

Report of the Auditor-General to the Eastern Cape Provincial Legislature and the Council on the OR Tambo District Municipality

Report on the audit of the consolidated and separate financial statements

Opinion

1. I have audited the consolidated and separate financial statements of the OR Tambo District Municipality set out on pages xx to xx, which comprise the consolidated and separate statement of financial position as at 30 June 2023, consolidated and separate statement of financial performance, consolidated and separate statement of changes in net assets, and consolidated and separate cash flow statement and consolidated and separate statement of comparison of budget and actual amounts for the year then ended, as well as notes to the consolidated and separate financial statements, including a summary of significant accounting policies.
2. In my opinion, the consolidated and separate financial statements present fairly, in all material respects, the consolidated and separate financial position of the OR Tambo District Municipality as at 30 June 2023 and its consolidated and separate financial performance and consolidated and separate cash flow statement, consolidated and separate statement of changes in net assets and consolidated and separate statement of comparison of budget and actual amounts for the year then ended in accordance with the South African Standards of Generally Recognised Accounting Practise (SA Standards of GRAP) and the requirements of the Municipal Finance Management Act 56 of 2003 (MFMA) and the Division of Revenue Act 5 of 2022 (Dora).
3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the responsibilities of the auditor-general for the audit of the consolidated and separate financial statements section of my report.
4. I am independent of the municipality in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Emphasis of matters

6. I draw attention to the matters below. My opinion is not modified in respect of these matters.

Restatement of corresponding figures

7. As disclosed in note 47 to the consolidated and separate financial statements, the corresponding figures for 30 June 2022 were restated as a result of an error in the consolidated and separate financial statements of the municipality at, and for the year ended, 30 June 2023.

Debt impairment

8. As disclosed in note 31 to the consolidated and separate financial statements, debt impairment of R80,96 million (2022: R84,94 million) was made as a result of the allowance for receivables from exchange transactions.

Unspent conditional grants

9. As disclosed in note 16 to the consolidated and separate financial statements, the municipality materially underspent their conditional grants and receipts by R111,99 million (2022: R187,87 million).

Other matter paragraph

10. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Unaudited disclosure notes

11. In terms of section 125(2)(e) of the MFMA, the municipality is required to disclose particulars of non-compliance with the MFMA in the consolidated and separate financial statements. This disclosure requirement did not form part of the audit of the consolidated and separate financial statements and, accordingly, I do not express an opinion on it.

Responsibilities of the accounting officer for the consolidated and separate financial statements

12. The accounting officer is responsible for the preparation and fair presentation of the consolidated and separate financial statements in accordance with the Generally Recognised Accounting Practice (South Africa) and the requirements of the Municipal Finance Management Act 56 of 2003 (MFMA); and for such internal control as the accounting officer determines is necessary to enable the preparation of consolidated and separate financial statements that are free from material misstatement, whether due to fraud or error.
13. In preparing the consolidated and separate financial statements, the accounting officer is responsible for assessing the municipality's ability to continue as a going concern; disclosing, as applicable, matters relating to going concern; and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the municipality or to cease operations, or has no realistic alternative but to do so.

Responsibilities of the auditor-general for the audit of the consolidated and separate financial statements

14. My objectives are to obtain reasonable assurance about whether the consolidated and separate financial statements as a whole are free from material misstatement, whether due to fraud or error; and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated and separate financial statements.
15. A further description of my responsibilities for the audit of the consolidated and separate financial statements is included in the annexure to this auditor's report.

Report on the audit of the annual performance report

16. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I must audit and report on the usefulness and reliability of the reported performance against predetermined objectives for the selected key performance area presented in the annual performance report. The accounting officer is responsible for the preparation of the annual performance report.
17. I selected the following key performance area presented in the annual performance report for the year ended 30 June 2023 for auditing. I selected a key performance area that measures the municipality's performance on its primary mandated functions and that is of significant national, community or public interest.

Key Performance area	Page numbers	Goals
Basic service delivery and infrastructure	XX	• To promote integrated sustainable community livelihoods • To provide conducive, adequate and accessible infrastructure • To provide water and sanitation to every village/community

18. I evaluated the reported performance information for the selected key performance area against the criteria developed from the performance management and reporting framework, as defined in the general notice. When an annual performance report is prepared using these criteria, it provides useful and reliable information and insights to users on the municipality's planning and delivery on its mandate and objectives.
19. I performed procedures to test whether:

- the indicators used for planning and reporting on performance can be linked directly to the municipality's mandate and the achievement of its planned objectives
 - the indicators are well defined to ensure that they are easy to understand and can be applied consistently, as well as verifiable so that I can confirm the methods and processes to be used for measuring achievements
 - the targets can be linked directly to the achievement of the indicators and are specific, time bound and measurable to ensure that it is easy to understand what should be delivered and by when, the required level of performance as well as how performance will be evaluated
 - the indicators and targets reported on in the annual performance report are the same as those committed to in the approved initial or revised planning documents
 - the reported performance information is presented in the annual performance report in the prescribed manner
 - there is adequate supporting evidence for the achievements reported and for the measures taken to improve performance.
20. I performed the procedures for the purpose of reporting material findings only; and not to express an assurance opinion or conclusion.
21. I did not identify any material findings on the reported performance information for the key performance area.

Other matters

22. I draw attention to the matters below. My opinion is not modified in respect of these matters.

Achievement of planned targets

23. The annual performance report includes information on reported achievements against planned targets and provides explanations for over achievements or under achievements and measures taken to improve performance.

Material misstatements

24. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information for Basic Service Delivery and Infrastructure. Management subsequently corrected all the misstatements, and I did not include any material findings in this report.

Report on compliance with legislation
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25. In accordance with the PAA and the general notice issued in terms thereof, I must audit and report on compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting officer is responsible for the municipality's compliance with legislation.

26. I performed procedures to test compliance with selected requirements in key legislation in accordance with the findings engagement methodology of the Auditor-General of South Africa (AGSA). This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.
27. Through an established AGSA process, I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the municipality, clear to allow consistent measurement and evaluation, while also sufficiently detailed and readily available to report in an understandable manner. The selected legislative requirements are included in the annexure to this auditor's report.
28. The material findings on compliance with the selected legislative requirements, presented per compliance theme, are as follows:

Annual financial statements and annual reports

29. The financial statements submitted for auditing were not prepared in all material respects in accordance with the requirements of section 122(1) of the MFMA. Material misstatements of property, plant and equipment, payables from exchange transactions, expenditure and disclosure notes identified by the auditors in the submitted financial statements were subsequently corrected resulting in the financial statements receiving an unqualified audit opinion.
30. The local community was not invited to submit representations in connection with the 2021/22 annual report, as required by section 127(5)(a)(ii) of the MFMA.
31. The council failed to adopt an oversight report containing the council's comments on the 2021/22 annual report, as required by section 129(1) of the MFMA.

Procurement and contract management

32. Some of the contracts were awarded to providers whose tax matters had not been declared by the South African Revenue Service to be in order, in contravention of Supply Chain Management (SCM) Regulation 43. Similar non-compliance was also reported in the prior year.
33. Some of the invitations to tender for procurement of commodities designated for local content and production, did not stipulate the minimum threshold for local production and content as required by the 2017 Preferential Procurement Regulation 8(2). Similar non-compliance was also reported in the prior year.
34. Some of the commodities designated for local content and production, were procured from suppliers who did not submit a declaration on local production and content as required by the 2017 Preferential Procurement Regulation 8(5). Similar non-compliance was also reported in the prior year.
35. The performance of the contractors or providers was not monitored on a monthly basis, as required by section 116(2)(b) of the MFMA. Similar non-compliance was also reported in the prior year.

Asset management

36. An effective system of internal control for assets was not in place, as required by section 63(2)(c) of the MFMA.

Strategic planning and performance management

37. The performance management system and related controls were not properly implemented or were inadequate as there was no evidence of adequate monitoring and review processes conducted as required by municipal planning and performance management regulation 7(1).

Expenditure management

38. Money owed by the municipality was not always paid within 30 days, as required by section 65(2)(e) of the MFMA.
39. Reasonable steps were not taken to prevent irregular expenditure amounting to R170,77 million as disclosed in note 55 to the separate controlling entity annual financial statements, as required by section 62(1)(d) of the MFMA. The majority of the irregular expenditure was caused by non-compliance with SCM reg.22(1)(b)(i).
40. Reasonable steps were not taken to prevent fruitless and wasteful expenditure amounting to R14,96 million as disclosed in note 54 to the separate controlling entity annual financial statements, in contravention of section 62(1)(d) of the MFMA. The majority of the disclosed fruitless and wasteful expenditure was caused by interest paid.
41. Reasonable steps were not taken to prevent unauthorised expenditure amounting to R71,35 million as disclosed in note 53 to the annual financial statements, in contravention of section 62(1)(d) of the MFMA. The majority of the unauthorised expenditure was caused by overspending of the budget.

Human Resource Management

42. Appropriate systems and procedures to monitor, measure and evaluate performance of staff were not developed and adopted, as required by section 67(1)(d) of the MSA.
43. The municipal manager and senior managers did not sign performance agreements within the prescribed period, as required by section 57(2)(a) of the MSA.

Other information in the annual report

44. The accounting officer is responsible for the other information included in the annual report, which includes the audit committee's report. The other information referred to does not include the consolidated and separate financial statements, the auditor's report and those selected key performance areas presented in the annual performance report that have been specifically reported on in this auditor's report.
45. My opinion on the consolidated and separate financial statements, the report on the audit of the annual performance report and the report on compliance with legislation do not cover the other

information included in the annual report and I do not express an audit opinion or any form of assurance conclusion on it.

46. My responsibility is to read this other information and, in doing so, consider whether it is materially inconsistent with the consolidated and separate financial statements and the selected key performance area presented in the annual performance report or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
47. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

Internal control deficiencies

48. I considered internal control relevant to my audit of the consolidated and separate financial statements, annual performance report and compliance with applicable legislation; however, my objective was not to express any form of assurance on it.
49. The matters reported below are limited to the significant internal control deficiencies that resulted in material findings on compliance with legislation included in this report.
50. Management did not adequately discharge its oversight of the implementation and monitoring of internal controls to ensure sound financial and performance management as there were material misstatements which were subsequently corrected on both the financial and the performance information. In addition, management developed an audit action plan to address the prior year external audit findings however not all actions were implemented adequately resulting in repeat findings on compliance with legislation.

Material irregularities

51. In accordance with the PAA and the Material Irregularity Regulations, I have a responsibility to report on material irregularities identified during the audit and on the status of material irregularities as previously reported in the auditor's report.

Status of previously reported material irregularities

Prepayments made to an implementing agent for water projects

52. The municipality made payments to its implementing agent for water projects, for goods and services not yet received. This resulted in non-compliance with section 65(2)(a) of the Municipal Finance Management Act 56 of 2003 (MFMA), which requires that the municipality should have and maintain an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds. The non-compliance with legislation resulted

in a likely material financial loss because the amount could still be recovered from the implementing agent.

53. The accounting officer was notified of the material irregularity on 7 April 2021 and invited to make written submission on the actions taken or to be taken to address the matter. The actions taken and planned are as follows:

- The implementing agent had subsequently performed some work for which the relevant evidence was audited during the current audit.
- The implementing agent had refunded the municipality an amount of R46 million on 30 June 2022.
- The municipality had reported the matter to the Directorate for Priority Crime Investigation (DPCI) and it was still in progress at the time of this report.

54. The accounting officer took the appropriate steps and the material irregular is resolved.

Covid 19 danger allowance was paid using an incorrect rate

55. The municipality made overpayments of covid 19 danger allowance to its employees who worked during the level 3 of the national lock down. Alert level 3 was in place since 01 June 2020 and I identified the non-compliance on 21 November 2021. This resulted in non-compliance with section 65(2)(a) of the MFMA, which requires that the municipality should have and maintain an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds. The non-compliance with the legislation resulted in a material financial loss.

56. The accounting officer was notified of the material irregularity on 7 April 2022 and invited to make written submission on the actions taken or to be taken to address the matter. The actions taken and planned are as follows:

57. Below are steps that the accounting officer has taken/ or in the process of taking in addressing the matter:

- The final danger allowance payment was presented in the special Local Labour Forum meeting as a material irregularity on 12 September 2023.
- The material irregularity will be tabled to Mayoral Committee and subsequently to the council on 8 December 2023.
- MPAC to investigate the matter by 29 February 2024.
- Municipality disciplinary board to effect consequence management once the investigation is done by 30 March 2024.
- The recommendations of the disciplinary board will be tabled to council and the accounting officer will subsequently implement the resolutions by 30 May 2024.

58. The progress on the material irregularity will be followed up during the next audit period.

Other reports

59. In addition to the investigations relating to material irregularities, I draw attention to the following engagements conducted by various parties. These reports did not form part of my opinion on the consolidated and separate financial statements or my findings on the reported performance information or compliance with legislation.
60. The Special Investigating Unit (SIU) was investigating the matters included below as contained in the proclamation (R80 of 2022) by the President, gazetted (GG 47107) on 29 July 2022, in respect of the municipality:
- The procurement of, or contracting for goods, works or services by or on behalf of the municipality and payments made in respect thereof in a manner that was not fair, competitive, transparent, equitable or cost-effective; or contrary to applicable legislation, manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the municipality.
 - Any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality in relation to the provision of strategic, technical and operational support services to the strategic programmes and management office of the municipality in terms of tender number ORTDM – SCMU33-17/18.
 - Any unlawful or improper conduct by officials or employees of the municipality, applicable service providers of the municipality; or any other person or entity, in relation to the allegations set out in the proclamation.
61. These investigations were still in progress at the date of signing this report.

Auditor-General

East London

13 December 2023



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure to the auditor's report

The annexure includes the following:

- The auditor-general's responsibility for the audit
- The selected legislative requirements for compliance testing

Auditor-general's responsibility for the audit

Professional judgement and professional scepticism

As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the consolidated and separate financial statements and the procedures performed on reported performance information for selected key performance area's compliance with selected requirements in key legislation.

Financial statements

In addition to my responsibility for the audit of the consolidated and separate financial statements as described in this auditor's report, I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the municipality's internal control
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made
- conclude on the appropriateness of the use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the municipality to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a municipality to cease operating as a going concern
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the group to express an opinion on the consolidated financial statements. I am responsible for the direction, supervision and performance of the group audit. I remain solely responsible for my audit opinion.

Communication with those charged with governance

I communicate with the accounting officer regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

I also provide the accounting officer with a statement that I have complied with relevant ethical requirements regarding independence and communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

Compliance with legislation – selected legislative requirements

The selected legislative requirements are as follows:

Legislation	Sections or regulations
Municipal Finance Management Act 56 of 2003	Section 1 - Paragraph (a), (b) & (d) of the definition: irregular expenditure, Section 1 - Definition: service delivery and budget implementation plan, Sections 11(1), 13(2), 14(1), 14(2)(a), 14(2)(b), 15, 24(2)(c)(iv), 29(1), Sections 29(2)(b), 32(2), 32(2)(a), 32(2)(a)(i), 32(2)(a)(ii), 32(2)(b), Sections 32(6)(a), 32(7), 53(1)(c)(ii), 54(1)(c), 62(1)(d), 62(1)(f)(i), Sections 62(1)(f)(ii), 62(1)(f)(iii), 63(1)(a), 63(2)(a), 63(2)(c), 64(2)(b), Sections 64(2)(c), 64(2)(e), 64(2)(f), 64(2)(g), 65(2)(a), 65(2)(b), 65(2)(e), Sections 72(1)(a)(ii), 112(1)(j), 116(2)(b), 116(2)(c)(ii), 117, 122(1), Sections 122(2), 126(1)(a), 126(1)(b), 127(2), 127(5)(a)(i), 127(5)(a)(ii), Sections 129(1), 129(3), 133(1)(a), 133(1)(c)(i), 133(1)(c)(ii), 170, Sections 171(4)(a), 171(4)(b)
MFMA: Municipal Budget and Reporting Regulations, 2009	Regulations 71(1), 71(2), 72
MFMA: Municipal Investment Regulations, 2005	Regulations 3(1)(a), 3(3), 6, 7, 12(2), 12(3)
MFMA: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014	Regulations 5(4), 6(8)(a), 6(8)(b), 10(1)

Legislation	Sections or regulations
MFMA: Municipal Supply Chain Management Regulations, 2017	Regulations 5, 12(1)(c), 12(3), 13(b), 13(c), 13(c)(i), 16(a), 17(1)(a), Regulations 17(1)(b), 17(1)(c), 19(a), 21(b), 22(1)(b)(i), 22(2), 27(2)(a), Regulations 27(2)(e), 28(1)(a)(i), 28(1)(a)(ii), 29(1)(a), 29(1)(b), Regulations 29(5)(a)(ii), 29(5)(b)(ii), 32, 36(1), 36(1)(a), 38(1)(c), Regulations 38(1)(d)(ii), 38(1)(e), 38(1)(g)(i), 38(1)(g)(ii), 38(1)(g)(iii), 43, Regulations 44, 46(2)(e), 46(2)(f)
Municipal Systems Act 32 of 2000	Sections 25(1), 26(a), 26(c), 26(h), 26(i), 29(1)(b)(ii), 29(3)(b), 34(a), 34(b), Sections 38(a), 41(1)(a), 41(1)(b), 41(1)(c)(ii), 42, 43(2), 56(a), 57(2)(a), Sections 57(4B), 57(6)(a), 66(1)(a), 66(1)(b), 67(1)(d), 74(1), 93J(1), 96(b)
MSA: Municipal Planning and performance Management Regulations, 2001	Regulations 2(1)(e), 2(3)(a), 3(3), 3(4)(b), 3(6)(a), 7(1), 8, 9(1)(a), 10(a), Regulations 12(1), 15(1)(a)(i), 15(1)(a)(ii)
MSA: Municipal Performance Regulations for Municipal Managers and Managers directly Accountable to Municipal Managers, 2006	Regulations 2(3)(a), 4(4)(b), 8(1), 8(2), 8(3)
MSA: Regulations on Appointment and Conditions of Employment of Senior Managers, 2014	Regulations 17(2), 36(1)(a)
MSA: Disciplinary Regulations for Senior Managers, 2011	Regulations 5(2), 5(3), 5(6), 8(4)
Annual Division of Revenue Act	Section 11(6)(b), 12(5), 16(1); 16(3)
Construction Industry Development Board Act 38 of 2000	Section 18(1)
Construction Industry Development Board Regulations	Regulations 17, 25(7A)
Municipal Property Rates Act 6 of 2004	Section 3(1)
Preferential Procurement Policy Framework Act 5 of 2000	Sections 2(1)(a), 2(1)(f)
Preferential Procurement Regulations, 2017	Regulations 4(1), 4(2), 5(1), 5(3), 5(6), 5(7), 6(1), 6(2), 6(3), 6(6), 6(8), Regulations 7(1), 7(2), 7(3), 7(6), 7(8), 8(2), 8(5) 9(1), 10(1), 10(2), Regulations 11(1), 11(2)
Preferential Procurement Regulations, 2022	Regulations 4(1), 4(2), 4(3), 4(4), 5(1), 5(2), 5(3), 5(4)

Legislation	Sections or regulations
Prevention and Combating of Corrupt Activities Act 12 of 2004	Section 34(1)