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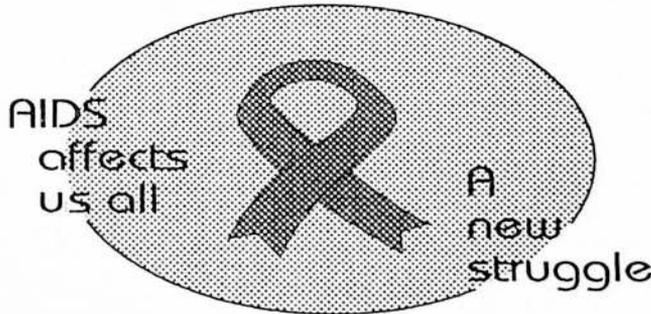
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Vol. 12

BISHO/
KING WILLIAM'S TOWN, 26 SEPTEMBER 2005

No. 1432
(Extraordinary)

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DEPARTMENT OF HEALTH

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PROVINCIAL NOTICE

No. 37

26 September 2005

PROVINCE OF THE EASTERN CAPE**DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS**

**PROPOSED AMENDMENT AND REPEAL OF PROVINCIAL NOTICE NO. 109
DATED 2/12/2000, AS AMENDED, ISSUED IN TERMS OF SECTION 12 OF THE
LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, (ACT NO. 117 OF
1998)**

I, SAM KWELITA, Member of the Executive Council of the Province of Eastern Cape responsible for local government in the Eastern Cape Province, hereby publish for general information a proposed notice in terms of sections 12 and 17 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), for the establishment of municipalities within the province as reflected in the proposals for new demarcations published under Notice No. 1594 of 2005 (Government Gazette No. 27937 dated 19 August 2005) and as set out in the schedule attached hereto.



**S. KWELITA
MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR LOCAL
GOVERNMENT - PROVINCE OF THE EASTERN CAPE**

DATE: 21/09/05

SCHEDULE**PART 1****Definitions**

1. In this Schedule, unless the context otherwise indicates or unless redefined herein, a word or expression to which a meaning has been assigned in the Local Government: Municipal Structures Act, 1998, or Chapter 2 of the Local Government: Municipal Structures Amendment Act, 2000 has the same meaning and -

"Constitution" means the Constitution of the Republic of South Africa;

"demarcation notice" means Provincial Notice 101 of 2000 published in *Provincial Gazette* No. 558 dated 19 May 2000, as amended;

"disestablished municipality" means an existing municipality disestablished in terms of paragraph 2 of Part 1 of this Schedule;

"district municipal area" means the area indicated as DC 44 on Map 1 of the demarcation notice;

"district municipality" means the Category C municipality established in terms of Part 2 of this Schedule;

"effective date" means -

- (a) the day on which the results of the first general election of municipal councils after the commencement of the Constitution Twelfth Amendment Act, 2005, are declared in respect of the local municipalities; or
- (b) if the results of any one or more of these councils cannot be declared, and a re-election must be held, the day on which the results of the re-election are declared;

"local municipality" means the Category B municipalities established in terms of Part 3 and 4 of this Schedule;

"MEC" means the Member of the Executive Council responsible for local government affairs in the Province of the Eastern Cape;

"new municipality" means Alfred Nzo District Municipality, Umzimvubu Local Municipality and the Matatiele Local Municipality as they are established in terms of Parts 2 to 4 of this Schedule;

"proportionally elected councillors" means councillors elected to proportionally represent the parties that contested the election in the municipality concerned;

"the Act" means the Local Government: Municipal Structures Act, 1998 (Act 117 of

“the Act” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“ward councillor” means a councillor elected to directly represent a ward.

Repeal of existing Section 12 Notice No. 109 of 02 December 2000

2. Provincial Notice No.109 of 2000 is repealed.

Establishment of municipalities

3. (1) Municipalities are hereby established for the district municipal area as set out in Parts 2 to 4 of this Schedule. The established municipalities are as follows:
 - (a) Alfred Nzo District Municipality established by Part 2 of this schedule;
 - (b) Matatiele Local Municipality established by Part 3 of this schedule and
 - (c) Umzimvubu Local Municipality established by Part 4 of this schedule.
- (2) The establishment of the municipalities mentioned in sub-paragraph (1) takes effect in terms of section 12(2)(b) of the Act at the commencement of the elections referred to in paragraph (a) of the definition of “effective date”.

Legal succession

4. A district municipality and the local municipalities within the area of the district municipality, supersede the existing municipality or municipalities to the extent that the existing municipality or municipalities fall within that area, and the district and local municipalities in the area become the successors in law of the existing municipality or municipalities depending on the specific assets, liabilities, rights and obligations are allocated to the district and local municipalities respectively in terms of this Schedule.

Transfer of assets, rights, liabilities and obligations

5. (1) The assets, rights, liabilities and obligations of an existing municipality, in so far as they were, immediately before the effective date, predominantly deployed in respect of, or related to, the performance by that municipality of a function or functions in a specific area, are hereby, subject to sections 16(1) of the Act, transferred to that new municipality which, on the effective date, has sole responsibility for the performance of the said function or functions in the said area.
- (2) For the purpose of sub-paragraph (1), “function” includes a power.
- (3) Administrative and other records relating to the assets, rights, liabilities and obligations referred to in sub-paragraph (1) vest, as from the effective date, in the municipality to which the respective assets, rights, liabilities and obligations are transferred in terms of the said sub-paragraph.

- (4) A new municipality shall, pending the review referred to in sub-paragraph (6), in exercising its powers, performing its functions and discharging its duties, make use of the assets and rights that were associated with such activities immediately before the effective date.

Investments, cash and cash balances

6. As from the effective date all investments and all cash and cash balances in a bank account of an existing municipality accrue to a new municipality established in terms of paragraph 3(1) in accordance with the following rules:
- (a) the investments, cash and cash balances of the existing district municipality referred to in paragraph 3(1)(a), accrue to the new district municipality: Provided that where the area of the existing municipality falls in more than one newly established district municipal area, the portions of such investments, cash and cash balances as determined by the MEC, will accrue to the new district municipalities concerned;
 - (b) the investments, cash and cash balances of an existing local municipality referred to in paragraph 3(1)(b) and (c) accrue to the new local municipality in whose area the existing municipality falls: Provided that where the area of the existing local municipality falls in more than one newly established local municipality the portion of such investments, cash and cash balances as determined by the MEC, will accrue to the new local municipality concerned;
 - (c) notwithstanding the foregoing, all cash and cash balances constituting funded reserves underpinning obligations or liabilities of an existing municipality shall accrue to the new municipality which has assumed that liability, or in proportion to the extent to which such liability has been assumed.

Transfer of staff

7. (1) A person who on the effective date is an employee of an existing municipality becomes an employee of a new municipality in accordance with the following rules:
- (a) employees who are for most of their normal working day occupied with work directly related or incidental to the performance of a specific function allocated in terms of section 84 of the Act to a new municipality or the performance of a specific function in a specific area, become employees of the new municipality which as from the effective date is responsible for the performance of that specific function or for the performance of that specific function in that specific area;
 - (b) for the purposes of paragraph (a) "function" include a power;

- (c) the employment of employees by a new municipality is subject to any collective agreement and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (d) an employee referred to in (a) or (b) above is transferred to the new municipality on terms and conditions no less favourable than those under which such employee served immediately before the effective date;
- (e) service by a person so transferred is deemed to be in the service, as an employee of the new municipality to which the person is transferred and any leave, pension and other benefits that may have accrued to that person by virtue of service with an existing municipality shall be deemed to have accrued in favour of such a person by virtue of service with the new municipality to which she or he is transferred;
- (f) where an employee transferred in terms of paragraph (a) or (b) was a member of a medical aid scheme, pension or provident fund immediately before the effective date –
- (i) that employee continues as such a member unless continued membership is contrary to the rules of the scheme or fund in question or unless the new municipality to which the employee is transferred and the employee, after consultation with the fund or scheme, agree otherwise;
- (ii) the new municipality must deduct the necessary employee's contributions to the scheme or fund from the remuneration of the employee and pay it over to the scheme or fund in question together with the employer's contribution.
- (g) the council of the employer municipality must appoint a person who became an employee of the municipality concerned in terms of sub-paragraph (1), in a post on the establishment of the municipality, provided that such a person remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately prior to becoming such an employee, but subject further to any amendments concluded locally or in the applicable bargaining council. All funded vacancies existing on the staff establishments of disestablished municipalities shall become vacancies within the staff establishment of the municipality responsible for the function to which such vacancy relates, *mutatis mutandis* in accordance with the rules contained herein;
- (h) a municipality to which an employee is transferred in terms of the rules contained in sub-paragraph (1) may, by agreement with another municipality within the province transfer the employee, with that employee's consent to that other municipality;
- (i) nothing contained herein shall preclude a Municipality from implementing a scheme to reorganise its staff subject to the provisions of the Labour Relations Act.

Continued application of by-laws and resolutions

8. (1) All by-laws, regulations and resolutions that apply in the area of an existing municipality immediately before the effective date, continue to apply in such area from the effective date subject to any amendment or repeal by the council of the new municipality.
- (2) A by-law or resolution of –
- (a) any existing district municipality, must be applied by the district municipality to the extent to which that by-law or resolution continues in force in terms of sub-paragraph (1) in the area of the district municipality; and
- (b) any other existing municipality must be applied by a local municipality to the extent to which that by-law or resolution continues in force in terms of sub-paragraph (1) in the area of that local municipality.
- (3) Unless inconsistent with the context or clearly inappropriate, reference in any such by-law, regulation or resolution to –
- (a) an existing municipality, must be construed as a reference to the new municipality; and
- (c) a structure or functionary of an existing municipality, must be construed as a reference to the corresponding structure or functionary in the municipality.

Seat of municipality

9. The seat of an existing municipality is deemed to be the seat of the new municipality until a new municipality changes such seat.

Intervention powers of the MEC

10. (1) The MEC for local government may at any time intervene in the proceedings of the Council and may request it to refer a matter to the MEC for resolution.
- (2) The MEC for local government may reconsider a matter on which the Council has taken a decision and confirm, vary or withdraw the decision of the Council.
- (3) The district municipality and the local municipalities, including affected employees, are bound by the decisions of the MEC.

PART 2**ESTABLISHMENT OF DISTRICT MUNICIPALITY**

1. A district municipality is hereby established for the district municipal area as a whole and indicated as DC 44 on Map 4 in the General Notice 1594 of 2005 as published in the Government Gazette No. 27937 dated 19 August 2005 and/or any subsequent amendment by the Demarcation Board.

CATEGORY

2. The district municipality is a Category C municipality as determined by the Demarcation Board in terms of section 4 of the Act.

TYPE

3. The district municipality is of a type described in section 4(b) of the Determination of Types of Municipality Act, 2000 (Act 5 of 2000(EC)).

BOUNDARIES

4. The boundaries of the district municipality are as indicated in General Notice No. 1594 published in the Government Gazette No. 27937 dated 19 August 2005 and/or any subsequent amendment by the Demarcation Board.

NAME

5. The name of the district municipality is Alfred Nzo.

COUNCILLORS

6. (1) The council of the district municipality to consist of 25 councillors as determined in Provincial Notice 37 of 2004 published in Provincial Gazette No. 1189(Extraordinary) dated 23 July 2004 as amended, subject to review as a result of possible changes to the municipal boundaries of which
 - (a) 10 must be proportionally elected councillors;
 - (b) 5 must be appointed by the local municipality mentioned in Part 3;
 - (c) 10 must be appointed by the local municipality mentioned in Part 4.
- (2) Full time councillors, if any, are designated in accordance with the policy framework contemplated in section 18(4) of the Act, subject to the following conditions:

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- (a) That the municipality submit to the MEC a motivation within 30 days of the effective date on the following –
- (i) the functions and duties to be performed by the full-time speaker;
 - (ii) the functions and duties to be performed by full-time office bearers if the number of full-time office bearers exceeds the total of six;
 - (iii) the municipality's financial capacity to pay the remuneration attached to the full-time office bearers.
- (b) That the final designation of full-time councillors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

FULL TIME COUNCILLORS

7. The council of the district municipality may, subject to the conditions contained in paragraph 6(2) in this Part, designate any of the following office-bearers as full time:
- (a) Speaker
 - (b) Executive Mayor
 - (c) Members of the Mayoral Committee.

PART 3

ESTABLISHMENT OF LOCAL MUNICIPALITY

1. A local municipality is hereby established for that part of the district municipal area indicated as EC 05b3 on Map 3 in the General Notice 1594 of 2005 as published in the Government Gazette No. 27937 dated 19 August 2005 and/or any subsequent amendment by the Demarcation Board.

CATEGORY

2. The local municipality is a Category B municipality as determined by the Demarcation Board in terms of section 4 of the Act.

TYPE

3. The local municipality is of a type described in section 3(b) of the Determination of Types of Municipality Act, 2000 (Act 5 of 2000(EC)).

BOUNDARIES

4. The boundaries of the local municipality are as indicated in Map No.3 in General Notice No. 1594 published in the Government Gazette No. 27937 dated 19 August 2005 and/or any subsequent amendment by the Demarcation Board.

NAME

5. The name of the local municipality is Matatiele.

COUNCILLORS

6. (1) The council of the local municipality to consist of 32 elected councillors of which 16 are ward councillors and 16 proportional ly elected subject to review as a result of possible changes to the municipal boundaries.
- (2) Full time councillors, if any, are designated in accordance with the policy framework contemplated in section 18(4) of the Act, subject to the following conditions:
- (a) That the municipality submit to the MEC a motivation within 30 days of the effective date on the following –
- (i) the functions and duties to be performed by the full-time speaker;
 - (ii) the functions and duties to be performed by full-time office bearers if the number of full-time office bearers exceeds the total of six;
 - (iii) the municipality's financial capacity to pay the remuneration attached to the full-time office bearers.
- (b) That the final designation of full-time councillors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

FULL TIME COUNCILLORS

7. The council of the local municipality may, subject to the conditions contained in paragraph 6(2) in this Part, designate any of the following office-bearers as full time:
- (a) Speaker.
 - (b) Mayor.
 - (c) Members of the Executive Committee.

WARDS

8. The local municipality to have 16 wards subject to review as a result of possible changes to the municipal boundaries.

PART 4**ESTABLISHMENT OF LOCAL MUNICIPALITY**

1. A local municipality is hereby established for that part of the district municipal area indicated as EC 05b2 on Map 5 in the General Notice 1594 of 2005 as published in the Government Gazette No. 27937 dated 19 August 2005 and/or any subsequent amendment by the Demarcation Board.

CATEGORY

2. The local municipality is a Category B municipality as determined by the Demarcation Board in terms of section 4 of the Act.

TYPE

3. The local municipality is of a type described in section 3(b) of the Determination of Types of Municipality Act, 2000 (Act 5 of 2000 (EC)).

BOUNDARIES

4. The boundaries of the local municipality are as indicated in Map No.5 in General Notice No. 1594 published in the Government Gazette No. 27937 dated 19 August 2005 and/or any subsequent amendment by the Demarcation Board.

NAME

5. The name of the local municipality is Umzimvubu.

COUNCILLORS

6. (1) The council of the local municipality to consist of 60 elected councillors of which 30 are ward councillors and 30 proportionally elected subject to review as a result of possible changes to the municipal boundaries.
(2) Full time councillors, if any, are designated in accordance with the policy framework contemplated in section 18(4) of the Act, subject to the following conditions:

- (a) That the municipality submit to the MEC a motivation within 30 days of the effective date on the following –
- (i) the functions and duties to be performed by the full-time speaker;
 - (ii) the functions and duties to be performed by full-time office bearers if the number of full-time office bearers exceeds the total of six;
 - (iii) the municipality's financial capacity to pay the remuneration attached to the full-time office bearers.
- (b) That the final designation of full-time councillors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

FULL TIME COUNCILLORS

7. The council of the local municipality may, subject to the conditions contained in paragraph 6(2) in this Part, designate any of the following office-bearers as full time:
- (a) Speaker
 - (b) Mayor and
 - (b) Members of the Executive Committee.

WARDS

8. The local municipality to have 30 subject to review as a result of possible changes to the municipal boundaries.