental Impact Assessments undertaken in terms of NEMA.

- (b) that Council delegate this function to the Manager: Spatial Planning Heritage & Environment; and
- (c) that Council approve the proposed delegation and it be added to the current System of Delegations.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.1

RESOLVED (nem con)

- (a) that the System of Delegations of Council be amended to include the provisions as set out below:

Legislative mandate: S 24 of NEMA

To submit comment on proposed projects' –

- (i) *basic assessment reports and environmental management programs, and where applicable the closure plans, submitted in terms of regulation 19 (Environmental Impact Assessment Regulations , 2014); and*
- (ii) *scoping reports submitted in terms of regulation 21 and the environmental impact assessment reports and environmental management programs submitted in terms of regulation 23 (Environmental Impact Assessment Regulations , 2014),*

as part of such a project's Environmental Impact Assessments undertaken in terms of NEMA;

- (b) that Council approve the proposed delegation and it be added to the current System of Delegations;
- (c) that Council delegate this function to the Director: Planning and Economic Development; and
- (d) that the Director: Planning and Economic Development submit a report on delegations to Council on a quarterly basis.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

8.2 APPOINTMENT OF A BUILDING CONTROL OFFICER

File number : 4/1/4/5 and 4/3/3/5

Report by : Director: Planning & Economic Development

Compiled by : Manager: Building Development

Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input checked="" type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To recommend to Council the appointment of an alternative Building Control Officer in terms of Section 5 of the National Building Regulations and Building Standards Act 103 of 1977 (NBRBSA).

Section 5 (1) of NBRBSA reads as follows: “a local authority shall appoint a person as Building Control Officer in order to exercise and perform the powers, duties or activities granted or assigned to a Building Control Officer by or under this Act”. In terms of Section 28(4) of the NBRBSA, a local authority cannot delegate the appointment of a Building Control Officer hence the matter is submitted to Council for a decision.

2. BACKGROUND

It is essential that the council appoint more persons as alternative or stand-in Building Control Officers who are qualified in terms of the National Building Regulations, to undertake the role and functions of the Building Control Officer in the absence of the appointed Building Control Officers. The Council appointed two Building Control Officers, Rodney Adams and Babalwa Nkonzo. Should Mr Adams or Mrs Nkonzo be sick or on leave during the same period, it will leave council without a Building Control Officer and therefore no building plan application can be finalized.

Mr Hylton Daniels was appointed as a Plans Examiner on 1 March 2016. It is now proposed that he be appointed as alternative Building Control Officer for Stellenbosch Municipality with effect from 01 July 2016 and that this appointment be made only to allow Mr Daniels to act in the absence of the permanently appointed Building Control Officers, Mr Rodney Adams and Ms Babalwa Nkonzo. An acting allowance should be paid to Mr Daniels in accordance with the prescriptions of the pre-determined policy for acting periods.

Mr Daniels holds a National Diploma in Architectural Technology from the Cape Peninsula University of Technology, obtained in 2006. His credentials, Identification Document and Driver's license are attached to this report as **APPENDICES 1, 2 and 3.**

3. DISCUSSION

A Building Control Officer shall:

- (a) make recommendations to the Local Authority in question, regarding any plans, specifications, documents and information submitted to such Local Authority in accordance with Section 4 (3);
- (b) ensure that any instruction given terms of this Act by the Local Authority in question, be carried out;
- (c) inspect the erection of a building and any activities or matters connected therewith, in respect of which approval referred to in Section 4(1) was granted;
- (d) report to the Local Authority in question, regarding non-compliance with any conditions on which approval referred to in Section 4(1) was granted; and
- (e) the Building Control Officer shall include a report from the Chief Fire Officer in his/her recommendation.

4. COMMENTS BY DEPARTMENTS

No comments were required from other Departments.

5. CONCLUSION

As the appointment of a Building Control Officer by Council is a statutory requirement in terms of the NBRBSA, Council is required to appoint a Building Control Officer, provided the candidate meets the minimum requirements stated in regulation A16 of the NBRBSA.

6. APPENDICES

Appendix 1: National Diploma in Architectural Technology
Appendix 2: Identification Document (Hylton Brandon Daniels)
Appendix 3: Driver's license (HB Daniels)

RECOMMENDED

- (a) that Mr Hylton Daniels be appointed as alternative Building Control Officer for Stellenbosch Municipality with effect from 01 July 2016;
- (b) that this appointment be only to allow the above-mentioned official to act in the absence of the permanently appointed BCO's (Mr Rodney Adams and Ms Babalwa Nkonzo); and
- (c) that an acting allowance be paid to this official in accordance with pre-determined policy for acting periods.

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.2**RESOLVED** (nem con)

- (a) that Mr Hylton Daniels be appointed as alternative Building Control Officer for Stellenbosch Municipality with effect from 01 July 2016;
- (b) that this appointment be only to allow the above-mentioned official to act in the absence of the permanently appointed BCO's (Mr Rodney Adams and Ms Babalwa Nkonzo); and
- (c) that an acting allowance be paid to this official in accordance with pre-determined policy for acting periods.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

8.3 PROGRESS REPORT: ELECTRICAL SERVICES MASTER PLAN

File number : 8/1/Engineering Services

Report by : Acting Director: Engineering Services

Compiled by : Acting Manager: Electrical Services

Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input checked="" type="checkbox"/>
Greenest municipality	<input checked="" type="checkbox"/>
Safest valley	<input checked="" type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To present the Electricity Master-plan to Council for adoption.

2. BACKGROUND

Council at its 33rd meeting held on 25 August 2015 resolved that:

“that this matter be referred back to allow the Administration to submit a Progress Report to Council as mentioned in the item”.

Although the previous Master-plan was done with a 20 year view, it has become outdated, because of unforeseen changes and as time goes on. The consultant therefore has to be reviewed every 6 years. The service provider, Royal Haskoning was therefore appointed for the update of Electricity Master-plan.

3. DISCUSSION

Information was sourced from the existing electrical network. The future development plans for the Municipality and future trends were also taken in consideration during the compilation of the plan.

The consultants made proposals for upgrades and future extension improvements that need to be done to ensure sufficient capacity, stability and quality of supply. Provisional cost estimates are included for each project.

A positive aspect is that there is no immediate crisis which means that the Electricity Department performed well looking after the system and the required planning and upgrades.

However there are challenges for the future to keep the Electrical network in a healthy state. The plan will guide the department for the

next few years to plan and budget. Due to the projected inaccuracies that escalate over time, the Stellenbosch Electricity Masterplan will have to be reviewed within 6 years.

Copies of the plan are available in electronic format from the Manager: Electrical Services' office.

RECOMMENDED

that Council adopts the Master-plan for the Electrical distribution system and that it be used and implemented by the Electricity Department.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

**ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE
MEETING: 2016-02-03: ITEM 5.1.2**

RECOMMENDED

that Council adopts the Master Plan for the Electrical distribution system and that it be used and implemented by the Electricity Department.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-02-17: ITEM 5.1.4

RECOMMENDED BY THE EXECUTIVE MAYOR

that Council adopts the Master Plan for the Electrical distribution system and that it be used and implemented by the Electricity Department.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

38TH COUNCIL MEETING: 2016-02-24: ITEM 7.3

The Speaker **RULED**

- (a) that this matter be referred back to allow the Administration to arrange a workshop for Councillors before the end of March to discuss the item; and

-
- (b) that the Administration provide the appendix in readable print whereafter same be resubmitted at the next meeting of Council scheduled for 2016-03-30.

(ACTING DIRECTOR: ENGINEERING SERVICES TO ACTION)

FURTHER COMMENTS BY THE ACTING DIRECTOR: ENGINEERING SERVICES

Subsequent to the Ruling of the Speaker in (a) above, the Workshop is scheduled for the last week in March 2016.

With reference to Ruling (b) above, the Master Plan is hereby resubmitted in a readable format as **APPENDIX 1 (DISTRIBUTED UNDER SEPARATE COVER)**.

FOR CONSIDERATION

(ACTING DIRECTOR: ENGINEERING SERVICES TO ACTION)

39TH COUNCIL MEETING: 2016-03-30: ITEM 7.9

RESOLVED (nem con)

that this matter be referred to the Council meeting scheduled for April 2016, to allow the Administration to arrange a Workshop prior to the Council meeting.

(ACTING DIRECTOR: ENGINEERING SERVICES TO ACTION)

KINDLY NOTE: COUNCILLORS ARE REQUESTED TO BRING ALONG THE A3 PRINTOUTS (APPENDIX 1) DISTRIBUTED AT THE MEETING OF 2016-03-30, AS SAME WILL NOT BE PRINTED AND DISTRIBUTED AGAIN.

FURTHER COMMENTS FROM THE DIRECTOR: ENGINEERING SERVICES

The workshop was presented to Councillors on 12 April 2016 in the Council Chambers by the Consultant, responsible for the compilation of the Electrical Master Plan.

RECOMMENDED

- (a) that Council take note of the workshop that was held on 12 April 2016; and
- (b) that Council adopts the Electrical Services Master Plan.

(ACTING DIRECTOR: ENGINEERING SERVICES TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.3

RESOLVED (nem con)

- (a) that Council take note of the workshop that was held on 12 April 2016;
and
- (b) that Council adopts the Electrical Services Master Plan.

(ACTING DIRECTOR: ENGINEERING SERVICES TO ACTION)

8.4 ELECTRICITY SUPPLY TO THE MUNICIPAL AREAS OF STELLENBOSCH

File number : 8/1 Engineering Services
Compiled by : Acting Manager: Electrical Services
Report by : Acting Director: Engineering Services
Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input checked="" type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF THE REPORT

To provide a progress report with regard to previous questions relating to the supply of electricity in the municipal area of Stellenbosch.

2. BACKGROUND

The previous Council item and resolution in this regard, dated 26 November 2014, is attached as **APPENDIX 1**.

Stellenbosch Municipality started with a process to transfer /take over the electricity distribution to the Pniel/Wemmershoek area, historically supplied by Drakenstein Municipality.

3. DISCUSSION

The previous resolution required a preliminary investigation to be conducted regarding the taking over of electricity supply from Drakenstein, while also requesting SALGA to expedite talks with ESKOM re other areas.

After various meetings between Drakenstein- and Stellenbosch Municipalities, an item served at Drakenstein Municipality's Council meeting of 29 September 2015. In response to the resolution as attached as **APPENDIX 2**, refer to the Department: Electrical Services' comments below:

Point 1:

It is noted that Drakenstein approved the transfer in principle

Point 2:

This Department is now waiting on Drakenstein Municipality's quotation for the infrastructure take-over

Point 3:

The resale of electricity by Drakenstein Municipality to Stellenbosch Municipality at the Eskom Megaflex tariff is acceptable

Point 6

This Directorate now awaits Drakenstein Municipality to provide a quotation to create 2x supply and metering points.

CONCLUSION

Although this is a positive move, there are still a few legal aspects to be investigated. Once the quotations have been received, a final decision will be tabled to determine the way forward for Stellenbosch Municipality.

RECOMMENDED

that the actions taken and progress made regarding the takeover of the Electricity supply from Drakenstein Municipality, be noted.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

**ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE
MEETING: 2015-11-04: ITEM 5.2.3****RESOLVED** (nem com)

that the actions taken and progress made regarding the takeover of the Electricity supply from Drakenstein Municipality, be noted.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

FURTHER COMMENTS FROM THE DIRECTOR: ENGINEERING SERVICES

Further to previous progress on this matter, Drakenstein Council at their meeting held on 20 May 2016 resolved (Resolution attached as **APPENDIX 3**):

1. *That the ceding of the Pniel and Hollandse Molen electricity networks, to Stellenbosch Municipality, be approved in principle.*
2. *That the negotiations for transfer of existing electrical infrastructure, services and metering be approved in principle and charged to Stellenbosch Municipality, at an estimated asset carrying value of R9 059 664.14 (as at 30 June 2016);*
3. *That it be noted that Drakenstein intends to sell to Stellenbosch bulk electricity at the Eskom Megaflex tariff plus a percentage value between*

5 and 10%, but legal implications in this regard must be investigated in consultation with NERSA;

4. *That the financial implications as set out, be noted*
5. *That the legal implications, be noted and*
6. *That the required network, upgrades, new metering points and switchgear be installed at cost to Stellenbosch Municipality”.*

The quotation to install two metering points and accompanied infrastructure was provided by Drakenstein Municipality and is attached as **APPENDIX 4** and amounts to R11 468 012.14 (incl VAT). Drakenstein Municipality has also indicated that a bank guarantee in respect of the consumer deposit of R2 000 000 instead of a cash transfer would be acceptable.

Council approved an amount of R10 300 000 on the 2016/17 budget to fund the amount of R10 059 664.16 (excl VAT).

The program to implement the take-over of the Electricity supply from Drakenstein Municipality is as follows:

1. An agreement will be compiled and signed by both Municipalities;
2. The payment as per the quotation will be made by Stellenbosch Municipality;
3. The affected consumers will be notified of the process to take over the electricity supply from Drakenstein Municipality. These consumers will be charged the tariffs as approved by Stellenbosch Municipality which is not anticipated to be a problem as Stellenbosch Municipality's tariffs are lower than Drakenstein Municipality's;
4. NERSA will be informed of the take-over;
5. The supply points will be installed by Drakenstein Municipality and the transfer of assets and consumers from Drakenstein to Stellenbosch Municipality can be effected simultaneously.

Council is hereby requested to consider the approval of the take-over before the recess by delegating the authority to the acting Municipal Manager to approve and sign off the required agreement and payment to Drakenstein Municipality in order to expedite the final phase of this project.

COMMENTS FROM THE DIRECTORATE: STRATEGIC & CORPORATE SERVICES (LEGAL)

Refer to the comments provided in Appendix 1

COMMENTS FROM THE DIRECTORATE: FINANCIAL SERVICES

In the 2016/2017 financial year an amount of R10 300 000 is allocated for the takeover of the electricity distribution in the Pniel/Wemmershoek area.

Before the municipality proceed with the acquisition a cost benefit analysis will be done as part of due diligence in terms of projected revenue and expenditures after the take-over.

It is also to be 2015/16 financial year.

NERSA requested an application from Stellenbosch Municipality regarding the take-over to finalise the details and tariffs applicable after the take-over.

RECOMMENDED

- (a) that Council take note of the progress made with the take-over of the electricity supply from Drakenstein Municipality;
- (b) that Council delegate the authority to the acting Municipal Manager to sign the agreement, subject to a due diligence; and
- (c) that Council mandate the administration to compile and submit an application to NERSA for the proposed take-over of the electricity network in the Pniel area from Drakenstein Municipality to Stellenbosch Municipality.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.4

RESOLVED (nem con)

- (a) that Council take note of the progress made with the take-over of the electricity supply from Drakenstein Municipality;
- (b) that Council delegate the authority to the acting Municipal Manager to sign the agreement, subject to a due diligence; and
- (c) that Council mandate the administration to compile and submit an application to NERSA for the proposed take-over of the electricity network in the Pniel area from Drakenstein Municipality to Stellenbosch Municipality.

**(ACTING DIRECTOR: ENGINEERING
SERVICES TO ACTION)**

8.5 INVESTIGATION WHY THE ADMINISTRATION OBTAINED A COURT ORDER FOR THE SALE OF EXECUTION OF ERF 3291, 17 LUCKHOFF STREET, IDAS VALLEY, STELLENBOSCH

File number : 8/1/Financial
Report by : Chief Financial Officer
Compiled by : Chief Financial Officer
Delegated authority : Council

Strategic intent of item:

Preferred investment destination	<input checked="" type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To provide a report to Council with regards to the Motion of Exigency received by Councillor Hendrickse at the Council meeting of 24 February 2016.

2. DISCUSSION

A comprehensive Debt Management report was submitted to the Finance Portfolio Committee meeting of 8 March 2016, after the motion was received from Councillor Hendrickse. (Attached as **APPENDIX 1**)

The report stipulates that no court order for a sale of execution for Erf 3291 was obtained nor requested.

Default Judgment was granted against the debtor pursuant to the Summons which was not defended. The municipality accordingly proceeded with the issuing of a Warrant of Execution.

The processes, which are followed by the Credit Control and Debt Collection Section, was clearly set out in the report of 8 March 2016 and that the Municipality will not proceed with any Sale in Execution without prior approval from Council.

RECOMMENDED

that Council take note of the report as submitted to the Finance Portfolio Committee.

(CHIEF FINANCIAL OFFICER TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.5

Councillor DD Joubert put a Procedural Motion that the matter now be decided.

RESOLVED (nem con)

that Council take note of the report as submitted to the Finance Portfolio Committee.

(CHIEF FINANCIAL OFFICER TO ACTION)

8.6 CONSIDERATION OF IRREGULAR EXPENDITURE DISCLOSED IN THE ANNUAL FINANCIAL STATEMENTS OF 2014/2015 FOR WERNER ZYBRANDT

File number : 3/3/3/6/7
Report by : Chief Financial Officer
Compiled by : Head: Supply Chain Management
Delegated Authority : Council

Strategic intent of item

Preferred investment destination	
Greenest municipality	
Safest valley	
Dignified Living	
Good Governance	X

1. PURPOSE OF THE REPORT

To provide information regarding “irregular expenditure” for oversight by MPAC. Council needs to consider and approve that the expenditure is deemed irrecoverable and be written off in terms of the MFMA Section 32 (2).

2. BACKGROUND

The Committee was established to deal with expenditure not aligned or non-compliant with Council’s approved policies and the Municipal Finance Management Act, herein after referred to as the “Act” and “Policies”.

2.1 Legislation

The Act (Section 32) stipulates the following with regard to unauthorized, irregular or fruitless and wasteful expenditure:

- “(1) without limiting liability in terms of the common law or other legislation-
 - (a) a political office-bearer of a municipality is liable for unauthorized expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorized expenditure, instructed an official of the municipality to incur the expenditure;
 - (b) The accounting officer is liable for unauthorized expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
 - (c) Any political office-bearer or official of a municipality who

deliberately or negligently committed, made or authorized an irregular expenditure, is liable for that expenditure; or

- (d) *Any political office-bearer or official of a municipality who deliberately or negligently made or authorized a fruitless and wasteful expenditure is liable for that expenditure”.*

In terms of Section 32 (2)

“A municipality must recover unauthorized, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure-

- (a) *In the case of unauthorized expenditure, is-*
- (i) *authorized in an adjustments budget; or*
- (ii) *Certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and*
- (b) *In the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council”.*

A further stipulation, Section 32(4) compels the accounting officer to

“Promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of-

- (a) *Any unauthorized, irregular or fruitless and wasteful expenditure incurred by the municipality;*
- (b) *Whether any person is responsible or under investigation for such unauthorized, irregular or fruitless and wasteful expenditure; and*
- (c) *The steps that have been taken-*
- (i) *To recover or rectify such expenditure; and*
- (ii) *To prevent a recurrence of such expenditure”.*

Irregular expenditure as defined under Chapter 1 of the Act:

- d) *Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;*
- e) *Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Municipal systems Act, and which has not been condoned on terms of that Act;*
- d) *Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law”.*

3. DISCUSSION

Management disagreed with the audit finding based on the following:

DSM07/15 was handled as a deviation as per SCM Regulation 36 which allows: “the Accounting Officer to dispense with the official procurement processes established by the policy and to procure any required goods or services through any convenient process.”

It is not necessary for a deviation to obtain three different quotes or whose names appear on the list of accredited prospective service providers as per SCM regulation 17 (a). Deviation is reported monthly to CFO, Accounting Officer and Council and it's not necessary to adhere to SCM

Regulation 17 (Deviation was approved based on the following classification (v) “in any other exceptional case where it is impractical or impossible to follow the official procurement processes”.

The request to deviate was based upon the discussion which alluded to the following:

- Current System of Delegations (SOD) and policies did not comply with all legislative requirements and refers to some Ordinances/Acts that was either repealed or amended
- Various versions of (SOD) were in circulation causing confusion
- Policies are not incorporated in the document

The above made it critical that the System of Delegations be updated immediately as the out-dated document created more risk and shortfalls whereby officials could authorise requests which didn't fall in their statutory requirement. Impending SPLUMA for Planning were also critical to implement as quick as possible.

An FQ process could easily consume at least 3 weeks in terms of compiling the specifications; advertising; compiling the technical evaluation and then approval of the FQ.

As it turned out the work done was way in excess what was quoted for. In fact probably double which would have taken the scope of works into a bidding procurement process which would have taken longer than 3 months which could be ill afforded.

Two other experts were also approach, but were not available or more expensive.

The actual work at the end entailed about 20 workshops with various stakeholders by a technical expert and a leader in the field of municipal governance. These workshops included at least 2 sessions per directorate plus 3 sessions with the political leadership including 3 sessions with the (Mayor and Speaker); Mayco and also the Council to promote the required Council approval of the delegations.

The Municipality obtained excellent value for money given the time spent by an expert workshoping the delegations with various parties including various political engagements to promote Council approval all in an effort

to address critical service delivery governance shortcomings and impending new legislation implementation like SPLUMA successfully which have put the Municipality at great risk.

Deviations don't need comparison quotes to evaluate based on the SCM regulation: "the Accounting Officer to dispense with the official procurement processes established by the policy and to procure any required goods or services through any convenient process."

This initial discovery of SOD shortfalls is in relation to historic inadequacies/shortfalls and needed to be corrected sooner than later.

4. FINANCIAL IMPLICATIONS

The overall financial implications as follow:

1. <u>Werner Zybrandts</u>	<u>R 120 000.00</u>
----------------------------	---------------------

5. CONCLUSION

Value was obtained through this appointment.

6. COMMENTS FROM OTHER DIRECTORATES

6.1 COMMENTS FROM DIRECTORATE: STRATEGIC & CORPORATE SERVICES (Director)

National Treasury Circular 68 states the following:

"In terms of section 32(2)(b) irregular expenditure may only be written-off by Council if, after an investigation by a council committee, the irregular expenditure is certified as irrecoverable.

"All instances of irregular expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the municipal council, after investigation by a council committee, as irrecoverable and is written off by the council. In other words, the expenditure that is written off is therefore condoned."(page 10).

The relevant parts of Section 32 further states:

"A municipality must recover unauthorized, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure-

(a) ...; and

(b) In the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council".

The circular further states that write off may only take place if the irregular expenditure is certified by Council as irrecoverable, based on the findings of an investigation.

Investigation of Irregular Expenditure

Section 32(4) requires that the municipal manager must report to Council and the MEC whether any person is responsible or under investigation for the, irregular expenditure.

In the current matter the AGSA investigated the matter and compiled a full report as per their "Communications of Audit Findings" as part of their regulatory audit and further investigation of this particular matter is therefore not needed. I am respectfully of the view that their investigation was complete and can be tabled in its current form to a council committee for its recommendation to council.

Recover or rectify such expenditure

In the current matter the system of delegations was approved by council. Council therefore did receive the goods and services they contracted for. Council can therefore not recover the expenditure as the goods was received and approved by council.

Council will rectify the expenditure if condone by council.

Prevent a recurrence of such expenditure:

The administration has since the finding taken specific steps to minimise deviations in general. The current deviation report is clear evidence that very specific steps are taken to prevent a possible recurrence of any irregular expenditure.

RECOMMENDED

that Council certifies the expenditure to the amount of R120 000.00 as irrecoverable and that it is written off.

(CHIEF FINANCIAL OFFICER TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.6**RESOLVED (nem con)**

that the matter be referred to the next MPAC meeting whereafter same be recommended to Council for consideration.

(CHIEF FINANCIAL OFFICER TO ACTION)

8.7 UNAUTHORISED EXPENDITURE AS DISCLOSED IN NOTE 53 OF THE AUDITED 2014/2015 ANNUAL FINANCIAL STATEMENTS

File No : 8/1/AFS
Report By : Financial Services
Compiled By : Manager: Budget Office
Delegated Authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF REPORT

To submit to the Council a report on the unauthorised expenditure as disclosed in Note 53 of the audited 2014/2015 Annual Financial Statements that cannot be authorised by Council through another adjustments budget for the 2014/2015 financial year but needs to be certified by Council as irrecoverable unauthorised expenditure and to be written off.

2. BACKGROUND

Section 32(1)(a) of the Municipal Finance Management Act (MFMA) determines that a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure.

Section 32(1)(b) of the MFMA also determines that the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer.

Section 32(2)(a) of the MFMA further determines that a municipality must recover unauthorised expenditure from the person liable for that unauthorised expenditure unless the expenditure in the case of unauthorised expenditure is authorised in an adjustments budget (which cannot take place anymore); or, after investigation by a committee of council, is certified by the council as irrecoverable and to be written-off.

3. DISCUSSION

Section 1 of the Municipal finance Management Act (MFMA) defines that-

“”unauthorised expenditure”, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes-

- (a) *overspending of the total amount appropriated in the municipality’s approved budget [which is not the case]*
- (b) *overspending of the total amount appropriated for a vote in the approved budget [which is the case]*
- (c) *expenditure from a vote unrelated to the department or functional area covered by the vote [which is not the case];*
- (d) *expenditure of money appropriated for specific purpose, otherwise than for that specific purpose [which is not the case]*
- (e) *spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of “allocation” otherwise than in accordance with any conditions of allocations [which is not the case]; or*
- (f) *a grant by the municipality otherwise than in accordance with this Act [which is not the case].”*

Unauthorised expenditure was disclosed as legislatively required in the financial statements and due to prior period corrections, the comparatives (2013/2014) and opening balances (2012/2013) were affected and updated accordingly. This resulted in unauthorised expenditure being disclosed for the following Vote/Directorate:

- **Engineering Services**
Overspending on non-cash items namely Depreciation and Contributions to Provisions contributed to the overspending per vote for the year 2014/2015 and 2013/2014 financial year.
- **Community and Protection Services**
The overspending for 2013/2014 is due to the implementation of iGRAP 1 and the impact on the accounting treatment of non-cash revenue and expenditure (Traffic Fines and Bad Debt Provision).

4. Financial Implications**Unauthorised expenditure per Vote/Directorate**

Unauthorised expenditure	2014/2015	2013/2014
Civil Engineering Services	49,806,155	32,294,361
Community and Protection Services		25,898,883
	49,806,155	58,193,244

5. Legal Input (provided by the Director Strategic Support Services)

In addition to the definition of unauthorised expenditure and S32 of the Local Government: Municipal Finance Management Act 56 of 2003 set out above, National Treasury Circular 68 provide further guidance on how council should deal with *inter alia* unauthorised expenditure. Circular 68 provide *inter alia* that when Council consider unauthorised expenditure it must consider:

“Are there good grounds shown as to why an unauthorised expenditure should be authorised? For example:

- the mayor, accounting officer or official was acting in the best interests of the municipality and the local community by making and permitting unauthorised expenditure;*
- the mayor, accounting officer or official was acting in good faith when making and permitting unauthorised expenditure; and*
- the municipality has not suffered any material loss as a result of the action.*

In these instances, the council may authorise the unauthorised expenditure. If unauthorised expenditure is approved by council, there would be no further consequences for the political office-bearers or officials involved in the decision to incur the expenditure.”

The unauthorised expenditure relates to non-cash items and the above cited paragraph would clearly apply.

The recommendation is therefore supported.

RECOMMENDED

- (a) that Council certify the unauthorised expenditure amount per Vote (Directorate) of R 49 806 155 (2014/2015) and R 58 193 244 (2013/2014) as set out above as irrecoverable and to be written off; and
- (b) that Council accept the reasons in the report and record that no political office-bearer or official of the Municipality deliberately or negligently incurred the over-expenditure and unauthorised expenditure to be written-off as irrecoverable.

(CHIEF FINANCIAL OFFICER TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.7

RESOLVED (nem con)

that the matter be referred to the next MPAC meeting whereafter same be recommended to Council for consideration.

(CHIEF FINANCIAL OFFICER TO ACTION)

8.8 PROPOSAL FOR THE REVIEW OF THE TARIFF STRUCTURE IN RESPECT OF PUBLIC RENTAL UNITS*File number : 5/17/16**Report by : Manager: Housing Administration**Compiled by : Director: Human Settlements and Property Management**Delegated Authority : Council***Strategic intent of item**

Preferred investment destination

Greenest municipality Safest valley Dignified Living Good Governance **1. PURPOSE OF REPORT**

To submit to Council a simplified and affordable revised tariff structure that will apply to all municipal public rental housing units following Council's approved strategy for the management of its public rental stock for Indigent Households.

The current tariff structure is unaffordable for the majority of the tenants.

2. BACKGROUND

The Department administers the following public rental units:

LOCATION	NUMBER OF UNITS
CLOETESVILLE (240 units)	
Long and Kloof Streets	132
Rhode Street	72
Pine, Primrose, Jacaranda and Eike Street Maisonettes	36
STELLENBOSCH (221 units)	
Lavanda	72
Aurora	72
Phyllaria	77
KAYAMANDI (144 units)	
10 and 13 th Closes	146
TOTAL	607

For more than ten years the municipality has been struggling to address the challenges experienced at its rental stock. These include the following:-

- Negative Mind-sets reinforced by the general appearance of the flats;
- Anti-social behaviour/lack of tolerance/ disrespect/vandalism of property;
- Unlawful activities and substance abuse;
- Contravention of Lease Agreements, particularly, illegal occupation;
- Poverty and unemployment.

At its 20th meeting held on 25th June 2014, Council approved a strategy for the management of its public rental stock and the following is a brief summary of progress with the approved strategy:

- a) **Survey of all properties:** This has been concluded and an interim report of the findings served before the Portfolio Committee of December 2015. The Department plans to conclude all its interviews with alleged illegal occupants by the end of March 2016 and submit a final report to Council of its findings.

In addition, the department has created a database of its public rental properties that includes financial information as obtained from the relevant Finance Department;

- b) **Housing Consumer Education workshops:** These have since been held specifically for tenants of our rental units. Unfortunately, not all the workshops were well attended.
- c) **Maintenance of assets:** During the past few years the municipality has invested considerable funding in the upgrading of the various public rental units and the transformation is remarkable.
- d) **Grounds:** The department has initiated a pilot programme using EPWP workers to improve and maintain the condition of the grounds, staircases and walkways.
- e) **Decisive action against Transgressors:** To date the Department has referred 19 (nineteen) cases of Breach of Lease Agreement / illegal occupancy to Legal Services and attorneys have already been appointed to proceed with eviction for 7 of these cases. (These do not include illegal occupants identified as part of the recent surveys or former employees in staff rental housing).
- f) **Rentals and Repayment:** The resolution of Council requires that Housing Administration Department along with Finance Department explore ways to
- Enhance debt collection
 - Review tariff structure
 - Review the evaluation process used to identify persons who qualify for indigent assistance;
 - Improve consultation in matters relating to debt management and the writing off of debt.

3. DISCUSSION

One of the key issues identified in the report to Council is the need to review the tariff structure. Tenants of public rental stock spend 19-22 years on the waiting list of the municipality before they are allocated accommodation. This is as a result of the extreme shortage of affordable accommodation in Stellenbosch.

A recent survey revealed that only 16 of the 240 Cloetesville tenants were under the age of 50 years (**93% of tenants are older than 50 years**). The dual effect of an ageing population and limited economic opportunities have a significant impact on our tenant's ability to afford the rentals.

Currently ± 64% of the tenants of rental stock are registered as indigent. The current rental structure is based on cost recovery. This is proving to be unaffordable for pensioners and other indigent households, resulting in debt having to be written off.

3.1 CURRENT TARIFF STRUCTURE

The current tariffs in respect of rentals and services are comprised of the following:

3.1.1 Rentals: Tenants pay a standard amount for rental (based on the size of the unit occupied). This amount is separately charged.

3.1.2 Water/Sewerage/Refuse removal: In some cases no separate metering occurs for water. The amount with regard to services (excluding electricity) is standard, regardless of the size of the unit (and is based on the overall consumption of the past financial year). However these amount are separately charged as general services

3.1.3 Fixed and Fluctuating Costs (FFC): This includes amounts in respect of:

- Rates
- Insurance
- Cleaning of grounds and staircases
- Interest and redemption on loans;
- Community facilities
- Maintenance
- Bad Debt
- Caretaker's honorarium
- Electrification of general areas
- Water consumption for general areas

This component forms the bulk of the rental tariff, ranging from R 225.51 to R1 124.37 per month.

The proposed new rental structure simplifies matters and does away with the FFC which is at present attempting in vain to recuperate the actual costs associated with the buildings. By implication this also means that no property rates will be levied against municipal dwellings that are rented to members of the public. Should the proposed new

rental structure be approved, paragraph 7.6 of the rates Policy will be regarded as amended accordingly.

3.2 THE CURRENT RENTALS CHARGED FOR THE VARIOUS AREAS ARE AS FOLLOWS

3.2.1 LAP FLATS (221 units)

	1 Bed room	2 Bedroom	3 Bedroom
TOTAL	R1 198.54	R1 325.27	R1 459.03

3.2.2 CLOETESVILLE (240 units)

	Maisonettes (36 units)	Long+Kloof streets (132 units)	Rhode St (72 units)
TOTAL	R 732,65	R 838.26	R 907.36

3.2.3 KAYAMANDI (144 one room units)

SIZE	TOTAL
29m ²	R1 296.10
32m ²	R1 430.18

3.3 THE CURRENT PAYMENT LEVELS

AREA	Units	2014/15 amounts raised	Total paid		2015/16 11 months amounts raised (rental only)	Total paid (rental only)	% payment level (rental only)
CLOETESVILLE							
Long and Kloof Streets	132	1,123,512	-141,002	12.55%	1,305,172	-256,774	19.67%
Rhode Street	72	766,127	-60,694	7.92%	736,445	-101,669	13.81%
Pine, Primrose, Jacaranda and Eike Street Maisonettes	36	255,193	-79,918	31.32%	172,312	-58,274	33.82%
STELLENBOSCH							
Stellenbosch-Lavanda, Aurora and Phyllaria	221	2,999,189	-610,585	20.36%	3,061,915	-782,466	25.55%
KAYAMANDI							
Kayamandi-10 and 13th Closes	144	1,953,867	-207,991	10.65%	1,960,603	-198,821	10.14%
TOTAL	605	7,097,888	-1,100,190	16.56%	7,236,447	-1,398,004	19.32%

The current payment levels are extremely low, mainly due of the unaffordable rentals. The table above excludes outstanding balances with regards to municipal services. The tendency is that, due to the high and unaffordable rentals, municipal services are not paid either.

3.4 FINANCIAL IMPLICATIONS

Should the new rentals as stipulated in paragraph 4 be implemented it would have an insignificant effect on the cash flow position of the municipality.

Current Rentals	
Annual Accrual - (Rent + FFC)	±R7.8million
Less Average Annual Payments received	±R1.5million
= Loss of cash (80.76%)	±R6.3million
Proposed New Rental	
Annual Accrual (estimated)	R1.4million
Difference between current cash received and proposed new rentals (annually)	±100,000

It is estimated that the actual loss in cash will amount to only approximately R100 000 per annum as opposed to the current loss that needs to be written off periodically.

Implementing the proposed new tariffs will have the following positive results:

- Positive reaction from the tenant community that will most likely lead to a much improved payment rate of more affordable rental.
- Improved payment rate of municipal services among tenants due to increased disposable income.
- Improved standard of living amongst tenants who are mostly indigent.
- More accurate reflection of municipal assets in the sense of debtors not being over stated.
- Reduced administrative burden as less credit control and debt collection processes would be required.
- Less need for electricity supply to be blocked.
- Reduced need to write off bad debts on a regular basis.

4. PROPOSED TARIFF STRUCTURE

4.1 Services (Water/Sewerage/Refuse Removal) will be based on consumption.

In cases where separate metering does not occur, the costs will be proportionate to the size of the dwelling in terms of number of bedrooms.

4.2 It is proposed that the basic rental tariff for **tenants who are registered as indigent consumers** is fixed at R100,00 (one hundred Rand) per month. The Indigent Policy is regarded as amended accordingly.

4.3 These tariffs will apply to municipal public rental stock in ALL AREAS.

4.4 In order to curtail the risk of false claims of indigence from tenants, applications for registration as indigent from tenants of public rental housing stock will only be considered upon recommendation from the Department: Housing Administration

5. COMMENTS BY RELEVANT DEPARTMENTS

5.1 Legal Department

Although the downwards adjustment should have been part of the budget process, same will have no prejudice to Council in light of the fact that a substantial amount of rental is not paid by the lessees on a yearly basis. The item and recommendations are supported.

5.2 Financial Services

Finance supports the Item.

RECOMMENDED

- (a) that the tariff for services (water/sewerage/refuse removal) be based on consumption, and in the event where separate metering does not occur, the costs be proportionate to the size of the dwelling in terms of the number of bedrooms;
- (b) that the rental tariff for non-indigent household remain as is on the current basis;
- (c) that the basic rental tariff for tenants who are registered as indigent consumers be fixed at R 100,00 (one hundred Rand) per month, applicable only to the 607 units identified in par 2 above; and
- (d) that applications for registration as indigent consumers from tenants of public rental housing stock only be considered upon the recommendation from the Department: Housing Administration.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.8

RESOLVED (majority vote with 9 abstentions)

- (a) that the tariff for services (water/sewerage/refuse removal) be based on consumption, and in the event where separate metering does not occur, the costs be proportionate to the size of the dwelling in terms of the number of bedrooms;

- (b) that the rental tariff for non-indigent household remain as is on the current basis;
- (c) that the basic rental tariff for tenants who are registered as indigent consumers be fixed at R 100,00 (one hundred Rand) per month, applicable only to the 607 units identified in par 2 above; and
- (d) that applications for registration as indigent consumers from tenants of public rental housing stock only be considered upon the recommendation from the Department: Housing Administration.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

8.9 REPORTING ON THE PROGRESS MADE WITH REGARD TO THE RECOMMENDATIONS OF THE OVERSIGHT COMMITTEE ON THE 2014/2015 ANNUAL REPORT

File number : 9/1/4/4
Report by : Executive Mayor
Compiled by : Municipal Manager
Delegated authority : Council

Strategic intent of item

Preferred investment destination	<input checked="" type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input checked="" type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input type="checkbox"/>

1. PURPOSE OF REPORT

That Council take note of the progress made on the Municipal Public Accounts Committee (MPAC) Oversight Report on the Annual Report for 2014/15 that was tabled at the 30th Council meeting, dated 30 March 2016, item 7.3.

2. BACKGROUND

The Oversight Committee conducted the Oversight Process over 11 sittings between 1 February 2016 and 22 March 2016 and the process concluded with a presentation to the Municipal Council on 30 March 2016.

During the Oversight Process, the Oversight Committee made recommendations on the improvement of the Draft Annual Report 2014/15 which entailed minor corrections and additional information that would make the Draft Annual Report reader friendly. These improvements were made to the extent that information was available.

The Oversight Committee also made specific recommendations on issues contained in the Draft Annual Report which should be addressed by the Municipal Council.

3. DISCUSSION

The Chairpersons of MPAC and Oversight Committee were of the opinion that the 2014/15 Annual Report accurately reflects the performance of the Municipality for the year under review and recommend that the Council approve the 2014/15 Annual Report without reservations.

Item (c) of the resolutions requested that Council requests the Executive Mayor to report to Council on a quarterly basis on the implementation of the recommended actions in addressing the findings in the Oversight Report.

COMMENTS BY RELEVANT DEPARTMENTS

Human Resource Management

No comment required.

Financial

No comment required.

Legal

No comment required.

4. FINANCIAL IMPLICATION

No financial implication applicable

5. PROGRESS ON RECOMMENDATION

Below the progress made on the recommendations of the Oversight Committee

Question /Observation	Pg	Response at Oversight	Recommendations/Actions (Oversight Report)	Progress from line department
Housing	175	Verbal report was provided	Housing remains of primary concern to the oversight committee even though it is not the function of local government. It is recognised that the Stellenbosch Municipality should optimise intergovernmental relations and finalise all policy matters and plans to ensure more efficient housing delivery to the greater Stellenbosch.	There is regular interaction with the Provincial Department of Human Settlements on housing development plans and the implementation of housing projects. These interactions happen in Quarterly Regional Meetings, Monthly Technical Meetings and Monthly/ Fortnightly Site Meetings. The following is a list of policies that either have been approved by Council or are targeted for tabling to Council in the 2015/16 financial year alone. (i) Informal Settlements Upgrading Strategy, (2) Emergency Housing Assistance Policy, (3) Staff Rental Housing Allocation Policy, 2015/16 Housing Pipeline Annual Review.

Ward Committee	16	Verbal report was provided	Ward delimitation causes concerns with councillors and communities if not clearly defined and reported on. The Council should ensure that improved communication with ward councillors address any disputes on these matters. Support to ward councillors appear to be inconsistent as the supervision and activities of Ward Administrators and ward committees need to be reviewed in consultation with each ward councillor.	Administrative support for Re: Minutes of meetings has been improved for ward 22 whereby minutes are completed by Committee services.
Property Management	180	List of leases provided	Reporting on property management appears to be inadequate as the assets of Stellenbosch Municipality require more detail in the annual report and should be addressed at an operational level to ensure that regular inspections of all assets are done to verify compliance with contracts.	We are in the process of requesting that the position of head: administration is advertised. The position remained vacant for the past six years; Note, due to the position being unfunded (funds have been moved to other vacancies without consultation).
TASK	158	Submission made to Oversight Committee	The oversight committee acknowledge the effect that TASK have on the organisation and that the process has affected the morale to the extent that distrust and dissatisfaction might exist amongst members of staff. Clarity on the delegated powers to authorise payments and a full report on TASK needs to be tabled to Council including full and final cost of the whole process and the way outstanding matters will be dealt with as well as the way forward to finalise appeals and future job evaluations.	We are in the process of finalising the process of TASK. KPMG was appointed to do full assessment of the TASK process.
Macro structure	236	Reports as acknowledged by management	A section 66 report be prepared as soon as possible with reference to capacity problems found in Legal ,HR,ICT, Traffic Services etc.	The Macro structure has been identified as a KPI for the 2016/17 financial year for review before the end of June 2017.
Organisational culture	158	Observation during submissions	The MM should investigate the prevailing organisation culture and need to change as it was observed by the oversight committee that related problems and morale was raised as concerns throughout the year.	A climate survey amongst staff has been identified as a KPI for the 2016/17 financial year for review before the end of June 2017.
Geodebt	282	CFO indicated that there is compliance	Official status of Geodebt as per the letter from National Treasury and compliance to the MFMA to be reported	Refer to Annexure 1 paragraph 11.1
System of Delegation as mentioned in the Management report of the AG	99 AFS	Note 55 to the AFS	The existing (Zybrands) system of delegations be reviewed for compliance	Item for Council collabed to write off expenses
Contract management	175	List of leases provided	Dedicated staff, controls and systems be considered to ensure improved contract management, in respect of leases, service providers, etc.	SCM contract management is being reviewed by new appointed SCM resources
Unauthorised expenditure	99 AFS	Note 53 to the AFS	That Circular 68 be complied with in terms of referring irregular and fruitless and wasteful and unauthorised expenditure to MPAC	Item collabed

RECOMMENDED

that Council take note of the progress made on the recommendations of the Oversight Committee.

(ACTING MUNICIPAL MANAGER TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.9

RESOLVED (nem con)

that Council take note of the progress made on the recommendations of the Oversight Committee.

(ACTING MUNICIPAL MANAGER TO ACTION)

8.10 COUNCIL TO CONSIDER AND APPROVE REQUEST FOR FURTHER EXTENSION OF THE AGREEMENT FOR ACTING MUNICIPAL MANAGER

File number : 4/1/5/5

Report by : Director: Corporate and Strategic Services

Compiled by : Director: Corporate and Strategic Services

Delegated authority : Council

Strategic intent of item

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input type="checkbox"/>
Good Governance	<input checked="" type="checkbox"/>

1. PURPOSE OF THE REPORT

To inform Council about the expiration of the agreement of the acting Municipal Manager and to request Council to approve and to submit a request for the further extension of the agreement.

2. BACKGROUND

The agreement of Mr R Bosman as Acting Municipal Manager expires on 31 July 2016 [**APPENDIX 1**].

As the municipality will enter into an interim period with local government elections confirmed for 3 August 2016, it is important to ensure continuity until such time the new Council completes the process to appoint a Municipal Manager. Council is requested to consider the extension of the agreement of Mr R Bosman as acting Municipal manager to oversee the interim period and until such time that Council appoints a Municipal Manager.

3. DISCUSSION

The current acting Municipal Manager has been acting in this capacity since 01 February 2016, and his secondment is due to end 31 July 2016. It is imperative to advertise the post by the second last week in July 2016 in order to allow the incoming Council to have a head start on the recruitment process. This will not only save time but will also allow the new Council the opportunity to commence and conclude the entire process soon after its formal institution.

RECOMMENDED

- (a) that Council approves the request to extend the agreement of Mr R Bosman for a further 3 months or until the appointment of a Municipal Manager whichever comes first;
- (b) that the request for extension be submitted to the office of the MEC as well as the City of Cape Town for approval;
- (c) that, in the event of the extension not being approved by the MEC, the directors be appointed to act as Municipal Manager on a rotational basis until a Municipal Manager is appointed; and
- (d) that the advert for a Municipal Manager be placed as per the regulations by the weekend of 23 – 24 July 2016.

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

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.10**RESOLVED** (nem con)

- (a) that Council approves the request to extend the agreement of Mr R Bosman for a further 3 months or until the appointment of a Municipal Manager whichever comes first;
- (b) that the request for extension be submitted to the office of the MEC as well as the City of Cape Town for approval;
- (c) that, in the event of the extension not being approved by the MEC, the directors be appointed to act as Municipal Manager on a rotational basis until a Municipal Manager is appointed; and
- (d) that the advert for a Municipal Manager be placed as per the regulations by the weekend of 15 – 16 July 2016.

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

9. **CONSIDERATION OF NOTICES OF QUESTIONS AND NOTICES OF MOTIONS RECEIVED BY THE SPEAKER** **(3/4/1/4)**

NONE
10. **CONSIDERATION OF MOTIONS OF EXIGENCY** **(3/4/1/4)**

NONE
11. **MATTERS FOR INFORMATION**
- 11.1 **REPORT BY THE EXECUTIVE MAYOR ON DECISIONS TAKEN BY THE MAYORAL COMMITTEE AND STANDING COMMITTEES FOR THE PERIOD MAY 2016** **(3/4/2/5)**

NONE
- 11.2 **DECISIONS TAKEN IN TERMS OF DELEGATED AUTHORITY BY THE EXECUTIVE MAYOR FOR THE PERIOD APRIL 2016** **(3/5/1/1)**

NONE
12. **OTHER URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER** **(8/1/3/2/7)**

NONE

13.1 CONSIDERATION OF REPORTS SUBMITTED BY THE SPEAKER (8/1/3/2/9)**13.1.1 INVESTIGATION INTO ALLEGATIONS OF BREACH OF THE CODE OF CONDUCT FOR COUNCILLORS: COUNCILLOR AT VAN DER WALT***File number : 3/6/4**Report by : Speaker**Compiled by : Liaison Official: Office of Speaker**Delegated authority : Council***1. PURPOSE OF REPORT**

The Disciplinary Committee has been established in terms of item 14(1)(b) of the Code of conduct for Councillors, promulgated as Schedule 1 to the *Local Government Systems Act, 2000 (Act No 32 of 2000)*, to invest and make a finding on any alleged breach of the Code and to make appropriate recommendations to Council.

This is a report from the Disciplinary Committee to inform Council on the outcome of the disciplinary enquiry of Councillor Van Der Walt. The outcome of the matter is reported to Council as a statutory requirement, in terms of item 13(1)(c) of the said Code.

2. BACKGROUND

The Speaker received a handwritten letter from Councillor AT Van Der Walt in which he admit that he arrange for the brake down of the Ekanini wall.

Two charges were brought against Councillor A Van Der Walt.

Charge 1: Councillor Van Der Walt was charged after he allegedly damaged Council's property by giving instructions that a wall must be broken down.

Charge 2: As a result of first charge, Councillor Van Der Walt was further charged for causing fruitless and/or wasteful expenses as envisaged by Section 32 of the Local Government: Finance Management Act No. 56 of 2003.

3. DISCUSSION

This report deals with the alleged contravention of the Code of Conduct for Councillors by Councillor Van Der Walt, who was charged with two offences as set out above.

Item 2 of the Code of Conduct for Councillors state:

2. A councillor must—

(a) *perform the functions of office in good faith, honestly and a transparent manner: and*

- (b) *at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.*

The Disciplinary Committee has been delegated by Council to receive reports of alleged transgressions from the Speaker in terms of item 14(1)(b) of the Code of Conduct for Councillors, to investigate and make findings on any alleged breach of the Code and to make appropriate recommendations to Council on a suitable penalty.

On 12 August 2015 the Disciplinary Committee conducted a hearing.

The Disciplinary Committee gave a verdict that Cllr Van Der Walt was found guilty on both charges.

Councillor Van Der Walt was given an opportunity to address the Disciplinary Committee to consider mitigating factors for a possible sanction. Councillor Van Der Walt did not address the Disciplinary Committee and reserved his rights to the process.

The Initiator was given the opportunity to address the Disciplinary Committee. He argued that this offence as set out in charge 1, must be seen in a very serious light, as all Councillors are holding a fiduciary duty to represent the Community and the Council in the best of all interests. He further argued that Councillors cannot take the law in their own hands. He proposed that charge 1 be dealt with in terms of Item 14 (2) (e) which constitutes removal of office.

In terms of Item 14 of Schedule 1 of the aforesaid act:-

“14. Breaches of Code

- (1) ...
- (2) *If the council or a special committee finds that a councillor has breached a provision of this Code, the council may -*
- (a) *issue a formal warning to the councillor;*
 - (b) *reprimand the councillor;*
 - (c) *request the MEC for local government in the province to suspend the councillor for a period;*
 - (d) *fine the councillor; and*
 - (e) *request the MEC to remove the councillor from office.*

The Disciplinary Committee has taken all arguments and circumstances into account, and recommends that Cllr Van Der Walt be sanctioned as follows:

Charge 1: That Cllr Van Der Walt be removed from office and that such request be sent to the MEC, as provided for in Item 14(2)(e);

Charge 2: That the contravention of Section 32 of the Local Government:

Finance Management Act No. 56 of 2003, be investigated by MPAC, and that an appropriate recommendation be made to Council by MPAC.

4. COMMENTS BY RELEVANT DEPARTMENTS

None required.

RECOMMENDED

- (a) that Cllr Van Der Walt be removed from office and that such request be send to the MEC, as provided for in Item 14(2)(e);
- (b) that the contravention of Section 32 of the Local Government: Finance Management Act No. 56 of 2003, be investigated by MPAC, and that an appropriate recommendation be made to Council by MPAC.
- (c) that Council accept the sanction from the Disciplinary Committee; or
- (d) that Council apply its own sanction as prescribed by the Code of Conduct for Councillors item 14(2), which states:

“(2) If the Council or a special committee finds that a Councillor has breached a provision of this Code, the Council may—

(a) issue a formal warning to the Councillor:

(b) reprimand the Councillor:

(c) request the MEC for local government in the province to suspend the Councillor for a period;

(d) fine the Councillor; and

(e) request the MEC to remove the Councillor from office”.

- (e) that the chairperson report the outcome of the investigation to the MEC for local government.

5. FURTHER COMMENTS

On 5 October 2015 the Speaker reported the outcome of the disciplinary hearing as resolved by Council on 23 September 2015 to the MEC for Local Government.

On 2 February 2016 the MEC wrote to Cllr Van der Walt requesting him to comment on the alleged breach.

On 6 June 2016 the Speaker received a letter from the MEC where the MEC state that he concur with the guilty finding and recommended sanction and that Cllr Van der Walt be removed as a Councillor (**APPENDIX 1**).

The Speaker informed Cllr Van der Walt by hand delivered letter on 06 June 2016 of the decision made by the MEC and that he are removed as a Councillor of Stellenbosch Municipality with immediate effect **(APPENDIX 2)**.

RECOMMENDED

that Council note the recommendations made by the MEC for Local Government Minister A Bredell.

(OFFICE OF THE SPEAKER TO ACTION)

42ND COUNCIL MEETING: 2016-06-15: ITEM 8.9**RESOLVED** (nem con)

that Council note the recommendations made by the MEC for Local Government, Minister A Bredell.

(OFFICE OF THE SPEAKER TO ACTION)

13.2 CONSIDERATION OF REPORTS SUBMITTED BY THE EXECUTIVE MAYOR
(8/1/3/2/9)

NONE

14. MATTERS TO BE CONSIDERED IN-COMMITTEE

(SEE PINK DOCUMENTATION)

Meeting adjourned at 18:40.

CONFIRMED

CHAIRPERSON

(Signature & date)