



UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE (UIFW) REDUCTION PLAN / STRATEGY POLICY

<i>Council Resolution No</i>	: A76
<i>Date</i>	: 24-04-2023
<i>Reference No</i>	: 6/17/B
<i>Municipal Code No</i>	: P-U-01

ADOPTED 24.04.2023

OVERBERG DISTRICT MUNICIPALITY

REDUCTION PLAN/STRATEGY FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY DOCUMENT

1. PURPOSE

- 1.1 The Municipal Finance Management Act (56 of 2003) instructs that Senior Managers and other official of the municipality take all reasonable steps to ensure that “any unauthorised, irregular or fruitless and wasteful expenditure and any other losses are prevented” (See sections 62(1)(d), 78(1)(c) and 81(1)(d))
- 1.2 The Municipality is often challenged by reports of the Auditor General in respect of unauthorised, irregular or fruitless and wasteful expenditure.
- 1.3 This reduction plan sets out to provide a strategic method and approach for dealing with these matters.
- 1.4 The purpose of the reduction plan is therefore to define and regulate unauthorised, irregular or fruitless and wasteful (UIF + W) expenditure in the Municipality.
- 1.5 The reduction plan furthermore seeks to implement a strategy to:
 - a) prevent unauthorised, irregular or fruitless and wasteful expenditure as compelled by the Municipal Finance Management Act (56 of 2003)
 - b) identify and investigate unauthorised, irregular or fruitless and wasteful expenditure
 - c) respond appropriately in accordance with the law and
 - d) address instances of unauthorised, irregular or fruitless and wasteful expenditure conclusively

2. OBJECTIVE

The objectives of this reduction plan include inter alia the following: -

- a) Ensuring that all officials and councillors of Overberg District Municipality are aware of their responsibilities in respect of unauthorised, irregular, fruitless, and wasteful expenditure
- b) Emphasizing the accountability of Directorates including consequence management
- c) Ensuring that Directorates have a clear and comprehensive understanding of the procedures they must follow when dealing with unauthorised, irregular or fruitless and wasteful expenditure
- d) Ensuring that resources made available to Directorates are utilized efficiently, effectively, economically and for authorized official purposes
- e) Ensuring that the Municipality’s resources are managed in compliance with the MFMA, the Municipal Budget and Reporting Regulations and other relevant legislation; and
- f) Ensure that irregular, unauthorised or fruitless and wasteful expenditure is detected, processed, recorded, and reported timeously.

3. APPLICABLE LEGISLATION

The reduction plan is informed and guided by, among others, the following statutes and regulations:

- 3.1 The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996
- 3.2 The Municipal Finance Management Act, 2003, No 56 of 2003 and related regulations
- 3.3 The Remuneration of Public Office Bearers Act and related regulations
- 3.4 Municipal Systems Act, 2000, Act No 32 of 2000 and related regulations
- 3.5 Municipal Structures Act No. 117 of 1998 and related regulations
- 3.6 Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings
- 3.7 Municipal Budget and Reporting Regulations

3.8 SCM Regulations and related legislation

3.9 MFMA Circular 68, Circular 68 of May 2013

- 3.10 Applicable General Reporting and Accounting Principles (GRAP)
- 3.11 MFMA Circular 68
- 3.12 MFMA Circular 111 and MFMA UIF&W Expenditure Reduction Strategy guide
- 3.13 Municipal Public Accounts Committees (MPAC)–Guide and Toolkit issued by NT&COGTA
- 3.14 Delegations of Overberg District Municipality
- 3.15 ODM Policy on financial misconduct
- 3.16 ODM Breach of the Code of Conduct for Municipal Staff Members; and
- 3.17 ODM Breach of the Code of Conduct for Councillors
- 3.18 ODM Supply Change Management Policy
- 3.19 Any other relevant policy of ODM
- 3.20 Any other applicable legislation and future applicable legislation

4. BACKGROUND

4.1 In accordance with section 32 of the Municipal Finance Management Act No. 56 of 2003 (the "MFMA"), read together with MFMA Circular No. 68 and 111, the Council has a duty to:

- a) Prevent unauthorised, irregular, fruitless and wasteful expenditure
- b) Identify and investigate unauthorised, irregular, fruitless and wasteful expenditure and
- c) Address all instances of unauthorised, irregular, fruitless and wasteful expenditure appropriately in accordance with the MFMA.

4.2 In terms of section 62 of the MFMA, the accounting officer is responsible for managing the financial affairs of the municipality and he/she must, for this purpose, inter alia:

- a) Take all reasonable steps to ensure that unauthorised, irregular, fruitless and wasteful expenditure and other losses are prevented; and
- b) Ensure that disciplinary or criminal proceedings are instituted against any official or councillor of Overberg District Municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA

4.3 Officials and councillors must ensure that all instances of fruitless and wasteful expenditure are prevented, detected and reported in a timely manner

4.4 This is to ensure the effective, efficient and transparent systems of financial, risk management and internal control

4.5 In terms of MFMA Circulars 68 and 111 read together with the guide issued by National Treasury in September 2021 on reduction strategy for Unauthorized, irregular, fruitless and wasteful for Municipalities and Municipal Entities, there is different ways to treat each type of UIWF expenditure.

5. PROCESS TO BE FOLLOWED WHEN DEALING WITH UNAUTHORISED EXPENDITURE

5.1 All cases of unauthorised expenditure must be referred to the Section 32 committee for investigation. The Section 32 committee must, after investigation, make a recommendation to council for the authorisation, recovery or write off the unauthorised expenditure in terms of section 32 (2) (a) of the MFMA\

5.2 The aim of such an investigation required in Section 32(2)(b) of the MFMA before the Council can certify any irregular expenditure as irrecoverable, is to establish whether the irregular expenditure must be recovered utilising the factors outlined in regulation 74 of the Municipal Budget and Reporting Regulations

5.3 The designated council committee referred to in section 32 of the MFMA is often the municipal public accounts committee, and it is not expected of the council committee to actually undertake the investigation but to receive support from the administration to do so

5.4 This, therefore, means that the context of the investigations to be undertaken by the council committee referred to in section 32(2)(b) of the MFMA is of such a nature that it does not require a forensic investigation

5.5 In considering the authorisation of unauthorised expenditure, council must consider the following factors:

- (a) Has the matter been referred to Council for a determination and decision?
- (b) Has the nature, extent, grounds and value of the unauthorised expenditure been submitted to Council?
- (c) Has the incident been referred to MPAC for investigation and recommendations?
- (d) Has it been established whether the accounting officer or official or public office bearer that made, permitted or authorised the unauthorised expenditure acted deliberately or in a negligent or grossly negligent manner?
- (e) Has the accounting officer informed Council, the mayor or the executive committee that a particular decision would result in an unauthorised expenditure as per section 32(3) of the MFMA?
- (f) Are there **good grounds** shown as to **why** an unauthorised expenditure should be authorised?

For example:

- the mayor, accounting officer or official was acting in the best interests of the municipality and the local community by making and permitting unauthorised expenditure;
- the mayor, accounting officer or official was acting in good faith when making and permitting unauthorised expenditure; and
- the municipality has not suffered any material loss as a result of the action.

6. EXPENDITURE THAT ARE NOT CLASSIFIED AS UNAUTHORIZED EXPENDITURE

6.1 Given the definition of unauthorised expenditure, the following are examples of expenditure that are NOT unauthorised expenditure:

- (a) Any over-collection on the revenue side of the budget as this is not an expenditure
- (b) any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA
- (c) re-allocation of funds and the use of such funds in accordance with a council approved virement policy
- (d) Any grant to an individual, in terms of the municipality's indigent policy or bursary scheme.
- (e) overspending of an amount allocated by standard classification on the main budget Table A2 (Budgeted Financial Performance: revenue and expenditure by standard classification), as long as it does not result in overspending of a vote on the main budget Table A3 (Budgeted Financial Performance: revenue and expenditure by municipal vote) and Table A4 (Budgeted Financial Performance: revenue and expenditure (read in conjunction with supporting Table SA1) of the MBRR and
- (f) overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding) of the MBRR so long as it does not result in overspending of a „vote" on the main budget Table A5

6.2 Money withdrawn from a bank account under the following circumstances, without appropriation, in terms of an approved budget, is not regarded as unauthorised expenditure:

- (a) To defray expenditure authorised in terms of section 26 (4) of the MFMA, [Section 26: Consequences of failure to approve a budget before the start of the budget year]

- (b) To defray unforeseen/unavoidable expenditure circumstances strictly in accordance with Section 29 (1) of the MFMA [Section 29: Unforeseen and unavoidable expenditure] failing which the unforeseen /unavoidable expenditure is unauthorised
- (c) Expenditure incurred from a special bank account for relief, charitable or trust purposes provided of course that it is done strictly in accordance with Section 12 of the MFMA [Section 12: Relief, charitable, trust or other funds]
- (d) To pay over to a person or organ of state money received by the Overberg District Municipality on behalf of that person or organ of state, including—
 - (i) money collected by the Overberg District Municipality on behalf of that person or organ of state by agreement; or
 - (ii) any insurance or other payments received by the Overberg District Municipality for that person or organ of state
- (e) To refund money incorrectly paid into a bank account
- (f) To refund guarantees, sureties and security deposits
- (g) For cash management and investment purposes in accordance with section 13 [Section 13: Cash Management and Investments]; and
- (h) To defray increased expenditure in terms of section 31 [Section 31: Shifting of funds between multi-year appropriations].
- (i) Any expenditure approved in terms the Municipal Budget and Reporting Regulations (MBRR).

6.3 Unauthorised expenditure on “non-cash” items

Municipalities have raised concerns over non-cash items being classified as unauthorised expenditure owing to the total amount of the budget being exceeded. Such expenditure relates to debt impairment, depreciation, asset impairment, transfers and grants as appropriated in Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) of the MBRR.

Although these expenditures are considered non-cash items as there is no transaction with any service provider or supplier, an under provision during the budget compilation process is a material misstatement of the surplus or deficit position of the municipality. This could be the result of poor planning, budgeting or financial management, or unknown events that gave rise to the asset and debt impairment after adoption of the budget. In this regard Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) must be read in conjunction with supporting Table SA1 of the MBRR.

7. ADJUSTMENTS BUDGETS TO AUTHORISE UNAUTHORISED EXPENDITURE

Depending on the responses to the questions in 5.2 above, council may authorise unauthorised expenditure in an adjustments budget, in terms of Sections 28(c) and 28(g) of the MFMA, read together with regulations 23(1), 23(2), 23(4) and 23(6) of the MBRR:

(a) Adjustments budget for unforeseen and unavoidable expenditure:

(i) An adjustments budget to allow council to provide ex post authorisation for unforeseen and unavoidable expenditure that was authorised by the mayor in terms of section 29 of the MFMA must be tabled in council at the “first available opportunity” or within the 60 days after the expenditure was incurred (see section 29(3) of the MFMA).

(ii) Should either of these timeframes be missed, the unforeseen and unavoidable expenditure must be treated in the same manner as any other type of unauthorised expenditure, and may still be authorised in one of the other adjustments budgets process described below.

(b) Main adjustments budget:

(i) In terms of regulation 23(6)(a) of the MBRR, council may authorise unauthorised expenditure in the adjustments budget which may be tabled in council “at any time after the mid-year budget and

performance assessment have been tabled in the council, but not later than 28 February of the current year”.

(ii) Therefore, unauthorised expenditure that occurred in the first half of the current financial year may be authorised by council in this adjustments budget. Where unauthorised expenditure from this period is not identified or investigated in time to include in this adjustments budget, it must be held over to the following adjustments budget process noted below.

(c) Special adjustments budget to authorise unauthorised expenditure:

- (i) In terms of regulation 23(6)(b) of the MBRR, council may authorise unauthorised expenditure in a special adjustments budget tabled in council when the mayor tables the annual report in terms of section 127(2) of the MFMA (see MFMA Circular 63 for clarification of the time period referred to in section 127(2) of the MFMA)
- (ii) This special adjustment budget may only deal with unauthorised expenditure from the previous financial year which the council is being requested to authorise in terms of section 32(2)(a)(i) of the Act.
- (iii) This special adjustment budget therefore deals with:
 - a) unauthorised expenditure that occurred in the first half of the previous financial year that was not included in the main adjustments budget or that was included but referred back for further investigation or further information
 - b) unauthorised expenditure that occurred in the second half of the previous financial year, and
 - c) any unauthorised expenditure identified by the Auditor-General during the annual audit process
- (iv) The timing of this special adjustments budget requires:
 - a) the municipality to report all the unauthorised expenditure in its annual financial statements (thus ensuring transparency regarding its performance with implementing the budget);
 - b) the Auditor-General to audit the municipality's disclosure of its unauthorised expenditure and to add any further unauthorised expenditure identified in the audit process; and
 - c) sufficient time (but also places a time limit given the date of tabling the Annual Report) for instances of unauthorised expenditure to be properly investigated before being presented to council for a decision on whether to authorise it; the investigation is normally done by a council committee. If the above timelines are not met, then such matter must be addressed during the following mid-year adjustment budget process.

8. ACCOUNTING DISCLOSURE OF UNAUTHORISED EXPENDITURE (CASH AND NON-CASH ITEMS)

With regard to the accounting disclosure of unauthorised expenditure in the books of the municipality in terms of section 125 of the MFMA, not all of the unauthorised expenditure for a specific period relates to cash transactions. This therefore result in a distorted picture when reporting is done on this particular item in that the readers of the annual financial statements more often than not see unauthorised expenditure relating to non-cash items as money that was lost by the municipality. It is for this reason that we advise municipalities to distinguish in their annual financial statements between unauthorised expenditure relating to cash and non-cash items. This will provide readers with a clear picture of expenditure that was not in terms of the council approved annual budget (cash items) and those instances where incorrect estimations were made which resulted in unauthorised expenditure (non-cash items).

In all instances where there is a clear overspending on the budget, i.e. the actual expenditure exceeds the budget, the municipality must pass an adjustment budget to authorise the over-expenditure within the timelines as legislated in regulation 23 of the MBRR. However, in accordance with the definition of unauthorised expenditure in paragraphs (b), (c) and (d), these instances may not necessarily result in over-expenditure (i.e. actual may not exceed budget). In such an instance, an investigation in terms of section 32(2)(a)(ii) of the MFMA will suffice to address the unauthorised expenditure. Therefore, whilst

municipalities will investigate and decide to write off the unauthorised budget (where it actual exceeds the budget), there must be an adjustment budget passed to authorise the unauthorised expenditure in cases where there was clear over expenditure in the budget. However, this must be done within the timelines as noted above.

9. PROCESS TO BE FOLLOWED WHEN DEALING WITH IRREGULAR EXPENDITURE

- 9.1 All cases of irregular expenditure must be referred to a Section 32 committee for investigation. The Section 32 committee must, after investigation, make a recommendation to council for the recovery or write-off of the irregular expenditure in terms of section 32 (2) (b) of the MFMA.
- 9.2 The aim of such an investigation required in Section 32(2)(b) of the MFMA before the Council can certify any irregular expenditure as irrecoverable, is to establish whether the irregular expenditure must be recovered utilising the factors outlined in regulation 74 of the Municipal Budget and Reporting Regulations.
- 9.3 The designated council committee referred to in section 32 of the MFMA is often the municipal public accounts committee, and it is not expected of the council committee to actually undertake the investigation but to receive support from the administration to do so
- 9.4 This, therefore, means that the context of the investigations to be undertaken by the council committee referred to in section 32(2)(b) of the MFMA is of such a nature that it does not require a forensic investigation.
- 9.5 In terms of section 170 of the MFMA, only the National Treasury may condone non-compliance with the MFMA or its regulations. The council of Overberg District Municipality has no power to "condone" any act of non-compliance with the MFMA or any of its regulations
- 9.6 The council may, after investigation and recommendation by MPAC, only resolve "to write off the expenditure as irrecoverable" or "resolve to recover the expenditure", in terms of section 32(2)(b) of the MFMA
- 9.7 Council may only condone a contravention of its own SCM policy or a by-law giving effect to that policy if contravention is not also a contravention of the MFMA or the SCM regulations
- 9.8 Irregular expenditure resulting from a contravention of the Public Office Bearers Act cannot be written-off and must be recovered from the political office bearer concerned, in terms of section 167(2) of the MFMA.

10. RECOGNITION OF IRREGULAR EXPENDITURE

10.1 The recognition of irregular expenditure must be linked to a financial transaction

10.2 Although a transaction or an event may trigger irregular expenditure, the council will only identify irregular expenditure when a payment is made or when the invoice is received in terms of GRAP 1

10.3 If the possibility of irregular expenditure is determined prior to a payment being made, the transgression shall be regarded as a matter of non-compliance.

11. PROCESS TO BE FOLLOWED WHEN DEALING WITH FRUITLESS AND WASTEFUL EXPENDITURE

11.1 No particular expenditure is explicitly identified in the MFMA as fruitless and wasteful.

- 11.2 All expenses regarded as fruitless and wasteful expenditure must be referred to the Section 32 committee for investigation. The Section 32 committee must, after investigation, make a recommendation to council for the recovery or write off of the fruitless and wasteful expenditure in terms of section 32 (2) (b) of the MFMA
- 11.3 The aim of such an investigation required in Section 32(2)(b) of the MFMA before the Council can certify any irregular expenditure as irrecoverable, is to establish whether the irregular expenditure must be recovered utilising the factors outlined in regulation 74 of the Municipal Budget and Reporting Regulations
- 11.4 The designated council committee referred to in section 32 of the MFMA is often the municipal public accounts committee, and it is not expected of the council committee to actually, undertake the investigation but to receive support from the administration to do so
- 11.5 This, therefore, means that the context of the investigations to be undertaken by the council committee referred to in section 32(2)(b) of the MFMA is of such a nature that it does not require a forensic investigation, but in the case of fruitless and wasteful expenditure, the committee may request and rely on a forensic report, especially if criminal procedures and recovery of debt will be considered.
- 11.6 An expense is regarded as fruitless and wasteful in terms of this policy if:
- (a) It was made in vain (meaning that the municipality did not receive value for money) and
 - (b) would have been avoided had reasonable care been exercised (meaning that the official or councillor concerned did not carelessly or negligently cause the expenditure to be incurred by the municipality, furthermore another official or councillor under the same circumstances would not have been able to avoid incurring the same expenditure).
- 11.7 Officials and councillors must always act in an accountable manner that promotes the principles of "efficient, economic and effective use of resources and the attainment of value for money", by ensuring that fruitless and wasteful expenditure is prevented as far as possible, is detected and reported in a timely manner
- 11.8 In determining whether expenditure is fruitless and wasteful, officials and councillors must apply the requirement of reasonable care as an objective measurement, that is:
- (a) Would the average man (in this case the average experienced official or councillor) have incurred the particular expenditure under exactly the same conditions or circumstances? and
 - (b) Is the expenditure being incurred at the right price, right quality, right time and right quantity?

12. RECOVERY OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

- 12.1 The processes to respond appropriately to prohibited expenditure are:
- (a) disciplinary charges against officials and political office bearers;
 - (b) criminal charges against officials and political office-bearers; and
 - (c) recovery of the fruitless and wasteful expenditure from the liable persons.
- 12.2 In other words, the writing-off of prohibited expenditure is not a primary response, it is subordinate to the recovery processes, and may only take place if the expenditure is certified by Council as irrecoverable
- 12.3 In terms of section 32(2) of the MFMA, read together with Regulation 74 of the MBRR, all instances of unauthorised, irregular, fruitless and wasteful expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the municipal council, after investigation by

Section 32 committee, as irrecoverable and written off by the council, or has been authorised in an adjustment budget.

- 12.4 Regulation 74(1) of the MBRR lists issues that must be considered by MPAC in investigating the recoverability of expenditure, including –
- The measures already taken to recover such expenditure,
 - The cost of measures already taken to recover such expenditure, and
 - The estimated cost and likely benefit of further measures that can be taken to recover such expenditure.
- 12.5 Once it has been established that recovery must be implemented, the accounting officer must in writing request that the liable political office-bearer or official to pay the amount within 30 days or in reasonable instalments. If the liable person fails to comply with the request, the matter must be referred to the normal debt collection process of the municipality.
- 12.6 The municipality can also institute measures to recover money's paid from service providers who did not deliver the goods or services, as may be appropriate.

13. REPORTING OF UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

- 13.1 The municipal manager must promptly report all instances of unauthorised, irregular, fruitless and wasteful expenditures to the mayor, the MEC for Local Government in the province and the Auditor-General in terms section 32(4) of the MFMA
- 13.2 The report mentioned in subparagraph 13.1 above must indicate:
- (a) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
 - (b) the steps that have been taken to recover or rectify such expenditure and to prevent a recurrence of such expenditure.
- 13.3 The municipal manager must, at least on a quarterly basis, also submit the report to:
- (a) The Finance Portfolio Committee;
 - (b) Council;
 - (c) Audit Committee; and
 - (d) Provincial Treasury
- 13.4 In terms of Section 32 (4), the accounting officer must inform the MEC for local government in the province and the Auditor-General, in writing at the end of the financial year of all unauthorised, irregular, fruitless and wasteful expenditure that occurred in ODM
- 13.5 Details of unauthorised, irregular, fruitless and wasteful expenditure must be disclosed in the municipality's annual financial statements as required by the MFMA and treasury requirements and as per annexure D of the revised MFMA circular 68; and disclosed in the municipality's annual report.

14. DISCIPLINARY PROCEEDINGS AND CRIMINAL CHARGES FOR UIF&W

- 14.1 All allegations of financial misconduct must be referred to the municipality's Disciplinary Board for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official liable for the expenditure, in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings read with MFMA Circular 76.
- 14.2 If, after having followed a proper investigation, the council concludes that the political office bearer or official responsible for making, permitting or authorising the unauthorised, irregular, fruitless and wasteful expenditure did not act in good faith or committed an act of financial misconduct, then the municipality must institute disciplinary action and criminal charges against the liable person/s in terms of chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings

14.3 The council, mayor or accounting officer (as may be applicable) must institute disciplinary charges as follows:

(a) Financial misconduct in terms of section 171 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings: in the case of an official that deliberately or negligently:

- contravened a provision of the MFMA which resulted in unauthorised, irregular, fruitless, and wasteful expenditure; or
- made, permitted or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure)

(b) Breach of the Code of Conduct for Municipal Staff Members: in the case of an official whose actions in making, permitting or authorising unauthorised, irregular, fruitless and wasteful expenditure constitute a breach of the Code; and

(c) Breach of the Code of Conduct for Councillors: in the case of a political office-bearer, whose actions in making, permitting, or authorising unauthorised, irregular, fruitless, and wasteful expenditure constitutes a breach of the code. This would also include instances where a councillor knowingly voted in favour or agreed with a resolution before council that contravened legislation resulting in unauthorised, irregular, fruitless and wasteful expenditure when implemented, or where the political office bearer improperly interfered in the management or administration of the municipality

14.4 Where a financial offence has been committed by any person official or office bearer, the accounting officer or, if the accounting officer is involved, the mayor or the municipal council must report the alleged financial offence to the South African Police Service. In terms of regulation 10(1) of the Municipal Regulations on Financial Misconduct and Criminal Proceedings.

15. MAINTAINING OF REGISTER FOR UNAUTHORISED, IRREGULAR, FRUITLESS & WASTEFUL EXPENDITURE

15.1 The accounting officer must implement a register of unauthorised, irregular, fruitless and wasteful expenditure, as set out in Annexure A of MFMA Circular 68, and ensure it is updated monthly

15.2 The Register will be a central source of information concerning unauthorised, irregular, fruitless and wasteful expenditure for council and relevant internal and external stakeholders. It is a clear record of the details of the transaction, the type of expenditure, the person liable for the expenditure and what measures were taken by the municipality to address the matter.

15.3 This register will be maintained by the Office of the CFO

16 CONSEQUENCES OF NON-COMPLIANCE

16.1 Any official or councillor who does not comply with their reporting duties in terms of this policy commit an act of financial misconduct or financial offence.

17. PROTECTION OF OFFICIALS OR COUNCILLORS WHO HAVE REPORTED UIF&W

17.1 The Protected Disclosures Act 2000 (Act No. 26 of 2000) applies to an official who makes a report or disclosure against a political office bearer or an official who is alleged to have committed financial misconduct or financial offence, in terms of regulation 18 of the Municipal Regulations on Financial Misconduct and Criminal Proceedings.

17.2 The municipal manager or mayor must immediately take appropriate action to ensure that protection, including reporting to the SAPS where necessary

18. IDENTIFIED DELIVERABLES AND RELATED PROBLEM

- 18.1 Over the past few financial years, ODM had to disclose several unauthorized and irregular expenditure that was self-disclosure in the AFS or raised in audit finding due to non-compliance
- 18.2 The most irregular expenditure incurred is due to SCM non-compliance in allocation of bid awards and quotations and Management will focussed on strengthen these internal controls. Unauthorized expenditure was mainly due to non-cash transactions occurring at financial yearend
- 18.3 Only one case of fruitless and wasteful expenditure was disclosed in the last year financial years. A forensic investigation was performed in this regard but the said official left service and the Section 32 committee recommended after investigating and consideration that it will not be economical worth while to spend legal fees on recovering due to the small amount of loss.
- 18.4 No fruitless and wasteful expenditure occurred during the last two financial years

19. GOALS SET OUT IN MTSF TO REDUCE IRREGULAR AND ELIMINATE FRUITLESS AND WASTE FUL EXPENDITURE

The following goals set in the MTSF will be to reduce irregular expenditure by 75% by 2024 and retain the 100% record of no eliminate fruitless and wasteful expenditure cases.

20. REDUCTION STRATEGY FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL

No	Deliverable	Scope	Objectives
1.	Report(s) to the council on the UIFW expenditure and any other information that the council may require for the MFMA "section 32" process.	All UIFW expenditure, as per the latest (audited) financial statements and related information that have not gone through an MFMA "section 32" process.	To enable the council to recover UIFW expenditure, unless in the case of: <ul style="list-style-type: none"> • unauthorised expenditure, such expenditure is authorised in an adjustments budget or certified as irrecoverable and written off • irregular and fruitless and wasteful expenditure, such expenditure is certified as irrecoverable and written off
2.	Council resolution that refers the UIFW expenditure to a council committee for investigation, as contemplated by section 32(2) of the MFMA	UIFW expenditure, as determined by the council to be investigated by a council committee	To enable the council committee to investigate the UIFW expenditure and produce a report on its recommendations to the council for a final decision, as contemplated in section 32(2) of the MFMA
3.	Report by the council Section 32 committee	UIFW expenditure investigated, as per the terms and referenced defined by the council committee	Enable the council committee to consider the: <ul style="list-style-type: none"> • measures are already taken, and the cost thereof to recover such expenditure

			<ul style="list-style-type: none"> • estimated cost and the likely benefit of further measures to recover such expenditure • submit a motivation explaining its recommendations to the council for a final decision in terms of section 32(2) of the MFMA
4.	Council resolution following its consideration of the report of the council committee on the investigation of the UIFW expenditure	Report and recommendations covering the UIFW expenditure investigated by the council committee	<p>Recovery of the UIFW expenditure, unless the council certifies such expenditure as irrecoverable and to be written off</p> <ul style="list-style-type: none"> • Institution of criminal and/or disciplinary proceedings against a person charged with the commission of an offence or a breach of the MFMA relating to such UIFW expenditure
5.	Report(s) by the disciplinary board on its investigation of financial misconduct	<ul style="list-style-type: none"> • Council resolution on the institution of criminal and/or disciplinary proceedings • Allegations of financial misconduct • Recommendation on the preliminary investigation of allegations of financial misconduct • Terms of reference for the investigation and production of an investigation report 	To investigate allegations of financial misconduct and to monitor the institution of disciplinary proceedings, as contemplated in the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceed

No	Deliverable	Scope	Objectives
6.	Reporting of alleged financial offences to the South African Police Service	Alleged financial offences	Investigation of and reporting on alleged financial offences, as contemplated in Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

21. SCOPE OF APPLICATION

This reduction plan applies to Council and members of Council structures, the Accounting Officer/Municipal Manager, Chief Financial Officer, Senior Managers (or all Section 56/7 employees of Council), municipal officials and all agents of Council. It is also applicable to any of its municipal entities, as funds that are expensed by the municipal entity must be expended in terms of the applicable legislation to the parent municipality. From a responsibility perspective, this policy is relevant to all employees of the Municipality, whether permanent, contractual or temporary.

22. ROLES AND RESPONSIBILITIES

22.1 The MFMA outlines the responsibilities of the Accounting Officer which include amongst others the following: -

(a) To exercise all reasonable care to prevent and detect irregular, unauthorised, fruitless and wasteful expenditure and must for this purpose implement effective, efficient and transparent processes of financial and risk management.

(b) To inform, in writing the Mayor, executive committee and Council, as the case may be, if a decision is taken which, if implemented, is likely to result in irregular, unauthorised, fruitless and wasteful expenditure.

(c) On discovery of any irregular, unauthorised, fruitless and wasteful expenditure to report promptly in writing, the particulars of the expenditure to the Accounting Officer or Senior Manager (whichever is applicable).

(d) Section 32 of the MFMA further prescribes the process that must be followed to deal with irregular, unauthorised, fruitless, and wasteful expenditure.

22.2 Senior managers and those duly delegated have the following responsibilities:

(a) Identifying the identity of the person who is liable for causing unauthorised, irregular or fruitless and wasteful expenditure.

(b) Reporting the transaction in line with Section 32 of the MFMA to all the required structures of Council.

(c) Deciding how to recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure (in line with Section 32 of the MFMA).

(d) Determining the amount of unauthorised, irregular or fruitless and wasteful expenditure to be recovered, written off or provided for (in line with Section 32 of the MFMA)

Risk identification and mitigation

List details of any significant risks (internal and external factors) that could impact the municipality's efforts to achieve the relevant MTSF goals within the municipality's planned timeframes, budget, and requirements. Mitigating actions should be identified for each identified risk.

REDUCTION STRATEGY FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL FOR OVERBERG DISTRICT MUNICIPALITY

<i>UIFW Expenditure action plans</i> Number:	Actions	Timelines	Responsible person committee
1	The MPAC committee will have UIFW expenditure meetings to process UIFW expenditure.	Annually after and before audit cycle	MPAC Chairperson
2	The accounting officer must table the UIFW registers at the MPAC committee meeting.	Annually after and before audit cycle	Accounting Officer

3. The accounting officer must process unauthorised expenditure authorised by the council in the next available adjustment budget. February and June every year Accounting Officer
4. Progress Report, using the UIFW template submitted to Mayor, Provincial Treasury and National Treasury Annually Accounting Officer

Suggested incremental targets in respect of the UIF&W expenditure outcome indicators over the 2019-2024 MTSF period

Outcome	Outcome indicators	Baseline	Suggested incremental targets			Target
			2020-21	2021-22	2022-23	2023-24
Sound financial controls and management of public finances	Percentage reduction of irregular expenditure	2019-20 baseline	20% reduction of irregular expenditure incrementally from baseline of 2019-20 by 2024	40% reduction of irregular expenditure incrementally from baseline of 2019-20 by 2024	60% reduction of irregular expenditure incrementally from baseline of 2019-20 by 2024	75% reduction of irregular expenditure incrementally from baseline of 2019-20 by 2024
	Percentage elimination of wasteful and fruitless expenditure	2019-20 baseline	20% elimination of fruitless and wasteful expenditure incrementally from baseline of 2019-20 by 2024	50% elimination of fruitless and wasteful expenditure incrementally from baseline of 2019-20 by 2024	75% elimination of fruitless and wasteful expenditure incrementally from baseline of 2019-20 by 2024	100% elimination of fruitless and wasteful expenditure incrementally from baseline of 2019-20 by 2024

FORMAT FOR REDUCTION STRATEGY FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL FOR OVERBERG DISTRICT MUNICIPALITY

Details of reducing historical irregular and wasteful expenditure to achieve the medium-term strategic framework goals	Amount	Financial year to which the IFW expenditure relates	Planned date of reporting the IFW expenditure to the council	Planned date of the council resolution to refer the IFW expenditure to a council committee for investigation	Planned date/timeframe of the investigation of the IFW expenditure by the council committee	Planned date for the council on its recommendations to the council for a final decision in terms of section 32(2) of the MFMA	Planned date for the council decision to recover or certify the IFW expenditure as irrecoverable and for write-off	Planned date to implement the council decision in respect of any related disciplinary or criminal proceedings	Timeframe to implement the council resolution related to any recovery or write-off and/or disciplinary or criminal proceedings
Nature of irregular and fruitless and wasteful (IFW) expenditure									
Accounting officer	Municipal council	Council committee	Municipal Council	Council committee	Municipal council	Municipal council	Municipal council	Accounting officer	Accounting officer
Note 1	Note 2	Note 3	Note 4	Note 5	Note 6	Note 7	Note 7	Note 7	Note 8

See attached spreadsheet.

REDUCTION STRATEGY FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL FOR OVERBERG DISTRICT MUNICIPALITY

Note 1: Summarise the nature of the IFW expenditure, based on the classification by management and/or the related audit findings,

for example, non-compliance with supply chain management regulations. This can be specific and presented in categories, for

example, SCM regulations 36, SCM regulation 32, MFMA section 33, MFMA section 116, etc.

Note 2: Provide the total amount of the IFW expenditure subject to the MFMA section 32 process. The recorded amount(s) should

be supported by detailed listings making up that amount, including supporting documentation and responsible persons, based on

the investigation of the accounting officer, the UIFW expenditure register and the audited financial statements.

Note 3: Include the financial year(s) to which the IFW expenditure relates, as per the audited financial statements of the municipality.

Note 4: The accounting officer must prepare a report, including full details of the IFW, as per the relevant registers and audited financial statements, as required by MFMA section 32(4).

Note 5: The council committee, normally the municipal public accounts committee, should determine the terms of reference for the investigation, including the modality of the investigation, for example, through internal audit, the municipal forensic service, etc. (*National Treasury does not encourage the use of external service providers to conduct section 32(2) investigations*).

Note 6: The council resolution should reflect the council's decision to recover UIFW expenditure from the person liable for that expenditure unless the expenditure (a) in the case of unauthorised expenditure is (i) authorised in an adjustments budget; or (ii) certified by the municipal council, after an investigation by a council committee, as irrecoverable and written off by the council; and (b) in the case of IFW expenditure, is, after an investigation by a council committee, certified by the council as irrecoverable and written off by the council.

Note 7: The dates are important to track to ensure that the council resolutions in respect of UIFW expenditure are implemented.

Note 8: According to section 32(5) of the MFMA, the writing off in terms of subsection (2) of any UIFW expenditure as irrecoverable is no excuse in criminal or disciplinary proceedings against a person charged with the commission

MUNICIPALITIES AND MUNICIPAL ENTITIES

Act (MFMA) relating to such unauthorised, irregular or fruitless and wasteful expenditure. The accounting officer must also report to the South African Police Service all cases of alleged irregular expenditure that constitute a criminal offence and theft and fraud that occurred in the municipality, as per section 32(5) of the MFMA. In this regard, effect should be given to the requirements of the Municipal Financial Regulations on Financial Misconduct Procedures and Criminal Proceedings. The municipality should implement a separate process to track and monitor the actions in implementing the requirements of these regulations.

Implementation of controls to prevent unauthorised, irregular and fruitless and wasteful expenditure

Municipalities should identify and document the preventative controls that should be implemented to establish a sound control environment related to preventing and reducing irregular and fruitless, and wasteful expenditure. The document should address what the municipality should implement to reduce risks in the procurement and contract management (as the main cause for irregular expenditure) and risks in the management of creditors' payments (as the main cause for fruitless and wasteful expenditure).

The preventative controls should consider the identified internal control deficiencies (root causes) that give rise to the irregular and fruitless, and wasteful expenditure, as identified through the external and internal audit processes to prevent such expenditure in the future. Such controls, for example, should focus on strengthening the control environment, procurement and contract management, consequence management and financial management as it relates to preventing penalties and interest and losses related to the late or non-payment of creditors.

The designed controls should also focus on detecting irregular and fruitless and wasteful expenditure where such expenditure has been incurred to deal with it under the requirements of the MFMA (for example, in respect of reporting, investigation and disclosure in the annual financial statements).

Importantly, consideration should also be given to the requirement for consequence management to deal with any related financial misconduct according to the Municipal Financial Misconduct Regulations and Criminal Proceedings requirements.

Monitoring and evaluation

Provide details on how the initiatives to achieve the various milestones set out in the strategy document/plan will be monitored and evaluated to ensure that deliverables are achieved.

Responsibilities for monitoring and evaluation and the timing thereof should be clearly defined.

Communication and reporting

Responsibilities for communication and reporting and the timing thereof should be clearly defined

REFERENCES:

1. Relevant NT MFMA Circulars, Guides and Regulations
2. AGSA 2018-19 and 2019/20 MFMA general report on local government audit outcomes
3. AGSA preventative controls guide and related compliance controls
4. Municipal Finance Management Act
5. Municipal Systems Act
6. Municipal Structures Act
7. SCM Regulations
8. Financial Misconduct and Criminal Proceedings
9. COSO Framework
10. ISA 315 *Understanding the entity and its environment and assessing the risks of material misstatement*
11. High Court of South Africa (Western Cape Division, Cape town) - Case No: A309/2017
12. 2019-2024 Medium-term strategic framework
13. Various other reference material on internal control
14. NT MFMA FMCMM model
15. NT MFMA Audit Action Plans



Item A76. 24.04.2023

POLICY CONSEQUENCE MANAGEMENT, REDUCTION STRATEGY AND IMPLEMENTATION PLAN FOR UNAUTHORIZED, IRREGULAR, FRUITLESS AND WASTEFUL (UIFW) EXPENDITURE AND SECTION 32 INVESTIGATION PROCESS COMMITTEE

NL Kruger: Chief Financial Officer

(Ref.: 6/17/B & Bundle P)

PURPOSE

The purpose of this item is to approve a policy document to align the existing section 32 processes according to the national guidelines issued in terms of legislation. This will enable Overberg District Municipality to comply with the requirements of the Auditor-General and to change its current processes to address the internal control deficiency identified by the Auditor-General.

BACKGROUND

National Treasury introduces a generic unauthorised, irregular, fruitless and wasteful (UIFW) expenditure reduction strategy to municipalities and municipal entities which aims to support and introduce measures that will assist in reducing such expenditures. In this regard, MFMA Circular no 111 was issued on 16 November 2021 and all municipalities and municipal entities were required to discuss and resolve on its own a UIFW reduction strategy and implementation plan.

The intention is to use this guideline to approve a policy that could be used to align the existing section 32 process to investigate UIFW expenditure by a committee appointed by Council. Currently ODM has a separate committee whilst most other Councils use the MPAC committee for this purpose.

DISCUSSION ON AUDIT FINDING – COMAF 9 of 2021/22

An audit finding was issued by the Auditor General in 2021/22, *Compliance: Consequence Management Investigations not conducted (CoMAF no. 9)*, which stated as follows:

“Where the Section 32 (2) (a) (ii) and (b) Municipal Finance Management Act 56 of 2003 (MFMA), state that municipality must recover unauthorized, irregular expenditure from the person liable for that expenditure unless the expenditure in the case of unauthorized expenditure is certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

Appropriate supporting documentation for investigating instances of unauthorised and irregular expenditure were not submitted on request of the auditors. Failure to submit appropriate documentation on request of the auditors is auditors' limitation of scope and may result in the modification of scope. Consequently, alternative procedures to obtain the assurance on the recoverability of the unauthorised and irregular expenditure could not be confirmed.

The municipality deemed the tabling of the above instances of unauthorised, irregular expenditure with the Section 32 committee to be investigations as required in terms of the act. Management tabled its unauthorised, irregular expenditure with its Section 32 committee, which then recommended certification and write-off on all the submitted unauthorised, irregular wasteful expenditure by council.

This constitutes a material non-compliance with section 32(2) of the MFMA and will be reported in the audit report.

Management did not ensure that they have a process in place to investigate the UIFW and they are only tabling the instance identified into the section 32 committee.

Recommendation: "Management should design a process or procedure to investigate the UIFW before it is tabled to the council committee."

Management did not agree with the audit finding because all the minutes and documentation were provided to the auditors. The auditors however responded that the minutes did not outline the following:

- The scope of the investigation relating to / for unauthorised expenditure identified
- Who commissioned/approved the investigation
- The recommendations/findings in respect of the investigation

The investigation as per section 32 of the MFMA is unfortunately not defined in the Act and is thus open for interpretation. Therefore the following guidelines released by National Treasury should be considered:

MFMA circular no 68 on page 13 guides as follows about the nature of such section 32 investigations:

*"Section 32(2)(b) of the MFMA requires an investigation by a council committee before the Council can certify any irregular expenditure as irrecoverable. It is important to note that the aim of such an investigation is to establish whether the irregular expenditure must be recovered utilising the factors outlined in regulation 74 of the Municipal Budget and Reporting Regulations. This, therefore, means that the context of the investigations to be undertaken by the council committee referred to in section 32(2)(b) of the MFMA is **of such a nature that it does not require a forensic investigation.**"*

According to **Regulation 74 of the Municipal Budget and Reporting Regulations**, the Council committee must consider the following in this investigation and report:

- measures are already taken, and the cost thereof to recover such expenditure
- estimated cost and the likely benefit of further measures to recover such expenditure
- submit a motivation explaining its recommendations to the council for a final decision in terms of section 32(2) of the MFMA

MFMA Circular 111 on page 19 provide the following guideline regarding assistance that should be provided to the Council committee to perform such an investigation:

*"In terms of section 32(2)(b) of the MFMA, a municipality must recover UIF&W expenditure from the person liable for that expenditure unless the expenditure, in the case of UIF&W expenditure, is, after an investigation by a council committee, certified by the council as irrecoverable and written off by the council. In this instance, the designated council committee referred to in section 32 of the MFMA is often the municipal public accounts committee, and **it is not expected of the council committee to actually undertake the investigation but to receive support from the administration to do so.**"*

The auditor's final conclusion on the audit finding was as follows:

*"The auditors were **unable to confirm through minutes submitted whether a proper investigation was conducted**, and we will follow up during the 2022/23 financial year on the actions committed by management and the process and controls implemented to address the internal control deficiency."*

PROPOSAL ON CHANGED PROCESS

Enquiries had been made at other municipalities in the District and the following was found:

1. CAM – All the UIFW expenditure items is first submitted to Council and only then referred to the MPAC committee for further investigation. The internal audit assists the MPAC committee with the investigation to provide the necessary documentation for the committee.
2. Swellendam – Has a separate Section 32 committee but is chaired by an independent person, which is not a Councillor. However, the chair of the MPAC is part of this committee. Items were first taken to this committee, but the process will now also be changed to first take it to Council. Internal Audit also assists the committee to provide the necessary documentation for the committee.
3. Overstrand, follows the same process as CAM but has an approved policy and standard operating procedure with templates to follow an administrative process according to the decision tree. There is also a specific charter approved for the MPAC which mandate them to perform the section 32 investigation.

In terms of the above findings, it is proposed that ODM follow the same route as the other three local municipalities in the Overberg District.

REDUCTION PLAN/STRATEGY FOR UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE POLICY DOCUMENT

Attached per annexure, is the proposed reduction plan/strategy compiled as a policy document following the template and information provided in the respective MFMA circulars. This is also a requirement from National Treasury as criteria to release the Equitable Share going forward. See extract and verification checklist below from the latest MFMA Budget Circular no 123 dated

3 March 2023:

8.1 Criteria for the release of the Equitable Share

The equitable share release criteria for 2023/24 were set out in MFMA Circular No. 122. To assist with managing this process, a guiding checklist has been developed (attached hereto as Annexure A) which municipalities can follow throughout the course of the year to ensure that the required documents are timeously uploaded to the GoMuni platform in line with the prescribed deadlines.

ANNEXURE A: Equitable Share Verification Checklist:

General Requirements

Criteria	Verification Requirement	Yes/No
UIF & W		
• UIF&W Register	Documents need to be uploaded to NTs eMonitoring Webpage	
• MPAC recommendation on UIF&W		
• Council Resolution on UIF&W		
• UIF&W Reduction Strategy		

Attached to the reduction strategy document, is a template provided with details and the summary of the performance of ODM over the last three financial years that met the targets set indicated below:

UNAUTHORIZED		Increase/Decrease	TARGET
TOTAL Unauthorized - 2019/2020	16 424 967	Baseline	
TOTAL Unauthorized - 2020/2021	3 632 595	-78%	-20%
TOTAL Unauthorized - 2021/2022	1 416 437	-91%	-40%
FRUITLESS & WASTEFULL			
		Increase/Decrease	TARGET
TOTAL Fruitless&Wastefull - 2020/2021	0	Baseline	
TOTAL Fruitless&Wastefull - 2020/2021	20 866	0%	-20%
TOTAL Fruitless&Wastefull - 2021/2022	0	-100%	-50%
IRREGULAR			
		Increase/Decrease	TARGET
TOTAL Irregular - 2019/2020	16 996 912	Baseline	
TOTAL Irregular - 2020/2021	6 819 222	-60%	-20%
TOTAL Irregular - 2021/2022	3 583 656	-79%	-40%
	48 894 655		

A separate item will be submitted to deal with the unauthorized and irregular expenditure that occurred in the 2021/22 financial year that was audited.

FINANCIAL IMPLICATIONS

A saving will be established if the two Council committees, MPAC and Section 32 should be merged.

LEGISLATION

Municipal Finance Management Act No. 56 of 2003
Municipal Budget and Reporting Regulations, April 2009

ANNEXURES

- Reduction Plan/Strategy for unauthorized, irregular, fruitless and wasteful expenditure policy document
- MFMA Circular no 68 updated October 2021 (for use during the 2021/22 financial year)
- MFMA Circular no 111 issued on 16 November 2021 – UIFW Reduction Strategy
- MFMA Circular no 121 issued October 2022 - CMA Framework
- Guideline for establishment of Municipal Public Accounts Committees (MPAC)

RESOLVED : (Proposed by Ald J Niewoudt and seconded by Cllr H Coetzee)

- 1) The Reduction Plan/Strategy Policy for unauthorized, irregular, fruitless and wasteful expenditure, was approved.
- 2) That it be noted that the targets as set in the Reduction Plan/Strategy were met.
- 3) That the merging of the existing Section 32 Committee with the MPAC Committee was approved.
- 4) That the investigation functions in terms of the Section 32 Committee be allocated to the MPAC Committee and the Terms of Reference be changed according to the MPAC Charter.
- 5) That Internal Audit developed a standard operating procedure and templates to assist the MPAC and Administration to perform the investigations as referred by Council to the Committee.
- 6) That the said process be shared with the Provincial Government and the Auditor-General to obtain confirmation that it will comply with the legislative requirements and will address the audit finding issued in COMAF 9 of 2021/22.

CERTIFIED A TRUE EXTRACT FROM THE MINUTES OF THE COUNCIL MEETING HELD ON 24 APRIL 2023.



**R BOSMAN
MUNICIPAL MANAGER**