

# PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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MONDAY, 14 DECEMBER 2015

### ANNOUNCEMENTS

The Speaker:

#### 1. Assent by the Premier in respect of Bills

- (a) *Western Cape Liquor Amendment Bill* [B 3–2015] – Act 3 of 2015 (assented to and signed by the Premier on 9 December 2015).
- (b) *Western Cape Adjustments Appropriation Bill* [B 4–2015] – Act 4 of 2015 (assented to and signed by the Premier on 9 December 2015).

#### 2. Publication of Act 3 of 2015

Publication of the Western Cape Liquor Amendment Act, 2015, published in *Provincial Gazette Extraordinary* 7545, dated 14 December 2015.

#### 3. Publication of Act 4 of 2015

Publication of the Western Cape Adjustments Appropriation Act, 2015, published in *Provincial Gazette Extraordinary* 7546, dated 14 December 2015.

#### 4. Referral of document to committee in terms of section 54(1) and (2) of the Financial Management of Parliament and Provincial Legislatures Act, Act 10 of 2009, as amended:

##### Parliamentary Oversight Committee

Western Cape Provincial Parliament: In-year Monitoring Report – November 2015.

**5. Referral of draft bills to committees in terms of Rule 220**

**(a) Standing Committee on Local Government**

- (i) Draft Refugees Amendment Bill, 2015 (NCOP) (proposed section 75 bill).
- (ii) Draft Border Management Agency Bill, 2015 (NCOP) (proposed section 76 bill).

**(b) Standing Committee on the Premier**

Draft Foreign Service Bill, 2015 (NCOP) (proposed section 75 bill).

**(c) Standing Committee on Economic Opportunities, Tourism and Agriculture**

Draft Films and Publications Amendment Bill (proposed section 75 bill).

**TABLINGS**

The Speaker:

**1. Tabling of document in terms of section 54(1) and (2) of the Financial Management of Parliament and Provincial Legislatures Act, Act 10 of 2009, as amended:**

Western Cape Provincial Parliament: In-year Monitoring Report – November 2015.

**2. Report received from municipality and tabled in accordance with sections 132(1) and (2) of the Local Government: Municipal Finance Management Act (Act 56 of 2003):**

**West Coast Municipality**

Draft Annual Report 2014/15.

**3. Minister of Finance**

Replacement of Annual Report 2014/15 – Provincial Treasury.

**COMMITTEE REPORT**

The Standing Committee on Local Government, having undertaken an oversight visit to Oudtshoorn Municipality on 19 November 2015, reports as follows:

**DELEGATION**

**Members of the Standing Committee on Local Government**

Mnqasela, M (DA) (Chairperson and leader of delegation)  
Dyantyi, R (ANC)  
Hinana, N (DA)  
Joseph, B (EFF)  
Max, LH (DA)  
Olivier, T (ANC)(Alternate)

## **1. Introduction**

The Standing Committee on Local Government (hereafter “the Committee” engaged with Oudtshoorn Municipality (hereafter “the Municipality”) in September 2014 to discuss progress and challenges the Municipality had experienced with regards to ensuring administrative and financial sustainability. The office of the Auditor-General was subsequently, in May 2015, requested to brief the Committee on its own assessment of the Municipality’s implementation of the Audit Action Plan emanating from the 2012/2013 audit outcomes. As a continuation of its oversight mandate, the Committee undertook an oversight visit to the Municipality on 19 November 2015. The purpose of the oversight visit was twofold, the first of which was to receive a briefing on progress and challenges with regards to the execution of the Administrator’s mandate and secondly to undertake an oversight visit to the Oudtshoorn Waste Water Treatment Works (WWTW).

The Municipality was placed under administration in terms of the provisions of section (139)(1)(b) of the Constitution. During phase one of the administration process, the Administrator was vested with all the powers and functions necessary to ensure that the proper functioning of the Municipal Council was restored. This excluded legislative powers, the approval of policies and the delegation of powers and functions to political office bearers, political structures and officials. During this phase the municipal council was enabled to take all and any decisions as was necessary for the restoration of the proper executive functioning of the Council. In instances where the Council refused or was not able to take a decision the Administrator was entitled to takes such decisions himself, after consultation with the Municipal Council.

During phase two of the administration process, the executive authority of the Council was suspended for the period of the Administrator’s appointment and vested in the Administrator. In addition, all accounting officer responsibilities were vested in the Administrator and will remain until such a time that an Acting Municipal Manager is appointed.

## **2. Overview**

The meeting commenced with a briefing by the Administrator, Mr K Chetty, on his terms of reference, progress made since his appointment and challenges in relation to the execution of his mandate. Mr Chetty briefed the Committee on immediate action and achievements since he took office and the continuing risks and challenges in relation to good governance, finance, forensic investigations, staffing matters, roads and storm water, human settlements and the Cango Caves. The office of the Auditor General, Provincial Treasury and the Department of Local Government concurred with the Administrator’s situational analysis of the Municipality’s current position.

Following the deliberation on the first briefing, Mr Chetty briefed the Committee on the pollution of the Olifants River. This was in specific reference to the measures that the Municipality has instituted to address the current situation, the time-line developed for addressing the situation and the budgetary provisions made to ensure that the situation is permanently resolved.

The Committee continued the engagement with an oversight visit to the Oudtshoorn WWTW where the Committee observed the two separate components of the WWTW namely the biological filtration plant and the aeration activated sludge works. The biological filtration plant was decommissioned. The Committee also observed the maturation ponds from which effluent flows into the Olifants Rivier.

### **3. Findings**

#### **3.1. Progress and challenges with regards to the execution of the Administrator's mandate**

- 3.1.1. The Administrator terminated all acting arrangements for senior managers once he took office. The rotation of officials in acting positions has an impact on governance within the Municipality as it results in a lack of accountability and continuity. He subsequently requested for the secondment of an Acting Municipal Manager and appointed an acting Director: Financial Services and Acting Director: Technical Services, the latter being seconded from the Provincial Department of Environmental Affairs and Development Planning.
- 3.1.2. All delegations related to legal matters and the settling of South African Local Government Bargaining Council (SALGBC) and/or Labour Court disputes have been withdrawn from the Municipal Council and will be exercised by the Administrator.
- 3.1.3. Despite the Council decision taken during phase one of the administration process to pursue existing court cases, the Administrator has decided that the Municipality is not in a financial position to appoint representation. For all further legal matters in which the Municipality will require representation, the office of the State Attorney will be utilised.
- 3.1.4. The Administrator has found that the Municipality's budget is not credible and its cash flow is under sever pressures and has been funded through non-compliant measures. Illustrations of such non-compliant measures was that the budget reflected the income for the Congo Caves but no expenditure was projected for it in the budget. The Municipality also secured a loan for R90 million which was intended for capital expenditure but was utilised primarily for operational expenditure. The Administrator has developed a Cash Flow Crisis Plan and is in the process of developing a 3-5 year Financial Recovery Plan.
- 3.1.5. The Administrator raised a number of matters with regards to the inadequacies of financial and budgetary controls within the Municipality. There is an exceptionally high occurrence of Supply Chain Management (SCM) exceptions, deviations and non-compliance. The municipality, for example, currently uses two financial systems, the first being utilised for billing and managing creditors and the second system being used to manage the payroll. The Municipality has

procured a single financial system but has not yet commenced with the process of migrating the existing systems thereto.

- 3.1.6. In order to fund its operational expenditure the Municipality has for a period of time not paid some of its creditors, one example being its current debt to Eskom. The Municipality has however reached an agreement with ESKOM that its current debt would be serviced over the next two years. Another creditor, the construction company ASLA was not prepared to make an arrangement for payment beyond the Administrator's period in office.
- 3.1.7. The financial position of the Municipality has resulted in the need to engage employee unions with regard to the proposal to not pay a 13<sup>th</sup> cheque to all employees at the end of the calendar year but to rather phase the payment to employees.
- 3.1.8. A forensic investigations team constituted of provincial and national government officials is in the process of investigating numerous allegations of transgressions, non-compliance and mismanagement related to the award of contracts. The necessary action will be taken once the team has concluded its report on the matters and it is anticipated that the report will be released before the end of the current calendar year. The Administrator has taken a decision to delay payments on contracts and awards where there are investigations pending with regards to irregularities and contractual breaches.
- 3.1.9. With regard to staffing matters, the Municipality has a temporary staff contingent of 300 employees, approximately 50% of which have been employed for between 5 and 10 years. According to the provisions of the Labour Relations Amendment Act (Act 6 of 2014) anyone working on contract for more than three months is deemed to be permanent employees unless certain conditions are met. The Administrator is in the processes of determining whether these conditions have been met for any of the existing temporary employees. Until such and other disciplinary disputes are resolved they continue to be a contingent liability.
- 3.1.10. Despite high staffing costs there are variable conditions under which staff are employed and skills shortages remain. These matters will have to be addressed although labour conflict and disputes could result in strikes which would have a negative impact on service delivery. Currently there are 37 unsettled labour disputes constituting 6.1% of the existing staff complement of 600. The Department of Co-operative Governance is assisting the Municipality with the assessment of current appointments, staff qualifications and outstanding disputes.
- 3.1.11. With the assistance of the Department of Local Government, the Administrator is in the process of developing a new micro and macro staffing structure which will have to be negotiated with employee trade unions.
- 3.1.12. The Administrator expressed that there is a dire need for funding to be allocated towards maintenance and provision of road infrastructure given that the road surface is deteriorating and there are numerous potholes on the roads. The Municipality will commence by prioritising the roads in the Central Business District (CBD) but require financial assistance from the Department of Public Works in this regard.

- 3.1.13. The Cango Caves at present do not have an operating budget and experiences challenges related to deteriorating infrastructure and management inadequacies. As an immediate remedial action an interim expenditure budget has been developed and the Administrator has applied for grant funding to restore infrastructure. A task team has also been established to determine the various management models (e.g. should it be managed as an entity or a private company) that are viable for the Caves, together with the advantages and disadvantages associated with both.
- 3.1.14. The Municipality has experienced a credibility crisis given that the perception amongst stakeholders (including business and community members) is that you have to be linked to officials or politicians within the municipality if you want to be employed or be awarded a contract. The media campaign undertaken by the Municipality has therefore emphasised that it will be conducting its appointment practices and business in a transparent manner.
- 3.1.15. All the above and related matters have been discussed by all stakeholders including Provincial Treasury, the Department of Local Government and the Department of Go-operative Governance and a back-to-basics plan has been developed for the Municipality. The plan also addressed the risks associated with terminating the Administrator's term in January 2016.

## **3.2. Oudtshoorn Waste Water Treatment Works**

- 3.2.1. The WWTW has a 6ML/day capacity but the volume flowing into the system is in the region of 8ML/day. The capacity of the WWTW is therefore highly inadequate and the plant has no reserve capacity. This has resulted in partially untreated effluent being discharged into the Olifants River. At present the effluent passing through the system into the Olifants River does not comply with the General Standards for Treated Effluent.
- 3.2.2. As at 12 November 2015 the Faecal Coliform Count of the effluent flowing into the Olifants River was 337cfu/100ml, therefore within the acceptable level of 1000cfu/100ml.
- 3.2.3. At the influent stage there is illegal disposal of FOGs (fat, oil and grease) and blood by commercial and business sectors into the sewer systems which impacts on the biological processes. At the plant stage the system is hydraulically and biologically overloaded and the electrical and mechanical equipment at the plant has deteriorated.
- 3.2.4. A number of emergency interventions have been instituted across the various plant stages. At the influent stage, the Municipality has undertaken awareness on by-laws through a partnership approach with businesses and the policing of illegal disposal of FOG's. At the plant stage the municipality has introduced enzymes and chlorination to enhance the biological process. At the effluent stage the Municipality introduced additional aerobic and anaerobic ponds and undertake regular testing.
- 3.2.5. As intermediate measures the Municipality will explore, amongst other, rehabilitating the biological system to the original capacity of 3.2 ML/day.

This rehabilitation will be at the cost of R5million and will be funded through the Municipal Infrastructure Grant (MIG).

#### **4. Recommendations/Actions**

- 4.1. The Committee RECOMMENDED:
  - 4.1.1. That Provincial Treasury and the Department of Local Government undertake an assessment as to whether the utilisation of two financial systems within the Municipality resulted in SCM irregularities;
  - 4.1.2. That the term of the Administrator be extended until after the 2016 local government elections; and
  - 4.1.3. That the Administrator engage with all key stakeholders including councillors and communities with regards to key decisions taken and the development of strategic documents such as the Integrated Development Plan (IDP).
- 4.2. The Committee REQUESTED that the Municipality provide it with the following once it has been concluded:
  - 4.2.1. The back-to-basics recovery plan; and
  - 4.2.2. The discussion document on the management model alternatives for the Congo Caves.
- 4.3. The Committee RESOLVED to, during the first two months of 2016, invite the Provincial Minister of Local Government, Minister of Co-operative Governance and Traditional affairs, and the Administrator to brief the Committee on progress with regards to the implementation of the back-to-basics plan developed for the municipality.

#### **5. Conclusion**

In his conclusion the Administrator remarked that the position in which the municipality finds itself is as a result of both administrative and political shortcomings. He added that much of the progress made during his terms is at risk of being negated if the Council, that enters following the 2016 local government elections, does not commit itself to the recovery plans developed and implemented thus far. There is therefore a need for the political will to ensure that the incoming council commits itself to the process and the Administrator stressed the need for political parties to institute measures to ensure that political interests cannot be pursued at the expense of governance and financial sustainability of municipalities.

The Chairperson thanked the Administrator for his frankness in addressing the Committee on the challenges experienced at the Municipality. He assured the Administrator that the role of the Committee is to use its oversight role to assist and complement processes implemented at the Municipality thus far through a partnership approach.