

# OVERSTRAND LOCAL MUNICIPALITY

*DEFINITION OF THE ROLE AND AREA OF RESPONSIBILITY OF EACH POLITICAL STRUCTURE, POLITICAL OFFICE BEARER AND THE MUNICIPAL MANAGER IN TERMS OF SECTION 53 OF THE MUNICIPAL SYSTEMS ACT*

**ROLES AND RESPONSIBILITIES OF EACH POLITICAL STRUC****POLITICAL OFFICE BEARER AND MUNICIPAL MANAGER****CHAPTER 1****LEGISLATIVE MANDATE****1. INTRODUCTION**

The legislative and policy framework for local government, is reflected in particular in the Local Government: Municipal Structures Act, No 117 of 1998 ('Structures Act'), the Local Government: Municipal Systems Act, No. 32 of 2000 ('Systems Act') and the Local Government: Municipal Finance Management Act, No. 56 of 2003 ('MFMA') and has introduced a new approach to the way a municipality is governed and administered. In particular, the framework confers important statutory powers on *political structures, political office bearers* and the *municipal manager*. It also provides that powers may be delegated to individual councillors, whether elected as office bearers or not.

Given the complex nature of local government and the extent of the powers and functions conferred on the *political structures, political office bearers and municipal manager* of a municipality, it is not possible that they can perform their respective functions in isolation and without intrusion on the other's terrain. This called for a measure to prevent or at least to limit the possibility of conflict and create a workable framework for interaction.

An aspect that may contribute to this potential for conflict is the unique dual character of local government, i.e. not only is the legislative authority vested in a municipality's council, but also the executive authority. In the case of the other two spheres of government there is a clear division of authority and consequently a lesser potential for conflict.

Based on the above reasons the legislature decided that each municipality should properly demarcate the roles and responsibilities of its key role players. Therefore the following provision was introduced by section 53 of the Systems Act:

"A municipality must, within the framework of and in accordance with relevant provisions of the Municipal Structures Act, this Act and other applicable legislation, define the specific role and area of responsibility of each political

structure and political office bearer of the municipality and of the municipal manager”.

This provision is peremptory; a municipality must comply.

This manual contains:

- The statutory and policy framework that must be considered in compiling a document defining the roles and responsibilities.
- The process followed by the Mayor, Speaker, Mayoral Committee, other Councillors and the Municipal Manager of Overstrand Municipality in determining the roles and responsibilities.
- The roles and responsibilities of each political structure and political office bearer of the Municipality and of the Municipal Manager as resolved and determined by the Council and constituting the requirements of Section 53(2) of the Systems Act.

## CHAPTER 2

### FRAMEWORK FOR DEFINING ROLES

#### 2.1. IMPORTANT TERMS AND CONCEPTS

The Systems Act requires that the ‘role’ and ‘area of responsibility’ of a ‘political structure’, ‘political office bearer’ and ‘municipal manager’ be defined.

The dictionary meaning of ‘**role**’ is: ‘*person’s or thing’s expected function*’ or ‘*part or function assumed by a person in any action or proceeding*’, whilst ‘function’ is defined as ‘*allotted task; special duty; activity which it is incumbent upon a person to carry out*’. It therefore follows that the sum of all the functions whether expressly conferred, implied or delegated needs to be defined.

The term ‘**responsibility**’ means: ‘*the state or fact of being responsible; duty for the performance of which one is morally or legally responsible*’, whilst ‘responsible’ means ‘*legally or morally answerable; personally accountable*’. Area of responsibility can thus be described as the functional and geographical influence of one’s duties.

The following terms are defined in the Structures Act viz:-

‘**political structure**’, in relation to a municipality, means the council of the municipality or any committee<sup>1</sup> or other collective structure<sup>2</sup> of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act.

‘**political office bearer**’ means the speaker, executive mayor, mayor, deputy mayor or a member of the mayoral committee as referred to in the Municipal Structures Act.

‘**municipal manager**’ means a person appointed in terms of section 82 of the Municipal Structures Act.

Other relevant terms are the following:-

“**administration**” means the Municipal Manager and all other employees of the municipality”

“ **after consultation**” means with due regard to the view of any person with whom a delegated body is required to consult before he/she exercises a delegated or sub-delegated power

<sup>1</sup> various committees may be appointed in terms of s 71, 79 and 80

<sup>2</sup> e.g. ward committees.

- “Constitution”** means the Constitution of the Republic of South Africa, 1996;
- “Council”** means the Municipal Council of the Overstrand Local Municipality as envisaged in section 157(1) of the Constitution;
- “delegating authority”** in relation to delegation of a power by the municipal council, means the municipal council; or in relation to a sub-delegation of a power or duty by a delegating body, means that delegating body;
- “delegation”** means the authorisation of a delegated body by a delegating authority to act in his/her stead, and in relation to a power or duty includes an instruction to exercise the power / carry out that delegation or duty; and
- “delegate”** has a corresponding meaning;
- “delegated body”** in relation to the delegation of a power means the political structure, political office-bearer, councillor or staff member to whom a power has been delegated in writing by the delegating authority;
- “in consultation”** means with the concurrence of the person with whom a delegated body must consult before exercising a delegated or sub-delegated power;
- “managing”** related to roles and responsibilities means planning, organising, leading and controlling and include all duties, functions and decision-making to ensure the day to day running of the business of the municipality and **“management of”** has a corresponding meaning;
- “municipal functions”** represent all the functions vested in the municipality and as determined from time to time;
- “power”** refers to the authority to perform certain duties and functions lawfully;
- “Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- “Municipal Finance Management Act” (MFMA)** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)

## 2.2 MANNER OF DEFINING ROLES AND RESPONSIBILITIES

The Systems Act (section 53(2)) requires a specific method or manner of defining the roles and areas of responsibility of a political structure, political office bearer and municipal manager, namely-

“The respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager must—

- (a) be defined in **precise terms** by way of **separate terms of reference**<sup>3</sup>, **in writing**, for each political structure or political office bearer and the municipal manager; and
- (b) **be acknowledged** and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.”

When defining the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager, the municipality must<sup>4</sup> determine-

- (a) the relationships among those political structures and political office bearers and the municipal manager, and the manner in which they must interact;
- (b) appropriate lines of accountability and reporting for those political structures and political office bearers and the municipal manager;
- (c) mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities between those political structures and political office bearers and the municipal manager;
- (d) mechanisms, processes and procedures for resolving disputes between those political structures and political office bearers and the municipal manager; and
- (e) mechanisms, processes and procedures for interaction, between—
  - (i) those political structures and political office bearers and the municipal manager and other staff members of the municipality; and
  - (ii) councillors and the municipal manager and other staff members of the municipality.

Paragraph (e) introduces two other role players, namely ‘councillors’ and ‘other members of staff’. In order to determine mechanisms, processes and procedures for

<sup>3</sup> The terms of may include the delegation of powers and duties to the relevant political structure or political office bearer or the municipal manager in terms of section 59

<sup>4</sup> In terms of section 53(5)

interaction with them, requires identification of the councillors and staff and clarification of their respective roles.

The term 'councillor' in this context refers to the elected representative distinct from the office he or she may hold. In other words it would include for example the mayor when he/she acts outside the mayoral function.

From the above it is clear that the role of the 'ordinary' councillor will also have to be defined.

It is clear that what is meant by 'other staff members' are those officials with whom there is constant contact; it could be a departmental head, a secretary, clerk or even a vehicle driver. It is not possible to identify these officials further, as relationships may differ depending on the specific organisational arrangement and individual preferences.

## **2.3 ROLES AND RESPONSIBILITY RELATING TO POWERS AND FUNCTIONS**

The purpose of this section is to look in broad outline at the objectives, powers and functions of municipalities, as the roles (that need to be defined) flow from the very nature of a municipality and out of what it may do. But, before that, it is necessary to first examine the doctrine of 'division of governmental power' (into legislative, executive and judicial), which is central to the overall powers and functions of a municipality.

### **2.3.1 Separation of Powers**

#### **2.3.1.1 The *trias politica* doctrine**

In terms of this doctrine *trias politica* the functions of government may be divided into legislation, executive action and the administration of justice.

The purpose of the doctrine is essentially to prevent the abuse of power by separating government functions. Thus the legislature would make laws, the executive would implement the laws and the judiciary would enforce and judge the acts of both the legislature and executive.

#### **2.3.1.2 The South African Constitutional Model**

The South African Constitution recognises the doctrine and it was introduced in terms of constitutional Principle VI, contained in the interim Constitution; it reads

“There shall be a separation of powers between the Legislature, Executive and Judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness”

This principle was entrenched in the final Constitution<sup>5</sup> in the following way-

Legislative power

“In the Republic, the legislative authority-

- (a) of the national sphere of government is vested in Parliament, as set out in section 44;
- (b) of the provincial sphere of government is vested in provincial legislatures, as set out in section 104;
- (c) of the local sphere of government is vested in the Municipal Council , as set out in section 156;

Executive power

“The executive authority of the Republic is vested in the President.”<sup>6</sup>

“The executive authority of a province is vested in the premier of that province”<sup>7</sup>

“The legislative and executive authority of a municipality is vested in its Municipal Council”.<sup>8</sup>

Judicial power

“The judicial authority of the Republic is vested in the courts”<sup>9</sup>

Because judicial authority is not relevant to municipalities a discussion thereof is not necessary.

As can be seen from the above provisions of the Constitution, a strict division of governmental power characterizes the national and provincial spheres of government: legislative power is exercised by the parliaments and executive power by the president/premiers. In local government there is no such division.

**2.3.1.3 The local government model**

Although the Constitution does not provide for a separation similar to that in regard to the national and provincial spheres of government, it is essential to know what is

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<sup>5</sup> section 43

<sup>6</sup> section 85

<sup>7</sup> section 125

<sup>8</sup> section 151

<sup>9</sup> section 165

regarded as legislative powers and executive powers. The main reason is, that different principles of law apply to the two types of authority, e.g. the principles of administrative justice only apply to executive acts, legislative powers may not be delegated, etc.

The fact that the municipal council is empowered to make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality<sup>10</sup> means that it will have to consider whether it wears its legislative or executive “hat” each time it has to take a decision. Such a distinction is also necessary when the municipal council may decide that it does not want to exercise or perform all these powers and functions itself, but would rather delegate it to someone else. **The municipal council is permitted to delegate its executive powers but it may not delegate its legislative powers.**

What then are a municipality’s legislative and executive powers? In *Fedsure Life Assurance v Greater Johannesburg Transitional Metropolitan Council*<sup>11</sup> the Constitutional Court considered this issue and reacted as follows-

“It seems plain that when a legislature, whether national, provincial or local, exercises the power to raise taxes and rates, or determines appropriations to be made out of public funds, it is exercising the power that under our Constitution is the power peculiar to elected legislative bodies. It is a power that is exercised by democratically elected representatives after due deliberations. It does not seem to us that such action of the municipal legislatures, in resolving to set rates, to levy the contribution and pay a subsidy out of public funds, can be classified as an administrative action as contemplated by section 24 of the interim Constitution.”

In the light of this decision it is generally accepted that, apart from the making of by-laws, the other non-delegable matters reflected in the Constitution<sup>12</sup> i.e. approval of budgets; imposition of rates and other taxes, levies and duties; and raising of loans, are legislative acts.

It follows that the balance of a municipality’s powers, after separating legislative powers, must be executive powers.

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<sup>10</sup> section 160(1)

<sup>11</sup> 1998(12) BCLR 1458 (CC)

<sup>12</sup> section 160(2)

This can be illustrated as follows: -

Legislative Power

Four functions

- 1) By-laws
- 2) Budget
- 3) Rates etc
- 4) Loans

Executive Power

All functions except

- a) Statutory powers
- b) Delegated powers
- c) Authorised powers

Because the legislative powers cannot be delegated the exercise of executive powers may be divided amongst political structures, political office bearers, individual councillors and staff. In some instances a council may wish to reserve specific powers (executive) for itself.

Political structures, political office bearers, individual councillors, the municipal manager and staff do not only derive powers and duties from council; enabling legislation (including by-laws) may also confer vast powers and duties on them. These powers and duties can obviously only be of an “executive nature”; if not the enabling legislation would be *ultra vires* the Constitution.

In general terms, executive functions refer to the power to give effect to rules of law, created by the legislature. The action by means of which these rules of law are applied to individual instances is an administrative action (contra legislative action) and consequently ‘administrative law’<sup>13</sup> applies.

The Systems Act<sup>14</sup> describes how the municipality must exercise its legislative and executive powers, viz: -

“A municipality exercises its legislative or executive authority by—

- (a) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery;
- (b) promoting and undertaking development;
- (c) establishing and maintaining an administration;
- (d) administering and regulating its internal affairs and the local government affairs of the local community;
- (e) implementing applicable national and provincial legislation and its by-laws;

<sup>13</sup> That part of the public law, which governs the organisation, powers and actions of the state administration. It provides a framework within which administrative action may be evaluated against the principles of justice, i.e. lawfulness, reasonableness and fairness.

<sup>14</sup> section 11

- (f) providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in section 78;
- (g) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;
- (h) preparing, approving and implementing its budgets;
- (i) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;
- (j) monitoring the impact and effectiveness of any services, policies, programmes or plans;
- (k) establishing and implementing performance management systems;
- (l) promoting a safe and healthy environment;
- (m) passing by-laws and taking decisions on any of the above-mentioned matters; and
- (n) doing anything else within its legislative and executive competence.”

### **2.3.2 De Facto Separation of Powers in Executive Mayor System Municipalities (and Overstrand Local Municipality in particular)**

#### **2.3.2.1 Enabled by legislation**

The Constitution does not create a separate executive and legislature for municipalities, as it does for the national and provincial spheres of government; but the legislative and policy framework reflected in particular in the Structures and Systems Acts and the Municipal Finance Management Act ("MFMA") anticipates the possibility of such an arrangement being established through delegation of powers.

#### **2.3.2.2 Establishment of executive mayor system**

Section 56 of the Structures Act deals with the functions and powers of executive mayors and anticipates that the council will delegate some of its powers to the executive mayor (section 56(3)(f)).

The council can only delegate executive powers. It follows then that, depending on the extent of such delegation, the executive mayor will fulfil such executive functions on behalf of the council.

The Structures Act further stipulates that the municipal council elects an executive mayor and the municipal council may delegate specific powers to the executive mayor.

Municipalities may establish committees as contemplated in section 80 of the Municipal Structures Act, i.e. committees to assist the executive mayor. In such instances, the Act requires the executive mayor to appoint a chairperson for each such committee and the executive mayor may delegate any powers and duties of the executive mayor to the committees. As a result, the executive then consists of the executive mayor and mayoral committee supported and advised by section 80 committees, headed by mayoral committee members. The practice is to allocate specific portfolios to mayoral committee members.

### **2.3.2.3 Function of Council**

Due to the de facto creation of an executive mayor, the council rarely exercises its executive authority, except in regard to those matters that are statutorily reserved to it.

It however retains its legislative function, which extends beyond mere enactment of bylaws.

In addition, the council exercises broad oversight responsibility over the actions of the executive mayor.

The Systems Act requires that decisions taken in terms of delegations to executive mayors must be reported to the council. In addition, the MFMA stipulates for the tabling before the council of reports on a number of matters. The MFMA specifically precludes councillors from participating in the supply chain management process. However, the council, as the guardian of its policy in this regard, will call the municipal manager to account for the proper implementation of this policy.

The MFMA specifically requires a council to develop an oversight report after receipt by it of the annual report which oversight report reflects on its oversight activities and the content of the annual report. (Refer to section 129 of the MFMA).

### **2.3.3 Powers and Functions of Municipalities**

A municipality derives its powers not only from statutes (Constitution and other acts) but also from its status, e.g. as a legal person. Legal personality allows the bearer thereof to participate in legal relations such as contacting with others to purchase or sell property, to sue or to be sued etc. There are also a vast number of derived powers,

<sup>15</sup> i.e. those powers that are reasonably necessary for, or incidental to, the effective performance of the municipality's main functions (e.g. the powers to expropriate).

The Constitution is the primary source of the powers and functions of a municipality. These powers and functions can be grouped as follows-

- matters which are reflected in Schedules 4B and 5B of the Constitution;<sup>16</sup>
- powers and functions which may be assigned;<sup>17</sup>
- fiscal powers and functions; and<sup>18</sup>
- powers flowing for the obligations set out in Section 152 of the Constitution.

### **2.3.3.1 The Schedule 4 and 5 matters**

The differences between Schedules 4 and 5 of the Constitution are as follows:

Part A of Schedule 4 of the Constitution contains the functional areas of concurrent national and provincial legislative competence. This means that both spheres have competitive legislative competence.

Part B of Schedule 4 of the Constitution contains local government matters, although restricted to the extent that-

- provincial legislation may make provision for the monitoring and support of local government<sup>19</sup>
- the national and provincial governments may regulate the executive competence of a municipality for reasons of efficiency<sup>20</sup>

The functions listed in Part B of Schedule 4 are as follows:

- Air pollution
- Building regulations
- Child Care facilities
- Electricity and gas reticulation
- Fire fighting services
- Local tourism
- Municipal airports

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<sup>15</sup> section 156(5) of the Constitution

<sup>16</sup> section 156(1) and (2)

<sup>17</sup> sections 44, 99, 104, 126 and 156

<sup>18</sup> section 229

<sup>19</sup> section 156(6)(a)

<sup>20</sup> section 155(7)

- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under the Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Stormwater management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Part A of Schedule 5 of the Constitution contains the functional areas of exclusive provincial competence.

Part B of Schedule 5 of the Constitution contains the local government matters, although restricted to the extent that provincial legislation may be made for the monitoring, support and regulation.<sup>21</sup>

The main difference in Part B of Schedule 4 of the Constitution is that the national government has no legislative competence therein, except in exceptional circumstances when necessary for the purpose of-

- the maintenance of national safety
- the maintenance of economic unity
- the maintenance of essential national standards
- determination of minimum standards for service delivery
- to prevent unreasonable actions by a province which are detrimental to the interests of that province or the country as a whole<sup>22</sup>

The functions contained in Part B of Schedule 5, are

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances

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<sup>21</sup> section 155(6)(a) and 155(7)

<sup>22</sup> section 44(2)

- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

A municipality will act illegally and in contravention of the Constitution if it exercises powers and functions, which fall within the functional areas of another sphere of government,<sup>23</sup> unless such powers and functions were assigned to it.

### **2.3.3.2 Fiscal powers and functions**

One of the distinguishing characteristics of government is the power to impose taxes and fees.

This competence of a municipality is also confirmed in section 229 of the Constitution wherein it is stipulated that a municipality has inter alia the competence to-

- impose rates on property and surcharges on fees for services
- impose other taxes in terms of the provisions of national legislation

In the exercise of this competence national economic policy and legislation must be complied with.

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<sup>23</sup> Fedsure-case

### 2.3.3.3 Assigned powers and functions

Powers and functions may be assigned in a threefold manner.

- the administration of a matter mentioned in Parts A of Schedules 4 and 5 of the Constitution, by means of an agreement with national or provincial government;<sup>24</sup>
- the legislative competence of parliament or the provincial legislator - without agreement;<sup>25</sup>
- any power or function that must be exercised or performed in terms of national or provincial legislation by means of an agreement.<sup>26</sup>

### 2.3.3.4 Division of powers and functions between local and district municipalities

The Constitution<sup>27</sup> requires that the national government make an appropriate division of powers and functions between category B and C municipalities

The Structures Act<sup>28</sup> does not provide a list of the various functions. However, it does list the powers and functions of district municipalities and allocates the balance of the functions of Parts B of Schedules 4 and 5 to local municipalities.

### 2.3.3.5 Objects of local government

Section 152 of the Constitution sets out the objects of local government, which include the provision of democratic and accountable government, to ensure the provision of services, to promote social and economic development, to promote a safe and healthy environment and to encourage the involvement of communities in matters of local government.

Section 152(2) requires a municipality to strive, within its capacity, to achieve these objects. In so striving, a municipality will need to take the necessary actions to achieve those objects. It is submitted that it must have been intended that it would have the executive powers and functions necessary to enable it to take such actions.

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<sup>24</sup> section 156 of the Constitution

<sup>25</sup> sections 44 and 104 of the Constitution

<sup>26</sup> sections 99 and 126 of the Constitution

<sup>27</sup> section 155(3)

<sup>28</sup> section 83

## 2.4 ROLES DEFINED

The roles and areas of responsibility of the following structures and office bearers will be defined herein:

- Municipal Council
- Speaker
- Executive Mayor
- Portfolio Committees
- Ward Committees
- Councillor
- Municipal Manager

## 2.5 FORMAT OF ROLE DEFINITION

The Systems Act does not prescribe the format in which the roles and areas of responsibilities must be defined. Each municipality may therefore consider which option will best suit its particular needs. Two major possibilities arise.

### 2.5.1 Functional description

A specific function is identified, analysed and broken up into the various stages of performance. The actions and names of the responsible role players are then linked to the various stages. This is an onerous task and it has the disadvantage of possibly missing out on important functions.

### 2.5.2 Title description

The second method, which is also the method selected for this document, seeks to identify and describe every function that has to be performed by each of the identified role players. It is conceivable that the initial list of functions so identified will not be exhaustive; it will have to be updated as and when new functions are identified or additional ones allocated. It is accepted that this is a living document and will continue to be developed over time.

## CHAPTER 3

### ROLE DEFINITION

#### 3.1 ROLE OF THE MUNICIPAL COUNCIL

Government in South Africa consists of three spheres, i.e. national, provincial and local. Municipalities represent the local sphere of government in South Africa.<sup>1</sup> Every municipality has the right, in terms of the Constitution, to govern<sup>2</sup> and has prescribed goals<sup>3</sup>, which it must strive to achieve by means of constitutionally conferred powers and functions<sup>4</sup>.

A municipality<sup>5</sup> as an entity cannot achieve all this, however, the Constitution empowers the municipal council to exercise the legislative and executive authority of a municipality<sup>6</sup> and it confers on the municipal council the power to make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality.<sup>7</sup>

Whatever the status given to a municipal council, whether as agent or representative or something else the fact remains that the municipal council is the primary structure of the municipality and it has sole authority, unless it has delegated its powers or a statute has conferred 'municipal powers' on other structures or individuals. The Systems Act<sup>8</sup> acknowledges this relationship by stating the rights and duties of municipal councils, namely-

- (1) The council of a municipality has the right to—
- (a) govern on its own initiative the local government affairs of the local community;
  - (b) exercise the municipality's executive and legislative authority, and to do so without improper interference; and
  - (c) finance the affairs of the municipality by—
    - (i) charging fees for services; and
    - (ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.

<sup>1</sup> section 151(1) of the Constitution

<sup>2</sup> section 151(3) of the Constitution

<sup>3</sup> section 152 of the Constitution

<sup>4</sup> section 156 of the Constitution

<sup>5</sup> section 2 of the Systems Act describes it as an entity consisting of the political structure and administration of the Municipality and the community of the municipality

<sup>6</sup> section 151(2) of the Constitution

<sup>7</sup> section 160(1)(a) of the Constitution

<sup>8</sup> section 4 of the Systems Act

- (2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to—
- (a) exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;
  - (b) provide, without favour or prejudice, democratic and accountable government;
  - (c) encourage the involvement of the local community;
  - (d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
  - (e) consult the local community about—
    - (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and
    - (ii) the available options for service delivery;
  - (f) give members of the local community equitable access to the municipal services to which they are entitled;
  - (g) promote and undertake development in the municipality;
  - (h) promote gender equity in the exercise of the municipality's executive and legislative authority;
  - (i) promote a safe and healthy environment in the municipality; and
  - (j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.
- (3) A municipality must, in the exercise of its executive and legislative authority, respect the rights of citizens and those of other persons protected by the Bill of Rights.

These rights and duties form the basis of the functions of the municipal council. The municipal council is a body, consisting of members elected by the community, and it can only act collectively by resolution properly taken. The role of the individual councillor is discussed later.

### 3.1.1 The Municipal Council Governs

The municipal council governs within the geographical area of the municipality by exercising the legislative and executive authority conferred upon it in terms of the Constitution.<sup>9</sup>

To govern means to exercise authority and more specifically the power to -

<sup>9</sup> sections 151(2), 156 and 229 of the Constitution

- make and administer legislation
- impose taxes
- take decisions which may affect the rights of individuals

### 3.1.1.1 Legislature

In terms of the Constitution<sup>10</sup> the legislative authority of the local sphere of government is vested in the Municipal Council, to make and administer by-laws for the effective administration of the matters, which it has the right to administer. These matters are reflected in parts B of Schedules 4 and 5 of the Constitution and may be extended by any other matters assigned to it by national or provincial legislation.

The authority to legislate may not be delegated.<sup>11</sup> Some procedural functions have however been allocated to “a member or committee of the municipal council”<sup>12</sup> and the executive<sup>13</sup> (where applicable) whilst others might have been delegated by council, e.g. the advertising for comment, publication in the Provincial Gazette, undertaking public participation, compiling of a municipal code, its enforcement, etc.

### 3.1.1.2 Tax authority

The municipal council may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality and if authorised by national legislation, other taxes, levies and duties. (Refer to the Municipal Fiscal Powers and Functions Act, No. 12 of 2007). The municipal council must perform this function itself; it may not delegate the power to impose taxes etc. to another.<sup>15</sup> The Systems Act<sup>16</sup> sets out the general power to levy and recover fees charges and tariffs-

“A municipality may-

- (a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality;
- (b) recover collection charges and interest on any outstanding amount.”

The Systems Act also imposes certain duties on the municipal manager when the municipal council has resolved to levy and recover fees, charges or tariffs, i.e. to

<sup>10</sup> sections 43 and 156(2) of the Constitution

<sup>11</sup> section 160(2) of the Constitution

<sup>12</sup> section 12 of the Systems Act

<sup>13</sup> section 56 of the Structures Act.

<sup>15</sup> section 160(2) of the Constitution

<sup>16</sup> section 75A of the Systems Act

display, publish and convey to the community the contents of the resolution. The other procedural duties and powers to give effect to the imposition, may however be delegated.

### **3.1.1.3 Primary Decision Maker**

The council of the municipality exercises the executive and legislative authority of a municipality, and it takes all the decisions of the municipality except those, which it has delegated, and those that have been conferred by statute on political office bearers, political structures or officials.<sup>17</sup>

### **3.1.1.4 Delegating authority**

The White Paper on Local Government,<sup>18</sup> (the comprehensive government policy on local government) suggests that a municipal council should delegate its executive powers in a manner that facilitates timely and efficient decision-making, and allows for the sound management and oversight of the municipal administration. The Systems Act<sup>19</sup> endorses this sentiment-

“A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.”

Powers and duties may be delegated to any of its political structures, political office bearers, councillors or staff members. A delegation of powers or duties does not divest the municipal council of the responsibility of exercising the power or the performance of the duty. It may also review or consider an appeal against any decision taken by a delegated body if the procedural requirements have been met and subject to any rights that may have accrued to a person.<sup>20</sup>

When a municipal council delegates powers or duties it cannot relinquish its duty to see to it that a power is exercised or a duty is performed. For this reason the municipal council must introduce measures to ensure that a delegated body report on decisions taken in terms of that delegated power or duty. In terms of such measures the municipal council would then be able to assess whether the delegated body has properly exercised/performed the delegated power or duty. If not, the municipal council

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<sup>17</sup> section 160(1) of the Constitution and section 11 of the Systems Act.

<sup>18</sup> GN 423 of 13 March 1998

<sup>19</sup> section 59 of the Systems Act

<sup>20</sup> see in this regard sections 59 and 62

may in certain circumstances review the decision or it may even decide to amend or withdraw the delegation.<sup>21</sup>

It should be noted that the MFMA allows the council to delegate the mayor's statutory powers conferred in terms of the MFMA (section 59) to another member of the mayoral committee.

#### **3.1.1.5 Appeal authority**

A person whose rights are affected by a decision taken by a delegated body, i.e. a political structure, political office bearer, councillor or staff member, and committees made up off staff members in terms of a power or duty delegated or sub-delegated may appeal against that decision. When the appeal is against the decision of a political structure or political office bearer or a councillor the section 62 appeals committee is the appeal authority.<sup>22</sup> When it considers the appeal it may confirm, vary or revoke the decision, but no such variation, or revocation may detract from any rights that may have accrued because of the decision. The municipal manager should provide the necessary administrative support.

#### **3.1.1.6 Oversight authority**

As has been reflected above, a municipal council exercises oversight authority over the executive actions of the executive mayor and the municipal manager acting in terms of delegated authority. This oversight authority is reflected statutorily in a number of areas, for example, section 11 of the Systems Act, enjoins a council to monitor municipal services, monitor the impact and effectiveness of services, policies, programmes and plans. Section 40 enjoins the council to monitor and review the council's performance management systems and section 95A requires a council to exercise its authority as shareholder in municipal entities in particular by exercising oversight over their activities.

The MFMA further assumes a separation between councillors serving on the executive (i.e. the mayor and the mayoral committee) and non-executive councillors. This separation is vital to ensure council maintains oversight for the performance of specific responsibilities and delegated powers to the mayor and mayoral committee.

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<sup>21</sup> see in this regard sections 63 and 64

<sup>22</sup> section 62 of the Systems Act

Section 127 of the MFMA refers to one of the reports that the council utilises in exercising its oversight authority, viz. the annual report to be submitted to it by the mayor. Section 129 of the MFMA requires the council to consider the annual report and to prepare an oversight report reflecting on the matters set out in the section.

From a structural perspective, the Structures Act provides for the possibility of the establishment by the council of committees necessary for the effective and efficient performance of any of its functions or powers (section 79 of the Structures Act). Such a committee would be the equivalent of parliamentary portfolio committee.

Section 79 provides that-

(1) A municipal council may—

- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
- (b) appoint the members of such a committee from among its members; and
- (c) dissolve a committee at any time.

(2) The municipal council—

- (a) must determine the functions of a committee;
- (b) may delegate duties and powers to it;
- (c) must appoint the chairperson;
- (d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
- (e) may remove a member of a committee at any time; and
- (f) may determine a committee's procedure.

Municipal councils, which have established section 80 committees to support and advise the executive mayor, may establish a section 79 committee for the purposes of exercising of oversight. The Overstrand Local Municipality has established such an oversight committee in terms of sections 33 and 79 of the Structures Act under the chairpersonship of a member representing an opposition party and which committee must co-opt two advisory members who are not members of the council (vide. Section 79(2)(d)).

It is important to note that councillors in their individual capacity have no oversight authority.

### **3.1.2 The Municipal Council is an “organ of state”**

The term “organ of state” has particular implications for the bearer of such status; the Constitution and other legislation place a number of duties and responsibilities on organs of state. The following meaning is attached to the terms “organ of state” in the Constitution<sup>23</sup>

“In the Constitution, unless the context indicates otherwise “organ of state” means-

- (a) any department of state in the national, provincial or local sphere of government; or
- (b) any other functionary or institution-
  - (i) exercising a power or performing a function in terms of the Constitution or a provincial Constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.”

There should be no doubt that the municipal council is in fact an organ of state. One of the most important functions of an organ of state is to comply with the principles of co-operative governance and intergovernmental relations as contained in the Constitution<sup>24</sup>-

- (1) All spheres of government and all organs of state in each sphere must-
  - (a) preserve the peace, the national unity and the indivisibility of the Republic;
  - (b) secure the well-being of the people of the Republic;
  - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
  - (d) be loyal to the Constitution, the Republic and its people;
  - (e) respect the constitutional status, institutions, powers and functions of government in the other spheres
  - (f) not assume any power or function except those conferred on them in terms of the Constitution;
  - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
  - (h) co-operate with one another in mutual trust and good faith by-
    - (i) fostering friendly relations;
    - (ii) assisting and supporting g one another;
    - (iii) informing one another of, and consulting one another on matters of common interest;
    - (iv) co-ordinating their actions and legislation with one another;

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<sup>23</sup> section 239 of the Constitution

<sup>24</sup> section 41 of the Constitution

- (v) adhering to agreed procedures; and
- (vi) avoiding legal proceedings against one another.

(3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.”

The status of being an organ of state also confers general powers of delegation. The Constitution<sup>25</sup> allows an executive organ of state to delegate any power or function that is to be exercised or performed in terms of legislation to any other executive organ of state, provided the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed or exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.

A few examples of duties placed on an organ of state are found in the Constitution-

- section 41(3)- duty to settle disputes before any litigation
- section 165 – prohibition on interference in functions of courts
- section 238 authority to delegate and involve agents

### **3.1.3 The Municipal Council is a member of Organised Local Government**

Organised local government plays a significant role in representing the official voice of local government. The organisation recognised in terms of national legislation<sup>26</sup> consists of representatives of municipal councils.

For the municipal council to play a meaningful role in influencing national views, sentiments and policy on local government matters, it must provide its representatives on the organisation with a clear mandate, which will enable the latter to-

- (a) develop common approaches for local government as a distinct sphere of government;
- (b) enhance co-operation, mutual assistance and sharing of resources among municipalities;
- (c) find solutions for problems relating to local government generally; and
- (d) facilitate compliance with the principles of co-operative government and intergovernmental relations.<sup>27</sup>

<sup>25</sup> section 238 of the Constitution

<sup>26</sup> Organised Local Government Act, 1997 (Act 52 of 1997)

<sup>27</sup> section 3 of the Systems Act

The municipal manager and staff play an equally important role in the realisation of the above goals. Their technical inputs are invaluable and they should be encouraged to actively engage in technical structures.

#### **3.1.4 The Municipal Council represents the Employer**

In order for the municipality to exercise its powers perform its functions it has to establish an administration.<sup>28</sup> Responsibilities in respect of the “administration” are shared between the municipal council and the municipal manager, as head of the administration.

The municipal council is responsible for the appointment of the municipal manager<sup>29</sup> and those managers accountable to the municipal manager, however subject to consultation with the municipal manager.<sup>30</sup> There is an argument that the power to appoint the municipal manager and managers accountable to him/her may not be delegated. The determination of the remuneration, benefits or other conditions of service of these officials may however be delegated, but only to the executive mayor in the case of Overstrand Local Municipality.<sup>31</sup>

The municipal manager on the other hand must develop a staff establishment (subject to a policy framework approved by Council) and submit same to the council for approval and is furthermore empowered to appoint all other staff.<sup>32</sup> In terms of section 5(1) of the National Building Regulations Act, 1977 (Act 103 of 1977) the municipal council must appoint an employee as building control officer.

Despite the prominent statutory role of the municipal manager in regard to personnel matters, the municipal council remains the personification of the employer, i.e. the municipality and it also nominates its members to serve on labour forums (e.g the Local Labour Forum). Due to this peculiar relationship between council and the municipal manager it would only seem proper that the municipal manager be engaged in all deliberations that may lead to collective agreements.

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<sup>28</sup> section 11 of the Systems Act

<sup>29</sup> section 82 of the Structures Act

<sup>30</sup> section 56 of the Systems Act.

<sup>31</sup> section 60 of the Systems Act.

<sup>32</sup> sections 55 and 60 of the Systems Act.

### 3.1.5 The Municipal Council represents the Legal Person

As seen in chapter IV a municipality does not derive its powers only from statute, but also from its status as a legal person; e.g. to purchase or sell property, to sue or being sued, etc.

The legal nature of the municipality is confirmed in the Systems Act<sup>33</sup> as follows-

“A municipality has a separate legal personality which excludes liability on the part of its community for the actions of the municipality.”

The municipal council represents the legal persona whenever it exercises any of the powers associated with legal personality. It may and in fact should delegate some of these powers to its structures or staff, e.g. to institute or defend legal actions, to enter into contracts, to purchase or lease property, to allow rights over or on council land or to acquire rights over or on private land, etc. Except for matters specifically reserved to it and those listed in 3.4.7, the Overstrand Municipal Council has chosen to delegate all executive authority to the Executive Mayor.

### 3.1.6. The Municipal Council must strive to achieve the “Objects of Local Government”

The Constitution<sup>34</sup> charges every municipality to achieve the following objects-

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government

The duty again is placed by statute<sup>35</sup> on the municipal council, viz-

- (1) A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.
- (2) A municipal council must annually review—
  - (a) the needs of the community;
  - (b) its priorities to meet those needs;
  - (c) its processes for involving the community;

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<sup>33</sup> section 2

<sup>34</sup> section 152

<sup>35</sup> section 19 of the Structures Act

- (d) its organisational and delivery mechanisms for meeting the needs of the community; and
  - (e) its overall performance in achieving the objectives referred to in subsection (1).
- (3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

The Constitutional Court, in the matter of *Mkontwana v Nelson Mandela Metropolitan Municipality* has ruled that the responsibility of a municipality to achieve and implement the objects is "a matter of public duty."

### **3.1.7. The Municipal Council must consult with the community**

One of the objects of local government is the duty of the municipality to encourage the involvement of communities and community organisations in the matters of local government. Municipalities must also subscribe to those democratic values of the public administration, contained in the Constitution.<sup>36</sup> The following are noteworthy-

- “(e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making;
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.”

These principles must be converted into practice and for that reason the Systems Act<sup>37</sup> provides that a municipality must involve the community in matters such as the preparation of the IDP, budget, performance management system, provision of services etc. The act goes further by giving, in an entire chapter, detailed guidance on how to achieve community participation. Many of the functions identified can be delegated to political structures, political office bearers and members of staff, in which event their interaction will have to be recorded.

## **3.2 ROLE OF THE SPEAKER**

The area of responsibility of the speaker must be viewed from a functional and geographical perspective. In geographical terms the speaker has to exercise and perform his powers and functions within the boundaries of the municipality. Because of the municipality’s constitutional commitment to co-operative governance it is to be

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<sup>36</sup> section 195 of the Constitution

<sup>37</sup> section 16

expected that the speaker's influence will also extend to other forums outside these physical boundaries, e.g. speakers' forum, etc.

As regards the functional area, the speaker's responsibility relates to all the powers, functions and duties conferred by statute, in terms of common law or by delegation.

As the head of administration, the municipal manager is responsible for providing the necessary administrative support and guidance to the speaker in carrying out his functions.

### **3.2.1 Chairperson of the Municipal Council**

Each municipality is obliged by law to have a chairperson who is called the speaker. (Where a municipality is of the plenary type the speaker must however be called the mayor.<sup>38</sup>) As chairperson, the speaker also has the powers and functions derived from common law. In addition thereto the speaker is also given explicit statutory powers, which will be discussed hereunder.

#### **3.2.1.1 Convenes meetings of the Municipal Council**

The speaker decides when and where the municipal council meets.<sup>39</sup> The only restraint on his power is –

- the requirement that the municipal council must meet at least quarterly<sup>40</sup>;  
and
- the right of a majority of the councillors to request that a meeting of the municipal council be convened at a specified time.<sup>41</sup>

“To convene” is defined as “to cause to come, call together, summon, convoke”, whilst “convener” is given the meaning of: “one who convenes, specific member of a committee or deliberate body who is specially appointed to fix dates of meetings and to issue notices of meetings”. The question arises as to whether this function is limited merely to deciding upon and giving notice of the date, time and place of a meeting. In the Overstrand Local Municipality, it may be concluded that the responsibility for determining what business must be conducted at the meeting in question and in what format it is to be presented, is “reasonably necessary for, or incidental to the effective

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<sup>38</sup> section 36 of the Structures Act

<sup>39</sup> section 29 of the Structures Act

<sup>40</sup> section 18 of the Structures Act

<sup>41</sup> section 29 of the Structures Act

performance of the speaker's functions and the exercise of his/her powers"<sup>42</sup> It is of course impractical for the speaker to perform all these powers in person. The practical fulfilment of this function should be allocated to the secretariat in the administration, through the municipal manager, and processes should be put in place to ensure the speaker's responsibility is not compromised.

### **3.2.1.2 Presides at meetings of the Municipal Council**

The speaker of the municipal council presides at meetings of the municipal council.<sup>43</sup>

As the presiding officer the speaker is authorised to-

- maintain order during meetings;
- ensure that council meetings are conducted in accordance with the rules and orders of the council;
- ensure compliance in the council and council committees with the Code of Conduct;
- protect a councillor's right of freedom of speech in meetings of the municipal council;
- protect a councillor's right to immunity and privilege;
- exercise a casting vote where there is an equality of votes on any question before the municipal council; except with budget
- sign the minutes on confirmation by the council that it is a true reflection of the proceedings of a meeting; and
- facilitate the admission of the public to meetings of the municipal council

The speaker has a casting vote if there is an equality of votes but not in respect of

- matters referred to in Section 160(2) of the Constitution or
- the election of the executive mayor.

### **3.2.1.3 Convenes Special Meetings**

The speaker may convene special meetings of the municipal council, i.e. meetings other than those scheduled. If the speaker wishes to convene such a special meeting then the decision to do so must be agreed between the speaker, the executive mayor and the municipal manager.

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<sup>42</sup> section 8 of the Systems Act

<sup>43</sup> section 37 of the Structures Act

If both the executive mayor and deputy executive mayor are absent or not available for a period of longer than 5 (five) days and an acting mayor must be elected to fill in for him, the speaker convenes and oversees a meeting of the council for this purpose.

### 3.2.2 Enforcer of the Code of Conduct

The speaker is given specific powers<sup>44</sup> to enforce the Code of Conduct in the council and committee meetings.

The speaker, in so far as this relates to meetings of council, will of necessity (due to his/her presence) note infringements of the code. In all probability the speaker will not be present at committee meetings and would therefore have to rely on the chairperson of that meeting to keep him/her informed of infringements of the code. A few examples<sup>45</sup> of infringements of this kind are-

- acting against the interests of the municipality or in such a way that the credibility and integrity of the municipality is compromised;
- non-attendance or failure to remain in attendance; and
- failure to disclose an interest in any matter before a meeting;

Proceedings against a councillor for non-attendance must be done in accordance with a uniform standing procedure adopted by the municipal council. The Overstrand Council has adopted such a procedure.

The speaker also has a duty in respect of other infringements of the code. Item 13 of the code provides as follows-

“(1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach;
- (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
- (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of sub-item (1) (c) is open to the public.

(3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.”

<sup>44</sup> section 37 of the Structures Act

<sup>45</sup> items 2, 3 and 5 of the code

The speaker can convene a meeting if it has to do with a transgression of the Code of Conduct since he must enforce it.

### **3.2.3 Appeal authority**

In the Overstrand Local Municipality the speaker may be appointed as the 'relevant authority' in terms of the Promotion of Access to Information Act. The speaker must then perform the powers and execute the duties as prescribed by the act and regulations.

### **3.2.4 Recipient of delegated powers**

The speaker may also perform the duties and exercise the powers delegated to him in terms of section 59 of the Systems Act.

### **3.2.5 Leader of council in respect of oversight function**

A number of statutory provisions impose responsibility on the council for oversight in various respects. Specifically, section 129 of the MFMA requires the council of a municipality to consider the annual report of the municipality and of any municipal entity under its control and thereafter to adopt an oversight report containing the council's comments on the annual report, which must include a number of components. In Overstrand Local Municipality, the municipal council has established a section 129 Oversight Committee. It consists of non-executive councillors for oversight of the annual report and, as the chairperson of the council, it is the responsibility of the speaker to provide leadership to council to fulfil this responsibility, and all other oversight functions vesting in council. In terms of s.79(2)(d) of the Structures Act, the Council must authorise the Oversight Committee to co-opt the municipal manager as an advisory member.

It is the responsibility of the municipal manager to provide to the speaker the necessary administrative capacity and support for this purpose.

### **3.2.6 Other non-statutory functions**

In the Overstrand Local Municipality, the responsibility of the speaker may extend beyond what is provided for by statute and could include a number of responsibilities which have developed as a matter of practice – such as the Speaker’s role in Ward Committees (see paragraph 3.7.1).

### **3.3 ROLE OF THE EXECUTIVE MAYOR**

- Note:
1. Reference to Mayor means Executive Mayor
  2. Compiled in a gender neutral manner

#### **3.3.1 Political leader**

The mayor is the political leader of the municipality. This status is not to be confused with party political leadership; it refers to the political system in state environment.

The mayor’s most important function as political leader of the municipality is to promote and defend the constitutional status, institutions, powers and functions of the municipality and to uphold the principles of co-operative government and intergovernmental relations. He/she will head delegations to the other spheres of government and organised local government.

#### **3.3.2 Social and ceremonial head**

The mayor is the social and ceremonial head of the municipality. In this capacity the mayor performs a number of functions, e.g.-

- represents the municipality at all levels of society;
- initiates or acts as patron for philanthropic or welfare causes;
- hosts and welcomes dignitaries;
- opens projects, events, new buildings,
- represents the council at civic events, etc.

#### **3.3.3 Delegation of duties**

In the absence of the mayor the deputy mayor acts as mayor and performs the delegated duties of the mayor.

#### **3.3.4 General responsibilities regarding financial matters**

Section 52 of the MFMA<sup>46</sup> describes the general responsibilities of mayors<sup>47</sup> as follows-

- (1) The mayor of a municipality—
- (a) must provide general political guidance over the fiscal and financial affairs of the municipality;
  - (b) in providing such general political guidance, may monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities;
  - (c) must take all reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality's approved budget;
  - (d) must within 30 days of the end of each quarter submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality; and
  - (e) must exercise the other powers and performs the other duties assigned in terms of this Act or delegated by the council to the mayor.

### 3.3.5 Budget processes and related matters

With regard to the budget, the mayor of a municipality must-<sup>48</sup>

- (a) provide general political guidance over the budget process and the priorities that must guide the preparation of a budget;
- (b) co-ordinate the annual revision of the integrated development plan and the preparation of the annual budget, and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and
- (c) take all reasonable steps to ensure –
  - (i) that the municipality approves its annual budget before the start of the financial year to which the budget relates;
  - (ii) that the municipality's service delivery and budget implementation plan is finalised within 28 days after the approval of the budget; and
  - (iii) that the annual performance agreements as required in terms of section 57 (1) (b) of the Municipal Systems Act for the municipal manager and all senior managers –
    - (aa) comply with this Act in order to promote sound financial management;

<sup>46</sup> Municipal Finance Management Act 56/2003

<sup>47</sup> 'mayor' in relation to a municipality with an executive mayor, is defined in the Act as the councillor elected as the executive mayor in terms of section 55 of the Structures Act

<sup>48</sup> section 53 of the MFMA

- (bb) are linked to the measurable performance objectives approved with the budget and service delivery implementation plan; and
  - (cc) are concluded in accordance with section 57 (2) of the Municipal Systems Act.
- (2) The mayor must report any delay in the signing of the annual performance agreements to the municipal council and the MEC for local government in the province.
- (3) The mayor must ensure -
- (a) That the revenue and expenditure projections for each month and the service delivery targets and performance indicators for each quarter as set out in the service delivery and budget implementation plan, are made public no later than 14 days after the approval of the service delivery and budget implementation plan; and
  - (b) That the performance agreements of the municipal manager, senior managers and any other categories of officials as may be prescribed, are made public no later than 14 days after the approval of the municipality's service delivery and budget implementation plan.

### **3.3.6 Budgetary control and early identification of financial problems**

On receipt of a statement or report submitted by the accounting officer of the municipality in terms of sections 71 or 72 the mayor must<sup>49</sup>

- (a) consider the statement or report;
- (b) check whether the municipality's approved budget is implemented in accordance with the budget and service delivery implementation plan;
- (c) consider and, if necessary, make any revision to the service delivery and budget implementation plan, provided that revisions to service delivery targets and performance indicators in the plan may only be made with the approval of the council following approval of an adjustments budget.
- (d) issue any appropriate instructions to the accounting officer to ensure -
  - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan; and
  - (ii) that spending of funds and revenue collection proceed in accordance with the budget.
- (e) identify any financial problems facing the municipality, including any emerging or impending financial problems.

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<sup>49</sup> section 54 of the MFMA

- (f) in the case of a section 72 report, submit the report to the council by 31 January of each year.
- (2) If the municipality faces any serious financial problems the mayor must –
  - (a) promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems, which may include –
    - (i) steps to reduce spending when revenue is anticipated to be less than projected in the budget;
    - (ii) the tabling of an adjustments budget; or
    - (iii) steps in terms of Chapter 13; and
  - (b) alert the council and the MEC for local government in the province to those problems.
- (3) The Mayor must ensure that any revisions of service delivery and budget implementation plan are made public promptly.

### **3.3.7 Report to provincial executive if conditions for provincial intervention exist**

If a municipality has not approved an annual budget by the first day of the budget year or if the municipality encounters a serious financial problem referred to in section 139 of this Act, the mayor of the municipality<sup>50</sup>

- (a) must immediately report the matter to the MEC for local government in the province; and
- (b) may recommend to the MEC an appropriate provincial intervention in terms of section 139 of the Constitution.

### **3.3.8 Exercise of ownership control powers over municipal entities (if any)**

The mayor of a municipality which has sole or shared ownership control over a municipal entity must guide the municipality in exercising its ownership control powers over the municipal entity in a way<sup>51</sup>

- (a) that would ensure that the municipal entity complies with this Act and at all times remains accountable to the municipality; and
  - (b) that would not impede the entity from performing its operational responsibilities.
- (2) In guiding the municipality in the exercise of its ownership control powers over a municipal entity in accordance with subsection (1), the mayor may monitor the

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<sup>50</sup> section 55 of the MFMA

<sup>51</sup> section 56 of the MFMA

operational functions of the entity, but may not interfere in the performance of those functions.

### **3.3.9 Budget preparation process**

In terms of Section 21 of the MFMA the mayor of a municipality must co-ordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget related policies to ensure that the tabled budget and any revisions of the integrated development plan and budget related policy are mutually consistent and credible.

The procedures and timeframes are set out in the Act and section 21(2) sets out the factors that the mayor must take into account when preparing the annual budget.

### **3.3.10 Municipal Adjustments Budget**

Section 28 of the MFMA provides that only the mayor may table an adjustments budget in the municipal council.

### **3.3.11 Reporting responsibilities in terms of the MFMA**

The mayor has various reporting responsibilities in terms of the MFMA and regulations promulgated in terms of said act. Notably, in terms of Section 127, the mayor must, within 7 months after the end of a financial year, table in the municipal council the annual report of the municipality and of any municipal entity under the municipality's sole or shared control.

### **3.3.12 Delegation of mayoral powers and duties in terms of the MFMA**

The MFMA allows the council to delegate the mayor's statutory powers conferred in terms of the MFMA<sup>52</sup> to another member of the mayoral committee.

Any such a delegation must be in writing; is subject to any limitations or conditions that the council may impose; and does not divest the mayor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

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<sup>52</sup> section 59

The mayor may also confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

### **3.3.13 Other duties**

The mayor receives a consolidated quarterly report of the ward committees from the administration and must ensure that the public's views are noted by the mayoral committee and, if need be, the council and, if required, attended to by the executive mayor as guardian of the public's right to be heard and overseer of the provision of services – refer to par. 3.4.6 and par. 3.4.8 – either directly if it is a political matter or if it concerns the administration via the office of the municipal manager who, in his discretion, directs the matter within the administration.

The mayor is responsible for public statements of a political nature, e.g. to the media, and accepts petitions from the public.

The mayor determines the attendance of conferences by the political leadership.

## **3.4 ROLE OF THE EXECUTIVE MAYOR**

The executive mayor is appointed by the municipal council from amongst the members of the council. It is also within the municipal council's power to dismiss the executive mayor.

The area of responsibility of the executive mayor must be viewed from a functional as well as geographical perspective. In geographical terms the executive mayor has to exercise and perform his powers and functions within the boundaries of the municipality. Because of the municipality's constitutional commitment to co-operative governance it is to be expected that through, the executive mayor's influence, will also extend to other forums outside these physical boundaries, e.g. IGFs in terms of Intergovernmental Relations Framework Act.

As regards the functional area, the executive mayor's responsibility relates to all the powers, functions and duties conferred by statute, in terms of civic culture or by delegation.

### 3.4.1 Executive leadership

The executive leadership of the municipality is vested in the executive mayor.<sup>53</sup> The term 'executive power' relates to the power to give effect to rules of law. The executive of the municipality is responsible for performance of this function. Because the legislative/executive powers at the local sphere are not separated, the council is notionally the executive. However, in terms of the arrangement that exists in the Overstrand Local Municipality, the majority of executive powers are delegated to the executive mayor. The executive mayor in turn shares his executive authority with the municipal manager. Both the executive mayor and the municipal manager have important executive functions conferred by statute. The powers to fulfil these functions are delegated by council to the executive mayor and the municipal manager. In many instances, these powers reflect two sides of the same coin, which illustrates the need for clear role definition and a structured working relationship. For example, the Municipal Manager is responsible for the formation and development of an economical, effective, efficient and accountable administration and must manage that administration whilst on the other hand; the Executive Mayor is responsible for monitoring the management of the administration.

### 3.4.2 Adviser of the municipal council

The executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the executive mayor, in terms of the executive mayor's delegated powers, cannot or chooses not to dispose of the matter.<sup>54</sup>

In three other instances the municipal council may not take a decision unless the mayor has submitted to it a report and recommendation, viz-<sup>55</sup>

- (a) any matter<sup>56</sup> in section 160(2) of the Constitution;
- (b) the approval of the IDP and any amendment to that plan; and
- (c) the appointment of the municipal manager and a head of a directorate of the municipality.

<sup>53</sup> section 7(b) of the Structures Act

<sup>54</sup> section 56 of the Structures Act

<sup>55</sup> section 30 of the Structures Act

<sup>56</sup> passing of by-laws, approval of budget, imposing rates and tariffs, raising loans

### 3.4.3 Identify the needs of the municipality

The following functions are entrusted to the executive mayor by statute<sup>57</sup>

- (a) to identify the needs of the municipality;
- (b) to review and evaluate those needs in order of priority;
- (c) to recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans;
- (d) to recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community; and
- (e) to identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (c) above can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general.

### 3.4.4 Evaluate progress

The executive mayor in performing the duties of office, is charged with the following duties<sup>58</sup>

- (a) evaluate progress against the IDP, SDBIP and the key performance indicators of the Performance Management System;
- (b) review the performance of the municipality in order to improve—
  - (i) the economy, efficiency and effectiveness of the municipality;
  - (ii) the efficiency of credit control and revenue and debt collection services; and
  - (iii) the implementation of the municipality's by-laws;
  - (iv) the implementation of governmental strategic plans

### 3.4.5 Monitor the administration

The executive mayor is empowered to monitor the management of the municipality's administration in accordance with the directions of the municipal council.<sup>59</sup>

<sup>57</sup> section 56(2) of the Structures Act

<sup>58</sup> section 56(3) of the Structures Act

<sup>59</sup> section 56(3)(d) of the Structures Act

### 3.4.6 **Oversee provision of services**

The executive mayor must oversee the provision of services to communities in the municipality in a sustainable manner.<sup>60</sup> This duty must be correlated with the functions of the municipal manager to “manage the provision of services in ...a sustainable and equitable manner.” Should the executive mayor believe there is underperformance in respect of any one or more areas, he must request the municipal manager to provide an explanation for the perceived underperformance and, if need be, set corrective measures to address the problem area/s; which corrective measures are to be ratified by the council.

### 3.4.7 **Recipient of delegated powers**

The executive mayor may perform such duties and exercise such powers as the council may delegate to the executive mayor.<sup>61</sup> The municipal council of the Overstrand Local Municipality has delegated all powers not specifically reserved to it, to the executive mayor except in respect of the following matters—

- (a) decisions to expropriate immovable property or rights in or to immovable property;
- (b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager; and
- (c) decisions to make investments on behalf of the municipality within the municipality’s investment policy that has been delegated to the municipal manager.<sup>62</sup>

### 3.4.8 **Guardian of public’s right to be heard**

The executive mayor has specific powers to ensure community involvement and that their views are considered. The executive mayor is therefore obliged to<sup>63</sup>

- (a) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- (b) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.
- (c) Ensure the existence of a language policy that makes community involvement possible.

<sup>60</sup> section 56(3)(e) of the Structures Act

<sup>61</sup> section 56(3)(f) of the Structures Act

<sup>62</sup> section 60 of the Systems Act

<sup>63</sup> section 56(3)(g) and (h) of the Structures Act

### **3.4.9 Must report to council**

The executive mayor must report to the municipal council on all decisions taken by the executive mayor.<sup>64</sup> This duty does not only relate to its statutory powers but also decisions taken in terms of delegated powers.<sup>65</sup> The council determines the format and frequency of reports.

### **3.4.10 Appeal authority**

A person, whose rights are affected by a decision taken by the municipal manager in terms of a power or duty delegated or sub-delegated to the municipal manager, may appeal against that decision to the executive mayor.<sup>66</sup>

The executive mayor must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued because of the decision.

### **3.4.11 May appoint committees to assist**

The municipal council may appoint committees of councillors to assist the executive mayor and such committees must report to the executive mayor in accordance with its directions. The executive mayor appoints a chairperson for each committee from amongst the members of the mayoral committee and may delegate any of his powers and functions to any such committee.<sup>67</sup>

These committees must be composed in a manner that allows for parties and interests reflected within the council to be fairly represented.

The executive mayor is not divested of the responsibility concerning the exercise of the power or the performance of the duty delegated and may even vary or revoke any decision taken by such committee, subject however to vested rights.

The municipal council of the Overstrand Local Municipality has established 5 (five) committees in terms of Section 80 of the Structures Act allowing for parties within the council to be fairly represented. These committees are chaired by members of the mayoral committee and the chairpersons, are appointed by the mayoral committee. The committees do not have delegated powers only advisory powers.

<sup>64</sup> section 56(4) of the Structures Act

<sup>65</sup> section 63 of the Systems Act

<sup>66</sup> section 62 of the Systems Act

<sup>67</sup> Section 80 of the Structures Act

The Section 80 committees meet at such dates, times and venues as determined by a calendar adopted by the council.

#### **3.4.12 Portfolio responsibilities of members of the mayoral committee**

The Overstrand Local Municipality has established 5 (five) section 80 portfolio committees, each headed by a member of the mayoral committee.

Aspects not relating to any of the portfolio committees may be submitted directly to the Mayoral Committee by the Municipal Manager.

### **3.5 ROLE OF THE PORTFOLIO COMMITTEES**

The roles fulfilled by the portfolio committees are in general to:

- Develop and recommend policy within the functional area of their respective committees;
- Develop and recommend on the content and drafting of by-laws within the functional area of their respective committee;
- Develop and recommend business plans within the functional area of their respective committee;
- Make recommendations with regard to the draft IDP and budget to the executive committee within the functional area of their respective committees;
- Make recommendations with regard to the setting and revision of tariffs, levies, taxes and duties within the functional area of their respective committees; and
- Assess the performance of service delivery generally within the functional area of their respective committee (outcomes monitoring).

Each portfolio committee:

- grants leave of absence to members from meetings of the committee;
- is subject to the council's rules of order and probity by-laws; and
- requests councillors, political office bearers and members of staff to appear before the committee to give evidence or make an input in order to enable the committee to perform its functions.

### **3.6 ROLE OF THE CHIEF WHIP (Not yet established in Overstrand)**

The Chief Whip is a post not provided for statutorily and the incumbent is not strictly speaking a “political office bearer” in terms of Section 53 of the Systems Act, but for practical purposes is sometimes used as a political functionary of the majority party.

The Chief Whip gets his mandate from the majority party’s caucus and maintains discipline within the majority party. He reports on a daily basis on the behaviour of every majority party councillor to his party’s regional executive leadership.

### **3.7 ROLE OF THE WARD COMMITTEE**

The purpose of a ward committee is to assist the ward councillor with organising consultation, spreading information and encouraging participation from residents in the ward. The Structures Act describes it as follows-<sup>68</sup>

“The object of ward committees is to enhance participatory democracy in local government.”

The Systems Act<sup>69</sup> is not very prescriptive about the establishment of ward committees; it gives broad guidelines on setting up and running ward committees and leaves it to the municipal council to decide on the details. The council has made rules about the functions, powers and resources that are given to ward committees.

The Overstrand Municipality has 13 (thirteen) ward committees each with 10 (ten) committee members.

#### **3.7.1. Powers and reporting**

Ward committees have no statutory powers but they may be granted delegated authority. They are generally there to advise the ward councillor and help him/her to better represent the people in the ward. They are made up of people, who know the area well and can help the councillor to consult properly, report to and inform people and make better decisions in council. They may make submissions to the ward councillor. They may also participate in the Overstrand Municipal Advisory Forum (OMAF) via nominated representatives for area wide participation that provide inputs to council on certain issues.

Matters on which ward committees should advise and assist the ward councillor include the following-

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<sup>68</sup> section 72

<sup>69</sup> sections 72 - 78

- doing research to understand the conditions, problems and needs of residents in the ward;
- outreach work to sectors and general consultation meetings to consult and inform residents on municipal issues like IDP, budget priorities and service delivery options;
- disseminating relevant information to residents that will help them get access to municipal services;
- interacting with other forums, e.g. community police or development forums;
- playing a resource and advice role for residents with problems;
- co-ordinating ward programmes of council – for example HIV/AIDS

The ward councillor is the chairperson of the ward committee and makes inputs for the ward committee agenda. The minutes of the ward committee meetings are the responsibility of the administration.

If there are matters to be dealt with by the administration, the municipal manager, in his/her discretion, decides where to direct the matter. The matter is dealt with in the department and reported on to the relevant portfolio committee. If so required, the matter is further dealt by the executive mayor and, if need be, referred to the municipal council from where feedback is given to the particular ward committee/s by the ward councillor.

Should a ward committee have a problem with its ward councillor, the matter is reported to the speaker by a committee member mandated thereto. If it is a political or governance matter, the speaker will deal with the matter in co-operation with the mayor. If it concerns an administrative or technical matter in terms of which a council policy does not yet exist, the speaker will act in co-operation with the municipal manager.

### **3.7.2. Training**

Addressing the training needs of the ward committee members is the responsibility of the relevant ward councillor assisted by the skills development facilitator of the municipality.

The Municipality is investigating various short term and long term ways in which to deal with the capacity building training of ward councillors and ward committees including in-house training programmes over the short term and training by service providers and

funded through the discretionary grant from the sector education and training authority over the longer term.

### **3.7.3 Administrative support**

The responsibility to render administrative support to the ward committees is located in the area managers' offices. It is the responsibility of the area managers to ensure that the ward committees receive administrative assistance, e.g. the writing of the minutes of the ward committee meetings.

### **3.7.4 Community participation**

Municipalities are obliged to encourage and facilitate community participation. Various pieces of legislation stress the role communities should play in participating in democracy at a local level, e.g.-

- "... local government must encourage the involvement of communities and community organisations..." <sup>70</sup>
- "...building local democracy is a central role of local government and municipalities should develop strategies and mechanisms to continuously engage with citizens, business and community groups." <sup>71</sup>
- The Systems Act<sup>72</sup> sketches the duties of municipalities to ensure community participation and the rights of communities to be consulted.
- the role of ward committees are described in the Structures Act as:  
"... to enhance participatory democracy in local government." <sup>73</sup>

### **3.7.5 Matters concerning other stakeholders**

There may be various stakeholders in the wards, some of which might not have ward committee representatives. It is the responsibility of the ward committee members and the ward councillors to ensure all the concerned issue-based community groups work through the ward committees.

## **3.8 ROLE OF THE MUNICIPAL COUNCILLOR**

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<sup>70</sup> Section 152 of the Constitution

<sup>71</sup> White Paper on Local Government

<sup>72</sup> section 4

<sup>73</sup> section 72

A political office bearer or member of a political structure is in the first place a councillor and has to fulfil that role over and above any other he/she may have. The powers and functions of the municipal councillor are not to be found in any of the laws applicable to local government. The reason is simply that apart from some functions, which will be discussed later, the individual municipal councillor has no powers; his/her strength lies in the association with co-councillors. The Systems Act endorses these views in its introductory sections when it reflects on the rights and duties of municipal councils, members of the local community and municipal administrations. Nowhere does the individual councillor feature,<sup>74</sup> (except the ward councillor and then only in regard to ward committees).

Councillors, on the other hand, do have extensive powers when they act collectively. These powers are usually exercised in the form of decisions taken with the support of the majority.<sup>75</sup> The most important role of the individual councillor is therefore expressed as member of the municipal council. In this regard the councillor has specific duties as set out below.

### **3.8.1. Participating in decision-making**

A councillor has the right and must take part in the business being transacted at meetings of council and the structures on which he/she serves. This means that he/she must not only have a good understanding of the matters to be considered, but also a sound understanding of the dynamics of and sentiments in the municipal area; a prerequisite for a proper policy judgement. Councillors should accordingly be prepared for all meetings, having read and analysed agendas.

### **3.8.2. Attend meetings**

A councillor should attend meetings of the municipal council and the structures on which he/she serves. Non-attendance of these meetings or failure to remain in attendance constitutes a transgression of the Code of Conduct.<sup>76</sup> Council may impose a fine on a councillor who transgresses and a councillor who is absent from three or more meetings must be removed from office as a councillor. The proceedings for the imposition of a fine or the removal from office must be conducted in accordance with a uniform standing procedure, which each municipal council must adopt for this purpose.

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<sup>74</sup> chapter 2, sections 2 - 7

<sup>75</sup> section 30 of the Structures Act

<sup>76</sup> items 3 and 4

These procedures must also comply with the principles of natural justice and are therefore bound to introduce other role-players.

### **3.8.3 Act in accordance with the Code of Conduct**

The code contains many rules that require a certain standard of conduct by a councillor. When a councillor is in breach of any one of these rules he/she may face disciplinary action. The speaker or the council itself may investigate a breach whilst council, or a committee appointed for that purpose, must make a finding.<sup>77</sup> Any investigation in this regard must be conducted in accordance with the rules of natural justice and, of necessity, involve other role players.

Other rules of the code, when transgressed, will immediately lead to conflict; these rules are discussed hereafter.

### **3.8.4 Access to Information**

A councillor may inspect documents in the possession of the municipality, but only to the extent that access to such information is reasonably necessary to perform his/her duties as a councillor. Unauthorised access and disclosure of any privileged or confidential information, is not only an infringement of the code<sup>78</sup> but also impedes on the terrain of the municipal manager in his capacity as Information Officer in terms of the Promotion of Access to Information Act.

The Overstrand Municipality has adopted an Access to Information Manual and Policy in accordance with the Promotion to Access of Information Act, 2 of 2000. If a councillor wishes to gain access to council documents, he/she must approach the municipal manager with a written request substantiating the information required and the reasons for the request. The municipal manager, acting in his discretion as the Information Officer, will arrange perusal of the required information but subject to the classification type of the information.

### **3.8.5 Interference in Administration**

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<sup>77</sup> items 13 and 14

<sup>78</sup> item 10

The code<sup>79</sup> provides that a councillor may not, except as provided by law-

- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
- (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- (d) encourage or participate in any conduct that would cause or contribute to maladministration in the council.

### 3.8.6 Promoting Local Democracy

Municipal councils play a central role in promoting local democracy. In addition to representing the community interests within the council, municipal councillors should promote the involvement of citizens and community groups in the design and delivery of municipal programmes. They are also ideally positioned to raise awareness of human rights issues and by promoting constitutional values and principles; an obligation in terms of section 7 of the Constitution<sup>80</sup>

The mandate to represent the community carries major responsibilities. It is worded as follows in the preamble to the Code of Conduct -

“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 by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established.”

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<sup>79</sup> item 11

<sup>80</sup> White Paper on Local Government, p40

The ward councillor has additional functions and responsibilities. The ward councillor is the chairperson of the ward committee, which brings added responsibilities, e.g.-

- convenes meetings of the ward committee and sets the agenda;
- presides at meetings of the ward committee;
- co-ordinates the business to be transacted at meetings of the ward committee;
- ensures that written minutes of the ward committee meetings are kept;
- acts as intermediary between council and the residents of the ward;
- liaises with administration regarding administrative support;
- identifies issues that require community consultation;
- arranges report-back public meetings;.

### **3.8.7 No Promises**

As set out above individual councillors have no power and can therefore not make promises to members of their constituencies and may not interfere in the administration and thus may not give direct instructions to employees of the council.

## **3.9 ROLE OF THE MUNICIPAL MANAGER**

The municipal manager holds an important position in the municipality; a position, which requires not only the service of a very competent person, but also sufficient powers to realise the municipality's goals and the contractual performance<sup>81</sup>, required from him/her (see also the Local Government : Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006 (GNR 805 dated 1 August 2006) regarding core competencies and the Local Government : Municipal Regulations on Minimum Competency Levels, 2007 (GNR 493 dated 15 June 2007) regarding general competency levels for accounting officers.)

It is for this reason that the legislature saw it fit to confer a number of important duties, powers and functions on the municipal manager. In order to enable the municipal manager to fulfil these functions, the Council is obliged to delegate the necessary powers.

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<sup>81</sup> an obligation in terms of section 57 of the Systems Act

### 3.9.1 The municipal manager is the head of the administration

In terms of the Systems Act<sup>82</sup> the municipal manager is the head of administration and is, subject to the policy directions of the municipal council, responsible and accountable for a variety of duties and functions, which are discussed hereunder.<sup>83</sup>

#### 3.9.1.1 Establish an administration

The municipal manager is, subject to the policy directions of the municipal council, responsible for the formation and development of an economical, effective, efficient and accountable administration and must ensure that it is:-

- equipped to carry out the task of implementing the municipality's integrated development;
- operating in accordance with the municipality's performance management system; and
- responsive to the needs of the local community to participate in the affairs of the municipality;

#### 3.9.1.2 Manage the administration

The municipal manager must manage the municipality's administration in accordance with the Systems Act and other legislation applicable to the municipality. He must ensure that the municipal 'machine' operates efficiently, that the organisational structure is able to perform the various tasks and exercise the necessary controls.

The municipal manager has to fulfil a leadership role in the administration; this is of utmost importance to influence the actions of staff and to inspire and persuade the staff to work together to realise the municipality's goals.

(Monitoring the management of the municipality's administration, on the other hand, is the responsibility of the executive mayor, who must perform this function in accordance with directions of the municipal council.<sup>84</sup>)

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<sup>82</sup> section 55

<sup>83</sup> paragraphs (a)-(q) of section 55(1)

<sup>84</sup> section 56(3)(d) of the Structures Act

### 3.9.1.3 Implement the IDP

The municipal manager must see to the implementation of the municipality's integrated development plan, and the monitoring of progress with implementation of the plan.

(The executive mayor again has the task of evaluating progress in the implementation of strategies, programmes and services aimed at addressing priority needs through the IDP.<sup>85</sup>)

### 3.9.1.4 Manage the provision of services

The municipal manager must manage the provision of services to the local community in a sustainable and equitable manner, whilst the executive mayor must oversee the provision of services to the communities in the municipality in a sustainable manner.<sup>86</sup>

### 3.9.1.5 Appoint and manage staff

The municipal manager is empowered to appoint all staff other than those who are directly accountable to him. In terms of section 5(1) of the National Building Regulations Act, 1977 (Act 103 of 1977) the municipal council must appoint an employee as building control officer. This power is exercised, subject to the Employment Equity Act, 55 of 1998 and based on the organogram approved by the municipal council as well as the human resources policies and delegations approved by the council. The municipal manager further exercises his/her original power to develop the organisational structure strictly in accordance with the parameters laid down by the resolution adopted by the municipal council and consistent with the broad governance framework and other applicable resolutions, rules and procedures of the council. The municipal manager reports in writing to the municipal council in the event of any organisational reviews and/or amendments because of exercising this original power.

The appointment of managers who are directly accountable to the municipal manager is the function of the municipal council but the municipal manager must be consulted.<sup>87</sup> The council and the municipal manager should agree to the processes, procedures and criteria, i.e. the occupational and managerial competencies, for the appointment of these managers (given that it is the municipal manager, who has to, with the assistance of these managers, meet the required performance levels or face the

<sup>85</sup> section 56(3)(a) of the Structures Act

<sup>86</sup> section 56(3)(e) of the Structures Act

<sup>87</sup> section 56 of the Systems Act

consequences). Such competencies must be in accordance with legislative requirements and/or national guidelines in this regard.

The municipal manager must within a policy framework determined by the municipal council and subject to any applicable legislation, approve a staff establishment for the municipality. He/she must-

- provide a job description for each post on the staff establishment;
- attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and
- establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.<sup>88</sup>

The municipal manager is furthermore responsible for-

- the management, effective utilisation and training of staff which training is done in accordance with the workplace skills plan of the council as annually submitted to it for noting;
- ensuring that his/her performance agreement and those of the section 56 managers are annually completed and signed on the legally required date;
- ensuring that his/her personal development plan and those of the section 56 managers are duly completed and pursued as part of their performance agreements;
- the maintenance of discipline of staff;
- the promotion of sound labour relations and compliance by the municipality with applicable labour legislation

As regards maintenance of discipline and proper conduct of staff, the municipal manager has a specific responsibility. He/she must ensure that the code of conduct for staff<sup>89</sup> is made known to the staff and that their conduct is in conformity with it.

### **3.9.1.6 Advising the political structures and office bearers**

The municipal manager is the chief adviser of the municipality and must advise the political structures and political office bearers of the municipality. To this end the municipal manager must ensure that there are competent and able officials to assist him/her in this task. Where specialised in-house expertise is not available the municipal manager must not be constrained in obtaining external advice. His/her advice is

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<sup>88</sup> section 66 of the Systems Act

<sup>89</sup> section 70 of the Systems Act

imperative for council and its structures and political office bearers to take informed decisions.

The municipal manager must specifically advise the executive mayor and/or the council in writing if a matter under consideration will lead to fruitless, irregular, and wasteful expenditure. If at a council meeting a resolution contrary to the advice of the municipal manager is taken that will lead to irregular expenditure, the municipal manager must request that his/her advice be minuted.

In accordance with the s.79(2)(d) of the Structures Act, the Overstrand Municipal Council may co-opt the municipal manager as an advisory member of the s.79 – read with s.129 of the MFMA – Oversight Committee to further enable him to fulfil his advisory obligations.

### **3.9.1.7 Manage communications**

The municipal manager is responsible for managing communications between the municipality's administration and its political structures and political office bearers. It is realistic to expect that in an organisation, with such divergent interests as the municipality, relationships and the way people interact with each other could be easily affected. All individuals in the organisation need to be drawn towards meeting common goals; this requires leadership and co-ordination and is one of the primary tasks of the municipal manager.

Compliance with the statutory requirement<sup>90</sup>, i.e. that the municipality must define roles and determine the manner of interaction in relationships and the appropriate lines of communication, may assist the municipal manager in the task of managing communications (which is the purpose of this document).

The municipal manager is responsible for all public statements, e.g. to the media, concerning technical and administrative matters while the mayor is responsible for all public statements of a political nature. The municipal manager reports directly to the executive mayor in respect of the communication functions that he/she fulfils.

### **3.9.1.8 Implementing decisions of the political structures and office bearers**

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<sup>90</sup> section 53 of the Systems Act

The municipal manager must see to the carrying out of the decisions of the political structures and political office bearers of the municipality. This duty obviously applies to lawful decisions however, regard must be had to the legal principle that an “unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is as set aside” by a court of law (vide. Oudekraal Estates (Pty) Ltd v. City of Cape Town and Others (41/2003) [2004] ZASCA48; [2004] 3 All SA1 (SCA) (28 May 2004). The municipal manager must of necessity act through the staff or delegate authority to staff to implement decisions.

#### **3.9.1.9 Administer and implement by-laws and other laws**

The municipal manager must administer and implement the municipality’s by-laws, other legislation and national and provincial legislation applicable to the municipality.

(The executive mayor also has a responsibility in this regard; it must review the performance of the municipality in order to improve the implementation of the municipality’s by-laws.<sup>91</sup>)

#### **3.9.1.10 Exercise delegated powers or assigned functions**

The municipal manager is responsible for the exercise of any powers and the performance of any duties delegated by the municipal council, or sub-delegated by other delegating authorities of the municipality, to the municipal manager; also the performance of any other function that may be assigned by the municipal council.

#### **3.9.1.11 Facilitate community participation**

The municipal manager must facilitate participation by the local community in the affairs of the municipality and must also develop and maintain a system whereby community satisfaction with municipal services is assessed. In this respect he/she reports directly to the executive mayor.

(The executive mayor in turn has the duty to-

- annually report on the involvement of communities and community organisations in the affairs of the municipality; and

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<sup>91</sup> section 56(3)(c) of the Structures Act

- ensure that regard is given to public views and report on the effect of consultation on the decisions of the council. <sup>92)</sup>

### **3.9.2 The municipal manager is the accounting officer of the municipality**

As accounting officer of the municipality the municipal manager is responsible and accountable for-

- all income and expenditure of the municipality;
- all assets and the discharge of all liabilities of the municipality;
- the investments of the municipality; and
- proper and diligent compliance with applicable municipal finance management legislation. <sup>93</sup>

The MFMA is the main source of the municipal manager's financial powers, duties and functions. These will be briefly discussed hereafter. References are to provisions of the latest version of the Act. <sup>94</sup> Reference should be made to the Act for a complete exposition of the role of the Municipal Manager.

#### **3.9.2.1 Give guidance (section 60)**

The municipal manager must provide guidance and advice or compliance with the Act to–

- the political structures, political office-bearers and officials of the municipality; and
- any municipal entity under the sole or shared ownership control of the municipality.

#### **3.9.2.2 Fiduciary responsibilities (section 61)**

The accounting officer must act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs.

The accounting officer must disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor.

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<sup>92</sup> section 56(3)(g) and (h) of the Structures Act

<sup>93</sup> section 55(2) of the Systems Act

<sup>94</sup> Act 56/2003

The accounting officer must seek to prevent any prejudice to the financial interests of the municipality.

### **3.9.2.3 General financial management functions (section 62)**

The accounting officer is responsible for the effective, efficient, economical and transparent use of the resources of the municipality.

The accounting officer must keep full and proper records of the financial affairs of the municipality in accordance with any prescribed norms and standards;

The accounting officer must ensure that the municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control and of internal audit.

The accounting officer must take all reasonable steps to prevent unauthorised, irregular, fruitless, and wasteful expenditure and losses resulting from criminal conduct. Also refer to par. 3.9.1.6.

The accounting officer must take effective and appropriate disciplinary steps against any official of the municipality who has allegedly committed an act of financial misconduct.

The accounting officer of a municipality must ensure that the municipality has and implements-

- a tariff policy;
- a rates policy;
- a credit control and debt collection policy; and
- a supply chain management policy

The accounting officer must ensure that the municipality has an investment policy and has the delegated power to make investments on behalf of the municipality within the municipality's investment policy.

The accounting officer must maintain and regularly update the municipality's official website and place on the website-

- annual and adjustments budgets and all budget-related documents;
- policies of the municipality
- annual report, financial statements and audit report;

- performance agreements of the municipal manager and managers that report to him;
- alternative service delivery agreements;
- long-term borrowing contracts;
- procurement contracts above a prescribed value.

The accounting officer is responsible for all bank accounts of the municipality and must account for such bank account.

#### **3.9.2.4 Asset and liability management (section 63)**

The accounting officer is responsible for the management of the assets and the liabilities of the municipality and must-

- introduce a system that accounts for the assets and liabilities of the municipality;
- value the municipality's assets and liabilities; and
- establish and maintain a system of internal control of assets and liabilities, including an asset and liabilities register.

#### **3.9.2.5 Revenue management (section 64)**

The accounting officer is responsible for the management of revenue and must for this purposes –

- ensure that the municipality has proper revenue collection systems;
- on a monthly basis calculate revenue due to the municipality;
- ensure that accounts for property rates and for municipal services provided on credit are prepared on a monthly basis;
- ensure that all money received is promptly deposited into the municipality's bank accounts;
- establish and maintain a management, accounting and information system;
- establish and maintain a system of internal control in respect of debtors and revenue;
- charge interest on arrears; and
- ensure that all revenue received is reconciled at least on a weekly basis.

The accounting officer must inform the National Treasury of any arrear payments for municipal services or rates and taxes due by a national or provincial organ of state.

The accounting officer must ensure that any funds collected on behalf of another organ of state is transferred to that organ of state and that such funds are not used for other purposes than as agreed with the organ of state.

### **3.9.2.6 Expenditure management (section 65)**

The accounting officer is responsible for the management of the expenditure and must for this purpose-

- ensure that the municipality has and maintains a proper system of expenditure control;
- ensure that the municipality has and maintains a management, accounting and information system;
- ensure that the municipality has and maintains a system of internal control in respect of creditors and payments;
- ensure that payments are made directly to whom it is due;
- pay all money owing promptly;
- comply with tax, levy, duty, pension, and other commitments of the municipality as required by legislation;
- manage available working capital effectively and economically;
- implement the municipality's procurement and asset disposal policies in a way that is fair, equitable, transparent, competitive and cost-effective;
- ensure that all accounts of the municipality are closed at the end of each month and reconciled with its records; and
- request a forensic audit if he comes across financial irregularities that warrants such an audit to be done.

### **3.9.2.7 Expenditure on staff benefits (section 66)**

The accounting officer must report to the council on all expenditure incurred by the municipality on staff salaries, wages, allowances and benefits and disclose such expenditure in the municipality's annual report.

### **3.9.2.8 Funds transferred to outside bodies** (section 67)

Before transferring municipal funds to an organisation or body outside any sphere of government (otherwise than in compliance with a commercial or other business transaction) the accounting officer must consider the Municipality's Grant-in-Aid Policy and be satisfied that the organisation or body-

- is able to comply with reporting, financial management and auditing requirements;
- implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement.

### **3.9.2.9 Budget preparation** (section 68)

The accounting officer of a municipality must assist the mayor in performing the budgetary functions assigned to the mayor and provide the mayor with the administrative support, resources and information necessary for the performance of those functions.

### **3.9.2.10 Budget implementation** (section 69)

The accounting officer is responsible for implementing the budget, including taking effective and appropriate steps to ensure that-

- the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the budget and service delivery implementation plan; and
- revenue and expenditure are properly monitored.

When necessary, the accounting officer must prepare an adjustments budget and submit it to the mayor for consideration and tabling in the municipal council.

The accounting officer must shortly after the approval of a budget submit to the mayor-

- the draft service delivery and budget implementation plan; and
- drafts of the annual performance agreements for the municipal manager and all managers directly responsible to the municipal manager.

### 3.9.2.11 Impending shortfalls, overspending and overdrafts (section 70)

The accounting officer of a municipality must report to the municipal council-

- any impending shortfalls in budgeted revenue or overspending of the municipality's budget;
- any overdrafts in a municipality's bank accounts; and
- any steps taken to rectify such shortfalls or overspending.

### 3.9.2.12 Monthly budget reports (section 71)

The accounting officer must each month submit to the mayor and national treasury a report on the state of the budget during that month and during the financial year up to the end of that month. The following matters must be reflected in the report-

- the actual revenue, including any transfers received, from national organs of state in terms of the annual Division of Revenue Act, and from provincial organs of state and other municipalities;
- actual borrowings;
- the actual expenditure, including capital expenditure;
- an explanation of material variances from projected revenue and expenditure and remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the approved budget; and
- a projection of revenue and expenditure for the rest of the financial year, and any revisions from initial projections.

### 3.9.2.13 Other reports (section 68, 69 and 70)

The accounting officer must -

- at mid year submit a performance assessment report to the mayor, national treasury
- the MEC for local government and the national treasury of any failure by the council to adopt or implement a budget-related policy or a procurement or asset disposal policy or any non-compliance by a political structure or office-bearer with any such policy;
- the national treasury, the MEC for local government or the Auditor-General such information, returns, documents, explanations and motivations as may be required.

#### **3.9.2.14 Power to delegate** (section 79)

The accounting officer must develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration.

The accounting officer may, in accordance with that system, delegate any of the powers or duties assigned to an accounting officer in terms of the act to any official of the municipality;

The accounting officer must regularly review delegations and, if necessary, amend or withdraw any of those delegations.

The accounting officer may in certain circumstances authorise sub-delegation.

The accounting officer is not divested of the responsibility concerning the exercise of a delegated power or the performance of a delegated duty.

The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued because of the decision.

### **3.9.3 Other statutory duties, powers and functions**

#### **3.9.3.1 Calls the first meeting of council**

The municipal manager of the municipality must call the first meeting of the council after the council has been declared elected.<sup>95</sup>

#### **3.9.3.2 Presides over election of speaker**

The municipal manager of the municipality presides over the election of a speaker.<sup>96</sup>

#### **3.9.3.3 Appeal authority**

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<sup>95</sup> section 29(2) of the Structures Act

<sup>96</sup> section 36 of the Structures Act

A person, whose rights are affected by a decision taken by a member of staff in terms of a power or duty delegated or sub-delegated to the member of staff, may appeal against that decision to the municipal manager.<sup>97</sup>

The municipal manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued because of the decision.

The municipal manager must also administer the lodging of appeals to other appeal authorities in the municipality. Appeals lodged in terms of the Supply Chain Management Policy / By-law are dealt with in accordance with that policy / by-law.

#### **3.9.3.4 Information Officer**

The municipal manager is the Information officer of the municipality in terms of the Promotion of Access to Information Act, and performs all the functions and exercises all the duties attached to that position. The municipal manager is responsible for all public statements, i.e. to the media, concerning technical and administrative matters.

#### **3.9.4 Other Roles**

##### **3.9.4.1 Legal Business**

The municipality as a complex structure operates in turn in a complex legal environment. This may involve claims by or against it for damages, payments or enforcement of rights, or the necessity to comply with a statutory provision, or to conclude relationships by way of contract and the management of those relationships.

It is the responsibility of the municipal manager to ensure that the legal interests of the municipality are best protected at all times by inter alia suing, defending or settling disputes, ensuring compliance with statutory or other provisions, concluding agreements in the best interests of council and managing the relationships in terms thereof thereafter.

##### **3.9.4.2 Intergovernmental relations**

The municipal manager must pursue the constitutional obligation to practise co-operative government by inter alia maintaining relationships with municipal managers and administrations of other municipalities, serving on and attending

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<sup>97</sup> section 62 of the Systems Act

meetings/conferences etc. of inter alia municipal managers' forums, professional bodies, etc. In addition, the municipal manager is responsible for providing technical support and advice to representatives of the council who attends intergovernmental forums and he represents the council on intergovernmental forums where appropriate. In respect of intergovernmental relations, the municipal manager reports directly to the executive mayor.

The municipal manager should also where possible and time allows co-operate in achieving the objectives of the 5-year strategic framework by making himself available to strengthen and support local government in general (e.g. serve on investigation teams in terms of Section 139 of the Constitution etc.)

#### **3.9.4.3 Labour Relations**

The municipal manager must manage relationships with unions and individual employees to promote labour peace.

#### **3.9.4.4 Special Programmes**

The municipal manager has managerial responsibility over directors responsible for special programmes pertaining to the youth, women, disabled, aged, children and HIV/Aids who report directly to the executive mayor in respect of these.

## CHAPTER 4

### RELATIONSHIPS, ACCOUNTABILITY AND INTERACTION

The political system of local government in South Africa draws a number of powerful bodies and individuals together in a union, with one goal in mind, i.e. to provide good, effective and accountable government to the community. Role players may have specific conferred powers, different mandates from their peers, or even divergent personal views. And then there is the community with its many needs, all in all, a recipe for differences to surface. Relationships are formed whenever these role players interact with each other, ranging from the formal meeting of council to the simple conveyance of a resident's complaint.

Only the most important interactions, lines of accountability and lines of reporting are discussed.

#### 4.1. Council/councillor

This relationship between the collective body and its member is generally one of ethics. A councillor must perform the functions of office in good faith, honestly and a transparent manner and at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. If a councillor is in breach of the code the council, after due process, has to consider whether to take action and, where appropriate, to impose a sanction.

The individual councillor's relation with the council in this regard is usually revealed in his/her association with the council's chairperson, i.e. the speaker.

The municipal councillor is accountable to the municipal council. The ward councillor as chairperson of a ward committee reports to the council and is accountable to council and the residents of the ward.

#### 4.2. Speaker/Council/Councillors

The speaker is the chairperson of the council and as such is empowered to dictate proceedings at council meetings, subject however to the rules of order, common law and constitutional dictates. Councillors must comply with the speaker's rulings or face the consequences.

Whenever the speaker enforces the code of conduct he/she must act in accordance with the rules of natural justice. A councillor who is the subject of an investigation must respect the position of the speaker and adhere to all lawful requests, subject however to specific individual rights.

The speaker is accountable to and reports to the municipal council.

#### 4.3. **Speaker/Mayor/Chief Whip (Latter is not applicable)**

In the municipal council meeting the executive mayor submits his/her recommendations, including the reports from the portfolio committees, argues, and substantiates his/her recommendations. The speaker chairs the meetings of the municipal council and the mayor is subject to the speaker's control of the meeting. In the meeting of the municipal council, the chief whip has no role but, if in accordance with the rules of order, a majority party caucus is called during a municipal council meeting, the chief whip controls the caucus meeting as chairperson of the majority party. **(Currently not applicable.)**

#### 4.4. **Speaker/Mayor/Council**

Although the mayor may be the leader of the municipality, the speaker is the dominant figure in the council meetings. In council meetings the mayor has the right to present the reports of the mayoral committee and the portfolio committees. In doing so he represents the executive in reporting to the legislative body and may defend his/her exercise of his/her delegated powers.

Outside the council chamber the mayor is the dominant figure and he is, together with the municipal manager, at the helm of the daily governance issues.

The two positions are complementary to each other and incumbents should strive to work together.

#### 4.5. **Council/Municipal Manager**

The council as decision-making body must heed the advice of the municipal manager. Good reasons will have to be offered whenever his/her advice is not followed, especially with regard to questions of lawfulness and financial competency. In certain circumstances the municipal manager is obliged to report such action to other authorities.

The municipal manager is appointed by and accountable to council for the performance of the functions entrusted to him/her in terms of statute, law and their contractual arrangement. He/she must be allowed to perform these functions without any interference and with reasonable support. The council, on the other hand, must consider whether the municipal manager's performance meets the required expectations.

The municipal manager's performance is assessed on a quarterly basis as determined by regulations in terms of the Systems Act by an assessment panel that must include the mayor, a ward committee member as nominated by the mayor and the portfolio committee chairpersons. As per the regulations, other panel members must be the chairperson of the council's performance audit committee (or the audit committee in the absence of a performance audit committee) and the mayor and/or the municipal manager of another municipality.

The municipal manager is accountable to council but reports to the executive mayor.

#### **4.6. Speaker/Municipal Manager**

The speaker must convene meetings of the council and can only do so with the support of the municipal manager and dedicated staff. This also applies to arrangements at the meeting place, the compiling of agendas and recording of minutes. Unless the speaker and municipal manager co-ordinate their respective actions council meetings may well be frustrated.

When the speaker acts as appeal authority the municipal manager must ensure that designated officials properly manage the proceedings. The municipal manager must also provide the logistical support whenever the speaker has to enforce the provisions of the Code of Conduct.

#### **4.7. Executive Mayor/Municipal Manager**

The relationship between the executive mayor and the municipal manager is important for the effective performance of the municipality. It is also a complex relationship, mainly because connection between their respective functions which often reflect two sides of one coin, i.e. the mayor as head of the executive leadership and the municipal manager as the 'head of the administration'. Likewise, the municipal manager's duty and power to 'form and develop an administration' and the mayor's duty to 'monitor the

administration' should not be seen as opposing functions; the two should work together to ensure an effective and efficient but also accountable administration.

The municipal manager, mayor and speaker must co-ordinate their respective actions to ensure that matters for council are presented for consideration and decisions are executed as fast as possible.

When the executive mayor acts as appeal authority the municipal manager must ensure that designated officials properly manage the proceedings.

The municipal manager reports to the executive mayor but is accountable to council.

#### **4.8. Councillor/Municipal Manager/Staff members**

The individual councillor is on the forefront of contact with the community and is constantly confronted with complaints about service delivery and other requests for assistance.

Should an individual councillor need to express a concern regarding an emergency, hazardous situation or disaster, he/she can report the matter directly in writing to the head of the respective department dealing with it but must also ensure that it is reported either by him/herself or the relevant head to the mayor and the municipal manager including the manner in which it was dealt with. Such reporting is necessary to keep the mayor (guardian of the public's right to be heard) informed and to enable the municipal manager to keep a record thereof for determining problem areas and trends.

A councillor acting as an individual may address a matter concerning an existing or proposed policy by way of submitting a motion in regard thereto to the municipal council in accordance with the standing orders of the municipal council.

Councillors may submit inputs regarding any matters related to long term planning and development of the municipality through the IDP process. To ensure community involvement with regards to development projects, the municipal manager must communicate with the ward councillor and ward committee of the ward concerned and assists to set up a steering committee for the project. In respect of smaller projects some of which are the responsibility of national and provincial departments, the municipal manager brings any relevant matter directly to the attention of the ward councillor.

Staff members who wish to interact with individual councillors must follow the line functions and do so through his/her head of department and thereafter the director, who will in turn interact with the municipal manager.

#### **4.9 Proportional Representation Councillors/Ward Councillors**

Within the ward committee, the ward councillor is the head and chairperson of the committee who reports to the speaker.

In the absence of the ward councillor, a proportional representation councillor may, upon request of a ward councillor, chair the meeting. Should the ward councillor and a proportional representation councillor both be absent, arrangements must be made through the Speaker for a councillor to chair the meeting.

#### **4.10 Ward Committee/Municipal Manager**

The ward committee could have direct contact with the administration or other structures and political office bearers on operational issues. These committees should preferably at all times act through their chairperson, the ward councillor and the area managers on strategic issues.

Ward councillors are not legally accountable to their ward committee – they are accountable to council, their party and the community.

A ward committee makes recommendations on any matter affecting its ward to its ward councillor who communicates the recommendations of the ward committee to the speaker's office. If there are matters to be dealt with by the administration, the municipal manager, in his/her discretion, decides where to direct the matter. The matter is dealt with in the department and reported on to the relevant portfolio committee. If so required, the matter is further dealt with in the executive mayor and, if need be, referred to the municipal council from where feedback is given to the particular ward committee/s by the ward councillor.

## CHAPTER 5

### DISPUTES

Section 53(5) requires the municipality to determine mechanisms, processes and procedures for resolving disputes between political structures, political office bearers and the municipal manager.

The process reflected in this document of defining roles and creating channels of communication and reporting lines may limit the potential for dispute but in practice, it is possible that disputes will arise which are not capable of being resolved in an informal manner.

Many disputes arise because of a failure of proper communication between and amongst parties. All political office bearers and the municipal manager commit to communicate continuously with each other to ensure a flow of information designed to minimise the possibility for dispute.

In the event of a dispute arising, the parties to that dispute commit to meet in private in order to air the issues between them and attempt to find a resolution.

The parties should, where appropriate, make use of a facilitator acceptable to both parties to assist in the process of communication.

If the dispute concerns a matter which should be addressed in a policy or is already addressed in a policy but is interpreted differently or not addressed appropriately thus leaving grey areas, the first important resolving step should be to either develop a policy or to revisit and revise the existing policy as a means to resolve the dispute.

Should the dispute continue, it will be referred to the Municipal Manager if he is not a party thereto.

Disputes which thereafter remain, should in the case of political office bearers, be referred to the speaker for determination of whether the dispute must be resolved at a municipal level or a political party level. If at municipal level, the dispute must be referred to the executive mayor for determination. The speaker may, in consultation with the Municipal Manager, call for an authoritative legal opinion on the matter.

If a dispute develops between the municipal council and the municipal manager over the lawfulness of a municipal council decision, a legal opinion must be requested from an advocate acting as an advisor to the municipal council and, if possible, an internal

adjudication based on the advocate's opinion must be done. In case of the dispute concerning a highly technical or specialist area, which requires the advice of an external specialist, the mayor or the advocate, may request such an opinion from a person both parties agree to.

Should an individual councillor have a difference of opinion or be involved in a dispute with a staff member of the municipality, the councillor must approach the executive mayor who must then take the matter up with the municipal manager who will attempt to find a resolution to the dispute with the mayor.

If the dispute involves a political office bearer and the municipal manager, and remains unresolved after the above private process, then the following formal process should ensue:

- The offended party declares a dispute in writing to the other party;
- The parties thereafter meet within 5 (five) working days at an agreed time and venue to discuss the issue in private;
- If the private meeting fails to yield results, the matter will be referred to the speaker who may be assisted by a specialist in an attempt to resolve the dispute at which meeting the political office bearer and the municipal manager will each be afforded a fair opportunity to state his/her case including the submission of supporting documentation;

If any of the abovementioned disputes remain unresolved after following the prescribed process, the chairperson of the Cape Bar Council in Cape Town will be forthwith requested to appoint a senior advocate to arbitrate the matter within 20 working days of his/her appointment and whose arbitration decision will be final and binding on the parties concerned.

The parties involved will personally present their own cases but if, for whatever reason, a party to the dispute obtains legal assistance at the cost of the Municipality in terms of its legal assistance policy developed in terms of s109A of the Systems Act, then the other party will be entitled to similar assistance.

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