

Ditsobotla



MPAC TERMS OF REFERENCE

TERMS OF REFERENCE 2023 - 2026

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1. INTRODUCTION

The Municipal Public Account Committee (MPAC) is an oversight committee of the municipal council established in terms of the provision of section 79A of the Local Government: Municipal Structures Amendment Act, 2021. Municipal Public Accounts Committees (MPACs) are modelled on the example of Standing Committee on Public Accounts (SCOPA), with specific differences by virtue of the legislative framework, widely used in South Africa by legislatures at the national and provincial level.

In accordance with the assertion of the Auditor-General “MPAC undertake and manage similar functions and responsibilities for municipalities as undertaken by the SCOPA” at provincial and national spheres of government. Council as contemplated in MFMA, MSA, and supporting MPAC Guide and Toolkit delegates powers and functions to MPAC as its oversight body/committee.

The municipal council must develop and adopt the MPAC Terms of Reference to give effect to the provision of the delegation of powers, functions, responsibilities and rights that the council is may deem appropriate to delegated to MPAC. These Terms of Reference shall unequivocally and succinctly define the parameters of oversight functions and powers delegate to MPAC.

MPAC is a committee of council mandated to perform an oversight function of council, and has power and right to call upon and probe an identified senior municipal official/s or/and political office-bearer/s in relation to any matter referred to it by council or matter that is interrogated as a result its own initiative. MPAC is answerable to the Municipal Council and that it compiles its reports with recommendations to council, once recommendations adopted by the Municipal council they became binding and enforceable/implementable.

The function of the MPAC is to, inter alia, review number of reports ranging from AR, AG Report, Oversight Report and other various reports, with an object of conducting oversight role gathering facts, information and/or evidence in any matter referred to it by council and/or out of its initiative. and

The core functions of the MPAC are to contribute to towards good governance of the municipality and that positive output by this committee should be review in its own annual oversight report.

The oversight effort of this committee is to provide an assurance and confidence (on behalf of Council) to the community/taxpayers on spectrum of issues that are pertinent to the non-financial information (performance) and financial information (AFS) of the municipality and quantify value for public money effectively expended.

2. PURPOSE

The object of this document is to be present, discuss and adopted by council of Ditsobotla to operate as a legitimate and legally binding MPAC Terms of Reference that sets out the specific oversight functions and powers that Ditsobotla Council delegates to the Municipal Public Accounts Committee (MPAC). The TOR will also set out unambiguously the pattern or manner in which the MPAC will carry out its operations without necessarily hindering with how the MPAC conduct its business.

The purpose of these terms of reference is to highlight the Committee's authority, roles, responsibilities as well as the requirements for its composition and outline meeting procedures. The Council delegate powers and functions to the MPAC as it deems appropriate. Terms and Reference is the legal embodiment of the delegated powers and functions by council to the MPAC which sought to give effect to the framework and guidelines envisaged in the provision of s 79(2) of Municipal Structures Act 117 of 1998.

3. COMPOSITION OF MPAC

- No office bearer/ executive councilor in the municipality may serve on the Committee;
- The Executive Mayor, Deputy Executive Mayor, the Speaker and Chief Whip of Council, Member of the Mayoral/Executive Committee may not be a member of MPAC but can serve in *ex officio* capacity;
- Members should be appointed for the term of Council, however, this is subject to the right of the Council to remove committee members by way of a formal Council resolution;
- Consistent with the provisions of section 160(8) of the Constitution of South Africa, membership of the committee must be such that it allows parties and interests reflected within Council to be fairly represented in the MPAC;
- MPAC Members should preferably not serve in other Committees of the Council; and
- Councilors appointed to the committee should have a wide range of experiences and expertise in order to enable the committee to exercise its oversight functions optimally

4. APPOINTMENT OF CHAIRPERSONS OF MPAC

- The Chairperson of the Committee is appointed by Council during a full Council Sitting/Council Meeting.
- The Council should take into account the skills required to perform the functions of public accounts when selecting and appointing the Chairperson of the Committee

5. LEGAL STATUS (*LOCUS STANDI*)

The MPAC is a committee of council established in terms of Section 79 (1) (a) and (b) of the Municipal Structures Act of 1998. The Council delegate powers and functions to the MPAC as it deems appropriate. Terms and Reference is the legal embodiment of the delegated powers and functions by council to the MPAC which sought to give effect to the framework and guidelines envisaged in the provision of s 79(2) of Municipal Structures Act 117 of 1998.

Section 129(4) of the Municipal Finance Management Act (MFMA) prescribes oversight role of the MPAC which provides guidance on the manner in which municipal councils should consider annual reports and conduct public hearings has deemed appropriate. In accordance with the above provision, the MPAC has powers and functions that council has seen fit to delegate to the committee.

6. MISSION

It is the commitment towards the effective exercise of oversight over administrative (senior management) and council executive structures to ascertain the principle of good governance and value for money prevails within the municipality. The Committee shall guard against and prevent any possibility of interfering with the administration or other committees of council when exercising its oversight function.

7. AUTHORITY

The MPAC has the authority:

- To develop and implement mechanisms to ensure that all Councillors fully understand and participate in the processes and activities initiated and conducted by the Committee during the *review of the Annual Report for the purpose of developing an Oversight Report*;
- To call any Councillor/administration to report on any matter reported in terms of finances to ensure that every cent spent is accounted for;
- To request, access information and monitor such information based on suspicion of imprudent financial management;
- To request any information (and have access) it requires from any MMC/ Councillor. All MMCs and Councillors are expected to co-operate with any request made by the Committee;
- To request committee members, management and other employees of the Council to be present at a given meeting for possible interview and input regarding items on the agenda;
- MPAC shall have direct access to internal and external auditors and may request investigations in any matter when necessary;
- The Committee has the right to request any person to give evidence before it, or to require any person or institution to report to it. In the interest of

accountability, the Committee may call individuals who were responsible at the time of the events, even though they may since have resigned from the municipality;

- Receive technical support from the Internal Audit Unit;
- The committee must monitor the extent to which its recommendations and those of the Auditor-General are carried out;
- The committee must invite and receive submissions from the public in relation to the Annual Report;
- The committee must consider recommendations and reports from the Audit Committee;
- MPAC may consider any financial reports or financial statements jointly with the Audit committee;
- MPAC to continuously make follow-ups on previously made recommendations and resolutions as well as current in –year reports, inclusive of quarterly, mid-year and annual report in order to finalise all outstanding matters

8. Accountability

The municipal sphere of government is the front desk of service delivery and faces serious challenges in respect of governance, accountability and financial management systems and controls.

The principles of public oversight and accountability is of critical importance as it ascertain that those entrusted with executive powers and public resources are required to give account of how they exercise the powers and responsibility.

9. Structure of the MPAC

6.1 The MPAC will comprise solely of elected public representative/councillors appointed by resolution of a properly constituted council meeting.

6.2 Section 79 (2) (d), the council also authorises the MPAC to co-opt advisory members who are not members of council but who possess special expertise or experience which will benefit the MPAC. Due consideration shall be given to the cost implications of such co-option.

6.3 Appointments to the MPAC shall reflect the proportional representation of political parties represented in council.

6.4 The names of the MPAC councillors, their party affiliation and a brief profile covering their professional qualifications / experience shall be published on the municipal website and in the Annual Report

6.5 Council must adopt nomination procedures that ensure that all MPAC members shall be councillors.

6.6 The Chairperson of the MPAC will be appointed by council as per the provisions of Section 79 (2)(c) of the Municipal Structures Act.

6.7 No executive councillors (Mayor, Speaker, Chief Whip, a member of Mayoral Committee or member of the Executive Committee and in addition the Section 79 Committee Chairperson) may serve on the MPAC.

6.8 The MPAC will be appointed for a term that corresponds to the term of council.

10. MPAC and Oversight

(i) Oversight ensures that the executive complies with the intent of the legislature and does not behave in a manner that allows maladministration, inefficiency, waste or corrupt practices. Strengthened oversight committee stimulates accountability in that it compels those whose actions and performance is monitored by a legitimate oversight body to accountable and justify their actions.

(ii) Section 59(1) of Municipal Systems Act prescribes that a municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.

(iii) MPAC is an oversight committee of council that is widely - accepted as the main oversight body in terms of the Policy Guidelines issued by National Treasury, Department of COGTA and SALGA in 2012.

(iv) MPAC's oversight role is of significance importance in that it provides a service of checks and balances to administrative and political component to ensure value for money as well as legislative compliance by the municipality.

11. Functions of MPAC

(a) To review and evaluate the content of the annual report and to make recommendations to Council when adopting an oversight, report on the annual report;

(b) In the case of matters not finalised, information relating to past recommendations made on the Annual Report, must also be reviewed.

(c) To examine the financial statements and audit reports of the municipality.

(d) Assess the extent to which the Audit Committee's and the Auditor-General's recommendations have been implemented and seek explanation when no or ineffective actions have followed.

(e) To promote good governance, transparency and accountability and value for money in the use of municipal resources.

(f) To recommend or undertake any investigation in its area of responsibility, after reviewing any investigation report already undertaken by the municipality or the Audit Committee.

(g) Probe and interrogation of financial misconducts (Unauthorised, Irregular, Fruitless and Wasteful expenditures) and non-financial information (SDBIP/Performance)

(g) To perform any other functions assigned to it through a resolution of Council within its area of responsibility.

12. The objectives of MPAC (During oversight process)

The MPAC toolkit succinctly sets out the fundamental objectives of MPAC during the oversight process.

The below-mentioned MPAC objectives are summarised as follows:

12.1 Financial and Non-financial information (financial statements, performance reports, annual reports).

12. 2 Probes and clarifies any deviations in form or the information contained in these statements, where such a deviation may amount to a potential for risk to the municipality

12. 3 That performance information is clear and unambiguous and properly explains any deviations from the performance standards agreed to in the SDBIP and performance agreements.

12. 4 Probes and clarifies any deviations in performance or the expenditures incurred in relation to performance, where such a deviation may amount to a potential for risk to the municipality

12. 5 That reporting in relation the Supply Chain Management processes within the municipality is clear and unambiguous and properly discloses any deviations from the municipal policies and procedures relating to Supply Chain Management.

12. 6 Probes and clarifies any deviations within the Supply Chain Management processes and procedures, where such a deviation may amount to a potential for risk to the municipality

12. 7 The reports properly and accurately identify and quantify any instances of unauthorised, irregular, wasteful and fruitless expenditure, as well as maintaining a register with actions and timelines.

12. 8 Probes and clarifies all instances of unauthorised, irregular, wasteful and fruitless expenditure.

12. 9 Seeks to identify responsible parties in the case of deviations from any process or policy and ensure consequence management is followed.

12. 10 Makes appropriate and timely recommendations to Council to address shortcomings in Oversight Reports, and matters relating to unauthorised, irregular, wasteful and fruitless expenditure.

13. Meeting of the MPAC

There will be two types of meeting for the MPAC.

- (a) The Ordinary Committee
- (b) The Special/or Urgent Committee

13.1 Ordinary Committee

13.1.1 The ordinary meeting of MPAC shall be held four (4) times per year/per annum.

13.1.2 Each such meeting to be held on quarterly basis

The notice and agenda of the meeting of the committee shall be issued seven days prior to the contemplated date of the MPAC. If attachments to the agenda are not dispatched with the notice, such attachment/s must reach MPAC members no later than 48 hours prior to the envisioned date of the meeting.

13.1.2 The notice of the meeting shall be served or distributed via email and proof of service shall be retrieved for records.

13.2 Special/Urgent Committee

13.2.1 The notice and agenda of the special or urgent meeting of the committee shall be issued (two days) 48 hours prior to the envisaged date of the meeting. If there are any attachments not included in the notice of the meeting, the office must ascertain that such attachment/s reaches MPAC members no later than 24 hours before the date of the meeting.

13.1.2 The notice of the meeting shall be served or distributed via email and proof of service shall be retrieved for records.

13.3 Virtual/Zoom Committee meeting

The rapid modernisation of technology and alternative means of remote or mobile communication has proved to be cost-effective and time conscious. The current trend of technology presented the corporate world with an unconventional way of holding the meeting during the pandemic period.

The MPAC wish to explore this option so that the committee meetings can be held successful and in accordance with the approved MPAC Work –Programme without any challenge of failure to meet quorum due to non-attendance by its members.

The Chairperson of MPAC shall, in consultation with MPAC members, decide between an option of contact or virtual sitting of the committee.

13.4. The locus standi of the meeting

13.4.1 The meeting shall be convened in accordance with the provision of item 13.1, 13.2 and 13.3 of the MPAC Terms of Reference. The organised MPAC meeting, either ordinary or special, should commence within the first 30 minutes of its scheduled time.

The failure of the meeting to reach its quorate within 30 minutes will result in the meeting been postponed to the next expected to commence within 30 minutes after its scheduled time and failure for the meeting to quorate within the 30 minutes' time shall led to a meeting being postposed for the next date.

13.5 Frequency of meetings

13.5.1 The ordinary of the MPAC shall be held at least once per quarter and any other meeting (special urgent) of the committee shall be convened as and when necessary.

13.6 Quorum

The Ditsobotla MPAC members comprise of nine (9) councillors and the committee requires a simple majority to reach or meet its quorum. The simple majority is fifty (50) percent plus one of its membership that is the minimum of five (5) of its members.

14. Powers of the MPAC

14.1 The MPAC shall not perform any powers or functions that are of an executive nature or fall within the ambit of management.

14.2 In fulfilling its obligations and responsibilities, the MPAC reports directly to council via the office of the Speaker.

14.3 In relation to the above consideration, Council is encouraged to develop a standard council agenda that includes a permanent item of the MPAC report.

14.4 In the case of unauthorised, irregular expenditure, fruitless and wasteful expenditure or any matter of financial governance, MPAC has the right to call the accounting officer or other senior staff to provide information or clarity.

14.5 The MPAC may request the support of both the Audit Committee and the internal auditor/audit unit.

14.1. FUNCTIONS

(a) To consider and evaluate the Annual Report as tabled to Council, and thereafter make recommendations to Council in this regard. The Committee must receive the report no more than two weeks after tabling to Council.

(b) To compile an Oversight Report and table in Council no later than two months from the date of which the Annual Report was tabled, in terms of Section 129 of the MFMA.

(c) To monitor that all submissions and calls for comment have been undertaken as per Section 127(5), 130 and 132 of the MFMA.

(d) To review whether matters raised in past Annual Reports have been attended to, as well as whether recommendations made in previous Oversight Reports in terms of Section 129 of the MFMA have been attended to.

(e) Any unforeseen and unavoidable expenditure, in terms of Section 29 of the MFMA, must be reported to the MPAC with proof of the necessary appropriation in the adjustment budget. After consideration of the matter, the MPAC must report to Council on the matter.

(f) Any unauthorized, irregular or fruitless expenditure, in terms of Section 32 of the MFMA, incurred by the Council, Mayor, political office bearers or officials, must be reported to the MPAC. The Accounting Officer must report to the MPAC on all steps taken to authorise or certify or recover or write off the expenditure, as well as whether any criminal action was instituted. The MPAC must report to Council on the appropriateness of action taken.

(g) To report to Council if an annual budget has not been compiled and submitted to Council in terms of Section 16 of the MFMA.

(h) To monitor whether the Mayor has initiated a review of the IDP post elections and annually thereafter. If such review is not done, the MPAC must report to Council.

16.6 The Committee shall have permanent referral of documents relating to:

(i) In-year reports of the municipality;

(ii) financial statements of the municipality as part of the Committee's oversight process;

(iii) audit opinion, other reports and recommendation from the Audit Committee;

(iv) information relating to compliance in terms of sections 32, 128 and 133 of MFMA;

(v) information in respect of any disciplinary action taken in terms of the MFMA where it relates to an item that is currently serving or has served before the Committee;

(vi) any other audit report from the municipality; and

(vii) performance information of the municipality.

16.7 The MPAC may delegate any of its members to attend and observe any other sub - committee of council, the delegated MPAC member shall attend the meeting of such sub-committee as an observer and shall not have right to vote or participate.

16.8 The MPAC has the right to motivate to council for the provision of staff, equipment, facilities and an operating budget commensurate with its obligations.

16.9 The MPAC shall develop a detailed report with recommendations to council pertaining to an oversight matter under review and present it to full council sitting.

15. Probing and Information – Gathering Sessions.

15.1 MPAC is empowered to probe and investigate any matter referred to it by council or/and on account of its own (MPAC) initiative.

15.2 Council empowers MPAC to call upon or summon any or identified municipal official and/or political office – bearers to provide information or clarity on the oversight matter under review.

15. 3 The Council empower MPAC to gain access to information and/or written reports pertaining to any matter of oversight that is referred to it or a matter that is probed as a result of its own initiative.

16. The following are officials and political office – bearers contemplated, but not limited to, the provisions of MFMA and other relevant statutes:

16. 1 - Section 32 (1) (a-c) of the MFMA

(Unauthorised, irregular, or fruitless and wasteful expenditure).

Accounting Officer and Political Office – Bearer/s are parties of interest when probing fiscal and financial misconduct and Council empowers the MPAC call upon the identified incumbents to appear before it for a purpose of interrogation regarding the oversight matter under investigation and to alternatively provide MPAC with the written report that pertains to an oversight matter under review.

16. 2 - Section 52

General responsibilities

Section 52(a) dictates that the mayor must provide general political guidance of fiscal and financial affairs of the municipality and performs other functions /responsibilities referred to in s52 (b)-(c) of MFMA.

The MPAC should be empowered to call upon or summon the Mayor and/or his/her Mayoral committee member/s to partake in the interview or interrogation pertaining to the oversight matter under review.

16. 3 - Section 78

Senior manager and other officials of the municipality

Section 78 (1) (a), (b) and (c) of MFMA imposes financial expenditure management responsibilities on senior managers and other municipal officials of the municipality. This provision further instructs them to ensure efficient and effective utilisation of public funds.

MPAC as an oversight body of council is empowered to call upon or summon senior official/s and/or other municipal officials, as contemplated in Section 78 for purpose of probing of the oversight matter under review.

16. 4 - Access to reports and information necessary for oversight function

The MPAC be empowered to have access and acquire Annual Report, SDBIP Quarterly Report, AG Reports, monthly budget statement and other various reports that are pertinent to the oversight function of the MPAC.

The relevant offices/officials or political office – bearers must provide the MPAC with reports that ought to assist the committee timeously and wherever required or requested to do so.

16. 5 - MPAC Oversight role in implementation of Supply Chain Management Policy.

Section 6 and 29(2) of Municipal Supply Chain Management Regulation 27636 of 2005 defines the oversight role of MPAC that, inter alia, includes principles envisaged in section 217 of the Constitution of the Republic of South Africa Act 108 Of 1996. The provision of section 6 supra succinctly express the oversight of council as follows:

- The council of a municipality [through MPAC] must maintain oversight over the implementation of its Supply Chain Management Policy,

17. Reporting by the MPAC

The MPAC reports is independent both substantive and procedural. MPAC reports directly to Council of the municipality. The MPAC chairperson shall liaise with the Speaker of council to ensure inclusion of its (MPAC) report in the council agenda.

17.1. MPAC self-monitoring

The MPAC shall develop a monitoring and tracking mechanisms that are well-versed and aligned to its approved annual work - programme.

17.2. MPAC assessment tool

The MPAC shall have its assessment tool in a form of resolution and recommendation register and implementation register to measure and keep record of progress in relation to implementation of recommendations adopted by council.

18. Assessment of MPAC Performance by Council

The council shall assess and evaluate the performance of MPAC on an annual basis.

19. MPAC Performance Areas

In its performance report, the MPAC is directed to reflect on the activities report and key areas of performance that are encapsulated in an approved annual work-programme of MPAC.

- (a) The number of MPAC meeting held.
- (b) Number of oversight matters reviewed and reported to council for a year under review.
- (c) Number of matters investigated and not yet completed (This should include the progress report regarding its current phase)
- (d) Reflect on whether Annual Report was reviewed
- (e) Indicate the number of quarterly reports on SDBIP were reviewed
- (f) Oversight Report
- (g) Whether the Annual
- (h) Operations and activities of the committee over the preceding and current financial years
- (i) In the case of financial and budgetary performance oversight reports, the MPAC shall report on:

- (i) Recommendations to council

(ii) Council resolutions on the recommendations

(iii) Implementation of the council resolutions

The Council should deliberate on the recommendations from the MPAC and resolve on matter that requires urgent resolution or the council must convene the special sitting if the matter remain unresolved in an ordinary council meeting.

20. MPAC Advisory structure

The MPAC shall be allowed to establish the MPAC advisory structure that will comprise of external people amassed with experienced and/or technical expertise and municipal officials. Alternatively, the MPAC will use services of the Disciplinary Board established by Council as contemplated in Regulation 4 of Financial Misconduct in probing UIFWE matters under review.

21. Human and Financial Resources

The MPAC requires both human and financial resources to carry out its oversight function as delegated by Council.

The MPAC shall motivate to council for the provision of staff, equipment, facilities and an operating budget commensurate with its onuses.

The MPAC workforce shall have ability to coordinate and undertake research activities, provide sound legal advisory function, and render effective secretarial and committee management service.

The MPAC operating budget shall be controlled and managed by the MPAC Office in accordance with the financial systems and procedures of the municipality.

22. Public interaction

(i) MPAC meetings shall be advertised on the website of the municipality

(ii) Public shall have access to all meetings of the committee and that MPAC shall be entitled to invite interested stakeholders when a matter relevant to them is under discussion.

(iv) The MPAC has the right to invitation specialists from community and seek their insight and advice on technical aspects of the projects.

22.1. Legislative Framework

The statutes that are applicable for the establishment of Municipal Public Accounts Committee and some of its oversight functions are:

(a) Binding Sources

- (i) Municipal Structures Act 117 of 1998
- (ii) Municipal Systems Act 32 of 2000
- (iii) Municipal Finance Management Act 56 of 2002
- (iv) Supply Chain Management Regulation 27636

(b) Persuasive Source

- (v) MPAC Guide and Toolkit

ABBREVIATIONS

- MPAC - Municipal Public Accounts Committee
- TOR - Terms of Reference
- EXCO - Executive Committee
- MFMA - Municipal Finance Management Act
- * MSAA – Municipal Structures Amendment Act
- * MSA – Municipal Systems Act
- AG - Auditor General
- COGHSTA - Cooperative Government, Human Settlements & Traditional Affairs
- FEED - Finance Economy and Enterprise Development
- SALGA - South African Local Government Association