

No. 27

MINUTES

OF

ETHEKWINI MUNICIPAL COUNCIL

Meeting held on Wednesday, 2018-01-31T10:00,
City Hall Main Auditorium, Church Walk, Durban

PRESENT : Councillors WL Mapena (Speaker), ZRT Gumede (Mayor), F Peer (Deputy Mayor), MA Ally, J Annipen, S Aslam, , A Beetge, S Bhanprakash, MC Bhengu, NC Biyela, T Biyela, M Brauteseth, WJD Burne, SS Butelezi, VP Caluza, H Cele, J Chetty, BA Chili, TJT Cibane, R Cloete, TP Collins, M David, HU De Boer, SV De Boer, GT De Lange, MAK Dladla, AN Dlamini, CB Dlamini, JA Dlamini, SB Dlamini, SR Dlamini, MP Dlomo, BA Fortein, VE Gebashe, R Gokool, S Govender, Y Govender, NL Graham, PJC Graham, BR Gumede, NP Gumede, TR Gumede, ZD Gushu, MS Gwala, MH Haniff, GJ Hegter, NP Hlomuka, RC Hlophe, S Hoosen, NB Hoosman, NB Iyir, JA Johnson, M Johnson, SA Kaunda, DM Khanyile, ES Khanyile, KNN Khubone, JS Khuboni, PZ Khumalo, HL Khubisa, NL Khuzwayo, S Khuzwayo, ZW Khuzwayo, SNC Khwela, CJ Laing, P Luthuli, TJ Luthuli, TN Mabanga, MT Mabaso, A Maharajh, B Majola, TG Makhanya, ZP Makhanya, NZ Maluleka, MW Manqele, PM Mbambo, V Mbanjwa, AM Mbele, RD Macpherson, SM Mdlalose, FW Mdletshe, LM Meyer, P Mfeka, TP Mfusi, K Mhlaba, GN Mhlongo, SE Mhlongo, MB Mjadu, AZ Mkhize, BA Mkhize, HGB Mkhize, KV Mkhize, MM Mkhize, MP Mkhize, S Mkhize, SM Mkhize, SM Mkhwanazi, PS Mncube, E Mngadi, SB Mngadi, SV Mngadi, LC Mnguni, NE Mnguni, BV Mngwengwe, LN Mngwengwe, SR Moodley, S Moonsamy, SB Mpanza, SNL Mshengu, B Msomi, LG Mthembu, M Mthembu, MGF Mthembu, MM Mthembu, ON Mthembu, TM Mthethwa, TT Mthiyane, N Munien, AB Mvubu, RM Mzobe, BD Naidoo, J Naidoo, M Nair, X Nala, PL Ncayiyana, BP Ndlela, AB Ndlovu, PB Ndlovu, MK Ndzimbomvu, ZS Ndzoyiya, AS Ngcobo, S Ngema, MM Ngiba, SJM Nhlapho, MS Nkosi, M Nojiyeza, DR Nowbuth, GM Noyce, B Ntshangase, PC Ntshangase, SC Ntshangase, BT Ntuli, PB Ntuli, PH Nxumalo, NP Nxumalo, W Nyaba, NN Nyanisa, TT Nzuzza, CJ Pappas, BW Phewa, JP Phewa, TK Phohlo, B Phungula, D Pillay, KR Pillay, P Pillay, JP Prinsloo, GDA Pullan, BR Qhantsi, MD Qwabe, A Ramkissoon, A Rampersad, S Ryley, S Sewshankar, AN Shabalala, B Shabane, MG Shange, SG Shange-Dlamini, MT Shelembe, ES Shezi, MC Shezi, VH Shezi, BP Shoji, DM Shoji, HP Shoji, M Sibisi, PN Sikhosana, B Singh, EL Singh, Sagar Singh, Samier Singh, PS Sishange, NI Sithole, AD Snyman, ZR Sokhabase, M Tembe, JB Thabethe, S Thango, JC Van den Berg, SM Windvogel, C Xesibe, MC Xulu, TV Xulu, NY Young, BM Zulu, GB Zulu, MBR Zuma, TM Zuma, and MH Zwane.

ABSENT : Councillors MPN Bhengu (On leave), S Brijmohan, NT Cele (Leave – Indisposed), RJ Crouch, HD Goge (Leave – Indisposed), G Govender, NC Gumede (Leave), CB Langa (Leave), NI Madlala, SD Maphumulo (Leave – Indisposed), ZM Mncwango (Leave – Indisposed), B Mpanza

(Leave), NE Mthembu, BS Ngiba (Leave), TT Ngubane (Leave – Indisposed), MS Nyawose (Leave – Municipal Business), DR Pillay, N Sibiya (Leave – Indisposed), WM Thring and TG Zungu (Leave).

AMAKHOSI

PRESENT : Inkosi BF Bhengu, Inkosi VR Cele, Inkosi TF Gwala, Inkosi PP Luthuli, Inkosi LD Mkhize, Inkosi KT Mkhize, Inkosi S Mlaba, Inkosi RF Mthembu, Inkosi JB Shangase, Inkosi EB Shozi and Inkosi MJ Ngcobo.

AMAKHOSI

ABSENT : Inkosi NM Hlengwa, Inkosi KS Makhanya, Inkosi NC Maphumulo (Leave), Inkosi DZ Mkhize (On leave), Inkosi TBE Mkhize and Inkosi MB Ngcobo.

OFFICIALS

PRESENT : Messrs/Mesdames SC Nzuzwa (City Manager), S Shezi (Acting Head: Legal Services and Compliance), M Mthiyane (Deputy Head: Legal Support, Legal Services and Compliance), BM Mhlongo (Deputy Head: Office of the Speaker), T Ndlovu (Senior Manager: Secretariat) and K Dweba (Principal Committee Officer).

(At the commencement of the meeting 185 Councillors were present, comprising ANC:109, DA: 53, IFP: 9, EFF: 6, INDEPENDENT: 3, AIC: 2, ACDP: 0, MF: 0, DLC: 0, TA: 1, MOSA: 1, APC: 0 and AL JAMA-AH: 1).

1. NOTICE CONVENING THE MEETING

The City Manager read the Notice convening the meeting as per the statutory requirement.

2. OPENING

The Speaker declared the meeting open and extended a warm welcome to Her Worship the Mayor, the Deputy Mayor; Members of the Executive Committee; Honourable Councillors and Traditional Leaders; City Manager; Deputy City Managers and Heads present; Legal Services and Compliance officials; Media; Members of the Public; Distinguished Guests and Members of the Administration.

3. AFRICAN UNION AND NATIONAL ANTHEM

At the request of the Speaker the meeting stood to sing the African Union Anthem and the National Anthem of the Republic of South Africa.

4. OPPORTUNITY FOR PRAYER/MEDITATION

The Speaker requested Council to observe a moment's silence for all those who had passed on.

5. OFFICIAL ANNOUNCEMENTS

The Speaker dealt with items 5 and 6 of the Order of Procedure, relative to official announcements and his report, concurrently. In initiating his announcements he congratulated the eThekweni Municipality on the hosting of a successful festive season. It was noted that the Festive Season Management Committee had been in operation throughout the festive period. The Speaker thanked the municipal officials who worked tirelessly to ensure that the beaches and public areas were clean and safe and the beach attendants who reunited lost children with their families.

Thereafter, on behalf of the Council he expressed condolences to:

- The family and fans of the acclaimed Jazz musician, Mr Hugh Masekela, who passed away after illness on 23 January 2018.
- The family and fans of musician, composer and producer, Mr Robbie Malinga, who passed away after illness on Christmas Day.
- The family of Comrade Njabulo Dlamini, a Ward Councillor at the Jozini Local Municipality who was stabbed on New Year's Day while on holiday in Richards Bay.
- The family and friends of MK Veteran and struggle stalwart, Laloo Chiba, who passed away on 08 December 2017 at the age of 87.
- The family of National Poet Laureate and liberation struggle activist, Professor Keorapetse Kgosietsile. He passed away at the age of 80 on 05 January 2018.
- The family of Amina Haffejee and her brother Abdul Raheem who were killed when a rock was thrown from a bridge and struck the car they were travelling in on the N2 near Tongaat.

The Speaker thereafter congratulated the ANC who held their 54th National Conference in Johannesburg from 16 to 20 December 2017 where a new leadership had been elected. He also paid tribute to Ladysmith Black Mambazo who won their fifth Grammy Award in the Best World Music Album for their Shaka Zulu Revisited: 30th Anniversary Celebration album. With respect to the matric class of 2017, the Speaker congratulated them on their great achievement and wished them well as they begin their next journey in tertiary institutions.

The Speaker conveyed his best wishes to all Councillors celebrating their birthdays in January.

The Speaker urged eThekweni residents and holidaymakers to help conserve water as, despite the recent rains, KZN was still classified as being in a severe drought. Thereafter, Councillors were requested to switch off their microphones after speaking to avoid interference with the sound system and to talk slowly and clearly during the proceedings to enable accurate interpretation.

The attention of Councillors was drawn to Rule of Order 16(1) (a)-(e) and (4),(5),(6),(7) and (9). As per these rules, Councillors were requested to conduct themselves in a respectful manner, to refrain from interrupting the proceedings and encouraged to conduct business with the highest decorum and integrity that the occasion and the residents of the Municipality deserved.

In his report the Speaker mentioned that for the period December 2017 and January 2018 only 39 reports had been received by his Office. It was noted that there was a decline in the submission of reports. He advised that going forward, Ward Community Engagement meetings were now indicated in the 2018 Calendar of meetings and the first of these meetings was scheduled for Sunday, 2018-02-04. These would now be held monthly as reflected in the calendar of meetings.

A total of 192 Ward Committee meetings had been held over the quarter October - December 2017. Not many Ward Committee meetings had been held in December and January. However, it was noted that some of the Ward Secretaries were not submitting the necessary documents as evidence of the Committee meetings. In this regard, Ward Councillors were urged to remind the Ward Committee Secretaries that they submit documents timeously as non-submission indicates that the Committee was not convening meetings and eventually the suspension of stipends.

The Speaker made the point that COGTA was currently undertaking the quarterly Ward Committee Functionality Assessment, for October to December 2017 quarter. Again, reiterated that the non-availability of the required evidence would give rise to a negative functionality outcome.

The Speaker mentioned that Council would consider recommendations on the upper limits of salaries, allowances and benefits of Council at its meeting today. He then highlighted details of such benefits and confirmed that, after Council approval, concurrence of the MEC for COGTA would be obtained prior to implementation. Councillors were then reminded to update their SAIRA forms, pertaining to the household and vehicle insurance.

The Speaker reminded Councillors that they had a responsibility of upholding the Code of Conduct, especially on matters pertaining to:

- Attendance at meetings
- Councillors in arrears
- Declaration of gifts
- Reporting back to constituencies
- Functionality of Ward Committees

In concluding his report, the Speaker advised that Council would receive a presentation from the Office of the Auditor General of South Africa (AGSA) on the Audit outcomes for the 2016/17 financial year. He thereafter welcomed AGSA officials, Ms Ntombifuthi Mhlongo (Business Executive), Rashika Rabichand (Senior Manager) and Mahendra Harkhu (Manager).

6. APPLICATIONS FOR LEAVE OF ABSENCE

RESOLVED:

That the following Councillors and Amakhosi be granted leave of absence as indicated:-

COUNCILLORS

Councillor NT Cele	:	2018-01-30 to 02-05 (Indisposed)
Councillor MPN Bhengu	:	2018-01-31 to 02-05 (Personal Commitments)
Councillor HD Goge	:	2018-01-25 to 02-28 (Indisposed)

Councillor NC Gumede	:	2018-01-31 (Personal Commitments)
Councillor R Hlophe	:	Request to leave at 13:00
Councillor NL Khuzwayo	:	2018-01-04 to 02-14 (Municipal Business)
Councillor CB Langa	:	2018-01-31
Councillor TN Mabanga	:	Request to leave at 10:30
Councillor SD Maphumulo	:	2018-01-31 (Indisposed)
Councillor ZM Mncwango	:	2018-01-31 (Indisposed)
Councillor B Mpanza	:	2018-01-30 to 02-01
Councillor BS Ngiba	:	2018-01-31 (Personal Commitments)
Councillor TT Ngubane	:	2018-01-29 to 02-06 (Indisposed)
Councillor MS Nyawose	:	2018-01-31 (Municipal Business)
Councillor N Sibiya	:	2018-01-30 to 31 (Indisposed)
Councillor TG Zungu	:	2018-01-31 (Personal Commitments)

AMAKHOSI

Inkosi NC Maphumulo	:	2018-01-31 (Personal Commitments)
Inkosi DZ Mkhize	:	2018-01-31 (Personal Commitments)

(It is recorded that although Councillor NL Khuzwayo had submitted an application for Leave of Absence effective 04 January till 14 February 2018, the Councillor was however present in this meeting).

7. CONFIRMATION OF MINUTES: Meeting held on 2017-12-06 and In-Committee Meeting held on 2017-12-06

RESOLVED:

That the minutes of the meeting of the eThekweni Municipal Council held on 2017-12-06 and In-Committee meeting held on 2017-12-06, as circulated and taken as read, be and they are hereby confirmed.

8. PRESENTATION BY OFFICE OF AUDITOR GENERAL OF SOUTH AFRICA ON AUDIT OUTCOMES FOR 2016/17 FINANCIAL YEAR

Her Worship the Mayor tabled draft Annual Report for the 2016/17 financial year as contained on item 6 of the Council Supplementary Agenda to enable the Auditor-General of South Africa (AGSA) to present on the item.

In her introduction, Ms Mhlongo of AGSA spoke on AGSA's Constitutional mandate as the supreme audit institution of South Africa. She highlighted alignment of AGSA audit work with the objectives of the National Development Plan. Council was advised that AGSA audit examines three (03) areas, namely, (i) Fair presentation and absence of significant misstatements in financial statements; (ii) Reliable and credible performance information for predetermined objectives; and (iii) Compliance with all laws and regulations governing financial matters.

Thereafter, based on findings identified, there are five (5) different audit opinions given by AGSA to any organisation and these include the following:

Opinion	Explanation
Unqualified opinion with no findings (clean audit)	Auditee successfully complies with all three areas being audited in relation to financial statements; performance information; and compliance with key legislation
Financially unqualified opinion with findings	Auditee has been able to produce credible and reliable financial statements that are free of material misstatements. However, lacked credible and reliable performance information and there is non-compliance with key legislations
Qualified opinion	Auditee has material misstatements on specific areas in financial statements which could not be rectified before the publication of financial statements
Adverse opinion	In addition to challenges similar to qualified opinion, Auditee has many material misstatements in financial statement and consensus could not be reached on almost all amounts and disclosures
Disclaimed opinion	Auditee has same challenges as for qualified opinion and, in addition, could not produce evidence for most of the amounts and disclosures such that there is inability to even express opinion on the credibility of financial statements.

With regard to eThekweni Municipality significant emphasis of matters had been raised on financial statements in relation to litigation; material water losses; and debt impairments. On the issue of litigation this pertains to the number of claims lodged against the Municipality in that the ultimate outcome of these claims was not determinable at year-end and no provision has been made in the financial statements for any liability which may occur. On the issue of material water losses, the Municipality has lost revenue in the amount of R710.90 Million as at 30 June 2017 as a result of illegal connections and deteriorating infrastructure. With regard to bad debts provision, an amount of R904.1 Million related to the 2016 provision has been written off as irrecoverable during the year.

It is pleasing to note that there are no material findings on the usefulness and reliability of the predetermined objectives from the sample including Plan 3: creating a quality living environment; Plan 8: financially accountable and sustainable City; and Plan 23 (Sub-Plan of Plan 2): Moses Mabhida Stadium.

On the issue of compliance with key legislations, eThekweni Municipality has incurred irregular expenditure in the amount of R514.8 Million and the majority was caused by non-compliance with Supply Chain Management Regulation 29(1).

Key matters requiring the attention of the Municipality relate to financial management; procurement and contract management; compliance management with regard to payment of service providers; HR Management; and IT Management. AGSA agrees that the Municipality's assurance providers, namely; Senior Management and Accounting Officer; Her Worship the Mayor; Internal Audit Unit; Audit Committee; and the Municipal Public Accounts Committee have to a large extent implemented the necessary controls and processes. However, certain control initiatives over the areas of consequence management; effective procurement planning and compliance monitoring over bid documentation by certain departments are still in progress.

It is also pleasing to report that Her Worship the Mayor and the Accounting Officer have made commitments to address issues of procurement and contract management; consequence management; human resources management; and IT management. It is acknowledged by AGSA that initiatives to address these matters are in progress.

In closing, AGSA confirmed that they have enhanced their audit methodology to ensure the Municipality continues to receive a valuable and relevant product. That the audits will be more focused and integrated with a robust risk approach allowing the Municipality to continue driving accountability and good governance.

During discussion, Council raised issues relating to public consultation, whether same presentation by AGSA would be used for this purpose; concerns about water losses in relation to the challenges arising from the implementation of the Revenue Management System and challenges of water meters, whether AGSA has taken this into consideration; status of areas needing attention such as HR and IT; and the role of the Municipality's Accounting Officer.

Speaking on issues of clarity as raised, AGSA indicated that the Municipality would be responsible for conducting public consultation through the Municipal Public Accounts Committee following the presentation of the Annual Report in this Council meeting.

On the issue of water losses, AGSA confirmed working with the Municipality to ensure necessary interventions and the ultimate reflection of accurate status in this regard. Confirmation was also given that progress was being made to address areas needing attention and highlight being given that HR matters were sitting at 33% at the time of auditing which outcome will still change since initiatives were underway to clear the identified findings.

On the issue of the role of the Accounting Officer, clarity was provided that AGSA had recognised the City's Accounting Officer and that he was playing a role of an assurance provider, hence, there had been some commitments made to clear the findings identified.

Providing the closing remarks, Her Worship the Mayor thanked AGSA for the presentation. She commended the City for the reduction in the findings identified and that there were no material findings with regard to performance information. She thereafter reiterated her commitments to drive the programme of clearing findings identified for the Municipality to comply with the audit requirements and be able to achieve the desired audit outcome.

Following the AGSA presentation, Council noted the draft 2016/17 Annual Report, as recorded under item 6 of these minutes, and on the basis that the Annual Report was to undergo public consultation process prior to final approval.

Her Worship the Mayor, Councillor ZRT Gumede presented the First Report of the Executive Committee.

FIRST REPORT OF THE EXECUTIVE COMMITTEE

(Meeting held 2018-01-23)

PRESENT : Executive Committee Members ZRT Gumede (Mayor and Chairperson), F Peer (Deputy Mayor), HU De Boer, BA Fortein, S Hoosen, SA Kaunda, ZM Mncwango, MM Mthembu, MS Nkosi and ZR Sokhabase.

1. DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS (3/5/4)

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The Executive Committee Members Mncwango, De Boer and Hoosen of the Democratic Alliance recorded their dissension on the basis that they would need to consult with their caucus in the first instance.

With the majority of members being in agreement,

COMMITTEE RECOMMENDS:

- 1.1 That Government Notice No. 1440 placed in Government Gazette No. 41335 dated 15 December 2017, citing conditions upon which the new limits for salaries; allowances; and benefits are to be implemented, be and is hereby noted and this relates to the total remuneration package of full and part time Councillors, upper limits of motor vehicle and travel allowance, upper limits of telephone allowance and capacity building.
- 1.2 That the Minister of Co-operative Governance and Traditional Affairs' Determination of the upper limits of salaries, allowances and benefits as stipulated in Government Gazette No. 41335 dated 15 December 2017, be approved.
- 1.3 That the provisions of Government Notice No. 1440, referred to in .2 above, be implemented at 100% of the upper limit.
- 1.4 That the concurrence of the MEC for Co-operative Governance and Traditional Affairs be sought prior to giving effect to item .3 above.

ADOPTED.

2. MOTIVATION FOR ALLOCATION OF LAND AND BUILDINGS FOR USE OF OFFICE ACCOMMODATION BY THE STRATEGIC MANAGEMENT UNIT (17/2/2/5/1)

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The recommendation as contained in the report was amended to indicate that the property be set aside for Council office accommodation and not solely for the Strategic Management Unit.

Thereafter

COMMITTEE RECOMMENDS:

- 2.1 That the request to pursue the setting aside of Erf 11162, of Lot 0085, Durban, located at 137 KE Masinga Road, for use as Council accommodation, be approved.
- 2.2 That subject to the adoption of .1 above, and subsequent successful allocation of the premises for Council accommodation, project authority be granted to proceed with the necessary refurbishment via public tender.
- 2.3 That the need for such office accommodation to be determined and prioritised by the City Manager and Deputy City Managers of the various Clusters.

C2811 (Parent Project No. C1347)	R0.5m excl VAT	Funded 2017/2018
C2811 (Parent Project No. C1347)	R4.0m excl VAT	Funded 2018/2019

FC No.: 47/C003

ADOPTED.

3. AUTHORITY TO UTILISE SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT FOR THE AMENDMENT TO CONTRACT CF/46/16 FOR THE SUPPLY AND DELIVERY OF A LANDFILL DOZER FOR WASTE HANDLING ON LANDFILL SITES (8/3/1/6 & 9/1/3)

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With it being noted that Executive Committee Member Mncwango had left the meeting at this stage and with Executive Committee Members De Boer and Hoosen abstaining,

COMMITTEE RECOMMENDS:

That in terms of Section 116(3) of the Municipal Finance Management Act 56 of 2003, and in order to enable the Cleansing and Solid Unit to meet its operational demands and assist in accelerating service delivery, the amendments to Contract CF/46/16 for the supply and delivery of Landfill Dozer for waste handling on Landfill Sites with Barloworld Equipment (Pty) Ltd, be approved.

During consideration of items 3 to 6 relating to contract amendments in terms of Section 116(3) of the Municipal Finance Management Act, the Acting Head: Legal & Compliance submitted that the items were not competent for consideration by Council in view of the content thereof being relevant for the Bid Adjudication Committee. It was clarified that with regard to contract amendments Council was only required to approve the reasons for such amendment not the actual service provider.

Therefore, the above-mentioned matter was WITHDRAWN.

4. AUTHORITY TO UTILISE SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT FOR AMENDMENT TO CONTRACT CF/64/16 FOR THE SUPPLY AND DELIVERY OF 8X4 HOOKLIFTS FOR THE CLEANSING AND SOLID WASTE UNIT (8/1/7/1 & 9/1/3)

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With Executive Committee Members De Boer and Hoosen abstaining,

COMMITTEE RECOMMENDS:

That in terms of Section 116(3) of the Municipal Finance Management Act 56 of 2003, and in order to enable the Cleansing and Solid Unit to meet its operational demands and assist in accelerating service delivery, the amendments to CF/64/16 for the supply and delivery of 8x4 Hooklift(s) with NMI Durban South Motors (Pty) Ltd T/A Mercedes Benz commercial vehicles, be approved.

Financial Implications:

Financial authority has been allocated and approved as follows:

Description(s)	Amount Excluding VAT (Rand)	Vote Number	FC Number
Initial contract value	R10 264 560.00	79700.42780.11300.00 00.PC8900.0010	FC to be issued once savings are identified
Additional Amount	R11 804 244.00		
Total Amount	R22 068 804.00		

WITHDRAWN.

5. AUTHORITY TO UTILISE SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT FOR AMENDMENT TO CONTRACT CF/42/16 FOR THE SUPPLY AND DELIVERY OF INDUSTRIAL REFUSE COMPACTOR(S) FOR A PERIOD OF TWENTY FOUR MONTHS (8/3/1/6 & 9/1/3)

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With Executive Committee Members De Boer and Hoosen abstaining,

COMMITTEE RECOMMENDS:

That in terms of Section 116(3) of the Municipal Finance Management Act 56 of 2003, and in order to enable the Cleansing and Solid Unit to meet its operational demands and assist in accelerating service delivery, the amendments to CF/42/16 for the supply and delivery of Industrial Refuse Compactor with MAN Truck and Bus SA, be approved.

Financial Implications:

Financial authority has been allocated and approved as follows:

Description(s)	Amount Excluding VAT (Rand)	Vote Number	FC Number
Initial contract value	R16 195 188.45	79700.42780.11300.00 00.PC8900.0010	FC to be issued once savings are identified
Additional Amount	R5 067 882.10		
Total Amount	R21 263 070.55		

WITHDRAWN.

6. AUTHORITY TO UTILISE SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT FOR AMENDMENT TO CONTRACT CF/43/16 FOR THE SUPPLY AND DELIVERY OF SPECIALISED 4X2 REFUSE COMPACTION TRUCKS FOR A PERIOD OF TWENTY FOUR MONTHS (8/3/1/6 & 9/1/3)

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With Executive Committee Members De Boer and Hoosen abstaining,

COMMITTEE RECOMMENDS:

That in terms of Section 116(3) of the Municipal Finance Management Act 56 of 2003, and in order to enable the Cleansing and Solid Unit to meet its operational demands and assist in accelerating service delivery, amendments to CF/43/16 for the supply and delivery of specialised 4x2 refuse compaction trucks with NMI Durban South Motors (Pty) Ltd T/A Mercedes Benz commercial vehicles, be approved.

Financial Implications:

Financial authority has been allocated and approved as follows:

Description(s)	Amount Excluding VAT (Rand)	Vote Number	FC Number
Initial contract value	R10 264 560.00	79700.42780.11300.00 00.PC8900.0010	FC to be issued once savings are identified
Additional Amount	R11 804 244.00		
Total Amount	R22 068 804.00		

WITHDRAWN.

7. PROJECT AUTHORITY TO ERECT STATUES OF THE LATE OR TAMBO AND NELSON MANDELA IN DURBAN (12/11 & 21/8/R)

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With Executive Committee Member Nkosi of the IFP abstaining,

COMMITTEE RECOMMENDS:

- 7.1 That the historical importance and the role played by the late Oliver Reginald Tambo and Nelson Rohihlahla Mandela in the liberation of South Africa and the anti-apartheid movement be acknowledged.
- 7.2 That as a matter of necessity authority be granted to the Head: Parks, Recreation and Culture to erect statues of the late OR Tambo and Nelson Mandela in honour of the role they played in the struggle for liberation and social justice in South Africa.
- 7.3 That subject to .2 above, authority be granted to the Head: Parks, Recreation and Culture to raise funds both internally and externally to finance the project.
- 7.4 That a further report indicating total costs in respect of the project be submitted to Council.

REFERENCE BACK

In terms of Rule of Order Bylaw 20(1)(c), Councillor SV De Boer, seconded by Councillor H Shozi, moved as a procedural motion that the above recommendations of the Executive Committee be referred back to the Community Services Committee for further consideration.

NOT CARRIED

As some Councillors were not in support of the reference back, the matter was put to the vote. With 187 Councillors present, 61 Councillors (DA – 55 and EFF – 6) voted in favour and 126 Councillors (ANC – 108, IFP – 9, IND – 3, AIC – 2, DLC – 1, TA - 1, MOSA - 1 and AL JAMA-AH - 1) voted against. There were no abstentions recorded.

The above-mentioned motion to refer back was, by the majority vote, **NOT CARRIED**.

(At this stage of the proceedings the Democratic Alliance requested a Caucus which was granted accordingly. The meeting briefly adjourned at 11h14 and resumed at 11h20)

Discussion thereafter reverted to the substantive motion. Some Councillors were not in support of statues erection based on what they regarded as lack of prioritisation of funding. Their view was that the matter was broad therefore there was an opportunity to involve private sector stakeholders, including tourism institutions, to contribute funding since they would also benefit when statues have been erected.

Other Councillors supported the matter pointing out that it had been long overdue given the significant contribution made by the leaders in question to liberate South Africa. Further, that consideration should be given to balancing the history by recognising other leaders who had also contributed to the liberation struggle.

Thereafter, the matter was put to the vote. With 193 Councillors present, 131 Councillors (ANC: 112, IFP: 9, IND: 3, AIC: 2, MF: 1, DLC: 1, TA: 1, MOSA: 1 and AL JAMA-AH: 1) voted in favour and no Councillors voted against. 62 Councillors (DA – 56 and EFF – 6) abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED**.

8. NOMINATION OF MEMBERS ON THE ASSOCIATION OF MUNICIPAL ELECTRICITY UTILITIES (AMEU) (14/1)

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The objectives of the Association of Municipal Electricity Utilities, namely to promote the pursuance of quality, service and management excellence and to facilitate communication between all its members and other stakeholders as well as influencing the environment was noted. As such continued participation by the Municipality is critical.

On that basis,

COMMITTEE RECOMMENDS:

- 8.1 That in view of the continued involvement of eThekweni Municipality as one of the larger Metros within the structure of the AMEU and its importance in maintaining the sustainability and influence in regulations and legislation affecting the electricity industry, the following nominations to represent the Municipality be approved:
- 8.1.1 One Councillor from the Human Settlements and Infrastructure Committee as the main member of the AMEU Executive Council, it being noted that eThekweni was previously represented by Councillor S Zungu as the main member and supported by Councillors WL Mapena and D Hoorzuk.
- 8.1.2 Ms Jayshree Pershad (Project Executive: Electricity Unit) as the Vice President Elect at the next AMEU Technical Convention.
- 8.2 That the Acting Head: Electricity be further mandated to continue being the main Engineer Member in terms of the AMEU Constitution.
- 8.3 That the Acting Head : Electricity together with the nominated Councillors (main Councillor member and support Councillors), and other Officials serving in the Executive Council continue to attend all the Executive Council and Executive Committee meetings of AMEU.
- 8.4 That Council continues to authorize 6 (six) Councillors from the Human Settlement and Infrastructure Committee and relevant Officials to attend the KwaZulu-Natal branch meetings of the AMEU, noting that attendance at branch meetings empowers members of the Human Settlement and Infrastructure Committee to understand issues affecting the Electricity Distribution Industry.

MOTION TO AMEND

In terms of Rule of Order Bylaw 20(4) Councillor LM Meyer, seconded by Councillor M Johnson, moved as a procedural motion that the above recommendations of the Executive Committee be amended in 8.4 thereof to read as follows:

“8.4 That Council continues to authorize six (6) Councillors from the Human Settlements and Infrastructure Committee on a Multi-Party proportional basis.”

NOT CARRIED

As some Councillors were not in support of the abovementioned motion to amend the matter was put to the vote. With 194 Councillors present, 56 DA Councillors voted in favour and 132 Councillors (ANC: 113, IFP: 9, IND: 2, AIC: 2, MF: 1, DLC: 1, TA: 1, MOSA: 1 and AL-JAMAH: 1) voted against. 6 EFF Councillors abstained from voting.

The abovementioned Motion to Amend was, by the majority vote, NOT CARRIED.

Discussion thereafter reverted to the substantive motion and as some Councillors were not in support thereof the matter was put to the vote. With 194 Councillors present, 188 Councillors (ANC: 113, DA: 56, IFP: 9, IND: 3, AIC: 2, MF:1, DLC: 1, TA: 1, MOSA: 1 and AL-JAMAH: 1) voted in favour and no Councillors voted against. 6 EFF Councillors abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED.**

9. PROGRESS REPORT AND MOTIVATION FOR EXTENSION OF THE CITY PLANNING COMMISSION’S TERM OF OFFICE (2/1/4/1/2 & 3/2/1)

(Page 117)

The recommendation as contained in the report was amended to indicate that the term of office of the current City Planning Commission be extended to June 2018 instead of December 2018 as it was previously proposed.

Accordingly,

COMMITTEE RECOMMENDS:

- 9.1 That the progress to date outlining the three themes, namely; Economic Development and Transformation, Spatial Integration and Quality Place Making and Good Governance relevant to the elevation of the Municipality and as recommended by the City Planning Commission, be noted.
- 9.2 That the term of office of the current members of the City Planning Commission which expired on 31 December 2017, be extended to the end of June 2018 to enable further stakeholder engagement and improvement related thereto.
- 9.3 That subject to .2 above, engagements of the City Planning Commission with the Executive Committee be programmed immediately after each quarterly Commission meeting.
- 9.4 That subject to.2 above, Council to identify 7 (seven) persons to fill the vacancies on the Commission.

Financial Implications:

The extension of the term of office for further year is expected to cost of R4 384 800.00. Made up as follows:

ITEM	AMOUNT
Remuneration – Current Commissioners	R1 284 000.00
Remuneration – proposed 7 additional Commissioners	R960 500.00
Travel and Accommodation	R20 300.00
Venue Hire and Catering	R120 000.00
Research and Consultancy	R2 000 000.00
TOTAL	R4 384 800.00

FC No.: 12/19

ADOPTED.

10. REPORT ON AWARDS MADE BY THE CITY FOR THE MONTH OF NOVEMBER 2017 (9/1/3)

(Page 154)

COMMITTEE RECOMMENDS:

- 10.1 That the report of the City Manager dated 2017-12-12 relative to awards made by the City for the month of November, as presented, be noted.
- 10.2 That it be noted that where the information is available for wards and registration numbers, it is included in the report, as information used to compile the report is taken from submissions made by the Units.
- 10.3 That the City Manager reserves the right to investigate the awards with a view to taking disciplinary, criminal and recovery actions where willful and negligent violation of Supply Chain Management Policies and Municipal Finance Management Act provisions are observed.
- 10.4 That the City Manager shall table a report to the Committee relative to the disciplinary, criminal and recovery actions taken, it being recorded that the City Manager can only respond when the reports are available.

Recommendations 10.1 and 10.2 were NOTED and recommendations 10.3 and 10.4 were ADOPTED.

11. BUDGET STATEMENT REPORT FOR THE MONTH ENDING 30 NOVEMBER 2017 (7/1/4)

(Page 172)

COMMITTEE RECOMMENDS:

That the Budget Statement Report for the month ending 2017-11-30, submitted by the City Manager as per his report dated 2017-12-19, in compliance with Section 52(d) of the Municipal Finance Management Act and Section 28 of the Municipal Budget and Reporting Regulations in terms of Government Notice 32141 dated 17 April 2009, relating to the "Local Government: Municipal Finance Management Act 2003, be noted.

NOTED.

12. REPORT ON INVESTMENTS AS AT 2017-11-30 (7/11/4)

(Page 307)

COMMITTEE RECOMMENDS:

That the report on investments for the eThekweni Municipality as at 2017-11-30, which records the total funds invested at financial institutions as R6 202 056,00 (Six Million, Two Hundred and Two Thousand and Fifty Six Rand) at an average rate of return on investments of 7.73%, as submitted by the City Manager and detailed in his report dated 2017-12-19, in line with the requirements of the Municipal Cash Management and Investment Regulations of the Municipal Finance Management Act, 2003, be noted.

NOTED.

13. REPORT ON INVESTMENTS AS AT 2017-12-31 (7/11/4)

(Page 313)

COMMITTEE RECOMMENDS:

That the report on investments for the eThekweni Municipality as at 2017-12-31, which records the total funds invested at financial institutions as R6 346 865,00 (Six Million, Three Hundred and Forty Six Thousand, Eight Hundred and Sixty Five Rand) at an average rate of return on investments of 8.01%, as submitted by the City Manager and detailed in his report dated 2018-01-17, in line with the requirements of the Municipal Cash Management and Investment Regulations of the Municipal Finance Management Act, 2003, be noted.

NOTED.

14. REPORT ON AWARDS MADE BY THE CITY FOR THE MONTH OF DECEMBER 2017 (9/1/3)

(Page 320)

COMMITTEE RECOMMENDS:

14.1 That the report of the City Manager dated 2018-01-09 relative to awards made by the City for the month of December, as presented, be noted.

14.2 That it be noted that where the information is available for wards and registration numbers, it is included in the report, as information used to compile the report is taken from submissions made by the Units.

14.3 That the City Manager reserves the right to investigate the awards with a view to taking disciplinary, criminal and recovery actions where willful and negligent violation of Supply Chain Management Policies and Municipal Finance Management Act provisions are observed.

14.4 That the City Manager shall table a report to the Committee relative to the disciplinary, criminal and recovery actions taken, it being recorded that the City Manager can only respond when the reports are available.

Recommendations 14.1 and 14.2 were **NOTED** and recommendations 14.3 and 14.4 were **ADOPTED**.

15. ESTABLISHMENT OF A STAND ALONE AGRO-ECOLOGY UNIT WITHIN ETHEKWINI MUNICIPALITY (4/1/1/2/3)

(Page 331)

With Executive Committee Members De Boer and Hoosen of the Democratic Alliance abstaining on the basis that they would need to research the organogram,

COMMITTEE RECOMMENDS:

15.1 That Sections 152(1)(c) and 153(b) of the Constitution which outlines the objectives of Local Government to promote social and economic development and mandate the participation in National Development programmes, be noted with it being acknowledged that the White Paper of Local Government (1998) requires that Local

Government be responsible for ensuring that overall economic and social conditions of the locality are conducive to the creation of employment opportunities.

- 15.2 That subject to .1 above and in terms of the Municipal Systems Act 200 (Section 66) as amended, the creation and implementation of the organogram to give effect to the proposed Agro-Ecology Unit within the Municipality, as depicted in Annexure “B” of the report of the City Manager dated 2017-12-08, be approved.
- 15.2 That subject to .2 above, the transfer of Agriculture functions from the Parks, Recreation and Culture Unit (together with resources) to the newly created Agro-Ecology Unit, be approved
- 15.3 That consultation with relevant affected employees to be undertaken through the Human Resources processes together with all vacant and newly created posts undergoing the normal recruitment process.

Financial Implications:

The implementation of the recommendations made in this report will incur an additional expenditure of approximately R36 119 167.00 (Thirty Six Million, One Hundred and Nineteen Thousand, One Hundred and Sixty Seven Rand) as contained in Annexure “C” of the report of the City Manager dated 2017-12-08.

As some Councillors were not in support of the above-mentioned recommendations of the Executive Committee, and with majority of the Councillors being in support of the recommendations, the matter was put to the vote.

With 190 Councillors present, 128 Councillors (ANC – 112, IFP – 7, IND – 3, AIC – 2, MF – 1, DLC – 1, TA – 1 and AL-JAMAH - 1) voted in favour and 56 DA Councillors voted against. 6 EFF Councillors abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED.**

16. INTEGRATED DEVELOPMENT PLAN (IDP) 2017/2018 MID TERM AMENDMENTS TO THE ORIGINAL ORGANISATIONAL SCORECARD AND SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP) (2/1/6/1)

(Page 349)

COMMITTEE RECOMMENDS:

That in terms of Section 3.4(b) of the Local Government Municipal Finance Management Regulations, the Mid-Term amendments to the original Organisational Scorecard and Service Delivery and Budget Implementation Plan (SDBIP), together with the public participation process linked to the amendment of the IDP, be noted.

NOTED.

17. SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP) & ORGANISATIONAL SCORECARD: MID-YEAR REPORTING: JULY TO DECEMBER 2017 (11/1/2)

(Page 543)

COMMITTEE RECOMMENDS:

That in terms of the Municipal Finance Management Act (MFMA), Circular No 13, the Service Delivery and Budget Implementation Plan and the Organisational Scorecard for the Quarter 2 of the 2017/18 Financial Year which reflects an overall achievement of 54.33% with the breakdown contained in the table below, be noted, it being recorded that the report would be audited by the Auditor General and that the Municipal Public Accounts Committee would deal with the findings thereof and recommend accordingly to Council.

Plan No	Plan Name	Achievement Rate
1	Develop and sustain our Spatial, Natural and Built Environment	75%
2	Developing a Prosperous, Diverse Economy and Employment Creation	81.25%
23	Moses Mabhida Stadium	16.67%
3	Creating a Quality Living Environment	52.78%
4	Fostering a Socially Equitable Environment	44.44%
5	Creating a Platform for Growth, Empowerment and Skills Development	50.00%
6	Embracing our Cultural Diversity, Arts and Heritage	83.33%
7A	Good Governance and Responsive Local Government	42.86%
7B	Good Governance and Responsive Local Government	50.00%
8	Financially Accountable and Sustainable City	54.55%
	Overall Achievement	54.33%

Municipal Entities		
Plan Name	Plan Name	Achievement Rate
ICC (Plan 21)	Develop and sustain our Spatial, Natural and Built Environment	37.50%
Ushaka (Plan 22)	Develop and sustain our Spatial, Natural and Built Environment	70.59%

NOTED.

18. NOTING OF RULE OF ORDER 28: APPROVAL TO UTILISE SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT TO PROVIDE FOR ADDITIONAL CONTRACT FINANCIAL AUTHORITY AND TO EXTEND CONTRACT DURATION FOR THE WESTERN AQUEDUCT, PHASE 2, CONTRACT WS.6522 FOR THE CONSTRUCTION OF 17KM OF DN1400mm AND 8KM OF DN1000mm CONTINUOUSLY WELDED STEEL PIPELINES FROM ASHLEY DRIVE, HILLCREST TO NTUZUMA 5 RESERVOIR WITH ASSOCIATED ROAD REHABILITATION AND REALIGNMENT AND CHAMBER CONSTRUCTION (23/1/11/1/1/2)

(Page L1)

With Executive Committee Members De Boer and Hoosen of the Democratic Alliance and Nkosi of the Inkatha Freedom Party abstaining on the basis of their Caucus considering same in the first instance,

COMMITTEE RECOMMENDS:

- 18.1 That the action by Her Worship the Mayor, Councillor ZRT Gumede in approving as a matter of urgency, in terms of Rule of Order Bylaw 28, the following recommendations of the Deputy City Manager: Trading Services as contained in his report dated 2017-12-15 relative hereto, be noted:
- 18.1.1 That in terms of Section 116(3) of the Municipal Finance Management Act 116(3), the increase in contract financial authority value by R24 066 785.66 (Twenty Four Million Sixty Six Thousand Seven Hundred and Eighty Five Rand and Sixty Six Cents) (5.3% of the current approved financial authority) from R450 706 218.21 (Four Hundred and Fifty Million Seven Hundred and Six Thousand Two Hundred and Eighteen Rand and Twenty One Cents) (excluding VAT) to R474 773 003.87 (Four Hundred and Seventy Four Million Seven Hundred and Seventy Three Thousand Three Rand and Eighty Seven Cents) (excluding VAT) for Contract WS.6522 for the construction of a 25km long 1400/1000 diameter steel pipeline from Hillcrest to Ntuzuma under the Western Aqueduct Phase 2 project that was awarded to Esorfanki Construction, be approved.
- 18.1.2 That the amendment to extend the contract duration period of Contract WS.6522 awarded to Esorfranki Construction from 2018-04-30 until the completion of the construction of the pipeline estimated as 2018-12-31, be approved.
- 18.1.3 That an advert in respect of the proposed contract duration extension and additional contract financial authority and soliciting of responses from the public, be placed in the press.
- 18.1.4 That subject to adoption of .1 and .2 above, and with no valid objections from the public to the contrary, the Bid Adjudication Committee be notified that the contract authority value of Contract WS.6522 has been increased to R474 773 003.87 Four Hundred and Seventy Four Million Seven Hundred and Seventy Three Thousand Three Rand and Eighty Seven Cents) (excluding VAT).
- 18.1.5 That the City Manager records reasons for any deviation and report it to the next meeting of Council and includes it as a note to the Annual Financial Statements.

Vote: X4625

R18 000 000.00 (Provided in 2017/2018 Capital Budget)

R 6 066 785.66 (Provided in 2018/2019 Capital Budget)

As some Councillors were not in support of the above-mentioned recommendations of the Executive Committee, and with majority of the Councillors being in support of the recommendations, the matter was put to the vote.

With 189 Councillors present, 176 Councillors (ANC – 110, DA – 56, IND – 3, AIC – 2, MF – 1, DLC – 1, TA – 1, MOSA - 1 and AL-JAMAH - 1) voted in favour and no Councillors voted against. 13 Councillors (IFP – 8 and EFF - 5) abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **NOTED.**

19. NOTING OF RULE OF ORDER 28: APPROVAL TO UTILISE SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT TO AMEND AND EXTEND PROFESSIONAL SERVICES CONTRACT PSC.2007/2 FOR PROFESSIONAL SERVICES CONTRACT FOR THE DESIGN AND CONSTRUCTION SUPERVISION OF THE WESTERN AQUEDUCT, PHASE 2 INCHANGA TO NTUZUMA (23/1/11/1/1/2)

(Page L2)

With Executive Committee Members De Boer and Hoosen of the Democratic Alliance and Nkosi of the Inkatha Freedom Party abstaining on the basis of their Caucus considering same in the first instance,

COMMITTEE RECOMMENDS:

- 19.1 That the action by Her Worship the Mayor, Councillor ZRT Gumede in approving as a matter of urgency, in terms of Rule of Order Bylaw 28, the following recommendations of the Deputy City Manager: Trading Services as contained in his report dated 2017-12-15 relative hereto, be noted:
- 19.1.1 That in terms of Section 116(3) of the Municipal Finance Management Act, the increase in contract financial authority value by R8 330 169.00 (Eight Million Three Hundred and Thirty Thousand One Hundred and Sixty Nine Rand) from R176 604 560.00 (One Hundred and Seventy Six Million Six Hundred and Four Thousand Five Hundred and Sixty Rand) (excluding VAT) to R184 934 729.00 (One Hundred and Eighty Four Million Nine Hundred and Thirty Four Thousand Seven Hundred and Twenty Nine Rand) (excluding VAT) under the Professional Services Contract PSC.2007/2 awarded to the Western Aqueduct Consultants Joint Venture, be approved.
- 19.1.2 That an advert in respect of the proposed contract duration extension and additional contract financial authority and soliciting of responses from the public, be placed in the press.
- 19.1.3 That subject to adoption of .1 and .2 above, and with no valid objections from the public to the contrary, the Bid Adjudication Committee be notified that the contract authority value of Contract PSC.2007/2 has been increased to R184 934 729.00 (One Hundred and Eighty Four Million Nine Hundred and Thirty Four Thousand Seven Hundred and Twenty Nine Rand) (excluding VAT).

- 19.1.4 That the City Manager records reasons for any deviation and report it to the next meeting of Council and includes it as a note to the Annual Financial Statements.

Vote: X4625 R6 600 000.00 (Provided in 2017/2018 Capital Budget)
 R1 730 169.00 (Provided in 2018/2019 Capital Budget)

As some Councillors were not in support of the above-mentioned recommendations of the Executive Committee, and with majority of the Councillors being in support of the recommendations, the matter was put to the vote.

With 190 Councillors present, 175 Councillors (ANC – 110, DA – 55, IND – 3, AIC – 2, MF – 1, DLC – 1, TA – 1, MOSA - 1 and AL-JAMAH - 1) voted in favour and 9 IFP Councillors voted against. 6 EFF Councillors abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, NOTED.

20. REQUEST FOR AUTHORITY TO SOURCE FUNDING TO CARRY OUT REPAIRS TO SANITATION INFRASTRUCTURE CAUSED BY STORM DAMAGE ON 10 OCTOBER 2017 (23/2/1/3/5/1)

(Page L3)

With Executive Committee Members De Boer and Hoosen of the Democratic Alliance and Nkosi of the Inkatha Freedom Party abstaining on the basis of their Caucus considering same in the first instance,

COMMITTEE RECOMMENDS:

- 20.1 That the action by Her Worship the Mayor, Councillor ZRT Gumede in approving as a matter of urgency, in terms of Rule of Order Bylaw 28, the following recommendations of the Deputy City Manager: Trading Services as contained in his report dated 2018-01-02 relative hereto, be noted:

- 20.1.1 That the Deputy City Manager: Finance be requested to identify savings to provide for the repairs to the sewer infrastructure caused by the storm damage of 2017-10-10 and requisite Financial Certificate numbers be provided subject to savings identified in the adjustment budget under Section 29 of the Municipal Finance Management Act

NOTED.

SECOND REPORT OF THE EXECUTIVE COMMITTEE

(Meeting held 2018-01-30)

- PRESENT** : Executive Committee Members ZRT Gumede (Mayor and Chairperson), F Peer (Deputy Mayor), HU De Boer, BA Fortein, S Hoosen, SA Kaunda, MM Mthembu, MS Nkosi and ZR Sokhabase.
- ABSENT** : Executive Committee Member ZM Mncwango (Leave)

1. APPOINTMENT OF NEW AUDIT COMMITTEE MEMBERS (3/2/2)

(Page 1)

The term of office of five (5) members of the Audit Committee expires on 29 May 2018. The recruitment and selection process undertaken has culminated in the re-appointment of three (3) incumbents to serve as new Audit Committee Members. The members recommended are being re-appointed as they meet the criteria and are in possession of diverse experience including Legal, Performance Audit, Financial Accounting Tax and Supply Chain Management. One of the members recommended for re-appointment currently serves on the Disciplinary Board which is a requirement in terms of the Financial Regulations.

The appointment criteria stipulates that the Audit Committee should also have a youth member and a person in possession of IT and Compliance skills. Incumbents matching the aforesaid criteria have not been secured. In view thereof, authority is sought to delegate powers to the City Manager to head hunt the remaining two incumbents as per the skills set required.

The Audit Committee currently has seven (7) members in total. The term of office of the other two members expires on 09 May 2019. These members previously served in the Risk Committee and their term of office was extended when their Committee integrated with the Audit Committee.

The importance of the oversight role played by the Audit Committee on matters relating to financial and performance management within the Municipality is acknowledged, hence the support of the process to appoint new members timeously.

The Executive Committee Members of the Democratic Alliance recorded its dissent as it felt the appropriate approach is to appoint completely new members to effectively monitor the performance of the Municipality for timeous interventions where required.

In acknowledging the expertise and the meaningful contribution of the members being re-appointed,

COMMITTEE RECOMMENDS:

- 1.1 That Council notes that the term of office of the five (5) members of the eThekweni Municipality Audit Committee expires on 2018-05-29 with the term of office of the remaining two members expiring on 2019-05-09.

- 1.2 That, in line with the requirements of Section 166 of the Municipal Finance Management Act and given the outcome of the appointment process undertaken, Council approves the appointment of Mr Nala Mhlongo; Ms Bongekile Zulu; and Mr. Daniel Bosch; as the three (3) new members to serve on the Audit Committee for a period of three (3) years, with effect from 2018-05-30 to 2021-05-29, as they meet the criteria and collectively bring in diverse experience including Legal, Performance Audit, Financial Accounting Tax and Supply Chain Management.
- 1.3 That authority be granted to the City Manager to head hunt two (2) incumbents, one from the youth and one in possession of Information Technology (IT) and Compliance skills to fill the two (2) remaining vacant positions within the Audit Committee.
- 1.4 That Council notes that subsequent to formal appointment of the new Audit Committee members an induction will be conducted to introduce them to the business of Council, the Municipal environment; compliance requirements; government structure, political leadership engagement and reporting; administrative leadership to ensure sustainable service delivery from the internal control environment perspective.

As some Councillors were not in support of the above-mentioned recommendations of the Executive Committee, and with majority of the Councillors being in support of the recommendations, the matter was put to the vote.

With 186 Councillors present, 125 Councillors (ANC: 108, IFP: 8, IND: 3, AIC: 2, MF: 1, TA: 1, MOSA: 1 and AL-JAMAH: 1) voted in favour and 54 DA Councillors voted against. 7 EFF Councillors abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED.**

2. QUARTERLY REPORT ON WITHDRAWALS FROM MUNICIPAL BANK ACCOUNT IN TERMS OF THE MUNICIPAL FINANCE MANAGEMENT ACT (11/1/2)

(Page 7)

COMMITTEE RECOMMENDS:

- 2.1 That the report on withdrawals from the Municipal bank account as at 31 December 2017, submitted in terms of Section 11(4) of the Municipal Finance Management Act, be noted, it being recorded that the withdrawals relate to the following:
- Section 11(f): To refund money incorrectly paid into a bank account.
 - Section 11 (g): To refund guarantees, sureties and security deposits.
 - Section 11(h): Investment of money not immediately required.
- 2.2 That Council notes that the report on withdrawals will also be submitted to the Provincial and the National Treasury as well as the Auditor-General, in line with the statutory requirement.

NOTED.

3. BACK TO BASICS REPORT FOR THE MONTH ENDED 30 NOVEMBER 2017
(2/3/2/1/2)

(Page 9)

The Back-to-Basics report portrays the image of the City in terms of progress made to achieve its predetermined objectives and related indicators. It is therefore of strategic importance to reflect accurate and up-to-date information for the Department of Cooperative Governance and Traditional Affairs to obtain a true reflection of the achievements of the City. The Committee feels the current report is inadequate thus resulting in the City being portrayed in a negative light despite reasonable achievements having been made.

In view of the foregoing, the report is noted on the basis that it be updated to provide an accurate report of progress made during the quarter under review.

COMMITTEE RECOMMENDS:

That the Back-to-Basics report, dated 2017-12-15, outlining progress by the eThekweni Municipality in achieving its performance indicators for the month ended 2017-11-30, compiled as per the requirements in terms of Circular No. 47 of 2014 from the Department of Co-operative Governance and Traditional Affairs (COGTA), with a view to analyzing the state of Local Governance and making an informed assessment to support and intervene where required, be noted, subject to the report being updated to furnish COGTA with a true reflection of the achievements by the Municipality

NOTED.

4. MID-YEAR BUDGET AND PERFORMANCE ASSESSMENT REPORT FOR
THE PERIOD 31 DECEMBER 2017 (7/4/2)

(Page 29)

The Mid-Year Budget was noted on the basis that an independent assessment would be undertaken by National Treasury on 15 and 16 February 2018. Some highlights of the report were submitted especially in respect of income, surplus, total expenditure, water loss, debt collection, irregular expenditure, capital and operating budget. Several aspects of the report have been interrogated with interventions being recommended to create stability in the operations of the City in particular from the financial perspective. Further reports will be provided to update the Committee on measures being implemented to address issues of concern such as irregular expenditure and Revenue Management System.

On the basis that progress will be made to play an effective oversight role on budget and performance assessment,

COMMITTEE RECOMMENDS:

That in compliance with Sections 52(d) and 72 of the Municipal Finance Management Act, (MFMA) and Sections 33 and 34 of the Municipal Budget and Reporting Regulations in terms of Government Notice 32141 dated 2009-04-17, relating to the "Local Government: Municipal Finance Management Act 2003,

the Municipal Budget and Reporting Regulations”, the Mid-Year Budget and Performance Assessment Report as at 2017-12-31, submitted by the City Manager as per his report dated 2018-01-15, be noted.

Some Councillors were not in support of the above-mentioned recommendations on the basis that included under debt collection was the aspect of electricity disconnection for schools in arrears which action would impact negatively to education. They were therefore requesting that a moratorium be placed on electricity disconnection in schools.

The Councillors in support of the recommendation provided clarity that the Municipality was acting responsibly on this matter and that its action would in no way jeopardize education. Mention was made that interventions had already been recommended to engage parties concerned to negotiate a way forward. The attention was drawn to the fact that an appropriate process had been followed as it was normally done for any other ratepayer in arrears for payment of Municipal services.

With 182 Councillors present, 175 Councillors (ANC: 102, DA: 54, IFP: 9, IND: 3, AIC: 2, MF: 1, DLC: 1, TA: 1, MOSA: 1 and AL-JAMAH: 1) voted in favour and no Councillors voted against. 7 EFF Councillors abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **NOTED.**

5. MUTUALLY BENEFICIAL PARTNERSHIPS ON LIFESTYLE EVENTS, CONFERENCING AND ATTRACTIONS (31/2/1/5/2)

(Page 165)

The proactive approach to promote and strategically position the Moses Mabhida Stadium as the most preferred and leading Sporting and Lifestyle events venue and destination of choice globally was commended.

Therefore,

COMMITTEE RECOMMENDS:

That authority be granted for the Moses Mabhida Stadium to enter into a long-term mutually beneficial partnerships with Event Organisers, Professional Conference Organizers (PCOs) and Tour Operators who stage events at Moses Mabhida Stadium.

Financial Implications:

The proposed preferential tariffs have been classified into three (3) categories based on capacity as outlined in the below table. It is further noted that all event direct costs will be for the Clients account.

Items	Venue	Description	Local - % off the current	International - % off the current rate
Category A	Bowl Events	Venue Hire (5000 – 15000)	5%	10%
	Peoples Park	Venue Hire (5001 – 10000)	5%	10%

Items	Venue	Description	Local - % off the current	International - % off the current rate
Category B	Bowl Events	Venue Hire (15001 – 30 000)	10%	20%
	Peoples Park	Venue Hire	10%	30%
Category C	Bowl Events	Venue Hire (above 30 000)	20%	30%
Ground Cover		Applicable to all categories	30%	30%
Fencing		Applicable to all categories	30%	30%
Conference Organizers		Conference facilities	10%	10%
Tour Operators		Attractions	10%	10%

As some Councillors were not in support of the above-mentioned recommendations of the Executive Committee, and with majority of the Councillors being in support of the recommendations, the matter was put to the vote.

With 182 Councillors present, 121 Councillors (ANC – 102, IFP – 9, IND – 3, AIC – 2, MF – 1, DLC – 1, TA – 1, MOSA - 1 and AL-JAMAH - 1) voted in favour and no Councillors voted against. 61 Councillors (DA – 54 and EFF – 7) abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED**.

6. ETHEKWINI MUNICIPALITY ANNUAL REPORT 2016/2017 (11/1/1)

(Circulated Separately)

The Annual Report 2016/2017 was noted on the basis that it would be submitted for public participation in February 2018 and that Auditor General will be presenting the findings thereon.

COMMITTEE RECOMMENDS:

- 6.1 That Council notes the eThekweni Municipality Annual Report for the 2016/17 financial year tabled in compliance with Section 121 of the Local Government: Municipal Finance Management Act for the purpose of:
 - 6.1.1 Providing a record of the activities of the eThekweni Municipal Council during the financial year 2016/2017;
 - 6.1.2 Providing a report on performance against the budget of the eThekweni Municipal Council for the financial year 2016/2017; and
 - 6.1.3 Promoting accountability to the local community for the decisions made throughout the year by the Municipality.

NOTED.

7. PROVISION OF FINANCIAL AND MUNICIPAL SUPPORT TO INDEPENDENT ELECTORAL COMMISSION: DURBAN METRO OFFICE (IEC) (19/1/15)

(Page L5)

COMMITTEE RECOMMENDS:

- 7.1 That subject to the Adjustment Budget of R2 Million being approved by Council thus making funds available:
 - 7.1.1 Council approves that municipal infrastructure be used as venues for election activities such as voting stations, storage facilities and training venues, and any lease/tariff charges be waived.
 - 7.1.2 Staff support be granted to the Independent Electoral Commission Durban Metro Office and staff members be granted time off in lieu of time worked and/or overtime.
 - 7.1.3 All other support, both logistical and administrative support, be made available to the Independent Electoral Commission Durban Metro Office at an agreed cost to both the Municipality and the Independent Electoral Commission.
 - 7.1.4 Council approves a budget of R2 000 000.00 (Two Million Rand) for support to the Independent Electoral Commission comprising the following:
 - Venue costs for Results Centre estimated at R1 200 000.00 (One Million Two Hundred Thousand Rand)
 - Staff costs estimated at R175 000.00 (One Hundred and Seventy Five Thousand Rand)
 - Use of appropriate municipal vehicles and provision of other logistical support during the period of the 2019 National and Provincial elections, estimated at R625 000.00 (Six Hundred and Twenty Five Thousand Rand).
 - 7.1.5 Council approves the allocation of the budget to the Office of the Deputy City Manager: Governance and International Relations and accordingly authorize him to incur expenditure linked to this budget.
 - 7.1.6 The City Manager concludes the agreement with the Independent Electoral Commission on the support to be given by the eThekweni Municipality in this regard.
 - 7.1.7 Council notes that the Deputy City Manager: Governance and International Relations will provide update on the Election Calendar once it is approved and proclaimed.

Financial Implications:

Funds require to be set aside for the following:

ACTIVITY	AMOUNT
Staffing Support (Overtime)	R 175 000.00
Logistical Support (Vehicles, generators and supplies)	R 550 000.00
Logistical Support (Printing)	R 75 000.00
Results Centre Venue Hire Costs	R1 200 000.00
TOTAL BUDGET	R2 000 000.00

ADOPTED.

8. COMMUNITY CONSULTATION PROGRAMME: 2016/17 ANNUAL REPORT
(11/1/1)

(Page L7)

The robust engagement with communities the previous year was acknowledged. The City will once again embark on the public consultation to enable the local communities to participate in the analysis of the performance of the City. The consultation scope has been increased to ensure an all-inclusive process of all the City stakeholders. For effective engagement the Annual Report will be circulated to all stakeholders prior to the consultation meetings to achieve constructive engagements.

The Executive Committee Members of the Democratic Alliance recorded their abstention at this stage.

COMMITTEE RECOMMENDS:

That Council approves the Community Consultation Programme on the 2016/17 Annual Report and the associated expenditure in the amount of R1 780 000.00 (One Million Seven Hundred and Eighty Thousand Rand) to be driven by the Municipal Public Accounts Committee as part of stakeholder engagement in line with the requirements of the Municipal Finance Management Act, and with stakeholders to include generic public, Ward Committees, Non-Governmental Organisations, Youth, Business sector, formal and informal, Media, Traditional Leaders, Community Based Organisations and Civic Organisations.

With 182 Councillors present, 121 Councillors (ANC – 102, IFP – 9, IND –3, AIC – 2, MF – 1, DLC – 1, TA – 1, MOSA - 1 and AL-JAMAH - 1) voted in favour and 54 DA Councillors voted against, with 7 EFF Councillors abstaining from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED.**

9. CITY FLEET REPLACEMENT PROGRAMME (8/3/1/R)

(Page L4)

The replacement of vehicles is critical to provide for efficiency in service delivery, reduction in repairs and maintenance costs, reduction in fuel consumption, reduction in hiring costs and additional vehicle requirements for safety and security. Authority is therefore sought to replace vehicles within the City Fleet Unit and this will cover services required for the provision of water, cleansing and solid waste, electricity, fire and emergency services and small plant operation, amongst the others.

With the report seeking for the authority to identify savings over the next three (3) years, a proposal was made and supported that approval be given for the current financial and that a further request be submitted to the Committee every time authority is being sought in a financial year.

Cognizance was taken of the fact that there are other issues of concern to be addressed with regard to the City Fleet operations. It was agreed that these would be dealt accordingly by the Municipal Public Accounts Committee once information is available for consideration.

The Executive Committee Members of the Democratic Alliance and the Inkatha Freedom Party recorded their abstention at this stage.

With the majority African National Congress being in support of the replacement programme given the critical need for improved service delivery at the local level,

COMMITTEE RECOMMENDS:

- 9.1 That Council grants authority for the Deputy City Manager: Finance to identify savings in the amount of R190.4 Million during the 2017/18 financial year for the replacement of critical vehicle requirements to achieve efficiency in the provision of service delivery to the local communities.
- 9.2 That, in noting that funding is required to cover the replacement programme over a 5-year period, the Deputy City Manager: Finance submits a report every financial year when critical vehicles have to be replaced.

Some Councillors were not in support of the above-mentioned recommendations of the Executive Committee in view of outstanding matters still to be addressed in relation to City Fleet operations. The majority of Councillors supported the matter given the need to improve operational efficiency. The matter was therefore put to the vote.

With 183 Councillors present, 112 Councillors (ANC: 101, IND: 3, AIC: 3, MF: 1, DLC: 1, TA: 1, MOSA: 1 and AL-JAMAH: 1) voted in favour and no Councillors voted against. 71 Councillors (DA: 55, IFP: 9 and EFF: 7) abstained from voting.

The above recommendations of the Executive Committee were, by the majority vote, **ADOPTED.**

(At this stage of the proceedings Councillor RL Hlophe presented the Report of the Ethics Committee and Councillors SS Butelezi, LM Meyer, R Gokool and MS Gwala recused themselves from the meeting).

(Prior to considering the Ethics Committee Report, the Democratic Alliance requested a Caucus. This was agreed to and the meeting accordingly adjourned at 12h54 and resumed at 13h04)

FIRST REPORT OF THE ETHICS COMMITTEE

(Meeting held on 2017-11-09)

PRESENT : Councillors RC Hlophe (Chairperson), B Ntshangase (Deputy Chairperson), WJM Burne, MP Dlomo, NL Graham, S Khuzwayo, E Mngadi and JA Johnson.

ABSENT : Councillors S Ngema (on leave - Municipal Business) and PS Sishange (on leave - Municipal Business).

FINDINGS AND RECOMMENDATIONS IN RESPECT OF COUNCILLORS' IN ARREARS : PERIOD ENDING APRIL TO MAY 2017 (3/2/1)

Hearings in respect of:-

Councillors SS Butelezi, LM Meyer, R Gokool and MS Gwala.

1. INTRODUCTION

Councillors are elected to represent Local Communities on Municipal Councils to ensure that Municipalities have structured mechanisms of accountability to local communities and to meet the priority needs of communities. Councillors must fulfill their obligations to the Community, to support the achievement by the Municipality of its objectives, must adhere to the Code of Conduct for Councillors, to comply with the Rules of Order and By-Laws of the Municipality and at all times respect the Rule of Law.

2. BACKGROUND

On 2017-05-11, the Ethics Committee received a report from the Speaker on possible non-compliance in relation to Councillors that were in arrears during the period April to May 2017. The Ethics Committee therefore resolved to conduct its hearings on 2017-11-09 in dealing with the alleged non-compliance of the Code of Conduct for Councillors to ascertain the reasons contributing thereto.

3. HEARINGS

The Hearings were held pursuant to Item 14(1)(B)(i)(ii), Schedule 1 of the Local Government Municipal Systems Act 2000.

The Ethics Committee wishes to record that at the outset, it applied the principles of natural justice that *espouses* the values that:-

- (a) There is a formal procedure;
- (b) There is a just and fair procedure;
- (c) The presumption of innocent until proven guilty; and
- (d) The principle of *audi alteram partem rule*.

4. COUNCILLOR STANLEY SAKHEPHI BUTELEZI

4.1 Breach One

It is alleged that Councillor SS Butelezi has been arrears with eThekweni Municipality for rates and/or service charges for a period longer than three months for the property described as Erf 10700 Pinetown, Extension 89 for the amount of R96,77 (Ninety Six Rand and Seventy Seven Cents) which is in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.

4.2 Plea on the breach by Councillor SS Butelezi

In plea to the allegations that he was in arrears with eThekweni Municipality for rates and/or service charges for a period longer than three months for the property described as Erf 10700 Pinetown, Extension 89 which is in contravention of Item 12(A) of Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000, Councillor Butelezi pleaded **GUILTY**.

4.3 Legislation

Municipal Systems Act 32 of 2000

Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000 states that: "*A Councillor may not be in arrears to the Municipality for rates and service charges for a period longer than 3 (three) months.*"

4.4 Evidence in support of Plea by Councillor Butelezi

Councillor Butelezi informed the meeting that he did not reside in the property described as Erf 10700 Pinetown, Extension 89, however the property was registered under his name. He indicated that he did not receive notifications timeously on amounts/rates owed by him and was unable to conduct follow ups on amounts owing on his account. He confirmed that he did make arrangements with the Municipality to deliver notices to his new postal address. Furthermore, he was up to date with his account and received notifications.

In closing, Councillor Butelezi requested the Committee to afford him an opportunity to pursue matters further with relevant Officials to ensure that payment arrangements were in place and that his account was always regular.

4.5 Presence of Mitigating Factors by Councillor Butelezi

In mitigation, Councillor Butelezi confirmed that the postal address which appeared on the monthly statements was his and had since been changed. He indicated that arrangements had been made with the Municipal Offices to cancel the above address and to re-direct future billing statements to his current address. He stated that he had changed his postal address towards the latter part of 2016. He submitted that prior to him being implicated for arrears, he had requested the Municipal Offices to change his postal address however there was no adherence to such directive.

In explaining the circumstances which gave rise to him making payment of R1 200,00 on 5 May 2017 prior to the operative date (8 May 2017) for the charges in question, Councillor Butelezi indicated that he had received information that he needed to make payment towards his account, hence his payment on the above date.

4.6 Presence of Aggravating Factors by Evidence Leader

The Evidence Leader made the following submissions:-

- 4.6.1 Councillor Butelezi confirmed that he understood the provisions of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.
- 4.6.2 Councillor Butelezi was inaugurated after he was elected as a Councillor and therefore, he understood his duties and responsibility as a Councillor.
- 4.6.3 Councillors are expected to behave in a manner that is exemplary to both the Community and Society at large.
- 4.6.4 The non-payment of Rates/Municipal Services is a serious offence as it affected the revenue which the Municipality was dependent upon to render its services.
- 4.6.5 In considering the mitigating circumstances by Councillor Butelezi, it was noted that the Councillor was remorseful in his actions, had pleaded guilty to the charges and made commitments that he will henceforth avoid being in arrears.
- 4.6.6 From evidence before the Committee, Councillor Butelezi proved that he had rectified his arrears.
- 4.6.7 In consideration of Councillor Butelezi's submission and plea to the above charge, it was recommended that the Committee impose an appropriate sanction that was in accordance with the Terms of Reference and would act as a deterrent to other Councillors from committing similar offences.

4.7 Factors taken into consideration in deciding an appropriate Sanction

In deciding an appropriate sanction, the Ethics Committee took into consideration the following factors:-

- 4.7.1 Given the plea entered into by Councillor Butelezi, there were no previous convictions against the Councillor since inauguration.
- 4.7.2 The Councillor served as a former Councillor in the previous term of Office. The Committee noted that any previous offences/allegations which may have been levelled against the Councillor from the previous term, was deemed irrelevant as this was a new Council and the Ethics Committee was newly established.
- 4.7.3 The Committee also noted that the charges levelled against Councillors in the erstwhile Council could not proceed and had since been terminated. Furthermore, the Committee took into consideration that it was unfair for the newly established Ethics Committee to consider convictions from the former Council.

4.7.4 As this was the first conviction of Councillor Butelezi, the Committee felt that a formal written warning should be imposed against the Councillor and to ensure that he did not repeat a similar offence.

4.8 Sanction

In terms of the Local Government : Municipal Systems Act 32 of 2000 (Schedule 1) Section 14(2) should the Council or a special Committee finds that a Councillor has breached a provision of this Code, the Council may:-

- (a) issue a formal warning to a Councillor;
- (b) reprimand a Councillor;
- (c) request the MEC for Local Government in the Province to suspend a Councillor for a period;
- (d) fine a Councillor; and
- (e) request the MEC to remove a Councillor from Office.

4.9 Right to Appeal

Schedule 1, Section 14(3)(a) of the Local Government : Municipal Systems Act 32 of 2000 states that:-

- "(3)(a) Any Councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) above, may within 14 days of having been notified of the decision of Council appeal to the MEC for Co-operative Governance and Traditional Affairs (COGTA) in writing, settling out the reasons on which the appeal is based.
- (b) A copy of the Appeal must be provided to Council.
- (c) The MEC for Co-operative Governance and Traditional Affairs (COGTA) may, after having considered the Appeal, confirm, set aside or vary the decision of the Council and inform the Councillor and the Council of the outcome of the Appeal."

With Councillors Graham and Burne dissenting on the basis that Councillor Butelezi should be reprimanded,

COMMITTEE RECOMMENDS:

4.9.1 That in respect of breach one relative to Councillors in Arrears during the period April to May 2017, Councillor SS Butelezi **is in** breach of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.

4.9.2 That in terms of the Local Government : Municipal Systems Act 32 of 2000 (Schedule 1) of Section 14(2), Councillor SS Butelezi be issued with a **formal written warning** for having breached the provision of the Code.

ADOPTED.

5. COUNCILLOR LUKAS MARTHINUS MEYER

5.1 Breach One

It is alleged that Councillor LM Meyer has been in arrears with eThekweni Municipality for rates and/or services charges for a period longer than three months for the properties described as 18 Halford Road, Musgrave for the amount of R851,83 (Eight Hundred and Fifty One Rand and Eighty Three Cents) which is in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.

5.2 Plea on the Breach by Councillor LM Meyer

In plea to the allegations that he was in arrears with eThekweni Municipality for rates and/or service charges for a period longer than three months for the property described as 18 Halford Road, Musgrave which is in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000, Councillor Meyer pleaded **GUILTY**.

5.3 Legislation

Municipal Systems Act 32 of 2000

Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000 states that: "*A Councillor may not be in arrears to the Municipality for rates and service charges for a period longer than 3 (three) months.*"

5.4 Evidence in support of Plea by Councillor Meyer

Councillor Meyer admitted that for the period of May 2017, he was in arrears due to a dispute with the Revenue Billing Section. He advised that the bill had since been rectified and had made payment arrangements to settle his outstanding amount. He indicated that the outstanding amount had been settled in terms of a payment plan.

5.5 Presence of Mitigating Factors by Councillor Meyer

In mitigation, Councillor Meyer stated that the bills he received was fairly exorbitant and had disputed the said amount with the Revenue Billing Section. He indicated that with the new Revenue Management System (RMS) being in place, there was a number of challenges encountered. He stated that he did not contribute towards the high bill until such time he had been furnished with valid reasons for excessive bills.

He stated that the high bills had been queried with the Revenue Billing Section and had since been rectified. Furthermore, the bill had been reduced considerably and he made payments in terms of what had been outstanding taking cognizance of the fact the amounts owed whilst under enquiry and what had remained outstanding. He advised that his monthly bills were usually minimal, however given the increased bills was impractical taking into consideration that he had lived alone.

Councillor Meyer confirmed that he received his bills electronically but did not receive the bill under enquiry. He confirmed that on 3 May 2017 (prior to the operative date, 8 May 2017), he made a payment of R3 098,00. In support of his statement towards the above payment, he stated that whilst his account was under dispute, he made payments in terms of his affordability.

5.6 Presence of Aggravating Factors by Evidence Leader

The Evidence Leader made the following submissions:-

- 5.6.1 Councillor Meyer confirmed that he understood the provisions of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.
- 5.6.2 Councillor Meyer was inaugurated after he was elected as a Councillor and therefore, he understood his duties and responsibility as a Councillor.
- 5.6.3 The offence during which Councillor Meyer is charged was serious and should be treated as such.
- 5.6.4 Councillor Meyer, as a Leader, is expected to behave in a manner that is exemplary to both the Community and Society at large by paying for Municipal Services/Rates on time.
- 5.6.5 The non-payment of Rates/Municipal Services is a serious offence as it affected the revenue which the Municipality was dependent upon to render its services.
- 5.6.6 In considering the mitigating circumstances by Councillor Meyer, it was noted that the Councillor was remorseful in his actions, had pleaded guilty to the charges and undertook steps to engage with the Revenue Section to dispute the bill which was inappropriate and rectified same by entering into an arrangement with the Municipality to settle any outstanding bills which may have incurred.
- 5.6.7 In consideration of Councillor Meyer's submission and plea to the above charge, that the Committee should impose an appropriate sanction that was in accordance with the Terms of Reference and would act as a deterrent to other Councillors from committing similar offences.

5.7 Factors taken into consideration in deciding an appropriate Sanction

In deciding an appropriate sanction, the Ethics Committee took into consideration the following factors:-

- 5.7.1 The Committee noted that Councillor Meyer was remorseful in his actions.
- 5.7.2 The Councillor had resolved his matter whilst his account was under dispute, settled his outstanding bills and was not in arrears.

5.8 Sanction

In terms of the Local Government : Municipal Systems Act 32 of 2000 (Schedule 1) Section 14(2) should the Council or a special Committee finds that a Councillor has breached a provision of this Code, the Council may:-

- (a) issue a formal warning to a Councillor;
- (b) reprimand a Councillor;
- (c) request the MEC for Local Government in the Province to suspend a Councillor for a period;
- (d) fine a Councillor; and
- (e) request the MEC to remove a Councillor from Office.

5.9 Right to Appeal

Schedule 1, Section 14(3)(a) of the Local Government : Municipal Systems Act 32 of 2000 states that:-

- "(3)(a) Any Councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) above, may within 14 days of having been notified of the decision of Council appeal to the MEC for Co-operative Governance and Traditional Affairs (COGTA) in writing, settling out the reasons on which the appeal is based.
- (b) A copy of the Appeal must be provided to Council.
- (c) The MEC for Co-operative Governance and Traditional Affairs (COGTA) may, after having considered the Appeal, confirm, set aside or vary the decision of the Council and inform the Councillor and the Council of the outcome of the Appeal."

Accordingly,

COMMITTEE RECOMMENDS:

- 5.9.1 That in respect of breach one relative to Councillors in Arrears during the period April to May 2017, Councillor LM Meyer **is in** breach of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.
- 5.9.2 That in terms of the Local Government : Municipal Systems Act 32 of 2000 (Schedule 1) of Section 14(2), Councillor LM Meyer be issued with a **formal written warning** for having breached the provision of the Code.

ADOPTED.

6. COUNCILLOR RIONA GOKOOL

6.1 Breach One

It is alleged that Councillor R Gokool has been in arrears with eThekweni Municipality for rates and/or services charges for a period longer than three months for the properties described as 31 Silver Oaks, Pecan Drive, 29 Assagay for the amount of R128,00 (One Hundred and Twenty Eight Rand) which is in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.

6.2 Plea on the Breach by Councillor R Gokool

In plea to the allegations that he was in arrears with eThekweni Municipality for rates and/or service charges for a period longer than three months for the property described as 31 Silver Oaks, Pecan Drive, 29 Assagay which is in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000, Councillor Gokool pleaded **NOT GUILTY**.

6.3 Legislation

Municipal Systems Act 32 of 2000

Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000 states that: *"A Councillor may not be in arrears to the Municipality for rates and service charges for a period longer than 3 (three) months."*

6.4 Evidence in support of Plea

Councillor Gokool confirmed that she received her bills for the months of March, April and May 2017 and had owed an amount, however such amount was not for R128,00. She stated that the amount reflected as overdue was being queried by the Municipality for reasons being that from what she had paid and what she was charged, had increased.

She further stated that there was an amount of R5 957,02 which was under query with the Municipality and continued to reflect in her account. For the months of January, February and March, she indicated that the amount of R5 957,02 kept on being carried forward as it was under enquiry, but she made payments monthly.

She confirmed that during the month of May 2017, she made a payment of R6 024,07, however for the month of April, no payment had been made as it was under query with the Revenue Unit. She stated that although payments had been made, there was no indication that the amount of R128,00 was outstanding.

She indicated that she was informed by the Municipality that the amount of R5 957,02 would ratify itself and such did not take place. Furthermore, for the month of June 2017, she had been credited. She confirmed that for the period under review, she was in arrears, however the amount in question was under enquiry and had ratified itself in June. Furthermore, she indicated that notwithstanding her account being in arrears, she nevertheless made payments for those three months. With regard to the outstanding amount of R128,00 she indicated that the Municipality would have disconnected her services.

In elaborating on the R128,00 claimed by the Municipality that she was in arrears, she stated that she would have been notified by the Municipality and given this instance, she was not notified by the Municipality that her account had been in arrears. She further stated that her services were not disconnected for reasons being that the amount of R5 957,02 was still under query.

6.5 Presence of Mitigation Factors by Councillor Gokool

In mitigation, Councillor Gokool confirmed that from the payments she had made, there was no breakdown as to how the funds were split, hence the continuation of interest being accrued into her account. Elaborating hereto, she indicated that her account would be rectified automatically. Councillor Gokool clarified that given the fact that her account was under dispute and upon feedback from the Revenue Unit that her account would rectify itself, her account indeed did rectify itself and was deducted from the amount of R5 957,02 owed by her. She confirmed that her account had been settled and there was a credit of R453,02 due to her. Councillor Gokool indicated that there was no reflection in her monthly bills that she had owed R128,00 and she was not made aware that she did owe such an amount.

6.6 Submission by the Municipality's Witness

The Municipality's Witness made the following submission in respect of Councillor Gokool's account:-

- 6.6.1 Councillor Gokool was in arrears with the Municipality. The Witness verified that the balance as at April had been brought forward to the month of May resulting to an amount of R12 161,09. She confirmed that Councillor Gokool made a payment of R6 204,07 and there was a balance of R5 957,02 which still remained. She mentioned that the above amount did not cover all the arrears, hence resulted to the balance being brought forward from the month of April 2017.
- 6.6.2 She further verified that the April payment was reflected in the May's billing statement as the billing date was on the 21st of May. She stated that in instances where the billing date which fell over a weekend, such amounts owed were reflected either on a Monday or Tuesday the following week. In this particular instance, she confirmed that Councillor Gokool made payment on 26 April 2017 which was after the billing date, hence the payment was reflected on the June statement.
- 6.6.3 Regarding monthly payments made by Councillor Gokool, she confirmed that the Councillor made payment on 26 January 2017 and there was a shortfall of R5 957,02 which was carried forward to the month of February.
- 6.6.4 Given the historical background of payments made by Councillor Gokool, she proved that the Councillor could not pay the full amount owing from January to May 2017, hence her account being in arrears. Furthermore, she submitted that had there been no payments outstanding, the balance in question would have reflected a nil balance and no interest would have been charged. She advised that interest was only charged for accounts in arrears.
- 6.6.5 Regarding the outstanding amount of R128,00 appearing on the monthly Age Analysis Report, she indicated that the amount was incorrect. She clarified that it had a smaller amount whereas it should have reflected a higher amount as the Councillor owed much more to the Municipality. She viewed the above discrepancy to be a system error on the side of the Municipality. Furthermore, the amount of R5 957,02 had been carried forward from the month of January 2017.

6.7 Presence of Aggravating Factors by Evidence Leader

The Evidence Leader made the following submission:-

- 6.7.1 Councillor Gokool admitted that for the period under review, she was in arrears for rates/services with the Municipality.
- 6.7.2 Having viewed the evidence in question, it was noted that it did not relate to the period under review. Furthermore, even though Councillor Gokool admitted that she was in arrears, Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000 did not relate to the value in question, but was of a matter of principle, in that, Councillors were not supposed to be in arrears and should lead by example.
- 6.7.3 Councillor Gokool acknowledged that she was in arrears but was in dispute over the value she owed. Furthermore, from evidence provided, it reflected information for the June period which fell outside the period under review. Therefore, based on the submission by Councillor Gokool and from evidence provided, it was noted that the

Councillor was indeed in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000 during the period under review.

6.7.4 Councillor Gokool was inaugurated after she was elected as a Councillor and therefore, she understood her duties and responsibility as a Councillor.

6.7.5 Councillors are expected to behave in a manner that is exemplary to both the Community and Society at large.

6.7.6 The non-payment of Rates/Municipal Services is a serious offence as it affected the revenue which the Municipality was dependent upon to render its services.

6.7.7 In consideration of Councillor Gokool's submission and plea to the above charge, it was recommended that the Committee should impose an appropriate sanction which was in accordance with the Terms of Reference and would act as a deterrent to other Councillors from committing similar offences.

6.8 Factors taken into consideration in deciding an appropriate Sanction

In deciding an appropriate sanction, the Ethics Committee took into consideration the following factors:-

6.8.1 The Committee noted that by the Councillor's own admission, she was aware that she was in arrears although she was in dispute with the Municipality. Furthermore, there was no evidence provided by Councillor Gokool to confirm that she had disputed her amount.

6.8.2 The Committee noted that the document submitted by Councillor Gokool as proof of evidence did not assist the Committee as it was for payments made after May 2017 and not before May 2017. The rectification of documents reflected three months after she had been charged for. The Committee also noted that she was still in arrears after May 2017. Furthermore, Councillors were expected to act in the best interest of the Municipality in such a way that the credibility and integrity of the Municipality were not compromised. However, with due consideration having been given to Councillor Gokool's submission, it was noted that the Councillor did not show any remorse in her actions, she did not believe that she was guilty and was defensive.

6.8.3 In consideration of the Notice of Inquiry and charge in question by the Municipality, it was noted that the allegation which stated that Councillor Gokool was in arrears for R128,00 as opposed to R5 967,02, was incorrect. Given the testimony by Council's Witness, it had been established that there was a discrepancy in the amount. Furthermore, the Councillor was in arrears for a period more than three months. The Councillor also proved that she had settled the arrears after the three month period. A further point was raised that Councillor Gokool had indicated that the account had rectified itself after June 2017, however such account did not speak to the period under review.

6.9 Sanction

In terms of the Local Government : Municipal Systems Act 32 of 2000 (Schedule 1) Section 14(2) should the Council or a special Committee finds that a Councillor has breached a provision of this Code, the Council may:-

- (a) issue a formal warning to a Councillor;
- (b) reprimand a Councillor;

- (c) request the MEC for Local Government in the Province to suspend a Councillor for a period;
- (d) fine a Councillor; and
- (e) request the MEC to remove a Councillor from Office.

6.10 Right to Appeal

Schedule 1, Section 14(3)(a) of the Local Government : Municipal Systems Act 32 of 2000 states that:-

- "(3)(a) Any Councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) above, may within 14 days of having been notified of the decision of Council appeal to the MEC for Co-operative Governance and Traditional Affairs (COGTA) in writing, settling out the reasons on which the appeal is based.
- (b) A copy of the Appeal must be provided to Council.
- (c) The MEC for Co-operative Governance and Traditional Affairs (COGTA) may, after having considered the Appeal, confirm, set aside or vary the decision of the Council and inform the Councillor and the Council of the outcome of the Appeal."

With Councillors Burnes and Graham dissenting,

COMMITTEE RECOMMENDS:

- 6.10.1 That in respect of breach one relative to Councillors in Arrears during the period April to May 2017, Councillor R Gokool **is in** breach of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.
- 6.10.2 That in terms of the Local Government : Municipal Systems Act 32 of 2000 (Schedule 1) of Section 14(2), Councillor R Gokool be issued with a **formal written warning** for having breached the provision of the Code.

ADOPTED

7. COUNCILLOR MZWETHU SANDILE GWALA

7.1 Breach One

It is alleged that Councillor MS Gwala has been in arrears with eThekweni Municipality for rates and/or services charges for a period longer than three months for the amount of R249,38 (Two Hundred and Forty Nine Rand and Thirty Eight Cents) which is in contravention of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000.

7.2 Plea on the breach by Councillor MS Gwala

Prior to entering into a plea, it had been established the name of the Councillor appearing on the evidence and the charge sheet had differed. It was noted that the name of "MS Mhlongo" had appeared onto the billing statement.

To ascertain whether the Committee had addressed the correct person, clarity was sought from Councillor Gwala on the correctness of his name. Councillor Gwala confirmed that from birth, his surname was "Mr Mhlongo". However, effective July 2012, he had changed his surname to that of his father "Mr Gwala" and was in accordance with his Identity Number.

7.3 Evidence in support of Plea by Councillor Gwala

Councillor Gwala informed the meeting that he resided in Ward 39 in a KwaMashu Hostel. He indicated that in 2007, the property in which he resided at, had been demolished with an assurance from the Municipality that in the near future, there was going to be a development of new houses. He stated that he was one of the new applicants for new houses, however did not receive a house in the said development. He submitted that presently, he lived with his relative and did not have any property registered under his name. He confirmed that he was not aware of any property that he was in arrears with. He requested that the Municipality assist him in the allocation of his house as per its assurance and to obtain further information of what had happened to his matter.

7.4 Deliberations by the Committee

7.4.1 During deliberations, the Committee noted that the charge sheet did not contain an address for Councillor Gwala but had indicated an amount of R249,38. The Committee also took into consideration that there was a dispute as to where the property was and that the Councillor had no recollection of this property.

7.4.2 Given the submission by Councillor Gwala, the Committee noted that this matter be withdrawn and investigated properly. In terms of the charges, the Committee could not deliberate any further on the property as there was no indication of the property as described on the charge sheet.

7.4.3 Consideration was also taken into account that the address mentioned in the billing statement had reflected "*130 Mbanda Road, KwaMashu-B(P)*" but did not appear on the charge sheet. The Committee noted that with the omission of the address from the charge sheet, it would not achieve its outcome. On that basis, it was proposed that the above charges be withdrawn and the Speaker investigate the said matter relating to address mentioned above, and if necessary, that the charges be re-formulated to include the correct address under dispute.

7.4.4 Furthermore, the Committee also noted that the Municipality should investigate and establish the lives of persons occupying the said property as there was a possibility of it being occupied by other Occupants.

Accordingly,

COMMITTEE RECOMMENDS:

7.4.4.1 That consideration of the matter relative Councillor MS Gwala's matter in terms of Item 12(A) of Schedule 1 of the Local Government : Municipal Systems Act 32 of 2000, be withdrawn on the basis that Councillor MS Gwala was not in possession of the said property.

- 7.4.4.2 That the Speaker investigates the allocation of property as alluded to by Councillor MS Gwala through the City Integrity & Investigations Unit and to provide an update to a future meeting of the Ethics Committee.

ADOPTED

8. APPROVAL OF THE ETHICS COMMITTEE REPORT : MEETING HELD ON 2017-11-09

COMMITTEE RECOMMENDS:

That the Report of the Ethics Committee in respect of the Findings and Recommendations relative to Councillors in Arrears with eThekweni Municipality for rates and/or service charges for a period longer than three months, be adopted and a copy thereof, be submitted to the MEC for Co-operative Governance and Traditional Affairs for information.

ADOPTED

(At this stage Councillors SS Butelezi, LM Meyer, R Gokool and MS Gwala re-entered the meeting).

REPORT OF COMMITTEE DECISIONS

Decisions of Committees reflected below have been reported to Council by way of circulating minutes of such Committees to each Member of the Council:-

1. COMMUNITY SERVICES COMMITTEE

Meeting held on : 2017-11-07

2. ETHEKWINI MUNICIPALITY INFORMAL ECONOMY FORUM (EMIEF)

Meeting held on : 2017-11-07

3. EXECUTIVE COMMITTEE

Meetings held on : 2017-12-04
: 2017-12-06

4. LOCAL LABOUR FORUM: TREASURY AND OFFICE OF THE CITY
MANAGER

Meetings held on : 2017-11-30
: 2017-06-14

5. SECURITY AND EMERGENCY SERVICES COMMITTEE

Meeting held on : 2017-11-23

6. SPEAKER'S COMMITTEE

Meeting held on : 2017-12-04

NOTED.

ITEMS FOR NOTING

The Items for Noting, reflected on Pages 18 to 22 of the Agenda were
NOTED.

The meeting terminated at 13h15

CONFIRMED AT THE MEETING OF THE ETHEKWINI COUNCIL ON 2018-02-22

SPEAKER