

PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

**Provincial Gazette
Igazethi Yephondo
Provinsiale Koerant**

Vol. 18

BISHO/
KING WILLIAM'S TOWN, 25 JANUARY 2011

No. 2509
(Extraordinary)

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD*No.**Page
No. Gazette
 No.***PROVINCIAL NOTICE**

6	Local Government: Municipal Structures Act (117/1998): Amendment and repeal of Provincial Notice No. 105 dated 2 December 2000	3	2509
---	--	---	------

PROVINCIAL NOTICE

No. 6**25 January 2011****PROVINCE OF THE EASTERN CAPE****DEPARTMENT OF LOCAL GOVERNMENT AND TRADITIONAL
AFFAIRS****AMENDMENT AND REPEAL OF PROVINCIAL NOTICE NO. 105 DATED 2
DECEMBER 2000, AS AMENDED, ISSUED IN TERMS OF SECTION 12 OF THE
LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998 (ACT NO.117
OF 1998)**

I **SICELO GQOBANA**, Member of the Executive Council of the Eastern Cape Province responsible for Local Government hereby publish a Provincial Notice in terms of Section 12 and 17 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), for the establishment of municipalities within the province as reflected in the new boundary demarcations published under Notice No 472 of December 2007 in Provincial Gazette No.1817 (Extra-ordinary) dated 14 December 2007 and as set out in the schedule attached hereto.


A handwritten signature in black ink, appearing to read 'Sicelo Gqobana', is written over a horizontal line.**SICELO GQOBANA****MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR LOCAL
GOVERNMENT-PROVINCE OF THE EASTERN CAPE****DATE: 29/11/10**

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

In this schedule, unless the context otherwise indicates or unless redefined herein, a word or expression to which 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 22 of 2000 published in *Provincial Gazette* No 486 dated 28 February 2000, as amended;

“disestablishment municipality” means an existing municipality disestablished in terms of paragraph 2 of Part 1 of this schedule;

“effective date” means

(a) The day on which the results of the next election of councils of the district municipality and the local municipalities are declared in terms of section 190(1)(c) of the Constitution

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

“district municipality” means the Category C municipality established in terms of Part 2 of this schedule;

“local municipality” means the Category B municipality established in terms of Part 3 and 4 of this schedule;

“existing municipalities” means the municipalities mentioned in paragraph 2 of part 1 of the schedule

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

2. Disestablishment of existing municipalities

(a) The existing **Chris Hani District Municipality** is disestablished with effect from the effective date to exclude the district management area (ECDMA 13) from the district municipality

(b) The following existing municipalities are also disestablished with effect from the effective date to include portions of the district management area (ECDMA13) in their local municipalities:

- **Inxuba Ye Themba Local Municipality**
- **Tsolwana Local Municipality**

3. Vacation of Office

The councillors of the municipalities referred to in paragraph 2(a)-(b) vacate office on the effective date.

4. Establishment of municipality

(1) Municipalities are hereby established as set out in parts 2, 3 and 4 of this schedule. The established municipalities are as follows:

- (a) **Chris Hani District Municipality** as set out in Part 2 of this Schedule;
- (b) **Inxuba Ye Themba Local Municipality** as set out in Part 3 of this Schedule;
- (c) **Tsolwana Local Municipality** as set out in Part 4 of this Schedule;

(2) The establishment of the municipalities mentioned in sub-paragraph 4 takes effect in terms of section 12(2)(b) of the Act at the commencement of the next election of councils of municipalities.

5. Legal succession

- (d) The newly established district municipality supersedes the existing municipality (Chris Hani District Municipality) to the extent that the existing municipality falls within that area but with the exclusion of the district management area (ECDMA13), and the new district municipality becomes the successor in law of the existing municipality.
- (e) The newly established municipalities of Inxuba Ya Themba and Tsolwana as they fall within the newly established boundaries of Chris Hani District Municipality with the inclusion of portions of the district management area (ECDMA13) in their respective municipalities becomes the successor in the law of their respective existing municipalities.

6. Transfer of assets, rights, liabilities and obligations

- (1) The assets, rights, liabilities and obligations of disestablished municipalities are hereby subject 16 "1" of the Act transferred to the new municipalities which, on the effective date, has sole responsibility for the performance of the said function in their separate areas of jurisdiction
- (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) vests, as from the effective date, in the municipality to which respective assets, rights, liabilities and obligations are transferred in terms of the said sub paragraph.
- (4) Assets, rights, liabilities and obligations other than those referred to in sub-paragraph (1) are hereby transferred as from the effective date to the newly established municipalities

(5) If a disestablished municipality falls within the metropolitan area, the following rules apply:

(a) All assets and liabilities and all the administrative and other records of a disestablished local municipalities falling within Chris Hani District Municipality are vested in the newly established local municipalities

(b) All assets and liabilities and all the administrative and other records of a disestablished district municipality are vested in the re-established district municipality if the disestablished municipality's main administrative office is situated within the district municipal area.

7. Investments, cash and cash balances

As from the effective date all investments and all cash and cash balances in a bank account of the disestablished municipalities accrue to the municipalities established in terms of paragraph 4(1) in accordance with the following rules:

- a) the investments, cash and cash balances of the disestablished municipalities referred to in paragraph 2(1), accrue to the established municipalities
- b) notwithstanding the afore going, all cash and cash balances constituting funded reserves underpinning obligations or liabilities of a disestablished municipalities shall accrue to the established municipalities if they had assumed those liabilities, or in proportion to the extent to which such liabilities had been assumed.

8. Transfer of staff

(1) A person who on the effective date is an employee of a disestablished municipality becomes an employee of the established municipality in accordance with the following rules:

- a) 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);
- b) an employee referred to is transferred to the local or district municipality on terms and conditions no less favourable than those under which such employee served immediately before the effective date;
- c) 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 a disestablished 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;
- d) where an employee 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 contribution to the scheme or fund from the remuneration of the employee and pay over to the scheme or fund in question together with the employer's contribution.

- e) the council of the employer municipality must appoint a person who became an employee of the municipality concerned in terms of subparagraph (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;
- f) nothing contained herein shall preclude a Municipality from implementing a scheme to re-organize its staff subject to provisions of the Labour Relations Act.

9. Continued application of by-laws and resolutions

- (f) (1) All by-laws, regulations and resolutions that apply in the area of a disestablished municipality immediately before the effective date, continue to apply in such area from the effective date subject to any amendment to repeal by council of the new municipality.
- (2) Unless inconsistent with the context or clearly inappropriate, reference in any such by-law, regulation or resolution to-
- a) a disestablished municipality, must be construed as a reference to the new municipality; and
 - b) a structure or functionary of a disestablished municipality, must be construed as a reference to the corresponding structure or functionary in the newly established municipality.

10. Transitional Facilitation Committee

1. A Transitional Facilitation Committee (TFC) is hereby established for the district and affected local municipalities to take effect from the date of publication.
 - (a) A TFC should consist of 5 councillors from each of the two municipalities designated by the district municipality and the affected local municipalities, and these should include governance, finance, corporate services and infrastructure and Local Economic Development (LED).
 - (b) The TFC must be assisted by a Technical Task Team co-chaired by the Municipal Managers and relevant managers representing the above mentioned portfolios from the affected municipalities as well as officials from the department.
2. The functions of the TFC shall, subject to and for the purposes of section 14 and 84 of the Act, be to recommend to the relevant authority:
 - (a) On the temporal adjustment of the division of powers and functions between the district and the local municipality, if the need to do so exists;
 - (b) Which of the assets, rights, liabilities and obligations that have been transferred from the disestablished municipality should remain vested in the transferee and which should be transferred from the transferee to another municipality;
 - (c) Subject to paragraph 8(e) of this part, the implication of a process of re-organizing the employees transferred to each new municipality;
 - (d) A process of reviewing the continued application of by-laws, regulations and resolutions of the disestablished municipalities and to make recommendations to the respective new municipalities for the rationalization of such by-laws, regulations and resolutions as contemplated in section 15 of the Act.

- (e) The legal, practical and other consequences of the partial disestablishment and establishment of the existing municipalities and also including vacation of office by councilors and implications thereof.
3. The councilor designated by the districts will be the co-chairpersons of the TFC
 - a. The chairperson of the TFC decides when and where the TFC meets, but a majority of members may request the chairperson in writing to convene a meeting of the TFC at a time and place set out in the request;
 - b. The chairperson presides at meetings of the TFC, but if the chairperson is absent from a meeting, the members present must elect another member to preside at the meeting.
 4. The TFC may determine its own procedures, subject to the following
 - a. A question before the TFC is decided with supporting vote of the majority of the members present at the meeting;
 - b. At least one half of the members must be present at a meeting before a vote may be taken on any matter.
 5. Dispute resolution
 - a. Where the TFC has before it any matter within its functions that cannot within sixty days of such matter being brought before it reach a decision thereon, the matter shall be referred to independent mediation and the mediation process shall be completed within thirty (30) days of such referral. The rules, governing such mediation and the list of approved mediation shall be as agreed upon by the TFC within fifteen (15) days of the expiry of the afore mentioned period of sixty (60) days;
 - b. The Executive Mayor as elected by the new district municipality and mayors from affected local municipalities shall be deemed to be responsible for the appointment of the mediator where necessary;
 - c. Where the TFC cannot, within the said period of fifteen (15) days reach agreement as contemplated in (a) above or where the mediation process does not resolve the matter within the afore mentioned period of thirty (30) days, the matter must be submitted to the MEC for local government who may, in his discretion, decide

on the matter, or may submit it to the arbitration by an arbitrator appointed by the MEC, whose decision shall be final and shall be deemed to constitute a recommendation of the TFC on the matter;

- d. The MEC shall be the Arbitrator but may appoint an arbitrator if he deems fit.
6. Any expense incurred by the TFC in the discharge of its functions or in respect of the costs of mediation in terms of sub-paragraph (5) shall be borne, in equal in proportion by the municipalities and the department who are members of the TFC.

11. Intervention powers of the MEC

- (1) The MEC for local government may at any time intervene in the proceedings of the TFC referred to in clause 10 and request the committee to refer a matter before the committee to the MEC for resolution.
- (2) The MEC for local government may reconsider a matter on which the Committee has taken a decision and confirm, vary or withdraw the decision of the Committee.
- (3) The district municipality and the affected local municipality, including affected employees are bound by the decision of the MEC.
- (4) The arbitration committee shall, unless otherwise stated, comprise of the 3 mayors and MEC for local government

PART 2**1. ESTABLISHMENT OF DISTRICT MUNICIPALITY**

(1) A district municipality is hereby established

(2) That the district municipality indicated as DC 13 excludes the district management area ECDMA13 which it was managing in terms of section 6 of the Municipal Structures Act.

2. CATEGORY

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

3. TYPE

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

4. BOUNDARIES

The boundaries of the district municipality are as indicated on Map No. DC13 as published in Provincial Gazette No. 1817 (extraordinary) dated 14 December 2007 under notice 472 of 2007 and/or any subsequent amendment by the Demarcation Board.

5. NAME

The name of the district municipality is Chris Hani District Municipality

6. COUNCILLORS

(1) The council of the district municipality consists of 42 councillors as determined in Provincial Notice No 46 of 2009 published in Provincial Gazette Extra Ordinary dated 7 August 2009.

(2) Full time councillors, if any, are designated in accordance with policy framework contemplated in section 18(4) of the Act, subject to the following conditions:

(a) That the municipality submits to the MEC a motivation for further fulltime councilors in the event that there be a need to exceed the already approved fulltime councilors, on the following –

(i) The functions and duties to be performed by full-time office bearers.

(ii) The municipality's financial capacity to pay the remuneration attached to the full-time office bearers.

(b) That the final designation of full-time councilors be made by the MEC within 30 days after receipt of the above-mentioned motivation by way of notice in the Provincial Gazette.

7. FULLTIME COUNCILLORS.

The council of the district municipality will continue to have the following office bearers as fulltime:

(a) Speaker

(b) Executive Mayor

(c) Members of the Mayoral Committee

(d) Chief Whip

8. SEAT OF FIRST MEETING

The seat of the new municipality for the purpose of the first meeting of its council after effective date shall continue to be Queenstown which shall be deemed to be the seat of the municipality until determined otherwise in terms of the Act.

9. MUNICIPAL MANAGER

The existing municipal manager is designated in terms of section 29(2) of the Act to call the first meeting of the council of the district municipality.

10. STANDING RULES FOR FIRST MEETING

The existing standing rules and order of the municipality shall continue to exist whilst mechanisms to review the same are established. The standing rules and orders for the first meeting of the new district municipality shall be as follows:

11. Definitions

In these rules, unless inconsistent with the context –

A word or expression to which a meaning has been assigned in the Municipal Structures Act has the same meaning;

“municipal manager” means the existing municipal manager;

“seat of the municipality” means the existing seat of the district municipality; and

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

12. Notice convening first meeting

- (1) The municipal manager must, within 3 days after council has been declared elected, inform the elected councillors in writing of the venue, date, and time of the first meeting of council.

- (2) The first meeting of the council must take place at the existing seat of the municipality within a period that will not exceed 21 days after all members to be appointed by local councils, have been appointed.

13. Convening notice read and oath or affirmation

- (1) At the commencement of proceeding of the council at the first meeting after it has been convened in terms of section 29 of the Municipal Structures Act, the existing municipal manager must read the notice convening the council.

- (2) After the notice convening the council has been read, the councillors must swear or affirm faithfulness to the Republic and obedience to the Constitution.

14. Election of Speaker

- (1) At its first meeting after its election the council must elect its speaker from among its councillors.

- (2) The existing municipal manager presides over the election of the Speaker.

- (3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the speaker

- (4) The elected speaker presides over the remainder of the first meeting of the council and the councilors from different political parties may express a sense of honour conferred upon him or her.

15. Election of Executive Mayor

- (1) At its first meeting after its election, the council must elect an executive mayor.
- (2) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the executive mayor.

16. Quorums and decisions

The quorums and determinations required by section 30 of the Municipal Structures Act apply to the first meeting of council.

17. Procedure for matters not dealt with in the Rules

A by-law relating to the procedure and maintenance of order at meetings, subject to the provision of the Municipal Structures act, applies to any procedural matter not provided for in the rules.

PART 3**1. ESTABLISHMENT OF LOCAL MUNICIPALITY.**

A local municipality is hereby established

That the local municipality indicated as EC131 now includes the western portion of ECDMA13 into Inxuba Ye Themba

2. CATEGORY

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

3. TYPE

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

4. BOUNDARIES

The boundaries of the district municipality are as indicated on Map No. DC_EC131 as published in the Provincial Gazette No 1817 (Extraordinary) of 14 December 2007 under notice No.472 of 2007 and/or any subsequent amendment by the Demarcation Board.

5. WARDS

The local municipality has 9 wards as determined by the demarcation board.

6. NAME

The name of the local municipality is Inxuba Ye Themba

7. COUNCILLORS

(1) The council of the local municipality consists of 18 councilors as determined in Provincial Notice No. 46 published in Provincial Gazette No. 2173 (Extraordinary) dated 07 August 2009.

(2) Full time councilors, if any, are designated in accordance with the policy framework contemplated in section 18(4) of the Act

8. FULLTIME COUNCILLORS

The council of the local municipality may, subject to conditions contained in item 7(2) in this Part, designate any of the following office bearers as fulltime.

- a. Executive Mayor

9. SEAT OF THE MUNICIPALITY

The seat of the new local municipality for the purpose of the first meeting of its council after the effective date shall continue to be Cradock which shall be deemed to be the seat of the local municipality until determined otherwise in terms of the Act.

10. MUNICIPAL MANAGER

The existing municipal manager is designated in terms of section 29 (2) of the Act to call the first meeting of the council of the local municipality.

11. STANDING RULES FOR THE FIRST MEETING

The existing standing rules and orders of the municipality shall continue to exist whilst mechanisms to review the same are established. The standing rules and orders for the first meeting of the new municipality shall be as follows:

Definitions

In these rules, unless inconsistent with the context-

A word or expression to which a meaning has been assigned in the Municipal Structures Act has the same meaning

“municipal manager” means the existing municipal manager

“seat of the municipality” means the existing seat of the district municipality.

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

12. RULES FOR THE FIRST MEETING OF THE LOCAL COUNCIL

Notice convening first meeting

(1) The municipal manager must, within 3 days after council has been declared elected, inform the elected councilors in writing of the venue, date, and time of the first meeting of the council

(2) The first meeting of the local council must take place at the seat of the municipality within a period that will not exceed fourteen days (14) after the council has been declared elected.

Convening notice read and oath or affirmation

- 1 (1) At the commencement of proceedings of the council at the first meeting after it has been convened in terms of section 29 of the Municipal Structures Act, the municipal manager must read the notice convening the council.
- (2) After the notice convening the council has been read, the councilors must swear or affirm faithfulness to the Republic and obedience to the Constitution

13.ELECTION OF THE SPEAKER

- (1) At its first meeting after its election the council must elect its speaker from among its councilors.
- (2) The municipal manager presides over the election of the speaker
- (3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the speaker.
- (4) The elected speaker then presides over the remainder of the first meeting of the council.

14.Quorums and decisions

The quorum and determination required by section 30 of the Municipal Structures Act apply to the first meeting of the council.

15.Procedure for matters not dealt with in these Rules

A by-law relating to the procedure and maintenance of order at meetings, subject to the provision of the Municipal Structures Act, applies to any procedural matter not provided for in the rules.

PART 4**1. ESTABLISHMENT OF LOCAL MUNICIPALITY.**

A local municipality is hereby established

That the local municipality indicated as EC 132 now includes the eastern portion of ECDMA13 into Tsolwana Local Municipality

2. CATEGORY

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

3. TYPE

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

4. BOUNDARIES

The boundaries of the district municipality are as indicated on Map No. DC_EC132 as published in the Provincial Gazette No 1817 (Extraordinary) of 14 December 2007 under notice No.472 of 2007 and/or any subsequent amendment by the Demarcation Board.

5. WARDS

The local municipality has 5 wards as determined by the demarcation board.

6. NAME

The name of the Local municipality is Tsolwana

7. COUNCILLORS

1) The council of the local municipality consists of 10 councillors as determined in Provincial Notice No. 46 published in Provincial Gazette No. 2173(Extraordinary) dated 07 August 2009.

(2) Full time councilors, if any, are designated in accordance with the policy framework contemplated in section 18(4) of the Act

8. FULLTIME COUNCILLORS

The council of the local municipality may, subject to the conditions contained in paragraph 7(2) in this Part, designate the following office bearer as fulltime:

(a) Speaker

9. SEAT OF THE MUNICIPALITY

The seat of the new local municipality for the purpose of the first meeting of its council after the effective date shall continue to be Tarkastad which shall be deemed to be the seat of the local municipality until determined otherwise in terms of the Act.

10. MUNICIPAL MANAGER

The existing municipal manager is designated in terms of section 29 (2) of the Act to call the first meeting of the council of the local municipality.

11. STANDING RULES FOR THE FIRST MEETING

The existing standing rules and orders of the municipality shall continue to exist whilst mechanisms to review the same are established. The standing rules and orders for the first meeting of the new municipality shall be as follows:

12. Definitions

In these rules, unless inconsistent with the context-

A word or expression to which a meaning has been assigned in the Municipal Structures Act has the same meaning

“municipal manager” means the existing municipal manager

“seat of the municipality” means the existing seat of the district municipality.

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

13. RULES FOR THE FIRST MEETING OF THE LOCAL COUNCIL

Notice convening first meeting

(1) The municipal manager must, within 3 days after council has been declared elected, inform the elected councilors in writing of the venue, date, and time of the first meeting of the council

(2) The first meeting of the local council must take place at the seat of the municipality within a period that will not exceed fourteen days (14) after the council has been declared elected.

Convening notice read and oath or affirmation

(1) At the commencement of proceedings of the council at the first meeting after it has been convened in terms of section 29 of the Municipal Structures Act, the municipal manager must read the notice convening the council.

(2) After the notice convening the council has been read, the councilors must swear or affirm faithfulness to the Republic and obedience to the Constitution

14. ELECTION OF THE SPEAKER

- (1) At its first meeting after its election the council must elect its speaker from among its councilors.
- (2) The municipal manager presides over the election of the speaker
- (3) The procedure set out in Schedule 3 of the Municipal Structures Act applies to the election of the speaker.
- (4) The speaker of a council of a municipality of the type mentioned in sections 9(e) or (f) or 10(c) of the Act must be called a Mayor
- (5) The elected speaker then presides over the remainder of the first meeting of the council.

15. Quorums and decisions

The quorum and determination required by section 30 of the Municipal Structures Act apply to the first meeting of the council.

16. Procedure for matters not dealt with in these Rules

A by-law relating to the procedure and maintenance of order at meetings, subject to the provision of the Municipal Structures Act, applies to any procedural matter not provided for in the rules.