



FRIENDS OF STELLENBOSCH MOUNTAIN

Chairperson: H Koekemoer  
hanneskoekemoer@proton.me

Secretary: HC Eggers  
076-785-3514 heggers@pm.me

P.O. Box 3218, 7602 Matieland  
11 Grandiceps Rd, 7600 Stellenbosch

Public Benefit Organisation No. 930049434  
fsmountain.org

## FSM Comments and Questions: 2023 Draft IDP and MTREF

25 April 2023

### 1 Stellenbosch Municipality is abusing the sub judice rule

The present IDP public participation process is a continuation of the process started late in 2022. In the earlier phases of this process, both in oral questions and in written replies, Stellenbosch Municipality (SM) has repeatedly invoked the *sub judice* rule to not answer questions posed by FSM and others. Specific examples can be found in the written answer by the Municipal Manager of 25 October 2022 (Appendix A) and statements by the Director: Corporate Services as per recorded proceedings of the IDP meeting of 22 September 2022.

**Stellenbosch Municipality should stop invoking the *sub judice* rule** unless and until it can prove that the resulting prejudice to the administration of justice is *demonstrable and substantial* and that *curtailing the free flow of information outweighs its advantage*. As set out by Pierre de Vos and Advocate de Havilland in pieces reproduced in Appendix B, the scope of the *sub judice* rule was strongly limited by the Supreme Court of Appeal in 2007. To quote the SCA judgement:

*[A] publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is **demonstrable and substantial** and there is a **real risk that the prejudice will occur** if publication takes place. **Mere conjecture or speculation that prejudice might occur will not be enough**. Even then publication will not be unlawful unless a court is satisfied that **the disadvantage of curtailing the free flow of information outweighs its advantage**. In making that evaluation it is not only the interests of those who are associated with the publication that need to be brought to account but, more important, the **interests of every person in having access to information**. Applying the ordinary principles that come into play when a final interdict is sought, if a risk of that kind is clearly established, and it cannot be prevented from occurring by other means, a ban on publication that is confined in scope and in content and in duration to what is necessary to avoid the risk might be considered.*

The onus is therefore on Stellenbosch Municipality to prove — with reasons and supporting documentation — that any SM refusal to answer questions and/or withhold information complies with the SCA ruling. For that reason, FSM below resubmits some of the past questions which have remained unanswered as a whole or incompletely. We do not accept any unsubstantiated *sub judice* claims as grounds for not answering questions and withholding important information from the public.

## 2 Unanswered questions asked on 22 and 29 September 2022

Annexure A of the 2023 Draft IDP contains a “2017-2022 Close-Out Report”. There are substantial issues and questions which have not been closed out. Here and in the next section, we re-issue questions asked but unanswered in the last year. See also related questions posed on 12 January 2022 as reproduced in Section 3.

2.1 **Municipal Manager’s letter of 26 October 2022** in answer to questions posed for the last three years by FSM. Refer to Appendix A.

2.1.1 **NRM grant termination:** Firstly, the statement that *the grant funding was taken back by the Provincial Government* is obviously untrue. It was DFFE (then called DEA), not the provincial government, which funded and administered the 2018 NRM grant. See again Appendix C as already provided in September 2022.

2.1.2 **Deon Klaassen court case**

- i. To repeat our earlier question: Did Deon Garden & Construction or any other tender BSM7/19-related service provider charge or use rates or costs different from those laid down by the written 2019 NRM agreement between SM and DFFE?
- ii. See Appendix D. This court case was set down for trial for 27 January 2022, more than a year ago. Following up: what is the status of Cape High Court Case 9140/2021 (Deon Garden & Construction vs Stellenbosch Municipality)?
  - If the case has been brought to judgement: What are the terms of the judge’s order and what costs did the judge award to each party? (As a reminder: Klaassen is apparently claiming R4.3million from the municipality for breach of contract; see e.g. Appendix D.)
  - If the case was settled before judgement: What are the settlement terms?
  - If the case has not been concluded: for which date has it now been set down for trial?
  - In all cases: could SM please provide access to the full court record, including pleadings and written evidence led?

2.2 **SM funding of alien clearing**

To repeat and amplify our pertinent question of 22 September 2022:

2.2.1 How much has Stellenbosch Municipality spent in total from 2019 until now on tenders BSM 102/20, BSM 65/22 and any other tenders related to invasive species?

2.2.2 What rates and costs did the successful tenderers charge for tenders BSM 102/20 and BSM 65/22?

2.2.3 How much has Stellenbosch Municipality spent in total from 2019 until now on (a) alien clearing, (b) firebreaks, (c) law enforcement in municipal nature areas?

2.2.4 From which sources (SM Operational budget, Province or National grants, private funding such as City of Cape Town, The Nature Conservancy etc) were the above tenders and any other alien clearing efforts on SM-owned land funded?

## 3 Unanswered questions asked in January 2022

3.1 **Termination of the 2019 NRM Contract and Tender BSM7/19**

The FSM directive request of March 2021 and the refused PAIA application for information of November 2020 were all the direct result of the termination in October 2019, by the Stellenbosch Municipal Manager, of a 2019 NRM grant of R14.26 million from the national DFFE. **The sub judice rule does not apply unless the conditions set out in Section 1 above are met.** Kindly note that the questions below pertain to the EXISTENCE, not

the CONTENT, of the pertinent judicial processes.

**QUESTIONS:**

- 3.1.1 Which, if any, primary internal disciplinary processes, ie resulting directly from or associated with the alleged irregularities of the said 2019 NRM Contract and/or tender, have been conducted by SM in the past three years?
- 3.1.2 What is the status of each of such processes?
- 3.1.3 Which, if any, legal action or actions have resulted from the said terminations, either in a higher court of law or within the ambit of the CCMA?
- 3.1.4 Which, if any, secondary internal disciplinary processes or external CCMA processes have been initiated in consequence or connected to any of the above?
- 3.1.5 What are the cumulative costs of the abovementioned legal processes over the period 2019 to the present?
- 3.1.6 Are there plans or intentions to pursue any of the above in future, even if they have not yet been initiated?

**3.2 Allegation of Fruitless and Wasteful Expenditure: so-called “biomass removal” in Paradyskloof Nature Area (2021)**

see Appendix E. The relevant documentation alleging Fruitless and Wasteful Expenditure of more than R300,000 was submitted both electronically and by physical deposition at the offices of the Municipal Manager on 29 November 2021. At the IDP Public Sector Engagement meeting on 11 January 2022, it was stated that SM would reply to the allegations forthwith. An email from SM of 24 January 2022 stated that *Please note that this matter is currently being investigated as per Section 170 (4A) of the Municipal Finance Management Act, as soon as our office receive the outcome same will be communicated to you.* It is now April 2023, 15 months later, but no further communication was received.

**QUESTIONS:**

- 3.2.1 When will the outcome of this investigation be communicated?
- 3.2.2 What was the outcome?
- 3.2.3 Was any consequence management carried out in accordance with stated SM policy?
- 3.2.4 Was the matter reported to Treasury as required?

**3.3 Alleged Financial Misconduct (Logging Operations in Paradyskloof and Botmaskop plantations, 2020-2021):** As set out in the January 2022 submission, FSM has strong reasons to suspect that the logging operations carried out between October 2020 and March 2021 violated municipal and national SCM policy and regulations and that SM has in consequence incurred substantial financial losses. The answers provided by SM in 2020 and 2021 are unsatisfactory.

**QUESTIONS:**

- 3.3.1 Have the irregularities in these logging operations, involving possible financial losses to SM ranging between R800,000 and R2,000,000, been investigated? If not, why not?
- 3.3.2 If an investigation has been completed: Was consequence management applied to any of the municipal officials and/or contractor(s)?
- 3.3.3 Was any money recovered from the said municipal officials and/or contractors? How much?

**3.4 Following up on the FSM questions of 12 January 2022 re human resources within the Section Environmental Management (SEM) within SM:** At the IDP Public Sector Engagement on 11 January 2022, it was stated in answer to a question that “all funded

posts” are filled or are about to be filled. See Appendix F for a copy of the relevant organogram as approved by Council in 2017.

#### **QUESTIONS:**

- 3.4.1 Which of the permanent staff posts shown in the first (upper) part of the SEM organogram are currently filled?
- 3.4.2 Which permanent posts in the SEM are currently unfunded?
- 3.4.3 Which funded permanent posts in the SEM are currently unfilled?
- 3.4.4 Which of the permanent staff posts shown in the second (lower) part of the SEM organogram in the “Subsection Environmental Management Implementation” (“Implementation”) are currently filled?
- 3.4.5 Which permanent posts in the Implementation subsection are currently unfunded?
- 3.4.6 Which funded permanent posts in the Implementation subsection are currently unfilled?
- 3.4.7 Which permanent or temporary staff in the Implementation subsection are currently suspended and/or being investigated for any misdemeanour, whether in terms of municipal disciplinary processes, and/or CCMA processes and/or a higher court of law?
- 3.4.8 Which permanent municipal employees in which municipal department and section are responsible for law enforcement duties in municipal nature areas?
- 3.4.9 Which permanent municipal employees in which municipal department and section are responsible for training and supervision of temporary/contract municipal employees working in municipal nature areas?

## **4 Comments/Questions on the Draft 2023 IDP**

- 4.1 **Mobility Forum** (IDP Section 1.17): SM has quietly closed down the Mobility Forum without as much as giving notice to the participants. No mention of the workings and participants of the **Stellenbosch Infrastructure Task Team** is made anywhere in the IDP. The publicly announced **Developers’ Forum** has not even been mentioned. There is a clear need for SM to become “clean and transparent” on its stakeholder engagements; in other words, please apply IDP Section 8.2.1.1. (Clean accountable and responsive government).
- 4.2 The **Strategic Focus Areas** (IDP Section 3.2, SFA’s) such as *Valley of Possibility* have become meaningless. The five categories are listed everywhere but they have no impact on decisionmaking, prioritisation and have information value in themselves. The SFA’s should be eliminated from the IDP and related documents such as the MTREF as they just clog up the tables and spaces.
- 4.3 **Roads, Traffic, NMT**
  - 4.3.1 FSM will deal with roadbuilding, public transport and NMT in comments pertaining to the CITP and MSDF which are due on 12 May and 30 May respectively. Since relevant information on those plans is contained in the Draft IDP and MTREF, those future CITP and MSDF FSM comments should be read with the present ones.
  - 4.3.2 Section 7.3.4: As indicated elsewhere, the past 2021 CITP is not an update and not compliant with the transport legislation. We note that neither the relevant officials have been disciplined nor has the external consultant *Innovative Transport Solutions* (ITS) suffered any consequences for the sloppy work and effectively Fruitless and Wasteful Expenditure which resulted in the 2021 “CITP”.

4.3.3 The “strategic interventions” of Draft IDP Section 7.3.4.1 are not in any way reflected in the prioritisation of projects set out in Section 7.3.4.2. As usual, the focus is strongly on engineering projects while almost nothing is done on urgent non-engineering measures such as Travel Demand Management, Congestion Strategy, Pedestrianisation. The NMT measures are nice but their budget is tiny compared to that of road- and parking-related capital projects. There is a shocking lack of urgency on the part of SM to get started on urgent and critical interventions beyond engineering projects.

4.4 **Housing** (IDP Section 7.3.3): Figure 38 on Priority Human Settlements and Housing Development Areas depicts the R44 between Adam Tas and Jamestown as priority. Naturally the Transit-Oriented Development approach also advocates siting housing close to routes of transport.

4.4.1 Housing is intimately tied to public transport and Travel Demand Management (see transport legislation). The R44 route is already congested. This congestion is the direct result of the strong anti-public-transport stance taken by SM. Further housing along the R44 can be built only if and once the R44 is given the big public transport (*not car-related*) upgrade which allows it to carry significant volumes of people rather than volumes of cars.

4.4.2 Hence Figure 38 of the IDP and the underlying PDSHDA are worthless unless and until corresponding transport measures are taken first, for example park-and-ride projects along the R44, congestion charges along the R44 etc.

4.4.3 Figure 38 does NOT mean that urban sprawl which happens to be close to the R44 is thereby legally compliant. If at all, development along the R44 must necessarily be high-density (several storeys) and confined to a narrow strip along the R44 route. The PDSHDA does not motivate, for example, development of **Farm 1457**, owned by Blaauwklippen Agricultural Estates or the Eastern Link Road.

4.5 **Energy and Electricity** (Section 7.3.5 of the IDP): FSM strongly supports electricity generation from renewables and co-generation by private entities. Hence the **Energy Masterplan** is supported. We note that, unlike the Roads Master Plan, the Energy Masterplan is compliant with national legislation and priorities.

4.6 **Water** (IDP Section 7.3.6)

4.6.1 Water Demand Management is critical. Section 7.3.6.4 is not nearly enough. We must deal not only with water leaks but actively control and limit groundwater use, eg by private and estate boreholes.

4.6.2 Support for **Wastewater Treatment Works** projects is conditional on understanding whom they serve. If these are being built to accommodate more luxury housing, we do not support them.

4.6.3 IDP Section 7.3.6.5 is generally supported. See Section 6 below for a more detailed treatment of climate change.

4.6.4 IDP Section 7.3.6.12 Boreholes: Accessing groundwater is an absolute last resort and cannot possibly be a sustainable solution. The 2018 emergency drilling measures resulted in significant environmental damage. That may not be repeated.

4.6.5 Decisions may not be driven by the financial needs of SM to sell water. If at all, rates should be increased as an effective measure to reduce water usage.

4.7 **Environmental Management Plans** (Section 7.3.2 of the IDP and sectoral EMP's):

4.7.1 The *Stellenbosch Environmental Management Framework (SEMF)* has been all but ignored. We find little to no reference to its provisions in council agendas, development proposals and SM communications outside of general aspirations and principles. The SEMF exists only on paper.

- 4.7.2 Many provisions of the *Paradyskloof Nature Area Environmental Management Plan* and other sectoral environmental plans are not being applied. For example, Section 4.2.4 in the Paradyskloof EMP and Section 7.2.4 in the Botmaskop EMP contain detailed specifications on how to prevent soil erosion, including e.g. slope grading, inside ditches and berm construction on jeep tracks, and logs on cycle tracks. Instead, grading is done indiscriminately and with no regard for adjacent vegetation.
- 4.8 **Smart City** (IDP Section 8.1): The benefits seem initially obvious but there is a significant danger in centralisation of control, privacy and data management. This is supported only if from inception the governance structures and resulting databases and data processing are decentralised, i.e. controlled not by a single authority (such as SM or one of the tech giants) but by citizens themselves. There should be clear and transparent rules on data usage and easily accessible mechanisms for private individuals to retrieve and delete data.
- 4.9 **Clean, accountable and responsive government** (IDP Section 8.2.1.1): As demonstrated above at length, the KPI related to fraud and corruption is not being fulfilled.
- 4.10 **Adam Tas Corridor** (IDP Section 8.2.1.5): This initiative should be the core and origin of all structural changes in Stellenbosch for decades to come. The ATC and within it the public transport and NMT components must inform and determine the strategy and contents of the MSDF, CEF and CITP and thence the resulting individual projects. We see very little of that happening. Instead, the CEF and CITP simply include the ATC but then proceed to propagate projects which undermine or ignore the central role of the ATC.
- 4.11 **Environment** (IDP Section 8.2.1.8): The Mayoral Outcomes (five-year plans) exhibit a glaring deficiency in all matters relating to the environment. Note that *environment* pertains to nature areas, river courses, parks and gardens. *Green energy*, *Green waste* and *Green economy* are nice, but they do not cover the environment per se. A further Mayoral Outcome 8.2.1.10 should be added specifically with respect to the **environment**. Section 8.3.10 is a small beginning but not enough.
- 4.12 The **Financial Plan** (IDP Chapter 10) is treated in the comments on the MTREF below.
- 4.13 **Close-out of previous IDP** (IDP Annexure A): We have already commented on this in Section 2 above.

## 5 Comments/Questions on the Draft 2023/2024 MTREF

- 5.1 The entire MTREF makes no reference whatsoever to the 10-year **Capital Expenditure Framework** (CEF). That is unacceptable and must be changed. There cannot be two disjoint financial planning instruments; one must influence the other.
- 5.2 Page 19: The *Capital Replacement Reserve* is seen to be contributing funds of R151million and R174million to expenditure. This funding source is second only to that of *external loans*, which come in at R94m and R200m in the next two years, followed by a further R200m and R175m in the two years thereafter (Page 92). This implies that **Stellenbosch Municipality is spending money excessively**. Drawing down reserves while taking up loans at the same time seems like a sure road to disaster in the long term. There needs to be a section motivating this and providing a viable roadmap to become financially sustainable. Could this profligacy perhaps have something to do with the upcoming 2024 General Elections?

### 5.3 Employee costs

Page 12 and 17: Re financial sustainability: In particular, there is general agreement that expenditure on **employee costs** is excessive.

The table on MTREF Page 89 pencils in employee related cost increases of 5.4% **plus Notch Increments** of 2.4% for 2023/2024. This means that municipal employees will be receiving an above-inflation increase of 7.6% in this year. That is unacceptable, given the macroeconomic situation and the MFMA circulars.

The one exception is the Section Environmental Implementation, which is badly understaffed and underfunded. There needs to be a significant increase in operational funding and filling of posts in this section.

5.4 **Councillor remuneration:** It is likewise inappropriate to budget a 6.0% increase (above the CPI inflation rate) for councillor remuneration while the country is in recession.

5.5 **Motor vehicle allowances** (MTREF Part 2K): Currently, councillors and officials are incentivised by their motor vehicle allowances to make decisions which favour roadbuilding, parking and car use. Which councillor or official will ever make use of NMT or public transport when his or her pocket suffers as a result? Add to that SARS tax allowances for vehicle use, and the inherent bias acting on municipal decisionmakers is clear.

This is incompatible with stated national and provincial policy. The vehicle allowances of councillors have been reduced, but the motor vehicle allowances for municipal officials have been increased. This allowance should be either reduced substantially or eliminated altogether.

5.6 **Other expenditure** Page 17/18: Operating budget: “Other expenditure” worth about R700m needs to be unpacked. This is a huge item and its major components needs to be set out. Mere reference to telephone usage and consulting fees is not enough; consultants cost “only” about R40million per years (Page 156). On which specific expenditure items is the rest of the R700m being spent?

5.7 Page 19 Capital budget summary: The 43% increase in Infrastructure Services to R433m (86% of Capital Budget) is excessive. Infrastructure already dominates spending and this further increase cannot be supported.

5.8 Page 36: Table A5 does not even have an item on public transport infrastructure. The universal neglect of public transport ranges right into the administrative categories which have not even been created.

5.9 There is almost no capital expenditure on Environmental Management and the municipal nature areas.

5.10 Page 78 Annexure D (Alignment with the IDP): As stated, reference to the Strategic Focus Areas in a little table is meaningless in proving “alignment”. Real alignment needs to demonstrate how specific projects prioritised in the IDP (and MSDF, and MTREF) tie in to specific sections of **legislation** and the related **regulations**.

5.11 Page 96: the Table Y-axis is incorrect and therefore the table of no use.

5.12 **Grant programme expenditure:** Page 98 Annexure I: please unpack the sources of the approximate R24m per annum under line item *Private Enterprises*.

5.13 **Roads, Stormwater, Transport:** Page 136ff (Annexure N, Detail Capital Budget) We will deal in detail with the projects relating to Roads, Stormwater and Transport in comments on the CITP. Those comments should be read also as input into the IDP and MTREF.

5.14 **Litigation and Corporate Services Vote** (Annexures N, P): An indication should be given on the amounts spent on litigation in the past year, and the amounts budgeted for the next years.

## 6 Climate Change

Climate Change and ecosystem collapse is a global crisis which cuts across all plans, disciplines, needs and budgets. We therefore treat it as an entity on its own.

- 6.1 **The IDP and all SM planning documents are very weak on climate change.**  
In those rare cases where climate change is mentioned at all, it is always in terms of **adaptation** (ie coping with the consequences of climate change). There is an urgent need to put **mitigation** (prevention and minimisation of climate change) at the forefront of policy. **We need concerted action in other critical areas of climate change PREVENTION such as land use, fossil fuel reliance reduction, carbon auditing, etc.**
- 6.2 A budget item in the IDP's Table 37 is called *Climate Change Adaptation Strategy*, which is fair enough. The allocated amount of R2,000,000 is, however ridiculously small compared to the need. R2million is not even a fraction of what is needed just for alien clearing, not to speak of river management and wildlife management. **This budget allocation must be increased drastically.**
- 6.3 Goal 13 in Section 3.5.1 (*Take urgent action to combat climate change and its impacts*) is not put into practice anywhere in the IDP.
- 6.4 Goal 14 in Section 7.3.1.1 to *improve the understanding of the impact that climate change is likely to have on the municipality and to implement measures to mitigate such impact* is a misnomer because it confuses the terminology. Again, *mitigation* is about preventing climate change, while *adaptation* would be dealing with the consequences. Furthermore, *improving the understanding* of the impact is just kicking the can down the road. The impacts are well understood, as voluminous documentation of eg the International Panel for Climate Change shows. Goal 14 should be reworded to action. And goals and the widely available insights should be implemented in Stellenbosch, not just outsourced to yet another consultant to write a report which gathers dust.
- 6.5 **Water:** Section 7.3.6.5 of the IDP (on adapting water systems to climate change) is supported, but this is just a small beginning. There is no doubt that the price of water must be increased significantly, especially for large users. In other words, the tariff curve of costs as a function of monthly usage should be much steeper than it is now. Naturally valid large uses such as nurseries will be treated as special cases.



## A Feedback letter from MM, received 25 October 2022



**STELLENBOSCH**

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Email: [municipal.manager@stellenbosch.gov.za](mailto:municipal.manager@stellenbosch.gov.za)

Date: 18 October 2022

**Friends of Stellenbosch Mountain**

P.O.Box 3218  
Matieland  
7602

**Attention: Mr HC Eggers**

**Per email: [heggers@pm.me](mailto:heggers@pm.me)**

Dear Mr Eggers,

**FEEDBACK ON WRITTEN SUBMISSION: IDP PUBLIC PARTICIPATION PERIOD SEPTEMBER 2022**

**1. COURT CASE 9140/2021: DEON GARDEN AND CONSTRUCTION VS MUNICIPALITY**

Your question posed on Thursday, 22 September 2022, during the Online IDP Public Participation meeting for wards 7, 8, 9, 10, 11, 22 and 23 and the written submissions made refer.

The allegations made for the reasons the tender was cancelled is untrue. The tender was cancelled because of suspected illegal activities that was uncovered by an ex – employee after which the grant funding was taken back by Provincial Government. Both the disciplinary process and current Labour Court Litigation is flowing from this situation. The municipality have explained that the matter is sub – judice and will not be further commented on. The municipality is acting within its legal right and is of the view that it is in the best interest of the municipality.

The case of Deon Garden Services is also sub – judice and the municipality had to defend the matter as the applicant is claiming money not owned to him and that he is not entitled to. The municipality is acting within its legal rights and in the best interest of the municipality. Unfortunately, no further comment will be made at this stage.

The same applies to all other legal matters reported in the municipality's financial statements. Stellenbosch Municipality act on the advice of its attorneys and defend the interest of the municipality and is not prepared to comment on any of the sub – judice matters other than what is mentioned in this response.

## 2. COMPREHENSIVE INTEGRATED TRANSPORT PLAN (CITP)

With reference to the document *"Follow-Up and Questions on the period 2017–2022 (Fourth Review of the Stellenbosch IDP) and Input for the impending Fifth Review of the Stellenbosch IDP"* Item 2.1 (a) – (f), see below the responses on the questions posed related to the Comprehensive Integrated Transport Plan (CITP):

- a) The 2016 – 2021 Comprehensive Integrated Transport Plan (CITP) – including its updates is currently being superseded. Therefore, any figures listed in the document were thus only forecasts and calculated estimates at the time. A more detailed cost estimation will be undertaken for budgeting purposes.
- b) In most cases in the document, it is actually full costs which are being compared. At present, a full review / (update) of the 2022 – 2027 CITP is currently being finalised. New project lists are being compiled, budget forecasting and categorisations are also being improved to ensure updated interpretations of the CITP projects are being planned and budgeted.
- c) The municipality has followed all required legislative prescripts and processes in the 2021 CITP document and processes. The municipality is of the view that all the necessary legal aspects have been complied with.
- d) The CITP flows from the Integrated Development Plan (IDP) and Spatial Development Framework (SDF) strategic documents as well as taken through the municipality's master planning, transport modelling and public consultation processes. Discussions were held with the team and changes will be brought about, such as budget forecasting and categorisation will be updated and improved during the compilation of the 2022 – 2027 CITP.
- e) No, the 2022 – 2027 CITP is a completely new review / overhaul of the document. The current CITP will remain in effect until the review process of the 2021 CITP is completed and the new 2022 – 2027 CITP document is formally adopted.
- f) At the time of the 2016 – 2021 CITP update in 2019, the Adam Tas Corridor (ATC) was proposed in the draft SDF (2019) and was also highlighted in the 2019 CITP update.

Sincerely yours,

  
GERALDINE METTLER  
MUNICIPAL MANAGER

18/10/2022  
DATE

## B Legal experts' opinion on the application of sub judice rule

### Don't hide behind (non-existent) sub judice rule

Pierre de Vos  
18 July 2011

One of the most irritating phenomena of our political life is the manner in which politicians wrongly invoke the so called sub judice rule to avoid accountability. Because they do not want to answer difficult questions or deal with politically awkward issues, such politicians invoke a rule that only exists in their imagination.

Is it possible that such politicians do not know that the rule has been substantially changed by the Supreme Court of Appeal (SCA) to bring it in line with the values and norms enshrined in our democratic Constitution? Or are they cynically invoking a non-existent rule knowing full well that the rule does not exist in the form that they pretend that it does?

The latest culprit is the Minister of Police, who invoked the rule in response to the Human Rights Commission's (HRC) findings and remedial order in the case of Mr Chumani Maxwele, the jogger who is alleged to have given President Zuma's motorcade the middle finger. The HRC found that the Special Protection Unit had violated several of Mr Maxwele's rights and called on the Minister, on behalf of the members involved, to apologise to Mr Maxwele and to take steps to ensure that the SAPS acts in terms of the Constitution and the Law.

Reacting to the HRC's findings, the Minister's spokesman claimed that because Mr Maxwele had instituted civil proceedings against the SAPS the sub judice rule applied. The SAPS had accordingly refused to participate in the investigation and would not abide by the HRC's ruling.

Now, it is an established rule of the common law that the proper administration of justice may not be prejudiced or interfered with and that to do so constitutes the offence of contempt of court. As the SCA has found, the sub judice rule is important as the integrity of the judicial process is an essential component of the rule of law. If the rule of law is itself eroded through compromising the integrity of the judicial process then all constitutional rights and freedoms are also compromised.

The crime of contempt of court thus includes contempt *ex facie curiae* (out of court) and this entails, first, cases where publication of an opinion will violate the dignity, repute or authority of the court (either by criticizing or insulting a particular judicial officer or the judicial system as a whole) and, second, statements which prejudice the administration of justice in pending proceedings. It is this latter aspect that has become known as the sub judice rule.

But in the *Midi Television* case the SCA stated that the broad scope of this rule which was in force in the pre-democratic era has been severely curtailed by the Constitution. In that case, dealing with the sub judice rule in the context of pre-publication censorship, Nugent JA, writing for a full bench of five judges, summarised the new position as follows:

*[A] publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place. Mere conjecture or speculation that prejudice might occur will not be enough. Even then publication will not be unlawful unless a court is satisfied that the disadvantage of curtailing the free flow of information outweighs its advantage. In making that evaluation it is not only the interests of those who are associated with*

*the publication that need to be brought to account but, more important, the interests of every person in having access to information. Applying the ordinary principles that come into play when a final interdict is sought, if a risk of that kind is clearly established, and it cannot be prevented from occurring by other means, a ban on publication that is confined in scope and in content and in duration to what is necessary to avoid the risk might be considered.*

If one applies these basic principles to the case at hand, it must be clear that the sub judice rule is not applicable here. The Minister would have to convince us that there would be a demonstrable and substantial prejudice to the administration of justice if he apologised to Mr Maxwele as requested by the HRC. He will further have to show that it would not be in the interest of society as a whole to obey the request of a Chapter 9 body because the risk to the administration of justice would far outweigh the harm done to the credibility and the dignity of the Chapter 9 institution.

This will obviously be impossible to show. Given the fact that section 181 of the Constitution states that other organs of state – including ministers – through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions, I cannot think of an example where the Minister would be allowed by the sub judice rule to ignore the HRC and to refuse to institute the remedial action proposed by it in a certain case.

Besides, how the minister could possibly argue that complying with the findings of the HRC – which dealt with the violation of Mr Maxwele’s constitutionally guaranteed rights to human dignity, to freedom and security of the person, to privacy, to freedom of expression and peaceful/unarmed demonstration – could possibly influence the parallel civil proceedings – which deals with a civil claim against the Police – is hard to fathom.

The HRC has already published a finding in which it concluded that Mr Maxwele’s rights have been infringed. Nothing the Minister can do or say will change that. A court dealing with the civil claim of Mr Maxwele will not be swayed by the finding of the HRC as it will have to hear the evidence presented to it and make its own finding on whether damages should be paid.

The fact that the HRC has found that Mr Maxwele’s rights have been infringed can also not be tendered in the civil case as proof that Mr Maxwele is entitled to be compensated financially as a result of any damages suffered. The two issues are therefore entirely different enquiries, and no substantial prejudice to the civil trial can possibly arise through the correct exercise of its rights jurisdiction by the Human Rights Commission.

Surely the Minister and his advisors know this. Can one therefore assume that they are hiding behind the sub judice rule to avoid complying with a finding of the HRC because the President and his seemingly lawless bodyguards were involved in this case? Is the Minister scared of President Zuma and his bodyguards or is he just ill-informed?

In any case, as the law stands now, the sub judice rule will almost never be applicable. Where anyone invoke this rule, they are doing so either because they are ill-informed about the law or because they are using the rule to avoid accountability. Whenever a politician invokes the sub judice rule, I for one will assume that the politician is admitting guilt or other wrongdoing, but is trying to hide from scrutiny and accountability for his or her actions.

So next time you read that a politician has invoked this rule, please do not believe for one second that the rule is applicable. It will not be applicable. Assume instead that the politician is ducking and diving because he or she is scared; or is trying to avoid being caught out in a lie; or is looking

for an excuse to justify a constitutional breach of a duty to show respect for other constitutional institutions like the HRC or the Public Protector.

(Also see statement by Adv Nikki de Havilland, Centre for Constitutional Rights)

<https://constitutionallyspeaking.co.za/dont-hide-behind-non-existent-sub-judice-rule/>

## **Police minister's critique of SAHRC misguided - CFCR**

Adv Nikki de Havilland  
17 July 2011

Nikki de Havilland says the ministry misapplied the sub judge rule

Respecting the office of the South African Human Rights Commission

The Minister of Police's response to the Human Rights Commission's findings and remedial order in the case of Mr Chumani Maxwele (the jogger who is alleged to have given President Zuma's motorcade 'the finger') is misplaced and has no standing in law. The HRC found that the Special Protection Unit had violated several of Mr Maxwele's rights and called on the Minister, on behalf of the members involved, to apologise to Mr Maxwele and to take steps to ensure that the SAPS acts in terms of the Constitution and the Law.

Reacting to the HRC's findings, the Minister's spokesman claimed that because Mr Maxwele had instituted civil proceedings against the SAPS the sub judge rule applied. The SAPS had accordingly refused to participate in the investigation and would not abide by the HRC's ruling.

The sub judge rule was created to prevent people from commenting on a case where such comments would prejudice the outcome of the case in any way. Historically it was invoked whenever there was any risk of prejudice to a fair trial, regardless of how speculative. However, in the matter of *Midi Television v The Director of Public Prosecutions*, a full bench of the Supreme Court of Appeal effectively put an end to the rule.

Emphasising the importance of freedom of expression, the Court developed an extremely strict test as to when the sub judge rule can be invoked. The court found that it would only be applicable if a substantial and real prejudice to the administration of justice would occur as a result of the communication and the prejudice could not be prevented from occurring by any other means.

The complaint which was filed with the South African Human Rights Commission involved the violation of Mr Maxwele's constitutionally guaranteed rights to human dignity, to freedom and security of the person, to privacy, to freedom of expression and peaceful/unarmed demonstration, to make political choices and to certain rights as a detained person.

The remedy sought was the restoration of his dignity. In contrast, the pending civil claim to which the Minister refers is a damages claim sounding in money. The crisp issue that will have to be decided in that matter is whether Mr Maxwele is entitled to be compensated financially as a result of any damages suffered. The two are thus different enquiries, and no substantial prejudice to the civil trial can possibly arise through the correct exercise of its rights jurisdiction by the Human Rights Commission.

The South African Human Rights Commission is an institution established in terms of the Consti-

tution to support constitutional democracy. It is specifically mandated to monitor the observance of human rights and authorised to take steps to secure appropriate redress where human rights have been violated. Section 181 obliges all organs of state to assist the Commission and prohibits any interference in its proper function. The Minister was thus ill advised not to co-operate with the investigation. It is now hoped that he will be correctly advised to respect and honour the findings within the stipulated 30 day time period.

Statement issued by Adv Nikki de Havilland, Centre for Constitutional Rights, FW de Klerk Foundation, July 15 2011

<https://www.politicsweb.co.za/politics/police-ministers-critique-of-sahrc-misguided--cfcr>

## C Minutes of termination meeting of 25 October 2019



**MINUTES OF NRM MEETING  
COMMUNITY SERVICES DEPARTMENT  
FRIDAY, 25 OCTOBER 2019**

OFFICIAL	JOB TITLE
Mrs Geraldine Mettler	Municipal Manager
Mr Gary Boshoff	Director: Community and Protection Services
Mr Kevin Carolus	Director: Chief Financial Officer
Mrs Tammy Leibrandt	Superintendent: Urban Forestry
Mr Nceba Ngcobo	DEFF- Director
Mr Colln Sharp	DEFF- Project Manager
Mrs Aadiela Moerat	DEFF- Area Manager
Mr Wessel Wentzel	DEFF-NRM

	CONCERN/ISSUE	COMMENT/S FROM DEPARTMENT
1.	NRM Project Closure Discussion	<ul style="list-style-type: none"> <li>• Stellenbosch Municipality submitted a termination letter to cancel the NRM Project with immediate effect on the 8 October 2019.</li> <li>• Department of Environmental Affairs (DEA) acknowledged receipt of the termination letter.</li> <li>• It must be noted the Working for Water concept no longer exists but the has been replaced by NRM</li> </ul>
2.		



**MINUTES OF NRM MEETING  
COMMUNITY SERVICES DEPARTMENT  
FRIDAY, 25 OCTOBER 2019**

3.		
4.	<b>Way forward</b>	<ul style="list-style-type: none"><li>• Mr Ngocobo stated that he understands the reasons why the Stellenbosch Municipality terminated the NRM contract and accepts the termination letter. He also stated that the NRM Project is difficult to implement at</li></ul>





**MINUTES OF NRM MEETING  
COMMUNITY SERVICES DEPARTMENT  
FRIDAY, 25 OCTOBER 2019**

		<p>municipalities because all municipalities are governed by the MFMA that dictates who municipalities must function in terms of processes and procedures.</p> <ul style="list-style-type: none"><li>• Aadelela mentioned that DEA is looking at a new NRM model that will be aimed specifically at municipalities and aligned with the MFMA.</li></ul>
--	--	---

  
Geraldine Mettler  
Municipal Manager

01 | 11 | 2019  
Date

# D Klaassen court case in 2020/2021 Annual General Report ("DEON GARDEN & CONSTRUCTION")

Page 497

## Stellenbosch Municipality

Annual Financial Statements for the year ended 30 June 2021

### Notes to the Annual Financial Statements

Figures in Rand

<b>66. Contingent liabilities (continued)</b>		
<b>STELLENBOSCH MUNICIPALITY / LEELYN MANAGEMENT CC</b>	400,000	-
Opinion and institution of Monetary claim against Leelyn Management CC for alleged parking revenue collected on behalf of the Municipality which was not paid over by Leelyn Management CC to the Municipality.		
<b>STELLENBOSCH MUNICIPALITY / CHOISY –LE-ROI OWNERS (PTY) LTD</b>	200,000	-
Review application instituted by the owner of Erf 13500 Technopark, Stellenbosch against the appeal judgment of the Executive Mayor. The Municipality served and filed notice of opposition against the application. Rule 53 record was subsequently filed at court. Choisy-le-Roi supplemented their application and the Municipality served and filed its answering affidavit. A court date needs to be obtained to argue the matter.		
<b>DEON GARDEN &amp; CONSTRUCTION CC / STELLENBOSCH MUNICIPALITY</b>	200,000	-
Monetary claim in the amount of R4 374 192.67 including interest at a rate of 7.75% per annum for alleged damages suffered by Deon Garden & Construction CC. The Municipality defended the claim instituted and is in the process of finalising its plea in the matter.		
<b>SECURITEM (PTY) LTD/ STELLENBOSCH MUNICIPALITY</b>	200,000	-
Securitem instituted legal action against the Municipality to pay VAT on top of their tender price. The Municipality is of the view that VAT was included in the tender price submitted by SECURITEM and opposed the application.		
<b>STELLENBOSCH MUN / MOFFAT &amp; OTHERS</b>	100,000	-
Eviction application against the Moffat family who illegally occupy the Eikestad Hall. The Municipality provided temporary accommodation to the Moffat family pursuant to the Moffat family wendy house being destroyed by a fire. The intension was that the Moffat family should occupy the Eikestad Hall temporarily and to relocate to Mountain View. The Municipality provided emergency accommodation at Mountain View, Jamestown, but the Moffat family refused to relocate. The Moffat's was given notice to vacate the Eikestad Hall and eviction proceedings is being instituted. The draft affidavit to institute eviction proceedings is being circulated for comment.		
<b>STELLENBOSCH MUNICIPALITY/ABSA</b>	9,000,000	-
The municipality is in a dispute with ABSA bank in relation to the fleet vehicle expenditure as controled by ABSA.		
<b>SHAHIEDA JACOBS / STELLENBOSCH MUNICIPALITY</b>	200,000	-
Shahieda Jacobs instituted legal proceedings against Stellenbosch Municipality and a municipal official for alleged sexual harassment and unfair discrimination in the Labour Court. The Municipality filed its Statement of Response to the Plaintiff's Statement of Claim. The Special Plea on Shahieda's new Statement of Claim will be determine on 29 July 2020 on the papers before the Judge.		

## E FSM letter of 29 November 2021



Chairperson: HC Eggers  
076-785-3514 heggers@pm.me  
P.O. Box 3218, 7602 Matieland  
11 Grandiceps Rd, 7600 Stellenbosch  
Public Benefit Organisation No. 930049434  
fsmountain.org municipality - Munisipaliteit  
Stellenbosch

29 NOV 2021

### Allegation of Fruitless and Wasteful Expenditure incurred during purported "biomass removal"

Office of the Municipal Manager  
Kantoor van die Munisipale Bestuurder

To the Municipal Manager  
Stellenbosch Municipality

BY HAND AND EMAIL

2021-11-29

Dear Municipal Manager,

1. Attached please find a report compiled by myself on behalf of Friends of Stellenbosch Mountain ("FSM") on the activities pertaining to so-called "biomass removal" on Farm 369, Stellenbosch, between 29 September and 19 November 2021 ("the Activity") as well as copies of emails dated 7, 25 and 27 October and 12 November.
2. In our opinion, the expenditure associated with this Activity exactly matches the definition of Fruitless and Wasteful Expenditure ("FWE") of section 1 of the Municipal Finance Management Act (Act No. 56 of 2003, "MFMA"), being *expenditure that was made in vain and would have been avoided had reasonable care been exercised*.
3. The Activity and associated expenditure in our opinion therefore constitutes Financial Misconduct in terms of section 171(3) of the MFMA.
4. In terms of MFMA Circular 68 of 2019 *fruitless and wasteful expenditure can arise in any circumstance and is not dependent on non-compliance with any legislation*.
5. We do not have access to the municipal financial accounting system and can only estimate the amount of FWE. We conservatively estimate the FWE to amount to not less than R319,000 for the six-week engagement of the contractor's excavator and truck; the actual amount of FWE will have to be determined in the course of the investigation. This amount is to be compared to an estimated cost of less than R20,000 which use of a chipper would have incurred for accomplishing the same task and with much smaller environmental impact, or of other cheap alternatives.
6. In terms of section 171(4) of the MFMA, a municipality must investigate this allegation and, if the investigation warrants such a step, institute disciplinary proceedings against those responsible. In terms of regulation 5(1) of the Financial Misconduct Procedures of the *Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings* of 2014 ("MRFM-PCP"), the matter must be referred to a disciplinary board within seven days of receiving this allegation.
7. It is possible that the expenditure involved in the Activity itself, or negligence in the ensuing investigation, constitutes or may later constitute an Offence in terms of section 173 of the MFMA, Chapter 8 of the MFMA or as defined by the MRFMPCP.
8. We note that the SM Consequence Management Policy of 2019 espouses a zero-tolerance approach to MFMA non-compliance.

9. Specific questions to be posed and answered in the course of the investigations include:
- 9.1 Which official or officials made a determination that an excavator and truck were to be used for the biomass removal rather than cheaper and/or more effective measures? Which person initially determined that tree stumps were to be removed?
  - 9.2 Which person generated the order on the municipal financial system in favour of the contractor APT (Pty) Ltd?
  - 9.3 Which person or persons authorised the said order?
  - 9.4 Did the persons generating and authorising the order consider the rational and cheaper alternative methods for biomass removal (such as use of a chipper) and their respective costs before the order favouring APT was generated and approved?
  - 9.5 Did the agreement with the contractor APT specify a fixed time frame (such as number of workdays) for which APT was to be engaged and paid, or did the agreement specify a particular task or land area to be cleared of biomass?
  - 9.6 Why did no one intervene, over a six-week period, to stop the use of the excavator despite multiple email warnings?
  - 9.7 Given that the expenditure exceeds R200,000, were the supply chain management competitive tender processes followed, not just in general, but for this particular Activity?
  - 9.8 Do the actions or omissions on the part of those persons involved in the Activity constitute *negligence* or *deliberate intent* as referred to in section 171(3) of the MFMA?
  - 9.9 Must the official or officials involved be held liable for the FWE incurred in terms of section 32 of the MFMA?
10. As stated, the biomass which was removed so far constitutes only a small part of the total biomass remaining on Farm 369 and elsewhere, so there is a possibility of further financial loss. MRFMPCP subregulation 10(2) may therefore apply.
11. Given the manifest environmental impact of the Activity, and given that the process of biomass removal on Farm 369 and elsewhere remains ongoing, decisions to be taken both with respect to the Activity as well as similar future activities impact the environment. Therefore, adequate and appropriate opportunity for information and public participation must be provided in terms of sections 23, 24, 28 and 31 of the National Environmental Management Act of 1998. We therefore do expect regular and timely feedback on the progress of the investigations and proceedings resulting from the present allegations. In particular, the outcome of the preliminary investigation (MRFMPCP regulation 5), of the full investigation (regulation 6), and of the tabling in Council (regulation 6) and possible escalation to National Treasury in terms of regulation 19 of the MRFMPCP are of interest to us and the public at large.
12. A complaint has been lodged separately with DEADP.
13. Our investigations into the logging which had taken place in the Paradyskloof and Botmaskop municipal plantations between October 2020 and April 2021 are continuing separately. We shall communicate in due course on that matter.
14. We reserve our rights to take further steps and approach other bodies and institutions in this and related matters.

Yours respectfully,



Hans C Eggers  
Chairperson: Friends of Stellenbosch Mountain

Appendices A to D: Four emails  
Annexure: Report of 25 November 2021 on Biomass Removal

---

FSM to SM: Fruitless and Wasteful Expenditure on Biomass Removal 2021-11-29 Page 2 of 6

# F Organogram Section Environmental Management (2017)

CONFIDENTIAL

STELLENBOSCH LOCAL MUNICIPALITY  
PROPOSED MICRO STRUCTURE - 21 SEP 2017



RECOMMENDED BY  
MUNICIPAL MANAGER

Signature

\_\_\_/\_\_\_/2017

APPROVED BY COUNCIL

Signature

\_\_\_/\_\_\_/2017

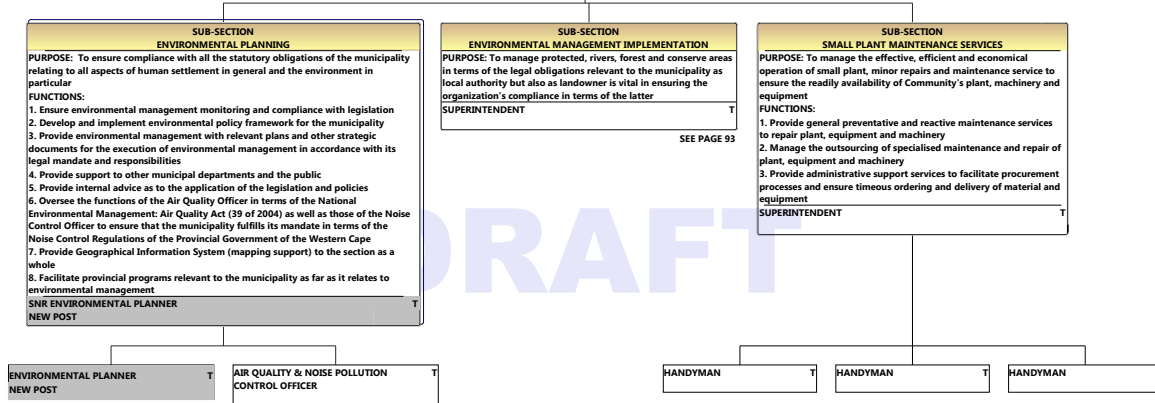
**SECTION**  
**ENVIRONMENTAL MANAGEMENT**

**PURPOSE:** To manage all aspects related to the environment through the preparation of appropriate plans and strategies that will ensure the integrity of the natural and cultural environment through the sustainable use and development in support of a quality living environment

**FUNCTIONS:**

1. Ensure compliance with all the statutory obligations of the municipality relating to all aspects of human settlement in general and the environment in particular
2. Manage protected, rivers, forest and conserve areas in terms of the legal obligations relevant to the municipality as local authority but also as landowner is vital in ensuring the organization's compliance in terms of the latter
3. Manage the effective, efficient and economical operation of small plant, minor repairs and maintenance service to ensure the readily availability of Community's plant, machinery and equipment

**MANAGER:** ENVIRONMENTAL MANAGEMENT



CONFIDENTIAL

STELLENBOSCH LOCAL MUNICIPALITY  
PROPOSED MICRO STRUCTURE - 21 SEP 2017



RECOMMENDED BY  
MUNICIPAL MANAGER  
  
Signature  
  
\_\_\_\_/\_\_\_\_/2017

APPROVED BY COUNCIL  
  
Signature  
  
\_\_\_\_/\_\_\_\_/2017

**SUB-SECTION**  
**ENVIRONMENTAL MANAGEMENT IMPLEMENTATION**  
**PURPOSE:** To manage protected, rivers, forest and conserve areas in terms of the legal obligations relevant to the municipality as local authority but also as landowner is vital in ensuring the organization's compliance in terms of the latter  
**FUNCTIONS:**  
1. Implement management plans and other strategic documents compiled by environmental planning and adopted by Council, such as those prepared for:  
i) Invasive species monitoring, control and eradication  
ii) River management  
iii) Fire management  
iv) Pollution control  
v) Erosion control  
vi) Reserve management  
2. Conserve formally declared protected areas by executing management actions as included in approved management plans  
3. Manage municipal land / previous forestry areas (not under lease agreement)  
4. Manage / execute river maintenance / rehabilitation projects  
5. Manage expanded public works program (EPWP) employees employed on the management of protected areas, municipal land (as defined above) and river management / rehabilitation projects  
6. Policing of public use of municipal land  
7. Provide general environmental education to local communities  
**SUPERINTENDENT** T

