



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/1/5

2019-11-11

MINUTES

URGENT MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY

2019-11-11 AT 10:00

Detailed account of the meeting proceedings is available on audio recording, which is obtainable from The Municipal Manager's Office per Request for Information (RFI)

MINUTES
URGENT MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2019-11-11

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
1.	OPENING AND WELCOME	
2.	APPLICATION FOR LEAVE OF ABSENCE	
3.	DISCLOSURE OF INTEREST	
4.	URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER	
4.1	CONFIRMATION OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN RESPONSE TO THE COUNCIL DECISION OF 2 AUGUST 2019	4
4.2	PROPOSED SETTLEMENT AGREEMENT LA CONCORDE SOUTH AFRICA(PTY) LTD ("LA CONCORDE") VS STELLENBOSCH MUNICIPALITY IN REGARD TO FARM 369P AND FARM 370 STELLENBOSCH	6
4.3	ACQUISITION OF ERF 1852, STELLENBOSCH (IN-COMMITTEE ITEM WAS WITHDRAWN)	9
4.4	RESIGNATION OF THE SPEAKER: CLLR WC PETERSEN (MS) AND ELECTION OF AN ACTING SPEAKER	9

MINUTES OF AN URGENT MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY HELD ON 2019-11-11 AT 10:00 IN THE COUNCIL CHAMBER, TOWN HOUSE, PLEIN STREET, STELLENBOSCH

PRESENT	The Speaker, Cllr WC Petersen (Ms) [Chairperson] The Executive Mayor, Ald G Van Deventer (Ms) The Deputy Executive Mayor, Cllr N Jindela	
COUNCILLORS	FJ Badenhorst FT Bangani-Menziwa (Ms) Ald PW Biscoombe PR Crawley (Ms) A Crombie (Ms) Z Dalling (Ms) R Du Toit (Ms) J Fasser A Florence AR Frazenburg E Fredericks (Ms) T Gosa E Groenewald (Ms) DA Hendrickse JK Hendriks	MC Johnson C Manuel NE Mcombring (Ms) (until 12:00) XL Mdemka (Ms) C Moses (Ms) RS Nalumango (Ms) N Olayi SA Peters MM Pietersen SR Schäfer Ald JP Serdyn (Ms) N Sinkinya (Ms) (until 11:30) Q Smit LL Stander E Vermeulen

Officials:	Municipal Manager (Ms G Mettler) Chief Financial Officer (K Carolus) Director: Corporate Services (Ms A De Beer) Director: Infrastructure Services (D Louw) Director: Planning and Economic Development (T Mfeya) Acting Director: Community and Protection Services (A vd Merwe) Senior Manager: Governance (Ms S De Visser) Chief Audit Executive (F Hoosain) Manager: Secretariat (EJ Potts) Senior Administration Officer (T Samuels (Ms)) Committee Clerk (N Mbali (Ms)) Interpreter (J Tyatyeka)
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1.	OPENING AND WELCOME
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The Speaker, Ms WC Petersen, welcomed all present at the Urgent Council meeting and expressed the hope that all will enjoy the various deliberations and fruitful discussions from the different speakers on the topics at hand.

It is with sadness that she informed Council of the passing of **Ex. Mayor, Mr Willie Meyer** at the age of 86 years and **Ex Deputy Mayor, Mr Cameron Mchako** (56 years) as well as Mr **Peter Mapira** (44 years), who worked in Ecclesia Building. She asked the meeting to remember them for their services to our broader communities. Today is Remembrance Day and she asked that we remember our heroes who have died in the end of the world war. Let us join in keeping the family and friends of the departed in our thoughts and prayers during this difficult time. A moment of silence was observed.

2.	APPLICATION FOR LEAVE OF ABSENCE
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2.1 The following applications for leave of absence were approved in terms of the Rules of Order By-law of Council:-

Cllr F Adams	–	11 November 2019
Cllr G Cele (Ms)	–	11 November 2019
Cllr JG Hamilton	–	11 November 2019
Cllr LK Horsband (Ms)	–	11 November 2019
Cllr DD Joubert	–	11 November 2019
Cllr MD Oliphant	–	11 November 2019
Cllr WF Pietersen	–	11 November 2019
Cllr M Mananga-Gugushe (Ms)	–	11 November 2019
Cllr P Sitshoti (Ms)	–	11 November 2019

2.2 Permission was granted to Councillors N Sinkinya (Ms) and NE Mcombring (Ms) to leave the meeting earlier (at 11:30 and 12:00 respectively).

2.3 ABSENT

Cllr JG Hanekom	–	11 November 2019
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3.	DISCLOSURE OF INTERESTS
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NONE

During the Declaration of Interest, Councillor DA Hendrickse informed the Speaker that not all Councillors received the Agenda of this Urgent Council meeting in time. He also referred to the In-Committee Agenda which was not distributed as indicated on the index of the Agenda and requested the Speaker to either cancel or postpone this meeting.

The Speaker afforded the Municipal Manager an opportunity to speak on the urgency of the items on the Agenda. The Municipal Manager referred to Clauses 5.4 and 8.2 of Council's Rules of Order By-law and stated that a notice of said meeting was indeed distributed as prescribed and that ample time was given to Councillors to prepare for the meeting, as prescribed in the above clauses.

She informed the meeting that, after consultation with the Speaker, the In-Committee Item 4.3 (ACQUISITION OF ERF 1852, STELLENBOSCH) as per the index of the Agenda, will be withdrawn, due to outstanding documentation. She explained the urgency of items 4.1 and 4.2 on the Agenda and mentioned that there is a possible 4th item that might serve, but she will deal with the matter during the course of the meeting.

4.	URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER
4.1	CONFIRMATION OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN RESPONSE TO THE COUNCIL DECISION OF 2 AUGUST 2019

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Urgent Council: 11 November 2019

1. SUBJECT: CONFIRMATION OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN RESPONSE TO THE COUNCIL DECISION OF 2 AUGUST 2019

2. PURPOSE

To obtain Council's confirmation of the maps contained in the *mSDF* after the final approval of the *mSDF* on 2 August 2019.

3. DELEGATED AUTHORITY

Council.

4. EXECUTIVE SUMMARY

After submission of the *mSDF* to the province, we received a letter dated 4 November 2019 (see **ANNEXURE 1**) requesting Council to confirm the urban edge maps, in particular figure 28 (see page 70 of the *mSDF*) in line with the Council resolution w.r.t. the *mSDF* adoption dated 2 August 2019. This is due to Council's request to exclude erf 1049/3, i.e. Brandwacht, from the urban edge. On the basis of the Council resolution taken on 2 August 2019, it is required that Council confirm the maps, in particular figure 28 in line with the Council decision.

The letter from the provincial government also indicated an error with the urban edge in the northern extension regarding the farm 81/33 which should be included within the urban edge.

Once Council has had an opportunity to confirm the 2019 *mSDF* with the urban edges, the *mSDF* together with the related IDP Amendment which takes the new *mSDF* into account, will be submitted to Minister Anton Bredell (Minister of Local Government, Environmental Affairs and Development Planning) in accordance with section 14 of the Western Cape Land Use Planning Act, 2014 (LUPA).

URGENT COUNCIL MEETING: 2019-11-11: ITEM 4.1

RESOLVED (majority vote)

- (a) that the corrected maps aligned with the approved IDP Amendment as contained in the *mSDF* attached as **ANNEXURE 2** be approved and confirmed as the final maps outlining the urban edge, as per Council decision of 2 August 2019; and

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- (b) that the approved *mSDF* and IDP Amendment be submitted within 10 working days to the Minister of Local Government, Environmental Affairs and Development Planning, as required in accordance with section 14 of the Western Cape Land Use Planning Act, 2014 (LUPA).

Councillor DA Hendrickse requested that his vote of dissent be minuted.

FOR FURTHER DETAILS CONTACT:

NAME	Bernabe de la Bat
POSITION	Manager Spatial Planning
DIRECTORATE	Planning and Economic Development
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REPORT DATE	7 November 2019

4.2	PROPOSED SETTLEMENT AGREEMENT IN THE MATTER BETWEEN LA CONCORDE SOUTH AFRICA (PTY) LTD (“LA CONCORDE”) VS STELLENBOSCH MUNICIPALITY IN REGARD TO FARM 369P AND FARM 370 STELLENBOSCH
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Collaborator No:

IDP KPA Ref No:

Good Governance

Meeting Date:

Urgent Council: 11 November 2019

1. SUBJECT: PROPOSED SETTLEMENT AGREEMENT IN THE MATTER BETWEEN LA CONCORDE SOUTH AFRICA (PTY) LTD (“LA CONCORDE”) VS STELLENBOSCH MUNICIPALITY IN REGARD TO FARM 369P AND FARM 370 STELLENBOSCH

2. PURPOSE

To get Council approval for the proposed settlement agreement in the legal proceedings between La Concorde and Stellenbosch Municipality.

3. DELEGATED AUTHORITY FOR DECISION BY COUNCIL

As the proposed settlement agreement the lease of land Council must approve the agreement.

4. EXECUTIVE SUMMARY

Stellenbosch Municipality entered into a long term lease agreement with KVV in terms of which Farm 369P and Farm 370 Stellenbosch (also known as “Grondves”) was leased to KVV, copies of which is annexed as **ANNEXURE “A”**. KVV was converted to a company called KVV (Pty) Ltd on 2 December 1997 and further changed to KVV South Africa (Pty) LTD on 7 August 1999. There was a further name change on 5 January 2017 to La Concorde South Africa (Pty) LTD (page 3 **ANNEXURE B**). There was never a request to cede the agreement to La Concorde.

A private developer approached the Municipality to construct a road over Grondves Farm in light of the Provincial Department of Transport and the Engineering Department of the Municipality supporting the developer’s development on condition that the road should be constructed over Grondves Farm. In light of the aforesaid, the Manager: Property Management informed La Concorde of the request that a portion of the lease area be utilized for purposes of a road and gave notice that a portion of 1.66ha will be excluded from the lease property. This decision was taken by the Manager Property Development under delegated authority in terms of Delegation 541 (of the 2015 delegations) read with clause 20 of the lease agreement. The decision of the Manager: Property Management was taken on appeal in terms of section 62 of the Municipal Systems Act. The appeal authority (municipal Manager) upheld the decision of the Manager: Property Management pursuant to considering all the relevant facts of the matter. La Concorde brought a High Court application challenging the decision taken by the Manager: Property Management as confirmed on appeal to have a portion of lease property excluded from the lease property for purposes of a road as well as the validity of the exemption certificate issued by the Director: Planning and Economic Development. The application further challenges the constitutionality of section 24(1)(e) of the By-law and section 61(2)(c) of LUPA, a copy of the application is attached hereto as **ANNEXURE “B”**.

The Municipality obtained verbal advice from senior advocate that the decision of the Municipality to exclude a portion of 1.66ha from the lease area does not amount to administrative action but is a decision based on a contract. In light of the aforesaid and in an attempt to settle the ongoing dispute with La Concorde, the Municipality made a settlement offer to settle the matter.

La Concorde made a counter settlement proposal which consists of the following:

"The matter is settled on the following terms:

- a. that an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the current lease agreement.
 - b. That the lease agreement be ceded by La Concorde to KWV.
 - c. Each party to pay its own costs.
2. Alternatively, the matter is settled on the following terms:
- a. That an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the lease agreement.
 - b. Your client agrees to amend the lease agreement.
 - i. to allow our client to sublet the leased property to KWV, alternatively a lessee of our client's choosing.
 - ii. Our client has the right to cancel the lease agreement if it so chooses during the remaining term of the lease agreement.
 - iii. Each party to pay its own costs."

A copy of the letter is annexed hereto as **ANNEXURE "C"**:

URGENT COUNCIL MEETING: 2019-11-11: ITEM 4.2

During debate on the matter, Councillor DA Hendrickse requested that it be minuted that the Asset Transfer Regulations has not been complied with.

RESOLVED (majority vote)

- (a) that the matter is settled on the following terms:
 - (aa) that an addendum to the lease agreement be entered into on the basis that the land comprising the extension of Schuilplaats Road and the portion of land between Schuilplaats Road and the R44 be excluded from the lease agreement;
 - (bb) that the Municipality agrees to amend the lease agreement:
 - (i) to allow La Concord to sublet the leased property to KWV, alternatively a lessee of La Concorde's choosing for a period of not more than 5 years;
 - (ii) that La Concorde has the right to cancel the lease agreement if it so chooses during the remaining term of the lease agreement.

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- (b) that the agreement is in full and final settlement of the entire High Court Application launched under case 22807/2018; and
- (c) each party to pay its own costs.

Councillor DA Hendrickse requested that his vote of dissent be minuted.

FOR FURTHER DETAILS CONTACT:

NAME	GARALDINE METTLER
POSITION	MUNICIPAL MANAGER
DIRECTORATE	MUNICIPAL MANAGER
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REPORT DATE	8 NOVEMBER 2019

4.3	ACQUISITION OF ERF 1852, STELLENBOSCH (IN-COMMITTEE)
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The Speaker **RULED** that this matter is withdrawn.

4.4	RESIGNATION OF THE SPEAKER: CLLR WC PETERSEN (MS) AND ELECTION OF AN ACTING SPEAKER
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The Municipal Manager, Ms G Mettler, informed Council that she received a letter from the Speaker, Cllr WC Petersen (Ms), wherein she resigned as Speaker of Council on 2019-11-11 and requested that this matter be dealt with as an Urgent matter, in terms of Rule 8.2 of Council's Rules of Order By-Law.

The Municipal Manager took over the Chair from the Speaker and read the resignation letter of Cllr WC Petersen (Ms) into the records. In line with Section 39(a) a vacancy has occurred.

Therefore, in line with Section 41 of the Structures Act, the Municipal Manager called for the nominations for an Acting Speaker and referred Council to the procedures set out in Schedule 3 of the Structures Act.

The DA requested a caucus, and the Municipal Manager, as Presiding Officer of the meeting, allowed the caucus.

When the meeting resumed, the Municipal Manager in line with Schedule 3(2) called for the nomination of candidates as Acting Speaker.

Two (2) duly signed nominations were received, i.e. Councillor N Jindela and Councillor C Moses (Ms).

Councillor N Jindela announced that he resigns as Deputy Executive Mayor of Council before he accepts the nomination as Acting Speaker, as is also indicated on the nomination form.

A secret ballot in terms of item 6 of Schedule 3 of the Local Government: Municipal Structures Act took place, yielding the following results:

Councillor N Jindela = 28 votes

Councillor C Moses (Ms) = 3 votes

31 ballot papers were handed out of which 0 were spoilt.

The Municipal Manager then

DECLARED

Councillor N Jindela as duly elected Acting Speaker.

The Municipal Manager handed over the Chair to the Acting Speaker, Cllr N Jindela.

The Acting Speaker announced that a Special Meeting will be held on Thursday, 14 November 2019 at 16:00 to elect a Speaker and Deputy Executive Mayor. A notice of the Special Council meeting will be distributed in due course.

The meeting adjourned at 12:30.

CHAIRPERSON:

DATE:

Confirmed on **with/without amendments**