



# MUNISIPALITEIT DAWID KRUIJER MUNICIPALITY

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## POLICY 020/2025 RAADSBELEID

SUBJECT/ONDERWERP: APPLICATION FOR LEGAL ADVICE & SUPPORT

REFERENCE/VERWYSING: 13.B

RESOLUTION NR/BESLUIT NO: 24.2/06/2025 (CM)

DATE/DATUM: 24 June 2025

### INTRODUCTION

The Municipality need, from time-to-time, to obtain legal opinion and to make use of attorneys and/or advocates to handle matters on behalf of the Municipality.

This is to ensure that Council is correctly advised on legal matter and that the correct resolutions in this matter is taken.

Council also are involved in legal disputes and to defend or to instigate proceedings in the applicable courts, Council has to make use of the services of suitable qualified attorneys and/or advocates.

From time to time the Municipality need to make use of the services of attorneys/advocates to ensure that the correct decisions are made and the correct procedures are followed.

Council is authorized in terms of the Local Government: Municipal System Act, 2000 (Act 32 of 2000) to defend and institute actions in a competent court.

The Local Government: Municipal System Act, 2000 (Act 32 of 2000) determines in article 2 the following:

*"A municipality—*

- (a) is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the 25 Local Government: Municipal Demarcation Act, 1998;*
- (b) consists of—*
  - (i) the political structures and administration of the municipality; and*
  - (ii) the community of the municipality;*

- (c) *functions in its area in accordance with the political, statutory and other 30 relationships between its political structures, political office bearers and administration and its community; and*
- (d) *has a separate legal personality which excludes liability on the part of its community for the actions of the municipality."*

The Act further determines in Article 109 the following:

- "109. (1) A municipality is a local authority for purposes of the Limitation of Legal 45 Proceedings (Provincial and Local Authorities) Act, 1970 (Act No. 94 of 1970).*
- (2) A municipality may compromise or compound any action, claim or proceedings. and may submit to arbitration any matter other than a matter involving a decision on its status, powers, duties or the validity of its actions or by-laws."*

The Municipality does not necessarily have the necessary legal expertise on some matters to advise Council and the Administration on it and have to make use of external service providers.

The aim of this policy is to provide the guidelines and procedures which needs to be followed when the services of external legal service provider is needed.

#### **GUIDELINES**

1. The services of an external legal service provider can only be obtained when a matter of such a nature that the Municipality cannot resolve the matter internally.
2. Where possible the services of local external legal service providers must be used. If it is not possible to make use of local legal service providers the use of legal service provides, not situated in the jurisdiction area of the Municipality, may be used.

#### **PROCEDURES**

The following processes needs to be followed when there is a need to make use of the services of an external legal services provider:

1. All the necessary information on the matter must be table to the Legal Department, accompanied with the necessary request form in which the reasons for the obtaining of the services of an external legal services provider is set out.
2. The Legal Department will then prepare the necessary item, in the case where Council approval is needed, to Council for consideration.
3. Where the Municipal Manager can resolve on the matter of the appointment the Legal Department table the matter to the office of the Municipal Manager for consideration.
4. The appointment of an external legal service provider is delegated as follows:

Act	Matter	Delegated to	Sub-delegation
Article 152(1) of the MFMA	Deciding to apply to the High Court for an order to stay all legal proceedings, including the execution of legal process,	Council	None

	by persons claiming money from the Municipality if the Municipality is unable to meet its financial commitments		
Article 153(1)(a) of the MFMA	Deciding to apply to the High Court for an order to stay, for a period not exceeding 90 days at a time, all legal proceedings, including the execution of legal process, by persons claiming money from the Municipality	Council	None
Article 153(1)(b) of the MFMA	Deciding to apply to the High Court for an order to terminate the Municipality's financial obligations to creditors, and to settle claims in accordance with a distribution scheme referred to in section 155 of the MFMA	Council	None
Article 176(2) of the MFMA	Deciding to recover from a political office-bearer or official of the Municipality any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office	Council	None
	<p>To commence with or approve the commencement of any legal process, whether a criminal, civil or labour law matter, on behalf of the municipality and to defend or oppose any legal process, whether a criminal, civil or labour law matter, against the municipality by:</p> <p>(a) Instructing the relevant legal representatives to commence with, claim from, appeal against, request review of, oppose or defend any legal process;</p> <p>(b) Depositing to any affidavit or directing any relevant official to depose to affidavits on behalf of the municipality, including any discovery affidavit</p>	Municipal Manager	
	To sign and provide a compliance notice, instruction, order or letter to any natural or juristic person who is infringing on any right or interest of the municipality, or who is contravening or attempts to contravene any national, provincial or municipal legislation, to compel him or	Municipal Manager	

	her to comply with the content of the notice, instruction, order or letter within the time frame set out therein		
	To authorise the commencement with or opposing of conciliation, mediation or arbitration proceedings, or the review or appeal in respect thereof, in the Bargaining Council, CCMA, Labour Court, Labour Appeal Court or any other applicable forum, and the utilisation of the municipality's attorney and an advocate if necessary in this regard	Municipal Manager	
	To submit or oppose an appeal or review application to a higher court or other body in respect of a judgement given by a lower court or body concerned	Council	
	To obtain the services of an attorney or advocate for any official purpose	Municipal Manager	
	To decide on the provision of legal presentation to an employee or a councillor	Municipal Manager	
	To settle or compound any legal action, claim or proceedings, and to submit to arbitration any matter other than a matter involving a decision on the status, powers or duties of the municipality or the validity of its acts or by-laws	Municipal Manager	
	To protect and enforce the rights of the public arising from a public servitude within the municipal area	Municipal Manager	
Article 62 of the Systems Act	To promptly submit an appeal received by him in terms of the provisions of section 62 of the Systems Act, from a person whose rights are affected by a decision taken by a delegated body in terms of a power or duty delegated or sub-delegated by a delegating authority to that delegated body against the decision, to the delegating authority concerned	Municipal Manager	
	unicipal's by-laws as well as national and provincial legislation applicable to their respective directorates, including the institution of criminal or civil proceedings in respect thereof, and to perform the functions and exercise the powers that vest in the Council in terms	Municipal Manager	

	<p>thereof by:</p> <p>(a) Instructing the relevant legal representatives to commence with, claim from, appeal against, request review of, oppose or defend any legal process;</p> <p>(b) Deposing to any affidavit or directing any relevant official to depose to affidavits on behalf of the municipality, including any discovery affidavit</p> <p>(c) authorising the utilisation of the services of an attorney and/or an advocate if necessary in any legal process;</p>		
	To sign and provide a compliance notice, instruction, order or letter to any natural or juristic person who is infringing on any right or interest of the municipality in respect of a matter applicable to their respective directorates, or who is contravening or attempts to contravene any national, provincial or municipal legislation in respect of a matter applicable to their respective directorates, to compel him or her to comply with the content of the notice, instruction, order or letter within the time frame set out therein	Municipal Manager	
	The institution of criminal proceedings against officials who do not return Council property which are in their possession when they terminate their services	Municipal Manager	
	To implement and enforce the all the municipality's financial policies and applicable by-laws, and to use all available processes to collect moneys owed to the Council in terms of a contract, legislation, court order, decision of the Council or any other legal basis	Municipal Manager	
	To commence with a legal process on behalf of Council in respect of the recovering of any money owed to the Council for whatever reason and in any	Municipal Manager	

	court which has jurisdiction, with the inclusion of the signing of all necessary documents in this regard. This includes the power to use the services of an attorneys and/or an advocate when necessary, to act on behalf of Council in such cases		
	To make a ruling in respect of the commencement with a legal process for the claiming of damages to Council property caused by a third party, and for expenses in respect of injuries sustained by an official while on duty, which the Council must incur in terms of the Workmen's Compensation Act and leave agreements, in the event that another party causes the accident or incident	Municipal Manager	

5. The Municipal Manager can sub-delegated any of the above-delegations, in writing to any competent employee.
6. The Municipal Manager is authorized, in matters where Council approval cannot be obtained in time, to take the necessary steps. The matter must be table to the next Council Meeting for information and condonation of the steps taken.

#### **REPEAL OF PREVIOUS POLICIES**

All previous policies regarding the appointment of legal representatives for the Municipality is hereby repealed.

#### **REVIEW OF THIS POLICY**

This Policy will be reviewed as and when necessary.