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PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF
CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS & TRADITIONAL AFFAIRS

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SUBMISSION ON RESPONSES TO PETITION

1. BACKGROUND:

During the meeting of the Portfolio Committee held on 17 February 2021 to discuss the Mogalakwena LM petition, two issues/concerns were raised by the petitioners and directed to COGHSTA as follows:

- 1.1 The Department has commissioned a legal opinion that will cost the municipality millions.
- 1.2 Concern over poor workmanship on Phase 1 and Incomplete network on Mogalakwena Ext. 20 bulk & internal sewer network and internal water reticulation

2. RESPONSES

2.1 LEGAL OPINION

In line with his responsibilities, the Head of Intervention Team submitted a report to the MEC on allegations of financial misconduct by the municipal manager. The report on the allegations of acts of misconduct by the municipal manager was presented to the Executive Committee of the municipality. The MEC wrote to the Mayor on the allegations and requested the Mayor to table the matter before council within seven (07) days upon receipt of the letter as per regulation 3 of Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings read together with Local Government: Disciplinary Regulations for Senior Managers of 2010. The Mayor was further requested to provide progress on the matter within seven [7] days after the municipal council has taken a decision on the matter.

The Mayor tabled the report on the allegations in Council during its sitting of 25 June 2020. Council resolved to institute further investigation to validate or



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disprove the allegations against the municipal manager, and further resolved that Ms BS Gunqisa be given an opportunity make written presentation to the municipal council on why she should not be suspended.

The municipal council considered written representation by the municipal manager on 07 July 2020 and resolved as follows:

- “Council note the contents of the report.
- An independent investigator who has never provided services to the municipality and who is not on the municipal database, be appointed to conduct investigation into the allegations of misconduct against Municipal Manager and submit a report to Council within a period of thirty days.
- The municipal manager be placed on precautionary suspension pending the outcome of the investigations to avoid interference and also to protect the integrity of the investigations.”
- The municipal manager was subsequently suspended, and an investigation launched on the allegations as per the council resolution.

The municipal council held a special meeting on 02 October 2020 to consider a report on the investigations on allegations of misconduct against the municipal manager. The municipal council accepted the report presented and exonerated the municipal manager from any wrongdoing.

The MEC received two (2) letters from the Mayor and the Head of Intervention Team raising concerns on the process followed that led to the exoneration of the municipal manager and return to office. In both letters, the MEC was requested to intervene to ensure that all due processes were adhered to in managing the entire process (from the council resolution, suspension, investigations and exoneration of the municipal manager). When considering the request by both the Mayor and the Head of Intervention Team, the department deemed it fit to acquire the services of an independent party to provide an opinion on the matter and advice the municipality accordingly.

The Department procured, **at its cost**, the services of a Senior Counsel through the State Attorney to provide a legal opinion on how the process



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was managed from the period the municipal council resolved to suspend the municipal manager to the period when the council resolved to exonerate the municipal manager on all charges.

The Senior Counsel was requested to provide a legal opinion on the following issues:

- Whether the investigation report prepared by Mapotene Mangena Incorporated Attorneys dated 29 September 2020 on allegations of misconduct against the municipal manager and other senior managers was procured lawfully in compliance with applicable law;
- Whether the said investigation report was lawfully tabled and adopted by Council on 02 October 2020; and
- If the findings are that the investigation report is unlawful and its adoption was unlawful, what remedial steps the MEC should consider appropriate for implementation.

On the overall, the legal opinion pointed to many irregularities in the process including among others:

- Failure by the municipality to comply with the provisions of the Local Government: Disciplinary Regulations for Senior Managers 2010.
- The investigation was inadequate as key officials were never interviewed;
- The report was invalid and subsequently its adoption by Council on 02 October 2020 was unlawful.

The opinion has since been discussed with the Executive Committee of the municipality and duly submitted to the municipality for corrective action.

COGHSTA paid for the services of the senior counsel and the municipality did not incur any expenditure in this regard.



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2.2 MOGALAKWENA EXT. 20 BULK & INTERNAL SEWER NETWORK AND INTERNAL WATER RETICULATION

The Provincial Department of Co-operative Governance, Human Settlement and Traditional Affairs (CoGHSTA), the National Department of Human Settlements, Mogalakwena Municipality and Housing Development Agency (HDA) signed the Implementation Protocol (IP) as a collaboration to implement the Distressed Mining Towns projects. During 2018/19 FY the Department transferred R17 000 000.00 towards re-aligning incorrectly installed services in Mokopane Ext 20. The municipality through its own supply chain processes appointed its own contractor to undertake Phase 1 of the project.

During 2019/20 FY, the Department transferred R 17 070 211.00 to the HDA, and two contractors were appointed by the Agency to undertake implementation of Phase 2 of Ext.20, currently implementation of this phase is underway.

The petitioners raised the following issues regarding implementation of this project:

a) Concern over poor workmanship on Phase 1

There is a concern over poor workmanship as most of the sewer network is leaking and the effluent is running through the yards and streets

The contractor for Phase 1 made use of substandard material which is not compliant to SABS

Response

The Department team and HDA undertook a site visit on 23/02/2021 and can confirm that the concern over effluent overflow is correct and an undertaking has been made to have this corrected. To this effect a technical team would undertake a full site assessment in order to quantify all those sewer lines with overflows. The assessment report will be submitted to the municipality for corrective measures.



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It is however difficult to substantiate claims of incorrect usage of materials used by the contractor as there is more than one contractor who has worked on the same lines.

b) Incomplete network

The contractors undertaking Phase 2 of the project have corrected the following regarding water network

Response

- (i) Missing hydrants have been installed
- (ii) Leaks have been repaired

The project engineers have been advised to spend more time on the project and ensure that the project is completed on time and that all issues of concern are fully addressed.

Head of Department

Date

