

TSWELOPELE LOCAL MUNICIPALITY

DELEGATION OF POWERS POLICY AND PRINCIPLES OF DELEGATION

1. Definitions

1.1 In this document, unless the context otherwise indicates -

- (a) “**accounting officer**” means the Municipal Manager;
- (b) “**administration**” means the Municipal Manager and the other employees of the Municipality;
- (c) “**after consultation**” means with due regard for the views of any person with whom a delegated body is required to consult before he / she exercises a delegated or sub-delegated power;
- (d) “**Chief Financial Officer**” means the person designated by the Municipal Manager as the Chief Financial Officer for the Municipality;
- (e) “**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
- (f) “**Council**” means the Municipal Council of the Tswelopele Local Municipality, its legal successors in title and its delegates;
- (g) “**delegating authority**”, in relation to the delegation of a power by –
 - (i) the Council, means the Council;
 - (ii) the Executive Committee, means the Executive Committee;
 - (iii) the Municipal Manager, means the Municipal Manager; and
 - (iv) in relation to a sub-delegation of a power by a delegated body, means that delegated body;
- (h) “**delegation**” means the authorisation of a delegated body by a delegating authority to act in its or his/her stead, and in relation to a power, includes an instruction to exercise the power, and “**delegate**” has a corresponding meaning;
- (i) “**delegated body**” in relation to the delegation of a power means the political structure, political office-bearer or employee of the Municipality to whom a power has been delegated in writing by the delegating authority;
- (j) “**in consultation**” means with the concurrence of the person with whom a delegated body must consult before exercising a delegated or sub-delegated power;
- (k) “**MFMA**” means the Local Government: Municipal Finance Management Act, 2003

(Act 56 of 2003);

- (l) “**power**” includes a duty and a function;
- (m) “**political office-bearer**”, in relation to the Municipality, means the Speaker and the members of the Executive Committee elected by the Council in accordance with the provisions of the Structures Act;
- (n) “**political structure**”, in relation to the Municipality, means the Council or any committee or other collective structure of the Municipality elected, designated or appointed in accordance with the provisions of legislation;
- (o) “**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
- (p) “**Systems Act**” means the Local Government: Municipal Systems Act 2000 (Act N 32 of 2000);

1.2 In this document, unless the context otherwise indicates, words and expressions denoting –

- (a) the singular includes the plural and vice versa;
- (b) a reference to a natural person shall include a legal person and vice versa.

2. Powers of the Municipality

- 2.1 The Municipality has all the powers assigned to it in terms of the Constitution as well as national and provincial legislation. The Municipality has the right to do anything reasonably necessary for, or incidental to, the effective exercise of its powers.
- 2.2 The executive and legislative authority of the Municipality vest in the Council. The Council takes all the decisions of the Municipality except -
 - (a) decisions on those matters that it has delegated to a delegated body;
 - (b) decisions on those matters that by law have been assigned to a political structure, political office-bearer or employee of the Council.
- 2.3 The Council may exercise executive and legislative authority within the municipal area only. The Council may, by written agreement with another Municipality, exercise executive authority in the area of that other Municipality.
- 2.4 All the powers of the Municipality that have not been reserved for the Council, or that have not expressly been delegated to a political structure, political office-bearer or employee of the Council are delegated to the Executive Committee.

3. Objectives of delegation

The objectives of this system of delegation are –

- (a) to ensure maximum administrative and operational efficiency;
- (b) to provide for adequate checks and balances;
- (c) to delegate decision-making to the most effective level within the administration;
- (d) to involve employees in management decision-making as far as practicable;
- (e) to promote a sense of collective responsibility for performance;
- (f) to assign clear duties for the management and co-ordination of administrative components, systems and mechanisms;
- (g) to define in precise terms the duties of each political structure and political office bearer;
and
- (h) to determine the relationships amongst the political structures, political office bearers and the administration, and the appropriate lines of accountability and reporting for each of them.

4. Roles and responsibilities of political office-bearers, political structures and the Municipal Manager

4.1 The specific roles and areas of responsibility of each political office-bearer, political structure and the Municipal Manager are defined to ensure –

- (a) sound relationships and interaction between these bodies and persons;
- (b) appropriate lines of accountability and reporting for these bodies and persons;
- (c) that unnecessary overlapping of responsibilities between these bodies and persons are prevented or kept to the minimum;
- (d) that disputes that may arise between these bodies and persons, are resolved amicable and timely; and
- (e) good interaction between these bodies and persons, and other councillors and employees of the Council.

4.2 The Mayor –

- (a) must ensure, in consultation with the Municipal Manager, that a proper committee service responsible for the agenda and minutes is in place for each such committee, that any such committee meets regularly and submits reports to him / her timely;

- (b) is responsible for the quality and speed of decision-making in the Executive- and section 80-committees;
- (c) plays a prominent role, in consultation with the Municipal Manager, in building, maintaining and enhancing a good relationship between the Council, councillors and the administration;
- (d) is responsible for liaison with the community, community organisations and councillors and political office-bearers in the different spheres of government; and
- (e) should be available on a regular basis to interview the public and visitors to the municipal offices and to interact with prominent business people as well as developers.

4.3 The Speaker -

- (a) must ensure that the Council and committee meetings are conducted in an orderly manner;
- (b) must enforce the Council's rules and orders and the code of conduct for councillors;
- (c) must liaise closely with the committee service responsible for the agenda and minutes of each Council meeting, in consultation with the Mayor and Municipal Manager;
- (d) must co-ordinate the arrangements regarding venues and dates for meetings and the circulation of agendas and minutes of all the meetings of the Council; and
- (e) must liaise with councillors, as well as members of the public and media who attend Council meetings, regarding proper conduct during such meetings to ensure compliance with Council's rules and orders.

4.4 The Executive Committee -

- (a) consists of councillors elected by the Council;
- (b) is composed in such a way that parties and interests represented in the Council are represented in the Executive Committee in substantially the same proportion they are represented in the Council;
- (c) is the principal committee of the Council;
- (d) is the committee of the Council which receives reports from section 80-committees and which must forward these reports together with its recommendations to the Council when it cannot dispose of the matters addressed in those reports in terms of its delegated powers;
- (e) receives reports with recommendations from departmental heads through the office of the Municipal Manager on all matters that must be handled by either the

Executive Committee or the Council in terms of these delegations and for which a specific committee has not been created to consider the matter beforehand;

- (f) must consider the matters raised in such reports and must either dispose of them in terms of its delegated powers, or must forward them with its recommendation to the Council for consideration; and
- (g) must ensure that integration between the various committees take place.

4.5 Section 80-committees -

- (a) consist of councillors appointed by the Council;
- (b) are established to assist the Executive Committee;
- (c) are chaired by a member of the Executive Committee appointed by the Executive Committee; and
- (d) report and is accountable to the Executive Committee in accordance with the directions of the Executive Committee.

4.6 Section 79-committees -

- (a) consist of councillors appointed by the Council and such co-opted persons who are not councillors as the Council may empower a particular committee to appoint;
- (b) may receive specific responsibilities and delegated powers from the Council, which must be exercised strictly in accordance with the conditions and limitations of delegation, if any; and
- (c) report and is directly accountable to the Council in accordance with the directives of the Council.

4.7 The Municipal Manager-

- (a) is the head of the administration and is responsible for the effective day to day management of the administration of the Municipality;
- (b) is responsible for the execution of resolutions taken by the Council, the Executive Committee and any delegated body;
- (c) plays a prominent role, together with the Speaker and the Mayor, in building, maintaining and enhancing sound relationships between the Council, councillors and the administration;
- (d) must ensure, after consultation with the Mayor and Speaker, that a proper and effective committee service responsible for agendas and minutes is in place for each of the committees, that the committees meet on a regular basis and submit reports to the Executive Committee timely; and

- (e) receives reports with recommendations from the departmental heads on all matters that must be considered by either the Executive Committee or the Council in terms of this policy. Those matters, for which specific committees have been established to consider the matters, are referred to such committees for consideration and report. Those matters, for which a specific committee has not been established, are referred to the Executive Committee for consideration.

5. Principles, conditions and limitations on delegated powers

5.1 A delegation of a power to a delegated body –

- (a) must not conflict with the Constitution, or any other law;
- (b) must be in writing under signature of the delegating authority, provided that in the case of a delegation by the Council or the Executive Committee it shall be sufficient for the resolution delegating the power to be certified by the Speaker (in the case of council resolutions) or the Mayor in any other case;
- (c) may at any time be withdrawn by the delegating authority in writing;
- (d) may include the authority to sub-delegate a delegated power;
- (e) does not divest the delegating authority of the responsibility concerning the exercising of the power;
- (f) must be reviewed when a new Council is elected;
- (g) is subject to the limitations, conditions and directions imposed by the delegating authority; and
- (h) includes any power reasonably necessary for, or incidental to, the delegated power.

5.2 An employee who has been delegated a power by a delegating authority may act thereon through any employee under his/her control.

5.3 The following conditions and limitations apply to any power that had been delegated by a delegating authority or sub-delegated by a delegated body-

- (a) The delegated body must give effect to the policies of the Municipality as approved from time to time by the Council.
- (b) The delegated body may at any time decide not to exercise the delegated power, but to submit it to the delegating authority for decision. In such event the delegated body must submit its report and recommendations on the matter to the delegating authority for consideration.
- (c) The delegating authority may at any time instruct the delegated body not to act on a delegated power in relation to a specific matter, but to submit the matter to it for decision and execution. In such an event the delegated body must submit its report and recommendations on the matter to the delegating authority.

- (d) A delegated body may not incur expenditure in the exercising of a delegated power –
 - (i) that had not been provided for in the approved budget; or
 - (ii) in excess of any provision made in the approved budget.
- (i) A delegated power must be exercised in a lawful manner.
- (j) A decision taken by a delegated body in the exercise of the Municipality's executive authority must be in writing.
- (k) A delegation contained in this register does not affect the exercise, performance or discharge of any power, function or duty assigned in terms of a service delivery agreement by a service provider.

5.4 The conditions stated above do not necessarily include all the prescripts, conditions and limitations contained in the relevant legislation; nor do the conditions contained in this document exempt a delegated body from complying with such conditions. Every delegated body and delegating authority must still comply with any conditions and prescripts that may be contained in legislation and that are not contained in this document.

6. Appeal against, and review of, decisions taken in terms of delegated powers

- 6.1 A person, whose rights are affected by a decision taken by a delegated body, may appeal against that decision by giving written notice and reasons for the appeal to the Municipal Manager within 21 days of the date of the notification of the decision.
- 6.2 The Municipal Manager must promptly submit any appeal that she / he may receive to the appropriate appeal authority that must decide the appeal in the manner and within the time set out in the Systems Act.
- 6.3 A delegated body must report to the delegating authority at such intervals as the delegating authority may require on all decisions taken in terms of that delegated or sub-delegated power since the last report.
- 6.4 The delegating authority may review and set aside a decision made by a delegated body under its delegated powers, provided that due regard must be had for any rights that may have accrued as a result of the decision of the delegated body.

7. Withdrawal of delegated powers and review of delegation system

- 7.1 With due regard for the objectives of the system of delegation set out above, a delegating authority may at any time, in writing, withdraw or amend or impose new conditions and limitations on a delegated power.
- 7.2 The withdrawal, amendment or lapse of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation before such withdrawal, amendment or lapse.
- 7.3 Whenever it becomes necessary to review the Municipality's delegations of powers, the Municipal Manager must submit a report on the existing delegations with recommendations

on any changes thereto which she / he may consider necessary, to the Council through the Executive Committee.

8. Provisions relating to delegation of powers conferred in terms of the Local Government: Municipal Finance Management Act 2003 (Act No 56 of 2003)

8.1 At the time of preparing these delegated powers, the Local Government: Municipal Finance Management Act 2003 (Act No 56 of 2003) (the MFMA) was not fully in operation yet. This document nevertheless contains delegation of powers conferred in terms of those sections of the MFMA that did not come into operation on 1 July 2004 in anticipation of their coming into operation.

8.2 In terms of Government Notice No 773 of 1 July 2004 the Minister of Finance exempted municipalities from certain provisions of the MFMA and delayed the implementation of certain provisions of the MFMA according to the capacity of a municipality. The delegated powers contained in this document do not take such exemptions and delays into consideration.

Council's power to delegate

8.3 The MFMA does not incorporate a provision empowering the Council to delegate any of the powers, duties and functions vested in it in terms of the MFMA to another political structure, political office-bearer or an official of the municipality. However, the Council may affect such delegations in terms of section 59 of the Systems Act which requires a council to develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances. It further authorises a council to delegate appropriate powers, to any of the municipality's other political structures, political office-bearers, councillors or staff members, excluding –

- (a) a power mentioned in section 160(2) of the Constitution, namely the power to –
 - (i) pass by-laws;
 - (ii) approve budgets;
 - (iii) impose rates and other taxes, levies and duties; and
 - (iv) raise loans;
- (b) the power to set tariffs;
- (c) the power to decide to enter into a service delivery agreement in terms of section 76(b) of the Systems Act; and
- (d) the power to approve or amend the Municipality's integrated development plan.

Mayor's power to delegate

8.4 The MFMA consistently refer to the “mayor” as the key political office-bearer in the municipal financial management process. Section 1 of the MFMA defines “mayor” as follows –

“... in relation to ... a municipality with an executive committee, means the councillor elected as the mayor of the municipality ...”

However, section 58 of the MFMA contradicts the definition. Section 58 states as follows:

“The powers and functions assigned by this Act to a mayor must, in the case of a municipality which has an executive committee referred to in section 43 of the Municipal Structures Act, be exercised by the mayor in consultation with the executive committee”.

It is difficult to conceive a situation where the Mayor must act with the concurrence (which is what the expression "in consultation with" means) of a body of which she / he is a member.

8.5 In terms of section 59(1)(b) of the MFMA the Council may delegate the powers conferred upon the Mayor to another member of the Executive Committee. The Council may, however, not delegate powers vested in the Mayor to a person (whether a councillor or official) other than a member of the Executive Committee. The approach taken in these delegated powers is that the Council delegates its power to delegate to the Mayor.

8.6 A delegation by the Mayor –

- (a) must be in writing;
- (b) is subject to any limitations or conditions that the Mayor may impose; and
- (c) does not divest the Mayor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

8.7 The Mayor may confirm, vary or revoke any decision taken in consequence of a power delegated by it but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Municipal Manager's power to delegate

8.8 In terms of section 79 of the MFMA the Municipal Manager must, for the proper application of the MFMA in the Municipality's administration, develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the financial administration. The Municipal Manager may, in accordance with the system of delegation, delegate to a member of the Municipality's top management (i.e. the Municipal Manager, the Chief Financial Officer, all directors who are responsible for managing the respective votes of the Municipality and to whom the Municipal Manager has delegated powers and duties for this purpose and any other senior officials designated by the Municipal Manager) and any other official of the Municipality -

- (a) any of the powers or duties assigned to an accounting officer in terms of the MFMA; and
- (b) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or

appropriate steps to ensure the achievement of the aims of a specific provision of the MFMA.

8.9 The Municipal Manager –

- (a) must regularly review delegations he / she issued and, if necessary, must amend or withdraw any of those delegations; and
- (b) may not delegate a power, function or duty assigned to him / her in terms of the MFMA to any political structure or political office-bearer of the Municipality.

8.10 A delegation by the Municipal Manager -

- (a) must be in writing;
- (b) is subject to such limitations and conditions as the Municipal Manager may impose in a specific case;
- (c) may either be made to a specific individual or to the holder of a specific post in the Municipality;
- (d) may, in the case of a delegation to a member of the Municipality's top management authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and
- (e) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

8.11 The Municipal Manager may confirm, vary or revoke any decision taken in consequence of a delegation of a power by him / her or a sub-delegation, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Chief Financial Officer's power to delegate

8.12 The Chief Financial Officer may, in terms of section 82 of the MFMA, delegate any of the following duties conferred upon him / her–

- (a) advising the Municipal Manager on the exercise of powers and duties assigned to the accounting officer in terms of the MFMA; and
- (b) advising directors and other senior officials in the exercise of powers and duties assigned to them in terms of section 78 of the MFMA or delegated to them by the Municipal Manager.

8.13 The Chief Financial Officer may sub-delegate any duties related to budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties delegated to him / her by the Municipal Manager in terms of the MFMA.

- 8.14 A delegation or sub-delegation by the Chief Financial Officer may only be made –
- (a) to an official in the Budget and Treasury Office;
 - (b) to the holder of a specific post in that Office;
 - (c) with the concurrence of the Municipal Manager to any other official of the Municipality; or
 - (d) with the concurrence of the Municipal Manager to any person contracted by the Municipality for the work of the Budget and Treasury Office, provided that a sub-delegation to such a person may only be made if the Chief Financial Officer is satisfied that effective systems and procedures are in place to ensure control and accountability.
- 8.15 A delegation or sub-delegation by the Chief Financial Officer –
- (a) must be in writing;
 - (b) is subject to such limitations or conditions as he / she may impose; and
 - (c) does not divest him / her of the responsibility concerning the delegated or sub-delegated duty.
- 8.16 The Chief Financial Officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation by him / her but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.