



**Department of Co-operative Governance
& Traditional Affairs**

KwaZulu-Natal Provincial Government

REPORT

ASSESSMENT AND INTERVENTION AT MTUBATUBA MUNICIPALITY

**CONDUCTED BY THE
DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

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PEOPLE CENTRED SUSTAINABLE CO-OPERATIVE GOVERNANCE, WHICH FOCUSES ON EFFECTIVE SERVICE DELIVERY RESPONSIVE TO THE NEEDS OF THE COMMUNITY

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1. PURPOSE

To inform the Mtubatuba Council of the action taken by the MEC for Co-operative Governance and Traditional Affairs in consultation with the MEC for Finance to consult the Mayor of the Mtubatuba Municipality in terms of Section 136 of the Municipal Finance Management Act, No 56 of 2003 (MFMA), and to institute a financial intervention in terms of section 137 of the MFMA.

2. SUMMARY

- 2.1. Based on an assessment of the finances of the Mtubatuba Municipality by the Department of Co-operative Governance and Traditional Affairs in terms of section 131(2)(a) of the MFMA as well as the assessment of the Provincial Treasury of the reports of the Municipality in terms of section 71 of the MFMA and the Annual Financial Statements it was established that the Mtubatuba Municipality is facing serious financial problems.
- 2.2. Consequently, the MEC for Co-operative Governance and Traditional Affairs in consultation with the MEC for Finance, considered it prudent to commence the process towards a Discretionary Intervention by consulting the Mayor of the Municipality in terms of section 136 of the MFMA.
- 2.3. Following this consultation, an intervention support strategy will be implemented through the deployment of a suitably qualified financial expert as a Financial Administrator to support the Mtubatuba Municipality to manage and implement a financial turnaround in consultation with the MEC for Finance. The Provincial Treasury will provide resources via the Municipal Support Program to undertake key operational activities in the treasury department of the municipality. This has been accepted by the Mayor and Executive Committee of the municipality.

3. ASSESSMENT FINDINGS

- 3.1. An assessment of the Finances of the Mtubatuba Municipality by the Department of Co-operative Governance and Traditional Affairs in terms of section 131(2)(a) of the MFMA highlighted the following areas of concern:
 - Going Concern – The municipality has incurred a deficit over the last two years and as at June 2011, the Municipality incurred a net deficit of R12.7 million.

- Irregular expenditure of R6.7 million was incurred in contravention of the Division of Revenue Act, 2010 and the Municipal Supply Chain Management Regulations.
- Management of expenditure was not in accordance with Section 65 (2)(e) of the MFMA as payments totalling R2.5 million were not paid within 30 days of receipt of the invoices.
- The 2010/11 Annual Financial Statements were not prepared in accordance with section 122 of the MFMA
- The performance report for the financial year 2010/11 was not prepared as required by section 46 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and section 121(3)(c) of the MFMA.
- Awards were made to providers whose directors / principal shareholders are persons in the service of other state institutions in contravention of the SCM regulations, paragraph 44.
- The annual report of the municipality did not comply with section 121 of the MFMA.

a. Governance issues Reported by the Auditor-General

- The audit committee although in place for the year 2010/11 was not effective as required by section 62 of the MFMA.
- Management did not exercise oversight responsibility regarding financial and performance reporting and compliance with laws and regulations.
- Internal audit did not review all the quarterly reports and final performance report to ensure that they were in compliance with relevant laws and regulations.
- Management did not ensure that the audit committee promoted accountability and service delivery through evaluating and monitoring responses to risks and providing oversight of the effectiveness of internal controls.

b. An analysis of the Audited Annual Financial Statements by the Department also highlighted amongst others the following deficiencies and financial challenges:

- Insufficient cash exists to finance the operational requirements for the current financial year.
- Poor debt and credit control management. The municipality is not managing "old debt". It should consider write-offs of uncollectable debt.
- Conditional grant funding being utilised on daily operating expenditure to the extent that all unspent conditional grants as at June 2011 are not cash backed.
- The actual expenditure of the municipality has exceeded the sum of its actual current revenue plus available surpluses for at least two consecutive years.
- The municipality has incurred a deficit over the last two financial years and as at June 2011, the municipality incurred a net deficit of R 12.7 million.

3.2. The Provincial Treasury's assessment of the reports of the municipality in terms of section 71 of the MFMA and the Annual Financial Statements also highlighted and confirmed the following deficiencies and financial challenges:

- The Municipality has not been able to generate sufficient income to cover operating expenditure over the past three years. The deficit has increased between the 2009/10 and 2010/11 years. Operating expenditure has increased by 59 percent whilst operating income increased by only 19 percent from 2009/10 financial year.
- Employee related costs (excluding remuneration of councillors and section 57 employees) increased by 22 percent in 2010/11 which is unreasonable in comparison to the SALGA recommended wage increase. A further 52 percent increase has been budgeted for in 2011/12 which does not appear to be reasonable.
- Most consumer debtor are overdue, i.e. more than 30 days old, with 91 percent (R25.4 million) sitting in 91 days or more. This is an indicative of ineffective revenue collection, which worsens the cash flow position and affects the municipality's financial viability.
- The municipality overspent the 2010/11 infrastructure grant by R2.1 million and has utilised the unspent portion (R 2.2 million) from the prior periods to fund the expenditure.

- The municipality had a net overdraft position of R4.8 million at year end 30 June 2011, which is in contravention of Section 45(4)(a) and (b) of the MFMA.
- The liquidity ratio deteriorated from 1.92 in 2009/10 to 0.80 in 2010/11. This indicates that the municipality will have difficulty in meeting their short term obligations as current liabilities exceed current assets.
- The cash coverage indicators were -5 months percentage and -7 months for 2009/10 and 2010/11, respectively. With negative balances of cash and cash equivalents, the municipality's ability to meet their short term obligation is severely curtailed.
- The provision for doubtful debts increased by 26 percent from prior year (2009/10) as compared to a 20 percent increase in debtors over the same period. 59 percent of gross debtors were provided as provision for doubtful debt as at June 2011 (2010: 56 percent). This is indicative of poor controls over debt collection over the years.
- There has been a recent Filing Notice against Mtubatuba Municipality in a matter between PricewaterhouseCoopers Incorporated and the municipality, where judgement was granted in favour of the plaintiff against the municipality.
- There are material discrepancies between section 71 reported figures for the 2010/11 financial year and the figures as reflected in the 2010/11 AFS.

	Section 71 Figures	2010/11 AFS Figures	Discrepancies
Operating Revenue	R43.6 million	R59.8 million	(R16.2 million)
Operating Expenditure	R60 million	R72.5 million	(R12.5 million)
Capital Expenditure	R12.1 million	R17.6 million	(R5.5 million)

Continuing challenges in getting reliable data from the municipality, despite various efforts by National and Provincial Treasuries.

- The collection rate has increased by 6 percent from 29 percent in 2009/10 to 35 percent in 2010/11, which is still unacceptably low. This has contributed to the high collection period of 597 days. (i.e. The number of days it takes the municipality to collect outstanding debt)
- The debtor's days outstanding improved slightly from 633 days in 2009/10 to 597 days in 2010/11 due to a slight improvement in the collection rate from 29 percent to 35 percent. However, this is still unacceptably high.
- There have been no bad debts written off over the past three years despite the fact that the bulk of the debtors have been long outstanding. This could mean that the debtors' balance is grossly overstated in the municipality's financial position.
- The municipality overspent the 2010/11 infrastructure grant by R2.1 million and has utilised the unspent portion (R2.2 million) from the prior periods to fund the operating expenditure.
- The Auditor-General of South Africa (AGSA) issued the Mtubatuba Municipality on 28 February 2012, a Risk alert and final demand letter. The municipality currently owes the AGSA a total amount of R582 485.91, outstanding over 30 days (included in the total is an amount of R448 423.73 which was outstanding between 61- 120+ days).
- There were various SCM weakness identified including;
 - Code of conduct has not been signed by bid committee members.
 - Bids register is managed by Corporate Services
 - Excessive awarding of contracts through deviation.
 - The SCM policy not in place and is not reviewed on an annual basis.
 - Bid committees have not been properly constituted and do not maintain proper processes.
 - Committees have not been appointed by the Accounting Officer.
 - Irregular expenditure amounted to R6.7 million as per the 2010/11 AFS.

3.3. Previous forensic investigation matters have not been finalized. This was also reported by the Auditor-General. Many of the issues highlighted, such as overtime, declaration of interests; and control of stores amongst others, were also highlighted in the forensic investigation report and the Accounting Officer has not implemented council's resolutions in this regard or reported to the Department positive progress.

3.4. The Municipality does not engage and report to the Senior Management of both the Department of Cooperative Governance and Traditional Affairs and the Provincial Treasury and the arrogance of senior municipal officials hampers the provincial monitoring responsibilities.

4. DISCUSSION

4.1. The MEC for Finance and the MEC for Cooperative Governance and Traditional Affairs (COGTA) together with senior officials of both departments met to discuss the situation at Mtubatuba Municipality on 02 April 2012 at which it was agreed that a Discretionary Intervention in terms of section 137 of the MFMA is implemented. It was agreed that the MEC for COGTA would provide a Financial Administrator and that the Provincial Treasury would provide support via the Municipal Support Program as part of a single team to develop and implement a financial recovery plan.

Based on the serious financial problems identified at the Mtubatuba Municipality, a letter communicating the intention of the MEC for COGTA to implement a discretionary intervention was sent to the Mayor on 02 March 2012.

4.2. The MEC for COGTA then met with the Mayor, Members of Exco, the Speaker and Municipal Manager on 17 April 2012 to highlight the results of the Provincial monitoring and obtain the municipality's response to the serious financial problems identified.

4.3. Based on the consultation, the Mayor, the Speaker and members of the Municipal EXCO concurred with the findings of the provincial monitoring and welcomed the support from the province in the form of a discretionary intervention in terms of section 137 of the MFMA. The municipality was advised that a support team consisting of members from Provincial Treasury and COGTA would be deployed to Mtubatuba Municipality in order to effect a financial turnaround at the municipality.

4.4. The mandate of the Financial Administrator would be as follows:

- To prepare in terms of section 141 a financial recovery plan compliant with section 142 of the MFMA in conjunction with the Municipal Support team from the Provincial Treasury, the Municipal Management and the Governance Expert of the COGTA Department for approval by the MEC for COGTA and MEC for Finance in terms of section 143(1) (2) of the MFMA.
- To ensure adoption of the recovery plan by the council of Mtubatuba Municipality and oversee implementation of the recovery plan in accordance with sections 145 and 156 of the MFMA.
- To report to the Council of Mtubatuba Municipality and the MEC for COGTA and MEC for Finance on a monthly basis or additionally as and when required in accordance with section 145(1) of the MFMA.
- Assist the MEC responsible for local government or the MEC for Finance to review the provincial intervention in accordance with section 147(1) of the MFMA.
- Coordinate all support initiatives in the municipality including external service providers appointed by the municipality itself to undertake either financial management activities or other activities on behalf of the municipality.
- Consider and advise council on whether it is necessary to make Applications for a Stay of Legal Proceedings or for Extraordinary Relief in accordance with sections 152 and 153 of the MFMA.
- Ensure implementation of the recommendations of the previous forensic investigation report undertaken by the COGTA Department and report thereon.
- Ratify all recommendations by the administration to the Council which may have any financial implication.
- Provide guidance and advice in council decision making and report thereon to the MEC for COGTA and MEC for Finance.

4.5. To ensure that the team deployed had the relevant legal authority and mandate to undertake an effective turnaround, the MECs requested that the Executive Committee of Mtubatuba Municipality take a formal resolution to accept the supportive intervention covering the following issues:

- Accept the deployment of suitably qualified persons made available by the Member of the Executive Council for Cooperative Governance and Traditional Affairs and the Member of the Executive Council for Finance;

- **Mandate the support team to:**

- Develop and oversee the implementation of a comprehensive financial recovery plan in consultation with the municipality.
 - Report and make recommendations directly to the Executive Committee, the MEC for Cooperative Governance and Traditional Affairs and the MEC for Finance.
 - Approve all reports for consideration by the Executive Committee that have financial implications prior to it being included in the agenda. No tabled reports that have financial implications will be considered by the Executive Committee without recommendations by the support team.
- Note that the intervention of the MEC for Cooperative Governance and Traditional Affairs will be for an initial period of three months with the possibility of extension for a further three months.
 - Note further that should the municipality not cooperate or comply with the instructions of the support team that the MEC for Cooperative Governance and Traditional Affairs reserves the right to implement an intervention in terms of Section 139 of the Constitution.
 - Note that the status at the Mtubatuba Municipality is an indication that senior municipal officials may have committed financial misconduct and offences in terms of Section 171 and 173 of the Municipal Finance Management Act, (MFMA). It is clear that there may have been breaches of sections 61-65 of the MFMA requiring the Accounting Officer and Chief Financial officer to:
 - a. Exercise fiduciary responsibilities;
 - b. Performing general financial management responsibilities;
 - c. Ensure effective asset and liability management;
 - d. Ensure effective revenue management; and
 - e. Ensure effective expenditure management.

Consequently, the municipality must deal with this matter in terms of Section 171(4) of the MFMA which requires it to:

"investigate allegations of misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and

If the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, the chief financial officer, or that senior manager or other official in accordance with Section 67 of the Municipal Systems Act read with Schedule 2 of that Act."

4.6. The Mayor was also informed that Executive Committee and in particular the Mayor herself should provide the necessary leadership and support, in order for this supportive intervention to be successful in achieving the desired result of turning around the financial situation at the Mtubatuba Municipality. In addition, the Mayor was advised that it is important to note that this intervention should be carried out in the spirit of cooperative governance. However, as indicated during the engagements that should the municipality not cooperate or comply with the instructions of the support team that the MEC for Cooperative Governance and Traditional Affairs, reserved the right to make recommendation to the Provincial Executive Council of KwaZulu-Natal for consideration of an intervention in terms of Section 139 of the Constitution.

4.7. The Council of the Mtubatuba Municipality will be required to take the necessary resolution at a formal meeting at which the financial administrator and finance team will be introduced to the municipality and indicated its support for the intervention.

5. FINANCIAL IMPLICATIONS

The Department of Co-operative Governance and Traditional Affairs will bear the cost of the Financial Administrator deployed to Mtubatuba Municipality as part of the supportive intervention and the Provincial Treasury will bear the cost of the financial support personnel under the Municipal Support Program.