

**Ref: Policy revision 2016  
Contact person: Prof Hennie van As**

18 March 2016

The Municipal Manager  
Hessequa Municipality

## **REPORT ON REVISION OF FINANCIAL POLICIES AND BY-LAWS**

On 18 January 2016 the NMMU was appointed to review the following policies and by-laws of Hessequa Municipality:

### **The appointment**

Policies:

1. Property Rates (Annexure A)
2. Indigents (Annexure B)
3. Credit Control and Debt Collection (Annexure C)
4. Tariffs and Free Basic Services (Annexure D)

By-Laws:

1. Property Rates
2. Credit Control and Debt Collection
3. Tariffs and Free Basic Services

### **Methodology**

On 4 February a workshop was conducted with officials. During this session their inputs were obtained and inputs received from the public during the year were handed over and discussed.

On 5 February a workshop was conducted with councillors and officials and further inputs were acquired and noted. The way in which the process would unfold further was also explained.

Public participation sessions were conducted as follows:

- |                   |            |
|-------------------|------------|
| 8 February 2016:  | Riversdale |
| 9 February 2016:  | Heidelberg |
| 10 February 2016: | Albertinia |
| 11 February 2016: | Stilbaai   |

The attendance registers recording attendance at these sessions are attached as **annexures to this report**. As they are in Pdf format, they are not marked.

Prior to the public participation sessions a number of written submissions have been received. These submissions were addressed as part of the workshops. A number of the submissions did not have bearing on the topics and were either addressed as individual cases or will be addressed through reference to the relevant departments.

### **Cases considered** (full reference not provided)

The following cases were reviewed in order to determine its possible effect on the policies. Where applicable, the necessary amendments were effected and indicated as such on the drafts, but on the whole, the policies are compliant.

1. Coutsourides v Nelson Mandela Bay Metropolitan Municipality (provisions of reasons for decisions)
2. Tshwane Metropolitan Municipality v Peregrine Joseph Mitchell (may a municipality hold a successor in title to property be held liable for unpaid debt of a previous owner for services supplied prior to transfer). (See "Proposals" below).
3. Moila v Tshwane Metropolitan Municipality (are municipalities compelled to provide statements of account in addition to monthly invoices and can disgruntled consumers request 'debatement')
4. Britannia Beach v Saldanha Bay Municipality (capital contributions)
5. SAPOA v Johannesburg City Council (adoption of rates that are materially different from those in the tabled budget)
6. Park Mews v City of Johannesburg (property valuation, permitted use and actual use)

### **Input received**

- **Council and Executive Mayoral Committee**

A number of contributions were received from these sources, some of which included EMC resolutions, which were all addressed in the policies (indications are given in the form of marginal comments or amendments in different colours).

- **Officials**

A high number of inputs were received from this source. Some of them related to inputs channelled to the municipality by members of the public throughout the current financial year. These matters were all addressed during discussions over a period of four days as well as by e-mail.

- **Public**

Written as well as verbal submissions were made. The written submissions are on record at the municipality. The oral submissions were recorded and are attached as Annexure E.

### **Matters that council should consider**

Amendments to the policies are indicated in **red** in the amended policies. Where the amendments are material, comments are added in the margin setting out the reasons advanced for the amendments. The matters that should be considered are listed as per the individual policies enumerated below (minor amendments are not addressed here, but are indicated in the policy).

#### **1. Property Rates Policy**

- a) That the definition of "accommodation" be scrapped. Rates are currently not levied on accommodation establishments because when the valuation roll was done the public were informed that it would not be levied and therefore no opposition was expressed. There is a proposal that an Accommodation Establishment Policy be developed as part of LED.
- b) The definition of "Act" be amended to provide for a compliance audit undertaken by COGTA.

- c) That a definition for “**agricultural purpose**” be inserted as it is referred to in the policy, but not defined. The definition is the same as in the Property Rates Act.
- d) That the insertion of a definition for “due date” be approved. An audit finding (2013/2014) stated that the policy was not applied strictly. Rebates of 3% were allowed for payments received after 20/9 as long as payment was received before 30/9. This necessitated a council resolution (dated 11 February 2015) in terms of which 20/9 was changed to 30/9 in the policies for 2015/16. The change was never effected though. Strictly speaking it should be changed as part of this exercise. However, par (d) provides an override. Council must decide whether the 20<sup>th</sup> should be retained to encourage earlier payment. It should not give rise to another finding as par (d) of the definition can be used to justify rebates on payments made after 20/9.
- e) That par 5.2(b) be scrapped as a category of property (see par (a) above).
- f) The following comments should be read in the policies and considered:
  - i. Paragraphs 8.1.1.2 and 8.1.1.4.
  - ii. Paragraph 9.1.2.iv.a.
  - iii. Paragraph 9.2.2.2.
  - iv. Paragraph 9.2.6.f.
  - v. Paragraphs 17.12.5 and 17.13.

## **2. Credit Control and Debt Collection Policy**

- a) Inclusion of a definition of “availability charge” as it is used in the policy, but was not defined.
- b) Consider the comment with regard to the definition of “due date”. The same motivation applies as set out for par d) of the Property Rates Policy.
- c) The definition of “residential property”. The 2015/16 policy had two definitions for the same concept. They were consolidated and the definition was harmonised with the one in the Property Rates Policy.
- d) Paragraph 21.2.a.
- e) Paragraph 23.4.e.v.
- f) Paragraph 23.6.
- g) The previous par 38 was deleted. It gave the municipality the right to make by-laws. That is superfluous as the municipal council has original (Constitutional) powers to make by-laws. It does not need a policy to give it that power.

## **3. Tariffs and Free Basic Services Policy**

- a) Insertion of definitions for “availability charge” and “basic charge” as they are used in the policy.
- b) The same comments set out for par d) of the Property Rates Policy apply here. A paragraph (d) was added to bring it in line with the other policies.
- c) A definition for “duet residences” was inserted as it is contained in the Zoning Scheme Regulations for Stilbaai and a new consolidated scheme is in the process of being developed, which will mean that the policy will be in place already.
- d) The definition of “residential property”. The 2015/16 policy had two definitions for the same concept. They were consolidated and the definition was harmonised with the one in the Property Rates Policy.
- e) Paragraph 5.13 and 5.15.
- f) Paragraph 8.2.2. Consider the deletion in anticipation of the development of an Accommodation Establishment Policy.
- g) Paragraph 8.5.2.
- h) Paragraph 8.5.4.6. The question arises about farms (rural areas) where refuse bags are placed next to the road or in specifically established transfer stations. There is a tariff of R206 p/m but it cannot be levied as the identity of the generators of the refuse cannot be established. At the Budget Committee meeting of 17/2/2016 it was

resolved that a full investigation be undertaken with a view of establishing transfer stations in strategic places throughout Hessequa. Such a request was also received from organised agriculture. This is actually a legislative imperative as NEMA and the DM by-laws prohibit the burning of refuse.

- i) Paragraph 9.1.2.2.
- j) Note paragraph 9.1.2.4. This used to read: "These customers are billed as per the tariffs applicable which have been determined by the Council by special agreement with a specific group of farmers in the past." It is amended because no record of such special agreements can be found on record.
- k) Paragraph 10.4.2.
- l) Paragraphs 10.4.3 and 10.4.5.
- m) Paragraph 11.2.2.
- n) Paragraph 12.4.3.

#### **4. Indigent Policy**

- a) Paragraph 9.3.3.5.
- b) Paragraph 11.3.3.
- c) Paragraph 11.5.1.
- d) Paragraph 13.1.

Apart from the above the following general actions are recorded:

- Short titles were removed. Policies are not legislation and therefore do not require short titles.

#### **Individual or societal input received to whom written responses should be directed**

At the public participation sessions it was undertaken that feedback will be given to attendees and members of the public who made submissions. A list of these matters will be provided as part of the final report which will be submitted once the policies have been adopted.

#### **Proposals flowing from the process**

1. The development and adoption of a policy on Accommodation Establishments by Local Economic Development should be considered as the lack thereof creates a high volume of disputes.
2. Council may have to consider putting measures in place to ensure that its administrative processes are in place in order to ensure compliance with the judgment in Tshwane Metropolitan Municipality v Peregrine Joseph Mitchell.
3. Council must ensure that its Indigent Policy is applied to South African Citizens, permanent residents as well as persons with refugee status.<sup>1</sup>
4. That an investigation be undertaken with a view of establishing transfer stations in strategic places throughout Hessequa's rural areas.
5. Cllr Hartnick proposed that in cases where the Building Control Department has to approve structures that are rented or occupied (goedgunstiglik) by indigent clients (paras 10.3, 12, 13 or 14 or an extension of paras 13.1 or 15), they should qualify for indigent support. It is further proposed that the owner should submit an affidavit that he provides the site free of charge as emergency housing or that he rents it at X amount. If accepted this would necessitate an extension to the definition of "household" to ... same or part of the same premises. It will also impact on par 11.7 of the policy. It is proposed that the matter be referred to the Department of Community Services and Housing for investigation and the establishment of policy in this regard.

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<sup>1</sup> See R566 published in GG 34529 dated 15 August 2011 and R 269 published in GG 35205 dated 30 March 2012.

6. Riversdale District Agricultural Society is of the opinion that if the amount of the state pension is increased, indigent couples will be pushed beyond the R3,000 and R3,500 limits. The status quo is that the current amounts are higher than the norm. It is proposed that a process must be implemented to investigate the raising of the ceilings.
7. Council was requested to consider the granting of incentives for property owners who install water tanks as this can alleviate problems experienced with water supply during the high season.
8. The cost-effectiveness of the privatisation of certain public services should be investigated, This matter was raised at Albertinia as well as Stilbaai.
9. Fynbosstrand Share Block Company requested that the rebate for "farm property or small holding used for agricultural purpose" be extended to farm property that is used for residential purposes in par 9.1.2(iii) (the 2.5% cases) of the Property Rates Policy. This will necessitate a re-look of the 2 "farm" definitions as well.

### **The way forward**

Once the policies have been approved, I need to be informed (also the matters that were not approved). I would also require the outcomes of any resolutions council adopted. Short by-laws, incorporating the policies, will then be drafted for consideration and approval of council, after which it will be published in the Provincial Gazette.

The legal office will have to provide me with the necessary information (PG number and date of publication of the previous financial by-laws) so that those by-laws can be repealed. This will be the Tariff, Customer Care and Revenue Management and Property Rates by-laws.

*HJ van As*

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