

Chairperson: HC Eggers
076-785-3514 heggers@pm.me

P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch

Public Benefit Organisation No. 930049434
fsmountain.org

FRIENDS OF STELLENBOSCH MOUNTAIN

Follow-Up and Questions on the period 2017–2022 (Fourth Review of the Stellenbosch IDP) and Input for the impending Fifth Review of the Stellenbosch IDP

2022-01-12

Contents

1	Background	2
2	The period 2017–2021 (4th generation IDP): questions regarding governance and municipal nature areas	2
3	Some issues for the upcoming 5th generation IDP	4
A	FSM criticism of the CITP and RMP, 14 June 2021	7
B	Extract from SM Organogram as approved in 2017	8
C	FSM Request for Directive to DFFE, March 2021	10
D	Request for Information refused by SM, November 2020	11
E	Fruitless and Wasteful Expenditure	12
F	June 2020 Council item on suspended official	13
G	Logging operations: Questions asked, 13 July 2021	19
H	Logging operations: Unsatisfactory answers, 8 October 2021	20
I	IDP FSM Urban Edge 210426-fsm-comments-idp-cp	21
J	IDP Response 210625-mm-to-fsm-idp-response-cp	22
K	Blaauwklippen Appeal Decision, 13 July 2021	23

1 Background

- 1.1. Stellenbosch Municipality (“SM”) held an “IDP Public Sector Engagement” on Tuesday 11 January 2022 (“IDP-PSE”). The earlier process plan, which had planned IDP submissions for November 2021, had been withdrawn in view of covid and the local government elections. The said public sector engagement, held just one day before the deadline for written submissions on 12 January, made it almost impossible to collect all the necessary data and evidence.
- 1.2. With the end of the five-year IDP cycle, coupled also to the MSDF and CITP, it is helpful to recall some of the problems, issues and questions which arose in this period and remain unresolved. There will be multiple reference to the so-called *Section Environmental Management of Stellenbosch Municipality* (“SEM”) which is that part of Stellenbosch Municipality which is responsible for, and is supposed to physically manage, the nature areas under the control of SM. It is common knowledge that the SEM has not functioned well in the past few years.
- 1.3. This submission is only a summary of existing questions and issues and is therefore brief and without details.
- 1.4. Only title pages are included to limit the length of this document. The full documents are already in the possession of Stellenbosch Municipality. Most of them are also available on the FSM website at fsmountain.org.
- 1.5. In view of FSM’s focus on Stellenbosch nature areas, transport and governance, the issues and questions raised here are limited to these issues.

2 The period 2017–2021 (4th generation IDP): questions regarding governance and municipal nature areas

- 2.1. On the so-called **Comprehensive Integrated Transport Plan** “Update” of 2021:

FSM submitted detailed criticism on the major deficiencies and weaknesses of the so-called “CITP” “Update” as tabled and approved by Council at the meeting of April 2021; see Appendix A for a copy of the title page.

QUESTIONS:

- (a) The discrepancies pointed out in the CITP “Update” budget amount to hundreds of millions of Rands and this “Update” is furthermore not compliant with either the MFMA or transport legislation and regulations. How and when will SM rectify these egregious errors in its budgeting processes?
- (b) The FSM comments pointed out that the budget calculations were highly skewed by comparing full-cost amounts for public transport and NMT on the one hand to mere planning costs for road infrastructure on the other hand. In all cases, the “Update” proposed that more than 90 percent of spending be directed to motorcar- and road-related projects. Will these major discrepancies be corrected?
- (c) Is Council aware of the fact that it approved a noncompliant and probably unlawful CITP in April 2021?
- (d) Will those responsible for these errors held to account?
- (e) In answer to a question posed at the IDP Public Sector Engagement, it was stated by a SM representative that the “CITP” “Update” would not be withdrawn but would await a completely new recompiled CITP in the next five-year cycle. If the so-called “CITP” “Update” is not withdrawn in the coming months, does this imply that SM will be strategising and implementing on the basis of a noncompliant major planning document?

- (f) Council has unambiguously committed to the advancement of the Adam Tas Corridor (ATC) project, and the ATC project must necessarily form the centrepiece of any transport and road construction strategy. How will SM integrate the ATC into the currently approved “CITP” given that the latter is unlawful and makes little mention of the ATC?

2.2. Regarding the status of **human resources within the Section Environmental Management (SEM)** within SM: At the IDP Public Sector Engagement on 11 January, it was stated in answer to a question that “all funded posts” are filled or are about to be filled. See Appendix B for a copy of the relevant organogram as approved by Council in 2017.

QUESTIONS:

- (a) Which of the permanent staff posts shown in the first (upper) part of the SEM organogram are currently filled?
- (b) Which permanent posts in the SEM are currently unfunded?
- (c) Which funded permanent posts in the SEM are currently unfilled?
- (d) Which of the permanent staff posts shown in the second (lower) part of the SEM organogram in the “Subsection Environmental Management Implementation” (“Implementation”) are currently filled?
- (e) Which permanent posts in the Implementation subsection are currently unfunded?
- (f) Which funded permanent posts in the Implementation subsection are currently unfilled?
- (g) Which permanent or temporary staff in the Implementation subsection are currently suspended and/or being investigated for any misdemeanour, whether in terms of municipal disciplinary processes, and/or CCMA processes and/or a higher court of law?
- (h) Which permanent municipal employees in which municipal department and section are responsible for law enforcement duties in municipal nature areas?
- (i) Which permanent municipal employees in which municipal department and section are responsible for training and supervision of temporary/contract municipal employees working in municipal nature areas?

2.3. On the **Termination of the 2019 NRM Contract and Tender BSM7/19**

Appendices C and D below as well as a PAJA request were all the direct result of the termination in October 2019, by the Stellenbosch Municipal Manager, of a 2019 NRM grant of R14.26 million from the national DFFE.

Kindly note that the questions below pertain to the EXISTENCE, not the CONTENT, of any judicial processes. The sub judice rule does not apply to disclosure of the existence per se of such processes.

QUESTIONS:

- (a) Which, if any, primary internal disciplinary processes, ie resulting directly from or associated with the alleged irregularities of the said 2019 NRM Contract and/or tender, have been conducted by SM in the past three years?
- (b) What is the status of each of such processes?
- (c) Which, if any, legal action or actions have resulted from the said terminations, either in a higher court of law or within the ambit of the CCMA?
- (d) Which, if any, secondary internal disciplinary processes or external CCMA processes have been initiated in consequence or connected to any of the above?
- (e) What are the cumulative costs of the abovementioned legal processes over the period 2019 to the present?

- (f) Are there plans or intentions to pursue any of the above in future, even if they have not yet been initiated?
- (g) With regard to the termination of the NRM contract, FSM submitted a Promotion of Access to Information Act (PAIA) request to SM in August 2020 with a follow-up in November 2020; see Appendix D. SM has not replied to date. Why not?

2.4. Allegation of Fruitless and Wasteful Expenditure: so-called “biomass removal” in Paradyskloof Nature Area (2021) (see Appendix E):

QUESTIONS:

- (a) The relevant documentation alleging Fruitless and Wasteful Expenditure of more than R300,000 was submitted both electronically and by physical deposition at the offices of the Municipal Manager on 29 November 2021. No acknowledgement of receipt was received. Why not?
- (b) At the IDP Public Sector Engagement meeting on 11 January, it was stated that SM would reply to the allegations forthwith. When can such reply be expected?

2.5. Alleged Historical Financial Misconduct (2019): Item 12.1.4 of the Council meeting of 12 June 2020 details the suspension and investigation of a SM official for alleged violation of Supply Chain Management policy, see Appendix F.

QUESTIONS:

- (a) Has the investigation been concluded?
- (b) If not, why is it taking so long and when will it be concluded?
- (c) If the investigation has been concluded: has the suspension of the official been lifted, or has the relevant official been punished?

2.6. Alleged Current Financial Misconduct (Logging Operations 2020-2021): As indicated in Appendix G, FSM has strong reasons to suspect that the logging operations carried out between October 2020 and March 2021 violated municipal and national SCM policy and regulations and that SM has in consequence incurred substantial financial losses. The answers provided by SM as per Appendix H are unsatisfactory and will be dealt with in the near future.

QUESTIONS:

- (a) Are the same suspension and investigation processes being followed with regard to these logging SCM violations as with the historical 2019 case?
- (b) Does SM continue to maintain that the SCM process followed in these logging operations, involving possible financial irregularities ranging between R800,000 and R2,000,000, should not be investigated further, even while purported financial irregularities of around R116,000 mentioned in the 2019 Council Item (see Appendix F) are being pursued? SM may not apply double standards; the same policy, regulations and rules apply in all cases.

3 Some issues for the upcoming 5th generation IDP

3.1. Urban edge and Heritage Inventory

The comments submitted by FSM in April 2021 on the Jamestown urban edge and the Heritage Inventory remain as valid and relevant as when they were first submitted; see Appendix I. The issue has become far more burning ever since property developer *Blaauwklippen Agricultural Estates* appealed against a refusal by the Municipal Planning Tribunal, supported by the

municipal Department of Planning. As appeal authority, the Stellenbosch Mayor overruled the MPT and permitted the development to go ahead; see Appendix K.

A noncommittal answer re Jamestown urban edge and heritage was provided by the MM to the April 2021 FSM comments and questions (see Appendix J) on 25 June 2021, before the said appeal decision was made by the Mayor on 13 July 2021 but after the appeal hearing.

In terms of the current Municipal Spatial Development Framework (mSDF) the “water erven” are included within the urban edge with the caveat that it be retained as a special character area due to its significance as a cultural and historic resource, that is to be retained. [...] The Heritage Inventory specifically dealt with the sensitivity of these agricultural properties and is another tool to manage development. Properties located within the urban edge is not automatically earmarked for urban development and one needs to read the mSDF to understand what is envisaged for the properties concerned. [...] Should the appeal, however, be successful based on the fact that the properties are located within the urban edge the revision of the urban edge will certainly be contemplated and can strengthen the future preservation of the properties and provide clear guidance to land owners and developers alike. However, the appeal will be of great significance as to the appetite of Council to preserve the erven as a unit.

QUESTIONS:

- (a) Will the new MSDF respect the said cultural and historical significance of the Jamestown water erven?
- (b) When will the Heritage Inventory (and its earlier phases) be tabled for consideration by Council?
- (c) Will the detailed recommendations of the Heritage Inventory be included in the 5th generation IDP and MSDF?
- (d) Will the views of the Mayor, who is the appeal authority but not qualified as town planner, but who overruled the views of the MPT and the SM Department of Planning, prevail when it comes to the compilation of the new urban edge and MSDF? Or will the principles espoused in SPLUMA, the current MSDF, the Heritage Inventory, the MPT and the Department of Planning prevail?
- (e) In other words: Will, in the upcoming 5th generation years, MSDF specifications and urban edge decisions be based on principle and knowledge of experts or only on the views of the appeal authority?
- (f) The same questions of principle versus personal views will apply, of course, not only in Jamestown but also in, for example, Farm Libertas, consideration of the road network (eg Western Bypass) and innumerable other cases.

3.2. Funding of environmental needs and operations

As set out above, SM has been exceptionally sloppy and profligate with taxpayers' money when it comes to procurement, Supply Chain Management and especially road construction. Yet whenever environmental projects and needs are brought up, the mantra is wheeled out that funds are limited.

FSM requested in March 2021 that the national Department of Forestry, Fisheries and the Environment (DFFE) investigate Stellenbosch Municipality for violations of the Biodiversity Act, especially its duty of care with respect to clearing of alien invasive plants; see Appendix C. That process will start on 19 January 2021, in one week's time.

In anticipation of an investigation by DFFE, SM in 2021 suddenly in 2021 increased its allocation to alien clearing tenders to more than R11 million. That, too, shows that budget allocations for environmental needs are quite possible.

QUESTIONS:

- (a) Will the Stellenbosch Environmental Management Framework (SEMF) and all the resulting sectoral plans (eg local Environmental Management Plans, Alien Clearing Plans, permanent posts etc) be properly funded at last?
- (b) FSM formally requests details of operational budget allocations as pertain to the funding both of operations of the SEM Implementation subsection and the funding of alien clearing tenders for the financial years 2019/2020, 2020/2021, 2021/2022 and 2022/2023.

A FSM criticism of the CITP and RMP, 14 June 2021



FRIENDS OF STELLENBOSCH MOUNTAIN

Chairperson: HC Eggers
072-146-0274 eggers@sun.ac.za

P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch

Public Benefit Organisation No. 930049434
<http://www.physics.sun.ac.za/~eggers/fsm/>

Comments on the draft

August 2019 Roads Master Plan (RMP)

June 2020 Comprehensive Integrated Transport Plan (“CITP”)

December 2020 NMT Master Plan (NMTMP)

as respectively approved for comment or accepted at the
Stellenbosch Municipality Council Meeting of 2021-04-28

2021-06-14

BY EMAIL to engineering.services@ Stellenbosch.gov.za

AND TO the SMF (Stellenbosch Sustainable Mobility Forum) email list

Contents

1	Status of the 2021 “Comprehensive Integrated Transport Plan”	3
2	Budget imbalance	8
3	Poverty, roads, and subsidising the rich	10
4	Railway transport and the Adam Tas Corridor	11
5	Comments on the draft Roads Master Plan	13
6	Comments on the draft NMT Master Plan	15
A	Article in Eikestadnuus on subordinate role of RMP	16
B	Item 11.5.5 of Council Agenda, 28 April 2021	18
C	Section 11(1)(c) of the National Land Transport Act	22
D	An annotated guide to contents and compliance of the 2021 “CITP”	24

B Extract from SM Organogram as approved in 2017

Page 164

CONFIDENTIAL

STELLENBOSCH LOCAL MUNICIPALITY PROPOSED MICRO STRUCTURE - 21 SEP 2017



92



RECOMMENDED BY
MUNICIPAL MANAGER

Signature _____

____/____/2017

SUB-SECTION
ENVIRONMENTAL MANAGEMENT IMPLEMENTATION

PURPOSE: To manage protected, rivers, forest and conserve areas in terms of the legal obligations relevant to the municipality as local authority but also as landowner is vital in ensuring the organization's compliance in terms of the latter

FUNCTIONS:

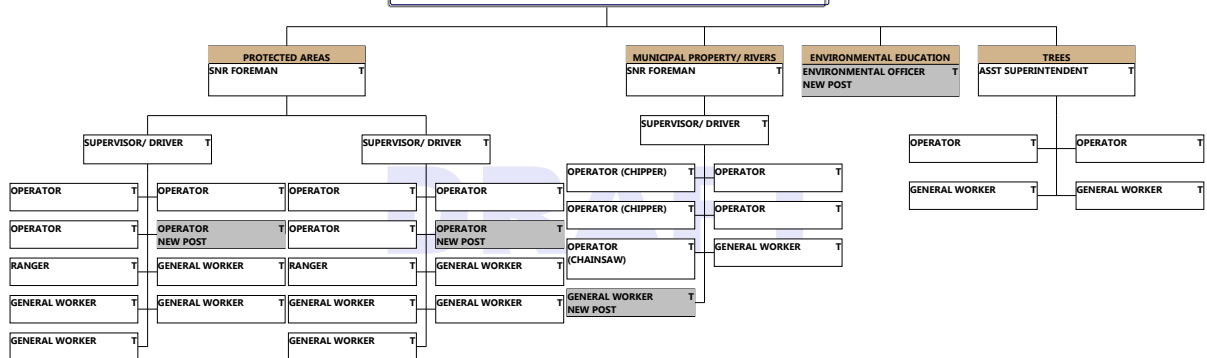
1. Implement management plans and other strategic documents complied by environmental planning and adopted by Council, such as those prepared for:
 - i) Invasive species monitoring, control and eradication
 - ii) River management
 - iii) Fire management
 - iv) Pollution control
 - v) Erosion control
 - vi) Reserve management
2. Conserve formally declared protected areas by executing management actions as included in approved management plans
3. Manage municipal land / previous forestry areas (not under lease agreement)
4. Manage / execute river maintenance / rehabilitation projects
5. Manage expanded public works program (EPWP) employees employed on the management of protected areas, municipal land (as defined above) and river management / rehabilitation projects
6. Policing of public use of municipal land
7. Provide general environmental education to local communities

SUPERINTENDENT T

APPROVED BY COUNCIL

Signature _____

____/____/2017



C FSM Request for Directive to DFFE, March 2021

A FSM Cover Letter



Chairperson: HC Eggers
076-785-3514 eggers@sun.ac.za
P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch
Public Benefit Organisation No. 930049434
<http://www.physics.sun.ac.za/~eggers/fsm/>

FRIENDS OF STELLENBOSCH MOUNTAIN

Request to issue a NEMBA Directive

BY HAND and BY EMAIL¹ to
BMbuli@environment.gov.za and CMarais@environment.gov.za

The Honourable Minister and
The Director: Natural Resource Management
Department of Environment, Forestry and Fisheries

18 March 2021

Honourable Minister Creecy, dear Dr Marais,

1 Introduction and overview

- 1.1 As chairperson of Friends of Stellenbosch Mountain (“FSM”) and mandated by the FSM Management Committee, I hereby request that the Department of Environment, Forestry and Fisheries (“DEFF”) issue a directive in terms of Section 73(3) of the National Environmental Management Act: Biodiversity Act of 2004 (“NEMBA”).
- 1.2 The completed request form as prescribed by the Alien and Invasive Species Regulations (the “Request”) is hereby submitted by FSM as per Section 74(1) of NEMBA. The present cover letter and the appendices below motivate the Request in detail.
- 1.3 The Request is that a NEMBA Section 73(3) directive be served on Stellenbosch Municipality (“SM”). The Request pertains not to one but to **many land units**, namely all nature areas owned and/or controlled by Stellenbosch Municipality. The relevant land units are set out in more detail in Paragraph 4 and Appendix B below. Land units controlled by national government, Cape Nature, private nature reserves, conservancies and any other private land units are not included in the Request.
- 1.4 Due to their cardinal roles in ecosystem health, we request that the directive include also those sections of **rivers** controlled by SM which are not already implicitly included in the land units listed in Appendix B.
- 1.5 In agreement with the 2019 NRM Grant award (see Paragraph 2), which included funds for **firebreaks and erosion control**, the directive should preferably encompass both alien clearing as well as erosion control and fire prevention and alleviation measures.

¹cc: Mr C. Liebenberg, DEFF Corporate Support, CELiebenberg@environment.gov.za
Mr Stiaan Kotze: DEFF Control Biodiversity Officer, SKotze@environment.gov.za

D Request for Information refused by SM, November 2020



FRIENDS OF STELLENBOSCH MOUNTAIN

Chairperson: HC Eggers
076-785-3514 eggers@sun.ac.za
Secretary: JZ Turnbull
082-382-4367 jzt1710@gmail.com
P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch
Public Benefit Organisation No. 930049434
<http://www.physics.sun.ac.za/~eggers/fsm/>

PAIA deemed refusal of request: NRM Contract



BY HAND AND EMAIL

To the Municipal Manager
Stellenbosch Municipality

2020-11-12

Dear Advocate Mettler,

1. On 2020-08-26, FSM had submitted, by email to Stellenbosch Municipality ("SM"), a *Request for Access to Record of Public Body* in terms of the Promotion of Access to Information Act (PAIA) and a similar request to Department of Environment, Forestry and Fisheries ("DEFF"). A S26(1)(a) notice of extension by 30 days was received from SM on 2020-09-25. However, when the second 30-day period lapsed on 2020-10-24, SM had still not provided any records or commented in any way on the failure to do so. Earlier on 2020-10-21, DEFF had provided nine records to FSM.
2. FSM hereby records that (a) SM did not provide any requested records to FSM as per the PAIA request dated 2020-08-25 within the statutory time limits, and (b) that, even while the documents referred to in items 1(a) to 1(f) of the 2020-10-24 FSM Request were provided independently by DEFF, the additional requested items as per item 1(g) of the PAIA request were not provided by SM. Item 1(g) of the FSM request reads: *1(g) A complete record of any agendas, minutes and pertinent supporting documents (whether classified secret or not) of one or more meetings held by the Stellenbosch Municipality Council and/or Mayoral Committee and/or the municipal Portfolio Committee on Parks, Open Spaces and the Environment on the topic of the NRM Contract.*
3. FSM therefore records that the 2020-10-24 PAIA request in general and Item 1(g) in particular must be deemed as refused by SM in terms of Section 28 of PAIA.

Yours respectfully,

Hans C Eggers
Chairperson: Friends of Stellenbosch Mountain

E Fruitless and Wasteful Expenditure



Chairperson: HC Eggers
076-785-3514 heggers@pm.me

P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch

Public Benefit Organisation No. 930049434
fsmountain.org Municipality - Munisipaliteit
Stellenbosch

29 NOV 2021

Office of the Municipal Manager
Kantoor van die Munisipale Bestuurder

Allegation of Fruitless and Wasteful Expenditure incurred during purported "biomass removal"

To the Municipal Manager
Stellenbosch Municipality

BY HAND AND EMAIL

2021-11-29

Dear Municipal Manager,

1. Attached please find a report compiled by myself on behalf of Friends of Stellenbosch Mountain ("FSM") on the activities pertaining to so-called "biomass removal" on Farm 369, Stellenbosch, between 29 September and 19 November 2021 ("the Activity") as well as copies of emails dated 7, 25 and 27 October and 12 November.
2. In our opinion, the expenditure associated with this Activity exactly matches the definition of Fruitless and Wasteful Expenditure ("FWE") of section 1 of the Municipal Finance Management Act (Act No. 56 of 2003, "MFMA"), being *expenditure that was made in vain and would have been avoided had reasonable care been exercised*.
3. The Activity and associated expenditure in our opinion therefore constitutes Financial Misconduct in terms of section 171(3) of the MFMA.
4. In terms of MFMA Circular 68 of 2019 *fruitless and wasteful expenditure can arise in any circumstance and is not dependent on non-compliance with any legislation*.
5. We do not have access to the municipal financial accounting system and can only estimate the amount of FWE. We conservatively estimate the FWE to amount to not less than R319,000 for the six-week engagement of the contractor's excavator and truck; the actual amount of FWE will have to be determined in the course of the investigation. This amount is to be compared to an estimated cost of less than R20,000 which use of a chipper would have incurred for accomplishing the same task and with much smaller environmental impact, or of other cheap alternatives.
6. In terms of section 171(4) of the MFMA, a municipality must investigate this allegation and, if the investigation warrants such a step, institute disciplinary proceedings against those responsible. In terms of regulation 5(1) of the Financial Misconduct Procedures of the *Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings* of 2014 ("MRFM-PCP"), the matter must be referred to a disciplinary board within seven days of receiving this allegation.
7. It is possible that the expenditure involved in the Activity itself, or negligence in the ensuing investigation, constitutes or may later constitute an Offence in terms of section 173 of the MFMA, Chapter 8 of the MFMA or as defined by the MRFMPCP.
8. We note that the SM Consequence Management Policy of 2019 espouses a zero-tolerance approach to MFMA non-compliance.

F June 2020 Council item on suspended official

Page 216

AGENDA

SPECIAL MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY

2020-06-12

12.1.4	CONSIDERATION OF IRREGULAR EXPENDITURE INCURRED RELATING TO ALIEN VEGETATION CLEARING SERVICES THAT WERE RENDERED BY IMPENTHANA PROJECTS AND MAINTENANCE CC
--------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good governance

12 June 2020

1. SUBJECT: CONSIDERATION OF IRREGULAR EXPENDITURE INCURRED RELATING TO ALIEN VEGETATION CLEARING SERVICES THAT WERE RENDERED BY IMPENTHANA PROJECTS AND MAINTENANCE CC

2. PURPOSE

To obtain Council's approval regarding the irregular expenditure incurred for investigation by MPAC and to be recommended to and consideration by Council to write-off the expenditure in terms of the MFMA Section 32 (2).

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

Services were rendered by Impenthana Projects and Maintenance CC, to Stellenbosch Municipality to the value of R116 400-13. The contractor was utilised for clearing alien vegetation on the NRM Project.

5. RECOMMENDATION

FOR CONSIDERATION

6. DISCUSSION

Alien vegetation clearing services were rendered by Impenthana Projects and Maintenance CC, to Stellenbosch Municipality from 19 August 2019 to the 28 August 2019 to value of R116 400-13. The services were rendered at Botmaskop Plantation over the aforementioned period (See **ANNEXURE A**).

Impenthana Projects and Maintenance CC was an appointed contractor on the Rates Tender BSM 7/19 who was instructed to do work for the NRM Project without an official order. The contractor was informed to commence clearing of alien vegetation at Botmaskop Plantation by Mrs Beverly September who was a contracted EPWP Administration worker. This instruction was given to her by Mr Leon Lourens. This instruction was given without the contractor receiving an official green order. Furthermore, the official responsible, Mr Leon Lourens, Superintendent: Environmental Management Implementation is currently suspended.

If the investigation confirms that the work was done by the contractor under false pretense and deliberate intent, then the official who instructed his subordinate to instruct the contractor to commence work, without a valid order number will be held liable for the services rendered for the amount of R116 400-13. A ratification was submitted to the relevant departments for approval (See **ANNEXURE B**).

7. FINANCIAL IMPLICATIONS

The contractor has provided evidence (supporting documents) of costs incurred for that work which was done without an official green order. The financial loss amounts R116 400-13. The official responsible can be held accountable for the expenditure.

AGENDA**SPECIAL MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY****2020-06-12****8. LEGAL IMPLICATIONS**

The recommendation in this report comply with Council's policies and all applicable legislation: MFMA Section 32(2).

- 8.1 Goods/services identified on this invoice was received;
- 8.2 As per the attached order, all goods and services are allocated to the specified budget vote;
- 8.3 Adequate funds are available on the Budget Vote.

9. COMMENTS**9.1 Manager: Supply Chain Management**

Official did not have delegation to appoint the service provider. Awarding of the contract was not in terms of Supply Chain Management prescripts and is thus an irregular expenditure.

9.2 Chief Financial Officer: Financial Services

The expenditure is irregular and must be reported to MPAC for further investigation. However, the service provider is on the approved panel for BSM 7/19 and the department confirmed that the service/ goods was received and that sufficient funds are available in their budget. I recommend that the service provider be paid for the service/ goods received and that the matter be reported to MPAC.

9.3 Municipal Manager

Proper procurement process was not followed by the official hence expenditure is regarded as irregular. Notwithstanding the above the service was rendered and satisfactory and contract was paid. Consequence management was instituted, and the process is currently on-going. Control measurements were put in place to prevent reoccurrence by proper signing off by supervisors.

MPAC MEETING: 2020-06-04: ITEM 5.4

MPAC took note of the circumstances as described in the report, and accepted the verbal explanation as given by the Administration.

RECOMMENDATIONS FROM MPAC TO COUNCIL: 2020-06-04: ITEM 5.4

- (a) that Council certifies the expenditure to the amount of R 116 400.13 (VAT inclusive) for services rendered by Impenthana Projects and Maintenance CC as irrecoverable and that it be written off; and
- (b) that Council writes off the irregular expenditure as irrecoverable in terms of the MFMA Section 32 (2).

ANNEXURES

Annexure A: Invoices

Annexure B: Ratification

ITEM 12.1.4



MEMORANDUM

COMMUNITY SERVICES DEPARTMENT

CHECK BEFORE SUBMISSION	YES	NO
REGISTERED ON SCM DATABASE If answer is NO follow the next step: - Register on SCM Database - Creditors form (SAMRAB)		
LETTER - SOLE SUPPLIER?		
ORIGINAL VALID TAX CERTIFICATE		
QUOTE/INVOICE ATTACHED		
BUDGET (SAMRAB)		
CASHFLOW		
SIGNATURES		

To / Aan : MUNICIPAL MANAGER
From / Van : TAMMY LEIBRANDT
Job Title / Postitel : MANAGER: ENVIRONMENTAL MANAGEMENT
Date / Datum : 11 OCTOBER 2019
Re / Insake : RATIFICATION: CLEARING OF ALIEN VEGETATION TO THE
 VALUE OF R 116 400-13

1. PURPOSE

To obtain approval in terms of Supply Chain Management Policy, 4.36.1(b) to ratify any minor breaches of the procurement processes.

2. BACKGROUND

In terms of regulation 36 of the SCM Regulations, the accounting officer is responsible for deciding whether a particular breach of procurement processes is minor or material.

Services were rendered by Impenthana Projects and Maintenance CC, to Stellenbosch Municipality to the value of R116 400-13. The contractor was appointed by the Municipality to do clearing of alien vegetation against the Rates Tender BSM7/19.

Impenthana Projects and Maintenance CC, was instructed to do work for the NRM Project without an official order. The contractor was informed to start working (clearing of alien vegetation) at Botmaskop Plantation. Furthermore, the contractor was instructed by a EPWP contract worker; Mrs Beverly September who was instructed by Mr Leon Lourens. This instruction was given without the contractor receiving an official green order. Furthermore, the official responsible Mr Leon Lourens, Superintendent: Environmental Management implementation is currently suspended, pending an investigation.

In exercising this discretion the accounting officer must be guided by:

- The specific nature of the breach: is it simply technical in nature, not impacting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process?

Ratification: IMPENTHANA PROJECTS AND MAINTENANCE CC: CLEARING OF ALIEN VEGETATION

Comment: The question cannot be answered pending an investigation.

3. DISCUSSION

- b) The circumstance surrounding the breach: are the circumstances justifiable or, at least, excusable?

Comment: Evidence was provided by the contractor and supporting documentation has been provided by Mrs Beverly September.

- c) The intent of those responsible for the breach: were they acting in good faith?

Comment: At this stage the question cannot be answered as the official is suspended. The Department is currently underway with a disciplinary case against Mr Leon Lourens.

4. FINANCIAL IMPLICATIONS

- d) The financial implication as a result of the breach: what was the extent of the loss or benefit?

Comment: The contractor has provided substantial evidence (supporting documents) of costs incurred for that work that was done without an official green order. The financial loss amounts R116 400-13. The official responsible can be held accountable for the expenditure.

5. RECOMMENDATION

- 5.1 If the investigation confirms that the work was done by the contractor under false pretense and deliberate intent, then the official that instructed his subordinate to inform the contractor to commence work will be held liable for the services rendered without a valid order number for the amount of R116 400-13.



Tammy Leibrandt
MANAGER: ENVIRONMENTAL MANAGEMENT



Albert van der Merwe
SENIOR MANAGER: COMMUNITY SERVICES

Noted any further comments:



Albert van der Merwe
ACTING DIRECTOR: COMMUNITY & PROTECTION SERVICES

Rectification: IMPENTHANA PROJECTS AND MAINTENANCE CC: CLEARING OF ALIEN VEGETATION

3

Noted any further comments:

Dalleel Jacobs
MANAGER: SUPPLY CHAIN MANAGEMENT

Dalleel

Date: 5/11/2019

Noted any further comments:

*Official did not have Delegation to appoint
Service provider. Awarding of the contract was
not in terms of irregular. SCM prescripts and is thus*

Kevin Carolus
CHIEF FINANCIAL OFFICER

Date: _____

Noted any further comments:

Geraldine Mettler
MUNICIPAL MANAGER

Approved

Date: _____

Ratification: IMPENTHANA PROJECTS AND MAINTENANCE CC: CLEARING OF ALIEN VEGETATION

G Logging operations: Questions asked, 13 July 2021

HC Eggers
Member of the Ward 21 Committee
Stellenbosch Municipality

13 July 2021

Dear Councillor Badenhorst,

after a long pause, I can finally return to the questions arising from the logging activity in Paradyskloof pine plantation between October 2020 and March 2021. While my comments and questions refer to Paradyskloof plantation, they also apply to the equivalent Botmaskop plantation logging which happened during the same time by the same external service provider, Toncu (Pty) Ltd under the same contract.

1. A quick reminder as to the timeline: There is a long email trail starting in August 2020, continuing to emails about the wind-blown pinetrees on 2 October 2020, an email on 29 October 2020 and again on 7 March 2021 about the logging of pinetrees which were NOT blown over but cut off anyway. This led to us discussing the matter briefly in the Ward 21 Committee meeting of 6 April 2021 (see our minutes and the transcript), following which I sent you an email with specific questions on 6 April. I am leaving out the emails of 6-9 April and just quote the original explanation of Ms T Leibrandt of approximately 11 or 12 April 2021. It reads:

From: Tammy Leibrandt
To: Albert van der Merwe <Albert.vanderMerwe@stellenbosch.gov.za>
Subject: [EX] Logging in Paradyskloof pine plantation

Good day Albert,

This process was a Transparent Process with the guidance of SCM.
This work was advertised as a Quotation for the Sales of Timber as per SCM procedures.

The contractor appointed was TONCU PTY (LTD).

The contractor was appointed to remove dead and dangerous trees at Paradyskloof Plantation and Botmaskop Plantation

The funds generated from this project was paid into the municipality's bank account. Attached is the summary of funds paid into the municipality's account.

The project is completed and biomass will be removed as soon the hired truck is delivered. It is important to note that the section Environmental Implementation does not have a truck to collect biomass from the areas.

Kind regards,
Tammy Leibrandt
Manager: Environmental Management
Directorate: Community and Protection Services

2. Also attached to those emails of 12 April 2021 were the spreadsheet of payments made and a PDF file called "SPECIFICATIONS.pdf" which constitute a "RFQ" (Request For Quotation) which I have therefore renamed as 201008-paradyskloof-logging-rfq.pdf. A copy of that RFQ/FQ document appears at the end of this email.

H Logging operations: Unsatisfactory answers, 8 October 2021

1

RESPOND ON PROF HE EGGERS LETTER, DATED 13 JULY 2021

(paragraph 6)

Question 1

*The FQ provided only has a handwritten "Toncu (Pty) Ltd" on the last page, plus what looks like the signature of the director of Toncu, Elton Makovere. MSCMP paragraph 17(1)(a) requires that quotations must be obtained from at least three different providers. **What are the details of the other service providers and their quotations?***

Answer

The attendance register attached shows service providers that attended the site meeting.

(paragraph 7)

Question 2

*MSCMP paragraph 17(1)(c) states that, if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the CFO. **Was this done, and what were the reasons given?***

Answer

The department approached SCM and had to urgently advertise on the website. Any further delays could result in potential loss in revenue for the municipality for (disposing of) the trees that fell due to the RUK WINDS.

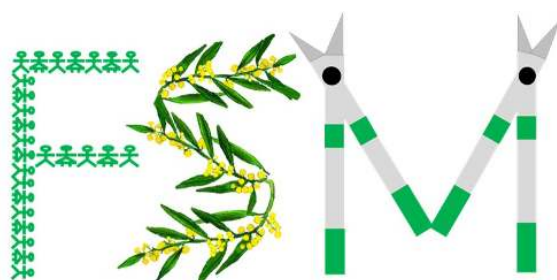
The SCM regulation 40 was the only SCM process used at that time because the trees had already fallen flat and the municipality could have lost revenue, the longer it took to appoint a service provider to remove the trees. This particular regulation does not stipulate a process of reporting and threshold.

SCM Reg 40(2)(b)(11)

NB...movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality or municipal entity;

8 service providers attended the site meeting and 2 then gave a quotation to provide the service. This was an income received by the municipality and not an expense.

I IDP FSM Urban Edge 210426-fsm-comments-idp-cp



Chairperson: HC Eggers
076-785-3514 eggers@sun.ac.za
P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch
Public Benefit Organisation No. 930049434
<http://www.physics.sun.ac.za/~eggers/fsm/>

FRIENDS OF STELLENBOSCH MOUNTAIN

Further comments on the Fourth Review of the Stellenbosch 2017–2022 IDP Draft Version March 2021

26 April 2021

Oral comments have already been provided by FSM chairperson HC Eggers in the course of the IDP Stakeholder Engagement of 23 April. The written comments below are supplementary and/or amplifications and/or reactions to the oral engagements.

1. The section entitled *Contents and Revisions* on Page xi is meaningless since it simply states that all sections have changed. It would help if important changes are actually set out here.
2. **Urban Edge reversion on the north side of Jamestown**
 - 2.1. FSM and others have previously questioned the drawing of the urban edge along the northern edge of the so-called “water erven” or “tuinerwe” on the northern edge of Jamestown. The matter became acute in the past year with the application for development into a gated estate of Portions 52, 53, 54 and 71 of Farm 510, which constitute four of those tuinerwe land units. Not surprisingly, the applicant reinforced his application by correctly stating the these land units were inside the urban edge as of the 2019 Municipal Spatial Development Framework (MSDF).
 - 2.2. The Stellenbosch Municipality Department of Planning has, however, stated strongly and correctly that Jamestown tuinerwen should not be developed due to their high heritage status and other town planning considerations. The Municipal Planning Tribunal agreed with this assessment, and while the developer’s appeal decision is still pending, the position of the municipal administration and MPT has been made clear enough.
 - 2.3. If there is such unanimity on the status of the tuinerwen, the logical next step is to align the urban edge maps with this assessment. FSM therefore suggests that **the Urban Edge should be returned to its pre-2010 alignment to run along the edge of Webersvallei Road. All the cadastral units between Webersvallei Road and the Blaauwklippen River which lie east of La Clemence should be excluded from the urban edge.**
3. **Clarification of status of Heritage Inventory and related documents**

The same Farm 510/52 development application highlighted the fact that the status of the Heritage Inventory and the corresponding Conservation Management Plan needs to be clarified both in the IDP and the MSDF. At the moment, there is only the general declaration *Respect and grow our cultural heritage* in Section 4.13.3 and Page 69 of the draft IDP. The specifics of the Heritage Inventory and Management Plan should appear in the IDP and MSDF just

J IDP Response 210625-mm-to-fsm-idp-response-cp



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Enquiries: Shireen De Visser 021 808 8035/8129

Stellenbosch Municipality
Office of the Municipal Manager
71 Plein Street
Stellenbosch
7600

25 June 2021

Friends of Stellenbosch Mountain
11 Grandiceps Road
Stellenbosch
P.O. Box 3218
7602
Matieland

Dear Professor Eggers,

RE: RESPONSE TO FRIENDS OF STELLENBOSCH MOUNTAIN ON THE FOURTH REVIEW OF THE STELLENBOSCH 2017-2022 INTEGRATED DEVELOPMENT PLAN (IDP)

1. Purpose

To respond to the written submission, which was addressed to Stellenbosch Municipality.

2. Urban edge reversion on the north side of Jamestown

The proposal is to exclude the "water erven" to the north of Weber's Valley Road from the urban edge. In terms of the current Municipal Spatial Development Framework (mSDF) the "water erven" are included within the urban edge with the caveat that it be retained as a special character area due to its significance as a cultural and historic resource, that is to be retained. An urban edge is only one of many tools to guide new development and / or restrict urban sprawl. The Heritage Inventory specifically dealt with the sensitivity of these agricultural properties and is another tool to manage development. Properties located within the urban edge is not automatically earmarked for urban development and one needs to read the mSDF to understand what is envisaged for the properties concerned.

From the recent application for development of one of the "water erven" it is clear that the development community does not understand this fact and views anything within the urban edge as land that can be developed. At present there is an appeal pending against the refusal by the Municipal Planning Tribunal (MPT). Should the appeal be turned down, the precedent for including the "water erven" in the urban edge albeit not for development, will be guiding the determination of the future urban edge.

Should the appeal, however, be successful based on the fact that the properties are located within the urban edge the revision of the urban edge will certainly be contemplated and can

K Blaauwklippen Appeal Decision, 13 July 2021



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTURE ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTION 52, 53, 54 AND 71 OF FARMS NO. 510, STELLENBOSCH (LU/8567)

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM		VARY		REVOKE	X
THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL, ON THE 12TH OF DECEMBER 2021, TO REFUSE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTURE ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTION 52, 53, 54 AND 71 OF FARMS NO. 510, STELLENBOSCH (LU/8567)					
<p>1. The abovementioned appeal refers.</p> <p>2. The Municipal Planning Tribunal, on the 12th of December 2020, Refused, in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for a Group Housing Estate(See ANNEXURE 1).</p> <p>3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015).</p> <p>4. Mr. Justin Truter from Werksmans Attorneys lodged an appeal on behalf of Blaauwklippen Agricultural Estates in terms of Section 79(2) of the By-Law, with the</p>					

Page 1 of 6

(M)