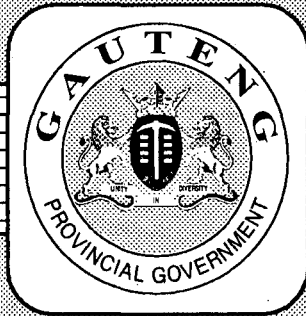


**THE PROVINCE OF
GAUTENG**



**DIE PROVINSIE
GAUTENG**

Provincial Gazette Extraordinary Buitengewone Provinsiale Koerant

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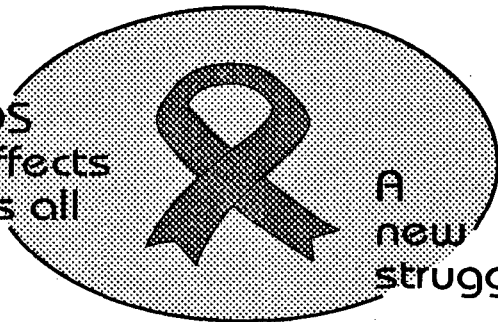
Vol. 8

PRETORIA, 6 FEBRUARY 2002
FEBRUARIE

No. 25

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us all



A
new
struggle

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DEPARTMENT OF HEALTH

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GENERAL NOTICE

NOTICE 272 OF 2002

GAUTENG PROVINCIAL LEGISLATURE

PUBLICATION OF PRIVILEGES AND IMMUNITIES OF COUNCILLORS BILL

Notice is hereby given that the Member of the Executive Council for Development Planning and Local Government (Mr T G Fowler) intends to introduce the Privileges and Immunities of Councillors Bill in the Legislature as published in this Extraordinary Gazette.

Any person or organisation wishing to comment on this proposed Legislation may lodge written comments on or before **28 February 2001** by posting, faxing or handing them in at the following address:

The Secretary to the Legislature
Gauteng Provincial Legislature
C/o Committee Co-ordinator (Ms N Ngcwabe)
Private Bag X52
Johannesburg
2000

Physical Address

Gauteng Provincial Legislature
Corner President and Loveday Strs.
Johannesburg
Tel No: (011) 498-5474
Fax No: (011) 498-5719

BILL

To give effect to the provisions of section 28 of the Local Government: Municipal Structures Act, 1998; to define the privileges and immunities of councillors; and to provide for matters incidental thereto.

BE IT ENACTED by the Gauteng Provincial Legislature as follows:

Definitions

1. In this Act, unless the context otherwise indicates –

"committee" means any committee of a council, including a mayoral committee;

"council" means the municipal council of a municipality established by the MEC responsible for Local Government matters in terms of section 12(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and duly elected in terms of the Local Government: Municipal Electoral Act 2000 (Act No. 27 of 2000);

"councillor" means a member of a council;

"rules and orders" means the rules and orders of a council as envisaged in section 160(6) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Privileges and immunities of councillors

2. (1) A councillor has freedom of speech in any meeting of a council and in its committees, subject to the relevant rules and orders of the council.

(2) A councillor does not incur any civil or criminal liability including arrest, imprisonment or damages for –

- (a) anything he or she has said in, produced before or submitted to the council or any of its committees;
- (b) anything revealed as a result of anything that he or she has said in, produced before or submitted to the council or any of its committees; or
- (c) any lawful act done under the authority or by order of the council or any of its committees.

(3) Notwithstanding the provisions of subsections (1) and (2), a councillor is not protected against any legal proceedings instituted against him or her for any act that is unlawful.

(4) A councillor is exonerated from liability if he or she has requested that his or her vote be registered against any resolution or decision of a council or any committee of which he or she is a member on a matter that does not fall within the statutory competence of a council or committee or that a resolution or decision is contrary to any law, regulation or the rules and orders of a council.

(5) Subject to the provisions of any national law, no person shall arrest a councillor or serve any legal or court document upon him or her, while the council or any committee of which he or she is a member, is in sitting.

(6) Any person who contravenes a provision of subsection (5) shall be guilty of an offence and on conviction be liable to a fine or to

imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(7) A councillor is not obliged to divulge or disclose any information which is privileged or confidential in terms of Item 10 of Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

Short title

3. This Act is called the Privileges and Immunities of Councillors Act, 2002.

EXPLANATORY MEMORANDUM ON THE PRIVILIGES AND IMMUNITIES OF COUNCILLORS BILL, 2002

1. PURPOSE OF THE BILL

In terms of section 161 of the Constitution, a provincial government may pass legislation, within the framework of national legislation, on privileges and immunities of municipal councils and its members.

Section 28 of the Local Government: Municipal Structures Act, 1998, makes provision for provincial legislation to be passed in order to afford freedom of speech to municipal councillors in a council or its committees and to indemnify councillors against any civil or criminal proceedings for anything done in a council or its committees.

In order to enhance freedom of speech in municipal councils and to protect councillors against anything done in the course of their duties within a municipal council and its committees, the Gauteng Provincial Government approved the Privileges and Immunities of Councillors Bill, 2002.

2. ENVIRONMENTAL IMPLICATIONS

None.

3. FINANCIAL IMPLICATIONS

None.

4. ACCOUNTS OF COMMENTS SOLICITED AND RECEIVED

Gauteng Association for Local Authorities (GALA).

5. PERSONNEL IMPLICATIONS

None.

6. CLAUSE-BY-CLAUSE DESCRIPTION

- 6.1 Clause 1 contains definitions.

- 6.2 Clause 2 provides for freedom of speech in meetings of a council or its committees and indemnifies a councillor against civil or criminal actions for anything said or revealed at such meetings or lawfully done by order of a council.

- 6.3 Clause 3 contains the short title of the Act.

KENNISGEWING 272 VAN 2002

WETSONTWERP

Om gevolg te gee aan die bepalings van artikel 28 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998; om die voorregte en immuniteite van raadslede te omskryf; en om voorsiening te maak vir sake wat daarmee verband hou.

Word soos volg deur die Provinsiale Wetgewer van Gauteng **UITGEVAARDIG**:

Omskrywings

1. In hierdie Wet, tensy die samehang anders aandui, beteken -
 - "komitee" enige komitee van 'n raad, insluitend 'n burgermeesterskomitee;
 - "raad" die munisipale raad van 'n munisipaliteit gestig deur die LUR verantwoordelik vir Plaaslike Regeringsake ingevolge artikel 12(1) van die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wetnr. 117 van 1998) en behoorlik verkies ingevolge die "Local Government: Municipal Electoral Act 2000" (Wetnr. 27 van 2000);
 - "raadslid" 'n lid van 'n raad;
 - "reëls en opdragte" die reëls en opdragte van 'n raad soos beoog in artikel 160(6) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wetnr. 108 van 1996).

Voorregte en immuniteite van raadslede

2. (1) 'n Raadslid het vryheid van spraak in enige vergadering van 'n raad en sy komitees, onderhewig aan die tersaaklike reëls en opdragte van die raad.
- (2) 'n Raadslid haal geen siviele of kriminele aanspreeklikheid op die hals, insluitend inhegtenisneming, tronkstraf of skadevergoeding, vir -
 - (a) enige iets wat hy of sy gesê het, geproduseer het vir, of aan die raad of enige van sy komitees voorgelê het;
 - (b) enige iets wat bekend gemaak word as gevolg van enige iets wat hy of sy gesê het, geproduseer het vir, of aan die raad of enige van sy komitees voorgelê het; of
 - (c) enige wettige optrede gedoen ingevolge die magtiging van of op die bevel van die raad of enige van sy komitees.
- (3) Nieteenstaande die bepalings van subartikels (1) en (2), word 'n raadslid nie beskerm teen enige wettige prosedures wat teen hom of haar ingestel word vir enige optrede wat onwettig is nie.
- (4) 'n Raadslid word van aanspreeklikheid vrygestel indien hy of sy versoek dat sy of haar stem geregistreer word teen enige resoluë of besluit van 'n raad of enige komitee waarvan hy of sy 'n lid is, ten opsigte van 'n saak wat nie binne die statutêre bevoegdheid van 'n raad of komitee val nie of dat 'n resoluë of besluit teenstrydig is met enige wet, regulasie of die reëls en opdragte van 'n raad.
- (5) Onderworpe aan die bepalings van enige nasionale wet, mag geen persoon 'n raadslid in hegtenis neem of enige regs- of hofdokument op hom of haar beteken terwyl die raad of enige komitee waarvan hy of sy 'n lid is, in sitting is nie.
- (6) Enige persoon wat 'n bepaling van subartikel (5) oortree, sal aan 'n oortreding skuldig wees en sal by skuldigbevinding onderhewig wees aan 'n boete of tronkstraf vir 'n tydperk wat nie ses maande oorskry nie, of aan beide sodanige boete of tronkstraf.
- (7) 'n Raadslid is nie verplig om enige inligting wat ingevolge Item 10 van

Bylae 1 tot die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wetnr. 32 van 2000) bevoorreg of vertroulik is, bekend te maak of te openbaar nie.

Korttitel

3. Hierdie Wet staan bekend as die Wet op Voorregte en Immuniteite van Raadslede, 2002.

VERDUIDELIKENDE MEMORANDUM OOR DIE WETSONTWERP TEN OPSIGTE VAN DIE VOORREGTE EN IMMUNITEITE VAN RAADSLEDE, 2002

1. DOEL VAN DIE WETSONTWERP

Ingevolge artikel 161 van die Grondwet, mag 'n provinsiale regering wetgewing ten opsigte van die voorregte en immuniteite van munisipale rade en hulle lede binne die raamwerk van nasionale wetgewing uitvaardig.

Artikel 28 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998, maak voorsiening vir provinsiale wetgewing om uitgevaardig te word om aan munisipale raadslede vryheid van spraak in 'n raad of sy komitees te verleen en om raadslede skadeloos te stel teen enige siviele of kriminele prosedures vir enige iets wat in 'n raad of sy komitees uitgerig word.

Om vryheid van spraak in munisipale rade te versterk en om raadslede te beskerm teen enige iets wat in die loop van hulle pligte binne 'n munisipale raad en sy komitees gedoen word, het die Gautengse Provinsiale Regering die Wetsontwerp op Voorregte en Immunitate van Raadslede, 2002 goedgekeur.

2. OMGEWINGSIMPLIKASIES

Geen.

3. FINANSIËLE IMPLIKASIES

Geen.

4. REKENSAP VAN KOMMENTAAR INGEWIN EN ONTVANG

Gautengse Vereniging van Plaaslike Owerhede (GVPO).

5. PERSONEELIMPLIKASIES

Geen.

6. KLOUSULE-VIR-KLOUSULE-BESKRYWING

6.1 Klousule 1 bevat omskrywings.

6.2 Klousule 2 maak voorsiening vir vryheid van spraak in die vergaderings van 'n raad of sy komitees en stel 'n raadslid skadeloos teen siviele of kriminele vervolging vir enige iets wat tydens sodanige vergaderings gesê of bekend gemaak is of wat wettiglik op bevel van 'n raad gedoen is.

6.3 Klousule 3 bevat die korttitel van die Wet.

NOTICE 272 OF 2002

ISIZULU**UMTHETHOSIVIVINYWA**

Ukufeza imiyalo yesigaba 28 soMthetho ka-1998 kaHulumeni weNdawo: Izakhiwo zikaMasipala (Local Government: Municipal Structures Act, 1998); ukuchaza amalungelo nokuvikeleka kwamakhansela; kanye nokulungiselela izindaba ezihambisana nalokho.

Ukumiswa komthetho yisiShayamthetho sesiFundazwe saseGauteng njengoba kulandela:

Izincazelo

1. Kulo Mthetho, ngaphandle kokuthi isimo sikhombise ngokwehluka –
“**ikomiti**” kuqondwe noma yiliphi ikomiti lomkhandlu, kufaka phakathi ikomiti likameya;
“**umkhandlu**” kuqondwe umkhandlu kamasipala ongokamasipala, osungulwe yiMEC ebhekene nezindaba zikaHulumeni weNdawo ngokwesigaba 12 (1) soMthetho ka-1998 kaHulumeni weNdawo: Izakhiwo zikaMasipala (uMthetho onguNombolo 117 ka-1998), nowakhetwa ngokufanele ngokoMthetho woKhethe loMasipala: UHulumeni weNdawo (uMthetho onguNombolo 27 ka-2000);
“**ikhansela**” kuqondwe ilungu lomkhandlu;
“**imithetho nokuhamba komthetho**” kuqondwe imithetho nokuhamba komthetho komkhandlu njengoba kucatshangwa esigabeni 160(6) soMthethosisekelo weRiphabhuliki yaseNingizimu Afrika, 1996 (Umthetho onguNombolo 108 ka-1996).

Amalungelo nokuvikeleka kwamakhansela

2. (1) Ikhansela linenkululeko yenkulumo kunoma yimuphi umhlangano womkhandlu namakomiti alo, lokho kungaphansi kwemithetho nokuhamba komthetho komkhandlu, okufanele.
- (2) Ikhansela alizukuthola noma yiliphi icala eliphathelene nokwelelesa noma imibango, kufaka phakathi ukuboshwa, ukugqunywa ejele noma inhlawulo mayelana –
 - (a) nanoma yini eliyishilo, layikhipha noma layethula emkhandlwini noma kunoma yiliphi lamakomiti awo;
 - (b) nanoma yini evezwe ngenxa yanoma yini eliyikhulumile, layikhipha noma layethula emkhandlwini noma kunoma yiliphi lamakomiti awo; noma mayelana
 - (c) nanoma yisiphi isenzo esisemthethweni esenziwe ngaphansi kwegunya noma ngokomyalo womkhandlu noma wanoma yiliphi elinye lamakomiti awo.

(3) Noma kunemiyalo yezigaba ezingaphansi u-(1) no-(2), ikhansela alivikelekile kunoma yiziphi izinyathelo zomthetho elizithathelwe nganoma yisiphi isenzo esingekho emthethweni.

(4) Ikhansela liyahlanjululwa ecaleni uma licele ukuthi ivoti lalo libhalwe lenqike kunoma yisiphi isinqumo somkhandlu noma sanoma yiliphi ikomiti eliyilungu lalo, mayelana nodaba olungangeni ngaphakathi kwamandla omkhandlu noma ekomiti aphathelene nomthetho noma mayelana nokuthi isinqumo siphikisana nanoma yimuphi umthetho nokuhamba komthetho womkhandlu.

(5) Ngokulandela imiyalo yanoma yimuphi umthetho kazwelonke, akunamuntu oyobopha ikhansela noma alinikeze noma yimuphi umbhalo womthetho noma wenkantolo, ngenkathi umkhandlu noma yinoma yiliphi ikomiti ayilungu lakho kuhlange.

(6) Noma yimuphi umuntu owephula umyalo wesigaba esingaphansi (5), uyoba necala bese kuthi lapho elahlwa yicala abizwe inhlawulo noma agqunywe ejele isikhathi esingedluli izinyanga eziyisithupha, noma athole kokubili inhlawulo enje noma ukugqunywa ejele.

(7) Ikhansela aliphoqiwe ukuthi liveze noma lidalule noma yiluphi ulwazi olunamalungelo noma oluyimfihlo ngokwePhuzu 10 leSheduli 1 yoMthetho ka-2000 kaHulumeni weNdawo: Izinhlelo zikaMasipala (Local Government: Municipal Systems Act, 2000) (Umthetho onguNombolo 32 ka-2000).

Isihloko esifushane

3. Lo Mthetho ubizwa uMthetho wamaLungelo nokuVikeleka kwamaKhansela ka-2002.

UMBIKO OLOTSHIWEYO OCHAZA NGOMTHETHOSIVIVINYWA KA-2002 WAMALUNGELO NOKUVIKELEKA KWAMAKHANSELA

1. INHLOSO YOMTHETHOSIVIVINYWA

Ngokwesigaba 161 soMthethosisekelo, uhulumeni wesifundazwe angabeka umthetho okhishwayo, ngaphakathi kohlaka lomthetho kazwelonke, mayelana namalungelo nokuvikeleka kwemikhandlu kamasipala kanye namalungu ayo.

Isigaba 28 soMthetho kaHulumeni weNdawo: Izakhiwo zikaMasipala, ka-1998, senza amalungiselelo okuthi kubekwe umthetho wesifundazwe ukuze kunikezwe inkululeko yenkulumo kumakhansela omasipala emikhandlwini noma emakomitini ayo kanye nokuvikela amakhansela kunoma yikuphi ukumangalelwa ngokwelelesa noma ngemibango mayelana nanoma yini eyenziwe emkhandlwini noma emakomitini awo.

Ukuze kugqanyiswe inkululeko yenkulumo emikhandlwini kamasipala kanye nokuvikela amakhansela kunoma yini eyenziwe lapho enza imisebenzi yawo ngaphakathi komkhandlu kamasipala namakomiti ayo, uHulumeni wesiFundazwe saseGauteng wavumela uMthethosivivinywa wamaLungelo nokuVikelwa kwamaKhansela, ka-2002.

2. IMIPHUMELA ENDAWENI OKUPHILWA KUYO

Ayikho.

3. IMIPHUMELA KWEZEZIMALI

Ayikho.

4. IMIBIKO YEZIMVO ECELIWE NEYEMUKELWE

IGauteng Association for Local Authorities (GALA).

5. IMIPHUMELA KWEZABASEBENZI

Ayikho.

6. INCAZELO YEZIGATSHANA NGEZIGATSHANA

6.1 Isigatshana 1 siqukethe izincazelo.

6.2 Isigatshana 2 silungiselela inkululeko yenkululmo emihlanganweni yomkhandlu noma emakomitini ayo futhi sivikela ikhansela kunoma yiziphi izinyathelo ezithathwa mayelana nokwelelesa noma imibango mayelana nanoma yini eshiwo noma evezwe emihlanganweni enje noma eyenziwe ngokomyalo womkhandlu.

6.3 Isigatshana 3 siqukethe isihloko esifushane soMthetho.

NOTICE 272 OF 2002

MOLAOKAKANYWA

Go kgonagatša ditaello tša karolo 28 ya Molao wa Mmušo wa Selegae: Dibopego tša Mmasepala wa 1998; go hlalosa ditokelo le ditšhireletšego tša bakhanselara; le go hlokomela merero ye e sepelelanago le tšeo.

Lekgotlapeomelao la Gauteng le **BEA MOLAO** ka mokgwa wo o latelago:

Ditlhaloso

1 Molaong wo, ntle le ge kwišišego e laetša ka mokgwa wo mongwe -

"komiti" e ra komiti ye nngwe le ye nngwe ya khansele, go akaretšwa le komiti ya ramotse;

"khansele" e ra khansele ya mmasepala wo o hlomilwego ke Leloko la Lekgotlaphethiši leo le nago le boikarabelo bja merero ya Mmušo wa Selegae go ya ka karolo 12(1) ya Molao wa Mmušo wa Selegae: Dibopego tša Mmasepala wa 1998 (Molao wa Nomoro ya 117 wa 1998), e lego woo o kgethilwego ka maleba go ya ka mabaka a Molao wa Mmušo wa Selegae: Dikekgetho tša Mmasepala wa 200 (Molao wa Nomoro ya 27 wa 2000);

"Mokhanselara" ke leloko la khansele;

"melao le ditaello" ke melao le ditaello tša khansele bjalo ka ge di hlaloswa karolong ya 160(6) ya Molaotheo wa Rapabliki ya Afrika Borwa, 1996 (Molao wa Nomoro ya 108 wa 1996).

Ditokelo le ditšhireletšego tša bakhanselara

2. (1) Mokhanselara o na le tokologo ya polelo kopanong ye nngwe le ye nngwe ya khansele le dikomiting tša yona, go ya ka melao ya maleba le ditaello tša khansele.

(2) Mokhanselara a ka se lebanwe ke tatofatšo ya leago goba ya bosenyi go akaretšwa go swarwa, go golegwa goba go sekwa ditshyenyagalelo mabapi le-

(a) se sengwe le se sengwe seo a se boletšego, a se tšweleditšego khanseleng goba ka go ye nngwe le ye nngwe ya dikomiti tša yona;

(b) se sengwe le se sengwe se se utollotšwego ka lebaka la se sengwe le se sengwe seo a se boletšego goba a se tšweleditšego ka khanseleng goba ka go ye nngwe le ye nngwe ya dikomiti tša yona; goba

(c) tiro ye nngwe le ye nngwe ye e lego molaong, ye e dirilwego ka tlase ga bolaodi bja khansele goba go ya ka taelo ya khansele goba ya ye nngwe le ye nngwe ya dikomiti tša yona.

- (3) Go sa šetšwe ditaelo tša dikarolwana tša (1) le (2), mokhanselara ga se a šireletšega tshepedišong efe goba efe ya molao yeo e hlomilwego kgahlanong le yena ka molao wo o sego molaong.
- (4) Mokhanselara o lokollwa boikarabelong ge a kgopetše gore boutu ya gagwe e tšewe go ba yeo e lego kgahlanong le kwano ye nngwe le ye nngwe goba sephetho sa khansela goba sa komiti efe goba efe yeo a lego setho sa yona, mabapi le morero wo o sa welego taolong ya semolao ya khansela goba ya komiti goba kwano goba sephetho seo se lego kgahlanong le molao ofe goba ofe, molaotshepedišo goba melao le ditaelo tša khansela.
- (5) Go ya ka ditaelo tša molao ofe goba ofe wa bosetšhaba, ga go motho yo a ka swarago mokhanselara goba a mo fa sengwalwa sefe goba sefe sa taelo ya molao goba ya kgoro ya tsheko, ge khansela goba komiti efe goba efe yeo a lego setho sa yona, e dutše.
- (6) Motho ofe goba ofe yo a tshelago taelo ya karolwana (5) o tla ba le molato gomme a ka fiwa kotlo ya tefišo goba a išwa kgolegong lebakeng le le sa fetego dikgwedi tše di tshelago goba a otlwa ka tefišo le kgolego ka bobedi.
- (7) Mokhanselara ga a gapeletšege go bolela goba go utulla tshedimošo efe goba efe yeo e sego ya mang le mang goba yeo e lego ya bosephiri go ya ka Temana ya 10 ya Skedule sa 1 sa Molao wa Mmušo wa Selegae: Mananeo a Mmasepala, 200 (Molao wa Nomoro ya 32 wa 2000)

Hlogo ye kopana

3. Molao wo o bitšwa Molao wa Ditokelo le Ditšhireletšego tša Bakhanselara, 2002.

MEMORANTAMO WA DITLHALOSO KA GA MOLAOKAKANYWA WA DITOKELO LE DITŠHIRELETŠEGO TŠA BAKHANSELARA, 2002

1. MORERO WA MOLAOKAKANYWA

Go ya ka karolo ya 161 ya Molaotheo, mmušo wa probense o ka fetiša molao, go ya ka lenaneo la peomelao ya bosetšhaba, mabapi le ditokelo le ditšhireletšego tša dikhansele tša mmasepala le maloko a tšona.

Karolo ya 28 ya Molao wa Mmušo wa Selegae: Dibopego tša Bommasepala, 1998, e fa taelo ya gore go dirwe melao ya probense gore go be le tokologo ya polelo go bakhanselara ba mmasepala ka khanseleng goba ka dikomiting tša yona, le go lokolla bakhanselara kgahlanong le tshekišo efe goba efe ya leago goba ya bosenyi, mabapi le se sengwe le se sengwe se se dirilwego ka khanseleng goba ka dikomiting tša yona.

Gore go šireletšwe tokologo ya polelo ka dikhanseleng tša mmasepala le go šireletša bakhanselara kgahlanong le se sengwe le se sengwe seo se dirwago lebakeng la mešomo ya bona ka khanseleng ya mmasepala le ka dikomiting tša yona, Mmušo wa Probense ya Gauteng o amogetše Molaokakanywa wa Ditokelo le Ditšhireletšego tša Bakhanselara, 2002.

2. DIKHUETŠO TŠA TIKOLOGO

Ga di gona.

3. DIKHUETŠO TŠA DITŠHELETE

Ga di gona.

4. DIPEGO TŠA MAIKUTLO TŠEO DI NYAKILWEGO LE GO HWETŠWA

Gauteng Association for Local Authorities (GALA).

(Mokgatlo wa Gauteng wa Dipušo tša Selegae)

5. DIKHUETŠO TŠA BOMOTHO

Ga di gona.

6. TLHALOSO YA TEMANA-KA-TEMANA

6.1 Temana ya 1 e na le ditlhaloso

6.2 Temana ya 2 e fana ka tokologo ya polelo ka dikopanong tša khansele goba ka dikomiting tša yona gomme e lokolla mokhanselara kgahlanong le dikgato tša leago goba tša bosenyi mabapi le se sengwe le se sengwe se se boletšwego goba se utollotšwego dikopanong tšeo goba se se dirilwego ka molao go ya ka ditaelo tša khansele.

6.3 Temana ya 3 e na le hlogo ye kopana ya Molao wo.
