

**EXTRACT FROM THE MINUTES OF A MEETING OF THE MUNICIPAL COUNCIL
OF DIHLABENG LOCAL MUNICIPALITY HELD IN THE TOWN HALL,
BETHLEHEM ON MONDAY, 25 JULY 2022 AT 14:16**

PRESENT:

Councillor	N P Mofokeng	-	Speaker
Councillors	T J Tseki	-	Executive Mayor
Councillor	S M Jacobs	-	Member of the Mayoral Committee
Councillor	M D Makhathini	-	Member of the Mayoral Committee
Councillor	M A Mokwena	-	Member of the Mayoral Committee
Councillor	L S Moloji	-	Member of the Mayoral Committee
Councillor	M E Sempe	-	Member of the Mayoral Committee
Councillor	J Twala	-	Member of the Mayoral Committee
Councillor	T V Hadebe		
Councillor	G Khoete		
Councillor	I Laesecke		
Councillor	H R Liebenberg		
Councillor	P A Maasdorp		
Councillor	L U Makhalema		
Councillor	S P Makoena		
Councillor	M G Masangane		
Councillor	T M Mofokeng		
Councillor	L R Mokoena		
Councillor	M J Mokoena		
Councillor	M S Mokoena		
Councillor	M M Mokotla		
Councillor	M A Motaung		
Councillor	E T Motloun		
Councillor	M A Vilakazi		
Councillor	N J Ngqubuka		
Councillor	L L Radebe		
Councillor	I L Rugheimer		
Councillor	D L Sibisi		
Councillor	W H Theunissen		
Councillor	M M Twala		
Councillor	A Wolmarans		
Councillor	D L Xaba		

IN ATTENDANCE:

Mr	B P Molatseli	-	Municipal Manager
Mr	A Mosima	-	Director Community Services
Ms	M S Mabula	-	Director: Corporate Services
Mr	N E Shabalala	-	Director: Infrastructure and Technical Services
Mr	N Mthethwa	-	Manager: Internal Audit
Mr	T Mohlakoana	-	Manager: Legal
Mr	J L Botha	-	Manager: Secretariat
Mr	A Mofokeng	-	Manager: Office of the Municipal Manager
Mr	T M H Mofokeng	-	Manager: Executive Mayor's Office

Mr M Sigasa - Manager: Speaker's Office
 Mrs C Hlapo - P A Executive Mayor

SECRETARIAT:

Ms B G Tshabalala
 Ms N A Zim
 Mrs P I Motaung
 Ms L Zigode

OPEN MEETING

SECTION I

(FOR CONSIDERATION/APPROVAL)

ITEM 36/2022

(MUNICIPAL PUBLIC ACCOUNTS COMMITTEE)


THE OVERSIGHT REPORT ON THE 2020/2021 ANNUAL REPORT

RESOLVED:

- (a) That Council after having fully considered the 2020/2021 financial years Annual Report of the Municipality presentations thereon, adopts the Oversight report and,
- (b) That Council approves 2020/2021 with reservations as included in the comments of the Municipal Public Accounts Committee on page 6 to 9.
- (c) That Council further requires the Accounting Officer to ensure that all matters raised by the Municipal Public Accounts Committee on the report receive full attention and report to Council on actions taken as a result of the recommendations.

CERTIFIED A TRUE EXTRACT FROM THE MINUTES OF A MEETING OF THE MUNICIPAL COUNCIL OF DIHLABENG LOCAL MUNICIPALITY HELD ON 25 JULY 2022.

DATE: 02/08/2022


 SPEAKER

ITEM

36/2022

DEPARTMENT: MUNICIPAL PUBLIC ACCOUNTS COMMITTEE.**SUBMISSION TO COUNCIL: THE OVERSIGHT REPORT ON THE 2020/2021 ANNUAL REPORT.****1. PURPOSE**

Submit to Council the Oversight Report on the 2020/2021 Annual Report in terms of Section 129 of the Municipal Finance Management Act (MFMA) for adoption.

2. BACKGROUND

2.1 The Draft Annual Report was presented to Council on the 28th of January 2022 in a Special meeting as per Item and Council resolved as thus:

2.1.1 that the Oversight Committee (MPAC) investigate the alleged Financial Misconduct where an official (The Accounting Officer/ Municipal Manager) has committed the Municipality without the approval of council.

2.1.2 "That cognizance be taken of the Annual Report, Auditor-General's Report, Annual Financial Statements and Performance Management Report for the year 2020/2021 and that it be referred to the Oversight Committee (MPAC) for consideration.

2.1.3 that the Oversight Report be made public within seven (7) days of its adoption

2.1.4 That the Oversight Committee ensure that the final report in above be resubmitted to council for approval in the next ensuing council meeting."

3. EXECUTIVE SUMMARY

3.1 The Oversight Report is the final major step in the annual reporting process of a municipal Section 129 of the Municipal Finance Management Act (no 56 of 2003) requires the council to consider the Annual Reports of its municipality and municipal entities and to adopt an Oversight Report containing the Council's comments on each Annual report.

3.2 The Oversight Report is thus clearly distinguished from the Annual Report.

3.2.1 The Annual Report is submitted to the Council by the Accounting Officer and the Mayor and is part of the process for discharging accountability by the Executive and Administration for their performance in achieving the goals set by Council.

3.2.2 The Oversight Report is a report of the Municipal Council and follows consideration.

3.2.3 The Municipal Public Accounts Committee (MPAC) have duly considered and deliberated on all submissions accepts without reservations as included in the Oversight Report.

4. FINANCIAL IMPLICATIONS

4.1 The Municipality will incur a total loss of R 7 554 706. 12 in an irrecoverable money spent on goods that are not delivered on payments made to KWANE CAPITAL (PTY) Ltd.

4.2 There would also be an additional of 10.25% from the date of counter claim against the municipality should KWANE CAPITAL (PTY) Ltd be considered by the courts.

4.3 There will further costs of suit to be paid by the municipality.

5. LEGAL IMPLICATIONS

Compliance with the following:

- ❖ Local Government: Municipal Structures Act (no 117 of 1998)
Section 33 and 79
- ❖ Local Government: Municipal System Act (no 32 of 2000)
Section 46
- ❖ Local Government: Municipal Finance Management Act (no56 of 2003)
Section: 127, 129, 130, 131 and 132
- ❖ MFMA Circular No. 11, 13 and 32

6. RECOMMENDED

Council after having fully considered the 2020/2021 financial year's Annual Report of the Municipality presentations thereon, adopts the Oversight Report and

- Council approves 2020/2021 Report with reservations as included in the comments of MPAC on pages 6 to 9.
- Council further requires the Accounting Officer to ensure that all matters raised by MPAC on the report receive full attention and report to Council on actions taken as a result of the above recommendations.

SUBMISSION BY



Cllr M.M Twala
MPAC: CHAIRPERSON



**REPORT OF THE MUNICIPAL
PUBLIC ACCOUNTS COMMITTEE
ON THE ANNUAL REPORT**

**FOR THE FINANCIAL
YEAR 2020/2021**

THE REPORT OF THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE TO COUNCIL
ON THE ANNUAL REPORT 2020/2021.

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1. INTRODUCTION

The purpose of the Municipality's Annual Report is to:

- Provide a record of the activities of the municipality.
- Provide a report on the performance in service delivery relative to the budget
- Provide information that supports the revenue and expenditure decisions made
- Recommend to Council the consideration of the 2020/2021 Annual Report and to adopt an Oversight Report that contains comments by Council on the Annual Report in terms of Section 129 (1) of the Local Government: Municipal Finance Management Act, Act 56 of 2003 as well as the Auditor General's report.
- Promote accountability to the local community for decisions made.

The Oversight Report is the final major step in the annual reporting process of the municipality. The Oversight Report is separated from the Annual Report. The Annual Report is submitted to the Council by the Accounting Officer and the Mayor and is part of the process for discharging responsibility by the Executive and Administration for their performance in achieving objectives and goals set by the municipality in the relevant financial year. The Oversight Report follows consideration and consultation on the Draft: Annual Report and is considered to be a report of the Municipal Council to the community disclosing the level of success or otherwise obtained with meeting the priority needs and stated desires of the community as contained in the IDP.

2. LEGISLATIVE MANDATE

In terms of Section 121 (1), (2) and (3) of the MFMA: every Municipality must for each financial year prepare an Annual Report in accordance with this chapter. The council of a municipality in accordance with section 129. The MFMA directs that the draft: annual report must be completed and tabled in Council by 31 January, for the financial year ended the previous 30 June. Council must then review the annual report and adopt an oversight report containing its comments within 60 days after the Annual Report being tabled to Council, as per s129 of the MFMA.

In terms of Section 129(1) of the Municipal Finance Management Act (Act No 56 of 2003) and National Treasury's (NT) Circular 32 they direct and guide the oversight process and the preparation of an oversight report. Circular 32 recommended that Council establish an Oversight Committee to prepare an oversight report, in order that all Councillors be provided with a more detailed and comprehensive analysis of the Annual Report.

3. THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC)

The Municipal Public Accounts Committee is the mechanism through which the council by Council exercises oversight over the management and expenditure of public funds. Municipal Public Accounts Committees are established in terms of Section 79 of the Municipal Structures Act to conduct oversight functions. The council must therefore provide assurance to the public that public monies and assets are being managed properly and there is value for money in the activities and projects rendered by the Municipality on the spending of public funds.

- Councillor M.M. Twala (Chairperson)
- Councillor D. Sibisi
- Councillor J.J. Nhlapo
- Councillor E.T. Motloug
- Councillor H.R. Liebenberg
- Councillor M.J. Mokoena
- Councillor M.S. Mokoena
- Councillor I. Laesecke
- Councillor J. Hadebe

In addition to the above members, the following are staff members: Mr S.S Malinga - Office Manager; Mr K.L Hlungwani and Mr M.J. Seshoeshoe are Researchers; and Mr S.R. Kholong – Secretary.

4. IN THE MINUTES OF THE COUNCIL MEETING HELD ON THE 28TH JANUARY 2022, COUNCIL RESOLVED THAT:

- The Draft Annual Performance Report: 2020/2021 Dihlabeng Local Municipality is noted.
- The 2020/2021 Annual Performance Report be made public and the community should be invited to Submit representations in accordance with section 21A of the Municipal System Act ,as required in terms of section 127(5) (a) of the MFMA.
- The 2020/2021 Audited Annual Report be submitted to the Auditor General, Department of Corporative Governance and Traditional Affairs and to the Free State Provincial Legislature as required in terms of section 127 (5) (b) of the MFMA

- The 2020/2021 Audited Annual Report be considered by the Oversight Committee and an oversight report to be tabled before council by no later than two month from the date on which the Annual Report was tabled in Council
- The Audited Annual Report: 2020/2021 of Dihlabeng Local Municipality should be submitted to the Municipal Public Accounts Committee for development of an Oversight Report.

5. PROCESSES FOLLOWED BY COUNCIL AND MPAC

On the 28th January 2022, Council referred the 2020/2021 Annual Report to the Municipal Public Accounts Committee, which performs the function of an Oversight Committee and make recommendations where necessary. The Municipal Public Accounts Committee based its work on the following documents:

- 2020/2021 Annual Performance Report (APR)
- 2020/2021 Service Delivery and Budget Implementation Plan (SDBIP), incorporated in the Annual Report
- 2020/2021 Annual Financial Statements (AFS)
- Auditor General's Report
- Local Government: Municipal Structures Act, 117 of 2003
- Local Government: Municipal Systems Act, 32 of 2000.
- Local Government: Municipal Systems Amendment Act, 44 of 2003.
- Local Government: Municipal Finance Management Act, 56 of 2003
- Constitution of the Republic of South Africa, 1996.
- National Treasury Circular 32, issued on the 15th March 2006 dealing with the Oversight Report and Circular 92 issued on the 19th April 2018 which provided for the Guide and Toolkit for Municipal Public Accounts Committees.
- The Municipal Public Accounts Committee values community participation in oversight processes as also contained in the Constitution of the Republic of South Africa that the principle of public participation is key, and that all state institutions must always follow it when discussing matters of public interest, in the interest of

good governance, to ensure accountability of publicly elected individuals. In this regard, the following initiatives were made, as also mandated by legislation:

- An invitation to the public to submit comments and inputs on the Draft Annual Report was publicised on all municipal building noticeboards and libraries, from the office of the Accounting Officer.
- A schedule of the 2020/2021 Draft Annual Report MPAC Public Participation meetings which were scheduled to take place on the 22nd March 2022, 25th March, and 29th March 2022 was advertised in the Municipal Notice Boards in all Municipal Buildings and Public Building and on the municipal website as follows:

➤ <http://www.dihlabeng.gov.za/strategic-documents/strategic-documents-idp/>

- The meetings of the Municipal Public Accounts Committee were open to the public and this was later altered amidst threats of planned disruptions of any public meetings following the return of the Municipal Manager, the cancellations are not *in tandem* with the requirements of the Local Government: Municipal Systems Act 32 of 2003 but necessary to avert damage to proper and any physical harm to committee members.
- Preliminary questions on issues raised by Auditor General were sent to management, oral presentations, and written responses were invited from the Accounting Officer and response were also received. Attached as Annexure A; is a copy of the preliminary questions to the Accounting Officer and management team and summary conclusion by the Committee.
- On the 28th January 2022 the Auditor General gave a brief oral overview on the audit outcome and other findings conducted in the 2020/2021 financial period.

6. COMMENTS OF MPAC ON THE ANNUAL REPORT

- The committee noted with concern that the Auditor General gave a qualified opinion once more in 3 successive financial periods (2020/2021; 2019/2020; 2018/2019) based on the financial statements presented, the financial position of the Municipality, the financial performance and the cash flow in accordance to GRAP, the requirements of the MFMA, Act no. 56 of 2003 as well as DORA, Act no. 1 of 2018.
- It is vividly evident from the oral presentations and reports submitted during the interviews conducted through the meetings held with senior management and sectional managers that there is lack of proper implementation and monitoring of internal control measures in the Municipality by Senior Management and supervisors.

- There remains numerous unresolved issues and lack of evidence that supports activities undertaken, these are repeated findings especially in the **IT, SCM and Finance** sections, and this confirms the findings by the Auditor General that there is an element that seeks to deliberately conceal information. The Audit Report confirms that there is **NO** improvement of performance from the past two (2) financial years (2020/2021; 2019/2020) because of wrongly contracted Key Performance Indicators as opposed to expected outcomes. There is a mismatch between the KIPs and the Measurable Objectives.
- Management did not implement adequate oversight and human resource Strategies to ensure the recruitment of a qualified, skilled and experienced workforce. The offices of both the IT and Internal Audit remain paralysed with non-permanent staff and critical posts in these two units remain vacant and not filled to improve the functions of these offices.
- It is, however, worth mentioning that there is an evident lack of capacity for leadership in the IT and the Internal Audit offices. This finding is strengthened by their inability to respond to questions posed to them by the MPAC members. These questions were in essence not new to them because these are the same questions that the Auditor General asked during the auditing period. These offices were given another opportunity to make a submission in writing to MPAC but the two chose to submit irrelevant materials that do not speak to the questions.
- The committee appreciates the presentations both oral and in writing made by the SCM on alleged irregularities in the procurement section. However, there is **NO evidence proof** of a council resolution and minutes in the existence of a contract for fleet procurement between Dihlabeng Local Municipality and Kwane Holdings (PTY) LTD.
- There continues a pattern of Non follow through of possible fraud activities that might relate to financial misconduct that must be investigated and reported by the Management.
- There are **NO** Consequence Management instituted for poor performance and non-compliance as expected from management. The non-response to questions and lack in the sense of urgency in addressing queries by management is an indication of less regard to compliance imperatives and clear display of arrogance.

7.1 THE MUNICIPAL FINANCE MANAGEMENT ACT (MFMA)

- (a) The MFMA requires that the Annual Financial Statements be compliant with the Generally Recognized Accounting Practice (GRAP). In consideration of the Auditor General Report, the financial statements submitted for auditing were not prepared in all material respects in accordance with the requirements of the MFMA. MPAC considers this revelation in a serious light because the non-filling of the Chief Financial Officer (CFO) posts exacerbates the problem, it must also be acknowledged that this factor contributes volumes in the Opinion of the Auditor General as an area of Non-Compliance.
- (b) There is a Draft Annual Report as presented that complies in this regard.
- (c) Explanation statements are inadequate and this makes compliance not achievable.
- (d) There is an Action Plan included in this report that has a host of corrective actions taken and those to be commissioned in response to all issues raised in the Auditor General's Report. This area has been complied with. (See Annexure B)

7.2 DIVISION OF REVENUE ACT (DORA)

The Division of Revenue Act requires that the Draft: Annual Report must disclose:

- (a) Details of conditional grants received from the National and Provincial Sphere; Municipal Infrastructure Grant, Financial Management Grant, Expanded Public Works Programme Grant, Department of Water Affairs Grant (DWAf), Water Services Infrastructure Grant, Library Grant and National Development Electrification Grant.
- (b) Details of grants made to any organs of state:
- (c) The Division of Revenue Act requires that the Draft: Annual Report must disclose the extent to which conditions of grants have been met:
Yes. The conditions of the grants were met, and the grants were used.
- (d) The Divisions of Revenue Act requires that information relating to outstanding debtors and creditors of the municipality be included in the Draft: Annual Report as well as information relating to the benefits paid to Councillors, Managers and Officials.

- (e) This is part of GRAP compliant Financial Statements as it is detailed in the Annual Financial Statements

7.3 MUNICIPAL SYSTEM ACT (MSA)

- (a) With regard to performance, a report is included in the Draft: Annual Report and hence compliance is met.
- (b) Performance targets are primarily in the form of budgeted expenditure and hence at a very basic level they are included.
- (c) The performance against predetermined objectives was reported using the guidelines of the Financial Management of the Parliament and Provincial Legislatures Act 10 of 2009.

The Annual Performance Report submitted by the municipality did comply with the requirements of Section 46 of the Municipal System Act (No 32 of 2000).

- (d) The reported performance information was deficient in respect of usefulness and measurability.
- (e) Reported objectives, indicators and targets not useful when compared to planned objectives, indicators and targets.

7.4 ADDITIONAL COMMENTS BY THE COMMITTEE

(a) The functionality and qualification of the Audit Committee

The past financial year of 2020/2021 was overseen by a team of leadership whose term of office lapsed in November 2021, the current MPAC is yet to receive the services of the Audit Committee since no meetings have been called since its inception. The Municipality's Internal Audit Manager is still expected to make services available to MPAC as per relevant statutes. The Audit Committee must have adopted all the required policies for its adequate functionality, which includes the Internal Audit Charter, Internal Audit Plan, Internal Audit Methodology and the Audit Committee Charter. This will enable the Municipality to comply with the requirements of the MFMA as the roles and responsibilities of the Audit Committee are clearly set out in Section 166 of the MFMA. The Municipal Public Accounts Committee awaits to see improved performance with the august responsibility bestowed on this committee.

(b) Unauthorized, Irregular, Fruitless, and Wasteful Expenditure (UIF&W)

There is a continuing trend of various and series of unwanted expenditures in the municipality. The Municipality has received a qualified Audit Opinion once

again. Auditor General alludes to lack of proper planning and the failure to adhere to internal controls and oversight. The lack of oversight by management and a discretionary negation of Standard Operation Procedures are among the reason that compliance is compromised. The Auditor-General is on record that investigations pertaining to the UIF&W were not conducted in addressing the findings as presented in the last financial period in accordance with Section 32(3) (a) of the MFMA. As a result, all these amounts making up the Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFW) were certified and condoned as being irrecoverable by Council in the previous financial years, in contravention to Section 32(2) (b) of the MFMA.

The Unauthorised Expenditure has generally decreased over the last period of two years according to the Auditor General although is currently standing at R256 million for the period ended June 2021. The municipality incurred unauthorised expenditure due to overspending of the financial budget. The management has, on the hand, related that the overspending was influenced by the apparent COVID-19 pandemic and a sudden total lockdown and restrictions that followed with partial openings of businesses. It was made clear during these interactions with management that some services and goods experienced an unprecedented upsurge in costs that were not planned for in advance. The management must stick religiously to its Remedial Plan of Action Plan and monitoring of the process must also be prioritised as presented herewith.

8. RESERVATIONS

The Municipal Public Accounts Committee having analysed the 2020/2021 Draft: Annual Report, did identify the following deficiencies and accordingly recommends for adoption with reservations:

- 8.1 that questions raised by Audit General were not adequately responded to by management
- 8.2 that there is a lack of proper staffing in the Internal Audit Office
- 8.3 IT is not properly staffed with permanent personnel
- 8.4 there is no strict adherence to SCM policies
- 8.4 there is still matters to be followed up on the UIF&W

9. RECOMMENDATIONS

- 9.1. The Committee requests Council to accord it an ample time to process the UIF&W cases with the assistance of the Internal Audit Office and thereby submit a report to the Council before the end of the financial period 2021/2022**
- 9.2 The Committee hereby recommends that monitoring be done by the Accounting Officer and submit a report to MPAC on a monthly basis on the implementation of the action plan in line with the Auditor's General findings.**
- 9.3 The committee recommends that the council should rescind its decision to write off UIF&W of previous years and such cases be referred to MPAC for investigation.**
- 9.4 It is also recommended that the council after having fully considered the report of the fleet that was never delivered must refer the matter to the disciplinary committee for further processing and institution of disciplinary action (s).**
- 9.5 Revenue Collections and Non-payment of services by Councillors and Officials be reported on a monthly basis to MPAC by the Accounting Officer. The matter of Councillors who have outstanding municipal accounts still remains unresolved. There is Council resolution on this matter, after meetings with various political party whips represented in Council, that no Councillor would be owing on their consumer accounts by end of December 2018 unfortunately the trend continues with no sign of stoppage on sight. Many different methods have been suggested in view to collecting the monies owed by those Councillors and Officials. Ultimately, a compromise was reached where the individual owing councillors then made payment agreements with the Municipality to pay their outstanding accounts, in instalments. However, those amounts are too little to bring about a positive reduction to the amounts owed in their accounts. However, this issue is still present. This Committee is of the view that this matter needs to be revisited again to find a progressive solution, taking into account resolution 17 of 23 October 2018 of the Free State Provincial Legislature which was taken after the reports of the Auditor-General on municipal audits for the period ending 30 June 2017, which says that "municipalities must ensure that former and current public officials paid their consumer accounts within 30 days".**
- 9.6 The Accounting Officer must present to the council all policies of the Audit Committee for adoption and implementation.**
- 9.7 There must be consequence management on non-follow through of irregularities in Supply Chain Management Office.**

9.8 There is a need for capacity building in both the IT, PMS and Internal Audit Offices

10. RESOLUTIONS

Following the above reservations by the Municipal Public Accounts Committee, it is resolved:

- that Council approves this Oversight Report on the Draft: Annual Report 2020/2021 in terms of Section 129 (1) of the Local Government: Municipal Finance Management Act (Act No 56 of 2003) with reservations.
- that Council approves the Draft: Annual Report 2020/2021 in terms of Section 129(1) of the Local Government: Municipal Finance Management Act (Act No 56 of 2003) with reservations.
- that the 2020/2021 Oversight Report of the Dihlabeng Local Municipality is made public within 7 days of its adoption, in terms of section 129 (3) of the Local Government: Municipal Finance Management Act (Act No 56 of 2003)
- that the Oversight Report be submitted to the Free State Provincial Legislature by the Accounting Officer in terms of Section 132 (2) of the Local Government: Municipal Finance Management Act (Act No 56 of 2003).
- that Council takes note that the Municipal Public Accounts Committee with the help of the Internal Audit Office will be investigating all the cases of Unauthorised, Irregular, Fruitless and Wasteful expenditures and that a report on this will serve before Council before the end of the current Financial period.

