

NDLAMBE MUNICIPALITY



2ND ADDENDUM

SPECIAL OPEN NDLAMBE COUNCIL MEETING

DATE: FRIDAY, 28 JUNE 2024

TIME: 10H00

**VENUE: COUNCIL CHAMBERS,
CAMPBELL STREET,
PORT ALFRED**

2ND ADDENDUM TO THE AGENDA OF AN OPEN NDLAMBE COUNCIL MEETING TO BE HELD ON FRIDAY, 28 JUNE 2024 AT 10H00, IN THE COUNCIL CHAMBERS, CAMPBELL STREET, PORT ALFRED.

2nd ADDENDUM to the AGENDA of an OPEN meeting of NDLAMBE COUNCIL to be held on FRIDAY, 28 JUNE 2023 at 10H00, IN THE COUNCIL CHAMBERS, CAMPBELL STREET, PORT ALFRED.

PORT ALFRED
27 June 2024


DIRECTOR: CORPORATE SERVICES
for: MUNICIPAL MANAGER

TO: Councillor A Marasi (In the Chair)

Councillors: KC Ncamiso, (Mayor) A. Bukani, S. T Dyakala, N. E. Haynes, W. Johannes, P. Y Kani, S. Kolosa, P. Khungwayo, T. Mbekela, N. F. Memani, M. Mgweba, Z. W. Myali, S. Melani, A Nyumka, X. Runeli, M. Sweli, S. Venene, E. H. K. Walker, S. Zweni.

Officials: Municipal Manager, Directors: Financial Management, Corporate Services, Infrastructural Development, Community / Protection Services.

~~Deputy Directors: Financial Management, Infrastructural Development (Port Alfred), (Alexandria), Community/Protection Services, Manager: Local Economic Development, Manager: Human Resources, Manager: Town Planning, Manager: Integrated Development Plan, Manager: Water Services, Manager: Housing, Manager: Internal Audit Unit, Manager: Administration, Communication Officer, SAMWU and IMATU.~~

SNCA015/06/2024

REPORT DATED 27 JUNE 2024 FROM MPAC CHAIRPERSON TO COUNCIL: IRREGULAR AND UNAUTHORISED EXPENDITURE REPORT.

PURPOSE

To submit Irregular and Unauthorised expenditure report for Council consideration and approval of MPAC recommendations

BACKGROUND

Section 32(2)(b), (4), (5), (6), (7) and (8) of the Municipal Finance Management Act, 2003 (MFMA) states the following regarding irregular expenditure.

(2)A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure—

(b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

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- (4) 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 unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality.
 - (b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
 - (c) the steps that have been taken—
 - (i) to recover or rectify such expenditure; and
 - (ii) to prevent a recurrence of such expenditure.
- (5) The writing off in terms of subsection (2) of any unauthorised, irregular, or fruitless and wasteful expenditure as irrecoverable is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of this Act relating to such unauthorised, irregular or fruitless and wasteful expenditure.
- (6) The accounting officer must report to the South African Police Service all cases of alleged—
- (a) Irregular expenditure that constitute a criminal offence; and
 - (b) Theft and fraud that occurred in the municipality.
- (7) The council of a municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service if—
- (a) the charge is against the accounting officer; or
 - (b) the accounting officer fails to comply with that subsection.
- (8) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may regulate the application of this section by regulation in terms of section 168.

MFMA Circular 68 with annexures, copy of which is attached, gives guidance on dealing with irregular expenditure.

DISCUSSION

Attached as **Annexure SC.09** please find MPAC Chairperson report on irregular and unauthorised expenditure investigation conducted by MPAC as well as the committee recommendations to Council.

RECOMMENDATIONS TO COUNCIL

1. THAT Council consider the MPAC Irregular expenditure investigation report for the investigation period.
2. THAT Council **APPROVES** the Municipal Public Accounts Committee recommendations to write-off:
 - 2.1 The irregular expenditure amount of **R 244,088,444.67**
 - 2.2 The fruitless and wasteful expenditure amount of **R 11,957.78**
 - 2.3 The unauthorised expenditure amount of **R 84,000,358.02**

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3. THAT the fruitless and wasteful expenditure amount of R 708,233.54 be RECOVERED from the employees/institutions affected.
4. THAT administration develops an action plan that will ensure elimination of irregular expenditure.

SPECIAL OPEN NDLAMBE COUNCIL MEETING

HELD ON FRIDAY, 28 JUNE 2024

**REPORT DATED 27 JUNE 2024 FROM MPAC
CHAIRPERSON TO COUNCIL: IRREGULAR AND
UNAUTHORISED EXPENDITURE REPORT.**

ANNEXURE SC.09

NDLAMBE LOCAL MUNICIPALITY



**MUNICIPAL PUBLIC ACCOUNTS COMMITTEE
REPORT TO COUNCIL**

**IRREGULAR AND UNAUTHORISED
EXPENDITURE REPORT**

LEGISLATIVE MANDATE

Irregular and Unauthorized Expenditure

MFMA Circular No 68 Municipal Finance Management Act No. 56 of 2003 on Unauthorized, Irregular, Fruitless and Wasteful expenditure states that.

In terms of section 32(2)(b) irregular expenditure may only be written-off by Council if, after an investigation by a Council Committee (MPAC), the irregular expenditure is certified as irrecoverable. In other words, writing-offs not a primary response, it is subordinate to the recovery processes, and may only take place if the irregular expenditure is certified by Council as irrecoverable, based on the findings of an investigation.

With reference to (a) as defined, - in terms of section 170 of the MFMA, only the National Treasury may condone non-compliance with a regulation issued in terms of the MFMA or a condition imposed by the Act itself. The municipal Council therefore has no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of its regulations.

With reference to (b) as defined there is no provision in the MSA that allows for a contravention of the Act to be condoned. Nevertheless, should a municipality wish to request that an act of non-compliance with any provision of the MSA be condoned, then the accounting officer should address the request to the Minister of Co-operative Governance and Traditional Affairs, who is responsible for administering the MSA. The resultant expenditure should however be dealt with in terms of section 32(2) of the MFMA.

With reference to (c) as defined -- there is no provision to allow (irregular expenditure resulting from a contravention of the Public Office-Bearers Act to be condoned. This is consistent with section 167(2) of the MFMA, which provides that such irregular expenditure cannot be written-off and must be recovered from the political office-bearer concerned.

With reference to (d) as defined, a council may condone a contravention of the Council approved SCM policy or a by law giving effect to such policy, provided that the contravention, is not also contravention of the MFMA or the SCM regulations, in which case (a) applies and then only National Treasury can condone a contravention of the SCM regulations. Any such requests must be accompanied by a full motivation and submitted to mfma@treasury.gov.za for consideration.

1. PURPOSE OF THE REPORT

Ndlambe Municipality has been qualified on irregular expenditure since the Auditor General started reporting on unauthorized, irregular expenditure and fruitless and wasteful expenditure (UIF). Efforts have been made to address historical reported balances while implementing measures to curb the reoccurrence of UIF. MFMA requires that UIF be dealt with on an annual basis, hence approaching MPAC, the requirement is that both historical and current year amounts be investigated during each financial year.

It be noted that Current year irregular amount was limited to those service providers that were identified as being irregular in the last financial year. Some identified transactions are still to be subjected to AG's assessment hence we only dealt with the known service providers only.

Ndlambe took a decision to start the investigation process on a phased approach starting with investigating irregular expenditure incurred as a result of:

- a) Procurements from expired contracts
- b) Expenditure of grants through deviations and
- c) Non-compliant constituted bid committees

2. SCOPE LIMITATION

The investigation report provides responses to all investigated items, however, due to the timing of the investigation some responses emanate from record analysis only due to some of the Senior Managers not being in the employment of Ndlambe Municipality i.e. former CFO, former Director Engineering Services and former Community Protection Services Director. However, knowledge of current senior management could provide the required responses due to their institutional knowledge of the investigated period, the report is still a fair presentation of what happened, their word of mouth would have provided an enhanced insight on what happened.

3. METHODOLOGY

The transactions were linked to the various directorates within the municipality, amounts were linked to the transactions identified as irregular and reasons for classifying the transaction as irregular were provided.

Irregular Expenditure amounts had been consolidated per department to generate a departmental report supported by the departmental transaction listing. The departmental transactions had been summed up to generate a total departmental irregular expenditure amount.

Departmental report is a 2-part report, part 1, provides details of the irregular expenditure incurred while part 2 is the irregular expenditure investigation part.

The investigation part comprises of the following questions which were raised:

- a) Why was the procurement process not followed?
- b) Were goods/services received?
- c) Must the amount be recovered from the person responsible?
- d) Is the amount recoverable?
- e) What action was taken to prevent re-occurrence?
- f) MPAC overall conclusion or recommendation on overall departmental irregular expenditure.

Questions above were aimed at understanding how and why the irregular expenditure was incurred, whether the goods or services were received, or any losses suffered as a result of the irregular expenditure. Each departmental head was called to account on the various expenditure amounts identified in their directorates also to provide clarity on the causes of their irregular expenditure.

4. MITIGATIONS BY ADMINISTRATION

- 1) Filling of posts as far as it is possible, constrained by budget and skills availability.
- 2) Activation of the Supply Chain module
- 3) Introduction of an electronic document management system
- 4) Use of planning documents, procurement plans and contract management

5. INVESTIGATION RESULTS

8.1 Irregular Expenditure Route Causes

The investigation process highlighted the following issues as major contributors to the irregular expenditure incurred.

- a) During the investigations it was noted that the root causes of the investigation across the departments were more less the same being.
 1. Missing Support documents
 2. Required Number of quotations not requested.
 3. Invalid deviation reasons
 4. Poor planning
 5. Required returnable documents not provided.

- b) The Municipal Supply Chain Department is not fully centralized for instance, procurement of goods falling within the R2000 and R30000 procurement band are still done at departmental level resulting in not fully complying with the procurement regulations.
- c) The decentralized procurement impacted negatively in record keeping hence supporting documents were missing during audits consequently, transactions were classified as irregular.
- d) The Supply Chain Unit is not fully capacitated to be able to service the user departments, some of the employees are not at work due to health reasons e.g., the Contracts Officer and Senior Buyer.
- e) SCM manager position is still vacant and filled in on a contractual arrangement.
- f) It was noted that in a number of deviations, the Auditor General disputed the deviation reasons and reclassified the transactions as poor planning, consequently as irregular.
- g) Classification of transactions as irregular does not necessarily mean embezzlement of funds, it is an outcome of transaction evaluation against the prescribed procurement regulations on the process followed in entering in that transaction.
- h) The investigation process showed no "untoward behaviour" by administration to be a cause of the irregular expenditure nor losses incurred as a result of the irregular expenditure.
- i) No findings of suspicious transactions were raised by AG during the audits nor a paragraph in the Audit Report.
- j) Administration has already taken steps to address some of the root causes. I.e. record keeping, and a central electronic document filing system
- k) No person had been found liable for irregular expenditure amounts incurred from which to be recovered.
- l) Some gaps were noted in the investigation data, like transaction data, goods/services description required enhancement to relate to the transaction amounts.

6. RECOMMENDATIONS TO COUNCIL

- 1) That administration to effectively integrate use of available planning documents to identify procurement requirements timeously and to avoid deviations as much as possible for instance 'procurement plans" which indicate timelines for procurement of goods and services, contract registers which indicate expiry dates of running contracts etc. This will be of great help in reducing deviations and eliminate transaction reclassification by AG, while contract management documents will assist with stopping procurement from expired contracts.

- 2) Administration to "step up pace" on the implementation of the Supply Chain module to ensure centralization of the R2000 to R30000 procurement band.
- 3) MPAC should be appraised with section 71 reports on a monthly basis.
- 4) UIF report to be presented to MPAC and Council on a quarterly basis.
- 5) That Council Write-off the UIF as per the table below:

Financial Years	Irregular Expenditure	Fruitless and Wasteful Expenditure	Unauthorized Expenditure		TOTAL
			Non-Cash	Non-Cash	
2015/16	15 801 098,36	-	0	0	0
2016/17	23 300 986,30	-	0	0	0
2017/18	5 232 073,22	-	0	0	0
2018/19	33 324 058,89	-	0	0	0
2019/20	36 208 924,86	-	0	0	0
2020/21	9 984 719,81	11 957,78	0	0	0
201/22	R81 810 508,73	-	0	0	0
2022/23	R0,00	-	69 018 577,25	14 981 780,77	84 000 358,02
2023/24	R38 426 074,50	-	0	0	0
TOTAL	R244 088 444,67	11 957,78	R69 018 577,25	R14 981 780,77	R84 000 358,02
