



NOTULES VAN DIE / MINUTES OF THE

**SPESIALE RAADSVERGADERING VAN DIE CEDERBERG MUNISIPALITEIT SOOS
GEHOU OP**

07 APRIL 2017

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SPECIAL COUNCIL MEETING OF THE CEDERBERG MUNICIPALITY, HELD ON

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CIRCULATED AGAIN**

**MINUTES OF THE SPECIAL COUNCIL MEETING OF THE CEDERBERG MUNICIPALITY
HELD ON 07 APRIL 2017 IN THE COUNCIL CHAMBERS OF CEDERBERG
MUNICIPALITY, CLANWILLIAM**

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CIRCULATED AGAIN.**

PRESENT AND IN ATTENDANCE:

As per the attendance registers copied into the minutes after the final item:

ABSENT WITHOUT APOLOGY:

- Geen / None

1. OPENING

**Rules of Order for Internal Arrangement
PART 3: MEETINGS**

4. Commencement of meetings of Council

- 4.1 The meeting must commence precisely at a time it is convened for.
- 4.2 The Speaker must assume the chair provided that a quorum is constituted.
- 4.3 The business of the meeting must be outlined at the onset.

5. Quorum

- 5.1 The presence of a majority of the members constitutes a quorum.
- 5.2 In the event that no quorum is present at the time at which the meeting was convened, the commencement of the meeting may be delayed for no longer than 30 minutes on the basis that no quorum exists.
 - 5.2.1 Should a quorum exist within this period, the Speaker must assume the chair immediately upon establishing that the quorum exists.
 - 5.2.2 Should no quorum continue to exist at the end of this period, the meeting must be adjourned by the Speaker to an alternate date, time and if applicable venue at his/her discretion., In this instance, the names of members present must be recorded.
- 5.3 In the event that there is no quorum and the Speaker is absent, the commencement of the meeting must be delayed for no more than 30 minutes and if there is no quorum at the end of this period, the meeting shall be cancelled. In this instance, the municipal manager must record the names of the members present.
- 5.4 A quorum is to be sustained during the course of proceedings of a meeting. Should there be a lack of quorum subsequent to the commencement of the meeting, the Speaker must suspend the proceedings until a quorum is again present, provided that if after 10 minutes there is still no quorum the speaker must adjourn the meeting.
- 5.5 In any instance when a meeting is adjourned as a result of the absence of a quorum, the time of such adjournment, as well as the names of the members present, must be recorded in the minutes.
- 5.6 Names of absentee members are to be recorded and provided by the Speaker to the committee established in terms of section 6 for the purposes of an investigation of a breach of these rules.

The Speaker welcomed all present and mr. C Sheldon opened the meeting with a prayer.

1.1 Announcement of Councillor's birthdays

2. ELECTION OF (ACTING) SPEAKER, IF NECESSARY
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N/A

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9. MATTERS FOR CONSIDERATION

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03. APPLICATIONS FOR LEAVE OF ABSENCE

Rules of Order for Internal Arrangement

Part 3

7. Leave of absence

- 7.1 Leave of absence may be obtained from Municipal Council by a member who wishes to absent himself or herself from meetings. Should a member be prevented from obtaining leave of absence based on special circumstances, the Speaker has the discretion to on grant such leave.
- 7.2 A written application for leave of absence from a meeting of the Municipal Council or a Committee must be addressed to the Speaker by the Member applying for leave.
- 7.3 Written applications include emails sent to the Speaker.
- 7.4 In certain instances, the granting of applications for leave is deemed. These instance include:
 - 7.4.1 the Member is acting on behalf of the Municipal Council on other matters elsewhere based on instructions of Council or the Mayor.
 - 7.4.2 the Member is required to remove himself/herself from a meeting by the Municipal Council, Mayor or Committee in circumstances envisaged in item 3(b) of Schedule 1 to the Systems Act, or the member recuses him/herself.
- 7.5 The Speaker may also grant leave of absence to a member for the following reasons:
 - 7.5.1 illness or any other valid reasonable reason making it impossible for the member to attend;
 - 7.5.2 business, personal commitments, or personal circumstances of the member.
 - 7.5.3 The failure to deliver notice of a meeting or the delivery of notice less than 72 hours prior to commencement provided that this does not relate to an ordinary meeting of the Council or Committees or changes of addresses of members.
 - 7.5.4 The lack of informing the Municipal Manager of a revised address for the service of documentation at least 7 days before the relevant meeting;
 - 7.5.5 Where circumstances envisaged in item 3(b) of the Code of Conduct for Councillors in Schedule 1 to the Systems Act occur which prevent the Member from attendance;
 - 7.5.6 Other circumstances where the member is prevented from attending the meeting.

3.1 A blank Application for Leave of Absence form is enclosed

Mr. PL Volschenk
Mr. A Titus

3.2 The Attendance Registers will be available at the meeting

Rules of Order for Internal Arrangement

Part 3

6. Attendance at meetings

- 6.1 An attendance register must be kept in relation to all meetings. Such register is to be signed by every member that attends the meeting/s.
- 6.2 Instances when a member may be absent from a meeting include the following:
 - 6.2.1 upon leave of absence being granted in terms of rule 7; and
 - 6.2.2 upon withdrawal on the basis of a legal requirement.

4. INTERVIEWS WITH OR PRESENTATIONS BY DEPUTATIONS

Rules of Order for Internal Arrangement

Part 6

6. Deputations

Should deputations seek an interview with council, the municipal manager must be provided with ten working days written notice of the intent of the deputation with details of the representations that are to be made as well as its source. The notice must be submitted to the Speaker by the Municipal Manager with recommendations and comments. The Speaker has the discretion to then grant the interview and instate conditions.

RESOLVED

- That Council take note of the RAF presentation; and
- That the Administration will contact the presenters of the RAF presentation as to how the Council can communicate the information given in the presentation to the communities of Cederberg.

5. CONFIRMATION OF MINUTES

Rules of Order for Internal Arrangement By-Law 2013 (Provincial Gazette 7118 dated 12 April 2013)

Part Four

1. Minutes

- 1.1 Minutes of the proceedings of meetings must be recorded in writing in a minute book;
- 1.2 Such minutes shall be compiled in printed form and be confirmed by the council at the following meeting of Municipal Council and signed by the speaker.
- 1.3 The minutes shall be deemed to have been read for the purpose of confirmation provided a copy thereof was sent to each member within a reasonable period prior to the following meeting.
- 1.4 Discussions or motions in relation to the accuracy of minutes shall be entertained. No further discussion or motions in relation to any other matters forming part of the minutes shall occur.
- 1.5 Minutes shall consist of recordings of all business discussed as well as the names of members that were in attendance, absent, and granted leave of absence.
- 1.6 Should any member have requested that their dissent, abstention or support be recorded during voting, these are to be recorded in the minutes.
- 1.7 Audio recordings of all meetings of Municipal Council must be kept for a period of three years for administrative purposes.

N/A

6. STATEMENTS AND COMMUNICATIONS BY THE SPEAKER

A. The Speaker informed the meeting that he is of the opinion that Council and Management are not sincere towards the workers on the "ground level". He states this because one of our workers, recently lost a parent and no one sympathised with that worker, to him, such behaviour is unacceptable.

B. Department Housing

In 2008 Mrs. Jo-ann De Wee's house burnt down and she lost her husband in that fire. Up to this date, she hasn't received anything from this Municipality as to another lady, Sannie Kambula whose house also burnt down after 2008 and the Municipality build her a new house.

C. Indigent / Pauper Funeral

Mrs Griet Lawak, an indigent case, died earlier this year and that house that she lived in did not consist of any electricity. The Speaker, financially assisted the family with the funeral out of his own pocket.

- D. The Speaker informed the meeting that he thinks it is time for Council to make an example of officials who fails to deliver services to our communities.

7. STATEMENTS AND COMMUNICATION BY THE EXECUTIVE MAYOR

- The Mayor, on behalf of Council and the Administration shared their sincerest condolences to the worker and her family for the loss of her mother.

8. REPORT BY THE EXECUTIVE MAYOR ON DECISIONS TAKEN BY THE EXECUTIVE MAYOR, THE EXECUTIVE MAYOR TOGETHER WITH THE DEPUTY EXECUTIVE MAYOR AND THE EXECUTIVE MAYOR TOGETHER WITH THE MAYORAL COMMITTEE

Rules of Order for Internal Arrangement

PART 3: MEETINGS

5. Order of business

(1) The business of meetings of the Council will appear in the following order on the agenda

(h) Report by the Executive Mayor on decisions taken by the Executive Mayor, the Executive Mayor together with the Deputy Executive Mayor, and the Executive Mayor together with the Mayoral Committee;

- 1) **The Executive Mayor reports to the municipal council on all decisions taken by the Executive Mayor (excluding Special Council Meetings).**
- 2) **The reports of the Executive Mayor shall be for information and nothing by council and no debate, question, motions, points for information, clarity or points of order on the report shall be allowed save where motions or questions are raised in compliance with the provisions of the Council's Rules of Order.**

N/A

9. MATTERS FOR CONSIDERATION

Rules of Order for Internal Arrangement

Part Four:

2. DECISIONS AND VOTING

- 2.1 In the event that the Speaker enquires from the attendees at a meeting if they are in agreement with recommendation/s and there is no opposition by any member present, recommendations are adopted.
- 2.2 The Speaker must put every apposed motion to the vote by calling upon the members to indicate by a raising of hands unless otherwise prescribed by law, whether they are in favour of or against such motion. The result of the vote must thereafter be declared by the Speaker.
- 2.3 The number of members voting in favour of or against an item, is to be recorded in the minutes. Members may abstain from voting without leaving the meeting and may request that his/her abstention be recorded in the minutes of that meeting. Consequently, subsequent to the speaker's declaration of the result, a member may demand that his or her opposition or support of a decision be recorded in the minutes and the Municipal Manager must accordingly arrange for the same.
- 2.4 All decisions must be taken by a supporting vote of the majority of the members present at any meeting of the Council.
- 2.5 The Municipal Council must reconsider a decision taken if the majority of members lodge a request in writing with the Municipal Manager. This shall apply unless such reconsideration adversely affects existing rights. Motions for the reconsideration of decision must be submitted in terms of Rule 5 of the Rules of Order.
- 2.6 Notwithstanding the provision of this Rule, the Council may at any time following a recommendation by the Mayor, rescind or amend any resolution passed by it.

Part 5

4. Councillor to address chair

A member who speaks at a meeting must address the chair.

Part 5

16. Order of priority

- 16.1 The Speaker must ensure that there is maintenance of order. To this end, the Speaker may, if he / she deems it necessary, at any time in a meeting direct an office to remove or cause the removal of any person, excluding a member, from the Council Chamber. The Speaker may also direct that the public gallery be vacated.
- 16.2 The removal of any person or persons who refuse to carry out any reasonable instruction given by the Speaker or obstructs the carrying out of such instruction may be ordered by the Speaker.

Part 5

3. Precedence of the Speaker

Silence must be observed by all present in meeting when the Speaker addresses meetings in order for the Speaker to be heard without interruption. Whenever the speaker addresses the meeting, all members must be silent so that the speaker may be heard without any interruption. Council must be addressed by members through the Speaker.

13. Relevance

Speeches by members must address the subject or matter under discussion or to an explanation or to a point of order. In this

Regard, no discussion shall be tolerated in relation to the anticipation of any matter on the agenda or in respect of any matter in respect of which a decision by a judicial or quasi-judicial body or a commission of inquiry, whether instituted in terms of

legislation or not, is pending, provided that such matter may be considered with the permission of Council.

Part 5

5. Right to speak

A member is provided with an opportunity to speak with the permission of the Speaker only once for no longer than 5 (five) minutes on a matter before the meeting unless authorised by the Chairperson.

A member is entitled to speak once on any recommendation, motion or proposal, provided that the Mayor or Member may reply to conclude a debate and shall restrict himself/herself to answering previous speakers rather than the introduction of new matters.

Prior to the consideration of any item contained in the report of the mayor in reply to a specific question or during discussion of the same, the Speaker shall permit the Mayor, MMC or Chairperson of the Committee in terms of section 79 and 80 of the Local Government Municipal Structures Act 117 of 1998 who made the proposal in terms of rule 9 or rule 14 of part 5 of these Rules to make and explanatory statement.

6. Length of speeches

- 6.1 A member may (unless authorised otherwise by the Speaker) only speak once to-
- 6.1.1 the matter and any amendments to that matter that is before the council;
- 6.1.2 any motion before the council;
- 6.1.3 to a matter or an amendment proposed or be proposed by himself or herself;
- 6.1.4 a point of order or a question of privilege,

unless authorised by the speaker or as provided for in terms of these rules.

- 6.2 No new matters may be introduced by a mover that speaks to a motion and replies to previous speakers in a debate. The right of reply shall not extend to the mover of an amendment which, having been carried, has become substantive motion.

**9.1.1 DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND
BENEFITS OF MEMBERS OF MUNICIPAL COUNCILS AS PER GOVERNMENT
GAZETTE NO. 40763 OF 03 APRIL 2017**

Ref.: 8/1/B

Municipal Manager: G.F. Matthyse

PURPOSE

The purpose of the item is to obtain Council's approval for the implementation of the Increase in Councilor remuneration as per the relevant legislation.

BACKGROUND

The salary and allowances of a member of a municipal council is determined by that municipal council by resolution of a supporting vote of a majority of its members ,in consultation with the member of the executive council responsible for local government in the province concerned, having regard to the upper limits as set out in Government Gazette No. 40763, the financial year of municipal councils, and the affordability of municipal councils to pay within the different levels of remuneration to councilors.

LEGAL IMPLICATIONS

The implementation of the above must be done in accordance with the Remuneration of Public Office Bearers Act.

FINANCIAL IMPLICATIONS

The approval of the above will lead to an increase in the salary bill and are these expenses budgeted for .Cederberg Municipality are also an Grade 2 Municipality and received an amount of R 1 883 000.00 from the National Government via the equitable share for council remuneration.

Total Council Remuneration with Increase:	R 4 477 572.00
Approved 2016 / 2017 Adjustment Budget:	R 4 558 851.21
Budget Surplus:	R 81 279.21
Plus National Fiscus Equitable Share Contribution:	R 1 883 000.00
Total Surplus	R 1 801 720.79

Comment of Directorates / Departments concerned:

Municipal Manager:	Recommendation supported
Director: Corporate and Strategic Services:	Recommendation Supported
Director: Financial Services:	Recommendation Supported
Director: Engineering and Planning Services:	Recommendation Supported
Director: Community Development Services:	Recommendation Supported

RECOMMENDATION

That in respect of:

**DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND BENEFITS
OF MEMBERS OF MUNICIPAL COUNCILS AS PER GOVERNMENT GAZETTE NO.
40763 OF 03 APRIL 2017**

discussed by Council at the Special Council meeting held on 07 April 2017:

- a) Council take cognizance of the content of the Government Gazette No. 40763,
- b) Council condones the upper limits as tabled,
- c) That the Tools of trade be approved based on provisions made in the budget, and
- d) The Speaker is mandated to handle further communication with the MEC in this regard.

RESOLVED

That in respect of:

**DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND BENEFITS
OF MEMBERS OF MUNICIPAL COUNCILS AS PER GOVERNMENT GAZETTE NO.
40763 OF 03 APRIL 2017**

- a) Council take cognizance of the content of the Government Gazette No. 40763,
 - b) Council condones the upper limits as tabled,
 - c) That the Tools of trade be approved based on provisions made in the budget, and
- The Speaker is mandated to handle further communication with the MEC in this regard.

Proposed: B Zass

Seconded: J Meyer

**9.1.2 SALARY AND WAGE INCREASE FOR THE PERIOD 01 JULY 2017 TO
30 JUNE 2018**

REF: 4/3/1

Manager: Human Resources: H Witbooi

DOEL / PURPOSE

To inform Council regarding the salary and wage increase for the 2017 / 2018 financial year

AGTERGRONG / BACKGROUND

SALGA and the Trade Unions (SAMWU and IMATU) agreed that the salary and wage increase for the 2017/2018 financial year will be 7.36%, and further, that benefits and the minimum wage shall increase by the same rate. The new minimum wage for the Local Government sector will be R6 845.09 from 01 July 2017.

Attached as addendum A:

- a) Circular 2 of 2017 from the South African Local Government Bargaining Council

TOEPASLIKE WETGEWING / APPLICABLE LEGISLATION

SALGBC Main Collective agreement on conditions of service as well as the Salary and wage Collective agreement as negotiated from time to time.

PERSONEEL IMPLIKASIES / PERSONNEL IMPLICATIONS

Geen

FINANSIËLE IMPLIKASIE / FINANCIAL IMPLICATIONS

The salary and wage increase must be budgeted for as indicated.

AANBEVELINGS / RECOMMENDATIONS

1. That Council take note of the content of the attached circular (SALGBC circular 2 of 2017) and specifically the salary and wage increase for the 2017 / 2018 financial year.

RESOLVED

- 1) That Council take note of the content of the attached circular (SALGBC circular 2 of 2017) and specifically the salary and wage increase for the 2017 / 2018 financial year.

9.1.3 APPOINTMENT OF ACTING DIRECTOR: COMMUNITY SERVICES

Ref: (4/3/3)

Municipal Manager: GF Matthyse

Compiled by: H Witbooi

DOEL / AIM :

To obtain approval for the appointment of a suitable candidate to act in the vacant position of Director of Community Services for a period of one month, as the current acting director went on leave for one month and thus his acting came to an end.

AGTERGROND / BACKGROUND :

The position of the Director Community Services has been advertised and candidates have been interviewed. After Council made an appointment of a new full time director, such person must still give notice of one month and in the meantime, the current acting director went on leave for a month. While the post is vacant, the Council must, in consultation with the Municipal Manager appoint a suitable person to act as Director Community Services.

The Council must now appoint, under section 56 (1) (a) (ii) of the Local Government: Municipal Systems Act, 32 of 2000 as amended, a suitable person as Acting Director for a period as prescribed, and if it would take more than three (3) months to fill the vacancy, the council must obtain approval from the MEC for Local Government to extend such acting period.

FINANSIËLE IMPLIKASIE / FINANCIAL IMPLICATION :

The position of Director Community Services is currently funded and the compensation package must be in accordance with the Main Collective Agreement of the South African Local Government Bargaining Council, which regulates acting of staff, and especially personnel acting in positions of senior managers in terms of section 56/57 of the Local Government: Municipal Systems Act, 32 of 2000

REGSIMPLIKASIE / LEGISLATIVE IMPLICATION :

The following piece of legislation refers:

- **Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) ("The Systems Act"):**

Section 56 states that 1(a) *“A municipal council, after consultation with the municipal manager, must appoint- (ii) an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed”.*

Section 56 (c) states that *“a person appointed in terms of paragraph (a)(ii) may not be appointed to act for a period that exceeds three [3] month: 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 [3] months.”*

Section 56 (3)(a) states that *“if a post referred to in subsection (1)(a)(i) becomes vacant, the municipal council must-*

- (a) Advertise the post nationally to attract a pool of candidates nationwide; and*
- (b) Select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.”*
- **Local Government: Regulation on the Appointment and Conditions of Employment of Senior Managers**

Regulation 1 defines **“senior manager”** as *“a municipal manager or acting municipal manager, appointed in terms of section 54A of the [Systems] Act, and includes a manager directly accountable to a municipal manager appointed in terms of section 56 of the Act”*

Regulation 2 (1) states that *“These regulations apply to –*

- (a) Municipalities in the Republic of South Africa;*
- (b) Municipal entities; and*
- (c) Senior managers.”*

Regulation 7 (1) states that *“when the post of senior manager becomes vacant, or is due to become vacant,... the municipal manage in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such a post in its next council meeting or as soon as it is reasonably possible to do so.”*

Regulation 7 (2) (a) states that *“a vacant senior manager post may not be filled, unless-*

- (a) approval to fill the post has been granted by the municipal council; and*
- (b) The post has been budgeted for.”*

AANBEVELING / RECOMMENDATION:

That Council:

- A. In consultation with the municipal manager, appoint a suitable person from, preferably from within the directorate, to act in the vacant position of Director Community Services for a period not exceeding three months; and,
- B. obtain approval from the MEC in terms of the Act to extend the acting period, should the process of filling the vacancy take longer than the prescribed period.

RESOLVED

That Council:

- A. In consultation with the municipal manager, appoint mr. PL Volschenk, to act in the vacant position of Director Community Services for a period not exceeding three months; and,
- B. obtain approval from the MEC in terms of the Act to extend the acting period, should the process of filling the vacancy take longer than the prescribed period.

Proposed: Cllr. J Barnard

Seconded: Cllr. R Pretorius

9.1.4 DEPARTMENT CORPORATE SERVICES: THE ALIENATION OR LEASE OF ERF 1349 LAMBERTS BAY

Ref:Erf 1349 L/B

Director Financial Services: E Alfred

PURPOSE

To obtain an in principle decision from Council whether to alienate erf 1349, Lamberts Bay or enter into a lease agreement with prospective tenants.

BACKGROUND

Cederberg Municipality entered into a purchase agreement with Lamberts Bay Entertainment Centre & Café a duly registered Close Corporation with registration no CK 99/15794/23, dated 3 May 2001. The records of the municipality shows that the transfer was never brought to fruition and the property remains vested in the name of Cederberg municipality. (See attached clause 8 as stipulated in the purchase agreement) “Die koper onderneem hiermee om binne ‘n tydperk van 21(een-en-twintig) dae nadat hy daartoe versoek word deur die Prokureurs wat toesien tot hierdie oordrag alle dokumente te voltooi en te teken as wat noodsaaklikerwys benodig word om oordrag van die eiendom in naam van die koper te bewerkstellig en versuim om so te doen sal kontrakbreuk aan die kant van die koper daarstel.”

The purchase agreement also contains an option and a right of pre-emption in favour of the municipality in the event there is no adherence to the stipulated contractual requirements. (See attached clause 14 as stipulated in the purchase agreement)

“OPSIE EN VOORKOOPSREG TEN GUNSTE VAN DIE MUNISIPALITEIT CEDERBERG”:

“Die munisipaliteit Cederberg sal die volgende opsie en voorkeepsreg met betrekking tot die eiendom hierby verkoop hê:

1. Die Munisipaliteit Cederberg sal 'n reg van eerste weiering hê om die eiendom hierby verkoop terug te koop teen dieselfde prys wat 'n derde party bereid is om by wyse van 'n skriftelike aanbod vir die eiendom te betaal.
2. Die koper moet binne twee jaar na registrasie die besigheid bedryf waarvoor die koop goedgekeur is.
3. Die koper moet 'n bedrag gelykstaande aan 2% van die koper se jaarlikse bruto inkomste verkry uit die bedryf aan die Munisipaliteit Cederberg oorbetaal vanaf die einde van die vyfde jaar na registrasie vir 'n periode van tien jaar, welke gelde in 'n "Jeug Ontwikkelingsfonds vir Lambertsbaai" gestort sal word wat deur die Munisipaliteit Cederberg beheer sal word".

The attention of Council is also drawn to a report of our building section which indicates the building is in a dilapidated state. The building is therefore a serious constructional risk to the occupants given the state of dilapidation.

Council now needs to decide whether the building on the said erf 1349 needs to be demolished or to be renovated in order to generate income.

FINANCIAL IMPLICATION

It should be noted that all applicable costs with regards to this transaction would be for the purchaser's or lessee's account. The property in question needs to be valued in order to get a market related selling or rental price. Council would therefore benefit from the income so generated.

LEGAL IMPLICATION

When Council considers the alienation or lease of immovable property, the **following must be complied with:**

- i) Consider the determinations as envisaged in terms of Section 14(2) of the MFMA which must be made **in respect of alienation of land,**

- ii) **Take into account the issues as contained in Regulations 7 and 11 of the ATR in respect of the alienation of immovable property, and**
- iii) **Comply with the general procedures as laid down in Chapters 2 and 4 of the ATR.**

Any transfer of ownership of a capital asset must be fair, equitable, transparent, competitive and consistent with the SCM policy of Council.

As a general principle, immovable property offered by council for sale or lease, shall be sold or leased by public competition. Council may however approve the direct lease or sale of property in circumstances set out above.

Immovable property will be sold or leased at a reasonable market value except when the public interest or the plight of the poor demands otherwise. Council may likewise determine subsidized selling prices or lease rates in respect of certain classes of property in order to promote Council's functions or goals as set out in the Constitution. **Should it be intended to transfer immovable property for less than its fair market value, the considerations listed under regulation 13(2) of the ATR, must be taken into account.**

Council will enjoy a right of pre-emption in the instance of purchasers applying to re-sell undeveloped immovable property purchased from Council. Immovable property may only be used for the purpose as approved by council and in accordance with the approved town planning scheme/s or spatial development framework.

No transactions shall be processed unless the applicant has confirmed in writing that the applicant will bear all applicable costs as set out above **and also confirmed that all other conditions imposed by the Municipality will be complied with.**

Comments by the Municipal Manager

Comments by the Director Engineering and Planning Services

Comments by the Acting Director Community Services

RECOMMENDATION

THAT

1. Council approves in principle the alienation or lease of the identified portion of immovable land in terms of section 14 of the MFMA and the Asset Transfer Regulations as well as the Supply Chain Management Policy and any other related legislative requirements.
2. All future costs to be for the account of the purchaser or lessee.
3. The property should unlock local economic development initiatives for local entrepreneurship. .
4. Council to resolve that the asset on reasonable grounds are not needed to provide the minimum level of basic municipal services and
5. Council to consider the fair market value of the asset and the economic and community value to be received in exchange for the asset should the property be sold or leased.
6. That the administration be mandated to go ahead with the alienation or lease of the identified portion of immovable land as per the determined fair market value.

RESOLVED

THAT

1. Council approves in principle the alienation or lease of the identified portion of immovable land in terms of section 14 of the MFMA and the Asset Transfer Regulations as well as the Supply Chain Management Policy and any other related legislative requirements.

2. All future costs to be for the account of the purchaser or lessee.
3. The property should unlock local economic development initiatives for local entrepreneurship. .
4. Council to resolve that the asset on reasonable grounds are not needed to provide the minimum level of basic municipal services and
5. Council to consider the fair market value of the asset and the economic and community value to be received in exchange for the asset should the property be sold or leased.
6. That the administration be mandated to go ahead with the alienation or lease of the identified portion of immovable land as per the determined fair market value.

Proposed: Cllr. R Pretorius

Seconded: Cllr. R Witbooi

9.1.5 PROCESS FLOW FOR LAND USE APPLICATIONS IN TERMS OF THE NEW MUNICIPAL LAND USE PLANNING BY-LAW

Ref. 7/2R

P Majeni

.

Booyesen

Director: Infrastructure and Technical Services:

Compiled: AJ

BACKGROUND

A query came to this Department with regards to an applicant that submitted a land use application to the Cederberg Municipality in Lambertsbay area for approval in 2005. However, no land use applications were approved or handled in this area in that time due to bulk service constraints.

The Land Use Planning Ordinance (15 of 1985) was the previous legislation for submitting and processing land use applications in the Cederberg Municipality area. Furthermore, during 2005 a moratorium on development was implemented in Lambertsbay area. The reason for the implementation of the moratorium was to restrict development in Lambertsbay area due to lack and shortcomings of infrastructure (water and sewage availability). This affected any development within the Lambertsbay area and no development could occur, i.e. all land use application were denied or referred back to applicants due to the lack of municipal infrastructure.

The Cederberg Municipality: Land Use Planning By-Law (PN 137/2016) is new legislation that was promulgated and implemented in 2016.

PURPOSE

The purpose of this item is to explain and inform the processes of the Planning laws that are required from the municipality to comply, manage and enforce. The following laws required and aligned with the Constitution of

South Africa (specifically for land use development planning):

- National - Spatial Planning Land Use Management Act (SPLUMA) 16 of 2013
- Provincial – Western Cape Land Use Planning Act (WCLUPA) 3 of 2014
- Local - Cederberg Municipality: Land Use Planning By-Law (PN 137/2016).
- These laws provide (amongst other criteria and provisions) facilitate sustainable and efficient use of land, establishes development principles, norms, standards and processes.

It is important to note that the process of land use applications needs to be adhered to by council and the applicant. The process of a land use application is as follows:

- Submission of land use application
- Advertisement of the application
- Assessment of application by officials
- Decision by delegated officials
 - The only delegated official that can approve land use planning application in the Cederberg Municipality is the Director: Infrastructure and Technical Services.

- In cases where there are objections on applications or conflict of interest, the appointed Municipal Planning Tribunal will be the delegated decision maker on land use applications.
- Appeal (if there are any objections from interested and affected parties as well as any public departments)

Please note that this is applicable to all land use applications and if a land use application is approved (taking into consideration of the type and complexity of the proposal of application) in terms of the old (LUPO) and current (By-Law) legislation, there are time constraint involved. These land use applications have time constraints, for example a rezoning and subdivision land use application is valid for 5 years, will lapse if not complying with all the prescribed conditions of approval within the specified timeframe. If the applicant (or owner of property) has not complied with the conditions of approval the land use application will lapse and a new application must be compiled and be submitted to council.

RECOMMENDATION

1. The Cederberg Municipal Council should take cognizance of the above legislation requirements and process of the Directorate: Infrastructure and Technical Services functions.
2. The Cederberg Municipal Council should recognise that the delegate official for approving land use planning applications in terms of the Cederberg Municipality: Land Use Planning By-Law (PN 137/2016) is the Director: Infrastructure and Technical Services and the Municipal Planning Tribunal where applicable.

RESOLVED

- a) That Speaker ruled that this item be removed from the Agenda as it will not be handled until a more detailed report with sufficient information are available.

9.1.6 REPORT TO COUNCIL ON LEASE OR PUBLIC PRIVATE PARTNERSHIP (PPP) FOR THE RAMSKOP NATURE GARDEN

Ref.: 17/16/1/2/1

Compiled by: N Mercuur

PURPOSE

The purpose of this report is to inform council about the progress to date regarding efforts by the municipality to investigate and propose alternative service delivery mechanisms for the Ramskop Nature Garden. Furthermore, this report aims to solicit Council's support for the possible implementation of a public private partnership or leasing of the nature garden.

BACKGROUND

Cederberg Municipality owns three (3) resorts, which are located in Clanwilliam, Lambert's Bay and Eland's Bay. The resorts are very well located and have established themselves as popular holiday destinations in the Cederberg Municipal area.

The Ramskop Nature Garden is situated adjacent to the Clanwilliam Dam Resort in Clanwilliam, and consists of the nature garden, a nursery, restaurant space with small kitchen, toilet facilities and two offices. There is also a fully-fledged house on the premises, adjacent to the office building.

The nature garden is a very popular destination for flower lovers, and also serves as a venue for meetings, weddings, parties and other events. Given that it is an indigenous nature garden, the flowers are mostly in bloom during August to October every year, but the garden lends itself to a number of opportunities linked to events, walking and cycling, festivals and other related economic opportunities.

The Clanwilliam Flower Festival draws thousands of visitors to Clanwilliam each year, and presents good opportunities for the garden and for tourism.

Challenges facing the Ramskop Nature Garden

The nature garden has been relatively adequately maintained over the years, but with increasing pressures on the municipality to deliver on its core functions like basic services (water, electricity, sewerage, etc.), municipal budgets have had to prioritise these core functions over leisure facilities. As a result, the nature garden has experienced a slight deterioration due to a lack of maintenance. The lack of proper maintenance at the garden

leads to a situation whereby its utilisation has drastically reduced, with insufficient income to justify the maintenance and upgrade of this facility.

The general deterioration of the garden also holds many reputational risks for local tourism, as visitors often find themselves increasingly dissatisfied with the state of the garden. This has longer-term negative implications for economic development and tourism in the region.

Initiatives initiated by Cederberg Municipality to address Ramskop Nature Garden Shortcomings

In 2010/2011 Cederberg Municipality embarked upon a process to enter into a lease agreement with regard to the Ramskop Nature Garden. However, due to various reasons the process was suspended and the lease did not take place. The Ramskop Nature Garden continues to operate at a loss on an annual basis, with increasing pressure being placed on current municipal resources to maintain the facility, even though it is only operational for no longer than 2 months in the year.

In February 2017 Council advertised for expressions of interest to gauge the level of interest from private parties to operate the garden. There was one application – a locally-based company – for the garden, that is interested in entering into a public private partnership with the Cederberg Municipality. The objective is to operate the nature garden as a tourist facility with a view to create jobs and turn the nature garden into a profitable venture.

Council is now asked to resolve on the desirability of entering into a lease agreement or public private partnership with a suitable entity.

LEGISLATIVE FRAMEWORK

The following documents were consulted in the development of this report:

1. Local Government: Municipal Systems Act (No. 32 of 2000)
2. Municipal Finance Management Act (No. 56 of 2003)
3. Cederberg Municipality: Asset Management Policy (17 August 2010)
4. National Treasury: Municipal Services and PPP Guidelines
5. Local Government: Municipal Public-Private Partnership Regulations (1 April 2005)

According to the MFMA, the government is focusing on outputs and outcomes to ensure that, in spending taxpayers' money, it produces the intended result. In terms of the MFMA Chapter 8, Part 1, the municipal manager is the accounting officer, and is directly accountable for the efficient management of the municipal budget to achieve the municipality's public mandate. The accounting officer needs constantly to evaluate value-for-money choices. Such options may include a PPP for the delivery of a public service, or to achieve a public good. By its nature, a municipal PPP entails:

- Targeted public spending, principally on outputs to agreed standards
- Leveraging private-sector finance and efficiencies
- Allocating risks to the party best able to manage them.

As a mechanism of service delivery, a municipal PPP is firmly in line with the intent of the MFMA and the Municipal Systems Act.

The Cederberg Municipality Asset Management Policy also makes provision for the letting of immovable property, and determines that such letting (excluding municipal housing for officials and political office bearers) must be done at market related tariffs, unless the relevant treasury approves otherwise. Furthermore, it clearly states that NO municipal property may be leased free of charge without the approval of the relevant treasury.

Section 12 of the Cederberg Municipality Asset Management Policy relates to the "Management of Immovable Assets", and sets out the legal framework and rationale for the management of immovable assets. It asserts that the Municipal Manager is responsible for advising the council and providing guidance, as well as to take all reasonable steps to ensure that the resources of the municipality are used effectively, efficiently and economically (section 62(1) of the MFMA).

Public Private Partnership vs Lease

According to the Municipal Service Delivery and PPP Guidelines, a PPP is a contractual arrangement between a public sector institution and a private party in which the private party performs an institutional function or uses of state assets and assumes substantial financial, technical and operational risk in the design, financing, building and or operation of the project, in return for a benefit.

Given Council's eagerness to free itself from the financial and operational burden in respect of the nature garden, a PPP would be a very viable option. With the PPP the risk will be transferred to the private sector institution and the municipality benefits from the income as

per the agreement with the private party. This may include the receipt of a percentage of the income generated by the facility.

The implementation of a PPP is a time-consuming process, consisting of 6 steps (attached to this report as annexure A). Initially, the implementation of a PPP can be a costly process, as there will be a need to conduct a feasibility study, appoint a project officer and appoint a transaction advisor, including extensive procurement processes as per chapter 11 of the MFMA.

A PPP also requires intensive stakeholder consultation processes. Based on examples of other PPP's implemented throughout South Africa, it is envisaged that the process from inception to contract management can take up to 36 months.

The other option available to Council is to simply lease the nature garden to an external party for a determined period. In the case of a **lease** the rental payment to the municipality tends to be fixed irrespective of the level of tariff collection that is achieved and so the operator takes a risk on bill collection and on receipts covering its operating costs.

Risks

The current situation at the Ramskop Nature Garden is not ideal. The garden has one full-time employee, with temporary staff (EPWP) being employed from time to time. Over the past number of years the garden has been frequent break-in attempts and vandalism. Its value in respect of tourism is slowly diminishing, because of the lack of capacity to manage the garden in a sustainable manner.

The potential of the nature garden as a tourist offering is still very great, however, it is felt that the private sector is much better placed than the municipality to fully exploit the value that the garden can offer. The Clanwilliam "veldblommevereniging" has over the past number of years assisted the municipality immensely with volunteers, funds, skills and other inputs to ensure the successful that the garden looks in good shape for the flower season. Without these volunteers there would not be a nature garden worth looking at. The willingness from these volunteers has been decreasing on a daily basis, as the challenges are getting bigger every year.

Therefore, there is a huge risk that, without the involvement from external stakeholders one of the most valuable tourist assets of Clanwilliam may be lost. This proposed intervention is aimed at mitigating the risk and turning it into an initiative that will strengthen the tourism value of Clanwilliam and the Cederberg.

Economic Impact of Proposed Initiative

The leasing of the Ramskop Nature Garden to an external party must have economic benefits for the municipality and the community. Therefore, any proposed intervention as contemplated in this report must address issues relating to:

- Employment creation
- Entrepreneurship
- SMME development
- Skills development – in particular the youth
- Tourism impact – which will automatically support the local economy
- Economic transformation
- Infrastructure development
- Local beneficiation

Council must be firm and adamant that it will only support a PPP or leasing of the nature garden if the interested parties will be able to prove that they will support the above-mentioned LED objectives.

Financial Implications

Depending on the decision by Council whether to enter into a PPP or a lease there will be some financial implications:

PPP:

- Appointment of project officer
- Appointment of project advisor
- Appointment of service provider to conduct a feasibility study
- Costs relating to procurement processes, eg. advertising, etc. Lease:
- Costs relating to procurement process, eg advertising

PERSONNEL IMPLICATIONS

The LED manager will be driving the process. The municipal treasury will play an integral part of the process to ensure compliance with the MFMA and other legislative requirements. The legal office will also be an important partner to draw up the contracts and other documents. Depending on the process approved by Council, there may be a need to bring on board other specialists on board, but this will not be full-time personnel.

Comments by Cederberg Legal Department

Comments by the Municipal Manager

I do support the recommendation:

1. Nature garden and related resort activities are not primary functions of a municipality as prescribed by the Constitution.
2. Outsourcing/leasing /PPP would contribute directly towards an increase in tourism GDP ,in support of our new economic diversification action strategy.
3. This is an opportunity to create much needed jobs opportunities thus reducing our unemployment and poverty in our municipal space.
4. The additional benefit of this transaction is the additional revenue to be generated for the municipality.
5. The economic asset (ie. land) remains the property of the municipality.
6. The amount to be investment by any successful bidder must be off-set by a long term lease agreement from a return on investment perspective for the investors.

Comments by the CFO:

Comments from Town Planning Department:

RECOMMENDATION

That:

1. Council takes cognisance of the report;
2. The Ramskop Nature Garden is not required to provide the minimum level of basic services to the community;
3. The Ramskop Nature Garden be leased out to suitably qualified interested parties, in accordance with the MFMA, Asset Management Policy and other relevant legislation;

4. The proposed leasing of the Ramskop Nature Garden must support Council's objectives in respect of local economic development and tourism;
5. All required public participation processes be followed as required by the MFMA.

After concerns the following concerns were raised by the ADC and ANC

- That the Speaker must be the custodian of this matter.
- That the process be done in a comprehensive manner so that everyone can get an equal opportunity.

It was **RESOLVED**

That:

1. Council takes cognisance of the report;
2. The Ramskop Nature Garden is not required to provide the minimum level of basic services to the community;
3. The Ramskop Nature Garden be leased out to suitably qualified interested parties, in accordance with the MFMA, Asset Management Policy and other relevant legislation;
4. The proposed leasing of the Ramskop Nature Garden must support Council's objectives in respect of local economic development and tourism;
5. All required public participation processes be followed as required by the MFMA.

9.2 Urgent matters submitted by the Municipal Manager

Geen / None

9.3 Matters for notification

Geen / None

9.4 Consideration of notices of motion

Rules of Order for internal Arrangement

Part 4

4. Notice of motion

- (1) Unless contained otherwise in these Rules, written notice of intent by a member to introduce a motion must be provided accompanied with a motivation, signature of mover and member seconding the motion as well as the date. Such notice must be delivered to the Municipal Manager at least six working days prior to the date of the meeting on which it is intended to be introduced. It shall incorporate a motivation, signature and date. The speaker may not accept any motion other than motion/s of exigency or motion/s of course unless notice has been provided.

Geen / None

9.5 Consideration of notices of questions

Rules of Order for internal Arrangement

Part 4

3. Notice of question

Unless contained otherwise in these Rules, written notice must be provided of intention by a member to introduce a question. Such notice shall be effected at least six working days before the date of the meeting on which it is intended to be introduced. It shall incorporate a motivation, signature and date.

Geen / None

9.6 Consideration of motions of exigency

Rules of Order for internal Arrangement

Part 4

8. Motion of exigency

- 8.1 A motion of exigency exists when the attention of Municipal Council is directed to any matter not appearing on the agenda for which no notice was provided. The subject of the matter is briefly stated as well as reference to the fact that the motion to which attention has been directed be considered a matter of exigency.
- 8.2 The attention to the matter is drawn by a member. The matter is brought under the consideration of council by way of motion or question only if the motion is seconded and carried by a majority of the members present.

9.6.1 Motion tabled by the ANC: Suspension of Municipal Manager.

Resolved

- a) That this motion be handled at the Special Council Meeting that will be held on Wednesday, 26 April 2017; and
- b) That Cllr. Nel provide the evidence, for the allegations made in the motion, at the Special Council Meeting of 26 April 2017

9.6.2 Motion tabled by the ADC: Suspension of Municipal Manager

Resolved

- a) That this motion be handled at the Special Council Meeting that will be held on Wednesday, 26 April 2017.
- b) That Cllr. White provide the evidence, for allegations made at the Special Council Meeting of 26 April 2017.

10. CLOSURE

- Meeting adjourned at 12h20.

VOORSITTER / CHAIRPERSON

DATUM / DATE