

FOR DECISION BY COUNCIL

COUNCIL OF THE CITY OF CAPE TOWN

15 DECEMBER 2000

C 10/12/00

INTERIM DELEGATIONS

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7 DECEMBER 2000

1. EXECUTIVE SUMMARY

The UniCity Commission has proposed a set of interim delegations describing the interim functional areas and delegations of Council, the Executive Committee and the Acting Municipal Manager. Where appropriate delegations were in place for other members of staff, except for the Chief Executive Officers, these delegations were saved in terms of the Section 12 Notice published in Provincial Notice PN 479/2000. The powers of the Chief Executive Officers now vest in the Interim Municipal Manager, who has been empowered by the said notice to sub-delegate any of these powers.

This report recommends the confirmation of the interim functional areas and the delegations of Council, the Executive Committee and the Interim Municipal Manager.

2. BUSINESS PLAN REFERENCE

<u>Directorate:</u>	Office of the Interim Municipal Manager
<u>Department:</u>	Legal Services
<u>Business Plan Heading:</u>	To support the creation of the new City of Cape Town

3. DELEGATION

For decision by Council.

4. ANNEXURES/ADDENDA

Addendum A : The report of the UniCity Commission

COUNCIL OF THE CITY OF CAPE TOWN

15 DECEMBER 2000

5. BACKGROUND/INTRODUCTION

Extensive work went into the drafting of the attached report and it is considered to be appropriate for the interim period. Subsequent to the drafting of this report, it became known that the former City of Cape Town had a particular problem in respect of the delegations to its officials, which were recalled in 1998 and were not re-delegated.

The processes envisaged by the City of Cape Town for delegating its committees were apparently also not completed.

6. DISCUSSION

The Commission proposed a general delegation of residual powers of the political structures. In this regard, it was suggested that the following additional executive powers be delegated to the Interim Municipal Manager:

1. those powers that may legally be delegated to the Interim Municipal Manager and,
2. that vested in the committees of the former municipalities,
3. excluding any such power that will be retained by the Council of the new City of Cape Town or its Executive Committee in terms of the attached Unicom's proposal.

It now appears that significant gaps may exist for which no delegations were made by some former municipalities to the administration or to the committees of those municipalities. The effect of this will be that the Council itself of the new City of Cape Town may find itself having to deal with relatively trivial matters whilst its final delegations is in the process of being drafted.

It is therefore necessary that a general catch-all clause dealing with all powers not delegated (not only the powers of the previous committees) be inserted in the interim delegations.

7. RECOMMENDED

It is recommended that:

1. Council accept the report of the UniCity Commission and that Council delegate its powers as set out therein

2. as an interim measure, Council delegate to the Acting Municipal Manager all its executive powers that may legally be delegated, which are not retained by Council itself or delegated to the Executive Committee or any other committee of Council. (In terms of the proposals of the UniCity Commission). This delegation does not affect the delegated authority of any official that was saved in terms of the provisions of the Section 12 Notice referred to above.

C 10/12/00 INTERIM DELEGATIONS

The following amendment was proposed by the DA as an addition to the recommendations in the report, and was carried nem. con.:

that these interim delegations will remain in place until the next meeting of Council where they will be reconsidered

that pending the establishment of the Organisational Transformation Committee, the Executive Committee be delegated to deal with any urgent staff matter.

RESOLVED

1. that Council accept the report of the Unicity Commission and that Council delegate its powers as set out therein
2. that as an interim measure, Council delegate to the Acting Municipal Manager all its executive powers that may legally be delegated, which are not retained by Council itself or delegated to the Executive Committee or any other Committee of Council. (In terms of the proposals of the Unicity Commission.) This delegation does not affect the delegated authority of any official that was saved in terms of the provisions of the Section 12 Notice referred to above
3. that these interim delegations will remain in place until the next meeting of Council where they will be reconsidered
4. that, pending the establishment of the Organisational Transformation Committee, the Executive Committee be delegated to deal with any urgent staff matter.

ADOPTED BY ORDINARY RESOLUTION

COUNCIL OF THE CITY OF CAPE TOWN

15 DECEMBER 2000

INTERIM DELEGATIONSA DOLBY
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23 NOVEMBER 2000

EXECUTIVE SUMMARY

The Section 12 Notice preserves the delegated powers of the officials of the seven administrations, but not the delegations of the political structures of the former Councils. Accordingly, it has been necessary to compile a set of delegations which could serve the new Council's interim political structure and be retained until final delegations are produced to serve the longer term political structures. This process comprised a rationalisation of the powers and delegations of the former Councils and took into account the need to comply with new legislation and the ability for the delegations to facilitate political decision making which would concentrate the new Council and its committees on policy formulation and the monitoring of service delivery.

The report includes a set of principles, checks and balances and special conditions which will regulate the delegation of powers and will control the decision making of delegates.

DELEGATED AUTHORITY

Not delegated, decision required by Council.

ANNEXURES

- A - STATUTORY OBJECTIVES, DUTIES AND FUNCTIONS OF THE COUNCIL
- B - STATUTORY DUTIES, POWERS AND FUNCTIONS OF THE EXECUTIVE COMMITTEE
- C - STATUTORY FUNCTIONS AND RESPONSIBILITIES OF THE MUNICIPAL MANAGER
- D - DUTIES ASSIGNED TO THE INTERIM / ACTING MUNICIPAL MANAGER IN TERMS OF SECTIONS 18 (2) AND 18 (3) OF THE SECTION 12 NOTICE PUBLISHED IN AN EXTRAORDINARY PROVINCIAL GAZETTE NO 5588 DATED 22 SEPTEMBER 2000
- E - PROPOSED INTERIM DELEGATIONS

INTRODUCTION

The Day One Arrangements Project Team was *inter alia* tasked with the drafting of interim delegations to the Executive Committee, Committees, Municipal Manager and Officials. The political structure for the new City of Cape Town will comprise of a Council of 200 members, an Executive Committee of 10 members which includes the Mayor who will be Chairperson of the Committee and a Deputy Mayor. Furthermore an Acting Municipal Manager will be appointed at the first meeting of the new Council.

TRANSITIONARY PERIOD

It is expected that the new Council will establish some minimal form of interim political structure that will have a relatively short life span. Thereafter a more substantial longer term political structure will have to be adopted to deal with political decision making. This may take the form of a further interim structure or be the first phase of a longer term political structure or be the final governance model.

The principles for delegations as contained in this report have been formulated to serve the full transitionary process as described above. In addition, a schedule of powers and delegations has been prepared and can readily be refined to serve the changing political structures from the interim to the final structures.

Depending on the nature of the structures adopted by the new Council for the interim through to the final phase, the principles, checks and balances and general conditions in respect of delegations will apply to a lesser or greater extent.

ASSUMPTIONS

The following assumptions were made in the preparation of this report:-

- The Local Government elections will be held on 5 December 2000.
- The period for the interim political structure will be from December 2000 to 28 February 2001.
- During the interim period interim delegations will be necessary for the Executive Committee, any Section 79 or 80 Committees which the Council may establish, the Acting Municipal Manager and the Chief Executive Officers of the seven existing Councils.
- During the period December 2000 to 28 February 2001 the Executive Committee will have to attend to the final political structure and commence with the compilation of final delegations. In this regard it is suggested that a team of specialist legal and management staff in consultation with appropriate line management be appointed at an early stage to develop a set of delegations that will match the final political structure for consideration by the Executive Committee and the new Council.

- The final delegations for officials can only be drafted after the macro and micro design of the administration has been finalised.
- The duties of the Acting Municipal Manager are set out in the notice published in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) ("the Structures Act"). These duties may be amended or repealed by the new Council at its first or at any subsequent meeting.
- During the period in which the Acting Municipal Manager has his Section 12 powers, matters of an urgent nature with a metro wide strategic significance will be submitted by the Acting Municipal Manager to the Executive Committee and if necessary to the Council for consideration during the interim period.

PRINCIPLES AND OBJECTIVES

The interim delegations:-

- Must enhance service delivery without sacrificing accountability.
- Must be lawful.
- Must be in writing.
- Must recognise the distinction between the strategic, political and policy setting role of the political structures and the operational role of the administration.
- Must ensure that the Council retains all legislative powers and those executive powers the execution of which cannot be regulated by policy, or which could have a major strategic impact on the existence, composition, operation or financing of the Council.
- Must focus the Council and the Executive Committee on their principal obligations during the interim period.
- Must provide for good governance and allow for adequate checks and balances.
- Must be conditional upon compliance with any Council policies (including the policies referred to in the Section 12 Notice), Council's IDP and budget and should continue to subscribe to the principles of the integrity agreement as far as these may be applicable.
- Because of the uncertainty in respect of the time required to complete the political structuring of Council the interim delegations must be flexible and must be drafted in such a manner that they can be adapted and developed to accommodate changing structures.
- Must be easy to implement.
- Must not unnecessarily undo any current delegations of the administration.

- Must not confuse issues such as functions, statutory powers, and authorisations with the power to decide.
- The Municipal Manager must specifically be authorised by Council to sub-delegate any of his/her powers which can lawfully be delegated in terms of relevant legislation.
- The interim political structures should not take decisions that should preferably be postponed until the final political structures are established. This is particularly relevant where long-term policy is at stake.
- Must not oblige a delegatee to exercise his/her delegated power and must therefore allow for the decision to be taken at the next higher level.
- Must be comprehensive and must address the disparities in delegations between the former Municipalities by ensuring that no gaps are left.

RELATIONSHIP BETWEEN INTERIM DELEGATIONS AND SECTION 12 NOTICE

In order to maintain service delivery and avoid uncertainty amongst staff all delegations of officials below the level of CEO must remain in place as preserved in the Section 12 Notice. This means that, as far as delegations to officials below the level of CEO are concerned, the Section 12 Notice overrides the interim delegations in so far as there may be a conflict. In respect of the remainder these delegations must prevail.

If this were not the case and officials current delegations were amended then it would be crucial to undertake an audit to assess which officials' powers were affected/alterd and to what extent.

The relevant officials would then have to be trained prior to the interim period to ensure that they operate legally during the few weeks of the interim period. It must be stressed that from a legal perspective this route would be highly problematic as it could lead to decisions being taken *ultra vires* or, even worse, not being taken at all. It would also necessitate a continuous retraining of officials as they would again have to undergo training to implement the final delegations.

The Section 12 Notice devolves all the powers previously enjoyed by the CEO's to the Interim/Acting Municipal Manager. The interim delegations must allow for the Municipal Manager to sub-delegate to the CEO's for the interim period. For this reason it is important that the interim delegations allow the Municipal Manager to sub-delegate any of his/her powers.

This should be encouraged in any event as the Municipal Manager should not be unnecessarily involved in operational matters during the interim period.

Although the Section 12 Notice preserves all delegations to officials granted by the delegations of the former Councils the Municipal Manager should be authorised to remove or amend such delegations as may become necessary.

FOCUS OF POLITICAL STRUCTURES DURING THE INTERIM PERIOD

The delegations must take into account the specific roles of Council, the Executive Committee, any other Committee and the Municipal Manager during the period when these delegations apply.

Council

Council's powers must be focussed on giving policy and strategic direction to the Executive Committee on the design and implementation of the political structures of the Council. In addition to this Council will have to exercise its obligations as a legislator specifically with reference to the budgetary process.

The only other additional focussed area of the Council and, where appropriate, the Executive Committee should be to deal with those of the Municipality's obligations relating to the IDP and the budget that cannot wait for the new political structures.

The Executive Committee

The Executive Committee's powers should be focussed on taking the steps necessary to enable the Council to appoint the Municipal Manager and finalising the design and implementation of Council's political structures in the shortest possible time.

The Executive Committee should therefore not become a *de facto* Day Management Committee trying to run the Municipality on a day-to-day basis. This means that only those matters referred to above and any other matters with serious and long-term implications that cannot adequately be dealt with in terms of policy should be dealt with by the Executive Committee.

The implication of this is that issues currently dealt with by some Councils and their Executive Committees which do not comply with these principles must be delegated to more appropriate levels.

Rationale in deciding strategic importance

There must be some rationale when deciding what matters are of strategic importance or of such political significance that the Executive Committee or the Council must deal with them. The traditional point of view that incurring expenditure above low limits could be of political importance is outdated and not suited to an organisation the size of the new Municipality. Strategic and political decisions include those pertaining to the approval of the budget, the Integrated Development Plan and the Business Plans and the incurring of expenditure merely involves the implementation of Council's policies.

With this in mind the practical consequences will be that once Council has approved the budget, the IDP and Business Plans and has decided on a procurement policy, the administration should be empowered to take as many consequential decisions as possible, provided adequate checks and balances are in place.

It should be noted that the approval of tenders takes place within the context of the framework of a procurement policy which in turn is governed by legislation. There is little room for discretion or subjectivity within the policy framework and tender awards are rendered virtually an automatic outcome. There would therefore seem to be little reason

to take these matters to political levels provided there was an adequate audit and regular report back of the delegated decisions taken.

The Executive Committee will therefore only in the most exceptional circumstances be tasked to deal with the implementation of the budget and Business Plans such as expropriations or appeals on decisions taken by the Municipal Manager.

Committees

In light of the above, all matters not relating to policy or to the primary focus areas of the Executive Committee must be delegated to committees lower down (if any) or to the Municipal Manager during the interim phase. This may also be applicable to a longer term political structure. This principle must be seen in the context of Clause 61 of the Local Government: Municipal Systems Act (the Systems Act), which allows the delegatee the option not to exercise his powers but to refer the decision back to the delegatee.

To give effect to this principle it may be appropriate for the delegations document to require delegates to exercise their delegated powers in the utmost of good faith and may refer sensitive issues to the next higher level.

HOW TO ACHIEVE THE PRINCIPLES AND OBJECTIVES

APPROPRIATE LEVELS OF DECISION-MAKING : COMMERCIAL ACTIVITIES

In order to ensure that decisions are taken at appropriate levels for matters involving expenditure where the value of expenditure determines the relative importance of such decision the system outlined below is proposed.

Council

As Council has to approve the budget, the IDP and the Business Plan, there can be no further metropolitan strategic significance in Council thereafter approving expenditure pursuant to a project for which in principle approval has already been granted. For this reason it would be inappropriate for Council to retain any decision-making powers in authorising expenditure on any subsequent commercial activity undertaken in accordance with the budget, IDP or Business Plan.

Executive Committee

The principle that Council should not be involved in deciding on commercial activities forming part of Council's Budget and IDP should also apply to the Executive Committee of the new Council. It must be remembered that the new Council's budget will exceed R10 bn per annum. If the Executive Committee is expected to approve commercial activities even of very high values, for example exceeding R10 m, then it would still be expected of this committee to have to consider about 1000 of these transactions per annum. At most the Executive Committee should be expected to provide checks and balances in respect of commercial decisions taken by other committees.

Committees

The committees are the appropriate political structures to decide on high level commercial activities as these committees are responsible for the implementation of Council's IDP and Business Plans within their functional areas.

Commercial Activity

It is suggested that commercial activity includes but is not limited to:-

The buying, selling, hiring, letting of goods, property (both moveable and immovable) or acquiring or providing services, the advertising of tenders for such goods or services, the awarding of such tenders, the entering into and signing of contracts or agreements including insurance contracts, the amendment and cancellation of such contracts or agreements, exceeding values on contract agreements and any activity incidental thereto (provided that the total contract price still falls within the delegated limits of the relevant functionary).

The value of a commercial activity in respect of leases is the total estimated cost of the lease. If the period of the lease is not determined then the annual cost of the lease will determine where the delegation lies. In respect of any other commercial activity, the total estimated contract sum applies. If the eventual amount payable for the commercial activity exceeds the delegated limit set for a functionary, the matter should be referred to the appropriate higher level of decision-making.

Subject to Council policy, the underlying principle is that the *monetary value* of the transaction is a determining factor of the relative importance of the decision while the *nature* of the commercial activity may in some cases also be relevant.

RATIONAL SYSTEM

The interim delegations will not work effectively if they are not easy to implement or if they are difficult to understand. For this reason it is proposed that a rational framework underpin these new delegations and that the new system does not become simply an amalgamation of amended current delegations. The existing delegations have very little in common and are not easily reconcilable.

It must be noted that the Systems Act now requires a Municipality's delegations to form part of a system and in a sense this prohibits an unstructured collection of delegations.

To achieve a rational system without any gaps it is important that a fallback mechanism is implemented during the interim period empowering the Municipal Manager to take decisions in cases where no specific other delegation exists. In this regard it is proposed that all delegations of Committees of the former Councils, not covered by specific delegations as provided for in this report (see Annexure E), will transfer to the Municipal Manager for the period of the interim political structure.

The underpinning theory of this rational system of delegations is that the system is principle driven and not designed on an ad hoc basis. This means that decisions are grouped together in respect of common underlying principles and a generic delegation is made instead of trying to list every possible permutation thereof. Further, the underlying principle determines the level at which the delegation should rest. For example changing a fragmented system of appointing permanent staff, casual staff, contract staff, etc. into a system requires agreement that the underlying principle is "contracting to obtain a workforce". Any decision to employ a workforce will fall under this heading without the necessity of listing all the potential types of employees that could be appointed. The system determining where the delegation must rest could be based on the level of expenditure in respect of the appointment, alternatively the seniority of the staff to be appointed could be taken into account.

The advantages of this "principle driven" system of delegations are numerous. Firstly, it makes the system of delegations adaptable to any alterations to the functions of the different committees and officials of the Municipality. Secondly, it minimises the possibility of a power being retained by Council by default, when it should logically have been delegated. Thirdly, the system is highly flexible, with Council retaining the power to withdraw or revoke any delegation and with the different levels being able to influence the manner in which decisions are made by simply amending the policy frameworks applying to delegations. In summary, such a system fosters certainty and transparency, thus maximising good corporate governance.

CHECKS AND BALANCES

All decisions taken in terms of delegated powers must be subject to appropriate checks and balances. Some checks and balances are prescribed by law, such as the new Appeals Committee. For the rest Council must make appropriate provision for this in its delegations, decision-making structures, policies and in its operations. The following sub-headings describe some of the more obvious checks and balances. Some further checks and balances are built into the general conditions of delegations set out below.

Appeals

The Systems Act requires the establishment of an Appeals Committee. This Committee must deal with appeals against decisions taken by all Council's Committees, including the Executive Committee, and any political office-bearer or Councillor.

In terms of the Systems Act the Appeals Committee must consist of Councillors who were not involved in the initial decision. To achieve this the Appeals Committee could be established on the basis that any member of this Committee who may have been part of the Committee which originally made the decision, must recuse him/herself from the Committee when considering an appeal. It is also possible to create this committee as an *ad hoc* committee for purposes of considering the appeal. Lastly it is possible to create the Appeals Committee as a separate committee and not to allow its members to sit on any other committee with executive functions. In any event the Appeals Committee must be a Section 79 Committee answerable to Council.

The Executive Committee is the appeal body for decisions taken by the Municipal Manager

and the Municipal Manager is the appeal body for decisions taken by other officials.

Withdrawal of delegation

The Council, or any subdelegator, such as the Executive Committee or the Municipal Manager, may at any time withdraw, qualify or amend a delegation, i.e. the power of the delegatee to take a delegated decision (Clause 54(1)(c) of the Systems Act). In addition the Municipal Manager may withdraw any delegation saved in terms of the Section 12 Notice.

Review of delegations

Every delegation must be reviewed in terms of the provisions of Clause 59(2)(f) of the Systems Act whenever a new Council is elected.

Delegator's right to intervene

The delegator may at any time order a delegated matter not to be proceeded with by the delegatee and then deal with such matter itself (see Clause 61 of the Systems Act).

Review of decisions

A Municipal Council must in terms of the provisions of Clause 59(3)(a) of the Systems Act and in accordance with the procedures of its Rules of Order review any decision taken under delegated powers if so requested in writing by at least a quarter of the members of Council. It may also require its Executive Committee to review any decision taken in terms of delegated powers (Clause 59(3)(b) of the Systems Act).

Separation of administration from decision-making

The separation of decision-making powers from the administration thereof necessarily involves the separation of the evaluation and recommendation process from the final decision-making process. This principle must apply to the procurement, sale, hire or lease of all property, goods and services excluding the appointment of professional consultants in certain urgent cases, for example, the appointment of advocates for which formal quotations or tenders are not invited.

Whenever tenders or quotations for goods or services are called for the delegatee deciding on the awarding of the contract may not be the same person or committee which makes the recommendation for or against acceptance of the offer. The decision to accept the offer or not may only be taken pursuant to a written report containing a recommendation on the acceptance of a specific offer.

Similarly the principle of separation of decision-making powers must be observed in all other cases where delegated decisions are taken following a formal adjudication process, e.g. when rights are bestowed pursuant to applications such as town planning and building

control etc. in so far as the applicable legislation may not already require such separation.

Decisions which impact on more than one administration

While separate administrations exist any decision to be taken by an official of one administration which could have implications for other administrations must be undertaken in consultation with the other Administrations. Similarly, while separate administrations exist any report for decision by a political structure or the Municipal Manager which could have metro wide significance must first be commented on by the other Administrations.

Where consultation with other Administrations is initiated, deadlines must be set for the receipt of responses from other effected Administrations.

Audit of decisions

Any delegator may require a selected sample of decisions to be audited.

Reports of decisions

All delegates must report to their delegators at such intervals as the delegator may require on all decisions taken in terms of that delegated or sub-delegated power or duty since their last report (Clause 58 of the Systems Act). These reports are to enable the delegator to determine whether the policies regulating the power are adequate and/or whether the delegation is appropriate.

GENERAL CONDITIONS APPLICABLE TO DELEGATIONS

Whenever a decision is taken in terms of a delegated power the exercise of this power is subject to the following conditions:-

Compliance with all relevant legislation and Council policies. In respect of Council's policies it must be understood that any existing or future policies will determine the parameters of any delegation and the delegatee is bound to comply therewith. Non compliance will cause any decision so taken to be *ultra vires*.

Compliance with Council's IDP, budget and Business Plans (including KPI'S). In executing delegated powers no expenditure may be incurred unless the delegatee is satisfied that the Council has budgeted for the expenditure and that the funds are still available on the relevant budget votes.

The delegator may at any stage withdraw any delegated power.

The delegator may determine whether a report is needed motivating the decision and whether the decision must be reduced to writing. If a report is required then it must indicate that all legal and financial requirements have been met.

A delegation may set out special circumstances in which a delegatee is prohibited from exercising his/her delegated power, for example if the delegatee is recommending the rejection of the most financially beneficial offer.

Any sub-delegation must be reduced to writing and recorded in the delegation register, which must be kept updated at all times by the Municipal Manager and the CEO's.

All decisions affecting the rights of others must be in writing and reasons must be recorded for such decisions.

INTERIM FUNCTIONAL AREAS OF THE POLITICAL STRUCTURES AND THE MUNICIPAL MANAGER

The functional areas of the political structures and Municipal Manager are defined below:-

Council

The statutory powers and functions of the Council in terms of the Constitution, the Structures Act, and the Systems Act are attached as Annexure A.

Only Council may exercise legislative powers and any other powers specifically reserved for Council in the Constitution [Section 160(2)] and the Systems Act (Clause 59].

Council must appoint the Municipal Manager and those officials reporting directly to him and determine their conditions of service. Council must set policy for the structuring of the administration and the appointment of other staff by the Municipal Manager.

Council must establish the political decision-making structures and must set policy for the Executive Committee in this regard. Council must further oversee the operations of the Executive Committee.

Council must concentrate on setting policy to guide its delegates in their decision-making.

The Executive Committee

The statutory powers and functions of the Executive Committee in terms of the Structures Act are attached as Annexure 'B'.

To consider any matter reserved for decision by Council and to make recommendations thereon.

To exercise the powers that may be delegated by Council to the Executive Committee in terms of the Systems Act (Section 60).

To develop and design the new political structures of the Municipality.

To develop and determine policy in respect of the administrative structures and the appointment of staff and guide the statutory powers of the Municipal Manager in this regard.

To recommend the appointment of the Municipal Manager as soon as possible.

To make recommendations to Council in respect of its legislative powers.

To set policy to guide other Committees, the Municipal Manager and officials in their decision-making process. This policy may be effective in preventing delegated decisions that could jeopardise Council's political objectives without necessitating the Executive Committee assuming responsibility for taking operational decisions on an ad hoc basis.

To consider any recommendation in respect of a commercial activity if the Committee which is delegated to deal with the matter does not accept the most financial beneficial offer.

To consider appeals from a person whose rights are affected by a decision of the Municipal Manager provided that the decision reached by this Committee may not detract from any rights that may have accrued as a result of the original decision.

Standing Committees

To make policy recommendations regarding matters falling within the functional area of the Committee but outside its delegated authority.

To set policy in respect of matters falling within the functional area of the Committee and within its delegated authority or authority delegated lower down.

To perform the functions specified by Council.

To consider any commercial activity falling within the functional area of the committee provided that the most financially beneficial offer to Council is accepted.

To consider any commercial activity falling within the function of the committee with a value above R1 m and up to R5 m if the most financially beneficial offer could not be accepted by the Municipal Manager or his delegatee.

The Municipal Manager

The statutory powers and functions of the Municipal Manager in terms of the Systems Act and the Municipal Finance Management Bill are attached as Annexure C. Annexure D indicates the duties of the Interim / Acting Municipal Manager in terms of the Section 12 notice.

Until decided otherwise by the Council of the new Municipality, the Municipal Manager has all the powers of the CEO's (Clause 18 of Section 12 Proclamation) from the effective date.

The Municipal Manager will be the Head of the Administration and be the Accounting Officer for the Municipality.

The Municipal Manager will be responsible to approve a staff establishment for the Municipality within the policy framework determined by the Council.

To consider any commercial activity of Council up to a value of R5 m provided that the most financially beneficial offer to Council is accepted. It must be noted that because the Municipal Manager will receive disparate powers from the CEO's in terms of the Section 12 Proclamation it is recommended that his commercial powers extend across the full spectrum from R0 to R5 m. In respect of other powers a general fallback clause must be inserted in cases where gaps or conflicts exist between the powers of the CEO's and that of the Municipal Manager or that of the powers of Committees.

To perform any function not reserved by Council or delegated to the Executive Committee, any other Committee or the Municipal Manager in terms of this document or a power not preserved in terms of the Section 12 Proclamation.

To sub-delegate any of his powers to the CEO's or any other official.

To consider appeals from a person whose rights are affected by a decision taken by any other official in terms of delegated authority provided that the decision he may come to may not detract from any rights that may have accrued as a result of the original decision.

The Appeals Committee (Standing or *ad hoc*)

To consider an appeal from a person whose rights are affected by a decision taken by a political structure, political office-bearer or Councillor in terms of a delegated power.

The decision made by this Committee may not retract any rights that may have accrued as a result of the original decision.

SCHEDULE OF PROPOSED DELEGATIONS

A process of collating the Executive and Standing Committee delegations of the seven former Councils has been undertaken. This included the elimination of duplicate and overlapping delegations as well as updating delegations in respect of the provisions of new legislation.

This process excluded those delegations to officials which have been preserved by the Section 12 Notice.

A schedule of the Councils powers and its proposed delegations to the Executive Committee, Section 79 and 80 Committees, the Municipal Manager and the CEO's / officials is reflected as Annexure E. These powers and delegations comply with the principles contained in this report and will be capable of supporting the possible options that may be adopted by the Unicity Council as its initial interim political structure.

RECOMMENDED

The Unicity Commission recommends to the new City of Cape Town as follows :

1. The system of delegations proposed in this report be accepted as the basis for the interim delegations of the Unicity.
2. The principles contained in the report be accepted.
3. The checks and balances be accepted to ensure good governance and the integrity of decision-making.
4. An Appeals process be established as outlined in this report.
5. The Municipal Manager be authorised to sub-delegate to other officials.
6. The Municipal Manager be authorised to remove or amend delegations to officials which have been preserved by the Section 12 Notice in so far as this may become necessary from time to time.
7. The delegations as reflected in Annexure E be adopted for the interim political structure, which is selected by the Council, appropriately revised by Council as may be necessary.
8. In the event of the Council adopting the creation of two Section 79 Committees as recommended in the Report dealing with Interim Political Structures, the Committee Delegations be allocated as follows :
 - 8.1 Planning and Property Committee : All delegations shown under the "Committee" column of Annexure E under the headings "Planning related matters" and "Property related matters".
 - 8.2 Tenders, Contracts and Finance Committee : All delegations shown under the "Committee" column of Annexure E, under the headings of "General Powers" and "Financial Powers".
9. That the Section 12 Notice overrides the interim delegations in respect of officials below CEO level in so far as there may be conflict, provided that the Municipal Manager may withdraw or amend any such delegation. In respect of delegations to all other levels the interim delegations contained in this report prevail.
10. That all delegations of Committees (including Executive Committees) of the former Councils not covered by the provisions of Annexure E be transferred to the Municipal Manager for the period of the interim political structure.
11. The Municipal Manager be designated as the Chief Financial Officer solely for the purpose of delegation 2.15 in Annexure E.

Nico Mclachlan

CHAIRMAN UNICITY COMMISSION

STATUTORY OBJECTIVES, DUTIES AND FUNCTIONS OF THE COUNCIL

Chapter 7 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

Objects of local government

152(1) The objects of local government are -

- a) To provide democratic and accountable government for local communities
 - b) To ensure the provision of services to communities in a sustainable manner.
 - c) To promote social and economic development.
 - d) To promote a safe and healthy environment ; and
 - e) To encourage the involvement of communities and community organisations in the matters of local government
1. A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Developmental duties of municipalities

153. A municipality must -

- a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community ; and
- b) participate in national and provincial development programmes.

Powers and functions of municipalities

156(1) A municipality has executive authority in respect of, and has the right to administer -

- a) The local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
 - b) Any other matter assigned to it by national or provincial legislation.
- (2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

- 2
- (3) Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
 - (4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if -
 - (a) that matter would most effectively be administered locally ; and
 - (b) the municipality has the capacity to administer it.
 - (5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

SCHEDULE 4

Part A

Administration of indigenous forests

Agriculture

Airports other than international and national airports

Animal control and diseases

Casinos, racing, gambling and wagering, excluding lotteries and sports pools

Consumer protection

Cultural matters

Disaster management

Education at all levels, excluding tertiary education

Environment

Health Services

Housing

Indigenous law and customary law, subject to Chapter 12 of the Constitution

Industrial promotion

Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence.

Media services directly controlled or provided by the provincial government, subject to section 192

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence.

Pollution control

Population development
 Property transfer fees
 Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
 Public Transport

Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law

Regional planning and development

Road traffic regulation

Soil conservation

Tourism

Trade

Traditional leadership, subject to Chapter 12 of the Constitution

Urban and rural development

Vehicle licensing

Welfare services

Part B

The following local government matters to the extent set out in section 155(6)(a) and (7) :

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Firefighting services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law

Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto

Stormwater management systems in built-up areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

SCHEDULE 5**Part A**

Abattoirs
Ambulance services
Archives other than national archives
Libraries other than national libraries
Liquor licences
Museums other than national museums
Provincial planning
Provincial cultural matters
Provincial recreation and amenities
Provincial sport
Provincial roads and traffic
Veterinary services, excluding regulation of the profession

Part B

The following local government matters to the extent set out for provinces in section 155(6)(a) and (7) :

Beaches and amusement facilities
Billboards and the display of advertisements in public places
Cemeteries, funeral parlours and crematoria
Cleansing
Control of public nuisances
Control of undertakings that sell liquor to the public
Facilities for the accommodation, care and burial of animals
Fencing and fences
Licensing of dogs
Licensing and control of undertakings that sell food to the public
Local amenities
Local sport facilities
Markets
Municipal abattoirs
Municipal parks and recreation
Municipal roads
Noise pollution
Pounds
Public places
Refuse removal, refuse dumps and solid waste disposal
Street trading
Street lighting
Traffic and parking

Municipal fiscal powers and functions

229(1) Subject to subsections (2), (3) and (4), a municipality may impose -

- (a) Rates on property and surcharges on fees for services provided by or on behalf of the municipality; and
 - (b) If authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.
- (2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties -
 - (a) May not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
 - (b) May be regulated by national legislation.
- (3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria :
 - (a) The need to comply with sound principles of taxation.
 - (b) The powers and functions performed by each municipality.
 - (c) The fiscal capacity of each municipality.
 - (d) The effectiveness and efficiency of raising taxes, levies and duties.
 - (e) Equity.
- (4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.
- (5) National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

Provincial and municipal loans

230(1) A province or a municipality may raise loans for capital or current expenditure in accordance with reasonable conditions determined by national legislation, but loans for current expenditure -

(a) May be raised only when necessary for bridging purposes during a fiscal year; and

(b) Must be repaid within twelve months.

(2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

160(2) The following functions may not be delegated by a Municipal Council:

The passing of by-laws.

The approval of budgets ;

The imposition of rates and other taxes, levies and duties; and

The raising of loans.

LOCAL GOVERNMENT : MUNICIPAL STRUCTURES ACT, 1998 (ACT 117 of 1998)

Municipal objectives

19(1) A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.

(2) A municipal council must annually review -

The needs of the community.

Its priorities to meet those needs;

Its processes for involving the community.

Its organisational and delivery mechanisms for meeting the needs of the community ; and

Its overall performance in achieving the objectives referred to in subsection (1).

(3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

30(2) All questions concerning matters mentioned in section 160(2) of the Constitution are determined by a decision taken by a municipal council with a supporting vote of a majority of the councillors.

(3) All other questions before a municipal council are decided by a majority of the votes cast, subject to section 34.

- (4) If on any question there is an equality of votes, the councillor presiding must exercise a casting vote in addition to that councillor's vote as a councillor.
- (5) Before a municipal council takes a decision on any of the following matters it must first require its executive committee or executive mayor, if it has such a committee or mayor, to submit to it a report and recommendation on the matter -
 - (a) Any matter mentioned in section 160(2) of the Constitution;
 - (b) The approval of an integrated development plan for the municipality, and any amendment to that plan; and
 - (c) The appointment and conditions of service of the municipal manager and a head of a department of the municipality.

LOCAL GOVERNMENT : MUNICIPAL SYSTEMS ACT

Delegations

- 54(1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may -
 - (a) Delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to approve or amend the municipality's integrated development plan, to any of the municipality's structures, functionaries, councillors or officials;
 - (b) Instruct any such structure, functionary, councillor or official to perform any of the municipalities duties; and
 - (c) Withdraw any delegation or instruction.
- (2) A delegation or instruction in terms of subsection (1) -
 - (a) Must not conflict with the Constitution, this Act or the Municipal Structures Act;
 - (b) Must be in writing ;
 - (c) Is subject to any limitations, conditions and directions the municipal council may impose ;
 - (d) May include the power to subdelegate a delegated power ;

- (e) Does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty ; and
 - (f) Must be reviewed when a new council is elected or, if it is a district council, elected and appointed.
- (3) The municipal council -
- (a) In accordance with procedures set out in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a structure, functionary, councillor or official in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person ; and
 - (b) May require its executive committee or executive mayor to review any decision taken by such a structure, functionary, councillor or official in consequence of a delegation or instruction.

Delegation of certain powers to councillors or officials disallowed

55. A delegating authority may not delegate to a councillor or official the power to -
- (a) Expropriate immovable property or rights in or to immovable property;
 - (b) Determine or alter the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager;
 - (c) Make investments on behalf of the municipality.

Referral of matters to delegating authorities for decision

56. A structure, functionary, councillor or official of a municipality to whom a delegating authority has delegated or subdelegated a power to dispose of matters falling within the area of responsibility of that structure, functionary, councillor or official may, or must if instructed to do so by the relevant delegating authority, refer a matter before the structure, functionary, councillor or official to the relevant delegating authority for a decision.

Appeals

- 57(1) A person whose rights are affected by a decision taken by a structure, functionary, councillor or official of a municipality in terms of a power or duty delegated or subdelegated by a delegating authority to the structure, functionary, councillor or official, may appeal to the delegating authority against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the decision.

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- (2) The municipal manager must promptly submit the appeal to the relevant delegating authority.
- (3) The delegating authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Duty to report to delegating authorities

- 58. A structure, functionary, councillor or official of a municipality to whom a delegating authority has delegated or subdelegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on all decisions taken in terms of that delegated or subdelegated power or duty since the last report.

Withdrawal, amendment or lapsing of delegation or subdelegation

- 59. The withdrawal, amendment or lapsing of a delegation or subdelegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or subdelegation.

Review of delegations

- 60(1) Whenever it becomes necessary in terms of section 54(2)(f) to review a municipality's delegations, the municipal manager of the municipality must submit to the municipal council -
 - (a) A report on the existing delegations issued in terms of section 54 by the council and other delegating authorities of the municipality; and
 - (b) Recommendations on any changes to the existing delegations which the municipal manager may consider necessary.
- (2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor.

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ANNEXURE B

STATUTORY DUTIES, POWERS AND FUNCTIONS OF THE EXECUTIVE COMMITTEE

In terms of Section 1 of Chapter 1 of the Local Government, Municipal Structures Act 1998 (Act 117 of 1998) an "Executive Committee" means an executive committee established in terms of section 43 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998)

In terms of Section 44(1) of the Local Government Municipal Structures Act, 1998 (Act 117 of 1998) an executive committee is -

- a) the principal committee of the council of a municipality of a type that is entitled to establish an executive committee; and
- b) the committee of a municipal council which receives reports from the other committees of the council and which must forward these reports together with its recommendations to the council when it cannot dispose of the matter in terms of its delegated powers.

The functions and powers of the Executive Committee are set out in section 44(2), 44(3) and 44(4) of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998) which reads as follows : -

"(2) The executive committee must -

- a) identify the needs of the municipality;
- b) review and evaluate those needs in order of priority;
- c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and

- d) recommend or determine the best methods, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The executive committee in performing its duties must -

- a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;
- b) evaluate progress against the key performance indicators;
- c) review the performance of the municipality in order to improve-
 - i) the economy, efficiency and effectiveness of the municipality;
 - ii) the efficiency of credit control and revenue and debt collection services; and
 - iii) the implementation of the municipality's by-laws;

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- d) monitor the management of the municipality's administration in accordance with the policy directions of the municipal council;
 - e) oversee the provision of services to communities in the municipality in a sustainable manner;
 - f) perform such duties and exercise such powers as the council may delegate to it in terms of section 32;
 - g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
 - h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.
- (4) An executive committee must report to the municipal council on all decisions taken by the committee.

Section 30(5) of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998) furthermore stipulates that before a municipal council takes a decision on any of the following matters it must first require its executive committee to submit to it a report and recommendation on the matter -

- a) the passing of by-laws
- b) the approval of budgets
- c) the imposition of rates and other taxes, levies and duties.
- d) the raising of loans
- e) the approval of an integrated development plan for the municipality and any amendment thereto.
- f) the appointment and conditions of service of the municipal manager and a head of a department.

Statutory Functions and Duties

- To develop strategies, programmes and services to address priority needs of the municipality through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial plans and to submit a report and recommendations thereon to the Council.
- To determine the best methods, including partnerships and other approaches to deliver the strategies, programmes and services to the maximum benefit of the community.
- To identify and develop criteria in terms of which progress in the implementation of strategies, programmes and services to address the priority needs of the municipality can be evaluated which includes key performance indicators which are specific to the municipality and common to local government in general.
- To evaluate progress against the key performance indicators;

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- To review the performance of the municipality in order to improve -
 - i) the economy, efficiency and effectiveness of the municipality;
 - ii) the efficiency of credit control and revenue and debt collection services; and
 - iii) the implementation of the municipality's by-laws;
- To monitor the management of the municipality's administration in accordance with the policy directions of the municipal council;
- To oversee the provision of services to communities in the municipality in a sustainable manner;
- To perform such duties and exercise such powers as the council may delegate to it in terms of section 32;
- To annually report on the involvement of communities and community organisations in the affairs of the municipality; and
- To ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.
- To formulate recommendations to Council regarding :
 - (i) the adoption of the estimates of Revenue and Expenditure, as well as Capital Budgets and the imposition of rates and other taxes, levies and duties;
 - (ii) the passing of by-laws
 - (iii) the raising of loans
 - (iv) the approval of an integrated development plan and any amendment thereto.
 - (v) the appointment and conditions of service of the Municipal Manager and a head of a department.
- To deal with any matter referred to it by the Council and to submit a recommendation thereon for consideration by the Council.
- To attend to and deal with all matters delegated to it by the Council in terms of the Local Government Municipal Systems Act.
- To appoint a chairperson for each of the committees appointed by the Council in terms of Section 79 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998) to assist the Executive Committee from its members.
- To delegate any powers and duties of the Executive Committee to these committee/s.
- To vary or revoke any decision taken by the Committee.

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- To receive and consider reports from the Committee in accordance with the directives as stipulated by the Executive Committee.
- To elect a chairperson to preside at meetings if both the Mayor and the Deputy Mayor are absent from a meeting in the event of there being a quorum present at such a meeting.

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ANNEXURE C

STATUTORY FUNCTIONS AND RESPONSIBILITIES OF THE MUNICIPAL MANAGER

In terms of Section 1 of Chapter 1 of the Local Government : Municipal Systems Act the "Municipal manager" means a person appointed in terms of Section 82 of the Municipal Structures Act, 1998 (Act 117 of 1998).

Section 82 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998) reads as follows :

"82 A municipal council must appoint -

- a) a municipal manager who is the head of administration and also the accounting officer for the municipality ; and
- b) when necessary, an acting municipal manager.

LOCAL GOVERNMENT : SYSTEMS ACT

Statutory Functions

50(1) As head of Administration he/she is subject to the policy directions of the Council, responsible and accountable for -

- a) the formation and development of an economical, effective, efficient, accountable and performance-driven administration;
- b) the management of the municipality's administration in accordance with this Act and other legislation applicable to the municipality;
- c) the implementation of the municipality's integrated development plan, and the monitoring of progress with implementation of the plan;
- d) the management of the provision of services to communities, residents and ratepayers in a sustainable manner;
- e) the control, management, effective utilisation and training of staff;
- f) the maintenance of discipline of staff;
- g) the promotion of sound labour relations and compliance by the municipality with applicable labour legislation;
- h) advising the structures and functionaries of the municipality;
- i) managing communications between the municipality's administration and its structures and functionaries;
- j) carrying out the decisions of the structures and functionaries of the municipality;
- k) the administration and implementation of the municipality's by-laws and other legislation;
- l) the exercise of any powers and the performance of any duties delegated by the municipal council, or subdelegated by other delegating authorities of the municipality, to the municipal manager in terms of section 54;
- m) the implementation of national and provincial legislation applicable to the municipality;
- n) facilitating participation by communities, residents and ratepayers in the affairs of the municipality; and

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- o) the performance of any other function that may be assigned by the municipal Council.
- 2) As accounting officer he/she is responsible and accountable for -
 - a) all income and expenditure of the municipality;
 - b) all assets and the discharge of all liabilities of the municipality; and
 - c) proper and diligent compliance with the Municipal Finance Management Act.

MUNICIPAL FINANCE MANAGEMENT BILL

- (q) The Municipal Manager must, as a financial year progresses, submit regular reports in the prescribed format on the state of the Municipality's budget to the -
 - (i) National Treasury and the relevant Provincial Treasury, in case of a metropolitan or a district municipality; and
- (r) The Municipal Manager must in writing inform the National Treasury and the relevant provincial treasury of -
 - (i) any unauthorised expenditure that has occurred in the Municipality; and
 - (ii) the steps taken to recover or rectify the unauthorised expenditure and to prevent a recurrence of such expenditures

As stated earlier on in the report the delegations as suggested are as an interim measure for the period November 2000 to 28 February 2001. In the event of the final political structure not being finalised by the Council and in place by 28 February 2001 the interim delegations will have to be retained until such time as the political structure had been finalised and final delegations for such political structure are in place.

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Annexure 'D'

DUTIES ASSIGNED TO THE INTERIM / ACTING MUNICIPAL MANAGER IN TERMS OF SECTION 18 (2) AND 18(3) OF THE SECTION 12 NOTICE PUBLISHED IN AN EXTRAORDINARY PROVINCIAL GAZETTE NO 5588 DATED 22 SEPTEMBER 2000

"18(2) The duties of the interim municipal manager shall be to : -

- d) call the first meeting of the Council of the Municipality in terms of section 29(2) of the Municipal Structures Act ;
- e) preside over the first meeting of the Council of the Municipality until the election of the speaker ;
- f) after the effective date, act as the head of administration and chief accounting officer of the Municipality until the appointment by the Municipality of its own municipal manager or acting municipal manager;
- g) after the effective date, fulfil all duties required to be fulfilled by the CEO of a municipality in terms of relevant legislation ;
- h) assume responsibility for effecting the transfer of all staff, assets, liabilities and administrative and other records to the Municipality;
- i) establish an interim corporate administration for the Municipality, including but not limited to an interim secretariat, legal service, communications service, internal audit service and financial control service;
- j) appoint such persons as are necessary to fulfil his or her obligations in terms of this Schedule ;
- k) delegate any of his or her powers or duties to any employee of the Municipality and amend or revoke any such delegation; and
- l) in the period prior to the effective date, prepare for the performance of the functions set out in paragraphs (a) to (h).

(3) Until the first meeting of the Council of the Municipality, the interim municipal manager must at all times act after consultation with the Unicity Commission".

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ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
1. GENERAL POWERS					
1.1 To determine strategic policy applicable to the municipality as a whole or where such policy is of Metropolitan significance.	*				
1.2 To determine policy on matters falling within the functional area of the Council, Committee or Administration within the functional areas of political structures other functionaries lower down subject to any policy determined by a higher political structure or functionary.	*	*	*	*	*
1.3 To decide on any legislative matter including but not limited to the consideration of by-laws, the IDP including the budget and the imposition of rates and other taxes, levies and duties or any amendment thereof and the raising of loans.	*				
1.4 To approve Council's business plans.	*				
1.5 To approve the Municipality's political structures and to appoint/elect members thereto.	*				
1.6 To determine functional areas of Council's political structures.	*				



ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
1.7 To determine the delegation of appropriate executive powers to Council's political structures and administration.	*	* In respect of any of the Executive Committee's powers to Committees created in terms of section 80 of the Structures Act. (Statutory power).			
1.8. To sub-delegate any of his/her powers.		*		*	
1.9. To consider Council's Rules of Order	*	* Subject to Council's Rules of Order and policies in this regard.			
1.10 To decide on an appeal in respect of a decision taken by delegated authority.		* Statutory power of the Executive Committee in respect of decisions taken by the Municipal Manager.	* Statutory power of Appeals Committee in respect of decisions taken by any Committee of Council, Political Office Bearer or a Councillor.	* Statutory power of Municipal Manager in respect of decisions taken by other officials.	
1.11. The institution or defending of any action in the High Court or Court of similar or higher stature subject to 2.3		* In respect of mediation actions		* In respect of defending actions	
1.12. The institution or defending of any action in the Lower Court or Court of similar stature or any arbitrations and mediations subject to 2.3				*	
1.13. To comment on legislation and government policies.		*			
1.14. Appoint Councillors and officials to attend international and national meetings/conferences/seminars etc.		* In respect of Councillors.		* In respect of officials.	

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PROPOSED INTERIM DELEGATIONS

ANNEXURE E

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
1.15. Appoint Councillors and officials to attend local meetings/conferences/seminars, etc.		* In respect of Councillors		* In respect of officials where such official has to represent the Municipality.	
1.16. To appoint or nominate Councillors and/or Officials to represent Council on outside bodies		* In respect of Councillors		* In respect of officials	
1.17. Approval of requests by Committees for deputation of Councillors to interview Ministers of State, State Depts and the Premier		*			
1.18. Appoint Secretary and/or Acting Secretary when necessary of Valuation Court				*	
1.19. The exercising of all powers provided for in the Property Valuation Ordinance 148 of 1993 and its Regulations.				*	
1.20. Approval of scholarship & bursaries administered or awarded by the Council				*	
1.21. To enter into a service delivery agreement in terms of section 76(b) of the Systems Bill	* May not be delegated.				
1.22. The demarcation of sections of beaches for various watersports					*
1.23. To approve a policy framework for civic functions, public relation events and civic honours	*				

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ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
2. FINANCIAL POWERS					
2.1. Deciding on any commercial activity.	Approval of budget, IDP, Business Plans and Procurement Policy	To decide on any commercial activity falling within the delegated powers of any Committee where such Committee does not recommend the acceptance of the most financially beneficial offer to Council.	To decide on any commercial activity falling within its functional activity and to consider any commercial activity falling within the delegated authority of the Municipal Manager or other official below R5 m where the Municipal Manager or other official does not recommend the acceptance of the most financially beneficial offer to Council	To decide on any commercial activity with a value between R1 m and up to R5 m and to consider any commercial activity falling within the delegated authority of any other official below R1 m where such official does not recommend the acceptance of the most financially beneficial offer to Council.	To decide on any commercial activity below R m
2.2. To decide on annual and periodic tenders for stock items subject to the procurement policy			* To accept tender where the CEO does not recommend the acceptance of the most financially beneficial offer to Council		* To accept the most financially beneficial offer to Council
2.3 To recover any debt or other monies due to Council for whatever reason and the institution of court action where appropriate.				*	* Subject to any credit control and debt collection policy within its Administration
2.4 Writing off of bad debts or other assets.				* Subject to any policy	
2.5 To determine rentals in respect of Council's housing rental stock including business units	* Section 59 of the Systems Bill now prohibits the delegation of the setting of tariffs.				

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ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
2.6 To decide on grants and donations other than to staff, provided that such grants or donations falls within a functional area of Council.			*		
2.7 Virementation of funds of any capital amount on budget.			*	* Subject to an amount of R100 000	
2.8 Virementation of funds on any operational budget.				*	
2.9 To decide on any commercial activity irrespective of the value involved with a Councillor or a member of staff or his or her spouse, partner or business associate, except where the commercial activity forms part of Council's normal service delivery and such transaction takes place in the normal course of business.	*				
2.10. The sponsoring of State funded loans to registered welfare bodies & utility companies subject to the approval by the relevant State Dept in respect of the Housing Act			*		
2.11. Approve adjustments or corrections to accounts					*
2.12. Authorise designated officials to sign cheques				* In respect of "Company 8"	* In respect of "Companies 1 to 7"

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ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
2.13. To resolve on method of financing proposed capital expenditure					*
2.14. To determine the development levies / contributions other than RSC levies				*	
2.15 The investment of surplus funds	*			* In terms of a policy framework approved by Council	
2.16 Raising of loans	*				
3. HUMAN RESOURCE POWERS					
3.1 Determine a policy framework in respect of the staff establishment, post descriptions, conditions of service, and the evaluation of the staff establishment of the Municipality.	*				
3.2. Determine the staff establishment, post descriptions, conditions of service, and the evaluation of the staff establishment of the Municipality.		* Only in respect of the Municipal Manager and Managers reporting directly to him/her.		* Excluding the Municipal Manager and officials reporting directly to him/her.	

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ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
3.3. The appointment of staff to the Municipality.	* Only in respect of a Municipal Manager, Acting Municipal Manager and after consultation with the Municipal Manager other Managers or Acting Managers directly accountable to the Municipal Manager..			* In respect of all newly created Unicity vacancies	* In respect of all staff below CEO, excluding levels 0 to of vacancies of the former Administrations (holding structure)
3.4. To consider any grants or donations to staff including ex gratia pension benefits				*	
3.5. The settlement of disputes under Labour Legislation				*	
4. PLANNING RELATED POWERS					
4.1. Approve the naming of streets, municipal buildings, public open spaces, parks, trails etc	* In respect of Civic Honours				* In terms of existing policy
4.2. To determine or amend any town planning scheme by way of a by-law.	*				

ADOPTED BY ORDINARY RESOLUTION





ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
4.3 Approval or finalisation of applications for departures, rezonings, subdivisions departures from regulations and approval or consent of conditional uses and the removal of title deed restrictions.			* where one or more of the conditions in the CEO's column apply.		* All decisions unless:- - legislation does not permit delegation - there are relevant objections to the application - the application is recommended for refusal - the application is not consistent with spatial framework - an official chooses not to exercise delegated authority - there are objections to the actions of an official.
4.4. To resolve all appeals relating to town planning & building survey control & submit its comments thereon to the relevant authorities			*		
4.5. To decide on recommendations to Premier on rezonings, subdivisions & departure applications and amendment to rezoning conditions where Council does not have the authority to decide thereon			*		
4.6 To decide on a second or any further extension of validity of a rezoning, subdivision and departure previously approved by Council					*

ADOPTED BY ORDINARY RESOLUTION





ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
4.7. To decide on recommendations to the Premier for amendment of Zoning Scheme Regulations where such amendments are contested			*		
4.8 To deal with matters relating to Environmental Management including the serving of notices in terms of Section 31(A) of the Environmental Conservation Act (Act 73 of 1995)					*
4.9. To dispose of consistency rulings pertaining to Urban Structure Plans					*
4.10 To exercise all powers conferred upon the Council by the Sectional Titles Act; Sections 15 (1), 30, 31, 40 and 41 of the Land Use Planning Ordinance 15 of 1985					*
4.11 To approve the design and specifications of housing in terms of the Housing Act			*		
4.12. To consider all spatial development plans and policies including but not limited to the MSDP, Structure Plans, policy plans, development guidelines, etc.	*				
4.13 To impose a levy in respect of any contravention of the zoning scheme			* Above the amount of R5 000		* Up to the amount of R5 000

ADOPTED BY ORDINARY RESOLUTION





ANNEXURE E

PROPOSED INTERIM DELEGATIONS

DESCRIPTION OF POWER / DELEGATION	COUNCIL	EXCO	COMMITTEES	MUNICIPAL MANAGER	CEO's
4.14 To deal with objections in terms of Business Act 71 of 1991			*		
5. PROPERTY RELATED POWERS					
5.1 To consider expropriation of immovable property or rights to immovable property.		* Subject to the existence of a policy framework determined by Council.			
5.2. To determine whether to sell/letting of immovable property out-of-hand.			*		
5.3 Conclusion or renewal of lease agreements without advertising not exceeding 12 months				*	
5.4 To lease property out of hand to substitute tenant for remaining period of lease without advertising					*
5.5 To determine policy relating to illegal land settlements or land invasions on council property	*				* Execution of policy
5.6 To deal with the eviction of tenants in municipal housing schemes			*		
5.7 To decide on the permanent closure of streets and public places			*		

ADOPTED BY ORDINARY RESOLUTION

