

SPECIAL MUNICIPAL COUNCIL MEETING
AGENDA
10 AUGUST 2023



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Notice is hereby given, in terms of Section 19(b) of the Local Government: Municipal Systems Act, 32 of 2000 as amended, that a **SPECIAL MEETING** of the **MUNICIPAL COUNCIL** of Knysna Municipality will be held in the Council Chambers on **THURSDAY, 10 AUGUST 2023** at **11:00** to consider the business set forth in the attached agenda.

Kennis geskied hiermee as gevolg van Artikel 19(b) van die Plaaslike Regering : Munisipale Stelsels Wet, 32 van 2000, dat 'n **SPESIALE VERGADERING** van die **MUNISIPALE RAAD** van Knysna Munisipaliteit in die Munisipale Raadsaal op **DONDERDAG, 10 AUGUSTUS 2023** om **11:00** gehou sal word ten einde sake soos uiteengesit in die aangehegte agenda te oorweeg.

Ibhunga lika**MASIPALA** waseKnysna lazisa ngomthetho okwisolotya 19(b) wenkqubo mgaqo olawula oMasipala, 32 of 2000, njengoko utshintshiwe, **NGENTLANGANISO EKHETHEKILEYO** ye**BHUNGA** lika**MASIPALA** waseKnysna eyakubanjelwa **NGOLWESINE, NGOMHLA WE 10 EYETHUPHA 2023** ngentsimbi ye **11:00** umba iyakuba lushishino oluchazwe kwi-agenda.

CLLR MD SKOSANA

The Speaker
Die Speaker
Usomlomo

MR O P SEBOLA

Municipal Manager
Munisipale Bestuurder
uManejala kaMasipala

Date: 8 August 2023

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A G E N D A

1. **OPENING AND WELCOMING**
2. **SILENT PRAYER**
3. **ATTENDANCE OF MEMBERS**
 - 3.1 **COUNCILLORS PRESENT**
 - 3.2 **COUNCILLORS WITH LEAVE**
 - 3.3 **COUNCILLORS WITHOUT LEAVE**
4. **NOTING THE PROVISIONS OF SCHEDULE 1 (CODE OF CONDUCT FOR COUNCILLORS) OF THE LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT, 2000**
5. **DISCLOSURE OF INTERESTS BY COUNCILLORS**

6. **NEW MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

6.1

SC01/08/23 REPORT ON THE RECRUITMENT AND SELECTION PROCESS FOR THE POSITIONS FOR DIRECTOR CORPORATE SERVICES, DIRECTOR PLANNING AND DEVELOPMENT, DIRECTOR INTEGRATED HUMAN SETTLEMENTS AND CHIEF FINANCIAL OFFICER

REPORT FROM THE MUNICIPAL MANAGER

PURPOSE OF THE REPORT

The purpose of this report is to inform Council of the recruitment and selection process for the following positions:

1. Director Corporate Services
2. Director Planning and Development
3. Director Integrated Human Settlements
4. Chief Financial Officer

BACKGROUND

Council was informed about the vacancies for the abovementioned Senior Management Positions. In terms of the relevant Regulatory framework for the appointment of senior managers the Council Meeting dated 28 February 2023 initiated the Recruitment and Selection process. This process relating particularly to the establishment of the Selection Panel as well as the observers to the process was reviewed and rescinded in two subsequent Meetings. Attached please find the three relevant Council resolutions (28 February 2023, 15 March 2023 and 3 April 2023).

The respective Selection Panels as approved by Council convened, reconvened and considered the following to arrive at the recommendations tabled to Council today.

- Masterlist
- Shortlist
- Interviews
- Criminal, Disciplinary and Qualification verification as well as the reference checking
- Competence Assessment

RELEVANT LEGISLATION

Local Government: Municipal Systems Act, 2000;
Government Gazette 37245: Local Government : Regulations on Appointment and Conditions of Employment of Senior Managers

FINANCIAL IMPLICATIONS

The positions are budgeted for in terms of the 2023\24 MTREF.

RECOMMENDATION OF THE MUNICIPAL MANAGER

DIRECTOR PLANNING AND DEVELOPMENT

- [a] That the report submitted by the Municipal Manager regarding the Appointment of the Senior Manager, be noted;
- [b] That Council take note of the contents of the Selection Report circulated under separate cover;
- [c] That Council recommend that M....., be offered the position of Director Planning and Development at a salary as determined by the Municipal Manager in terms of the latest approved Upper Limits.
- [d] That should M in [c] above not accept the position it be offered to candidate, M
- [e] That the Municipal Manager proceed to implement the appointments and offer the position as indicated in [c].
- [f] That Council further approve that the offer in [d] be made by the Municipal Manager to the candidate indicated should the condition in [d] eventuate.
- [g] That the Manager: Human Resources be requested to inform all interviewed candidates of the outcome of the interviews.
- [h] That the Manager Human Resources be requested to, within 14 days of the date of this resolution, submit the written report as is envisaged in Regulation 17(3)(b) and (4) to the MEC for Local Government regarding the appointment process and outcome.

DIRECTOR INTEGRATED HUMAN SETTLEMENTS

- [a] That the report submitted by the Municipal Manager regarding the Appointment of the Senior Manager, be noted;
- [b] That Council take note of the contents of the Selection Report circulated under separate cover;
- [c] That Council recommend that M....., be offered the position of Director Integrated Human Settlements at a salary as determined by the Municipal Manager in terms of the latest approved Upper Limits.
- [d] That should M in [c] above not accept the position it be offered to candidate, M
- [e] That the Municipal Manager proceed to implement the appointments and offer the position as indicated in [c].
- [f] That Council further approve that the offer in [d] be made by the Municipal Manager to the candidate indicated should the condition in [d] eventuate.
- [g] That the Manager: Human Resources be requested to inform all interviewed candidates of the outcome of the interviews.

- [h] That the Manager Human Resources be requested to, within 14 days of the date of this resolution, submit the written report as is envisaged in Regulation 17(3)(b) and (4) to the MEC for Local Government regarding the appointment process and outcome.

APPENDIX / ADDENDUM

Annexure : Government Gazette No. 37245 dated 17 January 2014 : Local Government Regulations on Appointment and Conditions of Employment for Senior Managers;
Report from the Selection Panel – attached under separate cover.

File number: 9/1/1/1
Execution: Municipal Manager
Director Corporate Services
Manager : Human Resources

6.2

SC02/08/23 PROCESS FOR THE RECRUITMENT AND SELECTION OF THE POSITION OF DIRECTOR INFRASTRUCTURE SERVICES
--

REPORT FROM THE MUNICIPAL MANAGER

PURPOSE OF THE REPORT

The purpose of this report is to propose to Council the process to be followed with the filling of the position of Director Infrastructure Services which will become vacant 30 September 2023. It is also to request Council to appoint a selection panel for the Recruitment and Selection process for the above vacancy.

BACKGROUND

It is of utmost importance that this post be filled as soon as possible to ensure that the top management is fully staffed.

The Nature and Content of the Positions

Section 56 of the *Local Government: Municipal Systems Act*, Act 32 of 2000, (Systems Act) provides for the appointment of Managers directly accountable to the municipal manager. The *Local Government: Regulations on Employment and Conditions of Employment of Senior Managers*, as promulgated on 17 January 2014, sets out the process for recruitment and selection of senior managers (see Annexure A).

In terms of the Regulations, the following principles must be followed:

- (1) The recruitment, selection and appointment of senior managers must take place in accordance with the Regulations as well as Municipal Systems Act sections 56, 57 A of the aforesaid Act.
- (2) Senior Manager positions must be filled through public advertising, in accordance with the procedures contemplated in regulation 10 of the mentioned Regulations.
- (3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

The Regulations also state that as soon as the positions of Managers directly accountable to the Municipal Manager becomes vacant, or are due to become vacant, the Municipal Manager must obtain approval from the Municipal Council for filling the post in its next Council meeting or as soon as it is reasonably possible to do so. A vacant senior manager post may not be filled, unless approval to fill the post has been granted by the Municipal Council and the post has been budgeted for.

Furthermore, no person may be appointed as a Senior Manager unless he or she is a South African citizen or permanent resident; and possesses the relevant Competencies, qualifications, experience, and knowledge set out in the said Regulations.

Advertising of vacant posts

The Municipal Manager must, within 14 days of receipt of the approval for the filling of the post from the Municipal Council, ensure that the vacant post is advertised in a newspaper circulating nationally and in the province. The advertisement for a vacant senior manager post must specify:

- (a) Job title;
- (b) Term of appointment
- (c) Place to be stationed;
- (d) Annual total remuneration package;
- (e) Competency requirements of the post, including minimum qualifications and experience required;
- (f) Core functions;
- (g) Need for signing of an employment contract, a performance agreement and disclosure of financial interest;
- (h) The need to undergo security vetting;
- (i) contact person;
- (j) Address where applications must be sent or delivered; and
- (k) Closing date which must be a minimum of 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.

Selection panel

Council must appoint a selection panel to make recommendations for the appointment of candidates and the panel must consist of at least three and not more than five members, constituted as follows:

- (a) The Municipal Manager who will be the Chairperson.
- (b) A member of the Mayoral Committee or Councillor who is the Portfolio head of the relevant Directorate.
- (c) At least one other person, who is not a Councillor or a staff member of the Municipality, and who has expertise or experience in the area of the advertised post.

It is advised that the two representative unions, SAMWU and IMATU, are invited to attend the interview process to observe the process. Each union may have one member present during the interview process. It is further advised that representative observers of parties in Council, as well as Independent Councillors are invited to attend the interview process. Each party may have one member present during the interview process. This clause is not provided for in the regulations and is entirely optional and at the discretion of Council.

Compiling shortlist and screening of applicants

The Municipal Manager, in consultation with the selection panel, must compile:

- (a) a list of all applicants who applied for an advertised post with an evaluation of their relevant competency requirements.
- (b) A shortlist evaluated against the relevant competency requirements as set out in Annexures A and B of the Regulations.

The shortlisting must be finalised within 30 days of the closing date of the advertisement.

Screening of the shortlisted candidates must take place within 21 days of the finalisation of the shortlisting by

- (a) Conducting the necessary reference checks;

- (b) Contacting a candidate's current or previous employer;
- (c) Determining the validity of a candidate's qualifications; and
- (d) Verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.

A written report on the outcome of the screening process must be compiled by the Municipal Manager before the interviews take place.

Interviews

The selection panel, which must remain the same throughout the screening and interviewing process, must conduct interviews within 21 days of screening the candidates.

Regulation 15. states as follows :

- (4) The determination of candidates to be recommended for appointment must be considered by way of consensus between the members of the selection panel.*
- (5) If consensus cannot be reached, a dissenting member may record his or her concerns in the minutes, whereafter the issue may be voted upon, with each member of the selection panel entitled to one vote.*

The selection panel must also recommend the second and third suitable candidates to minimise delays that may arise in the filling of the post if the first choice candidate declines or does not accept the offer of employment. Should there be no suitable alternates, such must be reported to Council.

Selection and Appointment

In terms of Regulation 16(1) *the candidates recommended for appointment to the post of a senior manager must undergo a competency assessment.*

The selection panel must submit a report and recommendation on the selection process to Council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexures A and B to the Regulations, in order of preference.

Before making a decision on an appointment, a municipal council must satisfy itself that:

- (a) The candidate meets the relevant competency requirements for the post, as set out in Annexures A and B of the Regulations;
- (b) Screening of the candidates has been conducted in terms of regulation 14 of the said Regulations; and
- (c) The candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 of the Regulations.

As soon as the Municipal Council has taken a decision on the appointment of a suitable candidate, it must inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and within 14 days submit a written report to the Member of the Provincial Executive Council (MEC) for local government regarding the appointment process and outcome.

The report to the MEC must contain;

- (a) Details of the advertisement, including date of issue and the name of newspapers in which the advert was published, and proof of the advertisement or a copy thereof;

- (b) A list of all applicants;
- (c) A report contemplated in regulation 14(2) on the screening process and the outcome thereof;
- (d) The municipal council's resolution approving the selection panel and the shortlisted candidates;
- (e) Competency assessment results;
- (f) The minutes of the shortlisting meeting;
- (g) The minutes of interviews, including scoring;
- (h) The recommendations of the selection panel submitted to the municipal council;
- (i) The recommendation of the executive mayor to the municipal council, if any;
- (j) The municipal council resolution approving the appointment of the successful candidate;
- (k) The application form, curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;
- (l) a written confirmation by the successful candidate that he or she does not hold political office as contemplated in section 56A of the Systems Act, as at the date of appointment;
- (m) The letter of appointment, outlining the term of contract, remuneration and conditions of employment of the senior manager; and
- (n) Any other information relevant to the appointment.

Appointment of Service Provider to assist with the process

It is proposed that a service provider be appointed to assist with the Recruitment and Selection process for Screening and Competency Assessment.

RELEVANT LEGISLATION

Municipal Systems Act, Act 32 of 2000

Local Government: Regulations on appointment and conditions of employment of Senior Managers

FINANCIAL IMPLICATIONS

The position is budgeted for in terms of the MTREF.

RECOMMENDATION OF THE MUNICIPAL MANAGER

- [a] That Council notes the report submitted by the Municipal Manager;
- [b] That Council notes the contents of the Regulations for Local Government Regulations on appointment and conditions of employment of Senior Managers as well as Government Gazette regarding the Upper Limits of Total Remuneration packages payable to Municipal Managers and Managers directly accountable to Municipal Managers;
- [c] That Council appoint the Selection Panel as follows:
 - [i] The Municipal Manager who will be the Chairperson;
 - [ii] A member of the Mayoral Committee or Councillor who is the Portfolio head of the relevant Directorate;

- [iii] At least one other person, who is not a Councillor or a staff member of the Municipality, and who has expertise or experience in the area of the advertised post;
- [d] That the selection process set out in the report mentioned in (a) above be adopted and implemented by the Municipal Manager compliant with the timelines as provided for in the regulations.

APPENDIX / ADDENDUM

Annexures: Government Gazette No. 37245 dated 17 January 2014;
Government Gazette No. 40118, Upper Limits of Total Remuneration packages payable to Municipal Managers and Managers directly accountable to Municipal Managers;

6.3

SC03/08/23 STRUCTURING OF THE MUNICIPAL COUNCIL : APPOINTMENT OF MEMBERS TO COMMITTEES
--

REPORT FROM THE MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To appoint various Committees to ensure efficiency and effectiveness in performing the powers and functions of the municipality.

BACKGROUND

The powers and functions (executive authority) of a municipality are foremost enacted in Sections 156 and 229 of the Constitution of the Republic of South Africa, 1996, which is the supreme law of the Republic. The mentioned Sections 156 and 229 as well as Part B of Schedule 4 and Part B of Schedule 5 of the Constitution are attached hereto as Annexure A.

The general empowerment provision of a municipality is enacted in Section 8 of the Local Government: Municipal Systems Act, 2000, which reads as follows:

*“CHAPTER 3
MUNICIPAL FUNCTIONS AND POWERS*

8. General empowerment.-(1) *A municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution, and must exercise them subject to Chapter 5 of the Municipal Structures Act.*

(2) *A municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers.”*

Attached hereto kindly find Chapter 5 of the Local Government : Municipal Structures Act, 1998, as Annexure B.

The Constitution also states in Section 160(1)(c) that a Municipal Council may elect committees, subject to national legislation. Said Section 160 is attached hereto as Annexure C.

DISCUSSION

In order to efficiently and effectively exercise the powers and functions of the municipality a Committee system is herewith proposed as envisaged in Section 33 of the mentioned Structures Act, which reads as follows:

“33. Criteria for establishment of committees.- A municipality may establish a committee provided for in this Act if-

- (a) the municipality is of a type that is empowered in terms of this Act to establish a committee of the desired kind;
- (b) the establishment of the committee is necessary, taking into account-

- (i) the extent of the functions and powers of the municipality;
 - (ii) the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance; and
 - (iii) the financial and administrative resources of the municipality available to support the proposed committee; and
- (c) in the case of the establishment of an executive committee, the municipality has more than nine councilors.”

It is very important to note Section 160(8) of the Constitution, which reads as follows:

“(8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that-

- (a) allows parties and interests reflected within the Council to be fairly represented;
- (b) is consistent with democracy; and
- (c) may be regulated by national legislation.”

In terms of subsection (a) as quoted above, all Committees of the Municipal Council must thus be fairly (proportionally) representative of all (political) parties and interests.

Except if otherwise indicated below, all Committees of the Municipal Council are established in terms of Section 79 of the Structures Act and Section 79A added by the Municipal Structures Amended Act. 2021, of which a copy is attached hereto as Annexure D.

It must however be noted that the Mayoral Committee is not a Committee of the Municipal Council but a Committee appointed by the Executive Mayor in terms of Section 60(1)(a) of the Structures Act. Said Section 60 is attached hereto as Annexure E.

The types of Committees proposed are:

- 15.1 Portfolio Committees as envisaged in Section 80 of the Structures Act, which is attached hereto as Annexure F. There should be five (5) Portfolio Committees and the Chairperson of each Committee shall be appointed by the Executive Mayor from her/his appointed Mayoral Committee, of which the Deputy Executive Mayor is a member. The main purpose of the Portfolio Committees is to assist the Executive Mayor in executing his/her functions and powers. The functions of every Portfolio Committee must be determined by the Municipal Council as stipulated in Section 79(2)(a) of the Structures Act.

RECOMMENDATION OF THE MUNICIPAL MANAGER

- [a] That the report regarding the appointment of members to Committees be noted;
- [b] That in terms of Section 79 of the Local Government: Municipal Structures Act, 1998, as amended, the following Portfolio Committees be appointed as envisaged in Section 80 of the Act mentioned herein :

Financial and Governance Portfolio Committee

Chairperson : Cllr..... (member of the Mayoral Committee)
Cllr.....
Cllr.....

Cllr.....
Cllr.....
Cllr.....

Roles and responsibilities as per Section F.1.1 of the Delegation Register.

Community Services Portfolio Committee

Chairperson : Cllr..... (member of the Mayoral Committee)
Cllr.....
Cllr.....
Cllr.....
Cllr.....
Cllr.....

Roles and responsibilities as per Section G.1.1 of the Delegation Register.

Planning, Economic Development and Tourism Portfolio Committee

Chairperson : Cllr..... (member of the Mayoral Committee)
Cllr.....
Cllr.....
Cllr.....
Cllr.....
Cllr.....

Roles and responsibilities as per Section E.1.1 of the Delegation Register.

Infrastructure Services Portfolio Committee

Chairperson : Cllr..... (member of the Mayoral Committee)
Cllr.....
Cllr.....
Cllr.....
Cllr.....
Cllr.....

Roles and responsibilities as per Section H.1.1 of the Delegation Register.

Integrated Human Settlements Portfolio Committee

Chairperson : Cllr..... (member of the Mayoral Committee)
Cllr.....
Cllr.....
Cllr.....
Cllr.....
Cllr.....

Roles and responsibilities as per Section I.1.1 of the Delegation Register.

APPENDIX / ADDENDUM

Annexure A – Sections 156 and 229 as well as Part B of Schedule 4 and Part B of Schedule 5 of the Constitution;

Annexure B – Chapter 5 of the Local Government: Municipal Structures Act, 1998;

Annexure C – Section 160 of the Constitution;

Annexure D – Section 79 of the Structures Act;

Annexure E – Section 60(1)(a) of the Structures Act;

Annexure F – Section 80 of the Structures Act;

Annexure G – Section 62 of the Systems Act.

Council Resolution dated 31 August 2022 - Structuring of the Municipal Council : Appointment of Members to Committees

File Number : 9/1/2/14

Execution : Municipal Manager

Acting Director : Corporate Services

156. Powers and functions of municipalities.-(1) A municipality has executive authority in respect of, and has the right to administer-

- (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
- (b) any other matter assigned to it by national or provincial legislation.

(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

(3) Subject to section 151 (4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.

(4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if-

- (a) that matter would most effectively be administered locally; and
- (b) the municipality has the capacity to administer it.

(5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

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229. Municipal fiscal powers and functions.-(1) Subject to subsections (2), (3) and (4), a municipality may impose-

(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and

(b)* if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.

(2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties-

(a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and

(b) may be regulated by national legislation.

(3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:-

(a) The need to comply with sound principles of taxation.

(b) The powers and functions performed by each municipality.

(c) The fiscal capacity of each municipality.

(d) The effectiveness and efficiency of raising taxes, levies and duties.

(e) Equity.

(4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.

(5) National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

(Date of commencement: 1 January, 1998.)

Footnotes

* See Sch. 6 item 21 (6).

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Schedule 4

FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE

PART B

The following local government matters to the extent set out in section 155 (6) (a) and (7):

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Firefighting

services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their

responsibilities to

administer functions specifically assigned to them under this Constitution or any other law

Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national

shipping and

matters related thereto

Stormwater management systems in builtup

areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic wastewater

and sewage

disposal systems

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Schedule 5

FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

PART B

The following local government matters to the extent set out for provinces in section 155 (6) (a) and (7):

Beaches and amusement facilities
Billboards and the display of advertisements in public places
Cemeteries, funeral parlours and crematoria
Cleansing
Control of public nuisances
Control of undertakings that sell liquor to the public
Facilities for the accommodation, care and burial of animals
Fencing and fences
Licensing of dogs
Licensing and control of undertakings that sell food to the public
Local amenities
Local sport facilities
Markets
Municipal abattoirs
Municipal parks and recreation
Municipal roads
Noise pollution
Pounds
Public places
Refuse removal, refuse dumps and solid waste disposal
Street trading
Street lighting
Traffic and parking

CHAPTER 5

FUNCTIONS AND POWERS OF MUNICIPALITIES

83. General.—(1) A municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution.

(2) The functions and powers referred to in subsection (1) must be divided in the case of a district municipality and the local municipalities within the area of the district municipality, as set out in this Chapter.

(3) A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by—

- (a) ensuring integrated development planning for the district as a whole;
- (b) promoting bulk infrastructural development and services for the district as a whole;
- (c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
- (d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

84. Division of functions and powers between district and local municipalities.—(1) A district municipality has the following functions and powers:

- (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.
- (b) Potable water supply systems.
- (c) Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.
- (d) Domestic wastewater and sewage disposal systems.
- (e) Solid waste disposal sites, in so far as it relates to—
 - (i) the determination of a waste disposal strategy;
 - (ii) the regulation of waste disposal;
 - (iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.
- (f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.
- (g) Regulation of passenger transport services.
- (h) Municipal airports serving the area of the district municipality as a whole.
- (i) Municipal health services.
- (j) Fire fighting services serving the area of the district municipality as a whole, which includes—
 - (i) planning, coordination and regulation of fire services;
 - (ii) specialised fire fighting services such as mountain, veld and chemical fire services;
 - (iii) coordination of the standardisation of infrastructure, vehicles, equipment and procedures;
 - (iv) training of fire officers.
- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.
- (l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.
- (m) Promotion of local tourism for the area of the district municipality.
- (n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.
- (o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.
- (p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

[Subs.]

(1) substituted by s. 6 (a) of Act No. 33 of 2000.]

Wording of Sections

(2) A local municipality has the functions and powers referred to in section 83 (1), excluding those functions and powers vested in terms of subsection (1) of this section in the district municipality in whose area it falls.

(3) (a) The Minister may, by notice in the *Government Gazette*, and after consultation with the Cabinet member responsible for the functional area in question, and after consulting the MEC for local government in the province and, if applicable, subject to national legislation, authorise a local municipality to perform a function or

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exercise a power mentioned in subsection (1) (b), (c), (d) or (i) in its area or any aspect of such function or power.

(b) The Minister must in the notice referred to in paragraph (a) regulate the legal, practical and other consequences of the authorisation, which may include—

- (i) the transfer of staff;
- (ii) the transfer of assets, liabilities, rights and obligations, and administrative and other records; and
- (iii) the continued application of any bylaws and resolutions in the area of the municipalities concerned and the extent of such application.

(c) The Minister may—

- (i) amend a notice issued in terms of paragraph (a); and
- (ii) regulate the legal, practical and other consequences of such amendment.

[Para. (c) substituted by s. 19 (b) of Act No. 51 of 2002.]

Wording of Sections

(d) Whenever the Minister revokes an authorisation envisaged by paragraph (a) the Minister must in the notice revoking that authorisation regulate the legal, practical and other consequences of the revocation, which

may include—

- (i) the transfer of staff;
- (ii) the transfer of assets, liabilities, rights, obligations and administrative and other records; and
- (iii) the continued application of any bylaws and resolutions in the area of the municipalities in question and the extent of such application.

[Para. (d) added by s. 19 (c) of Act No. 51 of 2002.]

(e) The Minister must comply with the consultation requirements as set out in paragraph (a) when a power referred to in paragraph (c) or (d) is to be exercised.

[Subs.

(3) substituted by s. 6 (b) of Act No. 33 of 2000. Para. (e) added by s. 19 (c) of Act No. 51 of 2002.]

Wording of Sections

(4) (a) Subject to paragraph (c), any authorisation, amendment of an authorisation or revocation of an authorisation under subsection (3) takes effect on the commencement date of the municipal financial year following

the date of publication of the notice effecting such authorisation or amendment or revocation.

(b) The Minister must inform the Minister responsible for finance of his or her intention to publish a notice contemplated in paragraph (a) at least six months before the notice is to take effect in terms of that paragraph.

(c) Paragraph (a) does not apply if any authorisation, amendment of an authorisation or revocation of an authorisation under subsection (3) is to coincide with an election of the council of an affected municipality.

[Subs.

(4) added by s. 9 of Act No. 19 of 2008.]

85. Adjustment of division of functions and powers between district and local municipalities.—(1) The MEC for local government in a province may, subject to the other provisions of this section, adjust the division of functions and powers between a district and a local municipality as set out in section 84 (1) or (2), by allocating,

within a prescribed policy framework, any of those functions or powers vested—

- (a) in the local municipality, to the district municipality; or
- (b) in the district municipality (excluding a function or power referred to in section 84 (1) (a), (b), (c), (d), (i), (o) or (p)), to the local municipality.

[Para. (b) substituted by s. 7 (a) of Act No. 33 of 2000.]

Wording of Sections

(2) An MEC may allocate a function or power in terms of subsection (1) only if—

- (a) the municipality in which the function or power is vested lacks the capacity to perform that function or exercise that power; and
- (b) the MEC has consulted the Demarcation Board and considered its assessment of the capacity of the municipality concerned.

(3) Subsection (2) (b) does not apply if the Demarcation Board omits to comply with subsection (4) within a reasonable period.

(4) The Demarcation Board must—

- (a) consider the capacity of a district or local municipality to perform the functions and exercise the powers vested in the municipality in terms of section 84 (1) or (2) when—

- (i) determining or redetermining the boundaries of the district and the local municipalities; or
- (ii) requested in terms of subsection (2) (b) by the MEC for local government in the province concerned to do so; and

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(b) convey its assessment in writing to the relevant MEC.

(5) If an MEC disagrees with the Demarcation Board on the capacity of the district or local municipality and adjusts the division of functions and powers between the district and local municipality, or refuses to adjust the division, contrary to the assessment of the Demarcation Board, the MEC must furnish reasons to the relevant municipalities and the Minister before finalising an adjustment in terms of subsection (1).

(6) Any adjustment of the division of functions and powers by way of an allocation in terms of subsection (1) or reallocation in terms of subsection (9) must be reflected in the notices referred to in section 12 which establish the municipalities concerned. Where applicable the legal, practical and other consequences of the allocation or reallocation must be regulated, including—

- (a) the transfer of staff;
- (b) the transfer of assets, liabilities and administrative and other records; and
- (c) the continued application of any bylaws, regulations and resolutions in the area or the municipalities concerned and the extent of such application.

(7) The Minister may by notice in the *Government Gazette* and after consulting the MEC for local government and the municipalities concerned—

- (a) vary or withdraw any allocation of a function or power in terms of subsection (1) or reallocation of a function or power in terms of subsection (9); or
- (b) adjust the division of functions and powers between a district and local municipality if the MEC has refused to make an adjustment in accordance with the assessment of the Demarcation Board.

(8) The MEC must amend the relevant section 12 notices to give effect to any variation or withdrawal of any allocation or reallocation in terms of subsection (7).

(9) (a) If a function or power has been allocated in terms of subsection (1) the MEC for local government in the province must regularly review the capacity of the relevant municipality and reallocate that function or power to that municipality when that municipality acquires the capacity to perform that function or exercise that power.

(b) A reallocation in terms of paragraph (a) must be made with the concurrence of the receiving municipality or, in the absence of such concurrence, after having consulted the Demarcation Board.

(9A) (a) Subject to paragraph (c), any adjustment of the division of functions and powers under this section takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such adjustment.

(b) The MEC or Minister, as the case may be, must inform the national Minister responsible for finance of his or her intention to publish a notice contemplated in paragraph (a) at least four months before the notice is to take effect in terms of that paragraph.

(c) Paragraph (a) does not apply if any adjustment of the division of powers and functions under this section is to coincide with an election of the council of an affected municipality.

(d) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of Municipal Structures Act, 1998 (Act No. 117 of 1998), decide on a different or shorter period than the period referred to in paragraph (a) and (b).

[Subs.]

(9A) inserted by s. 10 of Act No. 19 of 2008.]

(10) This section does not apply before the date of the first elections of municipal councils in terms of this Act.

[Subs.]

(10) added by s. 7 (b) of Act No. 33 of 2000.]

86. Resolution of disputes concerning performance of functions or exercise of powers.—If a dispute arises between a district and a local municipality concerning the performance of a function or the exercise of a power, the MEC for local government in the province, after consulting them, may, by notice in the *Provincial Gazette*, resolve the

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dispute by defining their respective roles in the performance of that function or in the exercise of that power.

[S. 86 substituted by s. 8 of Act No. 33 of 2000 (English only).]

Wording of Sections

87. Temporary allocation of functions and powers.—(1) If the provision of basic services by a district or local municipality collapses or is likely to collapse because of that municipality's lack of capacity or for any other reason, the MEC for local government in the province may, after written notice to the district or local municipality and with immediate effect, allocate any functions and powers necessary to restore or maintain those basic services, to a local municipality which falls within that district municipality or to the district municipality in whose area that local municipality falls, as the case may be.

(2) The district or local municipality may lodge a written objection against the allocation to the Minister, who may confirm, vary or withdraw the allocation after having consulted the Demarcation Board.

(3) If the district or local municipality does not lodge a written objection against the allocation to the Minister within 14 days of the date of the notice referred to in subsection (1), the municipality is regarded as having consented to the allocation.

(4) The MEC for local government must reallocate that function or power to the original municipality when that municipality is in a position to resume the provision of those basic services.

88. Cooperation

between district and local municipalities.—(1) A district municipality and the local municipalities within the area of that district municipality must cooperate with one another by assisting and supporting each other.

(2) (a) A district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services.

(b) A local municipality on request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support services to that district municipality to the extent that that local municipality has the capacity to provide those support services.

(c) A local municipality may provide financial, technical or administrative support services to another local municipality within the area of the same district municipality to the extent that it has the capacity to provide those support services, if the district municipality or that local municipality so requests.

(3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.

89. District management areas.—In district management areas, the district municipality has all the municipal functions and powers.

160. Internal procedures.-(1) A Municipal Council-

- (a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
- (b) must elect its chairperson;

(Date of commencement: 30 June, 1997)

- (c) may elect an executive committee and other committees, subject to national legislation; and
- (d) may employ personnel that are necessary for the effective performance of its functions.

(2) The following functions may not be delegated by a Municipal Council:

- (a) The passing of by-laws;
- (b) the approval of budgets;
- (c) the imposition of rates and other taxes, levies and duties; and
- (d) the raising of loans.

(3) (a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.

(b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.

(c) All other questions before a Municipal Council are decided by a majority of the votes cast.

(4) No by-law may be passed by a Municipal Council unless-

- (a) all the members of the Council have been given reasonable notice; and
- (b) the proposed by-law has been published for public comment.

(5) National legislation may provide criteria for determining-

- (a) the size of a Municipal Council;
- (b) whether Municipal Councils may elect an executive committee or any other committee; or
- (c) the size of the executive committee or any other committee of a Municipal Council.

(6) A Municipal Council may make by-laws which prescribe rules and orders for-

- (a) its internal arrangements;
- (b) its business and proceedings; and
- (c) the establishment, composition, procedures, powers and functions of its committees.

(7) A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.

(8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that-

- (a) allows parties and interests reflected within the Council to be fairly represented;
- (b) is consistent with democracy; and
- (c) may be regulated by national legislation.

79. Establishment.-(1) A municipal council may-

- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
- (b) appoint the members of such a committee from among its members; and
- (c) dissolve a committee at any time.

(2) The municipal council-

- (a) must determine the functions of a committee;
- (b) may delegate duties and powers to it in terms of section 32;
- (c) must appoint the chairperson;
- (d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
- (e) may remove a member of a committee at any time; and
- (f) may determine a committee's procedure.

18 No. 44647

GOVERNMENT GAZETTE, 1 JUNE 2021

Act No. 3 of 2021

Local Government: Municipal Structures Amendment Act, 2021

Insertion of section 79A in Act 117 of 1998

29. The following section is hereby inserted in the principal Act after section 79:

"Establishment of municipal public accounts committee

79A. (1) A municipal council must establish a committee called the municipal public accounts committee.

(2) The mayor or executive mayor, deputy mayor or executive deputy mayor, any member of the executive committee, any member of the mayoral committee, speaker, whip and municipal officials are not allowed to be members of the municipal public accounts committee.

(3) The municipal council must determine the functions of the municipal public accounts committee, which must include the following:

- (a) review the Auditor-General's reports and comments of the management committee and the audit committee and make recommendations to the municipal council;
- (b) review internal audit reports together with comments from the management committee and the audit committee and make recommendations to the municipal council;
- (c) initiate and develop the oversight report on annual reports contemplated in section 129 of the Local Government: Municipal Finance Management Act;
- (d) attend to and make recommendations to the municipal council on any matter referred to it by the municipal council, executive committee, a committee of the council, a member of this committee, a councillor and the municipal manager; and
- (e) on its own initiative, subject to the direction of the municipal council, investigate and report to the municipal council on any matter affecting the municipality.

(4) Reports of the municipal public accounts committee must be submitted to the speaker who must table such reports in the next meeting of the municipal council.

(5) (a) For the purposes of this section 'audit committee' means the audit committee envisaged in section 166 of the Local Government Municipal: Finance Management Act.

(b) Each municipality and each municipal entity must establish an audit committee in accordance with that section."

- 60. Mayoral committees.**-(1) If a municipal council has more than nine members, its executive mayor-
- (a) must appoint a mayoral committee from among the councillors to assist the executive mayor;
 - (b) may delegate specific responsibilities to each member of the committee;
 - (c) may delegate any of the executive mayor's powers to the respective members; and
 - (d) may dismiss a member of the mayoral committee.
- (2) The mayoral committee must consist of the deputy executive mayor (if any) and as many councillors as may be necessary for effective and efficient government, provided that no more than 20 per cent of the councillors or 10 councillors, whichever is the least, are appointed.
- (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.
- (4) The members of a mayoral committee remain in office subject to subsection (5) and section 26, for the term of the executive mayor who appointed them.
- (5) If the executive mayor vacates office, the mayoral committee appointed by that executive mayor dissolves.

Part 3: Metropolitan subcouncils

80. Committees to assist executive committee or executive mayor.-(1) If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor.

(2) Such committees may not in number exceed the number of members of the executive committee or mayoral committee.

(3) The executive committee or executive mayor-

- (a) appoints a chairperson for each committee from the executive committee or mayoral committee;
- (b) may delegate any powers and duties of the executive committee or executive mayor to the committee;
- (c) is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and
- (d) may vary or revoke any decision taken by a committee, subject to any vested rights.

(4) Such a committee must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor.

Part 6: Participation of traditional leaders

62. Appeals.-(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor 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, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

(3) 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.

(4) 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 councillor-
 - (i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or
 - (ii) a committee of councillors 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 councillors.

(5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.

[Sub-s. (6) added by s. 37 of Act No. 51 of 2002.]

8. **CONSIDERATION OF QUESTIONS**

None

ANC Caucus from 11:50 until 12:12

Cllr Tsengwa stepped out at 12:29

Cllr Tsengwa returned at 12:34

Whip Caucus from 12:36 until 13:07

DA Caucus from 13:09 until 13:23

**STRUCTURING OF THE MUNICIPAL COUNCIL : APPOINTMENT OF MEMBERS
TO COMMITTEES**

UNANIMOUSLY RESOLVED

That in terms of Section 79 of the Local Government : Municipal Structures Act, 1998, as amended, the following Portfolio Committees be appointed as envisaged in Section 80 of the Act mentioned herein :

Planning, Economic Development and Tourism Portfolio Committee

Chairperson : Cllr A Marbi (member of the Mayoral Committee)

Cllr T Matika

Cllr N Louw

Cllr W Grootboom

Cllr J Lopes

Cllr M Campbell

Finance and Governance Portfolio Committee

Chairperson : Cllr T Matika (member of the Mayoral Committee)

Cllr K Andrews

Cllr B Charlie

Cllr N Louw

Cllr S Campbell

Cllr S Sabbagh

Community Services Portfolio Committee

Chairperson : Cllr W Grootboom (member of the Mayoral Committee)

Cllr B Charlie

Cllr P Petros

Cllr A Marbi

*Cllr E Maxim
Cllr C Vanston
Cllr J White*

Infrastructure Services Portfolio Committee

*Chairperson : Cllr B Charlie (member of the Mayoral Committee)
Cllr W Grootboom
Cllr N Louw
Cllr R Arends
Cllr A Marbi
Cllr P Bester*

Integrated Human Settlements Portfolio Committee

*Chairperson : Cllr K Andrews (member of the Mayoral Committee)
Cllr M Khumelwana
Cllr B Charlie
Cllr N Louw
Cllr M Willemse
Cllr L Davis
Cllr H Stroebe*

File Number : 9/1/2/14

*Execution : Acting Municipal Manager
Acting Director : Corporate Services*

6.4

**SC04/08/23 REPORT ON CRIMINAL PROCEEDINGS AGAINST PREVIOUS MM,
DR SW VATALA AND PROGRESS ON DISPUTE WITH GARDEN
ROUTE DISTRICT MUNICIPALITY**

REPORT FROM THE MUNICIPAL MANAGER

PURPOSE:

To report to Council on the criminal proceedings against the previous Municipal Manager, Dr SW Vatala.

BACKGROUND

Criminal Proceedings:

On 31 March 2023, the administration reported to Council on the criminal proceedings instituted against the previous MM, Dr SW Vatala. Said report and council resolution is enclosed hereto as **Annexure "A"**.

The charges levelled against Dr Vatala, as accused number 1 and Mr M Stratu, as accused number 2, are as follows:

- Charge 1: Contravention of section 173 of the MFMA; and
Charge 2: Forgery and uttering to the value of R 64 million.

The accused appeared before court on 9 March 2023 for bail applications and the matter was postponed until 12 May 2023. On 12 May 2023, the criminal case was transferred to the regional court in George with the next court date being 25 July 2023.

Disputed Properties:

Above-mentioned charges emanates from the ongoing land dispute Council has with the Garden Route District Municipality. On 31 May 2023, a report served before Council advising on the negotiations between the parties, following a meeting in February 2023. Said report and resolution are enclosed as **Annexure "A"** and Council under item C09/05/23, **Annexure "B"**, resolved as follows:

ORDINARY COUNCIL MEETING
MINUTES
31 MAY 2023

C09/05/23 STATUS ON DISPUTED PROPERTIES WITH THE GARDEN ROUTE DISTRICT MUNICIPALITY

UNANIMOUSLY RESOLVED

- [a] That the content of the report with regards to the update regarding the disputed properties with the Garden Route District Municipality, be noted; and
- [b] That the Intergovernmental Dispute process be allowed to continue, that the process be concluded within 6 months, that monthly progress reports be submitted to the Finance and Governance Committee and that the committee be involved in the process.

File Number : 12/1/2/1
Execution : Municipal Manager
 Acting Director : Corporate Services

FINANCIAL IMPLICATION

Financial implications will be the increase in assets values based on the outcome of the dispute with those assets should the dispute be in Knysna Municipality favor and vice versa.

RECOMMENDATION OF THE MUNICIPAL MANAGER

That the content of the report on the criminal proceedings against the previous MM, Dr SW Vatala and the disputed properties be noted.

APPENDIX / ADDENDUM

Annexure A – Item & Resolution SC03/05/23

Annexure B –Council Resolution C09/05/23

File Number: 12/1/2/1
Execution: Municipal Manager
 Acting Director Corporate Services

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MINUTES
11 MAY 2023

Annexure "A"

SC03/05/23 REPORT ON CRIMINAL PROCEEDINGS AGAINST PREVIOUS MM. DR SW VATALA AND PROGRESS ON DISPUTE WITH GARDEN ROUTE DISTRICT MUNICIPALITY

ANC Caucus from 15:49 until 16:15

PBI Caucus from 16:20 until 16:40

Cllr Marbi proposed, seconded by Cllr Campbell that the item be withdrawn.

UNANIMOUSLY RESOLVED

That the content of the report on the criminal proceedings against the previous . MM, Dr SW Vatala and the disputed properties be withdrawn.

File Number: 12/1/2/1

Execution: Municipal Manager
 Acting Director Corporate Services

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11 MAY 2023

6.3

**SC03/05/23 REPORT ON CRIMINAL PROCEEDINGS AGAINST PREVIOUS MM,
DR SW VATALA AND PROGRESS ON DISPUTE WITH GARDEN ROUTE
DISTRICT MUNICIPALITY**

REPORT FROM THE MUNICIPAL MANAGER

PURPOSE:

To report to Council on the criminal proceedings against the previous Municipal Manager, Dr SW Vatala

BACKGROUND

Criminal Proceedings:

On 31 March 2023, the administration reported to Council on the criminal proceedings instituted against the previous MM, Dr SW Vatala. Said report and council resolution is enclosed hereto as **Annexure "A"**.

The charges levelled against Dr Vatala, as accused number 1 and Mr M Stratu, as accused number 2, are as follows:

- Charge 1: Contravention of section 173 of the MFMA; and
Charge 2: Forgery and uttering to the value of R 64 million.

The accused appeared before court on 9 March 2023 for bail applications and the matter was postponed until 12 May 2023.

Disputed Properties:

Above-mentioned charges emanates from the ongoing land dispute Council has with the Garden Route District Municipality. This dispute has been coming for a couple of years – **Annexure "B"**.

Council, on 6 August 2020, under Item C09/08/2020, **Annexure "C"**, resolved as follows:

**C09/08/2020 REPORT ON DISPUTED PROPERTIES WITH THE GARDEN ROUTE
DISTRICT MUNICIPALITY**

UNANIMOUSLY RESOLVED

- [a] That the content of the report with regard to the disputed properties with the Garden Route District Municipality, be noted;
[b] That the Acting Municipal Manager be instructed to address correspondence to the Garden Route District Municipality to

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request the transfer of the following properties to the Knysna Municipality:

1. Portions 2 & 3 of the Farm Walker's point
2. Erf 2790, Knysna
3. Erf 20,21,22 Belvidere
4. Portion 22 of the farm Westford
5. Portion 0,1 and 2 of the farm 185 George;

[c] *That should the Garden Route District Municipality fail to respond to the Correspondence and/ exceed to the request referred to in (b) above, within 21 days of receipt thereof, the Acting Municipal Manager be authorized to serve a formal IGR Notice in terms of Section 41 of the Intergovernmental Relations Framework Act 13 of 2005;*

[d] *That should the IGR Notice in terms of Section 41 of the Intergovernmental Relations Framework Act 13 of 2005 referred to in (c) above, be served on the Garden Route District Municipality, the Acting Municipal Manager disclose the assets in (b), as contingent liabilities in the Annual Financial Statements;*

[e] *That a progress report on the execution of the resolution in [b] and [c] above, be submitted to the next Ordinary Council meeting.*

The Deputy Executive Mayor requested that his gratitude towards the submission of the item by the Acting Municipal Manager, to the Ordinary Council Meeting held on 6 August 2020, be recorded.

After various meetings and negotiation talks, Council on 29 July 2021, resolved as follows, **Annexure "D"**:

C03/07/21 REPORT ON DISPUTED PROPERTIES WITH THE GARDEN ROUTE DISTRICT MUNICIPALITY

UNANIMOUSLY RESOLVED

- a) That the content of the report be noted;
- b) That Council resolves that the properties in question are still regarded as contingent assets;
- c) That a report on the outcome of the engagements with the Garden Route District Municipality, be submitted to an Ordinary Council meeting once the engagements have been finalised.

In execution of the above council resolution, the disputed properties were disclosed in Council's Annual Financial Statements. Enclosed as **Annexure "E"**, is extracts from the audited 2019/2020, 2020/2021 and 2021/2022 AFS, confirming the disclosure of the disputed properties.

Council will note that it is stated on page 87 of the 2021/22 AFS, that *"It has been unanimously resolved at the council meeting dated 6 August 2020 that the Acting Municipal Manager be instructed to address correspondence to the Garden Route District Municipality to request the transfer of the following properties to the Knysna Municipality estimated to the value of R 64 080 000.*

1. Portions 1, 2 and 3 of the Farm Walker's Point (R 20 200 000)
2. Erf 2790, Knysna (R 2 900 000)

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3. Erf 20, 21, 22 Belvidere (R 460 000; R 460 000; R 460 000)
4. Portion 22 of the Farm Westford (R 600 000)
5. Portion 0, 1 and 2 of the Farm 785 George (R 39 000 000)"

Above estimated value of the disputed properties combined is thus R 64 080 000.

Current status update:

The administration drafted a report on the disputed properties which will serve at the Finance & Governance Committee Meeting to be held on 11 May 2023.

The report as alluded to above, intends to inform Council on the following:

On 1 February 2023, the Executive Mayor, Municipal Manager, the relevant portfolio councillor and various staff from Garden Route District Municipality met with the Deputy Mayor, Municipal Manager, Acting Director: Corporate, chairperson of the Land Audit Committee (Councillor Neil Louw), Councillor Susan Campbell and the Properties section of Knysna Municipality. This meeting was the continuation of the negotiations, matters were discussed, and recommendations were made which are as follow:

Nr	Property description	KM proposal	GRDM proposal
1	Portions 1 & 3 Walker's point and Erf 228, Buffalo Bay (Buffelskop Caravan Park)	That these properties be transferred to KM and that KM continue using these properties as Tourist attraction properties and for Municipal Services.	Portion 1 - at the bottom old backpackers area GRDM intend to do a mixed use development and Knysna Municipality to cancel the illegal lease agreement and order the tenant to vacate the property. Portion 2 – the caravan park, GRDM intend to transfer that portion and for Knysna to continue with the operations of the caravan park. Portion 3 – GRDM wants to subdivide and transfer the piece of land with the WTW to Knysna Municipality and the remainder GRDM wants to do an upmarket housing development.
2	Erf 2790 – (Golf Driving Range)	That this Erf be transferred to KM and that KM continue using the property as Office space for the Electrical Department and conclude proper lease agreement for the Driving Range.	GRDM intends to subdivide and transfer the portion being used by Knysna Municipality Electrical department to Knysna in exchange for a proper property that can house GRDM EHP Office and also the GRDM roads department. The remainder of that property which is currently being utilised as the Golf Range, GRDM intends to put that on the market
3	Erf 20, 21, 22 Belvidere	That these erven be transferred to KM and that KM keep properties, as is, as open space, as these properties are very near the High Water mark.	GRDM intend to consolidate and sale these 3 properties and Knysna Municipality can offer a market related value
4	Portion 22 of the farm 191 Westford	That this Erf be transferred to KM and that KM continue using the property as is.	GRDM did not provide a proposal for this property.

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

5	Portion 0, 1 and 2 of the farm 185 George (Swartvlei Caravan Park)	That these properties be transferred to KM and that these properties be used by KM as the current use, as a caravan park.	GRDM has no intentions of transferring the property to KM and if Knysna Municipality so wishes they can place an offer which is market related and GRDM Council can consider that bearing in mind that this is a revenue generating property. GRDM to transfer the public ablution facility in Swartvlei to Knysna Municipality as the function and mandate lies with Knysna Municipality
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The Garden Route District Municipality informed the Knysna Municipality that they intend to enter into negotiations and provided their future plans for all the properties in dispute. The Garden Route District Municipality further requested that the Knysna Municipality rescind the Municipal Council resolution dated 5 August 2013 *inter alia* declaring a dispute between the two Municipalities on the basis that both Municipalities are willing to negotiate the matters under dispute.

Above-mentioned proposals will thus serve before Council for consideration at the Ordinary Council meeting at the end of May 2023.

FINANCIAL IMPLICATION

Financial implications will be the increase in assets values based on the outcome of the dispute with those assets should the dispute be in Knysna Municipality favor and vice versa.

RECOMMENDATION OF THE MUNICIPAL MANAGER

That the content of the report on the criminal proceedings against the previous MM, Dr SW Vatala and the disputed properties be noted.

APPENDIX / ADDENDUM

Annexure A – 31 March 2023 Council Resolution

Annexure B – 5 August 2013 Council Resolution

Annexure C – 6 August 2020 Council Resolution

Annexure D – 29 July 2021 Council Resolution

Annexure E – Extracts from 2019/20. 2020/21 and 2021/2022 AFS

File Number: 12/1/2/1

Execution: Municipal Manager

Acting Director Corporate Services

SPECIAL MUNICIPAL COUNCIL MEETING
AGENDA
10 AUGUST 2023

CONFIDENTIAL

ORDINARY MUNICIPAL COUNCIL MEETING
AGENDA
31 MARCH 2023

IN COMMITTEE

Annexure A.

15. **IN COMMITTEE : NEW MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

15.1[C]

**C01/03/23[C] REPORT ON CRIMINAL PROCEEDINGS AGAINST PREVIOUS
MUNICIPAL MANAGER, SW VATALA**

REPORT FROM MUNICIPAL MANAGER (LEGAL SERVICES)

PURPOSE OF THE REPORT

To report to Council with a status update on the criminal proceedings against the previous Municipal Manager, Dr SW Vatala.

BACKGROUND/DISCUSSION

On 30 March 2022, Item C11/03/22 IC, **Annexure "A"**, served before Council to advise on the criminal proceedings against the previous Municipal Manager, Dr SW Vatala. Council subsequently under aforementioned item resolved as follows:

C11/03/22IC **REPORT ON CRIMINAL PROCEEDINGS AGAINST
PREVIOUS MUNICIPAL MANAGER SW VATALA**

Unanimously Resolved

*That the report on the criminal proceedings against the
previous Municipal Manager, Dr SW Vatala, be noted.*

File Number: 9/1/2/14

Execution: Acting Municipal Manager

On 9 March 2023, the administration became aware that Dr Vatala will be appearing in the Knysna Magistrates Court and the Acting Manager: Legal Services attended the proceedings.

Dr Vatala, as accused number 1 and Mr M Stratu, as accused number 2, made first appearances before court and bail applications were heard on said date. The charges levelled against the accused by state were read as follows:

Charge 1: Contravention of section of section 173 of the MFMA; and
Charge 2: Forgery and uttering to the value of R 62 million.

The court heard bail applications by both accused and after deliberation, the court released the accused's on bail to the value of R15 000 each, subject to strict bail conditions. The matter was subsequently postponed to 12 May 2023 and to set a Regional Court date.

FINANCIAL IMPLICATIONS

N/A

RELEVANT LEGISLATION

N/A

SPECIAL MUNICIPAL COUNCIL MEETING
AGENDA
10 AUGUST 2023

CONFIDENTIAL

IN COMMITTEE

ORDINARY MUNICIPAL COUNCIL MEETING
AGENDA
31 MARCH 2023

RECOMMENDATION BY MUNICIPAL MANAGER

That the report on the Criminal Proceedings against the previous MM SW Vatala, as at March 2023, be noted.

APPENDIX

Annexure "A" – Item C11/03/22IC which served before Council 30 March 2022
Annexure "B" – Council Resolution C11/03/22IC dated 30 March 2022.

File Number : 9/1/2/14
Execution : Municipal Manager
Acting Manager : Legal Services

SPECIAL MUNICIPAL COUNCIL MEETING
AGENDA
10 AUGUST 2023

CONFIDENTIAL

ORDINARY COUNCIL MEETING
31 MARCH 2023
MINUTES

IN COMMITTEE

C01/03/23[IC]

REPORT ON CRIMINAL PROCEEDINGS AGAINST PREVIOUS
MUNICIPAL MANAGER, SW VATALA

UNANIMOUSLY RESOLVED

That the report on the Criminal Proceedings against the previous MM
SW Valala, as at March 2023, be noted.

File Number : 9/1/2/14

Execution : Municipal Manager
Acting Manager : Legal Services

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

MINUTES
COUNCIL MEETING
8 AUGUST 2013

CM07/07/13 REPORT ON THE LAND DISPUTE BETWEEN KNYSNA MUNICIPALITY
AND EDEN DISTRICT MUNICIPALITY

RESOLVED

- [a] That the report on the *status quo* regarding the land dispute between the Knysna Municipality and Eden District Council on:
- (i) Portions 1, 2 and 3 of farm Walkers Point,
 - (ii) Erven 20, 21 and 22 Belvidere and
 - (iii) application from Knysna Municipality to obtain the District Council Property on erf 2790, George Rex Drive Knysna that served before the Mayoral Committee of 18 July 2013, be noted;
- [b] That the Municipal Manager be directed to proceed with the negotiations with the intended outcome of the transfer of Portions 1, 2 and 3 of the farm Walkers Point to the Knysna Municipality;
- [c] That the Municipal Manager be requested to submit a further report to a Mayoral Committee Meeting as soon as possible regarding Erf 2790, Knysna;
- [d] That the Municipal Manager be directed to proceed with the negotiations with the intended outcome of the transfer erven 20, 21 and 22 in Belvidere to the Knysna Municipality;
- [e] That the Municipal Manager be directed to report on the status quo of Portion 1 and 2 of the farm 185 (Swartvlei Caravan Park) and all other properties within our area of jurisdiction, excluding those mentioned in [a] above, registered in the name of Eden District Municipality;
- [f] That the Municipal Manager be directed to declare a formal dispute with Eden District Municipality in terms of the Intergovernmental Relations Framework Act, 2005 should the matters mentioned in [b], [c] and [d] mentioned above not be satisfactory resolved in favour of Knysna Local Municipality within 14 days of the Council resolution.

File Number: 12/1/2/1

Execution: Director: Corporate Services
Manager: Administration

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

ORDINARY COUNCIL MEETING
MINUTES
6 AUGUST 2020

Annexure 'C'

C09/08/2020

**REPORT ON DISPUTED PROPERTIES WITH THE GARDEN ROUTE
DISTRICT MUNICIPALITY**

UNANIMOUSLY RESOLVED

- [a] That the content of the report with regard to the disputed properties with the Garden Route District Municipality, be noted;
- [b] That the Acting Municipal Manager be instructed to address correspondence to the Garden Route District Municipality to request the transfer of the following properties to the Knysna Municipality:
 - 1. Portions 2 & 3 of the Farm Walker's point
 - 2. Erf 2790, Knysna
 - 3. Erf 20,21,22 Belvidere
 - 4. Portion 22 of the farm Westford
 - 5. Portion 0,1 and 2 of the farm 185 George;
- [c] That should the Garden Route District Municipality fail to respond to the Correspondence and/ exceed to the request referred to in (b) above, within 21 days of receipt thereof, the Acting Municipal Manager be authorized to serve a formal IGR Notice in terms of Section 41 of the Intergovernmental Relations Framework Act 13 of 2005;
- [d] That should the IGR Notice in terms of Section 41 of the Intergovernmental Relations Framework Act 13 of 2005 referred to in (c) above, be served on the Garden Route District Municipality, the Acting Municipal Manager disclose the assets in (b), as contingent liabilities in the Annual Financial Statements;
- [e] That a progress report on the execution of the resolution in [b] and [c] above, be submitted to the next Ordinary Council meeting.

The Deputy Executive Mayor requested that his gratitude towards the submission of the item by the Acting Municipal Manager, to the Ordinary Council Meeting held on 6 August 2020, be recorded.

File Number :

Execution : Acting Municipal Manager
Chief Financial Officer
Director: Corporate Services
Manager: Legal Services and Properties

SPECIAL MUNICIPAL COUNCIL MEETING
AGENDA
10 AUGUST 2023

ORDINARY COUNCIL MEETING
MINUTES
29 JULY 2021

Annex "D"

**C03/07/21 REPORT ON DISPUTED PROPERTIES WITH THE GARDEN ROUTE
DISTRICT MUNICIPALITY**

UNANIMOUSLY RESOLVED

- [a] That the content of the report be noted;
- [b] That Council resolves that the properties in question are still regarded as contingent assets;
- [c] That a report on the outcome of the engagements with the Garden Route District Municipality, be submitted to an Ordinary Council meeting once the engagements have been finalised.

File Number:
Execution: Acting Municipal Manager
Chief Financial Officer
Manager: Legal Services and Properties

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

Annexure E

Knysna Municipality

Annual Financial Statements for the year ended 30 June 2020

Notes to the Annual Financial Statements

	2020 R	2019 R
46. Contingencies (continued)		
Contingent assets		
2019		
There are a number of properties that is registered in the name of the Garden Route District Municipality, that are in the jurisdiction of the Knysna Municipality. This was previously disclosed as contingent assets as the Knysna Municipality engaged and declared a dispute with the Garden Route District Municipality of the ownership of these properties. Several legal advises and opinions were sought by both the Garden Route District Municipality and Knysna Municipality since 2012 without tangible resolutions in previous years. Progress were however made during the current year between the mentioned municipalities, where it was resolved and agreed that these properties are registered in the name of the Garden Route District Municipality. Both Municipalities agreed that the formal dispute resolution procedure will be the last resort. Given the outcomes and resolution of the engagements during the year, the Garden Route District Municipality will not be disclosing the properties as contingent liabilities and Knysna Municipality will not be disclosing it as contingent assets anymore.		
2020		
It has been unanimously resolved at the council meeting (C09/08/2020) dated 6 August 2020 that the Acting Municipal Manager be instructed to address correspondence to the Garden Route District Municipality to request the transfer of the following properties to the Knysna Municipality estimated to the value of R 64 080 000. 1. Portions 1, 2 & 3 of the Farm Walker's point (R20 200 000) 2. Erf 2790, Knysna (R2 900 000) 3. Erf 20, 21, 22 Belvidere (R460 000 ; R460 000; R460 000) 4. Portion 22 of the farm Westfords (R600 000) 5. Portion 0, 1 and 2 of the farm 185 George, (R39 000 000) The contingent assets, as disclosed in Note 46 of the Annual Financial Statements as at 30 June 2020, are continuously assessed by management. In consideration of the reasons provided hereunder, Knysna Municipality is firmly of the opinion that there is more than a 50% probability of success in the disputed properties being transferred to Knysna Municipality. Based on the legal opinions considered by the Knysna Municipality which were provided by senior counsel to the Garden Route District Municipality and the Knysna Municipality respectively. Based on the user principle, Knysna Municipality manages several of the properties for which income is derived, and therefore provides an economic benefit to the Knysna Municipality. Based on the fact that the Garden Route District Municipality has not raised any objection in an attempt to prevent Knysna Municipality from utilising any of the disputed properties. On 04 September 2020 a formal notification was provided to the Municipal Manager of the Garden Route District Municipality with regards to the dispute of the abovementioned properties. The notification was made on the basis that the parties have attempted to negotiate a resolution of the dispute and have not been successful in achieving settlement and have complied with the provisions of the Intergovernmental Relations Framework Act 13 of 2005, in that the parties have conducted various negotiations on the above commencing on or during 20 June 2012, with the last engagement being held on or about 15 May 2019. Various unsuccessful consultations and correspondence between the Knysna Municipality and the Garden Route District Municipality has resulted in an intergovernmental dispute being raised, to which the MEC for Local Government was approached to appoint an arbitrator to resolve the contingent asset dispute.		
Scarce Skills Allowances		
At a special council meeting (SC03/02/2020) in February 2020, it has been unanimously resolved that all Scarce Skills Allowances paid to the Municipal Manager and the Managers directly accountable to the Municipal Manager in terms of the Scarce Skills Policy be recovered and that the MEC : Local Government be advised that Council do not oppose the court application (C 2867/2020) and will abide by the decision of the court. The possible recoverable estimated amount is R 1,6 mil.		

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

Knysna Municipality

Annual Financial Statements for the year ended 30 June 2020

Notes to the Annual Financial Statements

	2020	2019
	R	R

47. Related parties

Relationships
Councilors
Municipal Manager
Members of key management

Refer to the General information
Refer to the General information
Director Community Services
Director Corporate Services
Director Financial Services
Director Planning and Development
Director Technical Services

Related party transactions**Year ended 30 June 2020**

	Rates levied	Service charges levied	Other charges levied	Outstanding balance at year end
Councilors	23,074	102,050	10,711	35,733
Municipal Manager and Section 56 Personnel	14,813	68,029	199,422	21,171
	37,887	170,079	210,133	56,904

Year ended 30 June 2019

	Rates levied	Service charges levied	Other charges levied	Outstanding balance at year end
Councilors	64,105	207,015	20,480	47,840
Municipal Manager and Section 56 Personnel	8,222	23,103	58,618	-
	72,327	230,118	79,098	47,840

Key Management and Councilors receive and pay for services on the same terms and conditions as other ratepayers / residents. All transactions are at arm's length.

The rates, service charges and other charges are in accordance with approved tariffs that were advertised to the public. No bad debt expenses have been recognised in respect of amounts owed by related parties.

Related Party Loans

Since 1 July 2004 loans to councilors and senior management employees are not permitted. Loans granted prior to this date, together with the conditions, are disclosed in note 4 to the Annual Financial Statements.

Compensation of key management personnel

The compensation of key management personnel is set out in note 30 to the Annual Financial Statements.

Other Supply Chain Transactions

The following purchases were made during the year where Councilors or Staff have an interest:

Councillor/Staff member	Relationship	Entity	2020	2019
Mr. R. Bouwer (Stores Clerk)	Father-in-law	JC Terblanche t/a P&H Services	448,732	753,308
Ms. S. Mwa (Chief clerk: Administration)	Mother	LT Mwa	-	4,250
Ms. TS Guzana-Tsease (Senior Clerk: Records)	Spouse	Tsease Transport and Shuttle Services	1,900	7,300
Mr. N. Siyona (Supervisor: Roads)	Wife	Nokamboze	-	1,850
Ms. N. Masana (Procurement Clerk)	Brother	Minkulu: S	79,250	91,300
Mr. C. Hardnick (Senior Supervisor - Parks)	Brother	FK Hardnick	-	11,000
Ms. L. Plasjies (Network and system administrator)	Brother-in-law	MM Janjiles	-	4,966
Ms. S. Fourie (SCM clerk)	Uncle	(Transport) Julyan D	14,800	5,700

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 26 March 2021

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

Knysna Municipality

Audited Annual Financial Statements for the year ended 30 June 2021

Notes to the Audited Annual Financial Statements

	2021	2020
46. Contingencies		
Contingent liabilities		
The municipality is currently engaged in litigation which could result in damages / costs being awarded against Council if claimants are successful in their actions. The following are the estimates:		
Claims against council		
PL Bruwer vs The RAF and KM (Case no. 72310/2012). The municipality is the second respondent in a claim for personal injury due to a road accident.	1,000,000	1,000,000
Thabo Pitsi Mabula vs KM and 1 other (Case no. 21933/16). This is a High Court litigious matter. Status: Plaintiff appointed an attorney of record.	20,500,000	20,500,000
J & C LAW V KNYNSNA MUNICIPALITY	1,300,000	-
KM vs Brenton Haven - Claim in terms of Services Agreement for municipal services provided. (excluding interest)	-	1,008,341
Granville R Bond o.b.o Jheili Jafa	8,460,000	-
Garth Bock vs KM - Alleged breach of contract in respect of the upgrading of the ablution facilities at the Homlee Sportsgrounds (Damages claim)	204,095	184,095
Thabo Pitsi Mabula vs KM and 1 other (Case no. 21937/16). This is a High Court litigious matter. Status: Plaintiff proceedings to trial.	21,400,000	21,400,000
Aubrey Tsengwa vs KM and two others (LAC Case no. CA1/2016). This is a labour court matter against the Knysna Municipality. Status: Matter taken on appeal after KM was successful in opposing the Labour Court proceedings.	1,000,000	1,000,000
Entsha Henra vs KM - The claimant had instituted arbitration proceedings seeking payments from KM in respect of time related vis-a-vis works attended by them Tenders T15 and T18 of 2015	-	35,000
Thabo Pitsi Mabula vs KM and two others (LC Case no. 955/2015). This is a labour court matter against the KM.	1,000,000	1,000,000
Rotter vs KM - The plaintiff instituted action against KM for damages together with interest and costs resultant from injuries suffered after a manhole cover collapsed.	565,000	565,000
MG Parkin and Twenty Others vs Knysna Local Municipality. Action proceedings in the Western Cape High Court, case no 5856/20. Damages claims by Twenty Plaintiffs arising from the fire that allegedly started at Elandskraal on 7 June 2017.	18,231,184	18,231,184
Kamashabe B & E Projects & others // Knysna Municipality	-	5,400,000
Velle Waxa // Independent Electoral Commission and others.	400,000	600,000
Trackstar Trading Pty Ltd vs Knysna Municipality. KM refusal of Trackstar's LUPC application for rezoning, sub-division and departure	900,000	1,700,000
Eskom Holding Soc Limited // Knysna Municipality	500,000	500,000
D Adonis and 5 others vs Knysna Municipality (Labour court matter). Potential legal cost estimation for outstanding bonuses claimed against the municipality.	2,878,082	2,442,914
KM vs Erf 426 Boggomsbaai CC REF ES1179 Outstanding rates and taxes	133,980	158,980
Dirk Claassen Family Trust	-	2,400,000
Ambrose Trading (PTY) Ltd t/a Food lovers & 9 others// Knysna Municipality an 3 others Case No: 1347/19	-	1,000,000
KM vs Erf 426 Boggomsbaai CC REF ES1396	88,980	20,000
KM vs Marina REF: ES1045 Outstanding rates and taxes	60,000	65,000
KM vs CF & LM Guthrie Outstanding rates and taxes	60,000	65,000
KM vs Myles Bertrand Dent	26,821	56,821
KM vs Birgit Christine Lutzen - (There is a possibility that the Municipality will be reimbursed partially or wholly for the litigation they face.)	4,900,000	4,900,000
	83,606,142	84,232,335

AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Knysna Municipality

Audited Annual Financial Statements for the year ended 30 June 2021

Notes to the Audited Annual Financial Statements

	2021	2020
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46. Contingencies (continued)**Contingent assets**

It has been unanimously resolved at the council meeting dated 6 August 2020 that the Acting Municipal Manager be instructed to address correspondence to the Garden Route District Municipality to request the transfer of the following properties to the Knysna Municipality estimated to the value of R 64 060 000.

1. Portions 1, 2 & 3 of the Farm Walker's point (R20 200 000)
2. Erf 2780, Knysna (R2 900 000)
3. Erf 20,21,22 Belvidere (R460 000; R460 000; R460 000)
4. Portion 22 of the farm Westford (R600 000)
5. Portion 5,1 and 2 of the farm 185 George; (R39 000 000)

The contingent assets, as disclosed in Note 46 of the Annual Financial Statements as at 30 June 2021, are continuously assessed by management.

In consideration of the reasons provided hereunder, Knysna Municipality is firmly of the opinion that there is more than a 50% probability of success in the disputed properties being transferred to Knysna Municipality. Based on the legal opinions considered by the Knysna Municipality which were provided by senior counsel to the Garden Route District Municipality and the Knysna Municipality respectively. Based on the user principle, Knysna Municipality manages several of the properties for which income is derived, and therefore provides an economic benefit to the Knysna Municipality. Based on the fact that the Garden Route District Municipality has not raised any objection in an attempt to prevent Knysna Municipality from utilising any of the disputed properties.

On 04 September 2020 a formal notification was provided to the Municipal Manager of the Garden Route District Municipality with regards to the dispute of the abovementioned properties.

The notification was made on the basis that the parties have attempted to negotiate a resolution of the dispute and have not been successful in achieving settlement and have complied with the provisions of the Intergovernmental Relations Framework Act 13 of 2005, in that the parties have conducted various negotiations on the above commencing on or during 20 June 2012, with the last proposed engagement of 15 July 2021 being postponed.

Various unsuccessful consultations and correspondence between the Knysna Municipality and the Garden Route District Municipality has resulted in an intergovernmental dispute being raised, to which the MEC for Local Government was approached to appoint an arbitrator to resolve the contingent asset dispute.

All of the above has been confirmed by council at a council meeting held on the 29th of July 2021.

AUDITOR-GENERAL
SOUTH AFRICA

Aiding to build public confidence

SPECIAL MUNICIPAL COUNCIL MEETING

AGENDA

10 AUGUST 2023

Knysna Municipality

Annual Financial Statements for the year ended 30 June 2022

Notes to the Annual Financial Statements

	2022	2021
46. Contingencies		
Contingent liabilities		
The municipality is currently engaged in litigation which could result in damages / costs being awarded against Council if claimants are successful in their actions. The following are the estimates:		
Claims against council		
PL Bruwer vs The RAF and KM (Case no. 72310/2012). The municipality is the second respondent in a claim for personal injury due to a road accident.	1,000,000	1,000,000
Thabo Pitsi Mabula vs KM and 1 other (Case no. 21933/16). This is a High Court litigious matter. Plaintiff appointed an attorney of record.	20,500,000	20,500,000
J G C LAW V KNYSNA MUNICIPALITY	-	1,300,000
Granville R Bond o.b.o Jineil Jafra	8,260,000	8,480,000
Garth Bock vs KM - Alleged breach of contract in respect of the upgrading of the ablution facilities at the Hornlee Sportsgrounds (Damages claim)	204,095	204,095
Thabo Pitsi Mabula vs KM and 1 other (Case no. 21937/16). This is a High Court litigious matter. Status: Plaintiff has withdrawn the proceedings against defendants and tendered costs on a party to party scale.	21,400,000	21,400,000
Aubrey Tsengwa vs KM and two others (LAC Case no. CA1/2016). This is a labour court matter against the Knysna Municipality. Status: Matter taken on appeal after KM was successful in opposing the Labour Court proceedings.	-	1,000,000
DALE MEAKER V KNYSNA MUNICIPALITY	3,120,000	
Accountability group // Knysna Municipality and others	800,000	-
MEC // Knysna Municipality and others	8,000,000	-
William Clayton // Knysna Municipality	100,000	-
DENRON PLANT (PTY) LTD & 2 OTHERS // KNYSNA MUNICIPALITY & 2 OTHERS (CASE NO: 1363/2021)	1,620,193	-
Thabo Pitsi Mabula vs KM and two others (LC Case no. 955/2015). This is a labour court matter against the KM.	1,000,000	1,000,000
Rotter vs KM - The plaintiff instituted action against KM for damages together with interest and costs resultant from injuries suffered after a manhole cover collapsed.	525,000	565,000
MG Parkin and Twenty Others vs Knysna Local Municipality. Action proceedings in the Western Cape High Court, case no 5855/20. Damages claims by Twenty Plaintiffs arising from the fire that allegedly started at Elandsdraal on 7 June 2017.	18,231,164	18,231,164
Vette Wexa // Independent Electoral Commission and others.	100,000	400,000
Syuyile Mastoba//South African Local Government Bargaining Council and Knysna Municipality; Case No: PR98/21	150,000	-
Trackstar Trading Pty Ltd vs Knysna Municipality. KM refusal of Trackstar's LUPO application for rezoning, sub-division and departure. 2022 - The case is finalised. The municipality was found liable. An provision for amount of R388 904.70 claimed has been made at 30 June 2022 and is included in payables at year end.	-	900,000
Eskom Holding Soc Limited // Knysna Municipality	100,000	500,000
D Adonis and 5 others vs Knysna Municipality (Labour court matter). Potential legal cost estimation for outstanding bonuses claimed against the municipality.	2,878,082	2,878,082
KM vs Erf 426 Boggomsbaal CC REF ES1179 Outstanding rates and taxes	133,980	133,980
KM vs Erf 426 Boggomsbaal CC REF ES1396	88,980	88,980
KM vs Marina REF: ES1645 Outstanding rates and taxes	80,000	60,000
KM vs CF & LM Guthrie Outstanding rates and taxes	80,000	60,000
KM vs Myles Bertrand Dent (Case no: 0001224/18)	26,821	26,821
KM vs Birgit Christine Lutzen. - (There is a possibility that the Municipality will be reimbursed partially or wholly for the litigation they face.)	4,800,000	4,900,000
	93,168,336	83,608,142


AUDIT & FINANCIAL SERVICES
Auditing & financial solutions

30 November 2022

Knysna Municipality

Annual Financial Statements for the year ended 30 June 2022

Notes to the Annual Financial Statements

2022 2021

46. Contingencies (continued)**Contingent assets**

It has been unanimously resolved at the council meeting dated 6 August 2020 that the Acting Municipal Manager be instructed to address correspondence to the Garden Route District Municipality to request the transfer of the following properties to the Knysna Municipality estimated to the value of R 64 060 000.

1. Portions 1, 2 & 3 of the Farm Walker's point (R20 200 000)
2. Erf 2790, Knysna (R2 900 000)
3. Erf 20,21,22 Sehidere (R460 000; R460 000; R460 000)
4. Portion 22 of the farm Westford (R600 000)
5. Portion 0,1 and 2 of the farm 185 George, (R39 000 000)

The contingent assets, as disclosed in Note 46 of the Annual Financial Statements as at 30 June 2021, are continuously assessed by management.

In consideration of the reasons provided hereunder, Knysna Municipality is firmly of the opinion that there is more than a 50% probability of success in the disputed properties being transferred to Knysna Municipality. Based on the legal opinions considered by the Knysna Municipality which were provided by senior counsel to the Garden Route District Municipality and the Knysna Municipality respectively. Based on the user principle, Knysna Municipality manages several of the properties for which income is derived, and therefore provides an economic benefit to the Knysna Municipality. Based on the fact that the Garden Route District Municipality has not raised any objection in an attempt to prevent Knysna Municipality from utilising any of the disputed properties.

On 04 September 2020 a formal notification was provided to the Municipal Manager of the Garden Route District Municipality with regards to the dispute of the abovementioned properties.

The notification was made on the basis that the parties have attempted to negotiate a resolution of the dispute and have not been successful in achieving settlement and have complied with the provisions of the Intergovernmental Relations Framework Act 13 of 2005, in that the parties have conducted various negotiations on the above commencing on or during 20 June 2012, with the last proposed engagement of 15 July 2021 being postponed.

Various unsuccessful consultations and correspondence between the Knysna Municipality and the Garden Route District Municipality has resulted in an intergovernmental dispute being raised, to which the MEC for Local Government was approached to appoint an arbitrator to resolve the contingent asset dispute.

All of the above has been confirmed by council at a council meeting held on the 29th of July 2021.

SPECIAL MUNICIPAL COUNCIL MEETING
AGENDA
10 AUGUST 2023

Annexure "B"

ORDINARY COUNCIL MEETING
MINUTES
31 MAY 2023

**C09/05/23 STATUS ON DISPUTED PROPERTIES WITH THE GARDEN ROUTE
DISTRICT MUNICIPALITY**

UNANIMOUSLY RESOLVED

- [a] That the content of the report with regards to the update regarding the disputed properties with the Garden Route District Municipality, be noted; and
- [b] That the Intergovernmental Dispute process be allowed to continue, that the process be concluded within 6 months, that monthly progress reports be submitted to the Finance and Governance Committee and that the committee be involved in the process.

File Number : 12/1/2/1

Execution : Municipal Manager

 Acting Director : Corporate Services

7. **CONSIDERATION OF MOTIONS**

None

8. **CONSIDERATION OF QUESTIONS**

None

9. **CONSIDERATION OF MOTIONS OF EXIGENCY**

None

10. **IN COMMITTEE ITEMS**

None

11. **ADJOURNMENT**

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