

MINUTES OF THE SPECIAL COUNCIL MEETING OF WITZENBERG MUNICIPALITY, HELD IN THE COUNCIL CHAMBERS, MUNICIPAL OFFICES, 50 VOORTREKKER STREET, CERES ON FRIDAY, 4 OCTOBER 2019 AT 11:00

PRESENT

Councillors

Alderman TT Godden
Councillor BC Klaasen (Executive Mayor)
Alderman K Adams (Deputy Executive Mayor)
Councillor TE Abrahams
Councillor P Daniels
Councillor MD Jacobs
Councillor D Kinnear
Councillor GG Laban
Councillor C Lottering
Councillor TP Mgoboza
Councillor ZS Mzauziwa-Mdishwa
Councillor MJ Ndaba
Councillor N Phatsoane
Councillor JT Phungula
Alderman JW Schuurman
Councillor EM Sidego
Alderman HJ Smit
Councillor D Swart

Officials

Mr D Nasson (Municipal Manager)
Mr P van den Heever (Acting Director: Technical Services)
Mr A Raubenheimer (Acting Director: Finance)
Mr G Louw (Head: Internal Audit)
Mr A Hofmeester (IDP Manager)
Mr CG Wessels (Manager: Administration)
Ms MJ Prins (Acting Principal Administrative Officer)
Mr C Titus (Committee Clerk)
Ms M Badela (Interpreter)

1. OPENING AND WELCOME

The Speaker welcomed everyone present after which he requested Councillor C Lottering to open the meeting with a prayer.

NOTED

2. LEAVE OF ABSENCE AND CONFIDENTIALITY AND CONFLICT OF INTEREST DECLARATION

**2.1 Consideration of application for leave of absence, if any
(3/1/2/1)**

- (a) Applications for leave of absence from the meeting were received from Alderman JJ Visagie (DA) and Councillors H Visagie (ANC) and M Mdala (ANC).

The meeting decided that the approval of the applications for leave of absence from the meeting, received from Councillors H Visagie (ANC) and M Mdala (ANC) be held in abeyance and considered at the next meeting. Applications for leave of absence will in future only be conveyed by the Chief Whip of the applicable party.

- (b) Apologies for absence from the meeting were received from the Directors of Corporate Services and Technical Services.

RESOLVED

- (a) *that the application for leave of absence from the meeting, received from Alderman JJ Visagie, be approved and accepted.*

- (b) *that the approval of the applications for leave of absence from the meeting, received from Councillors H Visagie (ANC) and M Mdala (ANC), be held in abeyance until the next meeting.*

- (c) *that notice be taken of the apologies for absence from the meeting, received from the Directors of Corporate Services and Technical Services.*

2.2 Confidentiality and Conflict of Interest Declaration

The Confidentiality and Conflict of Interest Declaration was signed by all Councillors.

Councillor B Klaasen declared in terms of item 4.4.4 (Building of a boundary wall/erection of a fence along Vredebes/Crispy Farming/Morceaux and Patrick de Wet Farm) that Mr De Wet is a client of his attorney practice, Klaasen Incorporated.

NOTED

3. STATEMENTS, ANNOUNCEMENTS OR MATTERS RAISED

**3.1 Matters raised by the Speaker
(09/1/1)**

None

NOTED

**3.2 Matters raised by the Executive Mayor
(09/1/1)**

None

NOTED

4. GERESERVEERDE BEVOEGDHEDE / RESERVED POWERS

4.1 Direkoraat Finansies / Directorate Finance

**4.1.1 Travel Management Policy
(4/5/P)**

Item 4.1.1 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The Travel Management Policy is attached as **annexure 4.1.1**.

The Executive Mayoral Committee resolved on 3 October 2019 that the Travel Management Policy be workshopped by Council and after that be tabled to Council for approval and adoption.

The following recommendation was tabled to Council:

That the Executive Mayoral Committee recommends to Council:

that the Travel Management Policy, after being workshopped and considered, be approved and adopted.

UNANIMOUSLY RESOLVED

that the matter in respect of the Travel Management Policy be held in abeyance and be workshopped by Council.

4.2 Direkoraat Tegniëse Dienste / Directorate Technical Services

**4.2.1 Policy for appointment of consultants as per Cost Containment Regulations
(5/P)**

Item 4.2.1 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The following memorandum, dated 10 September 2019, was received from the Director: Technical Services:

“1. Purpose

The purpose of the report is to approve the Policy for the Appointment of consultants, 2019.

2. Background

The Minister of Finance has, acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, in terms of Section 168(1) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), made the Regulations for Municipal Cost Containment. These regulations were published by National Treasury in the Government Gazette No. 42514 of 7 June 2019 and will be used as a guideline in drafting the Policy for the Appointment of consultants, 2019.

3. Legal framework

The municipality's operations are governed by an array of different acts and this policy should be understood within the context of the compilation of all these legislations. The following Acts and prescripts are central in defining the municipality's boundaries and areas of influence:

- Constitution of the Republic of South Africa, 1996
- Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)
- Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
- Local Government: Municipal Finance Management Act, 2003 (Act 53 of 2003)
- Municipal Cost Containment Regulations, 2019, herein after referred to as the Regulations.

4. Financial impact

As per clause 5(2) of the Cost Containment Regulations:

An accounting officer must adopt a fair and reasonable remuneration framework for consultants taking into account the rates –

- (a) determined in the 'Guideline on fees for audits undertaken on behalf of the Auditor-general of South Africa', issued by the South African Institute of Chartered Accountants
- (b) set out in the 'Guide on Hourly Fee Rates for Consultants', issued by the Department of Public Service and Administration; or
- (c) as prescribed by the body regulating the profession of the consultant."

The Policy for the appointment of consultants, 2019 is attached as **annexure 4.2.1**.

The Executive Mayoral Committee resolved on 3 October 2019 to recommend to Council that the Policy for the appointment of consultants, 2019, after being workshopped and considered, be approved and adopted.

The following recommendation was tabled to Council:

That the Executive Mayoral Committee recommends to Council:

that the Policy for the appointment of consultants, 2019, after consideration, be approved and adopted.

UNANIMOUSLY RESOLVED

that the matter in respect of the Policy for the appointment of consultants as per Cost Containment Regulations be held in abeyance and be workshopped by Council.

4.2.2 Approval for way leave fibre applications within the Witzenberg area (17/15/1)

Item 4.2.2 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The following memorandum, dated 30 September 2019, was received from the Municipal Manager:

“Purpose

To consider amending Council's Policy to also provide for fibre way leave applications and to grant the Director: Technical Services the delegation to approve of such applications.

Deliberation

In terms of the Electronic Communications Act of 2005 an electronic communications network service licensee may:

- (a) Enter upon any land, including any street, road, footpath or land reserve for public purposes.
- (b) Construct and maintain an electronic communications network upon, over, along or across any land, including any street, road, footpath or land reserve for public purposes.

Council previously expressed its intention to roll out fibre throughout Witzenberg itself. The rolling out of fibre may only be done by approved licensees. Numerous applications have been received for way leave to install fibre. In terms of the said act a licensee may, after providing 30 days prior written notice to the local authority, construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for electronic communication network facilities under any street, road or footpath. The municipality has received such written notice now from Conic on behalf of Hero Telecoms (Pty) Ltd. If the municipality does not approve of the way leave they may continue to proceed without further permission. With the amendment of the policy Council can prescribe the conduit pipe for the fibre and may charge a cost for the provision of such conduit pipe.”

The Executive Mayoral Committee resolved on 3 October 2019 to recommend to Council that the matter regarding approval for way leave fibre applications within the Witzenberg area, be workshopped by Council and after that be tabled to Council for consideration.

UNANIMOUSLY RESOLVED

that the matter in respect of the approval for way leave fibre applications within the Witzenberg area be delegated to the Director: Technical Services to approve such applications for the time being.

4.3 Direktoraat Gemeenskapsdienste / Directorate Community Services

None

NOTED

4.4 Direktoraat Korporatiewe Dienste / Directorate Corporate Services

**4.4.1 Personnel matters: Retirement Policy: Witzenberg Municipality
(4/2/P & 1/3/1/32)**

Item 4.4.1 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The proposed Retirement Policy for Witzenberg Municipality is attached as **annexure 4.4.1**.

The policy was workshopped by Council on 29 May 2019.

The Executive Mayoral Committee resolved on 3 October 2019 to recommend to Council that the Retirement Policy for Witzenberg Municipality, after consideration, be approved and adopted.

The following recommendation was tabled to Council:

That the Executive Mayoral Committee recommends to Council:

that the Retirement Policy for Witzenberg Municipality, after consideration, be approved and adopted.

UNANIMOUSLY RESOLVED

that the matter in respect of the Retirement Policy for Witzenberg Municipality be held in abeyance until the next meeting.

**4.4.2 Personnel matters: Leave Policy: Witzenberg Municipality
(4/2/P & 1/3/1/32)**

Item 4.4.2 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The proposed Leave Policy for Witzenberg Municipality is attached as **annexure 4.4.2**.

The policy was workshopped by Council on 29 May 2019.

The Executive Mayoral Committee resolved on 3 October 2019 to recommend to Council that the Leave Policy for Witzenberg Municipality, after consideration, be approved and adopted.

The following recommendation was tabled to Council:

That the Executive Mayoral Committee recommends to Council:

that the Leave Policy for Witzenberg Municipality, after consideration, be approved and adopted.

UNANIMOUSLY RESOLVED

that the matter in respect of the Leave Policy for Witzenberg Municipality be held in abeyance until the next meeting.

4.4.3 Mayoral Bursary Fund Policy: Witzenberg Municipality (5/P)

Item 4.4.3 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The proposed Mayoral Bursary Fund Policy for Witzenberg Municipality is attached as **annexure 4.4.3**.

The policy was workshopped by Council on 29 May 2019.

The Executive Mayoral Committee resolved on 3 October 2019 to recommend to Council that the Mayoral Bursary Fund Policy for Witzenberg Municipality, after being workshopped and considered, be approved and adopted.

The following recommendation was tabled to Council:

That the Executive Mayoral Committee recommends to Council:

that the Mayoral Bursary Fund Policy for Witzenberg Municipality, after consideration, be approved and adopted.

UNANIMOUSLY RESOLVED

that the matter in respect of the Mayoral Bursary Fund Policy for Witzenberg Municipality be held in abeyance until the next meeting.

4.4.4 Building of boundary wall / erection of fence along Vredebek/Crispy Farming/Morcaux and Patrick de Wet farm (17/4/1/1/2/4)

Item 4.4.4 of the Executive Mayoral Committee meeting, held on 3 October 2019, refers.

The following memorandum, dated 30 September 2019, was received from the Municipal Manager:

Purpose

To consider a request from Crispy Farming and Morceaux Farming Trust for a 50 % contribution towards the building of a boundary wall and a 50 % contribution to Mr Patrick de Wet for a fence already erected on the boundary between the farm commonly known as Stukkiewit and Vredebes.

Background

Vredebes was a farm acquired by the municipality for housing purposes. During the EIA and subdivision processes both Morceaux Farming Trust and Crispy Farming stated that they will not object to the housing development on condition that the municipality erect a boundary fence.

This was, however, never a condition set by the Provincial Department when the EIA approval was granted. Prior to the issuing of the approval various correspondence was sent by Joubert Van Vuuren Attorneys to Macroplan and Cape Lowlands Environmental Services on this issue. See in this regard **annexure 4.4.4(a)**.

Subsequent to the approval of the housing project the municipality also requested the Department to consider making funds available for the erection of a fence, but without any success. The complaints from the farming neighbours were all about the escalation of theft and vandalism on their farms and cattle and goats grazing in their orchards.

The emerging farmers have all been complaining of the financial losses suffered as a result of the above and are blaming the municipality because of the uncontrolled access from Vredebes to their farms. Mr De Wet has proceeded to erect a fence on his own at a cost of approximately R600 000. It has been reported that at some places the fence has been cut and which needs to be repaired now on a regular basis. This is mainly the reason why Crispy Farming and Morceaux Farming Trust are requesting a contribution to a boundary wall to solve the problems permanently. A copy of the Google map of the area and boundary line is attached as **annexure 4.4.4(b)**. A copy of a tax invoice paid by Mr De Wet for the fence is attached as **annexure 4.4.4(c)**. Crispy Farming and Morceaux Farming Trust obtained quotations for both the wall and fence, which are attached as **annexure 4.4.4(d)**.

Legal implications

The Fencing Act places a duty on a neighbour to make a contribution to a boundary fence. The type of fence is dependent on the area where the fence will be erected. It has been proven that in residential areas the normal fence is often stolen and/or vandalised, making it ineffective for the purpose erected. In terms of the Law of Things there is a duty on a landowner to ensure that now offences are committed as a result of the usage and practices on the landowner's property. The municipality will in this instance be liable for any damages caused by the cattle and/or any livestock.

Financial implications

Any financial contribution has not been budgeted for and will have to be taken up in the adjustment budget. The landowners have been patient for a number of years and are now threatening with legal action which might escalate the cost."

The Executive Mayoral Committee resolved on 3 October 2019 to recommend to Council that Council engages with the MEC's for Housing and Agriculture for a donation in respect of the building of a boundary wall/erection of a fence along Vredebes/Crispy Farming/Morceaux and Patrick de Wet farm.

UNANIMOUSLY RESOLVED

that Council engages with the MEC's for Housing and Agriculture for a donation in respect of the building of a boundary wall/erection of a fence along Vredebes/Crispy Farming/Morceaux and Patrick de Wet farm, after which the matter be referred back to Council.

5. COUNCIL-in-COMMITTEE