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FRIENDS OF STELLENBOSCH MOUNTAIN

Follow-Up on FSM January 2022 IDP questions

22 September 2022

1. Resubmission of our 12 January 2022 questions

On 12 January 2022, Friends of Stellenbosch Mountain (FSM) submitted in writing a set of questions as part of the IDP process. These questions were never answered, even though they relate to millions of Rands of possible loss to Stellenbosch and its taxpayers. Stellenbosch Municipality (SM) is accountable to the public for its actions and budget spending. FSM hereby resubmits the January 2022 document and requests that the January questions be addressed properly and in full. We submit additional questions as set out below.

2. Court case 9140/2021: Deon Garden & Construction vs Municipality

Appendix A, taken from the Stellenbosch Municipality 2020/2021 Annual Financial Statements shows that Deon Garden & Construction cc (“DGC”, owned by Mr Deon Klaassen) is claiming more than R4.3 million Rand from Stellenbosch Municipality in his Cape High Court case 9140/2021. Appendix B contains a newspaper article which provides some background on this case.

This court case is closely related to the 2019/2020 termination of a NRM grant worth more than R14 million given by the national Department of the Environment, Forestry and Fisheries (DFFE) to Stellenbosch Municipality. SM unilaterally terminated this grant contract and thereby forfeited R14 million which would have supported nature work and hundreds of poor EPWP workers. On 22 September 2020, SM also unilaterally terminated three-year contracts with 13 local service providers who had already started work in 2019 under Tender BSM7/19, among them Deon Garden & Construction.

FSM has been asking questions about the NRM grant and Tender BSM7/19 for more than two years but no answers were provided.

Questions:

- 2.1 When will Court Case 9140/2021 come to trial?
- 2.2 How much in total have the other 12 service providers been paid for work done in 2019 under Tender BSM7/19?
- 2.3 SM claims that it terminated the NRM and DGC contracts because (SM claims) DGC charged rates per worker and expenses which were not allowed under the contract. However, Annexure A of the Memorandum of Agreement between DFFE and SM, as signed by Municipal Manager Mettler on 6 February 2019, contains detailed tables of employment costs laid down by DFFE itself.

Did Deon Garden & Construction or any other BSM7/19 service provider charge or use rates or costs different from those laid down by this Annexure A and agreed to in writing by the Municipal Manager?

2.4 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, funded by the Stellenbosch Taxpayer?

3. Leon Lourens Labour Court case

Appendix C is also taken from the Stellenbosch Municipality 2020/2021 Annual Financial Statements. It shows that the disciplinary case against municipal employee as referred to in the agenda of the Council meeting of 12 June 2020 has subsequently been changed into a Labour Court case. See also Appendix F in the January 2022 FSM IDP submission.

Questions:

3.1 It appears that Mr Leon Lourens has not been dismissed but continues to be on the municipal payroll with full salary and benefits. How much, in total, has SM paid to Mr Lourens in salaries and benefits since his suspension in 2019?

3.2 When will the purported Labour Court case come to trial?

4. Cost to taxpayer so far

The table below contains some well-established figures like the R14,426,500 NRM grant provided by DFFE, but there is considerable uncertainty regarding other amounts.

Question:

Could the MFMA Accounting Officer (the Municipal Manager) please correct or fill in the following estimates of costs and/or losses which have accrued to Stellenbosch Municipality due to the above issues?

Description	Possible cost to taxpayer
Termination by Stellenbosch Municipality of the NRM 2019 grant contract	R14,426,500
Leon Lourens suspension on full pay and benefits since 2019	R1,200,000 ??
Costs incurred for the Leon Lourens disciplinary process	??
Costs incurred so far for the Leon Lourens Labour Court case	??
Legal costs and damages sought by Deon Garden & Construction	R4,374,192 ??
Ad hoc payments to the other 12 service providers for work done in 2019 under Tender BSM 7/19	R500,000 ??
Tender BSM 102/20	R2,000,000 ??
Tender BSM 32/22	??
Tender BSM 33/22	??
Tender BSM 65/22	??
Possible total costs	R22,500,000 ?? or more?

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

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Figures in Rand

66. Contingent liabilities (continued)		
STELLENBOSCH MUNICIPALITY / LEELYN MANAGEMENT CC	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.		
STELLENBOSCH MUNICIPALITY / CHOISY –LE-ROI OWNERS (PTY) LTD	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.		
DEON GARDEN & CONSTRUCTION CC / STELLENBOSCH MUNICIPALITY	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.		
SECURITEM (PTY) LTD/ STELLENBOSCH MUNICIPALITY	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.		
STELLENBOSCH MUN / MOFFAT & OTHERS	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.		
STELLENBOSCH MUNICIPALITY/ABSA	9,000,000	-
The municipality is in a dispute with ABSA bank in relation to the fleet vehicle expenditure as controlled by ABSA.		
SHAHIEDA JACOBS / STELLENBOSCH MUNICIPALITY	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.		

B IOL newsreport on the Klaassen court case, February 2022

<https://www.iol.co.za/capetimes/news/>

Contractor hauls Stellies council to court

By Nicola Daniels

2 February 2022

CAPE TOWN - A local black contractor has taken the Stellenbosch Municipality to court for "abruptly" ending a three-year contract he and 12 other contractors were awarded, a month after they had already started working.

The contractor, Deon Klaasens, from Deon Garden and Construction feels he and others were prejudiced against as they were all contractors of colour and the municipality's reasons for ending the contract were allegedly unsubstantiated.

Klaasens filed a civil claim against the municipality in the Western Cape High Court for damages amounting to more than R4 million.

The municipality maintains Klaasens was paid what he was owed.

According to court documents the municipality appointed Klaasens's company to clear invasive alien vegetation from an area within the municipal boundaries from May 30, 2019 until June 30, 2021.

However, according to Klaasens' lawyer, Mohau Romeo Tsusi the work was only distributed around August or September 2020, and then on or about September 21, 2020, "in breach of the contract, the (Stellenbosch Municipality) unilaterally terminated the contract on the purported basis that the Defendant has no funds".

"The correct procedure to set aside their own contract or review their decision is through a court process, especially if it is already awarded because it is an administrative decision," Tsusi said.

"There was a contract and 13 contractors were appointed including our client, based on that there was a budget taken out. Then the contract was abruptly cancelled. I don't know how they came to that decision or what led to them cancelling but all clients lost out benefiting from that tender, contractors were waiting for work, empowerment and all of a sudden the work was gone, some even had to shut down business as a result.

"The municipality said they did not have funds but within about a three or six month period the same tender was reissued without any explanation. My client again applied for the second tender but was unsuccessful."

Klaasens added when he enquired with the funders [Department of Forestry, Fisheries and the Environment (DFFE)] they confirmed they did not pull out, but it was the municipality's decision because of an internal issue.

"The sad part is it was not our fault but we had to suffer, I mean we were expecting to work for three years, it was devastating. We had to buy equipment, train staff as required for the tender, we lost big time and the worst is that everyone can't afford to take legal action against the municipality so where does that leave them?" he asked.

According to the municipality's plea, the tender was dependent on funding from the DFFE in terms of a service provider agreement between the parties.

“On or about 29 May 2020 the service provider agreement was cancelled and the National Resources Management Project was terminated; as a result of the withdrawal of the funding by the (DFFE), the defendant was entitled to cancel the contract with the plaintiff,” court papers read.

They also alleged Klaasen charged rates per worker in excess of what the contract allowed and tools and transport which were not allowed under the contract.

The municipality would not respond to further questions around why the contract was cancelled or allegations of discrimination.

“Mr Klaasen was paid all he was due for work done on the tender. As this matter is sub judice, we cannot discuss the merits of this case,” Stellenbosch Municipality spokesperson, Stuart Grobbelaar said.

The DFFE on Wednesday told the Cape Times that the cancellation of the contract was initiated by the municipality.

DFFE spokesperson Albi Modise said: “On October 8, 2019, the department received a letter from Stellenbosch Municipality to cancel the contract. Based on the implications of the withdrawal, particularly on the employment of EPWP participants and controlling the spread of invasive alien plants in the Stellenbosch area, the Department met with the Municipal Management and her team including their CFO. Unfortunately, the MM made it clear that as municipality they could not continue to implement the projects.”

He said that the resolutions of the meeting included reconciliation of funds and that the balance of the funding must be paid to the Department’s account.

A trial date for the matter is still to be determined.

Cape Times

Stellenbosch Municipality

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66. Contingent liabilities (continued)		
Independent Schools Association of Southern Africa / eThekweni Municipality / Stellenbosch Municipality & Others	250,000	250,000

This matter involves an application on behalf of the Municipality to be joined as co-applicant together with eThekweni Municipality in an application for the review and setting aside of the Amended Municipal Property Rates Regulations promulgated on 12 March 2010. The Municipality has been joined successfully as co-applicant.

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De Zalze Golf Club / Valuation Appeal Board for Stellenbosch Municipality	400,000	500,000
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De Zalze Golf Club applied to have the Valuation Appeal Board for the Stellenbosch Municipality's decision dated 5 September 2018 to place a value of R26 500 000.00 on the leasehold rights in respect of remainder Erf 296 De Zalze reviewed and set aside and to replace the decision with an order valuing the property at R1 000.00 alternatively R4 900 000.00. In the alternative, and in the event that the Court is not prepared to grant the relief sought indicated above, remitting the matter to the Valuation Appeal Board and directing it, within a reasonable period and in accordance with the Court's directions, to make a fresh decision as to the value of the property. De Zalze Golf Club also applied that the Valuation Appeal Board and Stellenbosch Municipality pay De Zalze's costs jointly and severally, including the costs of two counsel (save that costs are only sought against Stellenbosch Municipality in the event of it opposing the application). The matter was heard on 13 August 2020 and judgment has been reserved. This matter does not involve any amounts claimed.

Stellenbosch Municipality / LJ Turnkey Investments (Pty) Ltd	250,000	250,000
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The owner of Portion 9 of Farm 100 Stellenbosch ("the Property") applied for a declaratory order that the zoning of the Property is general residential and allows them to utilise the Property for student accommodation. The Municipality opposed the declaratory order and filed its answering affidavit.

The Municipality is in the process of instituting a counter-application for, amongst others, a declaratory order regarding the zoning of the Property and interdictory relief regarding the utilisation of the Property for student and/or any other rental accommodation in contravention of the Municipality's Zoning Scheme By-law. This matter does not involve any amounts claimed.

Anonymous Employee/Stellenbosch Municipality	300,000	-
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Review application instituted by Stellenbosch Municipality setting aside the Arbitration Award made under WCP121702 under the South African Local Government Bargaining Council to pay her compensation for additional work done.

STELLENBOSCH MUNICIPALITY / FORMER EMPLOYEE	200,000	-
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Review Application instituted in the Labour Court against the disciplinary sanction of the chairperson in the disciplinary hearing of Leon Lourens. Leon Lourens was found guilty on three charges, which involves dishonesty but was not dismissed by the chairperson. The Municipality has served and filed its founding affidavit to have the ruling of the chairperson set aside and replace for a dismissal. The Municipality is in the process of transcribing the recordings of the hearing whereafter Leon Lourens will provide its answering affidavit in the matter.