

**No. 69**

# **MINUTES**

## **OF**

### **ETHEKWINI MUNICIPAL COUNCIL**

Meeting held Friday, 2024-06-28T10:00, through Microsoft Teams,  
streamed from Durban City Hall

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**PRESENT :** Councillors TE Nyawose (Speaker), ZP Myeni (Deputy Mayor), A Abdul, J Annipen, A Beetge, T Biyela, JM Black, WJD Burne, MH Buthelezi, KPM Cele, SB Cele, SP Chebure, J Chetty, CB Dlamini, Z Dzanibe, J Essop, BA Fortein, SN Gabela, SG Gama, GM Gasa, DM Gcabashe, FO Gcabashe, S Govender, SV Govender, Y Govender, BR Gumede, S Gumede, MS Gwala, GJ Hegter, MM Hlengwa, NP Hlomuka, SD Hlongwa, F Ismail, MF Ismail, DM James, M Johnson, , K Khambule, MH Khan, SM Khanyile, NP Khawula, MN Khubisa, KNN Khubone, NL Khuzwayo, ZW Khuzwayo, SNC Khwela, A Kisoona, BG Kubheka, V Kunju, CJ Laing, SW Lushaba, M Lutchmen, WM Luthuli, ME Mabaso, RD Macpherson, MA Madlala, NI Madlala, SR Madlala, RP Maharaj, S Maharaj, HS Makhathini, MW Manqele, JB Maphumulo, NJ Maphumulo, TZ Mathe, SH Mazibuko, WM Mazibuko, M Mbambo, KT Mbhele, RP Mbonambi, BA Mchunu, JL Mchunu, NP Mchunu, SW Mcineka; RL McKenzie, X Mdlazi, FW Mdletshe, DL Mea, K Mhlaba, DPM Mhlongo, GN Mhlongo, SE Mhlongo, T Miya, MB Mjadu, AZ Mkhize, KV Mkhize, MA Mkhize, ME Mkhize, NN Mkhize, NA Mkhize, SM Mkhize, B Mkhwanazi, BR Mngadi, DK Mngadi, E Mngadi, SV Mngadi, MR Mngonyama, ZM Mncwango, DP Mngoma, BV Mngwengwe, S Mnyandu, R Moses, ND Motseke, SB Mpanza, LI Msomi, DV Msweli, SSS Mthethwa, TD Mthethwa, TM Mthethwa, N Munien, J Naidoo, S Nala, V Ncukana, NB Ndlela, AB Ndlovu, MF Ndlovu, PB Ndlovu, PC Ndlovu, NS Ndlovu, TB Ndlovu, V Ndlovu, SG Nene, TH Nene, SB Ngcongco, DB Ngubane, LE Nkomeni, MS Nkosi, DR Nowbuth, XM Nqweniso, DM Nsundwane, PC Ntshangase, NC Ntshayintshayi, N Ntuli, NZ Ntuli, PB Ntuli, B Nxumalo, MR Nxumalo, PH Nxumalo, TS Nxumalo, NN Nyanisa, MV Nzimande-Madlala, NE Patshapen, AE Peterson, AS Phahla, DT Pillay, P Pillay, GDA Pullan, A Rampersad, R Rampersad, BH Shange, LP Shange; MG Shange, IM Shinga, HP Shoji, JN Sibisi, KS Sibisi, WP Sibisi, LC Sikhakhane, BSB Sindane, EL Singh, J Singh, R Singh, S Singh, PS Sishange, CN Sisoka, NI Sithole, BS Sivetye, EG Smith, AD Snyman, ZR Sokhabase, ZA Solomon, I Syed, BB Thusi, ME Thusi, M Thusi, ZN Tshazela, NT Tyelinzima, HM Van Der Ryst, NB Vilakazi, NI Webster, SM Windvogel, C Xaba, C Xulu, NL Xulu, NY Young, M Zondi, N Zondi, ON Zondi-Mthembu, TG Zungu and there being seven (07) vacancies.

**ABSENT :** Councillors R Cloete, BR Gumede, LBS Jali, MA Jokweni, M Maharaj (Leave) FN Majola, TG Makhanya, SP Mfeka, NM Mhlongo, MP Mkhize, TJ Mkhize, TJ Mnguni, ZO Mnomiya, BT Ntuli (Leave-Municipal Business), SK Mzimela, BD Naidoo, SH Ntombela, PW Phewa, T Sabelo, TE Shezi, TV Xulu and JC Van den Berg,

AMAKHOSI

PRESENT : None

AMAKHOSI

ABSENT : Inkosi EB Mlaba, S Mlaba and JJ Shangase.

OFFICIALS

PRESENT : Messrs/Mesdames Dr M Gumede (Acting City Manager), S Mfingwana (Deputy Head: Legal & Compliance), BM Mhlongo (Deputy Head: Office of the Speaker), T Ndlovu (Senior Manager: Secretariat) and Sibongile Kunene (Manager: Council Committees).

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(At the commencement of the meeting 159 Councillors were present, comprising ANC - 71, DA - 41, EFF - 18, IFP - 09, ASA - 03, ABC - 02, ACC - 02, ACDP - 02, AIC - 00, ADEC - 00, APF - 01, ATM - 01, AL JAMA-AH - 00, DLC - 01, JEP - 01, KZNI - 01, MF - 00, MOSA - 00, NFP - 01, PFP - 01, PRM - 01, TA- 01, UIM - 01 and VF Plus - 01).

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1. NOTICE CONVENING THE MEETING

The Acting City Manager, Dr M Gumede, read the notice convening the meeting, as per the statutory requirement.

2. OPENING

With the meeting convening virtually, the Speaker, at the meeting commencement time, gave the opportunity for the Political Parties to ensure their members successfully connect to Microsoft Teams. The meeting thereafter was officially declared open at 10h20.

Accordingly, the Speaker extended a warm welcome to Councillors; Traditional Leaders; Acting City Manager; Deputy City Managers; Heads and Deputy Heads, including other members of the Administration Team present and connecting virtually. A special warm welcome was extended to media and members of the public viewing through social media live streaming.

3. AFRICAN UNION AND NATIONAL ANTHEM

At the request of the Speaker the meeting stood to sing the African Union Anthem and the National Anthem of the Republic of South Africa.

4. OPPORTUNITY FOR PRAYER/MEDITATION

The Speaker requested Council to observe a moment's silence for everyone to meditate.

5. OFFICIAL ANNOUNCEMENTS

Presenting the official announcements, the Speaker advised that this was a continuation meeting to consider items that were deferred at the last Council meeting held 2024-06-25, due to time constraints.

He thereafter welcomed new Councillors that have joined the Municipality, following the vacancies declared, with the resignation of former Councillor S Ramsamy of MOSA, who has since been replaced by Councillor R Singh, as well as former Councillor VG Reddy of the ADEC, now replaced by Councillor N Patshapen.

In view of the meeting convening through Microsoft Teams, Councillors were encouraged to ensure that their microphones are muted when not speaking. Councillors further encouraged to conduct themselves with dignity and decency during the Council proceedings, and in compliant with the expectations in terms of Code of Conduct for Councillors.

Councillors were further reminded to complete the Attendance Register posted on the Microsoft Teams chat feature.

6. SPEAKER'S REPORT

There was no report for consideration at this meeting.

7. APPLICATIONS FOR LEAVE OF ABSENCE

**RESOLVED:**

That the following Councillors be granted leave of absence as indicated below:

**COUNCILLORS**

Councillor M Brauteseth	:	2024-06-28 (Indisposed)
Councillor G Govender	:	2024-06-28 (Indisposed)
Councillor M Maharaj	:	2024-06-28 (Personal Commitments)
Councillor MF Ismail	:	2024-06-28 (To leave at 12h00)
Councillor K Mhlaba	:	2024-06-28 (Indisposed)
Councillor T Mohammed	:	2024-06-28 (To leave at 12h00)
Councillor OB Mvubu	:	2024-06-28 (Indisposed)
Councillor S Sewshanker	:	2024-06-28 (Indisposed)
Councillor A Shaheed	:	2024-06-28 (To leave at 12h00)
Councillor AAK Paruk	:	2024-06-28 (To leave at 12h00)
Councillor T Xuma	:	2024-06-28 (Personal Commitments)

8. DECLARATION OF INTEREST

It was noted that none of the Members had declared interest on matters appearing on the Agenda.

9. CONFIRMATION OF MINUTES

It was noted that in view of this being a continuation meeting, there were no Minutes submitted for consideration.

10. MATTERS ARISING

Not applicable, in view of this being a continuation meeting.

11. QUESTIONS IN TERMS OF SECTION 27 OF THE RULES OF ORDER

Not applicable, in view of this being a continuation meeting.

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*At this stage of the proceedings, the Action SA requested the Speaker to provide clarity on the news circulating regarding the KwaZulu-Natal Provincial Department of Co-operative Governance and Traditional Affairs having imposed Section 154 of the Constitution of the Republic of South Africa to eThekweni Municipality. In response, the Speaker advised that Councillors as well as the members of the public were going to be formally briefed on the matter at an appropriate time.*

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(The Deputy Mayor, Councillor ZP Myeni, presented Third Report of the Executive Committee)

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**THIRD REPORT OF THE EXECUTIVE COMMITTEE**

(Meeting held 2024-06-24)

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PRESENT : Executive Committee Members ZP Myeni (Deputy Mayor and Chairperson), A Beetge, Y Govender; NI Madlala, TM Mthethwa, OB Mvubu, MS Nkosi, ZR Sokhabase and there being one (01) vacancy.

ABSENT : Executive Committee Member BT Ntuli (Leave- Municipal Business).

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1. APPROVAL OF REVISED 2024-2025 MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK (21/5/1)

(Page 214)

The Committee noted a statutory requirement to review the Municipal Spatial Development Framework (SDF) on an annual basis. The SDF is a key land use management tool which informs strategic choices and interventions, especially regarding the future growth and development within the Municipality. This has an important role to play in guiding and managing Municipal decisions relating to the use, development and planning of land. It is a legislative requirement and should resonate with the national and provincial Spatial Development Frameworks and priorities.

In noting the necessary compliance requirements,

COMMITTEE RECOMMENDS:

- 1.1 That the revised Municipal Spatial Development Framework (SDF) 2024-2025, submitted in line with the requirements of the Local Government: Municipal Systems Act No. 32 of 2000, and the Spatial Planning and Land Use Management Act 16 of 2013, be adopted, it being recorded that the public and stakeholder comments have been taken into account when finalising the Spatial Development Framework.
- 1.2 That, it be noted that upon adoption by the Council, the revised Municipal SDF 2024-2025 will be submitted to the MEC for Cooperative Governance and Traditional Affairs, and a notice of the Council resolution to adopt same will be placed in the KZN Provincial Gazette, in terms of Section 20(1) of the Spatial Planning and Land Use Management Act No. 16 of 2013, in fulfilment of the legislative requirements.

**ADOPTED.**

*With a comment that consideration be given to prioritizing land use for establishments and/or facilities promoting social and moral regeneration, including religious sites; drugs rehabilitation centres; old age homes etc.*

2. NOTING REASONS FOR PROPOSED AMENDMENT TO THE SCOPE OF CLEANING CONTRACT WS.7377, IN TERMS OF SECTION 116 (3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003, TO INCLUDE KWADABEKA & KLAARWATER COMMUNITY RESIDENTIAL UNITS (24/3/6)

(Page 303)

The Cleansing and Solid Waste Unit is currently facing difficulties in maintaining cleanliness within the two (02) Community Residential Units (CRUs), Klaarwater and KwaDabeka. This is due to contract expiry. In order to ensure uninterrupted service delivery to the communities affected, the Unit opted to utilize its internal resources and engaged beneficiaries of the Expanded Public Works Programme.

However, this arrangement resulted in a significant increase in overtime costs, which ultimately became unsustainable. The Cleansing and Solid Waste Unit has Contract WS.7377 in place for domestic service, refuse collection, streets cleaning and litter picking within the eThekweni Municipal area.

This contract also covers the Inner-West Region. Therefore, it is considered to make economic sense to engage and amend its scope to cover the KwaDabeka and the Klaarwater CRUs.

It is against this background that a submission is made advising of the intention to amend the cleaning Contract WS.7377, in terms of Section 116(3) of the MFMA, and amending the scope of contract to include the two CRUs in question.

Accordingly,

COMMITTEE RECOMMENDS:

- 2.1 That Council notes the intention to use Section 116(3) of the Municipal Finance Management Act (MFMA), to amend the scope of the existing Cleaning Contract WS.7377 for domestic service, refuse collection, streets cleaning and litter picking within the eThekweni Municipal area, to incorporate the servicing of Klaarwater and KwaDabeka Community Residential Units (CRUs) for the remaining period until the contract expiry on 30 June 2026, in view of the service in the aforesaid CRUs halted due to contract expiry and, as part of overtime costs management in relation to internal resources that were utilised as an interim arrangement.
- 2.2 That Council notes the intention to amend the Contract referred to in .1 above was advertised accordingly, to solicit the views of the public, in line with the statutory requirements, and there were no objections received in this regard.
- 2.3 That Council notes that contract authority in the amount of R102 024 890.97 (One Hundred and Two Million and Twenty Four Thousand Eight Hundred and Ninety Rand Ninety Seven Cents), excluding VAT, has increased by R18 323 393.90 (Eighteen Million Three Hundred and Twenty Three Thousand Three Hundred and Ninety Three Rand Ninety Cents), excluding VAT, to a total revised contract authority of R120 348 284.80 (One Hundred and Twenty Million Three Hundred and Forty Eight Thousand Two Hundred and Eighty Four Rand Eighty Cents), excluding VAT.

**Financial Implications (Excluding VAT):**

The authorized contract value is as follows:

Contract No.	Original Contract Authority (excl. VAT)	Contingencies and Escalation (excl. VAT)	Original Contract Period	Additional Authority Required (excl. VAT)	Revised Contract Authority (excl. VAT)
WS.7377	R88 717 296.48	R13 307 594.49	2023-07-01 to 2026-06-31	R18 323 393.90	R120 348 284. 80

- (i) The total additional authority value is 18% above the original estimate.
- (ii) Required Additional Authority Amount: R18 323 393.90 (Excl. VAT)
- (iii) FC NUMBER is 322-366-066
- (iv) The Unit has sufficient budget to cover the additional costs in:
- (v) (Vote No: 79630.10810.11.11300. 0000.MRC01.0010.

**NOTED.**

*With a recommendation that the Cleansing and Solid Waste Unit should consider conducting an empowerment programme to inculcate in the Community Residential Units residents a sense of caring for their environment thereby maintaining general cleanliness, in addition to the cleaning services to be rendered by the aforesaid Unit.*

3. **ADOPTION OF THE REVISED ETHEKWINI MUNICIPAL LAND USE SCHEME COMPRISING FIVE SUB-SCHEMES: CENTRAL, NORTH, SOUTH, INNER WEST AND OUTER WEST (21/7/R)**

(Page 392)

The Annual Land Use Scheme review seeks to respond to planning trends highlighted during the year that need to be included to keep the scheme relevant and also to incorporate recommendations arising from the planning projects undertaken.

The Land Use Scheme under discussion has been amended to incorporate the categories outlined below:

**A: Updating Land Use Definitions:**

Truck Depot and Truck Stop

The amendment is necessary to provide a clear understanding of land uses that are permitted within these definitions especially, regarding freight vehicles. The City is currently experiencing backlogs and traffic congestion within areas such as Durban Harbor, Cato Ridge, Shongweni, Pinetown and Durban South. The amendment will permit truck staging areas, inclusive of stuffing and destuffing of goods, and allied uses, to reduce the congestion on the main transportation routes, this being along M4, M7, M19, N3 and N2 Provincial and National corridors.

**B: Streamlining Processes:**

This is to determine an approach to permit an increase in Floor Area, Coverage and Height and Amendment to Telecommunication Infrastructure (Cell Mast applications). The purpose of the amendment is to provide a clear understanding of how to apply for an increase in Floor Area, Coverage and Height or a combination, inclusive of the calculations that are required, to accommodate roof top antennae.

This will simplify the approval process while still complying with legislation for Telecommunication Infrastructure (cell masts applications) and the Provincial Norms and Standards.

**C: Promoting Local Economic Development:**

Health and Beauty Clinic:

This proposed amendment to the Scheme is in response to local economic and land uses trends. Currently a Health and Beauty Clinic is only by Special Consent, but many are small operations that can be classified as Home Businesses, which only require Consent.

The Scheme will be amended to permit the owner or occupier of a Dwelling House to operate a Health and Beauty in three different formats with regards to the size of the operation as the current provision is not flexible. This in turn will promote employment opportunities for the operator and public and promote local economic development.

**D: Implementing of Local Area Plans:**

This review to cater for Brickfield, Sparks and Randles Project. This an area that has been under development pressure for the past 15-20 years, especially within the mixed use and medical precinct. The amendment is necessary to provide for developments rights to be updated and increase to permit a mix of land-uses, promote greater employment opportunities and generate a higher rates base for the City. This would make this precinct more responsive to the demand and become sustainable.

The Committee appreciated proactive measures to facilitate appropriate development and strategically growing the Municipality to realise its vision of becoming a caring City.

On this basis,

**COMMITTEE RECOMMENDS:**

- 3.1 That in terms of Section 19 of the eThekweni Municipality Planning and Land Use Management Second Amendment By-Law, 2021 (Notice 95 of 2021) and the Spatial Planning and Land Use Management Act No. 16 of 2013; the Annual Review of the eThekweni Municipal Land Use Scheme, comprising five Planning Regions, namely, the Central, North, South, Inner West and the Outer West region and all the land use regulations pertaining to these areas be adopted for the following reasons:
  - 3.1.1 The Annual Scheme Review ensures compliance with the Spatial Planning and Land Use Management Act No. 16 of 2013, in that it gives effect to the development principles, as described in Chapter 2, Clause 7 (a), (b), (c), (d) and (e); and Chapter 5, Land Use Management, Clause 24 (1) of the Spatial Planning and Land Use Management Act No 16 of 2013.
  - 3.1.2 The reviewed Land Use Scheme is in alignment with the Spatial Development Framework of the Municipality and further refinements will be made on an ongoing basis.
  - 3.1.3 This Annual Scheme Review responds to the ever-changing development pressures and trends within the Municipality.

**ADOPTED.**

- 4. NOTING 2024/2025 INDIVIDUAL PERFORMANCE AGREEMENTS & INDIVIDUAL PERFORMANCE PLANS OF THE CITY MANAGER AND THE DEPUTY CITY MANAGERS (4/6/1)

(Page 452)

As per the statutory requirement, the 2024/2025 Performance Agreements and the Individual Performance Plans of the Managers appointed in terms of Section 54A and Section 56 of the Local Government: Municipal Systems Act No 32 of 2000, is submitted for noting purposes.

In accordance with Section 53(3) of the Local Government: Municipal Finance Management Act No. 56 of 2003, the Agreements must be made public no later than fourteen (14) days after the approval of the Service Delivery and Budget Implementation Plan (SDBIP).

Therefore, once the matter has served before the Municipal Council, the Agreements will be submitted to the MEC for Cooperative Governance and Traditional Affairs for informational purposes.

The Agreements pertains to individual Managers as per their respective areas of speciality aligned to the Municipal Clusters falling under their jurisdiction. Therefore, in addition to high level strategic objectives, the agreements focus on key service delivery mandate aligned to the fulfilment of the objects of the Municipality, as enshrined in Section 152 of the Constitution of the Republic of South Africa.



Accordingly,

**COMMITTEE RECOMMENDS:**

- 4.1 That Council notes the 2024-2025 Individual Performance Agreements and the Individual Performance Plans of the City Manager and the Deputy City Managers, appointed in terms of Section 54A and Section 56 of the Local Government: Municipal Systems Act No. 32 of 2000, with the Agreements developed as per the provisions of Section 53(3)(b) of the Local Government: Municipal Finance Management Act No. 56 of 2003, and the Agreements submitted relate to the Managers reflected in the table below:

No.	Name	Designation
1.	Mr. Bongumusa Mbhele	City Manager: eThekweni Municipality
2.	Dr Sandile Mnguni	Deputy City Manager: Finance
3.	Mr. Sipho Cele	Deputy City Manager: Governance & International Relations
4.	Dr Musa Gumede	Deputy City Manager: Community & Emergency Services
5.	Ms Kim Makhathini	Deputy City Manager: Corporate & Human Capital
6.	Mr. Sibusiso Makhanya	Deputy City Manager: Trading Services
7.	Mr. Lawrence Pato	Acting Deputy City Manager: Human Settlements Engineering and Transport
8.	Mr. George Mohlakoana	Acting Chief Operations Officer

- 4.2 That upon the Council noting the agreements as per .1 above, the documents will be submitted to the MEC for Cooperative Governance and Traditional Affairs for information purposes.

**NOTED.**

5. APPROVAL OF 2024-2025 SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (2/10/1/1/9)

(Page 595)

The 2024-25 Service Delivery and Budget Implementation Plan (SDBIP) is submitted in line with the requirements of Section 53(1) of the Municipal Finance Management Act No. 56 of 2003, which prescribes the adoption of the SDBIP within twenty-eight (28) days upon the approval of the annual budget.

It will be recalled that the annual budget was approved 03 May 2024, and the SDBIP is submitted as part of the necessary compliance requirements.

Accordingly,

**COMMITTEE RECOMMENDS:**

That in terms of Section 53(1) of the Local Government: Municipal Finance Management Act No. 56 of 2003, the final eThekweni Municipality (including its entities) Service Delivery and Budget Implementation Plan (SDBIP) for the 2024/2025 financial year, with a breakdown per the respective Clusters contained in the City Manager's report dated 2024-05-23, be approved, and with the SDBIP document also circulated separately for ease of reference.

**ADOPTED.**

**Noting abstention by the DA**

6. NOTING INTENTION TO AMEND, IN TERMS OF SECTION 116(3) OF THE MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003, CONTRACT NO. 1J-24508: FOR THE PROVISION OF ON-ROAD AUTOMOTIVE FUEL, WITH AN AUTOMATED FUELING SOLUTION (8/3/1/R)

(Laid-on-Table)

The City Fleet Unit is in a process to award a long-term contract in terms of Section 33 of the Local Government: Municipal Finance Management Act No. 56 of 2003. Currently, the Unit operates through a 12-month contract, expiring 31 July 2024, to supply fuel for the Municipal vehicles.

In view of the Section 33 award pending, and with this award including installation of a tracking and monitoring device into the vehicles, which process will take approximately between 3-6 months, the Unit considers it imperative to then request to amend the existing short-term contract for a further 12-month period. The Committee noted the rationale behind amending Contract No. 1J-24508, and accordingly,

**COMMITTEE RECOMMENDS:**

- 6.1 That Council notes reasons for proposed amendments to Contract No. 1J-24508, in terms of Section 116(3)(a) and (b) of the Municipal Finance Management Act (MFMA) No. 56 of 2003, for the Provision of On-Road Automotive Fuel, with an automated fueling solution, for a further period of twelve (12) months, pending the finalisation of a long-term contract in terms of Section 33 of the MFMA, which process is currently underway.
- 6.2 That Council notes that there were no comments or objections received from the public or any other interested parties in terms of the public advert that closed 14 June 2024.

**Financial Authority:**

Financial authority has been allocated and approved as follows:

Budget	Amount Excl. VAT	Vote Number
Initial Contract Value	R484 347 900.00	Various 14110 10 12120 0000 MRC01 0010
Additional Amount	R480 000 000.00	
<b>Total Amount</b>	<b>R964 347 900.00</b>	

*The Action SA sought clarity regarding the contract period and whether it was permissible to extend a contract previously awarded using Section 36 of the Supply Chain Management Regulations. Clarity was thereafter provided that this extension was permissible considering that Section 36 is one of the supply chain management processes within the SCM Regulations. Management further advised that this contract extension is required to bridge a gap thereby continuing providing service whilst awaiting finalization of processes with respect to a new tender currently being processed, which has a vehicle tracking feature to be installed for the duration of approximately six (06) months, prior to becoming officially active.*

*In concluding discussion, the Speaker advised that the validity of the proposed amendment is eventually assessed by the Bid Evaluation Committee prior to making a decision whether to amend or not amend the contract. This giving certainty that due processes are done before making a decision on matters of this nature.*

**NOTED.**

7. NOTING OF REASONS TO AMEND CONTRACT NO. WS 7154 IN TERMS OF SECTION 116(3) OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003 FOR DESIGN, SUPPLY AND INSTALLATION OF ALTERNATIVE ON-SITE SANITATION TECHNOLOGY TO REPLACE PIT TOILETS IN THE ETHEKWINI MUNICIPAL AREA (22/2/R).

(Laid-on-Table)

eThekweni Municipality is currently facing significant backlog in the provision of acceptable sanitation, mainly, to previously disadvantaged and marginalized communities. This is due to lack of bulk sewer infrastructure and funding constraints. Therefore, the most viable option is to install onsite infrastructure, inclusive of urine diversion toilets and any other proven form of on-site sanitation technology.

The Water and Sanitation Unit has contract in place, Contract WS7154, for design, supply and installation of alternative on-site sanitation technology to replace pit toilets within the eThekweni Municipal area. A total of seven thousand three hundred and fifty-eight units (7 358) were allocated to three (03) service providers for the provision of on-site sanitation technology. Of the 7 358 units, a number of five thousand eight hundred and twenty-six (5 826) units have been completed and vetted accordingly for quality purposes, and this representing 79.18% achievement in terms of progress.

Thereafter, delays were encountered in the implementation of this program, due to storm disasters that have caused severe damages, and the consequential rain damages drastically impacting progress in the installation of the alternative solution units. The Unit has also had to deal with a number of additional requests for this technology, which led to the Council approving additional funding for this purpose.

Due to the delays, a request is therefore submitted to amend the period of contract for a further 12-month period to enable completion of outstanding six thousand three hundred (6 300) units, and to find time to utilise the Council-approved additional budget. The existing contract expires 30 June 2024.

In view thereof,

**COMMITTEE RECOMMENDS:**

- 7.1 That Council notes the reasons for intention to amend Contract No. WS7154, in terms of Section 116(3) of the Local Government: Municipal Finance Management Act No. 56 of 2003, for design, supply and installation of alternative on-site sanitation technology, for a further period of 12 months, expiring 30 June 2025, to replace pit toilets within the eThekweni Municipal area, and the reasons for the delays incurred in this project including:
- (i) The rain and the declared storm disaster having an impact on project progress.
  - (ii) The additional budget approved by Council in May 2024 for more material (R100 million) which will require more time to complete the new Units to be allocated, estimated at +- 6300 Units.
  - (iii) Time required for an assessment of completed installed Units.
  - (iv) Time required for a new procurement process in order to improve and standardize the design specification of the Alternative Sanitation Solution to be provided as per customer satisfaction, it being noted that the current technologies differ in terms of the design specification which resulted in different unit prices, varying from R24 000.00 (Twenty Four Thousand Rand) to R34 000.00 (Thirty Four Thousand Rand) per unit, and the variance being a result of one solution having two pits, whereas the others had one.
- 7.2 The Council notes the public participation process advertised through the media, in terms of Section 116(3) of the MFMA, as part of achieving compliance requirements pertaining to the public participation process, with feedback thereon to be reported to the Council.
- 7.3 The financial implications of the proposed amendment are that the contract authority of R450 000 000.00 (Four Hundred and Fifty Million Rand), excluding VAT, be increased by 20%, i.e. R90 000 000.00 (Ninety Million Rand), excluding VAT, to then revise contract authority to R540 000 000.00 (Five Hundred and Forty Million Rand), excluding VAT, and the contract be amended by a further twelve (12) month period to then expire 30 June 2025.

**Financial:**

The proposed amendments will have financial implications on contract no. WS7154 as indicated below:  
Summary of the Financial Status of Contract No. WS 7154

Item No.	Description	Amount (Excl. VAT)
1	Average Net Unit Cost (Excluding VAT)	R28 000.00
2	Allowance for Contingencies (10%)	R0.00
3	Allowance for Escalation	R12 000 000.00
4	Current Financial Authority	R450 000,000.00
5	Payments to date	R289 000 000.00
6	Add: Estimated increase in Contract Budget (20%)	R90 000 000.00
7	Revised Contract Financial Authority	R540 000 000.00

Financial Year	Budget Provision	Comment
2024/2025	R48 000 000.00	Provided
Project No. Y8792		

**NOTED.**

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(At this stage of the proceedings, Councillor CB Dlamini, in his capacity as the Deputy Chairperson of the Municipal Public Accounts Committee, presented First Report of the Committee)

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**REPORT OF THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE**

**FIRST REPORT OF THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE**

1. UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL (UIFW) EXPENDITURE: MULTIPLE FINANCIAL YEARS  
(Council Agenda 2024-06-25)

**BACKGROUND**

Section 32(2) of the MFMA provides that a Municipality must recover UIFW expenditure, except where the unauthorised expenditure is regularized through an adjustments budget, or where the expenditure is deemed to be irrecoverable following an investigation into the expenditure incurred.

The section reads as follows:

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

- (a) in the case of unauthorised expenditure, is—
  - (i) authorised in an adjustments 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 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.”

**ANALYSIS OF UIFW CASES FINALISED**

In line with National Treasury’s Municipal Finance Management Act Circular No. 68 and as outlined in Regulation 74 of the Municipal Budgets and Reporting Regulations, the process outlined below, was followed:

- A report was prepared by the Unit that incurred irregular expenditure after investigation by the said Unit. The report disclosed the deviation from Supply Chain Management Policy, the reasons for the deviation and the value of the expenditure.
- The report together with the supporting documents were submitted to the Internal Control Unit for review and thereafter were submitted to the Bid Adjudication Committee for noting purposes.
- The Internal Control Unit reviewed and applied its mind on the report and considered whether there was any value for money obtained by the municipality or any losses suffered by the municipality due to non-compliance detected using the following questions:
  - (a) The nature of the irregularity
  - (b) Whether or not the contracts followed the SCM public tender process
  - (c) Whether or not the Unit Head had certified that value for money was received
  - (d) Whether or not the Unit Head has confirmed that goods or services were delivered as per contract specifications and initial contract rates
  - (e) Whether corrective action needed to be undertaken
  - (f) Whether preventative measures were required to be implemented and the status of such actions; where deemed necessary
- Irregularities were identified through investigations by the City Integrity & Investigations Unit.

Irregular, Fruitless & Wasteful expenditure totaling **R24,866,995.00** (Twenty-four million eight hundred sixty-six thousand nine hundred ninety-five rands) was identified as follows:

Source	Annexure	Amount
City Integrity & Investigations Unit	A	R24,133,970.00
	B	R733,025.00
<b>TOTAL</b>		<b>R24,866,995.00</b>

Furthermore, Fruitless and Wasteful expenditure amounting to **R733,025.00** (Seven hundred thirty-three thousand twenty-five hundred rands) was deemed recoverable as a result of investigations undertaken by the City Integrity and Investigations Unit.

Whilst we believe that officials should be held responsible for incurring UIFW expenditure and believe that the necessary disciplinary proceedings should be instituted in this regard, it is unfortunately not our responsibility to undertake such actions. It is the sole responsibility of the Accounting Officer and his management; with the Financial Misconduct Disciplinary Board playing a role in instances of financial misconduct. However, as part of our oversight duties we receive quarterly reports from the Financial Misconduct Disciplinary Board and the team, that is led by the Deputy City Manager: Corporate and Human Capital, to monitor the implementation of consequence management in the municipality.

Having duly considered and deliberated on the IFW expenditure concerned,

**COMMITTEE RECOMMENDS:**

- 1.1 That in compliance with Section 32(2) of the Municipal Finance Management Act (MFMA), irregular, fruitless and wasteful expenditure totaling **R24,866,995.00** (Twenty-four million eight hundred sixty-six thousand nine hundred ninety-five rands) as detailed in “**Annexure A** of this report be certified as irrecoverable and written-off by Council based on the outcomes of the investigations of such expenditure.
- 1.2 That in compliance with Section 32(2) of the Municipal Finance Management Act (MFMA), fruitless and wasteful expenditure totaling **R733 025.00** (Seven Hundred and Thirty-Three Thousand and Twenty-Five Rand), as detailed in **Annexure B** of this report be recovered from the relevant or former officials of the Municipality as well as entities and service providers.
- 1.3 That it be noted that any consequence management recommendations will be dealt with in accordance with the Council Policy in relation to financial misconduct and oversight by the Financial Misconduct Disciplinary Board.
- 1.4 *That reports on the investigations conducted by the City Integrity and Investigations Unit be made available to the Municipal Council for accountability purposes.*

*In his presentation the MPAC Chairperson advised the Council that due processes had been followed to arrive at the decision to write-off an amount deemed irrecoverable. That a decision in this regard has been made as informed by the outcome of an investigation conducted by the City Integrity and Investigations Unit (CIU); Financial Misconduct Disciplinary Board; and thereafter the MPAC concluding on the matter. He confirmed that consequence management is being implemented where required, drawing attention to the amount contained in this Report and to be recovered from the officials implicated.*

**AMENDMENT**

**In terms of Rule 20 (4) of the Rules of Order By-Law, as amended, Councillor Z Mncwango and unanimously supported by the Council, moved for the amendment of the recommendations to include recommendation 1.4 as follows:**

*“That reports on the investigations conducted by the City Integrity and Investigations Unit be made available to the Municipal Council for accountability purposes.”*

**The motion to amend was unanimously, CARRIED.**

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However, it later appeared that some Councillors had connectivity issues and therefore the inability to comment on this amendment in time. Those Councillors then queried the legality of this amendment given that the investigations Reports carry evidence that might be required as cases unfold in other structures, and with this having potential to compromise the process.

Whilst noting the submission, the Speaker indicated the decision has already been taken on the proposed amendments. He then recommended that this amendment be unpacked further at the MPAC level, thereafter, feedback provided to the Council to determine a way forward.

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*Reverting to the substantive matter, the IFP reiterated concerns regarding what it perceived to be lack of implementing consequence management thus continued submissions for the Council to write-off huge amounts of irregular expenditure. The consistent absence of the MPAC Chairperson to present the Committee Reports was also questioned by the IFP.*

*Meanwhile, the DA, prior to commenting on the matter, supported the IFP and further drew the attention to the consistent non-availability of the MPAC Chairperson to present the Committee Reports, and with the Deputy Chairperson always taking responsibility for such. That the Council should consider evaluating the performance of the MPAC Chairperson under this circumstance.*

*Thereafter, the work done by the MPAC was commended, but the delays in finalizing cases was considered compromising work of this Committee. That, delaying cases render these being declared prescribed preventing the Committee from acting on the matter. It was reiterated that the CIU be strengthened to increase capacity to match the Unit's workload.*

**Thereafter, the Report was ADOPTED by the majority, as amended, and noting abstention by the EFF.**

*Subject to adding recommendation 1.4 recorded in italics. Further, that the Municipal Public Accounts Committee should review competence of this amendment to achieve certainty on the legality of such to then confirm whether the CIU reports can be made available to the Municipal Council.*

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(At this stage of the proceedings, Councillor CB Dlamini, in his capacity as the Deputy Chairperson of the Municipal Public Accounts Committee, presented  
Second Report of the Committee).

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## **SECOND REPORT OF THE MUNICIPAL PUBLIC ACCOUNTS COMMITTEE**

2. **UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE FROM PERIOD 1<sup>ST</sup> JULY 2023 TO 31<sup>ST</sup> MARCH 2024: LOCAL CONTENT**  
(Council Supplementary Agenda 2024-06-25)

### **BACKGROUND**

Section 32(2) of the MFMA provides that a Municipality must recover Unauthorised, Irregular, Fruitless and Wasteful (UIFW) expenditure, except where the unauthorised expenditure is regularised through an adjustments budget, or where the expenditure is deemed to be irrecoverable following an investigation into the expenditure incurred.

The section reads as follows:

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

- (a) in the case of unauthorised expenditure, is—
  - (i) authorised in an adjustments 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 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.”

### ANALYSIS OF UIFW CASES FINALISED

In line with National Treasury’s Municipal Finance Management Act Circular No. 68 and as outlined in Regulation 74 of the Municipal Budgets and Reporting Regulations, the process outlined below, was followed:

- A report was prepared by the Unit that incurred irregular expenditure after investigation by the said Unit. The report disclosed the deviation from Supply Chain Management Policy, the reasons for the deviation and the value of the expenditure.
- The report together with the supporting documents were submitted to the Internal Control Unit for review and thereafter were submitted to the Bid Adjudication Committee for noting purposes.
- The Internal Control Unit reviewed and applied its mind on the report and considered whether there was any value for money obtained by the municipality or any losses suffered by the municipality due to non-compliance detected using the following questions:
  - (a) The nature of the irregularity
  - (b) Whether or not the contracts followed the SCM public tender process
  - (c) Whether or not the Unit Head had certified that value for money was received
  - (d) Whether or not the Unit Head has confirmed that goods or services were delivered as per contract specifications and initial contract rates
  - (e) Whether corrective action needed to be undertaken
  - (f) Whether preventative measures were required to be implemented and the status of such actions; where deemed necessary

The Office of the Auditor-General South Africa, during an audit, identified non-compliance with Regulation 8(1) and (2) of the Preferential Procurement Regulations (PPR) 2017. The Regulations required an organ of state to, in the case of a designated sector, advertise the invitation to tender with a specification condition that only locally produced goods or locally manufactured goods, meeting a stipulated minimum threshold for local production and content would be considered.

We noted that 85 contracts had been awarded by the Municipality in contravention of local content provisions. The details of the contracts are reflected in **Annexure A** attached hereto. The contracts have a total value of **R931,345,188.13** (Nine hundred thirty-one million three hundred forty-five thousand one hundred eighty-eight rands and thirteen cents). All these contracts were acquired through public tender processes.

It should be noted that we previously supported a write-off of R495,377,082.01 (four hundred ninety-five million three hundred seventy-seven thousand eighty-two rands and one cent) relative to Local Content in the past financial year. In relation thereto, we further supported a write off of R2,030,763,586.25 (Two billion, thirty million, seven hundred sixty-three thousand, five hundred eighty-six rands and twenty-five cents) in February 2024. As the contracts were deemed irregular by the Auditor-General from inception, all expenditure incurred until the contracts end will be irregular.

We interviewed the Acting Head: Supply Chain Management to establish the root cause of the non-compliance and we have received the assurance that there was no breach of the Municipal Finance Management Act. It has been acknowledged that the root cause of the issue was due to oversight by Line Departments, Supply Chain Management and Bid Committees and that this was a mistake of a technical nature.

In addition, we have been informed that Preferential Procurement Regulations 2017 were repealed on 2023-01-15 as these Regulations were deemed unconstitutional. The Regulations were replaced by Preferential Procurement Regulations 2023. Local Content is no longer applicable in terms of these new Regulations. State Organs can now decide how they address Local Production and Local Content.

It should also be noted that some contracts have run their course and have reached their end dates. However, active contracts cannot be terminated as service providers have complied with all their contractual obligations. These are contracts that will continue to incur irregular expenditure until the contractual period ends. Many other tenders which were still in the procurement processes were not awarded, thus preventing irregular expenditure.

Having duly considered and deliberated on the irregular expenditure concerned,

#### COMMITTEE RECOMMENDS:

- 2.1 That, having examined the reasons provided for the Irregular Expenditure incurred on various contracts due to non-compliance with Local Content requirements, the amount of **R931,345,188.13** (Nine hundred thirty-one million three hundred forty-five thousand one hundred eighty-eight rands and thirteen cents) be written off on the basis that the matter be submitted for consequence management processes to be instituted.
- 2.2 That it be noted that any consequence management recommendations will be dealt with in accordance with the Council Policy in relation to financial misconduct and oversight by the Financial Misconduct Disciplinary Board.

*The Deputy Chairperson reported that this is the irregular expenditure incurred as a result of non-compliance with local content during tender award. He confirmed that the Committee was still to be furnished with a Report on further processes in relation to this aspect.*

*The DA pointed out the request to write off this irregular expenditure was concerning in view of officials having failed to comply with the legislation relative to local content. That the admission by Management at the MPAC level that an oversight has occurred in certain line departments was even more concerning. It being advised that the Auditor-General has already raised this aspect as a finding in its previous audit opinions.*

*The IFP reiterated its concern on what appears to be no implementation of consequence management. Also joining debate, the ActionSA stated that any non-compliance with procedures or legislation could not be justified. They also expressed concern regarding the pattern on the UIFWE, with billion rands written off but no evidence of accountability at the level of the City Manager and the Deputy City Managers. That, billions rands are written off, but on the other hand the Council continues raising long-term loans.*

*In support of the recommendations, the ANC indicated that write-off processes were catered for within the relevant prescripts, and that a need exists for the Municipality to ensure prudent financial management and the cleaning of the accounting books. Thereafter, the leadership provided by the Deputy Chairperson, as well as Councillor Fortein at times, to ensure work of the MPAC continues as per the statutory requirement, was commended. The Council was also informed that consequence management was implemented at various levels, depending on the nature of cases at hand.*

*The Council's attention was drawn to the fact that the Financial Misconduct Disciplinary Board also submits Reports to the Council, which Reports reflect officials of the Municipal Units that are due to undergo disciplinary processes. Mention being made that there is a Report due to be submitted to the Council which has been withheld as a result of the decision taken to prioritize certain items based on the volume of activities which were to be undertaken by the Council and requiring sufficient time. That, such Report will therefore serve at the next Council meeting.*

As some Councillors were not in support of the recommendations, the matter was put to the vote. With 172 Councillors present, 105 Councillors (ANC-78, EFF-18, ABC-02, AIC-01, APF-01, ATM-01, JEP-01, KZNI-01, NFP-01, PFP-01, PRM-01 and TA-01) voted in support of the recommendations, 5 Councillors (ActionSA-03, UIM-01 and VF PLUS-01) voted against the recommendations and 62 Councillors (DA-47, IFP-12, ACDP-02 and DLC-01) abstained.

**ADOPTED, by the majority vote.**

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## **REPORT OF COMMITTEE DECISIONS**

Decisions of Committees reflected below have been reported to the Council by way of circulating Minutes of such Committees to each Member of the Council:-

1. **ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE**

Meeting held on : 2024-03-20

2. **EXECUTIVE COMMITTEE**

Meetings held on : 2024-03-12  
: 2024-03-18 (Ordinary)  
: 2024-03-18 (Special)  
: 2024-03-22  
: 2024-03-26

3. FINANCE COMMITTEE

Meeting held on : 2024-03-20

4. GOVERNANCE AND HUMAN RESOURCES COMMITTEE

Meeting held on : 2024-04-18

5. HUMAN SETTLEMENTS AND INFRASTRUCTURE COMMITTEE

Meeting held on : 2024-03-20

6. LOCAL LABOUR FORUM: TREASURY AND OFFICE OF THE CITY MANAGER

Meetings held on : 2024-02-22  
: 2024-03-13  
: 2024-04-12

7. SECURITY AND EMERGENCY SERVICES COMMITTEE

Meetings held on : 2024-03-13  
: 2024-04-12

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**ITEMS FOR NOTING**

**The Items for Noting, reflected on Pages 33 to 38 of the Agenda, pertaining to the items discussed and resolved at the Executive Committee level during the month of March 2024 were, **NOTED.****

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The meeting terminated at 12h02.

APPROVED AT THE MEETING OF THE ETHEKWINI MUNICIPAL COUNCIL ON 2024-08-01.

SPEAKER