# MINUTES FOR CONFIRMATION

**The following minutes are distributed as a separate document for confirmation:**

**11.1** Minutes of a Hybrid In-Committee Special Council meeting held on Thursday, 21 September 2023.

**11.2** Minutes of an Ordinary Council meeting held on Friday, 29 September 2023.

**11.3** Minutes of an In-Committee Council meeting held on Friday, 29 September 2023.

# SPECIAL COUNCIL MEETING MINUTES

**MINUTES OF A HYBRID IN-COMMITTEE SPECIAL COUNCIL MEETING HELD ON THURSDAY, 21 SEPTEMBER 2023 AT 09:00 IN THE DESMOND TUTU LIBRARY, STASIE STREET, SWELLENDAM.**

**PLEASE RETAIN THIS DOCUMENT FOR RECORD PURPOSES AS IT WILL NOT BE CIRCULATED AGAIN.**

Yours sincerely

26/10/2023

**J.R. VAN SCHALKWYK** **DATE**

**SPEAKER**

# INDEX

**MINUTES OF A HYBRID IN-COMMITTEE SPECIAL COUNCIL MEETING OF THE MUNICIPAL COUNCIL OF SWELLENDAM MUNICIPALITY HELD ON THURSDAY, 21 SEPTEMBER 2023 AT 09:00 IN THE DESMOND TUTU LIBRARY HALL, STATSIE STREET, SWELLENDAM.**

| | | | |
|---|---|---|---|
| **PRESENT:** | **Councillor** | J.R. van Schalkwyk | Speaker |
| | | H.F. Du Rand | Executive Mayor |
| | **Councillor** | E.J. Lamprecht | |
| | | F. Kees | |
| | | D. Julius | |
| | | A. Bokwana | |
| | | J.A. Matthysen | |
| | | G. Libazi | |
| | | D.J. Julius | |
| | | M.T.A. Swart | |
| | | I.H. Ferguson | |

| | | |
|---|---|---|
| **IN ATTENDANCE:** | E. Wassermann | Director: Financial Services (Acting Municipal Manager) |

**SECRETARIAT:**

K. Uys

**RECORDING OFFICER:**

K. Uys

## 1. OPENING AND WELCOME

At 09:00 the Speaker, Councillor. J.R. van Schalkwyk, welcomed everybody at the Special Council meeting and declared the meeting duly constituted with a quorum present. Councillor A. Bokwana rendered and opened with a prayer.

## 2. ELECTION OF ACTING SPEAKER, IF NECESSARY

None

## 3. APPLICATION FOR LEAVE OF ABSENCE

None

## 4. DISCLOSURE OF INTERESTS BY COUNCILLORS

None

## 5. SPEECHES AND SUBMISSIONS

**Communication by the Speaker, Councillor J.R. van Schalkwyk**

*The Speaker, Councillor J.R. van Schalkwyk indicated that the tabled item had four complaints and suggested that the Executive Mayor, Councillor H.F. Du Rand table the item as it was so indicated by the law. The Speaker shared that each complaint will be dealt with one by one and each political party will be given 5 minutes to speak if they chose to speak on the item with 1 minute for extra time.*

*The Speaker referred to the Regulations indicating that Council had to decide whether the complaints warrant reasonable cause to go for an investigation or whether Council was dismissing the claims.*

*The Speaker warned Councillors to obey to the rules of order by speaking through the Chairperson and only when granted the permission to speak. The Speaker shared that he will only warn Councillors twice if they disobeyed the rules as the third time, he will ask the Councillor to leave.*

*The Speaker acknowledged Councillor D.J. Julius and Councillor E.J. Lamprecht's presence via virtual platform.*

*He added that the Regulations states that the Executive Mayor, Councillor H.F. Du Rand has to table the item within 7days of receiving the complaints to Council.*

***Councillor J.A. Matthysen requested to have a 3-minute caucus. The Speaker granted a 5-minute caucus at 09:06.***

***The meeting commenced at 09:11.***

*Councillor J.A. Matthysen said that he acknowledged that the Speaker has not open the item for discussion yet, but wanted to share that the ANC was of the opinion that the Executive Mayor, Councillor H.F. Du Rand was in conflict with the item as he was implicated in the allegations tabled to Council.*

*The Speaker indicated that the ANC's concerns were noted, however, by law the item had to be compiled by the Executive Mayor, Councillor H.F. Du Rand who had to present the item to Council. He added that the complaints were not against the Executive Mayor but the Municipal Manager which were two separate processes and allowed the Executive Mayor to present and take part in discussing the item.*

*The ANC Councillors requested that the Speaker got a legal opinion on the matter before the meeting commenced.*

***At 09:20 the Speaker announced a 5-minute caucus to allow for time to get a legal opinion on the matter.***

***The meeting commenced at 09:29.***

*The Speaker, Councillor J.R. van Schalkwyk shared that the advice received on the matter indicated that the Code of Conduct for Councillors states that if anyone had a conflict of interest in an item, they must excuse themselves, however, the allegations were against the Municipal Manager and the two charges needed to be separated. The Speaker added that the Executive Mayor, Councillor H.F. Du Rand had to decide if he was in conflict with the matter, if not, he was welcome to proceed to be in the meeting.*

*The Executive Mayor, Councillor H.F. Du Rand said that the allegations were not made against him and did not see any violation of the Code of Conduct and would therefore stay present in the meeting.*

*The Speaker rules that the Executive Mayor saw no conflict to himself in the matter and will therefore stay present in the meeting.*

*The Speaker acknowledged that he noted the ANC's objection to the Executive Mayor taking part in discussing the tabled item.*

## 6. MATTERS FOR CONSIDERATION

### 6.1 Items submitted by the Executive Mayor, Councillor F. Du Rand:

6.1.1

**Item number A140.** 21.09.2023

**ALLEGATIONS BROUGHT BY ANC COUNCILLORS AGAINST MUNICIPAL MANAGER, ANNELEEN VOSTER**

Report by Executive Mayor Francois du Rand:

| | |
|---|---|
| **Department** | Office of the Executive Mayor |
| **Section** | Council |
| **File Number** | 2/6/2 |

**PURPOSE OF REPORT**

The primary purpose of this report is to apprise the Council of allegations raised by ANC Councillors against the Municipal Manager, Anneleen Voster. It aims to:

1. **Inform the Council:** Provide Council members with a comprehensive understanding of the specific allegations of misconduct brought forward by the ANC councillors against the Municipal Manager, ensuring all relevant details are presented clearly.
2. **Facilitate Informed Decision-Making:** Enable Council members to make informed decisions regarding the allegations, including whether to proceed with an independent investigation.
3. **Request Mandate for an Independent Investigation:** Seek approval from the Council for the Executive Mayor to appoint an independent investigator to conduct a thorough and impartial investigation into the allegations.
4. **Ensure Transparency and Accountability:** Promote transparency and accountability within the Municipality by openly addressing and investigating allegations of misconduct involving a senior executive official.
5. **Protect Municipal Interests:** Safeguard the Municipality's interests, reputation, and efficient operation by addressing allegations promptly and appropriately.
6. **Comply with Legal Requirements:** Ensure the Municipality complies with all legal and procedural requirements when dealing with allegations against a senior official.
7. **Maintain Public Trust:** Uphold the public's trust in the governance of the Municipality by demonstrating a commitment to addressing allegations of impropriety fairly and independently.
8. **Facilitate Due Process:** Guarantee that the principles of due process and fairness are followed throughout the investigation, respecting the rights of both the Municipal Manager and the accusers.

**FACTS AND BACKGROUND**

On September 14, 2023, the Executive Mayor, Cllr Francois du Rand, received an email from the Speaker, Councillor Juan van Schalkwyk, with attached letters **(See Annexure A)** informing him of allegations received on September 13, 2023, from the ANC Whip, Amanda Swart, on behalf of the ANC councillors against the Municipal Manager, Anneleen Voster. **(See Annexure B)**

The allegations comprise two parts:

1. Alleged comments made by the Municipal Manager at a community meeting on August 12, 2023.
2. Failure to implement the Council's amendments to the Indigent Policy.

The allegation, Annexure B, is a handwritten letter received in a photo format. It states that it came to the attention of Cllr Amanda Swart from members of the public that the Municipal Manager, Anneleen Voster, allegedly made specific accusations at a meeting on August 12, 2023. The second part of the complaint pertains to the Municipal Manager's failure to amend the Indigent policy as requested by the Council. No further information regarding this second complaint is available, making it unclear precisely what the complaint refers to.

On the 18th of September, 2023, I received an email from the Speaker with additional allegations brought against the Municipal Manager by Councillor A. Swart.

The first allegation states the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, failed to appoint his Mayoral Committee.

The second allegation states that the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, was abroad at the end of January without prior permission from the Council.

**DISCUSSION**

This report serves as a critical tool for the Council to assess the seriousness of the allegations against the Municipal Manager and to decide whether an independent investigation is necessary. If the Council opts for an investigation, it also seeks the Council's mandate to appoint an independent investigator to ensure a thorough and impartial examination of the allegations, with the ultimate goal of upholding the integrity and accountability of the Municipality.

**LEGAL IMPLICATIONS**

Schedule 2 of the Municipal Systems Act legislates the Code of Conduct for Municipal Staff Members, including the Disciplinary Regulations for Senior Managers 2010 (the

Regulations) promulgated under Government Notice 344 dated April 21, 2011, which will apply.

**(Annexure C)**

Disciplinary Regulations for Senior Managers 2010 (the Regulations) state:

**Disciplinary procedures**

1. Any allegation of misconduct against a senior manager must be brought to the attention of the Municipal Council.
2. The mayor or the municipal manager must table an allegation(s) referred to in sub- regulation (1), as the case may be, before the municipal Council not later than seven (7) days after receipt thereof. Failing which, the mayor may request the Speaker to convene a special council meeting within seven (7) days to consider the said report.
3. If the municipal Council is satisfied that (a) There is a reasonable cause to believe that the senior manager has committed an act of misconduct, the municipal Council must, within seven (7) days, appoint an independent investigator to investigate the allegation(s) of misconduct. (b) There is no evidence to support the allegation(s) of misconduct against the senior manager; the municipal Council must, within seven (7) days, dismiss the allegation(s) of misconduct.

**FINANCIAL IMPLICATIONS**

In appointing an independent investigator, the estimated cost to the Council will start at R30,000, with the potential for increased costs based on the investigative process.

**PERSONNEL IMPLICATION**

N/A

**COMMUNICATION IMPLICATIONS**

N/A

**COMMENTS FROM DEPARTMENTS**

**Corporate Services:**

N/A

**Director: Community Services:**

N/A

**Director: Financial Services:**

N/A

**Director: Infrastructure Services:**

N/A

**Municipal Manager:**

N/A

**RECOMMENDED**

1. The Council thoroughly considers the allegatións against the Municipal Manager.
2. The Council ensures that if there is no evidence to support the allegation(s) of misconduct against the senior manager, the municipal Council must, within seven (7) days, dismiss the allegation(s) of misconduct.
3. The Council ensures that if there is a reasonable suspicion of misconduct by a senior manager, in this case, the Municipal Manager, the municipal Council must, within seven (7) days, appoint an independent investigator to probe the allegations of misconduct.
4. The Council mandates the Chief Financial Officer, Elmari Wasserman, to appoint an independent investigator within seven (7) days

***<u>DISCUSSION</u>***

*The Executive Mayor, Councillor H.F. Du Rand gave an overview of the item to Council and read the allegations together with the disciplinary procedures as stated in the item tabled to Council. The Executive Mayor confirmed that he requested the Speaker to convene a Special Council meeting within 7 days after receipt of the allegations.*

*The Executive Mayor, Councillor H.F. Du Rand emphasized that the law stated that Council must, within 7 days appoint an independent investigator if Council decided that it was needed. He added that Council will not be able to tender for an independent investigator within 7 days and would have to apply for the deviation in the Supply Chain Management procurement process and report on it as Council cannot advertise for 14 days.*

***At 09:45 the Speaker announced a 5-minute technical break to reconnect with Councillors on the virtual platform.***

***The meeting commenced at 09:50.***

*Councillor J.A. Matthysen referred to the 'purpose of the report: point 3 stating the following: Request Mandate for an Independent Investigation: Seek approval from the Council for the Executive Mayor to appoint an independent investigator to conduct a thorough and impartial investigation into the allegations', however, in point 4 of the recommendation it was indicated that the Chief Financial Officer, Ms E. Wasserman be mandated to appoint an independent investigator within 7 days.*

*Councillor J.A. Matthysen then also referred to 'the purpose of the report: point 4 stating the following: Ensure Transparency and Accountability: Promote transparency and accountability within the Municipality by openly addressing and investigating allegations of misconduct involving a senior executive official', and said that he was of the opinion that it was clear that the Mayor did not know what transparency was as the ANC*

*Councillors were excluded from certain key committees of Council such as the Appointment Committee.*

*Councillor J.A. Matthysen also referred to 'the purpose of the report: point 8 stating the following: Facilitate Due Process: Guarantee that the principles of due process and fairness are followed throughout the investigation, respecting the rights of both the Municipal Manager and the accusers', he asked that the item be more specific as to who the accusers were and that the names be mentioned.*

*In response to comment made by Councillor J.A. Matthysen with regard to the Appointment Committee the Executive Mayor, Councillor H.F. Du Rand corrected him and shared that Council do not have an Appointment Committee as the Municipal Staff Regulations clearly states that do not allow Councillors to be part of the appointment process. Furthermore, the Executive Mayor clarified that the accusers in this case would be all ANC Councillors who made the allegations against the Municipal Manager.*

*The Speaker, Councillor J.R. van Schalkwyk indicated that the comment made by Councillor J.A. Matthysen with regard to transparency and accountability was irrelevant as it was specifically referred to transparency and accountability in the investigation process of the accusations tabled to Council and not referring to transparency in the overall municipality.*

***FIRST COMPLAINT***

***Allegation 1:***

*The Speaker indicated that allegation 1 stated that: 'Alleged comments made by the Municipal Manager at a community meeting on August 12,2023'.*

*Councillor M.T.A Swart asked that the Speaker clarified whether it was expected of the Councillors who were present at the meeting of 12 August 2023 to provide a statement on the events as she was concerned that comments and statements made by Councillors in the current meeting may be used against them in the case of a hearing.*

*The Speaker shared that there was no pressure on any Councillor to say anything, however, Council has to determine if there was reasonable cause for an investigation to take place.*

*The Executive Mayor, Councillor H.F. Du Rand shared that it was very difficult for the DA Councillors to assume that the allegations made against the Municipal Manager were true or false as none of them were at the meeting of 12 August 2023. He said that it was very difficult for the DA caucus to refuse such an investigation as none of them were present. He added that he believed the allegation should warrant Council to appoint an investigator.*

*The Speaker confirmed that all Councillors agree that allegation 1: alleged comments made by the Municipal Manager at a community meeting on August 12,2023, will be sent for investigation by an independent investigator.*

***Allegation 2:***

*The Speaker indicated that allegation 2 stated that: 'Failure to implement the Council's amendments to the Indigent Policy'.*

*Councillor G. Libazi asked why the complaints could not be transferred to an independent investigator to look into rather than Council debating about the said allegations.*

*The Executive Mayor explained that the legislation stated that Council must be satisfied with the reasonable cause to allegations in order to launch an investigation. He said that the second allegation stating that the Municipal Manager failed to implement the Council's amendments to the Indigent Policy' did not specify which information in the policy was not amended and the allegation appears to be frivolous. The Executive Mayor ask that the ANC elaborate on the allegation and point to the amendments that were not made by the Municipal Manager, in the Indigent Policy.*

*The Speaker indicated that frivolous charges will not be sent for investigation.*

*The Executive Mayor requested that Councillor M.T.A. Swart, who submitted the complaints, give more background regarding the second allegation to help Council to make an informed decision.*

*Councillor M.T.A. Swart shared that the Municipal Manager was previously asked to make changes to the Indigent Policy which she did not do and believed that the situation would not be as it was if the Municipal Manager made the amendments as requested by Council.*

*The Executive Mayor, Councillor H.F. Du Rand explained that the correct Indigent Policy was approved on 31 May 2023 effective from 1 July 2023. He said that Council can only charge the Municipal Manager of the Chief Financial Officer if the policy was not correct on 31 May 2023 when it was approved.*

*The Speaker indicated that it was the duty of Council to check policies before approval to make sure that the information in the policy document was correct according to Council's decision.*

*Councillor F. Kees said that he agreed with the Executive Mayor that there were no legal grounds to proceed with an investigation as the accusation against the Municipal Manager was to vague and not enough reasonable cause to be able to make a decision. He added that the minutes of the meeting would have been able to assist Council in the matter but it was not presented.*

*Councillor M.T.A. Swart said she agreed with the comments made by the Executive Mayor, Councillor H.F. Du Rand and Councillor F. Kees but wanted to emphasise that the neglect to not make amendments to the policy when Council made the decision was grounds for an investigation.*

***SECOND COMPLAINT:***

***Allegation 1:***

*The Speaker referred to the following allegation: '…the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, failed to appoint his Mayoral Committee'.*

*The Executive Mayor, Councillor H.F. Du Rand stated that the Mayoral Committee has always been there, however, some members were removed and new members were* *added to the Mayoral Committee. He added that he was of the opinion that there were no grounds for an investigation.*

*Councillor G. Libazi said that there was no announcement of the new Mayoral Committee members as stated by the Executive Mayor and the members have not been introduced to full Council.*

*The Speaker, Councillor J.A. van Schalkwyk shared with Council the legislative extract from the Municipal Structures Act stating that, '(1) if a municipal Council has more than 9-members they must appoint a Mayoral Committee from amongst the Councillors consisting of the Executive Mayor, may delegate specific responsibilities to each, may dismiss a member of the Mayoral Committee, (2) the Mayoral Committee must consist of the Deputy Executive Mayor (if any)', which meant that Council does not have to have a Deputy Executive Mayor.*

*The Speaker said that the Chairpersons of the Portfolios appointed by the Executive Mayor were automatically part of the Mayoral Committee and he could not find legislation making the Municipal Manager accountable for the announcement and appointment of the Mayoral Committee.*

*The Executive Mayor indicated that he did not have to report to Council on who his members of the Mayoral Committee were as long as the committee reports to Council on minutes and proposed items.*

*Councillor M.T.A. Swart raised concern with regard to the Speaker allowing the Executive Mayor to defend himself on a matter concerning him.*

*The Speaker explained that there needed to be reasonable cause for an investigation to follow on the matter which could not be found.*

*Councillor J.A. Matthysen indicated that the ANC took note of the appointment of the Mayoral Committee but would have like to see the Executive Mayor announcing his decision to Council as all Councillors must report to Council.*

***Allegation 2:***

*The Speaker shared that the second allegation states that 'the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, was abroad at the end of January without prior permission from the Council', and shared that if the Municipal Manager did not have an obligation to report to Council on the whereabouts of the Executive Mayor, then the allegation would be irrelevant. The Speaker said that he could not find anything by law stating that the Municipal Manager has an obligation to report the Executive Mayor's whereabouts.*

*Councillor M.T.A. Swart asked to whom does the Executive Mayor report to since he does not have a Deputy Mayor who would be able to take over when he was not available.*

*The Speaker responded that Councillor Swart's question was based on different merits and not relevant to the item at hand.*

***At 10:37 Councillor M.T.A. Swart requested to have a 5-minute caucus. The Speaker granted permission for a caucus.***

***The meeting commenced at 10:44.***

*Councillor M.T.A. Swart indicated that the ANC Councillors took note of the Executive Mayor not excusing himself from the discussion on an item that involves him and propose to move forward to the recommendation.*

**PROPOSAL 1:**

Councillor J.A. Matthysen proposed the following amendment to the recommendation:

1. The Council thoroughly considers the allegations against the Municipal Manager.
2. The Council ensures that if there is a reasonable suspicion of misconduct by a senior manager, in this case, the Municipal Manager, the municipal Council must, within seven (7) days, appoint an independent investigator to probe the allegations of misconduct.
3. The Council mandates the Speaker, Councillor J.R. van Schalkwyk to appoint an independent investigator within seven (7) days to investigate all four allegations made against the Municipal Manager.

**Proposer:** Councillor J.A. Matthysen
**Seconder:** Councillor M.T.A. Swart

*The Acting Municipal Manager, Ms E. Wasserman shared that she would have to confirm whether the recommendation by Councillor Swart would be acceptable as the Municipal Finance Management Act clearly stipulate that no Councillor may be involved in any procurement processes. She said that she would have to confirm whether there was other legislation overruling the MFMA in this regard.*

*She said that the Administration will obtain and invite quotations whereafter the preference point will be applied to appoint a special investigator. She shared that the 7-day period was a very strict framework while for quotes over R30 000 the municipality has to advertise for 14 days. She said that with the 7-day time period Council would have to deviate from the 14 days if the quote was more than R30 000.*

*Ms Wasserman suggested that the Administration followed the procurement process with a deviation on the advertisement period.*

*Ms Wasserman said that while it seems that it might be a re-occurrence, the municipality will be going out for a panel by following a procurement process to appoint a panel of possible persons who can do these investigations and should there be any future investigations of this short, the Administration will then select from the panel going forward.*

*The Speaker, Councillor J.R. van Schalkwyk said that Council needs to follow the Regulations that states that Council appoints the investigator mandating the Chief*

*Financial Officer to go through the process to appoint.*

**PROPOSAL 2:**

The Executive Mayor, Councillor H.F. Du Rand proposed the following amendment to the recommendation:

1. that Council thoroughly considers the allegations against the Municipal Manager.
2. that Council ensures that if there is no evidence to support the allegation(s) of misconduct against the senior manager, the municipal Council must, within seven (7) days, dismiss the allegation(s) of misconduct.
3. that Council dismiss the following allegations based on (2) above: Allegation 2: Failure to implement the Council's amendments to the Indigent Policy; Allegation 3: the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, failed to appoint his Mayoral Committee; Allegation 4: the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, was abroad at the end of January without prior permission from the Council.
4. that Council ensures that if there is a reasonable suspicion of misconduct by a senior manager, in this case, the Municipal Manager, the municipal Council must, within seven (7) days, appoint an independent investigator to probe the allegations of misconduct.
5. that Council mandates the Chief Financial Officer/Acting Municipal Manager, Elmari Wasserman, to appoint an independent investigator within seven (7) days to look into allegation 1 referring to: Alleged comments made by the Municipal Manager at a community meeting on August 12,2023.

**Proposer:** Councillor H.F. Du Rand

**Seconder:** Councillor F. Kees

The TWO DULY constituted proposals were put to a vote by the Speaker.

**PROPOSAL 1:**

**Five (5) Councillors:** Councillor J.A. Matthysen; M.T.A. Swart; G. Libazi; I.H. Ferguson and D.J. Julius indicated that they were in favor of the recommendation as proposed by Councillor J.A. Mathysen.

**PROPOSAL 2:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F.Kees; D. Julius; E.J. Lamprecht; A. Bokwana and J.R. van Schalkwyk indicated that they were in favor of the recommendation as proposed by the Executive Mayor, Councillor H.F. Du Rand.

**RESOLVED** **Item A140/21/09/2023**

1. that Council thoroughly considers the allegations against the Municipal Manager.
2. that Council ensures that if there is no evidence to support the allegation(s) of misconduct against the senior manager, the municipal Council must, within seven (7) days, dismiss the allegation(s) of misconduct.
3. that Council dismiss the following allegations based on (2) above: Allegation 2: Failure to implement the Council's amendments to the Indigent Policy; Allegation 3: the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, failed to appoint his Mayoral Committee; Allegation 4: the Municipal Manager neglected to report to the Council that the Executive Mayor, Cllr Francois du Rand, was abroad at the end of January without prior permission from the Council.
4. that Council ensures that if there is a reasonable suspicion of misconduct by a senior manager, in this case, the Municipal Manager, the municipal Council must, within seven (7) days, appoint an independent investigator to probe the allegations of misconduct.
5. that Council mandates the Chief Financial Officer/Acting Municipal Manager, Elmari Wasserman, to appoint an independent investigator within seven (7) days to look into allegation 1 referring to: Alleged comments made by the Municipal Manager at a community meeting on August 12,2023.

## 7. CLOSURE

The Speaker thanked everybody for their time and commitment to attend the meeting.

The meeting adjourned at 11:01.

# ORDINARY COUNCIL MEETING MINUTES

SWELLENDAM
MUNICIPALITY/MUNISIPALITEIT/MASIPALA

**MINUTES OF AN ORDINARY COUNCIL MEETING HELD ON FRIDAY, 29 SEPTEMBER 2023 AT 13:00 IN THE COUNCIL CHAMBERS, RHENIUS STREET, SWELLENDAM.**

**PLEASE RETAIN THIS DOCUMENT FOR RECORD PURPOSES AS IT WILL NOT BE CIRCULATED AGAIN.**

Yours sincerely

26/10/2023

**J.R. VAN SCHALKWYK**

**SPEAKER**

**DATE**

# INDEX

**MINUTES OF AN ORDINARY MEETING OF THE MUNICIPAL COUNCIL OF SWELLENDAM MUNICIPALITY HELD ON FRIDAY, 29 SEPTEMBER 2023 AT 13:00 IN THE COUNCIL CHAMBERS, RHENIUS STREET, SWELLENDAM.**

| | | | |
|---|---|---|---|
| **PRESENT:** | **Councillor** | J.R. van Schalkwyk | Speaker |
| | | H.F. Du Rand | Executive Mayor |
| | | E.J. Lamprecht | |
| | | F. Kees | |
| | | A. Bokwana | |
| | | D. Julius | |
| | | J.A. Matthysen | |
| | | G. Libazi | |
| | | D.J. Julius | (Virtual) |
| | | M.T.A. Swart | |
| | | I.H. Ferguson | |
| **IN ATTENDANCE:** | | A. Vorster | Municipal Manager |
| | | E. Wasserman | Director: Financial Services |
| | | W. Treurnicht | (Acting: Director of Infrastructure Services) |
| | | K. Stuurman | Director: Community Services |

**SECRETARIAT:**

K. Uys

**RECORDING OFFICER:**

K. Uys

**ALSO PRESENT:**

Five members of the public

## 1. OPENING AND WELCOME

At 13:00 the Speaker, Councillor J.R.van Schalkwyk welcomed everyone at the Council meeting and declared the meeting duly constituted with a quorum present. Councillor E.J. Lamprecht rendered an opening prayer.

## 2. ELECTION OF ACTING SPEAKER, IF NECESSARY

None

## 3. APPLICATION FOR LEAVE OF ABSENCE

None

## 4. MOTIONS OF JOY AND SORROW

**4.1 Announcement of Councillors' birthdays and anniversary:**

None

**4.2 Announcements of deaths by Municipal Manager**

| SWELLENDAM | |
|---|---|
| Katrina Van Zyl | Swellendam |
| Kerlina Phillips | Swellendam |
| Eva De Bruyn | Swellendam |
| Dina Magrieta Alberts | Swellendam |
| William Jacques Pekeur | Swellendam |
| Jamahl David Scheepers | Swellendam |
| Tegan Ashley Fradie | Swellendam |
| Patrick Koket Titus | Swellendam |
| Gertruida Slingers | Swellendam |
| Maria Hester Pietersen | Swellendam |
| Anna Phike | Swellendam |
| Baby of Franel | Swellendam |
| David Jakobus Plaatjies | Swellendam |
| Peter Jonkers | Swellendam |
| Daniel Martin | Swellendam |
| Charles Sampson | Swellendam |
| Rochelle Marais | Swellendam |
| Magdalena Herdien | Swellendam |
| Peter Petersen | Swellendam |
| Booi Boks | Swellendam |
| Hendry Windvogel | Swellendam |
| Christopher Hlomela | Swellendam |
| Baby Ongezwa | Swellendam |
| Za-Handre Kaylee Windvogel | Swellendam |
| Flip Slingers | Swellendam |
| Caroline Filander | Swellendam |
| Felix Lorence Cupido | Swellendam |
| Sonja Carolus | Swellendam |
| Sophie Maria September | Swellendam |
| Martha Sophia Windvoël | Swellendam |
| Nomfaneleko Mtyotyhwana Baby | Swellendam |
| Daniel Slingers | Swellendam |
| Rosie Geldenhuys | Swellendam |
| Jane Brand | Swellendam |
| Daniel Johannes Pieterse | Swellendam |
| Monika Goliath | Swellendam |
| Boy August | Swellendam |
| Susan Abrahams | Swellendam |
| M.Syster | Swellendam |
| Niklaas Jacobs | Swellendam |
| Claressa Fredrika Buchenaar | Swellendam |
| Magdalena Christina Fortuin | Swellendam |
| Jacob Cyster | Swellendam |

The Municipal Manager, Mrs A. Vorster rendered a prayer in tribute to those who passed away.

## 5. SPEECHES AND SUBMISSIONS

*Councillor M.T.A. Swart indicated that the ANC wanted to apply for a matter of exigency by submitting an emergency motion to Council with regard to the oversight roll of the Executive Mayor, Councillor H.F. Du Rand and the Municipal Manager, Mrs A. Vorster in the municipality especially during the events of the past two months. She said that the events of 16 August 2023 were seen as a very serious matter and the ANC did not want to see the repeat of the same situation. Councillor Swart indicated that the ANC believed that there were people responsible for oversight and the leading role in the municipality to protect the community and the municipality who had to be held accountable.*

*Councillor Swart said that the ANC expected the Speaker, Councillor J.R. van Schalkwyk to make a thorough decision in terms of the ANC's request to investigate the matter.*

*The Speaker, Councillor J.R. van Schalkwyk indicated that the matter submitted by Councillor M.T.A. Swart was complaints he already received through the disciplinary process as there were already complaints against Councillors and asked if it could not be resolved through the disciplinary process.*

*The Speaker reported that there was an In-Committee Council Item on the agenda where Council will be updated on the complaints of various parties received regarding the matter. He said that he will present feedback on all the disciplinary processess that were currently in process, at the end of the meeting.*

## 6. STATEMENTS AND COMMUNICATIONS BY THE SPEAKER

*The Speaker, Councillor J.R. van Schalkwyk reminded Councillors to love one another as Christians and submit to civil authority except when it was against biblical teachings.*

*The Speaker said that he thought it to be important in the time Council found itself into refrain from accusations and placing blame until the facts were on the table as Council did not want to be part of doing something unjust. He said that he was hoping that the way to solve the challenges in the community would come through brotherly love, empathy, discussion and understanding.*

## 7. STATEMENTS AND COMMUNICATIONS BY THE EXECUTIVE MAYOR

None

## 8. DISCLOSURE OF INTERESTS BY COUNCILLORS

None

## 9. MATTERS FOR CONSIDERATION

**9.1** Items tabled by officials were considered by Council as reflected:

**9.1.1**

**Item number A134.** 29.09.2023

**RECRUITMENT AND SELECTION PROCESS FOR THE POSITION OF DIRECTOR INFRASTRUCTURE SERVICES**

Report of the Municipal Manager: A. Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Human Resources |
| **File number** | 4/3/3/4 |

**PURPOSE OF REPORT**

Council resolved at their Council meeting of 28 July 2023 as follows:

**UNANIMOUSLY RESOLVED** **Item A112/28/07/2023**

1. that Council approves the commencement of the recruitment and selection process of the Director Infrastructure Services position that will become vacant on 1 September 2023.
2. that Council approves the advertisement for the position of Director of Infrastructure Services as attached, for a permanent position.
3. that Council appoints a Selection Panel for the vacancy mentioned in (1) above as per the Regulations on the Appointment and Conditions of Employment of Senior Managers as promulgated in Government Gazette 37245 dated 17 January 2014, with the panel members being the Municipal Manager, Mrs A. Vorster as the Chairperson, the Chairperson of the Infrastructure Services Portfolio Committee, Councillor H.F. Du Rand and that the Municipal Manager consult with Mossel Bay Municipality to get Mr. Dick Naidoo as the specialist on the selection panel.
4. that Council make use of a recruitment agency to facilitate the filling of the vacancy.
5. that Mr. W Treurnicht be appointed to act in the position of Director of Infrastructure Services from 24 August 2023 for a period of three months. Should the vacancy not be filled within the three-month acting period, the MEC of Local Government be approached to extend the acting period of Mr. Treurnicht with a further three months or until the vacancy is filled.

The advertisement was published as prescribed in the Regulations on the Appointment and Conditions of Employment of Senior Managers as promulgated in Government Gazette 37245 dated 17 January 2014.

**See supporting documentation attached on Annexure A, B and Annexure C.**

**FACTS AND BACKGROUND**

Two candidates applied for the position of Director: Technical Services.

**DISCUSSION**

After a thorough analysis of the two applications received, the following conclusions were drawn:

- It is great a concern that only two applications were received for the position.
- Although both applicants meet the minimum requirement of an NQF level 7 qualification, the qualifications are either in one- or other field only, with a general lack of a wider knowledge field that covers ALL the functional areas in Infrastructure management.
- Only one candidate has the status of "Professional Engineer" while the other only has the status of "Engineering Technologist".
- Both these candidates lack extensive practical experience in the local government sector.

Based on the above, it is clear that the pool of applicants is very small and will not allow for a competitive process that can deliver the most suitable candidate.

In light of the above it is recommended the vacancy be re-advertised for a period of three weeks, but that the first round of applicants' applications be included in the second round (they thus do not need to re-apply).

Permission is required from Council to re-advertise the position as per previously approved advertisement for a period of 21 days.

**LEGAL IMPLICATIONS**

1. Constitution of South Africa, 1996 (Act no 108 of 1996).
2. Section 55 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
3. Local Government: Municipal Staff Regulations, 2021,
4. Employment Equity Act, 1998 (Act no 55 of 1998);
5. Basic Conditions of Employment Act, 1997 (Act no 75 of 1997);
6. Labour Relations Act, 1995 (Act no 66 of 1995);
7. Minimum competency requirements for Senior Managers as laid down in Government Notice R493 dated 15 June 2007, as amended by Government Notice 1146 dated 26 October 2018
8. Regulations on the Appointment and Conditions of Employment of Senior Managers as promulgated in Government Gazette 37245 dated 17 January 2014
9. The Upper Limits of total remuneration packages payable to Municipal Managers and Managers directly accountable to Municipal Managers

**FINANCIAL IMPLICATIONS**

As per the Upper Limits of total remuneration packages payable to Municipal Managers and Managers directly accountable to Municipal Managers.

**PERSONNEL IMPLICATIONS**

As per discussion above.

**COMMUNICATION IMPLICATION**

Advertising in a national newspaper.

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

N/A

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

None

**RECOMMENDED**

1. that Council agree to re-advertise the vacancy of Director Infrastructure Services for a period of 21 days only as per the attached advertisement.
2. that the current applications be included for consideration in the second round.

***DISCUSSION***

*Councillor M.T.A. Swart raised concern with regard to the cost of advertisements and the fact the administration was asking for a second round of advertisements and asked why the two individuals who applied could not be considered for the position. Councillor Swart also requested that the Recruitment Committee be identified to Council again.*

*The Municipal Manager, Mrs A. Vorster indicated that the cost per advertisement was about R14 000. She shared that the committee consisted of herself as the Chairperson, the Executive Mayor as the Infrastructure Portfolio Chairperson and Mr Naidoo as a panel expert from Mosselbay Municipality as per Council's decision.*

*The Municipal Manager shared that both the applicants lacked extensive experience in the Local Government Sector which was why the administration wanted to re-advertise to get the best candidate for the position.*

**PROPOSAL 1:**

The Executive Mayor, Councillor H.F. Du Rand proposed that the recommendation be accepted as-is:

1. that Council agree to re-advertise the vacancy of Director Infrastructure Services for a period of 21 days only as per the attached advertisement.
2. that the current applications be included for consideration in the second round.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor E.J. Lamprecht

***Councillor M.T.A. Swart requested a caucus at 13:25. The Speaker granted a 5-minute caucus.***

***The meeting commenced at 13:30.***

*Councillor M.T.A. Swart indicated that the ANC requested that a member of the ANC with observer status be included in the Recruitment Committee.*

**PROPOSAL 2:**

Councillor M.T.A. Swart proposed that the recommendation be accepted with the following amendment:

1. that Council agree to re-advertise the vacancy of Director Infrastructure Services for a period of 21 days only as per the attached advertisement.
2. that the two previous candidates not be included in the second round.
3. that one ANC member received observer status on the Recruitment Committee.

**Proposer:** Councillor M.T.A. Swart
**Seconder:** Councillor I.H. Ferguson

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**Proposal 1:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**Proposal 2:**

**Five (5) Councillors:** Councillor M.T.A. Swart; I.H. Ferguson; J.A. Matthysen; G. Libazi and D.J. Julius.

**RESOLVED** **Item A134/29/09/2023**

1. that Council agree to re-advertise the vacancy of Director Infrastructure Services for a period of 21 days only as per the attached advertisement.
2. that the current applications be included for consideration in the second round.

**9.1.2**

**Item number A139.** 18.09.2023

**SUPPLY CHAIN MANAGEMENT MONTHLY REPORT – AUGUST 2023**

| | |
|---|---|
| Report by the Director Financial Services: | Ms. E Wasserman |
| **Department** | Financial Services |
| **Section** | Supply Chain Management |
| **File number** | 9/2/1/5 |

**PURPOSE OF REPORT**

The SCM monthly report is prepared to inform Council on key SCM monthly activities and adhere to the reporting requirements in terms of the Legislative Framework.

**FACTS AND BACKGROUND**

In terms of section 6 of the Supply Chain Management Regulations, Council has a responsibility to maintain oversight over the implementation of the Supply Chain Management Policy.

Section 36(2) of the Supply Chain Management Regulation requires that the accounting officer must record the reasons for any deviation from the procurement process and report it to the next council meeting.

**DISCUSSION**

The SCM monthly report for August 2023 is attached as **Annexure D** to enable the council to fulfil its oversight role. The report informs on the following matters:

- Procurement Statistics for the month
- Awards made above R 100 000 which was reported to National Treasury
- SCM deviations

There are no material problems with the implementation of SCM policy.

**LEGAL IMPLICATIONS**

- Municipal Finance Management Act, 2003
- Municipal Supply Chain Management Regulation, 2005
- Municipal Supply Chain Management Policy, 2022

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

None

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

None

***This item served on the Corporate and Financial Services Portfolio Committee meeting held on 18 September 2023.***

**RECOMMENDED**

1. that Council takes cognisance of the Supply Chain Management Report for August 2023 attached **as Annexure D**.

***DISCUSSION***

*The Municipal Manager, Mrs A. Vorster made an amendment to the report on page 7. 6.3.2 referring to 25 August 2023. The amount of R4 270.11 was described as the leasing of a crane, however, the description was incorrect as it was to move brick pallets from the stores to the library.*

*The Speaker confirmed that the item was noted by Council.*

***RESOLVED*** ***Item A139/29/09/2023***

1. that Council takes cognisance of the Supply Chain Management Report for August 2023 attached **as Annexure D**.

9.1.3

**Item number A141.** 29.09.2023

**IRREGULAR EXPENDITURE FINANCIAL YEARS 2021-2022 AND 2022 - 2023 SWELLENDAM MUNICIPALITY: SUPPLY CHAIN MANAGEMENT: APPLICATION OF PIGGY-BACK CONTRACTS [SCMR 32]: VARIOUS CONTRACTS**

Report of the Municipal Manager: Ms A Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

To table a recommendation to Council by the Section 32 Committee of the Local Government: Municipal Financial Management Act, 2003 (MFMA), Act 56 of 2003, in respect of irregular expenditure for consideration.

**FACTS AND BACKGROUND**

The report deals with the Auditor-General findings in the 2018/ 2019 financial year relating to irregular expenditure concerning the management of piggyback contracts which continue into the 2021 to 2023 financial years due to the original contract obligations.

**DISCUSSION**

The matter was originally tabled to the Section 32 Committee on 2 June 2020 and to Council per Item A66 on 15 June 2020. The Council Resolution is attached as an annexure. It was also reported to Council that the irregular expenditure will occur annually until the contracts entered into with service providers have expired. Council has taken cognisance of the fact that a separate report will be submitted with regard to the retrospective and future application of piggy-back contracts. It was also reported in the attached Council Resolution that the so-called irregular expenditure did not in any way result in any financial or other loss to the Swellendam Municipality and no official in any way or manner irregularly benefitted from the contracts entered into with service providers. No further SCMR 32 piggyback contracts have been entered into since this matter was raised by the AG.

The table below indicates the expenditure incurred for the SCMR 32 piggy-back contracts:

| Service Provider | Financial Year 2021/2022 | Financial Year 2022/2023 | Contract End Date |
|---|---|---|---|
| ASLA Konstruksie | R 12 440 700-68 | R 30 118 725-61 | 31 August 2021<br>Extended to 28 November 2024 |
| ESRI South Africa | R 160 852-37 | Nil | 30 June 2022 |
| **Total** | **R 12 601 533-05** | **R 30 118 725-61** | |

**ANNEXURES:**

Relevant documentation is attached in **combined Annexure E,** sub-annexure A.

**FINANCIAL IMPLICATIONS**

R 42 720 278.66 (R 12 601 553.05 during the 2021/2022 financial year and R 30 118 725-61 during the 2022/2023 financial year).

**Director Financial services**

Section 32 of the MFMA prescribes that unathorised, irregular or fruitless, and wasteful expenditure must be recovered from the person liable for that expenditure unless the expenditure:

a) In the case of unauthorised expenditure is-
   (i) Authorised in an adjustment budget; or
   (ii) Certified by the municipal council, after an 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 an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

For the committee to consider the recoverability of the irregular expenditure, the committee may consider the following:

a) These contracts were procured through section 32 of the SCM regulation, procurement of goods and services. (So called piggyback contracts);
b) There are valid contracts in place for the service provider;
c) The work was executed in terms of the contract and/or service level agreements;
d) The municipality has received value for money.
e) The contract did not result in any or other financial loss to the municipality;
f) The municipality did not report the alleged irregular expenditure to the South African Police as no theft and fraud occurred on the expenditures;

Since the finding by the Auditor-General, the municipality had immediately stopped using section 32, of the MFMA. All contracts have ended, except the ASLA contract.

**MUNICIPAL MANAGER**

The municipality is placed in the invidious position of having to submit contracts to the Section 32 Committee for the regularisation of a series of contracts. A number of these contracts have been in existence before 2018, and some have been renewed since 2018.

It is critical to note the following aspects;

1. No aspect of wrongdoing has been found. In other words, there is a wholesale failure to comply by Swellendam Municipality. These very same contracts were found to be acceptable and Swellendam Municipality was granted clean audits.
2. A previous interpretation of piggy-back section 32 (1) and (2) which makes no specific reference to the auditor-general's interpretation, that piggy-back may only be allowed:
   a. For the remainder of the contract period not taken up by the primary tender holder (there is no such prescript). In other words, if the primary contract is for 3 years and the service or product is supplied for 2 years and 6 months, then in terms of the AG's interpretation only the remainder of the period is available. The contract period is not read concurrently with the primary contract.
   b. For the balance of the contract value not taken up by the primary tender holder (the first municipality) (again there is no such prescript), in other words, if the project value is R 100 000 and the primary tender holder only takes up R 80 000, then the piggy-back is for the remainder of the contract value.

c. For the balance of the contract, product performance is not completed or concluded in the duration of the contract (there is no prescript in the SCM or any other act), in other words, if the contract deliverable is 200 houses but only say 80 are built the piggy-back contracting municipality is limited to the remaining 120 houses only.

d. Contract extensions in terms of 116 do not prescribe any conditions before extensions are granted. The AG is not capacitated to question the validity of extensions as there is no clause in this regard. There is a prescription on how regularly to test the market, how widely to define the market, and a series of other elements related to contract management. None of these elements relate to the section 32 (1) and (2)

***This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.***

**RECOMMENDED TO COUNCIL**

1. that the irregular expenditure of R42 720 278.66 be written off in terms of section 32(2)(b) of the MFMA as no financial loss occurred.

***DISCUSSION***

*Councillor J.A. Matthysen indicated that piggy-back contracts were an issue that has come a long way and every time the Auditor General identified it as a finding. He said that this was misconduct and it has to stop as service delivery was being used as an excuse to justify the unauthorised expenditures. He added that the administration must do things right and prevent the occurrence of unauthorised and irregular expenditure.*

*Councillor F. Kees explained that it was an ongoing contract for the housing project and that the contract will be identified as irregular and wasteful for the next three years until the contract's time expired with the municipality. He added that it was important to note that no money spent went to the benefit of any single individual but was for the sake of service delivery. He added that the administration acted in line with legislation and thanked the administration for handling the financial matters in a legal manner.*

*Councillor M.T.A. Swart indicated that the officials responsible for the irregular and fruitless expenditures must be identified in order to determine who had to bear the expenses individually.*

*The Executive Mayor, Councillor H.F. Du Rand explained that it was an instruction from the AG to report piggy-back contracts to Council every year until the contracts expired, which was what Council was doing.*

**PROPOSAL 1:**

The Executive Mayor, Councillor H.F. Du Rand proposed that the following recommendation be accepted as-is:

1. that the irregular expenditure of R42 720 278.66 be written off in terms of section 32(2)(b) of the MFMA as no financial loss occurred.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor F. Kees

*Councillor J.A. Matthysen quoted from the MFMA, Section 32 (b) stating that the Accounting Officer was liable for unauthorised expenditure deliberately or negligently incurred. He added* *that subject to section 3. (c)(1) any political office bearer or official of a municipality who deliberately or negligently committed, made or authorised irregular expenditure was liable for that expenditure and (2) a municipality must recover irregular or fruitless and wasteful expenditure from the person liable for that expenditure.*

**PROPOSAL 2:**

Councillor M.T.A. Swart proposed the following amendment to the recommendation:

1. that the irregular expenditure of R42 720 278.66 not be written off and that the amount be recovered from the Accounting Officer according to section 32(b) of the MFMA.

**Proposer:** Councillor M.T.A. Swart
**Seconder:** Councillor J.A. Matthysen

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**Proposal 1:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**Proposal 2:**

**Five (5) Councillors:** Councillor M.T.A. Swart; J.A. Matthysen; G. Libazi and D.J. Julius and I.H. Ferguson.

**RESOLVED** **Item A141/29/09/2023**

1. that the irregular expenditure of R42 720 278.66 be written off in terms of section 32(2)(b) of the MFMA as no financial loss occurred.

***The ANC requested that their opposing vote be recorded.***

**9.1.4**

**Item number A142.** 29.09.2023

**IRREGULAR EXPENDITURE FINANCIAL YEARS 2021 – 2022 AND 2022- 2023: SWELLENDAM MUNICIPALITY: SUPPLY CHAIN MANAGEMENT: PROVISION OF ACCOUNTING SUPPORT FOR 3 YEARS: MUBESKO AFRICA (PTY) LTD**

Report of the Municipal Manager: Ms. A Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

To table a report to Council by the Section 32 Committee of the Local Government: Municipal Financial Management Act, 2003 (MFMA), Act 56 of 2003, in respect of irregular expenditure for consideration.

**FACTS AND BACKGROUND**

The report deals with the Auditor-General findings in the 2018/ 2019 financial year relating to irregular expenditure in respect of the appointment of Mubesko Africa (Pty) Ltd. The matter was referred to National Treasury for condonation but condonation was turned down.

As a result, the AFS were adjusted to report the appointment of the service provider, Mubesko Africa (PTY)(LTD) as irregular expenditure.

**DISCUSSION**

There were three matters listed by the Auditor General to support the finding of irregular expenditure, namely the compilation of the bid committee and the functionality criteria, and the legal support supplied by Brasika.

**Compilation of the BID committee**

The management view is that no non-compliance is evident. Swellendam is a small municipality with a limited number of Directors. Section 12.1.1 of the Supply Chain Management Policy (SCMP) makes provision for secundus for members who are not present. This matter was fully discussed per Item 1 of the Section 32 Committee of 2 June 2020 in a report with the heading: "Irregular Expenditure financial year 2018 - 2019: Swellendam Municipality: Supply Chain Management: Deviations: Composition of the Bid Adjudication Committee."

The municipality informed the AGSA that it disagreed with the finding as there was no non-compliance or any contravention of SCMR 29(2) evident, based on the following arguments:

(i) The AGSA incorrectly interpreted the SCM Regulations [SCMR] by not distinguishing between the '<u>Composition of the BAC</u>' versus '<u>Attendance at BAC meetings</u>'.
(ii) The AGSA incorrectly interpreted the intention of the legislature, to ensure that when adjudicating tenders, there are sufficient senior finance, SCM, and technical representatives present at BAC meetings and that the CFO has the appropriate expertise and capabilities to represent SCM.
(iii) The AGSA failed its burden of proof to confirm non-compliance or contravention of SCMR 29(2).

**Functionality criteria**

The second finding on the matter is related to the technical specifications. Although not the Chairperson, a Manager from the user department, Mr. J de Jager, was also present at the Bid Specification Committee (BEC) meeting as a representative of the user department to address technical enquiries. As the subject matter of the tender relates to Financial Matters, it is argued that Messrs P du Toit (SCM) and J de Jager (Finance) adequately represented the financial, technical, and SCM expertise required on the BEC. Compliant to SCMP 2.12.3, as the CFO was not present at the BAC meeting another manager in the budget and treasury office reporting directly to the CFO represented him, namely Mr. B Beyers (SCM Manager).

This query has been raised by the Auditor-General during various previous audits. Management's response has always been and applied consistently, that a small municipality does not have another option than to allocate more than one function to a member of the various SCM committees. This has been discussed and agreed upon by the Auditor-General during all previous audits.

SCMP 12.2.1 must be read with SCMP 15. 2 which provides as POLICY that:

a) The end-user must draw up clear specifications and terms of reference.
b) Include clear evaluation criteria before the invitation of the quotation/bid as offers may only be evaluated according to the criteria stipulated in the quotation/bid document.

SCMP 15.2.1 further provides as PRINCIPLE that it is the responsibility of the end-user through the facilitation of the SCMU and the Bid Specification Committee to compile detailed, clear, and unambiguous specifications with which to source proposals.

The rationale for the arrangements in the SCMP was to maximise the administrative and operational efficiency of SCM operations. For this purpose, the drafting of the first draft of the specifications was sub-delegated in terms of SCMR 5 to the User in terms of SCMP 15.2, whereafter it is considered, augmented, and recommended by the BSC.

It is further evidence that the BSC did apply its mind to the tender, as the BSC minutes reflect that the BSC made amendments as follows:

- Amendments:
  - Advert;
  - Special conditions of the contract;
  - Terms of reference;
  - Pricing schedule.
- The above amendments will be made by the end-user and SCM."

PPPFA reg 1 defines "functionality" as the ability of a tenderer to provide goods or services per specifications as set out in the tender documents.

SCMP 20.1.1.5 provides that functionality on the other hand provides for factors that, when scored, compare the capacity and ability of each bid to complete a contract successfully.

SCMP 20.1.12.2 provides that a need to invite bids based on functionality as a criterion depends on the nature of the required commodity or service taken into account cost, quality, reliability, viability, and durability of service and the bidder's technical capacity and ability to execute a contract.

It is clear from the above provisions that 'functionality criteria' by its nature is subjective as it has the intention to measure and compare the capability of the bidder to adequately render the service against other bidders.

Prof Bolton, in an article named 'AN ANALYSIS OF THE CRITERIA USED TO EVALUATE AND AWARD PUBLIC TENDERS' explained that under the new preferential procurement regime, functionality

criteria have been given a very specific role. In brief, an organ of state must determine whether the functionality is relevant to the particular procurement, and if so, it must provide for it during the qualification stage of the process.
Additionally, it is common cause that an effective and efficient Municipality would achieve an 'unqualified audit' and the direct causal link for achieving such is linked to the accounting support provided to it. It is therefore logical that the Municipality when testing functionality must be in a position to ensure that the preferred bidder does have the necessary ability and capability to achieve at least an 'unqualified audit'.

Mindful of the above statement, it is argued that to apply a 48% functionality requirement that a service provider should provide evidence of its ability and capability to support a Municipality in achieving an unqualified audit is seen as reasonable.

It also needs to be considered that various municipalities, across the country, applied this functionality criteria in their tenders.

The AG incorrectly interpreted the functional requirements as well as the evidence required in this regard.

The intention was not a request to provide evidence of assisting specifically to the Swellendam Municipality, but to confirm that the bidder's support can be applied with the specific GIS system applied by the Municipality. Additionally, the evidence required did not require Swellendam specific evidence, but merely 'Evidence that the service provider assisted municipalities/municipal entities to obtain an unqualified audit opinion'.

The Municipality required the bidder to develop SOPs aligned to its financial system, which will only occur once the bid is awarded. Additionally, the evidence required did not require Swellendam specific evidence, but merely 'Evidence of SOPs being developed and implemented for all financial cycles.

It must also be taken into account that

1. `functionality' should not be confused with 'specifications'.
2. 'functionality' has its own set of prescripts as listed above in terms of the PPPFA Regulations read with the SCMP 20.1.15 and 20.12.1.2.
3. The legality test for 'functionality' must therefore be limited to the relevant prescripts.
4. The AG erred in its interpretation of the requirement of 'unqualified audits' and the requirement for 'Swellendam specific evidence' as discussed above.

The following provisions of the SCMP 19.5.2 which provides for the rules relevant to the first stage evaluation of functionality, must also be considered and applied, during the evaluation of bids for functionality:

1. 19.5.2.12 Score sheets should be prepared and provided to panel members to evaluate the bids.
2. 19.5.2.13 The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
3. 19.5.2.14 Each panel member should after thorough evaluation independently provide his/her value to each criterion.
4. 19.5.2.15 Score sheets should be signed by panel members as necessary, written motivation may be requested by panel members where vast discrepancies in the values awarded for each criterion exist.

It is therefore clear that the intention is that a separate panel will conduct the functionality scoring and not the BEC, though the BEC will consider the outcome.

The rationale for the augmentation of the SCMP was to maximise the administrative and operational efficiency of SCM operations. The functionality scoring was sub-delegated in terms of SCMR 5 to a separate panel in terms of SCMP 19.5.2, whereafter it is considered, augmented, and recommended by the BEC.

This finding is a reflection of the auditor's limited understanding of the evidence required to measure a specific functionality criterion.

Although the 'measurement' required appears to be similar, namely 'Evidence that the service provider assisted municipalities/municipal entities to obtain an unqualified audit opinion' it must be read and applied with the criteria for each item, e.g. (o) Evidence that the service provider assisted municipalities/municipal entities to obtain an unqualified audit opinion in relation to the compilation of annual GRAP compliant financial statements.

This finding is dubious and completely in contradiction to the findings being purported by the auditor that the 'functionality requirements and evidence' are non-compliant as per findings 2.2.3 to 2.2.6 and 2.3.2 above.

The main objective for applying functionality criteria and then analysing and scoring the evidence provided, was for the sole purpose to determine the capability and capacity of the provider to provide the required services.

It was also for this purpose that the Municipality applied additional due diligence in sending letters on 22 May 2019, to all three bidders, requesting them to provide additional supporting evidence as follows:

It is argued that the Municipality exhausted all avenues in testing the 'ability and capability of the bidders even allowing all three an additional opportunity to present adequate evidence.

The auditor is cautioned in making subjective value judgments without obtaining appropriate evidence.

**Legal advice by Brasika**

Brasika Consulting was appointed on 25 April 2018, through a valid competitive bidding process [SMT 22/17/18] to support the Municipality with inter alia SCM Objection support, as the municipality does not have internal legal advisors.

Similar to the Accounting and Auditing Profession is Adv H Venter also bound by her Profession to apply all necessary due diligence to prevent any potential conflict of interest and to maintain a high level of integrity.

Brasika Consulting is indeed in certain instances co-opted as a specialist advisor by Moore Stephens and other financial accounting support service providers, to independently provide legal support to their municipal clients. It is important to understand that the services rendered to Moore Stephens and other similar institutions are based on 'independent legal support' and not as a legal representative of the relevant institutions.

Such support is rendered on an ad hoc arrangement basis and, in those Municipalities, where Brasika Consulting is co-opted by the relevant accounting and auditing firms all due protocol is observed to prevent any potential conflict of interest.

When Swellendam Municipality instructed Brasika Consulting to assist it with the objection received with regards to this tender, Adv Venter immediately applied her normal due diligence to confirm whether any of the service providers listed Brasika Consulting as a 'co-opted specialist advisor' by sending an email to the SCM Manager on 08 July 2019 at 10:07 requesting the following: "(i) Bevestig as dat Mubesko nie my naam gelys het as 'n 'support' vir hulle nie" to which he replied on 08 July 2019 at 12:12 PM: "Ek het na die tender gekyk en dit blyk nie so te wees nie. Op bladsy 89 van hul bylaes het hulle ander name gelys mbt legal support."

Only once any potential conflict was eliminated, did Brasika Consulting accept the instruction.

It is argued that Brasika Consulting fully complied with the requirements of an 'independent and impartial person, not directly involved in the supply chain management processes as per SCMR 50(1), as she had NO involvement in the tender process from inception until the preferred bidder was identified.

The Brasika Consulting report of 17 July 2019 serves as further evidence of the objectivity with which the report was compiled.

As an Advocate, permitted to appear in the Supreme Court of South Africa, Adv. Venter is willing to defend this opinion in any appropriate court of law if so required.

There is, therefore, no evidence of a contravention of SCMR 50(1) as:

1. Brasika Consulting did apply due diligence to confirm no potential conflict of interest, and
2. Complied with the requirements of an 'independent and impartial person, not directly involved in the supply chain management processes as it had NO involvement in the tender process from inception until the preferred bidder was identified.

As the AG, albeit baseless, raised a concern with the independence of Brasika Consulting with the management of the objection as per SCMR 50(1), you are advised to consider this concern and perhaps apply an independent due diligence exercise to satisfy the Municipality of due performance.

Since the disclosure of this contract is irregular, National Treasury has issued an additional directive. The directive is part of the attached annexures.

Based on the guideline, the BAC quorum requirements for a meeting must at least be 50% +1. National Treasury reached an agreement with the auditor-general that the new directive be applied prospectively, which means that existing contracts concluded before the directive will remain irregular.

The Mubesko contract is valid until the end of the 2021- 2022 audit and therefore irregular expenditure will occur annually until the contracts have expired.

All the relevant documentation in respect of the matter **is attached in combined Annexure E, sub-annexure B.** It includes the COMAF, the application to National Treasury, and their responses in two separate letters.

**LEGAL IMPLICATIONS**

Compliance with the Local Government: Finance Management Act, 2003 (Act 56 of 2003), especially the Supply Chain Management Regulations and the Swellendam Supply Chain Management Policy.

**FINANCIAL IMPLICATIONS**

R 2 029 874-70 (R 988 653-30 during the 2021/2022 financial year and R 1 041 221-40 during the 2022/2023 financial year).

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**Director Financial Services**

Section 32 of the MFMA prescribes that unathorised, irregular or fruitless, and wasteful expenditure must be recovered from the person liable for that expenditure unless the expenditure:

a) In the case of unauthorised expenditure is-
   (iii) Authorised in an adjustment budget; or
   (iv) Certified by the municipal council, after an 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 an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

For the committee to consider the recoverability of the irregular expenditure, the committee may consider the following:

a) There is a valid contract in place with the service provider;
b) The work was executed in terms of the contract and/or service level agreements;
c) The municipality has received value for money.
d) The contract did not result in any or other financial loss to the municipality;
e) The municipality did not report the alleged irregular expenditure to the South African Police as no theft and fraud occurred on the expenditures;

The municipality received a clean audit for the 2021/2022 financial year, confirming that there were no material misstatements and that value for money was received

**MUNICIPAL MANAGER**

The matter of the Mubesko Holdings appointment is a point of contention that highlights the questionable bona fides under which the AG sometimes operates. The Municipality was led to believe during discussions with the AGSA that if the matter is applied for condonation after the matter has been reported in the Financial Statements it would be sufficient to normalise the contractual matter and that it should not raise the issue of a Section 32 reporting requirement. During the course of the discussions with National Treasury, it became clear that NT was not going to grant a condonation it believed for an interpretation of an expenditure that it indicated was already reflected as such in the AFS.

***This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.***

**RECOMMENDED TO COUNCIL**

1. that the amount of R 2 029 874-70 (R 988 653-30 during the 2021/2022 financial year and R 1 041 221-40 during the 2022/2023 financial year be written-off in terms of section 32(2)(b) of the MFMA as no financial loss occurred.

***DISCUSSION***

*Councillor M.T.A. Swart indicated that the ANC was of the opinion that criminal cases be investigated in these matters to ensure that officials were disciplined. She added that the ANC* *would request an urgent investigation on all these matters of irregular expenditure and that officials responsible be held accountable as the same mistakes were made every time.*

**PROPOSAL 1:**

The Executive Mayor, Councillor H.F. Du Rand proposed that the following recommendation be accepted as-is:

1. that the amount of R 2 029 874-70 (R 988 653-30 during the 2021/2022 financial year and R 1 041 221-40 during the 2022/2023 financial year be written-off in terms of section 32(2)(b) of the MFMA as no financial loss occurred.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor D. Julius

**PROPOSAL 2:**

Councillor M.T.A. Swart proposed the following amendment to the recommendation:

1. that the amount of R 2 029 874-70 (R 988 653-30 during the 2021/2022 financial year and R 1 041 221-40 during the 2022/2023 financial year not be written-off in terms of section 32(2)(b) of the MFMA.
2. that an investigation be launched to identify the officials responsible for the irregular expenditure inccurred.
3. that the responsible officials be held accountable to pay back the money.

**Proposer:** Councillor M.T.A. Swart
**Seconder:** Councillor G. Libazi

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**Proposal 1:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**Proposal 2:**

**Five (5) Councillors:** Councillor M.T.A. Swart; J.A. Matthysen; G. Libazi and D.J. Julius and I.H. Ferguson.

**RESOLVED** **Item A142/29/09/2023**

1. that the amount of R 2 029 874-70 (R 988 653-30 during the 2021/2022 financial year and R 1 041 221-40 during the 2022/2023 financial year be written-off in terms of section 32(2)(b) of the MFMA as no financial loss occurred.

***Councillor M.T.A. Swart requested that the ANC's opposing vote be recorded.***

9.1.5

**Item number A143.** 29.09.2023

**UNAUTHORISED EXPENDITURE: 2021-2022 OVERSPENDING ON THE CAPITAL BUDGET: FINANCIAL SERVICES**

Report of the Municipal Manager: Ms. A Vorster

| | |
|---|---|
| **Department** | Financial Services |
| **Section** | Financial Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

The purpose of the report is for Council to consider the unauthorised expenditure on the capital budget for the Department of Financial Services for the 2021-2022 financial year.

**FACTS AND BACKGROUND**

Flowing from the financial statements for the 2021-2022 financial year, the overspending on the capital budget for Financial Services was classified as an unauthorised expenditure by the Auditor-General in COMAF 16. Subsequently, the notes of the AFS under note 51.1 was amended to disclose the unauthorised expenditure.

**DISCUSSION**

The unauthorised expenditure realised as a result of the non-cash journal entry for the capital restoration cost of the landfill site in terms of the GRAP standard.

The Auditor-General did note when auditing the unauthorized expenditure that capital expenditure as per note 51.1 did not reconcile to capital additions for property plant and equipment (PPE) and intangible assets.

Upon further discussion, it was identified that the capital expenditure as disclosed in note 51.1 only included project-related capital expenditure and did not include all capital expenditure incurred, for example, the recognition of the addition to the landfill site. Per the Auditor-General finding the misstatement must be recognized for the 2021/2022 financial year and the retrospective financial year.

The misstatement on unauthorised capital expenditure not disclosed in note 51.1 was determined to be as follows:

| | | |
|---|---|---|
| Capitalised Restoration Cost note 2 (not purchased) | 2021/2022 | R2 527 095 |
| Capitalised Restoration Cost note 2 (not purchased) | 2020/2021 | R6 727 255 |

The municipality did not suffer any loss on the overspending as it merely relates to a non-cash item that was journalised in terms of an actuarial valuation

**LEGAL IMPLICATIONS**

Section 32(4) of the Municipal Finance Management Act, 2003 (Act 56 of 2003).

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

The Municipal Manager must inform the Executive Mayor, the MEC for Local Government in the Western Cape, and the Auditor General of the matter in terms of section 32 (4) of the MFMA.

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

None

**Director: Community Services**

None

**Director: Financial Services**

Section 32 of the MFMA prescribes that unauthorised, irregular or fruitless, and wasteful expenditure must be recovered from the person liable for that expenditure unless the expenditure:

a) In the case of unauthorised expenditure is-
   (v) Authorised in an adjustment budget; or
   (vi) Certified by the municipal council, after an 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 an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

For the committee to consider the recoverability of the unauthorised expenditure, the committee may consider the following:

a) No adjustment budget could be passed after the financial yearend.
b) There were no financial losses, as this was an accounting non-cash entry for both financial years;
c) There was no purchase or amount paid which resulted in a cash outflow;
d) The journal entry is made in terms of the GRAP standards;

The GRAP standard has since changed and in future, there will no longer be capital restoration cost.

**Director: Infrastructure Services**

None

**Municipal Manager**

None

***<u>This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.</u>***

**RECOMMENDED TO COUNCIL**

1. that the unauthorised expenditure to the amount of R 2,527,095-00 for the 2021-2022 financial year and R 6727 255 for the 2020/2021 financial year be written off in terms of Section 32 (2) (b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), as there were no cash transaction.

***<u>DISCUSSION</u>***

**<u>PROPOSAL 1:</u>**

The Executive Mayor, Councillor H.F. Du Rand proposed that the following recommendation be accepted as-is:

1. that the unauthorised expenditure to the amount of R 2,527,095-00 for the 2021-2022 financial year and R 6727 255 for the 2020/2021 financial year be written off in terms of Section 32 (2) (b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), as there were no cash transaction.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** F. Kees

**<u>PROPOSAL 2:</u>**

Councillor M.T.A. Swart proposed the following amendment to the recommendation:

1. that the unauthorised expenditure to the amount of R 2,527,095-00 for the 2021-2022 financial year and R 6727 255 for the 2020/2021 financial year <u>not</u> be written off in terms of Section 32 (2) (b) of the MFMA.
2. that an investigation be launched to identify the officials responsible for the irregular expenditure inccurred.
3. that the responsible officials be held accountable to pay back the money.

**Proposer:** M.T.A. Swart
**Seconder:** J.A. Matthysen

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**<u>Proposal 1:</u>**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**Proposal 2:**

**Five (5) Councillors:** Councillor M.T.A. Swart; J.A. Matthysen; G. Libazi and D.J. Julius and I.H. Ferguson.

**RESOLVED** **Item A143/29/09/2023**

1. that the unauthorised expenditure to the amount of R 2,527,095-00 for the 2021-2022 financial year and R 6727 255 for the 2020/2021 financial year be written off in terms of Section 32 (2) (b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), as there were no cash transaction.

***The ANC requested that their opposing vote be recorded.***

**9.1.6**

**Item number A144.** 29.06.2023

**IRREGULAR EXPENDITURE FINANCIAL YEAR 2022-2023: SWELLENDAM MUNICIPALITY: SUPPLY CHAIN MANAGEMENT: CONTRACT MANAGEMENT: EXTENSIONS / AMENDMENTS NOT JUSTIFIABLE**

Report of the Municipal Manager: Ms. A Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

To report on the finding performed by the Auditor General (AG) during the audit of the 2019 - 2020 financial year on the extension/amendment of a contract between Swellendam Municipality and Hessequa Consulting Engineers.

**FACTS AND BACKGROUND**

The report deals with the Auditor-General findings in the 2019/ 2020 financial year relating to irregular expenditure in respect of the extension/amendment of a contract with Hessequa Consulting Engineers. This finding was not tabled to the Section 32 Committee.

**DISCUSSION**

There were three matters listed by the Auditor General to support the finding of irregular expenditure:

The appointment per the original contract was specific in that the contractor was appointed in relation to the work to be conducted at Smartie Town, Railton, Swellendam. This means that any modification of these contracts must be confined to work that is to be delivered in relation to the Smartie Town, Railton site. Any work that is to be delivered at a different site is totally separate from the original appointment and must be procured in terms of Municipal SCM Regulation 19 which states that "A supply chain management policy must specify-

"a) That goods and services above a transaction value of R200 000 (VAT included) and long-term contracts may be procured by the municipality or municipal entity only through a competitive bidding process, subject to regulation 11(2)"

SCM Reg. 19 is not a mandatory provision as it uses the wording "may" and not must.

In this case, the extension of the contract was not the municipality's first option. The municipality attempted to appoint Royal Haskoning DHV (Pty) Ltd for the project, as per the Professional Service Provider's tender (SMT27/17/18). See attached mail correspondence. The Brief for them is also attached.

Royal Haskoning DHV (Pty) Ltd telephonically indicated that the project size is too small to consider and failed to respond in writing to the requests/enquiries. Hence the accounting officer decided to consider an amendment of the contract, as Hessequa had prior knowledge of Smitsville in terms of roads and that the scope of works as per their original contract is exactly the same.

Important to note is that the municipality went through a tender process to appoint a list of consultants for Streets and associated stormwater. Hessequa is also on that list hence the municipality could have appointed Hessequa via that process. However, the amendment of the contract was more economical, efficient, and effective.

Hessequa worked as a consultant for ASLA on the current housing project in Smitsville, Barrydale in order to link the roads hence they have knowledge of the conditions in Barrydale amending the contract a better option in terms of time, cost, etc.

This was critical to registering the MIG project, otherwise, the municipality could have lost the MIG grant funding. The contract was amended initially for the amount of R27 000 (VAT excl.) for the 2019/20 financial year.

Based on the submission to Council, the extension of the contract is not an addition, substitution, or omission from the "Upgrading of gravel roads with kerbs and stormwater infrastructure in Smartie town, Railton, Swellendam" original scope of work, but management rather decided to add a new project (Smitsville, Barrydale) to the original contract. When considering the additional cost compared to the original contract (262%), it is also evident that it cannot be regarded as merely an addition or omission from the original contract.

The AGSA erred in its interpretation and application of MFMA s 116(3), s 112, and MFMA circular 62/2012 in this regard. Contract amendments are clearly discussed in par. 22.15 on page 191 of the SCMP and states the following:

"22.15 CONTRACT VARIATIONS / AMENDMENTS
Refer to MFMA section 116 and MFMA circular 62 of 2012
POLICY

(i) Contracts may be amended/varied/modified according to the AO's delegated powers to achieve the original objective of the contract.
(ii) Amendments may not materially alter the original objective; as such amendments should form part of a new bid invitation.
(iii) All contractual parties must agree to the amendment in writing.
(iv) No contract can be amended after the original contract has ceased to exist.
(v) The extension of a contract shall be finalised before the current expiry date of the contract.
(vi) Where prices are amended for an extended period, the reasonableness of the prices must be established.

22.15.2 For the appointment of consultants, any granting of a substantial extension of the stipulated time for performance of the contract, agreeing to any substantial amendment of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 %, will be subject to the approval of the AO or the delegated authority."

In this instance, the AGSA erred in its interpretation of MFMA s 116(3), as this section only provides the conditions to be followed when amending a contract that exceeds the values related to the 15%/20% provided for in MFMA Circular 62/2012. Alternatively, if it was the intention of the AGSA to refer to MFMA Circular Number 62/2012 where it is stated that contracts for goods or services may be expanded or varied by 15%, the AGSA also erred in its interpretation of the circular. The circular provides that in the event that the expansion will result in a 15% increase such amendment may be concluded through internal processes.

MFMA Circular Number 62/2012 further states that "Any expansion or variation in excess of the 15% threshold must be dealt with in terms of the provisions of section 116(3) of the MFMA. As the extension will increase the value by more than 15%, the Municipality fully complied with MFMA s 116(3) as well as MFMA Circular 62/2012."

It is also important to note that the original objective (Upgrading of Gravel Roads) was not materially altered hence the amendment of this contract is justifiable. If for instance the objective was changed to the upgrading of a water reservoir then one could have argued that the objective was materially altered.

Important to note is that the municipality initially only extended the contract for the MIG project to be registered at least with a cost implication of R27 000 (VAT excl.) for the 2019/20 financial year and which was the only expenditure incurred in the same.

Therefore, management should have complied with Municipal SCM Regulation 19 by following a tender process, or made use of single-source procurement, or followed Municipal SCM Regulation 36(1) in the event that it was impractical to follow the normal SCM process, to appoint a supplier for the Smitsville, Barrydale project. Any expenditure that the municipality has incurred or is to be incurred in future in relation to Smitsville, Barrydale project should be regarded as irregular expenditure

Section 116(3) of the MFMA states the following: A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after—

(a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
(b) the local community—
    (i) has been given reasonable notice of the intention to amend the contract or agreement; and
    (ii) has been invited to submit representations to the municipality or municipal entity.

Furthermore, states MFMA Circular 62 the following:

Management of expansion or variation of orders against the original contract

It is recognized that, in exceptional cases, an accounting officer of a municipality or municipal entity may deem it necessary to expand or vary orders against the original contract. The expansion or variation of orders against the original contract has, however, led to wide-scale abuse of the current SCM system.

To mitigate such practices, accounting officers of municipalities and municipal entities are advised that, from the date of this Circular, contracts may be expanded or varied by not more than 20% for construction-related goods, services, and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract. Municipal Councils and Board of Directors of municipal entities are required to amend their supply chain management policies accordingly. Furthermore, anything beyond the abovementioned thresholds must be reported to council or the board of directors.

Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116(3) of the MFMA which will be regarded as an amendment to the contract

It is evident that the amendment of the contract of Hessequa is an exceptional case, for the following reasons:

a) the municipality did attempt to appoint another consultant for this project,

b) the municipality could have appointed Hessequa via tender SMT27/17/18 as they are on the list of consultants for Roads & Stormwater
c) the scope of works was not materially altered.

**LEGAL IMPLICATIONS**

Compliance with the Local Government: Finance Management Act, 2003 (Act 56 of 2003), especially the Supply Chain Management Regulations and the Swellendam Supply Chain Management Policy.

**FINANCIAL IMPLICATIONS**

R 371 810-31 during the 2022/2023 financial year.

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**Director Financial Services**

Section 32 of the MFMA prescribes that unauthorised, irregular or fruitless, and wasteful expenditure must be recovered from the person liable for that expenditure unless the expenditure:
a) In the case of unauthorised expenditure is-
  (i) Authorised in an adjustment budget; or
    (ii) Certified by the municipal council, after an 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 an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

For the committee to consider the recoverability of the irregular expenditure, the committee may consider the following:
a) There is a valid contract in place with the service provider through section 116 of the MFMA;
b) The work was executed in terms of the contract and/or service level agreements;
c) The municipality has received value for money.
d) The contract did not result in any or other financial loss to the municipality;
e) The municipality did not report the alleged irregular expenditure to the South African Police as no theft and fraud occurred on the expenditures;

**MUNICIPAL MANAGER**

None

***This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.***

**RECOMMENDED TO COUNCIL**

1. that the amount of R 371 810-31 be written off in terms of section 32(2)(b) of the MFMA as no financial loss occured.

***DISCUSSION***

***Councillor M.T.A. Swart requested for a caucus at 14:01. The Speaker granted a 5-minute caucus.***

***The meeting commenced at 14:06.***

**PROPOSAL 1:**

Councillor J.A. Matthysen indicated that the ANC would propose the following amendment to the recommendation:

1. that the amount of R 371 810-31 not be written off in terms of section 32(2)(b) of the MFMA.
2. that the person liable for incurring misconduct be asked to pay back the money.

**Proposer:** Councillor J.A. Matthysen
**Seconder:** Councillor I.H. Ferguson

**PROPOSAL 2:**

The Executive Mayor, Councillor H.F. Du Rand proposed that the following recommendation be accepted as-is:

1. that the amount of R 371 810-31 be written off in terms of section 32(2)(b) of the MFMA as no financial loss occured.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor F. Kees

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**Proposal 1:**

**Five (5) Councillors:** Councillor M.T.A. Swart; J.A. Matthysen; G. Libazi and D.J. Julius and I.H. Ferguson.

**Proposal 2:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**RESOLVED** **Item A144/29/09/2023**

1. that the amount of R 371 810-31 be written off in terms of section 32(2)(b) of the MFMA as no financial loss occured.

***The ANC requested that their opposing vote be recorded.***

9.1.7
**Item number 145.** 29.09.2023

**FRUITLESS AND WASTEFUL EXPENDITURE FINANCIAL YEAR 2021-2022 SWELLENDAM MUNICIPALITY: REPAIRS TO ENGINE OF CASE TLB**

Report of Municipal Manager: Ms. A Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

To report on fruitless and wasteful expenditures as a result of the rejection of an insurance claim due to negligence.

**FACTS AND BACKGROUND**

The report deals with the cost of an engine for a Case TLB during the 2021/2022 financial year which was rejected by the insurers of Swellendam Municipality.

**DISCUSSION**

On 3 March 2022, the engine of the Case TLB did seize while operational. A claim for the replacement of the engine of the Case TLB was submitted to the insurers of Swellendam Municipality but was subsequently rejected.

The municipality was referred to the following clause in the policy:

General Provisions:

Exclusions applicable to Sub-Section 1-
"The insurers shall not be liable to pay for consequential loss as a result of any cause whatsoever, depreciation, whether arising from repairs following a defined event or otherwise, wear and tear, mechanical, electronic or electrical breakdowns, failures or breakages".

The claim was rejected for the following reason:

a) Consequential damages, the vehicle was driven without oil and the engine seized due to lack of oil.
b) The claim was not covered because it does not fall within the ambit of the policy and for this reason, the claim was rejected.

The documentation was referred to the disciplinary committee for investigation. The outcome of the disciplinary process followed was that the employee who was operating the Case TLB was found guilty.

**ANNEXURES:**

Relevant documentation is attached in the **combined Annexure E**, sub-annexure E.

**FINANCIAL IMPLICATIONS**

a) Based on the incident report immediate disciplinary actions were instated;

b) The municipality did not report the fruitless and wasteful expenditure to the South African Police as no theft and fraud occurred on the expenditures;

The involved employee was found guilty and the outcome of the disciplinary hearing is that the repair cost be recovered from the individual.

**MUNICIPAL MANAGER**

None

***This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.***

**RECOMMENDED TO COUNCIL**

1. that the Council takes note of the fruitless and wasteful expenditures;
2. that the Council takes note of the outcome of the disciplinary process to recover the repair cost of R248 240.12.
3. that the fruitless and wasteful expenditure not be written off as irrecoverable.

***DISCUSSION***

*Councillor M.T.A. Swart indicated that the ANC was of the opinion that the Administration was not being consistent when it came to writing off of expenditure.*

*Councillor J.A. Matthysen asked that consistency be kept in all matters in order to ensure that no unfair actions were taken against any official of the municipality. He added that mere human error now had to be paid for, whereas thousands of rands were being written off in other cases. He said that the employee was being treated unfairly in the situation.*

*The Executive Mayor, Councillor H.F. Du Rand indicated that the difference was that the municipality had a loss of R248 240.12 in the matter due to negligence of an official.*

**PROPOSAL:**

The Executive Mayor, Councillor H.F. Du Rand proposed the following amendment to the recommendation by adding another point:

1. that the Council takes note of the fruitless and wasteful expenditures;
2. that the Council takes note of the outcome of the disciplinary to recover the repair cost of R248 240.12.
3. that the fruitless and wasteful expenditure not be written off as irrecoverable.
4. that Council instructs the Administration to make use of independent Chairpersons at all future disciplinary hearings.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor F. Kees

*Councillor M.T.A. Swart raised concern with regard to who the independent Chairpersons would be and who would be selecting them, as unfairness may take place.*

**Councillor M.T.A. Swart requested a caucus at 14:19. The Speaker granted a 5-minute caucus.**

**The meeting commenced at 14:28.**

*Councillor M.T.A. Swart indicated that the ANC noted that it was fruitless expenditure and believed everyone doing wrong must pay back the money.*

*Councillor Swart said that the ANC was in support of the recommendation with comments noted.*

*Councillor G. Libazi asked that any evidence related to a matter be included in the item in order for Councillors to make an informed decision.*

**No counterproposal was received.**

**The Speaker confirmed that all 11 Councillor were in favour of the recommendation as proposed by the Executive Mayor, Councillor H.F. Du Rand:**

**UNANIMOUSLY RESOLVED** **Item A145/29/09/2023**

1. that the Council takes note of the fruitless and wasteful expenditures;
2. that the Council takes note of the outcome of the disciplinary to recover the repair cost of R248 240.12.
3. that the fruitless and wasteful expenditure not be written off as irrecoverable.
4. that Council instructs the Administration to make use of independent Chairpersons at all future disciplinary hearings.

9.1.8
**Item number A146.** 29.09.2023

**IRREGULAR EXPENDITURE FINANCIAL YEAR 2022-2023 SWELLENDAM MUNICIPALITY: SUPPLY AND DELIVERY OF WATER PURIFICATION TABLETS**

Report of the Municipal Manager: Ms. A Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

To table a recommendation to Council by the Section 32 Committee of the Local Government: Municipal Financial Management Act, 2003 (MFMA), Act 56 of 2003, in respect of irregular expenditure for consideration.

**FACTS AND BACKGROUND**

The report deals with the cost for the supply and delivery of water purification tablets for the period 1 January 2023 to 31 December 2023.

**DISCUSSION**

On 28 November 2022, Quotation no. SMQ46-22-23 was awarded to Rheochem (Pty) Ltd for the Supply and Delivery of Water Purification Tablets for the period 01 January 2023 to 31 December 2023. From 01 February 2023, there was a threefold increase in the issuing of chlorine tablets from the Stores. This was due to the Engineering department increasing the amount of chlorine that must be in the water system as a result of the quality tests of the water.

Up until 13 April 2023, the total value of chlorine tablets purchased on this contract amounted to R 119 326-30 (incl. VAT). On 28 April 2023, order 114958 was issued for the purchasing of chlorine tablets in the amount of R82 294,00 (incl. VAT) to meet the new demand. This office however erred in calculating the total contract amount which increased the total amount procured on this contract to R201 620-30 (Incl. VAT). As per the Municipal Supply Chain Management Regulation 12(1)(c), formal written price quotations have a procurement transaction value of up to R200 000 (VAT included).

As a result, the amount exceeding R200 000 is then regarded as irregular expenditure.

**ANNEXURES:**

Relevant documentation is attached in the **combined Annexure E**, sub-annexure F.

**FINANCIAL IMPLICATIONS**

R 1,409.56 during the 2022/2023 financial year.

**Director Financial services**

Section 32 of the MFMA prescribes that unauthorised, irregular or fruitless, and wasteful expenditure must be recovered from the person liable for that expenditure unless the expenditure:

a) In the case of unauthorised expenditure is-
   (i) Authorised in an adjustment budget; or

(ii) Certified by the municipal council, after an 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 an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

For the committee to consider the recoverability of the irregular expenditure, the committee may consider the following:

a) There are valid contracts in place for these service providers;
b) The work was executed in terms of the contract and/or service level agreements;
c) The municipality has received value for money.
d) There was no financial loss as the goods were received by the municipality.
e) The municipality did not report the alleged irregular expenditure to the South African Police as no theft and fraud occurred on the expenditures;

**MUNICIPAL MANAGER**

None

***This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.***

**RECOMMENDED TO COUNCIL**

1. that due to the minor oversight on the contract calculation, the irregular expenditure to the amount of R 1,409-56 during the 2022/2023 financial year) be written off in terms of section 32(2)(b) of the MFMA, as no financial loss occurred.

***DISCUSSION***

*Councillor M.T.A. Swart raised concern with regard to acting consistent when dealing with irregular expenditure matters. She asked that the proper oversight be performed on such matters and the person responsible must be held accountable for the irregular expenditure.*

*The Executive Mayor Councillor H.F. Du Rand indicated that the money was not paid to someone but was paid to get chlorination tablets to purify the water.*

**PROPOSAL 1:**

The Executive Mayor, Councillor H.F. Du Rand proposed that the following recommendation be accepted as-is:

1. that due to the minor oversight on the contract calculation, the irregular expenditure to the mount of R 1,409-56 during the 2022/2023 financial year) be written off in terms of section 32(2)(b) of the MFMA, as no financial loss occurred.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor E. J. Lamprecht

**PROPOSAL 2:**

Councillor M.T.A. Swart proposed the following amendment to the recommendation:

1. that the irregular expenditure to the amount of R 1,409-56 during the 2022/2023 financial year) not be written off in terms of section 32(2)(b) of the MFMA, and the person responsible, be held accountable to pay back the money.

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**Proposal 1:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**Proposal 2:**

**Five (5) Councillors:** Councillor M.T.A. Swart; J.A. Matthysen; G. Libazi and D.J. Julius and I.H. Ferguson.

**RESOLVED** **Item A146/29/09/2023**

1. that due to the minor oversight on the contract calculation, the irregular expenditure to the mount of R 1,409-56 during the 2022/2023 financial year) be written off in terms of section 32(2)(b) of the MFMA, as no financial loss occurred.

9.1.9
**Item number A147.** 29.09.2023

**IRREGULAR EXPENDITURE: FINANCIAL YEAR 2021-2022 SWELLENDAM MUNICIPALITY: GENERATORS**

Report of the Municipal Manager: Ms. A Vorster

| | |
|---|---|
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File number** | 5/1/1/24 |

**PURPOSE OF REPORT**

To report on irregular expenditures as a result of the emergency procurement of generators.

**FACTS AND BACKGROUND**

The report deals with the emergency procurement of generators and non-compliance with procurement policies.

**DISCUSSION**

The unexpected worsening of load-shedding by Eskom was furthermore worsened by a complete system failure at the Eskom substation in Swellendam which resulted in a major system failure at the Klipperivier Waste Water Treatment Works and a shortage of water supply in Buffeljagsrivier. As a result, it severely impacts the water provision, water quality, reservoir levels, and treatment of wastewater.

The repair time of the Transformer was unknown at this stage hence Management instructed that urgent quotations (from 7 different suppliers) be obtained for the procurement of 3 x Generators. The generators are needed at the Klipperivier Waste Water Treatment Works and the Buffeljagsrivier Water Works.

These generators will ensure continuous essential and effective service delivery to our community. The prevailing situation could not be alleviated by interim measures, in order to allow time for a formal procurement process.

The municipality obtained four quotations to procure generators, but the delivery time is between two to four weeks and longer depending on the size of the generators. Fortunately, one company had stock available of the required sizes which could be delivered within 3 days. This would ease the pressure on the networks.

A section 36 deviation was approved to proceed with the procurement of the generators.

The consequences should Section 36 application not be approved are as follows:

a) The deprivation of human rights
b) The interruption of essential services;
c) Serious damage may occur to the natural environment; and
d) The possibility that failure to take necessary action may result in the Municipality not being able to render essential community service.

The municipality considered the relevant risks involved and concluded that due to the health and environmental risks, the procurement process be treated as an emergency as per the

Municipal SCM regulations and its SCM Policy. The aforementioned risks as well as reputational risks weighted more than the procurement risks.

Genecom was the cheapest from the quotes received and the only supplier who could deliver the generators within 3 days but could not provide evidence in terms of tax compliance as it was a new company and was still awaiting registration from SARS. This was the only procurement risk identified.

Taking into account s.152 of the Constitution, the decision by the municipality is reasonable and justifiable as no action would have resulted in the municipality failing in its constitutional mandate of service delivery to the community.

The expenditure is therefore classified as irregular because the service provider fails to provide a tax clearance certificate.

**ANNEXURES:**

Relevant documentation is attached in the **combined Annexure E**, sub-annexure G.

**FINANCIAL IMPLICATIONS**

R R857 600 during the 2022/2023 financial year.

**Director Financial services**

Section 32 of the MFMA prescribes that unauthorised, irregular or fruitless, and wasteful expenditure must be recovered from the person liable for that expenditure unless the expenditure:

a) In the case of unauthorised expenditure is-
   (i) Authorised in an adjustment budget; or
   (ii) Certified by the municipal council, after an 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 an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

For the committee to consider the recoverability of irregular expenditures, the committee may consider the following:

a) There is a valid contract in place with the service provider;
b) The work was executed in terms of the contract and/or service level agreements;
c) The municipality has received value for money.
d) The contract did not result in any or other financial loss to the municipality;
e) The municipality did not report the alleged irregular expenditure to the South African Police as no theft and fraud occurred on the expenditures;

**MUNICIPAL MANAGER**

None

***This item served on the Section 32 Committee meeting held on Friday, 30 June 2023.***

**RECOMMENDED TO COUNCIL**

1. that the amount of R 857 600 during the 2022/2023 financial year be written off in terms of Section 32(2)(b) of the MFMA as no financial loss occurred.

***DISCUSSION***

*The Executive Mayor, Councillor H.F. Du Rand asked that the heading of the item be changed to irregular expenditure and not fruitless and wasteful expenditure.*

*The Speaker confirmed that the heading be changed to: Irregular Expenditure: Financial Year 2021-2022 Swellendam Municipality: Generators.*

*Councillor J.A. Matthysen indicated that the ANC was in favour of the proposed recommendation.*

*The Speaker confirmed that all Councillors were in favour of the recommendation as-is:*

**UNANIMOUSLY RESOLVED** **Item A147/29/09/2023**

1. that the amount of R 857 600 during the 2022/2023 financial year be written off in terms of Section 32(2)(b) of the MFMA as no financial loss occurred.

**9.1.10**
**Item number A148.** 29.09.2023

**2023/2024 REVISED AUDIT AND PERFORMANCE AUDIT COMMITTEE CHARTER**

Report of the Senior Internal Auditor: Mr A Petersen

| | |
|---|---|
| **Department** | Municipal Manager |
| **Section** | Internal Audit |
| **Proposed File number** | 3/3/3/16 |

**PURPOSE OF THE REPORT**

The purpose of the report is to submit the Revised Audit and Performance Audit Committee Charter for the 2023/2024 financial year to Council for consideration and approval.

**FACTS AND BACKGROUND**

The audit committee operates as a committee of the council. The audit committee performs the responsibilities assigned to it by the MFMA (sections 165 and 166), and the corporate governance responsibilities delegated to it under its charter by the council. A charter is the written terms of reference approved by the council which outlines the mandate of the audit committee. The charter becomes the policy of the audit committee which then informs the contracts of the audit committee members.

A charter should be used to guide the activities of an audit committee on an ongoing basis. A clear, well written charter should set out the objectives, roles and responsibilities, composition, structure and membership requirements, relationships with other stakeholders, authority for the committee to conduct enquiries and access municipality and municipal entity's records and personnel, outlines procedures for meetings, addresses the confidentiality and independence of committee members, and provides for ethical conduct and reporting.

Following approval, the audit committee charter should be published on the municipal website to promote awareness to all stakeholders. The charter should be reviewed annually and updated to ensure relevance and consistency with the MFMA, Municipal Systems Act (No 32 of 2000) and other related regulations, guides and best practice.

The charter should be used as a basis for:

- Preparing the audit committee's annual work plan;
- Setting the agenda for meetings;
- Requesting skills and expertise;
- Making recommendations to the accounting officer and municipal council;
- Assessing the audit committee's performance by its members, municipal council, management, Auditor-General and internal auditors; and
- Contributions and participation at meetings.

**DISCUSSION**

Section 166 of the Municipal Finance Management Act No. 56 of 2003, requires every Municipality to establish and maintain an audit committee, as an independent appraisal function. Experience has shown that a properly constituted Audit Committee can make an effective and valuable contribution to the process by which an organization is directed and controlled.

The Swellendam Audit Committee is well established and functioning as required. All the members of the Audit Committee are also members of the Performance Audit Committee.

The Revised Audit Committee Charter for the 2023/2024 financial year was tabled to the Audit and Performance Audit Committee on 27 June 2023 for review and inputs. The Audit and Performance Audit Committee accepted the Charter, with the amendments as highlighted in track changes.

The Revised Audit and Performance Audit Committee Charter is hereby tabled for adoption.

**Annexures**

1. The Revised Audit and Performance Audit Committee Charter is attached as **Annexure F.**

**LEGAL IMPLICATIONS**

Section 166 of the Municipal Finance Management Act No. 56 of 2003, requires every Municipality to establish and maintain an Audit Committee, as an independent appraisal function.

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

The Charter should be published on the municipal website to promote awareness to all stakeholders.

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

None

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

None

**RECOMMENDATION TO COUNCIL**

1. that the Revised Audit and Performance Audit Committee Charter for the 2023/2024 financial year be adopted by Council.

The Speaker, Councillor J.R. van Schalkwyk confirmed that all Councillors were in favour of the recommendation as-is:

**UNANIMOUSLY RESOLVED** **Item A148/29/09/2023**

1. that the Revised Audit and Performance Audit Committee Charter for the 2023/2024 financial year be adopted by Council.

**9.1.11**
**Item number A149.** 29.09.2023

**2023/2024 REVISED RISK MANAGEMENT STRATEGIC DOCUMENTS**

| | |
|---|---|
| Office of the Municipal Manager: | A. Vorster |
| **Department** | Office of the Municipal Manager |
| **Section** | Risk Management |
| **File number** | 3/3/3/28 |

**PURPOSE OF REPORT**

The purpose of the report is to submit the 2023/2024 Revised Risk Management Strategic Documents to Council for consideration and approval.

**FACTS AND BACKGROUND**

In order for the Municipal Manager to ensure that risk management is properly addressed, the Risk Management Strategic Documents will have to be reviewed and approved by Council on an annual basis and a risk assessment must be done in terms of the policy. Additional frameworks and structures have been established to ensure the effective implementation of Risk Management within the municipality and to establish appropriate reporting lines for Risk Management.

**DISCUSSION**

**2023/2024 RISK MANAGEMENT STRATEGIC DOCUMENTS**

The municipality has identified the need to review the Risk Management Strategic Documents on an annual basis to be in line with the current status of Risk Management within the municipality. The Revised Risk Management Strategic Documents were tabled to the Fraud and Risk Management Committee on 19 June 2023, and also tabled to the Audit and Performance Audit Committee (APAC) on 27 June 2023 for review.

The following Risk Management Strategic Documents are hereby tabled for adoption:

- 2023/2024 Anti-Corruption and Fraud Prevention Plan
- 2023/2024 Anti-Corruption and Fraud Prevention Policy
- 2023/2024 Anti-Corruption and Fraud Prevention Strategy
- 2023/2023 Risk Management Committee FARMCO Charter
- 2023/2024 Risk Management Implementation Plan
- 2023/2024 Risk Management Policy
- 2023/2024 Risk Management Strategy
- 2023/2024 Swellendam Code of Ethics

**Annexures are attached as Annexure G, 1-8**

1. 2023/2024 Anti-Corruption and Fraud Prevention Plan
2. 2023/2024 Anti-Corruption and Fraud Prevention Policy
3. 2023/2024 Anti-Corruption and Fraud Prevention Strategy
4. 2023/2023 Risk Management Committee FARMCO Charter
5. 2023/2024 Risk Management Implementation Plan
6. 2023/2024 Risk Management Policy
7. 2023/2024 Risk Management Strategy
8. 2023/2024 Swellendam Code of Ethics

**LEGAL IMPLICATIONS**

In terms of section 62 of the Local Government: Municipal Finance Management Act 2003 [Act 56 of 2006] [MFMA] the Municipal Manager is responsible for managing the Municipality's financial administration. For this purpose, the Municipal Manager must take all reasonable steps to ensure, amongst others, that the Municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control.

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

None

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

None

**RECOMMENDED**

1. that the following Risk Management Strategic Documents be approved by Council:
    1. 2023/2024 Anti-Corruption and Fraud Prevention Plan
    2. 2023/2024 Anti-Corruption and Fraud Prevention Policy
    3. 2023/2024 Anti-Corruption and Fraud Prevention Strategy
    4. 2023/2023 Risk Management Committee FARMCO Charter
    5. 2023/2024 Risk Management Implementation Plan
    6. 2023/2024 Risk Management Policy
    7. 2023/2024 Risk Management Strategy
    8. 2023/2024 Swellendam Code of Ethics

***DISCUSSION***

*The Executive Mayor, Councillor H.F. Du Rand indicated that the DA welcomed the approval of the policies but would like to workshop the Swellendam Code of Ethics first before approval.*

*The Speaker suggested that all the other documents be adopted and that the Swellendam Code of Ethics be moved to be workshopped to later come back to Council for approval in November 2023.*

*The Speaker confirmed that all Councillors unanimously agreed to adopt the recommendation with the amendment that the Swellendam Code of Ethics be removed to be tabled to Council at a later date.*

***UNANIMOUSLY RESOLVED*** ***Item A149/29/09/2023***

1. that the following Risk Management Strategic Documents be approved by Council:

    1. 2023/2024 Anti-Corruption and Fraud Prevention Plan
    2. 2023/2024 Anti-Corruption and Fraud Prevention Policy
    3. 2023/2024 Anti-Corruption and Fraud Prevention Strategy
    4. 2023/2023 Risk Management Committee FARMCO Charter
    5. 2023/2024 Risk Management Implementation Plan
    6. 2023/2024 Risk Management Policy
    7. 2023/2024 Risk Management Strategy

**9.1.12**
**Item number A150.** 29.09.2023

**2022/2023 3rd QUARTER AND ANNUAL REPORT OF THE AUDIT AND PERFORMANCE AUDIT COMMITTEE (APAC) FOR THE PERIOD ENDED 30 JUNE 2023 AND THE MINUTES OF THE APAC MEETING HELD ON 23 FEBRUARY 2023, 20 JUNE 2023 AND 27 JUNE 2023.**

Report of the Senior Internal Auditor: Mr A Petersen

| | |
|---|---|
| **Department** | Municipal Manager |
| **Section** | Internal Audit |
| **Proposed File number** | 3/3/3/16 |

**PURPOSE OF THE REPORT**

The purpose of the report is to submit the 3rd Quarter and Annual Report of the Audit and Performance Audit Committee (Committee) and the Minutes of the Committee meeting held on 23 February 2023, 20 June 2023 and 27 June 2023 to Council for cognizance.

**FACTS AND BACKGROUND**

In terms of National Treasury's Circular 65 of 2003, the committee must on a quarterly basis report to the Council on the performance of their functions and duties, as well as the functions of the internal audit department. This circular has been amended in 2012, to adapt to the latest developments and expectations regarding internal audit and risk management.

**DISCUSSION**

Based on this Circular, the committee drafted its quarterly and annual report for the period ended 30 June 2023 and which is now being submitted to the Council for discussion and consideration.

**Annexures H, 1 – 5.**

1. 2022/2023 3rd Quarter and Annual Report of the Audit and Performance Audit Committee for the period ended 30 June 2023; and
2. Minutes of the Audit and Performance Audit Committee Meeting held on 23 February 2023, 20 June 2023 (Special APAC meeting) and 27 June 2023.

**LEGAL IMPLICATIONS**

Section 166 of the Municipal Finance Management Act No. 56 of 2003, requires every Municipality to establish and maintain an Audit Committee, as an independent appraisal function.

In terms of National Treasury's Circular 65 of 2003, the committee must on a quarterly basis report to the Council on the performance of their functions and duties and the functions of the internal audit department.

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

None

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

None

**RECOMMENDED TO COUNCIL**

1. that cognizance be taken of the 2022/2023 3rd Quarter and Annual Report of the Audit and Performance Audit Committee for the period ended 30 June 2023; and
2. that cognizance be taken of the Minutes of the Audit and Performance Audit Committee Meeting held 23 February 2023, 20 June 2023 and 27 June 2023.

***DISCUSSION***

*The Speaker, Councillor J.R. van Schalkwyk said that the minutes of APAC indicated that the Head of Internal Audit must form part of the APAC Committee and asked who fulfilled that role for the municipality at the moment, whereby the Municipal Manager, Mrs A. Vorster indicated that the Overberg District Municipality was providing a shared service for the function.*

*The Speaker confirmed that Council took cognisance of the Item and declared the recommendation as noted.*

**UNANIMOUSLY RESOLVED** **Item A150/29/06/2023**

1. that cognizance be taken of the 2022/2023 3rd Quarter and Annual Report of the Audit and Performance Audit Committee for the period ended 30 June 2023; and
2. that cognizance be taken of the Minutes of the Audit and Performance Audit Committee Meeting held 23 February 2023, 20 June 2023 and 27 June 2023.

**9.1.13**
**Item number A151.** 29.09.2023

**UPPER LIMITS OF THE SALARIES, ALLOWANCES AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS FOR THE 2022/2023 FINANCIAL YEAR**

| | |
|---|---|
| Report of the Municipal Manager | A Vorster |
| **Department** | Municipal Manager |
| **Section** | Councillor Support |
| **File Number** | 5/12/R |

**PURPOSE OF REPORT**

To inform Council on the final upper limits of the salaries, allowances and benefits of different members of Municipal Councils for the 2022/2023 Financial Year, as published in the Government Gazette No. 49142 of 18 August 2023.

**FACTS AND BACKGROUND**

In terms of Section 219(1) and (5) of the Constitution, read with Section 8(4) of the Independent Commission for the Remuneration of Public Office Bearers (Commission Act), the Independent Commission for the Remuneration of Public Office Bearers ("the Commission") is mandated to make annual recommendations relating to the salaries and/or upper limits of the salaries, allowances, benefits and the resources (tools of trade) required by the Public Office Bearers (POBs) that will enable them to perform their duties effectively.

Further, Section 7 of the Remuneration of Public Office Bearers Act, 1998 empowers the Minister responsible for local government to determine the upper limits of the remuneration for Municipal Councillors after consultation with Members of the Executive Councils (MEC's) responsible for local government in each province and after, inter alia, taking into consideration the recommendations of the Commission.

Attached as **Annexure I** is the Final Notice No. 3807 on the Determination of Upper Limits of the salaries, allowances and benefits of Different Members of Municipal Councils for the 2022/2023 financial year as published in the Government Gazette No. 49142 of 18 August 2023.

**DISCUSSION**

The remuneration of councillors as per Notice No. 3807 on the Determination of Upper Limits of the salaries, allowances and benefits of Different Members of Municipal Councils for the 2022/23 financial year as published in the Government Gazette No 49 142 of 18 August 2023 is calculated according to grading.

The grading of Municipalities as it pertains to Councillors is determined as follows :

| **Allocation** | **2022/2023** | **Points** |
|---|---|---|
| Total Actual Municipal Income per Cash-Flow | R217 433 969 | 33.33 |
| Total Population | 40 211 | 8.33 |
| | | **41.66 = Grade 3** |

The impact of the new remuneration allocation is as follows :

| | 2022/2023 | 2023/2024 |
|---|---|---|
| Budget | R6 188 083 | R 6 083 160 |
| Total Councillors Remuneration | R5 675 686 | R5 675 686 |
| Budget Surplus | R 512 397 | R 407 474 |

The 2023/2024 budget will be sufficient for a 6% increase in the 2022/2023 financial year.

The above calculation excludes the remuneration of a Deputy Mayor. The composition of the calculation is as follows :

- Executive Mayor – Full Time
- Speaker – Full–Time
- Two Mayoral Committee Members – Full Time
- Chairperson of Oversight – Part-Time
- Six Part Time Councillors (Excluding the chair of the Oversight Committee)

The above calculation excludes any increase for the 2023/2024 financial year that must still be determined.

It should be noted that the amount contained under "total remuneration" requires that every Councillor who elects to include the motor vehicle allowance in his or her salary structure must specifically provide for it. If a Councillor structures his or her total remuneration package to provide for motor vehicle allowance, the Councillor must submit proof of ownership of a private motor vehicle.

In providing for the travelling allowance Councillors attention should be drawn to the reality that this allowance is granted to cover costs incurred on travelling for official business, which excludes travel between the place of residence and ordinary place of work. Although fully taxable on assessment, only 80% of the allowance is subject to the deduction of PAYE. Furthermore, this does not mean that only 80% is taxable. The full allowance remains taxable, and any unspent portion will be included in a Councillor's taxable income and a Councillor would be required to account to the South African Revenue Service (SARS) for the use of such an allowance. Councillors who DO NOT HAVE MOTOR VEHICLES and/or who are likely to have difficulties accounting to SARS for this allowance are advised NOT TO INCLUDE THE TRAVEL ALLOWANCE IN THEIR SALARY STRUCTURE.

It should be clarified that the total remuneration package INCLUDES the travel allowance, housing allowance, municipal contribution to the pension fund and municipal contribution to the medical aid scheme. The allowances that are provided for in the notice and applicable to councillors form the total remuneration package. No additional contribution must be made by the municipality.

Additionally, over and above the annual total remuneration package provided for in terms of items 5 and 8 respectively, Councillors may be paid a cell phone allowance not exceeding R3,600.00 per month and mobile data not exceeding R317.00 per month, in accordance with the applicable municipal council policy.

Municipalities must take out the special risk insurance on residential property limited to R1,5 million while on vehicles it is limited to R750,000. The life and disability insurance cover is limited to 2 times the total remuneration package of a Councillor.

A Councillor is obliged to submit to the municipality details of property, assets, and beneficiaries to be covered by the special risk insurance upon request. A Councillor who fails to submit the required details referred to herein forfeits the benefits associated with the special risk insurance cover.

The notice also necessitates that municipalities ought to develop the following policies to give effect and assist in the implementation of the provisions of the notice:

♣ Travel policy; (Already approved)

♣ Tools of trade policy; (Already approved)

♣ Policy on capacity building; and (To be developed)

♣ Policy on out-of-pocket expenses. (To be developed)

**LEGAL IMPLICATIONS**

- Section 219(1) and (5) of the Constitution, read with Section 8(4) of the Independent Commission for the Remuneration of Public Office Bearers (Commission Act);
- Section (7) of the Remuneration of Public Office Bearers Act, 1998.

**FINANCIAL IMPLICATIONS**

As per Report.

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**COMMENTS FROM DEPARTMENTS**

**Director: Community Services**

Not applicable.

**Director: Financial Services**

As per the report.

**Director: Infrastructure Services**

Not applicable.

**Municipal Manager**

As per the report.

***This item served on the Special Council meeting held on 25 August 2023 and was removed to obtain more information on the final financial report from the insurance assessors with regard to damages to the municipal building.***

**RECOMMENDED**

1. That Council notes that the grading of Swellendam Municipality as it pertains to councillors, calculated according to Final Notice No. 3807 on the Determination of Upper Limits of the salaries, allowances and benefits of Different Members of Municipal Councils for the 2022/2023 financial year as published in the Government Gazette No. 49142 of 18 August 2023, resulted in a grade 3 grading.
2. That Council confirms that there is a budget provision for a six percent increase in the 2022/23 financial year pertaining Councillor remuneration and the increases can be accommodated within the provided budget.
3. That Council confirms that the remuneration for a category 3 municipality as per Final Notice No. 3807 on the Determination of Upper Limits of the salaries, allowances and benefits of Different Members of Municipal Councils for the 2022/2023 financial year as published in the Government Gazette No. 49142 of 18 August 2023, be implemented retrospectively from 1 July 2022 subject to the concurrence from the MEC: Local Government and Environmental Affairs.
4. That an Out of Pocket Expenses and Capacity Building Policy be drafted.

**Councillor G. Libazi asked for a caucus at 14:47. The Speaker granted a 3-minute caucus.**

**The meeting commenced at 14:50.**

*Councillor G. Libazi indicated that the ANC supported the recommendation as-is.*

*The Speaker confirmed that the item was unanimously adopted by Council as-is:*

**UNANIMOUSLY RESOLVED** **Item A152/29/09/2023**

1. That Council notes that the grading of Swellendam Municipality as it pertains to councillors, calculated according to Final Notice No. 3807 on the Determination of Upper Limits of the salaries, allowances and benefits of Different Members of Municipal Councils for the 2022/2023 financial year as published in the Government Gazette No. 49142 of 18 August 2023, resulted in a grade 3 grading.
2. That Council confirms that there is a budget provision for a six percent increase in the 2022/23 financial year pertaining Councillor remuneration and the increases can be accommodated within the provided budget.
3. That Council confirms that the remuneration for a category 3 municipality as per Final Notice No. 3807 on the Determination of Upper Limits of the salaries, allowances and benefits of Different Members of Municipal Councils for the 2022/2023 financial year as published in the Government Gazette No. 49142 of 18 August 2023, be implemented retrospectively from 1 July 2022 subject to the concurrence from the MEC: Local Government and Environmental Affairs.
4. That an Out of Pocket Expenses and Capacity Building Policy be drafted.

**9.1.14**
**Item number A152.** 29.09.2023

**RESUBMISSION: LEASE OF PORTIONS OF MUNICIPAL LAND IN SWELLENDAM: SIBAKULU SECURITY**

| | |
|---|---|
| Report of the Director: Corporate Services: | A Vorster |
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File Number** | 7/2/R |

**PURPOSE OF REPORT**

To consider public feedback, for the lease of municipal land for security purposes, in Swellendam/Railton area.

**FACTS AND BACKGROUND**

The following are two extracts from Council minutes:

***UNANIMOUSLY RESOLVED*** ***Item A145/31/08/2022***

1. *"That Council confirms that the undetermined area next to VRT Pitt, camp 61 (commonage) as well as portion 4 of the industrial erven (as per attached map), Swellendam, is not needed for essential municipal services.*

2. *That Council confirms that it will lease the area next to VRT Pitt and commonage camp 61 as per attached map, to Sibakulu Security Services, for a period of three years at the going commonage lease rate, subject to them fencing the property within three months after approval is provided; and subject to the legal processes and public participation.*

3. *That Council provides the applicant permission to apply for a land use deviation/ consent to ensure that their proposed activities be aligned with the appropriate zoning.*

4. *That Council confirms that portion 4 (as per the attached map) of the industrial area, Swellendam, can be leased to the applicant for a period of three years at market value, subject to legal processes and public participation.*

5. *That the applicant is responsible for all costs relating to this application, including advertising, valuation reports, land use planning application and the drafting of a lease agreement.*

6. *That all leased portions be subject to a 6-month cancellation period.*

***UNANIMOUSLY RESOLVED*** ***Item A23/30/03/2023***

1. *that the standing Council resolution Item A145 of 31 August 2022 remains valid;*
2. *that the lease of the area next to VRT Pitt Primary School and commonage camp 61 to Sibakulu Security Services, be extended to a period of nine (9) years and eleven (11) months."*

Find the previous reports, as stated above attached as **Annexure J, 1-5.**

**DISCUSSION**

Notice H6/2023 was placed in the local newspaper on 3 August 2023 and circulated for public comments/objections. A lot of feedback was received.

Sibakulu Security was asked to answer the following questions, as received from the public, but no feedback was received:

1. Where will incoming trainee security guards be housed?
2. How will weapons be stored safely?
3. Will trainee security guards be armed, and what measures will be in place to control their access to weapons outside of their training?
4. What is the specific purpose for which security guards are being trained?
5. Where will goods removed during land invasions, be stored or dumped?
6. Is your company registered with CIPC?
7. Is your company registered with PSIRA? (for training and guarding)
8. Do you have liability insurance, in case of an accident?
9. Is your company registered with SAPS, for firearms training?
10. Is your company a closed corporation of company?
11. If closed corporation, who are your directors?

- *Would it not be a more transparent process if these parcels of land were advertised on an open tender for anyone to apply for leasing of the land?*
- *Why an unknown security company that will bring in the guards from outside the municipality? They being based in Durban and Brakenfell (CPT)*
- *With the guards come wives, girlfriends, kids and to be housed where? Another spurt in the informal settlement which is already out of control!!*
- *Once the lease expires, if ever, what happens to all the staff and family that have been brought in from outside the municipality. Further unemployment?*
- *What about arms and ammunition, where will this be in safe keeping and how will this be controlled?*

*All the while the above being neighbour to an informal settlement!!*

*I oppose the leasing to Sebakulu as I feel the security pertaining weapons being stored at the facilities have not been made clear, secondly why bring 2000 out of towners into SWD when we have ample and eager unemployed people. Where are these workers going to live etc? It seems like a ploy to bring more informal dwellings to an already battling infrastructure*

*I have several questions and concerns regarding this lease application. Firstly, will the trainee security guards be armed, and what measures will be in place to control their access to weapons outside of their training? The prospect of introducing easy access to weapons in an area that has recently demonstrated xenophobic tendencies is deeply concerning.*

*Secondly, what is the specific purpose for which the security guards are being trained? Will the security company be contracted by financial establishments or companies to ensure the safe passage of goods? It is important to ensure that this is not a training ground for a private militia-type organization that could be called upon to support any quasi-political initiatives.*

*Lastly, could you provide more information about the storage of goods removed during land invasions? It is crucial that the Council seeks a detailed explanation of this matter. This statement raises concerns that the company may be involved in activities beyond simply protecting their employers' goods.*

*After my email expressing concerns about the Security Training Company, I thought I should do my own research into the nature of the company. I found the website, but I was unable to* *find them registered with CIPC which I thought was mandatory, though possibly not if they are not being directly employed by government? It was however another red flag...*

*I object strongly, to these areas, being approved for the stated Security Company training purposes.*
*I have several reasons, but mainly, more weapons in various forms, being brought to our home area.*

- *Many extra people will be living in Swellendam in an already over populated area;*
- *Extra costs on water/electricity and housing that can be utilized in better ways;*
- *People with weapons in our town are my biggest concern and objection, as this is unsafe for everyone, especially the children. I think that the police should be the only people with the right to bear arms.*

*We object to the way the Municipality approved in principle the lease of the above-mentioned property to a Security Company which was not thoroughly checked out for the necessary registration of such a security business. Take note this is Sibakulu and not Sibakhulu (which is not a registered company);*
*They plan to train security guards (will they be armed) this is in the close proximity of a Primary School, which places children in a dangerous environment.*

*The whole area up to the N2, is included in this transaction. In light of the recent events there is no certainty that such a company will play a positive role and might even add to the political unrest;*

*This is open land with no infrastructure, no storage or any form of accommodation;*

*To our knowledge it will be males from elsewhere, a threat to the safety of women and young girls;*

*There is mention of storing debris and building material from illegal structures, where do they intend to dump it an add to the pollution;*

*For any form of weapons and ammunition, the storage facility must be cleared by the police.*

**The following letter was received, by hand, from 181 different people:**

*"I hereby object to the leasing of the above plots to Sibakulu Security (SS) for the following reasons:*

1. *The zoning is not appropriate for their operations as contained in your notice.*
2. *Before dealing with municipal property for such a long lease term, it is desired that a proper tender process will be followed and shared with the public.*
3. *Sibakulu Security must, in any case, provide proper and acceptable evidence that their activities will be acceptable within municipal ordinance.*
4. *The type of activities that are planned have a security risk for the Swellendam community and for that a thorough background investigation of the business and owners must be done.*
5. *Where will the incoming trainee security guards be housed?*
6. *What guarantee do we have that they wil return?*
7. *Why were these land parcels not put out for open tender?*
8. *How will any weapons be stores safely?*
9. *Has Sibakulu Security been properly vetted?*
10. *How will this impact on the local security companies that make a living in this town?*

*In light of the above, I/we insist that the process and letting be set aside."*

**The following letter was also received, by hand, signed by 84 different people:**

*'I hereby object to the leasing of the above plots to Sibakulu Security (SS) for the following reasons:*

1. *The zoning is not appropriate for their operations as contained in your notice.*
2. *Before dealing with municipal property for such a long lease term, it is desired that a proper tender process will be followed and shared with the public.*
3. *Sibakulu Security must, in any case, provide proper and acceptable evidence that their activities will be acceptable within municipal ordinance.*
4. *The type of activities that are planned have a security risk for the Swellendam community and for that a thorough background investigation of the business and owners must be done.*

*In light of the above, I/we insist that the process and letting be set aside."*

**LEGAL IMPLICATIONS**

The following legislation regulates property management:

- The stipulations of Section 14 of the Municipal Management Act, 2003, (Act 56 of 2003) (MFMA);
- The By-Law relating to the Management and Administration of Immovable Property, 2018.
- The Asset Transfer Regulations, 2008.
- Land Disposal Policy, 2018

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**COMMENTS FROM DEPARTMENTS**

**Town Planning & Building Control – Mr R. Brunings**

None

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

The application was advertised for public comment. The proposed use was always subject to land use processes. With the public opinion against the proposed leasing, the application is not supported for approval.

**RECOMMENDED**

1. that Council does not support the lease of the area next to VRT Pitt, camp 61 (commonage) as well as portion 4 of the industrial erven, Swellendam, to Sibakulu Security, due to the concern about the proposed activities on the relevant property.

***DISCUSSION***

*The Speaker, Councillor J.R. van Schalkwyk shared that the item was open for public input and a number of members of the community who were not in support of leasing the land to Sibakulu Security, raised their concerns.*

**PROPOSAL 1:**

The Executive Mayor, Councillor H.F. Du Rand proposed that the following recommendation be accepted as-is:

1. that Council does not support the lease of the area next to VRT Pitt, camp 61 (commonage) as well as portion 4 of the industrial erven, Swellendam, to Sibakulu Security, due to the concern about the proposed activities on the relevant property.

**Proposer:** Councillor H.F. Du Rand
**Seconder:** Councillor E.J. Lamprecht

**Councillor M.T.A. requested a caucus at 15:01. The Speaker granted a 5-minute caucus.**

**The meeting commenced at 15:06.**

*Councillor M.T.A. Swart indicated that the ANC did not support the recommendation as the item has been tabled to Council previously and both parties were in support of leasing the land to Sibakulu Security. She said that she was of the opinion that it was a political game.*

**PROPOSAL 2:**

Councillor M.T.A. Swart proposed the following recommendation:

1. that the ANC do not support the recommendation as tabled but would like to proceed with leasing the area next to VRT Pitt, camp 61 as well as portion 4 of the industrial erven, Swellendam to Sibakulu Security and give them an opportunity to prove themselves.

**Proposer:** Councillor M.T.A. Swart
**Seconder:** Councillor G. Libazi

*Councillor G. Libazi indicated she was concerned that Council has not given Sibakulu Security a chance to prove themselves yet and already decided to withdraw the Council decision to* *lease the land to them. She said that there were reasons justified by the Municipal Manager at the time, why Council should decide to lease the land to Sibakulu Security.*

*Councillor G. Libazi indicated that it was important that Council be consistent when making decisions.*

*The Speaker indicated that there were a lot of reasons in the public comments that gave reason why the lease should not be granted to Sibakulu Security and it was Council's duty to consider the public's inputs.*

The TWO DULY constituted proposals were put to the vote by the Speaker by show of hands.

**Proposal 1:**

**Six (6) Councillors:** Councillor H.F. Du Rand; F. Kees; E.J. Lamprecht; A. Bokwana; D. Julius and J.R. van Schalkwyk indicated that they were in favour of the recommendation as-is.

**Proposal 2:**

**Five (5) Councillors:** Councillor M.T.A. Swart; J.A. Matthysen; G. Libazi and D.J. Julius and I.H. Ferguson.

**RESOLVED** **Item A152/29/09/2023**

1. that Council does not support the lease of the area next to VRT Pitt, camp 61 (commonage) as well as portion 4 of the industrial erven, Swellendam, to Sibakulu Security, due to the concern about the proposed activities on the relevant property.

9.1.15
**Item number A153.** 29.09.2023

**TENDER SMT22/21/22 – DEVELOPMENT PROPOSALS FOR ERF 2599, SWELLENDAM**

| | |
|---|---|
| Report of the Director: Corporate Services: | A. Vorster |
| **Department** | Corporate Services |
| **Section** | Legal Services |
| **File Number** | 7/2/R |

**PURPOSE OF REPORT**

To consider a proposal from Raubex Building (Pty) Ltd for the development of Erf 2599, Voortrek Street, Swellendam.

**FACTS AND BACKGROUND**

Council has resolved per Item A24 on 25 February 2021 to invite proposals for the development of Erf 2599 via a public tender.

Extract from the minutes:

***RESOLVED*** ***Item A24/25/02/2021***

1. *"that Council resolves that Erf 2599, 6.2 hectares Swellendam, is not needed for the provision of basic municipal services in terms of section 14 of the Municipal Finance Management Act, 2003 (Act 56 Of 2003);*
2. *that Council approves that developers be invited through the Supply Management Process to submit proposals for the right to develop Erf 2599, Swellendam for residential purposes.*
3. *that the intention is not to sell and transfer Erf 2599 to the successful tenderer but to enter into a land availability agreement with the successful tenderer.*
4. *that the proposals from developers must include the following:*
   - *4.1 A detailed development proposal*
   - *4.2 A detailed proposed marketing plan*
   - *4.3 A detailed development programme and time frame*
   - *4.4 Confirmation from registered financial institutions who will provide the funding.*
5. *that the following conditions be made applicable to the proposed development of Erf 2599, Swellendam and interested developers must acknowledge this in their proposals:*
   - *i. Erf 2599 is zoned for residential development but is not serviced.*
   - *ii. all cost for essential services of Erf 2599 and all costs for further land use planning, subdivision, rezoning, environmental impact study, traffic impact assessment, heritage study and legal transfer/registration is for the cost of the developer;*
   - *iii. The developer will refund the municipality on the successful sale of erven per square metre as agreed upon;*
   - *iv. the development proposals will be subject to an approved site development plan and other development proposals as approved by Council.*
   - *v. development programmes and time frames must be adhered to in order to avoid cancellation of the contract entered into with the municipality.*
   - *vi price offers per square meter must be submitted together with the development proposals;*

vii. *the successful developer will be required to submit suitable guarantees, from registered financial institutions, to the municipality's attorneys within 30 days after requested to do so equal to 10% of the estimated development cost in order to ensure that they do qualify for financing and development of the land.*

viii. *the developer will upgrade and extend all engineering services in accordance of the Master Planning of the municipality to ensure sustainable functionality of the development.*

ix. *The developer shall submit detailed site development plans to the Director Infrastructure Services so that the impact on existing infrastructure can be determined so that upgrading plans and bulk link capacity increase requirements can be determined and agreed to be installed to prevent overloading of the current capacity of the infrastructure."*

Council further resolved on the reserve price as per Item A80 on 24 June 2021 as follows:

***RESOLVED*** ***Item A80/24/06/2021***

*"that Council approves the proposed Scope of Work and a Reserve Price of R3.1 million (plus VAT), in respect of the development of Erf 2599, Swellendam, in order for the Supply Chain Management process to proceed."*

**DISCUSSION**

The municipality has identified the need for the development of housing opportunities for what is commonly referred to as the affordable housing market. Erf 2599, Swellendam was made available for this purpose and was advertised on a tender process. Raubex Building (Pty) Ltd was the only tenderer and was requested to do a presentation at the Council meeting, before a decision will be made.

Raubex Building (Pty) Ltd was requested to make a presentation to Council on their proposed development. This Municipality requested additional information from the bidder to make an informed decision on their proposal. This information is **attached as Annexure K.1-3.**

**LEGAL IMPLICATIONS**

The following legislation regulates property management:

- The stipulations of Section 14 of the Municipal Management Act, 2003, (Act 56 of 2003) (MFMA);
- The By-Law relating to the Management and Administration of Immovable Property, 2018.
- The Municipal Asset Transfer Regulations, 2008.
- Municipal Policy in relation to the Management, Administration and Alienation of Immovable Property, 2014.
- Municipal Land Disposal Policy, 2018
- Swellendam Municipality: By-law on Land Use Management, 2020

**FINANCIAL IMPLICATIONS**

None

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

None

**COMMENTS FROM DEPARTMENTS**

**Director: Corporate Services**

As per report

**Town Planning & Building Control – Mr R. Brunings**

Not applicable.

**Director: Community Services**

Not applicable.

**Director: Financial Services**

Not applicable.

**Director: Infrastructure Services**

Not applicable.

**Municipal Manager**

Not applicable.

**RECOMMENDED**

**Recommendation by the Bid Evaluation Committee:**

1.1 It is recommended that the proposal for Raubex Building (Pty) Ltd for the Development of Erf 2599, Swellendam be availed to Council for consideration on the following conditions:

1.1.1 that the BAC appoints a CA/Accountant to evaluate the following:

a. Financial Statement: The report to indicate whether the company has the required liquidity / financial capability, and
b. Financial Proposal: The report to indicate that the proposal is in line with the set requirements and conditions stipulated in the tender specifications.

1.1.2 that from a town planning perspective vehicle access to Erf 2599 from Voortrek Street, be from the existing access that runs along the southern boundary of the property, adjoining Erf 2906.
1.1.3 That the proposal, including the financial reports and input from town planning, be prepared as an item for Council to access.
1.1.4 That Council provide a decision on whether the proposal is accepted.

1.2 The recommendation as stipulated in paragraph 1.1 is subject to the following:

1.2.1 the development of the property must conform to the zoning requirements and the building regulations of the Local Authority and in terms of all other applicable legislation.

1.2.2 Upon acceptance of the preferred proposal by the Council, the proponent agrees and undertakes to be bound by the terms of the proposal as submitted.

1.2.3 The successful bidder will have to sign a Land Availability Agreement.

1.2.4 The successful developer will be required to submit suitable guarantees, from registered financial institutions, to the municipality's attorneys within 30 days after being requested to do so, equal to 10% of the estimated development cost, in order to ensure that they do quality for financing and development of the land.

**RECOMMENDED**

1. that Council confirms to the BAC that they can proceed with the awarding of the bid.

***DISCUSSION***

*The Executive Mayor, Councillor H.F. Du Rand that this was a good opportunity to increase the tax payers of Swellendam and provide opportunity for first time home buyers to buy a house with the value from R700 000 to R1.2 million especially municipal employees that did not have a house yet.*

*The Speaker confirmed that the recommendation was supported by all Councillors.*

**UNANIMOUSLY RESOLVED** **Item A153/29/09/2023**

1. that Council confirms to the BAC that they can proceed with the awarding of the bid.

**9.1.16**

**Item number A154.** 29.09.2023

**COUNCILLOR SAFETY PLAN**

| | |
|---|---|
| Municipal Manager | A Vorster |
| **Department** | Municipal Manager |
| **Section** | Councillor support |
| **File Number** | 3/4/4 |

**PURPOSE OF REPORT**

To consider a proposed Councillor Safety Plan for Swellendam Municipality.

**FACTS AND BACKGROUND**

As local government is the sphere of government that is closest to our communities, local government representatives are the first point of contact for communities to raise socio-economic issues with. With this closeness, comes an inherent risk for conflict, often aimed at public representatives. Violent service delivery protests are increasing countrywide, including the areas within the jurisdiction of Swellendam Municipality.

According to the Upper limits of salaries, allowances and benefits of different members of Municipal Councils Notice, (GNR 2126; GG 46470 of 2 June 2022) Councillors may qualify for personal protection, subject to risk analysis, but for official matters only.

The increase in social tensions necessitates the Municipality to develop regulatory mechanisms and measures, within its powers and budget, to address viable threats related to their official duties, on councillors. The original policy was approved on 29 June 2023 per item A94, but a review was needed.

**DISCUSSION**

The purpose of this policy is to provide protection to all councillors, during times of violent service delivery protests or political instable situations that threaten their lives relating to their duties as councillors. The policy only pertains to Council-related risks and not to general or personal risks.
The potential or perceived risk will be dependent on a risk assessment by SAPS and the protection will be managed by the Speaker and Accounting Officer, except in the case of the Speaker and the Executive Mayor, where they are entitled to two bodyguards without a risk assessment. The proposed changes to the policy are highlighted in red. **(See attached Annexure L)**

**LEGAL IMPLICATIONS**

Upper limits of salaries, allowances and benefits of different members of Municipal Councils Notice, (GNR 2126; GG 46470 of 2 June 2022)

**FINANCIAL IMPLICATIONS**

The initiatives will be subject to an available budget provision.

**PERSONNEL IMPLICATIONS**

None

**COMMUNICATION IMPLICATIONS**

Disseminate amongst councillors.

**COMMENTS FROM DEPARTMENTS**

**Director: Community Services**

None

**Director: Financial Services**

None

**Director: Infrastructure Services**

None

**Municipal Manager**

As per report

**RECOMMENDED**

1. that Council approves the Safety Plan for Councillors.

***DISCUSSION***

*The Executive Mayor, Councillor H.F. Du Rand indicated that the policy was a living document and it was requested that amendments be made to the Councillor Safety Plan and the changes can be found marked in red in the document.*

*The Speaker confirmed that all Councillors were in favour of the recommendation as-is:*

**UNANIMOUSLY RESOLVED** **Item A154/29/09/2023**

1. that Council approves the Safety Plan for Councillors.

**9.2 Consideration of matters which require non-disclosure**

None

**9.3 Consideration of urgent matters**

None

## 10 MINUTES OF COMMITTEES AND AD HOC COMMITTEES

**RESOLVED:**

**10.1** that the minutes of a Section 32 Committee meeting held on Friday, 30 June 2023 which were sent to all Councillors within a reasonable time prior to the meeting, be taken as read and be hereby noted.

## 11 CONFIRMATION OF MINUTES

**Proposer:** Councillor F. Kees
**Seconder:** Councillor H.F. Du Rand

**RESOLVED:**

**11.1** that the minutes of an Ordinary Council meeting held on Thurday, 29 June 2023 which were sent to all Councillors within a reasonable time prior to the meeting, be taken as read and be hereby confirmed.

**11.2** that the minutes of Special Council meeting held on Friday, 28 July 2023 which were sent to all Councillors within a reasonable time prior to the meeting, be taken as read and be hereby confirmed.

**11.3** that the minutes of a Special In-Committee Council meeting held on Friday, 28 July 2023 which were sent to all Councillors within a reasonable time prior to the meeting, be taken as read and be hereby confirmed.

**11.4** that the minutes of a Special Council meeting held on Wednesday, 16 August 2023 which were sent to all Councillors within reasonable time prior to the meeting, be taken as read and be hereby confirmed.

**11.5** that the minutes of a Special Council meeting held on Friday, 25 August 2023 which were sent to all Councillors within reasonable time prior to the meeting, be taken as read and be hereby confirmed.

## 12. MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS MEETING

**12.1 Matters arising from the minutes: 16 August 2023**

In response to a question raised by the Executive Mayor, Councillor H.F. Du Rand with regard to when the municipality will be receiving the report from the SAPS on the investigation, the Municipal Manager, Mrs A. Vorster indicated that the municipality has not received feedback as it was still an ongoing process.

### 12.2 Matters arising from the minutes: 25 August 2023: Leave of Absence:

The Speaker, Councillor J.R. van Schalkwyk informed Council that Councillor D. Julius did provide leave of absence from the meeting of Friday, 25 August 2023 but that it was accidently missed the first time. The Speaker apologised and confirmed that Councillor D. Julius's leave of absence from the meeting, was duly granted.

## 13. CONSIDERATION OF MATTERS OF EXIGENCY

None

## 14. GENERAL

## 15. CLOSURE

The Speaker thanked everyone for their time and commitment to attend the meeting.

The meeting adjourned at 15:34.

# IN-COMMITTEE COUNCIL MEETING MINUTES

**MINUTES OF AN IN-COMMITTEE COUNCIL MEETING HELD ON FRIDAY, 29 SEPTEMBER 2023 AT 15:45 IN THE COUNCIL CHAMBERS, RHENIUS STREET SWELLENDAM.**

**PLEASE RETAIN THIS DOCUMENT FOR RECORD PURPOSES AS IT WILL NOT BE CIRCULATED AGAIN.**

Yours sincerely

26/10/2023

**J.R. VAN SCHALKWYK**

**DATE**

**SPEAKER**

<u>**INDEX**</u>

**MINUTES OF AN IN-COMMITTEE COUNCIL MEETING OF THE MUNICIPAL COUNCIL OF SWELLENDAM MUNICIPALITY HELD FRIDAY, 29 SEPTEMBER 2023 AT 15:45 IN THE COUNCIL CHAMBERS, RHENIUS STREET, SWELLENDAM.**

| | | | |
|---|---|---|---|
| **PRESENT:** | **Councillor** | J.R. van Schalkwyk | Speaker |
| | | H.F. Du Rand | Executive Mayor |
| | | E.J. Lamprecht | |
| | | F. Kees | |
| | | A. Bokwana | |
| | | D. Julius | |
| | | J.A. Matthysen | |
| | | G. Libazi | |
| | | D.J. Julius | |
| | | M.T.A. Swart | |
| | | I.H. Ferguson | |

| | | |
|---|---|---|
| **IN ATTENDANCE:** | A. Vorster | Municipal Manager |
| | E. Wasserman | Director: Financial Services |
| | K. Stuurman | Director: Community Services |

**SECRETARIAT:**

K. Uys

**RECORDING OFFICER:**

K. Uys

## 9.2 Consideration of matters which require non-disclosure.

### 9.2.1

### FEEDBACK BY THE SPEAKER ON DISCIPLINARY MATTERS

**Complaint 1:**

*The Speaker, Councillor J.R. van Schalkwyk shared that he received a complaint in June 2023 against Councillor J.A. Matthysen for allegedly transgressing section 3 of the General Conduct for Councillors, which states that a Councillor must during meetings maintain good and orderly behaviour. The Speaker said that he investigated the complaint and requested the Municipal Manager to appoint an initiator to investigate. He said that the Municipal Manager has to draft the scope of the complaint and it will be investigated to see whether there was a case to answer.*

**Complaint 2:**

*The Speaker shared that on 12 September 2023 he received a complaint agains Mr R. Jonas, Ward Committee member for Ward 4 and Mr M. Tiyanga Ward Committee member for Ward 5 for allegedly transgressing the Code of Conduct for Ward Committee members specificly relating to the burning of the municipal building on 16 August 2023. The Speaker said that he he requested the Municipal Manager to appoint an initiator to investigate.*

*The Speaker said that the Ward Committee members have a different Code of Conduct to that of Councillors as Councillors have Standing Rules for disciplinary procedures where with Ward Committee members the law of natural justice applies which means that Council has to investigate whether there was a prima facie case.*

**Complaint 3:**

*The Speaker shared that on 12 September 2023 he also received a complaint against Councillor M.T.A. Swart, Councillor I.H. Ferguson, Councillor J.A. Matthysen, Councillor D.J. Julius and Councillor G. Libazi for allegedly transgressing section 3 of the General Conduct for Councillors which states, if a Councillor is known to have or been seen to have orchestrate with a group of members of the public or municipal staff to engage in violent protests or labour unrest agianst the municipality, such a Councillor must be disciplined by the municipal Council for breach of the code. The Speaker said that he requested the Municipal Manager to appoint an initiator to investigate whether there was a case to answer.*

**Complaint 4:**

*The Speaker shared that on 13 September 2023 he received a complaint of Councillors not attending Council and Committee of Council meetings. He said that this was not being handed over but investigated by the Speaker's office. The Speaker said that he wanted to remind Councillors that it was critical to attend meetings as Council was having a lot of issues on the matter at the moment and if a Councillor do not attend meetings of Council in a row without an approved leave of absence by the Chairperson of a Committee or the Speaker of Council, then the matter will be dealt with. The Speaker added that he will investigate the matter and give feedback within the next 2 weeks in that regard.*

**Complaint 5:**

*The Speaker shared that on 14 September 2023 he received a complaint against Mr C. Paine in Ward 2 for interfering in the Administration in proper gain of favor and polical bias. He said that he requested the Municipal Manager to appoint an initiator to investigate whether there was a case to answer and determine if there was enough facts to proceed to a proper investigation before money was spent on a proper investigation.*

**Complaint 6:**

*The Speaker shared that on 18 September 2023 he received a complaint against the Executive Mayor Councillor H.F. Du Rand for violating the Structures Act. He said that he was still busy investigating and will make a decision by Wednesday, 04 October 2023 on what to do with the investigation.*

**Complaint 7:**

*The Speaker shared that on 26 September 2023 he received a complaint against Councillor J.A. Matthysen for allegedly transgressing section 3 of the General Code of Conduct for Councillors in connection with the 20th of September's riot, of wich the code states, if a Councillor is known to have or been seen to have orchestrate with a group of members of the public or municipal staff to engage in violent protests or labour unrest agianst the municipality, such a Councillor must be disciplined by the municipal Council for breach of the code. The Speaker said that he requested the Municipal Manager to appoint an initiator to investigate whether there was a case to answer.*

**Complaint 8:**

*The Speaker shared that an additional complaint was received on 26 September 2023 againts Mr R. Jonas from Ward Committee 4 and Mr M. Tiyanga from Ward Committee 5 for allegedly transgressing the code of conduct for Ward Committee members in the riot of 20 September 2023. The Speaker said that he requested the Municipal Manager to appoint an initiator to determine whether there was a case to answer.*

**Concerns by Councillor J.A. Matthysen:**

*Councillor J.A. Matthysen shared that he was not comfortable with the Municipal Manager Mrs A. Vorster instructed to appoint an initiator in the mentioned cases due to comments she made to the ANC Councillors on the 16th of August 2023.*

*The Speaker responded that Councillor Matthysen's concerns was noted. He added that he was an objective Speaker and will not allow any of the procedures to be used for anything accept what was fair and just. He said that he took his time to get legal advice to ensure that the processes were done as fair as possible and that there was no biasness in the process.*

**Feedback from the Executive Mayor, Councillor H.F. Du Rand on complaints against the Municipal Manager, Mrs A. Vorster:**

*The Executive Mayor, Councillor H.F. Du Rand indicated that he was informed by the CFO, Ms E. Wassermann that the municipality went out for quotations and appointed an initiator in the case of the Municipal Manager, Mrs A. Vorster, within the 7 days as stated by the legislation.*

*The Speaker thanked everyone for attending the meeting.*

*The meeting adjourned at 15:55.*