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26 April 2013

The Acting Municipal Manager
Tlokwe City Council
Municipal Office
C/o Sol Plaatjies and Wolmarans Streets
Potchefstroom

Attention: Mr Moumakwe

Dear Mr Moumakwe

EXECUTIVE SUMMARY: FORENSIC INVESTIGATION OF 6 ALLEGATIONS FROM THE TLOKWE CITY COUNCIL GRIEVANCE DOCUMENT.

The Tlokwe City Council listed 16 allegations in a grievance document against the Executive Mayor, Mr Maphetle. We were appointed to investigate these allegations. The Council selected these 6 allegations from the grievance document and requested that we prioritise these 6 allegations.

We attach herewith, as per your request at the meeting held on Monday 22 April 2013, our executive summary on the initial six (6) phases of the investigation which we conducted

Although this summary contains the findings and recommendations in relation to these investigations, we wish to emphasise that the summary currently reflects the conclusions and recommendations based upon the results of the investigations as contained in the draft reports. There are still certain outstanding issues on which we are awaiting confirmation. However, we are confident that these issues would not change our findings and recommendations materially.

The following allegations, which are part of the grievance document, are still not investigated and we await your instruction in this regard:

1. Unauthorised Israel trip by the EM;
2. Failure by the previous EM to act on Council instruction;



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3. Failure by the EM and MM to act on the forensic report re Frans Senne's appointment;
4. Grievance by Ezekiel Mafolo to the EM;
5. Failure by the EM to act against the MM and the specific Managers who failed to submit reports to Council as resolved by Council;
6. Maladministration of the R5m donated by Dr Kenneth Kaunda District Municipality in the Executive Mayoral Cleaning Project;
7. Unprocedural evictions;
8. Failing to act on the AG Report for the financial year period 2011-2012;
9. The alleged irregular appointment of D Legwete as MMC of Corporate Services.

We confirm that our reports and the findings of the forensic investigations therein, are for the exclusive use of yourselves and your appointed legal representative(s).

Yours faithfully

FRANCOIS LABUSCHAGNE
DIRECTOR: NEXUS FORENSIC SERVICES (PTY) LTD

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EXECUTIVE SUMMARY

1 APPOINTMENT

- 1.1.1 On 4 February 2013, Nexus Forensic Services (Pty) Ltd (NFS) consulted with the Acting Municipal Manager (MM), Mr Mounmakwe, of the Tlokwe City Council (TCC) where we received a grievance document which apparently formed the basis for the removal of the now reinstated Executive Mayor (EM), Mr Maphette, containing various allegations of a serious nature.
- 1.1.2 On 22 November 2012, Prof Combrink was elected as Mayor of TCC. After court action, she was subsequently relieved of this duty and replaced again by the EM, Mr Maphette.
- 1.1.3 The Acting MM, Mr Mounmakwe mandated NFS to investigate the various allegations as a matter of urgency. The appointment was made whilst Prof Combrink was the EM.
- 1.1.4 The assignment commenced on 18 February 2013.
- 1.1.5 It was specifically agreed that NFS would initially focus on only 6 of the 16 allegations contained in the grievance document. The investigations were conducted and the result of each investigation is contained in a separate report.
- 1.1.6 This document serves to combine the major findings and recommendations related to each of these individual investigations.

2 SCOPE AND MANDATE

- 2.1.1 NFS was instructed to focus on only 6 of the allegations listed in the grievance document. These investigations are as follow:
 - ✕ Allegation 1: The acquisition of a Mercedes Benz vehicle without following due process;
 - ✕ Allegation 2: Failure to secure a refund for the extension of the Airport Runway for the FIFA 2010 Soccer World Cup;

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- ⌘ Allegation 3: The former EM allegedly used municipal land for private gain in relation to Rietfontein farm;
- ⌘ Allegation 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mothbedi/Bonang Conference Centre;
- ⌘ Allegation 5: Alleged abuse of the Poverty Alleviation and Disaster Emergency Fund; and
- ⌘ Allegation 6: Alleged irregular benefiting of Mothbedi / Bonang Conference Centre in the allocation of even and paving.

The tables below reflect the findings and recommendations related to every specific allegation listed above.

INVESTIGATION 1: The acquisition of a Mercedes Benz vehicle without following due process	
FINDINGS / CONCLUSION	RECOMMENDATIONS
Allegation 1.1: Procurement of the vehicle of the EM	Non – compliance with the SCM prescriptions in the procurement of the vehicle for the EM and overspent on budget.
⌘ The SCMP prescriptions were not complied with as the incorrect sourcing strategy was utilised - instead of going out on public tender only one quote was obtained. This was despite a draft set of specifications detailing the purchase of 'a sedan vehicle' for the EM, being provided to the office of the EM. Instead Mr Temanie drafted a request to purchase a specific vehicle, being a Mercedes Benz E 350. ⌘ The motivation for obtaining one quote was that Cargo Motors is a sole supplier of the Mercedes Benz E 350. This motivation was blatantly untrue, as confirmed by the supplier itself.	⌘ We recommend that the TCC consider instituting disciplinary steps against Mr Temanie for his role in the procuring of the Mercedes Benz E 350, in that he: <ul style="list-style-type: none"> • Did not approach SCM for advice on the sourcing strategy; • Despite being provided with the draft specifications for submission to the Bid Specifications Committee, did not utilise such specifications but rather provided an untrue / incorrect

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INVESTIGATION 1: The acquisition of a Mercedes Benz vehicle without following due process	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>There is no evidence that either Mr Temanie or Mr Tyatya approached SCM to request their advice in how to deal with the procurement of the vehicle. Instead Mr Temanie incorrectly motivated the deviation from the SCMP and Mr Tyatya appears to have accepted this without diligently questioning whether the SCMP has been complied with (the MM being responsible in terms of the MFMA to ensure that the SCMP is implemented and complied with).</p> <p>As a result of utilising the incorrect sourcing strategy, the full amount of the vehicle (being R736,713.00) constitutes irregular expenditure, as it was expenditure incurred in contravention with SCMP prescriptions.</p> <p>The individuals who are to be held responsible for such contravention is Mr Temanie and Mr Tyatya.</p>	<p>motivation for using a 'sole supplier' scenario in the procurement of the vehicle;</p> <ul style="list-style-type: none"> We thus recommend that TCC approach Mr Temanie and provide him with an opportunity to provide reasons as to why he should not be disciplined for the above, prior to making a decision in this regard. <p>Mr Tyatya is no longer an official of TCC, the TCC cannot consider any disciplinary steps against Mr Tyatya.</p> <p>However, section 173, which deals with criminal offences, details that the accounting officer will be guilty of a criminal offence if he deliberately or in a grossly negligent way <i>inter alia</i>:</p> <ul style="list-style-type: none"> Fails to take reasonable steps to implement the TCC's SCMP; Fails to take reasonable steps to prevent unauthorised and irregular expenditure. <p>We therefore recommend that the TCC lay a criminal complaint against Mr Tyatya with the SAPS. Please also refer to the discussion of Section 32(6) and 32(7) <i>infra</i>.</p>

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INVESTIGATION 1: The acquisition of a Mercedes Benz vehicle without following due process	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>Allegation 1.2: Budgeting for the vehicle of the EM</p> <p>✕ TCC did budget an amount of R700,000.00 for procuring the vehicle for the EM. Eventually, however, an amount of R736,713.00 was spent. The additional R36,713.00 was not budgeted for and as a result, constitutes unauthorised expenditure as there was an overspent of the amount appropriated in the budget.</p> <p>✕ The responsible official who confirmed and ordered the extra items, and authorised the purchase of the vehicle for the full amount, was Mr Tyatya.</p>	<p>Recovery of irregular and unauthorised expenditure incurred by the TCC</p> <p>✕ In terms of Section 32(1) of the MFMA, the Accounting Officer (thus Mr Tyatya) is liable for:</p> <ul style="list-style-type: none"> • unauthorised expenditure that he deliberately or negligently incurred; • irregular expenditure that he deliberately or negligently committed, made or authorised. • Mr Temanie is not liable for the above expenditure, in that he himself did not make or authorise such expenditure <p>✕ In terms of Section 32(2) the TCC must recover unauthorised and irregular expenditure from the former MM Mr Tyatya - It is compulsory.</p> <p>✕ In addition, in terms of Section 32(4) of the MFMA, the current acting MM Mr Mounakwe must also inform the mayor, the MEC for local government and the Auditor-General in writing of:</p> <ul style="list-style-type: none"> • the unauthorised and irregular expenditure incurred;

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INVESTIGATION 1: The acquisition of a Mercedes Benz vehicle without following due process	
FINDINGS / CONCLUSION	RECOMMENDATIONS
	<ul style="list-style-type: none"> • whether the person responsible is under investigation; • what steps have been taken to recover the money and to prevent a recurrence of the expenditure.
	<p>✕ Section 32(6) of the MFMA, requires the MM to report all cases of irregular expenditure that constitutes a criminal offence, to the South African Police Services ('SAPS').</p> <p>✕ Section 32(7) requires the Council of the TCC to take all reasonable steps to ensure that all cases referred to in section 32(6), are reported to SAPS if the charge is against the accounting officer.</p>
INVESTIGATION 1: The acquisition of a Mercedes Benz vehicle without following due process	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>✕ Allegation 1.3: Damages to the courtesy vehicles</p> <p>Mr Masilo is most probably responsible for the damages to the courtesy vehicles. Please note that we did not investigate the detail of each incident to determine whether there was negligence involved and if so, to what degree. In view of the fact that Cargo Motors decided to write off the damages and not institute legal action for recovery against TCC,</p>	<p>✕ Based on Mr Masilo's conduct, we recommend that the TCC consider instituting disciplinary action against him for contravention of Section 2(b) of the Code of Conduct for Municipal Staff members in that he:</p>

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INVESTIGATION 1: The acquisition of a Mercedes Benz vehicle without following due process	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>the TCC has not suffered any financial prejudice resulting from these incidents.</p> <p>Mr Masilo's response to Cargo Motors when they attempted to engage the TCC in conversation regarding the damages, however, was to the detriment of the reputation of the TCC. The TCC is a public institution whose officials should be orientated to serve the public and build a good relationship with the public. Mr Masilo's conduct was not conducive to building such a relationship - especially in view of the fact that Cargo Motors was clearly entitled to recover damages from TCC.</p>	<ul style="list-style-type: none"> • Did not act in the best interests of the TCC in how he dealt with Cargo Motors; and • His actions compromised the credibility and integrity of the TCC.
INVESTIGATION 2: Failure to secure a refund for the extension of the Airport Runway for the FIFA 2010 Soccer World Cup	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>1. That the EM persuaded Council to spend R34 000 000 on extending the Airport Runway on the basis that this money would be recovered former the Department of Public Works:</p> <p>i. The EM through Mr Venter persuaded the Councillors to support the extension of the Potchefstroom Airport Runway</p>	<p>✕ We recommend that the TCC consider instituting disciplinary steps against the EM, Mr Maphetle for:</p> <ul style="list-style-type: none"> • Not utilising the correct sourcing strategy; • Not diligently requesting SCM's advice on the sourcing strategy and/or not informing the Council that funding was not secured;

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INVESTIGATION 2: Failure to secure a refund for the extension of the Airport Runway for the FIFA 2010 Soccer World Cup	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>project even though they were aware that TCC did not budget for such an expenditure;</p> <p>II. Council approved the deviation from SCM in terms of Section 36(2) for the appointment of KD Civils for R25m and for the appointment of BKS as Consulting Engineers for R2 532 700.00;</p> <p>III. The Councillors did not take reasonable steps to prevent irregular expenditure and failed to act in the best interest of the Municipality;</p> <p>IV. Councillors must act in the best interest of the municipality and must act in such a way not to compromise the integrity or credibility of the Municipality; and</p> <p>V. The expenditure for the extension of the Potchefstroom Airport Runway was incurred without following guidelines and precepts. Council was aware that the property they want to improve is owned by another Government Department and Council had to ensure that proper negotiations was in place before approving such a project.</p>	<ul style="list-style-type: none"> • Approving the expenditure for the extension of the Airport Runway outside the SCM prescriptions, thereby causing the TCC to incur irregular expenditure to the value of R32 720 245.67; (calculated on the basis of the expenditure report 13 August 2010) • Not acting in the best interest of the Municipality, Section 173 (2) (b). <p>✗ We also recommend that the TCC consider taken steps against the EM for breaching the Code of Conduct for Councillors in that he did not act in the best interest of the municipality by:</p> <p>✗ deliberately and/or negligently allowed and or approved the contravention of the procurement provisions contained in the MFMA;</p> <p>✗ failed to comply with the general financial management functions as per Section 54 of the MFMA;</p> <p>✗ made or permitted or instructed an official, to make an irregular and unauthorised expenditure.</p> <p>✗ For the failure to inform the TCC that funding was not secured, alternatively failed to obtain written agreements or commitments in relation to the funding.</p>

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INVESTIGATION 2: Failure to secure a refund for the extension of the Airport Runway for the FIFA 2010 Soccer World Cup	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>2. That the money was spent but never recovered through alternative funding and the previous EM and MM failed to report to Council why this refund was not received:</p> <p>i. Neither the EM nor the former MM reported to Council the reasons why the proposed funding were not received;</p> <p>ii. The Council in approving the adjustment budget and the proposal of Mr Venter could have approved it conditionally (subject to prove of funding) to ensure that it is in the best interest of the Municipality;</p> <p>iii. Council has the authority to investigate the failure of the refund but they did not do it.</p> <p>iv. Councilors (Mr Coetzer, Mr Modiakogotla, Ms Dasse and Mr Landsberg) confirmed that Mr Venter during his presentation stated it as a fact that he already obtained the funding;</p> <p>v. The Provincial Government never stated explicitly in any document that they or DPWRT will refund TCC for the extension of the Potchefstroom Airport Runway. Mr Venter</p>	<p>✗ We also recommend that the TCC consider taken steps to hold the EM liable for the authorizing irregular expenditure in terms of section 32(1)(c) alternatively.</p> <p>✗ The TCC should act in terms of section 32(2) to account for the irregular expenditure and also take steps in terms of section 32(4) to report the matter to the relevant MEC.</p> <p>✗ If Mr Tyatya was still an official, we would have recommended that the TCC consider instituting disciplinary steps against him for:</p> <p>i. Not utilizing the correct sourcing strategy;</p> <p>ii. Not ensuring compliance with section 2(a) of the MFMA by failing to ensure transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of the TCC as prescribed;</p> <p>iii. Failed to comply with the his general financial management functions as per section 62; and</p> <p>iv. Allowing the TCC to incur an irregular and unauthorized expenditure.</p>

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INVESTIGATION 2: Failure to secure a refund for the extension of the Airport Runway for the FIFA 2010 Soccer World Cup	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>presented that he has the committed funding and even requested a bank account number from Ms Wilgenbus; and</p> <p>vi. The DPWRT was mandated to seek a funding stream in liaison with Tlokwe Municipality for the extension of the Airport Runway.</p>	<p>vi. That the TCC consider instituting criminal charges against the former MIM, Mr Tyatya, for contravening section 173 of the MFMA in that:</p> <ul style="list-style-type: none"> • He failed to take all reasonable steps to prevent unauthorized, irregular or fruitless and wasteful expenditure. <p>Based on the investigation performed we made some general recommendations</p> <p>i. It is recommended to investigate the evaluation and adjudication process of the tender PR01/2010 in appointing KD Civils for the construction of the extension of the Potchefstroom Airport Runway. It was reported that a certain political group requested money from the tender proceeds; and</p> <p>ii. That proactive steps must be taken to ensure Council meetings are recorded during the meeting.</p>

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INVESTIGATION 3: The former EM allegedly used municipal land for private gain in relation to Rietfontein farm	
FINDINGS / CONCLUSION	RECOMMENDATIONS
Value of Rietfontein Commonage Farm	
<p>✕ Based on the available evidence, we conclude as follows:</p> <ul style="list-style-type: none"> The difference between values in the price paid by Government in acquiring the Rietfontein Commonage Farm and the valuation conducted by the TCC, is relative and we did not find any evidence that the TCC was prejudiced. 	<p>We do not recommend any action be taken.</p>
Use of the Rietfontein Commonage Farm by the Executive Mayor, Mr. Maphetle for private gain	
<p>✕ Based on the available evidence and information at our disposal, we conclude as follows:</p> <ul style="list-style-type: none"> The prescriptions of the Code of Conduct for Councillors (General conduct of Councillors) state that, as the Executive Mayor, Mr Maphetle must at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. We are unable to conclude that the Executive Mayor, Mr Maphetle, abused his position to improperly benefit his nephew, Mr Phule John Maphetle by allowing him to graze cattle on council property; and 	<p>We do not recommend that the TCC institute disciplinary steps or any other action against the Executive Mayor, Mr Maphetle</p> <p>Mr Masitenyane was recently again appointed as an official, we therefore recommend that the TCC consider instituting disciplinary steps against Mr Masitenyane, Mr Galeng and Mr Molotsi for:</p> <ul style="list-style-type: none"> ✕ Failing to execute the lawful policies of the municipal council; and ✕ Failing to perform the functions of office in good faith, honestly and a transparent manner; and

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INVESTIGATION 3: The former EM allegedly used municipal land for private gain in relation to Rietfontein farm	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<ul style="list-style-type: none"> We are unable to conclude, based upon the evidence at our disposal that the Executive Mayor, Mr Maphelle use or benefitted from the Rietfontein Commonage farm, a property or asset owned, controlled or managed by the municipality to which he had no right. 	<p>Not at all times acting in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.</p>
<p>Based on the available evidence, we further conclude as follows:</p> <ul style="list-style-type: none"> The prescriptions of the Code of Conduct for Municipal staff members (General conduct) were not complied with, as Mr Mastenyaane, former Head of the Department of Local Economic Development, knowing that the Rietfontein Farm was not properly managed, did not at all times: <ul style="list-style-type: none"> Loyally execute the lawful policies of the municipal council; Perform the functions of office in good faith, diligently, honestly and in a transparent manner; and Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised. 	<p>We further recommend that:</p> <ul style="list-style-type: none"> The TCC implement steps to ensure proper administration of the lease agreements and related procedures; Proper procedures and policies be developed to control and verify the relocation and identity of the livestock; and A proper and complete physical inspection of the livestock be done on the farm to verify the actual ownership.
<p>We furthermore conclude that there are no proper control measures or supervision in place to verify the relocation of the livestock in</p>	

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INVESTIGATION 3: The former EM allegedly used municipal land for private gain in relation to Rietfontein farm

FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>accordance with approved lease agreements. In terms of section 78(1)(e) an official has a duty to ensure that the assets of the municipality are managed effectively.</p> <p>✕ The total livestock on the farm does not correspond with the total livestock as indicated on the temporary lease agreements provided to us.</p> <p>✕ Based upon the above, we conclude that Mr</p>	

INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mothibedi/Bonang Conference Centre

FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>Payment of the R300,000 to Clover Aardklop from the Poverty Alleviation Fund constitutes unauthorised expenditure</p> <p>1. An amount of R300,000 was paid from the TCC's Poverty Alleviation Fund to Clover Aardklop (with the instruction/request to Aardklop to pay the money to Mr Mothibedi immediately), although it was purportedly intended to support a cultural event. This payment constitutes unauthorised expenditure as defined in the MFMA.</p>	<p>Recommendations in respect of Mr Tyatya</p> <p>✕ Since Mr Tyatya is no longer an employee of the municipality, TCC cannot take any disciplinary action against him (as a result all charges of financial and other misconduct as an employee falls away);</p>

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INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mochibedi / Bonang Conference Centre

FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>2. The officials/former officials responsible for this unauthorised expenditure is Mr Temanie (in contravention with section 78 and with reference to section 173 of the MFMA) and Mr Tyatya (in contravention with sections 61, 62, 65 and with reference to sections 171 and 173 of the MFMA)</p> <p>3. Mr Tyatya's conduct may amount to:</p> <ul style="list-style-type: none"> a) a contravention of the following sections of the MFMA: sections 61(1)(a), 61(2)(c), 62(1)(a), 62(1)(d) and 65(2)(d)(i) b) financial misconduct as defined in sections 171(1)(a), 171(1)(b) and 171(1)(c) c) a transgression of section 2 of the Code of Conduct for Municipal Staff Members (MSA Schedule 2), in particularly sections 2(a), 2(b), 2(d) and 4 d) a criminal offence as defined in section 173(1)(a)(i) and section 173(1)(a)(iii) <p>4. Mr Temanie's conduct may amount to:</p>	<ul style="list-style-type: none"> ✧ We recommend that TCC consider laying a criminal complaint against Mr Tyatya for committing offences as defined in sections 173(1)(a)(i) and (iii) of the MFMA. <p>Recommendations in respect of Mr Temanie</p> <ul style="list-style-type: none"> ✧ We recommend that the TCC consider take disciplinary action against Mr Temanie for: ✧ contravention of sections 78(1)(b) and (c) of the MFMA; ✧ financial misconduct in terms of section 171(3)(d)] of the MFMA; and ✧ contravention of section 2 and 4 of the MSA Code of Conduct for Municipal Staff Members. <p>Recommendations in respect of Mr Maphette</p> <ul style="list-style-type: none"> ✧ We recommend that the Council make a finding on the breach of the MSA Code of Conduct for Councillors subsequent to this investigation

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**INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric
Mothibedi/Bonang Conference Centre**

FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>a) a contravention of the following sections of the MFMA: sections 78(1)(b) and 78(1)(c)</p> <p>b) financial misconduct as defined in section 171(3)(d)</p> <p>c) a transgression of section 2 of the Code of Conduct for Municipal Staff Members (MSA Schedule 2), in particularly sections 2(a), 2(b), 2(d) and 4</p> <p>5. Even though the documented audit trail does not show that Mr Maphette gave instructions for the R300,000 to be paid to Aardklop (and transferred to Mr Mothibedi), there is evidence that Mr Maphette played a central role in introducing the role players, motivating for Mr Mothibedi's involvement, receiving requests for financial intervention from Mr Mothibedi, instructing Mr Temanie to find a way to support the Jazz Festival, making a misrepresentation to Council about the Clover Aardklop Committee meetings and attempting to influence Mr Vrey to steer the Clover Aardklop Committee away from questions about the R300,000. This is circumstantial evidence which may be sufficient to prove that he intervened in the administration of the TCC in contravention with Section 11 of the Code of Conduct for Councilors</p>	<p>and, if applicable, implement any of the relevant sanctions as per section 14(2) of the Code of Conduct.</p> <p>✕ We recommend that TCC consider laying a criminal complaint against Mr Maphette for committing offences as defined in sections 173(4)(a) of the MFMA.</p> <p>✕ Recovery of unauthorised expenditure</p> <p>We recommend that the TCC recover the unauthorised expenditure of R300,000 from Mr Maphette, Mr Tyatya and Mr Temanie in terms of section 32 of the MFMA.</p> <p>Reporting duties</p> <p>✕ In terms of section 32(4) of the MFMA, the MM should inform the EM, the MEC for local government and the Auditor-General of any unauthorised expenses incurred; whether someone is responsible for the unauthorised expenditure or under investigation for same; and what steps have been taken to recover or rectify the expenditure, and to prevent a recurrence of the expenditure.</p>

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INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mothibedi/ Bonang Conference Centre	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>(Schedule 1 to the MSA) and in contravention with section 173(4)(a) of the MFMA. Mr Maphetle denied any knowledge that the payment was eventually made to Mr Mothibedi, however it is highly unlikely that he was not aware that the payment was made from the Poverty Alleviation Fund.</p> <p>6. In light of the above, Mr Maphetle's conduct may amount to:</p> <p>a) a transgression of section 2, 6 and 11 of the Code of Conduct for Councillors (MSA Schedule 1)</p> <p>a criminal offence as defined in section 173(4)(a) of the MFMA.</p>	<p>✕ In terms of section 32(6) of the MFMA, the MM is obliged to report to the SAPS all the cases of alleged theft that occurred in the municipality.</p> <p>✕ Section 32(7) of the MFMA says that, if the MM is obliged to report a case to the SAPS in terms of section 32(6), the Council must take all reasonable steps to ensure that such cases have been lodged with SAPS where the charge is against the accounting officer (in this instance the former accounting officer).</p> <p>✕ In terms of the Prevention and Combating of Corrupt Activities Act, there is a reporting duty on the TCC in terms of section 34(2) to report the suspected theft of R300,000 to the SAPS for further investigation.</p>

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INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mothibedi/Bonang Conference Centre	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>Possible collusion between TCC officials and third parties to commit theft of TCC funds to the value of R300,000</p> <ul style="list-style-type: none"> ✕ Mr Maphetle did not act on a council resolution when he approached the Clover Aardklop board for further funding for the Jazz Festival after receiving the 'request for intervention' from Mr Mothibedi; ✕ Mr Mothibedi directly approached Mr Maphetle for assistance with funding for the Jazz Festival and the written request mentioned an amount of R250,000 - R300,000; ✕ A TCC cheque for R300,000 in favour of Aardklop was requested by Mr Temanie, authorised by Mr Tyatya and collected by Mr Temanie, purportedly for delivery to Aardklop (the apparent beneficiary); ✕ The payment of R300,000 was unauthorised and in contravention of the MFMA as the money was purportedly intended to support the Jazz Festival, but it was paid from the Poverty Alleviation vote; ✕ Subsequently Mr Mothibedi presented Mr Vrey from Aardklop with the cheque of R300,000, with an request/instruction from Mr Tyatya (allegedly initiating from Mr Maphetle) to deposit the money and 	<p>We recommend that as a result of our findings that the TCC consider laying a criminal complaint against Mr Tyatya, Mr Temanie, Mr Maphetle and Mr Mothibedi and request the SAPS to investigate the suspicion of theft of R300,000 from the TCC.</p>

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INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mothibedi/Bonang Conference Centre	
FINDINGS / CONCLUSION	RECOMMENDATIONS
<p>immediately transfer the whole amount to Mr Mothibedi - the Clover Aardklop board complied with the request/instruction;</p> <p>✕ When the time came to pay the artists and other service providers, Mr Mothibedi simply referred them to Clover Aardklop for payment;</p> <p>✕ It is not known whether any part of the R300,000 was used towards payment for the Jazz Festival</p> <p>✕ When Mr Maphetle was asked to provide certain information to Council regarding meetings of the Aardklop Committee, he told Council that the Aardklop Committee had not convened meetings and therefore no feedback was available to provide to Council. This was a misrepresentation as the Aardklop Committee had indeed convened meetings;</p> <p>✕ When preparing for an Aardklop Committee meeting on 28 September 2012, Mr Maphetle suggested Mr Vrey to steer the committee away from questions regarding the jazz festival, meetings held and payments made to Clover Aardklop;</p> <p>✕ The available evidence constitutes a reasonable suspicion that these actions may also amount to theft of municipal funds involving the</p>	

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INVESTIGATION 4: The alleged inappropriate investment in Aardklop Arts Festival in 2011 via Eric Mothibedi/Bonang Conference Centre	
FINDINGS / CONCLUSION	RECOMMENDATIONS
following individuals: Mr Tyatya, Mr Temanie, Mr Maphetle and Mr Mothibedi.	

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INVESTIGATION 5: Alleged abuse of the Poverty Alleviation and Disaster Emergency Fund	
FINDINGS / CONCLUSION	RECOMMENDATIONS
Mr Mapethle, the EM abused the Fund solely created for alleviation of poverty not in accordance with the purpose of the fund.	
<i>Payments for Food Parcels for Funeral Services</i> We identified irregular expenditure from the PAF aggregating to R61 906-25.	We recommend the institution of disciplinary proceedings against Mr Temanie for contravention of section 171(3)(c) of the MFMA (making an irregular expenditure).
<i>Payments to Universities / students for tertiary education-related expenses</i> We identified unauthorized expenditure from the PAF aggregating to R90 872-00. We identified fruitless and wasteful expenditure aggregating to R17 163-00.	We recommend the institution of disciplinary proceedings against Mr Temanie for contravention of section 171(3)(c) of the MFMA (making an unauthorized and fruitless and wasteful expenditure).
<i>Payments from PAF reflected on TCC documentation as 'donations':</i> We identified unauthorized expenditure from the PAF aggregating to R405 740-39.	We recommend the institution of disciplinary proceedings against Mr Temanie for contravention of section 171(3)(c) of the MFMA (making an unauthorized expenditure). The institution of criminal proceedings against the former MM, Mr Tyatya (in a gross negligent way fails to take all reasonable steps to prevent unauthorized, irregular or fruitless and wasteful expenditure – refer sections 62(1)(d) and 173(1)(a)(iii) of the MFMA.
Mr Mapethle former (EM) abused the fund solely created for disaster management not in accordance with the purpose of the fund.	
<i>Payments from DEF</i>	We recommend the institution of disciplinary proceedings against Mr Temanie for contravention of section 171(3)(c) of the MFMA (making an unauthorized expenditure).

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INVESTIGATION 5: Alleged abuse of the Poverty Alleviation and Disaster Emergency Fund	
FINDINGS / CONCLUSION	RECOMMENDATIONS
Removing rubble from illegal dumping sites is not related to disaster relief, which is the intended purpose of the DEM. We identified unauthorized expenditure from the PAF aggregating to R171 500.	

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INVESTIGATION 6: Alleged irregular benefiting of Mothibedi / Bonang Conference Centre in the allocation of erven and paving		
FINDINGS / CONCLUSION		RECOMMENDATIONS
Non-compliance with the prescriptions in the acquisition of Erven		
Based on the available evidence, we conclude as follows:		We do not recommend any action be taken against the EM or any other Municipal Staff Member.
✕ The process followed in the application by Mr Mothibedi and the granting of the selling of land, was according to the prescribed processes.		
✕ The current status of the erf is in contravention with the Council Resolution taken and the property (land) is currently illegally occupied in terms of the conditions as set out in the Council Resolution.		
✕ We were unable to conclude on the evidence and information provided to us, that the EM was involved, in any irregular manner, during the process in which the property was acquired by Mr Mothibedi.		
Non-compliance with the prescriptions in the utilization of funds from the 2010 World Cup Fund Vote		
The prescriptions of the Code of Conduct for Councilors (General conduct of Councilors) were not complied with, as the Executive Mayor, Mr Maphetle did not at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised, in		We recommend that the TCC consider instituting disciplinary steps against the Executive Mayor, Mr Maphetle , in that he:
✕ Failed to perform the functions of office in good faith, honestly and a transparent manner;		

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INVESTIGATION 6: Alleged irregular benefiting of Mothibedi / Bonang Conference Centre in the allocation of even and paving	
FINDINGS / CONCLUSION	RECOMMENDATIONS
that he instructed officials of the TCC to conduct work and incur an expenditure unrelated to the functional area covered by a specific vote.	<p>✗ Failed to at all times act in the best interest of the municipality and in such a manner that the credibility and integrity of the municipality are not compromised;</p> <p>✗ Instructed Municipal Staff Members to perform work which resulted in an unauthorized expenditure as envisaged in sect 29 and 32 of the MFMA; and</p> <p>Used his position or privileges for private gain or to improperly benefit another person (being his friend, Mr Eric Mothibedi).</p>
Recovery of irregular and unauthorised expenditure incurred by the TCC	
<p>In terms of Section 32(1) of the MFMA, the EM , as Political office-bearer and the person who gave the instruction to incur the expenditure is liable for:</p> <p>✗ unauthorised expenditure that he deliberately or negligently incurred expenditure unrelated to the department or functional area covered by the vote; or</p> <p>✗ irregular expenditure that he deliberately or negligently committed, made or authorised expenditure not in accordance with the relevant legislation.</p>	<p>If Mr Tyaba was still in the employment of the TCC we would have recommended that the TCC, in terms of Section 32(2) and 32 (3) the TCC should recover unauthorised and irregular expenditure from him.</p> <p>The TCC may consider acting in terms of section 32 (1) (a) or 32(1)(c) to hold the EM liable for the expenditure incurred as result of this project.</p> <p>In addition, in terms of Section 32(4) of the MFMA, the current acting MM, Mr Mounakwe must inform the Executive Mayor, the MEC for Local Government and the Auditor-General in writing of:</p>

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FINDINGS / CONCLUSION	RECOMMENDATIONS
	<p>the unauthorised and irregular expenditure incurred;</p> <p>whether the person responsible is under investigation; and</p> <p>what steps have been taken to recover the money and to prevent a recurrence of the expenditure.</p> <p>Section 32(6) of the MFMA, requires the MM to report all cases of irregular expenditure that constitutes a criminal offence, to the SAPS.</p> <p>Section 32(7) requires the Council of the TCC to take all reasonable steps to ensure that all cases referred to in section 32(6), are reported to SAPS if the charge is against the accounting officer.</p>