



COUNCIL DECISION CIRCULAR : MEETING HELD ON 2024-06-28

TO ALL DEPUTY CITY MANAGERS AND HEADS:

Attached please find decisions adopted by the Council at its meeting held on 2024-06-28, a continuation of the Council meeting adjourned Tuesday, 25 June 2024.

Deputy City Managers and Heads are kindly requested to facilitate implementation of the decisions impacting their Clusters and Units within the applicable timeframes.

Kindly note that the word "**ADOPTED**" marked in bold at the end of the recommendation confirms that the item has been approved by Council and is ready for implementation. Other relevant status will be reflected at the end of the recommendation to indicate the position taken by Council on a particular item.

Should further information be required on any item on the Council agenda, kindly contact:

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3. **THIRD REPORT OF THE EXECUTIVE COMMITTEE: MEETING HELD MONDAY 2024-06-24**

1. **APPROVAL OF THE REVISED 2024-2025 MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK (21/5/1)**

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The Committee noted a statutory requirement to review the Municipal Spatial Development Framework (SDF) on an annual basis. The SDF is a key land use management tool which informs strategic choices and interventions, especially regarding the future growth and development within the Municipality. This has an important role to play in guiding and managing Municipal decisions relating to the use, development and planning of land. It is a legislative requirement and should resonate with the national and provincial Spatial Development Frameworks and priorities.

In noting the necessary compliance requirements,

COMMITTEE RECOMMENDS:

- 1.1 That the revised Municipal Spatial Development Framework (SDF) 2024-2025, submitted in line with the requirements of the Local Government: Municipal Systems Act No. 32 of 2000, and the Spatial Planning and Land Use Management Act 16 of 2013, be adopted, it being recorded that the public and stakeholder comments have been taken into account when finalising the Spatial Development Framework.
- 1.2 That, it be noted that upon adoption by the Council, the revised Municipal SDF 2024-2025 will be submitted to the MEC for Cooperative Governance and Traditional Affairs, and a notice of the Council resolution to adopt same will be placed in the KZN Provincial Gazette, in terms of Section 20(1) of the Spatial Planning and Land Use Management Act No. 16 of 2013, in fulfilment of the legislative requirements.

ADOPTED.

With a comment that consideration be given to prioritizing land use for establishments and/or facilities promoting social and moral regeneration, including religious sites; drugs rehabilitation centres; old age homes etc.

2. **NOTING REASONS FOR PROPOSED AMENDMENT TO THE SCOPE OF CONTRACT WS.7377, IN TERMS OF SECTION 116 (3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003, TO INCLUDE KWADABEKA & KLAARWATER COMMUNITY RESIDENTIAL UNITS (24/3/6)**

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The Cleansing and Solid Waste Unit is currently facing difficulties in maintaining cleanliness within the two (02) Community Residential Units (CRUs), Klaarwater and KwaDabeka. This is due to contract expiry. In order to ensure uninterrupted service delivery to the communities affected, the Unit opted to utilize its internal resources and engaged beneficiaries of the Expanded Public Works Programme.

However, this arrangement resulted in a significant increase in overtime costs, which ultimately became unsustainable. The Cleansing and Solid Waste Unit has Contract WS.7377 in place for domestic service, refuse collection, streets cleaning and litter picking within the eThekweni Municipal area.

This contract also covers the Inner-West Region. Therefore, it is considered to make economic sense to engage and amend its scope to cover the KwaDabeka and the Klaarwater CRUs.

It is against this background that a submission is made advising of the intention to amend Contract WS.7377, in terms of Section 116(3) of the MFMA to amend the scope of contract to include the two CRUs in question.

Accordingly,

COMMITTEE RECOMMENDS:

- 2.1 That Council notes the intention to use Section 116(3) of the Municipal Finance Management Act (MFMA) to amend the scope of the existing Contract WS.7377 for domestic service, refuse collection, streets cleaning and litter picking within the eThekweni Municipal area, to incorporate servicing of Klaarwater and KwaDabeka Community Residential Units (CRUs) for the remaining period until the contract expiry on 30 June 2026, in view of the service in the aforesaid CRUs halted due to contract expiry and, as part of overtime costs management in relation to internal resources that were utilised as an interim arrangement.
- 2.2 That Council notes the intention to amend the Contract referred to in .1 above was advertised accordingly, to solicit the views of the public, in line with the statutory requirements, and there were no objections received in this regard.
- 2.3 That Council notes that the contract authority of R102 024 890.97 (One Hundred and Two Million and Twenty Four Thousand Eight Hundred and Ninety Rand Ninety Seven Cents), excluding VAT, has increased by R18 323 393.90 (Eighteen Million Three Hundred and Twenty Three Thousand Three Hundred and Ninety Three Rand Ninety Cents), excluding VAT, to a total revised contract authority of R120 348 284.80 (One Hundred and Twenty Million Three Hundred and Forty Eight Thousand Two Hundred and Eighty Four Rand Eighty Cents), excluding VAT.

Financial Implications (Excluding VAT):

The authorized contract value is as follows:

Contract No.	Original Contract Authority (excl. VAT)	Contingencies and Escalation (excl. VAT)	Original Contract Period	Additional Authority Required (excl. VAT)	Revised Contract Authority (excl. VAT)
WS.7377	R88 717 296.48	R13 307 594.49	2023-07-01 to 2026-06-31	R18 323 393.90	R120 348 284. 80

- (i) The total additional authority value is 18% above the original estimate.
- (ii) Required Additional Authority Amount: R18 323 393.90 (Excl. VAT)
- (iii) FC NUMBER is 322-366-066
- (iv) The Unit has sufficient budget to cover the additional costs in:
- (v) (Vote No: 79630.10810.11.11300. 0000.MRC01.0010.

NOTED.

On the basis that the Cleansing and Solid Waste Unit implements an empowerment programme to inculcate in the Community Residential Units residents a sense of caring for their environment thereby maintaining general cleanliness, in addition to the cleaning services to be rendered by the aforesaid Unit.

3. ADOPTION OF THE REVISED ETHEKWINI MUNICIPAL LAND USE SCHEME
COMPRISING FIVE SUB-SCHEMES: CENTRAL, NORTH, SOUTH, INNER
WEST AND OUTER WEST (21/7/R)

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The Annual Land Use Scheme review seeks to respond to planning trends highlighted during the year that need to be included to keep the scheme relevant and also to incorporate recommendations arising from the planning projects undertaken.

The Land Use Scheme under discussion has been amended to incorporate the categories outlined below:

A: Updating Land Use Definitions:

Truck Depot and Truck Stop

The amendment is necessary to provide a clear understanding of land uses that are permitted within these definitions especially, regarding freight vehicles. The City is currently experiencing backlogs and traffic congestion within areas such as Durban Harbor, Cato Ridge, Shongweni, Pinetown and Durban South. The amendment will permit truck staging areas, inclusive of stuffing and destuffing of goods, and allied uses, to reduce the congestion on the main transportation routes, this being along M4, M7, M19, N3 and N2 Provincial and National corridors.

B: Streamlining Processes:

This is to determine an approach to permit an increase in Floor Area, Coverage and Height and Amendment to Telecommunication Infrastructure (Cell Mast applications). The purpose of the amendment is to provide a clear understanding of how to apply for an increase in Floor Area, Coverage and Height or a combination, inclusive of the calculations that are required, to accommodate roof top antennae.

This will simplify the approval process while still complying with legislation for Telecommunication Infrastructure (cell masts applications) and the Provincial Norms and Standards.

C: Promoting Local Economic Development:

Health and Beauty Clinic:

This proposed amendment to the Scheme is in response to local economic and land uses trends. Currently a Health and Beauty Clinic is only by Special Consent, but many are small operations that can be classified as Home Businesses, which only require Consent.

The Scheme will be amended to permit the owner or occupier of a Dwelling House to operate a Health and Beauty in three different formats with regards to the size of the operation as the current provision is not flexible. This in turn will promote employment opportunities for the operator and public and promote local economic development.

D: Implementing of Local Area Plans:

This review to cater for Brickfield, Sparks and Randles Project. This an area that has been under development pressure for the past 15-20 years, especially within the mixed use and medical precinct. The amendment is necessary to provide for developments rights to be updated and increase to permit a mix of land-uses, promote greater employment opportunities and generate a higher rates base for the City. This would make this precinct more responsive to the demand and become sustainable.

The Committee appreciated proactive measures to facilitate appropriate development and strategically growing the Municipality to realise its vision of becoming a caring City.

On this basis,

COMMITTEE RECOMMENDS:

- 3.1 That in terms of Section 19 of the eThekweni Municipality Planning and Land Use Management Second Amendment By-Law, 2021 (Notice 95 of 2021) and the Spatial Planning and Land Use Management Act No. 16 of 2013; the Annual Review of the eThekweni Municipal Land Use Scheme, comprising five Planning Regions, namely, the Central, North, South, Inner West and the Outer West region and all the land use regulations pertaining to these areas be adopted for the following reasons:
 - 3.1.1 The Annual Scheme Review ensures compliance with the Spatial Planning and Land Use Management Act No. 16 of 2013, in that it gives effect to the development principles, as described in Chapter 2, Clause 7 (a), (b), (c), (d) and (e); and Chapter 5, Land Use Management, Clause 24 (1) of the Spatial Planning and Land Use Management Act No 16 of 2013.
 - 3.1.2 The reviewed Land Use Scheme is in alignment with the Spatial Development Framework of the Municipality and further refinements will be made on an ongoing basis.
 - 3.1.3 This Annual Scheme Review responds to the ever-changing development pressures and trends within the Municipality.

ADOPTED.

4. NOTING THE 2024/2025 INDIVIDUAL PERFORMANCE AGREEMENTS & INDIVIDUAL PERFORMANCE PLANS OF THE CITY MANAGER AND THE DEPUTY CITY MANAGERS (4/6/1)

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As per the statutory requirement, the 2024/2025 Performance Agreements and the Individual Performance Plans of the Managers appointed in terms of Section 54A and Section 56 of the Local Government: Municipal Systems Act No 32 of 2000, is submitted for noting purposes.

In accordance with Section 53(3) of the Local Government: Municipal Finance Management Act No. 56 of 2003, the Agreements must be made public no later than fourteen (14) days after the approval of the Service Delivery and Budget Implementation Plan (SDBIP).

Therefore, once the matter has served before the Municipal Council, the Agreements will be submitted to the MEC for Cooperative Governance and Traditional Affairs for informational purposes.

The Agreements pertains to individual Managers as per their respective areas of speciality aligned to the Municipal Clusters falling under their jurisdiction. Therefore, in addition to high level strategic objectives, the agreements focus on key service delivery mandate aligned to the fulfilment of the objects of the Municipality, as enshrined in Section 152 of the Constitution of the Republic of South Africa.

Accordingly,

COMMITTEE RECOMMENDS:

- 4.1 That Council notes the 2024-2025 Individual Performance Agreements and the Individual Performance Plans of the City Manager and the Deputy City Managers, appointed in terms of Section 54A and Section 56 of the Local Government: Municipal Systems Act No. 32 of 2000, with the Agreements developed as per the provisions of Section 53(3)(b) of the Local Government: Municipal Finance Management Act No. 56 of 2003, and the Agreements submitted relate to the Managers reflected in the table below:

No.	Name	Designation
1.	Mr. Bongumusa Mbhele	City Manager: eThekweni Municipality
2.	Dr Sandile Mnguni	Deputy City Manager: Finance
3.	Mr. Siphon Cele	Deputy City Manager: Governance & International Relations
4.	Dr Musa Gumede	Deputy City Manager: Community & Emergency Services
5.	Ms Kim Makhathini	Deputy City Manager: Corporate & Human Capital
6.	Mr. Sibusiso Makhanya	Deputy City Manager: Trading Services
7.	Mr. Lawrence Pato	Acting Deputy City Manager: Human Settlements Engineering and Transport
8.	Mr. George Mohlakoana	Acting Chief Operations Officer

- 4.2 That upon the Council noting the agreements as per .1 above, the documents will be submitted to the MEC for Cooperative Governance and Traditional Affairs for information purposes.

NOTED.

5. APPROVAL OF THE FINAL 2024-2025 SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (2/10/1/1/9)

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The 2024-25 Service Delivery and Budget Implementation Plan (SDBIP) is submitted in line with the requirements of Section 53(1) of the Municipal Finance Management Act No. 56 of 2003, which prescribes the adoption of the SDBIP within twenty-eight (28) days upon the approval of the annual budget.

It will be recalled that the annual budget was approved 03 May 2024, and the SDBIP is submitted as part of the necessary compliance requirements.

Accordingly,

COMMITTEE RECOMMENDS:

That in terms of Section 53(1) of the Local Government: Municipal Finance Management Act No. 56 of 2003, the final eThekweni Municipality (including its entities) Service Delivery and Budget Implementation Plan (SDBIP) for the 2024/2025 financial year, with a breakdown per the respective Clusters contained in the City Manager’s report dated 2024-05-23, be approved, and with the SDBIP document also circulated separately for ease of reference.

ADOPTED.

Noting abstention by the DA

- 6. NOTING INTENTION TO AMEND, IN TERMS OF SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003, CONTRACT NO. 1J-24508: FOR THE PROVISION OF ON-ROAD AUTOMOTIVE FUEL, WITH AN AUTOMATED FUELING SOLUTION (8/3/1/R)

(Laid-on-Table)

The City Fleet Unit is in a process to award a long-term contract in terms of Section 33 of the Local Government: Municipal Finance Management Act No. 56 of 2003. Currently, the Unit operates through a 12-month contract, expiring 31 July 2024, to supply fuel for the Municipal vehicles.

In view of the Section 33 award pending, and with this award including installation of a tracking and monitoring device into the vehicles, which process will take approximately between 3-6 months, the Unit considers it imperative to then request to amend the existing short-term contract for a further 12-month period. The Committee noted the rationale behind amending Contract No. 1J-24508, and accordingly,

COMMITTEE RECOMMENDS:

- 6.1 That Council notes reasons for proposed amendments to Contract No. 1J-24508, in terms of Section 116(3)(a) and (b) of the Municipal Finance Management Act (MFMA) No. 56 of 2003, for the Provision of On-Road Automotive Fuel, with an automated fueling solution, for a further period of twelve (12) months, pending the finalisation of a long-term contract in terms of Section 33 of the MFMA, which process is currently underway.
- 6.2 That Council notes that there were no comments or objections received from the public or any other interested parties in terms of the public advert that closed 14 June 2024.

Financial Authority:

Financial authority has been allocated and approved as follows:

Budget	Amount Excl. VAT	Vote Number
Initial Contract Value	R484 347 900.00	Various 14110 10 12120 0000 MRC01 0010
Additional Amount	R480 000 000.00	
Total Amount	R964 347 900.00	

NOTED, Confirmation being given that the item is legally competent in terms of compliance with applicable Supply Chain Management Regulations.

7. NOTING OF REASONS TO AMEND CONTRACT NO. WS 7154 IN TERMS OF SECTION 116(3) OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003 FOR DESIGN, SUPPLY AND INSTALLATION OF ALTERNATIVE ON-SITE SANITATION TECHNOLOGY TO REPLACE PIT TOILETS IN THE ETHEKWINI MUNICIPAL AREA (22/2/R).

(Laid-on-Table)

eThekweni Municipality is currently facing significant backlog in the provision of acceptable sanitation, mainly, to previously disadvantaged and marginalized communities. This is due to lack of bulk sewer infrastructure and funding constraints. Therefore, the most viable option is to install onsite infrastructure, inclusive of urine diversion toilets and any other proven form of on-site sanitation technology.

The Water and Sanitation Unit has contract in place, Contract WS7154, for design, supply and installation of alternative on-site sanitation technology to replace pit toilets within the eThekweni Municipal area. A total of seven thousand three hundred and fifty-eight units (7 358) were allocated to three (03) service providers for the provision of on-site sanitation technology. Of the 7 358 units, a number of five thousand eight hundred and twenty-six (5 826) units have been completed and vetted accordingly for quality purposes, and this representing 79.18% achievement in terms of progress.

Thereafter, delays were encountered in the implementation of this program, due to storm disasters that have caused severe damages, and the consequential rain damages drastically impacting progress in the installation of the alternative solution units. The Unit has also had to deal with a number of additional requests for this technology, which led to the Council approving additional funding for this purpose.

Due to the delays, a request is therefore submitted to amend the period of contract for a further 12-month period to enable completion of outstanding six thousand three hundred (6 300) units, and to find time to utilise the Council-approved additional budget. The existing contract expires 30 June 2024.

In view thereof,

COMMITTEE RECOMMENDS:

- 7.1 That Council notes the reasons to amend Contract No. WS7154, in terms of Section 116(3) of the Local Government: Municipal Finance Management Act No. 56 of 2003, for design, supply and installation of alternative on-site sanitation technology, for a further period of 12 months, expiring 30 June 2025, to replace pit toilets within the eThekweni Municipal area, and the reasons for the delays incurred in the project including:
- (i) The rain and the declared storm disaster having an impact on project progress.
 - (ii) The additional budget approved by Council in May 2024 for more material (R100 million) which will require more time to complete the new Units to be allocated, estimated at +- 6300 Units.
 - (iii) Time required for an assessment of completed installed Units.

- (iv) Time required for a new procurement process in order to improve and standardize the design specification of the Alternative Sanitation Solution to be provided as per customer satisfaction, it being noted that the current technologies differ in terms of the design specification which resulted in different unit prices, varying from R24 000.00 (Twenty Four Thousand Rand) to R34 000.00 (Thirty Four Thousand Rand) per unit, and the variance being a result of one solution having two pits, whereas the others had one.

7.2 The Council notes the public participation process advertised through the media, in terms of Section 116(3) of the MFMA, as part of achieving compliance requirements pertaining to the public participation process, with feedback thereon to be reported to the Council.

7.3 The financial implications of the proposed amendment are that the contract authority of R450 000 000.00 (Four Hundred and Fifty Million Rand), excluding VAT, be increased by 20%, i.e. R90 000 000.00 (Ninety Million Rand), excluding VAT, to then revise contract authority to R540 000 000.00 (Five Hundred and Forty Million Rand), excluding VAT, and the contract be amended by a further twelve (12) month period to then expire 30 June 2025.

Financial:

The proposed amendments will have financial implications on contract no. WS7154 as indicated below:
Summary of the Financial Status of Contract No. WS 7154

Item No.	Description	Amount (Excl. VAT)
1	Average Net Unit Cost (Excluding VAT)	R28 000.00
2	Allowance for Contingencies (10%)	R0.00
3	Allowance for Escalation	R12 000 000.00
4	Current Financial Authority	R450 000,000.00
5	Payments to date	R289 000 000.00
6	Add: Estimated increase in Contract Budget (20%)	R90 000 000.00
7	Revised Contract Financial Authority	R540 000 000.00

Financial Year	Budget Provision	Comment
2024/2025	R48 000 000.00	Provided
Project No. Y8792		

NOTED.

FIRST REPORT OF THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE

1. **UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL (UIFW) EXPENDITURE: MUTIPLE FINANCIAL YEARS**
(as contained in the Council Agenda 2024-06-28)

COMMITTEE RECOMMENDS:

- 1.1 That in compliance with Section 32(2) of the Municipal Finance Management Act (MFMA), irregular, fruitless and wasteful expenditure totaling **R24,866,995.00** (Twenty-four million eight hundred sixty-six thousand nine hundred ninety-five rands) as detailed in “**Annexure A** of this report be certified as irrecoverable and written-off by Council based on the outcomes of the investigations of such expenditure.
- 1.2 That in compliance with Section 32(2) of the Municipal Finance Management Act (MFMA), fruitless and wasteful expenditure totaling **R733,025.00** (Seven hundred thirty-three thousand twenty-five hundred rands) as detailed in **Annexure B** of this report be recovered from the relevant or former officials of the Municipality as well as entities and service providers.
- 1.3 That it be noted that any consequence management recommendations will be dealt with in accordance with the Council Policy in relation to financial misconduct and oversight by the Financial Misconduct Disciplinary Board.
- 1.4 *That reports on the investigations conducted by the City Integrity and Investigations Unit be made available to the Municipal Council for accountability purposes.*

ADOPTED, by the majority vote

Subject to adding recommendation 1.4 recorded in italics. Further, that the Municipal Public Accounts Committee should review legal of competence of this amendment to achieve certainty that such CIU reports can be made available to the Municipal Council.

SECOND REPORT OF THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE

2. **UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE FROM PERIOD 1ST JULY 2023 TO 31ST MARCH 2024: LOCAL CONTENT**
(as contained in the Council Agenda 2024-06-28)

COMMITTEE RECOMMENDS:

- 2.1 That, having examined the reasons provided for the Irregular Expenditure incurred on various contracts due to non-compliance with Local Content requirements, the amount of **R931,345,188.13** (Nine hundred thirty-one million three hundred forty-five thousand one hundred eighty-eight rands and thirteen cents) be written off on the basis that the matter be submitted for consequence management processes to be instituted.

2.2

That it be noted that any consequence management recommendations will be dealt with in accordance with the Council Policy in relation to financial misconduct and oversight by the Financial Misconduct Disciplinary Board.

ADOPTED, by the majority vote.



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TB Mbhele
City Manager
28 June 2024