

WEST RAND DISTRICT MUNICIPALITY



SYSTEM OF DELEGATIONS

(Developed i.t.o. Section 59 of the Local Government: Municipal Systems Act, 32 of 2000)

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1. PURPOSE AND OBJECTIVE

The purpose of this policy is to provide for the establishment of appropriate internal mechanisms, processes and procedures to be followed for the development, formulation, review and adoption of policies and by-laws by the Municipality, to ensure that it produces relevant policies and by-laws that will enhance its capacity and ability to deliver quality services to the community of WRDM.

2. SCOPE

This policy is an institutional policy which applies to the Municipality as a whole.

3. DEFINITIONS

3.1 In this document, unless the context otherwise indicates, an expression to which a meaning has been assigned in the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003), the Local Government: Municipal Property Rates Act, 2004 (Act No 4 of 2004) or any other applicable legislation, shall have the meaning so assigned to it.

3.2 For the purpose of this policy, unless otherwise stated, the following words shall have the following meanings:

“Administration” means the Municipal Manager and the other employees of the municipality;

“Accounting officer” in accordance with Section 60 of the MFMA, means the Municipal Manager;

“Chief Finance Officer” means the person appointed by Council as the Chief Financial Officer in terms of section 56 of the Systems Act and designated as such by the Accounting Officer i.t.o. section 80(2)(a) of the MFMA, and includes the person acting in his stead;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

“Council” means the Municipal Council of the WRDM, its legal successors in title and its delegates;

“Councillor” means a member of the council;

“Delegating authority” means a political structure or office bearer of the Council, the Municipal Manager, Chief Financial Officer, Executive Manager or any other employee of the Council to whom a primary power has been assigned in terms of legislation, policy or otherwise, and who delegates this power or function to a delegatee i.t.o. this System of Delegations and ‘delegator’ has a corresponding meaning;

“Delegation” means the process whereby a delegating authority selected powers or functions on a delegatee in writing for the delegatee to perform these powers and functions in his stead, including the authority to deploy resources, and ‘delegate’ and ‘sub-delegate’ has a corresponding meaning;

“Delegatee” means a subordinate political structure or office bearer or employee of Council to whom a power is delegated by a delegating authority i.t.o. this System of Delegations;

“Executive Manager” means a manager directly accountable to the Municipal Manager, appointed in terms of section 56 of the Systems Act, and includes any person acting in his stead;

“In consultation” means with the concurrence of the person with whom a delegatee are required to consult before exercising a delegated or sub-delegated power;

“MFMA” means the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003);

“Municipality”, means the West Rand District Municipality, and when referred to as –

- (i) an entity, means a municipality as described in section 12 of the Systems Act; and
- (ii) a geographic area, means a municipal area determined in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

“Municipal Manager” means the person appointed by the Council as the head of the administration for the municipality in terms of section 54A of the Structures Act, and includes any person acting in his stead;

“Power” includes a duty and a function;

“Political office bearer” means the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive committee as referred to in the Structures Act;

“Political structure” means the council of the municipality or any committee or other collective structure of the municipality elected, designated or appointed in terms of a specific provision of the Structures Act;

“Primary power” means an original power assigned to a delegating authority in terms of legislation.

“Rates Act” means the Local Government: Municipal Property Rates Act, 2004 (Act No 4 of 2004);

“Section 79 Committee” means a committee established and appointed by the Council in terms of section 79 of the Structures Act to assist the Council with the effective an efficient performance of its functions and the exercise of its powers; (Inserted by Council on 28 September 2006 under Item 119A3)

“Section 80 Committee” means a committee established and appointed by the Council in terms of section 80 of the Structures Act to assist the executive mayor with the effective an efficient performance of his functions and the exercise of his powers; (Inserted by Council on 28 September 2006 under Item 119A3)

“Staff member” means the employee of the Municipality, including the Municipal Manager, and employee has a corresponding meaning;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998);

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);

3.3 In this document, unless the context otherwise indicates, words and expressions denoting:

- (i) the singular shall include the plural and vice versa;
- (ii) the male sex shall include the female sex and vice versa; and
- (iii) a reference to a natural person shall include a legal person and vice versa.

4. INTRODUCTION

4.1 This System of Delegations was compiled in compliance with the provisions of Section 59 of the Local Government: Municipal Systems Act, Act 32 of 2000, which:

- (i) will maximise administrative and operational efficiency and provide for adequate checks and balances as required in Section 59(1)(a) of the Municipal Systems Act, 2000;
- (ii) includes a legal as well as a policy framework within which the granting and execution of delegated powers may take place;
- (iii) informs Council who the relevant role-players are and what each one's primary powers are in terms of current legislation;
- (iv) includes Council's policy for the delegation of power within the Municipality;
- (v) delegates certain specific powers to the Executive Mayor, the Municipal Manager and the Executive Managers; and
- (vi) allows them to further delegate such powers to the functionary/official that is actually executing the activities in terms of the enabling legislation, without compromising the principles of accountability and proper governance.

4.2 Delegation is a process whereby authority and responsibility are delegated to the lower levels of an organisation and consists of the following four primary steps:

- (i) The assignment of functions and resources.
Functions are tasks and activities that are assigned to a subordinate for implementation. Resources are the people, equipment, funds, etc. needed to satisfactorily complete these tasks and activities.
- (ii) The delegation of authority
This gives the subordinate the power to act on behalf of another and includes the authority to deploy resources.
- (iii) The assignment of operating responsibilities
Only an operational responsibility, that is a responsibility to properly perform a function, can be delegated – the ultimate responsibility, that is final accountability for the function, can never be delegated.
- (iv) The creation of accountability
It is the obligation by the delegator to see that the function is being carried out properly and that goals are achieved satisfactorily.

4.3 The main reason for delegating is to set top management free from the day-to-day activities of the Municipality in order to focus on creative thinking and planning, which is a prerequisite for achieving excellence in any organisation. Another important reason is that it moves functions to subordinates who may have specialised knowledge for a particular job.

4.4 Delegation requires the delegator not to make decisions about functions and responsibilities that have been delegated and to abide by the decisions that are made by subordinates, even if he or she differs about the decisions. Delegators should realise that there is more than one way to deal with a situation and should give subordinates complete freedom in performing their delegated tasks.

4.5 The objectives of this System of Delegation are to:

- (i) ensure maximum administrative and operational efficiency;
- (ii) provide for adequate checks and balances;
- (iii) delegate decision-making to the most effective level within the administration;
- (iv) involve employees in management decisions as far as practicable;
- (v) promote a sense of collective responsibility for performance;

- (vi) assign clear duties for the management and co-ordination of administrative units, systems and mechanisms;
- (vii) define in precise terms the duties of each political structure and political office bearer;
- (viii) determine the relationships amongst the political structures, political office bearers and the administration, and the appropriate lines of accountability and reporting for each of them.

5. NEED FOR A SYSTEM OF DELEGATION

- 5.1 Legislative and executive authority in the form of wide ranging powers and functions have been assigned by parliament to municipalities in the Constitution, 1996, which also identifies Councils as the decision making body to exercise all these powers and functions.
- 5.2 As it is practically impossible for Council to give adequate time and attention to all its powers and functions, the legislature accordingly, in Section 59(1)(a) of the Municipal Systems Act, 2000, determined that a Municipal Council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.
- 5.3 Delegation to the subordinate structures of Council as well as to the Municipal Manager and other officials can therefore aid Council in executing its authority in a speedy and effective manner for the benefit of the community.
- 5.4 It should be noted, however, that this does not mean that the Council is no longer responsible for service delivery, as it remains responsible for the execution of all its powers and duties, even where it has delegated it. For this reason Council should be cautious in deciding which powers to delegate and to whom.
- 5.5 Delegation should, however, not be seen as a statutory responsibility forced onto Council by the legislature. It is in fact an essential management tool.
- 5.6 The need for delegation in a municipal environment in accordance with a proper system, can be summarised as follows:
- (i) To empower qualified, competent and able employees of the Municipality to make decisions in the performance in their day to day duties, and thereby speed up service delivery. Powers should therefore be delegated to the lowest level possible where it could be executed responsibly and not compromise the municipality's efficiency, transparency and accountability in the execution of its powers and duties;
 - (ii) A proper system of delegations will ensure that all decisions and actions taken by the Council, its committees, Executive Mayor, Speaker and Municipal Officials indeed carry the sanction of the Council and that invalid actions and decisions will not be justified; and
 - (iii) Will ensure that delegated powers are properly performed. In this regard, regular progress reports on the various functions that have been delegated should be submitted.

6. LEGAL FRAMEWORK

Before Council can give consideration to the delegation of powers and functions, it is important to determine, firstly, what the primary powers and functions of the municipality and its different role-players are in terms of current legislation, and, secondly, what the legislative requirements for the delegation of powers and functions are.

6.1 The Constitution of the Republic of South Africa, 1996

6.1.1 Section 156 of the Constitution deals with the powers and functions of municipalities and assigns the following powers and functions to municipalities:

- (i) The executive authority in respect of and the right to administer the matters listed in Part B of Schedules 4 and 5 of the Act, as well as any other matter assigned to it by national or provincial legislation;
- (ii) The right to make and administer by-laws;
- (iii) The administration of a matter listed in Part A of Schedules 4 and 5, which has been assigned to it by national or provincial government;
- (iv) Any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

6.1.2 Section 160(1)(a) designates the Council as the relevant body in the municipality who makes decisions concerning the exercise of all the powers and the performance of all the functions and duties of the Municipality.

6.1.3 Section 160(2) prescribes that a Municipal Council may not delegate the following functions:

- (i) The passing of by-laws;
- (ii) The approval of budgets;
- (iii) The imposition of rates and other taxes, levies and duties; and
- (iv) The raising of loans.

Section 229 of the Constitution deals with the fiscal powers and functions of a municipality.

6.2 The Local Government: Municipal Structures Act, Act 117 of 1998

6.2.1 Section 56 deals with the powers and functions of the Executive Mayor and Section 60 with that of the Mayoral Committee, and will be discussed in detail here below.

6.2.2 Section 74, 79 and 80, respectively, deals with the powers and functions of Ward Committees, Committees of Council and Committees to assist the Executive Mayor, and will also be discussed here below.

6.2.3 Chapter 5 of the Act deals with the powers and functions of the Municipality. Section 83 (1) read with Section 84(2) stipulates in this regard that a municipality has the powers and functions assigned to it in terms of Sections 156 and 229 of the Constitution, excluding those vested in the district municipality.

6.3 The Local Government: Municipal Systems Act, Act 32 of 2000

6.3.1 Part 3 of Chapter 7 of the Local Government: Municipal Systems Act, 2000, deals with the delegation of powers and is attached hereto in full as Annexure "A", not only for ease of reference but also because of its importance to this report.

6.3.2 Section 59(1) makes it compulsory for Council to "develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances".

6.3.3 Section 59(1)(a) authorises Council to delegate appropriate powers in accordance with that system to any of the municipalities other political structures, political office bearers, councillors or staff members.

- 6.3.4 Section 59(1)(a) also prohibits Council from delegating any of the following:
- (i) A power mentioned in Section 160(2) of the Constitution;
 - (ii) The power to set tariffs;
 - (iii) The power to decide to enter into a service delivery agreement; and
 - (iv) The power to approve or amend the municipality's Integrated Development Plan.
- 6.3.5 Section 59(1)(b) authorises Council to instruct any political structure, political office bearer, councillor or staff member to perform any of the municipality's duties.
- 6.3.6 Section 59(1)(c) authorises Council to withdraw any delegation or instruction.
- 6.3.7 In terms of section 59(2) any delegation or instruction must comply with the following requirements:
- (i) It must not be in conflict with the Constitution or the Municipal Systems or Structures Acts
 - (ii) It must be in writing;
 - (iii) It is subject to any limitations, conditions and directions imposed by the Council;
 - (iv) It may include the power to sub-delegate;
 - (v) It does not divest the Council of the responsibility concerning the exercise of the power or the performance of the duty; and
 - (vi) It must be reviewed when a new Council is elected (See Section 65 for the procedure to be followed).
- 6.3.8 Section 59(3) provides for the Council, or the Executive Mayor if so requested by the Council, to review a decision taken in terms of delegated powers and to either confirm, vary or revoke such decision, subject to any rights which may have accrued to a person.
- 6.3.9 Section 59(4) requires any delegation or sub-delegation to a staff member of a power conferred on the Municipal Manager to be approved by the Council in accordance with its System of Delegation.
- 6.3.10 In terms of Section 60 the following powers may, within a policy framework determined by the Council, only be delegated to the Executive Mayor:
- (i) The expropriation of immovable property or the rights in such property;
 - (ii) The remuneration, benefits or other conditions of service of the Municipal Manager or managers directly responsible to him; and
 - (iii) The decision to make investments on behalf of the municipality within a policy framework determined by the Minister of Finance (This power may also be delegated to the Chief Financial Officer).
- 6.3.11 Section 61 makes provision for a decision on a delegated matter to be referred to the delegating authority for decision.
- 6.3.12 Section 62 provides an appeal procedure for any person whose rights has been affected by a decision taken in terms of delegated powers and also indicate who the relevant appeal authority in any specific instance shall be.
- 6.3.13 Section 63 makes it compulsory for all decisions taken in terms of delegated powers to be reported to the delegating authority at such intervals as determined by such authority.

6.3.14 Section 64 stipulates that the withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

6.3.15 In terms of section 65, the Municipal Manager must, whenever it becomes necessary in terms of section 59(2)(f) to review a municipality's delegations, submit to the council a report on the existing delegations and recommendations on any changes through the Executive Mayor.

6.4 The Local Government: Municipal Finance Management Act, Act 56 of 2003

6.4.1 The Accounting Officer (Municipal Manager) may delegate the duty to enforce compliance with sections 7 and 8, which deals with the opening of bank accounts and the Municipality's primary bank account, and section 11, which deals with withdrawals from the Municipality's bank account, to the Chief Financial Officer only.

6.4.2 I.t.o section 14(4) Council may delegate to the Accounting Officer (Municipal Manager) the power to dispose of movable capital assets not needed to provide the minimum level of basic municipal services, below a value as determined.

6.4.3 I.t.o. Section 59(1) the Executive Mayor may delegate the powers and duties assigned to him/her in terms of the Act to another member of the Mayoral Committee and, i.t.o. Section 59(3), confirm, vary or revoke any decision taken in consequence of a delegation without detracting from any rights that may have accrued as a result of the decision.

6.4.4 I.t.o. Section 79, the Accounting Officer (Municipal Manager):

- (i) Must develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration;
- (ii) May delegate to a member of the municipality's top management or any other official of the municipality any of the powers or duties assigned to an accounting officer in terms of the Act or any powers or duties reasonably necessary to assist the accounting officer in complying with a duty to ensure the achievement of the aims of a specific provision of the Act;
- (iii) Must regularly review delegations issued and, if necessary, amend or withdraw any of those delegations.
- (iv) May confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation, without detracting from any rights that may have accrued as a result of the decision.

6.4.5 The accounting officer may not, i.t.o. section 79(2), delegate to any political structure or political office-bearer of the municipality any of the powers or duties assigned to accounting officers in terms of this Act.

6.4.6 I.t.o. section 79(3) the delegation:

- (i) must be in writing;
- (ii) is subject to such limitations and conditions as the accounting officer may impose in a specific case;
- (iii) may either be to a specific individual or to the holder of a specific post in the municipality;
- (iv) may, in the case of a delegation to a member of the municipality's top management), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and
- (v) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

7. THE RELEVANT ROLE PLAYERS AND THEIR PRIMARY POWERS AND DUTIES

Section 59(1)(a) authorises Council to delegate appropriate powers in accordance with that system to any of the municipalities other political structures, political office bearers, councillors or staff members.

The provisions of Section 53 of the Systems Act, 2000, requires Council, within the framework of and in accordance with relevant provisions of the Structures and Systems Act, as well as other applicable legislation, to define the specific role and area of responsibility of each political structure and political office bearer as well as that of the Municipal Manager.

It is important that each of these role-players understand the specific roles and areas of responsibility of the other role-players, in order to ensure:

- good relationships and interaction between them;
- appropriate lines of accountability and reporting;
- that unnecessary overlapping of responsibilities between them are prevented or kept to the minimum;
- that disputes that may arise between them are resolved amicable and timely;

7.1 Political structures

In terms of the provisions of section 11(4) of the Systems Act, 2000, any decision taken by a municipal council or any other political structure of the municipality, must be recorded in writing.

7.1.1 The Council / Municipality

7.1.1.1 In terms of section 156(1) and (2) of the Constitution, a municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and any other matter assigned to it by national or provincial legislation. A municipality may also make and administer by-laws for the effective administration of the matters which it has the right to administer.

7.1.1.2 In terms of the provisions of Section 160(1)(a) of the Constitution, 1996, Council is inherently the holder of all the powers and functions of the municipality.

7.1.1.3 The following powers must, in terms of the provision of Section 160(2) of the Constitution, 1996, and Section 59(1)(a) of the Systems Act, 2000, be retained by Council and may accordingly not be delegated:

- (i) The passing of by-laws;
- (ii) The approval of budgets;
- (iii) The imposition of rates and other taxes, levies and duties;
- (iv) The raising of loans;
- (v) The power to set tariffs;
- (vi) The power to decide to enter into a service delivery agreement; and
- (vii) The power to approve or amend the municipality's Integrated Development Plan.

7.1.1.4 In terms of section 229(1) of the Constitution, a municipality may, subject to certain conditions, impose rates on property and surcharges on fees for services provided by or on behalf of the municipality and, if authorised by national legislation, may impose other taxes, levies and duties, but may not impose income tax, value-added tax, general sales tax or customs duty.

7.1.1.5 Section 83 of the Structures Act, 1998, affirms that a municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution.

- 7.1.1.6 In terms of section 11(1) of the Systems Act, the executive and legislative authority of the municipality vest in the Council, who takes all the decisions of the municipality except:
- (i) decisions on those matters that have been delegated;
 - (ii) decisions on those matters that have by law been assigned to a political structure, political office bearer or employee of the Council;
- 7.1.1.7 In terms of section 11(3) of the Systems Act, a municipality exercises its legislative or executive authority by:
- (i) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery;
 - (ii) promoting and undertaking development;
 - (iii) establishing and maintaining an administration;
 - (iv) administering and regulating its internal affairs and the local government affairs of the local community;
 - (v) implementing applicable national and provincial legislation and its by-laws;
 - (vi) providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in section 78 of the Systems Act;
 - (vii) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;
 - (viii) preparing, approving and implementing its budgets;
 - (viii) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;
 - (ix) monitoring the impact and effectiveness of any services, policies, programmes or plans;
 - (x) establishing and implementing performance management systems;
 - (xi) promoting a safe and healthy environment;
 - (xii) passing by-laws and taking decisions on any of the above-mentioned matters; and (xiv) doing anything else within its legislative and executive competence.
- 7.1.1.8 In terms of section 60(1) of the Systems Act, the following powers of Council may only be delegated to the Executive Mayor:
- (i) The expropriation of immovable property or the rights in such property;
 - (ii) The remuneration, benefits or other conditions of service of the Municipal Manager or managers directly responsible to him; and
 - (iii) The decision to make investments on behalf of the municipality within a policy framework determined by the Minister of Finance (This power may also be delegated to the Chief Financial Officer).
- 7.1.1.9 In terms of section 60(2) of the Systems Act, Council may only delegate to the Municipal Manager the power to make decisions on investments on behalf of the municipality within the municipality's investment policy contemplated in section 13(2) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
- 7.1.1.10 In terms of section 51 of the Systems Act, a municipality must within its administrative and financial capacity, establish and organise its administration in a manner that would enable the municipality to:
- (i) be responsive to the needs of the local community;
 - (ii) facilitate a culture of public service and accountability amongst its staff;
 - (iii) be performance orientated and focused on the objects of local government set out in section 152 of the Constitution and its developmental duties as required by section 153 of the Constitution;

- (iv) ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives set out in the municipality's integrated development plan;
- (v) establish clear relationships, and facilitate co-operation, co-ordination and communication, between-
 - its political structures and political office bearers and its administration;
 - its political structures, political office bearers and administration and the local community;
- (vi) organise its political structures, political office bearers and administration in a flexible way in order to respond to changing priorities and circumstances;
- (vii) perform its functions:
 - through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units; and
 - when necessary, on a decentralised basis;
- (viii) assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms;
- (ix) hold the Municipal Manager accountable for the overall performance of the administration;
- (x) maximise efficiency of communication and decision-making within the administration;
- (xi) delegate responsibility to the most effective level within the administration;
- (xii) involve staff in management decisions as far as is practicable; and
- (xiii) provide an equitable, fair, open and non-discriminatory working environment.

7.1.2 Section 79 committees (Committees to assist Council)

- 7.1.2.1 In terms of the provisions of Section 33 of the Structures Act, 1998, Council may establish a committee if necessary, taking into account:
- (i) the extend of the functions and powers of the municipality;
 - (ii) the need for the delegation of functions and powers in order to ensure efficiency and effectiveness; and
 - (iii) the financial and administrative resources available to support the committee.

7.1.1.11 Council may, in terms of Section 79 of the Structures Act, 1998, establish any committees necessary for the effective and efficient performance of its functions or the exercise of any of its powers and may appoint the members of such a committee from amongst its members.

7.1.1.12 The Section 79 committees of Council -

- (i) consist of Councillors appointed by the Council;
- (ii) the chairperson of each section 79 committee is appointed by the Council ;
- (iii) may receive specific responsibilities and delegated powers from the Council, which must be exercised strictly in accordance with the conditions and limitations of delegation, if any;
- (iv) report to the Council in accordance with the directions of the Council.

7.1.3 Section 80 committees of Council (Committees to assist the Executive Mayor)

7.1.3.1 Council may, in terms of Section 80 of the Structures Act, 1998, establish committees of councillors to assist the Executive Mayor.

7.1.3.2 The Section 80 committees of Council -

- (vi) consist of councillors appointed by Council to assist the Executive Mayor;

- (vii) is chaired by a member of the mayoral committee appointed by the Executive Mayor;
- (viii) may exercise such powers and responsibilities as the Executive Mayor may delegate to each committee, and must report thereon to the Executive Mayor in accordance with his or her directions;
- (ix) Reports to the Executive Mayor in accordance with her directions and she may vary or revoke any decision taken by a committee, subject to any vested rights

7.1.4 ***Mayoral Committee***

7.1.4.1 The Mayoral Committee is a committee appointed by the Executive Mayor in terms of the provisions of Section 60 of the Structures Act, 1998, and is accordingly not a Committee of Council.

7.1.4.2 Section 60(1)(b) stipulates that the Executive Mayor may delegate specific responsibilities to each member of the Mayoral Committee and may delegate any of her powers to the respective members.

7.1.4.3 Section 60(3) stipulates that those of the Executive Mayor's powers and functions as may be designated by Council, must be exercised and performed by the Executive Mayor together with the other members of the mayoral committee.

7.1.4.4 The Mayoral Committee's function is to assist the Executive Mayor and apart from that it has no other inherent powers or functions.

7.1.4.5 The following aspects of the mayoral committee should be noted:

- (i) The Executive Mayor may delegate specific responsibilities to each member of this committee;
- (ii) Any powers and duties delegated to the Executive Mayor, as determined by the Council must be exercised and performed by the Executive Mayor together with the other members of the mayoral committee.
- (iii) This consultative process ensures the presence of checks and balances on the performance of the Executive Mayor.

7.2 **Political office bearers**

7.2.1 ***The Executive Mayor***

7.2.1.1 In terms of the provisions of Section 56(1) of the Structures Act, 1998, the Executive Mayor is entitled to receive reports from committees of Council and to forward these reports, together with a recommendation, to Council when the matter cannot be disposed of by way of delegated powers.

7.2.1.2 In terms of the provisions of Section 56(2)(f), the Executive Mayor may perform such duties and exercise such powers as may have been delegated to her by Council.

7.2.1.3 It should be noted that in terms of the provisions of Section 56(5) of the Structures Act, 1998, the Executive Mayor must report to the Council on all decisions taken by him, irrespective of whether the decision was taken in terms of a delegated power or an inherent power.

7.2.1.4 The following aspects of the position of the Executive Mayor should be noted:

- (i) The Council elects one member as the Executive Mayor;
- (ii) The executive leadership of the municipality is vested in this individual;
- (iii) The Council delegates executive powers and duties to this person;
- (iv) The Executive Mayor appoints a mayoral committee to assist him/her; and

- (v) The Executive Mayor may delegate responsibilities to members of the mayoral committee, but remains accountable to Council for all the powers and duties allocated to him/her, as well as to the Mayoral Committee).

7.2.2 **The Speaker**

The functions of the Speaker, in terms of the provisions of Section 37 of the Structures Act, 1998, are as follows:

- (i) To preside at meetings of Council;
- (ii) To perform the duties and exercises the powers delegated to him/her by the Council;
- (iii) To ensure that the Council meets at least quarterly;
- (iv) To maintain order during council meetings;
- (v) To ensure compliance in the Council and Council Committees with the Code of Conduct; and
- (vi) To ensure that Council meetings are conducted in accordance with the Rules and Orders of Council.

7.3 **The Municipal Manager**

7.3.1 The main role of the Municipal Manager is set out in Section 55 of the Systems Act, 2000, and can be summarised as follows:

As head of administration the Municipal Manager is, subject to the policy directions of the Council, responsible and accountable for:

- (i) the formation and development of an economical, effective, efficient and accountable administration:
 - a) equipped to carry out the task of implementing the municipality's IDP;
 - b) operating in accordance with the municipality's performance management system; and
 - c) responsive to the needs of the local community to participate in the affairs of the municipality;
- (ii) the management of the municipality's administration in accordance with this Act and other legislation applicable to the municipality;
- (iii) the implementation of the municipality's IDP, and the monitoring of progress with implementation of the plan;
- (iv) the management of the provision of services to the local community in a sustainable and equitable manner;
- (v) the appointment of staff other than those reporting directly to the Municipal Manager, subject to the Employment Equity Act, 1998;
- (vi) the management, effective utilisation and training of staff;
- (vii) the maintenance of discipline of staff;
- (viii) the promotion of sound labour relations and compliance by the municipality with applicable labour legislation;
- (ix) advising the political structures and political office bearers of the municipality;
- (x) managing communications between the municipality's administration and its political structures and political office bearers;
- (xi) carrying out the decisions of the political structures and political office bearers of the municipality;
- (xii) the administration and implementation of the municipality's by-laws and other legislation;
- (xiii) the exercise of any powers and the performance of any duties delegated by the municipal council, or sub-delegated by other delegating authorities of the municipality, to the Municipal Manager;
- (xiv) facilitating participation by the local community in the affairs of the municipality;

- (xv) developing and maintaining a system whereby community satisfaction with municipal services is assessed;
- (xvi) the implementation of national and provincial legislation applicable to the municipality; and
- (xvii) the performance of any other function that may be assigned by the municipal council.

As accounting officer of the municipality the municipal manager is responsible and accountable for:

- (i) all income and expenditure of the municipality;
- (ii) all assets and the discharge of all liabilities of the municipality; and
- (iii) proper and diligent compliance with applicable municipal finance management legislation.

8. PRINCIPLES, CONDITIONS AND LIMITATIONS

- 8.1 The official actually executing a function in terms of the enabling legislation should as far as practical and possible be empowered by way of delegation to execute the authority. In other words a delegated power should vest as near as possible to the operational functionary but at the same time not compromising the principles of accountability and proper governance.
- 8.2 Delegations should at all times be executed within and be subject to the Council's normal practices, procedures and guidelines and should be granted with the view of maximizing the Council administrative and operational efficiency. It should furthermore provide for adequate checks and balances to ensure responsible and accountable decision-making.
- 8.3 A delegated authority or power must have its roots in the enabling legislation, should be as specific as possible and preferably refer to the specific provision in the applicable legislation from which an authority originates.
- 8.4 Any power delegated to any of the Council's political structures, political office bearers or staff member may be further sub-delegated to any of the other political structures, political office bearers or staff members and to subsequent political structures, political office bearers or staff members on condition that the principles contained herein are adhered to and the sub-delegation of the specific power is not prohibited by legislation. For purposes of duly maintaining the Council's System of Delegations, the Municipal Manager must be furnished with a copy of any sub-delegations to subordinates and must amend the relevant annexure to the System of Delegations accordingly.
- 8.5 All delegated powers are and remain subject to and should be executed in accordance with any applicable legislation, policy, instructions or other prescribed requirements.
- 8.6 A delegation and sub-delegation of a power to a delegatee –
- (i) must be in writing under signature of the delegating authority;
 - (ii) must not be in conflict with the Constitution, the Structure Act, the Systems Act or any other applicable legislation;
 - (iii) may at any time be withdrawn by the delegating authority in writing;
 - (iv) includes the authority to sub-delegate a delegated power;
 - (v) does not divest the delegating authority of the responsibility concerning the exercising of the power;
 - (vi) must be reviewed when a new Council is elected;
 - (vii) is subject to the limitations, conditions and directives imposed by the delegating authority, if any;

- 8.7 The following conditions and limitations apply to any power that had been delegated by a delegating authority:
- (i) the delegatee must give effect to the policies of the municipality as approved from time to time by the Council;
 - (ii) the delegatee may at any time decide not to exercise the delegated power, but to submit it to the delegator for decision. In such event the delegatee must submit a report and recommendations on the matter to the delegator for consideration.
 - (iii) the employee may act thereon through any employee under his control.
 - (iv) the delegator may at any time instruct the delegatee, i.r.o. any specific matter, not to act exercise a delegation, but to submit the matter to the delegator for decision and execution. In such an event the delegator must inform the delegatee in writing of the decision taken and the reasons therefore.
 - (v) a delegatee may not incur expenditure in the exercising of the delegated powers that had not been provided for in the budget.
 - (vi) No delegation may be executed if there are insufficient funds on a specific vote or if specific item does not appear on the Council's budget.
- 8.8 The withdrawal, amendment or lapse of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation before such withdrawal, amendment or lapse.
- 8.9 Whenever it becomes necessary to review the municipality's delegations of powers, the Municipal Manager must submit a report on the existing delegations with recommendations on any changes thereto which the Municipal Manager may consider necessary, to the Council through the Executive Mayor.
- 8.10 In terms of the provisions of section 11(4) of the Systems Act, 2000, all decisions taken by the Council or any other political structure of the municipality must be recorded in writing. A decision taken by a delegatee on behalf of Council or any other political structure must accordingly also be in writing.
- 8.11 If a decision has been taken under delegated authority, such a decision is final (*functus officio*) and may not be changed, unless an appeal is received from a person whose rights are affected by such decision.
- 8.12 Taking into account the rapid changes and developments within the municipal area and the Council, all delegations are to be reviewed, rationalised, refined, amended, withdrawn or sub-delegated on an annual basis.
- 8.13 Below are some guidelines that can be used as guidelines to assist managers to be more effective in delegation:
- (i) Explain the reasons for delegating. Subordinates should understand that delegation has advantages for themselves, for the manager and for the department;
 - (ii) Set clear goals and standards. Functionaries should participate in the process for formulating goals for the delegated power and should agree with the criteria laid down for measuring their performance. This participation will foster successful delegation;
 - (iii) Ensure clarity of authority and responsibility. Subordinates must understand the powers and duties designated to them, recognise their responsibility and be held accountable for the results;
 - (iv) Involve subordinates. Managers should motivate subordinates by including them in the decision making process, informing them of their progress and enabling them to improve their knowledge and skills in the delegated powers and duties. An informed functionary is more likely to accept well designated powers and duties and perform them properly;

- (v) Provide the necessary direction and assistance. Request the completion of tasks incidental to exercising the delegated powers and duties. Managers can see to it that functionaries complete the tasks delegated to them according to the agreed standards and goals;
- (vi) Provide feedback to the subordinate. Timely and accurate feedback should be provided to subordinates on a regular basis. The feedback should include
- (vii) both positive and negative feedback regarding the functionary's performance. The way forward should then be discussed with the subordinate.

8.14 The following steps are recommended by which the delegation process can be carried out. It should be noted that the same process described below will also apply to sub-delegation:

- (i) Decide on the powers and duties to be delegated. Duties of a repetitive nature, or minor chores, can easily be delegated. It is important to delegate more challenging tasks in order to develop employees' skills and to build self-confidence.
- (ii) Decide who should perform the powers and duties. The time available, competencies and skills required, and experience of the subordinate employee should be taken into account.
- (iii) Provide sufficient resources for carrying out the powers, and duties delegated. These include human, financial, technical and other resources physical (such as computers, telephones, office furniture and so on). It must be that the issue of adequate resources must be a prerequisite to the delegated functions and responsibilities that is required to be undertaken. Without sufficient resources employees will not be able to execute the powers and duties that have been delegated to them.
- (iv) Delegate the powers and duties. The manager delegating the powers and duties should empower the functionaries who are responsible and provide all relevant information on the task to be undertaken, including the results and performance that must be achieved. It is essential for the existence of clear channels of communication and lines of authority between the manager and the employee on all matters related to the delegation.
- (v) Establish a reporting system. This is vital because the outcome of the delegation process is information on the performance of the task. This serves as a measure to evaluate its execution and as input for when delegations are reviewed and others considered

9. CHECKS AND BALANCES

9.1 The Executive Mayor, Committees, the Municipal Manager, Executive Managers and every official to whom powers and functions have been delegated must keep a record of all decisions taken under such delegated powers and report it in writing on a three-monthly basis as follows:

- (i) The Executive Mayor for information to the Council, together with his report on his decisions and recommendations on the matters considered by him;
- (ii) Section 79 and 80 Committees to the Executive Mayor;
- (iii) Ward Committees to the Speaker;
- (iv) The Municipal Manager to the Executive Mayor;
- (v) The Executive Managers to the Municipal Manager;
- (vi) The Managers to the Executive Manager concerned;
- (vii) Other officials to the Manager concerned;

9.2 The purpose of reporting decisions taken is to keep the delegator informed of what has happened, to ask questions relating to certain issues and if necessary to amend or withdraw a delegated authority, if necessary.

10. APPEALS

10.1 In terms of Section 62 of the Systems Act, 2000:

- (i) A person whose rights are affected by a decision taken in terms of a delegated, may appeal to the Municipal Manager in writing, giving reasons for such appeal, within 21 days of the date of the notification of the decision.
- (ii) The municipal manager must promptly submit the appeal to the appropriate appeal authority, who 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.

10.2 When the appeal is against a decision taken by:

- (i) a staff member, the Municipal Manager is the appeal authority;
- (ii) the Municipal Manager, the Executive Mayor is the appeal authority;
- (iii) a political structure or political office bearer, or a councillor, a committee of councillors who were not involved in the decision and appointed by council for this purpose is the appeal authority.

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

11. SPECIFIC DELEGATIONS

11.1 Specific delegations i.t.o. the Structures Act, 1998, the Systems Act, 2002, the Municipal Finance Management Act, 2003 and the Municipal Property Rates Act, 2004, are attached hereto as Annexures "B" to "F".

11.2 It is important to note that the extend of a role players powers and duties would comprised of its primary powers and duties, as set out in legislation, together with its delegated powers and duties as set out in these annexures.

11.3 Delegations i.r.o. of other legislation, the Conditions of Service, the Town Planning Ordinance, etc, will be submitted to Council for consideration by way of separate reports, whereafter it will form Part 3 of this System of Delegations.

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LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000

CHAPTER 7

Part 3

Delegation system

59. Delegations.

- 1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may —
 - a) delegate appropriate powers, excluding a power mentioned in section 160 (2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76 (b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors, or staff members;
 - b) instruct any such political structure, political office bearer, councillor, or staff member to perform any of the municipality's duties; and (c) withdraw any delegation or instruction.
- 2) A delegation or instruction in terms of subsection (1) —
 - a) must not conflict with the Constitution, this Act or the Municipal Structures Act;
 - b) must be in writing;
 - c) is subject to any limitations, conditions and directions the municipal council may impose;
 - d) may include the power to sub-delegate a delegated power;
 - e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.
- 3) The municipal council —
 - a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and
 - b) may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction.
- 4) Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).

60. Certain delegations restricted to executive committees or executive mayors.

- 1) The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:
 - a) decisions to expropriate immovable property or rights in or to immovable property; and
 - b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.
- 2) The council may only delegate to an executive committee or executive mayor or chief financial officer decisions to make investments on behalf of the municipality within a policy framework determined by the Minister of Finance.
- 3) **The Executive Mayor has a restricted delegation to make a determination of the remuneration, benefits or other conditions of service of the municipal manager or managers directly accountable to the municipal manager.**

61. Referral of matters to delegating authorities for decision.

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

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.

63. Duty to report to delegating authorities.

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

64. Withdrawal, amendment or lapsing of delegation or sub-delegation.

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

65. Review of delegations.

1) Whenever it becomes necessary in terms of section 59 (2) (f) to review a municipality's delegations, the municipal manager must submit to the council —

- a) a report on the existing delegations issued in terms of section 59 by the council and other delegating authorities of the municipality; and
- b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.

2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor.

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PRIMARY AND DELEGATED POWERS AND FUNCTIONS: CONSTITUTION, 1996

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
151	(1) The executive and legislative authority of a municipality is vested in the Council. (2) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.	Council	N/A Not Delegated	N/A Not Sub Delegated
152	(1) The objects of local government are: <ul style="list-style-type: none"> • to provide democratic and accountable government for local communities; • to ensure the provision of services to communities in a sustainable manner; • to promote social and economic development; • to promote a safe and healthy environment; and • to encourage the involvement of communities and community organisations in the matters of local government. (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).	Council	Not Delegated	Not Sub Delegated
153	A municipality must: <ul style="list-style-type: none"> • structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and • participate in national and provincial development programmes. 	Council	N/A Not Delegated	N/A Not Sub- delegated
156	(1) A municipality has executive authority in respect of, and has the right to administer:	Council	N/A Not Delegated	N/A Not Sub-delegated
	<ul style="list-style-type: none"> • the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and • 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.			
	(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.			

Section	Power / Function	Delegation / Responsibility		
		Delegator	Deelegatee	Sub-delegated
160	(1) A municipal Council: <ul style="list-style-type: none"> Makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality; Must elect its chairperson; May elect an executive committee and other committees, subject to national legislation; <ul style="list-style-type: none"> May employ personnel that are necessary for the effective performance of its functions. 	Council	N/A Not Delegated	N/A Not Sub-delegated
	(6) May make by-laws which prescribe rules and orders for: <ul style="list-style-type: none"> its internal arrangements; its business and proceedings; and the establishment, composition, procedures, powers and functions of its committees. 			
	(7) 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.			
229	(1) A municipality may impose: <ul style="list-style-type: none"> rates on property and surcharges on fees for services provided by or on behalf of the municipality; and <ul style="list-style-type: none"> 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. 	Council	N/A Not Delegated	N/A Not Sub-delegated
230A	(1) A Municipal Council may, in accordance with national legislation: <ul style="list-style-type: none"> raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year; and bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality. 	Council	N/A Not Delegated	N/A Not Sub Delegated

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PRIMARY AND DELEGATED POWERS AND FUNCTIONS: MUNICIPAL STRUCTURES ACT NO. 117 OF 1998

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
15	Review and rationalise the by-laws, regulations and resolutions (including standing delegations) of the superseding municipality.	Council	N/A Not Delegated	N/A Not Sub Delegated
18	(2) Meet at least quarterly; (4) Designate councillors determined by the MEC as full-time	Council	N/A Not Delegated	N/A Not sub delegated
19(1)	Strive, within its capacity, to achieve the objectives set out in section 152 of the Constitution;	Council	N/A Not Delegated	N/A Not Sub Delegated
19(2)	Annually review: <ul style="list-style-type: none"> the needs of the community as well as its priorities to meet those needs its processes for involving the community its organisational and delivery mechanisms for meeting the needs of the community its overall performance in achieving the sect 152 objectives; 	Council	Executive Mayor	N/A Not Sub Delegated
19(3)	Develop a mechanism to consult the community and community organisations in performing its functions and exercising its powers	Council	Speaker	N/A Not Sub Delegated
23(1)(b)	Appoint councillors to directly represent the municipality on the district municipality	Council	N/A Not Delegated	N/A Not Sub- Delegated
25(2A)	The Municipal Manager must inform the MEC for local government in the province and the Electoral Commission of a vacancy in a ward within 14 days from the date on which the vacancy occurred.			
25(3)	Call and set dates for by-elections by notice in local newspaper, after consulting the IEC. The municipal manager of a municipality concerned and the MEC for local government un the province, after consulting the electoral commission, must, by notice in a local newspaper, the provincial gazette, call and set a date for the by-election, which must be held within 90 days of the date ...	Municipal Manager	N/A Not Delegated	N/A Not Sub-Delegated
29(1)	Decides when and where the council meets	Speaker	N/A Not Delegated	N/A Not Sub-delegated
29 (A)	The Municipal Manager of a municipality must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every- (a) ordinary and special meeting of the council or a meeting of a committee of a council; (b) ordinary or special meeting of the council or a committee of a council that was postponed; and	Municipal Manager	Not Delegated	Not Sub delegated

Annexure “C”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	(c) Urgent meeting of the council or meeting of a committee of a council, except when time constraints make this impossible.			
29 (1A)	If the Speaker or acting speaker refuse to call a meeting of the council requested in terms of sub section 1 of the principal act, the municipal manager, or in the absence of the municipal manager, a person designated by the MEC for Local Government in the province, may call and chair the meeting	Speaker	Municipal Manager/ Person designated by the MEC in the Province	Not Sub-delegated
29(2)	Call the first meeting of Council within 14 days after an election.	Municipal Manager	N/A Not Delegated	N/A Not Sub-delegated
33	Establish committees provided for in the Act, if necessary.	Council	N/A Not Delegated	N/A Not Sub-delegated
34(1)	Dissolve the Council with a two-thirds majority.	Council	N/A Not Delegated	N/A Not Sub-delegated
36(1)	Elect a Speaker.	Council	N/A Not Delegated	N/A Not Sub-delegated
36(3)	Presides at council meeting over the election of a Speaker.	Municipal Manager	N/A Not Delegated	
37	<p>The Speaker:</p> <ul style="list-style-type: none"> • presides at meetings of the council; • performs the duties and exercises the powers delegated to the speaker in terms of section 59 of the Systems Act; • must ensure that the council meets at least quarterly; • must maintain order during meetings; • must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 1 to the Local Government: Municipal Systems Act; and • must ensure that council meetings are conducted in accordance with the rules and orders of the council. • Must ensure compliance in the council committees with the code of conduct (set out in Schedule 1 of the Local Government: Municipal Structures Act, 2000 (Act no. 32 of 2000); and • Must ensure that council meetings are conducted in accordance with the rules and orders of the Council and • Must ensure that the legislative authority of the municipality functions effectively; • Is responsible for the effective oversight over the executive authority if the municipality; • Must ensure the effectiveness of committees of the municipal council established in terms of section 79; • Is responsible for the ethics and accountability of the municipal council; and <ul style="list-style-type: none"> • Must ensure the effectiveness and functionality of ward committees and the public participations process 	Speaker	N/A Not Delegated	N/A Not Sub-delegated

Annexure “C”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Deelegatee	Sub-delegated
40	Remove the Speaker from office.	Council	N/A Not Delegated	N/A Not Sub-delegated
41	Elect a councillor to act as speaker	Council	N/A Not Delegated	N/A Not Sub-delegated
41 A	Each municipal Council may elect a whip for the council who is also a municipal office bearer as set out in schedule 3	Council	Not Delegated	Not Sub delegated
41 B	The Whip of a municipal Council must- (a) liaise with the different political parties to ensure representation in council and council committees; (b) maintains sound relations between the various political parties; (c) inform the whips of all parties on important matters of the council agenda; (d) assist the speaker to count votes in the council meeting; (e) facilitates the interaction between the executive and legislative oversight structures in the municipality; (f) Resolves disputes between the speaker, mayor or executive mayor, or members of the mayoral committee.	Council Whip	Not Delegated	Not sub-delegated
41 (C)	The Whip of a municipal council is elected for a term ending, subject to section 41D, when the next council is declared elected	Council	Not Delegated	Not Sub delegated
41 (E)	(1) A municipal council may remove, by resolution, the whip from office. (2) Prior written notice of an intention to move a motion for the removal of the whip must be given	Council	Not Delegated	Not Sub delegated
41(F)	If the whip of a municipal council is absent or not available to perform the functions of whip, or during a vacancy, the council must elect another councillor to act as a whip	Council	Not Delegated	Not Sub delegated
55(1)	Elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members	Council	N/A Not Delegated	N/A Not Sub-delegated
56(1)	Receive reports from Committees of the Municipal Council referred to in section 80 and forward these reports together with a recommendation to Council when the matter cannot be disposed of by the Executive Mayor in terms of the delegated powers.	Executive Mayor	N/A Not Delegated	N/A Not Sub-delegated
56(2)	The Executive Mayor must: • Identify the needs of the municipality; • Review and evaluate those needs in order of priority; • Recommend strategies, programmes and services to Council to address priority needs through the IDP and the budget, taking into	Executive Mayor	N/A Not Delegated	N/A Not Sub-delegated

Annexure “C”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>account any applicable national and provincial development plans; and</p> <ul style="list-style-type: none"> Recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community. 			
56(3)	<p>The executive mayor in performing the duties of office, must:</p> <ul style="list-style-type: none"> Identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to here above can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general; Evaluate progress against the key performance indicators; Review the performance of the municipality in order to improve: <ol style="list-style-type: none"> the economy, efficiency and effectiveness of the municipality; the efficiency of credit control and revenue and debt collection services; and the implementation of the municipality's bylaws; <input type="checkbox"/> Monitor the management of the municipality's administration in accordance with the directions of the municipal council; Oversee the provision of services to communities in the municipality in a sustainable manner; Perform such duties and exercise such powers as the council may delegate to the Executive Mayor; Annually report on the involvement of communities and community organisations in the affairs of the municipality; and Ensure that regard is given to public views and report on the effect of consultation on the decisions of the council. 	Executive Mayor	N/A Not Delegated	N/A Not Sub Delegated
56(4)	Perform a ceremonial role as the municipal council may determine.	Executive Mayor	N/A Not Delegated	N/A Not Sub-Delegated
56(5)	Report to Council on all decisions taken.	Executive Mayor	N/A Not Delegated	N/A Not Sub-Delegated
56(7)	Designate a councillor to act as executive mayor	Council	Executive Mayor	N/A Not Sub Delegated
58	Remove the Executive Mayor from office.	Council	N/A Not Delegated	N/A Not Sub-delegated
60(1)	<ul style="list-style-type: none"> Must appoint a mayoral committee from among the councillors; May delegate specific responsibilities to member/s of the committee; May delegate any of the Executive Mayor's powers to the respective members; and 	Executive Mayor	N/A Not Delegated	N/A Not Sub Delegated

Annexure “C”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> May dismiss a member of the mayoral committee. 			
	<ul style="list-style-type: none"> Delegations to the Executive Mayor to amend salaries of the senior managers 			
60(3)	Exercise and perform those of the Executive Mayor’s powers and functions as may be designated by the Council, together with the other members of the mayoral committee.	Executive Mayor	N/A Not Delegated	N/A Not Sub Delegated
73(1)	Establish Ward Committees for each ward in the municipality	Council	N/A Not Delegated	N/A Not Sub Delegated
73(3)	Make rules regulating: <ul style="list-style-type: none"> the procedure to elect the other members of a ward committee; the circumstances under which those members must vacate office; and the frequency of meetings of ward committees. 	Council	Speaker	N/A Not Sub delegated
73(4)	Make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively.	Council	Speaker	N/A Not sub delegated
76	Fill vacancies occurring among the section 73(2)(b) members of a ward committee in accordance with the determined procedure.	Council	Speaker	N/A Not sub delegated
78	Dissolve a ward committee if the committee fails to fulfil its object.	Council	N/A Not Delegated	N/A Not sub delegated
79(1)	<ul style="list-style-type: none"> 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; Appoint the members of such a committee from among its members; and Dissolve a committee at any time. 	Council	N/A Not Delegated	N/A Not sub delegated
Section 79 (A) (Structures Amendment Act 3 of 2021)	<p>(1) A Municipal Council must establish a committee called the municipal public accounts committee.</p> <p>(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.</p> <p>(3) A Municipal Council must determine the functions of the municipal public accounts committee, which must include as outlined in sub section (a) – (e).</p>	Council	Not Delegated	Not Delegated
80(1)	May appoint, in terms of section 79, committees of councillors to assist the executive committee or executive mayor.	Council	N/A Not Delegated	N/A Not sub delegated
80(3)	<ul style="list-style-type: none"> Appoints a chairperson for each Section 80 Committee from the mayoral committee; May delegate any powers and duties of the Executive Mayor to a Section 80 Committee; 	Executive Mayor	N/A Not Delegated	N/A Not sub delegated

Annexure “C”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> Is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and May vary or revoke any decision taken by a Section 80 Committee, subject to any vested rights. 			
82(1)(a)	<p>Must appoint a Municipal Manager as head of administration and accounting officer</p> <p>Refer to the Municipal Systems Amendment Act 2022</p>	Council	N/A	N/A
82(1)(b)	<p>Must, when necessary, appoint an acting municipal manager</p>	Council	N/A	N/A

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PRIMARY AND DELEGATED POWERS AND FUNCTIONS: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
2	Exercise legislative and executive authority within its area of jurisdiction;	Council	N/A Not Delegated	N/A Not Sub Delegated
3	Must exercise its executive and legislative authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.	Council	N/A Not Delegated	N/A Not Sub Delegated
4(1)	Council has the right to: <ul style="list-style-type: none"> • govern on its own initiative the local government affairs of the local community; • exercise the municipality’s executive and legislative authority, and to do so without improper interference; and • finance the affairs of the municipality by: <ul style="list-style-type: none"> (i) charging fees for services; and (ii) imposing surcharges on fees, rates on property and other taxes, levies and duties. 	Council	N/A Not Delegated	N/A Not Sub Delegated
4	(2) Has the duty to, within the municipality’s financial and administrative capacity and having regard to practical considerations: ☐ exercise the municipality’s executive and legislative authority and use the resources of the municipality in the best interests of the local community; <ul style="list-style-type: none"> • provide, without favour or prejudice, democratic and accountable government; • encourage the involvement of the local community; • strive to ensure that services are provided to the local community in a financially and environmentally sustainable manner; • consult the local community about: <ul style="list-style-type: none"> (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and (ii) the available options for service delivery; • give members of the local community equitable access to the municipal services to which they are entitled; • promote and undertake development in the municipality; ☐ promote gender equity in the exercise of the municipality’s executive and legislative authority; • promote a safe and healthy environment in the municipality; and • contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution. 	Council	N/A Not delegated	N/A Not Sub Delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	(3) A municipality must in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights.			
6	The administration of a municipality must: <ul style="list-style-type: none"> • be responsive to the needs of the local community; • facilitate a culture of public service and accountability amongst staff; • take measures to prevent corruption; • establish clear relationships, and facilitate co-operation and communication, between it and the local community; • give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and • inform the local community how the municipality is managed, of the costs involved and the persons in charge. 	Municipal Manager	Executive Managers	N/A Not Sub Delegated
8	(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.	Council	N/A Not delegated	N/A Not Sub Delegated
11	(1) The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality subject to section 59. (2) A municipality may exercise executive and legislative authority within its boundaries only, but may, by written agreement with another municipality and subject to Chapter 5 of the Municipal Structures Act and other applicable national legislation, exercise executive authority in the area of that other municipality. (3) A municipality exercises its legislative or executive authority by- <ol style="list-style-type: none"> (a) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery; (b) promoting and undertaking development; (c) establishing and maintaining an administration; (d) administering and regulating its internal affairs and the local government affairs of the local community; (e) implementing applicable national and provincial legislation and its by-laws; 	Council	N/A Not Delegated	N/A Not Sub delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>(f) providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in section 78;</p> <p>(g) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;</p> <p>(h) preparing, approving and implementing its budgets;</p> <p>(i) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;</p> <p>(j) monitoring the impact and effectiveness of any services, policies, programmes or plans;</p> <p>(k) establishing and implementing performance management systems;</p> <p>(l) promoting a safe and healthy environment;</p> <p>(m) passing by-laws and taking decisions on any of the abovementioned matters; and</p> <p>(n) doing anything else within its legislative and executive competence.</p> <p>(4) A decision taken by a municipal council or any other political structure of the municipality must be recorded in writing.</p>			
13(a)	A by-law passed by Council must be published promptly in the Provincial Gazette, and, when feasible, also in a local newspaper or in any other practical way to bring the contents of the by-law to the attention of the local community	Council	Municipal Manager	EM: Corporate Services
15	<p>(1) A municipality must compile and maintain in bound or loose-leaf form, and when feasible also in electronic format, a compilation of all its by-laws, including any provisions incorporated by reference as by-laws of the municipality.</p> <p>(2) The municipal code must be constantly updated and annotated and must be kept at the municipality’s office as the official record of its bylaws.</p> <p>(3) At the request of a member of the public, the municipality must provide that person with a copy of or an extract from the Municipal Code against payment of a reasonable fee determined by the Council.</p>	Council	Municipal Manager	EM: Corporate Services
16(1)	<p>A municipality must develop a culture of community participation and must for this purpose:</p> <p>□ encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in—</p> <p>(i) the preparation, implementation and review of its integrated development plan;</p>	Council	Speaker	N/A Not sub delegated

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> (ii) the establishment, implementation and review of its performance management system; (iii) the monitoring and review of its performance, including the outcomes and impact of such performance; (iv) the preparation of its budget; and (v) strategic decisions relating to the provision of services; • contribute to building the capacity of— <ul style="list-style-type: none"> (i) the local community to enable it to participate in the affairs of the municipality; and (ii) councillors and staff to foster community participation; and <p>use its resources, and annually allocate funds in its budget, as may be appropriate for the purpose of implementing this section.</p>			
17	<p>(1) Ensure that participation by the local community in the affairs of the municipality take place through-</p> <ul style="list-style-type: none"> • political structures for participation in terms of the Municipal Structures Act; • the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act; • other appropriate mechanisms, processes and procedures established by the municipality; • councillors; and • generally applying the provisions for participation as provided for in this Act. <p>(2) Establish appropriate mechanisms, processes and procedures to:</p> <ul style="list-style-type: none"> • enable the local community to participate in the affairs of the municipality, and must for this purpose provide for: • the receipt, processing and consideration of petitions and complaints lodged by members of the local community; • notification and public comment procedures, when appropriate; • public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate; • consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and • report-back to the local community. <p>(3) Take into account: the special needs of:</p> <ul style="list-style-type: none"> • people who cannot read or write; • people with disabilities; • women; and • other disadvantaged groups. 	Council	Speaker	N/A Not Sub Delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
Ot Sub delega17(4)	Council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council’s competence.	Council	Executive Mayor	N/A Not Sub Delegated
18	<p>(1) A municipality must communicate to its community information concerning:</p> <ul style="list-style-type: none"> • the available mechanisms, processes and procedures to encourage and facilitate community participation; • the matters with regard to which community participation is encouraged; • the rights and duties of members of the local community; and <input type="checkbox"/> municipal governance, management and development. • When communicating the information mentioned in subsection <p>(2) Taking into account:</p> <ul style="list-style-type: none"> • language preferences and usage in the municipality; and <input type="checkbox"/> the special needs of people who cannot read or write. 	Council	Speaker	N/A Not Sub Delegated
19	Give notice to the public of the time, date and venue of ordinary or special meetings of Council.	Municipal Manager	EM: Corporate Services	N/A Not Sub Delegated
20	<p>(1) Open meetings of Council and its committees to the public and media, subject to certain limitations;</p> <p>(4) Within its financial and administrative capacity, provide space for the public in the chambers and places where the council and its committees meet; and may take reasonable steps to regulate public access to and public conduct at meetings of the council and its committees.</p>	Council	Speaker	N/A Not Sub Delegated
21	<p>(1) When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done-</p> <ul style="list-style-type: none"> • in the local newspaper or newspapers of its area; • in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or • by means of radio broadcasts covering the area of the municipality. <p>(2) Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.</p> <p>(3) A copy of every notice that must be published in the <i>Provincial Gazette</i> or the media in terms of this Act or any other applicable legislation, must be displayed at the municipal offices.</p> <p>(4) When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that</p>	Council	Municipal Manager	N/A Not Sub Delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person’s comments or representations.</p> <p>(5) When a municipality requires a form to be completed by a member of the local community, a staff member of the municipality must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form and, if the form relates to the payment of money to the municipality or to the provision of any service, the assistance must include an explanation of its terms and conditions.</p>			
21A	<p>(1) All documents that must be made public by a municipality in terms of a requirement of this Act, the Municipal Finance Management Act or other applicable legislation, must be conveyed to the local community –</p> <ul style="list-style-type: none"> • by displaying the documents at the municipality’s head and satellite offices and libraries; • by displaying the documents on the municipality’s official website; and • by notifying the local community, in accordance with section 21, of the place, including the website address, where detailed particulars concerning the documents can be obtained. <p>(2) If appropriate, any notification in terms of subsection (1) I must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.</p>	Council	Municipal Manager	<p>N/A</p> <p>Not Sub Delegated</p>
21B(1)	A municipality must establish an official website, if affordable, and place on that official website information required to be made public in terms of this Act and the Municipal Finance Management Act	Council	Municipal Manager	EM: Corporate Services
21B(3)	The Municipal Manager must maintain and regularly update the website.	Municipal Manager	EM: Corporate Services	<p>N/A</p> <p>Not Sub Delegated</p>
23	<p>(1) A municipality must undertake developmentally-oriented planning so as to ensure that it:</p> <ul style="list-style-type: none"> • strives to achieve the objects of local government set out in section 152 of the Constitution; • gives effect to its developmental duties as required by section 153 of the Constitution; and • together with other organs of state contribute to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution. 	Council	Municipal Manager	All Executive Managers

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
24	<ul style="list-style-type: none"> □ Align its planning with, and complement, the development plans and strategies of other affected municipalities and other organs of state so as to give effect to the principles of co-operative government. □ Participate in national and provincial development programmes as required in section 153 (b) of the Constitution. 	Council	Municipal Manager	All Executive Managers
25	<p>(1) Adopt a single, inclusive and strategic plan (IDP) for the development of the municipality which:</p> <ul style="list-style-type: none"> • links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality; • aligns the resources and capacity of the municipality with the implementation of the plan; • forms the policy framework and general basis on which annual budgets must be based; • complies with the provisions of this Chapter; and • is compatible with national and provincial development plans and planning requirements binding on Council i.t.o. legislation. <p>(2) Amend an integrated development plan adopted in terms of subsection (1).</p> <p>(3) A newly elected municipal council may, within the prescribed period, adopt the IDP of its predecessor, but before taking a decision it must comply with section 29 (1) (b) (i), (c) and (d) and must effect the amendments in accordance with the process referred to in section 34 (b).</p>	Council	N/A Not Delegated	N/A Not Sub Delegated
25(4)	<p>Within 14 days of the adoption of its integrated development plan, give notice to the public:</p> <ul style="list-style-type: none"> • of the adoption of the plan; and that copies of or extracts from the plan are available for public inspection at specified places; and □ publicise a summary of the plan. 	Council	Municipal Manager	N/A Not Sub Delegated
28(1)	<p>Within a prescribed period after the start of its elected term, adopt a process set out in writing to guide the planning, drafting, adoption and review of its IDP.</p>	Council	N/A Not Delegated	N/A Not Sub Delegated
28(2)	<p>Must, through appropriate mechanisms, processes and procedures, consult the local community before adopting the process.</p>	Council	Speaker	N/A Not Sub Delegated
28(3)	<p>Must give notice to the local community of particulars of the process it intends to follow.</p>	Council	Municipal Manager	N/A Not Sub Delegated
29(3)	<p>A local municipality must-</p> <ul style="list-style-type: none"> • align its integrated development plan with the framework adopted in terms of section 27; and • draft its integrated development plan, taking into account the integrated development 	Council	Municipal Manager	N/A Not Sub Delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	processes of, and proposals submitted to it by the district municipality.			
30	The Executive Mayor must: <ul style="list-style-type: none"> • Manage the drafting of the municipality’s IDP; • Assign responsibilities in this regard to the Municipal Manager; • Submit the draft plan to the Council for adoption. 	Executive Mayor	N/A Not delegated	N/A Not Sub Delegated
32(1)	The Municipal Manager must submit a copy of the adopted IDP to the MEC, accompanied by: <ul style="list-style-type: none"> • a summary of the process referred to in section 29(1). • a statement that the process has been complied with, together with any explanations that may be necessary to amplify the statement; and • a copy of the framework adopted in terms of section 27. 	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated
32(3)	Council must consider the MEC’s proposals, and within 30 days of receiving the MEC’s request must- <ul style="list-style-type: none"> • if it agrees with those proposals, adjust its IDP accordingly; or • if it disagrees with the proposals, object to the request and furnish reasons in writing why it disagrees. 	Council	N/A Not delegated	N/A Not Sub Delegated
34	<ul style="list-style-type: none"> • Council must review its IDP annually in accordance with an assessment of its performance measurements in terms of section 41 and, to the extent that changing circumstances so demand; and □ Amend its IDP in accordance with a prescribed process. 	Council	N/A Not delegated	N/A Not Sub Delegated
36	A municipality must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its IDP	Council	Municipal Manager	All Executive Managers
38	<ul style="list-style-type: none"> • A municipality must establish a performance management system that is: <ul style="list-style-type: none"> (i) commensurate with its resources; (ii) best suited to its circumstances; and (iii) in line with the priorities, objectives, indicators and targets contained in its integrated development plan; • Promote a culture of performance management among its political structures, political office bearers and councillors and in its administration; and • Administer its affairs in an economical, effective, efficient and accountable manner. 	Council	Municipal Manager	All Executive Managers
39	The Executive Mayor must: <ul style="list-style-type: none"> • Manage the development of the municipality’s performance management system; 	Executive Mayor	N/A Not delegated	N/A Not Sub Delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> Assign responsibilities in this regard to the Municipal Manager; <input type="checkbox"/> Submit the proposed system to the Council for adoption. 			
40	A municipality must establish mechanisms to monitor and review its performance management system.	Council	Executive Mayor	Municipal Manager
41(1)	<p>A municipality must, in terms of its performance management system and in accordance with any regulations and guidelines that may be prescribed:</p> <ul style="list-style-type: none"> Set appropriate key performance indicators as a yardstick for measuring performance, including outcomes and impact, with regard to the municipality’s development priorities and objectives set out in its integrated development plan; Set measurable performance targets with regard to each of those development priorities and objectives; With regard to each of those development priorities and objectives and against the key performance indicators and targets: <ul style="list-style-type: none"> (i) monitor performance; and (ii) measure and review performance at least once per year; <p><input type="checkbox"/> Take steps to improve performance with regard to those development priorities and objectives where performance targets are not met; and <input type="checkbox"/> Establish a process of regular reporting to:</p> <ul style="list-style-type: none"> (i) the council, other political structures, political office bearers and staff of the municipality; and (ii) the public and appropriate organs of state. 	Council	Executive Mayor	Municipal Manager
	<ul style="list-style-type: none"> (i) monitor performance; and (ii) measure and review performance at least once per year; <p><input type="checkbox"/> Take steps to improve performance with regard to those development priorities and objectives where performance targets are not met; and <input type="checkbox"/> Establish a process of regular reporting to:</p> <ul style="list-style-type: none"> (i) the council, other political structures, political office bearers and staff of the municipality; and (ii) the public and appropriate organs of state. 			
42	A municipality must involve the community in the development, implementation and review of the PMS, and, in particular, allow the community to participate in the setting of appropriate KPI’s and performance targets.	Council	Speaker	N/A Not sub-delegated
43(2)	Set KPI’s for the municipality which include any general KPI’s prescribed in terms of subsection (1), to the extent that these indicators are applicable to the municipality.	Council	N/A Not delegated	N/A Not Sub Delegated
44	A municipality must make known, both internally and to the general public, the key performance indicators and performance targets set by it for purposes of its performance management system.	Council	Municipal Manager	N/A Not Sub Delegated
46	<p>(1) A municipality must prepare for each financial year a performance report reflecting:</p> <ul style="list-style-type: none"> the performance of the municipality and of each external service provider comparison of the performances with targets set for and performances in the previous financial year; and <input type="checkbox"/> measures taken to improve performance. 	Council	Municipal Manager	N/A Not Sub Delegated

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	(2) The performance report must form part of the municipality’s annual report in terms of Chapter 12 of the MFMA.			
50(2)	A municipality must strive to achieve the objects of local government set out in section 152 (1) of the Constitution, and comply with the duties set out in sections 4(2) and 6.	Council	Municipal Manager	All Executive Managers
51	A municipality must, within its administrative and financial capacity, establish and organise its administration in a manner that would enable the municipality to: <ul style="list-style-type: none"> • be responsive to the needs of the local community; • facilitate a culture of public service and accountability amongst its staff; • be performance orientated and focused on the objects of local government set out in section 152, and its developmental duties as required by section 153 of the Constitution; • ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives set out in the municipality’s IDP; • establish clear relationships, and facilitate co-operation, co-ordination and communication, between: <ul style="list-style-type: none"> (i) its political structures and political office bearers and its administration; (ii) its political structures, political office bearers and administration and the local community; • organise its political structures, political office bearers and administration in a flexible way in order to respond to changing priorities and circumstances; • perform its functions: <ul style="list-style-type: none"> (i) through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units; and (ii) when necessary, on a decentralised basis; • assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms; • hold the municipal manager accountable for the overall performance of the administration; • maximise efficiency of communication and decision-making within the administration; • delegate responsibility to the most effective level within the administration; • involve staff in management decisions as far as is practicable; and 	Council	Municipal Manager	All Executive Managers

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> provide an equitable, fair, open and non-discriminatory working environment. 			
53(1)	A municipality must, within the framework of and in accordance with relevant provisions of the Structures and Systems Act, and other applicable legislation, define the specific role and area of responsibility of each political structure and political office bearer and of the Municipal Manager.	Council	Executive Mayor	N/A Not Sub Delegated
54A(1)(a)	<ul style="list-style-type: none"> Council must appoint a municipal manager as head of the administration of council. The person appointed must at least have the skills, expertise, competencies and qualifications as prescribed. 	Council	N/A Not Delegated	N/A Not Sub Delegated
54A(1)(b)	<ul style="list-style-type: none"> Council must appoint an acting municipal manager under circumstances and for a period as prescribed for a period that does not exceeds three months. The person appointed must at least have the skills, expertise, competencies and qualifications as prescribed. 	Council	N/A Not Delegated	N/A Not Sub Delegated
54A	<p>(2A) Council MUST apply in writing to the MEC for local government to extend the period of an acting appointment, for a further period that does not exceed three months.</p> <p>(4) If the post of municipal manager becomes vacant, Council must advertise the post nationally to attract a pool of candidates nationwide; and</p> <p>(5) re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.</p>	Council	Executive Mayor	N/A Not Sub Delegated
	<p>(6) The Municipal Council may:</p> <ul style="list-style-type: none"> Request the MEC for local government to second a suitable person, on such conditions as prescribed, to act in the advertised position until such time as a suitable candidate has been appointed; and If the MEC has not done so seconded a suitable person within a period of 60 days after receipt of the request referred to in the above stated paragraph, the Council may request the Minister to second a suitable person on such conditions as prescribed until such time as a suitable candidate has been appointed. <p>(7) Council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed. The MEC for local government must, within 14 days of receipt of the information referred to in the above stated paragraph, refer a copy to the minister.</p> <p>(10) Council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed</p>	Council	Not Delegated	Not Sub Delegated

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>in subsection (2) if it is unable to attract suitable candidates.</p> <p>(10) If the MEC for Local Government fails to respond to the appointment process and outcomes within the timeframes, as contemplated above, or the minister fails to respond as contemplated above, the appointment of the municipal manager or acting municipal manager will be deemed to be in compliance with the Act: provided the municipal council submitted all relevant documents as prescribed.</p> <p>(11) A municipal council may, in special circumstances and on good course shown, apply in writing to the Minister to waive any of the requirements pertaining to skills, knowledge, qualification and experience, if it is unable to attract suitable candidates.</p>			
55(1)	<p>As head of administration is, subject to the policy direction of Council, responsible and accountable for:</p> <ul style="list-style-type: none"> the formation and development of an economical, effective, efficient and accountable administration; □ the management of the municipality’s administration in accordance with the Act and other legislation; the implementation of the municipality’s IDP, and the monitoring of progress with implementation of the plan; the management of the provision of services to the local community in a sustainable and equitable manner; the appointment of staff other than the managers directly accountable to the Municipal Manager, subject to the Employment Equity Act; the management, effective utilisation and training of staff; the maintenance of discipline of staff; the promotion of sound labour relations and compliance by the municipality with applicable labour legislation; advising the political structures and political office bearers of the municipality; managing communications between the municipality’s administration and its political structures and office bearers; carrying out the decisions of the political structures and office bearers of the municipality; the administration and implementation of the by-laws and other legislation; the exercise of any powers and the performance of any duties delegated by the Council, or sub-delegated by other delegating authorities of the municipality in terms of section 59; 	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> facilitating participation by the local community in the affairs of the municipality; developing and maintaining a system whereby community satisfaction with municipal services is assessed; the implementation of national and provincial legislation applicable to the municipality; and the performance of any other function that may be assigned by the municipal council. 			
55(2)	<p>As accounting officer of the municipality, is responsible and accountable for:</p> <ul style="list-style-type: none"> all income and expenditure of the municipality; all assets and discharge of all liabilities of the municipality; and proper and diligent compliance with applicable municipal finance management legislation. 	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated
56(1)(a)(i)	<ul style="list-style-type: none"> A Municipal Council, after consultation with the Municipal Manager, must appoint managers directly accountable to the Municipal Manager. The person appointed must at least have the skills, expertise, competencies and qualifications as prescribed. 	Council	N/A Not Delegated	N/A Not Sub Delegated
56(1)(1)(ii)	<p>A Municipal Council must appoint an acting manager directly accountable to the Municipal Manager under circumstances and for a period as prescribed, which may not exceed three months.</p> <p>Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months</p>	Council	Municipal Manager	N/A Not Sub Delegated
56(3), (4), (4A) & (6)	<p>(3) If a post referred to in subsection (1)(a)(i) becomes vacant, the municipal council must-</p> <ul style="list-style-type: none"> advertise the post nationally to attract a pool of candidates nationwide; and select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post. <p>(4) Re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.</p> <p>(4A) Council must, within 14 days of the date of appointment, inform the MEC for local government of the appointment process and outcome, as may be prescribed.</p> <p>(5) Council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (1)(b) if it is unable to attract suitable candidates.</p>	Council	Municipal Manager	N/A Not Sub Delegated
57(1)	<p>Enter into written employment contracts with the Municipal Manager and managers directly accountable to the Municipal Manager, complying</p>	Council	Executive Mayor	N/A

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	with the provisions of this section and signed by both parties before the commencement of service.			Not Sub Delegated
57(2)(b)	Enter into an annual performance agreement with the Municipal Manager within 60 days after the appointment commencement of service, failing which the appointment lapses: provided that, upon good course shown by such person to the satisfaction of the municipal council, the appointment shall not lapse, and be concluded annually, thereafter, within one month after the beginning of each financial year of the municipality. and thereafter one month after the beginning of each financial year of the municipality.	Executive Mayor	Executive Mayor	N/A Not Sub Delegated
57(2)(c)	Enter into annual performance agreements with the managers directly accountable to the Municipal Manager within one month after the beginning of each financial year of the municipality failing which the employment contract automatically lapse.	Municipal Manager	N/A Not Delegated	N/A Not Sub Delegated
57(4B)	Award bonuses based on performance to the Municipal Manager or managers directly accountable to the Municipal Manager after the end of the financial year and only after an evaluation of performance and approval of such evaluation by Council.	Council	N/A Not Delegated	N/A Not Sub Delegated
57(4c)	The employment contract for a municipal manager must – <ul style="list-style-type: none"> • Be for a non-renewable fixed term of employment up to a maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality. • Include a provision for a cancellation of the contract, in the case of a non-compliance with the employment contract or, where applicable, the performance agreement • Stipulates the terms of the renewal of the employment contract, but only by agreement between parties, and • Reflect the values and principles referred to in section 50, the code of conduct set out in Schedule 2, and the management standards and practices contained in section 51 • A Municipality must maintain a record that contains the prescribed information regarding the disciplinary proceedings of staff members dismissed for misconduct and who resigned prior to finalisation of the disciplinary proceedings. 	Council	Executive Mayor	Not Sub-Delegated
57(7)	A copy of the record stated above must be submitted to the MEC for local government on a quarterly basis	Council	Executive Mayor	Municipal Manager
59(1)	Council must develop a system of delegation that will maximise administrative and operational efficiency	Council	N/A	N/A

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	and provide for adequate checks and balances, and, in accordance with that system, may: <ul style="list-style-type: none"> delegate appropriate powers, excluding the listed powers, to its political structures, political office bearers, councillors, or staff members; instruct them to perform any of the municipality’s duties; and <input type="checkbox"/> withdraw any delegation or instruction. 		Not delegated	Not Sub Delegated
59(3)	<ul style="list-style-type: none"> Council, in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and may require its executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction. 	Council	N/A	N/A Not Sub Delegated
60 (1) (2)	<p>(1) The following powers may, within the policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:</p> <p>(a) Decisions to expropriate immovable property or rights in or to immovable property;</p> <p>(b) A determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly accountable to the municipal manager.</p> <p>(2) Council may only delegate the executive committee or executive mayor or chief financial officer decisions to make investments on behalf of the municipality within the policy framework determined by the minister of finance</p>	Council	Executive Mayor	Chief Financial Officer
62(2)	The Municipal Manager must promptly submit the appeal to the appropriate appeal authority.	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated
62(3)	Consider the appeal, and confirm, vary or revoke the decision taken by the delagatee, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of a decision.	Relevant appeal authority	N/A Not delegated	N/A Not Sub Delegated
62(4)(a)	Consider appeals against the decisions taken by staff members in terms of delegated powers.	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated
62(4)(b)	Consider appeals against decisions taken by the Municipal Manager in terms of delegated powers.	Executive Mayor	N/A Not delegated	N/A Not Sub Delegated
62(4)(c)(ii)	Appoint a committee of councillors who were not involved in the decision for this purpose as the appeal authority to consider appeals against decisions taken	Council	N/A Not delegated	N/A Not Sub Delegated

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	by a political structure or political office bearer or a councillor..			
62(4)(c)(ii)	Consider appeals against decisions taken by a political structure or political office bearer or a councillor.	Committee of councillors	N/A Not delegated	N/A Not Sub Delegated
63	Report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub- delegated power or duty since the last report	All Delegatees	N/A Not delegated	N/A Not Sub Delegated
65	Submit a report and make recommendations on the review of delegations when a new Council is elected.	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated
66(1)	<p>Within a policy framework determined by the Council and subject to any applicable legislation:</p> <ul style="list-style-type: none"> Develop a staff establishment for the municipality and submit to Council for approval; provide a job description for each post on the staff establishment; attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service. 	Municipal Manager	N/A Not delegated	N/A Not Sub Delegated
67(1)	<p>A municipality must, in accordance with applicable law and subject to any applicable collective agreement, develop and adopt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration, including:</p> <ul style="list-style-type: none"> the recruitment, selection and appointment of persons as staff members; service conditions of staff; the supervision and management of staff; the monitoring, measuring and evaluating of performance of staff; the promotion and demotion of staff; the transfer of staff; grievance procedures; disciplinary procedures; the investigation of allegations of misconduct and complaints against staff; the dismissal and retrenchment of staff; and any other matter prescribed by regulation i.t.o. section 72. 	Council	Municipal Manager	N/A Not Sub Delegated
67(4)	<p>The Municipal Manager must:</p> <ul style="list-style-type: none"> Ensure that every staff member and representative trade union has easy access to a copy of these staff systems and procedures, including any amendments; 	Municipal Manager	EM: Corporate Services	N/A Not Sub Delegated

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> On written request by a staff member, make a copy of or extract from these staff systems and procedures, including any amendments, available to that staff member; and Ensure that the purpose, contents and consequences of these staff systems and procedures are explained to staff members who cannot read. 			
68	<p>(1) A municipality must develop its human resource capacity to a level that enables it to perform its functions and exercise its powers in an economical, effective, efficient and accountable way, and for this purpose must comply with the Skills Development Act, 1998, and the Skills Development Levies Act, 1999.</p> <p>(2) May in addition to any provision for a training levy in terms of the Skills Development Levies Act, 1999, provide in the budget for the development and implementation of training programmes.</p> <p>(3) May apply to the Sector Education and Training Authority for local government established in terms of the Skills Development Act, 1998, for funds for training programmes in addition to the levy payable in terms of the Skills Development Levies Act, 1999</p>	Council	Municipal Manager	EM: Corporate Services
70	<p>(1) The Municipal Manager must:</p> <ul style="list-style-type: none"> Provide a copy of the Code of Conduct to every member of the staff of the municipality; Provide every staff member with any amendment of the Code of Conduct. <p>(2) The Municipal Manager must:</p> <ul style="list-style-type: none"> Ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read; and Communicate sections of the Code of Conduct that affect the public to the local community. 	Municipal Manager	EM: Corporate Services	N/A Not Sub Delegated
71(3)	Municipalities must comply with any collective agreements concluded by organised local government within its mandate on behalf of local government in the bargaining council established for municipalities.	Council	Municipal Manager	All Executive Managers
73	<p>(1) A municipality must give effect to the provisions of the Constitution and:</p> <ul style="list-style-type: none"> give priority to the basic needs of the local community; promote the development of the local community; and ensure that all members of the local community have access to at least the minimum level of basic municipal services. <p>(2) Ensure that municipal services are:</p>	Council	Municipal Manager	All Executive Managers

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> • equitable and accessible; • provided in a manner that is conducive to: <ul style="list-style-type: none"> (i) the prudent, economic, efficient and effective use of available resources; and (ii) the improvement of standards of quality over time; • financially sustainable; • environmentally sustainable; and • regularly reviewed with a view to upgrading, extension and improvement. 			
74(1)	Prepare a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of the Act, the MFMA and with any other applicable legislation for Council to adopt and implement.	Council	Municipal Manager	Chief Finance Officer
75(1)	Council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.	Council	N/A Not delegated	N/A Not Sub Delegated
75(1)	Prepare by-laws to give effect to the implementation and enforcement of its tariff policy for adoption by Council.	Council	Municipal Manager	Chief Finance Officer
75A(1)(a)	A municipality may levy fees, charges or tariffs in respect of any function or service of the municipality; and	Council	N/A Not delegated	N/A Not Sub Delegated
75A(1)(a) & (b)	<p>A municipality may:</p> <ul style="list-style-type: none"> • Recover fees, charges or tariffs in respect of any function or service of the municipality; and • Recover collection charges and interest on any outstanding amount. 	Council	Municipal Manager	Chief Finance Officer
75A(3) & (4)	<p>(3) The Municipal Manager must, after a resolution regarding the levying of fees, charges or tariffs has been passed by Council, without delay-</p> <ul style="list-style-type: none"> • Conspicuously display a copy of the resolution for a period of at least 30 days at the main administrative office of the municipality and at such other places within the municipality to which the public has access; • Publish in a newspaper of general circulation in the municipality a notice • Seek to convey the information to the local community by means of radio broadcasts covering the area of the municipality. <p>(4) Send a copy of the notice referred to in subsection (3)(b) to the MEC for local government concerned.</p>	Municipal Manager	Chief Finance Officer	N/A Not Sub Delegated
76	<p>A municipality may provide a municipal service in its area or a part of its area through:</p> <ul style="list-style-type: none"> □ an internal mechanism, in which case it must allocate sufficient human, financial and other resources necessary for the proper provision of the service and transform the provision of that service in 	Council	N/A Not delegated	N/A Not Sub delegated

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>accordance with the requirements of this Act (Sect 79); or</p> <p><input type="checkbox"/> an external mechanism, by entering into service delivery agreements with the entities as stipulated in the Act.</p> <p>(Before a municipality enters into a service delivery agreement for a basic municipal service it must establish a mechanism and programme for community consultation and information dissemination regarding the agreement. The contents of the agreement must be communicated to the local community through the media - Sect 80)</p>			
77	<p>A municipality must review and decide on the appropriate mechanism to provide a municipal service in the municipality or a part of the municipality in the case of a municipal service provided through either an internal or external mechanism whenever the events as stipulated occurs.</p>	Council	N/A Not delegated	N/A Not Sub delegated
81	<p>(2) A municipality, through a service delivery agreement-</p> <p><input type="checkbox"/> may assign to a service provider responsibility for-</p> <ul style="list-style-type: none"> (i) developing and implementing detailed service delivery plans within the framework of the municipality’s IDP; (ii) the operational planning, management and provision of the municipal service; (iii) undertaking social and economic development that is directly related to the provision of the service; (iv) customer management; (v) managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality, subject to the MFMA; (vi) the collection of service fees for its own account from users of services in accordance with the municipal council’s tariff policy in accordance with the credit control measures established in terms of Chapter 9; <ul style="list-style-type: none"> • may pass on to the service provider, through a transparent system that must be subject to performance monitoring and audit, funds for the subsidisation of services to the poor; • must ensure that the agreement provides for a dispute-resolution mechanism to settle disputes between the municipality and the service provider; • may in accordance with applicable labour legislation, transfer or second any of its staff 	Council	I.t.o. Section 160(2) of the Constitution, 1996, and Section 59(1)(a) of the Systems Act, 2000, the power to decide to enter into a service delivery agreement may not be delegated	

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>members to the service provider, with the concurrence of the staff member concerned;</p> <ul style="list-style-type: none"> • must ensure continuity of the service if the service provider is placed under judicial management, becomes insolvent, is liquidated or is for any reason unable to continue performing its functions; and • must, where applicable, take over the municipal service, including all assets, when the service delivery agreement expires or is terminated. <p>(3) Council has the right to set, review or adjust the tariffs within its tariff policy. The service delivery agreement may provide for the adjustment of tariffs by the service provider within the limitations set by Council.</p> <p>(4) A service delivery agreement may be amended by agreement between the parties, except where an agreement has been concluded following a competitive bidding process, in which case an amendment can only be made after the local community has been given-</p> <ul style="list-style-type: none"> • reasonable notice of the intention to amend the agreement and the reasons for the proposed amendment; and • sufficient opportunity to make representations to the municipality. <p>(5) No councillor or staff member of a municipality may share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.</p>			
85	A municipality may, in accordance with the policy framework referred to in Section 86, establish a part of the municipality as an internal municipal service district to facilitate the provision of a municipal service in that part of the municipality.	Council	N/A Not delegated	N/A Not Sub delegated
86	A municipality must develop and adopt a policy framework for the establishment, regulation and management of an internal municipal service district.	Council	N/A Not delegated	N/A Not Sub Delegated
95	<p>In relation to the levying of rates and other taxes and the charging of fees for municipal services, the Council must, within its financial and administrative capacity:</p> <ul style="list-style-type: none"> • establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality; • establish mechanisms for users of services and ratepayers to give feedback to the municipality regarding the quality of the services and the performance of the service provider; • take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of 	Council	Municipal Manager	Chief Finance Officer

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<p>service fees, and the manner in which monies raised from the service are utilised;</p> <ul style="list-style-type: none"> where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems; ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due; provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts; <p>provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;</p> <ul style="list-style-type: none"> provide mechanisms to monitor the response time and efficiency in complying with the previous paragraph; and provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services. 			
96(a)	Collect all money that is due and payable to the municipality, subject to this Act and any other applicable legislation.	Council	Municipal Manager	Chief Finance Officer
96(b)	Prepare a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act, for adoption by Council.	Council	Municipal Manager	Chief Financial Officer
98(1)	Prepare by-laws to give effect to the credit control and debt collection policy, its implementation and enforcement, for adoption by Council.	Council	Municipal Manager	Chief Financial Officer
99	<p>The Executive Mayor must: <input type="checkbox"/> oversee and monitor:</p> <p>(i) the implementation and enforcement of the municipality’s credit control and debt collection policy and any by-laws enacted in terms of section 98; and</p> <p>(ii) the performance of the municipal manager in implementing the policy and any by-laws;</p> <ul style="list-style-type: none"> When necessary, evaluate or review the policy and any by-laws, or the implementation of the policy and any such by-laws, in order to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and At such intervals as may be determined by the Council report to a meeting of the council, except when the council itself performs the duties mentioned hereabove. 	Executive Mayor	N/A Not delegated	N/A Not Sub delegated
100	The Municipal Manager must:	Municipal Manager	Chief Finance Officer	N/A Not Sub Delegated

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Section	Power / Function	Delegation / Responsibility		
		Delegator	Deelegatee	Sub-delegated
	<ul style="list-style-type: none"> □ Implement and enforce the municipality’s credit control and debt collection policy and any by-laws enacted in terms of section 98; • In accordance with the credit control and debt collection policy and any such by-laws, establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the municipality; and • At such intervals as may be determined by the council report the prescribed particulars to a meeting of the supervisory authority referred to in section 99. 			
102	<p>(1) A municipality may, if there is no dispute between the municipality and such a person concerning any specific amount claimed from him/her,;</p> <ul style="list-style-type: none"> • consolidate any separate accounts of persons liable for payments to the municipality; • credit a payment by such a person against any account of that person; and • implement any of the debt collection and credit control measures in relation to any arrears on any of the accounts of such a person. <p>(3) A municipality must provide an owner of a property in its jurisdiction with copies of accounts sent to the occupier of the property for municipal services supplied to such a property if the owner requests such accounts in writing from the municipality concerned.</p>	Council	Municipal Manager	Chief Finance Officer
103	<p>A Municipality may:</p> <ul style="list-style-type: none"> • with the consent of a person liable for the payment of rates or other taxes, or fees for municipal services, enter into an agreement with that person’s employer to deduct from his/her salary or wages: <ul style="list-style-type: none"> (i) any outstanding amounts due by that person to the municipality; or (ii) regular monthly amounts as may be agreed; and • provide special incentives for: <ul style="list-style-type: none"> (i) employers to enter into such agreements; and (ii) employees to consent to such agreements. 	Council	Municipal Manager	Chief Finance Officer
109(2)	A municipality may compromise or compound any action, claim or proceedings, and submit matters to arbitration	Council	Municipal Manager	EM: Corporate Services
109(A)	<p>A municipality may provide an employee or councillor of the municipality with legal representation where:</p> <ul style="list-style-type: none"> • legal proceedings have been instituted against the employee or councillor as a result of any act or omission by the employee or councillor in the exercise of his or her powers or the performance of his or her duties; or 	Council	Municipal Manager	EM: Corporate Services

Annexure “D”

Section	Power / Function	Delegation / Responsibility		
		Delegator	Delegatee	Sub-delegated
	<ul style="list-style-type: none"> the employee or the councillor has been summoned to attend any inquest or inquiry arising from the exercise of his or her powers or the performance of his or her duties. 			
112	<p>Council may authorise a staff member in terms of Section 22 (8) (b) of the National Prosecuting Authority Act, 1998, to conduct prosecutions, to institute criminal proceedings and to conduct the prosecution in respect of a contravention of or failure to comply with a provision of:</p> <ul style="list-style-type: none"> a by-law or regulation of the municipality; other legislation administered by the municipality; or other legislation as the National Director of Public Prosecutions may determine in terms of section 22 (8) (b) of the National Prosecuting Authority Act, 1998. 	Council	Municipal Manager	<p>N/A</p> <p style="color: red;">Not Sub Delegated</p>
115	Receive any legal process served on the municipality.	Municipal Manager	EM: Corporate Services	Manager: Legal Services
116	Public servitudes in favour of a municipality are under the control of the Council which must protect and enforce the rights of the local community arising from those servitudes.	Council	Municipal Manager	EM: Corporate Services
117	The Municipal Manager must keep all records and documents of the municipality in safe custody.	Municipal Manager	EM: Corporate Services	Manager: Administration
118(1)	Issue a prescribed certificate which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.	Council	Chief Finance Officer	Manager: Income

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PART 3

MUNICIPAL FINANCE MANAGEMENT ACT, ACT 56 OF 2003

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Glossary of Terms

“Accountability” means an obligation of an individual to account for its activities and to disclose the results in a transparent manner.

“Authority” means a power that is delegated formally. It includes a right to command a situation, commit resources, give orders and expect them to be obeyed. It is always accompanied by an equal responsibility for one’s actions or a failure to act.

“Delegation” means the assignment of authority and responsibility to another person to carry out specific activities.

“Delegation official” means any person to whom power has been delegated or who has been authorised to perform a duty in terms of a formal delegation. This includes an official who lawfully acts in the capacity of the delegated official.

“Duty” means the responsibility of conduct, function or performance that arises from an express or implied contract or from the fact of holding an office or position.

“Effectiveness” means the degree to which the objectives are achieved and the extent to which targeted problems are resolved. In contrast to efficiency, effectiveness is determined without reference to cost and whereas efficiency means “doing the thing right”, effectiveness means “doing the right thing”

“Efficiency” means a comparison of what is actually produced or performed with what can be achieved with the same consumption of resources.

“Function” means a task oriented block of related efforts organised to produce intended outputs. E.g. financial reports

“Limitation” means a restriction being imposed on the performance of a particular power.

“Manager” means an individual who is in charge of a certain group of tasks or a certain subset of an organisation.

“Power” means an instrument transferring or vesting legal authorisation. The ability conferred on a person by law to determine and alter the rights, duties, liabilities and other legal relations of himself or others.

“Principle Functionary” means any person upon whom a power is conferred or a duty is imposed through an empowering provision in terms of which an administrative action is taken. The principle functionary, in whom the power or duty is vested, remains accountable for the execution of the delegation.

“Responsibility” means a duty or obligation to satisfactorily perform or complete a task, assigned by someone, that one must fulfil and which has a consequent penalty for failure.

1. Background

The President has identified the need to modernise the public service across all three spheres of government. It must be noted that key to this requirement is the need to ensure that service delivery is achieved in an effective and efficient manner, including the desired results and outcomes that must be attained. The system of delegation has a profound effect and places emphasis on the strategic planning, decision making on both the budgetary implications and the plan on implementation in which service delivery is undertaken and managed. In view thereof, it is a requirement that the functionality of the system of delegations, including its procedures and processes, must be results and performance driven and must contribute towards the principles of effectiveness and efficiency with no delays in service delivery.

The drafting of this document has therefore been initiated by the President’s concern that there seems to be a correlation between the delegation of authority and service delivery. This concern is driven by the Governance and Administration Cluster through the President’s outcome 12 focusing on an ‘efficient, effective and developmental orientated public service’. The purpose of this document is therefore to provide principles that will assist municipalities in drafting their systems of delegations.

The term ‘delegation’ is derived from Latin. It means that when delegating, a person sends work that is delegated to him/her to another person to plan, undertake and achieve the desired results and outcomes. It is important to note that delegating clearly defines the limits and parameters of authority that go with decision making, by providing the required checks and balances. Delegation therefore means the giving of power, responsibility, or work to another person.

The act of delegation involves assigning powers or duties to another person so he or she can act on your behalf. Authority to exercise discretion is delegated to a person so that that person may make decisions, use resources, act or dispose of matters at his or her own particular level without having to refer the matter to higher authority for a decision. It must be noted that when you delegate a particular function, you delegate responsibility and not accountability. The MFMA allows the Accounting Officer of a municipality to delegate either to a specific individual or to the holder of a specific post in the municipality in either a permanent or acting capacity. It is therefore important to note that the person acting in a post is equally accountable as the person who normally occupies the post concerned. Hence, in the implementation and management of the Systems of Delegations in a municipality, the Accounting Officer maintains every level of accountability. Accountability can therefore not be delegated. For example, if ‘A’ is given a task with sufficient authority and ‘A’ delegates this task to ‘B’ and ask him to ensure that the task is performed, responsibility rest with B but accountability still remains with A.

The legislative framework that relates to the requirement for the implementation and management of a System of Delegations in terms of the Municipal Finance Management Act (MFMA) (Act 56 of 2003) and the Municipal Systems Act (MSA) (Act 32 of 2000) would also influence the management of the Performance Regulations.

The delegation of the financial management responsibilities in terms of the MFMA read with the MSA cascades from the municipal council to the Mayor and further onwards to the Accounting Officer as the head of the administration.

The legislation assumes that the political head of a municipality (Executive Mayor or Mayor) is responsible for policy matters and outcomes which include seeking council approval and adoption of the municipality’s budget. The head of the administration (Accounting Officer) is responsible for outputs and implementation and is accountable to the municipal council for the management and implementation of that budget. This approach is consistent with the MFMA read with the MSA which relies on a performance driven system of measureable outputs.

The MFMA and its Regulations prescribe specific responsibilities that the Accounting Officer (AO) must carry out to ensure the effective, efficient, economical and transparent use of a municipality's resources.

Delegations have multiple effects and benefit both the Accounting Officer as well as officials to whom powers or duties are delegated to. Through delegations, the accounting officer's workload is reduced allowing him or her to focus more on strategic issues facing the municipality whilst delegations serve as a powerful staff motivator by raising officials' self-esteem and confidence. It makes officials feel involved in the decision making process where they have an opportunity to articulate their views, thereby making a difference in the workplace. This enhances their skills, which in the long terms is beneficial to both the municipality and the public sector as a whole.

It is also important that delegations reflect the municipality's organisational structure. Sub-delegation on a temporary basis is appropriate in circumstances where the officer normally responsible is officially absent for a period by reason of authorised leave or secondment.

When the draft budget and policies are tabled in the Municipal Council for approval, it is advisable that the system of delegations for the municipality is tabled simultaneously. In this regard we are referring to the system of delegations containing all the delegations for the municipality including the financial management delegations in terms of the MFMA and its regulations.

2. Legal framework for delegations

2.1 Municipal Finance Management Act and Municipal Systems Act (MFMA and MSA)

It is important that our delegations are consistent with the prevailing legal framework. In this regard, section 238 of the Constitution of the Republic of South Africa Act, 1996 provides that an executive organ of state in any sphere of Government may delegate any power or function that is to be performed in terms of legislation to any other executive organ of state, provided that the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed. The Constitution therefore sets down the qualification that the particular delegation must be consistent with the enabling legislation.

In terms of the MSA, the Municipal Council or the Executive Mayor is required to delegate powers or functions to the accounting officer. It must be noted that any form of written delegations to the accounting officer must not be inconsistent with the powers, functions and responsibilities that is assigned to the Accounting Officer in terms of Chapter 8 of the MFMA. In addition, it is a requirement for the Municipal Council and the Executive Mayor to also be aware of the provisions of section 76 of the MFMA that relates to the duty of the accounting officer to undertake and manage his or her responsibilities in terms of the MFMA without any undue influence.

In terms of section 79 of the MFMA, the Accounting Officer is responsible for ensuring that an appropriate system of delegations is developed that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration.

In addition to the above, the Chief Financial Officer is also provided with the option to in terms of section 82 of the MFMA sub-delegate all of the duties, functions and responsibilities that are referred to in terms of section 81(1)(b), (d) and (e) of the MFMA. The Chief Financial Officer is allowed to delegate his or her power referred to in the latter section, to an official in the budget and treasury office, to the holder of a specific post in that office or with the concurrence of the accounting officer, to any other official of the municipality or any person contracted by the municipality for the work of the office.

It must be noted that the delegations in respect of section 56 managers, though not explicitly prescribed in the MSA, are nonetheless conferred upon them by implication by virtue of their performance agreements that is required in terms of the Performance Regulations.

In terms of section 59 of the MSA, the responsibility of developing and maintaining a system of delegation is placed in the Municipal Council. The responsibility of the AO to manage and implement the system of delegations is also guided by section 59 of the MSA. It must be noted that this responsibility of the AO remains non-negotiable and should be documented as a key performance area in his/her performance agreement.

All delegations must be reviewed annually to put effect to the relevance and entrench accountability on the delegated responsibility.

In terms of section 60 of the MFMA, the Act has made it non-negotiable and prescriptive, that the Accounting Officer is required to:

- Exercise the functions and powers that is assigned to the Accounting Officer in terms of the MFMA; and
- Provide guidance and advice on compliance with the MFMA to various role players in the municipality.

In view of the aforementioned, the Act thus place complete accountability on the Accounting Officer to ensure that its requirements are given effect to.

3. Accountability

In the implementation and management of the System of Delegation in a municipality, the Accounting Officer maintains every level of accountability.

Accountability means giving explanations for any variance in the actual performance from the expectations set. Accountability cannot be delegated. For example, if 'A' is given a task with sufficient authority, and 'A' delegates this task to B and asks him to ensure that task is done well, responsibility rest with 'B', but accountability still remain with 'A'. The senior management within municipalities is most accountable. The term Accountability makes reference to being answerable for the end result. Accountability can therefore not be escaped because it arises from responsibility.

This level of accountability is substantiated and best illustrated in section 79 (3) (e) of the MFMA. The MFMA only make provision for delegations to the accounting officer of a municipality. The MFMA goes further to preclude the Accounting Officer from delegating functions and duties to “any member of the political structures” in the municipality.

In light of the aforementioned, the implementation and management of the system of delegation is in fact the process to implement the best practices and the “skill on accountability”. The system of delegations gives authority to an official in the administrative system but with “the essential human, technical and other resources” to plan, fund, implement, and manage the mandate on service delivery in a municipality.

Since accountability is legislatively enforced in the public service, delegation is often not undertaken lightly and usually involves service-delivery considerations. The requirement for an effective and reliable system of delegation is to entrench accountability by firstly providing a clear and vertical division of work output to determine the relationship between the delegator and the delegatee.

4. Responsibility and Authority

Responsibility is the duty of the person to complete the task assigned to him. A person who is given the responsibility should ensure that he or she accomplishes the tasks assigned to him. If the tasks for which he was held responsible are not completed, then he should take responsibility for failing to complete the task by the agreed date. Responsibility without adequate authority may lead to discontent and dissatisfaction amongst officials. It is therefore important that delegations flow with the necessary discretion to make decisions. Responsibility flows from bottom to top. The middle level and lower level management holds more responsibility. The person held responsible for a job is answerable for it.

Authority in context of a business organization can be defined as the power and right of a person to use and allocate the resources efficiently and to take decisions and to give orders so as to achieve the organizational objectives. Authority must be well-defined. All people who have the authority should know what the scope or limitation of their authority is and they should not misuse it. Authority is the right to give commands, orders and get the things done. The top level management has greatest authority. Authority always flows from top to bottom. It explains how a superior gets work done from his subordinate by clearly explaining what is expected of him and how he should go about it. Authority should be accompanied with an equal amount of responsibility. Delegating the authority to someone else does not imply escaping from accountability. Accountability still rest with the person having the utmost authority.

5. Effectiveness and Efficiency

In providing an understanding to the term effectiveness and efficiency, it is essential to give an illustration to its characteristics and meaning.

The term Effectiveness relates to understanding the mandate, determining all the right things that must be executed to achieve the desired results and outcomes of the Mandate.

The term Efficiency relates to an understanding of determining the timeframes, the techniques and the skills to manage the implementation plan that is directly focussed to achieving the outcomes of a specific mandate. The display in the level of efficiency would guide the adjudicators to comment on the grade of competence and diligence that was on display during the execution of the implementation plan. The efficient performance of work necessitates a realistic delegation of authority extending to the lowest possible level in the hierarchy of the municipality. To provide services and accomplish related tasks necessary for it, functionaries need a large degree of delegation, especially where regional and local offices are involved. For this reason, the delegation of authority is closely intertwined with the extent of centralisation or decentralisation of municipal activities.

The effectiveness and efficiency that is achieved in the implementation and management of the system of delegation would also be influenced by the size, complexity and magnitude of the constitutional mandate. In addition, the issue of centralization and/or decentralization would also influence how the system of delegation must maintain the right levels in effectiveness and efficiency within the institution.

To provide services and accomplish related tasks necessary for it, functionaries need a large degree of delegation that is supported with the right levels of human, technical and other resources that would position all levels of management to function but with a focus of concentration on the outcomes of the mandate.

The advantages that accrue from a delegations system that mirrors decentralisation of administrative functions can include amongst others:

- The workload of Council or the Accounting Officer and other managers are reduced, thus maintaining greater focus on strategic issues;

- The promptness, quality, integrity, reliability in decision making improves due to the fact that decision making is closer to the work at hand and time does not have to be allocated for referring the matter to a higher authority;
- Improved initiatives and job satisfaction amongst middle and junior level managers due to the fact that they are part of the effort to manage the executive obligations and play a lead and direct role on service delivery activities of the institution. In addition the clarity and certainty that is prevalent positions Officials of all levels of Management to be in readiness accept greater responsibilities;
- Employees are encouraged to exercise judgement and accept responsibility which enhances their self-confidence and willingness to take initiative; and
- Building institutional memory at various levels of the organisation.

It should be noted that there are several personnel and managerial factors that can inhibit the implementation and management of the system of delegation. This would require clarification to entrench stability. They can include:

- The higher the degree of accountability that the legislation demands from the delegator, the higher the thought to centralise activities and a reluctance to delegate to functionaries lower in the municipal hierarchy;
- The delegator is concerned that insufficient capacity exists at different levels of management to implement and manage the work output that has been delegated; and
- The delegator is concerned that his or her performance evaluation could be seriously and negatively affected when staff in the different levels in management experience seamless difficulties to undertake and manage the work output that has been delegated within the system of delegation.

Senior managers sometimes inherit organisations or parts thereof that were designed by others. It is possible that the design of the organisation itself inhibits effective delegations. This might necessitate a review of the organising function to determine the root cause of the problem. Organisational impediments to delegation can include:

- The system of delegation is not effective if the nature of the powers, duties and/or task, accompanying the authority and reporting requirements are not clearly explained and the responsible functionary is not identified;
- When senior managers fail to delegate a power or duty, there is the expectation that the responsibility for its execution will eventually be delegated in an irregular manner to others. This would create additional staff, reporting, performance evaluation and communication burdens; and
- In the absence of a clear delegation policy or with poorly developed job descriptions, staff members at all levels of the organisational hierarchy may not have a good understanding of what is expected of them.

6. Clarification of roles and responsibilities

The legal framework surrounding delegations in terms of the MFMA has been described above. In essence, the relationship between the delegator and the delegatee is based on the loyalty and trust to the mandate on service delivery. Checks, balances and external authorities will not remedy the situation if both communication and understanding is compromised. To prevent such a scenario from occurring, there must be frequent and effective communication between the delegator and delegatee.

7. Principle and process for delegation under the MFMA

7.1 Principle for delegation

The delegation process is essential to every manager in a municipality. Below are some guidelines that can be used to assist managers to be more effective in delegation:

- **Explain the reasons for delegating.** Delegatees should understand that delegation has advantages for themselves, for the manager and for the municipality;
- **Set clear goals and standards.** Delegatees should participate in the process of formulating goals for the delegated power and should agree with the criteria laid down for measuring their performance. This participation will foster successful delegation;
- **Ensure clarity of authority and responsibility.** Delegatees must understand the powers and duties designated to them, recognise their responsibility and be held accountable for the results;
- **Involve delegatees.** Managers should motivate delegatees by including them in the decision making processes, informing them of their progress and enabling them to improve their knowledge and skills in the delegated powers and duties. An informed delegatee is more likely to accept well designated powers and duties and perform them properly;
- **Provide the necessary direction and assistance.** Request the completion of tasks incidental to exercising the delegated powers and duties. Managers can see to it that delegatees complete the tasks delegated to them according to the agreed standards and goals;
- **Provide performance training.** The effectiveness of delegation depends on the delegatee’s ability to perform tasks. Managers should continually evaluate the responsibilities delegated and provide training to help delegatee’s overcome shortcomings; and
- **Provide feedback to the delegatee.** Timely and accurate feedback should be provided to delegatees on a regular basis. The feedback should include both positive and negative feedback regarding the delegatee’s performance. The way forward should then be discussed with the delegatee.

7.2 Delegation process

The delegation process is essential to managers of municipalities to assist them to discharge the function and responsibilities that have been delegated to them as well as for the growth and well-being of employees. Delegation does also not take place automatically; it is initiated by the responsible principal and implemented by the employee to whom the power is delegated.

Furthermore, the internal and external environment is expected to change rapidly in a municipality. In view thereof, it is imperative that the responsible principal and managers review the constantly changing requirements with their employees. In the case of newly appointed employees, a greater amount of time will be required to ensure that they understand their jobs and what will be required of them.

The following steps are recommended by which the delegation process can be carried out. It should be noted that the same process described below will also apply to sub-delegation:

Decide on the powers and duties to be delegated. Duties of a repetitive nature, or minor chores, can easily be delegated. It is important to delegate more challenging tasks in order to develop employees’ skills and to build self-confidence.

- Decide who should perform the powers and duties. The time available, competencies and skills required, and experience of the delegatee should be taken into account.
- Provide sufficient resources for carrying out the powers and duties delegated. These include human, financial, technical and other resources. The issue of adequate resources must be a prerequisite to the delegated functions and responsibilities that is required to be undertaken. Without sufficient resources, employees will not be able to execute the powers and duties that have been delegated to them.
- Delegate the powers and duties. The manager delegating the powers and duties should empower the functionaries who are responsible and provide all relevant information on the task to be undertaken, including the results and performance that must be achieved.
- Establish a reporting system. This is vital because the outcome of the delegation process is information on the performance of the task. This serves as a measure to evaluate its execution and as input for when delegations are reviewed and others considered.

It must be noted that notwithstanding the delegation being issued, the accountability remains vested with the Manager (delegator). In light of the aforementioned, the Manager should be required to intervene in the event when difficulties arise. It must also be noted that an instance of such an intervention would be the issue of depleting and/or unavailable resources.

In addition, if the delegatee lacks sufficient experience or the appropriate skills, managers should be prepared to assist where necessary and the delegatee should be made aware it is possible to request assistance.

8. The role of the Accounting Officer

The AO is duty bound and is responsible to plan, implement and monitor not only the functionality of the system of delegation within senior management and the municipality, but also to determine whether the correct results and performance is achieved under each matter within the system of delegations. It is also the responsibility and function of the AO to correct any malfunction in the event there are negative trends in the results and performance under each of the matters that are issued within the system of delegations.

It thus remains of essence, that the system of delegations that is managed under the administrative leadership of the AO must by virtue of its design and structure play a lead and direct role to achieve absolute compliance, provide the reliance and stability on accountability and ensure that effectiveness and efficiency are achieved in the required outputs in the MFMA.

In light of this crucial requirement, it must become inevitable that the duty and responsibility for the implementation and management of the system of delegation must be included as a Key Performance Area (KPA) in the performance agreement of the AO. In addition, it must simultaneously also be KPA of each Senior Manager in their performance agreement. This would relate to the results and performance that is achieved in the implementation and management of their relevant delegation by the Accounting Officer within the system of delegation.

9. The credentials and key outcomes of the system of delegation

The evaluation exercise and providing comment on a system of delegation must be guided by the norms and standards that must be achieved in terms of the MFMA. The measurement and/or benchmark of a system of delegation can only be credible if the following aspects form its cornerstones, namely:

- The matters that are delegated to a member of Senior Management are specific and unambiguous to the power or function as contained in the MFMA;
- How the effectiveness and efficiency of the system of delegation that contains the requirements in terms of the MFMA, would ensure that the prescribed time frames, norms and standard that are set for each matter is achieved with certainty;
- That the functionality of the system of delegation that contains the matters in terms of the MFMA is underpinned and supported by the right staff structure (that is designed in relation to the functions that must be undertaken and managed), the provision of the necessary human, technical and other resources during the implementation and management of the system of delegations by members of senior management. In addition, the plan by the AO with the direct support of the Municipal Council to implement initiatives to strengthen the functionality of the system of delegation; and
- The implementation and management plan of the AO to evaluate whether any sub-delegations is consistent to the main matters as contained in the primary delegation to the members of senior management and whether the AO is a signatory with the relevant senior manager to a sub-delegation.

The Municipal Council must ensure that the duty and responsibility of the AO with reference to the implementation and management of the system of delegations as required in terms of section 79 of the MFMA must be included as a Key Performance Area in both the employment contract and performance agreement of the AO. In addition and simultaneous to the aforementioned, the AO must include this as a KPA in the employment contract and performance agreement of members of senior management.

10. The implementation plan and process

The implementation and management must be undertaken by the AO with the support and assistance of the Chief Financial Officer and senior management at the strategic level. In addition, the AO is required to evaluate the outcomes achieved by the senior management with regards to the sub-delegations to managers at the operational level.

The system of delegations at both the strategic level (AO to senior management and the operational level) can only be legal for functionality when the issue and receipt of the delegations is secured and protected by the relevant signatories between the parties to the delegations.

The AO is required to undertake an evaluation and submit a report to the Municipal Council with regards to the effectiveness of the system of delegations to firstly report on the functionality of the system within the municipality and secondly how the system has contributed to improved performance on the outputs required by the MFMA on service delivery. The Municipal Council will be required to undertake quarterly reviews of the performance of the political head of the municipality

(Executive Mayor). The Internal Audit division within the municipality must monitor the implementation and management of the system of delegations within the institution.

11. Conclusion

The purpose for the implementation and management of the system of delegations in municipalities is firstly to achieve and enhance effective and efficient compliance with the MFMA and secondly it is the duty of the AO to lead and direct senior management with regards to the execution and management of the work output that is required in terms of the Act.

It must be stated that the AO is required to manage the budget, financial and other general matters within the ambit of the system of delegations to delegate and hold senior management accountable for its planning, funding, implementation and reporting on all key outcomes and performance. In addition, the compliance that is required in terms of the Act, which relates to the compilation, implementation and management of a system of delegation, must be adopted as a key performance area of the AO. It must be the duty of the political head and the Municipal Council to undertake quarterly performance reviews that includes the system of delegations. The system of delegations in terms of the MFMA must be a crucial aspect in the performance agreement of the AO and senior management in municipalities.

12. Specific Delegations and Other Annexures

Annexure “A”: Specific Delegation in terms of the Municipal Finance Management Act No. 56 Of 2003

Annexure “B”: Delegation Template, to be used for delegations by the Accounting Officer to the Chief Financial Officer

Annexure “C”: Sub-Delegation Template, to be used for delegations by the Chief Financial Officer to Managers in the Finance Department.

Annexure “D”: Sub-Delegation Template, to be used for delegations by the Chief Financial Officer to Acting Managers in the Finance Department.

Annexure “E”

ANNEXURE “A”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
7(1)	Deciding to open a bank account for the Municipality.	Section 62(2) of the MFMA	Council	Accounting Officer
	Deciding at which commercial bank/banks to open a bank account.	Subject to section 8(2) of the MFMA	Council	Accounting Officer
	Deciding to close a bank account.	Section 10(1)(B) of the MFMA	Council	Accounting Officer
7(2)	Determining into which bank account money collected or received by the Municipality must be deposited.	See section 48(2)(d) of the MFMA	Council	Accounting Officer
8(1)	Designating a bank account of the Municipality as the Municipality’s primary bank account.	Section 62(2) of the MFMA	Council	Accounting Officer
8(3)	Determining the reasonable steps to be taken to ensure that the prescribed money received is paid into the Municipality’s primary bank account.	Section 62(2) of the MFMA	Council	Accounting Officer
8(4)	Entering into an agreement with other parent municipalities of a municipal entity of which the Municipality is a parent municipality, as to which Municipality’s primary bank account to use for the purpose of receiving allocations from organs of state to the municipal entity concerned.		Council	N/A
12(2)	Deciding to open a separate bank account in the name of the Municipality for the purpose of a relief, charitable, trust or other fund.	Section 12(1) of the MFMA	Council	Accounting Officer
13(2)	Establishing an appropriate and effective cash management and investment policy for the Municipality.	NOTE:	Council	
		In terms of section 60(2) of the Municipal Systems Act 2000 the Council may only delegate to the Executive Mayor or The Chief Financial Officer the authority to make decisions to make investments on behalf of the Municipality	Council	N/A
14(2)	Deciding to transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset.	On condition that the asset concerned is not needed to provide the minimum level of basic municipal services and the Council considered the fair market value of the asset concerned	Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
14(2)(a)	Deciding, at a meeting open to the public and on reasonable grounds, that an asset of the Municipality is not needed to provide the minimum level of basic municipal services.	Only in respect of movable capital assets below a value determined by the Council	Council	N/A
14(2)(b)	Considering the fair market value of an asset to be disposed of and the economic and community value to be received in exchange for an asset to be disposed of	Only in respect of movable capital assets below a value determined by the Council	Council	Accounting Officer
14(4)	Determining the value of movable assets in respect of which the Municipal Manager may determine –	A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2)(a) and (b) in respect of movable capital assets below a value determined by the council.	Council	Accounting Officer
	(b) determining the fair market value of such asset and the economic and community value to be received in exchange for the asset		Council	Accounting Officer
16(1)	Approval of an annual budget	NOTE:	Council	N/A
		1. In terms of section 160(2)(b), read with section 160(3)(b) of the Constitution a budget must be approved by a decision taken by the Council with a supporting vote of a majority of its members.	Council	N/A
		2. Approval of the budget must be considered on or before 1 June each year in terms of section 24(1) of the MFMA.	Council	N/A
		3. In terms of section 30(5) of the Local Government: Municipal Structures Act 1998 (Act No 117 of 1998) the Council may only after it received and considered the report	Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		and recommendations of the Executive Mayor regarding the annual budget, approve the budget		
		4. See section 25(1) of the MFMA	Council	N/A
16(3)	Deciding whether money for capital expenditure for a period not exceeding three financial years may be appropriated in an annual budget	A separate appropriation must be made for each of financial year	Council	Mayor & Accounting Officer
19(1)(b)	Approving a capital project, including its total cost		Council	N/A
19(1)(d)	Considering the sources of funding of a capital project		Council	N/A
19(2)	Considering, in respect of a capital project, the projected cost covering all financial years until the project is operational and the future operational costs and revenue on the project, including municipal tax and tariff implications.		Council	N/A
19(3)	Deciding to approve capital projects below the prescribed value individually or as part of a consolidated capital programme		Council	N/A
23(1)	Receiving and considering the views of the communities and organs of state received in connection with the budget		Council	N/A
23(2)	Deciding to give the Mayor an opportunity to respond to any submissions received in connection with the budget from communities and organs of state		Council	N/A
28(1)	Deciding to revise an approved budget by way of an adjustments budget		Council	N/A
32(2)	Deciding to recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure	Except, in the case of –	Council	
		1. Unauthorised expenditure, if the amount of the expenditure is authorised in an adjustments budget; or	Council	Mayor & Executive committee
		2. Is certified by the Council, after investigation by a Council committee, as irrecoverable and written off by the Council; and	Council	Mayor & Executive committee

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		3. Irregular or fruitless and wasteful expenditure is, after investigation by a Council committee, certified by the Council as irrecoverable and written off by the Council	Council	N/A
32(2)	Determining the amount of unauthorised, irregular or fruitless and wasteful expenditure to be recovered, written off or provided for in an adjustments budget		Council	N/A
32(2)	Identifying the identity of the person who is liable for unauthorised, irregular or fruitless and wasteful expenditure	section 62(1)(e)	Council	Accounting Officer
32(2)	Appointing a committee to investigate any suspected or reported	NOTE:	Council	
	unauthorised, irregular or fruitless and wasteful expenditure	In terms of the judgements of the Courts in the cases of <u>The Democratic Alliance and another v Amos Masondo and another</u> (WLD) (Case No 01/9260) (2001) and <u>Democratic Alliance and Another v Amos Masondo N O and the Minister of Provincial and Local Government</u> (CC) (Case No CCT 29/02) a mayoral committee was found not to be a committee of a municipal council. The Council may therefore not appoint the Mayoral Committee to perform such an investigation	Council	Council Committee
32(7)	Determining whether an alleged irregular expenditure incurred by the Municipal Manager constitutes a criminal offence		Council	Council Committee
	Determining whether the Municipal Manager allegedly committed an act of theft and fraud		Council	Council Committee
	Reporting alleged irregular expenditure incurred by the Municipal Manager that constitutes a criminal offence and		Council	Municipal Council

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	alleged theft and fraud perpetrated by the Municipal Manager to the SAPS			
33(1)	Deciding to enter into a contract which will impose financial obligations on the municipality beyond a financial year		Council	Municipal Council
34(1)	Entering into an agreement with the national or provincial government to assist the Municipality to build its capacity for efficient, effective and transparent financial management		Council	National & provincial governments
34(3)(a)	Considering the results of the provincial government’s monitoring of the Municipality		Council	Provincial government
34(3)(b)	Considering a notification of the provincial government of any emerging or impending financial problems in the Municipality		Council	Mayor, Accounting Officer & CFO
37(1)(a)	Determining the steps the Municipality must take to promote co-operative government with the national and provincial spheres of government and other municipalities in the Municipality’s fiscal and financial relations		Council	Mayor, Accounting Officer & CFO
38(2)	Considering a notice received from the National Treasury of its intention to stop the transfer of funds to the Municipality		Council	Mayor, Accounting Officer & CFO
39(3)	Determining the deputation that will appear before a committee of Parliament considering the approval or renewal of a decision of the National Treasury to stop the transfer of funds to the Municipality		Council	Mayor and Accounting Officer
	Determining the case that will be presented to a committee of Parliament considering the approval or renewal of a decision of the National Treasury to stop the transfer of funds to the Municipality		Council	Mayor and Accounting Officer
45(1)	Deciding whether to incur short term debt	1. In terms of section 160(2) of the Constitution the Council may not delegate the raising of loans	Council	
		2. A decision to raise a loan must be taken by the Council with a supporting vote of a majority of its members in terms of section 160(3)(b) of the Constitution	Council	N/A
		3. In terms of section 30(5) of	Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		the Local Government: Municipal Structures Act 1998 (Act No 117 of 1998) the Council may only after it received and considered the report and recommendations of the Executive Mayor regarding a loan, approve the raising of a loan		
45(2)(a)	Approving any short term debt agreement		Council	
46(1)	Deciding whether to incur long term debt	1. In terms of section 160(2) of the Constitution the Council may not delegate the raising of loans	Council	N/A
		2. A decision to raise a loan must be taken by the Council with a supporting vote of a majority of its members in terms of section 160(3)(b) of the Constitution	Council	N/A
		3. In terms of section 30(5) of the Local Government: Municipal Structures Act 1998 (Act No 117 of 1998) the Council may only after it received and considered the report and recommendations of the Executive Mayor regarding a loan, approve the raising of a loan	Council	N/A
46(2)(a)	Approving any long term debt agreement		Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
48(1)	Deciding whether to provide security for any of the Municipality’s debt obligations, debt obligations of a municipal entity under its sole control and contractual obligations of the Municipality undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the Municipality or such other person		Council	N/A
48(2)	Deciding the form/nature of security to be provided for any of the Municipality’s debt obligations, debt obligations of a municipal entity under its sole control and contractual obligations of the Municipality undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the Municipality or such other person		Council	N/A
48(3)(a)	Deciding whether an asset or right that has been hypothecated in any manner as security is necessary for providing the minimum level of basic municipal services		Council	N/A
48(3)(b)	Deciding, if an asset or right that has been hypothecated in any manner as security is necessary for providing the minimum level of basic municipal services, the manner in which the availability of the asset or right will be protected		Council	N/A
50	Deciding to issue a guarantee for any commitment or debt of any organ of state, person or municipal entity under the sole or shared control of the Municipality		Council	N/A
	Deciding to grant exemptions from charging interest on any arrears owing to the Municipality in accordance with the Municipality’s budget-related policies	Subject to any prescripts in this regard	Council	N/A
83(2)	Determining the resources or opportunities to be made available for the training of officials to meet the prescribed financial management competency levels		Council	Accounting Officer
84(1a)	Determining precisely the function or service that a municipal entity would perform on behalf of the Municipality when considering the establishment of, or participation in, a municipal entity		Council	Accounting Officer
84(2)(b)(i)	Considering an assessment of the impact of the shifting of a function or service to a municipal entity on the Municipality’s staff, assets and liabilities when considering the establishment of, or participation in, a municipal entity		Council	Accounting Officer
84(2)(b)(ii)	Considering the comments or representations received from the local community, organised labour and other interested persons in respect of the Municipality’s intention to establish and/or participate in a municipal entity		Council	Municipal Council
84(2)(b)(iii)	Considering the views and recommendations of the National Treasury and the provincial treasury, the national and provincial departments responsible for local government and the MEC responsible for local government in respect of the Municipality’s intention to establish and/or participate in a municipal entity		Council	Municipal Council

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
86(1)	Receiving information from a municipal entity of which the Municipality is the parent municipality regarding the entity’s bank account(s)		Council	Accounting Officer
87(1)	Receiving a proposed budget for a municipal entity of which the Municipality is the parent municipality for each financial year		Council	N/A
87(2)	Considering the proposed budget of a municipal entity of which the Municipality is the parent municipality and assessing the entity's priorities and objectives		Council	Accounting Officer
	Deciding to make recommendations on the proposed budget of a municipal entity of which the Municipality is the parent municipality		Council	Accounting Officer
87(5)(c)	Determining the limits, including any limits on tariffs, revenue, expenditure and borrowing, on the budget of a municipal entity of which the Municipality is the parent municipality		Council	Accounting Officer
88(b)(ii)	Receiving and considering a mid-year performance assessment report of a municipal entity of which the Municipality is the parent municipality		Council	Accounting Officer
89(a)	Determining the upper limits of the salary, allowances and other benefits of the chief executive officer and senior managers of a municipal entity of which the Municipality is the parent municipality		Council	N/A
89(b)	Monitoring and ensuring that a municipal entity of which the Municipality is the parent municipality reports to the Council on all expenditure incurred by that municipal entity on directors and staff remuneration matters, and in a manner that discloses such expenditure per type of expenditure		Council	Accounting Officer
	Considering an application from a municipal entity of which the Municipality is the parent municipality to transfer ownership or otherwise dispose of a capital asset other than an asset needed to provide the minimum level of basic municipal services	The power must be exercised in a meeting which is open to	Council	N/A
		the public at which the Council –	Council	
		(a) must determine on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and	Council	N/A
		(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset	Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
90(4)	Deciding to delegate to the Municipal Manager the power to determine on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services and the fair market value of the asset and the economic and community value to be received in exchange for the asset in respect of movable capital assets of a municipal entity of which the Municipality is the parent municipality below a value determined by the Council		Council	N/A
	Determining the value of movable capital assets of a municipal entity of which the Municipality is the parent municipality in respect of which the Municipal Manager may on reasonable grounds decide that the asset is not needed to provide the minimum level of basic municipal services and the fair market value of the asset and the economic and community value to be received in exchange for the asset		Council	N/A
97(3)	Receiving a report of the accounting officer of a municipal entity of which the Municipality is the parent municipality regarding any payments due by an organ of state to the entity in respect of service charges, if such payments are regularly in arrears for periods of more than 30 days		Council	Accounting Officer
	Considering a report of the accounting officer of a municipal entity of which the Municipality is the parent municipality regarding any payments due by an organ of state to the entity in respect of service charges, if such payments are regularly in arrears for periods of more than 30 days		Council	N/A
101(1)	Receiving a report of the accounting officer of a municipal entity of which the Municipality is the parent municipality on any financial problems of the entity		Council	Accounting Officer
104(1)(b)	Deciding which information, returns, documents, explanations and motivations to require from the accounting officer of a municipal entity of which the Municipality is the parent municipality		Council	Accounting Officer
109	Deciding, when a municipal entity of which the Municipality is the parent municipality, experiences serious or persistent financial problems and the board of directors of the entity fails to act effectively –		Council	N/A
	(a) the appropriate steps to be taken in terms of the Municipality’s rights and powers over the entity concerned, including its rights and powers in terms of any relevant service delivery or other agreement;		Council	N/A
	(b) impose a financial recovery plan, which meets the criteria set out in section 142 of the MFMA; or		Council	N/A
	(c) liquidate and disestablish the entity.		Council	N/A
111	Making and implementing a supply chain management policy for the Municipality	Subject to the content requirements in terms of section 112(1) of the MFMA	Council	CFO

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
113(1)	Deciding whether to consider an unsolicited bid received outside the Municipality’s normal bidding process		Council	Accounting Officer
116(3)	Considering the reasons for the proposed amendment of a contract or agreement and any representation that may have been received regarding the proposed amendment of a contract or an agreement procured through the supply chain management policy of the Municipality and deciding whether to consent to the amendment of the contract or agreement		Council	N/A
116(3)	Considering the reasons for the proposed amendment of a contract or agreement and any representation that may have been received regarding the proposed amendment of a contract or an agreement procured through the supply chain management policy of a municipal entity of which the Municipality is a parent municipality and deciding whether to consent to the amendment of a contract or agreement		Council	N/A
119(2)	Determining the resources or opportunities to be made available for the training of officials involved in the implementation of the supply chain management policy of the Municipality to meet the prescribed competency levels		Council	CFO
120(1)	Deciding to enter into a public-private partnership agreement		Council	N/A
120(1)(a)	Determining whether a proposed public-private partnership agreement will provide value for money to the municipality		Council	N/A
120(1)(b)	Determining whether a proposed public-private partnership agreement will be affordable for the Municipality		Council	N/A
120(1)(c)	Determining whether a proposed public-private partnership agreement will transfer appropriate technical, operational and financial risk to the private party		Council	N/A
120(4)	Deciding to conduct a feasibility study before a public-private partnership is concluded		Council	Accounting Officer
120(5)	Determining whether to apply for the national government’s assistance in carrying out and assessing a feasibility study regarding a proposed public private partnership		Council	N/A
121(1)	Preparing an annual report for the Municipality		Council	Accounting Officer
121(4)(f)	Determining any additional information to be contained in the annual report of a municipal entity of which the Municipality is a parent municipality		Council	Accounting Officer
126(2)(a)	Receiving the financial statements of municipal entity over which the Municipality has sole control or effective control (if it is a private company)		Council	Accounting Officer
126(4)	Receiving a report outlining the		Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	reasons for the delay from the Auditor-General if she/he is unable to complete an audit within three months after submission of the Municipality’s annual financial statements and any consolidated annual financial statements of the Municipality and of a municipal entity over which the Municipality has sole control or effective control (if it is a private company)		Council	N/A
129(1)	Considering the annual report of the Municipality and of any municipal entity under the Municipality's sole or shared control		Council	N/A
	Adopting an oversight report containing the Council's comments on the annual report(s)		Council	N/A
129(5)	Deciding whether to adopt guidelines issued by the National Treasury on the manner in which councils should consider annual reports and conduct public hearings and the functioning and composition of any public accounts or oversight committees established by a council to assist it to consider an annual report		Council	N/A
133(c)(i)	Deciding whether to request the Speaker or another councillor to investigate the reasons for the failure of the Municipal Manager or of the accounting officer of a municipal entity under the Municipality's sole or shared control to submit annual financial statements to the Auditor-General or the Executive Mayor’s failure to table the annual report of the Municipality or a municipal entity in the Council		Council	N/A
	Receiving the report of the appointed councillor regarding the failure of the Municipal Manager or of the accounting officer of a municipal entity under the Municipality's sole or shared control to submit annual financial statements to the Auditor-General or the Executive Mayor’s failure to table the annual report of the Municipality or a municipal entity in the Council		Council	N/A
133(c)(ii)	Determining the appropriate steps to be taken to ensure that the financial statements are submitted to the Auditor-General or that the annual report, including the financial statements and the audit report on those statements, is tabled in the Council, as the case may be		Council	N/A
133(c)(iii)	Deciding whether disciplinary steps should be taken against the Municipal Manager or other persons responsible for the failure of the Municipal Manager or of the accounting officer of a municipal entity under the Municipality's sole or shared control to submit annual financial statements to the Auditor-General or the Executive Mayor’s failure to table the annual report of the Municipality or a municipal entity in the Council		Council	N/A
135(3)	Considering whether the Municipality is, or is likely to, encounter a serious financial problems in meeting its financial commitments		Council	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
135(3)(a)	Determining the manner of seeking solutions to any serious financial problem in meeting its financial commitments experienced or anticipated by the Municipality		Council	Mayor
	Defining the solutions to be implemented to solve or avoid any serious financial problem in meeting its financial commitments experienced or anticipated by the Municipality		Council	Mayor
135(3)(b)	Informing the MEC responsible for local government and the MEC responsible for finance of any serious financial problem in meeting its financial commitments experienced or anticipated by the Municipality		Council	Mayor
135(3)(c)	Notifying organised local government of any serious financial problem in meeting its financial commitments experienced or anticipated by the Municipality		Council	Mayor
137(2)	Receiving an assessment of the seriousness of the financial problem in the Municipality, the determination of the provincial executive whether the financial problem experienced by the Municipality, singly or in combination with other problems, is sufficiently serious or sustained that the Municipality would benefit from a financial recovery plan and the request to a suitably qualified person to prepare and submit a financial recovery plan for the Municipality		Council	Speaker of council
	Receiving a copy of the Municipal Financial Recovery Service’s determination of the reasons for the crisis in the Municipality’s financial affairs and assessment of the Municipality’s financial state		Council	Speaker of council
141(3)(a)	Participating in consultations with the person or body appointed to prepare a financial recovery plan or an amendment of such plan for the		Council	Accounting Officer
144(2)	Municipality		Council	Accounting Officer
141(3)(c)	Commenting on a draft financial recovery plan or an amendment to such plan for the Municipality		Council	Accounting Officer
144(2)			Council	Accounting Officer
143(3)(a)	Receiving an approved financial recovery plan for the Municipality		Council	Speaker of council
145(1)(a)	Implementing an approved financial recovery plan for the Municipality		Council	CFO
146(1)(a)			Council	CFO
145(1)(b)	Reporting monthly to the MEC for local government on the implementation of the approved financial recovery plan for the Municipality		Council	Accounting Officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
147(1)(b)	Receiving progress reports and a final report on any intervention from the MEC for local government or the MEC responsible for finance		Council	Speaker of council
148(1)(b)(i)	Declaring the Municipality’s willingness to fulfil the executive obligation in terms of legislation or the Constitution that gave rise to any discretionary intervention in the Municipality		Council	N/A
148(3)(a)	Receiving a notification that an intervention in the Municipality has ended		Council	Speaker of council
152(1)	Deciding to apply to the High Court for an order to stay all legal proceedings, including the execution of legal process, by persons claiming money from the Municipality if the Municipality is unable to meet its financial commitments		Council	Accounting Officer
153(1)(a)	Deciding to apply to the High Court for an order to stay, for a period not exceeding 90 days at a time, all legal proceedings, including the execution of legal process, by persons claiming money from the Municipality		Council	Accounting Officer
153(1)(b)	Deciding to apply to the High Court for an order to suspend the Municipality's financial obligations to creditors, or any portion of those obligations, until the Municipality can meet those obligations		Council	Accounting Officer
153(1)(b)	Deciding to apply to the High Court for an order to terminate the Municipality's financial obligations to creditors, and to settle claims in accordance with a distribution scheme referred to in section 155 of the MFMA		Council	Accounting Officer
165(1)	Deciding whether to establish an internal audit unit or to outsource the internal audit function		Council	Accounting Officer
166(1) and (6)	Deciding whether to establish an internal audit committee for –		Council	Accounting Officer
	(a) the Municipality only; or		Council	Accounting Officer
	(b) the Municipality and the local municipalities within the district municipal area; or		Council	Accounting Officer
	(c) the Municipality and any municipal entity under its sole control		Council	Accounting Officer
166(2)	Receiving reports of the audit committee		Council	Accounting Officer
166(2)(d)	Requesting the audit committee to investigate the financial affairs of the Municipality or a municipal entity of which the Municipality is a parent		Council	N/A
166(4)	Determining the number of members of the audit committee		Council	N/A
	Determining the nature of the appropriate experience that persons should possess to be considered for appointment as a member of the audit committee		Council	N/A

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
166(5)	Appointing the members of the audit committee of the Municipality and of a municipal entity of which the Municipality is a parent municipality		Council	N/A
	Appointing from amongst the members of an audit committee who is not in the employ of the Municipality or municipal entity a chairperson		Council	N/A
	Considering any guidelines issued by the Minister of Finance in terms of section 168(1) of the MFMA		Council	N/A
168(3)	Investigating any allegations of financial misconduct against the Municipal Manager, the Chief Financial Officer, a senior manager or other official of the Municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded		Council	N/A
171(4)(a)	Deciding whether an allegation of financial misconduct against the Municipal Manager, the Chief Financial Officer, a senior manager or other official of the Municipality is frivolous, vexatious, speculative or obviously unfounded		Council	N/A
	Deciding whether an investigation of an allegation of financial misconduct against the Municipal Manager, the Chief Financial Officer, a senior manager or other official of the Municipality revealed anything that warrants the institution of disciplinary proceedings		Council	N/A
174(4)(b)	Deciding to recover from a political office-bearer or official of the Municipality any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office	Any disciplinary proceedings must be conducted in terms of the relevant collective agreement	Council	N/A
176(2)	Submitting to the National Treasury a list of all corporate entities in which the Municipality or a municipal entity under its sole or shared control has an interest		Council	N/A
178(2)(a)	Submitting to the National Treasury a list of all public-private partnerships to which the Municipality is a party, with a value of more than one million Rands in total or per annum		Council	N/A
178(2)(b)	Submitting to the National Treasury a list of all other types of contracts of the Municipality for a period beyond 1 January 2007 and with a value of more than one million Rands in total or per annum		Council	N/A
178(2)(c)	Powers delegated to Executive Mayor and other political body		Council	N/A
	Power/duty conferred			
Section of MFMA	Deciding to set-up a relief, charitable, trust or other fund of whatever description	Conditions		
12(1)	Tabling the budget at a Council meeting		Mayor/Comm's	Accounting Officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
16(2)	Co-ordinating the processes of preparing the annual budget and reviewing the Municipality's integrated development plan and budget-related policies	The annual budget must be tabled at least 90 days before 1 July each year	Mayor/Comm's	Mayor
21(1)(a)	Tabling in the Council a time schedule outlining key deadlines for the preparation, tabling and approval of the annual budget, the annual review of the integrated development plan and the Municipality's budget-related policies, the tabling and adoption of any amendments to the integrated development plan and the budget-related policies and any consultative processes forming part of the processes		Mayor/Comm's	Mayor
21(1)(b)	Deciding the reasonable steps to be taken to review the Municipality's integrated development plan	At least 10 months before 1 July each year	Mayor/Comm's	Mayor
21(2)(b)	Determining the manner and timing of consultation of the local municipalities within the municipal area, the provincial treasury and such other organs of state as may be prescribed with regard to the Municipality's annual budget		Mayor/Comm's	Mayor
21(2)(d)	Providing information relating to the budget that may be requested to the National Treasury and any other organ of state		Mayor/Comm's	Mayor
21(2)(e)	Complying with section 55 of the MFMA if the Municipality has not approved an annual budget, including revenue-raising measures necessary to give effect to the budget, by 1 July of any year	Subject to any limitations that may be prescribed in respect of organs of state other than the National Treasury	Mayor/Comm's	Mayor
25(3)	Obtaining the MEC responsible for finance's approval to withdraw funds from the Municipality's bank accounts, if a budget has not been approved on or before 1 July of each year.	Immediately report the matter to the MEC responsible for local government	Mayor/Comm's	Mayor
26(4)	Determining the likelihood of the Municipality not being able to comply with the MFMA or other legislation relating to the tabling or approval of an annual budget or compulsory consultation processes		Mayor/Comm's	Mayor
27(1)	Informing the MEC responsible for finance of any impending noncompliance by the Municipality of any provisions of the MFMA or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes		Mayor/Comm's	Mayor
	Deciding to apply to the MEC responsible for finance to extend any time limit or deadline with regard to the preparation and approval of the annual budget		Mayor/Comm's	Mayor
27(2)	Applying to the MEC responsible for finance to extend any time limit or deadline with regard to the preparation and approval of the annual budget		Mayor/Comm's	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	Informing the Council, the MEC responsible for finance and the National Treasury, in writing, of any actual non-compliance by the Municipality of a provision of Chapter 4 of the MFMA and any remedial or corrective measures the Municipality intends to implement to avoid a recurrence of such non-compliance		Mayor/Comm's	Mayor
27(3)	Tabling an adjustments budget in the Council		Mayor/Comm's	Mayor
28(4)	Deciding to authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget in emergency or other exceptional circumstances		Mayor/Comm's	Mayor
29(1)	Reporting to the Council regarding the authorisation of unforeseeable and unavoidable expenditure for which no provision was made in an approved budget in emergency or other exceptional circumstances		Mayor/Comm's	Mayor
29(2)(c)	????????????????????	Such report must be made to the Council at the first Council meeting next ensuing after the authorisation was given	Mayor/Comm's	Mayor
31(d)	Giving written approval for exceeding the amount appropriated in respect of a capital programme		Mayor/Comm's	Mayor
	Deciding the nature and extent of, and manner in which political guidance over the fiscal and financial affairs of the Municipality will be provided		Mayor/Comm's	Mayor
	Deciding the monitoring and oversight mechanisms to be applied to the exercise by the Municipal Manager and the Chief Financial Officer of their powers, functions and duties in terms of the MFMA		Mayor/Comm's	
52(a)	Deciding the reasonable steps to be taken to ensure that the Municipality performs its constitutional and statutory functions within the limits of the Municipality's approved budget		Mayor/Comm's	Mayor
52(b)	Submitting to the Council, within 30 days of the end of each quarter, a report on the implementation of the budget and the financial state of affairs of the Municipality		Mayor/Comm's	Mayor
52(c)	Deciding the nature and extent of, and manner in which political guidance is to be given over the budget process and the priorities that must guide the preparation of a budget		Mayor/Comm's	Mayor
52(d)	Deciding the steps to be taken to co-ordinate the annual revision of the integrated development plan and the preparation of the annual budget		Mayor/Comm's	Mayor
53(1)(a)	Determining how the integrated development plan is to be taken into account or revised for the purposes of the budget		Mayor/Comm's	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
53(1)(b)	Determining the reasonable steps to be taken to ensure that the Municipality approves its annual budget before the start of the budget year		Mayor/Comm's	Mayor
	Determining the reasonable steps to be taken to ensure he/she approves the Municipality's service delivery and budget implementation plan		Mayor/Comm's	Mayor
53(1)(c)(i)	Determining the reasonable steps to be taken to ensure that the annual performance agreements for the Municipal Manager and all senior managers comply with the MFMA, are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan and are concluded in accordance with section 57(2) of the Municipal Systems Act		Mayor/Comm's	Mayor
53(1)(c)(ii)	Reporting to the Council and the MEC responsible for finance any delay in the tabling of an annual budget, the approval of the service delivery and budget implementation plan or the signing of the annual performance agreements	The Executive Mayor must approve the annual service delivery and budget implementation plan within 28 days after the approval of the budget	Mayor/Comm's	Mayor
53(1)(c)(iii)	Ensuring that the revenue and expenditure projections for each month and the service delivery targets and performance indicators for each quarter, contained in the service delivery and budget implementation plan, are made public no later than 14 days after the approval of the service delivery and budget implementation plan	In terms of section 57(2)(a) of the Municipal Systems Act the annual performance agreements must be concluded on or before 30 July of each year	Mayor/Comm's	Mayor
53(2)	Ensuring that the performance agreements of the Municipal Manager, senior managers and any other categories of officials as may be prescribed, are made public no later than 14 days after the approval of the Municipality's service delivery and budget implementation plan		Mayor/Comm's	Mayor
53(3)(a)	Submission of the annual performance agreements of the Municipal Manager, senior managers and any other categories of officials as may be prescribed, to the Council and the MEC responsible for local government		Mayor/Comm's	Mayor
53(3)(b)	Making arrangements for the receipt of a monthly statement on the state of the Municipality's budget and a mid-year corporate performance assessment report	1. The statement a statement regarding the state of the municipality's budget must be submitted not later than 10 working days	Mayor/Comm's	Mayor
54(1)(a)			Mayor/Comm's	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		after the end of each month		
	Determining the procedures, including reports required to check whether the Municipality's approved budget is implemented in accordance with the service delivery and budget implementation plan	2. The mid-year performance assessment report must be submitted not later than 25 January of each year	Mayor (/Comm's-DELETE)	Mayor
	Determining whether it is necessary to make any revisions to the service delivery and budget implementation plan	3. The mid-year corporate performance assessment report must be submitted to the Council not later than 31 January each year	Mayor/Comm's	Mayor
54(1)(b)	Determining the process of formulating revisions to the service delivery and budget implementation plan		Mayor/Comm's	Mayor
54(1)(c)	Determining the instructions to be given to the Municipal Manager to ensure that the budget is implemented in accordance with the service delivery and budget implementation plan and that spending of funds and revenue collection proceed in accordance with the budget	Revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the Council following approval of an adjustments budget	Mayor/Comm's	Mayor
	Considering whether the Municipality faces any financial problems including any emerging or impending financial problems		Mayor/Comm's	Mayor
54(1)(d)	Making public any revisions of the service delivery and budget implementation plan	If the Municipality faces any serious financial problems, the Executive Mayor must promptly respond to and initiate any remedial or corrective steps proposed by the Municipal Manager to deal with such problems, which may include steps to reduce spending when revenue is anticipated to be less than projected in the Municipality's approved budget, the tabling of an adjustments budget	Mayor/Comm's	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		or steps in terms of Chapter 13 of the MFMA and alert the Council and the MEC for local government to those problems		
54(1)(e)	Immediately report to the MEC for local government if the Municipality has not approved an annual budget by 1 July of any year or if the Municipality encounters a serious financial problem		Mayor/Comm's	Mayor
54(3)	Providing guidance to the Municipality to exercise its rights and powers over any municipal entity in which the Municipality has sole or shared control		Mayor/Comm's	Mayor
55	Deciding to delegate the powers and duties assigned to the Executive Mayor in terms of the MFMA		Mayor/Comm's	Mayor
56			Mayor/Comm's	Mayor
59(1)(a)		1. Such power or duty may only be delegated to another member of the Mayoral Committee	Mayor/Comm's	Mayor
	Determining the conditions and limitations of any delegation by the Executive Mayor	2. A delegation by the Executive Mayor must be in writing	Mayor/Comm's	Mayor
	Deciding to confirm, vary or revoke any decision taken in consequence of a delegation by the Executive Mayor	3. A delegation by the Executive Mayor does not divest him/her of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.	Mayor/Comm's	Mayor
59(2)	Tabling the proposed budget of a municipal entity of which the Municipality is the parent municipality in the Council		Mayor/Comm's	Mayor
59(3)	Considering an application by the board of directors of a municipal entity of which the Municipality is the parent municipality to revise the budget of the municipal entity	No variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision	Mayor/Comm's	Mayor
87(3)	Tabling the budget or adjusted budget and any adjustments budget of a municipal entity of which the	Together with the Municipality's budget	Mayor/Comm's	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	Municipality is the parent municipality at the next Council meeting	for the relevant financial year		
87(6)	Receiving a report of the board of directors of a municipal entity of which the Municipality is the parent municipality any irregular expenditure or any fruitless		Mayor/Comm's	Mayor
87(9)	and wasteful expenditure incurred by, or on behalf of, that municipal entity		Mayor/Comm's	Mayor
102(1)	Receiving a report of the accounting officer of a municipal entity of which the Municipality is the parent municipality regarding any interference by a councillor outside that councillor's assigned duties, in the financial affairs of the municipal entity; or the responsibilities of the board of directors of the municipal entity		Mayor/Comm's	Mayor
	Tabling in the Council the Municipality's annual report and the annual report of any municipal entity under the Municipality's		Mayor/Comm's	Mayor
103	sole or shared control		Mayor/Comm's	Mayor
127(2)	Submitting to the Council a written explanation setting out the reasons for any delay in tabling the Municipality's annual report and the annual report of any municipal entity under the Municipality's		Mayor/Comm's	Mayor
	sole or shared control		Mayor/Comm's	Mayor
127(3)(a)	Determining the reasonable time period to be allowed during a council meeting at which an annual report is to be discussed or at which decisions concerning an annual		Mayor/Comm's	Mayor
	report are to be taken for the discussion of any written submissions received from the local community or organs of state on the annual report and for members of the local community or any organs of state to address the Council		Mayor/Comm's	Mayor
130(1)	Ensuring that the Municipality addresses all the issues raised in an audit report		Mayor/Comm's	Mayor
	Tabling in the Council a written explanation setting out the reasons for the failure of the Municipal Manager or of the accounting officer of a municipal entity under the Municipality's sole or shared control to submit annual financial statements to the Auditor-General or the Executive Mayor's failure to table the annual report of the Municipality or a municipal entity in the Council		Mayor/Comm's	Mayor
131(1)	Participating in consultations with the MEC for local government regarding a serious financial problem in the Municipality		Mayor/Comm's	Mayor
133(1)(a)	Participating in consultations with the MEC for local government regarding the Municipality's co-operation in resolving any financial problem, and if applicable, implementing the financial recovery plan		Mayor/Comm's	Mayor
136(1)(a)	Participating in consultations with the MEC for local government regarding the Municipality's co-operation in		Mayor/Comm's	Mayor

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan			
137(1)(d)	Receiving a request made by the provincial executive to the Municipal Financial Recovery Service to determine the reasons for the crisis in the Municipality’s financial affairs, to assess the Municipality’s financial state and to prepare an appropriate recovery plan for the Municipality		Mayor/Comm's	Mayor
139(1)(b)	Receiving reports of the audit committee		Mayor/Comm's	Mayor
139(2)	Powers delegated to Municipal Manager		Mayor/Comm's	Mayor
166(2)	Power/duty conferred Submission of the Municipality’s primary bank account details, and any impending change thereof		Mayor/Comm's	Mayor
Section of MFMA	Submission of the prescribed details regarding any new bank accounts opened for the Municipality	Applicable Conditions		
8(5)	Submission of the details of the Municipality’s bank accounts annually before the start of a financial year		MM/AO	Accounting officer
9(a)	Administration of the Municipality’s bank accounts		MM/AO	Accounting officer
9(b)	Enforcing compliance with sections 7, 8 and 11 of the MFMA		MM/AO	Accounting officer
10(1)(a)	Authorising staff to withdraw or authorise the withdrawal of money from the Municipality’s bank account		MM/AO	CFO
10(2)			MM/AO	CFO
11(1)	Preparation of a quarterly consolidated report of all withdrawals made in terms of section 11(1)(b) to (j) of the MFMA from the Municipality’s bank accounts	1. Subject to the prescribed framework	MM/AO	
	Tabling of a quarterly consolidated report of all withdrawals made in terms of section 11 (1)(b) to (j) of the MFMA from the Municipality’s bank accounts in the Council	2. If the Municipality has a primary bank account which is separate from its other bank accounts, only the Chief Financial Officer may be authorised to withdraw money or authorise the withdrawal of money from the Municipality’s primary bank account in terms of section 11(2) of the MFMA	MM/AO	CFO
11(4)(a)	Submission of quarterly consolidated report of all withdrawals made in terms of section 11 (1)(b) to (j) of the MFMA to the provincial treasury and the Auditor-General	A quarterly consolidated report of all withdrawals made	MM/AO	CFO

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	Issuing written authority to withdraw money without appropriation in terms of an approved budget from a bank account opened for the purpose of a relief, charitable, trust or other fund	from the Municipality’s bank accounts must be tabled in the Council, and submitted to the provincial treasury and the Auditor-General within 30 days after the end of each quarter.	MM/AO	Accounting officer
11(4)(b)	Making the annual budget as tabled public, inviting the community to submit representations in connection therewith and submitting same to the national and provincial treasuries and affected municipalities		MM/AO	Accounting officer
12(4)	Submission of the approved annual budget to the National Treasury and the provincial treasury	Such authorisation must be in accordance with decisions of the Council in this regard and only for the purposes for which, and subject to the conditions on which, the fund was established or the money in the fund was donated	MM/AO	Accounting officer
22	Issuing a certificate specifying that actual revenue for the financial year concerned is expected to exceed budgeted revenue and that sufficient funds are available for exceeding the amount appropriated for a specific capital programme without incurring further borrowing beyond the annual budget limit	In accordance with Chapter 4 of the Local Government: Municipal Systems Act 2000	MM/AO	Accounting officer
24(3)	Deciding whether a decision taken by the Council or the Executive Mayor is likely to result, if it is implemented, in unauthorised, irregular or fruitless and wasteful expenditure		MM/AO	CFO
31(c)	Instructing an authorised official not to implement a decision taken by the Council or the Executive Mayor that is likely to result, if it is implemented, in unauthorised, irregular or fruitless and wasteful expenditure	Funds for the programme in question was appropriated for more than one financial year	MM/AO	Accounting officer
32(3)	Informing the Council or the Executive Mayor that a decision taken by the Council or the Executive Mayor is likely to result, if it is implemented, in unauthorised, irregular or fruitless and wasteful expenditure		MM/AO	Accounting officer
	Deciding whether an expenditure incurred by the Municipality was unauthorised, irregular or fruitless and wasteful expenditure		MM/AO	Accounting officer
	Determining the amount of any unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality		MM/AO	Accounting officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
32(4)	Identifying the person responsible, or suspected of being responsible, for unauthorised, irregular or fruitless and wasteful expenditure		MM/AO	Accounting officer
	Determining the steps to be taken to recover or rectify any unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality		MM/AO	Accounting officer
	Determining the steps to be taken to prevent the recurrence of unauthorised, irregular or fruitless and wasteful expenditure by the Municipality		MM/AO	Accounting officer
	Informing the Executive Mayor, the MEC for local government and the Auditor-General, in writing, of any unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality, whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure and the steps that have been taken to recover or rectify such expenditure and to prevent a recurrence of such expenditure.		MM/AO	Accounting officer
	Determining whether an alleged irregular expenditure constitutes a criminal offence		MM/AO	Accounting officer
	Determining whether alleged theft and fraud occurred in the Municipality		MM/AO	Accounting officer
32(6)	Reporting alleged irregular expenditure that constitutes a criminal offence and alleged theft and fraud which occurred in the Municipality to the SAPS		MM/AO	Accounting officer
	Determining the projected amount of any allocation proposed to be transferred to another municipality during each of the next three financial years and notifying the receiving municipality thereof		MM/AO	Accounting officer
	Signing a debt agreement or other document which creates or acknowledges any short term debt		MM/AO	Accounting officer
37(2)	Signing a debt agreement or other document which creates or acknowledges any long-term debt	Such notification must be given on or before 2 April each year	MM/AO	CFO
45(2)(b)	Determining the (proposed) remedial or corrective steps to deal with any serious financial problems facing the Municipality		MM/AO	CFO
46(2)(b)	Determining the nature, extent and manner of providing guidance and advice on compliance with the MFMA to the political structures, political office-bearers and officials of the Municipality and any municipal entity under the sole or shared control of the Municipality		MM/AO	CFO
	Deciding to disclose to the Council and the Executive Mayor all material facts which are available or reasonably discoverable, and which in any way might influence the decisions or actions of the Council or the Executive Mayor		MM/AO	CFO
60(b)(i)	Deciding the timing and manner of disclosing to the Council and the Executive Mayor all material facts which		MM/AO	CFO

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	are available or reasonably discoverable, and which in any way might influence the decisions or actions of the Council or the Executive Mayor			
61(1)(b)	Deciding the reasonable steps to be taken to ensure that that the resources of the Municipality are used effectively, efficiently and economically		MM/AO	Accounting officer
	Deciding the reasonable steps to be taken to ensure that that full and proper records of the Municipality’s financial affairs are kept in accordance with any prescribed norms and standards		MM/AO	Accounting officer
62(1)(a)	Deciding the reasonable steps to be taken to ensure that that the Municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control		MM/AO	CFO
62(1)(b)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains effective, efficient and transparent systems of internal audit operating in accordance with any prescribed norms and standards		MM/AO	CFO
62(1)(c)(i)	Deciding the reasonable steps to be taken to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented		MM/AO	CFO
62(1)(c)(ii)	Deciding the reasonable steps to be taken to ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the Municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA		MM/AO	Accounting officer
62(1)(d)	Deciding the reasonable steps to be taken to ensure that the Municipality has and implements a tariff policy referred to in section 74 of the Municipal Systems Act		MM/AO	CFO
62(1)(e)	Deciding the reasonable steps to be taken to ensure that the Municipality has and implements a rates policy as required in terms of section 3 of the Local Government: Municipal Property Rates Act, 2004 (Act No 6 of 2004)		MM/AO	Accounting officer
62(1)(f)(i)	Deciding the reasonable steps to be taken to ensure that the Municipality has and implements a credit control and debt collection policy referred to in section 96(b) of the Municipal Systems Act		MM/AO	Accounting officer
62(1)(f)(ii)	Deciding the reasonable steps to be taken to ensure that that the Municipality has and implements a supply chain management policy in accordance with Chapter 11 of the MFMA	Only if there is a district management area in the municipal area of the Municipality	MM/AO	CFO
62(1)(f)(iii)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the Municipality		MM/AO	CFO
62(1)(f)(iv)	Deciding the reasonable steps to be taken to ensure that the Municipality's assets and liabilities are valued in		MM/AO	CFO

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	accordance with standards of generally recognised accounting practice			
63(2)(a)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed		MM/AO	CFO
63(2)(b)	Deciding the reasonable steps to be taken to ensure that the Municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the Municipality's credit control and debt collection policy		MM/AO	CFO
63(2)(c)	Deciding the reasonable steps to be taken to ensure that revenue due to the Municipality is calculated on a monthly basis		MM/AO	CFO
64(2)(a)	Deciding the reasonable steps to be taken to ensure that accounts for regional services council levies and charges for municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical		MM/AO	CFO
64(2)(b)	Deciding the reasonable steps to be taken to ensure that all money received is promptly deposited in accordance with the MFMA into the Municipality's primary and other bank accounts		MM/AO	CFO
64(2)(c)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains a management, accounting and information system which recognises revenue when it is earned and accounts for debtors and for receipts of revenue		MM/AO	CFO
64(2)(d)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains a system of internal control in respect of debtors and revenue		MM/AO	CFO
64(2)(e)	Deciding the reasonable steps to be taken to ensure that the Municipality charges interest on arrears, except where the Council has granted exemptions in accordance with its budget-related policies and within a prescribed framework		MM/AO	CFO
64(2)(f)	Deciding the reasonable steps to be taken to ensure that all revenue received by the Municipality, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis	Subject to any prescripts in this regard	MM/AO	CFO
64(2)(g)	Informing the National Treasury of any payments due by an organ of state to the Municipality in respect of municipal tax or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.	Subject to any prescripts in this regard	MM/AO	CFO
64(2)(h)	Deciding the reasonable steps to be taken to ensure that any funds collected by the Municipality on behalf of another organ of state is transferred to that organ of state at least on a weekly basis		MM/AO	CFO

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
64(3)	Deciding the reasonable steps to be taken to ensure that funds collected by the Municipality on behalf of another organ of state are not used for purposes of the Municipality		MM/AO	CFO
64(4)(a)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds		MM/AO	CFO
64(4)(b)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains a management, accounting and information system which recognises expenditure when it is incurred and that accounts for creditors of, and payments made by, the Municipality		MM/AO	CFO
65(2)(a)	Deciding the reasonable steps to be taken to ensure that the Municipality has and maintains a system of internal control in respect of creditors and payments		MM/AO	CFO
65(2)(b)	Deciding the reasonable steps to be taken to ensure that payments by the Municipality are made directly to the person to whom it is due unless agreed otherwise for reasons as may be prescribed and either electronically or by way of non-transferable cheques		MM/AO	CFO
65(2)(c)	Deciding the reasonable steps to be taken to ensure that all money owing by the Municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure		MM/AO	CFO
65(2)(d)	Deciding the reasonable steps to be taken to ensure that the Municipality complies with its tax, levy, duty, pension, medical aid, audit fees and other statutory commitments	Cash payments and payments by way of cash cheques may be made for exceptional reasons only and only up to a prescribed limit	MM/AO	Accounting officer
65(2)(e)	Deciding the reasonable steps to be taken to ensure that any dispute concerning payments due by the Municipality to another organ of state is disposed of in terms of legislation regulating disputes between organs of state		MM/AO	CFO
65(2)(f)	Deciding the reasonable steps to be taken to ensure that the Municipality's available working capital is managed effectively and economically in terms of the prescribed cash management and investment framework		MM/AO	CFO
65(2)(g)	Deciding the reasonable steps to be taken to ensure that the Municipality's supply chain management policy is implemented in a way that is fair, equitable, transparent, competitive and cost-effective		MM/AO	CFO
65(2)(h)	Deciding the reasonable steps to be taken to ensure that all financial accounts of the Municipality are closed at the end of each month and reconciled with its records		MM/AO	CFO
65(2)(i)	Reporting to the Council on all		MM/AO	CFO

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
65(2)(j)	expenditure incurred by the Municipality on staff salaries, wages, allowances and benefits, and in a manner that discloses such expenditure per type of expenditure		MM/AO	CFO
66	Determining whether an organisation or body outside any sphere of government to whom funds of the Municipality stand to be transferred otherwise than in compliance with a commercial or other business transaction, -		MM/AO	Accounting officer
			MM/AO	Accounting officer
67(1)	(a) has the capacity to comply with any agreement with the Municipality,		MM/AO	
	(b) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in the agreement,		MM/AO	Accounting officer
	(c) to report at least monthly to the Municipal Manager on actual expenditure against such transfer and to submit its audited financial statements for its financial year to the Municipal Manager promptly;		MM/AO	Accounting officer
	(d) implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement; and		MM/AO	CFO
	(e) has in respect of previous similar transfers complied with all the requirements of section 67(1) of the MFMA		MM/AO	CFO
	Entering into an agreement with an organisation or body outside any sphere of government to whom funds of the Municipality stand to be transferred otherwise than in compliance with a commercial or other business transaction		MM/AO	
	Obtaining the approval of the provincial treasury to transfer funds of the Municipality to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction if there has been a failure by an organisation or body to comply		MM/AO	CFO
	with the requirements of section 67(1) of the MFMA in respect of a previous transfer		MM/AO	Accounting officer

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
67(2)	Determining the appropriate mechanisms to ensure compliance by an organisation or body outside any sphere of government to whom funds of the Municipality was transferred otherwise than in compliance with a commercial or other business transaction with –		MM/AO	Accounting officer
67(3)	(a) any agreement with the Municipality,		MM/AO	CFO
	(b) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in the agreement,		MM/AO	CFO
	(c) to report at least monthly to the Municipal Manager on actual expenditure against such transfer and to submit its audited financial statements for its financial year to the Municipal Manager promptly;		MM/AO	CFO
	(d) implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement; and		MM/AO	CFO
	(e) has in respect of previous similar transfers complied with all the requirements of section 67(1) of the MFMA		MM/AO	CFO
	Determining whether an organisation or body outside any sphere of government to whom funds of the Municipality stand to be transferred otherwise than in compliance with a commercial or other business transaction is an organisation or body serving the poor or used by government as an agency to serve the poor		MM/AO	
67(4)	Assisting the Executive Mayor in performing the budgetary steps assigned to the Executive Mayor		MM/AO	Accounting officer
	Determining the administrative support, resources and information required by the Executive Mayor to perform the budgetary steps assigned to the Executive Mayor		MM/AO	Accounting officer
68(a)	Making the administrative support, resources and information required by the Executive Mayor to perform the budgetary steps assigned to the Executive Mayor available to him/her		MM/AO	Accounting officer
68(b)	Determining, in relation to implementing the Municipality’s approved budget, the reasonable steps required to ensure that the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the service delivery and budget implementation plan		MM/AO	Accounting officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	Determining, in relation to implementing the Municipality’s approved budget, the reasonable steps required to ensure that revenue and expenditure are properly monitored		MM/AO	Accounting officer
69(1)(a)	Determining whether it is necessary to prepare an adjustments budget		MM/AO	Accounting officer
69(1)(b)	Preparing an adjustments budget and submitting it to the Executive Mayor for consideration and tabling in the Council		MM/AO	Accounting officer
69(2)	Preparing and submitting, within 14 days after the approval of the Municipality’s annual budget, a draft service delivery and budget implementation plan for the budget year		MM/AO	CFO
	Preparing and submitting, within 14 days after the approval of the Municipality’s annual budget, drafts of the annual performance agreements as required in terms of section 57(l)(b) of the Municipal Systems Act for the Municipal Manager and all senior managers		MM/AO	Accounting officer
69(3)(a)	Reporting in writing to the Council any impending shortfalls in budgeted revenue and overspending of the Municipality's budget and any steps taken to prevent or rectify such shortfalls or overspending		MM/AO	Accounting officer
69(3)(b)	Informing the National Treasury that the Municipality’s bank account or, if the Municipality has more than one bank account, the consolidated balance in those bank accounts, shows a net overdrawn position period for a period exceeding a prescribed	An annual performance agreement must be concluded on or before 31 July of each year in terms of section 57(2)9a) of the Municipal Systems Act	MM/AO	Accounting officer
70(2)	Submitting to the Executive Mayor and the provincial treasury, within 10 working days after the end of each month, a statement in the prescribed		MM/AO	Accounting officer
	format on the state of the municipality's budget		MM/AO	Accounting officer
71(1)	Submitting to the national or provincial organ of state or municipality which transferred an allocation during any particular month to the Municipality within 10 working days after the end of the month concerned a statement indicating the amount of any allocations received and actual expenditure on those allocations, excluding expenditure on its share of the local government equitable share and allocations exempted by the annual Division of Revenue Act from compliance with this requirement	1. The statement must contain the information referred to in section 71(1), (2) and (3) of the MFMA	MM/AO	CFO
	Performing an assessment of the Municipality’s performance during the first half of each financial year	2. The statement submitted to the provincial	MM/AO	CFO

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		treasury must be in the form of a signed and an electronic document		
71(5)	Submitting the mid-year performance assessment report to the Executive Mayor, the National Treasury and the Provincial Treasury		MM/AO	CFO
72(1)(a)	Determining whether it is necessary to recommend that an adjustments budget be considered and that revised projections for revenue and expenditure is necessary		MM/AO	Accounting officer
72(1)(b)	Informing the provincial treasury of any failure by the Council to adopt or implement a budget-related policy or a supply chain management policy	On or before 25 January each year	MM/AO	Accounting officer
72(3)	Informing the provincial treasury of any non-compliance by a political structure or political office-bearer of the Municipality with a budget-related policy or the supply chain management policy		MM/AO	Accounting officer
73(a)	Submitting to the National Treasury, the provincial treasury, the department for local government and the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.		MM/AO	Accounting officer
73(b)	Reporting his/her inability to comply		MM/AO	Accounting officer
74(1)	with any of the responsibilities in terms of the MFMA, together with reasons, to the Executive Mayor and the provincial treasury		MM/AO	CFO
74(2)	Ensuring that the required documents are uploaded to, and available on, the Municipality’s website within five days after its tabling in the Council or on the date on which it must be made public, whichever occurs first		MM/AO	Accounting officer
	Deciding to designate any officials other than those listed in section 77(1)(a) to (c) of the MFMA as “top management”		MM/AO	Accounting officer
75(1)	Developing an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the Municipality's financial administration for the proper application of the MFMA		MM/AO	Accounting officer
77(1)	Delegating to a member of the Municipality's top management or any other official of the Municipality any of the powers or duties assigned to an accounting officer in terms of the MFMA or any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of the MFMA		MM/AO	CFO
79(1)(a)			MM/AO	Accounting officer
79(1)(b)		1. No delegation may be done by the Municipal Manager to any political structure	MM/AO	Accounting officer

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		or political office-bearer of the Municipality		
		2. A delegation must be in writing;	MM/AO	Accounting officer
		3. A delegation is subject to such limitations and conditions as the Municipal Manager may impose in a specific case;	MM/AO	Accounting officer
		4. A delegation may either be to a specific individual or to the holder of a specific post in the Municipality;	MM/AO	Accounting officer
	Regularly reviewing delegations issued to a member of the Municipality's top management or any other official of the Municipality and, if necessary, amending or withdrawing any of those delegations	5. A delegation may, in the case of a delegation to a member of the Municipality's top management authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and	MM/AO	Accounting officer
	Reviewing and confirming, varying or revoking any decision taken in consequence of a delegation or sub-delegation in terms of the MFMA	6. A delegation does not divest the Municipal Manager of the responsibility concerning the exercise of the delegated power or the performance of	MM/AO	Accounting officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
		the delegated duty		
79(1)(c)	Allocating officials of the Municipality to the Chief Financial Officer		MM/AO	Accounting officer
79(2)	Making an assessment of the impact of the shifting of a function or service to a municipal entity on the Municipality's staff, assets and liabilities when considering the establishment of, or participation in, a municipal entity	No variation or revocation of a decision taken under delegated powers may detract from any rights that may have accrued as a result of the decision	MM/AO	Accounting officer
80(1)(b)	Publishing an information statement regarding the Municipality's intention to establish and/or participate in a municipal entity		MM/AO	CFO
84(1)(b)	Inviting the local community, organised labour and other interested persons to submit comments or representations in respect of the Municipality's intention to establish and/or participate in a municipal entity		MM/AO	CFO
84(2)(a)(i) (aa)	Soliciting the views and recommendations of the National Treasury and the provincial treasury, the national and provincial departments responsible for local government and the MEC responsible for local government in respect of the Municipality's intention to establish and/or participate in a municipal entity		MM/AO	CFO
84(2)(a)(i) (bb)	Submitting the information received from a municipal entity of which the Municipality is the parent municipality regarding the entity's bank account(s) to the Auditor-General, the National Treasury and the provincial treasury		MM/AO	CFO
84(2)(a)(ii)	Receiving a monthly statement in the prescribed format on the state of the budget of a municipal entity of which the Municipality is the parent municipality		MM/AO	CFO
86(2)	Tabling a report of the accounting officer of a municipal entity of which the Municipality is the parent municipality on any financial problems of the entity in the first Council meeting next ensuing		MM/AO	CFO
87(11)	Receiving a report of the board of directors of a municipal entity of which the Municipality is the parent municipality any irregular expenditure or any fruitless		MM/AO	CFO
101(2)	and wasteful expenditure incurred by, or on behalf of, that municipal entity		MM/AO	Accounting officer
102(1)	Submitting a report containing the reasons for deviating from such recommendation to the Auditor-General, the provincial treasury and the National Treasury if a tender other than the one recommended in the normal course of implementing the supply chain management policy of the Municipality is approved		MM/AO	Accounting officer

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SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	Implementing the Municipality’s supply chain management policy		MM/AO	Accounting officer
114(1)	Determining the reasonable steps that must be taken to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices		MM/AO	Accounting officer
115(1)(a)	Determining the reasonable steps that must be taken to ensure that a contract or agreement procured through the supply chain management policy of the Municipality is properly enforced		MM/AO	CFO
115(1)(b)	Monitoring the performance of a contractor under a contract or an agreement with the Municipality on a monthly basis		MM/AO	CFO
116(2)(a)	Determining the capacity that needs to be established within the Municipality’s administration to assist the Municipal Manager to enforce the provisions of a contract or agreement between the Municipality and a contractor and to monitor the performance of a contractor under a contract or an agreement with the Municipality on a monthly basis		MM/AO	CFO
116(2)(b)	Establishing the capacity in the Municipality’s administration to assist the Municipal Manager to enforce the provisions of a contract or agreement between the Municipality and a contractor and to monitor the performance of a contractor under a contract or an agreement with the Municipality on a monthly basis		MM/AO	CFO
116(2)(c)	Regularly report to the Council regarding the management of contracts and/or agreements and the performance of contractors.		MM/AO	Accounting officer
	Determining the frequency/regularity of reports to be submitted to the Council regarding the management of contracts and/or agreements and the performance of contractors.		MM/AO	Accounting officer
116(2)(d)	Tabling the reasons for the proposed amendment of a contract or agreement procured through the supply chain management policy of the Municipality in the Council		MM/AO	Accounting officer
116(3)(a)	Giving the local community reasonable notice of the intention to amend a contract or agreement procured through the supply chain management policy of the Municipality and inviting the local community to submit representations to the Municipality		MM/AO	Accounting officer
	Receiving an application from a municipal entity of which the Municipality is a parent municipality to amend a contract or agreement procured through the supply chain management policy of the municipal entity concerned		MM/AO	Accounting officer
116(3)(b)	Tabling the reasons for the proposed amendment of a contract or agreement procured through the supply chain		MM/AO	Accounting officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
116(3)	management policy of a municipal entity of which the Municipality is a parent municipality in the Council		MM/AO	Accounting officer
116(3)(a)	Giving the local community reasonable notice of the intention to amend a contract or agreement procured through the supply chain management policy of a municipal entity of which the Municipality is a parent municipality and inviting the local community to submit representations to the Municipality		MM/AO	Accounting officer
	Submitting the report on the feasibility study together with all other relevant documents to the Council for a decision, in principle, on whether the municipality should continue with the proposed public-private partnership		MM/AO	Accounting officer
116(3)(b)	Making the particulars of the proposed public-private partnership, including the report on the feasibility study and inviting the local community and other interested persons to submit to the Municipality comments or representations in respect of the proposed public-private partnership at least 60 days prior to the meeting of the Council at which the matter is to be considered		MM/AO	CFO
120(6)(a)	Soliciting the views and recommendations of the National Treasury, the national department responsible for local government, the responsible national department if the proposed public-private partnership involves the provision of water, sanitation, electricity or any other service as may be prescribed and any other national or provincial organ of state as may be prescribed in respect of the proposed public-private partnership at least 60 days prior to the meeting of the Council at which the matter is to be considered		MM/AO	Accounting officer
126(6)(b)	Performing an assessment of any arrears on municipal taxes and service charges for inclusion in the Municipality’s annual report		MM/AO	CFO
126(6)(c)	Performing an assessment of the Municipality’s performance against the measurable performance objectives referred to in section 17(3)(b) of the MFMA for revenue collection from each revenue source and for each vote in the Municipality’s approved budget for the relevant financial year for inclusion in the Municipality’s annual report		MM/AO	Accounting officer
121(2)(e)	Preparing annual financial statements which fairly presents the state of		MM/AO	CFO
121(2)(f)	affairs of the Municipality, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results, and its financial position as at the end of the financial year		MM/AO	CFO
122(1)/	Submitting the annual financial statements of the Municipality to the Auditor-General on or before 31 August of each year		MM/AO	CFO
126(1)(a)			MM/AO	CFO

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
126(1)(a)	Preparing consolidated annual financial statements of the Municipality and of a municipal entity over which the Municipality has sole control or over which it has effective control within the meaning of the Municipal Systems Act of a municipal entity which is a private company		MM/AO	Accounting officer
122(1)/	Submitting the consolidated annual financial statements of the Municipality and of a municipal entity over which the Municipality has sole control or effective control (if it is a private company) to the Auditor-General on or before 31September of each year		MM/AO	Accounting officer
126(1)(b)	Receiving the audit report on the Municipality’s annual financial statements and any consolidated annual financial statements of the Municipality and of a municipal entity over which the Municipality has sole control or effective control (if it is a private company)		MM/AO	Accounting officer
126(1)(b)	Receiving the annual report of a municipal entity of which the Municipality is a parent municipality		MM/AO	Accounting officer
126(3)(b)	Publishing the annual report and inviting the local community to submit representations in connection with the annual report		MM/AO	Accounting officer
127(1)	Submitting the annual report to the Auditor-General, the provincial treasury and the provincial department responsible for local government		MM/AO	Accounting officer
127(5)(a)	Monitoring whether the accounting officer of any municipal entity under the sole or shared control of the Municipality has complied with sections 121(1) and 126(2) of the MFMA, establish the reasons for any noncompliance and report any non-compliance, together with the reasons for such non-compliance, to the Council, the provincial treasury and the Auditor-General		MM/AO	CFO
127(5)(b)	Attending the meetings of the Council and its committees where the annual report is discussed and responding to questions concerning the report		MM/AO	Accounting officer
128	Submitting copies of the minutes of meetings of the Council and its committees where the annual report was discussed to the Auditor-General, the provincial treasury and the provincial department responsible for local government		MM/AO	CFO
129(2)(a)	Publishing the oversight report regarding the annual report		MM/AO	Accounting officer
129(2)(b)	Submitting the Municipality’s responses to the issues raised in an audit report to the MEC for local government		MM/AO	Accounting officer
129(3)	Submission of the Municipality’s annual report and oversight report and the annual report and oversight report of a municipal entity under the Municipality's sole or shared control to the provincial legislature		MM/AO	CFO
131(2)(a)	Reporting monthly to the MEC responsible for finance on the implementation of a financial recovery plan for the		MM/AO	Accounting officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
	Municipality resulting from a mandatory provincial intervention			
146(1)(c)	Bringing an application to the High Court for an order to stay all legal proceedings, including the execution of legal process, by persons claiming money from the Municipality if the Municipality is unable to meet its financial commitments		MM/AO	Accounting officer
	Giving notice of an application by the Municipality to the High Court for an order to stay all legal proceedings, including the execution of legal		MM/AO	Accounting officer
	process, to persons claiming money from the Municipality if the Municipality is unable to meet its financial		MM/AO	Accounting officer
152(2)	Bringing an application in the High Court for an order to stay, for a period not exceeding 90 days at a time, all legal proceedings, including the execution of legal process, by persons claiming money from the Municipality		MM/AO	Accounting officer
	Giving notice of an application in the High Court for an order to stay, for a period not exceeding 90 days at a time, all legal proceedings, including the execution of legal process, to persons claiming money from the Municipality		MM/AO	Accounting officer
	Bringing an application in the High Court for an order to suspend the Municipality's financial obligations to creditors, or any portion of those obligations, until the Municipality can meet those obligations		MM/AO	Accounting officer
153(3)	Giving notice of an application in the High Court for an order to suspend the Municipality's financial obligations to creditors, or any portion of those obligations, until the Municipality can meet those obligations		MM/AO	Accounting officer
	Bringing an application in the High Court for an order to terminate the Municipality's financial obligations to creditors, and to settle claims in accordance with a distribution scheme referred to in section 155 of the MFMA		MM/AO	Accounting officer
153(3)	Giving notice of an application in the High Court for an order to terminate the Municipality's financial obligations to creditors, and to settle claims in accordance with a distribution scheme referred to in section 155 of the MFMA		MM/AO	Accounting officer
	Receiving reports of the audit committee		MM/AO	Accounting officer
153(3)	Recovering any amount paid or given in cash or in kind to a person as a political office-bearer or as a member of a political structure of the Municipality otherwise than in accordance with the framework of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998), including any bonus, bursary, loan, advance or other benefit		MM/AO	Accounting officer
166(2)	<u>Powers delegated to Other Parties</u>		MM/AO	Accounting officer

Annexure “E”

SECTION OF MFMA	POWER/DUTY CONFERRED	APPLICABLE CONDITIONS	DELEGATION	
			FROM	TO
167(2)(a)	Power/duty conferred		MM/AO	Accounting officer
	Advising the Municipal Manager on the exercise of powers and duties assigned to her/him in terms of the MFMA			
Section of the MFMA	Assisting the Municipal Manager in administering the Municipality's bank accounts and in the preparation and implementation of the Municipality's budget	Applicable Conditions		
81(1)(b)	Advising senior managers and other senior officials in the exercise of powers and duties assigned or delegated to them			CFO
81(1)(c)	Deciding to sub-delegate any powers and duties to employees in the Budget and Treasury Office			CFO
81(1)(d)	Reviewing and confirming, varying or revoking any decision taken in consequence of a sub-delegation by the Chief Financial Officer			CFO
82		A sub-delegation must be in writing, is subject to such limitations or conditions as the Chief Financial Officer may impose and does not divest the Chief Financial Officer of the responsibility concerning the delegated duty		
82(4)				CFO
				CFO

DELEGATION OF POWERS, DUTIES, FUNCTIONS AND RESPONSIBILITIES IN TERMS OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 56 OF 2003 AND ALL ITS ASSOCIATED REGULATIONS; LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 32 OF 2000; DIVISION OF REVENUE ACT BY THE ACCOUNTING OFFICER OF THE WRDM TO THE CHIEF FINANCIAL OFFICER OF THE WRDM

By virtue of the authority vested in me in terms of section 79 of the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003) read in conjunction with section 59 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), I,, in my capacity as Municipal Manager of the WRDM, hereby delegate the powers, duties, functions and responsibilities, as set out in the Annexure attached hereto, to the Chief Financial Officer. I authorise the Chief Financial Officer to sub-delegate those powers, duties, functions and responsibilities to the appropriate managers within the Finance Department in the municipality.

GENERAL

Further sub-delegation by the Chief Financial Officer to any other official outside the Finance Department of the municipality can only be undertaken with my concurrence.

The powers, duties, functions and responsibilities must be exercised according to Council’s approved policies.

ACCOUNTING OFFICER

DATE

I, in my capacity as the Chief Financial Officer of the WRDM hereby accepts the delegations as set out in the Annexure hereto.

CHIEF FINANCIAL OFFICER

DATE

[Note: this is a pro forma template which must be used for the issuance, acceptance and implementation of delegations by the delegator and delegatee]

**SUB-DELEGATION OF POWERS, DUTIES, FUNCTIONS AND RESPONSIBILITIES IN TERMS OF THE LOCAL GOVERNMENT:
MUNICIPAL FINANCE MANAGEMENT ACT, 2003 AND ITS ASSOCIATED REGULATIONS; DIVISION OF REVENUE ACT; LOCAL
GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 BY THE CHIEF FINANCIAL OFFICER OF THE WRDM TO THE MANAGER:
..... WITHIN THE FINANCE DEPARTMENT OF THE WRDM**

By virtue of the authority vested in me i.t.o. section 82(1) of the Municipal Finance Management Act, 2003 (Act 56 of 2003), I,, in my capacity as Chief Financial Officer of the WRDM, hereby sub-delegate the powers, duties, functions and responsibilities as set out in the Annexure attached hereto, to the incumbent of the position Manager:

It should be noted that further sub-delegation by the Manager: Municipal Budgets must only be undertaken with my concurrence.

CHIEF FINANCIAL OFFICER

DATE

I, in my capacity as Manager: of the WRDM hereby accepts the delegations as set out in the attached Annexure hereto.

MANAGER:

DATE

[Note: this is a pro forma template which must be used for the issuance, acceptance and implementation of delegations by the delegator and delegatee. This therefore means that whenever the CFO or any other official sub-delegates, this template will have to be used and the relevant names will have to be inserted above.]

**SUB-DELEGATION OF POWERS, DUTIES, FUNCTIONS AND RESPONSIBILITIES IN TERMS OF THE LOCAL GOVERNMENT:
MUNICIPAL FINANCE MANAGEMENT ACT, 2003 AND ITS ASSOCIATED REGULATIONS; DIVISION OF REVENUE ACT; LOCAL
GOVERNMENT: MUNICIPAL
SYSTEMS ACT, 2000 BY THE CHIEF FINANCIAL OFFICER OF THE WRDM TO THE INCUMBENT THAT WILL BE ACTING IN THE
POSITION
MANAGER: WITHIN THE FINANCE DEPARTMENT OF THE WRDM FOR THE PERIOD
..... TO
..... 20....**

By virtue of the authority vested in me by section 82(1) of the Municipal Finance Management Act, 2003 (Act 56 of 2003), I,, in my capacity as Chief Financial Officer of the WRDM, hereby sub-delegate the powers, duties, functions and responsibilities to the incumbent that will be acting in the position Manager: or the acting official of the indicated post.

It must be noted that the official acting in a temporary capacity in the position Manager: Municipal Budgets will be equally, jointly, severally and otherwise responsible for the agreed outcomes to be achieved and the performance of the tasks attached to the post for the period that he or she is acting in this post.

CHIEF FINANCIAL OFFICER

DATE

I, in my capacity as Acting Manager: of the WRDM hereby accepts the delegations as set out in the attached Annexure hereto.

A/MANAGER:

DATE

[Note: this is a pro forma template which must be used for the issuance, acceptance and implementation of delegations by the delegator and delegate. This therefore means that whenever the CFO or any other official sub-delegates, this template will have to be used and the relevant names will have to be inserted above.]

ROLES AND RESPONSIBILITIES OF EACH POLITICAL STRUCTURE, POLITICAL OFFICE BEARER AND MUNICIPAL MANAGER

CHAPTER 1

LEGISLATIVE MANDATE

1. INTRODUCTION

The legislative and policy framework for local government, is reflected in particular in the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) ('Structures Act'), the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) ('Systems Act') and the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) ('MFMA') and has introduced a new approach to the way a municipality is governed and administered. In particular, the framework confers important statutory powers on *political structures*, *political office bearers* and the *municipal manager*. It also provides that powers may be delegated to individual councillors, whether elected as office bearers or not.

Given the complex nature of local government and the extent of the powers and functions conferred on the *political structures*, *political office bearers* and *municipal manager* of a municipality, it is not possible that they can perform their respective functions in isolation and without intrusion on the other's terrain. This called for a measure to prevent or at least to limit the possibility of conflict and create a workable framework for interaction.

An aspect that may contribute to this potential for conflict is the unique dual character of local government, i.e. not only is the legislative authority vested in a municipality's council, but also the executive authority. In the case of the other two spheres of government there is a clear division of authority and consequently a lesser potential for conflict.

Based on the above reasons the legislature decided that each municipality should properly demarcate the roles and responsibilities of its key role players. Therefore the following provision was introduced by section 53 of the Systems Act:

“A municipality must, within the framework of and in accordance with relevant provisions of the Municipal Structures Act, this Act and other applicable legislation, define the specific role and area of responsibility of each political structure and political office bearer of the municipality and of the municipal manager”.

This provision is peremptory; a municipality must comply.

This manual contains:

- The statutory and policy framework defining the roles and responsibilities.
- The process followed by the Mayor, Speaker, Mayoral Committee, other Councillors and the Municipal Manager of the WRDM in determining the roles and responsibilities.
- The roles and responsibilities of each political structure and political office bearer of the Municipality and of the Municipal Manager as resolved and determined by the Council and constituting the requirements of Section 53(2) of the Systems Act.

CHAPTER 2

FRAMEWORK FOR DEFINING ROLES

2.1. IMPORTANT TERMS AND CONCEPTS

The Systems Act requires that the ‘role’ and ‘area of responsibility’ of a ‘political structure’, ‘political office bearer’ and ‘municipal manager’ be defined.

The dictionary meaning of ‘**role**’ is: *‘person’s or thing’s expected function’ or ‘part or function assumed by a person in any action or proceeding’*, whilst ‘function’ is defined as *‘allotted task; special duty; activity which it is incumbent upon a person to carry out’*.

It therefore follows that the sum of all the functions whether expressly conferred, implied or delegated needs to be defined.

The term ‘**responsibility**’ means: *‘the state or fact of being responsible; duty for the performance of which one is morally or legally responsible’*, whilst ‘responsible’ means *‘legally or morally answerable; personally accountable’*.

Area of responsibility can thus be described as the functional and geographical influence of one’s duties.

The following terms are defined in the Structures Act viz:-

‘**political structure**’, in relation to a municipality, means the council of the municipality or any committee¹ or other collective structure² of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act.

‘**political office bearer**’ means the speaker, executive mayor, mayor, deputy mayor or a member of the mayoral committee as referred to in the Municipal Structures Act.

‘**municipal manager**’ means a person appointed in terms of section 54A of the Municipal Structures Act.

Other relevant terms are the following:-

“**administration**” means the Municipal Manager and all other employees of the municipality”

“**after consultation**” means with due regard to the view of any person with whom a delegated body is required to consult before he/she exercises a delegated or sub-delegated power

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

“**Council**” means the Municipal Council of the WRDM as envisaged in section 157(1) of the Constitution;

“**delegating authority**” in relation to delegation of a power by the municipal council, means the municipal council; or in relation to a sub-delegation of a power or duty by a delegating body, means that delegating body;

¹ Various committees may be appointed in terms of s 71, 79 and 80 ² E.g. ward committees

“**delegation**” means the authorisation of a delegated body by a delegating authority to act in his/her stead, and in relation to a power or duty includes an instruction to exercise the power / carry out that delegation or duty; and “**delegate**” has a corresponding meaning;

“**delegated body**” in relation to the delegation of a power means the political structure, political office-bearer, councillor or staff member to whom a power has been delegated in writing by the delegating authority;

“**in consultation**” means with the concurrence of the person with whom a delegated body must consult before exercising a delegated or sub-delegated power;

“**managing**” related to roles and responsibilities means planning, organising, leading and controlling and include all duties, functions and decision-making to ensure the day to day running of the business of the municipality and “**management of**” has a corresponding meaning;

“**municipal functions**” represent all the functions vested in the municipality and as determined from time to time;

“**power**” refers to the authority to perform certain duties and functions lawfully;

“**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)

2.2 MANNER OF DEFINING ROLES AND RESPONSIBILITIES

The Systems Act, section 53(2) requires a specific method or manner of defining the roles and areas of responsibility of a political structure, political office bearer and municipal manager, namely-

“The respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager must—

- (a) be defined in **precise terms** by way of **separate terms of reference², in writing**, for each political structure or political office bearer and the municipal manager; and
- (b) **be acknowledged** and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.”

When defining the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager, the municipality must³ determine-

- (a) the relationships among those political structures and political office bearers and the municipal manager, and the manner in which they must interact;
- (b) appropriate lines of accountability and reporting for those political structures and political office bearers and the municipal manager;

² The terms may include the delegation of powers and duties to the relevant political structures or political office bearer or the municipal manager in terms of section 59

³ In terms of section 53(5)

- (c) mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities between those political structures and political office bearers and the municipal manager;
- (d) mechanisms, processes and procedures for resolving disputes between those political structures and political office bearers and the municipal manager; and
- (e) mechanisms, processes and procedures for interaction, between—
 - (i) those political structures and political office bearers and the municipal manager and other staff members of the municipality; and
 - (ii) councillors and the municipal manager and other staff members of the municipality.

Paragraph (e) introduces two other role players, namely ‘councillors’ and ‘other members of staff’. In order to determine mechanisms, processes and procedures for interaction with them, requires identification of the councillors and staff and clarification of their respective roles.

The term ‘councillor’ in this context refers to the elected representative distinct from the office he or she may hold. In other words it would include for example the mayor when he/she acts outside the mayoral function.

From the above it is clear that the role of the ‘ordinary’ councillor will also have to be defined.

It is clear that what is meant by ‘other staff members’ are those officials with whom there is constant contact; it could be a departmental head, a secretary, clerk or even a vehicle driver. It is not possible to identify these officials further, as relationships may differ depending on the specific organisational arrangement and individual preferences.

2.3 ROLES AND RESPONSIBILITY RELATING TO POWERS AND FUNCTIONS

The purpose of this section is to look in broad outline at the objectives, powers and functions of municipalities, as the roles (that need to be defined) flow from the very nature of a municipality and out of what it may do. But, before that, it is necessary to first examine the doctrine of ‘division of governmental power’ (into legislative, executive and judicial), which is central to the overall powers and functions of a municipality.

2.4 Separation of Powers

2.4.1.1 The *trias politica* doctrine

In terms of this doctrine *trias politica* the functions of government may be divided into legislation, executive action and the administration of justice.

The purpose of the doctrine is essentially to prevent the abuse of power by separating government functions. Thus the legislature would make laws, the executive would implement the laws and the judiciary would enforce and judge the acts of both the legislature and executive.

2.3.1.2 The South African Constitutional Model

The South African Constitution recognises the doctrine and it was introduced in terms of constitutional Principle VI, contained in the interim Constitution; it reads:

“There shall be a separation of powers between the Legislature, Executive and Judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness”

This principle was entrenched in the final Constitution⁴ in the following way-

Legislative power

“In the Republic, the legislative authority-

- (a) of the national sphere of government is vested in Parliament, as set out in section 44;
- (b) of the provincial sphere of government is vested in provincial legislatures, as set out in section 104;
- (c) of the local sphere of government is vested in the Municipal Council , as set out in section 156;

Executive power

“The executive authority of the Republic is vested in the President.”⁵⁶

“The executive authority of a province is vested in the premier of that province”⁷

“The legislative and executive authority of a municipality is vested in its Municipal Council”.⁷

Judicial power

“The judicial authority of the Republic is vested in the courts”⁸

Because judicial authority is not relevant to municipalities a discussion thereof is not necessary.

As can be seen from the above provisions of the Constitution, a strict division of governmental power characterizes the national and provincial spheres of government: legislative power is exercised by the parliaments and executive power by the president/premiers. In local government there is no such division.

⁴ Section 43

⁵ Section 85

⁶ Section 125

⁷ Section 151

⁸ Section 165

2.4.1.3 The local government model

Although the Constitution does not provide for a separation similar to that in regard to the national and provincial spheres of government, it is essential to know what is regarded as legislative powers and executive powers. The main reason is, that different principles of law apply to the two types of authority, e.g. the principles of administrative justice only apply to executive acts, legislative powers may not be delegated, etc.

The fact that the municipal council is empowered to make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality⁹ means that it will have to consider whether it wears its legislative or executive “hat” each time it has to take a decision. Such a distinction is also necessary when the municipal council may decide that it does not want to exercise or perform all these powers and functions itself, but would rather delegate it to someone else. **The municipal council is permitted to delegate its executive powers but it may not delegate its legislative powers.**

What then are a municipality’s legislative and executive powers? In *Fedsure Life Assurance v Greater Johannesburg Transitional Metropolitan Council*¹⁰ the Constitutional Court considered this issue and reacted as follows-

“It seems plain that when a legislature, whether national, provincial or local, exercises the power to raise taxes and rates, or determines appropriations to be made out of public funds, it is exercising the power that under our Constitution is the power peculiar to elected legislative bodies. It is a power that is exercised by democratically elected representatives after due deliberations. It does not seem to us that such action of the municipal legislatures, in resolving to set rates, to levy the contribution and pay a subsidy out of public funds, can be classified as an administrative action as contemplated by section 24 of the interim Constitution.”

In the light of this decision it is generally accepted that, apart from the making of bylaws, the other non-delegable matters reflected in the Constitution¹¹ i.e. approval of budgets; imposition of rates and other taxes, levies and duties; and raising of loans, are legislative acts.

It follows that the balance of a municipality’s powers, after separating legislative powers, must be executive powers.

This can be illustrated as follows: -

Legislative Power

Four functions

- 1) By-laws
- 2) Budget
- 3) Rates etc
- 4) Loans

Executive Power

All functions except

- a) Statutory powers
- b) Delegated powers
- c) Authorised powers

Because the legislative powers cannot be delegated the exercise of executive powers may be divided amongst political structures, political office bearers, individual councillors and staff. In some instances a council may wish to reserve specific powers (executive) for itself.

Political structures, political office bearers, individual councillors, the municipal manager and staff do not only derive powers and duties from council; enabling legislation (including by-laws) may also confer vast powers and duties on them.

⁹ Section 160(1)

¹⁰ 1998(12) BCLR 1458 (CC)

¹¹ Section 160(2)

These powers and duties can obviously only be of an “executive nature”; if not the enabling legislation would be *ultra vires* the Constitution.

In general terms, executive functions refer to the power to give effect to rules of law, created by the legislature. The action by means of which these rules of law are applied to individual instances is an administrative action (contra legislative action) and consequently ‘administrative law’¹² applies.

The Systems Act¹³ describes how the municipality must exercise its legislative and executive powers, viz: -

“A municipality exercises its legislative or executive authority by—

- (a) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery;
- (b) promoting and undertaking development;
- (c) establishing and maintaining an administration;
- (d) administering and regulating its internal affairs and the local government affairs of the local community;
- (e) implementing applicable national and provincial legislation and its bylaws;
- (f) providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in section 78;
- (g) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;
- (h) preparing, approving and implementing its budgets;
- (i) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;
- (j) monitoring the impact and effectiveness of any services, policies, programmes or plans;
- (k) establishing and implementing performance management systems;
- (l) promoting a safe and healthy environment;
- (m) passing by-laws and taking decisions on any of the above-mentioned matters; and
- (n) doing anything else within its legislative and executive competence.”

2.3.2 De Facto Separation of Powers in Executive Mayor System Municipalities

2.3.2.1 Enabled by legislation

The Constitution does not create a separate executive and legislature for municipalities, as it does for the national and provincial spheres of government; but the legislative and policy framework reflected in particular in the Structures and Systems Acts and the Municipal Finance Management Act ("MFMA") anticipates the possibility of such an arrangement being established through delegation of powers.

2.3.2.2 Establishment of executive mayor system

Section 56 of the Structures Act deals with the functions and powers of executive mayors and anticipates that the council will delegate some of its powers to the executive mayor (section 56(3)(f)).

The council can only delegate executive powers. It follows then that, depending on the extent of such delegation, the executive mayor will fulfil such executive functions on behalf of the council.

¹² That part of the public law, which governs the organisation, powers and actions of the state administration. It provides a framework within which administrative action may be evaluated against the principles of justice, i.e. lawfulness, reasonableness and fairness

¹³ Section 11

The Structures Act further stipulates that the municipal council elects an executive mayor and the municipal council may delegate specific powers to the executive mayor.

Municipalities may establish committees as contemplated in section 80 of the Municipal Structures Act, i.e. committees to assist the executive mayor. In such instances, the Act requires the executive mayor to appoint a chairperson for each such committee and the executive mayor may delegate any powers and duties of the executive mayor to the committees. As a result, the executive then consists of the executive mayor and mayoral committee supported and advised by section 80 committees, headed by mayoral committee members. The practice is to allocate specific portfolios to mayoral committee members.

2.3.2.3 Function of Council

Due to the de facto creation of an executive mayor, the council rarely exercises its executive authority, except in regard to those matters that are statutorily reserved to it.

It however retains its legislative function, which extends beyond mere enactment of by-laws.

In addition, the council exercises broad oversight responsibility over the actions of the executive mayor.

The Systems Act requires that decisions taken in terms of delegations to executive mayors must be reported to the council. In addition, the MFMA stipulates for the tabling before the council of reports on a number of matters. The MFMA specifically precludes councillors from participating in the supply chain management process. However, the council, as the guardian of its policy in this regard, will call the municipal manager to account for the proper implementation of this policy.

The MFMA specifically requires a council to develop an oversight report after receipt by it of the annual report which oversight report reflects on its oversight activities and the content of the annual report. (Refer to section 129 of the MFMA).

2.3.3 Powers and Functions of Municipalities

A municipality derives its powers not only from statutes (Constitution and other acts) but also from its status, e.g. as a legal person. Legal personality allows the bearer thereof to participate in legal relations such as contacting with others to purchase or sell property, to sue or to be sued etc. There are also a vast number of derived powers,¹⁴i.e. those powers that are reasonably necessary for, or incidental to, the effective performance of the municipality’s main functions (e.g. the powers to expropriate).

The Constitution is the primary source of the powers and functions of a municipality. These powers and functions can be grouped as follows-

- matters which are reflected in Schedules 4B and 5B of the Constitution;¹⁵
- powers and functions which may be assigned;¹⁶
- fiscal powers and functions; and¹⁷
- powers flowing for the obligations set out in Section 152 of the Constitution.

¹⁴ Section 156(5) of the Constitution

¹⁵ Section 156(1) and (2)

¹⁶ Section 44, 99, 104, 126 and 156

¹⁷ Section 229

2.3.3.1 The Schedule 4 and 5 matters

The differences between Schedules 4 and 5 of the Constitution are as follows:

Part A of Schedule 4 of the Constitution contains the functional areas of concurrent national and provincial legislative competence. This means that both spheres have competitive legislative competence.

Part B of Schedule 4 of the Constitution contains local government matters, although restricted to the extent that-

- provincial legislation may make provision for the monitoring and support of local government¹⁸
- the national and provincial governments may regulate the executive competence of a municipality for reasons of efficiency¹⁹

The functions listed in Part B of Schedule 4 are as follows:

- Air pollution
- Building regulations
- Child Care facilities
- Electricity and gas reticulation
- Fire fighting 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 the 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 built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Part A of Schedule 5 of the Constitution contains the functional areas of exclusive provincial competence.

Part B of Schedule 5 of the Constitution contains the local government matters, although restricted to the extent that provincial legislation may be made for the monitoring, support and regulation.²⁰

The main difference in Part B of Schedule 4 of the Constitution is that the national government has no legislative competence therein, except in exceptional circumstances when necessary for the purpose of-

¹⁸ Section 156(6)(a)

¹⁹ Section 155(7)

²⁰ Section 155(6)(a) and 155(7)

- the maintenance of national safety
- the maintenance of economic unity
- the maintenance of essential national standards
- determination of minimum standards for service delivery
- to prevent unreasonable actions by a province which are detrimental to the interests of that province or the country as a whole²¹

The functions contained in Part B of Schedule 5, are

- 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

A municipality will act illegally and in contravention of the Constitution if it exercises powers and functions, which fall within the functional areas of another sphere of government,²² unless such powers and functions were assigned to it.

²¹ Section 44(2)

²² Fedsure case

2.3.3.2 Fiscal powers and functions

One of the distinguishing characteristics of government is the power to impose taxes and fees.

This competence of a municipality is also confirmed in section 229 of the Constitution wherein it is stipulated that a municipality has inter alia the competence to-

- impose rates on property and surcharges on fees for services
- impose other taxes in terms of the provisions of national legislation

In the exercise of this competence national economic policy and legislation must be complied with.

2.3.3.3 Assigned powers and functions

Powers and functions may be assigned in a threefold manner.

- the administration of a matter mentioned in Parts A of Schedules 4 and 5 of the Constitution, by means of an agreement with national or provincial government;²³
- the legislative competence of parliament or the provincial legislator – without agreement;²⁴
- any power or function that must be exercised or performed in terms of national or provincial legislation by means of an agreement.²⁵

2.3.3.4 Division of powers and functions between local and district municipalities

The Constitution²⁶ requires that the national government make an appropriate division of powers and functions between category B and C municipalities

The Structures Act²⁷ does not provide a list of the various functions. However, it does list the powers and functions of district municipalities and allocates the balance of the functions of Parts B of Schedules 4 and 5 to local municipalities.

Section 84(1) of the Structures Act provides for the following functions of a district municipality:

- (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 waste-water 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.

²³ Section 156 of the Constitution

²⁴ Sections 44 and 104 of the Constitution

²⁵ Sections 99 and 126 of the Constitution

²⁶ Section 155(3)

²⁷ Section 83

- (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, co-ordination and regulation of fire services;
 - (ii) specialised fire fighting services such as mountain, veld and chemical fire services;
 - (iii) co-ordination 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.

Furthermore, a district municipality in terms of Section 83(3) of the Structures Act 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 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

2.3.3.5 Objects of local government

Section 152 of the Constitution sets out the objects of local government, which include the provision of democratic and accountable government, to ensure the provision of services, to promote social and economic development, to promote a safe and healthy environment and to encourage the involvement of communities in matters of local government.

Section 152(2) requires a municipality to strive, within its capacity, to achieve these objects. In so striving, a municipality will need to take the necessary actions to achieve those objects. It is submitted that it must have been intended that it would have the executive powers and functions necessary to enable it to take such actions.

2.4 ROLES DEFINED

The roles and areas of responsibility of the following structures and office bearers will be defined herein:

- Municipal Council
- Speaker
- Executive Mayor
- Portfolio Committees
- Ward Committees
- Councillor
- Municipal Manager

2.5 FORMAT OF ROLE DEFINITION

The Systems Act does not prescribe the format in which the roles and areas of responsibilities must be defined. Each municipality may therefore consider which option will best suit its particular needs. Two major possibilities arise.

2.5.1 Functional description

A specific function is identified, analysed and broken up into the various stages of performance. The actions and names of the responsible role players are then linked to the various stages. This is an onerous task and it has the disadvantage of possibly missing out on important functions.

2.5.2 Title description

The second method, which is also the method selected for this document, seeks to identify and describe every function that has to be performed by each of the identified role players. It is conceivable that the initial list of functions so identified will not be exhaustive; it will have to be updated as and when new functions are identified or additional ones allocated. It is accepted that this is a living document and will continue to be developed over time.

CHAPTER 3

ROLE DEFINITION

3.1 ROLE OF THE MUNICIPAL COUNCIL

Government in South Africa consists of three spheres, i.e. national, provincial and local. Municipalities represent the local sphere of government in South Africa²⁸. Every municipality has the right, in terms of the Constitution, to govern²⁹ and has prescribed goals³⁰, which it must strive to achieve by means of constitutionally conferred powers and functions³¹.

A municipality³² as an entity cannot achieve all this, however, the Constitution empowers the municipal council to exercise the legislative and executive authority of a municipality³³ and it confers on the municipal council the power to make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality.³⁴

Whatever the status given to a municipal council, whether as agent or representative or something else the fact remains that the municipal council is the primary structure of the municipality and it has sole authority, unless it has delegated its powers or a statute has conferred ‘municipal powers’ on other structures or individuals. The Systems Act³⁵ acknowledges this relationship by stating the rights and duties of municipal councils, namely-

- (1) The council of a municipality has the right to—
 - (a) govern on its own initiative the local government affairs of the local community;
 - (b) exercise the municipality’s executive and legislative authority, and to do so without improper interference; and
 - (c) finance the affairs of the municipality by—
 - (i) charging fees for services; and
 - (ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.
- (2) The council of a municipality, within the municipality’s financial and administrative capacity and having regard to practical considerations, has the duty to—
 - (a) exercise the municipality’s executive and legislative authority and use the resources of the municipality in the best interests of the local community;
 - (b) provide, without favour or prejudice, democratic and accountable government;

²⁸ Section 151(1) of the Constitution

²⁹ Section 151(3) of the Constitution

³⁰ Section 152 of the Constitution

³¹ Section 156 of the Constitution

³² Section 2 of the Systems Act describes it as an entity consisting of the political structure and administration of the Municipality and the community of the municipality

³³ Section 151(2) of the Constitution

³⁴ Section 160(1)(a) of the Constitution

³⁵ Section 4

- (c) encourage the involvement of the local community;
 - (d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
 - (e) consult the local community about—
 - (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and
 - (ii) the available options for service delivery;
 - (f) give members of the local community equitable access to the municipal services to which they are entitled;
 - (g) promote and undertake development in the municipality;
 - (h) promote gender equity in the exercise of the municipality’s executive and legislative authority;
 - (i) promote a safe and healthy environment in the municipality; and
 - (j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.
- (3) A municipality must, in the exercise of its executive and legislative authority, respect the rights of citizens and those of other persons protected by the Bill of Rights.

These rights and duties form the basis of the functions of the municipal council. The municipal council is a body, consisting of members elected by the community, and it can only act collectively by resolution properly taken. The role of the individual councillor is discussed later.

3.1.1 The Municipal Council Governs

The municipal council governs within the geographical area of the municipality by exercising the legislative and executive authority conferred upon it in terms of the Constitution.³⁶

To govern means to exercise authority and more specifically the power to –

- make and administer legislation
- impose taxes
- take decisions which may affect the rights of individuals

3.1.1.1 Legislature

In terms of the Constitution³⁷ the legislative authority of the local sphere of government is vested in the Municipal Council, to make and administer by-laws for the effective administration of the matters, which it has the right to administer. These matters are reflected in parts B of Schedules 4 and 5 of the Constitution and may be extended by any other matters assigned to it by national or provincial legislation.

³⁶ Sections 151(2), 156 and 229 of the Constitution

³⁷ Sections 43 and 156(2) of the Constitution

The authority to legislate may not be delegated.³⁸ Some procedural functions have however been allocated to “a member or committee of the municipal council”³⁹ and the executive⁴⁰ (where applicable) whilst others might have been delegated by council, e.g. the advertising for comment, publication in the Provincial Gazette, undertaking public participation, compiling of a municipal code, its enforcement, etc.

3.1.1.2 Tax authority⁴¹

The municipal council may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality and if authorised by national legislation, other taxes, levies and duties. (Refer to the Municipal Fiscal Powers and Functions Act, 2007 (Act No. 12 of 2007). The municipal council must perform this function itself; it may not delegate the power to impose taxes etc. to another.⁴² The Systems Act⁴³ sets out the general power to levy and recover fees charges and tariffs-

“A municipality may-

- (a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality;
- (b) recover collection charges and interest on any outstanding amount.”

The Systems Act also imposes certain duties on the municipal manager when the municipal council has resolved to levy and recover fees, charges or tariffs, i.e. to display, publish and convey to the community the contents of the resolution. The other procedural duties and powers to give effect to the imposition, may however be delegated.

3.1.1.3 Primary Decision Maker

The council of the municipality exercises the executive and legislative authority of a municipality, and it takes all the decisions of the municipality except those, which it has delegated, and those that have been conferred by statute on political office bearers, political structures or officials.⁴⁴

3.1.1.4 Delegating authority

The White Paper on Local Government,⁴⁵ (the comprehensive government policy on local government) suggests that a municipal council should delegate its executive powers in a manner that facilitates timely and efficient decision-making, and allows for the sound management and oversight of the municipal administration. The Systems Act⁴⁶ endorses this sentiment-

“A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.”

Powers and duties may be delegated to any of its political structures, political office bearers, councillors or staff members. A delegation of powers or duties does not divest the municipal council of the responsibility of exercising the power or the performance of the duty. It may also review or consider an appeal against any

³⁸ Section 160(2) of the Constitution

³⁹ Section 12 of the Systems Act

⁴⁰ Section 56 of the Structures Act

⁴¹ Section 160 of the Constitution

⁴² Section 160(2) of the Constitution

⁴³ Section 75A

⁴⁴ Section 160(1) of the Constitution and Section 11 of the Systems Act

⁴⁵ GN 423 of 13 March 1998

⁴⁶ Section 59

decision taken by a delegated body if the procedural requirements have been met and subject to any rights that may have accrued to a person.⁴⁷

When a municipal council delegates powers or duties it cannot relinquish its duty to see to it that a power is exercised or a duty is performed. For this reason the municipal council must introduce measures to ensure that a delegated body report on decisions taken in terms of that delegated power or duty. In terms of such measures the municipal council would then be able to assess whether the delegated body has properly exercised/performed the delegated power or duty. If not, the municipal council may in certain circumstances review the decision or it may even decide to amend or withdraw the delegation.⁴⁸

It should be noted that the MFMA allows the council to delegate the mayor’s statutory powers conferred in terms of the MFMA (section 59) to another member of the mayoral committee.

3.1.1.5 Appeal authority

A person whose rights are affected by a decision taken by a delegated body, i.e. a political structure, political office bearer, councillor or staff member, and committees made up off staff members in terms of a power or duty delegated or sub-delegated may appeal against that decision. When the appeal is against the decision of a political structure or political office bearer or a councillor the section 62 appeals committee is the appeal authority.⁴⁹ When it considers the appeal it may confirm, vary or revoke the decision, but no such variation, or revocation may detract from any rights that may have accrued because of the decision. The municipal manager should provide the necessary administrative support.

3.1.1.6 Oversight authority

As has been reflected above, a municipal council exercises oversight authority over the executive actions of the executive mayor and the municipal manager acting in terms of delegated authority. This oversight authority is reflected statutorily in a number of areas, for example, section 11 of the Systems Act, enjoins a council to monitor municipal services, monitor the impact and effectiveness of services, policies, programmes and plans. Section 40 enjoins the council to monitor and review the council's performance management systems and section 95A requires a council to exercise its authority as shareholder in municipal entities in particular by exercising oversight over their activities.

The MFMA further assumes a separation between councillors serving on the executive (i.e. the mayor and the mayoral committee) and non-executive councillors. This separation is vital to ensure council maintains oversight for the performance of specific responsibilities and delegated powers to the mayor and mayoral committee.

Section 127 of the MFMA refers to one of the reports that the council utilises in exercising its oversight authority, viz. the annual report to be submitted to it by the mayor. Section 129 of the MFMA requires the council to consider the annual report and to prepare an oversight report reflecting on the matters set out in the section.

From a structural perspective, the Structures Act provides for the possibility of the establishment by the council of committees necessary for the effective and efficient performance of any of its functions or powers (section 79 of the Structures Act). Such a committee would be the equivalent of parliamentary portfolio committee.

Section 79 provides that-

(1) A municipal council may—

⁴⁷ Sections 59 and 62

⁴⁸ Sections 63 and 64

⁴⁹ Section 62 of the Systems Act

- (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;
- (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.

Municipal councils, which have established section 80 committees to support and advise the executive mayor, may establish a section 79 committee for the purposes of exercising of oversight. The WRDM has established such an oversight committee in terms of sections 33 and 79 of the Structures Act.

It is important to note that councillors in their individual capacity have no oversight authority.

3.1.2 The Municipal Council is an “organ of state”

The term “organ of state” has particular implications for the bearer of such status; the Constitution and other legislation place a number of duties and responsibilities on organs of state. The following meaning is attached to the terms “organ of state” in the Constitution⁵⁰

“In the Constitution, unless the context indicates otherwise “organ of state” means-

- (a) any department of state in the national, provincial or local sphere of government; or
- (b) any other functionary or institution-
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial Constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.”

There should be no doubt that the municipal council is in fact an organ of state. One of the most important functions of an organ of state is to comply with the principles of cooperative governance and intergovernmental relations as contained in the Constitution⁵¹-

- (1) All spheres of government and all organs of state in each sphere must-
 - (a) preserve the peace, the national unity and the indivisibility of the Republic;
 - (b) secure the well-being of the people of the Republic;
 - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
 - (d) be loyal to the Constitution, the Republic and its people;
 - (e) respect the constitutional status, institutions, powers and functions of government in the other spheres
 - (f) not assume any power or function except those conferred on them in terms of the Constitution;

⁵⁰ Section 239 of the Constitution

⁵¹ Section 41 of the Constitution

- (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (h) co-operate with one another in mutual trust and good faith by-
 - (i) fostering friendly relations;
 - (i) assisting and supporting one another;
 - (ii) informing one another of, and consulting one another on matters of common interest;
 - (iii) co-ordinating their actions and legislation with one another;
 - (iv) adhering to agreed procedures; and
 - (v) avoiding legal proceedings against one another.
- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.”

The status of being an organ of state also confers general powers of delegation. The Constitution⁵² allows an executive organ of state to delegate any power or function that is to be exercised or performed in terms of legislation to any other executive organ of state, provided the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed or exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.

A few examples of duties placed on an organ of state are found in the Constitution-

- section 41(3)- duty to settle disputes before any litigation
- section 165 – prohibition on interference in functions of courts
- section 238 authority to delegate and involve agents

3.1.3 The Municipal Council is a member of Organised Local Government

Organised local government plays a significant role in representing the official voice of local government. The organisation recognised in terms of national legislation⁵³ consists of representatives of municipal councils.

For the municipal council to play a meaningful role in influencing national views, sentiments and policy on local government matters, it must provide its representatives on the organisation with a clear mandate, which will enable the latter to-

- (a) develop common approaches for local government as a distinct sphere of government;
- (b) enhance co-operation, mutual assistance and sharing of resources among municipalities;
- (c) find solutions for problems relating to local government generally; and
- (d) facilitate compliance with the principles of co-operative government and intergovernmental relations.²⁷

The municipal manager and staff play an equally important role in the realisation of the above goals. Their technical inputs are invaluable and they should be encouraged to actively engage in technical structures.

⁵² Section 238 of the Constitution

⁵³ Organised Local Government Act, 1997 (Act No 52 of 1997) ²⁷

Section 3 of the Systems Act

3.1.4 The Municipal Council represents the Employer

In order for the municipality to exercise its powers perform its functions it has to establish an administration.⁵⁴ Responsibilities in respect of the “administration” are shared between the municipal council and the municipal manager, as head of the administration.

The municipal council is responsible for the appointment of the municipal manager⁵⁵ and those managers accountable to the municipal manager, however subject to consultation with the municipal manager.⁵⁶ There is an argument that the power to appoint the municipal manager and managers accountable to him/her may not be delegated. The determination of the remuneration, benefits or other conditions of service of these officials may however be delegated, but only to the executive mayor.⁵⁷

The municipal manager on the other hand must develop a staff establishment (subject to a policy framework approved by Council) and submit same to the council for approval and is furthermore empowered to appoint all other staff.⁵⁸ In terms of section 5(1) of the National Building Regulations Act, 1977 (Act 103 of 1977) the municipal council must appoint an employee as building control officer.

Despite the prominent statutory role of the municipal manager in regard to personnel matters, the municipal council remains the personification of the employer, i.e. the municipality and it also nominates its members to serve on labour forums (e.g the Local Labour Forum). Due to this peculiar relationship between council and the municipal manager it would only seem proper that the municipal manager be engaged in all deliberations that may lead to collective agreements.

3.1.5 The Municipal Council represents the Legal Person

As seen in chapter IV a municipality does not derive its powers only from statute, but also from its status as a legal person; e.g. to purchase or sell property, to sue or being sued, etc.

The legal nature of the municipality is confirmed in the Systems Act⁵⁹ as follows-

“A municipality has a separate legal personality which excludes liability on the part of its community for the actions of the municipality.”

The municipal council represents the legal persona whenever it exercises any of the powers associated with legal personality. It may and in fact should delegate some of these powers to its structures or staff, e.g. to institute or defend legal actions, to enter into contracts, to purchase or lease property, to allow rights over or on council land or to acquire rights over or on private land, etc.

3.1.6. The Municipal Council must strive to achieve the “Objects of Local Government”

The Constitution⁶⁰ charges every municipality to achieve the following objects-

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;

⁵⁴ Section 11 of the Systems Act

⁵⁵ Section 54A of the Systems Act

⁵⁶ Section 56 of the Systems Act

⁵⁷ Section 60 of the Systems Act

⁵⁸ Sections 55 and 60 of the Systems Act

⁵⁹ Section 2

⁶⁰ Section 152

- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government

The duty again is placed by statute⁶¹ on the municipal council, viz-

- (1) A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.
- (2) A municipal council must annually review—
 - (a) the needs of the community;
 - (b) its priorities to meet those needs;
 - (c) its processes for involving the community;
 - (d) its organisational and delivery mechanisms for meeting the needs of the community; and
 - (e) its overall performance in achieving the objectives referred to in subsection (1).
- (3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers. The Constitutional Court, in the matter of *Mkontwana v Nelson Mandela Metropolitan Municipality* has ruled that the responsibility of a municipality to achieve and implement the objects is "a matter of public duty."

3.1.7. The Municipal Council must consult with the community

One of the objects of local government is the duty of the municipality to encourage the involvement of communities and community organisations in the matters of local government. Municipalities must also subscribe to those democratic values of the public administration, contained in the Constitution.⁶²

The following are noteworthy-

- “(e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making;
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.”

These principles must be converted into practice and for that reason the Systems Act⁶³ provides that a municipality must involve the community in matters such as the preparation of the IDP, budget, performance management system, provision of services etc. The act goes further by giving, in an entire chapter, detailed guidance on how to achieve community participation. Many of the functions identified can be delegated to political structures, political office bearers and members of staff, in which event their interaction will have to be recorded.

3.2 ROLE OF THE SPEAKER

The area of responsibility of the speaker must be viewed from a functional and geographical perspective. In geographical terms the speaker has to exercise and perform his powers and functions within the boundaries of the municipality. Because of the municipality’s constitutional commitment to co-operative governance it is to be expected that the speaker’s influence will also extend to other forums outside these physical boundaries, e.g. speakers’ forum, etc.

⁶¹ Section 19 of the Structures Act

⁶² Section 195 of the Constitution

⁶³ Section 16

As regards the functional area, the speaker’s responsibility relates to all the powers, functions and duties conferred by statute, in terms of common law or by delegation.

As the head of administration, the municipal manager is responsible for providing the necessary administrative support and guidance to the speaker in carrying out his functions.

3.2.1 Chairperson of the Municipal Council

Each municipality is obliged by law to have a chairperson who is called the speaker.

(Where a municipality is of the plenary type the speaker must however be called the mayor.⁶⁴) As chairperson, the speaker also has the powers and functions derived from common law. In addition thereto the speaker is also given explicit statutory powers, which will be discussed hereunder.

3.2.1.1 Convenes meetings of the Municipal Council

The speaker decides when and where the municipal council meets.⁶⁵ The only restraint on his power is –

- the requirement that the municipal council must meet at least quarterly⁶⁶; and
- the right of a majority of the councillors to request that a meeting of the municipal council be convened at a specified time.⁶⁷

“To convene” is defined as “to cause to come, call together, summon, convoke”, whilst “convener” is given the meaning of: “one who convenes, specific member of a committee or deliberate body who is specially appointed to fix dates of meetings and to issue notices of meetings”. The question arises as to whether this function is limited merely to deciding upon and giving notice of the date, time and place of a meeting. In the WRDM, it may be concluded that the responsibility for determining what business must be conducted at the meeting in question and in what format it is to be presented, is “reasonably necessary for, or incidental to the effective performance of the speaker’s functions and the exercise of his/her powers”⁶⁸ It is of course impractical for the speaker to perform all these powers in person. The practical fulfilment of this function should be allocated to the secretariat in the administration, through the municipal manager, and processes should be put in place to ensure the speaker’s responsibility is not compromised.

3.2.1.2 Presides at meetings of the Municipal Council

The speaker of the municipal council presides at meetings of the municipal council.⁶⁹

As the presiding officer the speaker is authorised to-

- maintain order during meetings;
- ensure that council meetings are conducted in accordance with the rules and orders of the council;
- ensure compliance in the council and council committees with the Code of Conduct;
- protect a councillor’s right of freedom of speech in meetings of the municipal council;
- protect a councillor’s right to immunity and privilege;
- exercise a casting vote where there is an equality of votes on any question before the municipal council; except with budget

⁶⁴ Section 36 of the Structures Act

⁶⁵ Section 29 of the Structures Act

⁶⁶ Section 18 of the Structures Act

⁶⁷ Section 29 of the Structures Act

⁶⁸ Section 8 of the Systems Act

⁶⁹ Section 37 of the Structures Act

- sign the minutes on confirmation by the council that it is a true reflection of the proceedings of a meeting; and
- facilitate the admission of the public to meetings of the municipal council

The speaker has a casting vote if there is an equality of votes but not in respect of

- matters referred to in Section 160(2) of the Constitution or - the election of the executive mayor.

3.2.1.3 Convenes Special Meetings

The speaker may convene special meetings of the municipal council, i.e. meetings other than those scheduled. If the speaker wishes to convene such a special meeting then the decision to do so must be agreed between the speaker, the executive mayor and the municipal manager.

If both the executive mayor and deputy executive mayor are absent or not available for a period of longer than 5 (five) days and an acting mayor must be elected to fill in for him, the speaker convenes and oversees a meeting of the council for this purpose.

3.2.2 Enforcer of the Code of Conduct

The speaker is given specific powers⁷⁰ to enforce the Code of Conduct in the council and committee meetings.

The speaker, in so far as this relates to meetings of council, will of necessity (due to his/her presence) note infringements of the code. In all probability the speaker will not be present at committee meetings and would therefore have to rely on the chairperson of that meeting to keep him/her informed of infringements of the code. A few examples⁷¹ of infringements of this kind are-

- acting against the interests of the municipality or in such a way that the credibility and integrity of the municipality is compromised;
- non-attendance or failure to remain in attendance; and
- failure to disclose an interest in any matter before a meeting;

Proceedings against a councillor for non-attendance must be done in accordance with a uniform standing procedure adopted by the municipal council. The WRDM Council has adopted such a procedure.

The speaker also has a duty in respect of other infringements of the code. Item 13 of the code provides as follows-

“(1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—

- authorise an investigation of the facts and circumstances of the alleged breach;
 - give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
 - report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.
- A report in terms of sub-item (1) (c) is open to the public.
 - The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

⁷⁰ Section 37 of the Structures Act

⁷¹ Items 2,3 and 5 of the Code

- (4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.”

The speaker can convene a meeting if it has to do with a transgression of the Code of Conduct since he must enforce it.

3.2.3 Appeal authority

In the WRDM the speaker may be appointed as the ‘relevant authority’ in terms of the Promotion of Access to Information Act. The speaker must then perform the powers and execute the duties as prescribed by the act and regulations.

3.2.4 Recipient of delegated powers

The speaker may also perform the duties and exercise the powers delegated to him in terms of section 59 of the Systems Act.

3.2.5 Leader of council in respect of oversight function

A number of statutory provisions impose responsibility on the council for oversight in various respects. Specifically, section 129 of the MFMA requires the council of a municipality to consider the annual report of the municipality and of any municipal entity under its control and thereafter to adopt an oversight report containing the council's comments on the annual report, which must include a number of components. In WRDM, the municipal council has established a section 129 Oversight Committee. It consists of non-executive councillors for oversight of the annual report and, as the chairperson of the council, it is the responsibility of the speaker to provide leadership to council to fulfil this responsibility, and all other oversight functions vesting in council. In terms of s.79(2)(d) of the Structures Act, the Council must authorise the Oversight Committee to co-opt the municipal manager as an advisory member.

It is the responsibility of the municipal manager to provide to the speaker the necessary administrative capacity and support for this purpose.

3.3 ROLE OF THE EXECUTIVE MAYOR

- Note: 1. Reference to Mayor means Executive Mayor
2. Compiled in a gender neutral manner

3.3.1 Political leader

The mayor is the political leader of the municipality. This status is not to be confused with party political leadership; it refers to the political system in state environment.

The mayor’s most important function as political leader of the municipality is to promote and defend the constitutional status, institutions, powers and functions of the municipality and to uphold the principles of co-operative government and intergovernmental relations. He/she will head delegations to the other spheres of government and organised local government.

3.3.2 Social and ceremonial head

The mayor is the social and ceremonial head of the municipality. In this capacity the mayor performs a number of functions, e.g.-

- represents the municipality at all levels of society;
- initiates or acts as patron for philanthropic or welfare causes;
- hosts and welcomes dignitaries; - opens projects, events, new buildings, - represents the council at civic events, etc.

3.3.4 General responsibilities regarding financial matters

Section 52 of the MFMA⁷² describes the general responsibilities of mayors⁷³ as follows-

- (1) The mayor of a municipality—
 - (a) must provide general political guidance over the fiscal and financial affairs of the municipality;
 - (b) in providing such general political guidance, may monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities;
 - (c) must take all reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality's approved budget;
 - (d) must within 30 days of the end of each quarter submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality; and
 - (e) must exercise the other powers and performs the other duties assigned in terms of this Act or delegated by the council to the mayor.

3.3.5 Budget processes and related matters

With regard to the budget, the mayor of a municipality must-⁷⁴

- (a) provide general political guidance over the budget process and the priorities that must guide the preparation of a budget;
- (b) co-ordinate the annual revision of the integrated development plan and the preparation of the annual budget, and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and
- (c) take all reasonable steps to ensure –
 - (i) that the municipality approves its annual budget before the start of the financial year to which the budget relates;
 - (ii) that the municipality's service delivery and budget implementation plan is finalised within 28 days after the approval of the budget; and
 - (iii) that the annual performance agreements as required in terms of section 57(1) (b) of the Municipal Systems Act for the municipal manager and all senior managers –
 - (aa) comply with this Act in order to promote sound financial management;
 - (bb) are linked to the measurable performance objectives approved with the budget and service delivery implementation plan; and

⁷² Local Government: Municipal Finance Management Act, 2003 (Act 56 of 20013)

⁷³ “mayor” in relation to a municipality with an executive mayor, is defined in the Act as the councillors elected as the executive mayor in terms of section 55 of the Structures Act

⁷⁴ Section 53 of the MFMA

(cc) are concluded in accordance with section 57 (2) of the Municipal Systems Act.

- (2) The mayor must report any delay in the signing of the annual performance agreements to the municipal council and the MEC for local government in the province.
- (3) The mayor must ensure –
 - (a) That the revenue and expenditure projections for each month and the service delivery targets and performance indicators for each quarter as set out in the service delivery and budget implementation plan, are made public no later than 14 days after the approval of the service delivery and budget implementation plan; and
 - (c) That the performance agreements of the municipal manager, senior managers and any other categories of officials as may be prescribed, are made public no later than 14 days after the approval of the municipality's service delivery and budget implementation plan.

3.3.6 Budgetary control and early identification of financial problems

On receipt of a statement or report submitted by the accounting officer of the municipality in terms of sections 71 or 72 the mayor must⁷⁵

- (a) consider the statement or report;
 - (b) check whether the municipality's approved budget is implemented in accordance with the budget and service delivery implementation plan;
 - (c) consider and, if necessary, make any revision to the service delivery and budget implementation plan, provided that revisions to service delivery targets and performance indicators in the plan may only be made with the approval of the council following approval of an adjustments budget.
 - (d) issue any appropriate instructions to the accounting officer to ensure –
 - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan; and
 - (ii) that spending of funds and revenue collection proceed in accordance with the budget.
 - (e) identify any financial problems facing the municipality, including any emerging or impending financial problems.
 - (f) in the case of a section 72 report, submit the report to the council by 31 January of each year.
- (2) If the municipality faces any serious financial problems the mayor must – (a) promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems, which may include –
- (i) steps to reduce spending when revenue is anticipated to be less than projected in the budget;
 - (ii) the tabling of an adjustments budget; or
 - (iii) steps in terms of Chapter 13; and
- (b) alert the council and the MEC for local government in the province to those problems.
- (3) The Mayor must ensure that any revisions of service delivery and budget implementation plan are made public promptly.

⁷⁵ Section 54 of the MFMA

3.3.7 Report to provincial executive if conditions for provincial intervention Exist

If a municipality has not approved an annual budget by the first day of the budget year or if the municipality encounters a serious financial problem referred to in section 139 of this Act, the mayor of the municipality⁻⁷⁶

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

3.3.8 Exercise of ownership control powers over municipal entities (if any)

The mayor of a municipality which has sole or shared ownership control over a municipal entity must guide the municipality in exercising its ownership control powers over the municipal entity in a way⁻⁷⁷

- (a) that would ensure that the municipal entity complies with this Act and at all times remains accountable to the municipality; and
 - (b) that would not impede the entity from performing its operational responsibilities.
- (2) In guiding the municipality in the exercise of its ownership control powers over a municipal entity in accordance with subsection (1), the mayor may monitor the operational functions of the entity, but may not interfere in the performance of those functions.

3.3.9 Budget preparation process

In terms of Section 21 of the MFMA the mayor of a municipality must coordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget related policies to ensure that the tabled budget and any revisions of the integrated development plan and budget related policy are mutually consistent and credible.

The procedures and timeframes are set out in the Act and section 21(2) sets out the factors that the mayor must take into account when preparing the annual budget.

3.3.10 Municipal Adjustments Budget

Section 28 of the MFMA provides that only the mayor may table an adjustments budget in the municipal council.

3.3.11 Reporting responsibilities in terms of the MFMA

The mayor has various reporting responsibilities in terms of the MFMA and regulations promulgated in terms of said act. Notably, in terms of Section 127, the mayor must, within 7 months after the end of a financial year, table in the municipal council the annual report of the municipality and of any municipal entity under the municipality's sole or shared control.

⁷⁶ Section 55 of the MFMA

⁷⁷ Section 56 of the MFMA

3.3.12 Delegation of mayoral powers and duties in terms of the MFMA

The MFMA allows the council to delegate the mayor’s statutory powers conferred in terms of the MFMA⁷⁸ to another member of the mayoral committee.

Any such a delegation must be in writing; is subject to any limitations or conditions that the council may impose; and does not divest the mayor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

The mayor may also confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

3.3.13 Other duties

The mayor is responsible for public statements of a political nature, e.g. to the media, and accepts petitions from the public.

The mayor determines the attendance of conferences by the political leadership.

3.4 ROLE OF THE EXECUTIVE MAYOR

The executive mayor is appointed by the municipal council from amongst the members of the council. It is also within the municipal council’s power to dismiss the executive mayor.

The area of responsibility of the executive mayor must be viewed from a functional as well as geographical perspective. In geographical terms the executive mayor has to exercise and perform his powers and functions within the boundaries of the municipality. Because of the municipality’s constitutional commitment to co-operative governance it is to be expected that through, the executive mayor’s influence, will also extend to other forums outside these physical boundaries, e.g. IGFs in terms of Intergovernmental Relations Framework Act.

As regards the functional area, the executive mayor’s responsibility relates to all the powers, functions and duties conferred by statute, in terms of civic culture or by delegation.

3.4.1 Executive leadership

The executive leadership of the municipality is vested in the executive mayor.⁷⁹ The term ‘executive power’ relates to the power to give effect to rules of law. The executive of the municipality is responsible for performance of this function. Because the legislative/executive powers at the local sphere are not separated, the council is notionally the executive. However, in terms of the arrangement that exists in the WRDM, the majority of executive powers are delegated to the executive mayor. The executive mayor in turn shares his executive authority with the municipal manager. Both the executive mayor and the municipal manager have important executive functions conferred by statute. The powers to fulfil these functions are delegated by council to the executive mayor and the municipal manager. In many instances, these powers reflect two sides of the same coin, which illustrates the need for clear role definition and a structured working relationship. For example, the Municipal Manager is responsible for the formation and development of an economical, effective, efficient and accountable administration and must manage that administration whilst on the other hand; the Executive Mayor is responsible for monitoring the management of the administration.

⁷⁸ Section 59

⁷⁹ Section 7(b) of the Structures Act

3.4.2 Adviser of the municipal council

The executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the executive mayor, in terms of the executive mayor’s delegated powers, cannot or chooses not to dispose of the matter.⁸⁰ In three other instances the municipal council may not take a decision unless the mayor has submitted to it a report and recommendation, viz-⁸¹

- (a) any matter⁸² in section 160(2) of the Constitution;
- (b) the approval of the IDP and any amendment to that plan; and
- (c) the appointment of the municipal manager and a head of a directorate of the municipality.

3.4.3 Identify the needs of the municipality

The following functions are entrusted to the executive mayor by statute-⁵⁷

- (a) to identify the needs of the municipality;
- (b) to review and evaluate those needs in order of priority;
- (c) to recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans;
- (d) to recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community; and
- (e) to identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (c) above can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general.

3.4.4 Evaluate progress

The executive mayor in performing the duties of office, is charged with the following duties-⁸³

- (a) evaluate progress against the IDP, SDBIP and the key performance indicators of the Performance Management System;
- (b) review the performance of the municipality in order to improve—
 - (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) the efficiency of credit control and revenue and debt collection services; and
 - (iii) the implementation of the municipality’s by-laws;
 - (iv) the implementation of governmental strategic plans

3.4.5 Monitor the administration

The executive mayor is empowered to monitor the management of the municipality’s administration in accordance with the directions of the municipal council.⁸⁴

⁸⁰ Section 56 of the Structures Act

⁸¹ Section 30 of the Structures Act

⁸² Passing of by-laws, approval of budget, imposing rates and tariffs, raising loans ⁵⁷

Section 56(2) of the Structures Act

⁸³ Section 56(3) of the Structures Act

⁸⁴ Section 56(3)(d) of the Structures Act

3.4.6 Oversee provision of services

The executive mayor must oversee the provision of services to communities in the municipality in a sustainable manner.⁸⁵ This duty must be correlated with the functions of the municipal manager to “manage the provision of services in “...a sustainable and equitable manner.” Should the executive mayor believe there is underperformance in respect of any one or more areas, he must request the municipal manager to provide an explanation for the perceived underperformance and, if need be, set corrective measures to address the problem area/s; which corrective measures are to be ratified by the council.

3.4.7 Recipient of delegated powers

The executive mayor may perform such duties and exercise such powers as the council may delegate to the executive mayor.⁸⁶ The municipal council of the WRDM has delegated powers not specifically reserved to it, to the executive mayor except in respect of the following matters—

- (a) decisions to expropriate immovable property or rights in or to immovable property;
- (b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager; and
- (c) decisions to make investments on behalf of the municipality within the municipality’s investment policy that has been delegated to the municipal manager.⁸⁷

3.4.8 Guardian of public’s right to be heard

The executive mayor has specific powers to ensure community involvement and that their views are considered. The executive mayor is therefore obliged to⁸⁸

- (a) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- (b) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.
- (c) Ensure the existence of a language policy that makes community involvement possible.

3.4.9 Must report to council

The executive mayor must report to the municipal council on all decisions taken by the executive mayor.⁸⁹ This duty does not only relate to its statutory powers but also decisions taken in terms of delegated powers.⁹⁰ The council determines the format and frequency of reports.

3.4.10 Appeal authority

A person, whose rights are affected by a decision taken by the municipal manager in terms of a power or duty delegated or sub-delegated to the municipal manager, may appeal against that decision to the executive mayor.⁹¹ The executive mayor 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 because of the decision.

⁸⁵ Section 56(3)(f) of the Structures Act

⁸⁶ Section 56(3)(f) of the Structures Act

⁸⁷ Section 60 of the Systems Act

⁸⁸ Section 56(3)(g) and (h) of the Structures Act

⁸⁹ Section 56(4) of the Structures Act

⁹⁰ Section 63 of the Systems Act

⁹¹ Section 62 of the Systems Act

3.4.11 May appoint committees to assist

The municipal council may appoint committees of councillors to assist the executive mayor and such committees must report to the executive mayor in accordance with its directions. The executive mayor appoints a chairperson for each committee from amongst the members of the mayoral committee and may delegate any of his powers and functions to any such committee.⁹²

These committees must be composed in a manner that allows for parties and interests reflected within the council to be fairly represented.

The executive mayor is not divested of the responsibility concerning the exercise of the power or the performance of the duty delegated and may even vary or revoke any decision taken by such committee, subject however to vested rights.

The municipal council of the WRDM has established 8 (Eight) committees in terms of Section 80 of the Structures Act allowing for parties within the council to be fairly represented. These committees are chaired by members of the mayoral committee and the chairpersons, are appointed by the mayoral committee.

The committees do not have delegated powers only advisory powers.

The Section 80 committees meet at such dates, times and venues as determined by a calendar adopted by the council.

3.4.12 Portfolio responsibilities of members of the mayoral committee

The WRDM has established 8 (Eight) section 80 portfolio committees, each headed by a member of the mayoral committee.

Aspects not relating to any of the portfolio committees may be submitted directly to the Mayoral Committee by the Municipal Manager.

3.5 ROLE OF THE PORTFOLIO COMMITTEES

The roles fulfilled by the portfolio committees are in general to:

- Develop and recommend policy within the functional area of their respective committees;
- Develop and recommend on the content and drafting of by-laws within the functional area of their respective committee;
- Develop and recommend business plans within the functional area of their respective committee;
- Make recommendations with regard to the draft IDP and budget to the executive committee within the functional area of their respective committees;
- Make recommendations with regard to the setting and revision of tariffs, levies, taxes and duties within the functional area of their respective committees; and
- Assess the performance of service delivery generally within the functional area of their respective committee (outcomes monitoring).

⁹² Section 80 of the Structures Act

Each portfolio committee:

- grants leave of absence to members from meetings of the committee;
- is subject to the council’s rules of order and probity by-laws; and
- requests councillors, political office bearers and members of staff to appear before the committee to give evidence or make an input in order to enable the committee to perform its functions.

3.6 ROLE OF THE COUNCIL WHIP

The Council Whip is a post not provided for statutorily and the incumbent is not strictly speaking a “political office bearer” in terms of Section 53 of the Systems Act, but for practical purposes is sometimes used as a political functionary of Council.

The Council Whip gets his mandate from the Speaker and political party caucuses and maintains discipline within the Council. He reports on a daily basis on the behaviour of every party councillor to the Speaker and party’s regional executive leadership.

3.7 ROLE OF THE MUNICIPAL COUNCILLOR

A political office bearer or member of a political structure is in the first place a councillor and has to fulfil that role over and above any other he/she may have.

The powers and functions of the municipal councillor are not to be found in any of the laws applicable to local government. The reason is simply that apart from some functions, which will be discussed later, the individual municipal councillor has no powers; his/her strength lies in the association with cocouncillors. The Systems Act endorses these views in its introductory sections when it reflects on the rights and duties of municipal councils, members of the local community and municipal administrations. Nowhere does the individual councillor feature⁹³

Councillors, on the other hand, do have extensive powers when they act collectively. These powers are usually exercised in the form of decisions taken with the support of the majority.⁹⁴ The most important role of the individual councillor is therefore expressed as member of the municipal council. In this regard the councillor has specific duties as set out below.

3.7.1. Participating in decision-making

A councillor has the right and must take part in the business being transacted at meetings of council and the structures on which he/she serves. This means that he/she must not only have a good understanding of the matters to be considered, but also a sound understanding of the dynamics of and sentiments in the municipal area; a prerequisite for a proper policy judgement. Councillors should accordingly be prepared for all meetings, having read and analysed agendas.

3.7.2. Attend meetings

A councillor should attend meetings of the municipal council and the structures on which he/she serves. Non-attendance of these meetings or failure to remain in attendance constitutes a transgression of the Code of Conduct.⁹⁵ Council may impose a fine on a councillor who transgresses and a councillor who is absent from three or more meetings must be removed from office as a councillor. The proceedings for the imposition of a fine or the removal from office must be conducted in accordance with a uniform standing procedure, which each municipal council must adopt for this purpose.

⁹³ Chapter 2, sections 2-7

⁹⁴ Section 30 of the Structures Act

⁹⁵ Items 3 and 4 of the Code

These procedures must also comply with the principles of natural justice and are therefore bound to introduce other role-players.

3.7.3 Act in accordance with the Code of Conduct

The code contains many rules that require a certain standard of conduct by a councillor. When a councillor is in breach of any one of these rules he/she may face disciplinary action. The speaker or the council itself may investigate a breach whilst council, or a committee appointed for that purpose, must make a finding.⁹⁶ Any investigation in this regard must be conducted in accordance with the rules of natural justice and, of necessity, involve other role players.

Other rules of the code, when transgressed, will immediately lead to conflict; these rules are discussed hereafter.

3.7.4 Access to Information

A councillor may inspect documents in the possession of the municipality, but only to the extent that access to such information is reasonably necessary to perform his/her duties as a councillor. Unauthorised access and disclosure of any privileged or confidential information, is not only an infringement of the code⁹⁷ but also impedes on the terrain of the municipal manager in his capacity as Information Officer in terms of the Promotion of Access to Information Act.

The WRDM has adopted an Access to Information Manual and Policy in accordance with the Promotion to Access of Information Act, 2 of 2000. If a councillor wishes to gain access to council documents, he/she must approach the municipal manager with a written request substantiating the information required and the reasons for the request. The municipal manager, acting in his discretion as the Information Officer, will arrange perusal of the required information but subject to the classification type of the information.

3.7.5 Interference in Administration

The code⁹⁸ provides that a councillor may not, except as provided by law-

- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
- (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- (d) encourage or participate in any conduct that would cause or contribute to maladministration in the council.

3.7.6 Promoting Local Democracy

Municipal councils play a central role in promoting local democracy. In addition to representing the community interests within the council, municipal councillors should promote the involvement of citizens and community groups in the design and delivery of municipal programmes. They are also ideally positioned to raise awareness of human rights issues and by promoting constitutional values and principles; an obligation in terms of section 7 of the Constitution⁹⁹

⁹⁶ Items 13 and 14 of the Code

⁹⁷ Item 10

⁹⁸ Item 11

⁹⁹ White Paper on Local Government p40

The mandate to represent the community carries major responsibilities. It is worded as follows in the preamble to the Code of Conduct –

“Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established.”

3.7.7 No Promises

As set out above individual councillors have no power and can therefore not make promises to members of their constituencies and may not interfere in the administration and thus may not give direct instructions to employees of the council.

3.8 ROLE OF THE MUNICIPAL MANAGER

The municipal manager holds an important position in the municipality; a position, which requires not only the service of a very competent person, but also sufficient powers to realise the municipality’s goals and the contractual performance¹⁰⁰, required from him/her (see also the Local Government :

Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006 regarding core competencies and the Local Government : Municipal Regulations on Minimum Competency Levels, 2007 regarding general competency levels for accounting officers.)

It is for this reason that the legislature saw it fit to confer a number of important duties, powers and functions on the municipal manager. In order to enable the municipal manager to fulfil these functions, the Council is obliged to delegate the necessary powers.

3.8.1 The municipal manager is the head of the administration

In terms of the Systems Act¹⁰¹ the municipal manager is the head of administration and is, subject to the policy directions of the municipal council, responsible and accountable for a variety of duties and functions, which are discussed hereunder.¹⁰²

3.8.1.1 Establish an administration

The municipal manager is, subject to the policy directions of the municipal council, responsible for the formation and development of an economical, effective, efficient and accountable administration and must ensure that it is:-

- equipped to carry out the task of implementing the municipality’s integrated development; - operating in accordance with the municipality’s performance management system; and
- responsive to the needs of the local community to participate in the affairs of the municipality;

¹⁰⁰ An obligation in terms of Section 57 of the Systems Act

¹⁰¹ Section 55

¹⁰² Paragraphs (a)-(q) of Section 55(1)

3.8.1.2 Manage the administration

The municipal manager must manage the municipality’s administration in accordance with the Systems Act and other legislation applicable to the municipality. He must ensure that the municipal ‘machine’ operates efficiently, that the organisational structure is able to perform the various tasks and exercise the necessary controls.

The municipal manager has to fulfil a leadership role in the administration; this is of utmost importance to influence the actions of staff and to inspire and persuade the staff to work together to realise the municipality’s goals.

(Monitoring the management of the municipality’s administration, on the other hand, is the responsibility of the executive mayor, who must perform this function in accordance with directions of the municipal council.¹⁰³)

3.8.1.3 Implement the IDP

The municipal manager must see to the implementation of the municipality’s integrated development plan, and the monitoring of progress with implementation of the plan.

(The executive mayor again has the task of evaluating progress in the implementation of strategies, programmes and services aimed at addressing priority needs through the IDP.⁷⁹)

3.8.1.4 Manage the provision of services

The municipal manager must manage the provision of services to the local community in a sustainable and equitable manner, whilst the executive mayor must oversee the provision of services to the communities in the municipality in a sustainable manner.¹⁰⁴

3.8.1.5 Appoint and manage staff

The municipal manager is empowered to appoint all staff other than those who are directly accountable to him. In terms of section 5(1) of the National Building Regulations Act, 1977 (Act 103 of 1977) the municipal council must appoint an employee as building control officer. This power is exercised, subject to the Employment Equity Act, 55 of 1998 and based on the organogram approved by the municipal council as well as the human resources policies and delegations approved by the council. The municipal manager further exercises his/her original power to develop the organisational structure strictly in accordance with the parameters laid down by the resolution adopted by the municipal council and consistent with the broad governance framework and other applicable resolutions, rules and procedures of the council. The municipal manager reports in writing to the municipal council in the event of any organisational reviews and/or amendments because of exercising this original power.

The appointment of managers who are directly accountable to the municipal manager is the function of the municipal council but the municipal manager must be consulted.¹⁰⁵

The council and the municipal manager should agree to the processes, procedures and criteria, i.e. the occupational and managerial competencies, for the appointment of these managers (given that it is the municipal manager, who has to, with the assistance of these managers, meet the required performance levels

¹⁰³ Section 56(3)(d) of the Structures Act ⁷⁹

Section 56(3)(a) of the Structures Act

¹⁰⁴ Section 56(3)€ of the Structures Act

¹⁰⁵ Section 56 of the Systems Act

or face the consequences). Such competencies must be in accordance with legislative requirements and/or national guidelines in this regard.

The municipal manager must within a policy framework determined by the municipal council and subject to any applicable legislation, approve a staff establishment for the municipality. He/she must-

- provide a job description for each post on the staff establishment;
- attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and
- establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.¹⁰⁶

The municipal manager is furthermore responsible for-

- the management, effective utilisation and training of staff which training is done in accordance with the workplace skills plan of the council as annually submitted to it for noting;
- ensuring that his/her performance agreement and those of the section 56 managers are annually completed and signed on the legally required date;
- ensuring that his/her personal development plan and those of the section 56 managers are duly completed and pursued as part of their performance agreements;
- the maintenance of discipline of staff;
- the promotion of sound labour relations and compliance by the municipality with applicable labour legislation

As regards maintenance of discipline and proper conduct of staff, the municipal manager has a specific responsibility. He/she must ensure that the code of conduct for staff¹⁰⁷ is made known to the staff and that their conduct is in conformity with it.

3.8.1.6 Advising the political structures and office bearers

The municipal manager is the chief adviser of the municipality and must advise the political structures and political office bearers of the municipality. To this end the municipal manager must ensure that there are competent and able officials to assist him/her in this task. Where specialised in-house expertise is not available the municipal manager must not be constrained in obtaining external advice. His/her advice is imperative for council and its structures and political office bearers to take informed decisions.

The municipal manager must specifically advise the executive mayor and/or the council in writing if a matter under consideration will lead to fruitless, irregular, and wasteful expenditure. If at a council meeting a resolution contrary to the advice of the municipal manager is taken that will lead to irregular expenditure, the municipal manager must request that his/her advice be minuted.

In accordance with the s.79(2)(d) of the Structures Act, the WRDM Council may co-opt the municipal manager as an advisory member of the s.79 – read with s.129 of the MFMA – Oversight Committee to further enable him to fulfil his advisory obligations.

¹⁰⁶ Section 66 of the Systems Act

¹⁰⁷ Section 70 of the Systems Act

3.8.1.7 Manage communications

The municipal manager is responsible for managing communications between the municipality’s administration and its political structures and political office bearers. It is realistic to expect that in an organisation, with such divergent interests as the municipality, relationships and the way people interact with each other could be easily affected. All individuals in the organisation need to be drawn towards meeting common goals; this requires leadership and coordination and is one of the primary tasks of the municipal manager.

Compliance with the statutory requirement¹⁰⁸, i.e. that the municipality must define roles and determine the manner of interaction in relationships and the appropriate lines of communication, may assist the municipal manager in the task of managing communications (which is the purpose of this document).

The municipal manager is responsible for all public statements, e.g. to the media, concerning technical and administrative matters while the mayor is responsible for all public statements of a political nature. The municipal manager reports directly to the executive mayor in respect of the communication functions that he/she fulfils.

3.8.1.8 Implementing decisions of the political structures and office bearers

The municipal manager must see to the carrying out of the decisions of the political structures and political office bearers of the municipality. This duty obviously applies to lawful decisions however, regard must be had to the legal principle that an “unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is as set aside” by a court of law (vide. Oudekraal Estates (Pty) Ltd v. City of Cape Town and Others (41/2003) [2004] ZASCA48; [2004] 3 All SA1 (SCA) (28 May 2004). The municipal manager must of necessity act through the staff or delegate authority to staff to implement decisions.

3.8.1.9 Administer and implement by-laws and other laws

The municipal manager must administer and implement the municipality’s bylaws, other legislation and national and provincial legislation applicable to the municipality.

(The executive mayor also has a responsibility in this regard; it must review the performance of the municipality in order to improve the implementation of the municipality’s by-laws.¹⁰⁹)

3.8.1.10 Exercise delegated powers or assigned functions

The municipal manager is responsible for the exercise of any powers and the performance of any duties delegated by the municipal council, or sub-delegated by other delegating authorities of the municipality, to the municipal manager; also the performance of any other function that may be assigned by the municipal council.

3.8.1.11 Facilitate community participation

The municipal manager must facilitate participation by the local community in the affairs of the municipality and must also develop and maintain a system whereby community satisfaction with municipal services is assessed. In this respect he/she reports directly to the executive mayor.

(The executive mayor in turn has the duty to-

¹⁰⁸ Section 53 of the Systems Act

¹⁰⁹ Section 56(3)(c) of the Structures Act

- annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.¹¹⁰⁾

3.8.2 The municipal manager is the accounting officer of the municipality

As accounting officer of the municipality the municipal manager is responsible and accountable for-

- all income and expenditure of the municipality;
- all assets and the discharge of all liabilities of the municipality;
- the investments of the municipality; and
- proper and diligent compliance with applicable municipal finance management legislation.¹¹¹

The MFMA is the main source of the municipal manager’s financial powers, duties and functions. These will be briefly discussed hereafter. References are to provisions of the latest version of the Act. ¹¹² Reference should be made to the Act for a complete exposition of the role of the Municipal Manager.

3.8.2.1 Give guidance (section 60)

The municipal manager must provide guidance and advice or compliance with the Act to–

- the political structures, political office-bearers and officials of the municipality; and
- any municipal entity under the sole or shared ownership control of the municipality.

3.8.2.2 Fiduciary responsibilities (section 61)

The accounting officer must act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs.

The accounting officer must disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor.

The accounting officer must seek to prevent any prejudice to the financial interests of the municipality.

3.8.2.3 General financial management functions (section 62)

The accounting officer is responsible for the effective, efficient, economical and transparent use of the resources of the municipality.

The accounting officer must keep full and proper records of the financial affairs of the municipality in accordance with any prescribed norms and standards;

The accounting officer must ensure that the municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control and of internal audit.

The accounting officer must take all reasonable steps to prevent unauthorised, irregular, fruitless, and wasteful expenditure and losses resulting from criminal conduct.

¹¹⁰ Section 56(3)(g) and (h) of the Structures Act

¹¹¹ Section 55(2) of the Systems Act

¹¹² Act 56 of 2003

The accounting officer must take effective and appropriate disciplinary steps against any official of the municipality who has allegedly committed an act of financial misconduct.

The accounting officer of a municipality must ensure that the municipality has and implements-

- a tariff policy;
- a rates policy;
- a credit control and debt collection policy; and
- a supply chain management policy

The accounting officer must ensure that the municipality has an investment policy and has the delegated power to make investments on behalf of the municipality within the municipality’s investment policy.

The accounting officer must maintain and regularly update the municipality’s official website and place on the website-

- annual and adjustments budgets and all budget-related documents;
- policies of the municipality
- annual report, financial statements and audit report;
- performance agreements of the municipal manager and managers that report to him;
- alternative service delivery agreements;
- long-term borrowing contracts;
- procurement contracts above a prescribed value.

The accounting officer is responsible for all bank accounts of the municipality and must account for such bank account.

3.8.2.4 Asset and liability management (section 63)

The accounting officer is responsible for the management of the assets and the liabilities of the municipality and must-

- introduce a system that accounts for the assets and liabilities of the municipality;
- value the municipality’s assets and liabilities; and
- establish and maintain a system of internal control of assets and liabilities, including an asset and liabilities register.

3.8.2.5 Revenue management (section 64)

The accounting officer is responsible for the management of revenue and must for this purposes –

- ensure that the municipality has proper revenue collection systems;
- on a monthly basis calculate revenue due to the municipality;
- ensure that accounts for property rates and for municipal services provided on credit are prepared on a monthly basis;
- ensure that all money received is promptly deposited into the municipality’s bank accounts;
- establish and maintain a management, accounting and information system;
- establish and maintain a system of internal control in respect of debtors and revenue;

- charge interest on arrears; and
- ensure that all revenue received is reconciled at least on a weekly basis.

The accounting officer must inform the National Treasury of any arrear payments for municipal services or rates and taxes due by a national or provincial organ of state.

The accounting officer must ensure that any funds collected on behalf of another organ of state is transferred to that organ of state and that such funds are not used for other purposes than as agreed with the organ of state.

3.8.2.6 Expenditure management (section 65)

The accounting officer is responsible for the management of the expenditure and must for this purpose-

- ensure that the municipality has and maintains a proper system of expenditure control;
- ensure that the municipality has and maintains a management, accounting and information system;
- ensure that the municipality has and maintains a system of internal control in respect of creditors and payments;
- ensure that payments are made directly to whom it is due;
- pay all money owing promptly;
- comply with tax, levy, duty, pension, and other commitments of the municipality as required by legislation;
- manage available working capital effectively and economically;
- implement the municipality’s procurement and asset disposal policies in a way that is fair, equitable, transparent, competitive and cost-effective;
- ensure that all accounts of the municipality are closed at the end of each month and reconciled with its records; and
- request a forensic audit if he comes across financial irregularities that warrants such an audit to be done.

3.8.2.7 Expenditure on staff benefits (section 66)

The accounting officer must report to the council on all expenditure incurred by the municipality on staff salaries, wages, allowances and benefits and disclose such expenditure in the municipality’s annual report.

3.8.2.8 Funds transferred to outside bodies (section 67)

Before transferring municipal funds to an organisation or body outside any sphere of government (otherwise than in compliance with a commercial or other business transaction) the accounting officer must consider the Municipality’s Grant-in-Aid Policy and be satisfied that the organisation or body-

- is able to comply with reporting, financial management and auditing requirements;
- implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement.

3.8.2.9 Budget preparation (section 68)

The accounting officer of a municipality must assist the mayor in performing the budgetary functions assigned to the mayor and provide the mayor with the administrative support, resources and information necessary for the performance of those functions.

3.8.2.10 Budget implementation (section 69)

The accounting officer is responsible for implementing the budget, including taking effective and appropriate steps to ensure that-

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

When necessary, the accounting officer must prepare an adjustments budget and submit it to the mayor for consideration and tabling in the municipal council. The accounting officer must shortly after the approval of a budget submit to the mayor-

- the draft service delivery and budget implementation plan; and
- drafts of the annual performance agreements for the municipal manager and all managers directly responsible to the municipal manager.

3.8.2.11 Impending shortfalls, overspending and overdrafts (section 70)

The accounting officer of a municipality must report to the municipal council-

- any impending shortfalls in budgeted revenue or overspending of the municipality’s budget;
- any overdrafts in a municipality’s bank accounts; and
- any steps taken to rectify such shortfalls or overspending.

3.8.2.12 Monthly budget reports (section 71)

The accounting officer must each month submit to the mayor and national treasury a report on the state of the budget during that month and during the financial year up to the end of that month. The following matters must be reflected in the report-

- the actual revenue, including any transfers received, from national organs of state in terms of the annual Division of Revenue Act, and from provincial organs of state and other municipalities;
- actual borrowings;
- the actual expenditure, including capital expenditure;
- an explanation of material variances from projected revenue and expenditure and remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the approved budget; and
- a projection of revenue and expenditure for the rest of the financial year, and any revisions from initial projections.

3.8.2.13 Other reports (section 68, 69 and 70)

The accounting officer must –

- at mid year submit a performance assessment report to the mayor, national treasury
- the MEC for local government and the national treasury of any failure by the council to adopt or implement a budget-related policy or a procurement or asset disposal policy or any non-compliance by a political structure or office-bearer with any such policy;

- the national treasury, the MEC for local government or the AuditorGeneral such information, returns, documents, explanations and motivations as may be required.

3.8.2.14 Power to delegate (section 79)

The accounting officer must develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality’s financial administration.

The accounting officer may, in accordance with that system, delegate any of the powers or duties assigned to an accounting officer in terms of the act to any official of the municipality;

The accounting officer must regularly review delegations and, if necessary, amend or withdraw any of those delegations.

The accounting officer may in certain circumstances authorise sub-delegation. The accounting officer is not divested of the responsibility concerning the exercise of a delegated power or the performance of a delegated duty.

The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued because of the decision.

3.8.3 Other statutory duties, powers and functions

3.8.3.1 Calls the first meeting of council

The municipal manager of the municipality must call the first meeting of the council after the council has been declared elected.¹¹³

3.8.3.2 Presides over election of speaker

The municipal manager of the municipality presides over the election of a speaker.¹¹⁴

3.8.3.3 Appeal authority

A person, whose rights are affected by a decision taken by a member of staff in terms of a power or duty delegated or sub-delegated to the member of staff, may appeal against that decision to the municipal manager.¹¹⁵

The municipal manager 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 because of the decision.

The municipal manager must also administer the lodging of appeals to other appeal authorities in the municipality. Appeals lodged in terms of the Supply Chain Management Policy / By-law are dealt with in accordance with that policy / by-law.

¹¹³ Section 29(2) of the Structures Act

¹¹⁴ Section 36 of the Structures Act

¹¹⁵ Section 62 of the Systems Act

3.8.3.4 Information Officer

The municipal manager is the Information officer of the municipality in terms of the Promotion of Access to Information Act and the Protection of Personal Information Act, and performs all the functions and exercises all the duties attached to that position. The municipal manager is responsible for all public statements, i.e. to the media, concerning technical and administrative matters.

3.8.4 Other Roles

3.9.8.1 Legal Business

The municipality as a complex structure operates in turn in a complex legal environment. This may involve claims by or against it for damages, payments or enforcement of rights, or the necessity to comply with a statutory provision, or to conclude relationships by way of contract and the management of those relationships.

It is the responsibility of the municipal manager to ensure that the legal interests of the municipality are best protected at all times by inter alia suing, defending or settling disputes, ensuring compliance with statutory or other provisions, concluding agreements in the best interests of council and managing the relationships in terms thereof thereafter.

3.8.4.2 Intergovernmental relations

The municipal manager must pursue the constitutional obligation to practise cooperative government by inter alia maintaining relationships with municipal managers and administrations of other municipalities, serving on and attending meetings/conferences etc. of inter alia municipal managers’ forums, professional bodies, etc. In addition, the municipal manager is responsible for providing technical support and advice to representatives of the council who attends intergovernmental forums and he represents the council on intergovernmental forums where appropriate.

In respect of intergovernmental relations, the municipal manager reports directly to the executive mayor.

The municipal manager should also where possible and time allows co-operate in achieving the objectives of the 5-year strategic framework by making himself available to strengthen and support local government in general (e.g. serve on investigation teams in terms of Section 139 of the Constitution etc.)

3.8.4.3 Labour Relations

The municipal manager must manage relationships with unions and individual employees to promote labour peace.

3.8.4.4 Special Programmes

The municipal manager has managerial responsibility over directors responsible for special programmes pertaining to the youth, women, disabled, aged, children and HIV/Aids who report directly to the executive mayor in respect of these.

CHAPTER 4

RELATIONSHIPS, ACCOUNTABILITY AND INTERACTION

The political system of local government in South Africa draws a number of powerful bodies and individuals together in a union, with one goal in mind, i.e. to provide good, effective and accountable government to the community. Role players may have specific conferred powers, different mandates from their peers, or even divergent personal views. And then there is the community with its many needs, all in all, a recipe for differences to surface. Relationships are formed whenever these role players interact with each other, ranging from the formal meeting of council to the simple conveyance of a resident’s complaint.

Only the most important interactions, lines of accountability and lines of reporting are discussed.

4.1. Council/councillor

This relationship between the collective body and its member is generally one of ethics.

A councillor must perform the functions of office in good faith, honestly and a transparent manner and at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. If a councillor is in breach of the code the council, after due process, has to consider whether to take action and, where appropriate, to impose a sanction.

The individual councillor’s relation with the council in this regard is usually revealed in his/her association with the council’s chairperson, i.e. the speaker.

The municipal councillor is accountable to the municipal council. The ward councillor as chairperson of a ward committee reports to the council and is accountable to council and the residents of the ward.

4.2. Speaker/Council/Councillors

The speaker is the chairperson of the council and as such is empowered to dictate proceedings at council meetings, subject however to the rules of order, common law and constitutional dictates. Councillors must comply with the speaker’s rulings or face the consequences.

Whenever the speaker enforces the code of conduct he/she must act in accordance with the rules of natural justice. A councillor who is the subject of an investigation must respect the position of the speaker and adhere to all lawful requests, subject however to specific individual rights.

The speaker is accountable to and reports to the municipal council.

4.3. Speaker/Mayor/Council Whip

In the municipal council meeting the executive mayor submits his/her recommendations, including the reports from the portfolio committees, argues, and substantiates his/her recommendations. The speaker chairs the meetings of the municipal council and the mayor is subject to the speaker’s control of the meeting. In the meeting of the municipal council, the council whip has no role but, if in accordance with the rules of order, a caucus is called during a municipal council meeting, the council whip controls the caucus meeting as chairperson of whippers and assists the speaker in the maintenance of discipline.

4.4. Speaker/Mayor/Council

Although the mayor may be the leader of the municipality, the speaker is the dominant figure in the council meetings. In council meetings the mayor has the right to present the reports of the mayoral committee and

the portfolio committees. In doing so he represents the executive in reporting to the legislative body and may defend his/her exercise of his/her delegated powers.

Outside the council chamber the mayor is the dominant figure and he is, together with the municipal manager, at the helm of the daily governance issues.

The two positions are complementary to each other and incumbents should strive to work together.

4.5. Council/Municipal Manager

The council as decision-making body must heed the advice of the municipal manager.

Good reasons will have to be offered whenever his/her advice is not followed, especially with regard to questions of lawfulness and financial competency. In certain circumstances the municipal manager is obliged to report such action to other authorities.

The municipal manager is appointed by and accountable to council for the performance of the functions entrusted to him/her in terms of statute, law and their contractual arrangement. He/she must be allowed to perform these functions without any interference and with reasonable support. The council, on the other hand, must consider whether the municipal manager’s performance meets the required expectations.

The municipal manager’s performance is assessed on a quarterly basis as determined by regulations in terms of the Systems Act by an assessment panel that must include the mayor, a ward committee member as nominated by the mayor and the portfolio committee chairpersons. As per the regulations, other panel members must be the chairperson of the council’s performance audit committee (or the audit committee in the absence of a performance audit committee) and the mayor and/or the municipal manager of another municipality.

The municipal manager is accountable to council but reports to the executive mayor.

4.6. Speaker/Municipal Manager

The speaker must convene meetings of the council and can only do so with the support of the municipal manager and dedicated staff. This also applies to arrangements at the meeting place, the compiling of agendas and recording of minutes. Unless the speaker and municipal manager co-ordinate their respective actions council meetings may well be frustrated.

When the speaker acts as appeal authority the municipal manager must ensure that designated officials properly manage the proceedings. The municipal manager must also provide the logistical support whenever the speaker has to enforce the provisions of the Code of Conduct.

4.7. Executive Mayor/Municipal Manager

The relationship between the executive mayor and the municipal manager is important for the effective performance of the municipality. It is also a complex relationship, mainly because connection between their respective functions which often reflect two sides of one coin, i.e. the mayor as head of the executive leadership and the municipal manager as the ‘head of the administration’. Likewise, the municipal manager’s duty and power to ‘form and develop an administration’ and the mayor’s duty to ‘monitor the administration’ should not be seen as opposing functions; the two should work together to ensure an effective and efficient but also accountable administration.

The municipal manager, mayor and speaker must co-ordinate their respective actions to ensure that matters for council are presented for consideration and decisions are executed as fast as possible.

When the executive mayor acts as appeal authority the municipal manager must ensure that designated officials properly manage the proceedings.

The municipal manager reports to the executive mayor but is accountable to council.

4.8. Councillor/Municipal Manager/Staff members

The individual councillor is on the forefront of contact with the community and is constantly confronted with complaints about service delivery and other requests for assistance.

Should an individual councillor need to express a concern regarding an emergency, hazardous situation or disaster, he/she can report the matter directly in writing to the head of the respective department dealing with it but must also ensure that it is reported either by him/herself or the relevant head to the mayor and the municipal manager including the manner in which it was dealt with. Such reporting is necessary to keep the mayor (guardian of the public’s right to be heard) informed and to enable the municipal manager to keep a record thereof for determining problem areas and trends.

A councillor acting as an individual may address a matter concerning an existing or proposed policy by way of submitting a motion in regard thereto to the municipal council in accordance with the standing orders of the municipal council.

Councillors may submit inputs regarding any matters related to long term planning and development of the municipality through the IDP process. To ensure community involvement with regards to development projects, the municipal manager must communicate with the ward councillor and ward committee of the ward concerned and assists to set up a steering committee for the project. In respect of smaller projects some of which are the responsibility of national and provincial departments, the municipal manager brings any relevant matter directly to the attention of the ward councillor.

Staff members who wish to interact with individual councillors must follow the line functions and do so through his/her head of department and thereafter the director, who will in turn interact with the municipal manager.

CHAPTER 5

DISPUTES

Section 53(5) requires the municipality to determine mechanisms, processes and procedures for resolving disputes between political structures, political office bearers and the municipal manager.

The process reflected in this document of defining roles and creating channels of communication and reporting lines may limit the potential for dispute but in practice, it is possible that disputes will arise which are not capable of being resolved in an informal manner.

Many disputes arise because of a failure of proper communication between and amongst parties. All political office bearers and the municipal manager commit to communicate continuously with each other to ensure a flow of information designed to minimise the possibility for dispute.

In the event of a dispute arising, the parties to that dispute commit to meet in private in order to air the issues between them and attempt to find a resolution. The parties should, where appropriate, make use of a facilitator acceptable to both parties to assist in the process of communication.

If the dispute concerns a matter which should be addressed in a policy or is already addressed in a policy but is interpreted differently or not addressed appropriately thus leaving grey areas, the first important resolving step should be to either develop a policy or to revisit and revise the existing policy as a means to resolve the dispute.

Should the dispute continue, it will be referred to the Municipal Manager if he is not a party thereto.

Disputes which thereafter remain, should in the case of political office bearers, be referred to the speaker for determination of whether the dispute must be resolved at a municipal level or a political party level. If at municipal level, the dispute must be referred to the executive mayor for determination. The speaker may, in consultation with the Municipal Manager, call for an authoritative legal opinion on the matter.

If a dispute develops between the municipal council and the municipal manager over the lawfulness of a municipal council decision, a legal opinion must be requested from an advocate acting as an advisor to the municipal council and, if possible, an internal adjudication based on the advocate’s opinion must be done. In case of the dispute concerning a highly technical or specialist area, which requires the advice of an external specialist, the mayor or the advocate, may request such an opinion from a person both parties agree to.

Should an individual councillor have a difference of opinion or be involved in a dispute with a staff member of the municipality, the councillor must approach the executive mayor who must then take the matter up with the municipal manager who will attempt to find a resolution to the dispute with the mayor.

If the dispute involves a political office bearer and the municipal manager, and remains unresolved after the above private process, then the following formal process should ensue:

- The offended party declares a dispute in writing to the other party;
- The parties thereafter meet within 5 (five) working days at an agreed time and venue to discuss the issue in private;
- If the private meeting fails to yield results, the matter will be referred to the speaker who may be assisted by a specialist in an attempt to resolve the dispute at which meeting the political office bearer and the municipal manager will each be afforded a fair opportunity to state his/her case including the submission of supporting documentation;

Annexure “F”

If any of the abovementioned disputes remain unresolved after following the prescribed process, the chairperson of the Johannesburg Bar Council in Johannesburg Town will be forthwith requested to appoint a senior advocate to arbitrate the matter within 20 working days of his/her appointment and whose arbitration decision will be final and binding on the parties concerned.

The parties involved will personally present their own cases but if, for whatever reason, a party to the dispute obtains legal assistance at the cost of the Municipality in terms of its legal assistance policy developed in terms of s109A of the Systems Act, then the other party will be entitled to similar assistance.