***ACTION MINUTES***

***COUNCIL MEETING***

***28 APRIL 2022***

**CAPE WINELANDS DISTRICT MUNICIPALITY**

**MINUTES OF THE COUNCIL MEETING OF THE CAPE WINELANDS DISTRICT MUNICIPALITY HELD ON THURSDAY, 28 APRIL 2022 AT 10:04 IN THE COUNCIL CHAMBER, CAPE WINELANDS DISTRICT MUNICIPALITY, TRAPPES STREET, WORCESTER**

**PRESENT (3/2/1/2)**

**COUNCILLORS**

Cllr. D.D. Joubert (Speaker)

Ald. (Dr.) H. von Schlicht (Executive Mayor)

Ald. M. Sampson (Executive Deputy Mayor)

Ald. K. Adams

Cllr. E.G. Arendse

Cllr. W.M. Blom (Virtual)

Cllr. M.N. Bushwana

Cllr. G.J. Carinus

Cllr. A.J. du Plessis

Cllr. R. Farao

Cllr. G.J. Fredericks

Cllr. S. Goedeman

Cllr. E. Groenewald

Cllr. V. Hani

Cllr. J.J.S. Januarie

Cllr. F. Jacobs

Cllr. D.B. Janse

Cllr. C.O. Klaaste

Cllr. J. Kriel

Cllr. M.S. Liebenberg

Cllr. J. Maliti

Cllr. C. Manuel

Cllr. X.L. Mdemka

Ald. C. Meyer

Cllr. T.R. Mphulanyana

Cllr. D.W. Nel

Cllr. L. Ngwane

Cllr. A.J. Pedro

Cllr. W.C. Petersen

Cllr. A.M. Richards

Cllr. J. Smit

Cllr. M. Smit

Ald. R. Smuts

Cllr. J.H.P. Steyn

Cllr. D. Swart

Cllr. M. van Stade

Cllr. C.F. Wilskut

Cllr. M.H. Yabo

**ABSENT**

Cllr. R.S. Nalumango

Cllr. N. Phatsoane

**OFFICIALS**

Mr. H.F. Prins (Municipal Manager)

Ms. F.A. du Raan-Groenewald

Mr. P.A. Williams

Ms. K. Smit

Ms. W.M. Neethling

Ms. E.J. Otto

Mr. M.J. Lesch

Ms. N.J. Fortuin

Ms. R.A. Leo

Ms. M.R. Matthyse

Mr. D.A. Heath

Ms. I. Willemse

**C.1 OPENING (3/2/1/2)**

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The Speaker welcomed all present and requested a moment of reflection.

**C.2 ELECTION OF ACTING SPEAKER, IF NECESSARY (3/2/1/2)**

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Not applicable.

**C.3 DISCLOSURE OF ANY DIRECT OR INDIRECT INTERESTS BY COUNCILLORS AND/OR OFFICIALS (3/4/1 & 4/8/4)**

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None.

**C.4 APPLICATION FOR LEAVE OF ABSENCE (3/2/1/2)**

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**COUNCILLORS**

Cllr. N.D. Sauerman

**OFFICIALS**

None.

**C.5 STATEMENTS AND COMMUNICATIONS BY THE SPEAKER *(Verbatim)***

**(3/2/1/3)**

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I would like to congratulate the following Councillors who have celebrated their birthdays during April 2022:

07 April : Cllr. A.M. Richards

16 April : Cllr. J. Smit

18 April : Cllr. E. Groenewald

25 April : Cllr. W.M. Blom

I wish that you will be blessed with happiness, good luck and success in your life.

I want to thank SALGA for availing Mr. Anton Coetsee to present a Rules of Order workshop to the Cape Winelands District Municipality Councillors on Monday, 25 April 2022.

I want to remind Councillors that all training to empower our Councillors involves financial expenses for the Cape Winelands District Municipality and that I expect all Councillors to attend training in order to avoid fruitless and wasteful expenditure.

The dates of further training will be communicate to all Councillors in due course, starting with financial training in May 2022.

It is a concern to note that some Councillors arrive late for training and meetings as well as leave early and this matter will be addressed with the Whips of the political parties represented in Council.

With regard to requests received for the removal of the Covid-19 screens in the Council Chamber, I will discuss the matter with the Whips of the political parties represented in Council taking into account prevailing Covid-19 Regulations, whereafter the matter will be referred to the Municipal Manager.

(Councillors C.F. Wilskut joined the meeting at 10:15)

**C.6 STATEMENTS AND COMMUNICATIONS BY THE EXECUTIVE MAYOR *(Verbatim)* (3/2/1/3)**

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1. **EID CELEBRATIONS**

Wishing our citizens and Councillors celebrating Eid a day filled with peace, love, and happiness. Celebrating important religious days was quite challenging for all of us during the past two years of facing a pandemic. But may this beautiful occasion, when you celebrate with family and friends, be a reminder to always practice gratitude. Stay safe and many blessings.

1. **TOURISM IS PICKING UP IN THE CAPE WINELANDS**
2. In support of the tourism sector and economic growth in the district, Cape Winelands District Municipality spent a substantial amount on a Tourism radio tour, where I have had intensive radio interviews over the last two months as far as the Metro, West Coast, and the Overberg district to invite tourist back to Cape Winelands. I want to encourage you to become local tourists and ambassadors for our district.

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| A person and person standing in front of a bus  Description automatically generated with medium confidence |

***Live radio interview with Mr. Q on Worcester FM***

1. Cape Winelands District Municipality attended the World Trade Market from 11 May 2022 to 13 May 2022 where Local Tourism Associations and small-scale entrepreneurs in Cape Winelands could exhibit their products and network. This gave our district a global platform, thanks to our partner WESGRO.
2. I was honoured to be able to attend the SA Cheese Festival with Minister of Agriculture, Dr. Ivan Meyer on 23 April 2022 at Groote Post Vineyards. Please support this world-class event this coming weekend from 30 April 2022 to 01 May 2022 in Stellenbosch at Sandringham.

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| A group of men posing for a photo  Description automatically generated with medium confidence |

***Executive Mayor Elna von Schlicht and Dr. Ivan Meyer with exhibitors at Groote Post Vineyards***

1. Cape Winelands District Municipality’s team will attend the Durban Tourism Indaba from 01 May 2022 to 05 May 2022. All the best to our Tourism Division, and I trust that you will bring back some innovative ideas for our Municipality.
2. **Disaster hists KwaZulu-Natal**

On behalf of Cape Winelands District Municipality, I want to express my deepest sympathies to the citizens of KwaZulu-Natal.

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1. **CENSUS 2022 - CALL TO ACTION**

Statistics South Africa (Stats SA) has been conducting the census around the country. The face-to-face collection took place between 14 February and 20 March 2022, with a mop-up phase from 22 March 2022 to 14 April 2022.

However, the Western Cape is substantially behind schedule in data collection. On Wednesday, 20 April 2022 the Premier briefed all Western Cape Mayors on the census status of the Province. The country’s data collection is at 83,8%, while the Western Cape stands at 49%. As a result, Stats SA has granted an extension in the Western Cape until 30 April 2022.

This has a direct impact on CWDM as well. Fiscal allocations based on the Census include the equitable share of the Province and municipalities. If the Census underreports the population of the Western Cape, our Western Cape budgets will not be able to meet our needs in terms of Education, Health, Basic Services, etc. Budgets are already very tight. It is therefore critical that we make every effort to ensure that as many of the people of the Western Cape as possible are counted, as the results will inform the programmes and priorities of all spheres of government.

I am encouraging all of you to get counted and encourage others to do the same since the Cape Winelands only 25% have been counted to date.

Follow the link: <https://getcounted.statssa.gov.za/#!/home>

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| Graphical user interface, website, calendar  Description automatically generated |

***#Getcounted so that you can get your fair share***

1. **MEET AND GREET/ PCF FEEDBACK**

The Municipal Manager and I attended the Premier’s Coordinating Forum and Meet and Greet with Cabinet. I can unreservedly say that the Cape Winelands District Municipality received an appraisal for their excellent work. Thank you to the Management Team, Municipal Manager, and Councillors for the roles they play in this accolade.

1. **HEALTH REGULATIONS AND COVID**

New Health Regulations

1. We are seeing a slower decline in cases in the Western Cape having exited the 4th wave;
2. We need evidence-based Health Regulation amendments for appropriate restrictions for future waves;
3. We have fully mitigated the impact of the 4th wave, through our triggered health system and societal response. We have embarked on recovery and have to live with Covid-19;
4. The probability for a 5th wave, driven by a new variant, is high. The severity of the disease is unpredictable. The response will require vigilance and agility;
5. Our biggest weapon remains vaccination, especially for people 50 years and older;
6. We require a massive whole of society effort to continue to generate increased targeted demand for unvaccinated persons and take-up of boosters for vaccinated persons.



***Covid-19 Summary : 25 April 2022***

1. **BOLAND ATHLETICS**

Congratulations to Boland Athletics for their sterling performance at Athletics South Africa. The Boland senior team received 13 medals. They are true ambassadors of Cape Winelands.

1. **EASTER WEEKEND EVENTS**

Thank you to the Councillors who represented Cape Winelands District Municipality at the Easter Events.

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| A picture containing outdoor, grass, person  Description automatically generated |

1. **A WORD OF APPRECIATION**

As the Executive Mayor, I want to express my sincerest appreciation to the Speaker of Council for arranging the Rules of Order training workshop. The SALGA facilitator complemented Cllr. Donovan Joubert for the way in which the Rules of Order has been written and adopted by Council. This is how we will be able to move forward in the interest of our communities.

1. **ANNOUNCEMENTS**
2. **Agricultural Advisory Committee**

This is a voluntary committee that will give support to the Agricultural sector in our district. Members of the Committee will be presented by councillors and members of the public:

Alderman M. Sampson

Councillor J. Kriel

Councillor G.J. Carinus

Councillor A.J. Pedro

Councillor D. Swart

Mr. W. Vrolick

1. **Innovation Desk**

With reference to my inauguration speech delivered on 02 December 2021, in which I have highlighted strategic goals, I would like to inform your that the Office of the Executive Mayor is in the process of investigating the establishment of an Innovation Desk of which the goal will be to reach the strategic goals and contribute to economic growth. I will keep Council informed of developments in this regard.

Thank you

**C.7 CONSIDERATION OF NOTICES OF MOTION (3/2/1/4)**

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None.

**C.8 CONSIDERATION OF NOTICES OF QUESTIONS (3/2/1/5)**

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None.

**C.9 CONSIDERATION OF MOTIONS OF EXIGENCY (3/2/1/4)**

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None.

(Councillor M.H. Yabo requested a caucus, which was granted. The meeting adjourned at 10:27 and resumed its business at 10:54)

**C.10 MINUTES**

**C.10.1 CONFIRMATION OF THE MINUTES OF THE COUNCIL MEETING HELD ON THURSDAY, 24 MARCH 2022 (3/2/1/6)**

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**COUNCIL MEETING: 28 APRIL 2022: ITEM C.10.1**

**RESOLVED:** That –

1. The matter be held in abeyance until the next meeting of Council for the verification of Item C.15.1 paragraph (b);
2. Cognisance be taken that the Speaker ruled the debate on the matter closed.

The Speaker ruled that Councillor J.J.S. Januarie must retire from the place of meeting for the remainder of the meeting in terms of Rule 24(2) of the Rules of Order of the Cape Winelands District Municipality, due to the persistent disregards of the directions of the Speaker.

(The Speaker granted a caucus. The meeting adjourned at 11:08 and resumed its business at 11:13)

Councillor M.H. Yabo reported back on the caucus and submit an apology for the disruption caused by Councillor J.J.S. Januarie with a request that Councillor J.J.S. Januarie may remain present in the meeting.

The Speaker accepted the apology submitted by Councillor M.H. Yabo, however confirmed his previous ruling that Councillor J.J.S. Januarie must retire from the place of meeting for the remainder of the meeting in terms of Rule 24(2) of the Rules of Order.

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| **ACTION** | **DUE DATE** | **COMMENT** |
| Ms. F.A. du Raan-Groenewald (Admin Support) to attend to (a) | 19 May 2022 |  |

(The meeting adjourned at 11:15 and resumed its business at 11:26)

**C.10.2 REPORT BY THE MUNICIPAL MANAGER: ACTION MINUTES OF THE COUNCIL MEETING HELD ON THURSDAY, 24 MARCH 2022**

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**RESOLVED:**

That the matter be held in abeyance until the next meeting of Council.

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| **ACTION** | **DUE DATE** | **COMMENT** |
| Ms. F.A. du Raan-Groenewald (Admin Support) to attend to the matter | 19 May 2022 |  |

**C.11 INTERVIEWS WITH OR PRESENTATIONS BY DEPUTATIONS**

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None.

**C.12 URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

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None.

**C.13 REPORT BY THE EXECUTIVE MAYOR (3/2/2/1)**

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None.

**C.14 MATTERS FOR NOTIFICATION**

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**C.14.1 FINANCIAL QUARTERLY REPORT FOR THE QUARTER ENDING 31 MARCH 2022 IN TERMS OF SECTION 52(d) OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT NO. 56 OF 2003) (9/1/2/1)**

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**PURPOSE OF SUBMISSION**

That Council take cognisance of the financial quarterly report for the quarter ending 31 March 2022, in terms of section 52(d) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA).

**BACKGROUND**

In terms of section 52(d) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA), the mayor of a municipality must:

*(d) Within 30 days of the end of each quarter, submit a report to council on the implementation of the budget and the financial affairs of the municipality.*

The IDP as well as the Business Plans, as approved by the Executive Mayor, gives effect to the Budget and Service Delivery and Budget Implementation Plan (SDBIP). In order for Council to effectively play its oversight role and ensure compliance with the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as prescribed in Chapter 7, the mayor must submit a finance and budget implementation report to the council on a quarterly basis. Furthermore, the mayor must take appropriate action to identify and resolve any financial problems that are evident.

**Included in the agenda, separately, are the following financial reports:**

**Annexure A**

1. In-Year Financial Management Report - 2021/2022.

**Annexure B - Financial Report**

2. Budget vs. Actual Expenditure per Strategic Objective – 2021/2022.

3. Budget vs. Actual Expenditure per Category - 2021/2022.

4. Budget vs. Actual Income per Strategic Objective – 2021/2022.

5. Detailed Budget vs. Actual Expenditure and Actual Income per Strategic Objective – 2021/2022.

6. Budget vs. Actual Project Expenditure – 2021/2022.

7. Budget vs. Capital Expenditure – 2021/2022.

8. Expenditure Benevolent Fund – 2021/2022.

9. Disclosures in terms of the Municipal Supply Chain Management Regulation 36(2).

10. Project Management – 2021/2022.

**Annexure C**

11. MSCOA progress report March 2022.

**Annexure D**

12. Cost Containment Report March 2022.

**Annexure E**

13. Pre-determined Objectives - 2021/2022

**COMMENTS**

In terms of section 69 of the MFMA the accounting officer is responsible for implementing the approved budget of council and must properly monitor and report on all revenue and expenditure patterns as projected in the budget.

The recommendations and inputs made during the meeting of the Municipal Public Accounts Committee (MPAC) held on Thursday, 21 April 2022 will be presented by the Chairperson of the Municipal Public Accounts Committee (MPAC) during the Council meeting.

**RECOMMENDATION BY MUNICIPAL MANAGER:**

That the Municipal Public Accounts Committee (MPAC) take cognisance of the financial quarterly report for the quarter ending 31 March 2022, in terms of section 52(d) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), included in the agenda under separate cover, and to make recommendations to Council.

**RECOMMENDATION BY EXECUTIVE MAYOR:**

That Council take cognisance of the financial quarterly report for the quarter ending 31 March 2022, in terms of section 52(d) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), included in the agenda under separate cover.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.1**

**RESOLVED (Unopposed):**

That cognisance be taken of the financial quarterly report for the quarter ending 31 March 2022, in terms of section 52(d) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), included in the agenda under separate cover; provided that KPI 3.3.6.1 [Number of work opportunities created (in person days) through CWDM's various initiatives] be changed from 3321 to 3333 for Quarter 3.

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| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.14.2 CONSOLIDATED REPORT OF ALL WITHDRAWALS MADE FROM THE MUNICIPAL BANK ACCOUNT IN TERMS OF SECTION 11(4) OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT NO. 56 OF 2003) FOR THE QUARTER ENDING 31 MARCH 2022**

**(9/1/2/1)**

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**PURPOSE OF SUBMISSION**

That Council take cognisance of the consolidated report of all withdrawals made from the municipal bank account for the quarter ending 31 March 2022 to be tabled in Council by the Accounting Officer in terms of section 11(4) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA).

**BACKGROUND**

For the quarter under review, funds were withdrawn from the municipal bank account in terms of section 11(1)(b) to (j) of the MFMA without appropriation in terms of an approved budget, which withdrawals were made –

1. For cash management and investment purposes in accordance with section 13 of the MFMA; and
2. Towards post-retirement health care benefits and ex gratia pension benefits.

**COMMENT**

In order to comply with the reporting requirements of section 11(4) of the MFMA, the accounting officer must within 30 days after the end of each quarter, table a consolidated report of all the withdrawals made from the municipal bank accounts as well as submitting a copy of the report to the relevant Provincial Treasury and the Auditor-General.

\*\*\* Attached as Annexure “A”, is a copy of the said report of the withdrawals made for the quarter ending 31 March 2022.

The report under discussion was submitted to the Provincial Treasury and the Auditor-General.

**IMPLICATIONS**

**PERSONNEL**

None.

*Comments prepared by Ms. G.C.N. Julie*

**FINANCIAL**

None.

*Comments prepared by: Ms. F.A. du Raan-Groenewald*

**LEGAL**

Section 11(1) stipulates that only the accounting officer or the chief financial officer of a municipality, or any other senior financial official of a municipality acting on a written authority of the accounting officer, may withdraw money from or authorise the withdrawal of money from any of the municipality’s bank accounts, and may do so only –

(a) To defray expenditure appropriated in terms of an approved budget;

(b) To defray expenditure authorized in terms of section 26(4) of the MFMA;

(c) To defray unforeseeable and unavoidable expenditure authorised in terms of section 29(1) of the MFMA;

(d) In the case of a bank account opened in terms of section 12 of the MFMA, to make payments from the account in accordance with subsection (4) of that section;

(e) To pay over to a person or organ of state money received by the municipality on behalf of that person or organ of state including –

(i) Money collected by the municipality on behalf of that person or organ of state by agreement; or

(ii) Any insurance or other payments received by the municipality for that person or organ of state;

(f) To refund money incorrectly paid into a bank account;

(g) To refund guarantees, sureties and security deposits;

(h) For cash management and investment purposes in accordance with section 13 of the MFMA;

(i) To defray increased expenditure in terms of section 30 of the MFMA; or

(j) For such other purposes as may be prescribed.

In terms of section 11(4) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA), the accounting officer must within 30 days after the end of each quarter:

(a) Table in the municipal council a consolidated report of all withdrawals made in terms of subsection (1)(b) to (j) during that quarter; and

(b) Submit a copy of the report to the relevant Provincial Treasury and the Auditor-General.

*Comments prepared by: Ms. W.M. Neethling*

**RECOMMENDATION BY MUNICIPAL MANAGER:**

That Council take cognisance of the consolidated report of all withdrawals made from the municipal bank account for the quarter ended 31 March 2022, made in terms of section 11(4) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA) to be tabled by the Accounting Officer to the Council, attached as Annexure “A” to the agenda item.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.2**

**RESOLVED (Unopposed):**

That cognisance be taken of the consolidated report of all withdrawals made from the municipal bank account for the quarter ended 31 March 2022, made in terms of section 11(4) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA) to be tabled by the Accounting Officer to the Council, attached as Annexure “A” to the agenda item.

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| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.14.3 REPORT ON EXPENDITURE INCURRED ON STAFF BENEFITS IN TERMS OF SECTION 66 OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT NO. 56 OF 2003) FOR THE PERIOD 1 JANUARY 2022 TO 31 MARCH 2022 (9/1/2/1)**

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**PURPOSE OF SUBMISSION**

That Council take cognisance of the consolidated financial report of all the expenditure incurred by the District Municipality on staff salaries, wages, allowances and benefits for the period 1 January 2022 to 31 March 2022, which must be reported to Council by the Accounting Officer in terms of section 66 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA).

**BACKGROUND**

In terms of section 66 of the MFMA, the accounting officer of a municipality must, in a format as may be prescribed, report to 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–

* 1. Salaries and wages;
  2. Contributions for pensions and medical aid;
  3. Travel, motor car, accommodation, subsistence and other allowances;
  4. Housing benefits and allowances;
  5. Overtime payments;
  6. Loans and advances; and
  7. Any other type of benefits or allowances related to staff.

**COMMENT**

\*\*\* Attached as Annexure “A” is a copy of the consolidated financial report on expenditure incurred by the District Municipality on staff benefits for the period 1 January 2022 to 31 March 2022.

**IMPLICATIONS**

**PERSONNEL**

None.

*Comment prepared by: Ms. G.C.N. Julie*

**LEGAL**

Legal Implications have been adequately addressed under background.

*Comment prepared by: Ms. W.M. Neethling*

**FINANCIAL**

None.

*Comment prepared by: Ms. F.A. du Raan-Groenewald*

**RECOMMENDATION BY MUNICIPAL MANAGER:**

That Council take cognisance of the consolidated financial report of all the expenditure incurred by the District Municipality on staff salaries, wages, allowances and benefits for the period 1 January 2022 to 31 March 2022, which must be reported to Council by the Accounting Officer in terms of section 66 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA), attached as Annexure “A” to the agenda item.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.3**

**RESOLVED (Unopposed):**

That cognisance be taken of the consolidated financial report of all the expenditure incurred by the District Municipality on staff salaries, wages, allowances and benefits for the period 1 January 2022 to 31 March 2022, which must be reported to Council by the Accounting Officer in terms of section 66 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA), attached as Annexure “A” to the agenda item.

|  |  |  |
| --- | --- | --- |
| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.14.4** **DRAFT CAPE WINELANDS DISTRICT MUNICIPALITY PROCESS PLAN IN ORDER TO DEVELOP THE 2022/2023 – 2026/2027 CAPE WINELANDS DISTRICT MUNICIPALITY 5th GENERATION INTEGRATED DEVELOPMENT PLAN (IDP) (2/9/R, 5/1/R & 2/10/R)**

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**PURPOSE OF SUBMISSION**

That Council take cognisance that no public input and comments have been received on the draft Cape Winelands District Municipality Integrated Development Process Plan in order to develop the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5th Generation Integrated Development Plan (IDP).

**BACKGROUND**

Council must in terms of section 28 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) adopt a process, which is set out in writing, for the planning, drafting, adoption and revision of the Integrated Development Plan (IDP).

This procedure plan must include:

• A programme specifying the timeframes for the different planning steps;

• Appropriate mechanisms, processes and procedures for consultation and participation of local communities, organs of state, traditional authorities, and other role-players in the IDP drafting process;

• An indication of the organisational arrangements for the IDP process;

• Binding plans and planning requirements, i.e. policy and legislation; and

• Mechanisms and procedures for vertical and horizontal alignment.

**COMMENT**

Council at item C.15.1 of 27 January 2022 approved the draft Cape Winelands District Municipality Process Plan in order to develop the 2022/2023 - 2026/2027 Cape Winelands District Municipality 5th Generation IDP.

The draft Cape Winelands District Municipality Process Plan has been published for public input and comments, however no input or comments have been received by the due date 17 February 2022.

\*\*\* Attached as Annexure “A” is a copy of the draft Cape Winelands District Municipality Process Plan in order to develop the 2022/2023 - 2026/2027 Cape Winelands District Municipality 5th Generation IDP.

**IMPLICATIONS**

**PERSONNEL**

None.

*Comment prepared by: Ms. G.C.N. Julie*

**FINANCIAL**

R132 670 has been appropriated in respect of public participation processes in the 2021/2022 Annual Budget as displayed below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Unique Key** | **Cost Code** | **Item Description** | **Amount** |
|  | 11512222630000 | Events (Transport) | R45 000 |
| 20180704051372 | 11512223080000 | Hire Charges (Venue) | R500 |
|  | 11512201270000 | Catering Services | R64 170 |
|  | 11512200590000 | Translator, scribes, and editors | R17 000 |
|  | 11512201670000 | Stage and sound crew | R6 000 |
| **Total** | | | **R132 670** |

*Comment prepared by: Ms. F.A. du Raan-Groenewald*

**LEGAL**

Section 28 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) stipulates as follows:

1. Each municipal council, within a prescribed period after the start of its elected term, must adopt a process set out in writing to guide the planning, drafting, adoption and review of its integrated development plan.
2. The municipality must through appropriate mechanisms, processes and procedures established in terms of Chapter 4, consult the local community before adopting the process.
3. A municipality must give notice to the local community of particulars of the process it intends to follow.
4. The legal framework for integrated development planning is contained in Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and is adequately addressed under BACKGROUND above.

The public participation process is prescribed in section 29 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

*Comment prepared by: Ms. W.M. Neethling*

**RECOMMENDATION BY MUNICIPAL MANAGER:**

That Council take cognisance that no public input or comments have been received on the draft Cape Winelands District Municipality Integrated Development Process Plan in order to develop the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5th Generation Integrated Development Plan (IDP) amongst the three spheres of government.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.4**

**RESOLVED (Unopposed):**

That cognisance be taken that no public input or comments have been received on the draft Cape Winelands District Municipality Integrated Development Process Plan in order to develop the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5th Generation Integrated Development Plan (IDP) amongst the three spheres of government.

|  |  |  |
| --- | --- | --- |
| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.14.5 CAPE WINELANDS DISTRICT MUNICIPALITY INTEGRATED DEVELOPMENT PLANNING DISTRICT FRAMEWORK TO ENSURE ALIGNMENT OF THE DEVELOPMENT OF THE 2022/2023 – 2026/2027 CAPE WINELANDS DISTRICT MUNICIPALITY 5th GENERATION INTEGRATED DEVELOPMENT PLAN (IDP) AMONGST THE THREE SPHERES OF GOVERNMENT (2/9/R/1, 5/1/R & 2/10/R)**

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**PURPOSE OF SUBMISSION**

That Council take cognisance that no public input and comments have been received on the draft Cape Winelands District Municipality Integrated Development Planning District Framework to ensure alignment of the development of the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5thGeneration Integrated Development Plan (lDP) amongst the three spheres of government.

**BACKGROUND**

Each district municipality, within a prescribed period after the start of its elected term and after following a consultative process with the local municipalities in its area, must adopt a framework for integrated development planning in the area as a whole (Section 27 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

The function of the district framework is to ensure that the process of district and local IDP’s is mutually linked and can inform one another. If parallel processes are supposed to be smoothly interlinked, one must agree on a joint time schedule and some crucial milestones. This will be done through the framework.

**COMMENT**

Council at item C.15.1 of 13 January 2022 approved the draft Cape Winelands District Municipality Integrated Development Planning District Framework to ensure alignment of the development of the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5th Generation Integrated Development Plan (IDP) amongst the three spheres of government.

The draft Cape Winelands District Municipality Integrated Development Planning District Framework for the period 2022/2023 – 2026/2027 has been published for public inputs and comments, however no input or comments have been received by the due date 24 January 2022.

\*\*\* Attached as Annexure “A” is a copy of the draft Cape Winelands District Municipality Integrated Development Planning District Framework to ensure alignment of the development of the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5th Generation Integrated Development Plan (IDP) amongst the three spheres of government.

**IMPLICATIONS**

**PERSONNEL**

None.

*Comment prepared by: Ms. G.C.N. Julie*

**FINANCIAL**

Adequate appropriation in respect of public participation processes has been made in the 2021/2022 Annual Budget as reflected below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Unique Key** | **Cost Code** | **Item Description** | **Amount** |
| 20210706012540 | 11512200590000 | Translators, Scribes and Editors | R 8 500 |
| 20210706012537 | 11512200590000 | Translators, Scribes and Editors | R 8 500 |
| 20210706012764 | 11512201270000 | Catering Services | R 12 085 |
| 20210706012725 | 11512201270000 | Catering Services | R 12 085 |
| 20210706012705 | 11512201270000 | Catering Services | R 10 000 |
| 20210706012704 | 11512201270000 | Catering Services | R 20 000 |
| 20210706012729 | 11512201270000 | Catering Services | R 10 000 |
| 20210706012819 | 11512201670000 | Stage and Sound Crew | R 3 000 |
| 20210706012823 | 11512201670000 | Stage and Sound Crew | R 3 000 |
| 20210706013699 | 11512222630000 | Events | R 10 000 |
| 20210706013696 | 11512222630000 | Events | R 10 000 |
| 20210706013695 | 11512222630000 | Events | R 12 500 |
| 20210706013698 | 11512222630000 | Events | R 12 500 |
| 20180704051372 | 11512223080000 | Hire Charges | R 500 |
| **Total** |  |  | **R 132 670** |

*Comment prepared by: Ms. F.A. du Raan-Groenewald*

**LEGAL**

Section 27 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) stipulates that each district municipality, within a prescribed period after the start of its elected term and after following a consultative process with the local municipalities within its area, must adopt a framework for integrated development planning in the area as a whole.

The said framework binds both the district municipality and the local municipalities in the area of the district municipality and must at least:

1. identify the plans and planning requirements binding in terms of national and provincial legislation on the district municipality and the local municipalities or on any specific municipality;
2. identify the matters to be included in the integrated development plans of the district municipality and the local municipalities that require alignment;
3. specify the principles to be applied and co-ordinate the approach to be adopted in respect of those matters; and
4. determine procedures for consultation between the district municipality and the local municipalities during the drafting process of their respective integrated development plans and to effect essential amendments to the framework.

The legal framework for integrated development planning is contained in Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and is also adequately addressed under BACKGROUND above.

*Comment prepared by: Ms. W.M. Neethling*

**RECOMMENDATION BY MUNICIPAL MANAGER:**

That Council take cognisance that no public input or comments have been received on the draft Cape Winelands District Municipality Integrated Development Planning District Framework to ensure alignment of the development of the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5thGeneration Integrated Development Plan (lDP) amongst the three spheres of government.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.5**

**RESOLVED (Unopposed):**

That cognisance be taken that no public input or comments have been received on the draft Cape Winelands District Municipality Integrated Development Planning District Framework to ensure alignment of the development of the 2022/2023 – 2026/2027 Cape Winelands District Municipality 5thGeneration Integrated Development Plan (lDP) amongst the three spheres of government.

|  |  |  |
| --- | --- | --- |
| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.14.6 SPECIAL REPORT ON MUNICIPAL MINIMUM COMPETENCY LEVELS**

**(4/12/5, 1/1/1 & 3/2/5/13)**

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**PURPOSE OF SUBMISSION**

That Council take cognisance of the special report on Municipal Minimum Competency Levels, together with a detailed list of the job titles of employees who are currently enrolled on the MMCL programme, also indicating their dates of appointment at the Cape Winelands District Municipality.

**BACKGROUND**

Council at Item C.10.2(b) on 24 March 2022 resolved that:

*Councillor J. Maliti engage with the Municipal Manager in order to obtain clarity regarding her concern of the absence of a completion date for newly appointed officials that must comply with the Municipal Minimum Competence Levels within 18 months and feedback be provided at the next Council meeting.*

**COMMENT**

The Municipal Regulations on Minimum Competency Levels were first issued on 15 June 2007. This required municipalities and municipal entities to achieve full compliance by 1 January 2013. The Regulations required officials holding key positions and those that are responsible for financial management to comply with the prescribed minimum competencies relevant to their positions.

In April 2012 the National Treasury issued MFMA Circular 60 aimed at assisting municipalities who were experiencing difficulties in complying with the legislation for officials already in the employ of the municipality. In accordance with the Circular, municipalities could apply to the National Treasury to consider a delay in enforcement of certain provisions of the regulations as a “Special Merit Case”.

On 14 March 2014 the National Treasury issued a MFMA Exemption Notice to delay the enforceability of the Regulations. This Exemption Notice lapsed on 30 September 2015.

After consultation with key stakeholders and correspondence received from municipalities regarding the challenges faced in attracting and retaining key skills as a result of the prescribed minimum competency level requirements, a decision was taken to further exempt municipalities and municipal entities from the application of Regulations 15 and 18 of the Municipal Regulations on Minimum Competency Levels for a period of 18 months from 3 February 2017.

\*\*\* On 3 February 2017, MFMA Exemption Notice 40593 was issued in terms of section 177(1)(b) of the MFMA relating to exemption from compliance with Regulations 15 and 18 of the Municipal Regulations on Minimum Competency levels (attached as Annexure “A”).

Paragraphs 2.5 and 2.6 of the MFMA Exemption Notice stipulate as follows:

* 1. *A municipality must –*

1. *Submit a report to the National Treasury on the implementation of the conditions referred to in paragraph 2.1(a), in respect of the municipality and each of its entities in such format and on such dates as the National Treasury determines; and*

*(b) On a monthly basis, submit to the National Treasury and the relevant Provincial Treasury a report with details of –*

1. *Employment contracts of officials appointed by virtue of this Notice;*

*(ii) Registration with accredited training providers; and*

*(iii) Progress made in attaining the minimum competency levels.*

*2.6 The report envisaged in paragraph 2.5(b) must be tabled at each municipal council meeting to enable the council to –*

1. *Enforce the Regulations and this Notice; and*
2. *Institute corrective action as may be required.*

In terms of the Regulations, only the following appointed officials, together with three (3) Financial Interns, are currently outstanding in terms of the required MMCL training and they have embarked on the Municipal Finance Management Programme with Next Step Academy (Pty) Ltd, who was appointed as the accredited service provider for the implementation of the Municipal Finance Management Programme for the period ending 30 June 2023:

**Job Title Appointment Date**

1. Director: Roads - 01/04/2022
2. Deputy Director: Roads - 01/11/2021
3. Deputy Director: Resealing & Maintenance - 01/07/2021
4. Deputy Director: Construction & Maintenance - 01/05/2020
5. Manager: Office of Executive Mayor - 10/02/2022
6. Occupational Health & Safety Officer - 01/04/2022

**IMPLICATIONS**

**PERSONNEL**

The Exemption Notice is applicable to existing officials who are in the employ of municipalities and municipal entities and new appointments. With regard to officials who were already in the employment of municipalities and municipal entities prior to 3 February 2017, these officials were given until 2 August 2018 to complete the outstanding prescribed Unit Standards to ensure full compliance with the Regulation.

To give effect to Exemption Notice 40593, all affected officials already in the employ of the Cape Winelands District Municipality involved in the implementation of the Supply Chain Management policy of the Municipality who must meet the prescribed financial management competency levels, signed Memorandums of Agreement which, inter alia, stipulated the consequences to officials should they refuse to either complete their outstanding Unit Standards and/or refuse to participate in the Municipal Finance Management Programme (MFMP).

Newly appointed officials (those appointed after 3 February 2017) affected by the Municipal Minimum Competency Levels, are also required to sign Memorandums of Agreement stipulating the consequences to officials should they refuse to partake in the MFMP and complete the relevant Unit Standards, within the prescribed 18 months of their appointment dates.

*Comment prepared by: Ms. G.C.N. Julie*

**FINANCIAL**

Sufficient provision has been made in the 2021/2022 financial year for MMCL training of newly appointed employees.

*Comment prepared by: Ms. F.A. du Raan-Groenewald*

**LEGAL**

Section 119(1) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA) stipulates that the accounting officer and all other officials of a municipality or a municipal entity involved in the implementation of the supply chain management policy of the municipality must meet the prescribed financial management competency levels, whilst section 119(2) stipulates that a municipality and a municipal entity must for the purposes of subsection 119(1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels.

In terms of regulation 13 of the Municipal Regulations on Minimum Competency Levels, 2007 the municipal manager of a municipality and the chief executive officer of a municipal entity must ensure that competencies of all financial officials and supply chain management officials are assessed in order to identify and address gaps in competency levels of those officials.

In terms of regulation 14(1) of the Municipal Regulations on Minimum Competency Levels, 2007 the municipal manager of a municipality and the chief executive officer of a municipal entity must monitor, and take any necessary steps to ensure compliance with the prescribed minimum competency levels for Financial officials and supply chain management officials within the time frames set out in regulation 15.

*Comment prepared by: Ms. W.M. Neethling*

**RECOMMENDATION BY MUNICIPAL MANAGER:**

That Council take cognisance of the special report on Municipal Minimum Competency Levels, together with a detailed list of the job titles of the employees who are currently enrolled on the MMCL programme, also indicating their dates of appointment at the Cape Winelands District Municipality.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.6**

**RESOLVED (Unopposed) :**

That cognisance be taken of the special report on Municipal Minimum Competency Levels, together with a detailed list of the job titles of the employees who are currently enrolled on the MMCL programme, also indicating their dates of appointment at the Cape Winelands District Municipality.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.14.6**

Councillor M.H. Yabo proposed that the resolution taken at Item C.14.6 of the meeting of Thursday, 28 April 2022 be rescinded and the Item be resubmitted to Council at its meeting to be held on Thursday, 26 May 2022.

Councillor A.M. Richards seconded the proposal.

**RESOLVED (37 Councillors) :**

That the resolution taken at Item C.14.6 of 28 April 2022 be rescinded and the Item be resubmitted to Council at its meeting to be held on Thursday, 26 May 2022.

|  |  |  |
| --- | --- | --- |
| **ACTION** | **DUE DATE** | **COMMENT** |
| Ms. F.A. du Raan-Groenewald (Admin Support) to attend to the matter | 19 May 2022 |  |

**C.15 MATTERS FOR CONSIDERATION**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**C.15.1 PERFORMANCE EVALUATION PANEL(S) FOR THE MUNICIPAL MANAGER AND MANAGERS DIRECTLY ACCOUNTABLE TO THE MUNICIPAL MANAGER (3/2/5/14)**

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**PURPOSE OF SUBMISSION**

That Council takes cognisance of the appointment of the Performance Evaluation Panel(s) for purposes of evaluating the annual performance of the Municipal Manager and Managers directly accountable to the Municipal Manager and consider the remuneration of members of the Performance Evaluation Panel(s).

**BACKGROUND**

Regulation 27(4)(d) of the Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, 2006, stipulates that for purposes of evaluating the annual performance of the municipal manager, an evaluation panel constituted of the following persons must be established –

1. Executive Mayor or Mayor;
2. Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
3. Member of the mayoral or executive committee or in respect of a plenary type municipality, another member of council;
4. Mayor and/or municipal manager from another municipality; and
5. Member of a ward committee as nominated by the Executive Mayor or Mayor.

Regulation 27(4)(e) of the Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, 2006, stipulates that for purposes of evaluating the annual performance of managers directly accountable to municipal managers, an evaluation panel constituted of the following persons must be established-

1. Municipal Manager;
2. Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
3. Member of the mayoral committee or executive committee or in respect of a plenary type municipality, another member of council; and
4. Municipal Manager from another municipality;

Regulation 27(4)(f) of the Local Government: Municipal Performance Regulations stipulates that the manager responsible for human resources of the municipality must provide secretariat services to the evaluation panels referred to in subregulations (d) and (e).

**IMPLICATIONS**

**PERSONNEL**

None.

*Comment prepared by: Ms. G.C.N. Julie*

**FINANCIAL**

Members of the Performance Evaluation Panel(s), excluding Councillors and the Municipal Manager of the Cape Winelands District Municipality, shall be remunerated at the same rate as members of the Audit Committee of the Cape Winelands District Municipality.

The tariffs applicable are as follows:

|  |  |
| --- | --- |
| **Chairperson** | **Members** |
| R 540-00/hour | R 450-00/hour |

Where applicable and on submission of a claim on the prescribed form, members of the Performance Evaluation Panel(s), excluding Councillors and the Municipal Manager of the Cape Winelands District Municipality, will be reimbursed for travel expenditure in terms of the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles as well as for costs pertaining to accommodation.

*Comment prepared by: Ms. F.A. du Raan-Groenewald*

**LEGAL**

The legal implications are sufficiently addressed under BACKGROUND.

*Comment prepared by: Ms. W.M. Neethling*

**RECOMMENDATION:** That –

(a) Council takes cognisance of the appointment of the Performance Evaluation Panel(s) for purposes of evaluating the annual performance of the Municipal Manager consisting of the following panel members:

(i) Executive Mayor;

(ii) Chairperson of the Performance Audit Committee;

(iii) Member of Mayoral Committee; and

(iv) Municipal Manager from another municipality;

(b) Council takes cognisance of the appointment of the Performance Evaluation Panel(s) for purposes of evaluating the annual performance of the Managers directly accountable to the Municipal Manager consisting of the following panel members:

1. Municipal Manager;
2. Chairperson of the Performance Audit Committee;
3. Member of the Mayoral Committee; and
4. Municipal Manager from another municipality;

(c) Council approves the remuneration of the members of the Performance Evaluation Panel(s), excluding Councillors and the Municipal Manager of the Cape Winelands District Municipality, at the same rate as members of the Audit Committee of the Cape Winelands District Municipality, namely:

The tariffs applicable are as follows:

|  |  |  |
| --- | --- | --- |
| **Chairperson** | **Members** | **Preparation Time** |
| R 540-00/hour | R 450-00/hour | 3 hours |

and where applicable and on submission of a claim on the prescribed form, members of the Performance Evaluation Panel(s) will be reimbursed for travel expenditure in terms of the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles as well as for costs pertaining to accommodation.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.15.1**

**RESOLVED (36 Councillors) :** That –

(a) Cognisance be taken of the appointment of the Performance Evaluation Panel(s) for purposes of evaluating the annual performance of the Municipal Manager consisting of the following panel members:

(i) Executive Mayor;

(ii) Chairperson of the Performance Audit Committee;

(iii) Member of Mayoral Committee; and

(iv) Municipal Manager from another municipality;

(b) Cognisance be taken of the appointment of the Performance Evaluation Panel(s) for purposes of evaluating the annual performance of the Managers directly accountable to the Municipal Manager consisting of the following panel members:

1. Municipal Manager;
2. Chairperson of the Performance Audit Committee;
3. Member of the Mayoral Committee; and
4. Municipal Manager from another municipality;

(c) Members of the Performance Evaluation Panel(s), excluding Councillors and the Municipal Manager of the Cape Winelands District Municipality be remunerated at the same rate as members of the Audit Committee of the Cape Winelands District Municipality, namely:

The tariffs applicable are as follows:

|  |  |  |
| --- | --- | --- |
| **Chairperson** | **Members** | **Preparation Time** |
| R 540-00/hour | R 450-00/hour | 3 hours |

and where applicable and on submission of a claim on the prescribed form, members of the Performance Evaluation Panel(s) will be reimbursed for travel expenditure in terms of the applicable tariffs prescribed by the Department of Transport for the use of privately owned vehicles as well as for costs pertaining to accommodation.

|  |  |  |
| --- | --- | --- |
| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.15.2 ADOPTION OF INTERIM ARRANGEMENTS AS IT RELATES TO PREFERENTIAL PROCUREMENT IN TERMS OF THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 (ACT NO. 5 OF 2000)**

**(5/14/5)**

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**PURPOSE OF SUBMISSION**

That Council consider approving the adoption of interim arrangements as it relates to preferential procurement in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

**BACKGROUND**

\*\*\* On Wednesday, 16 February 2022, the Constitutional Court handed down judgment in the application for leave to appeal against a judgment and order of the Supreme Court of Appeal (SCA) (Annexure “A”). This application was brought by the National Minister of Finance (“the Minister”) against Afribusiness NPC, and concerns the validity of the Preferential Procurement Regulations, 2017 (“Procurement Regulations” as referred to in the judgment) promulgated by the Minister on 20 January 2017, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (“Procurement Act” as referred to in the judgment).

The SCA held that the Minister's promulgation of regulation 3(b) (determining whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4), regulation 4 (pre-qualification criteria for preferential procurement) and regulation 9 (subcontracting as a condition of tender) of the Procurement Regulations was unlawful.

Due to the interconnectedness of the regulations, the SCA declared the entire Procurement Regulations invalid on the basis that the content of the Regulations exceeded the Minister’s power on what could permissibly be regulated on in terms of section 5 of the Procurement Act and section 217 of the Constitution. The declaration of invalidity was suspended for 12 months. The matter was then heard by the Constitutional Court where the majority judgment dismissed the appeal against the SCA judgment. The majority judgment was silent on the question of remedy and did not address the specific issue of the status of the SCA's order of suspension. The minority judgment addresses the issue at footnote 28, where it asserts that "the period of suspension expired on 02 November 2021". The Constitutional Court hence in both its majority and minority judgments technically did not address the issue of suspension in the body of their orders.

In the absence of valid Preferential Procurement Regulations, due to the fact that it was declared invalid by the Constitutional Court judgement and the Supreme Court of Appeal, the Municipality seeks to implement interim measures to mitigate the risk of low service delivery and the underspending of the budget.

**COMMENTS**

\*\*\* The National Treasury has in the interim (whilst seeking clarity from the Constitutional Court on the date of invalidity of the regulations), issued a letter on 25 February 2022 (attached hereto as Annexure “B”) indicating that whilst awaiting the outcome of guidance from the Constitutional Court, organs of state are advised that –

1. Tenders advertised before 16 February 2022 be finalised in terms of the PPPFR, 2017;
2. Tenders advertised on or after 16 February 2022 be held in abeyance; and
3. No new tenders be advertised.

\*\*\* The National Treasury subsequently on 03 March 2022 (attached hereto as Annexure “C”) issued a further letter indicating in summary that –

1. The advice provided on 25 February 2022 excluded procurement with a Rand value less than R30 000 obtained through price quotations;
2. Regulations will be issued providing for the thresholds for the points system; and
3. Until the new regulations take effect, that organs of state may in terms of section 3(c) of the Act, request an exemption from the provisions of the Act for a specific procurement or category of procurement requirements limiting this to procurement that cannot await the new regulations or Constitutional Court’s guidance/clarity.

In an attempt to obtain further clarity from National Treasury on their communication dated 25 February 2022 and 3 March 2022 respectively, the Office of the Chief Procurement Officer (OCPO) responded that –

*“… be advised that since judgment by the Constitutional Court (ConCourt) was handed down on 16 February 2022, the advisory communication was issued based on the view that the declaration of invalidity would not be back-dated. This view is based on the fact that the matter was still under consideration by the ConCourt in November 2021 and in terms of section 18(1) of the Superior Courts Act, the Supreme Court of Appeal’s order was suspended when the Minister launched the application for leave to appeal.*

*The municipality is thus encouraged to consult with its internal legal services to understand the implications of this view, as it was communicated to organs of state that the two sets of communications (dated 25 February and 3 March 2022) are advisory in nature, pending the clarification sought from the ConCourt.”*

\*\*\* The Western Cape Provincial Treasury (PT) has subsequently also issued a Treasury Circular No. 6/2022 (Annexure “D”) to provide guidance and recommendations in respect of interim arrangements as it relates to preferential procurement in terms of the PPPFA given the recent Constitutional Court judgment declaring the Preferential Procurement Regulations, 2017 invalid.

PT identified in the above-mentioned Annexure “D”, the following primary risks for municipalities due to the lacuna created by the court ruling:

1. *Increase in irregular expenditure;*
2. *Delivery of critical municipal service;*
3. *Delays in procurement processes;*
4. *Audit risks, non-compliance, and interpretation challenges;*
5. *National Treasury not responding or approving exemption timeously or at all;*
6. *Impact on future budgetary allocations for the 2022/23 financial year;*
7. *Legal implications for municipalities;*
8. *Some tenders for the period will be dealt with in terms of preference and the exempted ones not; and*
9. *Possibility of supplier litigation risks from aggrieved suppliers who will have grounds for the municipalities applying regulations that have been declared unconstitutional with higher chances of success.*

\*\*\* In the meantime, the National Treasury published draft regulations for public comment on 10 March 2022, with the comment period closing on 11 April 2022 (attached as Annexure “E”). It must however be noted that these draft regulations are not at present applicable and will only be formally gazetted after the period for public comment has closed.

The uncertainty on whether or not the court will extend the suspension of invalidity, and when this clarification will be made, hold challenges and risks in applying interim arrangements that is compliant with prevalent legislation. If the clarity determines that the suspension of invalidity has not been extended, then the lacuna persists up until such time that the national Minister issues new Procurement Regulations.

PT advised that municipalities –

1. Establish their own interim arrangements to mitigate the risk of non-delivery, underspending and the impact on citizens that any moratorium on procurement will create; and
2. In the absence of the Regulations, the interim arrangements articulated by PT may be considered for adoption by councils to manage their procurement needs up until the new Regulations are formally issued or clarity is provided by the Constitutional Court.

The Municipality applied for an exemption from the national Minister of Finance, as advised by PT and the National Treasury, applicable on section 2(1)(b) – (g) and subsection 2 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) up until National Treasury issues new regulations to the Act, and to the extent that the procurement meet the exemption requirements in terms of section 3(1)(c) of the PPPFA. The word “prescribed” is defined in the PPPFA that it means prescribed by regulation made under section 5. Since there are no threshold values and formulas as the procurement regulations are invalid, the OCPO clarified in a webinar session, that in order for the Municipality to proceed with interim procurement arrangements, it would have to be exempted from these provisions. Furthermore, a decision to apply for exemptions should be considered in the context of the risk that the suspension of the invalidity of the regulations will not be granted by the court up until the new regulations are issued and come into effect.

Henceforth the following interim arrangements proposed are an all-inclusive effort of the above and hold risks of irregular expenditure and litigation cases against the Municipality:

1. The use of a points system with thresholds and associated formulas, where the 80/20 preference point system will be applied for procurement with a rand value equal to or above R30 000 up to R50 million (all applicable taxes included) and the 90/10 preference point system for procurement above R50 million (all applicable taxes included);
2. The use of the pre-existing mechanism to address the evidence requirements as it relates to the allocation of points for preference i.e., B-BBEE certificates and affidavits given that these matters were not in dispute;
3. Maintain the status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000;
4. All bids advertised before 16 February 2022, that cannot await new regulations or the Constitutional Court’s guidance be finalized in terms of the Preferential Procurement Regulations, 2017, but limited to bids that did not contain the determinations that is excluded in the new draft PPPFA regulations.
5. Consider to cancel and re-advertise bids that are excluded in paragraph (d) above;
6. Consider to cancel and re-advertise bids advertised on or after 16 February 2022;
7. All new bids be advertised with the prescribes as identified in paragraphs (a) to (c) above.

The proposed interim arrangements would allow the municipality to continue with relevant procurement processes, limited to procurement requirements that cannot await new regulations or the Constitutional Court’s guidance.

**IMPLICATIONS**

**PERSONNEL**

None.

*Comment prepared by: Ms. G.C.N. Julie*

**FINANCIAL**

Financial implications are addressed in the contents of the item.

*Comment prepared by: Ms. F.A. du Raan-Groenewald*

**LEGAL**

The Constitution of the Republic of South Africa, 1996, provides in sections 152(1)(c) and 152(2) that local government must promote social and economic development and that the municipality must strive within its financial and administrative capacity, to achieve the objects set out in subsection 152(1).

Procurement by organs of state is comprehensively regulated. Section 217(1) of the Constitution of the Republic of South Africa, 1996 stipulates that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost- effective.

Despite this, section 217(2) provides that the state may make use of procurement as a policy tool to protect or advance persons, or categories of persons disadvantaged by unfair discrimination.

It is important to note that the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) itself remains valid as an Act of Parliament. It is only the Preferential Procurement Regulations, 2017 that have been declared invalid. However, the continued implementation of the Act is dependent on valid Regulations being in place.

*Comment prepared by: Ms. W.M. Neethling*

**RECOMMENDATION BY MUNICIPAL MANAGER:**

1. That Council take cognisance that the Municipality applied for an exemption from the national Minister of Finance, as advised by Provincial Treasury and the National Treasury, applicable on section 2(1)(b) – (g) and subsection 2 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) up until National Treasury issues new regulations to the Act, and to the extent that they meet the exemption requirements in terms of section 3(1)(c) of the PPPFA;
2. That Council consider approving the adoption of the following interim arrangements as it relates to preferential procurement in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000):

(i) The use of a points system with thresholds and associated formulas, where the 80/20 preference point system will be applied for procurement with a rand value equal to or above R30 000 up to R50 million and the 90/10 preference point system for procurement above R50 million (all applicable taxes included);

1. The use of the pre-existing mechanism to address the evidence requirements as it relates to the allocation of points for preference i.e., B-BBEE certificates and affidavits given that these matters were not in dispute;
2. Maintain the status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000;
3. All bids advertised before 16 February 2022, that cannot await new regulations or the Constitutional Court’s guidance be finalized in terms of the Preferential Procurement Regulations, 2017, but limited to bids that did not contain the determinations that is excluded in the new draft PPPFA regulations;
4. Consider to cancel and re-advertise bids that are excluded in terms of paragraph (iv) above;
5. Consider to cancel and re-advertise bids advertised on or after 16 February 2022;
6. All new bids be advertised with the prescriptions as identified in paragraphs (i) to (iii) above.
7. The proposed interim arrangements that would allow the Municipality to continue with relevant procurement processes, be limited to procurement requirements that cannot await new regulations or the Constitutional Court’s guidance.

**COUNCIL MEETING: 28 APRIL 2022: ITEM C.15.2**

**RESOLVED (37 Councillors) :** That –

1. Cognisance be taken that the Municipality applied for an exemption from the national Minister of Finance, as advised by Provincial Treasury and the National Treasury, applicable on section 2(1)(b) – (g) and subsection 2 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA) up until National Treasury issues new regulations to the Act, and to the extent that they meet the exemption requirements in terms of section 3(1)(c) of the PPPFA;
2. The following interim arrangements as it relates to preferential procurement in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), be adopted:

(i) The use of a points system with thresholds and associated formulas, where the 80/20 preference point system will be applied for procurement with a rand value equal to or above R30 000 up to R50 million and the 90/10 preference point system for procurement above R50 million (all applicable taxes included);

(ii) The use of the pre-existing mechanism to address the evidence requirements as it relates to the allocation of points for preference i.e., B-BBEE certificates and affidavits given that these matters were not in dispute;

(iii) Maintain the status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000;

(iv) All bids advertised before 16 February 2022, that cannot await new regulations or the Constitutional Court’s guidance be finalized in terms of the Preferential Procurement Regulations, 2017, but limited to bids that did not contain the determinations that is excluded in the new draft PPPFA regulations;

1. Consider to cancel and re-advertise bids that are excluded in terms of paragraph (iv) above;
2. Consider to cancel and re-advertise bids advertised on or after 16 February 2022;
3. All new bids be advertised with the prescriptions as identified in paragraphs (i) to (iii) above.
4. The proposed interim arrangements that would allow the Municipality to continue with relevant procurement processes, be limited to procurement requirements that cannot await new regulations or the Constitutional Court’s guidance.

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| **ACTION** | **DUE DATE** | **COMMENT** |
| Noted. |  |  |

**C.16 CONCLUSION**

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The agenda was concluded at 12:57.

CONFIRMED ON THIS DAY OF 2022.

SPEAKER

DAH/iw

**CAPE WINELANDS DISTRICT MUNICIPALITY**

**COUNCIL MEETING**

**THURSDAY, 28 APRIL 2022 AT 10:00**

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