

**CITY OF EKURHULENI METROPOLITAN MUNICIPALITY
ORDINARY COUNCIL MEETING**

2024.05.22

A-F (MPAC (04(b)-2024)

MUNICIPAL PUBLIC ACCOUNTS COMMITTEE: ANNUAL REPORT ON THE ANNUAL REPORT, INCLUSIVE OF ANNUAL FINANCIAL STATEMENTS (AFS) FOR THE 2022/23 FINANCIAL YEAR AND THE AUDITOR GENERAL SOUTH AFRICA (AGSA) REPORT

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ABBREVIATIONS

AFS	Annual Financial Statements
AGSA	Auditor General of South Africa
BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
CoE	City of Ekurhuleni
CIDB	Construction Industry Development Board
Circular 63	National Treasury: MFMA Circular No 63 of 2012
Circular 68	National Treasury: MFMA Circular No 68 of 2021
CRM	Customer Relations Management
EHC	Ekurhuleni Housing Company
ED	Department of Energy
ERWAT	East Rand Water Care Company
Finance	Department of Finance
GPL	Gauteng Provincial Legislature
HOD	Head of Department
IA	Internal Audit Department
Ltd.	Limited
MPAC	Municipal Public Accounts Committee
MD	Managing Director
MSA	Municipal Systems Act 32 of 2000
MFMA	Municipal Financial Management Act 56 of 2003
Pty	Proprietary Company
RED	Real Estate Development
RMD	Risk Management Department
SCM(P)	Supply Chain Management (Policy)
UIF&W	Unauthorised, Irregular, Fruitless and Wasteful Expenditure

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PURPOSE

To report to Council on Municipal Public Accounts Committee's (MPAC's) consideration of the Annual Report, Inclusive of Annual Financial Statements (AFS) and the Auditor General South Africa's (AGSA's) Report for the 2022/23 financial year.

EXECUTIVE SUMMARY

The Annual Report, Inclusive of Annual Financial Statements (AFS) for the 2022/23 financial year and the AGSA's Report, is the final draft of the annual report including the AGSA's report after the Unaudited Annual Report was dealt with by the end of December 2023. Due to a dispute between the City and the AGSA, only on 12 March 2024, Council referred this report to the MPAC for consideration and reporting in accordance with Rule 135 of the Standing Orders By-Law.

Public hearings were convened on 26 March and 26 April 2024. The Committee deliberated on and adopted this MPAC oversight report, including the recommendations to be adopted by the Council, on 10 May 2024. The Committee is gravely concerned by the complete disregard of the MMC and HoD of Human Settlements department who did not attend the hearing on 26 April 2024, even though invited, a clear violation of applicable rules on the Standing Orders By-Law, Rule 21.3 for the officials while MMC failed to comply with Rule 179.

These actions impede the oversight work of the Committee and cannot be accepted. Likewise, regarding the implementation of Council resolutions by departments, the Committee has noted an unsavoury pattern where departments do not implement Council resolutions and come to hearings with excuses.

Based on the five (5) standard questions, the Committee interrogated the details of each unauthorised, irregular, fruitless and wasteful (UIF&W) expenditure incident stated in explanatory note 48 of the Annual Financial Statements and the AGSA's report.

The Committee conducted the interrogation to establish the status of the incidents in terms of accountability, and what corrective measures the affected departments, in collaboration with other departments of the City, have instituted, where applicable. This was done in collaboration with the City Manager's office, Internal Audit (IA) department and the Auditor-General of South Africa (AGSA), who are permanent attendees of the MPAC meetings, including the public hearings.

The Committee notes that there were eleven (11) incidents, made up of irregular expenditure of R171 301 107 and fruitless and wasteful expenditure of R75 331 712, thus amounting to a total of R246 632 819 during the financial year under review. These incidents involve seven (7) departments, and the two (2) entities.

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The below table gives a breakdown of the departments, contravention, amount as well as classification of whether the expenditure is irregular or fruitless and wasteful expenditure.

Department	Description	Classification	Amount (R)
EHC	Contravention of SCM policy	Irregular	717 483
Transport	Contravention of SCM policy	Irregular	16 814 331
Real Estate	Contravention of SCM policy	Irregular	5 048 756
Risk Management	Contravention of SCM policy	Irregular	28 682 822
Customer Relations	Contravention of SCM policy	Irregular	17 406 633
Human Settlements	Contravention of SCM policy	Irregular	1 551 604
ERWAT	Contravention of SCM policy	Irregular	101 079 478
TOTAL			171 301 107

Fruitless and wasteful expenditure for the financial year 2022/23 is as follows

Department	Description	Classification	Amount (R)
EHC	Contravention of SCM policy	Fruitless	3 622
Customer Relations	Allegation of fraud	Fruitless	641 251
Water and Sanitation	Inappropriate use of regulation 32	Fruitless	70 319 061
Various	Value for service not received	Fruitless	4 367 778
TOTAL			75 331 712

Of the eleven (11) UIF&W's identified in note 48, the Committee found that five (5) incidents were addressed, amounting to R93 375 974, wherein the incidents were deliberated, and recommendations sent to Council in the previous year. Council therein resolved on the matters. The table below lists the reports, as well as the resolutions adopted by Council, on these matters.

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ITEM NUMBER	DEPARTMENT	RESOLUTIONS OF COUNCIL	DATE SERVED IN COUNCIL
A-MPAC (18-2022)	Water and Sanitation	<ol style="list-style-type: none"> 1. That the fruitless and wasteful expenditure of R 192 504 090.82 BE RECOVERED from Lesira-Teq. 2. .That Lesira-Teq and its directors BE BLACKLISTED from doing business with the CoE via the National Treasury process and quarterly reports BE SUBMITTED to the MPAC upon resolution of Council. 3. That, a criminal case against the directors of Lesira-Teq BE OPENED for defrauding the CoE. 4. That, a progress reports on 2, 3 and 4 above BE SUBMITTED quarterly to the MPAC upon the resolution of Council. 	27 October 2022
A-MPAC (14-2022)	Various Finance Department)	<ol style="list-style-type: none"> 1. That the irregular expenditure amount of R129 192 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council. 2. That Supreme Workwear CC and its directors BE BLACKLISTED from doing business with the CoE via the National Treasury process and upon adoption of Council, quarterly reports BE SUBMITTED to the MPAC. 3. That the irregular expenditure amount of R 29 800 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council. 4. That the irregular expenditure amount of R 21 500 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council. 5. That Disciplinary action BE INSTITUTED against Mr. Daniel for violation of the code of conduct for employees 6. That a criminal case BE OPENED against Mr. Daniel for aiding fraudulent activities. 7. That the fruitless and wasteful expenditure of R 2 405 851 and R2 617 090 BE RECOVERED collectively from the Benaskabo (Pty) Ltd and Hlehlekagang (Pty) Lt. 	28 July 2022

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		<p>8. That Benaskabo (Pty) Ltd and Hlehlekagang (Pty) Ltd and its directors BE BLACKLISTED from doing business with the CoE via the National Treasury process and quarterly reports BE SUBMITTED.</p> <p>9. That a criminal case against the directors of Benaskabo (Pty) Ltd and Hlehlekagang (Pty) Ltd BE OPENED for defrauding the CoE amounts of R2 617 090 and R2 405 851, respectively.</p> <p>10. That a QUARTELY progress report on the implementation of recommendations 3,6,7,8,9 and 10 BE SUBMITTED to the MPAC.</p>	
A- MPAC (15-2022)	Customer Relations	<p>1. That the report into irregular expenditure incurred on additional and alterations at Tembisa CCC in 2017/18 financial year, BE NOTED.</p> <p>2. That the irregular expenditure amount of R17 807 892.04 be certified as IRRECOVERABLE in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council.</p>	27 October 2022
A-MPAC (19-2022)	Customer Relations	<p>1. That Report into alleged Irregularities at The Lungile Mtshali Community Development Project by Customer Relation Management Department during the 2015/16 Financial Year, BE NOTED.</p> <p>2. That the irregular expenditure amount of R1 754 434,64 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council.</p> <p>3. That the irregular expenditure amount of R137 025,20 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council.</p> <p>4. That the irregular expenditure amount of R144 210,00 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF by Council.</p>	27 October 2022

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ITEM NUMBER	DEPARTMENT	RESOLUTIONS OF COUNCIL	DATE SERVED IN COUNCIL
		5. That the fruitless and wasteful expenditure of R503 680 BE RECOVERED from Makhubo Events and Projects.	
A-MPAC (01-2022)	Ekurhuleni Housing Company	1. That the irregular expenditure amount of R4,577 844 be certified as irrecoverable in terms of s32(2)(b) of MFMA and accordingly BE WRITTEN OFF	30 March 2022

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Therefore, the above incidents and their amounts do not form part of this report. In other cases, the Committee dealt with different amounts stated in the AFS explanatory note 48. Regarding incidents of the previous year, the Committee noted that all departments blatantly ignored Council resolutions. The implementation of Council resolutions by departments and entities is lagging behind.

Out of the seven (7) UIF&W's expenditure amounting to R153 256 845 considered, the Committee **WRITES OFF** (2) irregular expenditure amounting R717 483. The Committee also recommends one (1) fruitless and wasteful expenditure of R3 622 to **BE RECOVERED**. Three (3) irregular expenditures amounting to R122 942 565 **BE REFERRED** to IA for further investigation. Two irregular expenditures amounting to R30 234 426 **WILL BE DELIBERATED** on and recommendations to Council will be sent by **30 August 2024**.

BACKGROUND

The Municipal Public Accounts Committee (MPAC) is a standing committee of Council established per section 79A of the Municipal Structures Act (no. 117 of 1998), as amended. As per section 79A (3) (a) the Committee's functions must include the following:

- (a) Review the Auditor-General's reports and comments of the management committee and the audit committee and make recommendations to the municipal council;
- (b) Review internal audit reports together with comments from the management committee and the audit committee and make recommendations to the municipal council;
- (c) Initiate and develop the oversight report on annual reports contemplated in section 129 of the Local Government: Municipal Finance Management Act;
- (d) Attend to and make recommendations to the municipal council on any matter referred to it by the municipal council, executive committee, a committee of the council, a member of this committee, a councillor and the municipal manager; and
- (e) On its own initiative, subject to the direction of the municipal council, investigate and report to the municipal council on any matter affecting the municipality.

Therefore, the compilation of this oversight report follows sub-section 3 above. In interrogating the identified UIF&W's matters, the Committee posed the following questions to the concerned departments:

1. Comprehensively outline what transpired for the expenditure to be incurred?
2. Is there an investigative report submitted by the Internal Audit (IA) Department to the department? If yes, have the IA recommendations been implemented accordingly? Submit status report.
3. What corrective measures has the department taken since the identification of the expenditure?
4. What measurements has the department put in place to ensure that such an incident does not re-occur in the future?
5. Provide a report on the value for money on the identified expenditure.

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After the department's response from these questions, the Committee deliberated on the course of action to be followed. Amongst the others, the Committee is guided by the Supply Chain Management Policy (SCMP) of the City of Ekurhuleni (City) which seeks to promote fair, equitable, transparent competitive and cost-effective process. The Committee is also doing its oversight per section 32 (1) and (2) of the MFMA discussed below. Section 32 (1) states as follows:

- 1) Without limiting liability in terms of the common law or other legislation: -
- a) A political office-bearer of a municipality is liable for unauthorised expenditure if that office bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;*
 - b) The accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);*
 - c) Any political office bearer or official of a municipality who deliberately or negligently committed, made, or authorised an irregular expenditure, is liable for that expenditure; or*
 - d) Any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure*

Circular 68 defines unauthorised, irregular, fruitless and wasteful expenditure; Unauthorised expenditure is defined in section 1 of the MFMA as follows: "unauthorised expenditure", in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes—

- (a) overspending of the total amount appropriated in the municipality's approved budget;
- (b) overspending of the total amount appropriated for a vote in the approved budget;
- (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or
- (f) a grant by the municipality otherwise than in accordance with this Act.

Irregular expenditure is defined in section 1 of the MFMA as follows: "irregular expenditure", in relation to a municipality or municipal entity, means—

- (a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;
- (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
- (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or MFMA Circular No 68 Unauthorised, Irregular, Fruitless and

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(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure".

Fruitless and wasteful expenditure is defined in section 1 of the MFMA as follows: "fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

As per Circular 63, read together with section 127 to 129 of the Municipal Finance Management Act (MFMA) (no. 56 of 2003), the Unaudited Annual Report, Inclusive of Draft Annual Financial Statements, must be submitted to Council within two months after the end of the financial year, i.e., in August, for oversight by Council. After 7 months, i.e., by the end of January of each year, the final Annual Report, together with the AGSA's report, must be tabled in Council and the MPAC must make its final pronouncement on the financial statements in conclusion of the oversight process of Council, not later than two (2) months after the tabling of the report. Due to the dispute between the City and AGSA, the Final (Audited) Annual Report for 2022/23 F/Y was tabled in Council on 12 March 2024, wherein it was adopted and referred to the MPAC. On 15 March 2024, the MPAC started with its deliberations on the report. According to section 129 (1) of the MFMA (no. 56 of 2003), the oversight report must include whether Council approves, rejects, or refers the AR back.

This is discussed in ITEM MPAC (01-2024(A)), which must be read together with the current report. In addition, the Committee must pronounce itself in accordance with section 32 (2) which states that:

- 2) A municipality must recover unauthorised, irregular, or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure –
- a. *in case of unauthorised expenditure is –*
 - i. *authorised in an adjustment budget; or*
 - ii. *certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and*
 - b) *in 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.*

The Committee must notify and recommend to Council on cases it managed to recover expenditure and close cases. The Committee is also expected to recommend to Council to write-off unauthorised, irregular, or fruitless and wasteful expenditure that the City would be unable to recover.

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KEY DELIBERATIONS

In its deliberations over the report, the Committee focused on note 48: *Unauthorised, Irregular, and Fruitless and Wasteful Expenditure*. On this note, the Committee notes that there was a closing balance of R1 592 342 000 in irregular expenditure, R73 989 251 in fruitless and wasteful expenditure, and zero balance for unauthorised expenditure by the end of the 2022/23 financial year. In other words, the group accounts for a total of R1 666 331 251 in UIF&W's Expenditure in the 2022/23 Annual Financial Statements, indicating a constant reduction in the balance which reflects the dedication the MPAC has on its stringent work.

Regarding the current closing balance of irregular expenditure balance of R1 592 342 000 the Committee notes that there was an opening balance of R1,850 902 941. The Committee notes that Council wrote off a total amount of R429 862 048 (R384 013 024+ R45 849 024) as per the City's AFS. Meanwhile, the opening balance in fruitless and wasteful expenditure was R140 789 029 and closing balance of R73 989 251. The MPAC has already made recommendations for the amount of R71 397 093 which is yet to be effected in the AFS. Therefore, the balance will be drastically reduced, a reflection of MPACs diligence to achieve the timelines as set in the City's UIF&W's reduction plan, a requirement of the National Treasury Circular 111, which emphasised a need to ensure measures are introduced to reduce irregular expenditure by 75% and to eliminate fruitless and wasteful expenditure by 100% during the 2019-24 Medium Term Strategic Framework (MTSF) period.

The MPAC is concerned by the City's regression from achieving an overall clean audit opinion from the AGSA to an unqualified opinion. The Committee notes that an unqualified audit opinion is an upstanding audit outcome as it indicates that the City's financial statements present a fair and accurate picture of its financial position and that they have been properly prepared in accordance with the relevant financial standards prescribed in the Municipal Finance Management Act. Furthermore, the City has not incurred unauthorised, fruitless, and wasteful expenditure as disclosed in the audited financial statements for the financial year under review.

However, the City has incurred an irregular expenditure of R21.8 million identified by the AGSA for the current financial year and has committed to addressing this issue promptly in agreement with the AGSA findings. Regarding Supply Chain Management (SCM) regulations and processes, the Committee notes that the AGSA highlighted weaknesses in the City's internal controls - especially pertaining to contract management. The Committee urges the City to strengthen its controls and processes by ensuring employees are skilled and section 78 of MFMA managers understand their role to ensure that the City of Ekurhuleni not only meets but exceeds the standards of governance, transparency, and accountability expected by citizens and stakeholders. Moreover, the Committee notes and appreciates the assurance provided by the Internal Audit Department on matters related with the UIFW expenditures incurred by the City.

The Committee continues to encourage the City's and its entities to strive for the achievement of a clean audit opinion. As per the AGSA's prescriptions, a clean audit outcome is understood by the Committee to mean the municipality and its entities has

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(1) unqualified opinion on its financial statements, (2) it does not have findings on its pre-determined objectives, and (3) compliance with laws and regulations. Further, there must not be dishonest deficiencies on its internal controls.

East Rand Water Care Company (ERWAT)

The ERWAT accounts for an irregular expenditure amounting to R101 079 478 which is made up of the following amounts (R2 086 871,90 + R1 747 770.05 + R2 850 875,98 + R13 720 977.55 + R37 749 583 + R8 301 353,80 + R11 672 934,24 + R8 495 558,25 +R297 581.13+R2 622 111.80). The Committee notes that all these UIF&W's expenditures were first identified in the 2020/21 financial year and that the entity has engaged the IA for investigation into all these incidents.

R2 086 871,90 and R1 747 771,05 relate to the B-BBE points allocated to bidders who did not submit a valid certificate for a subcontractor Inkulumo, a contravention of PPR 7(3), which provides that Regulation 7(3), which provides that a tenderer must submit proof of its B-BBEE status level of contributor. R1 747 771,05 was incurred for the replacement of self-priming and horizontal end suction pumps at various ERWAT Water Care Works: manufacture , supply , delivery install and commission while R2 086 871,90 was incurred for the supply and delivery of PPE for 36 months as and when required contract and was awarded to a panel of contractors per commodity. **The Committee refers this irregular expenditure to IA for further investigation.**

R2 850 875,98, R13 720 977.55, R37 749 583 and R8 301 353,80 are irregular expenditures where the contravention was that tenders were advertised without the compulsory subcontracting requirements as required by regulation 9(1) of the Preferential Procurement Regulations, 2017. R2 850 875,98 was incurred for the supply, delivery, and installation of electric motors at ERWAT WCW as per BoQ. R13 720 977.55 was incurred for the supply , delivery and Installation of High Mast Lights and Street Lights. R37 749 583 was for the appointment for the supply, delivery and install all analytical instruments and associated equipment on as and when required basis in all ERWAT Water Care Works for a period of 36 Months. Finally, R8 301 353,80 was incurred for the appointment of a service provider to supply, delivery, and install gearboxes for ERWAT sites on an as and when required basis for 36 months. **The Committee would like to refer this irregular expenditure to IA for further investigation.**

R11 672 934,24 and R2 545 203.16 irregular expenditures were in contravention of regulation 9(1) of the Preferential Procurement Regulations, 2017, where a service provider was appointed to supply, deliver, and install gearboxes For ERWAT sites on an as and when required period of 36 Months. The non-compliance was due to tenders above R30 million advertised without a feasibility assessment being conducted to establish whether the bid would be subcontracted. Meanwhile, R2 545 203.16 was incurred for appointment of a service provider for the upgrade and refurbishment of the Olifantsfontein WCW. The tender was advertised without the compulsory subcontracting requirements as required. **The Committee would like to refer this irregular expenditure to IA for further investigation.**

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R8 495 558,25, R297 581.13 and R2 622 111.80 irregular expenditure were a contravention against the supply chain management policy and the Preferential Procurement Regulations 4(2), which states that a tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender. R8 495 558,25 was for the supply, delivery and installation of Ferric Chloride and Chlorine Dosing Systems, where the BOQ was amended (scratched) and the signature next to the scratch is different from the signature (authorised personnel as per form C that completed the tender forms and witnesses.

R297 581.13 was incurred for the supply and installation of 3200A Resin Encapsulated Bus Bars For Aeration Blower Project, the winning bidder, who was deemed economically unviable, failed to submit a letter of intent for third party liability insurance and all risk contractor's insurance to cover the contract which should have led to a disqualification. Similarly, R2 622 111.80 was incurred for the supply, delivery, installation, and commissioning of various online and portable meters for ERWAT. The contravention was that a tender was awarded to a supplier who submitted a partially completed bid document and whose CIDB requirements advertised in the newspaper is not the same as the requirements as per the approved specifications. **The Committee refers this irregular expenditure to IA for further investigation.**

R12 039 750 was incurred for the upgrade and replacement of Aerators at Carl Grundling Wastewater Care Works Plant. The contravention was that the winning bidder's municipal account was in arrears for more than 3 months, which is a non-compliance with the SCM Policy. **The Committee refers this irregular expenditure to IA for further investigation.**

Overall relating to the above incidents, the Committee notes that the management developed and implemented bid committee charters to clarify and enhance bid committee roles and responsibilities as follows:

- Developed and implemented the SCM bid committee checklist to enhance the evaluation and adjudication of bids and ensure compliance with applicable laws and regulations prior to awards on bids.
- Reviewed and updated bid document templates to ensure that the correct template is in place for procurement processes.
- Developed the contract management policy.
- Monthly monitoring of the contract register and communication to end-user departments of all contracts due for expiry.
- A bid probity committee will be implemented to review bids prior to award.

Ekurhuleni Housing Company (EHC)

The EHC accounts for one matter of irregular expenditure amounting to R717 483, made up of (R537 970 + R179 513) and another one of R3 622 in fruitless and wasteful expenditure.

R537 970 was a contravention of the SCM policy, transactions exceeding 15% allowed variation. The EHC entered into an operating lease agreement for office accommodation for a period 5 years since 01 December 2016. The lease expired on

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the 31 October 2021 and was extended for 6 months from 01 November 2021, post the extension the entity entered into a month-to-month agreement on the same terms as the initial lease. The Committee notes the lease was extended pending the completion of SCM processes to acquire new premises. The value of the extension and the month-to-month agreement as of 30 June 2022 exceeded the allowed variation of 15% by R285 534.

Furthermore, the Committee notes this amount was written off by Council resolution dated 03 April 2023. In the 2022/23 financial year, a further amount of R537 970 was incurred from July 2022 to October 2022 as the new lease agreement was signed from November 2022. **The Committee recommends disciplinary action against senior managers responsible. The Committee recommends the irregular expenditure to be written off.**

R179 513 was incurred when the EHC entered into a 12-month contract for security service at the EHC complexes. The contract ended on the 28th of February 2023. The expenditure on the contract exceeded the allowed variation of 15% by R179 513 due to a one-month extension, while there was already an approval for additional scope variation on the contract. The additional scope was relating to access control measures, where the service provider was required to register tenants in the access control system and ensure all access points. The one-month extension did not follow the SCM policy processes. However, value for money was obtained in the safeguarding of complexes. **The Committee recommends disciplinary action against senior manager responsible. The Committee recommends the irregular expenditure to be written off.**

Regarding the fruitless and wasteful expenditure of R3 622 , the Committee notes that this came as a result of an interest incurred in September 2022 and December 2022 on the Liberty accounts for R1 240.16 and R2 381.41, respectively. The interest was due to the late processing of the debit order, which is dependent on the EHC authorisation and loading of the monthly bill on the online liberty system. **The Committee recommends the fruitless and wasteful expenditure be recovered from the senior manager.**

The Committee notes with serious concern the inability of EHC to manage SCM processes related to contracts as well as provident fund and SARS related payments effectively and efficiently and lack of proper planning, a glaring gap in knowledgeable leadership and governance.

Transport Department

The department accounts for one irregular expenditure amounting to R16 814 331, which is made up of the following amounts (R7 565 177 + R9 249 154), relating to the appointment of Selby Construction and Kontinental Engineering.

R7 565 177 was incurred when Selby Construction was appointed in a contravention relating to the staffing profile of the Construction Health and Safety agent. The bidder was required to make a provision of a resume with qualifications of a construction Health and Safety Agent registered with the South African Council for the Project and

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Construction Management Profession (SACPCMP), but the bidder provided a Health and Safety Officer not Health and Safety Agent.

The Committee notes that though the duties are similar in nature, the appointment should have been aligned with the actual requirements of the bid documents. As such, this is a contravention of the SCMP, as well as the Preferential Procurement Regulations 4(2), which state that a tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is unacceptable. The Committee notes that work has already been issued to Selby Construction and would like to recommend that no work should be issued henceforth. The Committee refers this irregular expenditure to IA for further investigation.

Regarding the irregular expenditure of R9 249 154 incurred due to the appointment of Kontinental Engineering, the Committee noted that the company did not price two rates, in two areas in their Bill of Quantities (BOQ). This is a contravention against the supply chain management policy which requires the bidder to price all items in the BOQ. Once more, the Committee reiterates that Preferential Procurement Regulations 4(2) states that a tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender and the department should have applied this in this case.

It is unacceptable that such errors can be made regularly, the departments plan to mitigate such occurrences leaves much to be desired, no clear plan with clear attainable actions and outcomes. The above incidents are the SCM issues the AGSA keeps lamenting on in terms of continuous weakening internal controls within the City. **The Committee refers this irregular expenditure to IA for further investigation.**

Real Estate Department

The Real Estate Department incurred an irregular expenditure of R5 048 756 made up of two amounts (R3 773 830 + R1 274 926) relating to the appointment of Pfukani - Kusile Consulting and Lihuzu Projects Pty Ltd. During the hearing, the department failed to give adequate responses to the 5 standard questions as well as follow up questions. The Committee is gravely concerned by the lack of knowledge of the Section 78 managers present lack of information on these matters. In light of the above, **the Committee refers this matter to the IA for further investigation.**

Human Settlements Department (HSD)

The HSD incurred an irregular expenditure of R1 551 604. However, the department did not attend the scheduled hearing and refused to answer the standard questions to give the Committee clarity as to how this irregular expenditure relates to HSD, whereas when the MPAC made recommendations to Council after the analysis of the IA report which only indicated two departments involved to be Real Estate Department and Customer Relations Management.

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The Committee resolved to send letters to both the City Manager and Mayor, copying the Chair of Chairs plus Speaker with regards to the failure to attend the Public Hearings by HoD and MMC respectively as per applicable rules on the Standing Orders By-Law. Rule 21.3 for the officials while MMC failed to comply with Rule 179. The Committee cannot accept the glaring disregard as this impedes its work and crucial role of oversight on the public accounts of the City. **Therefore, the Committee is unable to make recommendations on this matter and will consider the item and render its recommendations to Council once the matter has been addressed in accordance with the Standing Orders by Law.**

Risk Management Department (RMD)

The RMD incurred an irregular expenditure of R28 682 822 due to irregularities related to purchase orders issued for insurance related to repairs that did not follow prescribed procurement process, as well as the Standard Operating Procedure for Risk Financing. According to the RDM, the process of acquiring repair/replacement quotations was done by the Risk Management Department's claim technicians, and not by user departments, as required by the insurance standard operating procedure. Additionally, the repair/replacement quotations were not sourced from the service providers appointed by the City through approved contracts following the normal bidding process, in contravention of the SCM Policy.

The Committee notes that the RMD, upon this discovery, did due diligence on the purchase orders issued and subsequently the HOD: Risk Management requested, through the City Manager, that an investigation done by the IA department to uncover the full extent of the irregularity, its root causes and to receive recommendations on ways in which control deficiencies can be addressed and report 004FOR2223 was issued to the department. The Committee did not have sufficient time to apply itself on this matter. **Therefore, a report with recommendations will be sent to Council by 30 August 2024.**

LEGAL COMMENTS

The MPAC is a Committee of Council established in terms of Section 79A of the Municipal Structures Act, 117 of 1998, the aforementioned process was also guided by the SALGA/ National Treasury guidelines on the establishment of MPACs. For purposes of guiding the committee in the exercise of its oversight mandate, powers, duties and responsibilities, the municipal council approved the committee's terms of reference.

Clause 4 of the Terms of Reference states the objectives of the committee as to assist council to ensure that:

The municipality fulfils its constitutional mandate of service delivery to the community and achieves the set objectives;

- The municipality is managed in an efficient, effective and ethical, corruption and fraud free manner; and

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- The municipal resources are utilised in an economic manner and are fully accounted for.

Clause 4.2.3.3 of the ToR requires that all reports of the Auditor- General should be submitted to the committee as they become available.

The Standing Orders By-Laws is also relevant in the operations of MPAC as it relates to, inter alia the composition and conduct of the committee meetings, powers of the committee (Rule 121) and reports to Council (Rule 135). In this case Rule 135 finds application in that it requires the committee to submit the committee report on annual reports within 60 days after referral by Council in terms of Rule 122(1), this requirement is in alignment with the provisions of Section 129(1) of the MFMA.

Rule 21(3) of the Standing Orders By-Law is integral in that it requires the City Manager, GCFO and HoDs to attend the council/committee meetings at which the Annual Report of the City is discussed, for the sole purposes of responding to any questions. In instances where there cases of non-attendance which hampers the work of Council/Committee, necessary steps as prescribed in the Standing Orders By-Law, 2023 will be implemented.

The relevant provisions of the MFMA, its regulations and circulars, stated elsewhere in this report are omitted herein to avoid prolixity, however, same must be read as if specifically incorporated in these legal comments.

The Municipal Finance Management Act and the regulations promulgated in accordance therewith is an integral piece of legislation in the committee execution of its functions, the aforementioned Act has as its object to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for-

- a. Ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;
- b. The management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings
- c. Budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government;
- d. Borrowing;
- e. The handling of financial problems in municipalities;
- f. Supply chain management; and
- g. Other financial matters.

It is noted that the Annual Report was referred to the Committee on the 12 March 2024 with an instruction to report back during the Council sitting of April 2024, the Committee could not achieve this deadline as a result of the changes in the Governance of the City which resulted in there being no executive to attend the public hearing and respond to questions, it is submitted that the above is reason enough for Council to favourably consider the non-adherence to timelines provided for submitting the oversight report.

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It is as a result thereof, that this report and its recommendations are supported from a legal perspective.

PUBLIC PARTICIPATION AND SUBMISSIONS

The Committee, through the national and local newspapers as well as local community radio stations, invited the community and all relevant stakeholders to the public hearings. However, there was neither oral nor written submissions from the community and stakeholders on matters discussed.

RECOMMENDATION

The Municipal Public Accounts Committee (MPAC), after consideration of the Annual Report, Inclusive of Annual Financial Statements (AFS) for the 2022/23 financial year and the AGSA's Report, is making the following recommendations to Council;

1. That annual report on the annual report, inclusive of Annual Financial Statements (AFS) for the 2022/23 financial year and the Auditor General South Africa (AGSA) report, **BE NOTED**.
2. That the following matters, as outlined according to the department and brief description be certified to be irrecoverable and **BE WRITTEN OFF** by Council as per section 32 of the MFMA of 2003.

No.	Amount	Department	Description
1	R537 970	EHC	Exceeded 15% of the initial contract value
2	R179 513	EHC	Exceeded 15% of the initial contract value
R717 483		TOTAL	

3. That the following matters, as outlined according to the department and brief description, be certified to **BE RECOVERED** by Council as per section 32 of the MFMA of 2003.

No.	Amount	Department	Description
	R3 622	Ekurhuleni Housing Company	Interests on overdue payments
R3622		TOTAL	

4. That the following incidents, as outlined according to the department and brief description **BE REFERRED** to the IA department for further investigation.

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No.	Amount	Department	Description
1	R101 079 478	ERWAT	SCM Policy contraventions
2	R16 814 331	Transport	Bidder awarded tender without alignment to bid spec
3	R5 048 756	Real Estate	Bidder awarded tender without alignment to bid specifications.
R122 942 565		TOTAL	

5. That the following matters, as outlined according to the department and brief description, **WILL BE DELIBERATED** on and recommendations sent to Council on **30 August 2024**

No.	Amount	Department	Description
1	1 551 604	Human Settlements	Contravention of SCM policy
2	28 682 822	Risk Management	Contravention of SCM policy
R30 234 426		TOTAL	

ACKNOWLEDGEMENTS

The Chairperson of MPAC would like to acknowledge the contribution of all members of the Committee, especially the MPAC administrative staff, for their dedication and hard work in completion of this report. Thank you to the Accounting Officer and her office, Dr Imogen Mashazi and the GCFO Kagiso Lerutla for providing necessary support to the Committee, the Internal Audit Department, for their relentless assurance. The Risk Management Department for the support given to the Committee as well as the AGSA. We thank the City of Ekurhuleni residents, and its organisations for their support.