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### Abbreviations and acronyms used in the report

#### 1. Entities

- **BIG** Business Innovations Group
- **DAC** Department of Arts and Culture
- **DAG** Development Agencies Forum consisting of fund granting agencies reporting to DAC
- **DBSA** Development Bank of South Africa
- **GFIA** Gobodo Forensic and Investigative Accounting (Pty) Ltd
- **HM Foundation** Hugh Masekela Foundation and Legacy Hotels
- **Lalela** Lalela Project Trust
- **Layher** Layher (Pty) Ltd
- **NAC** National Arts Council South Africa
- **NFVF** National Film and Video Foundation
- **NHC** National Heritage Council
- **SARA** South African Roadies Association
- **PAST** Paleontological Scientific Trust

#### 2. Individuals

- **Dipenaar** Mr Andries Dipenaar, BIG consultant
- **Diphofa** Ms Julie Diphofa, Arts Development Manager, NAC
- **Dlamini** Mr Dumisani Dlamini, former CFO, NAC
- **Jones** Mr Denzil Jones, former Project Manager, NAC
- **Kerzner** Ms Andrea Kerzner, CEO, Lalela Project Trust
- **Lesala** Ms Puleng Lesala, Arts Development Officer: Visual Arts, NAC
- **Makwetla** Ms Angie Makwetla, former chairperson, NAC
- **Mangope** Ms Rosemary Mangope, CEO of NAC
- **Mbanya** Mr Phumlani Mbanya, NAC

## Contents (continued)

### Abbreviations and acronyms used in the report (continued)

#### 2. Individuals (continued)

- **Molekwa** Ms Janet Molekwa, Marketing and Communication Specialist
- **Mphomela** Mohau Mphomela, former NAC Chairperson
- **Newton** Ms Monica Newton, Former CEO, NAC
- **Nyathela** Mr Freddie Nyathela, SARA President
- **Ramatseba** Mr Zinzi Ramatseba, Arts Development Officer:  
Multidiscipline, NAC
- **Rieper** Ms Catherina Rieper, Chief Operating Officer: Lalela Project

#### 3. Other

- **ADM** Arts Development Manager
- **ADO** Arts Development Officer
- **CFO** Chief Financial Officer
- **Companies Act** Companies Act, Act No.71 of 2008
- **Council** Council consist of a minimum of 9 Provincial representatives
- **CPO** Chief Procurement Officer, National Treasury
- **EXCO** The Executive Committee of the NAC, which comprises a maximum of 25% of the Council members. The Chairperson and Vice Chairperson could be members of EXCO.
- **NAC Act** National Arts Council Act, Act No. 56 of 1997
- **PFMA** Public Finance Management Act, Act No 1 of 1999
- **PPPFA** Preferential Procurement Policy Framework Act, Act No. 5 of 2000.
- **SCM Policy** Supply Chain Management Policy
- **SLA** Service Level Agreement
- **VAT** Value Added Tax

## **1. Executive Summary**

### **1.1 Conflict of interest involving BIG employee**

- 1.1.1 It appears that the Business Innovation Group (“BIG”) Forensic Auditor, Andries Dippenaar (“Dippenaar”), who was involved in the NAC investigation, was a former colleague of Rosemary Mangope (“Mangope”), the NAC CEO. It was further alleged that both Dippenaar and Mangope worked for the Development Bank of South Africa (“DBSA”) during the same period and that they knew each other well.
- 1.1.2 It was further alleged that both parties did not disclose this relationship and this could have compromised the investigation.
- 1.1.3 We were provided with the BIG final investigation report dated 6 October 2016 and titled *“ALLEGATIONS OF MISCONDUCT BY THE SENIOR MANAGEMENT OF THE NAC AS A RESULT OF THEIR FAILURE TO AWARD A GRANT TO SARA”*.
- 1.1.4 We reviewed the BIG report and found that the report was factually correct and that the report was issued without any malicious intent.
- 1.1.5 Dippenaar confirmed that he had worked at the DBSA as the Head of the Forensic Unit from 2007 to 2013. As Head of the Forensic Unit, he reported to the Chief Audit Executive. During this period, it appears that Mangope was employed as an Executive in Marketing at the DBSA. At the time that both Dippenaar and Mangope worked together at the DBSA, the DBSA had over 1000 employees.
- 1.1.6 According to Dippenaar, he had no personal relationship with Mangope and the working relationship was limited to presentations on his forensic work to the full Executive Committee, which included Mangope. Thus he had no one to one interaction with Mangope during his time at the DBSA.
- 1.1.7 The fact that Dippenaar and Mangope were former colleagues at the DBSA was reported to Michael Sass (“Sass”), the immediate senior to Dippenaar at BIG by Dippenaar himself. Both Dippenaar and Sass confirmed that they had disclosed at the introductory meeting with National Arts Council (“NAC”) officials that Mangope was a former colleague of Dippenaar. The disclosure was also confirmed by Julie Diphofa, the Arts Development Manager (“ADO”).

1.1.8 It appears that a disclosure was submitted by BIG in their final evidence file to the Department of Arts and Culture (“DAC”).

1.1.9 The available evidence suggests that Dippenaar and Mangope did not have a close personal and working relationship at DBSA. Thus it is our view that the involvement of Dippenaar as investigator did not compromise the investigation.

## **1.2 Review of the awarding of a grant of R50 000.00 in 2013**

1.2.1 The Lalela Projects Trust (Lalela”) was granted funding for Art Workshops for an amount of R50 000.000. The said funding was granted on 28 June 2013.

1.2.2 It appears that Lalela submitted an application for funding in response to an NAC “*Call for applications for funding 2013*”.

1.2.3 The grant funding application for R50 000.00 in 2013 was subjected to a proper approval process. The funding application was subjected to a screening and assessment process by the Arts and Development Officer and the relevant Advisory Panel respectively.

1.2.4 The 2013 funding application for R50 000.00 was recommended by the then CEO of the NAC Monica Newton. It was recommended that Lalela be granted funding of R50 000.00. It is evident that Mangope, the current CEO was not involved in the recommendation or approval of the 2013 funding to Lalela Projects as she was not employed at the NAC at the time. Mangope’s involvement in the 2013 funding was limited to signing the final fund agreement.

1.2.5 As the funding amount was less than R100 000.00, it was submitted to the Executive Committee (“EXCO”) for approval. The funding grant was approved by EXCO on 10 May 2013 and ratified by the Council on 24 May 2013.

1.2.6 In accordance with the funding agreement, an initial payment of R35 000.00 was given to Lalela on 20 September 2013.

1.2.7 Lalela failed to submit the required narrative report and financial statements and were thus classified as an “*Expired project*” on or about 30 October 2015. As an expired project, Lalela forfeited the remaining R15 000.00 of their 2013 funding grant. Furthermore, Lalela Projects did not qualify for funding for the 2016 and 2017 years in accordance with the Expired Projects and Surplus Policy. **Refer to paragraph 8.2.6 *infra* for more details.**

### **1.3 Review of the awarding of a grant of R1 889 000.00 in 2016**

- 1.3.1 Lalela was awarded another grant funding for the “*Social Cohesion Heart Maps Project*” for an amount of R1 889 000.00. The said funding was granted on 12 September 2016. The said project was considered to be flagship project.
- 1.3.2 We could find no funding application and / or proposal from Lalela Projects regarding the “*Social Cohesion Heart Maps project*” for R1 889 285.00. In an interview with Mangope, she insisted that a funding application was completed and submitted by Lalela (see paragraph 8.4.4 infra for interview details). Mangope further stated that the Lalela file was stolen. We also had an interview with Denzil Jones (“Jones”), the former Project Manager for flagship projects (see paragraph 8.4.5 infra for interview details). In the interview, Jones indicated that there was no funding application completed because a proposal was submitted by Lalela. According to Jones, the known missing documents in the Lalela file were replaced as duplicates had been made him previously. The information provided by Jones contradicts the information provided by Mangope. According to Molekwa, Diphofa and Lesala, there was no funding application and / or proposal from Lalela regarding the “*Social Cohesion Heart Maps project*”.
- 1.3.3 Based on the available information in our possession, it is apparent that Lalela did not submit a proposal or funding application. The non-submission of a funding application
- 1.3.4 The non-submission of a funding application and supporting documents is a breach of paragraph 6.1 of the Grant Awarding Manual.
- 1.3.5 During the information gathering interview Diphofa informed us that this funding was suggested by the CEO, Mangope. Thus the funding of this project was not in response to an application submitted by Lalela or to a call for funding application.
- 1.3.6 The Grant Awarding Policy does allow staff and management to identify projects for funding that will promote the NAC objectives. Notwithstanding the fact that this funding project was identified by the CEO, the NAC approval process must still be followed in accordance with paragraph 6.1 of Grant Awarding Manual.

- 1.3.7 Thus it is apparent that Lalela should have completed a funding application form or submitted a proposal. There appears to be no evidence that Lalela submitted a funding application form and submitted a three year proposal as this was a multi-year funding proposal. Thus the CEO, Mangope breached the Grant Awarding Manual by not ensuring that a fund application and supporting documents are submitted by Lalela Projects.
- 1.3.8 In an interview with Janet Molekwa (“Molekwa”), Marketing and Communications Specialist at NAC on 14 March 2018, Molekwa indicated that she attended a meeting with representatives of Lalela and the CEO, Andrea Kerzner on or about 22 March 2016. We note that this meeting between NAC representatives and Lalela took place before any submissions had been made to the Executive Committee and the Council. The following individuals attended the said meeting:
- Rosemary Mangope – CEO of NAC;
  - Janet Molekwa – Marketing and Communications Specialist at NAC;
  - Andrea Kerzner – CEO of Lalela Projects;
  - Catherine Rieper – COO of Lalela Projects; and
  - Mandla Sibeko – Lalela Projects.
- 1.3.9 It appears that the meeting was arranged by the CEO, Mangope to discuss the “*Social Cohesion Heart Maps project*” as part of a strategic partnership with NAC. After the meeting, the CEO instructed Molekwa to prepare a submission to EXCO and Council based on discussions at the said meeting.
- 1.3.10 We question whether a meeting should have been held with a potential funding applicant, before they had even submitted an application or proposal. The meeting about the proposed project could have given the Lalela projects a competitive advantage over other applicants and appears to be irregular. According to both Diphofa and Lesala, meetings are only arranged with fund applicants after the application has been assessed and approved. Thus a meeting with a potential fund applicant before an application has been submitted, assessed and approved appears irregular.
- 1.3.11 Thus it appears that the CEO, Mangope acted irregularly by meeting with Lalela representatives to discuss the “*Social Cohesion Heart Maps project*” before the fund application and or proposal had been submitted to the NAC.

- 1.3.12 We were provided with a submission dated 2 August 2016 from Mangope, Chief Executive Officer: NAC to Mohau Mphomela (“Mphomela”), Chairperson of the NAC. The submission was submitted and recommended for EXCO approval by Mangope on 2 August 2016 and the budget verified by Dumisani Dlamini (“Dlamini”) on 2 August 2016. We noted that Diphofa supported the recommendation of the CEO.
- 1.3.13 The submission further states that the project will be rolled out in four phases – phase one being a pilot phase and phases 2-4 being a national roll out of the programme. The four phases will be rolled between 2016 and 2019. The total cost for **the entire project roll out was indicated as R1 889 000.00 for a period of twelve months**. A detailed budget was attached to the submission.
- 1.3.14 According to the said submission, the partnership between NAC and Lalela was proposed for duration of 3 years in order to roll out the Heart Maps programme training in all nine provinces. According to the submission, **the total funding of R1 889 000.00 was to be given to Lalela Projects in the first year, notwithstanding the fact that the project is to be rolled out over three years. This appears to be an advance payment of the grant funding relating to years 2 and 3.**
- 1.3.15 We noted that the submission appears to have been submitted and signed by Mangope, however Mangope did not write the date in which the submission was signed. The submission appears to have been supported by Diphofa who signed the submission on 2 August 2016. The budget appears to have been verified by Dlamini who also signed the submission on the 2 August 2016. We also noted that the submission was approved by Mphomela, however Mphomela did not indicate the date in which the submission was approved. In an interview with Diphofa, she admitted that she knew very little about this project and only signed because she had been requested to sign by the CEO, Mangope. Diphofa admitted that the funding application had not been subjected to a proper approval process.
- 1.3.16 The submissions to EXCO and Council indicate that the total funding of R1 889 00.00 for the Lalela “*Social Cohesion Heart Maps project*” will be funded from the **monies available under the expired projects / surplus funds**.
- 1.3.17 The Expired Projects and Surplus Policy stipulates that there must be compliance with Sections 6, 7, 8 and 9 of the Grant Awarding Manual for “*individuals, organisations and arts companies*”.

1.3.18 Lalela were funded by the NAC in 2013. It appears that Lalela failed to submit the required final reports and financial statements for the 2013 funding. In a letter dated 30 October 2015, the NAC informed Lalela Projects that their project had been officially classified as an “*expired project*”. In terms of paragraph 6.2 of the Expired projects and Surplus policy,

*“Expired projects will not be legible (sic) for funding until two years have elapsed and only after outstanding reports have been submitted”.*

1.3.19 It is apparent that Lalela should not have been granted the funding as they did not qualify for funding from NAC until about October / November 2017. **Refer to paragraph 1.2.7 supra and to paragraph 8.2.6 infra for more details.**

1.3.20 According to Puleng Lesala, she was not informed about the project and only found out later about the 2016 funding. As the ADO responsible for the 2013 Lalela project, she should have been informed about the 2016 funding proposal. Diphofa also indicated that she was not informed about the 2016 project and was only requested to sign the submission. Thus according to both Lesala and Diphofa, the 2016 funding application / proposal by Lalela should have been declined as they were classified as expired project.

1.3.21 Paragraph 5 of the submission further states that the “*partnership between NAC and Lalela is proposed for a duration 3 years*”. As this is a multiyear funding proposal, the funding proposal is deemed to be a company funding and thus clause 7.3 of the Grant Awarding policy is applicable.

1.3.22 In terms of clause 7.3.6 of the Grant Awarding Manual the company project funding should be accompanied by certain compulsory documents such as original valid tax clearance certificate, Latest one month bank statement and recent financial statements by a registered accountant.

1.3.23 We could find no evidence that Lalela projects had submitted a fund application / proposals, the compulsory documents and a three year proposal.

1.3.24 The approval process in terms of the Grant Awarding Manual stipulates that all funding applications / proposals must be screened by ADOs. The ADOs would then prepare a funding index, which is provided to the Advisory panels. The applicable Advisory Panel would then advise the Council on the merits of the funding applications for grants on any matter relating to the field of the arts for which it was appointed.

- 1.3.25 We could find no evidence that the funding application of the Lalela “*Social Cohesion Heart Maps project*” had been properly screened and assessed by an Advisory Panel. In an interview with Mangope, she agreed that the Lalela submission had not been subjected to the normal approval process as this was a flagship project, which had been discussed at the Development Agencies Forum (“DAG Forum”). We were provided with a letter signed on 20 June 2016 and 6 September 2016 from the NAC, National Film and Video Foundation (“NFVF”) and National Heritage Council (“NHC”) (cross reference *Exhibit 38*). In the letter, the DAG Forum recommended that the DAC “*Support the collaboration process by availing a budget from the DAC*”. We were not provided with the response from the Deputy Director-General (“DDG”), Corporate Governance. Thus any funding by NAC must be subjected to the NAC policies and procedures.
- 1.3.26 In an interview with Lesala and Diphofa, they indicated that in the past flagship projects were always subjected to the approval process. As flagship projects were mainly funded from the available surplus funds, the Surplus Policy had to be followed. Furthermore, the DAG Forum does not approve the funding projects.
- 1.3.27 We were provided with a submission to Council dated 24 August 2016. The submission was from the CEO, Mangope to the Chairperson, Mphomela. In the submission, the CEO requested that Council approve the amount of R4 074 285.00 for the 4 strategic partnerships, including the Lalela project. The submission was approved by Mphomela on behalf of the Council. We requested the signed minutes of the resolution. We were informed by the NAC officials that Mphomela had refused to sign the minutes of the Council meeting of 24 August 2016. It appears that the new Council has signed the said minutes in or about February 2018. We have still not been provided with the said minutes after numerous requests to NAC officials. Paragraph 12.1.5 of the Grant Awarding Manual states:
- “No member of staff the panel, staff or Council may submit an application directly to the Panel Chair / Panel / Council for consideration”.*
- 1.3.28 We note that the funding submission was submitted directly to EXCO and the Council by the CEO without being subjected to the normal funding process. Thus the direct submission of the funding application by the CEO for the Lalela project is a breach of paragraph 12.1.5 of the Grant Awarding Manual by the CEO.

- 1.3.29 **Thus Mphomela as the Chairperson exceeded his authority by approving the strategic partnership and funding of R1 889 285.00. It is apparent that the CEO acted irregularly and negligently in recommending the approval of the funding to Lalela without following the proper approval process and also recommending the grant funding for Lalela Projects, which had their 2013 project classified as an “Expired” project in October 2015.**
- 1.3.30 The stated duration of the project is given as 40 month period starting on 1 September 2016 to 1 December 2019 in the signed agreement. The submission to EXCO and Council refers to a 12 month period. Thus the agreement contradicts the submission to Council and ostensibly approved by Council. Thus the CEO signed an agreement for a three year roll out period, which contradicts the submission made to EXCO and Council of 12 months.
- 1.3.31 Lalela was paid a first installment of R1 133 571.00 on 12 October 2016. The payment of R1 133 571.00 to Lalela could be considered to be irregular as the proper approval process for the funding application was not followed. Thus Mangope irregularly authorised the payment of R1 133 571.00 to Lalela projects.
- 1.3.32 Lalela Projects was paid a second installment of R566 785.50 on or about November 2017. The payment of R566 785.50 to Lalela Projects could be considered to be irregular as the proper approval process for the funding application was not followed. **Thus Mangope irregularly authorised the payment of R566 785.50 to Lalela projects.**

#### **1.4 Conflict of interest involving the CEO and Lalela Projects Administrator**

- 1.4.1 There was an allegation that a family relationship between Mangope and Andrea Kerzner (“Kerzner”) existed and the said relationship could have given Lalela an unfair advantage in being granted the funding.
- 1.4.2 The allegation appears to be based on a historical relationship that existed between Sol Kerzner, the father of Andrea Kerzner (“Kerzner”) and the late Lucas Mangope, the former leader of the then Bophuthatswana and the father in law to Rosemary Mangope. In an interview with Mangope, she acknowledged that she knew Kerzner through her late father in law. Mangope further informed that she had no contact with Kerzner for 20 years until they met again in 2016.

1.4.3 We could find no evidence that there was a close relationship between Andrea Kerzner and Rose Mangope. However, the manner in which the application for strategic partnerships was handled and the breach of policies and prescripts by the CEO, Mangope raises certain concerns, such as:

- The non-compliance of Lalela Projects with the agreed requirements for the 2013 funding was ignored in considering the 2016 application;
- The NAC approval process was breached;
- The strategic partnerships and the Lalela Funding project were introduced by Rose Mangope;
- Rose Mangope submitted the funding application directly to EXCO and Council without following the proper approval process. This is a breach of the Grant Awarding Manual;
- The 2013 Lalela project was classified as an expired project and Lalela was prohibited or suspended from obtaining funding from NAC for a period of two years;
- Lalela was awarded a substantial funding grant of R1 889 000.00 even though they had not complied with all the 2013 funding requirements;
- Mangope had a meeting with the Lalela Projects representatives before any submission was made to the NAC by Lalela Projects. A meeting between a potential beneficiary before a call for applications and before the applications are submitted to the NAC is seemingly highly questionable and irregular;
- The funding applications for the 2013 years appeared to be managed on behalf of the Lalela Projects by Catherine Rieper, the COO of Lalela Projects. These particular projects were before the tenure of Mangope as CEO; and
- The application for funding for strategic partnerships was seemingly handled by Kerzner and the agreement was signed by Kerzner.

1.4.4 It is apparent that Lalela funding grant of 2016 was ostensibly treated favourably as it was not subjected to the normal approval process. Furthermore the funding submission was directly handled by the CEO and the staff in her office to the exclusion of the Arts Development Officers and the Arts Development Manager.

## **2. Background**

- 2.1 The Department of Arts and Culture (“DAC”) has requested Gobodo Forensic and Investigative Accounting (Pty) Ltd (“GFIA”) to conduct forensic investigation services pertaining to the investigation into possible conflict of interest and alleged undue / irregular award of funding at the National Arts Council of South Africa (“NAC”). The matters to be investigated were brought to the attention of the DAC’s Internal Audit Directorate by a whistleblower.
- 2.2 In this regard, the matters requiring investigation relate to:
- 2.2.1 The DAC appointed an investigation team to conduct an investigation at the NAC. It has been alleged that a member of the appointed investigation team failed to properly and fully disclose the relationship between him/herself and the Chief Executive Officer (“CEO”) of the NAC.
- 2.2.2 We were further informed that the possible existence of present/past relationship between the CEO of NAC and the said investigation team member may have influenced the outcome of the final investigation conducted by the appointed company.
- 2.2.3 It appears that the whistleblower was not satisfied with the final outcome of the investigation because of the alleged past / present relationship between the CEO and a member of the investigation team.
- 2.2.4 It has also been alleged that the CEO of NAC failed to disclose in full her relationship with one of the beneficiaries awarded funding by the NAC of R50 000.00 and R1 899 000.00 in 2013 and 2016 respectively. According to the DAC, the possible existence of such a relationship may have influenced the awarding of grants (funding) to the said beneficiary. Furthermore the beneficiary's project did not comply with all NAC requirements.
- 2.2.5 It has been alleged that the CEO made a presentation to the NAC Council and recommended that the said beneficiary be awarded the two grants mentioned in the aforesaid paragraph. We were informed that such presentations are normally done by other NAC officials and not the CEO. Thus the presentation by the CEO of this particular project at the NAC Council was a deviation from past practice.
- 2.2.6 It is further alleged that the beneficiary in question failed to submit their financial performance reports to NAC once they had been awarded funding. It appears that no remedial action was taken by the NAC's management with regard to non-submission of the said reports. The submission of regular financial performance reports by the NAC beneficiaries is a requirement and condition of granting the funding. NAC is required to take action against beneficiaries that fail to comply with the said requirement.

### **3. Purpose and objectives of the report**

3.1 The purpose of this report is to inform the DAC of the following:

- The background to the investigation;
- Our approach to the investigation and procedures performed;
- Any assumptions made and estimates applied;
- Our factual findings in respect of the investigation; and
- Our conclusions and recommendations based upon our factual findings.

3.2 The primary objectives of this assignment are:

- (i) To review the initial appointment of the service provider that conducted an investigation at NAC and to understand their mandate;
- (ii) To obtain the applicable documents and establish whether the appointed service provider, referred to above, made a disclosure of possible conflict of interest between one of the members of their investigation team and the CEO of NAC;
- (iii) To conduct our own searches and inquiries in order to establish whether the said disclosure, if such was made, stated the full extent of the relationship between the CEO and a member of the service provider's investigation team;
- (iv) To obtain the report and deliverables of the service provider, which was seemingly presented to the DAC, and establish whether the content of the said report addressed all items stated in the service provider's mandate;
- (v) To investigate the alleged conflict of interest involving the CEO and Andrea Kerzner of Lalela;
- (vi) To investigate the two funding awards of R50 000.00 and R1 899 000.00 to Lalela;
- (vii) To investigate the non-compliance of Lalela regarding to the submission of financial performance reports;
- (viii) To interview officials at the NAC in order to obtain an understanding of the processes and policies being applied in the selection and subsequent awarding of grants to organisations.

Furthermore to understand and establish all the requirements which have to be met before an organisation can be selected for receiving grants;

- (ix) To review the process, which resulted in the decision to award the two grants to the Lalela Project. This entails reviewing all the documents and information submitted by the said beneficiary prior to the award and further to establish if all the requirements were met;
- (x) To interview the whistleblower with a view of establishing the following:
  - Understand his/her unhappiness or concerns on the outcome of the investigation conducted by BIG (service provider) and why she / he feels that the quality of the investigation work conducted may have been compromised;
  - Any knowledge of a possible relationship between the CEO of NAC and the said beneficiary that received the funding despite not meeting the requirement;
  - The reasons he / she feels that the CEO may have possibly influenced the awarding of grants to the beneficiary; and
  - Any other irregular activities / maladministration occurring at NAC.
- (xi) To obtain the personnel file and other related records of the CEO and in order to determine whether the CEO properly disclosed the alleged conflict of interest;
- (xii) Conduct probity searches on the CEO, the beneficiary (organisations) and members of the beneficiary organisation;
- (xiii) To identify the NAC officials who were part of the process leading to the award of grants. In this regard, we understand that the CEO was part of the said process. The CEO's participation in the process appears to be irregular;
- (xiv) To determine the post award activities / dealings between the said beneficiary and NAC. This includes establishing whether financial performance reports were submitted or not and also whether NAC management failed to take remedial action against the beneficiary on the alleged non-submission of required financial performance reports;
- (xv) To identify those officials / individuals responsible for any breach of NAC policies and procedures in respect of the selection and awarding of grants to the said beneficiary, and whether such was as a result of administrative deficiencies and / or deliberately done with intent to defraud NAC and / or for personal gain either directly or indirectly;

- (xvi) To interview individuals considered to have information relevant to the investigation;
- (xvii) To present bi-weekly status / progress reports to the DAC or its nominee, which will summarise our results of work for the period against the original objectives;
- (xviii) To advise the Department's Project Management team of any emerging risk exposure impacting the investigation during the investigating process;
- (xix) To develop presentations to the DAC Management, Ministry Office and Audit Committee of the Department as would be required;
- (xx) To make recommendations to enhance the overall standard of internal financial and other operational controls applied by the Department, at the extent and decision of the Department;
- (xxi) To report on our factual finding and to substantiate these with full exhibits and documentary evidence; and
- (xxii) To provide litigation support, if required. This will be provided for in a separate mandate if the need arises.

3.3 This report is not a court document, and has been prepared solely for the purpose of this assignment. It is to be used solely as a discussion document and should not be used for any other purpose. No part of this document may be quoted, referred to or disclosed, in whole or in part, other than to competent authorities in terms of due legal requirements, without our prior written consent.

## **4. Approach and procedures performed**

4.1 We took cognisance of the relevant legislation, policies and procedures and guidelines.

4.2 We took cognisance of the General Conditions of Contract used by Government.

4.3 We *inter alia* obtained and reviewed copies of the following:

- BIG Forensic Investigation Report dated 6 October 2016;
- Grant awarding manual – GR001/2010 dated 17 March 2010;
- Surplus funding policy – GR002/2010 dated 17 March 2010;
- Expired projects and surplus policy – GR003/4/2015 dated 22 May 2015;
- Email correspondence from Freddie Nyathela and others;
- Submission to Council on CEO’s office special projects dated 24 March 2015;
- Call for applications for funding 2013;
- Lalela Project Trust annual financial statements for the financial year ended 29 February 2012;
- Lalela Project Trust funding application submission dated 11 March 2013;
- NAC Exco funding meeting minutes and agenda for 9 and 10 May 2013;
- NAC Exco funding meeting minutes and agenda for 8 May 2013;
- Declaration of interests by the following NAC Board members for the meeting of 9 May 2013;
  - Phyllis Klotz – 9 May 2013;
  - Andile Magengelele – 9 May 2013;
  - Zaida Harneker – 9 May 2013;
  - Nakedi Ribane – 9 May 2013;
  - Zamindlela Bhengu – 9 and 10 May 2013;

- Seipati B Dichabe – 9 and 10 May 2013;
  - Julie Diphong – 9 May 2013;
  - Angie Makwetla – 9 and 10 May 2013;
  - Johnny Masilela – 9 May 2013;
  - N Nkuna – 10 May 2013;
  - N Ntshangasi – declaration was undated; and
  - Pumloi Mbeya – 10 May 2013.
- Exco approved funding schedule dated 10 May 2013;
  - Minutes of the Council meeting dated 24 May 2013;
  - Grant approval letters, agreements and addendum relating to the Lalela Projects Trust;
  - Correspondence between NAC and Lalela Project Trust; and
  - Various submissions to the Executive Committee relating to the Lalela Project Trust.

4.4 We *inter alia* conducted interviews with the following fund beneficiaries, applicants and NAC officials:

- Freddie Nyathela, funding applicant on 25 January 2018;
- Andries Dippenaar, BIG investigator on 13 March 2018;
- Michael Sass, BIG investigator on 14 March 2018;
- Julie Diphofa, Arts Development Manager at NAC on 14 March 2018 and 10 April 2018;
- Pule Lesala, Arts Development Officer at NAC official on 14 March 2018 and 10 April 2018;
- Janet Molekwa, Communications and Marketing Specialist at NAC official on 14 March 2018;
- Rosemary Mangope, NAC CEO on 9 April 2018; and
- Denzil Jones, former NAC official on 10 April 2018.

- 4.5 We *inter alia* examined relevant legislation, policies and procedures pertaining to the grant funding.
- 4.6 We reviewed the various agreements between NAC and the grant beneficiaries in question.
- 4.7 We obtained the payments and supporting documents for grant beneficiaries in question.

## **5. Scope and qualification of our investigation**

- 5.1 The scope of our investigation was determined by the purposes and objectives of our mandate, as recorded in paragraph 2 *supra*.
- 5.2 We have attempted to obtain all information relevant to our assignment, but cannot, at this stage, guarantee that all relevant documentation has been obtained, despite diligent effort on our part. Although every attempt has been made to identify that all apparent irregularities, we cannot guarantee that all or any such areas have been identified.
- 5.3 We were not required to, nor did we, undertake as part of the investigation, an audit in terms of Generally Accepted Audit Standards. The scope of our investigation was limited to a review of documents, information and data made available to ourselves.
- 5.4 Should further documentation and / or information exist, which was not divulged to us, for whatever reason, our opinions and interpretations may change and an amended report may be issued if considered necessary.
- 5.5 We were unable to interview Mohau Mphomela (“Mphomela”), the former NAC Chairperson. We tried to contact Mphomela on cellular phone number 083 477 0242 on numerous occasions. The phone was either switched off or engaged. We also sent email requests to Mphomela on [mmphomela@gmail.com](mailto:mmphomela@gmail.com) and [0834770242@mtnloaded.co.za](mailto:0834770242@mtnloaded.co.za) email addresses. To date Mphomela has not responded to our telephone calls or email requests for an interview.
- 5.6 We repeatedly requested the signed minutes of the Council meeting held on 24 August 2016. On 12 April 2018, we were provided with unsigned copy of the said minutes. We also noted that pages 2, 4, 6, 8 and 10 were missing. We again requested the minutes and to date have still not received such.

## **6. Legislative requirements and policies and procedures**

### **6.1 The Constitution of the Republic of South Africa**

6.1.1 Section 217 provides that “*When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective*”.

6.1.2 In dealing with the above 5 principles the following guidelines are given:

#### *Fairness and equality*

*The principles of fairness and equitability indicate that the procurement procedure must be procedurally fair. At a minimum, interested parties (including all tenderers) should be given a reasonable opportunity to make representations relating to the award of the relevant contract. In addition, affected persons should be treated fairly and equally. For example, all tenderers should be furnished with the same information and should be given the same opportunity to make representations.*

#### *Transparency*

*The principle of transparency promotes openness and accountability. The important principle serves to encourage good decision-making in relation to procurement and combats the ever-present possibility of corruption in the adjudication of tenders and awarding of contracts. In so doing, it instils public confidence in the procurement process.*

*In light of this constitutional principle of open procurement, it is difficult to justify the award of a contract by an organ of State in the absence of some form of public process.*

#### *Competitiveness and cost-effectiveness*

*The principles of competitiveness and cost-effectiveness indicate that an organ of state should, while taking into account other factors, attempt to procure goods or services at the lowest possible cost.*

## **6.2 National Arts Council Act, Act No. 56 of 1997**

6.2.1 The NAC was established in terms of the National Arts Council Act, Act No. 56 of 1997 (NAC Act):

6.2.2 Section 3 provides the “*Objects of the Council*” as follows:

- “1 to provide, and encourage the provision of, opportunities for person to practice the arts;
2. to promote the appreciation, understanding and enjoyment of the arts;
3. to promote the general application of arts in the community;
4. to foster the expression of national identity and consciousness by means of the arts;
5. to uphold and promote the right of any person to freedom in the practice of the arts;
6. to give historically disadvantaged such additional help and resources as are required to give them greater access to the arts;
7. to address historical imbalances in the provision of infrastructure for the promotion of the arts;
8. to promote and facilitate national and international liaison between individuals and institutions in respect of the arts; and
9. to develop and promote the arts and to encourage excellence in regard to these.”

6.2.3 Section 6 provides as follows:

A. Subject to subsection (3) and in order to achieve its objects, the Council may:

- “(a) render support, including but not limited to, financial support, advice and information, to any person, organization or institution;
- (b) investigate and determine which field of the arts should have preference for the purpose of support thereof;
- (c) investigate and determine the need for support of any person, organisation or institution;
- (d) conduct research into any field of the arts;

- (e) establish, compile and maintain databases, including, but not limited to databases of persons, organisations, institutions, equipment and facilities connected with the arts;*
- (f) make bursaries available to students for local and overseas studies;*
- (g) liaise with the responsible members in order to promote the arts more effectively throughout the Republic and to ensure co-ordination in the distribution of funds at national and provincial level;*
- (h) make funds available to the responsible members for such distribution as the Council may determine;*
- (i) nationally and internationally facilitate and promote liaison between individuals and institutions;*
- (j) make grants to any person, organization or institution in order to provide facilities to support the development and promotion of the arts;*
- (k) co-operate with any person, organization and institution;*
- (l) grant study bursaries and loans;*
- (m) enter agreements with any person, organization or institution, upon such conditions as may be agreed upon;*
- (n) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber movable and, with the approval of the Minister, granted with the concurrence of the Minister of Finance, immovable property;*
- (o) with the approval of the Minister, granted with the concurrence of the Minister of Finance, on such terms and against such security as may be agreed upon; and*
- (p) generally, do everything which is necessary to achieve its objectives.”*

**B. The Council shall:**

- “(a) advise the Minister on matters concerning the arts;*
- (b) publish information on its objects and functions;*
- (c) perform such duties in respect of its objects as the Minister may assign to it; and*

(d) *undertake or procure the undertaking of such investigations and research concerning its objects as the Minister may assign to it in terms of any other Act.*”

C. The Council shall not itself establish, acquire or operate any organisation or institution connected with the arts, but may initiate projects which it considers necessary in pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations or institutions which have the capacity to undertake such projects.

### **6.3 Public Finance Management Act, Act No. 1 of 1999**

6.3.1 In terms of **section 51 (1) (a) (iii)** of the PFMA, *“an accounting authority for a public entity must ensure that the public entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective”*.

6.3.2 Section 51 (1) (b) (ii) states that the *“an accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not complying with the operational policies of the public entity”*.

6.3.3 Section 51 (1) (e) provides that an accounting authority for a public entity “Must take effective and appropriate disciplinary steps against any employee of the public entity who:

(i) *contravenes or fails to comply with a provision of this Act;*

(ii) *commits an act which undermines the financial management and internal control system of the public entity; or*

(iii) *makes or permits an irregular expenditure or a fruitless and wasteful expenditure”*.

6.3.4 Section 57 provides that an “official in a public entity–

(b) *must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*

(c) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s area of responsibility;*

- (d) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (e) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*
- (f) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility”.*

6.3.5 Section 83 (1) provides for the following offences:

- (1) the accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently–*
  - (a) fails to comply with a requirement of section 50,51, 52, 53, 54 or 55; or*
  - (b) makes or permits an irregular expenditure or a fruitless and wasteful expenditure.*
- (2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any misconduct of the accounting authority.*
- (3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.*
- (4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.*

6.3.6 In dealing with suppliers and / or potential suppliers, the following guidelines are provided:

- To recognise and deal with conflicts of interest or the potential therefore;
- To deal with vendors even-handedly;
- To ensure they do not compromise the standing of the state through acceptance of gifts or hospitality;
- To be scrupulous in their use of public property;
- To provide all assistance in the elimination of fraud and corruption;

- To have open, honest and co-operative business relations with colleagues and vendors;
- To ensure confidentiality of both government and commercial information;
- To avoid conflict of interest or a perception of bias;
- To disclose possible conflicts of interest, whether real or capable of being perceived, to the Head of Procurement as soon as they arise;
- To ensure fair dealing and impartially in the conduct of bid evaluations; and
- To achieve the highest possible standard of professional competence and the encouragement of similar standards among all staff.

6.3.7 Pertaining to communicating with potential suppliers, the following principals are normally applied:

- There should be minimal contact with prospective bidders prior to the closing date any *contact should be in accordance with the protocols set out in the bid documentation.*
- *Any briefings or clarifications of the bid must be provided in a consistent manner to ensure that all vendors have access to the same information and no one is advantaged or disadvantaged.*
- *All clarifications must be done in writing and records should be maintained in the relevant bid file.*

## **6.4 Internal policies and procedures**

### **6.4.1 Grant awarding Manual GR001/2010**

6.4.1.1 In terms of section 9.1.3, that for administration compliance; all required documentation must be submitted with the application.

### **6.4.2 Emergency Grant Funding GR002/2009**

6.4.2.1 In terms of Section 8, that the total amount approved may not exceed R100 000.00.

### **6.4.3 Expired Projects and Surplus Policy GR003/4/2015**

6.4.3.1 Section 9 of the policy states:

- Surplus funds may be utilised to obtain NAC objectives;
- Funds shall not be used to support projects that could be supported through project funding;
- Funds may be utilised to support projects that will transform and grow the sector;
- It may also be used where NAC wishes to strengthen its relationship with a particular organization in pursuance of its objectives;
- It may be used on projects that falls outside the seven arts disciplines supported by NAC as long as it contributes to growth in the sector; and
- Council and Management can directly make decisions with regard to the utilization of surplus funds only if that allocation relates to project operational activities.

## **6.5 Guide for Accounting Officers, October 2000**

6.5.1 Chapter 9 of the Guide for Accounting Officers deals with the transfer payments and conditional grants. Transfers or grants not authorized in terms of an appropriation Act and / or the Division of Revenue Act constitute unauthorised expenditure.

6.5.2 Accounting officers must not transfer funds to e.g. a Non-Governmental Organisation (NGO) to conceal underspending in their own departments (fiscal dumping). This may constitute financial misconduct. Any intentions to transfer should be outlined during the budget preparation process, before the financial year begins. The recipient organization should be encouraged to have plans in place for spending the funds before the financial year commences.

## **7. Detailed Findings: Conflict of interest involving BIG employee**

### **7.1 Background**

7.1.1 It appears that the Business Innovation Group (“BIG”) Forensic Auditor, Andries Dippenaar (“Dippenaar”), who was involved in the NAC investigation, was a former colleague of Rosemary Mangope (“Mangope”), the NAC CEO. It was further alleged that both Dippenaar and Mangope worked for the DBSA during the same period and that they knew each other well.

7.1.2 It was alleged that both parties did not disclose this relationship and this could have compromised the BIG investigation into NAC activities.

### **7.2 Appointment of BIG by DAC**

7.2.1 We were not provided with the BIG appointment letter, which sets out the terms of reference. Paragraph 2 of the BIG report discusses the investigation mandate. We deem it prudent to state the BIG mandate in their report as follows<sup>1</sup>:

*“2.1 BIG was appointed by the DAC to conduct an investigation into the allegation that NAC deliberately failed to adhere to the grant funding policies in an irregular manner and to establish if any of the NAC staff members acted in an irregular and /or corrupt and /or fraudulent manner regarding this matter.*

*2.2 The scope covered the grant funding application submitted by SARA for a project to procure stage equipment from Layher (Pty) Ltd during 14 April 2014, in the amount of R290 363.30.*

*2.3 It also covered a second grant application dated 30 July 2014, for similar stage equipment, in the amount of R920 734.62.*

*2.4 In addition, the investigation on a high level looked at payments made to entities directly linked to current and former employees, including but not limited to Jazz for Juniors, Hugh Masekela Foundation and Legacy Hotels”.*

7.2.2 As we did not have the signed appointment letter, we accepted the investigation mandate included in the BIG report as stated in the aforesaid paragraph.

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<sup>1</sup> BIG forensic report dated 6 October 2016

### **7.3 Background information on BIG investigation report**

7.3.1 BIG produced a final investigation report titled *“ALLEGATIONS OF MISCONDUCT BY THE SENIOR MANAGEMENT OF THE NAC AS A RESULT OF THEIR FAILURE TO AWARD A GRANT TO SARA”* on 6 October 2016. The allegations against the NAC senior management were contained in a memorandum submitted by Freddie Nyathela (“Nyathela”), President of SARA to the DAC.

7.3.2 GFIA has been requested to obtain and consider the BIG report regarding the alleged misconduct by senior management at the NAC. Paragraph 16 of the BIG report has made *inter alia* the following findings with regard to the allegations by Nyathela:

*“16.1 Based the interview (sic) with Mr Nyathela and Ms Diphofa; and our analysis of the Grant Awarding Manual, the Expired Projects and Surplus Policy and the Emergency Grant Policy, it was established that Mr Nyathela did not comply with the terms and conditions of the Grant Awarding Manual and the Emergency Grant Policy.*

*16.2 Mr Nyathela applied for emergency funding in the amount of R290 363.30. The amount exceeds the amount as stated in section 8 of the Grant Payment (Emergency Grant Policy), which stipulates that payment of total approved grant may not exceed R100 000.*

*16.3 Mr Nyathela in his second grant application for stage equipment, amounting to R920, 734.62, omitted to submit a complete grant application. He however admitted that he did not attach the copies of the Identification Documents (ID’) of the Board members of SARA. He claimed his copier machine was out of order.*

*16.4 In the Exco Submission dated 9 March 2015 the NAC proposed an amount of R350 000.00 to be awarded to Mr Nyathela / SARA, under the expired Project and Surplus Policy. The Expired Project and Surplus Policy allows them (NAC) to identify and fund projects that they deem of value to better the arts community, as per the NAC Act. The allegation made by Mr Nyathela is therefore unfounded, since the NAC acted within their policy.*

*16.5 Mr Nyathela and / or SARA were not aware of the above stated submission dated 9 March 2015, nor was he aware that the information contained in this submission, was obtained from his second grant application that was used for the “Expired Project and Surplus Policy” however declined by the NAC.*

- 16.6 *Expired Project and Surplus Policy approved by the Audit and Risk Committee (ARC) and the NAC Executive Committee (EXCO) appears not to be in line with the Treasury Regulations, and that the PFMA. Further this policy appears to be unfair and uncompetitive.*
- 16.7 *The surplus funds are generated as a result of declined grant applications or grant applications that failed to adhere to the terms and conditions of the grant in subsequent years. The NAC then seizes further disbursements to the applicant and surplus funds are generated as a result thereof.*
- 16.8 *There was no evidence to suggest that the NAC staff members were involved in any irregularities involving the grant funding application submitted by SARA for a project to stage equipment during 14 April 2014, in the amount of R290 363.30, and the second grant application dated 30 July 2014 or for similar stage equipment, in the amount of R920 734.62.*
- 16.9 *There was no evidence to suggest that the NAC staff members were involved in any irregularities involving the proposed grant funding, involving the Hugh Masekela Foundation, Legacy Hotels and Jazz for Juniors.*
- 16.10 *The reason for the conclusion on the above two assertions is that NAC staff adhered to NAC policies at all times. The stringent application of the policies can however be questioned as it does not always allow for the achievement of the objective of the grants.*
- 16.11 *Ms Rose Katz did disclose her involvement in the Jazz for Junior project and the grant application was however declined by the NAC Board.*

## **7.4 Review of BIG investigation report and our findings**

### **7.4.1 Application for emergency funding**

7.4.1.1 We were provided with the Emergency Grant policy with reference number GR002/2009. The said policy was signed as approved by the CEO and Chairperson: Audit & Risk on 15 March 2010 and 17 March 2010 respectively.

7.4.1.2 SARA applied for an emergency grant of R290 363.30. This amount exceeds the stipulated maximum of R100 000.00 and thus the funding application was rejected.

7.4.1.3 According to BIG, SARA / Nyathela *“failed to comply with the grant funding policies and procedures of the NAC”* for this application.

**7.4.1.4 The finding by BIG appears to be factually correct and thus the BIG finding in this regard to be accepted.**

### **7.4.2 Application for stage equipment**

7.4.2.1 We were provided with the Grant awarding manual with reference number GR001/2010. The said policy was signed as approved by the Chairperson: Audit & Risk on 15 March 2010 and by the Chairperson of the NAC. The signature date for the Chairperson of the NAC is unclear as no day or year has been inserted except the month.

7.4.2.2 SARA submitted a second grant application for stage equipment amounting to R920 734.62.

7.4.2.3 The second SARA application was for stage equipment, which was rejected by NAC. According to NAC, they did not have the capacity and budget to fund infrastructure related request. The BIG report also indicated that SARA had failed to submit all the required documents.

7.4.2.4 We interviewed Nyathela and he admitted to that he did not submit the identity documents of the SARA Board members.

7.4.2.5 According to BIG, SARA / Nyathela *“failed to comply with the grant funding policies and procedures of the NAC”* for this application.

**7.4.2.3 The finding by BIG appears to be factually correct and thus the BIG finding in this regard to be accepted.**

### **7.4.3 Proposal by NAC for a grant to SARA under the Expired Project and Surplus Policy**

- 7.4.3.1 The NAC proposed that an amount of R350 000.00 be awarded to SARA under the Expired Project and Surplus Policy. SARA and Nyathela were unaware that this proposal had been submitted for approval to EXCO and the Council. The said proposal was declined by Council.
- 7.4.3.2 BIG has questioned the use of the surplus funds from expired projects. The use of the surplus funds could constitute a contravention of Treasury Regulations and could also be considered to be financial misconduct by NAC officials.
- 7.4.3.3 **The finding by BIG appears to be factually correct and thus the BIG finding in this regard to be accepted.**

### **7.4.4 Proposed grant funding Hugh Masekela Foundation, Legacy Hotels and Jazz for Juniors**

- 7.4.4.1 According to BIG, Rose Katz did disclose her involvement in the Jazz for Juniors project and the grant application was declined by the NAC Board. It appears that Katz recused herself from the adjudication process after the disclosure.
- 7.4.4.2 **The finding by BIG appears to be factually correct and thus the BIG finding in this regard to be accepted.**

## **7.5 Conflict of interest involving CEO and BIG employee**

7.5.1 It was alleged that that both Dippenaar and Mangope worked for the DBSA during the same period and that they knew each other well. It was alleged that both parties did not disclose this relationship and this could have compromised the investigation.

7.5.2 We telephonically **interviewed Dippenaar on 13 March 2018** on cellular phone number 076 791 3420. Dippenaar informed as follows:

- That he was the Head of the Forensic Unit at the Development Bank of SA from 2007 to 2013;
- As the Head of the Forensic Unit, he reported to the Chief Audit Executive;
- Rosemary Mangope was employed as an executive in Marketing at the DBSA;
- Had no personal relationship with Mangope and the working relationship was limited to presentations on his forensic work to the full Executive committee, which included Mangope. Thus he had no one to one interaction with Mangope during his time at the DBSA;
- From a hierarchical point of view, Mangope was much more senior to him and thus contact with her at DBSA was limited;
- On his first day at NAC, he recognised her as a former DBSA employee;
- At the NAC introductory meeting attended by his BIG senior, Michael Sass, he disclosed the fact that he had worked with Mangope at DBSA;
- At the time that both Dippenaar and Mangope worked together at the DBSA, the DBSA had over 1000 employees. and
- A disclosure regarding his working relationship with Mangope at DBSA was included in the final evidence file submitted to DAC.

7.5.3 We telephonically **interviewed Michael Sass on 14 March 2018** on cellular phone number 082 807 6834. Sass informed as follows:

- That Dippenaar informed him that he had worked at DBSA with Mangope;
- That there was no personal or working relationship between the two as Mangope was much more senior to Dippenaar at DBSA; and

- That there was no conflict of interest issue as there had been no working relationship between the two at the DBSA.

7.5.4 We interviewed Julie Diphofa (“Diphofa”), the Arts Development Manager (“ADM”) on 14 March 2018 regarding the relationship between Dippenaar and Mangope. According to Diphofa, Mangope, informed her at the introductory meeting that Dippenaar was a former DBSA colleague of hers.

7.5.5 We interviewed Rosemary Mangope on 9 April 2018 (see paragraph 8.4.4 *supra* for details). In the interview, indicated that she had worked at the DBSA with Dippenaar but had limited work interaction with him. Furthe indicated that she had disclosed that Dippenaar was a former colleague.

7.5.6 **The available evidence suggests that Dippenaar and Mangope did not have a close personal and working relationship at DBSA. Thus it is our view that the involvement of Dippenaar as investigator did not compromise the investigation.**

## **8. Detailed Findings: Irregular funding of Lalela Projects Trust**

### **8.1 Background**

- 8.1.1 It was alleged that Lalela was granted funding despite not complying with the requirement of submitting financial statements and a narrative report. Furthermore Lalela Project failed to submit financial performance reports in accordance with the requirements and conditions of the funding agreement.
- 8.1.2 There was also an allegation that a family relationship between Mangope and Andrea Kerzner (“Kerzner”) existed and that the said relationship could have given Lalela an unfair advantage in being granted the funding.
- 8.1.3 It appears that Lalela applied for funding in 2012 but was not granted funding as they did not have a tax clearance certificate. Lalela Projects was granted funding in 2013 and 2016 of R50 000.00 and R1 889 000.00 respectively.

### **8.2 Review of the awarding of a grant of R50 000.00 in 2013**

#### **8.2.1 Invitation for funding and Lalela Projects funding application**

- 8.2.1.1 Lalela Projects was granted funding for art workshops for an amount of R50 000.000. The said funding was granted on 28 June 2013.
- 8.2.1.2 In this regard we contacted the NAC officials and sourced information and records pertaining to the process followed which led to the awarding of the grant and subsequent management of the agreement.
- 8.2.1.3 During the information gathering interview with Diphofa, we were informed that Lalela submitted an application for funding in response to an NAC “*Call for applications for funding 2013*”.
- 8.2.1.4 We were provided with a document titled “*Call for applications for funding 2013*”.<sup>2</sup> The said document was an invitation by the NAC to “*individuals and registered organisations active in theatre, dance, crafts, literature, music, multidiscipline and visual arts to submit their applications for project funding*”. The closing date for the call for funding applications was indicated as

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<sup>2</sup> Call for applications for funding 2013

15 March 2013 and the “*outcomes*” date indicated as 9 June 2013. It appears that this document was downloaded from the NAC website.

8.2.1.5 We note from the Grant Awarding Manual that the application for general project funding should be accompanied by the following documents which are compulsory. The “*APPLICATION FORM FOR FUNDING FOR THE ART*”,<sup>3</sup> which was attached to the call for funding applications also had a “*CHECKLIST*” on page 11, which reflects similar documents to be provided:

- Original valid tax clearance certificate;
- Certified copy of company registration certificate (organisations / company applications);
- Two reference letters (at least 18 months old);
- Sample of work;
- One month bank statement;
- Curriculum vitae / biography of applicant;
- Certified copies of identity documents (organisations are required to submit two certified copies of office bearers; and
- Recent annual financial statements compiled by a registered accountant / chartered accountant.

8.2.1.6 It appears from KPMG’s independent auditor’s report<sup>4</sup> that Lalela Project Trust is registered as a Trust. The following persons have been identified in the aforesaid report as the trustees of Lalela Project Trust:

- Andrea Kerzner;
- Theodore Benjamin Rutstein; and
- Timothy Luke Bailes.

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<sup>3</sup> Application form for funding for the arts

<sup>4</sup> KPMG Independent auditors report

8.2.1.7 On 11 March 2013, Catherine Rieper (“Rieper”), Chief Operating Officer (“COO”): Lalela Projects completed an application form for Arts Workshops funding on behalf of Lalela Projects. The funding application was for a period of 12 months beginning March 2013 to March 2014.<sup>5</sup> The Arts Workshops project has been described by Lalela Projects in their application as follows:

*“Lalela Project provides arts education to children grade 1 to 12 in a safe space during after school and holiday periods. Our programmes ignite imagination and teach children how to map and manifest their dreams and goals, launching the possibility of a different future for themselves and their communities. Our project aims to teach life skills through predominantly virtual arts but we also include photography, film making and music as part of our mediums used. We try to expose our students to the Arts by taking them on outings to galleries and theatre. Lalela Project aims to connect the youth with artist by inviting artist such as Peter Clarte, Paul du Toit, George Mahashe and many more to attend our workshops as guest artist.*

8.2.1.8 The Lalela application shows the estimated project costs as R1 059 000.00. The application further indicates that Lalela Projects have seemingly raised an amount of R838 500.00 from other sources and thus they were requesting the remaining amount of R220 500.00 from NAC. We noted that they have indicated on their application that they had received R50 000.00 from the NAC in the previous year (2012). The NAC officials have confirmed that this amount was not given as Lalela Projects did not submit the necessary tax clearance certificate.

## **8.2.2 Approval of funding application**

8.2.2.1 We were provided with EXCO funding minutes of the meeting held at NAC offices in Newtown on 9 and 10 May 2013.<sup>6</sup> The minutes indicate that the following persons were present at the meeting:

### **Attendance:**

- Mrs Andlina Makwetla – Chairperson
- Mr Zamindlela Bhengu – Exco Member
- Ms Seipati Dichabe – Exco Member

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<sup>5</sup> Lalela application form

<sup>6</sup> EXCO funding minutes of meeting held at NAC offices in Newtown on the 9 and 10 May 2013

**By Invitation:**

- Ms Monica Newton – CEO
- Ms Julie Diphofa – Manager: ADO Section
- Ms Mary-Anne Makgoka – Board Secretary

**Apologies:**

- Mr Mohau Mphomela

8.2.2.2 The following persons signed the declaration of interest:<sup>7</sup>

- Phyllis Klotz – on 9 May 2013
- Andile Magengele – on 9 May 2013
- Zaide Harneker – on 9 May 2013
- Nakeli Ribane – on 9 May 2013
- Zamindlela Bengu – on 9 May 2013 and 10 May 2013
- Seipati B Dichabe – on 9 May 2013 and 10 May 2013
- Julie Diphofa – on 9 May 2013
- Angie Makwetla – on 9 May 2013 and 10 May 2013
- Johnny Masilela – on 9 May 2013
- Monica Nkune – on 10 May 2013
- N Tshangase – on 10 May 2013; and
- Phumlani Mbanya – on 10 May 2013

8.2.2.3 We noted that item 4.6 of the day 2 (10 May 2013) minutes shows that Phumlani Mbanya (“Mbanya”), tabled panel recommendations to EXCO for approval pending Council ratification (Refer to Funding Index). The minutes of the meeting were approved and signed by Angie Makwetla (“Makwetla”), Chairperson of the NAC on 20 August 2013.

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<sup>7</sup> Declarations of interest

8.2.2.4 We were provided with a funding index document titled “*Visual Arts: EXCO Approved 10 May 2013*”. The ADO’s overview in the said the funding index<sup>8</sup> document states in respect of the Lalela Project:

*“The organization is planning to conduct training with children from schools during winter, in the past the organization use to fund itself to run these workshops facilitated by Paul du Toit, Chris Swift and Norman Cohen. And that currently the organization plans to continue to run workshops in the next winter school holidays. Purpose: To conduct workshops with different professional’s artist and stage an exhibition”.*

8.2.2.5 We noted from the said funding index that the panel recommended an amount of R50 000.00 to be awarded to Lalela. We also note from the said index that the EXCO approved an amount of R50 000.00 to be awarded to Lalela Projects. We further note that EXCO approved a total of 49 applications including the Lalela Projects application. Of the fifty applications recommended for funding only one application was declined. The funding index shows that the funding was approved by EXCO on 10 May 2013. The funding index was signed by Monica Newton (“Newton”), the then Chief Executive Officer: NAC and Makwetla on 6 June 2013.

8.2.2.6 We were provided with minutes of Council meeting held at NAC offices in Newtown on 24 May 2013 at 09:00.<sup>9</sup> According to the minutes the following persons were present at the meeting:

**Attendance:**

- Mrs Angelina Makwetla – Chairperson
  - Mr Mohau Mphomela – Deputy Chairperson
  - Mr Zamindlela Bhengu – ARC Chair
  - Ms Sepati Dichabe – Exco Member
  - Mr Johnny Masilela – Member
  - Ms Nwabisa Mavuso – Member
  - Mr Bongani Thembe – Member
  - Prof Muxe Nkondo – Member
- 

<sup>8</sup> Funding Index

<sup>9</sup> Minutes of Council meeting held at NAC offices in Newtown on 24 May 2013 at 09:00

- Ms Nakedi Ribane – Member
- Mr Andrew Nhlanguwini – Provincial Chair
- Mr Ndela Ntshangase – Provincial Representative KZN
- Mr Chikapa Phiri – Provincial Representative Mpumalanga
- Mr Manne Thembe – Provincial Representative N Cape
- Prof Dominic Thorburn – Provincial Representative E Cape

**By invitation:**

- Ms Monica Newton – CEO
- Mr Thami Kubheka – CFO
- Ms Julie Diphofa – ADO Manager
- Ms Mary-Anne Makgoka – Board Secretary

**Apologies:**

- Ms Erica Elk
- Ms Phyllis Klotz

8.2.2.7 We noted that item 5.1 of the said minutes refers to “*Project Funding and Bursaries*” and states that “*All Exco recommendations were ratified by Council. Refer to Funding index*”. The Council minutes were approved and signed by Makwetla on 20 August 2013.

8.2.2.8 We were provided with an approval for funding letter dated 28 June 2013.<sup>10</sup> The letter was addressed to Catherine Rieper of Lalela and signed on behalf of the NAC by Newton. The letter informed Lalela that that they had been awarded funding to the value of R50 000.00 to run art workshops. A letter dated 22 August 2013 from C Rieper to Lesala, indicated that they had attached “*the latest NAC agreement, 2X signed copies with an updated budgeted and Tax Clearance Certificate*”.<sup>11</sup>

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<sup>10</sup> Letter dated 28 June 2013 from M Newton to C Rieper

<sup>11</sup> Letter dated 22 August 2013 from C Rieper to Puleng Lesala

### **8.2.3 Agreement between NAC and Lalela Projects**

- 8.2.3.1 We were provided an agreement between NAC and Lalela Projects for the award of R50 000.00 funding.<sup>12</sup>
- 8.2.3.2 We noted several sections of the Agreement, which are relevant to our investigation in respect of both the beneficiary and the NAC, respectively, and associated payments.
- 8.2.3.3 The agreement was signed on behalf of the NAC by the Chief Executive Officer, KR Mangope, on 1 September 2013, and on behalf of Lalela by Catherine Rieper of Lalela Projects on 20 August 2013.
- 8.2.3.4 Clause 4 of the agreement stipulates that the allocated amount of R50 000.00 will be paid in two installments. The first installment of R35 000.00 will be paid after receipt of two signed and original contracts. The final payment of R15 000.00 will be paid after the receipt of a final comprehensive narrative report, valid tax clearance certificate and a project financial statements from a registered accountant not later than the end of June 2014.
- 8.2.3.5 Clause 5.9 stipulates that the beneficiary will submit interim reports between payments, and complete the Project Narrative Report and audited financial statements within 6 months of completion of the project.
- 8.2.3.6 In terms of Annexure A to the agreement, the first amount of R17 000.00 will be paid after signing the funding agreement and submission of interim report for the period March to September 2013 on the 31 August 2013 and 31 October 2013 respectively. The second amount of R17 000.00 will be paid after the submission of interim report for October 2013 to January 2014. The final amount of R16 000.00 will be paid after the submission of final report for January to March 2014 including all budgets.
- 8.2.3.7 It appears that the payment terms stipulated on paragraph 8.2.3.4 *supra* contradicts the payments terms stipulated on Annexure A to the agreement.
- 8.2.3.8 Clause 5.1 stipulates that the beneficiary undertakes to submit a revised budget and indicate any additional funding received in order to make the project viable if the grant does not cover all the project costs.

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<sup>12</sup> Agreement between NAC and Lalela Projects for R50 000

## **8.2.4 Unsigned addendum to the agreement**

8.2.4.1 We also reviewed an unsigned addendum to the agreement between NAC and Lalela<sup>13</sup> for the period September 2015 to October 2015 for the project: Lalela Holiday Project. We note the following changes on the unsigned addendum to the agreement:

*“1 INTRODUCTION AND SCOPE OF APPLICATION*

*1.1 Lalela Projects and the National Arts Council (NAC) entered Into an Agreement with regard to the project Lalela Holiday Project.*

*1.2 NAC has entered into an agreement to fund the said project Lalela Holiday Project by youth has accepted the awarding of such grant and agrees to be bound by the terms and conditions as set out in the said Agreement.*

*1.3 The following changes, corrections, clarifications and additions shall be made to the Agreement between the NAC and Lalela Holiday Project shall be binding as if incorporated into the original Agreement. The parties agree that wherever there is any conflict between the Addendum and the Agreement, the provisions of this Addendum will prevail and the Agreement shall be construed accordingly.*

*2. THE GRANT*

*2.1 As per the Agreement, in addition to the Grant due to Lalela Holiday Project, funding from the NAC, will be paid to Lalela Projects and must be used ONLY for purposes of specific aspects of the funded project, as outlined in Clause 2. Any variations or amendments must be agreed to in writing by the NAC.*

*2.2 The total amount allocated Is R50, 000.00 (Fifty Thousand Rand Only) payable in 2 instalments as specified hereunder:*

*2.2.1 The first instalment of R35, 000.00 (Thirty Five Thousand Rand Only) was paid after receipt of valid tax clearance certificate, two signed and original contracts.*

*2.2.2 The final payment of R15 000.00 (Fifteen Thousand rand Only) will be paid after the receipt of a valid tax clearance certificate, the final narrative report and income and expenditure report or invoices and receipts not later than end of October 2015”.*

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<sup>13</sup> Unsigned addendum to the agreement between NAC and Lalela Project

8.2.4.2 It appears that Lalela had not responded to the demand letters for the final report for the 2013 funding .Furthermore the addendum to the agreement was sent to Lalela to assist them in claiming the outstanding amount of R15 000.00. There was seemingly no response from Lalela. The addendum contained new target dates (cross reference to *Exhibit 22*).

## **8.2.5 Submission of a revised budget**

8.2.5.1 We were provided with a letter dated 22 August 2013 from Catherine Rieper to Lesala, Arts Development Officer – Visual Arts (“ADO”). Attached to the letter was a tax clearance certificate<sup>14</sup> and a revised budget<sup>15</sup> for an amount of R1 383 800.00.

8.2.5.2 It appears that the budget of R50 000.00 was not revised as requested by Lalela Projects.

## **8.2.6 Compliance with conditions of the grant agreement**

8.2.6.1 It is apparent that Lalela Projects had also been granted a R50 000.00 funding in 2012. However, this funding had not been taken up by Lalela. According to Lesala, Lalela projects did not have a tax clearance certificate and thus the funding was not given.

8.2.6.2 According to the paragraph 11.5 of the Grant Awarding Manual, “*subsequent project payments are made after the relevant conditions on the Service Level Agreement (“SLA”) have been met*”. The paragraph further indicates that progress reports, audited financial statements or a registered Accountants report should be submitted before payment is finalised.

8.2.6.3 Annexure A of the signed agreement is titled “*Time / Payment Schedule Against Key Deliverables*”. The said annexure stipulates the following deliverables and target dates for the payment tranches:

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<sup>14</sup> Tax clearance certificate

<sup>15</sup> Revised budget

Tranch payment	Activity	List of deliverable	Date	Amount
1	1	Funding Agreement signed	31-Aug-13	R17 000.00
1	2	Submission of interim report for period March to September 2013	31-Oct-13	–
2	1	Submission of interim report for period October to January 2014	31-Jan-14	R17 000.00
3	1	Submission of interim report for period October to January 2014	31-Mar-14	R16 000.00
<b>Total Funding</b>				<b>R50 000.00</b>
Payment Received				R35 000.00
<b>Outstanding Payment</b>				<b>R15 000.00</b>

Refer to paragraph 8.2.3.6 *supra*.

8.2.6.4 There appears to have been numerous letters from Lesala to Lalela and in particular to Rieper representing Lalela regarding the submission of financial statements and a final narrative report. The correspondence relates in the main to the 2013 funding granted to Lalela projects. Notwithstanding the non-compliance by Lalela with the SLA and the Grant Awarding Manual, Lalela was granted an additional grant of R1 889 000.00 in 2016 (see paragraph 8.3 *infra*). We detailed the following correspondence between Puleng Lesala and Lalela Projects:

- In a letter dated 30 April 2013<sup>16</sup> from Lesala to Rieper, Lalela Projects were reminded that they had not submitted the required final report and financial statements. In an interview held with Lesala, we questioned the date of the letter as the grant funding agreement was only signed in or about August 2013. Lesala acknowledged that the date on the letter was seemingly wrong and that it should have been “30 April 2014” as it relates to the 2013 grant funding. In the letter, Lalela were reminded that the required grant documents were overdue and should be submitted to the NAC office on or before the end of June 2013. We assume that the date should be “June 2014”.
- A second letter dated 30 September 2013<sup>17</sup> was sent to Lalela Projects by Lesala. According to Lesala, the second letter should also refer to “30 September 2014”. The said letter made reference to the friendly reminder that was sent on “30 April 2014”. Lalela was again

<sup>16</sup> Letter dated 30 April 2013

<sup>17</sup> Letter dated 30 September 2013

reminded that the required final report and financial statement had not been received. They were again reminded that the documents were overdue and that they would “*forfeit the right to any further payments from NAC*”. They were urged to submit the required documents to NAC office on or before the end of October 2013. It was again acknowledged by Lesala that the date should have been “October 2014” and not October 2013.

- A third letter dated 28 March 2014<sup>18</sup> was sent to Lalela Projects by Lesala. It was again acknowledged by Lesala that the date should have been “*28 March 2015*” and not 28 March 2014. The said letter made reference to the friendly reminders that were sent on the “*30 April 2014 and 30 September 2014*”. Lalela Projects were again reminded that the required final report and financial statement had not been received. They were again reminded that the documents were overdue and that they would “*forfeit the right to any further payments from NAC*”. They were urged to submit the require documents to NAC office on or before the end of April 2014. Lesala again acknowledged that the date should have been “*April 2015*”.
- A fourth letter dated 30 November 2014<sup>19</sup> was sent to Lalela Projects by Lesala. The said letter made reference to the friendly reminders that were sent on the 30 April 2013, 30 September 2013 and 28 March 2014. Lalela Projects were again reminded that the required final report and financial statement had not been received. They were again reminded that the documents were overdue and that they would “*forfeit the right to any further payments from NAC*”. They were urged to submit the required documents to NAC office on or before the end of April 2014 (It appears that the submission date was not changed on this letter as it was the same as the previous letter).
- A fifth letter dated 30 October 2015<sup>20</sup> was sent to Lalela by Lesala. The said letter made reference to the friendly reminders that were sent on 28 March 2014, 30 April 2013, 30 September 2013 and 30 November 2014. Lalela were again reminded that the required final report and financial statement had not been received. The letter further stated that as per the agreement with the NAC Lalela should have been finished by the end of June 2014. In addition an addendum contract was sent to Lalela to assist them in claiming the outstanding amount. As NAC did not receive any communication from Lalela, the NAC decided to

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<sup>18</sup> Letter dated 28 March 2014

<sup>19</sup> Letter dated 30 November 2014

<sup>20</sup> Letter dated 30 October 2015

declare the project officially “*expired*”. Lalela were then informed that they would forfeit the right to further payment of an amount of R15 000.00 for the final installment.

8.2.6.5 We were informed by Lesala that the letters were posted to Lalela. Lesala was unable to provide us with evidence that she had posted the letters to Catherine Rieper / Lalela.

8.2.6.6 In an email dated 15 December 2016<sup>21</sup> and sent at 11h59 sent to Molekwa (copied to Mangope and Oliver Nurock) from Catherine Rieper, it states as follows

*“Just a note to say that I have never received any letters of demand from NAC for payment and my emails to Puleng is evident of that”.*

8.2.6.7 We were provided an email dated 15 December 2016 and sent at 21h37 to Julie Diphofa, Janet Molekwa and Cat Rieper (copied to Rosemary Mangope and Oliver Nurock) from Lesala.<sup>22</sup> In the email, Lesala states:

*“The NAC has a monitoring and evaluation process which is undertaken by Arts Development Officers, that function involves the officer is to (sic) remind beneficiaries to report in order for NAC to close the file. Letters were sent to Lalela and cat finally responded to me seeking clarity about the content on letters, I then explained to her that Lalela has to give us a report with a financial statement as stated on the contract for the NAC to claim the last instalment. My follow up effort was to send her an addendum at lease to save the situation, the addendum was sent way too late- I still did not get a reason for the delay.”*

8.2.6.8 We were provided with an email dated 25 March 2018 and sent at 19h20 to Julie Diphofa, Janet Molekwa (copied to Rosemary Mangope) from Lesala. The email was a response to the email and progress report sent by Charl Blignaut. In the email, Lesala states:<sup>23</sup>

*“If you can remember the NAC received numerous questions in 2016 and in one of questions (sic) was about Lalela not reporting and Lalela claimed to have reported. On the same email I was copied (which surprised me) and there was confusion of Lalela 2012 and 2014 and I had to clarify (please see mail attached). One of my closing statement (sic) on the email was getting a clarity on how the report was sent and asking for the report to be sent again so I can attach it on the V02214. My email was ignored, however a new contract for the Lalela Flagship file singed and the first payment was effected.”*

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<sup>21</sup> Email dated 15 December 2016 from Rieper to Molekwa

<sup>22</sup> Email dated 15 December 2016 from Lesala to Rieper, Molekwa and Diphofa

<sup>23</sup> Email dated 25 March 2018 from Lesala to Molekwa

- 8.2.6.9 Thus Catherine Rieper's claim that she did not receive any demand letters from Lesala and the NAC appears to contradict the claim by Lesala that she sent five letters of demand to Lalela. Lesala could not produce evidence that the letters were posted to Lalela. However, the email referred to in paragraph 8.2.6.7 *supra*, clearly indicates that Catherine Rieper was informed on or about 15 December 2016 that a report and financial statement has to be submitted. There is no evidence that Lalela responded to the said email by submitting the required final narrative report and financial statement. Notwithstanding the fact that Lalela possibly did not receive any letters of demand, Annexure A of the agreement stipulates that a final report will be submitted on 31 March 2014 before the third tranche is paid. The third tranche of R15 000.00 is still outstanding because the ADO has ostensibly not received the final report. Furthermore Lalela was informed on or about 15 December 2016 that the report and financial statements were outstanding, Lalela failed to submit a final report to NAC.
- 8.2.6.10 An email dated 23 March 2018 from Charl Blignaut was sent to Janet Molekwa and Zimasa Velaphi of DAC. In the email Charl Blignaut addresses Janet Molekwa directly and states as follows:<sup>24</sup>
- "Sorry to add to the issues this week, but attached <sup>25</sup>is a report that Lalela says they posted to the NAC and hand delivered in 2013, as well as a letter, claiming that they did account for the R35K.<sup>26</sup> I have spoken with their CEO Ms Cat Rieper who puts the blame on NAC. Do you maybe have a response?"*
- 8.2.6.11 It is interesting to note that the report from Lalela is the first progress report, which was supposed to have been submitted for the first tranche payment. The second report and the final report, which was supposed to have been submitted on or about 31 March 2014 appears to be still outstanding. Thus there appears to have been no compliance with the terms of the agreement. Refer to paragraph 8.2.6.3 *supra*.
- 8.2.6.12 Furthermore there is no proof that Lalela submitted the report referred to paragraph 8.2.6.7 *supra* to the NAC on or about 31 October 2013.
- 8.2.6.13 Based on the non-submission of the reports by Lalela, it appears that Lalela breached clause 5.9 of the contract which states that *"The beneficiary undertakes to take actions to ensure that the project's success, submit interim reports between payments, and complete the Project Narrative Report and audited financial statements within 6 months of completion of project. The beneficiary also*

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<sup>24</sup> Email dated 23 March 2018 from Charl Blignaut

<sup>25</sup> Lalela progress report for the period 24 June 2013 to 11 July 2013

*undertakes to furnish the NAC with documented proof (i.e. invoices and/receipts) of expenditure and to provide additional material such as video material, photographs, posters and pamphlets to confirm that the allocation has been utilised according to the original Agreement should this be requested by the end of the reported as indicated in section 4.2”.*

## **8.2.7 Payments**

- 8.2.7.1 We were provided with a Requisition for payment to Lalela Project dated 6 September 2013 for an amount of R35 000.00.<sup>27</sup> The said Requisition for payment was prepared by Lesala and checked by Julie Diphofa, Arts Development Manager (“Diphofa”) on 11 September 2013.
- 8.2.7.2 Diphofa provided us with a supplier detailed ledger<sup>28</sup> for the period 1 April 2013 to 31 March 2014. The detailed ledger depicted that a payment of R35 000.00 was made to Lalela Projects on 20 September 2013.

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<sup>26</sup> Letter dated 31 October 2013 from Catherine Rieper to Puleng Lesala

<sup>27</sup> Request for payment to Lalela Project dated 6 September 2013

<sup>28</sup> Supplier detailed ledger

### **8.3 Review of the awarding of a grant of R1 889 000.00**

#### **8.3.1 Background**

8.3.1.1 Lalela was awarded another grant funding for the “*Social Cohesion Heart Maps Project*” for an amount of R1 889 000.00. The said funding was granted on the 12 September 2016. The said project was considered to be flagship project by the CEO.

8.3.1.2 In this regard we contacted the NAC officials and sourced information and records pertaining to the process followed which led to the awarding of the grant and subsequent management of the agreement.

#### **8.3.2 Formulation of the motivation / proposal**

8.3.2.1 We could find no funding application and / or proposal from Lalela regarding the “*Social Cohesion Heart Maps project*” for R1 889 000.00. In an interview with Mangope, she insisted that a funding application was completed and submitted by Lalela (see paragraph 8.4.4 *infra* for interview details). Mangope further stated that the Lalela file was stolen. We also had an interview with Denzil Jones (“Jones”), the former Project Manager for flagship projects (see paragraph 8.4.5 *infra* for interview details). In the interview, Jones indicated that there was no funding application completed because a proposal was submitted by Lalela. According to Jones, certain documents were removed from the Lalela file. The known missing documents in the Lalela file were ostensibly replaced as duplicates had been made. The information provided by Jones contradicts the information provided by Mangope regarding the submission of a funding application. According to Molekwa, Diphofa and Lesala, there was no funding application and / or proposal from Lalela regarding the “*Social Cohesion Heart Maps project*”.

8.3.2.2 Based on the available information in our possession, it is apparent that Lalela did not submit a proposal or funding application. The non-submission of a funding application and / or proposal is a breach of paragraph 6.1 of the Grant Awarding Manual.

8.3.2.3 During the information gathering interview with Diphofa, she informed us that the funding for the “*Social Cohesion Heart Maps project*” was suggested by the CEO, Mangope. Thus the funding of this project was not in response to an application submitted by Lalela Projects or to a call for funding application.

- 8.3.2.4 The Grant Awarding Policy does allow staff and management to identify projects for funding that will promote the NAC objectives. Notwithstanding the fact that this funding project was identified by the CEO, the NAC approval process must still be followed in accordance with paragraph 6.1 of Grant Awarding Manual.
- 8.3.2.5 Thus it is apparent that Lalela Projects should have completed a funding application form and submitted the compulsory documents. There appears to be no evidence that Lalela Projects submitted a funding application form and submitted a three year proposal as this was multi-year funding proposal. Thus the CEO, Mangope breached the Grant Awarding Manual by not ensuring that a fund application and supporting documents are submitted by Lalela.
- 8.3.2.6 According to Mangope, the “*Social Cohesion Heart Maps project*” was introduced by Mandla Sibeko of Lalela Projects at an initial meeting between Mandla Sibeko, Catherine Rieper and herself.
- 8.3.2.7 In an interview with Janet Molekwa (“Molekwa”), Marketing and Communications Specialist at NAC on 14 March 2018, she indicated that she attended a meeting with representatives of Lalela Projects and the CEO on or about 22 March 2016(see paragraph 8.4.2 *infra* for interview details). In a meeting with Mangope, she confirmed the meeting but could not remember the date. It appears that this was the second meeting between the Lalela representatives and NAC CEO. We noted that this meeting between NAC representatives and Lalela took place before any submissions had been made to the Executive Committee and the Council. The following individuals attended the said meeting:
- Rosemary Mangope – CEO of NAC;
  - Janet Molekwa – Marketing and Communications Specialist at NAC;
  - Andrea Kerzner – CEO of Lalela Projects;
  - Catherine Rieper – COO of Lalela Projects; and
  - Mandla Sibeko – Lalela Projects.
- 8.3.2.8 It appears that the meeting was arranged to discuss the “*Social Cohesion Heart Maps project*” as part of a strategic partnership with NAC. After the meeting, the CEO instructed Molekwa to prepare a submission to EXCO and Council based on discussions at the said meeting.

- 8.3.2.9 We question whether a meeting should have been held with a potential funding applicant, before they had even submitted an application or proposal. The meeting about the proposed project could have given the Lalela project a competitive advantage over other applicants and appears to be irregular. According to both Diphofa and Lesala, meetings are only arranged with fund applicants after the application has been assessed and approved. **Thus a meeting with a potential fund applicant before an application has been submitted, assessed and approved is seemingly irregular.**
- 8.3.2.10 According to Molekwa, she was not requested by the CEO to attend any other meetings with fund applicants or potential strategic partners.
- 8.3.2.11 **Thus it appears that the CEO, Mangope acted irregularly by meeting with Lalela Projects representatives to discuss “Social Cohesion Heart Maps project” before the fund application and / or proposal had been submitted to the NAC.**

### **8.3.3 Submission to Executive Committee for approval of strategic partnerships**

- 8.3.3.1 We were provided with a submission titled “*REQUEST FOR SUPPORT: STRATEGIC PARTNERSHIPS*” dated 28 July 2016<sup>29</sup> from Mangope, Chief Executive Officer: NAC to Mohau Mphomela (“Mphomela”), Chairperson of the NAC.
- 8.3.3.2 The submission to the Executive Committee (“EXCO”) states that the purpose of the document is to inform EXCO and to solicit support for four identified strategic partnerships, namely;
- Partnership with the DAC on Community Arts Centres: Annexure A;
  - DAGs Forum Collaboration: Arts Education: Africa meets Africa: Annexure B;
  - The Heritage Education Schools Outreach Programme: Annexure C; and
  - Hearts Maps Social Cohesion Collaboration with Lalela: Annexure D.

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<sup>29</sup> Submission to Chairperson dated 28 July 2016

8.3.3.3 We deem it prudent to quote the background, motivation, financial implications and recommendation of this submission as follows:

**“2. BACKGROUND**

*The 2015 / 16 Annual Reports indicates that while the NAC has made great strides over the past year in terms of tightening its internal operations and process, disbursing more grants to deserving beneficiaries and strengthening strategic partnerships both locally and abroad. One of its greatest realisation was that the organisation exist as part of an intricate ecosystem in the arts, culture and heritage landscape. Practically applying this realisation has been at the core of the NAC’s operations and continues to be its focal point into the new financial year and beyond.*

*We simply cannot operate in this day and age thinking ourselves as stand-alone entity while the arts and culture sector develops into an interrelated and intersectional economy. Part of this lesson entailed adapting and striving to became and remain relevant as a holistic, national grant-making entity of choice, in terms of, as far and as deeply as possible, fulfilling our mandate through key developmental and sustainability imperatives.*

**3. MOTIVATION**

*The NAC’s collaborative efforts and ability to contribute to and interact with the intricate broader arts, culture and heritage ecosystem is critical to attaining success. The above mentioned partnerships are unique and are true partnerships in that they will be making budgetary contributions.*

***Community Arts Centres (CACs) Collaboration with DAC:***

*The NAC made submission to the DAC to contribute to the creation and running of programmes in CACs. The objective is to raise resources through being in charge of the CACs operational budget. The idea is for the operational budget. It is estimated to be around R3 million. At this point it is difficult to indicate the sum required, as it depends on which CACs will be allocated to the NAC. A separate submission is provided as **Annexure B**.*

*Africa meets Africa already contributed significantly to this project by developing Teachers Guide and Learner Workbook. They have track record of over 15 years working with mathematicians, historians, visual artist and architects. These particular workbooks have already been developed and printed at their own cost estimated to be around R2 800 000.00. A separate submission is provided as **Annexure B**.*

*The Heritage Educational School Outreach Project: The National Heritage Council (NHC) committed a substantial amount totaling R600 000.00 to the Heritage Educational Schools Outreach Programme. The NHC will approach the rest of the DAG Agencies to make up the Shortfall of R736 685.00. A separate submission is provided as **Annexure C**.*

*Heart Maps Social Cohesion Collaboration with Lalela: Lalela is a well-established entity with a solid record of using arts to help students and marginalised youth to explore realities functional relationships. They have invested over R20 000 000.00 over a period of 5 years in doing this work. They have embarked on tried and tested methodologies and paid for monitoring and evaluation guides and longitudinal impact analysis which had been conducted with grade 4's to 12's at various schools. A separate submission is provided as **Annexure D**.*

#### **4. FINANCIAL IMPLICATIONS**

*As the submission will indicate all partners are in the process of following their own internal channels to obtain sign offs. That notwithstanding, it is important for the NAC to identify and ring fence funding for these identified partnerships. The total budget available from expired projects for flagship projects amounts to R5 038 902.00.*

*It is **proposed** that the funding be ring fenced as follows:*

- *Community Arts Centres: R1 000 000.00.*
- *Heritage Education Schools Outreach Programme: R185 000.000.*
- *Arts Education: Africa meets Africa: R1 000 000.00.*
- *Lalela Social Cohesion Heart Maps: R1 889 285.00.*

*This implies tranche funding of approximately R4 074 285.00 for the current financial year, to be sources from surplus funding.*

#### **5. RECOMMENDATION**

- 1.1 *It is hereby recommended that EXCO discusses and approves these partnerships.*
- 1.2 *Approves the amount of R4 074 285.00.*
- 1.3 *Recommends that Council approves these critical partnerships”.*

8.3.3.4 The submission was submitted and recommended for EXCO approval by Mangope on 2 August 2016 and the budget verified and recommended by Dumisani Dlamini on 2 August 2016.

### **8.3.4 Submissions to Executive Committee for the approval of Lalela Social Cohesion Heart Maps project**

8.3.4.1 We were provided with a submission to EXCO dated 2 August 2016<sup>30</sup> from Mangope to Mphomela, the NAC Chairperson. The submission states that:

*“The purpose of the submission is to motivate for EXCO to support and give approval for the NAC to partner with Lalela- an arts education organisation working with at-risk youth for the training of teachers and the implementation of the Heart Maps programme on a national scale”.*

8.3.4.2 The second submission regarding the strategic partnerships with Lalela Projects, focuses on the **details and funding of the Lalela Social Cohesion Heart Maps project**. It should be noted that the submission referred to in paragraph 8.3.3 *supra* focused on the strategic partnerships with four other organisations including Lalela and no specific project was discussed.

8.3.4.3 In the submission the nature of the partnership between NAC and Lalela Projects is also discussed. In this regard the submission states:

*“The NAC is continuously working on forging strategic partnerships that will enable the organisation to meet its full and broader mandate while supporting the DAC’s strategic imperative including fostering social cohesion. This project will add to the portfolio of NAC social cohesion projects that are not only tangible but can also be measured for impact. The call for proposals for both project and company funding has not covered all strategic deliverables. It is therefore critical for management to identify organisations with proven record as well as credibility, to partner with in order to meet deliverables as listed in the APP”.*

8.3.4.4 According to the submission, the partnership between NAC and Lalela is proposed for duration of 3 years to roll out the Heart Maps programme training in all nine provinces. The project will be rolled out nationally in four phases and will see the training of 200 teachers over a period of five days in each province. Lalela has access to accredited facilitators that will facilitate the training sessions.

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<sup>30</sup> Submission to EXCO dated 2 August 2016

8.3.4.5 The submission further states that the project will be rolled out in four phases – phase one being a pilot phase and phases 2-4 being a national roll out of the programme. The four phases will be rolled out in 2016 and 2017. The costs below include costs for monitoring and evaluation. The total cost for **the entire project roll out is R1 889 285.00 for a period of twelve months.** The budget is detailed in Annexure 1 of the submission. According to the submission, the partnership between NAC and Lalela is proposed for duration of 3 years to roll out the Heart Maps programme training in all nine provinces. It appears that **the total funding is to be given to Lalela Projects in the first year, notwithstanding the fact that the project is to be rolled out over three years. This appears to be an advance payment of the grant funding relating to years 2 and 3.**

- Phase 1 – R344 370.00
- Phase 2 – R372 680.00
- Phase 3 – R509 520.00
- Phase 4 – R662 715.00

8.3.4.6 The submissions to EXCO indicate that the total funding of R1 889 000.00 for the Lalela “*Social Cohesion Heart Maps project*” will be funded from the **monies available under the expired projects.**

8.3.4.7 We noted that the submission **for the funding of the Lalela Social Cohesion Heart Maps project** appears to have been submitted and signed by Mangope, however Mangope did not write the date in which the submission was signed. The submission appears to have been supported by Diphofa who signed the submission on 2 August 2016. The budget appears to have been verified by Dlamini who also signed the submission on the 2 August 2016. We also note that the submission was approved by Mphomela, however Mphomela did not indicate the date in which the submission was approved. In an interview with Diphofa, she admitted that she knew very little about this project and only signed because she had been requested to sign by the CEO, Mangope. Diphofa admitted that the funding application had not been subjected to a proper approval process.

### **8.3.5 Compliance with funding requirements**

8.3.5.1 During the information gathering interview Diphofa informed us that this funding was suggested by the CEO, Mangope. Thus the funding of **for the Lalela Social Cohesion Heart Maps project** was not in response to an application submitted by Lalela Projects or to a call for funding application.

8.3.5.2 The Grant Awarding Policy does allow staff and management to identify projects for funding that will promote the NAC objectives. Notwithstanding the fact that this funding project was identified by the CEO, the NAC approval process must still be followed. In terms of paragraph 6.1 of Grant Awarding Manual:

*“All funding (in respect of institutional and individual and individual post-graduate bursary application, projects and special company funding undertaken) by the NAC will be done on the basis of filling in of application forms; and submission of the three year proposals in respect of company funding”.*

8.3.5.3 Thus it is apparent that Lalela should have completed a funding application form. There appears to be no evidence that Lalela Projects submitted a funding application form and submitted a three year proposal as this was multi-year funding proposal.

8.3.5.4 According to the submission discussed in paragraph 8.3.3 *supra* the “*Heart Maps Social Cohesion Collaboration with Lalela*” will be funded by using the “*the total budget available from expired projects for flagship projects amounts to R5 038 902.00 (sic)*”. The Expired Projects and Surplus Policy stipulates that there must be compliance with Sections 6, 7, 8 and 9 of the Grant Awarding Manual for “*individuals, organisations and arts companies*”. Furthermore paragraph 7 of the Expired Projects and Surplus policy stipulates:

*“7.1 It is the responsibility of each ADO and Arts Development Manger to check and verify that new applications shortlisted have not been expired before.*

*7.2 Should shortlisted applicant that have been expired before be (sic) recommended for funding, the Arts Development Manager should report the matter to the chairperson of the panel and the CEO to recommend withdrawal of the concerned project or bursary”.*

8.3.5.5 Lalela were funded by the NAC in 2013/ 2014. It appears that Lalela Projects failed to submit the required final reports and financial statements for the 2013/2014 funding (Refer to paragraph 8.2.6 *supra*). In a letter dated 30 October 2015, the NAC informed Lalela that their project had been officially classified as an “*expired project*”. In terms of paragraph 6.2 of the Expired projects and Surplus policy:

*“Expired projects will not be legible for funding until two years have elapsed and only after outstanding reports have been submitted”.*

- 8.3.5.6 According to Lesala, she was not informed about the project and only found out about the 2016 funding later. As the ADO responsible for the 2013 Lalela project, she should have been informed about the 2016 funding. Diphofa, the ADM also indicated that she was not informed about the 2016 project and was only requested to sign the submission. Thus it is apparent that the 2016 funding application / proposal by Lalela should have been declined.
- 8.3.5.7 It appears that subsequent to the grant award to Lalela for the “*Social Cohesion Heart Maps project*”, there were questions raised about the “*expired project*” status of Lalela. A request for the report and financial statement was made to Catherine Rieper by Puleng on or about 15 December 2016 (cross reference to *Exhibit 22*). It is our view that Lalela should have responded by submitting the necessary documents. There appears to be no evidence provided by Lalela / Catherine Rieper that the required reports were submitted before the second tranche was paid in or about November 2017.
- 8.3.5.8 Paragraph 5 of the submission states that the “*partnership between NAC and Lalela is proposed for a duration 3 years*”. As this is a multiyear funding proposal, the funding proposal is deemed to be a company funding and thus clause 7.3 of the Grant Awarding policy is applicable.
- 8.3.5.9 In terms of clause 7.3.6 of the Grant Awarding Manual the company project funding should be accompanied by the following documents which are compulsory:
- Three year business plan and budget;
  - Three year artistic programme;
  - Detailed three year artistic out-reach programme;
  - Recent financial statements by a registered accountant;
  - Latest one month bank statement;
  - Original valid tax clearance certificate;
  - Certified copy of company registration certificate (organisations / company applications);
  - Three reference letters;
  - Samples of artistic work / media reviews; and
  - Three copies of certified identity documents of office bearers.

- 8.3.5.10 We could find no evidence that Lalela had submitted a fund application and a three year proposal.
- 8.3.5.11 Lalela were funded by the NAC in 2013. It appears that Lalela Projects failed to submit the required final reports and financial statements for the 2013 funding.
- 8.3.5.12 The Grant Awarding Policy stipulates that “*Applicants with outstanding administrative compliance documents are not precluded from funding consideration. However, funding will not be released until all outstanding documents are submitted*”.
- 8.3.5.13 According to both Lesala and Diphofa, to date Lalela has not submitted the 2013 outstanding documents and information. Lalela submitted a progress report via Charl Bignaut in or about March 2018. However, Lalela did not provide any evidence that the said report had been submitted as required. Thus funding to Lalela for the 2016 project should not have been released.

### **8.3.6 Submission to Council for Approval**

- 8.3.6.1 The approval process in terms of the Grant Awarding Manual stipulates that all funding applications / proposals must be screened by ADOs. The ADOs would then prepare a funding index, which is provided to the Advisory panels. The applicable Advisory Panel would then advise the Council on the merits of the funding applications for grants on any matter relating to the field of the arts for which it was appointed.
- 8.3.6.2 We could find no evidence that the funding application of the Lalela “*Social Cohesion Heart Maps project*” had been properly screened and assessed by an Advisory Panel. In an interview with Mangope, she agreed that the Lalela submission had not been subjected to the normal approval process as this was a flagship project, which had been discussed at the DAG Forum. We were provided with a letter signed on 20 June 2016 and 6 September 2016 from the NAC, National Film and Video Foundation (“NFVF”) and National Heritage Council (“NHC”) (cross reference *Exhibit 39*). In the letter, the DAG Forum recommended that the DAC “*Support the collaboration process by availing a budget from the DAC*”. We were not provided the response from the DDG.
- 8.3.6.3 In interview with Lesala and Diphofa, they indicated that in the past flagship projects were always subjected to the approval process. As flagship projects were mainly funded from the available surplus funds, thus the surplus policy had to be followed. Furthermore, the DAG Forum does not approve funding projects.
- 8.3.6.4 The total amount for the flagship projects amounted to R5 038 902.00. The recommended funding amount for Lalela was R1 889 285.00. In terms of paragraph 5 of the Grant Awarding manual, all

recommended amounts in excess of R100 000.00 must be recommended to Council for approval and not EXCO.

8.3.6.5 We were provided with a submission to Council dated 24 August 2016.<sup>31</sup> The submission was from the CEO, Mangope to the Chairperson, Mphomela. In the submission, the CEO requested that Council approve the amount of R4 074 285.00 for the 4 strategic partnerships. The submission was approved by Mphomela on behalf of the Council. We requested the signed minutes of the resolution. We were informed by the NAC officials that Mphomela had refused to sign the minutes of the Council meeting of 24 August 2016. It appears that the new Council have signed the said minutes in or about February 2018. We have still not been provided with the signed minutes after numerous requests to NAC officials. In the interview with Mangope, she confirmed that the new Council had approved the said minutes after listening to the tape recording. We were promised a signed copy of the said minutes. We were however provided unsigned copy of the said Council minutes on 12 April 2018.<sup>32</sup> To date we have not received the signed minutes.

8.3.6.6 Paragraph 12.1.5 of the Grant Awarding Manual states:

*“No member of staff the panel, staff or Council may submit an application directly to the Panel Chair / Panel / Council for consideration”.*

We note that the funding application was submitted directly to EXCO and the Council without being subjected to the normal funding process. Thus the direct submission of the funding application for the Lalela Lalela *“Social Cohesion Heart Maps project”* is a breach of paragraph 12.1.5 of the Grant Awarding Manual.

8.3.6.7 It is apparent from the aforesaid paragraph that Lalela Projects should not have been granted the funding as they did not qualify for funding from NAC until about October / November 2017.

8.3.6.8 **Thus Mphomela as the Chairperson exceeded his authority by approving the strategic partnership and funding of R1 889 285.00. It is apparent that the CEO irregularly recommended the approval of the funding to Lalela without following the proper approval process and also recommending the grant funding for Lalela Projects, which had their 2013 project classified as an “Expired project in October 2015.**

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<sup>31</sup> Submission to Council dated 24 August 2016

<sup>32</sup> Unsigned minutes of Council meeting held on 24 August 2016

8.3.6.9 We were provided a letter dated 12 September 2016<sup>33</sup> from Mangope addressed to Andrea Kerzner “Kerzner”, Chief Executive Officer: Lalela Projects. The letter informed Lalela Projects that they had been awarded grant funding of R 1 889 000.00. The letter further requested that the Lalela Projects should submit the following information with the signed agreement:

- Revised budget breakdown and schedule of activities;
- Valid Tax Clearance Certificate;
- Proof of banking details;
- Certified copy of ID of project convener; and
- Certified copy of company registration certificate.

8.3.6.10 It appears from the said letter that Lalela was not asked to submit the following documentation among others as stipulated on the Grant Award Manual:

- Two reference letters (at least 18 months old);
- Sample of work;
- One month bank statement;
- Curriculum vitae / biography of applicant; and
- Recent annual financial statements compiled by a registered accountant / chartered accountant.

8.3.6.11 The documents listed above that were not requested from Lalela becomes very important as there is evidence by Lesala that Lalela Project to submit final report and financial statement after a numerous letters were sent to Lalela project to request such on the R50 000.00 grant that was awarded to them previously. The results of Lalela Project non-compliance with numerous request to submit final report and financial statements resulted in NAC forfeiting the right of Lalela Project to further payment of an amount of R15 000.00 for the final instalment.

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<sup>33</sup> Letter dated 12 September 2016

### **8.3.7 Agreement between NAC and Lalela Projects**

8.3.7.1 We were provided with an agreement between NAC and Lalela Projects for the award of R1 889 285.00 funding.<sup>34</sup>

8.3.7.2 We noted several sections of the Agreement, which are relevant to our investigation in respect of both the beneficiary and the NAC, respectively, and associated payments.

8.3.7.3 The agreement was signed on behalf of the NAC by the Chief Executive Officer, KR Mangope, on 12 October 2016, and on behalf of Lalela Projects by Andrea Kerzner of Lalela Projects on 27 September 2016.

8.3.7.4 The stated duration of the project is given as three years in the agreement. The submission to EXCO and Council refers to a 12 month period. Thus the agreement contradicts the submission to Council and ostensibly approved by Council. **Thus the CEO signed an agreement for a three year roll out period, which contradicts the submission made to EXCO and Council of 12 months.**

8.3.7.5 Clause 5 of the agreement stipulates that the four phases will be rolled out as follows:

- Planning and development phase, October 2016 to December 2016;
- Phase 1: Pilot and pilot results, January 2017 to march 2017;
- Phase 2: Roll out in 2 provinces, April 2017 to December 2017;
- Phase 3: Roll out and evaluation and reporting in 3 Provinces, January 2018 to December 2018; and
- Phase 4: Roll out and evaluation and reporting in 3 Provinces, January 2019 to December 2019.

8.3.7.6 Clause 7 of the agreement stipulates that the allocated amount of R1 889 285.00 will be paid in three installments. The first installment of R1 133 571.00.00 will be paid after receipt of a valid tax clearance certificate, two signed and original contracts, a certified registration certificate, certified ID, revised budget breakdown and proof of bank details. The second installment to be paid on submission of a detailed project implementation plan by Lalela Projects. The final payment of R188 928.50 will be paid after the receipt of a final narrative report, valid tax clearance certificate

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<sup>34</sup> Agreement between NAC and Lalela Projects for R1 889 285.00

and project financial statements from a registered accountant not later than the end of 30 December 2017.

- 8.3.7.7 Clause 9.13 stipulates that the beneficiary will submit the required documentation in between interim reports between payments, and complete the Project Narrative Report and unqualified audited financial statements within 6 months of completion of the project.
- 8.3.7.8 The agreement stipulates that that funding must be used only for the purposes of the approved programme.
- 8.3.7.9 We note that there is discrepancy between the amount stipulated on the letter of award (R1 889 000.00) and the amount stipulated on the Funding Agreement (R1 889 285.00).

### **8.3.8 Review of payments made to Lalela Projects**

- 8.3.8.1 We were provided with a proforma invoice number SA/NAC01 dated 11 October 2016 issued by Lalela to NAC for an amount of R1 133 571.00. The description on the invoice is indicated as *“Implementation of Heart Map Social Cohesion Project”*.
- 8.3.8.2 Requisition for payment dated 11 October 2016 for an amount of R 1 133 571.00 was prepared by Denzil Jones “Jones”, Project Manager, NAC. The requisition for payment was checked by Zinzi Ramatseba (“Ramatseba”), Arts Development Officer: Multidiscipline, NAC on the 11 October 2016. It is not clear as to who processed the requisition of payment on 20 October 2016 as the name is not written on the requisition for payment.
- 8.3.8.3 The funding agreement stipulates that the first payment will be made after receipt of valid tax clearance certificate, two original contracts, a certified registration certificate, certified ID, revised budget breakdown and proof of bank details. We note that Lalela submitted the following documents to support the payment of the first installment:
- Tax clearance certificate: Approved date 29 September 2016: Expiry date 29 September 2017;
  - Two original contracts;
  - Uncertified registration certificate;
  - Certified ID;
  - Revised budget break down; and
  - Proof of banking details.

- 8.3.8.4 We note that Lalela submitted an uncertified copy of registration certificate.
- 8.3.8.5 We were also provided with a document titled “*CHECKLIST FOR REPORTING AND PAYMENT – ORGANISATIONS*”.<sup>35</sup> The said document shows that Mangope authorised the first installment of R1 133 571.00 on 12 October 2016. We question the payment of this amount as Lalela had not complied with all the requirements relating to the 2013 funded project. **Thus the payment authorised by Mangope appears irregular.**
- 8.3.8.6 We were also provided with requisition for payment dated 30 August 2017 for an amount of R566 785.50 prepared by Jones. The requisition for payment was checked by Lindi on the 10 October 2017 and processed by Galaletsang Molefe (“Molefe”), on the 13 November 2017.
- 8.3.8.7 We were further provided with ABSA audit trail. The audit trail indicates that the transaction for an amount of R566 785.50 paid to Lalela project on the 17 November 2017 was captured by Molefe, first approver by Diphofa and final approver by Dlamini.
- 8.3.8.8 The funding agreement stipulates that the second installment of R566 785.50 will be paid on presentation of a detailed project implementation plan outlining dates and provinces where training will be undertaken. A lesson learnt report from the pilot phase must be submitted at any stage before national roll-out. We note that Lalela Project submitted the following documentations to support the second payment:
- Progress report dated 14 August 2017 for a period of October 2016 to July 2017; and
  - Heart Maps Social Cohesion Project report on the pilot phase dated 28 June 2017.
- 8.3.8.9 Progress report dated 14 August 2017 appears to have been received by NAC on the 16 August 2017.

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<sup>35</sup> Checklist for reporting and payment - Organisations

## **8.4 Interviews conducted**

### **8.4.1 Interview conducted with Puleng Lesala**

8.4.1.1 We interviewed Puleng Lesala (“Lesala”), the Arts Development Officer on 14 March 2018. Lesala informed as follows:

- Lalela Projects submitted a funding application in 2012. They were awarded the grant but failed to submit a valid tax clearance certificate and thus did not claim the R50 000.00;
- The reminder letters to Lalela regarding the submission of outstanding documents have been incorrectly dated 2013 but should be 2014;
- As the ADO responsible for the 2013 Lalela project, she should have been informed about the 2016 application / proposal. She would then have informed them that Lalela are on the expired list;
- When Lalela was requested to submit the outstanding documents / information in respect of the 2013 project, they insisted that they had submitted the outstanding 2013 documents with their 2016 application. The said documents are still outstanding;
- Only became aware that Lalela had been granted funds for 2016 later;
- That before Lalela Projects was paid their first installment of R1 133 571.00, they should have submitted the 2013 outstanding documents;
- The “*Social Cohesion Heart Maps project*” was considered a flagship project, which was managed from the CEO’s office;
- The initial project manager for the 2016 “*Social Cohesion Heart Maps project*” was Rose Katz;
- After Rose Katz left the NAC, the project was managed by Denzil Jones (“Jones”). Jones contract was for a six month period, which was not renewed; and
- The positions of Rose Katz and Denzil Jones were new positions, which were introduced by the CEO, Mangope.

8.4.1.2 We conducted a second interview with Puleng Lesala on 11 April 2018. Lesala informed as follows:

- That she had received an email from Janet Molekwa on 23 March 2018. In the email Molekwa referred Lesala to the emails from Oliver Nurock, Catherina Rieper and Charl Bignaut and the letter and progress report from Catherina Rieper and Lalela (Cross reference to *Exhibits 23 – 23*);
- Insisted that the report was never submitted to NAC and that the submission of the report to Charl Blignaut on 16 March 2018 does not prove that there was a submission to NAC. No proof has been provided by Lalela to support their claim that the report was submitted;
- We provided emails between Catherina Rieper and Lesala dating back to 2012, when the initial project was approved and finalised. We were also provided an email response to Molekwa regarding the Lalela progress report; and
- That flagship projects have always been subjected to an approval process.

#### **8.4.2 Interview conducted with Janet Molekwa**

8.4.2.1 We interviewed Janet Molekwa (Molekwa”), the Marketing and Communications Specialist on 14 March 2018. Molekwa informed as follows:

- The CEO arranged a meeting with Lalela Projects on or about 22 March 2016 in Johannesburg;
- The meeting was held in Johannesburg and the following individuals attended the meeting;
  - Andrea Kerzner – CEO of Lalela Projects;
  - Catherine Rieper – COO of Lalela Projects;
  - Mandla Sibeko – Lalela Projects;
  - Rosemary Mangope – CEO of NAC; and
  - Janet Molekwa – Marketing and Communications Specialist at NAC.
- The meeting was arranged to discuss the “*Social Cohesion Heart Maps project*”;
- Was part of the meeting because she had to assist in the formulation of the proposal;

- The CEO, Mangope instructed her to prepare a motivation for submission to EXCO and the Council;
- The initial submission to EXCO was prepared and submitted on 20 June 2016; and
- A submission was prepared for Council, which was seemingly approved on 24 August 2016.

### **8.4.3 Interview conducted with Julie Diphofa**

8.4.3.1 We interviewed Julie Diphofa (“Diphofa”), the Arts Development Manager on 14 March 2018. Diphofa informed as follows:

- Confirmed that Mangope had informed her that Dippenaar was a former DBSA colleague;
- Lalela insisted that they did submit the outstanding 2013 documents. Bongani Phiri is responsible for sorting and registering all mail at the NAC. Bongani Phiri could find no evidence that the said documents were ever submitted to the NAC. The 2013 documents are still outstanding;
- Confirmed that she signed the submissions to Exco and Council regarding the approval of the strategic partnerships and the Lalela “*Social Cohesion Heart Maps project*”. The CEO, Mangope had requested her to sign the submission. She knew very little about the project but signed at the request of the CEO;
- Confirmed that the flagship projects including “*Social Cohesion Heart Maps project*” had been submitted to Council and was approved;
- Acknowledged that the proper approval process had not been followed in the award of the funding of R1 889 571.00 to Lalela Projects; and
- That the former Chairperson, Mohau Mphomela had refused to sign the Council minutes of 24 August 2016, which included the approval of the flagship projects.

8.4.1.3 We conducted a second interview with Julie Diphofa on 11 April 2018. Diphofa informed as follows:

- That flagship projects have always been subjected to an approval process; and
- That the Surplus policy serves as the flagship policy as flagship projects are mainly funded by the available surplus.

#### **8.4.4 Interview conducted with Rosemary Mangope**

8.4.3.2 We interviewed Rosemary Mangope (“Mangope”), the Chief Executive Officer on 9 April 2018. Mangope informed as follows:

- That she was employed at the DBSA from 2009 to 2013;
- Was employed at DBSA as Divisional Executive Communications and marketing;
- Recognised Andries Dippenaar as a former DBSA colleague at the introductory meeting;
- The interactions with Dippenaar were mainly work related and were only during their time at the DBSA;
- Disclosed to the then Chairperson, Mohau Mphomela that the BIG investigator, Dippenaar was a former DBSA colleague. This information was also disclosed to council members at a Council meeting. Could not remember the council meeting date;
- Acknowledged that she knew Andrea Kerzner, though her late father in law, Lucas Mangope;
- That she had no contact with Andrea Kerzner for the past 20 years until the meeting in 2016;
- The “*Social Cohesion Heart Maps project*” was brought to the NAC by Mandla Sibeko, a Lalela Board member;
- That she had an initial meeting with Catherina Rieper and Mandla Sibeko. She was unable to remember the date of the initial meeting;
- A second meeting was arranged, which was attended by the following:
  - Andrea Kerzner;
  - Catherina Rieper;
  - Mandla Sibeko;
  - Janet Molwkwana; and
  - Rosemary Mangope.

- At the second meeting with the Lalela representatives, a strategic partnership between the parties was discussed for the “*Social Cohesion Heart Maps project*”. She was unable to recall the date of the second meeting. According to Janet Molwka, the meeting was held on 22 March 2016. See paragraph 8.4.2.1 *supra*;
- Insisted that an application form was completed by Lalela for the funding of the “*Social Cohesion Heart Maps project*” and that the project file had been stolen. The said file contained the application form. Further indicated that her former Office Manager, Denzil Jones would corroborate her assertions;
- That Lalela had submitted the outstanding progress report for the 2013 project and thus Lalela should not have been classified an “*expired project*”. As proof that Lalela had submitted the progress report for the 2013 project, Mangope provided the emails from Charl Blignaut of the City Press. The emails had the attached Lalela Progress report, which had been provided to the City Press by Catherina Rieper and Olver Nurock on **12 March 2018**<sup>36</sup> and an email from Olver Nurock to Charl Blignaut on **16 March 2018**;<sup>37</sup>
- An email dated **23 March** from Charl Blignaut to Janet Molekwa was also provided to us regarding the submission of the Lalela progress report (cross reference *Exhibit 24*);
- That there was no need for the normal approval process as this was a flagship project that was discussed at a Development Agencies Forum (“DAG”) meeting and that Kelebogile Sethibelo (“Sethibelo”), Deputy Director General: Corporate Governance was aware of the flagship initiatives. Furthermore the strategic partnerships were something that started with the DAC. In support of her averments, we were provided with a letter signed on 20 June 2016 and 6 September 2016 from the NAC, NFVF and National Heritage Council (“NHC”);<sup>38</sup>

## **8.4.5 Interview conducted with Denzil Jones**

8.4.3.3 We interviewed Denzil Jones (“Jones”), the former Project Manager in the CEO’s office on 10 April 2018. Jones informed as follows:

- Was employed at NAC from 1 March 2016 to 9 November 2017 as the Project Manager in the CEO’s office. This job was previously held by Rose Katz;

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<sup>36</sup> Email dated 12 March 2018 from Cat Rieper to Oliver Nurock

<sup>37</sup> Email dated 16 March 2018 from Oliver Nurock to Charl Blignaut

<sup>38</sup> Letter dated 20 June 2016 from NAC, NFVF and NHC to Kelebogile Sethibelo

- His salary was paid from the surplus fund;
- One of his duties was to manage the flagship projects;
- The Lalela “*Social Cohesion Heart Maps project*” was considered to be a flagship project;
- The NAC built a surplus fund of approximately R45 million over the years. The NAC needed a mechanism to deal with the surplus funds. Flagship projects would ensure that the NAC achieves its mandate. Thus it was envisaged that the surplus funds would be used to fund the flagship projects;
- In order to identify flagship projects, it was anticipated that the Universities and relevant organisations would be “engaged” in order to obtain proposals;
- There was no need for flagship project such as “*Social Cohesion Heart Maps project*” to be subjected to the normal approval process as it had been presented to the DAG Forum and to the DDG Corporate Governance;
- That certain documents in the Lalela and Paleontological Scientific Trust (“PAST”) files were removed;
- The PAST file was removed and returned with missing documents and certain documents had been added to the file;
- The Lalela file was not removed but certain documents such as the submissions to EXCO and the Council were removed;
- The missing submissions in the Lalela file were also in three other flagship project files. Thus he was able to replace all the missing submissions; and
- Confirmed that there was no fund application submitted by Lalela but that a proposal was submitted.

## **8.5 Conflict of interest involving the CEO and Lalela Projects Administrator**

8.5.1 There was an allegation that a family relationship between Mangope and Andrea Kerzner (“Kerzner”) existed and the said relationship could have given Lalela Projects an advantage in being granted the funding.

8.5.2 The allegation appears to be based on a historical relationship that existed between Sol Kerzner, the father of Andrea Kerzner and the late Lucas Mangope, the former leader of the then Bophuthatswana and the father in law to Rosemary Mangope.

8.5.3 We could find no evidence that there was a close relationship between Andrea Kerzner and Rose Mangope. However, the manner in which the application for strategic partnerships was handled and the breach of policies and prescripts raises certain concerns, such as:

- The non-compliance of Lalela Projects with the agreed requirements for the 2013 funding was ignored in considering the 2016 application;
- The NAC approval process was breached;
- The strategic partnerships were introduced by Rosemary Mangope;
- The 2013 Lalela project was classified as an expired project and Lalela was prohibited from obtaining funding from NAC for a period of two years;
- Mangope had a meeting with the Lalela representatives before any submission was made to the NAC by Lalela. A meeting between a potential beneficiary before a call for applications and before the applications are submitted to the NAC is seemingly highly questionable and irregular;
- The funding applications for the 2013 years appeared to be managed on behalf of the Lalela by Catherine Rieper, the COO of Lalela. These particular projects were before the tenure of Mangope as CEO; and
- The application for funding for strategic partnerships was seemingly handled by Kerzner and the agreement was signed by Kerzner.

8.5.4 Thus based on the above concerns, it appears that Lalela Projects was treated favorably by the CEO and NAC.

## **9. Conclusions**

- 9.1 We conclude that the BIG report was issued without any malicious intent.
- 9.2 We conclude that the BIG investigator disclosed the fact that he worked at the Development Bank of South Africa during the time that Rose Mangope was a DBSA Executive.
- 9.3 We conclude that Andries Dippenaar did not have a close personal or working relationship with Rose Mangope.
- 9.4 That there was no conflict of interest regarding Andries Dippenaar's involvement in the NAC investigation.
- 9.5 We conclude that Lalela was granted funding of R50 000.00 in 2012 but failed to take the grant because they did not have the required tax clearance certificate.
- 9.6 We conclude that Monica Newton, the then CEO of NAC recommended that Lalela Projects be granted funding of R50 000.00.
- 9.7 It is evident that Rose Mangope, the current CEO was not involved in the recommendation or approval of the 2013 funding to Lalela Projects as she was not employed at the NAC.
- 9.8 We conclude that Rose Mangope's only involvement in 2013 funding of Lalela projects was in the signing of the agreement in or about September 2013.
- 9.9 We conclude that Lalela was reminded on five occasions to submit the required documents in accordance with the SLA and Grant Awarding policy for the 2013 funding granted.
- 9.10 We conclude that Lalela denied that they were issued with letters of demand by NAC
- 9.11 We could find no evidence that NAC had posted the mentioned letters to Lalela.
- 9.12 We could find no evidence that Lalela had submitted the required final narrative report and financial statements for the 2013 funding,
- 9.13 We conclude that Lalela submitted a progress report dated 31 October 2013 to Charl Blignaut of the City Press and not to NAC in or about March 2018. This report was not submitted directly to NAC.
- 9.14 We conclude that Lalela forfeited R15 000.00 of their 2013 funding because they failed to comply with the requirements of the SLA and Grant Awarding policy.

- 9.15 It appears that the Lalela 2013 project was listed as an expired project on or about 30 October 2015.
- 9.16 We conclude that Lalela did not qualify for funding for the 2016 and 2017 because of their “*expired projects*” status.
- 9.17 We could find no funding application, supporting and / or proposal from Lalela Projects regarding the “*Social Cohesion Heart Maps project*” for R1 889 285.00.
- 9.18 We conclude that the non-submission of a funding application and supporting documents is a breach of paragraph 6.1 of Grant Awarding Manual.
- 9.19 We conclude that the Mangope as the NAC CEO met with Lalela representatives regarding the “*Social Cohesion Heart Maps project*” on or about 22 March 2016.
- 9.20 We conclude that the meeting between Lalela Projects and the Mangope took place before any submission had been made to NAC by Lalela.
- 9.21 Thus it appears that it appears that the CEO, Mangope acted irregularly by meeting with Lalela representatives to discuss “*Social Cohesion Heart Maps project*” before the fund application and or proposal had been submitted to the NAC.
- 9.22 We conclude that Lalela was treated favorably and given a competitive advantage by the CEO regarding their “*Social Cohesion Heart Maps project*”.
- 9.23 We conclude that Janet Molekwa, the Marketing and Communications Specialists was instructed by Mangope to prepare a submission to EXCO and Council on the “*Social Cohesion Heart Maps project*” based on the discussions at the meeting held on 22 March 2016 with Lalela.
- 9.24 We conclude that the preparation of a submission for grant funding by Janet Molekwa was done before any funding application and / or proposal had been submitted by Lalela.
- 9.25 We could find no evidence that the funding applications of the four proposed strategic partners had been properly screened and assessed by an Advisory Panel in accordance with the Grant Awarding Manual.
- 9.26 We conclude that the submission for grant funding for the Social Cohesion Heart Maps project was submitted by the CEO directly to EXCO and Council on 28 July 2016 and 24 August 2016 respectively.

- 9.27 It is apparent that Mangope breached paragraph 12.1.5 of the Grant Awarding Manual by submitting a funding application directly to EXCO and the Council without the application being subjected to the normal funding process.
- 9.28 Thus Mphomela as the Chairperson exceeded his authority by approving the strategic partnership and funding of R1 889 285.00. It is also apparent that the CEO irregularly recommended the approval of the funding to Lalela without following the proper approval process and also recommending the grant funding for Lalela, which had their 2013 project classified as an “Expired” project in October 2015.
- 9.29 The stated duration of the project is given as 40 month period starting on 1 September 2016 to 1 December 2019 in the signed agreement. The submission to EXCO and Council refers to a 12 month period. Thus the agreement contradicts the submission to Council and ostensibly approved by Council. Thus the CEO signed an agreement for a three year roll out period, which contradicts the submission made to EXCO and Council of 12 months.
- 9.30 It appears that the total funding of R 1889 000.00 is to be given to Lalela Projects in the first year, notwithstanding the fact that the project is to be rolled out over three years. This appears to be an advance payment of the grant funding relating to years 2 and 3.
- 9.31 We conclude that the Lalela Projects was paid a first installment of R1 133 571.00 on 12 October 2016.
- 9.32 We conclude that the payment of R1 133 571.00 to Lalela projects could be considered to be irregular as the proper approval process was not followed.
- 9.33 We conclude that Mangope irregularly authorised the payment of R1 133 571.00 to Lalela projects.
- 9.34 We conclude that the Lalela Projects was paid a second installment of R566 785.50 on 30 August 2017.
- 9.35 We conclude that the payment of R566 785.50 to Lalela projects could be considered to be irregular as the proper approval process was not followed.
- 9.36 We conclude that Mangope irregularly authorised the payment of R566 785.50 to Lalela projects.
- 9.37 We conclude that the funding grant to Lalela Projects in 2016 was not conducted in an open, transparent and equitable manner in terms of section 217 of the constitution.

- 9.38 We could find no direct evidence that there was a close relationship between Andrea Kerzner and Rose Mangope.
- 9.39 We conclude that the Lalela Projects funding grant of 2016 was ostensibly treated favorably as it was not subjected to the normal approval process. Furthermore the funding submission was directly handled by the CEO and the staff in her office.

## 10. Recommendations

10.1 We recommend that disciplinary action be instituted against Rosemary Mangope, the NAC Chief Executive Officer for:

- Submitting a funding application directly to EXCO and the Council without the application being subjected to the normal funding process in breach of paragraphs 12.1.5 and 6.1 of the Grant Awarding Manual;
- For irregularly meeting with the Lalela representatives to discuss “*Social Cohesion Heart Maps project*” before the fund application and or proposal had been submitted to the NAC. The said meeting resulted in Lalela being given favorable treatment and a competitive advantage over other potential applicants. This is a contravention of section 38 (iii) of the PFMA;
- For acting in a negligent manner and recommending the approval of grant funding of R1 899 000.00 for a beneficiary classified as an “*expired project*”;
- For irregularly authorising the payment of R1 133 571.00 to Lalela as proper approval process was not followed in the award of the grant;
- For irregularly authorising the payment of R566 785.50 to Lalela as proper approval process was not followed in the award of the grant; and
- For misrepresenting that a funding application had been submitted for the *Social Cohesion Heart Maps project*” of Lalela projects.