

Ordinary Council (OPEN) Meeting

31 January 2023

Addendum 1:

| ITEM NO | SUBJECT | FIL REF | PG |
|---|---|-----------------|----------------|
| SECTION 1: OFFICE OF THE MUNICIPAL MANAGER | | | |
| C/1/123/01/23 | FAILURE TO APPROVE THE ANNUAL BUDGET BEFORE THE 2021-2022 FINANCIAL YEAR | 5/1/117 | 3 - 15 |
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SECTION 1

**OFFICE OF THE MUNICIPAL
MANAGER**

Section 1: Office of the Municipal Manager

ITEM C/1/123/01/23

FAILURE TO APPROVE THE ANNUAL BUDGET BEFORE THE 2021-2022 FINANCIAL YEAR

Portfolio Comm: Strategic Services & Office of the MM **Demarcation:** All Wards
File Ref: 5/1/1/17 **Delegation:** Council

Attachments: Annexure “A” - Extract of the Auditor General (AG) Final Management report.

Annexure “B” - Letter from Acting Executive Mayor to the Minister of Local Government and Environmental Affairs. (MEC)

Annexure “C” - Letter from Macgregor Erasmus Attorneys to the MEC

Report from: Municipal Manager

Date: 12 January 2023

PURPOSE OF THE REPORT

To bring to the attention of Council the Audit finding of the Auditor General (AG) in COMAF 25 of the Final Management Report communicated to the Accounting Officer on 9 December 2022.

Executive Summary

On 9 December 2022 in its Final Management report the Auditor General of South Africa found, “*We were unable to obtain approved council minutes where the annual budget for the 2021/22 financial year were approved.*”

Management responded and made the following comment on the audit finding:

“The minutes are complete. Management in reviewing compliance matters became aware of this issue around July/August 2022. The Municipal manager raised the matter in Council and Council resolved that Bitou apply for condonation to National Treasury (NT). Unfortunately, the legislation does not provide for any remedy for failure to approve the budget. The MEC must be informed, and he can then make a decision if Council continuously fails to approve the budget. In this case the MEC was informed through a legal letter from the Municipality stating that the budget was approved. Provincial Treasury (PT) relied on this communication from the Municipality and the MEC for Local Government could not pursue the matter further after receipt of the letter signed by then Executive Mayor.”

Background / Discussion

In terms of Section 24 (1) of the MFMA, “The municipal council must at least 30 days before the start the budget year consider approval of the annual budget.

Section 24 (2) (a) further states that “An annual budget must be approved before the start of the budget year.” The AG found, “*We were unable to obtain approved council minutes where the annual budget for the 2021/22 financial year were approved.*”

Management in its comment on the audit finding said that the “*The minutes are complete.*” Thereby

Section 1: Office of the Municipal Manager

conceding that the budget was not approved but explained, *“Management in reviewing compliance matters became aware of this issue around July/August 2022. The Municipal manager raised the matter in Council and Council resolved that Bitou apply for condonation to NT. Unfortunately, the legislation does not provide for any remedy for failure to approve the budget.”*

It further averred that, *“In this case the MEC was informed through a legal letter from the Municipality stating that the budget was approved. PT relied on this communication from the Municipality and the MEC for local Government could not pursue the matter further after receipt of the letter signed by then Executive Mayor.”*

Accordingly, reliance was placed on the legal letter authored by Mr. Stefan Hill of Macgregor Erasmus Attorneys to aver that the budget was approved. This letter was authored on instruction of the Municipality and in response to previous correspondence addressed to the then Acting Mayor, Councillor Gcabayi.

The author incorrectly concludes in paragraphs 3.1 and 3.2 by relying on the incorrect version of what transpired at the Council Meeting of 8 June 2021 see paragraph 3.3 of the said letter, that the budget was approved.

Provincial Treasury and the MEC further relied on a letter dated 27 July 2021 and signed by the then Acting Executive Mayor which stated that the budget was approved.

The AG found that *““We were unable to obtain approved council minutes where the annual budget for the 2021/22 financial year were approved.”*

The budget was therefore not approved and the resultant expenditure on the unapproved budget is in contravention of Section 15 (a) of the MFMA.

Conclusion

It is clear that several provisions of the MFMA was transgressed by the then Acting Executive Mayor, the then Accounting Officer and officials. Their conduct must therefore be investigated in terms of Sections 32 (1) (a) and (b) and Section 32 (2) of the MFMA, as well as for any other breach of the provisions of the MFMA.

Applicable legislation:

Constitution of the Republic South Africa, 1996.

Local Government: Municipal Finance Management Act 56 of 2003 as amended.

Financial Implications

Unauthorised expenditure of R884 805 000 (capital and operating expenditure).

RECOMMENDED BY THE MUNICIPAL MANAGER

1. That Council take note of the Auditor General finding COMAF 25.
2. That Council elect a Committee to investigate the conduct of Councillors in causing the unauthorised expenditure.
3. That Council refer to the Municipal Public Accounts Committee the conduct of officials in causing the unauthorised expenditure.

Recommendation

Management should strengthen its review processes of the tariff charged per consumer against the approved tariffs to ensure that the correct tariffs are charged.

Management should examine the population to which the misstatement relates to understand the cause of the misstatement and to make the appropriate adjustments to the annual financial statements.

Management response

| | | |
|---|---------|---------|
| Management comment on audit finding | | |
| Management comment on internal control deficiencies | | |
| Management comment on recommendation | | |
| Remedial action | | |
| What actions will be taken | By whom | By when |
| If the above finding affects an amount(s) disclosed in the financial statements: | | |
| Please give an indication of whether a correcting journal entry shall be processed | YES | NO |
| If yes, please indicate the accounting entry | | |
| If no, please provide the reason why such a conclusion has been reached | | |

Name:

Position:

Date:

Auditor's conclusion

No response were received to COMAF 23. The misstatement will therefore be transferred to the schedule of uncorrected misstatements for further evaluation. This matter will remain in the management report as an Annexure B item.



Audit finding

Section 16 of the Municipal Finance Management Act no. 56 of 2003 (MFMA) states the following:

“(1) The council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year.”

Section 24 of the MFMA state the following:

“(1) The municipal council must at least 30 days before the start of the budget year consider approval of the annual budget.”

(2) An annual budget-

(a) must be approved before the start of the budget year;

(b) is approved by the adoption by the council of a resolution referred to in section 17(3)(a)(i)”

Section 25 of the MFMA state the following:

“(1) If a municipal council fails to approve an annual budget, including revenue-raising measures necessary to give effect to the budget, the council must reconsider the budget and again vote on the budget, or on an amended version thereof, within seven days of the council meeting that failed to approve the budget.”

Section 125 of the MFMA state the following:

“(2) The notes to the annual financial statements of a municipality or municipal entity must disclose the following information:-

(e) particulars of non-compliance with this Act”

We were unable to obtain approved council minutes where the annual budget for the 2021/22 financial year were approved.

Upon inspecting the council minutes of 8 June 2021 provided by management, we noted that these minutes were not approved and no council meeting minutes could be obtained where these minutes were considered and approved. As a consequence there is insufficient audit evidence that the annual budget was approved before the start of the financial and budget year in terms of section 16 and 24 of the MFMA.

Furthermore, we also noted that the municipality did not disclose any non-compliance in the notes to the financial statements relating to the lack of approval of the annual budget as required by section 125(2)(e) of the MFMA.

The non-compliance is not considered to be material, however, as a consequence of the budget not being approved the expenditure incurred could result in unauthorised expenditure.

Leadership

Exercise oversight responsibility regarding financial and performance reporting and compliance as well as related internal controls

Council did not approve the council minutes as no council meetings took place from 8 June 2022 until 11 November 2022 when the new council was formed.

Recommendation

Council should ensure that all minutes of council meetings are approved by council and approval to be done within a reasonable time.

Management response

| | | | |
|---|-----------------------|--|-----|
| Management comment on the audit finding: | | | |
| Management agree with the findings | | | |
| Management comment on the root cause identified within the audit finding: | | | |
| The root cause was merely due to political instability which is beyond the control of administration. | | | |
| Management comment on the recommendation: | | | |
| <p>The minutes are complete. Management in reviewing compliance matters became aware of this issue around July/August 2022. The Municipal manager raised the matter in Council and Council resolved that Bitou apply for condonation to NT. Unfortunately the legislation does not provide for any remedy for failure to approve the budget. The MEC must be informed and he can then make a decision if Council continuously fails to approve. In this case the MEC was informed through a legal letter from the Municipality stating that the budget was approved. PT relied on this communication from the Municipality and the MEC for local Government could not pursue the matter further after receipt of the letter signed by then Executive Mayor.</p> <p>The matter becomes too technical and complicated as the minutes and all other available documents indicate that there was no majority approval of the Budget. This may have huge implication not only for expenditure but equally the income that was received based on what could be argued as unapproved tariffs.</p> <p>Management do not believe that the intention of the legislature was or would have been to punish the whole community and staff members if such incidents do occur. Management would rather not focus on legal arguments and spend the energy on corrective behaviour for politicians.</p> <p>Put very simple it means no service delivery should have been done and no salaries should have been paid and no income should have been collected.</p> <p>None compliance with one area of the entire law cannot render the whole process null and void.</p> | | | |
| Remedial action: | | | |
| What actions will be taken: Municipal Manager will play his role in advising Council on the implications of not approving the budget | By whom: MM | By when: 31 st of March and 30 th of May each year | |
| If the above findings affects an amount (s) disclosed in the financial statements: | | NO | |
| Please give an indication of whether the correcting journal entry shall be processed: | | NO | N/A |
| If yes, please indicate the accounting entry: | | | |
| If no, please provide the reason why such a conclusion: | | | |

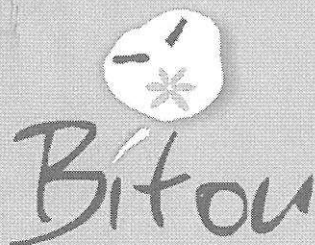


Name:
Position:
Date:

Auditor's conclusion

Management's response is noted. Inspected the adjusted annual financial statements and confirmed that the correct adjustment has been made to account for the unauthorised expenditure of R884 805 000 (capital and operating expenditure). This matter will remain in the management report as an Annexure B item.





munisipaliteit umasipala municipality

to be the best together

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| Reference | Telephone | E- mail |
|-------------|--------------|--|
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27 July 2021

FOR ATTENTION: MINISTER A. BREDELL

Minister of Local Government,
Environmental Affairs and Development Planning
Private Bag X9186
Cape Town
8000

Sent via e-mail to: Bernice.Labuschagne@westerncape.gov.za;

Dear Minister Bredell,

BITOU MUNICIPALITY: APPROVAL OF BUDGET AND IDP

The abovementioned and more specifically your communiqué dated 13 July 2021 bear reference.

Attached hereto the following for your information:

- Copy of an extract of the Minutes of the Council Meeting that took place on 08 June 2021 where the Budget and IDP in respect of 2021/2022 were approved;
- Copy of the assessment of the 2021/2022 Budget, IDP and SDF by the Western Cape Provincial Government.

We note your reference in your communiqué, amongst others, to section 160 (3) (b) of the Constitution of the Republic of South Africa. The facts below show that a majority of members of the council duly approved the budget, as required.

We would like to place the following on record:

- The budget and IDP item duly served before Council,
- A vote for approval of the item was duly proposed and seconded;
- There was neither a counter proposal nor a secondment of the latter;
- The Budget and IDP were therefore duly "carried" unanimously.
- The council was therefore *functus officio* regarding a decision on this item.

- Refer to minutes attached indicating the procedures followed;
- Thereafter, opposition was raised by certain council members, requesting that their votes should be recorded against the resolution. This belated opposition, after the item was carried, was not explained by the members, and cannot now be taken into account.

Yours faithfully



COUNCILLOR. S E GCABAYI
ACTING EXECUTIVE MAYOR



macgregor•erasmus

ATTORNEYS Inc.

6 September 2021

Our reference:

TO: **MEC Bredell**
C Pienaar
C Green

Bernice.Labuschagne@westerncape.gov.za
chandre.pienaar2@westerncape.gov.za
cayley.green@westerncape.gov.za

Dear Sirs

RE: BITOU MUNICIPALITY: APPROVAL OF BUDGET AND IDP

1. We refer to the abovementioned matter as well as the previous correspondence related to the subject matter resting with your letter dated 24 August 2021 addressed to the Acting Mayor Councillor Gcabayi.
2. We do not intend to, in this letter, respond to each and every allegation contained in your correspondence under reply. Our client reserves the right to do so in future, at the appropriate time, and in the appropriate forum if necessary. As such, a failure to respond to a specific allegation and/or contention should not be construed to be an admission of the correctness thereof.
3. Without limiting our client's abovementioned right, we wish to point out the following:

JOHANNESBURG
106 Johan Avenue | Sandton | 2196
Docex 293 | Johannesburg
Tel: 011 268 0720 | Fax: 087 220 4135

DURBAN (HEAD OFFICE)
Bond Square | 1st Floor
12 Browns Road | The Point | Durban | 4001
Postnet 278 | Private Bag X04 | Dalbridge | 4014
Tel: 031 201 8955 | Fax: 087 220 5202

CAPETOWN
Kay Jay House | 48 Dorp Street | Cape Town | 8001
Docex 113 | Cape Town
Tel: 021 492 2891 | Fax: 021 422 1224

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B-BBEE Status: Level 4 Contributor | B-BBEE RECOGNITION LEVEL: 100% | BEE RATED Certificate No. BR8820-061017 | Practice No. 41183

Directors: Bruce Macgregor | Richard Erasmus | Jacques Schabert | Mpho Titus | Justin Klingbiel | Glen Kirby-Hirst | Stefan Hill | Elco Geldenhuys
Associate Directors: Cora Hufkie | Jonathan Jones
Associates: Lauren Anderson | Adam Clark | Vicky Doney | Qudsiyyah Majam | Mthokozisi Ndokweni

- 3.1 In terms of Rule 7 in Chapter 3 of the municipality's By-law relating to the Rules of Order for the Conduct of Meetings of the Council, a unanimous vote *must* (emphasis added) be recorded in the minutes when council is called upon to consider a matter before it and there is no opposition from any member.
- 3.2 This is exactly what transpired at the Council meeting on 8 June 2021.
- 3.3 Towards the end of the meeting, long after the conclusion of the budget and IDP item, Councillor Bill Nel belatedly and out of order informed the council about an apparent opposition against the item. The item was then already proposed, seconded, and passed.
- 3.4 Councillor Bill Nel wrote the Speaker and Municipal Manager on 10 June 2021 questioning the correctness of the approval of the budget and IDP. He was referred to Rule 19 of Rules of Order which clearly provides the procedure that must be followed if a member wishes to rescind or amend a resolution taken at a meeting. Subsequently, no further interest was shown in the matter by Councillor Bill Nel or any other councillor, nor was the indicated procedure followed.
- 3.5 Rules 13 moreover provides the procedure applicable in connection with disputes regarding the correctness of council minutes. I pause to



mention that this rule should become relevant since the minutes reflect, incorrectly in my opinion, 6 (six) votes against the item, which was clearly not the case as explained above, as well as for the fact that Councillor Bill Nel cannot 'vote' on behalf of other members of the council.

3.6 The budget that was approved was inclusive of the Provincial and National Treasury inputs and complied with all the legislative requirements. An effective budget process inclusive of the IDP was followed every step of the way as mandated. The councillors who 'objected' to the final approval on 8 June 2021, never raised any concerns before regarding any aspect of the budget and IDP throughout the abovementioned lengthy process. No alternative proposals were submitted. In fact, during the short stint when these councillors erroneously thought that they were in control of the council, they tabled the very same budget and IDP for approval by council.

3.7 There can be no doubt that this attempted challenge of the approval of the budget and IDP suggests the presence of a hidden, subjective, and sinister aim and ulterior motive. It is done in bad faith and in an insincere manner evidently for political reasons and/or because of political pressure. The basis of the bad faith or motive is however irrelevant, its mere existence being sufficient to violate the principle of legality. Even



an altruistic motive cannot confer legitimacy on the exercise of public power for an unauthorised purpose.

4. In the circumstances, your request to be provided with the documentation is declined since it is firstly unsubstantiated and has no basis in law. Secondly, it is considered to be, until proven otherwise, *male fide*, unlawful, and against the rule of law.
5. Lastly, the common law principle of legality demands that public power be exercised reasonably, in good faith, and in the *public interest*. The exercise of public power is legitimate only if it is lawful. The rule of law as a founding constitutional value and an element of the principle of legality elevates legality to a constitutional principle. Consequently, your request does not comply with any of these requirements, the least of which is that it is in the public's interest.
6. We accordingly regard the matter now as finalized.
7. We trust you find the above in order.
8. Our client's rights remain reserved.

Yours faithfully,



STEPHAN HILL

MACGREGOR ERASMUS ATTORNEYS



SECTION 5

ENGINEERING SERVICES

Section 5: Engineering Services

ITEM C/5/50/01/23

IMPLEMENTATION OF LEVEL 1 WATER RESTRICTIONS

Portfolio Comm: Engineering & Community Services
File Ref: 16/1/1/6

Demarcation: All Wards
Delegation: Council

Attachments: None

Report from: Director: Engineering Services

Author: Manager: Water Services

Date: 24 January 2023

PURPOSE OF THE REPORT

The purpose of this Item is to seek Council's approval to implement Stage 1 Moderate water restrictions.

EXECUTIVE SUMMARY

In terms of Section 39 of the Municipal By-law related to water services, the Municipality may impose measures to limit, discontinue or restrict the use of water for conservation purposes, during droughts and periods of short supply. Hence, Council adopted the Bitou Local Municipality Drought Management Policy during 2017. This policy provides rules and guidelines for the implementation of effective and efficient measures to conserve and manage water supply sources.

BACKGROUND /DISCUSSION

In view of the below average rainfall experienced over the Bitou and surrounding areas during the last two years, and the strain on our existing water sources, it will be prudent to implement water conservation and demand management initiatives with the aim to reduce water consumption.

The follow water restriction measures need to be implemented having regard to the state of the Keurbooms River and Roodefontein Dam, which are the main water supply sources to Bitou Municipality.

During the week 11 January 2023 the level of the Roodefontein Dam dropped to below 80%.

Stage 1 Moderate Water Restrictions to be implemented when the Roodefontein Dam volume ranges between 80% and 66% to achieve a reduction in consumption.

Section 5: Engineering Services

Stage 1 moderate water restrictions will entail the following:

- a) Where own water other than municipal water e.g. borehole or grey water is used, an appropriate notice must be displayed on the property by the landowner eg “OWN WATER” or “BOREHOLE WATER IN USE”
- b) Watering of gardens may only be undertaken for two hours per day between 08:00 and 10:00 two days per week.
- c) At sports fields the watering of cricket pitches, golf greens and bowling greens is permitted for two hours per day, unless own sources of water are used.
- d) No hosing of roofs and driveways and no washing of vehicles with a garden hose connected to municipal reticulation. This includes the use of a high-pressure jetting machine.
- e) That all domestic households be limited to 20kl of water consumption per month.

To achieve the desired outcome of imposing Level 1 restrictions the follow action needs to be implemented.

- 1. An effective public awareness campaign must be conducted and intensified.
- 2. Water restrictions must become effective immediately after being approved by Council and advertised.
- 3. Consumers accounts must be closely monitored and those identified who do not heed the request to save water and the imposed restrictions.
- 4. The Call Centre must be available on 044 5013174 / 75 where contraventions can be reported and followed up immediately by law enforcement.
- 5. That the use of automated garden sprinkler system be prohibited.
- 6. Any person who contravenes these restrictions must be guilty of an offence and upon conviction, be liable for a fine.

FINANCIAL IMPLICATION

Awareness campaign will require funds for printing of leaflets and posters etc.

RELEVANT LEGISLATION

Bitou Municipal Water Services By-laws.

Section 5: Engineering Services

Comments: Director: Financial Services

Recommendations of Municipal Manager supported

Comments: Acting Director Corporate Services

Recommendations of Municipal Manager supported

Comments: Director Community Services

Recommendations of Municipal Manager supported

Comments: Director Engineering Services

Recommendations of Municipal Manager supported

Comments Manager: Legal Services

Recommendations of Municipal Manager supported

RECOMMENDED BY THE MUNICIPAL MANAGER

1. That Level 1 water restrictions be implemented with immediate effect upon approval by Council and advertisement on local media platforms.
2. That the following restrictions immediately be imposed;
 - a) Where own water other than municipal water eg borehole or grey water is used, an appropriate notice must be displayed on the property by the landowner eg “OWN WATER” or “BOREHOLE WATER IN USE”
 - b) Watering of gardens may only be undertaken for two hours per day between 08:00 and 10:00 two days per week.
 - c) At sports fields the watering of cricket pitches, golf greens and bowling greens is permitted for two hours per day, unless own sources of water are used, two days per week.
 - d) That the use of automated garden sprinkler system be prohibited.
 - e) No hosing of roofs and driveways and no washing of vehicles with a garden hose connected to municipal reticulation. This includes the use of a high-pressure jetting machine.

Section 5: Engineering Services

- f) That all domestic households be limited to 20kl of water consumption per month.
3. That the following action be implemented in support of the water restrictions;
- a) An effective public awareness campaign must be conducted and intensified.
 - b) Water restrictions must become effective immediately after being approved by Council and advertised on local media platforms.
 - c) Consumer accounts must be closely monitored and those identified who do not heed the request to save water and the imposed restrictions.
 - d) The Call Centre must be available on 044 5013174 / 75 and 0800212797 where contraventions can be reported and followed up immediately by Law Enforcement.
 - e) The use of automated garden sprinkler system be prohibited.
 - f) Any person who contravenes these restrictions must be guilty of an offence and upon conviction, be liable for a fine.