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Municipal Public Accounts Committee (MPAC)

Sedibeng District Municipality

Municipal Public Accounts Committee (MPAC) OVERSIGHT REPORT

Sedibeng District Municipality MPAC
Chairperson Cllr S.Mochawe

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MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC): OVERSIGHT REPORT ON THE ANNUAL REPORT FOR 2019 /2020 FINANCIAL YEAR

Office of the Speaker

PREAMBLE

The Oversight Report covers the 2019/2020 Financial Year and starts off with a broad outline of the objectives of the Municipal Public Account Committee (MPAC). The Sedibeng MPAC committee set out to achieve the following objectives; -

- a) To investigate fraud or corruption in the administration or in council;
- b) To perform its Oversight role over the Executive and Administration;
- c) To ensure that there is legal compliance whenever required;
- d) To ensure that the municipality gets accountability on Public Funds spent;
- e) To ensure that the Budget and IDP are properly aligned and monitored;
- f) To ensure that there is proper service delivery in all areas of municipal jurisdiction in support of the needs of the local people which are determined through public participation processes;
- g) To make sure that the MPAC Report is compiled in such a manner that it is useful to Council and should promote good governance in the final analysis. It is also the committee's role to advise Council correctly on findings highlighted in the Annual Report;
- h) To employ methods used by the committee in preparing the Oversight Report that include the convening of meetings where the Annual Report, IDP, SDBIP and all supporting documentation are scrutinized.
- i) To prepare questions formulated on specific areas of concern to be addressed to management which is required to provide responses and present them to the members of MPAC. Senior Managers, in particular from the affected Clusters such as Corporate Services, Community Services, TIE, Finance, SPED and the Offices of the Municipal Manager, the Executive Mayor and Audit Committee, were invited by the Committee in accordance with the Committee's Terms of Reference as adopted by the Council. All these

engagements have assisted the Committee in developing the final Oversight Report to be tabled at the Special Council scheduled to take place on the 16th of July 2021.

1. PURPOSE AND OBJECTIVES OF THE OVERSIGHT REPORT

The purpose of this report is to account for the performance of MPAC to Council, to apprise Council on the activities of the committee over the preceding and current financial years, to enlighten Council about the number of meetings held and the composition of the MPAC and any measures taken to retain skills and experience, to ensure compliance with the key resolutions taken in the annual report and to present before Council a final oversight MPAC Report on the Annual Report for 2019/2020 Financial Year for adoption, with the following objectives.

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public entities.
- To ensure that its primary function is the protection of the rights and liberties of citizens.
- To hold the government accountable in respect of the usage of public funds.
- To detect wasteful and unauthorised expenditure in the municipality.
- To ensure that there is alignment with and implementation of National Legislation as well as the relevant policy guidelines.
- To improve the transparency of government operations and enhance public trust in the municipality, which is itself a condition for effective policy delivery.

2. INTRODUCTION

The Council's oversight function is one of the foundations of democracy and an indicator of good governance. It promotes ethical conduct through the monitoring of municipal performance, the management of the budget as well as ensuring that those who commit misconduct are disciplined through the municipal policy processes. The function of oversight is a critical component of good governance. This helps to monitor and ensure that all planned activities are implemented by the municipality by providing strategic direction for the benefit of the local community and stakeholders.

It is therefore the role of the Section 79 MPAC to scrutinize, investigate and hold accountable the executive through oversight processes on the IDP as well as the municipal budget usage thus ensuring

that policies and procedures are followed, instituting financial controls (including independent audits), and following through with key recommendations.

The oversight process integrates many aspects which includes political, administrative, financial, ethical, legal and strategic elements. The core function of oversight is to ensure that resources are used efficiently and effectively for the benefit of the community of Sedibeng. At its core, the oversight function aims to protect the rights and liberty of citizens.

3. BACKGROUND

The MPAC is a committee of Council established in terms of Section 79 (1) (a) and (b) of the Municipal Structures Act of 1998. In accordance with the above provision, the MPAC has the powers and functions that Council has seen fit to delegate to the committee. These powers and functions are broadly described within the terms of reference. These terms of reference give expression to the requirement contained in Section 79 (2) of the Municipal Structures Act, 1998 which requires that that the Council shall set out the framework and guidelines within which such committees of Council shall operate. The legal basis for the MPAC oversight functions are set out in Section 129(4) of the Municipal Finance Management Act of 2003 (MFMA) which provides guidance on the manner in which municipal Councils should consider annual reports and conduct public hearings. The MFMA provisions also direct the functioning and composition of any public accounts or oversight committees established by the Council to assist it to consider an annual report. The Sedibeng MPAC is established by Council resolution and in terms of Section 79 of the Municipal Structures Act.

Legislation guides the municipality on the compilation of the MPAC Oversight report and below are the Statement Options which are in line with the legal prescripts of section 129 (1) of the MFMA which states that: -

“The council of a municipality must consider the annual report of the municipality and of any municipal entity under the municipality's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the council in terms of section 127, adopt an oversight report containing the council's comments on the annual report, which must include a statement whether the council-

(a) has approved the annual report with or without reservations;

- (b) has rejected the annual report; or
- (c) has referred the annual report back for revision of those components that can be revised.

4. DISCUSSIONS

At local government level, section 151 (2) of the Constitution has vested both legislative and executive powers in the Council. Despite this, legislation has provided that the executive authority of the Council may be exercised through the executive committee or the executive mayor. In this model, legislative authority then resides with the Council. The MPAC is constituted as a Section 79 committee in that it arises from within Council and it is comprised of Councillors. Since the MPAC reports to Council and not to the executive, it is best suited to providing oversight over the executive and the administration. – thus the MPAC is assigned the oversight functions deemed necessary *by the Sedibeng District Municipality Rules and Orders relating to the procedures of council and its committees. (Section 93, subsection 1-7).*

The Municipal Annual Report was tabled before Council on the 7th April 2021 and it was then officially referred to the MPAC for the committee to play its oversight role and submit the report within 60 days in terms of section 127 and 129 of the Municipal Finance Management Act. The Council's role is to receive and consider the recommendations of the MPAC with a view to passing favourable, legally correct and informed resolutions in the best interest of Council.

The extension letter and the authorization to submit the MPAC oversight report outside of the statutory time limits has been solicited from Council (**Annexure H**).

5. COMPOSITION OF MPAC

Noting that Cllr T.P Maraka resigned as a councillor and therefore automatically resigned from all committees, including the MPAC, ~~the~~ current committee of the MPAC comprises of the following members: -

1. Cllr S.J. Mochawe (Chairperson)
2. Cllr L. Machitje.
3. Cllr A.R. McLoughlin

4. Cllr K.M. Mahlase
6. Cllr P.S.Zwedala
7. Cllr O.A. Mkhwanazi
8. Cllr V.J. Ntuthu
9. Cllr S.S. Sinyanya

6. MPAC MEETINGS

The MPAC held many ordinary meetings to formulate strategies for the oversight process, the development of management questions and the interrogation of management amongst other key priorities.

The purpose of convening these meetings was to receive factual presentations on the findings and performance of the Sedibeng District Municipality and to gather enough relevant information to enable the development and preparation of a useful oversight report. The Municipal Public Account Committee invited the Municipal Manager (Acting), in his capacity as the Accounting Officer, together with his Executive Management team to clarify and respond to the MPAC questions during the hearings which were held on the 1st and 2nd of June 2021. The Committee has also interrogated different documents and responses in the preparation of this final oversight report.

The following stakeholders were invited for MPAC strategic Sessions:

1. Sedibeng Audit Committee
2. COGTA
3. Office of the Auditor General (AG)
4. Provincial Treasury

All Minutes of the above mentioned meetings and discussions are attached as Annexures to this report.

7. STAKEHOLDER ENGAGEMENTS

Internal and External stakeholders such as the Auditor General's Office, the Audit Committee, COGTA and Gauteng Treasury were engaged during the Oversight Process. The Strategic Planning Session was held in a physical meeting on the 21-23 April 2021 and the Management Hearings were held virtually on the 1st and 2nd of June 2021. Members of the MPAC were also encouraged to extend an invitation to members of the public to attend the virtual meeting. Due to Covid-19 Regulations and Guidelines, no physical Public Hearings could be held in June as per the lockdown pronouncement by the President.

8. LEGAL AND CONSTITUTIONAL IMPLICATIONS

The following Statutes and Notices were used as reference points in the preparation of this report:

- 1) The Constitution of the Republic of South Africa, 1996
- 2) Covid-19 Regulations and Notices (published i.t.o of the Disaster Management Act No. 57 of 2002)
- 3) The Disaster Management Act, No. 57 of 2002 & Regulations
- 4) The Draft Public Procurement Bill 2020
- 5) The Local Government: Municipal Finance Management Act No. 56 of 2003 And Circular 63 read together with Circular 32.
- 6) The Division of Revenue Act No 1 of 2018
- 7) The Local Government: Municipal Finance Management Regulations
- 8) The Local Government Municipal Systems Act, No. 32 of 2000 & Regulations
- 9) The Local Government: Municipal Structures Act, No. 117 of 1998 & Regulations.

9. ALIGNMENT WITH COUNCIL STRATEGIES

This report is aligned to the following strategies of the municipality:

- Effective management of Council Business
- Strengthening of oversight and accountability

10. MPAC FINDINGS

- (a) THAT the Re-assessment of the assets residual value and useful life are not in line with the standards of GRAP;
- (b) THAT there are Material misstatements in the Annual Performance Report;

- (c) THAT there is a scope limitation on Contract Management and this has resulted in the provisions of Section 15(2)(b) of the Public Audit Act of 2004, Section 63(2) of the Municipal Finance Management Act and Section 62 (1) of the Municipal Management Act not being complied with.
- (d) THAT there was non-compliance with Circular 102 relating to Covid-19 expenditure which has resulted in irregular expenditure of **R1,373,173.75**.
- (e) THAT the remuneration of the late Municipal Manager, Mr Stanley Khanyile, was not in line with the prescribed limits of salaries for level 4 category municipalities, of which the Sedibeng District Municipality is one, and paragraph 13(4) of Government Gazette No.43122, which led to irregular expenditure in the sum of **R1,007,769.00**, of which **R683,596.00** was previously written off by council, leaving a total of **R324,200.00** remaining as irregular expenditure.
- (f) That the Gauteng Provincial Department of Co-operative Governance (COGTA) declined the salary waiver application which led to irregular expenditure (*2 letters attached in the annexures*)
- (g) THAT the Salary waiver for the Executive Directors are not in line with the prescribed limits of salaries for level 4 category municipalities, of which the Sedibeng District Municipality is one, and paragraph 13(4) of Government Gazette No.43122 and with the Government Gazette of COGTA Vol 351 on Competency Framework. Furthermore, some Executive Directors did not meet the minimum competency requirements. A concern was also raised on the academic qualifications of some Executive Directors,
- (h) THAT the Salary waiver and expenditure for Executive Directors has to led to irregular expenditure amounting to **R3,027,951.00** to date.
- (i) The MEC of COGTA in both correspondences did **NOT** grant a salary waiver in relation to the Municipal Manager and the Executive Directors which are therefore above the irregular expenditure threshold.
- (j) THAT the municipality had not developed, documented and adopted a process on monitoring returns on ICT investments. The lack of process for monitoring the return on investment may result in management not being able to measure the impact of these investments on the municipality's business operations and not being able to account for ICT expenditure.
- (j) THAT the total amount ascribable to UIF&W expenditure for the 2019/20 financial year is **R15,257,905.17**.

11. MPAC RECOMMENDATIONS

The MPAC Committee hereby recommends the following to Council:-

- **THAT the MPAC Oversight Report on the 2019/2020 Annual Report be hereby approved with the following reservations:**
 - a) THAT Management must develop an Asset Management Policy that will be able to monitor the reporting of damage, theft, insurance claims and similar occurrences.
 - b) THAT the Accounting Officer, through Council, must ensure that there is comprehensive implementation of the Action Plans in order to avoid re-occurrences of non-compliance on the issues raised by the office of the Auditor General in previous reports;
 - c) THAT the Audit Committee be hereby delegated to formally present its intervention report to Council on a quarterly basis, and to advise Council on potential risks and procedures to avoid such.
 - d) THAT it be noted that the reports on the misconduct with regards to financial misappropriation, such as fraud and corruption, should have consequence management and money lost must be recouped from the responsible party. It is therefore imperative that all matters relating to financial misconduct must be referred by the Accounting Officer, forthwith on becoming aware thereof, to the Financial Misconduct Disciplinary Board and any other relevant authorities (internal and external) for investigation and disciplinary recommendations.
 - e) THAT due diligence, vetting and rigorous authentication of purported qualifications and any other employment documentation be conducted prior to commencement of duties when recruiting new employees.
 - f) THAT the Accounting Officer takes effective and appropriate steps to prevent unauthorized, irregular, fruitless and wasteful expenditure and losses, and to implement consequence management where appropriate or applicable.
 - g) THAT Council must make suitable financial determinations to recoup salaries paid in excess to Senior Managers and a monthly report/statement must be submitted to MPAC through the office of the Speaker and Council by the Accounting Officer.

- h) THAT the COVID 19 non-compliance with Circular 102 related expenditure, which resulted in irregular expenditure of **R1,373,173.75**, be recouped by Council through the Accounting Officer and that appropriate consequence management must take effect as soon as possible.
- i) THAT the Finance Department, and more particularly the Supply Chain Department, must circumvent unnecessary deviations, comply with the Municipal Financial Management Act prescriptions in the context of competitive bids advertising, Government Supplier Database Compliance and quality assurance must be done on all appointed service providers.
- j) That an investigation be launched to establish whether the amount of **R324,200.00** can be legally recouped from the estate of the late municipal manager and, if so, the necessary arrangements be made by the Accounting officer, in accordance with an appropriate Council resolution.

12. CONCLUSION

When conducting oversight, the MPAC relied on the principles of cooperative governance and intergovernmental relations and this has assisted the committee in performing the mandatory functions in a manner that is objective and transparent and that does not encroach on the terrain of others. Public accountability and transparency are indispensable pillars of good governance which build public confidence in government.

Despite the many challenges brought about by the Covid-19 Pandemic, the MPAC submits that it has fulfilled its duties to the best of its abilities.

13. LIST OF DOCUMENTS (ANNEXURES)

A list of documents was considered in the process of finalization of the Oversight Report, not all documents are listed below or attached to the report due to the size of the folders. Attached are only those documents that had a direct bearing on the work of the Committee and the rest of the documents can be inspected or perused at the Office of the Speaker in the interest of promotion of good governance.

Attached to this report are the following Annexures: -

1. Annexure A MPAC Minutes and Registers
2. Annexure B- Questions to Senior Management & Responses
3. Annexure C- COGTA Correspondences (a & b) on Salary Waiver Application⁵