KNYSNA
Municipality
Munisipaliteit
uMasipala

Notice is hereby given
of a meeting of the

# MUNICIPAL PUBLIC ACCOUNTS COMMITTEE

to be held on

**MONDAY, 5 MAY 2025**

at

**09:00**

In the Council Chambers
to consider the items, as indicated in the Agenda

| | |
|---|---|
| MUNICIPAL OFFICES | MR. L MAPHOLOBA |
| **KNYSNA** | **MUNICIPAL MANAGER** |

| | |
|---|---|
| Chairperson: | Cllr M Willemse |
| Members: | Cllr S Campbell |
| | Cllr P Petros |
| | Cllr R Arendse |
| | Cllr L Davis |
| | Mr A Jacobs (Advisory Member: Audit Committee) |

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# AGENDA

1. **OPENING AND WELCOME**

2. **ATTENDANCE (AS PER ATTENDANCE REGISTER)**

   2.1 Members: Present
   2.2 Members: Absent with Leave
   2.3 Members: Absent Without Leave
   2.4 Other Councillors Present
   2.5 Officials Present
   2.6 Members of the Audit Committee Present
   2.7 Members of the Public Present

3. **NOTING THE PROVISIONS OF SCHEDULE 1 (CODE OF CONDUCT FOR COUNCILLORS) OF THE LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT, 2000**

4. **DISCLOSURE OF INTERESTS BY COUNCILLORS**

5. **CONSIDERATION OF THE MINUTES OF THE PREVIOUS MEETING**

   That the Minutes of the MPAC Meeting held on 7 April 2025 be approved.

## 8. CLOSURE

*-oOo-*

KNYSNA
Municipality
Munisipaliteit
uMasipala

# MINUTES

of

the

# MUNICIPAL PUBLIC ACCOUNTS COMMITTEE MEETING

held on

Monday, 7 April 2025 at 08:00

**IN ATTENDANCE**

**MEMBERS:**

| | |
|---|---|
| Chairperson: | Cllr M Willemse |
| Members: | Cllr L Davis |
| | Cllr S Campbell |
| | Cllr P Petros |
| | Cllr R Arendse |

**MEMBERS ABSENT WITH LEAVE**

None

**MEMBERS ABSENT WITHOUT LEAVE**

**OTHER COUNCILLORS PRESENT**

The Speaker, Cllr M Skosana
Cllr L Tyokolo

**OFFICIALS**

| | |
|---|---|
| L Mapholoba | Municipal Manager |
| M Boyce | Director: Corporate Services |
| R Wesso | Director Infrastructure Services |
| E Campher | MPAC Coordinator |
| T Mampana | Manager SCM |
| M Michaels | Manager Expenditure |

**APOLOGIES**

None

**AUDIT COMMITTEE MEMBERS**

None

**MEMBERS OF THE PUBLIC**

None

1. **OPENING AND WELCOME**

   The Chairperson opened the meeting and welcomed everybody present. The Chairperson indicated that it is not necessary for all the directors to be present at the meeting and that they can be excused.

2. **ATTENDANCE**

   Members of the Committee were present, as per the Attendance Register.

3. **NOTING THE PROVISIONS OF SCHEDULE 1 (CODE OF CONDUCT FOR COUNCILLORS) OF THE LOCAL GOVERNMENT MUNIICPAL SYSTEMS ACT, 2000**

   Noted

4. **DISCLOSURE OF INTERESTS BY COUNCILLORS**

   *None*



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## 5. CONSIDERATION OF THE MINUTES OF THE PREVIOUS MEETING

None

## 6. NEW ITEMS

### 6.1. MPAC01/04/25- REPORT ON FRUITLESS AND WASTEFUL EXPENDITURE JULY 2022 TO MAY 2024

On No. 1, the Chairperson stated that the report relates to the fruitless and wasteful expenditure declared in the annual financial statements for the 2022/2023 financial year. This fist item relates to late payments of SARS in the amount of R2,328.90.

On No. 2-5, the Manager Expenditure explained to the Committee that the expenditure relates to penalties on late payment of motor vehicle licenses. The penalty raised as a result of late submissions by the user departments to creditors for payment.

On No. 6. This expenditure relates to penalties levied due to late payment of the compensation fund. The late payment is as a result of the late submissions by the Human Resources Department to Creditors for payment. After deliberation, the Committee resolved that the Manager Human Resource Management must be requested to attend the next MPAC meeting in order to explain the reasons for the fruitless and wasteful expenditure incurred.

On No.7. The Manager Expenditure explained to the Committee that the fruitless and wasteful expenditure relates to the training cost for the municipal competency training (MMC) which expenditure was identified by the Internal Audit Unit as expenditure made in vain. The fruitless and wasteful expenditure amounts to R281,750.00.

After deliberation, the Committee resolved that the HR Manager and the staff members involved be requested to attend the next MPAC meeting in order to explain the reasons why they failed to attend the training.

On No.8. After deliberation, the Committee requested that all the council items and decisions, recordings as well as the correspondence between the MEC for Local Government and the Municipality be submitted to the next MPAC meeting.

On No. 9. After deliberations, the Committee requested the administration to provide it with all the information pertaining to these advertisements and to briefly set out the reasons for the delays and or cancellations.

**RESOLVED**

a) That, the MPAC takes cognizance of the report pertaining to the late payments of SARS as contained in NO.1;
b) That, MPAC recommends to Council that the amount of R2,328.90 be written off since the interest payment was due to technical challenges and therefore could not have been avoided.


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c) That, MPAC takes cognizance of the report pertaining to the penalties on the late payments of motor vehicle licenses in the amount of R2134.80 as contained in No.2-5;
d) That the amount of R2134.80 be written off and that the Municipal Manager send out a stern warning to the officials involved not to repeat these transgressions;
e) That, MPAC takes cognizance of the report pertaining to the fruitless and wasteful expenditure incurred due to the late submissions from the Human Resources Department to Creditors for payment. The Committee resolved that the Manager HR be requested to attend the next MPAC meeting in order to explain the fruitless and wasteful expenditure in the amount of R125,939.91 in respect of No.6
f) That, MPAC takes cognizance of the report on the fruitless and wasteful expenditure incurred pertaining to the minimum competency training (MMC) in the amount of R282,750.00.
g) That, the HR Manager and the officials who failed to complete the training be requested to attend the next MPAC meeting, in order to explain why they did not complete the training;
h) That, SCM Manager provide the Committee with detailed information pertaining to the procurement process that was followed in procuring the services of the service provider.

File Number: 9/1/2/14
Execution: Municipal Manager

## 8. CLOSURE

The Chairperson thanked everyone at the meeting for their contributions and the meeting adjourned at 10:05.

| Approved | |
|---|---|

.........................................
Chairperson : Cllr M Willemse

............................
Date

*-oOo-*

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6.1

# REPORT ON FRUITLESS AND WASTEFUL EXPENDITURE

## REPORT FROM THE DIRECTOR FINANCIAL SERVICES

## PURPOSE OF THE REPORT

The purpose of this report is to submit to MPAC the report on fruitless and wasteful and expenditure to be investigated or written-off

## BACKGROUND

In terms of section 32(4) of the MFMA, the accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of

(a) any unauthorized, irregular, or fruitless and wasteful expenditure incurred by the municipality.

(b) Whether any person is responsible or under investigation for such unauthorized, irregular, or fruitless and wasteful expenditure; and

(c) The steps that has been taken :
   a. To recover or rectify such expenditure; and
   b. To prevent a recurrence of such expenditure

Definition of fruitless and wasteful expenditure

- Expenditure that was made in vain and would have been avoided had reasonable care been exercised.

## DISCUSSION

During the 2022/2023 financial year and as declared in the annual financial statements, expenditure has been identified as fruitless and wasteful expenditure that must be submitted to a committee of council to investigate. See attach register of fruitless and wasteful expenditure Annexure A.

The fruitless and wasteful expenditure as per Annexure A relates to interest on late payments, penalties on late payments, training cost and legal fees identified by Auditor General as fruitless and waste expenditure.

No Fruitless and wasteful expenditure has been identified for the period July 2023 to May 2024.

ANNEXURE A

No. 1

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 | 30/06/2023 | | 08/08/2022 | EFT 154694 | R2,328.90 | Late Payment of SARS PAYE due to technical challenges |

The interest payment is due to a technical challenges and therefore could not have been avoided. SARS also charged a penalty fee, however the penalty was written off as a result of the municipality's request for write-off and motivation. It is therefore recommended that the interest payment be condoned by MPAC.

**This item was considered by MPAC at its meeting held on 7 April 2025 and it was recommended that the amount of R2,328.90 be written off.**

No. 2 - 5

| | | | | | | |
|---|---|---|---|---|---|---|
| 2 | 30/06/2023 | | 31/10/2022 | EFT169643 | R31.20 | Penalties - Late MV Licence payment |
| 3 | 30/06/2023 | | 09/11/2022 | EFT169811 | R210.00 | Penalties - Late MV Licence payment |
| 4 | 30/06/2023 | | 05/12/2022 | EFT 174863 | R224.40 | Penalties - Late MV Licence payment |
| 5 | 30/06/2023 | | 20/01/2023 | EFT 180375 | R1,669.20 | Penalties - Late MV Licence payment |

This relates to penalties on late payment of motor vehicle licenses. Penalty raised as a result of late submission by the user department to creditors for payment. As per the supporting documents attach, penalties were already levied upon submission to creditors for payment. MPAC, there must investigate reason for late submission and which official should be held responsible. The Fleet officer is responsible to ensure motor vehicle license is up to date.

**This item was considered by MPAC at its meeting that was held on 7 April 2025 and it was recommended that the amount of R2135. 80 be written off.**

No. 6

| | | | | | | |
|---|---|---|---|---|---|---|
| 6 | 30/06/2023 | | 26/04/2023 | EFT 212086 | R125,939.91 | Penalty - Late submission |

This relates to penalties levied due to late payment to the compensation fund. The late payment is as a result of the late submission by HR department to creditors for payment. MPAC must investigate reason for late submission and which official is responsible.

**This item was considered by MPAC at its meeting that was held on 7 April 2025, and it was resolved that the HR Manager be requested to attend the next meeting in order to explain the wasteful expenditure in the amount of R125,939.91.**

**The only information received from HR is a letter dated 9June 2021 from the erstwhile Acting Municipal Manager , D Adonis addressed to the Department of of Labour which is attached hereto , marked "Annexure A".**

No.7

| | | | | | | |
|---|---|---|---|---|---|---|
| 7 | 18/11/2023 | | 14/07/2023 _31/08/2023 | EFT95173_EFT 105208 | R281,750.00 | Training Cost |

Part of the training cost for the MMC was identified by Internal Audit as expenditure made in vain. In terms of the AG report manager HR indicated that instruction was given by the Director Corporate to process the full payment.The Internal Audit recommended that MPAC must investigate and already determent that part of the expenditure to the service provider was made in vain.

**This item was considered by MPAC at its meeting held on 7 April 2025, and it was resolved that the HR Manager and provide the MPAC an explanation regarding the fruitless and wasteful expenditure and that the SCM Manager provide the MPAC with a detailed explanation pertaining to the procurement process that was followed in procuring the services of the service provider.**

No. 8

| | | | | | | |
|---|---|---|---|---|---|---|
| 8 | 2022/2023 | | | Identfied by AG Comaf 71 | R2,477,527.00 | Legal Fees |

The information will be submitted to the next MPAC meeting as more information needs to be gather to provide MPAC with more details.

**This item was considered at the MPAC meeting held on 7 April 2025 and it was resolved that the Committee Services provide the Committee with all the items , resolutions and recordings pertaining to this matter.**

**The only information received regarding this item was from the Legal Services Section which is attached hereto, marked "Annexure B".**

No. 9

| | | | | | | |
|---|---|---|---|---|---|---|
| 9 | 2022/2023 | | | Identfied by AG Comaf 40 | R27,962.67 | Advertisements |

The information will be submitted to the next MPAC meeting as more information needs to be gather to provide MPAC with more details.

**This item was considered at the MPAC meeting held on 7 April 2025, and that the SCM Manager provide the Committee with a detailed explanation regarding the reasons for the cancelled tenders and the re-advertisement cost.**

## FINANCIAL IMPLICATIONS

The total fruitless and wasteful expenditure as per the register amounts to R2,917,643.28. See attached Annexure A.

## RELEVANT LEGISLATION

In terms of section 32(4) of the MFMA.

## DELEGATION

Delegated to Finance and Governance Committee to resolve (F.2.1)

## RECOMMENDATION OF THE MUNICIPAL MANAGER

1. That MPAC note the report for fruitless and wasteful expenditure
2. That MPAC must decide to either condone the fruitless and wasteful expenditure or further investigate to determine who is responsible for the fruitless and wasteful expenditure.

## APPENDIX / ADDENDUM

ANNEXURE A – Register of fruitless and wasteful expenditure.

File Number: 9/1/2/10

Execution: Municipal Manager

Director Financial Services

Manager Budget and reporting

" Annexure A"

Ref:
Collab Ref:

09 June 2021

KNYSNA
Municipality
Munisipaliteit
uMasipala

Department of Labour
P.O. Box 955
Pretoria
0001

Dear Sir / Madam

**RE: STATEMENT OF ACCOUNT DATED 30 APRIL 2021 - LATE SUBMISSION INTEREST INCURRED**

Reference is made to the statement issued to the Knysna Municipality with reference number CF990000084481 dated 30 April 2021.

The Knysna Municipality respectfully requests your assistance with writing off the interest amount of R176962.52 incurred due to late submission of Return of Earnings (ROE).

We could not gain access to the system to do the submission as there was no one registered within the Municipality with the Department of Labour (DOL) for submitting the information. The Occupational Health and Safety Officer (our former employee) was denied access to the system for submission as she was registered with a previous company. She tried to register numerous_times and had to wait for a period of 14 days to pass before a feedback was given and, in this case, on every attempt she was denied.

Afterwards, we used a consultant that is registered as an external user with the DOL to follow through on the process. Once again, the system within the DOL had a waiting period of 14 days that delayed the Municipality an attempt to do the submission. Once we gained access to the system the submission was done successfully. After the submission was completed, the system generated the amount to be paid. There was once again a delay as the Municipality would only do payment upon receiving an invoice. The local DOL was contacted and they supplied an invoice. Once received, we immediately did the payment to the amount of **R2263160.27** on 19 April 2021. The only other amount outstanding is the **R176962.52**, which is the interest, incurred because of the difficulties experienced to gain access to the online ROE submissions.

We have always maintained a positive payment history with you and with everyone already under financial pressure; we humbly request DOL to write off the amount of **R176962.52** in good faith.

We are awaiting for your favourable feedback.

Kind regards,

**Mr. DJ ADONIS**
**ACTING MUNICIPAL MANAGER**

cc – directorcorporate@knysna.gov.za
lphillips@knysna.gov.za



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// Annexure 8) (1)

AUDITOR-GENERAL
SOUTH AFRICA

The Accounting Officer
Knysna Municipality
PO Box 21
Knysna
6570

20 November 2023

Reference: ComAF 71 of 2023

Dear Mr Sebola

**COMMUNICATION OF FINDINGS IDENTIFIED DURING THE AUDIT OF THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023**

**Background**

1. In performing the audit of the financial statements we identified a misstatement as described in the annexure. We have recorded the internal control deficiency that gave rise to the misstatement and our recommendation for correcting the misstatement for your consideration.

2. The finding will be included in the management report, including your comments and our final response.

**Required**

3. You are requested to indicate whether you agree with the facts stated in the annexure, including whether you agree with the identified internal control deficiency. Should you disagree, please provide us with documentary evidence to the contrary within five days from the date of this communication, as agreed in the engagement letter.

4. Should you agree, you are hereby requested to make the necessary corrections.

5. Should you choose not to make the necessary corrections, kindly communicate your reasons for this within five days from the date of this communication, as agreed in the engagement letter. The remaining uncorrected misstatement will then be evaluated for reporting purposes based on materiality.

6. Should you choose to make the necessary corrections, kindly refer the point(s) described below and provide us with the necessary information within five days from the date of this communication, as agreed in the engagement letter.

7. Please provide us with copies of the proposed adjusting journal entries and the supporting documentation.

8. Once we have received this information, we will perform additional audit procedures to determine whether there are remaining uncorrected misstatements.

9. If the results of these procedures are satisfactory, we will accept the proposed adjusting journal entries and you may pass the journal entries.

10. If the results of these procedures are not satisfactory or there are remaining uncorrected misstatements, we will evaluate these for reporting purposes based on materiality.

Yours sincerely

Ntombokhanyo Ndzamela
Senior Manager: Western Cape

| | |
|---|---|
| Enquiries: | Anette Krieg |
| Telephone: | (021) 528 4100 |
| Fax: | (021) 528 4200 |
| Email: | anettek@agsa.co.za |


**Acknowledgement of receipt by management:**

Received by　　　　　　　　　　　　　　Date



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**DETAILED AUDIT FINDING**

**Irregular expenditure - Appointments**

**Audit finding**

The definition of irregular expenditure contained in section 1 of the Muncipal Finance Management Act, 2003 (MFMA) includes any "*expenditure incurred by a municipality that is in contravention of, or that is not in accordance with, a requirement of this Act*".

Section 83 of the Municipal Finance Management Act No. 56 of 20023 (MFMA) states:
*"(1) The accounting officer, senior managers, chief financial officers and other financial officials of the municipality must meet the prescribed financial management competency levels".*

The Municipal Regulations on Minimum Competency Levels states:
***"5. Minimum competency levels for chief financial officers*** *-The chief financial officer of a municipality or municipal entity must comply with the minimum competency levels required for higher education qualification, work related experience, core managerial and occupational competencies and be competent in the unit standards prescribed for financial and supply chain management competency areas as set out below."*

| ***MINIMUM COMPETENCY LEVELS FOR CHIEF FINANCIAL OFFICERS*** | | |
|---|---|---|
| ***Description*** | *(a) All municipalities with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and*<br><br>*(b) All municipal entities of a parent municipality with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year.* | *(a) All municipalities with annual budgets of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and*<br><br>*(b) All municipal entities of a parent municipality with an annual budget of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa 1 July of each year.* |
| ***Higher Education Qualification*** | *At least a Bachelor degree in Accounting, Finance or Economics or a relevant qualification registered on the National Qualifications Framework at a NQF level 7 with a minimum of 360 credits.* | *At least a Post Graduate Degree or qualification in the fields of Accounting, Finance, or Economics registered on the National Qualifications Framework at NQF Level 8 with a minimum of 120* |
| ***Work-Related Experience*** | *Minimum of 5 years at middle management level* | *Minimum of 7 years at senior and middle management levels, of which at least 2 years must be at senior management level.* |
| ***Core and Leading Competencies*** | *As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 Government Gazette 37245 of 17 January 2014.* | *As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 Government Gazette 37245 of 17 January 2014.* |
| ***Financial and Supply Chain Management Competency Areas:*** | ***Required Minimum Competency Level in Unit Standards*** | ***Required Minimum Competency Level in Unit Standards*** |
| *Strategic leadership and management* | *116358; 116361* | *116358; 116361* |



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| | | |
|---|---|---|
| *Strategic financial management* | *116361; 116342; 116362* | *116361; 116342; 116362* |
| *Operational financial management* | *116345; 119352; 119341; 119331; 116364* | *116345; 119352; 119341; 119331; 116364* |
| *Governance, ethics and values in financial management* | *116343* | *116343* |
| *Financial and performance reporting* | *116363; 119350; 119348; 116341* | *116363; 119350; 119348; 116341* |
| *Risk and change management* | *116339* | *116339* |
| *Project management* | *119343* | *119343* |
| *Legislation, policy and implementation* | *119334* | *119334* |
| *Stakeholder relations* | *116348* | *116348* |
| *Supply Chain Management* | *116353* | *116353* |
| *Audit and assurance* | *116351* | *116351* |

Section 56(1)(c) of the Municipal Systems Act No. 32 of 2000 (MSA) states:
*"A person appointed in terms of paragraph (a) (ii) may not be appointed to act for a period that exceeds three months: Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months."*

Section 56(1)(b) of the MSA states:
*"(b) A person appointed in terms of paragraph (a) (i) or (ii) must at least have the skills, expertise, competencies and qualifications as prescribed."*

Section 10(1) of GNR.890 of 20 September 2021: Local Government: Municipal Staff Regulations (Government Gazette No. 45181) states:
*"Principles.- The recruitment, selection and appointment of a staff member to a post on the staff establishment must-*

- *(a) comply with the requirements of the municipality's employment equity policy and plan: Provided that if a municipality is unable to adhere to the employment equity plan due to specialised scarce skills required for a specific post, the municipality must record reasons for deviation from the policy;*
- *(b) be integrated with other human resource management systems and procedures;*
- *(c) use objective competencies specified in the Regulations; and*
- *(d) be filled through advertising in accordance with regulation 14."*

Comment[Ntombokhanyo Ndzamela (SM)1]: For an Act we refer to Section but for the regulations then this should be regulation 10

The Municipal Regulations on Minimum Competency Levels states:
*"6. General competency levels for senior managers.-(1) A senior manager of a municipality must generally have the skills, experience and capacity to assume and fulfil the responsibilities and exercise the functions and powers assigned in terms of the Act to that senior manager.*

*(2) A senior manager of a municipal entity must generally have the skills, experience and capacity to assume and fulfil the responsibilities and exercise the functions and powers assigned in terms of the Act to that senior manager.*

*(3) A senior manager must note that any failure to comply with any financial management responsibilities, functions and powers entrusted to that senior manager may constitute financial misconduct.*

*7. Minimum competency levels for senior managers.- A senior manager of a municipality or municipal entity must comply with the minimum competency levels required for higher*

***education qualification, work related experience, core managerial and occupational competencies and be competent in the unit standards prescribed for financial and supply chain management competency areas as set out below."***

| MINIMUM COMPETENCY LEVELS FOR SENIOR MANAGERS | | |
|---|---|---|
| ***Description*** | *(a) All municipalities with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and*<br><br>*(b) All municipal entities of a parent municipality with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year.* | *(a) All municipalities with annual budgets of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and*<br><br>*(b) All municipal entities of a parent municipality with an annual budget of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year.* |
| ***Higher Education Qualification*** | *At least a Bachelor degree or a relevant qualification registered on the National Qualifications Framework at NQF level 7 with a minimum of 360 credits.* | *At least a Post Graduate Degree or relevant qualification registered on the National Qualifications Framework at NQF Level 8 with a minimum of 120 credits in a field relevant for the senior management position.* |
| ***Work-Related Experience*** | *Minimum of 5 years at middle management level* | *Minimum of 7 years at senior and middle management level, of which at least 2 years must be at senior management level* |
| ***Core and Leading Competencies*** | *As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 of 17 January 2014.* | *As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 of 17 January 2014.* |
| ***Financial and Supply Chain Management Competency Areas*** | ***Required Minimum Competency Level in Unit Standards*** | ***Required Minimum Competency Level in Unit Standards*** |
| *Strategic leadership and management* | *116358; 116361* | *116358; 116361* |
| *Operational financial management* | *119341; 119331; 116364* | *119341; 119331; 116364* |
| *Governance, ethics and values in financial management* | *116343* | *116343* |
| *Financial and performance reporting* | *116363; 119350; 119348; 116341* | *116363; 119350; 119348; 116341* |
| *Risk and change management* | *116339* | *116339* |
| *Project management* | *119343* | *119343* |
| *Legislation, policy and implementation* | *119334; 116361* | *119334; 116361* |
| *Supply Chain Management* | *116353* | *116353* |
| *Audit and assurance* | *116351* | *116351* |



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Section 12 (5) of GN 21 of 17 January 2014: Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (Government Gazette No. 37245) states:
*" A panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process."*

Finding 1: Acting Chief Financial Officer 1

The acting chief financial officer (CFO) for the period from 15 August 2022 to 7 June 2023 did not meet the minimum competencies prescribed in regulation 5. The employee was not certified competent in the following modules:

- Strategic leadership and management: 116358; 116361
- Strategic financial management: 116361; 116342; 116362
- Operational financial management: 116345; 119352; 119341; 119331; 116364
- Governance, ethics and values in financial management: 116343
- Financial and performance reporting: 116363; 119350; 119348; 116341
- Risk and change management: 116339
- Project management: 119343
- Legislation, policy and implementation: 119334
- Stakeholder relations: 116348
- Supply Chain Management: 116353
- Audit and assurance: 116351

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency Levels.

The incumbent also did not hold a NQF level 8 degree as required by regulation 5.

The extension of the official's acting contract beyond 3 months by the municipal council was made without the approval of the MEC of Local Government and therefore it was in direct contravention of section 56 of the MSA.

Agree with above 3 conclusions reached with regards to the non-compliance with Regulation 5 of the Competency Regulations, the NQF qualification and the extension of the acting period beyond the 3 months. Judgement attached.

The appointment of this employee resulted in the incurring of irregular expenditure by the municipality of R926,904.

Finding 2: Acting Chief Financial Officer 2

The official occupying the position of the acting chief financial officer for the period of 25 July 2022- until further notice, as well as 8 June 2023 to 22 June 2023, did not meet the minimum competencies in terms of regulation 5. The employee did not hold a NQF level 8 qualification and was not certified competent in the following modules:

- Strategic leadership and management: 116358; 116361
- Strategic financial management: 116361; 116342; 116362
- Operational financial management: 116345; 119352; 119341; 119331; 116364
- Governance, ethics and values in financial management: 116343
- Financial and performance reporting: 116363; 119350; 119348; 116341
- Risk and change management: 116339
- Project management: 119343
- Legislation, policy and implementation: 119334
- Stakeholder relations: 116348
- Supply Chain Management: 116353
- Audit and assurance: 116351

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency levels and irregular expenditure of R2 634.

Finding 3: Acting Chief Financial Officer 3

The acting chief financial officer appointed to serve in this position from 19 June 2023 did not meet the minimum competencies in terms of the regulation 5. The employee has not been certified competent in the following modules:

- Strategic leadership and management: 116358; 116361
- Strategic financial management: 116361; 116342; 116362
- Operational financial management: 116345; 119352; 119341; 119331; 116364
- Governance, ethics and values in financial management: 116343
- Financial and performance reporting: 116363; 119350; 119348; 116341
- Risk and change management: 116339
- Project management: 119343
- Legislation, policy and implementation: 119334
- Stakeholder relations: 116348
- Supply Chain Management: 116353
- Audit and assurance: 116351

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency levels and irregular expenditure of R 2 898.

Finding 4: Acting Chief Financial Officer 4

The acting chief financial officer for the period of 1 July 2022 to 31 July 2022 did not meet the minimum competencies in terms of the regulation 5. The incumbent does not hold a NQF level 8 Qualification in Accounting, Finance or Economics.

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency levels and irregular expenditure of R31 980.

Finding 5: Acting Director Corporate Services 1

The acting director corporate services appointed for the period 19 June 2023 until the earliest of 3 months or the appointment of a permanent director did not meet the minimum competencies in terms of regulation 7, since the incumbent did not hold a NQF level 8 qualification.

The MEC of Local Government (MEC) did notify the Municipal Manager in writing that this appointment was in contravention of the Act and that the municipality should set aside this appointment or take steps to remedy the appointment. In response to the letter from the MEC the Municipal Manager and Executive Mayor wrote a letter to the Minister of Finance asking for a condonation of the non-compliance. The response by the Minister of Finance was not submitted to audit, thus it was not possible to confirm that the appointment was condoned as requested.

Agree with above, response however limited to the resignation letter submitted by the incumbent, the item to council and subsequent resolution – to be attached. Cannot comment on correspondence received from MEC to remedy the appointment. Request for condonation submitted as per council resolution. No response thereon to date.

Therefore this appointment was non-compliant with the regulation and has resulted in irregular expenditure. No payment was identified to have been made to him in the year under review.

HR to comment on any payments made.

Finding 6: Acting Director Corporate Services 2

From 19 Sept 2022 until 7 June 2023 the acting director corporate services:

1. Did not meet the experience in terms of regulation 7. In his CV the incumbent failed to prove that he has at least 2 years' experience as a senior manager. When comparing his CV's the first CV that he used to apply for the secondment to Knysna Municipality did not include his employment at Coastal Entertainment Pty Ltd.
   HR to comment on this.
2. The extension of the acting appointment beyond 3 months was done without the approval of the MEC, as required by section 56 of the MSA.
3. The extension of the contract beyond 6 months was also found invalid by the High Court of the Western Cape.

Agree with above points 2 and 3 as it was confirmed in the judgment.

Therefore, the appointment of this director was in contravention of the act and resulted in irregular expenditure of R818 711.

The official was subsequently permanently appointed to the position. However, a selection panel member was a reference in his CV, and the panel member did not disclose any interest or relationship with shortlisted candidates during the shortlisting process as required by the Act. This calls into question the independence of the panel.

HR to comment on this.

Finding 7: Acting Director Planning & Economic Development

From 1 May 2023 to 31 July 2023 the acting director planning & economic development did not have a NQF level 8 degree in Building Science/Architecture and he also did not have the 2 years' experience in senior management.

His appointment was in direct contravention of the Act and therefore led to irregular expenditure of R9,811.

Finding 8: Political office bearers' administrative staff

The employees who were employed in the offices of the municipal office bearers were appointed without following the proper steps as stated in the act and also did not follow the municipality's Human resource policies. The court interdicted the payment of these employees, resulting in any payments made to them meeting the MFMA definition of irregular expenditure. It also is non-compliance with the Local Government Municipal Staff Regulations.

**Issue 2: Fruitless and wasteful expenditure – Legal fees**

The definition of fruitless and wasteful expenditure contained in section 1 of the MFMA state:
*"**fruitless and wasteful expenditure** means expenditure that was made in vain and would have been avoided had reasonable care been exercised".*

This matter was in court on 11 May 2023, no judgment handed down yet. Cannot comment on the non-compliance with the Municipal Staff Regulations.

Matter 1:
The auditor assessed the merits of the case:
MEC // Knysna Municipality // Executive Mayor & Others Case 2286/23 Appointments: Acting Director Corporate Services & Acting Chief Financial Officer – High Court

In the email correspondence dated 10 February 2023 from the *Appointed legal representative*, amongst other things the following was noted in relation to the court case:

It was noted in the email that the court case is based on two propositions:
*-The appointees not meeting the minimum competency requirements and*
*- The municipal council not having received the necessary authorisation from the MEC for the "further extension".*

*"The level of facts, we will have to answer the following questions:*
*1. Does the ACFO and the ADCS meet the minimum requirements or not? If not, then there is merit in the challenge unless there is a provision in the legislation that provides for an exemption. If the ACFO and ADCS in fact meet the requirements, then this leg of the challenge fails.*

*2. Do the extensions of the ACFO and ADCS appointments fall within the provisions of S56(1)(c) or not? If yes, then there is merit in the challenge. If not, then this leg of the challenge must fail.*

It is evident from the legal representatives what the factors were that the municipality had to confirm before defending the matter in court. The required minimum competencies for the CFO position and DCS was audited above, refer to <u>Finding 1: Acting Chief Financial Officer 1</u> and <u>Finding 6: Acting Director Corporate Services 2.</u> It was concluded that the officials did not have the required minimum competencies for the positions and therefore, the municipality should not have incurred the legal costs in relation to the legal matter.

Therefore, the expenditure could have been avoided if the municipality had investigated and verified if the appointed ACFO and ADCS met the minimum requirements as questioned by the legal representative of the municipality, before incurring the legal costs.

Agreed.

<u>Matter 2:</u>

The auditor assessed the merits of the cases:
<u>MEC // Knysna Municipality //Council // MM // L Sotshede - Case 3488/23 Appointment: Acting Chief Financial Officer – High Court</u> **consolidated with** <u>MEC // Knysna Municipality // Council // MM // L Loliwe - Case 4884/23 Appointment: Acting Director Corporate Services – High Court</u>

Based on the evidence included in the court case documents for case 3488/23, the below were the basis of the cases:

*"The appointment of the ACFO in breach of S56(1)(c) of the MSA which provides as follows: "a person appointed as [Acting CFO of a municipality] may not be appointed to act for a period that exceeds three months; Provided that a municipal council may, in a special circumstance and on a good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a) for a further period that does not exceed three months"*

*When the appointment was made on 14 February 2023, the ACFO had already acted in the position of CFO for a period of six months without any written application having been made to the MEC to extend the ACFO's appointment for a further three month period before the second appointment was made.*

*Before the re-appointment on 14 Feb 2023, the MEC instituted an application on 9 February 2023- for an order declaring the first and second acting appointment (along with consecutive acting appointment in respect of another senior manager, DCS) to be unlawful and invalid, and reviewing and setting them aside.*

*The appointment was also unlawful for breach of S56(1)(b) of the MSA, which provides that "a person appointed as [ACFO] must at least have the skills, expertise, competencies and qualifications as prescribed". The ACFO did not have the qualifications prescribed for an acting CFO of the municipality".*



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Based on the evidence included in the court case documents for case 4884/23, the below were the basis of the cases:

*"The appointment of the ADCS in breach of S56(1)(c) of the MSA which provides as follows: "a person appointed as [Acting manager directly accountable to the municipality] may not be appointed to act for a period that exceeds three months; Provided that a municipal council may, in a special circumstance and on a good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a) for a further period that does not exceed three months"*

*When the impugned appointment was made on 15 March 2023, ADCS had already acted in the position of DCS for a period of six months without any written application having been made to the MEC to extend the DCS's appointment for a further three month period before the second appointment was made.*

*Before the re-appointment on 14 Feb 2023, the MEC instituted an application on 9 February 2023- for an order declaring the first and second acting appointment (along with consecutive acting appointment in respect of another senior manager, DCS) to be unlawful and invalid, and reviewing and setting them aside."*

Refer to Finding 1: Acting Chief Financial Officer 1 and Finding 6: Acting Director Corporate Services 2. Based on the audited information,
- The extension of this contract beyond 3 months by the municipal council was made without the approval of the MEC and therefore it was in direct contravention of section 56 of the MSA.

Therefore, if the municipality had verified whether the municipality had obtained the approval of the MEC to extend the acting contracts of the ACFO and ADCS beyond 3 months, they would have confirmed that this had not been received. This would have prevented the incurring of the legal costs incurred to defend the matter, thus avoiding the expenditure that was "*made in vain and would have been avoided had reasonable care been exercised*".

Agreed.

The municipality incurred legal costs amounting to R2 477 527 in relation to legal representation provided by the municipality to defend cases which, if reasonable care had been exercised, would have been avoided. This expenditure meets the definition of fruitless and wasteful expenditure as defined in the MFMA.

**Internal control deficiency**

Financial Management and Performance management.

*Review and monitor compliance with applicable laws and regulations.*

Management did not implement systems and processes to ensure, prior to the acting appointments, that the acting senior managers have the minimum competencies, qualifications and expertise as outlined in section 56 of MSA and the related regulations.

Management failed to prevent the incurring of legal fees to defend cases in the courts which had no real chance of success, thereby incurring fruitless and wasteful expenditure.

Leadership

*Exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.*

Leadership did not exercise oversight responsibility regarding compliance with applicable laws as the appointments was tabled with council, however they did not identify that these appointments do not comply with legislation.

Leadership did not sufficiently interrogate the decisions by management to defend the noted court cases and to question the merits of the cases, resulting in legal fees incurred in defense of cases where the defense was not justified.

**Recommendation**

Management and leadership should ensure that all appointments of senior managers comply with the legislation, by thoroughly investigating the competencies of each applicant and verifying same prior to their appointment.

Management should investigate the irregular and fruitless and wasteful expenditure incurred and deal with it in terms of the Consequence management policies.

**Management response**

Name:
Position:
Date:

**Auditor's conclusion**

8 (2)

**Knysna**

Municipality Munisipaliteit uMasipala

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**Collab. Ref.:** 1409388.
**File Ref.:** 13/2.

**202 –02-09**

Webber Wentzel
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
8001

Via email: sabrina.defeitas@webberwentzel.com
lionel.egypt@webberwentzel.com

Dear Lionel,

**URGENT INSTRUCTION: CASE 2286/23 – MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE // KNYSNA MUNICIPAL COUNCIL**

The above matter refers.

Herewith urgent instruction to represent the respondents in this matter. As per Council's System of Delegations, it was decided by our Municipal Manager that the matter be opposed.

Due to the complexity and urgency of the matter, it was also decided that should you require the appointment of counsel herein, you may proceed accordingly

We trust you find above in order

Yours faithfully,

**MR OMBALI SEBOLA**
**MUNICIPAL MANAGER**

B (3)

**Knysna**

**Municipality Munisipaliteit uMasipala**

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**Collab. Ref.:** 433561
**File Ref.:**

**2023-03-06**

BulaBula Inc.
Suite 17c, Upper Mall
Florina Place, Main Street
Plettenberg Bay
6600

Via email: nandi@bulabulainc.co.za

Dear Madam,

**URGENT INSTRUCTION: CASE 3488/23 – MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE**

The above matter refers.

Herewith urgent instruction to represent the respondents in this matter. As per Council's System of Delegations, it was decided by our Municipal Manager that the matter be opposed. From the Notice of Motion you will note that we are required to file said Intention to Oppose by tomorrow, 7 March 2023.

We confirm that your hourly rate for services rendered under this matter will be negotiated as soon as we receive same from your office.

Due to the complexity and urgency of the matter, it was also decided that should you require the appointment of counsel herein, you may proceed accordingly.

We trust you find above in order.

Yours faithfully,

7/3/23

**MR OMBALI SEBOLA**
**MUNICIPAL MANAGER**

24

B (4)

**Knysna**
Municipality Munisipaliteit uMasipala
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**Collab. Ref.:** 1455312
**File Ref.:**

**2023-03-16**

BulaBula Inc.
Suite 17c, Upper Mall
Florina Place, Main Street
Plettenberg Bay
6600

Via email: nandi@bulabulainc.co.za

Dear Madam,

**WITHDRAWAL: CASE 3488/23 – MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE**

The above matter refers.

We herewith confirm our verbal agreement on your withdrawal as Attorney of record to represent the respondents in this matter, effective 15 March 2023.

Yours faithfully,

**MR OMBALI SEBOLA**
**MUNICIPAL MANAGER**



Please address all correspondence to the Municipal Manager and quote the above reference
P O Box 21 • Knysna • 6570 • Tell: 044 302 6300 • Fax: 044 302 6333 • E-mail: knysna@knysna.gov.za

6.2

## REQUEST FOR INVESTIGATION OF AVOIDABLE IRREGULAR EXPENDITURE INDENTIFIED BY AUDITOR GENERAL SOUTH AFRICA

**REPORT FROM THE DIRECTOR FINANCIAL SERVICES**

**PURPOSE OF THE REPORT**

The purpose of this submission is to request MPAC to investigate the avoidable irregular expenditure identified by the Auditor General South Africa during the implementation of SCM policies in terms of Council's approved Supply Chain Management Policies and Procedures of the Municipality.

**BACKGROUND**

During 2021/22 and 2022/23 Financial Audit year the Auditor General has identified material non-compliance in relation to the implementation of Supply Chain Management in the Municipality which includes the following namely:

- Non-compliance with CIDB requirements where a bid was advertised not in line with the CIDB grading requirements as prescribed by the regulations (The route cause was the drafting of bid specifications requirements with the inclusion of CIDB grading that was found not to be in line with the regulations or design to favour service provider) for maintenance of telemetry services.
- Non-compliance with SCM regulations by awarding bid without allocations of a preference points system as prescribed by the regulations for a bank loan tender service.
- Bids or contracts awarded outside of bid validity period for provision of banking services, surfacing of gravel roads in the northern areas, oversee, coordinate and supervise of technical related work, supply and delivery of electrical cables.
- Contract extension with invalid or without justifiable or compelling reasons to supply and delivery of non-flushing toilets, supply and delivery of chemicals, oversee, coordinate and maintenance of WWTW and provision of analytical services.
- None-compliance with preferential procurement policy framework regulations for local content for supply and delivery of electrical meters.
- Evaluation criteria applied incorrectly by the evaluation committee for upgrade of Sedgefield bulk sewerage services.

**N.B** See attached table marked register B in the submission memo for the avoidable irregular expenditure for ease references, which depicts the name of the suppliers, awarded amount, department and procuring manager.
Enclosed is documentary evidence for consideration of MPAC and external auditors during the investigation.
Since the findings are administrative in nature because of either internal control deficiencies the investigation will reveal if it was administrative errors or oversight or deliberation intention to ignore or overlooked the SCM policies and procedures.

## RECOMMENDATION OF THE SCM MANAGER

The Municipal Public Accounts Committee should:

- Note the avoidable irregular expenditure incurred during the implementation of SCM policies and procedures.
- Consider the evidence at its disposal and co-source the services of external auditor to investigate the material none-compliance of SCM regulations, policies and procedures.
- Make appropriate recommendations to Finance and Governance committee of council for consideration and approval of council.

## APPENDIX / ADDENDUM

**Annexure A**: T 23 of 2021/22 documents - (Bid Committee's and expenditure report)
**Annexure B**: T01 of 2020/21 documents - (Bid Committee's and expenditure report)
**Annexure C**: T69 of 2020/21 documents - (Bid Committee's and expenditure report)
**Annexure D:** T06 of 2022/23 documents - (Bid Committee's and expenditure report)
**Annexure E:** T21 of 2022/23 documents - (Bid Committee's and expenditure report)
**Annexure F:** T26 of 22/23 documents - (Bid Committee's and expenditure report)
**Annexure G:** T22 of 2021/22 documents - (Bid Committee's and expenditure report)
Annexure H: T70 of 2017/18 documents - (Bid Committee's and expenditure report)
Annexure I: T06 of 2020/21 documents - (Bid Committee's and expenditure report)
Annexure J: T01 of 2022/23 documents - (Bid Committee's and expenditure report)
Annexure K: T12 of 2021/22 documents - (Bid Committee's and expenditure report)
Annexure L: T19 of 2021/22 documents - (Bid Committee's and expenditure report)

File Number: 9/1/2/10

Execution: Director Financial Services