

# **SWELLEN DAM MUNICIPALITY**



## **SYSTEM OF DELEGATIONS, 2023**

**APPROVED BY COUNCIL: ITEM A105 29 JUNE 2023**

## **MUNICIPAL ADMINISTRATIVE AND OPERATIONAL DELEGATION SYSTEM**

1. Section 59 of the Municipal Systems Act, 2000 (Act 32 of 2000) –[MSA] prescribes that the Municipal Council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances and may, in writing delegate appropriate powers, to any of the municipality’s other political structures, political office bearers, councillors, or staff members.
  
2. Section 59(2)(d) of the MSA prescribes that the issued delegations may include the power to sub-delegate a delegated power.
  
3. This Instruction therefore:
  - Sets out the Swellendam Municipality’s system of delegations.
  - Is effective from 29 June 2023.
  - Repeals all previous Administrative and Operational Delegations issued per item A86B of 28 April 2016, as well as subsequent amendments.
  - Is issued in terms of s 59 read with s 59(2)(d) of the MSA.
  - Must be read and applied together with the AO Finance Delegations and the SCM delegations as approved from time to time in terms of section 79 read with section 82 of the Municipal Finance Management Act, 2003 (Act 56 of 2003) – [MFMA]
  
4. Your co-operation to ensure further distribution and implementation will be appreciated.

**EXECUTIVE MAYOR**

**Date:**

**MUNICIPAL MANAGER**

**Date:**

## **SWELLENDAM MUNICIPALITY**

### **DELEGATION SYSTEM ADMINISTRATIVE AND OPERATIONAL DELEGATIONS AND SUB- DELEGATIONS**

**Issued in terms of section 59 read with section 59(2)(d) of the  
Municipal Systems Act, 2000 (Act 32 of 2000) as per council  
resolution A149 on 11 November 2021 as quoted below:**

**UNANIMOUSLY RESOLVED**

**Item A149/11/11/2021**

1. that the System of Delegations, attached as Annexure B which served before the previous Council on 8 April 2016, be reconfirmed;
2. that all powers not reserved by law for full Council, be delegated to the Executive Mayor as per the System of Delegations.

## DELEGATION FRAMEWORK

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### PART 1: GLOSSARY OF TERMS AND ABBREVIATIONS

- 1.1. In these delegations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the relevant legislation have the same meaning and application as in the referenced legislation.
- 1.2. In this document, unless the context indicates otherwise:-

**“Constitution”** means the Constitution of the Republic of South Africa, 1996.

**“Deeds Act”** means the Deeds Act Registry Act, No 47 of 1937.

**“Delegation”** in relation to a duty, including an instruction to perform or assist in performing the duty and **“delegatee”** has a corresponding meaning.

**“Delegating authority”** shall have the meaning assigned thereto in the Systems Act.

**“Delegatee”** refers to a person to whom a power or function has been delegated or who has been instructed to perform a certain function.

**“Designation”** means those of the Executive Mayor’s powers and functions that he/she must exercise and perform together with the other members of the Mayoral Committee as envisaged in section 60(3) of the Structures Act, marked with an \*in the list of delegations (Part B).

**“Director”** refers to a manager directly accountable to the Municipal Manager.

**“Executive authority”** in relation to the Municipality, means the Municipality’s executive authority envisaged in **Section 156** of the Constitution, read with **Section 11** of the Municipal Systems Act.

**“Executive Mayor”** means a Mayor with executive powers and elected from among the members of Council in terms of Section 55 of the Municipal Structures Act.

**“Manager”** refers to officials directly accountable to directors.

**“Municipal Council” or Council** means a Municipal Council referred to in **section 157(1)** of the Constitution.

**“Municipal Ordinance”** means the Municipal Ordinance, No 20 of 1974.

**“Municipality”** means Swellendam Municipality, established in terms of Provincial Notice P.N. 489 of 22 September 2000, as amended.

**“Political Office Bearer** means the Speaker, the Executive Mayor, and Executive Deputy Mayor.

**“Political Structure”** means the Council or any committee of Council, including the Mayco.

- 1.3. For the purpose of the application of these delegations the following abbreviations have the meaning as described below:

<b>DESCRIPTION</b>	<b>ABBREVIATION</b>
Chief Financial Officer	CFO
Director: Infrastructure Services	DIS

Manager: Town Planning and Building Control	MTPBC
Director: Community Services	DCommS
Director: Corporate Services	DCS
Executive Mayor (always acting in consultation with MAYCO)	EM
Executive Mayoral Committee	MAYCO
Legal and ERM Officer	LERMO
Manager: Supply Chain Management	MSCM
Manager: Budget, Reporting & Expenditure	MBRE
Manager: Development Services	MDS
Manager: Electrical Services	MES
Manager: Housing	MH
Manager: Human Resources	MHR
Manager: Information Communication Technology	MICT
Manager: Local Economic Development	MDS
Manager: Solid Waste Disposal Sites	MSWDS
Manager: Traffic Services	MTS
Senior Manager: Civil Engineering Services	SM: CIS
Manager: Roads and Storm Water Services	MRSWS
Manager: Revenue	MRev
Manager: Water Services	MWS
Municipal Manager	MM
Relevant Director	DIR
Relevant Manager	MGR
Relevant Portfolio Committee	RPC
Town Manager	TM
Manager Administrative Support	MAS
Manager Project Management Unit	MPMU

- 1.4. For the abbreviation for relevant legislative and regulatory prescripts, please refer to Part 9 for further explanation.

## **PART 2: CONTEXT**

- 2.1. The word 'delegation' is derived from Latin. Delegate means 'to send from', which in turn means that when delegating, work is being sent 'from' one person 'to' someone else.
- 2.2. Delegation is the process through which a portion of authority assigned to an official is passed on to a lower level official who in turn has the authority to deploy resources in his or her area of responsibility to execute a specific task.
- 2.2. In this context:
- (i) 'Accountability' and 'Responsibility' means that the official who delegates authority remains accountable and the lower level official must be held responsible for the execution of the delegated power or authority.
  - (ii) 'Centralisation' considers where the responsibility for decision-making authority is vested, i.e. the degree to which decision-making is concentrated at a single point in the organisation.
  - (iii) 'Decentralisation' is when authority is widely dispersed within the organisation.
  - (iv) Centralisation and decentralisation does not refer to geographical dispersion.
- 2.3. The delegation process is essential to every Municipality as this is a mechanism through which it can ensure the achievement of effective, efficient and economical service delivery by officials.
- 2.4. Management processes are dependent on the concept of delegation. It is therefore important that this concept and its advantages during implementation is understood by all parties involved. Some of the key advantages are the following:
- Managers who allow their staff to accept more responsibilities are in a better position themselves to accept more responsibilities and higher levels of authority.
  - Delegations encourage officials to exercise judgment and to accept accountability.
  - Better decisions are often taken by officials who operate closer to implementation.
  - Decision-making processes are quicker and enhances officials' confidence to make future decisions.
- 2.5. It has been established by various oversight bodies, that the following key transversal challenges relating to the current Administrative delegations need to be addressed:
- Inconsistency in the different levels of delegations.
  - No indication is given by officials of which delegation is utilised when a delegated authority is exercised.
  - Where a discretionary delegated power (refer to Paragraph 6.3) is utilised and the provisions of PAJA applies, there is uncertainty as to what factors should be considered.

2.6. The existing Swellendam Municipality Administrative and Operational, Financial and SCM delegations were revised and amended, also addressing the aforementioned challenges. These delegations have been designed to distinguish between:

- Strategic, tactical and operational level delegations.
- Different activity requirements, where appropriate, in exercising a delegated power, being to initiate, process, recommend, approve, execute and monitor the execution of a delegated power.
- Different principles guiding the appropriate delegation level, being the management impact level, post level and frequency level.
- Whether the provision is mandatory or allows for discretion in terms of implementation.
- Different risk impact levels, where appropriate, when executing a delegated power, being, extensive, moderate or limited, including the area of impact.

### **PART 3: PRINCIPLES OF DELEGATIONS**

3.1. This System of Delegations ensure that the Council retains all legislative powers and those executive powers that cannot be delegated in terms of the law.

3.2. In exercising delegated authority, Council's decision makers must do so in the spirit of utmost good faith and transparency.

3.3. It is the duty of the delegating authority to ensure that clear and comprehensive policies are drafted and that those policies may be substituted and/or amended at any given time.

3.4. All delegations must be aimed at empowering the relevant functionaries to perform their function effectively, taking into account the different levels of decision-making.

3.5. The functions allocated to Council's executive as may be approved by council from time to time, form the basis of the allocation of delegations of executive decision-making power.

3.6. All delegations must enhance service delivery without compromising accountability.

3.7. Delegations must not oblige the delegate to exercise delegated powers and must accordingly allow for the decision to be taken at the next higher level. Delegated powers do not absolved Council or the Municipality from the responsibility of exercising powers or performing duties.

3.8. All delegations must provide for good governance and allow for adequate checks and balances to ensure responsible and accountable decision-making.

3.9. In the event that any delegated power conflicts or transgresses legislation, by-laws and/or the procurement policy of the Municipality the delegated power will be deemed as *pro non scripto*.

### **PART 4: OBJECTIVES AND CONDITIONS OF DELEGATIONS**

4.1. The Delegation System aims to:



- (a) Review and update the previous Municipal Delegations to reflect powers prescribed to the Council, Executive Mayor and Municipal Manager inclusive of the relevant Regulations mindful of the requirements of effective work-flows and proper segregation of duties.
- (b) Provide guidance on the certification required when exercising a delegation.
- (c) Provide guidance of what factors to consider when a delegation is exercised and the provisions of the PAJA applies.
- (d) Provide clarity of the relevant legal framework in relation to financial legislation relevant to the execution of official responsibilities.
- (e) Promote consistency.
- (f) Make officials/employees aware of their delegatory mandates and responsibilities.
- (g) Instil best practice.
- (h) Prevent IFW&UE.
- (i) Strengthen the control environment.
- (j) Prevent the undermining of the financial management system.
- (k) Promote efficiency, effectiveness and economy.

4.2. All decision-making powers delegated by the Delegating Authority are subject to the following conditions:

- (a) Delegated powers conferred on political structures, political office bearers, councilors and staff members are not conferred personally on incumbents. Anyone properly appointed in a position has the delegated powers conferred on the position.
- (b) These delegations also apply to acting positions. Persons acting in these positions have the same-delegated powers as those serving in a permanent capacity.
- (c) In executing any delegated power, the delegate shall under all circumstances comply with all relevant legislation, agreements and policies.
- (d) These delegations do not redefine Council's powers and functions.
- (e) The policies, whether existing or future, determine the parameters of any delegation and the delegating authority is bound to comply with it. Non-compliance causes any decision so taken to be **ultra vires**. It is the duty of the delegating authority to ensure that clear and comprehensive policies are drafted and that those policies may be instituted and amended at any given time.
- (f) In executing delegated powers, no expenditure may be incurred unless the delegatee is satisfied that the Council has budgeted for the expenditure and that the funds are still available on the relevant budget votes.
- (g) The political office bearers, political structures and staff members are authorised to sub-delegate any of their delegated powers, duties and functions unless this provision is specifically excluded in this system. Where a matter has been delegated to an individual Councilor, the matter cannot be delegated or sub-delegated to an official.

- (h) Any sub-delegation of a power, duty or function authorised in terms of this system of delegations must be in writing, and may be given subject to limitations, conditions and directions by the person who grants the sub-delegation.
- (i) It is not permissible in terms of the law for a person who has been given a “sub-delegation” to sub-delegate such power, duty or function.
- (j) Unless an activity is delegated to a specific post holder in a specific component, the level of the post holder indicated is regarded as the ‘lowest level’ delegated to, which implies that officials holding a higher level may also exercise the power or authority, subject to the principles of *functus officio* and rights being vested.
- (j) The conferring of a delegation or sub-delegation does not divest the delegating authority from exercising the responsibility concerning the exercise of the power or the performance of the duty.
- (k) A political structure, a political office bearer or a staff member to whom a power has been delegated may decline to exercise such power and refer it for decision to the Council, political structure, political office bearer or official which/who delegated such power, unless this system specifically provided otherwise.
- (l) A political structure, political office bearer or councilor of a municipality to whom a delegating authority has delegated a power, duty or function must report regularly to the delegating authority, on decisions taken in terms of that delegated power, duty or function. The monthly reports of the various departments to portfolio committees will serve as sufficient for the officials to report back and will include the statistics with references to the specific delegations. A political structure, political office bearer or councilor will report via the relevant structures minutes on delegations.
- (m) In exercising any power, duty or function in terms of this System of Delegation a political structure, political office bearer or official must comply with the provision of the Promotion of Administrative Justice Act 3 of 2000 and the regulations promulgated in terms thereof.
- (n) In exercising any power, duty or function in terms of this System of Delegation a political structure, political office bearer or a staff member must comply with the provisions of Council’s policies, Bylaws and any law relating to the matter under consideration. It is the duty of such political structure,-office bearer or staff member to acquaint him/herself with such policies, by-laws or other legislation.
- (o) The exercising of any power, duty or function included the right to do anything reasonably necessary for or incidental to the effective performance of such power, duty or function.
- (p) Council or any other delegating authority may at any time, subject to applicable law, and the accrual of any rights, order a delegated matter not to be proceeded with by the delegate and then deal with the matter.
- (q) The delegate may determine whether a report is needed to motivate a decision and whether the decision must be reduced to writing. If a report is required then it must indicate that all legal and financial requirements have been met.
- (r) A delegation may set out special circumstances in which a delegate is prohibited from exercising their delegated power, for example if the delegate is recommending the rejection of the most financially beneficial tender offer.

- (s) Any sub-delegation must be reduced to writing and recorded in the delegation register.
- (t) Provision must be made for separation between the evaluation and recommendation stage of the decision-making process and the actual decision itself. This must happen in all cases where the decision-making process is reasonably capable of being divided as set out above.

**NOTE:** - Please note that the use of the word “grant/approve” in the delegations set out below also means to “refuse”, to “revoke”, to “vary” and/or “amend”. Should there be a duplication of a power, duty or function the power, duty or function conferred on the higher authority will take precedence.

4.3. The following powers (not an exhaustive list) are non-delegable –

#### 4.3.1. Financial

- (a) Approval of budgets; Section 160(2) of the Constitution
- (b) Imposition of rates and other taxes, levies and duties; and section 160(2) of the Constitution
- (c) Raising of loans. Section 160(2) of the Constitution

#### 4.3.2. Political

- (a) Dissolution of council • Section 34 of the Structures Act
- (b) Election of speaker • Section 36 of the Structures Act
- (c) Removal of Speaker from office • Section 40 of the Structures Act
- (d) Election of another councilor to act as speaker (per occasion) • Section 41 of the Structures Act
- (e) Election of executive mayor and executive deputy mayor • Section 55 of the Structures Act
- (f) Removal of executive mayor or deputy executive mayor from office • Section 58 of the Structures Act
- (g) Establishment of committees • section 79 of the Structures Act • section 80 of the Structures Act section 166 of the MFMA • item 14(1) (b) of Schedule 1 of the Systems Act
- (h) Granting consent to a councilor to be a party to or beneficiary under a contract with the municipality • Item 6 of Schedule 1 of the Systems Act
- (i) Determining the salary and allowances of councilors • Section 7 of the Remuneration of Public Office Bearers Act
- (j) Determining the fine for non-attendance of meetings • Item 4(1) of Schedule 1 of the Systems Act

#### 4.3.3. Staff

- (a) Appointment of a Municipal Manager •Section 82 of the Structures Act • section 30 of the Structures Act • *Mbana v Mquma Municipality 2004 (1) BCLR 83 (Tk)* • *Mgoqi v Municipality of Cape Town and another; in re: Municipality of Cape Town vs Mgoqi and another (2006) JOL 17349 (C)*. Regulations GN21 of 2014: Regulations on the appointment and conditions of service for senior managers:
- (b) Appointment of a head of a department / manager directly accountable to the municipal manager • Section 30 of the Structures Act • Section of 56 the Systems Act *Regulations* GN21 of 2014: Regulations on the appointment and conditions of service for senior managers:

- (c) Appointment of building control officer • Section 5(1) read with Section 28 (4) of the National Building Regulations Act

#### 4.3.4. Legal

- (a) Entering into of a service delivery agreement in terms of Section 76 (b) of the Systems Act • Section 59 of the Systems Act
- (b) In terms of Section 59 of the Systems Act only Council can delegate its powers, duties and functions • *Mgoqi v Municipality of Cape Town and another; in re: Municipality of Cape Town vs Mgoqi and another (2006) JOL 17349 (C)*

#### 4.3.5. General

- (a) Passing of by-laws; Section 160(2) of the Constitution
- (b) Approval of an integrated development plan and any amendment to that plan • Section 30 of the Structures Act

### PART 5: APPROACH

- 5.1. For ease of reference the Delegation Framework is divided into Parts as set out in the content table.

### PART 6: APPLICATION

- e.4. The Delegation Framework is applicable to all officials employed by Swellendam Municipality.
- 6.2. When exercising a delegatory authority the principles of PAJA apply, which is discussed in **Part 10** below.
- 6.3. When exercising a delegated power an official has to **apply his/her mind** and must be able to **show cause** for “applying of his/her mind”, more so when discretion is applied. Discretionary power is identified when the wording ‘**may**’ is used.
- 6.4. The following wording must be displayed on ALL documents where a delegation has been exercised:
- “Approval/authority is hereby granted/ denied\* in terms of the Municipal delegation, item .... issued in terms of:***
- ***section 79 of the Municipal Finance Management Act, 2003 (Act 56 of 2003); or***
  - ***section 59 of the Municipal Systems Act, 2000 (Act 32 of 2000)\*\*\*delete which is not applicable***
- 6.5. Where rubber-stamps are required, a request for the acquisition of such stamps must be submitted to the Office of the DCS.
- 6.6. It is important to know that a delegated authority **MAY NOT**:
- (i) Sub-delegate powers delegated to them, if there is no legal provision made for such sub-delegation.
  - (ii) Exercise the delegation beyond the geographical, location parameters or area of responsibility described in the delegation.
  - (iii) Exercise the delegation resulting in an illegal activity.

- (iv) Exercise the delegation contrary to relevant case law.
- (v) Prescribe additional conditions to a delegation, if not expressly allowed.
- (vi) Exercise a delegation beyond timeframes prescribed.

6.7 Note that an official acting in a post may only exercise the delegations assigned to that post if such official was duly appointed in an acting position in writing.

6.8. Notwithstanding the delegations there is a responsibility or duty of care vested in every official as contemplated in MFMA s78.

6.9. The execution of a delegated authority is based on a trust relationship between the delegator and the delegatee. Breach of this trust relationship will have consequences.

## **PART 7: MAINTENANCE AND REVIEW**

7.1. Review of the Delegation Framework will be considered under, *inter alia*, the following circumstances:

- (i) Changes in legislation, regulations and treasury instructions.
- (ii) Court judgments and other legal interpretations.
- (iii) Changes in the strategic, tactical, operational and control environment.
- (e) Changes in business processes and organisational structures.
- (v) New Council, Executive Mayor or Municipal Manager.
- (vi) Management requests.
- (vii) Recommendations/resolutions from oversight bodies.
- (viii) Every three years **as a whole**.

7.2. Maintenance will be performed by the DCS, through own or contracted-in resources.

7.3. Issued amendments emanating from review and updating processes must be distributed under cover of a Municipal Administrative Instruction.

7.4. Amendments and repeals are controlled by means of a Delegation Control Register.

7.5. The Delegation Framework must be posted and maintained on the ICT system of Swellendam Municipality.

## **PART 8: IMPLEMENTATION**

8.1 All officials must be committed to full compliance with the letter and spirit of these delegations in order to enhance corporate governance, institutional operations and service delivery.

8.2. It is the responsibility of management to:

- (a) Bring the content of this Delegation Framework to the attention of all parties within their area of responsibility and control.

- (b) Ensure that all officials within their area of responsibility and control are continuously developed to effectively exercise their delegated authority.

8.3. It is the responsibility of management to ensure that job descriptions are aligned to the delegations.

8.4. Non-compliance with the Delegation Framework will result in appropriate disciplinary or criminal procedures being considered and instituted against the relevant officials were deemed necessary.

## **PART 9: GOVERNANCE AND REGULATORY FRAMEWORK**

### **9.1. The Constitution**

**9.1.1. Section 160(2)** of the Constitution states that a Municipal Council may not delegate the following functions:

- (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.

By necessary implication, the Municipal Council may delegate any of its functions that are not included in the above list.

### **9.2. Municipal Systems Act, 2000**

#### **9.2.1. Section 11 (4): Decision to be in writing**

- A decision taken by a municipal council or any other political structure of the municipality must be in writing.

#### **9.2.2. Section 59: Delegations**

- A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may-
  - (a) 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, councilors, or staff members;
  - (b) instruct any such political structure, political office bearer, councilor, or staff member to perform any of the municipality's duties; and
  - (c) withdraw any delegation or instruction.
- A delegation or instruction in terms of subsection (1) –
  - (a) must not conflict with the Constitution, this Act or the Municipal Structures Act;
  - (b) must be in writing;
  - (c) is subject to any limitations, conditions and directions the municipal council may impose;
  - (d) may include the power to sub-delegate a delegated power;

- (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
  - (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.
- The municipal council –
  - (a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councilors, must, review any decision taken by such a political structure, political office bearer, councilor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and
  - (b) may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councilor or staff member in consequence of a delegation or instruction.
- Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).

#### **9.2.3. Section 60: Certain delegations restricted to executive committees or executive mayors**

- The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:
  - (a) Decisions to expropriate immovable property or rights in or to immovable property; and
  - (b) The determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.
- The council may only delegate to the Municipal Manager the power to make decisions on investments on behalf of the municipality within the municipality's investment policy contemplated in Section 13(2) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

#### **9.2.4. Section 61: Referral of matters to delegating authorities for decision**

- A political structure, political office bearer, councilor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that political structure, political office bearer, councilor or staff member may, or must if instructed to do so by the relevant delegating authority, refer a matter before the political structure, political office bearer, councilor or staff member to the relevant delegating authority for a decision.

#### **9.2.5. Section 62: Appeals**

- A person whose rights are affected by a decision taken by a political structure, political office bearer, councilor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councilor or staff member, may appeal

against that decision by giving written notice of the appeal and reasons to the municipal manager with 21 days of the date of the notification of the decision.

- The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
- The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- When the appeal is against a decision taken by-
  - (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
  - (b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive committee or executive mayor, the council of the municipality is the appeal authority; or
  - (c) a political structure or political office bearer, or a councilor-
    - (i) the municipal council is the appeal authority where the council comprises less than 15 councilors; or
    - (ii) a committee of councilors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councilors.
- An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.

#### **9.2.6. Section 63: Duty to report to delegating authorities**

- A political structure, political office bearer, councilor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority as such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub-delegated power or duty since the last report.

#### **9.2.7. Section 64: Withdrawal, amendment or lapsing of delegation or sub-delegation**

- The withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

#### **9.2.8. Section 65: Review of delegation**

- Whenever it becomes necessary in terms of section 59(2)(f) to review a municipality's delegations, the municipal manager must submit to the council –
  - (a) A report on the existing delegations issued in terms of section 59 by the council and other delegating authorities of the municipality; and



- (b) Recommendations on any changes to the existing delegations which the municipal manager may consider necessary.
- (2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor”

### **9.3. Municipal Structures Act**

#### **9.3.1. Section 30(5)**

- Before a municipal Council takes a decision on any of the following matters, it must first require its Executive Mayor to submit to it a report and recommendation on the matter:-
  - (a) any matter mentioned in section 160(2) of the Constitution;
  - (b) the approval of an integrated development plan for the municipality, and any amendment to that plan; and
  - (c) the appointment and conditions of service of the Municipal manager and a head of department of the Municipality.

#### **9.3.2. Section 60(3)**

- 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.

### **9.4. Municipal Finance Management Act**

#### **9.4.1. Section 79**

- The accounting officer of a Municipality:
  - (a) Must for the proper application of the MFMA in the Municipality’s administration develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the Municipality’s financial administration;
  - (b) May, in accordance with that system, delegate any of the powers or duties assigned to an accounting officer in terms of his Act:
    - (i) To a member of the Municipality’s top management referred to in section 72; and
    - (ii) To any other official of the Municipality.
  - (c) Must regularly review delegations in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations.
- A delegation in term of subsection (1):
  - (a) Must be in writing;
  - (b) Is subject to such limitations and conditions as the accounting officer may impose in a specific case;
  - (c) May either be to a specific individual or to the holder of a specific post in the Municipality;

- (d) May, in case of a delegation to a member of the Municipality's top management in terms of subsection (1)(b)(l), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in the member's area of responsibility; and
  - (e) Does not divest the accounting officer of the responsibility concerning the exercise of the delegated duty.
- The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

**9.5. NOTE:** The general rule of delegations is that when a delegatee performs a power entrusted to another person on behalf of such person, the latter person still remains accountable but the delegate remains responsible.

**9.6. Administrative Law and practice promotes the following important principles:**

- The Council may, at any time, limit or revoke any delegation subject to rights being vested due to a delegated power already being exercised.
- The Council may also exercise the power although it has been delegated.
- When executed, the power of delegation must be restrictively interpreted<sup>1</sup> which means that the delegate must only do what is explicitly delegated.

**9.7.** In order of hierarchy of application, the regulatory framework in Table 9.1 below, attempts to reference the relevant legislative and regulatory framework and prescripts that guides the administrative, operational, financial and related functional responsibilities of officials in Swellendam Municipality.

<b>Table 9.1: Legislative Framework</b>	
<b>PRESCRIPT</b>	<b>ABBREVIATION</b>
1. Advertising on Roads and Ribbon Development Act (Act 21 of 1940) – ARRDA	ARRDA
2. Businesses Act (Act 71 of 1991) – BA	BA
3. Broad-Based Black Economic Empowerment Act (BBBEEA), 2003 (Act 53 of 2003) – BBEEE	BBEEE
4. Black Communities Development Act Regulations (Act 4 of 1984) – BCDA	BCDA
5. Basic Conditions of Employment, 1997 (Act 75 of 1997) – BcoE	BcoE
6. Companies Act, 1973	CA
7. Conservation of Agricultural Resources Act (Act 43 of 1983) – CARA	CARA
8. Code of Conduct for Councilors, 2004	CCC
9. Code of Conduct for Municipal Staff Members	CCSMS
10. Construction Industry Development Board Act, 2000 (Act 38 of 2000) and Regulations	CIDBA + Regs
11. Competition Act, 1998 (Act 89 of 1998)	Comp A
12. Criminal Procedures Act, 1977 (Act 51 of 1977) – CPA	CPA

<sup>1</sup> *Kasiyamhuru v The Minister of Home Affairs 1999 (1) SA 643*

**Table 9.1: Legislative Framework**

13. Criminal Procedure Act (Act 51 of 1977) – CPROA	CPROA
14. Construction Regulation R1010 of 2003 (for compliance to occupational health and safety within the construction industry)	CR
15. Disaster Management Act (Act 57 of 2002) – DMA	DMA
16. Division of Revenue Act, annual – DORA	DORA
17. Environmental Conservation Act, 1989 (Act 73 of 1989) – ECA	ECA
18. Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) – ECTA	ECTA
19. Employment Equity Act, 1998 (Act 55 of 1998) – EEA	EEA
20. NEMA Environmental Impact Assessment Regulations, 2006 (GG 28753) – EIA	EIA
21. Engineering Professions Act, 2000 (Act 46 of 2000) – EPA	EPA
22. Electricity Regulation Act, 2006 (Act 4 of 2006) – ERA	ERA
23. Financial Misconduct and Offences, Regulations on (2014 MFMA)	RFMO
24. Fire Arms Act, 2000 (Act 60 of 2000)	FAA
25. Fire Brigade Services Act (Act 99 of 1987) – FBSA	FBSA
26. Firearms Control Act (Act 60 of 2000) – FCA	FCA
27. Inter-Governmental Relations Framework Act, 2005 (Act 13 of 2005) – IGRFA	IGRFA
28. Land Survey Act (Act 8 of 1997) – LSA	LSA
29. Legal Succession to South African Transport Services Act (Act 9 of 1989) – LSSATSA	LSSATSA
30. Lower Breede River Conservancy Trust	LBRCT
31. The Spatial Planning and Land use Management Act (Act 16 of 2013) and the regulations thereto	SPLUMA
32. The land use Planning Act Western Cape and the regulations thereto	LUPA
33. The Land use Planning By-Law	LUP By-law
34. The Swellendam Municipal By-law relating to Municipal Roads, Traffic and Parking	M RTP By-Law
35. Municipal Asset Transfer Regulations [MATR], 2008 (GG 31346)	MATR
36. Municipal Budget and Reporting Regulations, 2008 (GG32141)	MBRR
37. Magistrates Court Act (Act 32 of 1944) – MCA + Rules	MCA
38. Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998) – MDA	MDA
39. Municipal Regulations on Debt Disclosure, 2007 (GG 29966)	MDD TR
40. Municipal Finance Management Act, 2003 (Act 56 of 2003) – MFMA	MFMA
41. Municipal Fiscal Powers and Functions Act, 2007 (Act 12 of 2007)– MFPFA	MFPFA
42. Municipal Investments Regulations, 2005 (GG 27431)	MIR
43. Municipal Ordinance (1974) – MO	MO
44. Mineral and Petroleum Resources Development Act (Act 28 of 2002) – MPRDA	MPRDA
45. Municipal Systems Act, 2000 (Act 32 of 2000) – MSA	MSA
46. MSA Disciplinary Regulations for Senior Managers, 2011 (GG 34213)	MSA Disc Regs
47. MSA Performance Regulations, 2006 (GG 29089)	MSA Perf Regs
48. MSA Municipal Planning and Performance Management Regulations, 2001 (GG 22605)	MSA Pln & Perf Regs
49. MSA Regulations, 2001 (GG 22328)	MSA Regs

**Table 9.1: Legislative Framework**

50. Municipal Structures Act, 1998 (Act 117 of 1998) – MSTA	MSTA
51. Museums Ordinance, 1975 (Ord 8 of 1975)	Mus Ord
52. National Building Regulations (2378 of 1990)	NBR
53. National Building Regulations and Building Standards Act (Act 103 of 1977) – NBRBSA	NBRBSA
54. National Council for Library and Information Act, 2001 (Act 6 of 2001)	NCLIA
55. National Environmental Management Act, 1998 (Act 107 of 1998) – NEMA	NEMA
56. NEMA Regulations, 2001 (GG 22960)	NEMA Regs
57. National Environmental Management: Biodiversity Act (Act 10 of 2004)	NEMA:BA
58. NEMA Waste Act, 2008 (Act 59 of 2008) – NEMWA	NEMWA
59. National Heritage Resources Act (Act 25 of 1999) – NHRA	NHRA
60. National Heritage Resources Act, 1999 (Act 25 of 1999)	NHRA
61. National Land Transport Act (Act 22 of 2000) – NLTA	NLTA
62. National Road Traffic Act (Act 93 of 1996) – NRTA	NRTA
63. National Road Traffic Act, 1996 (Act 93 of 1996) – NRTA	NRTA
64. National Road Traffic Regulations (225 of 2000)	NRTR
65. National Veld and Forest Act (Act 101 of 1998) – NVFA	NVFA
66. National Water Act (Act 36 of 1998) – NWA	NWA
67. Occupational Health and Safety Act (Act 85 of 1993) – OHSA	OHSA
68. OHSA: Driven Machinery Regulations (295 of 1988)	OHSA: DMR
69. OHSA: Electrical Machinery Regulations (250 of 2011)	OHSA: EMR
70. OHSA: General Administrative Regulations (929 of 2003)	OHSA: GAR
71. OHSA: General Machinery Regulations (1521 of 1998)	OHSA: GMR
72. OHSA: General Safety Regulations (1031 of 1986)	OHSA: GSR
73. OHSA: Lift, Escalator and Passenger Conveyor Regulations (828 of 2009)	OHSA: LEPCR
74. OHSA: Vessels Under Pressure Regulations (1591 of 1996)	OHSA: VUPR
75. Protected Areas Act (Act 57 of 2003) – PAA	PAA
76. Public Audit Act, 2004 (Act 25 of 2004)	PauditA
77. Promotion of Access to Information Act, 2000 (Act 2 of 2000) – PAIA	PAIA
78. Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) – PAJA	PAJA
79. Prevention of Illegal Eviction from Unlawful Occupation of Land Act (Act 19 of 1998) – PIEUOLA	PIE
80. Provincial Library Service Ordinance, 1981 (Ord 16 of 1981)	PLSO
81. Public Office Bearers Act, 1998 (Act 20 of 1998)	POBA
82. Prevention of Illegal Squatting Act, 1998 (Act 19 of 1998)	PoISA
83. Municipal PPP Regulations, 2005 (GG 27431)	PPP Regs
84. Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and Regulations – PPPFA	PPPFA
85. Local Government Municipal Property Rates Act, 2004 (Act 6 of 2004) – PRA	PRA
86. Private Securities Companies Act, 2001 (Act 56 of 2001)	PSSA
87. Roads Ordinance (Ordinance 19 of 1976) – RO	RO

**Table 9.1: Legislative Framework**

88. Municipal SCM Regulations, 2005 (GG 27636)	SCM TR
89. Skills Development Act, 1998 (Act 97 of 1998) – SDA	SDA
90. SDA Learner-ship Regulations, 2007 (GG 30010)	SDAL Regs
91. Spatial Data Infrastructure Act (Act 54 of 2003) – SDIA	SDIA
92. SDA Levies Act, 1999 (Act 9 of 1999) – SDLA	SDLA
93. State Information Technology Agency Act, 1998 (Act 88 of 1998) – SITA	SITA
94. Spatial Planning and Land Use Management Act (Act 16 of 2013) – SPLUMA	SPLUMA
95. Sectional Titles Act (Act 95 of 1986) – STA	STA
96. Western Cape Gambling and Racing Act (Act 4 of 1996) – WCGRA	WCGRA
97. Water Services Act, 1997 (Act 108 of 1997) – WSA	WSA
98. Regulation on the appointment and conditions of service of senior managers as per GN 21 of 2014	

## 9.8. Minimum legislative and regulatory powers of main role-players:

### 9.8.1. EXECUTIVE MAYOR

- The Executive Mayor has extensive statutory powers and duties. The most important sources thereof are the Local Government: Municipal Structures Act, No 117 of 1998, the Local Government: Municipal Systems Act, No 32 of 2000 and the Local Government: Municipal Finance Management Act, No 56 of 2003.
- Acting in terms of section 60(3) of the Systems Act, **Council hereby designates the powers and functions marked with an \* in this document (See Part B) which must then be exercised and performed by the Executive Mayor together with the members of the Mayoral Committee.** The criteria used for identifying whether such powers need to be designated or not, are as follows:
  1. The need to take urgent decisions;
  2. The importance of the matter;
  3. Whether checks and balances have already been incorporated in the System of Delegation which makes designation unnecessary; and
  4. Whether the nature of the power makes designation impossible.
- A power or duty so designated is not delegable; see “*Constitutional Court in Democratic Alliance and another v Masondo and another 2003(2) BCLR 128 (CC)*”

#### 9.8.1.1 The Structures Act

##### 9.8.1.1.1 Functions and powers of executive mayors [Section 56]

- (1) Receives reports from committees and forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor’s delegated powers.
- (2) (a) Identifies the needs of the municipality.
- (b) Reviews and evaluates those needs in order of priority.

- (c) Recommends to the municipal council strategies, programmes and services to address priority needs through the IDP, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans.
- (d) Recommends or determines the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.
- (3)(a) Identifies and develops criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2) (c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general.
  - (b) Evaluates progress against the key performance indicators.
  - (c) Reviews the performance of the municipality in order to improve –
    - (i) the economy, efficiency and effectiveness of the municipality;
    - (ii) the efficiency of credit control and revenue and debt collection services; and
    - (iii) the implementation of the municipality's by-laws.
  - (d) Monitors the management of the municipality's administration in accordance with the directions of the council.
  - (e) Oversees the provision of services to communities in the municipality in a sustainable manner.
  - (f) Performs such duties and exercise such powers as the council may delegate to the executive mayor.
  - (g) Annually reports on the involvement of communities and community organisations in the affairs of the municipality.
  - (h) Ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.
- (4) Performs a ceremonial role as the municipal council may determine.
- (5) Reports to the municipal council on all decisions taken by the executive mayor.

### **9.8.2 MAYORAL COMMITTEES [Section 60]**

- (1)(a) Appoints a mayoral committee from among the councilors to assist the executive mayor.
- (1)(b) May delegate specific responsibilities to each member of the committee.
- (1)(c) May delegate any of the executive mayor's powers to the respective members.
- (1)(d) May dismiss a member of the mayoral committee.

### **9.8.3 COMMITTEES TO ASSIST EXECUTIVE MAYOR [Section 80]**

- (3)(a) Appoints a chairperson for each committee from the mayoral committee.
- (3)(b) May delegate any powers and duties of the executive mayor to the committee.

(3)(c) Is not divested of the responsibility concerning the exercise of the power or the performance of the duty.

(3)(d) May vary or revoke any decision taken by a committee, subject to any vested rights.

#### **9.8.4 THE SYSTEMS ACT**

##### **9.8.4.1 Management of drafting process for the integrated development plan [Section 30]**

- (a) Manages the drafting of the municipality's integrated development plan.
- (b) Assigns responsibilities in this regard to the municipal manager.
- (c) Submits the draft plan to the municipal council for adoption by the Council.

##### **9.8.4.2 Development of performance management system [Section 39]**

- (a) Manages the development of the municipality's performance management system;
- (b) Assigns responsibilities in this regard to the municipal manager, and
- (c) Submits the proposed system to the municipal council for adoption.

##### **9.8.4.3 Appeals [Section 62]**

- (4)(b) Is the appeal authority when an appeal is lodged against a decision taken by the municipal manager,
- (5) Must commence with an appeal within six weeks and decide the appeal within a reasonable period.

#### **9.8.5 THE MUNICIPAL FINANCE MANAGEMENT ACT**

##### **9.8.5.1 Annual budgets [Section 16(2)]**

Must table the annual budget at a council meeting at least 90 days before the start of the budget year in order for council to approve for each financial year an annual budget before the start of that financial year.

##### **9.8.5.2 Budget preparation process [Section 21]**

- (1)(a) Must co-ordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget-related policies to ensure that the tabled budget and any revisions of the integrated development plan and budget-related policies are mutually consistent and credible.
- (1)(b) Must, at least 10 months before the start of the budget year, table in the municipal council a time schedule outlining key deadlines for—
  - (i) the preparation, tabling and approval of the annual budget;
  - (ii) the annual review of—
    - (aa) the IDP in terms of section 34 of the Municipal Systems Act; and
    - (bb) the budget-related policies;

- (iii) the tabling and adoption of any amendments to the IDP and the budget-related policies; and
  - (iv) any consultative processes forming part of the processes referred to in subparagraphs (i), (ii) and (iii).
- (2) Must when preparing the annual budget, -
- (a) take into account the municipality's IDP;
  - (b) take all reasonable steps to ensure that the municipality revises the IDP in terms of Section 34 of the Municipal Systems Act, taking into account realistic revenue and expenditure projections for future years;
  - (c) take into account the national budget, the relevant provincial budget, the national government's fiscal and macro-economic policy, the annual Division of Revenue Act and any agreements reached in the Budget Forum;
  - (d) consult-
    - (i) the relevant district municipality and all other local municipalities within the area of the district municipality;
    - (iii) the relevant provincial treasury, and when requested, the National Treasury; and
    - (iv) any national or provincial organs of state, as may be prescribed; and
  - (e) provide, on request, any information relating to the budget –
    - (i) to the National Treasury; and
    - (ii) subject to any limitations that may be prescribed, to-
      - (aa) the national departments responsible for water, sanitation, electricity and any other service as may be prescribed;
      - (bb) any other national and provincial organ of state, as may be prescribed; and
      - (cc) another municipality affected by the budget.

#### **9.8.5.3 Consultations on tabled budgets [Section 23]**

Must respond to the submissions of the local community, National and Provincial Treasury, national organs of state or municipalities which made submissions on the budget; after the annual budget was tabled in the municipal council and if necessary, revise the budget and table amendments for consideration by the Council.

#### **9.8.5.4 Failure to approve budget before start of budget year [Section 25(3)]**

Must, if the council has by the first day of the budget year failed to approve an annual budget, including revenue-raising measures necessary to give effect to the budget, as contemplated by Section 55-

- (a) immediately report the matter to the MEC for local government; and
- (b) may recommend to the MEC an appropriate provincial intervention in terms of Section 139 of the Constitution.

#### **9.8.5.5 Non-compliance with provisions of Chapter 4: Municipal Budgets [Section 27]**



- (1) Must, upon becoming aware of any impending non-compliance by the municipality of any provisions of this Act or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes, inform the MEC for finance, in writing, of such impending non-compliance.
- (2) the impending non-compliance pertains to a time provision, except Section 16 (1), the mayor may apply to the MEC for finance to extend any time limit or deadline contained in that provision, provided that no such extension may compromise compliance with Section 16 (1).
- (3) Must, upon becoming aware of any actual non-compliance by the municipality of a provision of this Chapter, inform the council, the MEC for finance and the National Treasury, in writing, of-
  - (a) such non-compliance; and
  - (b) any remedial or corrective measures the municipality intends to implement to avoid a recurrence.

#### **9.8.5.6 Municipal adjustments budgets [Section 28(4)]**

May table an adjustments budget in the municipal council within any prescribed limitations as to timing or frequency.

#### **9.8.5.7 Unforeseen and unavoidable expenditure [Section 29]**

- (1) May in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.
- (2) Must report any such expenditure to the council at its next meeting and must appropriate such expenditure in an adjustments budget.

#### **9.8.5.8 Shifting of funds between multi-year appropriations [Section 31(d)]**

To approve in writing an increase in expenditure that exceeds the amount of a year's appropriation for a capital programme, where funds for such programme have been appropriated for more than one financial year.

#### **9.8.5.9 Short-term debt [Section 45(2)(a)]**

- (a) Must provide general political guidance over the fiscal and financial affairs of the municipality.
  - (b) May in providing such general political guidance, monitor and, to the extent provided in the Act, oversee the exercise of responsibilities assigned in terms of the Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities.
- (1) Must, on receipt of a statement or report submitted by the accounting officer in terms of section 71 or 72-
    - (a) consider the statement or report;
    - (b) check whether the municipality's approved budget is implemented in accordance with the service delivery and budget implementation plan;

- (c) consider and, if necessary, make any revisions to the service delivery and budget implementation plan, provided that revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the council following approval of an adjustments budget;
- (d) issue any appropriate instructions to the accounting officer to ensure-
  - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan; and
  - (ii) that spending of funds and revenue collection proceed in accordance with the budget;
- (e) identify any financial problems facing the municipality, including any emerging or impending financial problems; and
- (f) in the case of a Section 72 report, submit the report to the council by 31 January of each year.

(2) Must, if the municipality faces any serious financial problems –

- (a) promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems, which may include –
  - (i) steps to reduce spending when revenue is anticipated to be less than projected in the municipality's approved budget;
  - (ii) the tabling of an adjustments budget; or
  - (iii) steps in terms of Chapter 13; and
- (b) alert the council and the MEC for local government in the province to those problems.

(3) Must ensure that any revisions of the service delivery and budget implementation plan are made public promptly.

#### **9.8.6 The Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006 (Gn 805 of 1 August 2006)**

- The regulations confer various powers on the Executive Mayor in relation to the MM; see the definition of employer - "employer" means the municipality employing a person as a municipal manager or as a manager directly accountable to a municipal manager and as represented by the mayor, executive mayor or municipal manager as the case may be and these powers relate *inter alia* to-
  - A written employment contract for a municipal manager
  - A written performance agreement for a municipal manager
  - Conditions of service
  - Performance bonus
  - Precautionary suspension
  - Performance management system

#### **9.9 SPEAKER**

## **9.9.1 The Structures Act**

### **9.9.1.1 Meetings of municipal councils [Section 29]**

- (1) The speaker of a municipal council decides when and where the council meets subject to section 18 (2), but if a majority of the councilors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request.
- (3) Where the composition of a municipal council has been changed as a result of the provisions of item 2, 3 or 7 of Schedule 6B to the Constitution, the speaker of that council must, subject to item 6 (b) of Schedule 6B to the Constitution, convene council meetings for purposes of dealing, amongst others, with the consequences of such a change, the first of which meetings must –
  - (a) in the case of a metro council or a local council, take place within seven days after the expiry of a period referred to in item 4 (1)(a)(i) or (ii) of Schedule 6B to the Constitution; and
  - (b) in the case of a district council, take place within seven days after the completion of the appointments referred to in item 6 (b) (ii) of Schedule 6B to the Constitution.

### **9.9.1.2 Functions of speakers. [Section 37]**

The speaker of a municipal council –

- (a) presides at meetings of the council;
- (b) performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (c) must ensure that the council meets at least quarterly;
- (d) must maintain order during meetings;
- (e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
- (f) must ensure that council meetings are conducted in accordance with the rules and orders of the council.

## **9.9.2 The Systems Act**

### **9.9.2.1 Duty of chairpersons of municipal councils. [Item 13 Code of Conduct for Councilors]**

- (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must –
  - (a) authorise an investigation of the facts and circumstances of the alleged breach;
  - (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
  - (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.
- (3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.
- (4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

### **9.9.2.2 Rewards, gifts and favours [Item 8 Code of Conduct for Municipal Staff Members]**

- (2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of sub item (1).

### **9.9.2.3 Reporting duty of staff members [Item 13 Code of Conduct for Municipal Staff Members]**

Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.

## **9.9.3 The Municipal Finance Management Act**

### **9.9.3.1 Reporting of improper interference by councilors [Section 103]**

The accounting officer of a municipal entity must promptly report to the speaker of the council of the entity's parent municipality any interference by a councilor outside that councilor's assigned duties, in –

- (a) the financial affairs of the municipal entity; or
- (b) the responsibilities of the board of directors of the municipal entity.

### **9.9.3.2 Consequences of non-compliance with certain provisions [Section 133]**

- (1) If the accounting officer of a municipality or municipal entity fails to submit financial statements to the Auditor-General in accordance with section 126(1) or
- (2) or if the mayor fails to table the annual report of the municipality or a municipal entity in the council in accordance with section 127(2) –
  - (b) the Auditor-General, in the case of any failure to submit financial statements for auditing, must promptly - (i) inform the speaker of the council.....
  - (c) the municipal council – (i) must request the speaker or any other councillor to investigate the reasons for the failure and report to the council;

## **9.9.4 Promotion of Access to Information Act, Act 2000**

To determine internal appeals in terms of the Promotion of Access to Information Act 2 of 2000 as the designated relevant authority in terms thereof.

## **9.9.5 General**

### **9.9.5.1 The speaker of a Municipal Council has the following further duties:**

- (a) The Speaker is in charge of the legislative arm of the Municipal Council and must therefore guard the integrity of the legislative process, as well as protect the “checks and balances” between the legislature and the executive.
- (b) The Speaker has to ensure that by-laws that are tabled comply with the Constitution, Structures Act, Systems Act and other applicable National and Provincial legislation.

- (c) The Speaker must ensure that the procedural requirements that apply specifically to the adoption of by-laws have been adhered to.
- (d) The Speaker has to guard the integrity of the Council, which requires the Speaker to guard against the abuse of Councilor's privileges and interests.
- (e) The Speaker should deal with complaints lodged against Councilors by members of the community.
- (f) The Speaker must exercise his or her duties within the rules as determined by the Council, and is therefore accountable to the Council.
- (g) The Speaker calls council meetings and decides on their time and venue. However, if a majority of Councilors request a meeting, the Speaker must convene a meeting accordingly.
- (h) Although the Council is the ultimate decision maker on the rules of order, the Speaker should take the initiative in the policy formulation around the rules of order.
- (i) The Speaker must further ensure that:
  - (i) Councilor's freedom of speech in the council is protected, i.e. that Councilors are allowed to speak freely, that there is order in the meeting, that there are no interruptions etc.
  - (ii) Councilor's freedom of speech is exercised subject to Council's rules of order.
- (j) The Speaker must facilitate the implementation of **Section 20(1) and (2) of the Structures Act** in as far as it deals with the public's admission to Council meeting. The council decides whether or not to close a meeting but the Speaker must be able to advise Council and facilitation the decision making around the issue. The Speaker must ensure that members of the public are seated in designated areas and should have the authority to remove any person who refuses to comply with the Speaker's ruling.
- (k) The Speaker must maintain an attendance register in order to implement item 4(2) of the code of Conduct. This provides for the removal of a Councilor after a third consecutive absence from a Council meeting without having obtained leave of absence.

## **9.10. MUNICIPAL MANAGER**

### **9.10.1 Section 55 of the Local Government: Municipal Systems Act, 2000 (Act 32/2000)**

- (a) As head of administration the Municipal Manager of a Municipality is, subject to the policy directions of the Municipal Council, responsible and accountable for –
  - (i) The formation and development of an economical, effective, efficient and accountable administration-
    - Equipped carrying out the task of implementing the Municipality's Integrated Development Plan in accordance with Chapter 5;
    - Operating in accordance with the Municipality's performance management system in accordance with Chapter 6; and
    - Responsive to the needs of the local community to participate in the affairs of the Municipality;
- (b) The management of the Municipality's administration in accordance with this Act and other legislation applicable to the Municipality;

- (c) The implementation of the Municipality's Integrated Development Plan, and the monitoring of progress with implementation of the plan;
- (d) The management of the provision of services to the local community in a sustainable and equitable manner;
- (e) **The management, effective utilisation and training of staff;**
- (f) **The maintenance of discipline of staff;**
- (g) **The promotion of sound labour relations and compliance by the Municipality with applicable labour legislation;**
- (h) Advising the political structures and political office bearers of the Municipality;
- (i) Managing communications between the Municipality's administration and its political structures and political office bearers;
- (j) **Carrying out the decisions of the political structures and political office bearers of the Municipality;**
- (k) The administration and implementation of the Municipality's by-laws and other legislation;
- (l) The exercising of any powers and the performing of any duties delegated by the Municipal Council, or sub-delegated by other delegating authorities of the Municipality, to the Municipal Manager in terms of section 59;
- (m) Facilitation participation by the local community in the affairs of the Municipality;
- (n) Developing and maintaining a system whereby community satisfaction with Municipal services is assessed;
- (o) The implementation of national and provincial legislation applicable to the Municipality; and
- (p) The performance of any other function that may be assigned by the Municipal Council.

**9.10.2 As accounting officer of the Municipality the Municipal Manager is responsible and accountable for-**

- (a) All income and expenditure of the Municipality;
- (b) All assets and the discharge of all liabilities of the Municipality; and
- (c) Proper and diligent compliance with the Municipal Finance Management Act.

**9.10.3 Chapter 8 of the MFMA Act no 56 of 2003 (Section 60 – 79)**

The Municipal Manager of a Municipality is the accounting officer of the Municipality for the purposes of the MFMA, and, as accounting officer must:

- (a) Exercise the functions and powers assigned to accounting officers in terms of the said Act, and
- (b) Provide guidance and advice on compliance with the said Act to:
  - (i) The political structures, political office-bearers and officials of the Municipality; and
  - (ii) Any Municipal entity under the sole or shared ownership control of the Municipality.

**9.10.4 Fiduciary responsibilities of accounting officers – Section 61**

- **The accounting officer of a Municipality must:**

- (a) Act with fidelity, honesty, integrity and in the best interest of the Municipality in managing its financial affairs;
  - (b) Disclose to the Municipal Council and the Mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decision or actions of the council or the Mayor; and
  - (c) Seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the Municipality.
- **An accounting officer may not:**
    - (a) Act in a way that is inconsistent with the duties assigned to accounting officer in terms of the MFMA; or
    - (b) Use the position and privileges of, or confidential information obtained as, accounting officer for personal gain or improperly benefit another person.

#### **9.10.5 General financial management functions – Section 62**

- The accounting officer of a Municipality:
  - (a) Is responsible for the effective, efficient, economical and transparent use of the resources of the Municipality;
  - (b) Must keep full and proper records of the financial affairs of the Municipality in accordance with any prescribed norms and standards;
  - (c) Must ensure that the Municipality has and maintains:
    - (i) Effective, efficient and transparent systems of financial and risk management and internal control;
    - (ii) A system of internal audit operating in accordance with any prescribed norms and standards;
  - (d) Must take all reasonable steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and other losses; and
  - (e) Must take effective and appropriate disciplinary steps against any official of the Municipality who:
    - (i) Contravenes or fails to comply with a provision of a this Act;
    - (ii) Commits an act which undermines the financial management and internal control system of the Municipality; or
    - (iii) Makes or permits and unauthorised, irregular or fruitfulness and wasteful expenditure.

#### **9.10.6 The accounting officer of a Municipality must take all reasonable steps to ensure that the Municipality has and implements:**

- (a) Procurement and asset disposal policies which the Municipality must adopt in terms of Section 166;
- (b) A tariff policy referred to in section 74 of the MSA;
- (c) A rates policy as may be required in terms of any applicable national legislation;

- (d) A credit control and debt collection policy referred to in section 96(b) of the MSA; and
- (e) A SCM Policy which gives effect to the provisions of Part 1 of Chapter 20 of the MFMA.

**9.10.7 The accounting officer must maintain and regularly update the Municipality's official website and promptly, not later than 5 days after its tabling, place on the website:**

- (a) The annual and adjustments budget and all budgets-related documents;
- (b) All policies of the Municipality referred to in subsection;
- (c) The annual report, financial statements and audit report;
- (d) All performance agreements required in terms of section 57(1)(b) of the Municipal Systems Act;
- (e) All service delivery agreements and other agreements referred to in section 81;
- (f) All long-term borrowing contracts;
- (g) All procurement contracts above a prescribed value; and
- (h) Any other documents that may be prescribed.

**9.10.8 The accounting officer is responsible for and must account for all bank accounts of the Municipality, including any bank account opened for any relief, charitable or trust fund set up by the Municipality in terms of section 12 and therefore the accounting officer of a Municipality:**

- (a) Takes any appropriate action with regard to any loss of or shortage in fund or property belonging to or controlled by the Council involving alleged fraud, theft or negligence on the part of all staff, members of Council or any other structure of Council. This action may only be instituted pursuant to relevant recommendations submitted by the relevant Portfolio Committee.
- (b) Approves and reviews audit plans.
- (c) Considers any deals with external audit report, and replies thereto and receive quarterly internal audit reports.

**9.10.9 The Accounting Officer has the following further powers, duties or functions:**

- (a) Municipal Bank Accounts - i.t.o. Section 10(2), the accounting officer may delegate the duties referred to in subsection 10(1)(c) to the Municipality's Chief Financial Officer only;
- (b) Delegations - i.t.o. Section 79(1), the accounting officer of a Municipality, must:
  - (i) For the proper application of the MFMA, in the Municipality's administration, develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the Municipality's financial administration;
  - (ii) May, in accordance with that system of delegations, delegate to a member of the Municipality's top management referred to in Section 77 or any other official of the Municipality:
    - Any of the powers or duties assigned to an accounting officer in terms of the MFMA; or
    - Any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of the MFMA; and



- (iii) Must regularly review delegations issued in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations.
- (iv) i.t.o. Section 79(2), the accounting officer may not delegate to any political structure or political office bearer of the Municipality any of the powers or duties assigned to accounting officers in terms of the MFMA.
- (v) i.t.o. Section 79(3), a delegation in terms of subsection (1), must be in writing:
  - (a) Subject to such limitations and conditions as the accounting officer may impose in a specific case;
  - (b) May either be to a specific individual or to the holder of a specific post in the Municipality;
  - (c) May, in the case of a delegation to a member of the Municipality's top management in terms of subsection (1)(b), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that members area of responsibility; and
  - (d) Does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (vi) i.t.o. Section 79(4) the accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

#### **9.10.10 Asset and liability management Section 63 of MFMA**

The accounting officer of a Municipality is responsible for the management of:

- (a) The assets of the Municipality, including the safeguarding and the maintenance of those assets; and
- (b) The liabilities of the Municipality.

The accounting officer must for the purposes of subsection (1):

- (a) Ensure that the Municipality maintains a management, accounting and information system that accounts for the assets and liabilities of the Municipality;
- (b) Cause the Municipality's assets and liabilities to be valued in accordance with standards of generally recognised accounting practice; and
- (c) Establish and maintain a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

#### **9.10.11 Revenue management Section 64**

The accounting officer of a Municipality is responsible for the management of the revenue of the Municipality.

The accounting officer must for the purposes of subsection (1):

- (a) Ensure that the Municipality has proper revenue collection systems consistent with Section 95 of the Municipal Systems Act and the Municipality's credit control and debt collection policy;
- (b) On a monthly basis calculate revenue due to the Municipality;

- (c) Ensure that accounts for Municipal tax, and charges for Municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- (d) Ensure that all money received is promptly deposited in accordance with this Act into the Municipality's primary and other banks accounts;
- (e) Establish and maintain a management, accounting and information system which:
  - (i) Recognises revenue when it is earned;
  - (ii) Accounts for debtors; and
  - (iii) Accounts for receipts of revenue.
- (d) Establish and maintain a system of internal control in respect of debtors and revenue as may be prescribed;
- (e) Charge interest on arrears, except where the Council has granted exemptions in accordance with its budget-related policies and within a prescribed framework; and
- (f) Ensure that all revenue received by the Municipality, including revenue received by any collecting agent on its behalf, is reconciled as least on weekly basis.

9.10.12 The AO must immediately inform the National Treasury of any payments due by an organ of state to the Municipality in respect of Municipal tax or for Municipal services, if such payments are regularly in arrears for periods of more than 30 days.

9.10.13 The accounting officer must ensure:

- (a) That any funds collected by the Municipality on behalf of another organ of state is transferred to that organ of state at least on a weekly basis; and
- (b) Those funds are not used for other purposes.

#### **9.10.14 Expenditure management Section 65**

The accounting office of a Municipality is responsible for the management of the expenditure of the Municipality.

The accounting officer must for the purpose of subsection (1):

- (a) Ensure that the Municipality has and maintains a proper system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds.
- (b) Ensure that the Municipality has and maintains a management, accounting and information system which:
  - (i) Recognises expenditure when it is incurred;
  - (ii) Accounts for creditors of the Municipality; and
  - (iii) Accounts for payments made by the Municipality.
- (c) Ensure that the Municipality has and maintains a system of internal control in respect of creditors and payments.
- (d) Ensure that payments are made:
  - (i) Directly to the person to whom it is due unless agreed otherwise or for good reason;

- (ii) Either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed;
- (e) Pay all money owing within 30 days of receiving the relevant invoice, unless where prescribed otherwise.
- (f) Comply with tax, levy, duty, pension, and other commitments of the Municipality as required by legislation.
- (g) Manage available working capital effectively and economically in terms of the prescribed cash management and investment framework.
- (h) Implement the Municipality's procurement and asset disposal policies referred to in section 165 in a way that is fair, equitable, transparent, competitive and cost effective.
- (i) Ensure that all accounts of the Municipality are closed at the end of each month and reconciled with its records.

#### **9.10.15 Expenditure on staff benefits - s 66**

The accounting officer of a Municipality must:

- (a) In a format and at intervals as may be prescribed, report to the Council on all expenditure incurred by the Municipality on staff salaries, wages, allowances and benefits, and in a manner that discloses such expenditure per type of expenditure namely:
  - (i) Salaries and wages;
  - (ii) Contributions for pensioners and medical aid;
  - (iii) Travel, motor car, accommodation, subsistence and other allowances;
  - (iv) Housing benefits and allowances;
  - (v) Overtime payments;
  - (vi) Loans and advances; and
  - (vii) Any other type of benefit or allowance related to staff.
- (b) Disclose such expenditure in the Municipality's annual report in a prescribed format.

#### **9.10.16 Budget preparation – Section 68**

The accounting officer of a Municipality must:

- (a) Assist the Mayor in performing the budgetary functions assigned to the Mayor in terms of Chapter 4; and
- (b) Provide the Mayor with the administrative support, resources and information necessary for the performance of those functions.

#### **9.10.17 Budget implementation - Section 69**

The accounting officer of a Municipality is responsible for implementing the Municipality's approved budget, including taking all effective and appropriate steps to ensure that:

- (a) The spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the budget and service delivery implementation plan;
- (b) Revenue and expenditure are properly monitored.

When necessary, the accounting officer must prepare an adjusted budget and submit it to the Mayor for consideration and tabling in the Municipal Council.

The accounting officer must no later than 14 days after the approval of an annual budget submit to the Mayor:

- (a) A draft budget and service delivery implementation plan for the budget year; and
- (b) Drafts of the annual performance agreements as are required in terms of section 57(1)(b) of the MSA for the Municipal Manager and all managers directly responsible to the Municipal Manager.

#### **9.10.18 Impending shortfalls, overspending and overdrafts Section 70**

The accounting officer of a Municipality must report in writing to the Municipal Council:

- (a) Any impending:
  - (i) Shortfalls in budgeted revenue; and
  - (ii) Overspending of the Municipality's budget; and
- (b) Any steps taken to rectify such shortfalls or overspending.
- (c) If the consolidated balance in a Municipality bank accounts shows a net overdrawn position for a period exceeding a prescribed period, the accounting officer of the Municipality must promptly notify the National Treasury in the prescribed format of:
  - (i) The amount by which the account or accounts is overdrawn;
  - (ii) The reasons for the overdrawn account or accounts; and
  - (iii) The steps taken or to be taken to correct the matter.

#### **9.10.19 Monthly budgets statements Section 71**

The accounting officer of a Municipality must by no latter that seven working days after the end of each month submit to the Mayor of the Municipality and the National Treasury a report in the prescribed format on the state of the Municipality budget during that month and during the financial year up to the end of that month reflecting:

- (a) The actual revenue, per revenue source;
- (b) Actual borrowings;
- (c) The actual expenditure, per vote;
- (d) The actual capital expenditure, per vote;
- (e) The amount of any transfers received, from national organs of state in terms of the annual Division of Revenue Act, and from Provincial organs if state and other Municipalities;
- (f) The actual expenditure on those transfers, excluding expenditure on its share of the Local Government equitable share and on transfers which the annual Division of Revenue Act exempts from this section;
- (g) When necessary, an explanation of:
  - (i) Any material variances from the Municipality's projected revenue by source, and from the Municipality's expenditure projections per vote; and
  - (ii) Any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the Municipality's approved budget.

- (h) The amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for the Municipality's approved budget.
- (i) The statement to the National Treasury referred to in subsection (1) may be in electronic format.
- (j) The accounting officer of a Municipality which has received transfer referred to in subsection (1)(e) during any particular month must, by no later than seven (7) working days after the end of that month, submit that part of the statement reflecting the particulars referred to subsection (1)(e) and (f) to the National or Provincial organ of State or Municipality which made the transfer.

#### **9.10.20 Reports on failure to adopt implement budget-related and other policies - Section 73**

The accounting officer must inform the MEC for Local Government in the Province and National Treasury, in writing, have:

- (a) Any failure by the Council of the Municipality to adopt or implement a budget related policy or a procurement or asset disposal policy referred to in section 111; or
- (b) Any non-compliance by political structures or office-bearers of the Municipality with any such policy.

#### **9.10.21 General reporting obligation - Section 74**

The accounting officer of a Municipality must submit to the National Treasury, the MEC for Local Government in the Province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the National Treasury, that MEC or the Auditor General may require.

#### **9.10.21 Protection of Accounting Officer**

Any action taken by a political structure or office-bearer of a Municipality against the accounting officer of the Municipality solely because of that accounting officer's compliance with a provision of this Act, is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No 66 of 1995).

### **PART 10: IMPACT WHEN EXECUTING A DELEGATION**

- 10.1. The principles of Administrative Law dictate that when an official executes a delegation, such delegation is regarded as an administrative action and has the force of law<sup>2</sup>. The result of the latter is that when an official conducts a legal, illegal or *ultra vires* administrative action, such action may retain its force of law until it is declared by a court of law as being invalid in total and void **or** voidable, subject to rights already being vested.
- 10.2. It is therefore of the utmost importance that when an official executes a delegation/administrative action, he or she must ensure that they execute a **good** delegation/administrative action. The common law principles of administrative actions as well as PAJA provides various guidelines of what constitutes a **good** administrative action and principally entails a positive response to each of the following criteria. Table 10.1 below provides a PAJA test.

**Table 10.1: PAJA tick list**

<sup>2</sup> Administratiefreg, tweede uitgawe, Marinus Wiechers, BUTTERWORTH, 1984

<b>JUST ADMINISTRATIVE ACTION TEST: tick off</b>	
<b>All the requirements to take a lawful, reasonable and procedurally fair administrative action have been complied with and no grounds exist for a review of the action:</b>	
	All relevant and permissible facts and circumstances were taken into consideration to achieve the purpose/objective of the empowering provision ( <i>mindful of previous precedence created</i> )
	All prescripts, limitations and conditions are adhered to
	Action by the relevant official is within the ambit of his/her empowering provision, delegation or legislative power
	The result of the action/decision will serve a legal permissible purpose
	The result of the action falls within ambit of the budget, budget description and objectives of the strategic plan

10.3. Once a delegation has been exercised it is deemed to be a **completed** administrative action. A **completed** administrative action is regarded as a *functus officio* action.

10.3.1. *Functus officio* is the legal term for an administrative action that has been executed resulting in legal rights being vested. Administrative actions exercised by an appropriate delegated authority therefore result in such actions being regarded as *functus officio*.

10.3.2. **Remedies available if the delegated authority or AO wishes to revoke or amend a *functus officio* administrative action:**

- A *functus officio* administrative action that is irregular does not immediately invalidate the action but such action may be declared invalid through a competent authority determined by law or a competent court if the law does not allow differently. Such irregular administrative action renders the action *ultra vires* and is thus regarded as voidable but not immediately invalid. The administrator will have to void his action and the party whose rights are negatively affected may have a legal claim in this regard. This situation is mostly prevalent in cases where officials accepted more responsibility than was delegated to them or did not comply with the limitations and conditions stated in the relevant delegatory power.
- If it was found that an administrative action was not properly executed and/or *ultra vires*, the delegated authority will have to inform the affected parties accordingly and advise them of the actions that will be taken to rectify the matter and also advise them of their rights in this regard.
- If it is found that the *functus officio* administrative action was regular and 'good', it may also be revoked or amended if a law explicitly allows for such revocation or amendment. An example is the provisions of the PPPFA Regulations, 2011 and the Treasury Regulations 16A.9.1 which allow the revocation of an administrative action if it was found that the bidders submitted incorrect, false or fraudulent information on which a decision was based.

10.3.3. **The principles of PAJA:**

- (i) PAJA stipulates that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair and everyone whose rights have been adversely affected has the right to be given reasons.
- (ii) This principle is also endorsed by the common law principles of natural justice.
- (iii) The most common remedy to persons whose rights are affected through administrative actions, is to request compliance with the ***audi alterem partem*** rule [*right to be heard*']. This rule can be applied in four ways:
  - Affected persons are allowed the opportunity to make presentations.
  - Affected persons are given the reasons why their applications were not successful and be allowed to make representations.
  - Affected persons are given the reasons why their applications were not successful, confirming that it was a discretionary power that was executed.
  - The delegated authority shows cause that the decision was made or the action executed without prejudice.
- (iv) PAJA, sections 3 and 5, endeavour to give more clarity to the above and provide that where an administrative action is executed, two considerations must be adhered to:
  - (i) The administrative action must be procedurally fair and provide adequate opportunity to those affected to make representations, adequate notice for internal appeal or review and adequate notice of the right to request reasons; and
  - (ii) The person whose rights are affected may request reasons for such decision, which reasons must be given within 90 days after receipt of the request.

## **PART 11: DELEGATIONS**

11.1. The following delegations are applicable:

- (i) ***Annexure A:*** General Administrative Delegations (attached and approved by council as integral part of this delegation system).
- (ii) AO and CFO Finance Delegations. Separate document. Approved by the AO.
- (ii) AO and CFO SCM Delegations. Separate document. Approved by the AO.

11.2. In the execution of the above delegations consideration must be taken and where appropriate alignment must be promoted with the following delegations:

- (i) Mayoral delegations issued in terms of section 59 of the MFMA; and
- (ii) Relevant line function delegations affecting the execution of administrative, financial or SCM related matters.

11.3. The following guiding principles were applied in arriving at the delegations contained in Annexures A and the separate documents referred to:

- The reason for delegating a power or authority.
- Clarity of authority and responsibility.
- Ability to perform the delegation.
- Relevance.
- Personal and psychological barriers that impede the delegation process.
- Awareness of other impediments to delegations.
- Segregation of duties.

11.4. The following tables are intended to assist officials with the explanation, interpretation and application of the delegations:

**Table 11.1 defines the content of each column of the Delegation Framework:**

TERMS	DEFINITION
<b>Item number</b>	Each delegation has been numbered to reference the appropriate delegation.
<b>Reference to power of authority</b>	This column contains the source and cryptic description of the power or authority. This column is divided into a 'mandate/source reference' and 'cryptic description of authority/obligation' column respectively.
<b>Mandate/Source Reference</b>	This column refers to the specific mandate/source reference and is organised in the order of the relevant legislation as listed in table 9.1 above
<b>Cryptic description of power of authority/ obligation</b>	This column contains an extract of the power or authority as encapsulated in the relevant prescripts
<b>Delegated Authority/ Component Delegated to</b>	Activity is delegated to a specific component. At the remarks column an indication is given to which division within the specific component the activity is delegated to. It remains the prerogative of the Manager per component to sub-delegate the functions further, subject to such being in writing.
<b>Limitations/conditions</b>	The execution of delegations is subject to compliance with the corresponding limitations and/or conditions. This forms part of the system of checks and balances (controls) that ensures that delegations are exercised in a responsible and accountable manner and is enforceable by law.
<b>Risk</b>	Indicates the risk impact on exercising the authority and differentiates between:
<ul style="list-style-type: none"> <li>• <b>Limited</b></li> </ul>	Restricted/small impact on the Swellendam Municipality internally. The timeframe of the impact would generally be short-term.
<ul style="list-style-type: none"> <li>• <b>Moderate</b></li> </ul>	Impact is more substantial on the Swellendam Municipality internally but not big enough to be considered extensive. The timeframe of the impact would generally be medium-term.
<ul style="list-style-type: none"> <li>• <b>Extensive</b></li> </ul>	Major impact on the Swellendam Municipality internally and externally on the broader Government. The timeframe of the impact would generally be long-term.

## PART 12: INTERNAL CONTROL AND RISK MANAGEMENT



- 12.1. The MFMA prescribes that the Swellendam Municipality must conduct a *risk assessment* on its business. This would *inter alia* include a risk management assessment of its Delegation Framework, once implemented.
- 12.2. When risks and deficiencies in the level of control are identified, it is necessary to choose the most appropriate type of controls. Non-compliance should be deterred wherever possible. Similarly, prevention of non-compliance is always preferable to detection and correction. Strong preventive controls should therefore be applied wherever possible, however, preventive controls may not always be sufficient and detective controls are therefore important. Detective and corrective controls are established to detect errors after the events have taken place.
- 12.3. Internal controls that provide for the security and accountability of the municipal resources and prevent or reduce opportunity for non-compliant activities must be continuously established and maintained. Internal controls are divided into four **main categories**, namely:
- (a) **Management controls** – to ensure that the Municipal structure and systems support its policies, strategies and objectives and operate within a legal framework.
  - (b) **Administrative controls** – to ensure that policies, strategies and objectives are delivered in an effective and efficient manner and losses are minimized.
  - (c) **Accounting controls** – to ensure the resources allocated are accounted for fully and transparently and are properly documented.
  - (d) **Information technology controls** – relate to the Municipal IT systems, access control, control of system software programmes, business continuity controls and other related controls.
- 12.4. Each category of control can further be **classified** as either:
- (a) **Preventative controls** – to discourage errors or irregularities from occurring.
  - (b) **Detective controls** – to find errors or irregularities after they have occurred.
  - (c) **Corrective controls** – to correct identified errors or irregularities.
- 12.5. Preventative and detective controls were considered in the development of the Delegation Framework and is included as part of the limitations and conditions.
- 12.6. Table 12.1 below reflects the risk assessment coding principles to be applied when issuing delegations, which will guide future activities and the monitoring of its effectiveness.

**Table 12.1: The coding per risk impact**

ITEM	AREA OF IMPACT	EXTENT OF IMPACT		
		LIMITED = L	MODERATE = M	EXTENSIVE = E
1	Own work environment	L1	M1	E1
2	Own institution	L2	M2	E2
3	Other institutions	L3	M3	E3
4	Whole of the public sector	L4	M4	E4

ITEM	AREA OF IMPACT	EXTENT OF IMPACT		
		LIMITED = L	MODERATE = M	EXTENSIVE = E
5	General public	L5	M5	E5
6	Media	L6	M6	E6
7	Private sector organisations	L7	M7	E7
8	Other governments	L8	M8	E8
9	Executive Authorities	L9	M9	E9

**PART 13: COMPLIANCE, REPORTING, MONITORING AND EVALUATION**

13.1. The monthly reports of the various departments will contain information related to the delegations executed during the month.

**PART 14: CAPACITY DEVELOPMENT**

14.1. Direct clarification of and solicit training on any matter contained in the Delegation Framework, to the Office of the DCS.