

AGENDA OF THE INAUGURAL MEETING OF THE COUNCIL 17 NOVEMBER 2021

**8.
DELEGATED POWERS TO EXECUTIVE MAYOR**

2/5/3

H van Tonder
4 November 2021

Manager : Council Support Services

(028) 313 8037

1. Executive Summary

The purpose of this report is to afford Council the opportunity to consider the delegation of certain powers to the newly elected Executive Mayor.

2. Service Delivery and Budget Implementation Plan - IGNITE

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Not applicable

5. Legal Requirements

- Local Government: Municipal Systems Act, No 32 of 2000 (Systems Act)
- Section 160(2) of the Constitution of the Republic of South Africa, 1996 (Constitution)

6. Discussion

Section 51(k) of the Systems Act provides that a municipality must within its administrative and financial capacity establish and organise its administration in a manner that would enable the municipality to, *inter alia*:

- delegate responsibility to the most effective level within the administration; and
- involve staff in management decisions as far as is practicable.

Part 3 (sections 59 – 65) of the abovementioned act deals with delegations. Section 59(1)(a) provides as follows:

“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

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- (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."*

Section 160(2) of the Constitution furthermore provides:

"The following functions may not be delegated by a municipal council:

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

Section 60(3) of the Structures Act provides as follows:

"Those of the executive mayor's powers and functions as may be designated by the municipal council, must be exercised and performed by the executive mayor together with the other members of the mayoral committee."

This method of delegation, for technical and practical reasons, is not suggested.

The Principles and Conditions of Delegation which are applicable on the municipality's system of delegation and as approved by the former Council on 28 May 2015, is attached.

The previous Council has furthermore delegated all powers and functions vested with Council, excluding those powers and functions

- mentioned in section 160(2) of the Constitution; and
- mentioned in section 59(1)(a) of the Systems Act,

to the Executive Mayor with the power of sub-delegation in terms of section 59(2)(d) of the Systems Act.

Section 59(4) of the Systems Act provides that 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). Such a report will be submitted to Council in due course.

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None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Part 3 of Chapter 7 of the Systems Act
Annexure B : Principles and Conditions of Delegation

RECOMMENDATION TO THE COUNCIL:

1. that the Principles and Conditions of Delegation, attached as Annexure B which served before Council on 28 May 2015, **be reconfirmed**; and
2. that all powers not reserved by law for full Council, **be delegated** to the Executive Mayor.

RESPONSIBLE OFFICIAL:**H VAN TONDER****TARGET DATE FOR IMPLEMENTATION:****17 NOVEMBER 2021**

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).

[Sub-s. (4) added by s. 36 of Act No. 51 of 2002.]

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 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).

[Sub-s. (2) substituted by s. 13 of Act No. 19 of 2008.]
Wording of Sections

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.

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

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.

5. 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.

1. **LEGAL REQUIREMENTS:**

1.1 Sections 59 to 65 of the **Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)** provide as follows:

"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 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, Act 56 of 2003.*

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."

- 1.2 Section 160(2) of the **Constitution, 1996** (referred to in section 59 (1)(a) of the Systems Act) provides as follows:

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

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

- 1.3 Sections 79, 81 and 82 of the **Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)** provide as follows:

"79. Delegations (1) *The accounting officer of a municipality-*

- (a) must, for the proper application of this Act in the municipality's administration, 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;*
 - (b) may, in accordance with that system, delegate to a member of the municipality's top management referred to in section 77 or any other official of the municipality-*
 - (i) any of the powers or duties assigned to an accounting officer in terms of this Act; or*
 - (ii) 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 this Act, and*
 - (c) must regularly review delegations issued in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations.*
- (2) *The accounting officer may not 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.*
- (3) *A delegation in terms of subsection (1)-*
- (a) must be in writing;*

- (b) *is subject to such limitations and conditions as the accounting officer may impose in a specific case;*
 - (c) *may either be to a specific individual or to the holder of a specific post in the municipality*
 - (d) *may, in the case of a delegation to a member of the municipality's top management in terms of subsection (1)(b), 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*
 - (e) *does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.*
- (4) *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 as a result of the decision.*

81. Role of chief financial officer (1) *The chief financial officer of a municipality-*

- (a) *...;*
 - (b) *must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act;*
 - (c) *...*
 - (d) *must advise senior managers and other senior officials in the exercise of powers and duties assigned to them in terms of section 78 or delegated to them in terms of section 79; and*
 - (e) *must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 79 be delegated by the accounting officer to the chief financial officer.*
- (2) *...*

82. Delegations (1) *The chief financial officer of a municipality may sub-delegate any of the duties referred to in section 81 (1)(b), (d) and (e)-*

- (a) *to an official in the budget and treasury office;*
- (b) *to the holder of a specific post in that office; or*
- (c) *with the concurrence of the accounting officer, to-*

- (i) *any other official of the municipality; or*
 - (ii) *any person contracted by the municipality for the work of the office.*
- (2) *If the chief financial officer sub-delegates any duties in terms of subsection (1) to a person who is not an employee of the municipality, the chief financial officer must be satisfied that effective systems and procedures are in place to ensure control and accountability.*
- (3) *A sub-delegation in terms of subsection (1)-*
- (a) *must be in writing;*
 - (b) *is subject to such limitations or conditions as the chief financial officer may impose; and*
 - (c) *does not divest the chief financial officer of the responsibility concerning the delegated duty.*
- (4) *The chief financial officer may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), but no such variation or revocation of decision may detract from any rights that may have accrued as a result of the decision."*

2. PRINCIPLES OF DELEGATION

- 2.1 All delegations must ensure that the Council retains all legislative powers and those executive powers which cannot be lawfully delegated.
- 2.2 Policy formulation and determination process is as follows:
- 2.2.1 Policy is determined by Council.
 - 2.2.2 Any political office bearer or staff member may initiate the generation of proposed policy.
 - 2.2.3 Policy must first be channelled via the executive mayor for his/her consideration and recommendations.
 - 2.2.4 Notwithstanding the above, if, in the view of the Municipal Manager, any proposed policy has a direct and significant impact on the community, then the comments of that community must be obtained prior to the approval of the policy.
- 2.3 The Council as the legislative and executive authority may exercise no power and perform no function beyond that conferred upon it by law.
- 2.4 No political office bearer or staff member may exercise its authority contrary to any policy approved by Council.

- 2.5 Clear corporate policies in respect of support services such as finance, human resources, procurement and certain administrative functions must inform the delegated powers of relevant political office bearers and staff members. Policies should not serve as ad hoc instructions, but must be universally applicable.
- 2.6 The functions allocated to the municipality's political office bearers or staff members as may be approved by Council from time to time will form the basis for the allocation of delegations of executive decisionmaking power.
- 2.7 All delegations are conditional upon compliance with the municipality's policies, its Integrated Development Plan and budget.
- 2.8 All delegations must be in writing.
- 2.9 All delegations must provide for good governance and allow for adequate checks and balances.
- 2.10 All delegations must enhance service delivery without sacrificing accountability.
- 2.11 Delegations must not oblige a delegatee to exercise his/her delegated power and must therefore allow for the decision to be taken at the next higher level.
- 2.12 In exercising delegated authority, the municipality's political office bearers or staff members must do so in the spirit of utmost good faith.
- 2.13 The political office bearers and staff members must be empowered to perform their functions effectively and to take decisions in the management and administration of their functional areas within the maximum amount of delegated authority, subject to compliance with the following constraints:
 - 2.13.1 Clear operational policies which are determined by Council must govern the actions of the relevant political office bearers or staff members in performing their respective functions and activities. Where it is necessary for relevant political office bearers or staff members to operate in exceptional cases outside a defined policy, the authority of either the Executive Mayor or the Municipal Manager respectively must be obtained.
 - 2.13.2 Relevant political office bearers or staff members must take decisions and implement policy, projects and manage their functional areas in order to give effect to the requirements of their respective business plans.
 - 2.13.3 Relevant political office bearers or staff members must ensure that their proposed business plans give maximum effect to the achievement of the municipality's strategic objectives.
 - 2.13.4 During the implementation of the municipality's business plans, relevant political office bearers or staff members must, when exercising their delegated powers, ensure that council's strategic objectives are achieved.

- 2.13.5 In giving effect to policies, projects and the requirements of business plans, relevant political office bearers or staff members must take decisions and operate within the parameters of their respective operational and capital budgets.
- 2.13.6 Relevant political office bearers and staff members must give effect to the enforcement and observation of all municipal by-laws and other relevant legislation and where changing circumstances so dictate, must recommend the creation or amendment of municipal by-laws.
- 2.14 Although there is a requirement for relevant staff members to be monitored by higher levels of authority in respect of their performance in the implementation of policies, programmes and projects, they must be empowered to take decisions without unnecessary delay. This permits political office bearers and staff members at higher levels to concentrate on policy determination, strategic planning, appropriate interaction with the public and the monitoring of the implementation of individual business plans and the municipality's strategic priorities.
- 3. CONDITIONS OF DELEGATION**
- 3.1 All decisionmaking powers delegated by the Council are subject to the following conditions:
- 3.1.1 Delegated powers are conferred upon the Executive Mayor and posts in the organisation of the municipality and not personally on incumbents.
- 3.1.2 These delegations also apply to acting positions. Persons acting in these positions have the same delegated powers as those serving in a permanent capacity, provided that the competent authority has duly appointed such acting persons and has not excluded certain powers.
- 3.1.3 In executing any delegated power, the delegatee must comply with all relevant legislation, agreements and policy.
- 3.1.4 These delegations do not redefine the municipality's powers and functions.
- 3.1.5 The policies whether existing or future will determine the parameters of any delegation and the delegator is bound to comply therewith. It is the duty of the delegator to ensure that clear and comprehensive policies are drafted.
- 3.1.6 In executing delegated powers, no expenditure may be incurred unless the delegatee is satisfied that the municipality has budgeted for the expenditure and that the funds are still available on the relevant budget.
- 3.1.7 In executing delegated powers all decisions taken must be in support of the municipality's business plans and its strategic objectives.
- 3.1.8 Council or its executive mayor or any part of the municipality's staff members above the delegatee may at any time, subject to applicable law, order a delegated matter not to be proceeded with by the delegatee and then deal with such matter.

- 3.1.9 The chain of authority from the Council to the Executive Mayor to the Municipal Manager and officials below must not be jeopardised by any delegation.
- 3.1.10 The relevant political office bearer or staff members delegated to take a decision, may determine whether a report is needed motivating the decision and whether the decision must be reduced to writing. If a report is required then it must indicate that all legal and financial requirements have been met.
- 3.1.11 A delegation may set out special circumstances in which a delegatee is prohibited from exercising his/her delegated power.
- 3.1.12 Any sub-delegation must be reduced to writing and recorded in the delegation register, contained in this document, which must be kept updated at all times by the Director: Management Services and who must be informed in writing of any sub-delegation.
- 3.1.13 All decisions affecting the rights of others must be in writing and reasons must be recorded for such decisions.
- 3.1.14 The Council or any other delegator, may at any time withdraw, qualify or amend a delegation made by itself.
- 3.1.15 Provision must be made for a separation between the evaluation and recommendation stage of the decisionmaking process and the actual decision itself. This must happen in all cases where the decisionmaking process is reasonably capable of being divided as set out above.
- 3.1.16 Any delegator may require a selected sample of decisions taken by a part of the staff below him/her to be audited.