

COUNCIL MEETING AGENDA



To: Councillors:

J.R. Van Schalkwyk (Speaker)
H.F. Du Rand (Executive Mayor)
E. J. Lamprecht
F. Kees
D. Julius
A. Bokwana
G. Libazi
J.A. Matthysen
M.T.A. Swart
D.J. Julius
I.H. Ferguson

Ex Officio:

E. Wassermann (Director: Financial Services)
K. Stuurman (Director: Community Services)
E. Delport (Acting: Director: Infrastructure Services)
R. Brunings (Manager: Town Planning and Building Control)

AGENDA FOR AN ORDINARY COUNCIL MEETING

Notice is hereby given that an **Ordinary Council meeting** of the Municipal Council of Swellendam Municipality will be held on **Wednesday, 30 October 2024** at **10:00** in the **Council Chambers, Rhenius Street, Swellendam** to consider the items attached hereto.

A handwritten signature in black ink, appearing to read "JRS", is written in a cursive style.

**J R VAN SCHALKWYK
SPEAKER**

DATE: 25 October 2024

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1. OPENING AND WELCOME

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

4. Commencement of Meeting

The speaker must take the chair precisely at the time for which the meeting is convened and must proceed immediately with the business of the meeting subject to section 14.

14. Quorum

- (1) A majority of the members constitutes the quorum.
- (2) If there is no quorum at the time for which the meeting is scheduled, the speaker must take the chair as soon as a quorum is present.
- (3) Whenever there is no quorum, the start of the meeting must be delayed for no longer than 30 minutes and if at the end of the period, there is no quorum, the speaker must adjourn the meeting to another time, date and venue at his or her discretion and record the names of those members present.
- (4) Whenever the speaker is not present and there is no quorum, the municipal manager must act in accordance with the procedure prescribed in terms of subsection 14(3).
- (5) Whenever during a meeting there is no quorum, the speaker must suspend the proceedings until a quorum is again present or adjourn the meeting if a longer time has passed than the speaker has allowed and there is still no quorum.
- (6) Whenever a meeting is adjourned owing to the absence of a quorum, the speaker must convene a meeting within seven (7) days where the rest of the matters on the agenda must be dealt with.

2. ELECTION OF ACTING SPEAKER, IF NECESSARY

Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)

41. Acting speakers

If the speaker of a municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council must elect another councillor to act as speaker.

3. APPLICATION FOR LEAVE OF ABSENCE

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

11. Leave of Absence

A member who wishes to absent himself or herself from meetings must act in accordance with the rules relating to the leave of absence from the council as determined by council.

Item A2481: Council meeting of 21 November 2013:

PROPOSED AMENDMENTS – ITEM A2446 OF 7 OCTOBER 2013: RULES OF ORDER AND PROCEDURES WITH REGARDS TO ALLEDGED TRANSGRESSION OF THE CODE OF CONDUCT FOR COUNCILLORS

1. That the following procedures be reconfirmed by means of which councillors may apply for leave of absence from 'n council meeting:

LEAVE OF ABSENCE

1. Application for leave of absence from a meeting of the Council must be addressed to the Speaker of Council in writing and signed by the member who is applying for such leave.
2. The Speaker of Council may only consider applications for leave of absence which are in writing. Applications for leave of absence which are not in writing may not be considered.
3. Notwithstanding Section 2 above, applications for leave of absence from a meeting are deemed to have been granted if:
 - 3.1 the Council or Mayor delegated the relevant member to act elsewhere on behalf of the Council in a matter; or
 - 3.2 if the Council requests the member to leave the relevant meeting in circumstances envisaged in Item 3(b) of the code of conduct of Schedule 1 to the Systems Act, or the member recuses him/herself.
4. The Speaker may, subject to Sections 2 and 3 above, grant leave of absence to a member for the following reasons:

- 4.1 illness of the member a medical certificate must be handed to the office of the Speaker in this regard within 5 working days after the Council meeting, for which leave of absence was applied by the member as proof of illness.
 - 4.2 essential business or personal commitments, or personal circumstances of the member.
 - 4.3 When the member is not permitted to attend the meeting due to circumstances envisaged in item 3(b) of the Code of Conduct for Councillors in Schedule 1 to the Systems Act;
 - 4.4 Any other circumstances where the member is prevented from attending the meeting.
2. That the following revised fines are imposed in respect of situations where councillors fail to remain in attendance of council meetings:
- FINES IN TERMS OF PARAGRAPH 4(2)(b) OF THE CODE OF CONDUCT FOR COUNCILLORS**
- In the case where the accused councillor was convicted that he or she failed to remain in attendance at a meeting of the Council, the Council may impose the following penalties:
- a. 1st transgression, 10 % of the Councillor's monthly remuneration;
 - b. 2nd transgression, 15 % of the Councillor's monthly remuneration;
 - c. 3rd transgression, 20 % of the Councillor's monthly remuneration;
 - d. 4th transgression, 25% of the Councillor's monthly remuneration; and
 - e. 25% for each subsequent transgression.
3. That the disciplinary committee, as established, handles complaints against councillors who are guilty of paragraph 4(2)(b) of the code of conduct Councillors as per schedule 1 of Municipal Systems Act, 2000 (Act 32 of 2000).

3.1 A blank application for leave of absence form is enclosed

3.2 The attendance registers will be available at the meeting

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

10. Attendance of meetings

- (1) Every member attending a meeting of the council must sign his or her name in the attendance register kept for such purpose.
- (2) A member must attend each meeting except when-
 - (a) leave of absence is granted in terms of section 11; or
 - (b) the member is required to withdraw in terms of law.

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|-------------------------------------|
| 4. MOTIONS OF JOY AND SORROW |
|-------------------------------------|

4.1 Announcement of birthdays:

Cllr. M.T.A. Swart – 11 November

4.2 Announcements of deaths by Municipal Manager

September 2024

| SWELLENDAM | |
|----------------------------|------------|
| Sandra Perold | Swellendam |
| Magdaleen Pietersen | Swellendam |
| Marius Matthee | Swellendam |
| Marie Stadler | Swellendam |
| Maria Snyman | Swellendam |
| Alfred Lebasi | Swellendam |
| Eva-Lotta Lof | Swellendam |
| Johannes Willemse | Swellendam |
| Helena Platjies | Swellendam |
| Telorise Ben | Swellendam |

| | |
|--------------------------------|------------|
| Jan Slingers | Swellendam |
| Klasiena Arends | Swellendam |
| Job Jaffa | Swellendam |
| Dawid Fortuin | Swellendam |
| Jacoba Nieuwoudt | Swellendam |
| Hans Wolfaardt | Swellendam |
| Sandra Whelan | Swellendam |
| Manthabaleng Pita | Swellendam |
| Baby Bachobonke | Swellendam |
| Annie September | Swellendam |
| Allison Hely-Hutchinson | Swellendam |
| Willem Booysen | Swellendam |
| Marrina Evertson | Swellendam |
| Elizabeth Pietersen | Swellendam |
| Whitney Plaatjies | Swellendam |
| Delta Alman | Swellendam |
| Louis Adendorf | Swellendam |
| Rachel Morris | Swellendam |
| BARRYDALE | |
| Liza Davids | Barrydale |
| Susanna Pretorius | Barrydale |
| Jennifer Ben | Barrydale |
| Johannes Kees | Barrydale |
| Denzil Marthinus | Barrydale |
| SUURBRAAK | |
| Piet Theodore | Suurbraak |
| Hendrick Brandt | Suurbraak |

5. SPEECHES AND SUBMISSIONS

6. STATEMENTS AND COMMUNICATIONS BY THE SPEAKER

7. STATEMENTS AND COMMUNICATIONS BY THE EXECUTIVE MAYOR

8. DISCLOSURE OF INTERESTS BY COUNCILLORS

Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)

5. Disclosure of interests

- (1) A councillor must-
 - (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
 - (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars

of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.

- (3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

9. MATTERS FOR CONSIDERATION

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 4: DECISION

15. Unopposed Matters

Whenever council is called upon to consider a matter before it and there is no opposition from any member, a unanimous vote will be recorded in the minutes.

16. Opposed Matters

- (1) After attempts to reach consensus on certain matters have failed, the speaker must put the matter under discussion to the vote. Motions must be moved and seconded by members. Hereafter the speaker must call upon the members to indicate by a show of hands whether they are for such motions or against it, whereupon he or she declare the result of such vote.
- (2) Upon the speaker's declaration of the result of a vote, a member may demand for his or her vote to be recorded against the decision concerned and the municipal manager shall ensure that such vote is recorded in the minutes.
- (3) If there is an equality of votes in respect of a matter on which voting takes place, the speaker must exercise his or her casting vote, in addition to his or her deliberative vote, provided that the speaker may not exercise a casting vote in terms of any matter set out in section 160(2) of the Constitution.

PART 7: RULES OF DEBATE

23. Member to address the chair

A member who speaks at a meeting must address the chair and may do so in any one of the three official languages of the Province of the Western Cape.

24. Order or priority

When a member wishes to address the council, he or she must first have the permission of the speaker.

25. Precedence of speaker

Whenever the speaker addresses the meeting, all members must be silent so that the speaker may be heard without any interruption.

26. Relevance

- (1) A member who speaks must direct his speech strictly to the subject or matter under discussion or to an explanation or to a point of order.
- (2) No discussion may be permitted-
 - (a) which will anticipate any matter on the agenda;
 - (b) on any matter in respect of which a decision by a judicial or quasi-judicial body or a commission of enquiry is pending.

27. Right to speak

A member or non-member may speak on any matter before the council as determined by the speaker, provided that speeches of all members and non-members are allocated in a fair manner.

28. Length of speeches

The speaker determines the length of speeches.

31. Speaker's ruling on points of order and explanation

- (1) The ruling of the speaker on a point of order or an explanation shall be final and not open to discussion.
- (2) The ruling of the speaker on any point of order raised as to the interpretation of these rules must be entered in the minutes.

9.1 Items submitted by officials to Council

9.1.1

Item number A164. 30.10.2024

SUPPLY CHAIN MANAGEMENT MONTHLY REPORT – SEPTEMBER 2024

Report by the Director Financial Services: Ms. E Wassermann

| | |
|--------------------|-------------------------|
| 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.

The SCM monthly report for September 2024 is attached as A.1 to A.2 of the Annexures.

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 September 2024 is attached as Annexure A 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, 2024

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 Monday, 14 October 2024 and the Mayoral Committee meeting held on Wednesday, 23 October 2024.

RECOMMENDED

1. that Council takes cognisance of the Supply Chain Management Report for September 2024 attached as Annexure.

9.1.2

Item number A165. 30.10.2024

CLOSING OF MUNICIPAL OFFICES FOR DECEMBER 2024

Report by the Senior Manager – Human Resources: Mr P. Le Roux

Department Corporate Services

Section Human Resources

File number 2/5

PURPOSE OF REPORT

The purpose of the report is to consider the closing of the municipal offices between Christmas and New Year.

FACTS AND BACKGROUND

Traditionally the municipal offices close between Christmas and New Year subject to the condition that employees must take leave for this period. Provision is made in the leave regulations for such closure. The closing of the offices does not affect essential and/or standby services.

DISCUSSION

None

LEGAL IMPLICATIONS

None

FINANCIAL IMPLICATIONS

None

PERSONNEL IMPLICATIONS

Employees who would normally be on duty take leave for 3 (three) days;
Sufficient staff to be placed on standby duty to perform essential services.

COMMUNICATIONS IMPLICATIONS

The closing of the offices to be widely communicated to the public by means of advertisements in the local newspapers, social media platforms, the website and notices on notice boards along with a list of contact numbers for standby services.

COMMENTS FROM DEPARTMENTS

Director: Community Services

None

Director: Financial Services

None

Acting Director: Infrastructure Service

None

Municipal Manager

Recommendation is supported.

This item served on the Corporate

This item served on the Corporate- and Financial Services Portfolio Committee meeting held on Monday, 14 October 2024 and the Mayoral Committee meeting held on Wednesday, 23 October 2024.

RECOMMENDED

1. that approval be granted for the closing of the municipal offices (excluding pay points / cashier's offices) for the period **27 - 31 December 2024**, on condition that all employees who would normally be on duty for the said period take **leave for 3 (three) days**.
2. that employees who perform essential services continue with their work and that sufficient staff be placed on standby duty for the said period.
3. that all **pay points / cashier's** offices be **open** for services on 27, 30 and 31 December 2024 from **08:00 to 12:00** daily.
4. that all municipal offices **close at 12:00 on Tuesday, 24 December 2024**.
5. that **salaries** be paid on **Wednesday, 18 December 2024**.
6. that the closing of the offices be widely communicated to the public by means of advertisements in the local newspapers, notices on notice boards and social media platforms along with a list of contact numbers for standby services.

9.1.3

Item number A166. 30.10.2024

SYSTEM OF DELEGATIONS

Report of the Municipal Manager: Ms. A. Vorster

Department Office of the Municipal Manager

File number 2/6/2

PURPOSE OF REPORT

The purpose of this report is to afford Council the opportunity to reconsider the delegation of powers to office bearers and officials as per a request received from the Speaker.

FACTS AND BACKGROUND

Council, during a which was held on 29 June 2023, has resolved as follows per Resolution A 105/29/6/2023:

UNANIMOUSLY RESOLVED

Item A105/29/6/2023

1. that the System of Delegations, attached on pages 1107 to 1269 of the Annexures, which was workshopped on 27 June 2023, be approved by Council with amendments made in workshop.
2. that all powers not reserved by law for full Council, be delegated to the Executive Mayor as per the System of Delegations.

DISCUSSION

Section 51(k) and (l) of the Systems Act provides that a municipality must within its administrative and financial capacity establish and organise its administration in a manner that would enable the municipality to, inter alia, delegate responsibility to the most effective level within the administration; and - involve staff in management decisions as far as is practicable.

Sections 59 – 65 of the abovementioned Act deals with delegations.

Section 59(1)(a) provides as follows:

“A municipal council must develop a system of delegations that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76(b) and to approve or amend the municipality’s integrated development plan, to any of the municipality’s other political structures political office bearers, councillors or staff members.”

Section 160(2) of the Constitution stipulates:

“The following functions may not be delegated by a municipal council:
(a) the passing of by-laws;

- (b) the approval of budgets;
- (c) the imposition of rates and other taxes, levies and duties; and
- (d) the raising of loans."

Section 60(3) of the Structures Act provides as follows:

"Those of the executive mayor's powers and functions as may be designated by the municipal council must be exercised and performed by the executive mayor together with the other members of the mayoral committee." This method of delegation, for technical and practical reasons, is not suggested."

Annexures are attached as A.3 and A.4.

Annexures: System of Delegations

LEGAL IMPLICATIONS

- Local Government: Municipal Systems Act, No 32 of 2000 (Systems Act)
- Section 160(2) of the Constitution of the Republic of South Africa, 1996 (Constitution)
- Section 60(3) of the Local Government: Municipal Structures Act, No 117 of 1998.

FINANCIAL IMPLICATIONS

None

PERSONNEL IMPLICATIONS

None

COMMUNICATION IMPLICATIONS

None

COMMENTS FROM DEPARTMENTS

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 Monday, 14 October 2024 and the Mayoral Committee meeting held on Wednesday, 23 October 2024.

SUBMITTED FOR CONSIDERATION

9.1.4

Item number A167. 30.10.2024

SUPPLY CHAIN MANAGEMENT QUARTERLY REPORT – JULY - SEPT 2024

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

PURPOSE OF REPORT

The quarterly report for the Supply Chain Management (SCM) is prepared to update the Council on SCM's key activities for the quarter and to meet the reporting requirements of the Legislative Framework.

FACTS AND BACKGROUND

In terms of section 6 of the Supply Chain Management Regulations, the 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 attached **Annexure A.5** contains the SCM quarterly report for September 2024, which will help the council in its oversight role. The report covers the following: -

- Procurement statistics for the month -
- Awards above R 100 000 reported to National Treasury -
- SCM deviations -
- BBBE

There are no major problems with the implementation of the SCM policy. However, we are facing difficulties with the new preference point system, which is applied to all procurements above R2000. We are experiencing delayed implementation and reluctance from suppliers to quote for small amounts.

To address these challenges, the SCM unit is working on a more strategic approach, which will be rolled out in the 2024/2025 financial year. The main areas of focus are: -

- Increasing space at municipal stores to enable more strategic procurement and improve the turnaround time for goods and services;
- Achieving cost savings through bulk procurement;
- Centralizing buying from all departments to SCM.

LEGAL IMPLICATIONS

- Municipal Finance Management Act, 2003
- Municipal Supply Chain Management Regulation, 2005
- Municipal Supply Chain Management Policy, 2024

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 Monday, 14 October 2024 and the Mayoral Committee meeting held on Wednesday, 23 October 2024.

RECOMMENDED

1. that Council takes cognisance of the Supply Chain Management Quarterly Report for July to September 2024 attached as **Annexure A.5**.

MONTHLY REPORT OF MUNICIPAL MANAGER: OCTOBER 2024

The following report on activities for October 2024 is presented:

Barrydale Sportsfield Upgrade

The Barrydale Sports Community received a sponsorship totaling R50 000 from Mr John Dobson, John Maytham, Sir Simon and DHL for the upgrade of the Barrydale rugby field. The Sporting fraternity proposed upgrades of the Barrydale sports field with the assistance of Meyer Joubert and Potgietersbroers to bring the field up to match standards. The project is to commence from 12 October to 31 January and the Municipality will supply EPWP/CWP workers and water to the rugby field. The local sport clubs were contacted and informed that the field cannot be used during this time.

This is an important collaboration with the community.

The Director Community Services indicated that sport forums in all towns have been established and that an umbrella Sport Forum for the whole municipal area is the next step.

Railton Sports Grounds

The Railton Sports Grounds have been vandalised and could not be repaired before the security has been upgraded. The latter upgrades will take place in October whereafter the ablutions will be upgraded and an agreement will be made with clubs that they will be responsible for any damage when they use the facilities. Challenges with public urination and defecation/indecency in the public area next to the sport field, opposite the liquor outlet are experienced. The Municipality performs clean ups in the area and have increased law enforcement in this area during matches.

Phelophepa Health Care Trains Operations

The Transnet Foundation, Phelophepa Health Care Trains Operations, expressed their thanks and appreciation to the Municipality the exemplary manner in which they received co-operation and assistance during the staging of the Phelophepa Health Care Train II at Swellendam Railway Station for the period 23 September until 04 October 2024.

Apologies were extended for the payment issues that were encountered. This has been addressed and everyone has been paid.

The Municipality was praised for the professional manner in which they performed their role. The cleaning of the station, the provision of municipal services and security as well as the constant interaction were complemented. The following staff made an exceptional contribution to the success of the initiative:

Doreen Jonas, Charlene Lottring, Gershan Jansen & Team, Louis Mralasi, Brian de Silva & Team, Li Ann Minnies and Christopher Jafftha.

The Municipality provided transport to the amount of R8 300.00.

The statistics for the visit are attached as A.6 and A.7 of the Annexures.

IDP MEETINGS

Swellendam Municipality is concluding its first round of public participation public meetings on the Integrated Development Plan (IDP) during October. On 2 October 2024 the Municipality met with SPARC management and on 9 October Management met with the Malgas Ratepayers Association to collate their input for the IDP.

Ward 5's IDP public participation meeting was on 17 October 2024.

The facilitating of inputs is a continuous process and will continue in the next months to enable the drafting of the draft IDP and budget in March 2025.

HUMAN RIGHTS COMMISSION: STORMSVLEI

The Municipal Manager held another meeting with the Office of the Human Rights Commission on the lack of services on a private farm in Stormsvlei. The Council resolution was conveyed to the Commission, but two political parties indicated that they will each donate a water tanker to the affected parties. This will be transported to the area to be identified by the Commission.

HOUSING PROJECT: SWELLENDAM

The next handover of houses to identified beneficiaries will be in the first and second week of November in a batch of 30 houses each. The wheelchair adapted houses do not form part of this allocation, but forms part of the next 100 houses that is currently nearing completion.

WATER RESTRICTIONS

Swellendam has three dams for storing raw water, with the main dam, Grootkloof 3, currently at 76% capacity. If no rain occurs, this water will last the Municipality for about three to four months.

The dams are replenished through a water channel from the mountain, which broke in March, stopping the inflow. Emergency repairs were completed, but formal repairs began in July and lasted six weeks, during which dam levels dropped to nearly 55%.

Given the hot and dry summer forecast, the Municipality has initiated a campaign to promote responsible water use. Level 1 water restrictions took effect on October 14, encouraging residents to use water wisely. There are no strict limits, but residents are asked to water their gardens every second day and fill swimming pools only once a week.

As always, water levels will be monitored throughout the summer, and residents are reminded to use water responsibly.

The water restrictions are attached for cognisance as A.8 and A.9 of the Annexures.

OVERBERG DISTRICT MUNICIPALITY TOURISM ENGAGEMENT

Swellendam Municipality met with Overberg District Municipality's newly appointed tourism official on 2 October to engage on collaboration and a collective tourism marketing strategy and economic development. The Overberg District's official was invited to join the Small-Town Regeneration Steering Committee. Once the ODM engaged with all B-municipalities, an Overberg LED forum will be established to enhance collaboration. A suggestion to develop an Overberg Tough initiative in Swellendam was discussed and is to be developed further.

ENERGY DISCUSSION

A meeting on possible wheeling initiatives as part of the Municipality's Renewable Energy Strategy was held on 2 October with Provincial officers in attendance. A Wheeling Policy will be drafted and tabled to Council. A follow-up meeting is scheduled for 25 October.

WEBSITE REVIEW

A meeting took place with a website developer that will develop a website for the Municipality free of charge as a pilot project. This initiative is being further investigated.

SILO WASTE WATER PUMP STATION

The site hand-over of the Silo Waste Water Pump Station took place on 11 October with the contractor doing site establishment within two weeks. The duration of this project is estimated at six months.

BARRYDALE WATER RESERVOIR

As part of the Municipality's initiative to ensure clean drinking water, the main reservoir in Barrydale was emptied and cleaned on 17 October 2024. The public was informed prior to the event and emergency water was made available during the water disruption.

TDI TURN OVER

The last batch of the TDI rollovers is in process. At this stage it seems that it is necessary to replace around 450 meters that are not compatible with the change over requirements. The Municipality have some meters in our stores as consumables and placed an additional order to address the shortfall. The lead time for delivery is 6-8 weeks.

To date 4386 meters have been changed, with 2300 remaining. The meter implementation is at 55%. A further 1 200 meters have been rolled out in the week of 14 October and is thus in process of change overs.

WHATSAPP FOR ENGINEERING COMPLAINTS

The Technical Department has a whatsapp number, 0609441339, that can be used, in addition to the Link App system to log water, electricity, sanitation, roads and stormwater complaints during working hours in the week. Councillors are requested to disseminate this information.

POPIA TRAINING

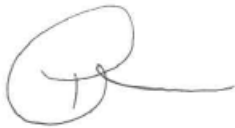
Internal Staff and Councillors underwent POPIA training via a virtual platform on 14 October 2024. The slides will be circulated once the presenter has sent it to us.

TRANSNET PROPERTY TRANSFER

The transfer cost payment towards the Transnet property in Swellendam has been made and the deed submitted for transfer.

The above is a summary of activities for the first two weeks of October 2024.

This item served on the Mayoral Committee meeting held on Wednesday, 23 October 2024



A Vorster
MUNICIPAL MANAGER

9.1.6

Item number A170. 30.10.2024

IRREGULAR EXPENDITURE FINANCIAL YEARS 2022-2023 AND 2023-2024 SWELLENDAM MUNICIPALITY: SUPPLY CHAIN MANAGEMENT: APPLICATION OF PIGGY-BACK CONTRACTS [SCMR 32]: VARIOUS CONTRACTS

Report of the Municipal Manager: Ms A Vorster

Department

Municipal Manager

File number

5/15/1/1

PURPOSE OF REPORT

To table a recommendation to 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.

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 2022/2023 | Financial Year 2023/2024 | Contract End Date |
|---------------------------|-------------------------------------|-------------------------------------|---------------------------------|
| ASLA Konstruksie | R 237 985-54 | R 60 327 992-32 | 31 August 2021 |
| ASLA Konstruksie (VAT) | R 65 535-47 | R 1 051 265-98 | Extended to 28 November 2024 |
| Total | R 303 521-01 | R 61 379 258-30 | |

ANNEXURES:

Relevant documentation is attached as **Annexure A.10**.

FINANCIAL IMPLICATIONS

The irregular expenditure amounts to R 61 682 779-31 (R 303 521-01 during the 2022/2023 financial year and R 61 379 258-30 during the 2023/2024 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 adjustments 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 Regulations, 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 33, 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 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 important and 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 R100 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 section 32 (1) and (2)

Consequently, the matters as set out in the recommendation are supported pending a further discussion with the AG. Failing which alternative action may be required as the failure to act may raise the consequence management aspects of the Public Audit Amendment Act. Sadly, the PAA does not allow Accounting Officers to defer to service delivery demands even though no untoward or malicious, or fraudulent benefit could be identified.

This item served on the Section 32 Committee meeting held on Monday, 26 August 2024 and the Council meeting held on 30 September 2024.

RECOMMENDED

It is recommended to Council that the outstanding amount of R303 521-01 during the 2022/2023 financial year and R61 379 258-30 during the 2023/2024 financial year) in respect of Swellendam Municipality: Supply Chain Management: Application of Piggy-Back Contracts: (SCMR 32): Various Contracts, be written off as irrecoverable in terms of section 32(2)(b) of the MFMA.

9.1.7

Item number A171. 30.10.2024

IRREGULAR EXPENDITURE FINANCIAL YEAR 2023-2024: SWELLENDAM MUNICIPALITY: SUPPLY CHAIN MANAGEMENT: CONTRACT MANAGEMENT: EXTENSIONS / AMENDMENTS NOT JUSTIFIABLE

Report of the Municipal Manager: Ms A Vorster

Department Municipal Manager

File number 5/15/1/1

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. We did attempt to appoint Royal Haskoning DHV (Pty) Ltd for the project, as per the Professional Service Provider's tender (SMT27/17/18). See attached email correspondence. The Brief for them is also attached. They however took their time to decide and placed the municipality under pressure in terms of getting a MIG project registered. Eventually, Royal Haskoning DHV (Pty) Ltd telephonically

indicated that projects this size are too small to consider and failed to respond in writing to the requests/enquiries. Hence we decided to 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 which 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 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.

In order 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.

The table below indicates the expenditure incurred for the extension/amendment of contract not justifiable:

| Service Provider | Financial Year 2022/2023 | Financial Year 2023/2024 |
|-------------------------------------|---------------------------------|---------------------------------|
| Hessequa Consulting Engineers | Nil | R 151 084-42 |
| Hessequa Consulting Engineers (VAT) | R 55 771-55 | R 22 662-66 |
| Total | R 55 771-55 | R 173 747-08 |

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

The irregular expenditure amounts to R 229 518-63 (R 55 771-55 during the 2022/2023 financial year and R 173 747-08 during the 2023/2024 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 adjustments 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 Monday, 26 August 2024 and the Council meeting held on Monday, 30 September 2024.

RECOMMENDED

1. that it be recommended to Council that the amount of R 55 771-55 during the 2022/2023 financial year and R 173 747-08 during the 2023/2024 financial year) in respect of Swellendam Municipality: Supply Chain Management: Extensions/ Amendments not justifiable, be written off as irrecoverable in terms of section 32(2)(b) of the MFMA.

9.1.8

Item number A172. 30.10.2024

IRREGULAR EXPENDITURE FINANCIAL YEAR 2022-2023: SWELLENDAM MUNICIPALITY: PROCUREMENT AND CONTRACT MANAGEMENT - NON-COMPLIANCE WITH LOCAL CONTENT

Report of the Municipal Manager: Ms A Vorster

Department Municipal Manager

File number 5/15/1/1

PURPOSE OF REPORT

To report on the finding performed by the Auditor General (AG) during the audit of the 2022 - 2023 financial year on non-compliance with local content for a tender awarded to Macnay CC.

FACTS AND BACKGROUND

The report deals with the Auditor-General findings in the 2022/ 2023 financial year relating to irregular expenditure in respect of non-compliance with local content for a tender awarded to Macnay CC. This finding was not tabled to the Section 32 Committee. **Documentation is attached as Annexure A.11.**

The administration did agree with the finding as indicated in the discussion below.

DISCUSSION

As already indicated in the facts and purpose, management did agree with the finding.

In terms of section 8(2) of the Preferential Procurement Policy Framework Act (Act no. 5 of 2000) (PPR): Preferential Procurement Regulations, 2017:

"An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

During the audit of procurement and contract management it was identified that for the request for tender, below tender did not stipulate the percentage of the minimum threshold for local production content.

| No. | Description | Expenditure Amount |
|-----|--|--------------------|
| 1 | Macnay CC (SMT16/22/23) (Supply and Delivery of Telecom Trailer and 2 X Scow Containers) | R598 0000 |
| | | R598 000 |

Minimum threshold for local production content not applied

| No. | Item Description | % Local Content |
|-----|------------------|-----------------|
| 1. | Steel Products | 100% |

An oversight did occur with the specification committee and the local production content was not included in the tender document and the advertisement. It should be noted that the local content was one of the matters which was removed from the latest PPR implementation.

It just doesn't make sense to classify this as irregular expenditure if there was a court ruling and it was subsequently removed from the preference point system. It is the opinion of the municipality that these kinds of disclosures mislead the users. It is proposed that this case rather be seen as a minor breach in light of the court ruling.

Local Production Content is no longer applicable. A SCM checklist on the SCM requirements is already part of the specifications meeting. This was an oversight by the committee.

LEGAL IMPLICATIONS

Compliance with Section 8(2) of the Preferential Procurement Policy Framework Act (Act no. 5 of 2000) (PPR): Preferential Procurement Regulations, 2017.

FINANCIAL IMPLICATIONS

R 598 000-00 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 adjustments 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) The work was executed in terms of the contract and/or service level agreements;
- b) The municipality has received value for money.
- c) The contract did not result in any or other financial loss to the municipality;
- d) 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 Monday, 26 August 2024 and the Council meeting of Monday, 30 September 2024.

RECOMMENDED

1. that it be recommended to Council that the amount of R 598 000-00 in respect of irregular expenditure financial year 2022-2023: procurement and contract management -non-compliance with local content, be written off as irrecoverable in terms of section 32(2)(b) of the MFMA.

9.1.9

Item number A173. 30.10.2024

IRREGULAR EXPENDITURE FINANCIAL YEAR 2022-2023: SWELLENDAM MUNICIPALITY: PREFERENTIAL PROCUREMENT REGULATIONS 2022

Report of the Municipal Manager: Ms A Vorster

Department Municipal Manager

File number 5/15/1/1

PURPOSE OF REPORT

To report on the finding performed by the Auditor General (AG) during the audit of the 2022 - 2023 financial year on non-compliance with S2(1)(a) of the PPPFA.

FACTS AND BACKGROUND

The report deals with the Auditor-General findings in the 2022/ 2023 financial year relating to irregular expenditure in respect of non-compliance with S2(1)(a) of the PPPFA. This finding was not tabled to the Section 32 Committee.

The administration did not agree with the finding as indicated in the discussion below.

DISCUSSION

As already indicated in the facts and purpose, management did not agree with the finding.

The following is an extract of the finding by the Auditor-General:

Section 2(1)(a) of the Preferential Procurement Policy Framework Act (PPPFA) states that; "An organ of state must determine its preferential procurement policy and implement it within the following framework:

(a) A Preference point system must be followed."

Regulation 3(1) of the Preferential Procurement Regulations, (PPR) 2022: state that "An organ of state must, in the tender documents, stipulate— (a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7"

Regulation 4(1) of the PPR 2022:

"The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes"

$$Ps = 80 \frac{(1 - Pt - Pmin)}{Pmin}$$

Where:

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration and

Pmin = Price of lowest acceptable tender.

Regulation 1 of the PPR 2022 defines a tender as follows:

““tender” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation”

As required by S2(1)(a) of the PPPFA, a preference point system must be followed. Regulation 4(1) of the PPR 2022 further states that the 80/20 preference point system must be used in the calculation in respect of an invitation for tender with a rand value equal to or below R50 million, inclusive of all the applicable taxes.

The PPR 2022 defines a tender as a written offer in response to an invitation to provide goods and services through price quotations, competitive tendering processes or other.

During the audit of Supply Chain Management it was identified that the preferential points system was not applied to written quotations below R30 000 (VAT included).

In response to the auditor's query on the application of PPR 2022 to procurement below R30 000, the municipality has indicated that they have utilized the National Treasury Implementation Guide: PPR 2022 and continued to use the PPR 2022 to all tenders and formal quotation processes as per the SCM regulation thresholds, thus being above R30 000.

Paragraph 7.3.9 of the above Implementation Guide states the following:

The prescribed threshold values within with Accounting Officers may procure goods and services using petty cash, verbal/written price quotations or advertised competitive bids should not be confused with the threshold values prescribed for the application of preference points in the Preferential Procurement Regulations, 2022.

National Treasury further issued frequently asked questions (FAQ) and generic answers on PPR 2022. The auditors refer the municipality to an extract from the FAQ:

7. Question: *“Since there is no longer a prescribed minimum value for the 80/20 system, can an organ of state, in its own policy prescribe the minimum value?”*

Response: *“In terms of section 2(1) of the PPPFA, an organ of state must determine its preferential procurement policy and implement it within the framework prescribed. The word “prescribed” is defined to mean prescribed by regulation made under section 5, and section 5 of the PPPFA empowers the Minister to make regulations. Therefore, organs of state are not empowered to prescribe threshold values for the application of the PPPFA, only the Minister of Finance is empowered to do so.*

The PPPFA provides for the 80/20 preference points system to apply in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes. Consequently, where there is no tender invited, for example in the case of petty cash purchases, the 80/20 preference points system will not apply.”*

The above re-emphasizes that the 80/20 preference points system must be applied to all procurement at the municipality above the petty cash threshold of R2 000 as per the written quotation threshold in the municipality's SCM policy, read together with the definition of a tender in the PPR 2022.

Further enquiry determined that since 16 Jan 2023 - 30 June 2023, the municipality has approved various requisitions estimated at R5 673 413, to which preferential points was not applied.

As the quotes below R30 000 but above the petty cash threshold of R2 000 were not evaluated in accordance with the preference point system as prescribed by the PPPF Act, this results in non-compliance with S2(1)(a) of the PPPFA.

The following was communicated by Management with the Auditor-General:

The interpretation of the Preferential Procurement Act and the Preferential Procurement Regulations, 2022 is based on the following:

s.2(1)(a) of the Preferential Procurement Policy Framework Act, states

(1) An organ of state must determine its preferential procurement policy and implement it within the following framework:

(a) A preference point system must be followed;

(b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price;

(ii) for contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points for price;

The interpretation on s.2(1)(a) of the PPPFA was done in isolation but must be interpreted in the context of the full section. By reading s.2(1)(b)(i) and (ii) its purposive meaning is that a preference point system must be followed where the municipality opt to do so in terms of its approved policy.

Regulation 3 (1) of the Preferential Procurement Regulations, (PPR) 2022 states

An organ of state must, in the tender documents, stipulate—

(a) the applicable preference point system as envisaged in regulations 4, 5, 6 or 7;

(b) the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

The interpretation on Reg 3(1) and 3(1)(a) of the PPR, 2022 was also done in isolation but must be interpreted in the context of the full section. By reading Reg.3(1)(b) which states that 'the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal. The purposive meaning is that a preference point system must be followed where the municipality opt to do so in terms of its approved policy.

The interpretation on Reg 4(1) of the PPR, 2022 was also done in isolation and should have been interpreted in the context of the full section. By reading Reg.4(2) which states that 'A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.' The purposive meaning is that points for specific goals must be followed where the municipality opt to do so in terms of its approved policy.

The PPR 2022 definition are enourmasly interpreted as a tender as a written offer in response to an invitation to provide goods and services through price quotations, competitive tendering processes or other.'

The correct definition of a tender as per the PPR 2022 is: "tender means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation."

The the words 'in the form determined by an organ of state', was omitted, thus removing the discretion in the definition to an organ of state to determine the form of the written offer that shall be regarded as a tender.

It is therefore clear from the ordinary grammatical meaning of the words as well as the purposive interpretation that the municipality can determine the form or method of contract/procurement, for example, any of the following methods: price quotations, competitive tendering process or any other method envisaged in legislation that would in the view of the municipality constitute a 'tender'.

Therefore, where the words 'tender' or 'tender document' are used in PPR 2022, SCM Regulation 3 and 4, it must be interpreted that at it shall mean a written offer in the form/method determined by an organ of state.

In this instance, the municipality, determined that formal written price quotations as prescribed in SCM Regulations 17 and 18 shall be the form /method to which tender and, by implication, the specific goals and preference points shall apply due to the fact that it will not be an effective, efficient, and economical use of the municipality's resources if the preferential procurement system is implemented for transactions below R30,000.

The interpretation of s2 of the Framework Act and the PPR2022 as indicate in the finding is not consistent with the purposive interpretation and essentially concludes that all procurements, excluding petty cash, are subject to preferential procurement, and the organ of state has no freedom nor discretion as it has to provide preference / specific goal points for all contracts from R0.

The municipality, as an organ of state, has the discretion of implementation its own preferential procurement policy **within the framework** prescribes by legislation.

The reliance on the 'NT Guidelines' and Frequently Ask Question document circulated in October 2023 is concerning. Even more concerning is that these guidelines were not issued in terms of section 168(1) of the Municipal Finance Management Act and are not binding.

The interpretation of this piece of legislation are in contradiction with the dictum of the SCA and the Constitutional court in Afribusiness as it seeks to unlawfully and irregularly suggest that the municipality has no discretion in applying preference points for specific goals.

The municipality did however decide to disclose the transactions between R2000 and R30 000 as Irregular expenditure until the matter is resolved following the Western Cape approach.

| Service Provider | Financial Year 2022/2023 | Financial Year 2023/2024 |
|--|---------------------------------|---------------------------------|
| Various Procurement Transactions VAT inclusive | R 1 836 356.69 | R1 671 939.05 |
| Total | R 1 836 256.69 | R 1 671 939.05 |

Documentation is attached as Annexure A.12.

LEGAL IMPLICATIONS

Compliance with S2(1)(a) of the PPPFA.

FINANCIAL IMPLICATIONS

The irregular expenditure amounts to R3 508 295.74 (R 1 836 256-69 during the 2022/2023 financial year and R1 671 939.05 during the 2023/2024 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 adjustments budget; or
 - (iii) 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) This expenditure relates to a procurement compliance issue.
- b) The work was executed in terms of an order and/or contract and/or service level agreements;
- c) The municipality has received the goods and materials.
- 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;

MUNICIPAL MANAGER

None

This item served on the Section 32 Committee meeting held on Monday, 26 August 2024 and the Council meeting of Monday, 30 September 2024.

RECOMMENDED

1. that it be recommended to Council that the amount of R 1 836 256-69 for the 2022/2023 financial year and R1 671 939.05 for the 2023/2024 financial year in respect of Swellendam

Municipality: Preferential Procurement Regulations 2022, be written off as irrecoverable in terms of section 32(2)(b) of the MFMA.

9.1.10

Item number A174. 30.10.2024

UNAUTHORISED EXPENDITURE: 2022-2023 OVERSPENDING ON THE OPERATIONAL BUDGET: WASTE WATER MANAGEMENT AND HEALTH

Report of the Municipal Manager: Ms. A Vorster

Department Municipal Manager

File number 5/15/1/1

PURPOSE OF REPORT

The purpose of the report is for the committee to consider the unauthorised expenditure on the operational budget for Health and Waste Water Management for the 2022-2023 financial year.

FACTS AND BACKGROUND

Flowing from the financial statements for the 2022-2023 financial year, the overspending on the operational budget for Health and Waste Water Management was classified as an unauthorised expenditure and subsequently disclosed in the notes of the AFS under note 49.1 as unauthorised expenditure.

DISCUSSION

The unauthorised expenditure realised as a result of the following non-cash entries:

| Function | Item | Amount |
|------------------------|-------------------------------|----------------|
| Health | Depreciation and Amortisation | R 67-05 |
| Waste Water Management | Bad Debts Written Off | R 1 018 326-98 |

The municipality did not suffer any loss on the overspending as it merely relates to non-cash items that were allocated to these functions.

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: 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 adjustments 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 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 accounting entry for non-cash entries;
- c) There was no purchase or amount paid which resulted in a cash outflow;

Municipal Manager

None

This item served on the Section 32 Committee meeting held on Monday, 26 August 2024 and the Council meeting of Monday, 30 September 2024.

RECOMMENDED

1. that the unauthorised expenditure to the amount of R 1,018,394-03 for the 2022-2023 financial year in respect of overspending of the operational budget: waste water management and health, be written off as irrecoverable in terms of Section 32 (2) (b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

9.1.11

Item number A175. 30.10.2024

IRREGULAR EXPENDITURE FINANCIAL YEAR 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 Municipal Manager

File number 5/15/1/1

PURPOSE OF REPORT

To table a report to 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 was 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 'Composition of the BAC' versus 'Attendance at BAC meetings'.
- (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 (BSC) 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:
 - o Advert;
 - o Special conditions of the contract;
 - o Terms of reference;
 - o 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 as Annexure A.13**. 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 156,183-21 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 adjustments 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;
- 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 AG SA 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 scheduled on Monday, 26 August 2024 and the Council meeting of Monday, 30 September 2024.

RECOMMENDED

1. that the amount of R 156,183-21 during the 2022/2023 financial year in respect of Swellendam Municipality: Supply Chain Management: Provision of Accounting Support for 3 years: Mubesko Africa (Pty)Ltd, be written-off as irrecoverable in terms of section 32(2)(b) of the MFMA.

9.1.12

Item number A176. 30.10.2024

ELECTRICITY COST OF SUPPLY – SECOND PHASE – TARIFFS STRUCTURE

Report of the Director Financial Services: Me E. Wasserman

Department Financial Services

Section Finances

File number

PURPOSE OF REPORT

The purpose of the report is to inform the Council on second phase implementation of the cost of supply study for electricity tariffs which was done in line with the NERSA requirements.

FACTS AND BACKGROUND

In terms of the National Electricity Pricing Policy, the following should be noted:

- All tariffs should be set as close as possible to the cost of supply.
- Indigent customers as registered in terms of indigent policy.
 - These customers are limited to 20 Amps with no fixed charges.
 - The current IBT energy rates be retailed.
 - Free Basic Electricity (FBE) of 50 kWh/m offset by equitable share.
 - The cost of FBE is based on the second block price, the first block should be removed.
- Cross-subsidisation of low-usage domestic customers (poor but not indigent) customers should be done as follows:
 - Customers are limited to 20 Amps with no fixed charges.
 - The current IBT energy rates are retailed but the first block price is set equal to the second block.
 - No FBE is granted.
- All small customers (domestic / business) > 20 Amp should have a fully cost-reflective tariff:
 - A basic charge to reflect the fixed metering, billing, revenue collection, and customer services costs.
 - A capacity charge is based on the installed / limited capacity of the customer. In other words, the total network costs as calculated for that tariff before (using the relevant demand allocation method), are now divided by the customers' actual capacity.
 - An energy charge that covers the full energy cost, losses, and surplus markup.
- All large customers should be charged on a TOU tariff with structure and TOU slots as per the Eskom Megaflex tariff applicable to Swellendam including changes over time:
 - Basic charge.
 - Capacity charge based on the highest of the following:
 - Notified demand or highest annual maximum demand to cover Eskom Access charge plus dedicated municipal network costs.
 - Maximum demand charge based on monthly highest maximum during Peak and Standard Periods only.

- Energy charges for:
 - High Demand (June, July and August) and Low demand (all other months)
 - Peak, Standard, and Off-peak (See diagram below) Reactive energy charge based on vary more than 30% of kWh during all peak and Standard periods for both seasons.
 - Public holidays are treated as the day they fall on.
 - The tariffs should be different for small consumers (<100 kVA), LV and MV.

This means that each customer will pay an average price depending on its own TOU ratios and load factor. This is the same as applied by Eskom on its TOU tariffs.

- Co-generation charges. (SSEG-tariff)
 - The standard Access / Capacity charges remain.
 - Energy purchased by the customer be charged at the relevant standard tariff charges.
 - An additional basic charge be levied to cover the additional metering/billing costs.
 - The energy purchased from the customer be credited on the TOU period based on 90% of Eskom TOU energy rates (excluding non-TOU energy charges such as levies). The municipality proposes to reduce this to 50% despite the fact that the current rate is very close to 80%)

DISCUSSION

During March 2024, under item A52/27/03/2007 Council resolved as follows:

- That the cost of supply be submitted to NERSA for consideration.
- That an extensive public participation process be followed on the cost of supply.

The municipality plan to commence with the public participation process during November 2024 to January 2025. The municipality have estimated about 12 stakeholder engagements. The following stakeholders have been identified:

- Councillors
- Swellendam Residents
- Railton Residents
- Barrydale Residents
- Barrydale Smitsville Residents
- Suurbraak Residents
- Swellendam Business Sector *2
- Barrydale Business Sector *2
- Other Stakeholders *2

LEGAL IMPLICATIONS

Electricity Pricing Policy

Electricity By-Laws

Local Government: Municipal Systems Act

Local Government: Municipal Finance Management Act

FINANCIAL IMPLICATIONS

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

This matter should be discussed at general public meetings in town, at ward committees and with each Ratepayers Association, as well as the Business Chambers.

RECOMMENDED

It is recommended:

1. That council notes the commencement of the public participation process.
2. That the public and all stakeholders be invited to attend the public participation process.
3. That the public be invited to make comments on the cost of supply via the public participation process.
4. That Council consider the inputs and approve the new tariff structure after consultation.
5. That, on conclusion of the process, the new proposed tariff structure be submitted to NERSA for implementation with the 2025/2026 Annual Budget.

9.1.13

Item number A177. 30.10.2024

UPPER LIMITS OF THE SALARIES, ALLOWANCES AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS FOR THE 2023/2024 FINANCIAL YEAR

Report of the Municipal Manager: Mrs. A Vorster

Department Municipal Manager
Section Legal Services
File Number 5/12/R

PURPOSE OF REPORT

To inform the council on the final upper limits of the salaries, allowances and benefits of different members of Municipal Councils for the 2023/2024 Financial Year, as published in the Government Gazette No. 51407 of 17 October 2024. The Gazette is attached **as Annexure A.14**.

FACTS AND BACKGROUND

In terms of Section 7(1), 8(5) and 9(5)(a) 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.

The upper limits as set out in the government gazette is attached as Annexure A and take effect on 1 July 2023.

The salary and allowances of a councillor is determined by that municipal council by resolution of a supporting vote of the majority of its members, in consultation with the member of the Executive Council responsible for local government in each province, having regard to the upper limits as set out hereunder, the financial year of a municipality and affordability of municipality to pay within the different grades of the remuneration of councillors, including the austerity measures as approved by national Cabinet. For purposes of implementation of this Government Notice, "in consultation with" means that a municipal council must obtain concurrence of the MEC for local government prior to the implementation of the provisions of this Notice.

DISCUSSION

The grading of councillors is determined as follows :

| Allocation | 2023/2024 | Points |
|---|--------------|------------------------|
| Total Actual Municipal Income per Cash Flow | R241 154 824 | 33.33 |
| Total Population | 47 114 | 8.33 |
| | | 41.66 = Grade 3 |

The impact of the new remuneration allocation is as follows :

| | 2023/2024 |
|--------------------------------|------------------|
| Budget | R 6 083 162 |
| Total Councillors Remuneration | R5 830 386 |
| Available Budget | R 252 776 |

The 2023/2024 budget will be sufficient for the increase. Because the gazette is before the audit report, the accounting standards informs that the a post balance sheet provision must be raised.

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

The actual councillors remuneration on 30 June 2023 was R5 607 289 and projected to increase to R5 830 386 which is R223 097 more but falls within the budget provision of R6 083 162.

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

It is important to note the change in tools of trade contained in the notice. The MEC: Local Government will be informed of Council's resolution and once concurrence is received, the necessary payments will be made with the following pay-run.

RECOMMENDED

- 1) That Council notes that sufficient funds exist for the proposed increase in the upper limits of salaries, allowances and benefits of different members of municipal councillors.
- 2) That Council confirm the determination of the grade of the municipal council as grade 3.
- 3) That the upper limits be recommended to the MEC Local Government to be implemented from 1 July 2023 after concurrence from the Minister: Local Government have been received.

9.1.14

Item number A178. 30.10.2024

UPPER LIMITS OF THE SALARIES, ALLOWANCES AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS FOR THE 2024/2025 FINANCIAL YEAR

Report of the Municipal Manager: Mrs. A Vorster

| | |
|--------------------|---------------------------------|
| Department | Office of the Municipal Manager |
| Section | Legal Services |
| File Number | 5/12/R |

PURPOSE OF REPORT

To inform the council on the final upper limits of the salaries, allowances and benefits of different members of Municipal Councils for the 2024/2025 Financial Year, as published in the Government Gazette No. 51419 of 21 October 2024. The Gazette is attached **as Annexure A.15**.

FACTS AND BACKGROUND

In terms of Section 7(1), 8(5) and 9(5)(a) 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.

The upper limits as set out in the government gazette is attached as Annexure A and take effect on 1 July 2024.

DISCUSSION

The grading of councillors is determined as follows :

| Allocation | 2024/2025 | Points |
|---|---------------|------------------------|
| Total Actual Municipal Income per Cash Flow | R 271 446 669 | 33.33 |
| Total Population | 47 114 | 8.33 |
| | | 41.66 = Grade 3 |

The impact of the new remuneration allocation is as follows :

| | 2024/2025 |
|--------------------------------|------------------|
| Budget | R 6 326 489 |
| Total Councillors Remuneration | R 5 963 221 |
| Available Budget | R 363 268 |

The 2024/2025 budget will be sufficient for the increase.

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

The projected increase of the upper limits is R5 963 221 which is R132 835 more than the previous allowances, but falls within the budget provision of R6 326 489.

PERSONNEL IMPLICATIONS

None

COMMUNICATION IMPLICATIONS

None

COMMENTS FROM DEPARTMENTS

Director: Corporate Services

As per report.

Director: Community Services

Not applicable.

Director: Financial Services

As per the report.

Director: Infrastructure Services

Not applicable.

Municipal Manager

It is important to note the change in tools of trade contained in the notice. The MEC: Local Government will be informed of Council's resolution and once concurrence is received, the necessary payments will be made with the following pay-run.

RECOMMENDED

- 1) That Council notes that sufficient funds exist for the proposed increase in the upper limits of salaries, allowances and benefits of different members of municipal councillors.
- 2) That Council confirm the determination of the grade of the municipal council as grade 3.
- 3) That the upper limits be implemented from 1 July 2024.

9.1.15

Item number A179. 30.10.2024

SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP) AND PERFORMANCE QUARTERLY REPORT FOR PERIOD ENDED 30 SEPTEMBER 2024

Report of the Municipal Manager:

Mrs A Vorster

Department:

Municipal Manager

Section:

Performance Management

File number:

2/13

PURPOSE OF REPORT

The purpose of the report is to submit to Council the Service Delivery and Budget Implementation Plan (SDBIP) and Performance Quarterly Report for the quarter ended 4

FACTS AND BACKGROUND

In terms of Section 52(d) of the Municipal Finance Management Act, 56 of 2003, the Mayor must within 30 days of the end of each quarter, submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality. This report informs the council on a quarterly basis of the SDBIP and Budget.

DISCUSSION

The Top Layer SDBIP for the 2024/25 financial year was approved by the Executive Mayor in June 2024. The SDBIP was submitted to Provincial and National Treasury in both electronic and hard copy format. The SDBIP was also made public by placement on the website.

The Quarterly Budget Statement and Quarter SDBIP Report are **attached as Annexure A.16 and A.17.**

The key elements can graphically be presented as follows:

1. Implementation of Budget

For the first quarter, the following are highlighted.

The total revenue excluding capital transfers and contributions budget is R530,3 million, with a year-to-date revenue of R118,6 million.

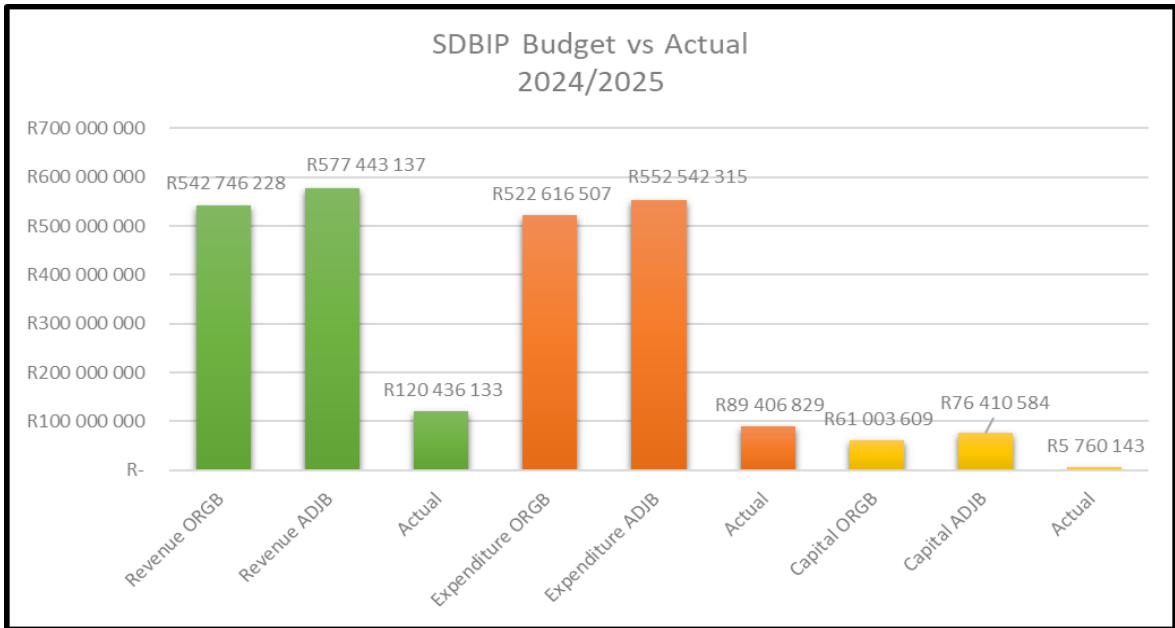
Property rates reflect at 29,5% of the budgeted amount, while the electricity amount raised represents 28,7% of the budgeted amount. The water revenue amount represents 22,5% of the budgeted amount.

The total expenditure budget is R552,5 million and the year-to-date actual is R89,4million which is 16,2%.

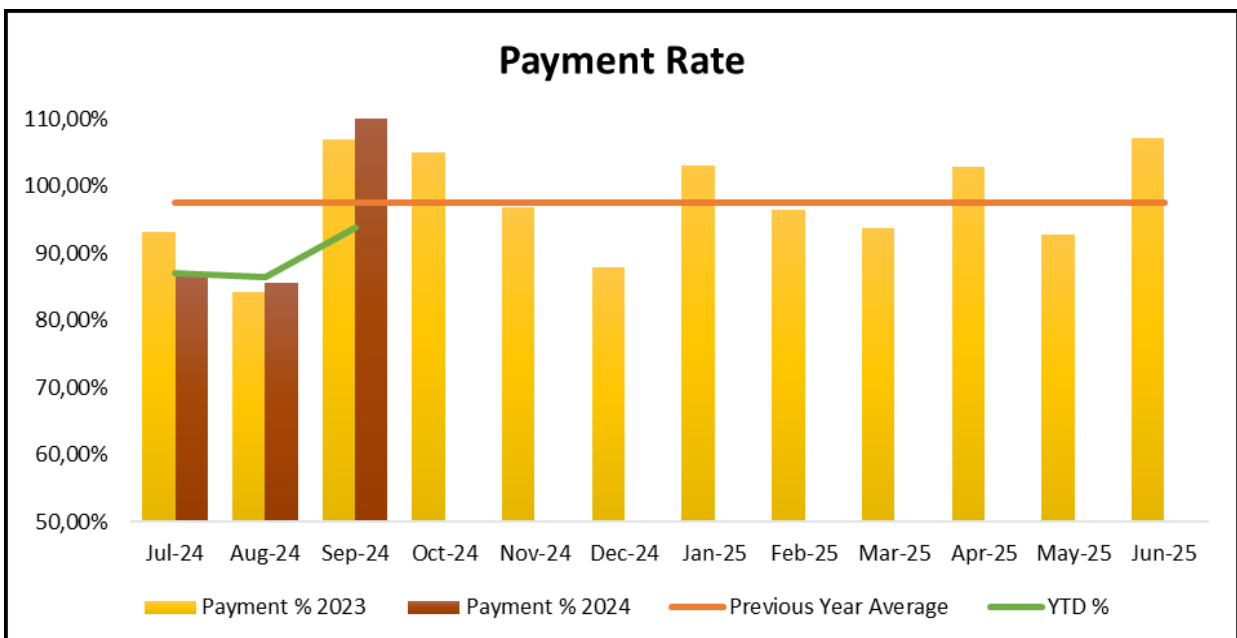
The budgeted amount for capital expenditure is R76.4 million of which R5,8 million has been expended to date, i.e. 7,6%. Capital commitments that amounts to R9,2 million have been made and measures were implemented to improve capital expenditure.

The actual total cash available at 30 September 2024 amounts to R202,6 million.

The liquidity ratio is 2.38:1, which means the Municipality can honour their short-term debt. The gearing ratio is 4%, while the payment percentage of debtors are at 93,7%.

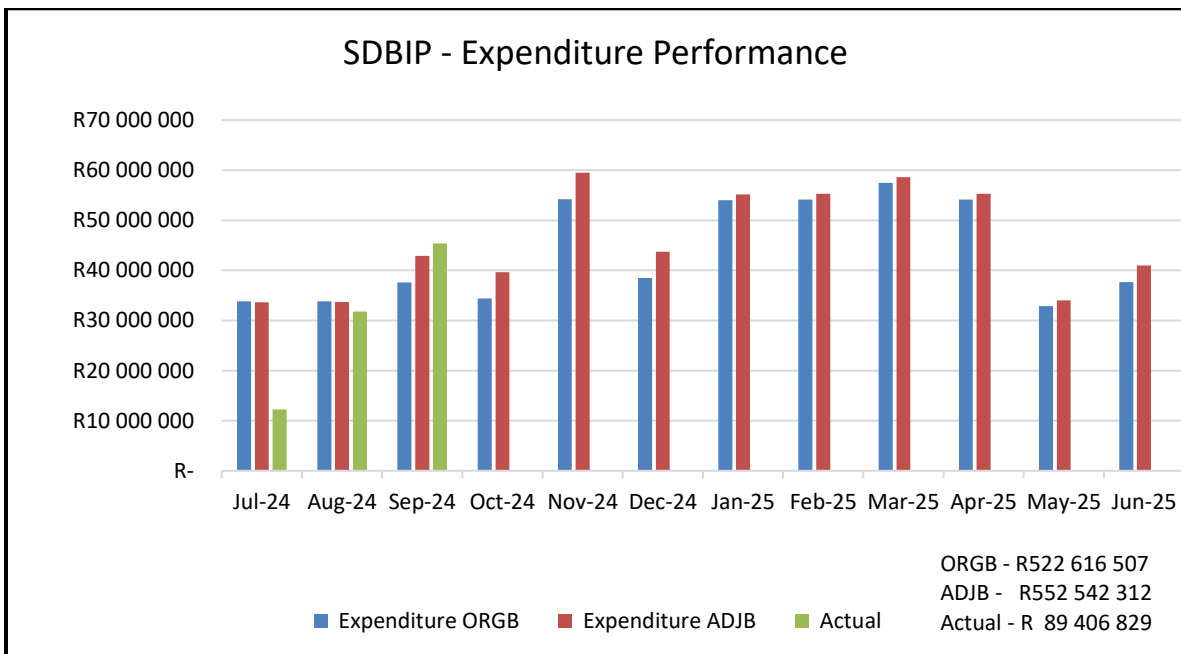
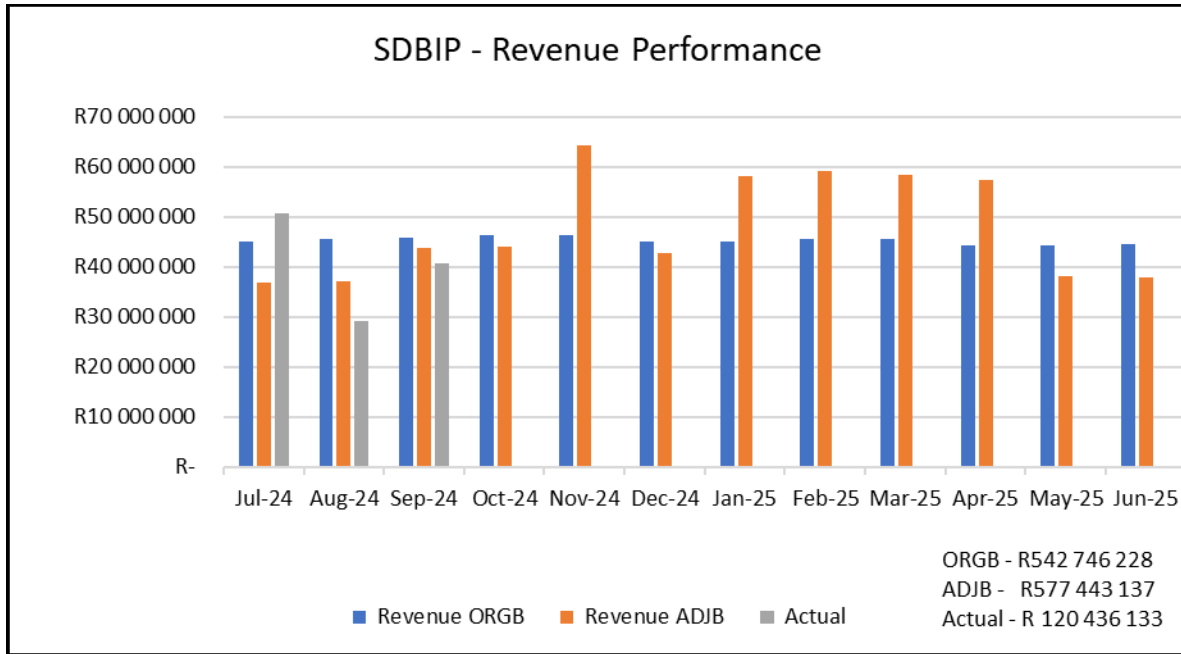


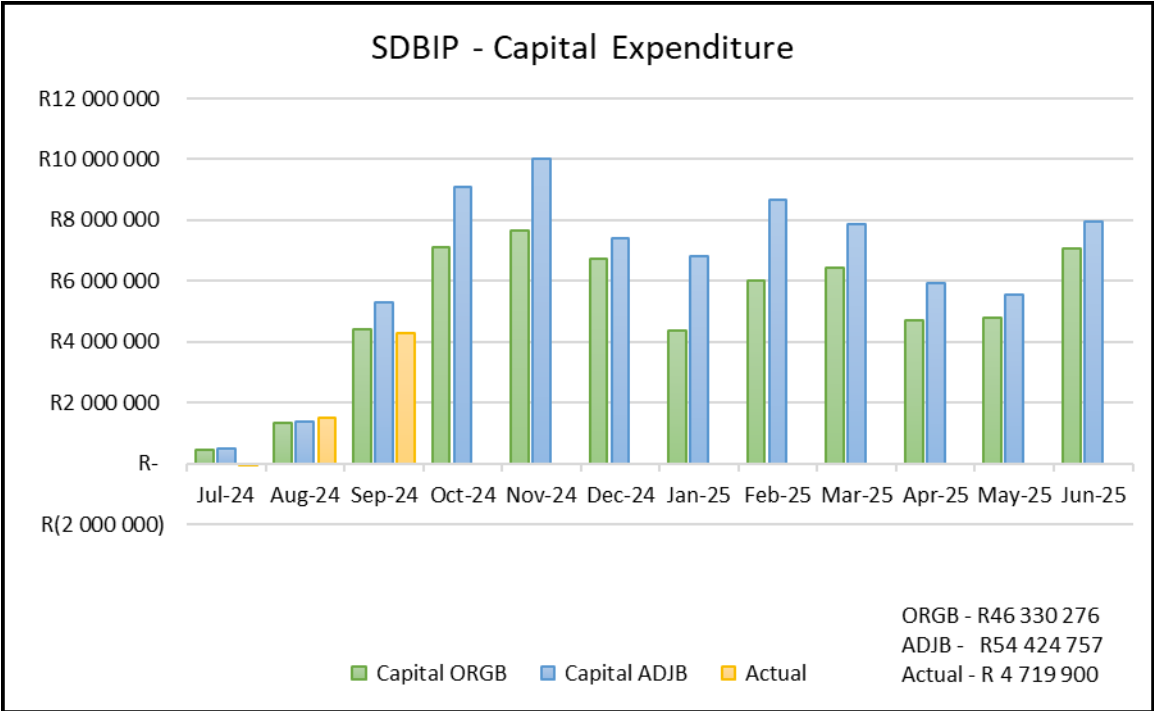
The payment rate remains under pressure with fluctuations as seen in the previous financial year. Continuous credit control actions are implemented.



2. Implementation of Performance

The performance report is attached as separate annexure. The financial performance by month is graphically presented below:





LEGAL IMPLICATIONS

Section 52(d) of the MFMA;

FINANCIAL IMPLICATIONS

No direct financial implication.

PERSONNEL IMPLICATIONS

None

COMMUNICATION IMPLICATIONS

None

COMMENTS FROM DEPARTMENTS

Director: Community Services

None

Director: Financial Services

Comments on the municipality's financial position for quarter one is contained in the quarterly report.

Director: Infrastructure Services

None

Municipal Manager

None

RECOMMENDED

1. that Council takes cognizance of the 2024/25 Top Layer Service Delivery and Budget Implementation Plan (SDBIP) and Performance quarterly report for the quarter ended 30 September 2024.
2. that Council takes note of the report on the implementation of the budget and financial state of affairs of the municipality for the quarter ending September 2024, in terms of Section 52 (d) of the MFMA.

9.1.16

Item number A180. 30.10.2024

APPOINTMENT OF THE MEMBERS OF THE FINANCIAL MISCONDUCT DISCIPLINARY BOARD AND AFFIRMATION OF THE TERMS OF REFERENCE OF THE FINANCIAL MISCONDUCT DISCIPLINARY BOARD AND REPORTING PROCEDURES FOR DISHONEST ACTIVITIES

Report of the Municipal Manager

Mrs A. Vorster

Department

Municipal Manager

File number

3/3/3/25

PURPOSE OF REPORT

The purpose of the report is to submit the appointment proposal of the Members of the Financial Misconduct Disciplinary Board.

FACTS AND BACKGROUND

Regulation 4 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014 (hereunder referred to as the Regulations, stipulates that the council must establish a disciplinary board to investigate allegations of financial misconduct in the municipality and to monitor the institution of disciplinary proceedings against an alleged transgressor. Furthermore, a disciplinary board is an independent advisory body that assists the council with the investigation of allegations of financial misconduct and provides recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.

Council previously resolved on 30 March 2023 as follows:

UNANIMOUSLY RESOLVED

Item A17/30/03/2023

1. that the 3-member disciplinary board in terms of regulation 4 (1) and 4 (6) of the regulations be re-appointed as follows for a 3-year term effective from 1 November 2021:
 - (a) The Manager: Internal Audit from the Overberg District Municipality for Internal Audit purposes,
 - (b) The Municipal Manager
 - (c) The Audit- and Performance Audit Committee Chairperson as the Chairperson of the Disciplinary Board.
2. that the following alternate member be appointed for the abovementioned members:
 - (a) **Alternate member** for the Manager Internal Audit from Overberg District Municipality, an individual from a neighbour municipality as **appointed** by the Chairperson of the Disciplinary Board.
 - (b) **Alternate member** for the Municipal Manager, another Senior Manager as **appointed** by the Chairperson of the Disciplinary board in consultation with the Accounting Officer.
 - (c) **Alternate member** for the Audit Committee Chairperson will be a member of the Audit Committee as **appointed** by the Chairperson.
3. that the existing Terms of Reference of the Financial Misconduct Disciplinary Board be re-affirmed by Council.
4. that the existing "Reporting Procedures for Dishonest Activities" be affirmed by Council.

DISCUSSION

The establishment of a disciplinary board is compulsory. The disciplinary board will investigate matters of financial misconduct but does not replace other disciplinary structures. The purpose of the disciplinary board is spelled out in the background above.

In terms of regulation 6 of the Regulations the municipality must develop terms of reference for an investigation, in terms of regulation 5, within seven days of receipt of a referral from a disciplinary board for approval by the council. A draft set of standard Terms of Reference has been developed for consideration by Council.

Regulation 17 of the Regulations stipulates that the municipality must establish reporting procedures for persons to report allegations of financial misconduct and financial offences on a confidential basis; and make public the reporting procedures in accordance with section 21(1)(a) and (b) of the Municipal Systems Act. When establishing reporting procedures in terms of sub-regulation (1) or (2), a municipality or municipal entity must take into account its financial and administrative capacity. A draft set of reporting procedures has been developed for consideration by council.

It should be noted that the Municipality does not have a Chief Executive Auditor or Director: Corporate Services. An agreement was reached with the Overberg District Municipality to utilise their Manager: Internal Audit instead of appointing a Chief Executive Auditor. The Municipal Manager cannot form part of said committee and thus the Accounting Officer must be replaced.

Annexures are attached as A.18, A.19 and A.20

1. Terms of Reference for the Financial Misconduct Disciplinary Board;
2. Reporting Procedures for Dishonest Activities; and
3. Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014

LEGAL IMPLICATIONS

Government Notice R430: Local Government: Municipal Finance Management Act (56/2003): Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014.

FINANCIAL IMPLICATIONS

The financial implication is limited to the cost of sundries and travel for external members of the board and for making public the reporting regulations.

PERSONNEL IMPLICATIONS

None

COMMUNICATION IMPLICATIONS

None

COMMENTS FROM DEPARTMENTS

Director: Financial Services

None

Director: Infrastructure Services

None

Municipal Manager

The Municipal Manager cannot form part of the Committee.

RECOMMENDED TO COUNCIL

1. that the 3-member disciplinary board in terms of regulation 4 (1) and 4 (6) of the regulations be re-appointed as follows for a 3-year term effective from 1 November 2021:
 - (a) The Manager: Internal Audit from the Overberg District Municipality for Internal Audit purposes,
 - (b) The MPAC chair
 - (c) The Audit- and Performance Audit Committee Chairperson as the Chairperson of the Disciplinary Board.
2. that the following alternate member be appointed for the abovementioned members:
 - (a) **Alternate member** for the Manager Internal Audit from Overberg District Municipality, an individual from a neighbour municipality as **appointed** by the Chairperson of the Disciplinary Board.
 - (b) **Alternate member** for the MPAC chair another Senior Manager as **appointed** by the Chairperson of the Disciplinary board in consultation with the APAC chair.
 - (c) **Alternate member** for the Audit Committee Chairperson will be a member of the Audit Committee as **appointed** by the Chairperson.
3. that the existing Terms of Reference of the Financial Misconduct Disciplinary Board be re-affirmed by Council.
4. that the existing "*Reporting Procedures for Dishonest Activities*" be affirmed by Council.

9.1.17

Item number A181. 30.10.2024

COUNCIL IN RECESS: 11 DECEMBER 2024 – 15 JANUARY 2025

Report of the Municipal Manager

| | |
|--------------------|---------------------------------|
| Department | Municipal Manager |
| Section | Administrative Support Services |
| File number | 3/3/2/1 |

PURPOSE OF THE REPORT

To obtain confirmation of Council's recess from 11 December 2024 until 15 January 2025.

FACTS AND BACKGROUND

Councillors may wish to have a much deserved break during the festive season and the report is submitted to obtain a Council resolution in this regard.

During the proposed recess, all urgent matters shall be dealt with by the Executive Mayor in consultation with the Municipal Manager, if and when required in terms of the delegations per Resolution A2374 taken on 5 June 2013, which reads as follows:

RESOLVED:

- 1. That during periods of recess the Executive Mayor be delegated to exercise any power of the Council and/or its political structures, as well as designated powers, in consultation with the Municipal Manager or if the Municipal Manager is not available, the Acting Municipal Manager, Provided that:***
 - (b) the failure to exercise such power as a matter of urgency would have a substantial detrimental impact on the municipality and/or its services; and/or its people;***
 - (c) the delegation excludes the exercise of all powers reserved for Council in terms of Section 160 of the Constitution: Passing of By-Laws, Approval of Budget, Imposition of rates and taxes, Levies and Duties, raising of loans***
 - (d) where the public interest so demands, this power be exercised after consultation with as many members of the Mayoral Committee as reasonably possible.***
- 2. "Recess" means the period determined by Council resolution when all councillors shall be on official leave and such period shall commence at 17h00 and shall terminate at 08h00 on the dates determined.***
- 3. All resolutions taken by the EM during recess must be tabled at the next meeting of the Council for ratification.***

LEGAL IMPLICATIONS

Constitution of the Republic of South Africa, 1996
Local Government Municipal Structures Act, 117 of 1998
Local Government Municipal Systems Act, 32 of 2000
Local Government Municipal Finance Management Act, 56 of 2003
The delegations as per resolution A2374 dated 5 June 2013.

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 it be confirmed that the Council will be in recess from 11 December 2024 until 15 January 2025 and that during this period all urgent matters, if and when required, shall be dealt with by the Executive Mayor in consultation with the Municipal Manager in terms of the delegations per Resolution A2374 dated 5 June 2013.
2. that it be noted that all resolutions taken by the Executive Mayor during recess will be tabled at the next meeting of Council for ratification.

9.1.18

Item number A182. 30.10.2024

REPORT IN TERMS OF THE SDBIP – IMPLEMENTATION OF COUNCIL RESOLUTIONS: MUNICIPAL MANAGER

Report of the Municipal Manager: Mrs A. Vorster

Department Office of the Municipal Manager

Division Office of the Municipal Manager

File number 3/3/2/1

PURPOSE OF THE REPORT

In terms of the Service Delivery and Budget Implementation Plan as well as to measure the performance with regard to the implementation of Council Resolutions, a quarterly report is submitted. The resolutions are summarized in a schedule with the comments and actions taken.

The schedules for July 2024 to September 2024 **are attached as Annexure A.21, A.22, A.23, A.24, A.25.**

DISCUSSION

As under purpose of the report.

LEGAL IMPLICATIONS

None

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 Council takes cognisance of the report on the implementation of Council Resolutions for the period July to September 2024.

9.1.19

Item number A183. 30.10.2024

2024/2025 1st QUARTER AUDIT AND PERFORMANCE AUDIT COMMITTEE CHAIRPERSON REPORT FOR THE PERIOD ENDED 30 SEPTEMBER 2024 AND THE MINUTES OF THE APAC MEETINGS HELD ON 30 AUGUST 2024 (SPECIAL APAC) AND 09 OCTOBER 2024 AND THE COMBINED ASSURANCE OVERSIGHT REPORT.

Report of the Senior Internal Auditor: Mr A Petersen

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

PURPOSE OF THE REPORT

The purpose of the report is to submit the 1st Quarter Audit and Performance Audit Committee Chairperson Report and the Minutes of the Committee meetings held on 30 August 2024 (Special Audit and Performance Audit Committee) and 09 October 2024 together with the Combined Assurance Oversight Report to Council for cognisance.

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 1st quarterly report for the period ended 30 September 2024 and which is now being submitted to the Council for discussion and consideration.

Annexures are attached as A.26, A.27, A.28, A.29

1. 2024/2025 1st Quarter Audit and Performance Audit Committee Chairperson Report for the period ended 30 September 2024; and
2. Minutes of the Audit and Performance Audit Committee Meeting held on 30 August 2024 (Special APAC Meeting) and 09 October 2024 and;
3. Combined Assurance Oversight Report.

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 cognisance be taken of the 2024/2025 1st Quarter Audit and Performance Audit Committee Chairperson Report for the period ended 30 September 2024; and
2. That cognisance be taken of the Minutes of the Audit and Performance Audit Committee Meetings held 30 August 2024 (Special Audit and Performance Audit Committee Meeting) and 09 October 2024 and;
3. That cognisance be taken of the Combined Assurance Oversight Report.

9.2 Consideration of matters which require non-disclosure

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

6. Non-disclosure of Matters

- (1) Matters which require non-disclosure, must be marked as such in the agenda.
- (2) When such matters are to be considered, the speaker must direct that all members of the public leave the venue of the meeting.
- (3) Any member can prior to the commencement of the meetings, request the speaker to deal with a certain matter as a non-disclosed matter.

9.3 Consideration of urgent matters

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

7. Speaker may introduce urgent matters

The speaker may at any time and without notice make any statement or introduce urgent matters.

10 MINUTES OF COMMITTEES AND AD HOC COMMITTEES

The following minutes are distributed as a separate document for cognisance:

- 10.1 Minutes of an Ordinary Mayoral Committee meeting held on Monday, 19 August 2024.
- 10.2 Minutes of a Breede River Estuary Municipal Liaison Committee as held on 20 August 2024.

11 CONFIRMATION OF MINUTES

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

13. Minutes

- (1) The municipal manager must compile the minutes of the proceedings of meetings in printed form.
- (2) The minutes of a meeting must be confirmed by the council at the next meeting and signed by the speaker.
- (3) The minutes shall be taken as read, for the purpose of confirmation, if a copy thereof was sent to each member within a reasonable period before the next meeting.

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

- 11.1 Minutes of an Ordinary Council meeting as held on Wednesday, 28 August 2024.
- 11.2 Minutes of an Ordinary Council meeting as held on Wednesday, 30 September 2024.
- 11.3 Minutes of an Ordinary In-Committee Council meeting as held on Wednesday, 30 September 2024.

12. MATTERS ARISING FROM THE MINUTES OF THE PREVIOUS MEETING

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

13(4). The speaker shall declare that the minutes are open for discussion as soon as the minutes are confirmed.

13. CONSIDERATION OF MATTERS OF EXIGENCY

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 7: RULES OF DEBATE

29. Matters of exigency

- (1) A member can prior to the commencement of a meeting direct the attention of the speaker to any matter which does not appear on the agenda and of which no previous notice has been given, for consideration during the meeting.
- (2) The speaker must use his own discretion to decide if the matter must be considered or not during the meeting in terms of subsection (3).
- (3) Urgent matters must be of such a nature that it will receive the approval of the council or that it will not elicit any discussion or only serve as information to members.

14. GENERAL

15. CLOSURE

16. NOTICE TO THE PUBLIC

Rules of Order regulating the conduct of Meetings of the Council of the Municipality of Swellendam (Provincial Gazette 6347 dated 3 March 2006)

PART 3: MEETINGS

8(4). The municipal manager must give notice to the public of the date, time and venue of every meeting by publishing a notice in a local newspaper determined by him or her, provided that he or she may depart from this requirement when time constraints make this impossible.

Swellendam Municipality

Notice is hereby given in terms of Section 19 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that an **Ordinary Council meeting** of the Municipal Council of Swellendam Municipality is scheduled as follows:

Date: Wednesday, 30 October 2024

Time: 10:00.

Location: Council Chambers, Rhenius Street, Swellendam

A. VORSTER

MUNICIPAL MANAGER

Notice number: A34/2024

Swellendam Munisipaliteit

Kennisgewing geskied hiermee in terme van Artikel 19 van die Wet op Plaaslike Regering: Wet op Munisipale Stelsels, 2000 (Wet 32 van 2000) dat 'n **Gewone Raadsvergadering** van die Swellendam Munisipale Raad soos volg geskeduleer is:

Datum: Woensdag, 30 Oktober 2024

Tyd: 10:00.

Plek: Raadsaal, Rheniusstraat, Swellendam

A. VORSTER

MUNISIPALE BESTUURDER

Kennisgewingnommer: A34/2024

17. BLANK APPLICATION FOR LEAVE OF ABSENCE FORM

SWELLEN DAM MUNICIPALITY



APPLICATION FOR LEAVE OF ABSENCE FROM MEETING

(Note: To be submitted to the Chairperson before the start of the meeting)

Name of Councillor

Herewith I apply for leave of absence from the following meeting(s):

| MEETING | DATE |
|---|------|
| Council Meeting | |
| Special Council Meeting | |
| Executive Mayoral Committee Meeting | |
| Any other Committee/Forum/Workshop (Please specify) | |
| | |
| | |
| Reason for absence | |
| | |
| | |
| | |

SIGNATURE

DATE