

# **LEKWA-TEEMANE LOCAL MUNICIPALITY**



## **TERMS OF REFERENCE**

## **OVERSIGHT COMMITTEE**

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## **1. INTRODUCTION**

The Municipal Finance Management Act (MFMA) assigns specific oversight responsibilities to Council in regards to the Annual Report and the preparation of an Oversight Report.

Given the processes required by council to effectively undertake its oversight role, the establishment of an Oversight Committee of Council would provide the appropriate mechanism in which Council could fulfil its oversight responsibilities.

The Oversight Committees' primarily role will be to consider the Annual Report, receive input from the various role players and to prepare a draft Oversight Report for consideration by Council.

## **2. BACKGROUND**

The oversight role of Council is an important component of the financial reforms and it is achieved through the separation of roles and responsibilities between Council, the Executive (Mayor and Executive Committee) and administration. Good governance, effective accountability and oversight can only be achieved if there is a clear distinction between the functions performed by the different role players.

Non-executive Councillors are required to maintain oversight on the performance of specific responsibilities and delegated powers that they have given to the (Mayor). In other words, in exchange for the powers in which Council have delegated to the Executive, Council retains a monitoring and oversight role ensuring that there is accountability for the performance or non performance of the municipality.

The Municipal Finance Management Act (MFMA) vests in Council specific powers of approval and oversight.

- Approval of budgets
- Approval of Budget related Policies
- Review of the Annual Report and adoption of the Oversight Report

## **3. FUNCTIONS OF THE OVERSIGHT COMMITTEE**

- Undertake a review and analysis of the Annual Report
- Invite, receive and consider inputs from Councillors and Portfolio Committees, on the Annual Report.
- Consider written comments received on the Annual Report from the public consultation process
- Conduct Public Hearing(s) to allow the local community or any organs of state to make representations on the Annual Report
- Receive and consider Councils' Audit Committee views and comments on the annual financial statements and the performance report.
- Preparation of the draft Oversight Report, taking into consideration, the views and inputs of the public, representative(s) of the Auditor General, organ of states, Councils' audit committee and Councillors.

## **4. COMPOSITION OF OVERSIGHT COMMITTEE**

### **4.1 Membership**

The Oversight Committee is a committee of Council established under section 79 of the Municipal Structures Act 1998. Section 79, allows for the co-option of advisory members to a committee of Council, who are not members of the Council.

Due to the separation of roles and responsibilities, between Council and the Executive (Mayor and Executive Committee) it is not appropriate that members of the Executive Committee be members of the Oversight Committee.

The Oversight Committee is composed of the following members;

- Four PR Councillors :
- Two members from local community

### **4.2 Authority & Power**

The Oversight Committee is delegated the responsibility to conduct meetings and to hold public hearings to receive and hear public submissions on the Annual Report, on behalf of Council.

Timely notice of all meetings should be given and all meetings held by the Oversight Committee must be open to the public and minutes of the meetings must be submitted to Council meetings.

### **4.3 Meeting Schedule**

The Annual Report must be tabled to Council by the 31<sup>st</sup> January and the Oversight Report must be adopted within two months from the date in which the Annual Report was tabled to Council.

Within the two month period, the Oversight Committee will be required to meet as required to fulfil the functions of the committee.

## 5. **STRUCTURE AND CONTENTS OF THE OVERSIGHT REPORT**

### 5.1 **Contents of the Oversight Report**

1. Title and reference to the year under review.
2. Summary of comments and conclusions on the annual report of the **municipality** referred to in the resolutions, including one or more of the following:
  - (i) Summary of reservations, if approved with reservations and actions to be taken by the executive and administration to resolve reservations.
  - (ii) Summary of components required to be revised, if referred back for revision and actions to be taken by the executive and administration to provide revisions and the date for these to be submitted.
  - (iii) Summary of reasons for rejection of the report, if report is rejected and what other action should be taken by the executive and administration.
  - (iv) In cases where only components of the annual report are submitted by the mayor detail those components and restrict comments to this effect. Include a statement listing the outstanding components and estimated timeframe for these to be tabled and considered by council.
3. Summary of comments and conclusions on the annual reports of **each municipal entity** referred to in the resolutions, including one or more of the following:
  - (i) Summary of reservations, if approved with reservations and actions to be taken by the executive and administration or the entity to resolve reservations.
  - (ii) Summary of components required to be revised, if referred back for revision and actions to be taken by the executive and administration or the entity to provide revisions and the date for these to be submitted.
  - (iii) Summary of reasons for rejection of the report, if report is rejected and what other action should be taken by the executive, administration and the entity.
  - (v) In cases where only components of the annual report are submitted by the chairman detail those components and restrict comments to this effect. Include a statement listing the outstanding components and estimated timeframe for these to be tabled and considered by the board of directors.
4. Annexures to the report should provide the following –
  - (i) Summary of the process followed in the review, including:
    - Copies of minutes of meetings of committee.
    - Summary of written representations submitted by the public, auditor-general and other spheres of government.
    - Responses to questions provided by the accounting officer.
  - (ii) Other information as may be needed to support the conclusions in the resolutions, for example, outcomes of large infrastructure / capital projects and programmes.

5. Resolutions and statement required by MFMA s129(1)

The statement required in the oversight report by section 129(1) of MFMA, should be in the form of a council resolution to record both the adoption of the oversight report and the comments of council on the report.

The resolutions should, as a minimum, state:

**Council resolves that:**

1. The Council having fully considered the annual report of the municipality and representations thereon, adopts the oversight report; and
2. *(insert one of the following as appropriate)*
  - Council approves the annual report without reservations; or
  - Council approves the annual report with reservations as included in the comments in the oversight report pages xx to xx; or
  - Council refers the annual report back for revisions of the components listed on pages xx to xx of the oversight report; or
  - Council rejects the annual report of the municipality for the reasons summarised in pages xx to xx of the oversight report.
3. *(Where further action or revisions are required in the resolutions):* Council requests the Mayor (Executive Mayor) to report to Council on the actions required as a result of these resolutions by <date to return to Council>.

**Where the annual reports of municipal entities are also considered additional resolutions should be adopted to refer to the municipal entities –**

**Council resolves that :**

1. The Council having fully considered the annual report of the municipal entity <name> and representations thereon, adopts the oversight report; and
2. *(insert one of the following as appropriate)*
  - Council approves the annual report without reservations; or
  - Council approves the annual report with reservations as included in the comments in the oversight report pages xx to xx; or
  - Council refers the annual report back for revisions of the components listed on pages xx to xx of the oversight report; or
  - Council rejects the annual report of the municipal entity <name> for the reasons summarised in pages xx to xx of the oversight report.
3. *(Where further action or revisions are required in the resolutions):* Council requests the municipal entity to report to Council on the actions required as a result of these resolutions by <date to return to Council>.

**6. ANNUAL REPORT CHECKLIST**

INFORMATION REQUIRED TO BE INCLUDED IN ANNUAL REPORTS	COUNCIL CONSIDERATIONS AND QUESTIONS	RESPONSES/COMMENTS
<b>1. Financial Matters – Annual Financial Statements - Section 121 (3) MFMA</b>	<b>Financial reporting matters to be considered</b>	<b>Responses/Comments</b>
121 (3)(a) The annual financial statements (AFS) for the municipality and, if applicable, consolidated statements (with all entities) as submitted to the Auditor-General	Where the municipality has sole or effective control of a municipal entity, consolidated financial statements are required. The AFS are to be in the form as required by the applicable accounting standards. MFMA Circular 18 with annexures, 23 June 2005, provides guidelines on the new accounting standards for municipalities. <b>Have the required standards been met – refer audit report and report of audit committee for views on this?</b>	
121 (3)(a)	The above applies also to the AFS of municipal entities.	
121 (3)(b) The Auditor-General’s reports on the financial statements of the municipality.	<b>Is the audit report included in the annual report as tabled?</b> <b>If not, when will the audit report be tabled?</b> <b>What are causes of the delays?</b> <b>What actions are being taken to expedite the report?</b>	
121 (4)(b)	The above applies also to the AFS of municipal entities.	
121 (3)(h) Any explanations that may be necessary to clarify issues in connection with the financial statements	The accounting standards require that notes accompany the statements to provide explanations of issues and matters reported. Refer also points below on information in notes to AFS. <b>Taking into consideration the audit report and the audit committee comments, is sufficient explanation of financial issues contained in the notes to the statements?</b>	
121 (4)	The above applies also to the AFS of municipal entities.	
121 (3)(e) An assessment by the accounting officer on any arrears on municipal taxes and service charges, including municipal entities	<b>Has an adequate assessment been included?</b> <b>Is there sufficient explanation of the causes of the arrears and of actions to be taken to remedy the situation?</b> <b>Is any other action required to be taken?</b>	
121 (4)(c)	The above applies also to the AFS of municipal entities.	

1. Financial Matters – Annual Financial Statements - Section 121 (3) MFMA	Financial reporting matters to be considered	Responses/Comments
<p>121 (3)(g) Particulars of any corrective action taken or to be taken in response to issues raised in the audit reports</p>	<p>The conclusions of the annual audit may be either –</p> <ul style="list-style-type: none"> <li>▪ an unqualified audit opinion with or without management issues, which means that the financial statements are acceptable;</li> <li>▪ a qualified audit opinion setting out reasons for qualification, which means that certain issues need to be addressed before an unqualified opinion can be achieved; or</li> <li>▪ the auditor will disclaim the statements and not offer an opinion. In this case there may be serious financial issues to be addressed.</li> </ul> <p>The objective of the municipality should be to achieve an unqualified audit opinion.</p> <p><b>Taking into account the audit report, audit opinion and the views of the audit committee, council should consider:</b></p> <ul style="list-style-type: none"> <li>▪ <b>To what extent does the report indicate serious or minor financial issues?</b></li> <li>▪ <b>To what extent are the same issues repeated from previous audits?</b></li> <li>▪ <b>Is the action proposed considered to be adequate to effectively address the issues raised in the audit report?</b></li> <li>▪ <b>Has a schedule of action to be taken been included in the annual report, with appropriate due dates?</b></li> </ul> <p>Note that actions taken on audit issues are to be reported to the provincial legislature, the MECs for local government and finance to report on any omissions by municipalities in addressing issues. Council should confirm that the audit report has been forwarded to the MECs.</p>	
<p>121 (4)(e)</p>	<p>The above applies also to the AFS of municipal entities.</p>	
<p>121 (3)(f) An assessment by the municipality’s accounting officer of the municipality’s performance against measurable performance objectives for revenue collection from each revenue source and for each vote in the approved budget</p>	<p>The budget of the municipality must contain measurable performance objectives for revenue from each source and for each vote in the budget, taking into account the IDP (MFMA s17(3)(b)). The accounting officer must include these objectives in the annual report and report on performance accordingly.</p> <p><b>Has the performance met the expectations of council and the community?</b> <b>Have the objectives been met?</b> <b>What explanations have been provided for any non-achievement?</b> <b>What was the impact on the service delivery and expenditure objectives in the budget?</b></p> <p>Council should comment and draw conclusions on performance and explanations provided.</p>	
<p>121 (3)(i)(k) Any information as determined by the municipality, the entity or its parent municipality</p>	<p>Review any other information that has been included in regard to the AFS.</p>	

1. Financial Matters – Annual Financial Statements - Section 121 (3) MFMA	Financial reporting matters to be considered	Responses/Comments
<p>121 (4)(d) An assessment by the municipal entity’s accounting officer of the entity’s performance against any measurable performance objectives set in terms of the service delivery agreement or other agreement between the entity and the municipality</p>	<p>Agreements between the municipality and its entities for service delivery are to include measurable performance objectives. This will include measures of services delivered to the community, financial targets, expenditure targets etc. The entity’s annual report must include an assessment by the accounting officer, of performance against these objectives. In order to show the linkage between the entity and the municipality, the report of the municipality should also include the performance of entities.</p> <p><b>Has the performance met the expectations of council and the community?</b>  <b>Have the performance objectives been met?</b>  <b>What explanations have been provided for any non-achievement?</b>  <b>What was the impact on the service delivery and expenditure objectives in the budget?</b></p> <p>Council should comment and draw conclusions on performance and explanations provided.</p>	
<p>121 (3)(i)(k) Any information as determined by the municipality, the entity or its parent municipality</p>	<p>Review any other information that has been included in regard to the AFS.</p>	
<p>121 (4)(g)(h)</p>	<p>The above applies also to the AFS of municipal entities.</p>	
<p>121 (3)(j) and 121 (4)(g) Recommendations of the audit committee in relation to the AFS and audit reports of the municipality and its entities</p>	<p><b>Have the recommendations of the audit committee in regard to the AFS been adequately addressed by the municipality and/or the entity?</b>  <b>What actions need to be taken in terms of these recommendations?</b></p> <p>Conclusions on these recommendations and the actions required should be incorporated in the oversight report.</p>	

2. Disclosures - Allocations received and made - Section 123-125 MFMA	Considerations	Responses/Comments
<p>123 (1)(a) Allocations received by <u>and</u> made to the municipality</p>	<p>The report should disclose:</p> <ul style="list-style-type: none"> <li>▪ Details of allocations received from another organ of state in the national or provincial sphere.</li> <li>▪ Details of allocations received from a municipal, entity or another municipality.</li> <li>▪ Details of allocations made to any other organ of state, another municipality or a municipal entity.</li> <li>▪ Any other allocation made to the municipality under Section 214(1)(c) of the Constitution.</li> </ul> <p><b>Have these allocations been received and made? Does the audit report confirm the correctness of the allocations received in terms of DORA and provincial budgets? Does the audit report or the audit committee recommend any action?</b></p> <p>Council should comment and draw conclusions on information and explanations provided.</p>	
<p>121 (1)(b) Allocations received by and made to the municipal entity</p>	<p>The report should disclose:</p> <ul style="list-style-type: none"> <li>▪ Details of allocations received from any municipality or other organ of state.</li> <li>▪ Details of any allocations made to a municipality or other organ of state.</li> <li>▪ Other information as may be prescribed.</li> </ul> <p><b>Have these allocations been received and made? Does the audit report confirm the correctness of the allocations received in terms of DORA and provincial budgets? Does the audit report or the audit committee recommend any action?</b> Council should comment and draw conclusions on information and explanations provided.</p>	
<p>121 (1) Information in relation to outstanding debtors and creditors of the municipality and entities</p>	<p>Municipalities and entities are reminded of the requirement to include, in their annual financial statements, amounts owed to them and persistently delayed beyond 30 days, by national or provincial departments and public entities.</p> <p>It is also a requirement to report on whether the municipality or entity has met its statutory commitments, including the payment of taxes, audit fees, and contributions for pension and medical aid funds.</p> <p>Council should be satisfied that –</p> <ul style="list-style-type: none"> <li>▪ the information has been properly disclosed;</li> <li>▪ conditions of allocations have been met; and</li> <li>▪ also that any explanations provided are acceptable.</li> </ul> <p>The comments of the Auditor-General and the views of the audit committee should be used to determine the accuracy and appropriateness of this information.</p>	

<b>2. Disclosures - Allocations received and made - Section 123-125 MFMA</b>	<b>Considerations</b>	<b>Responses/Comments</b>
<p>121 (1)(c) Information in relation to the use of allocations received</p>	<p>Section 123 of the MFMA and MFMA guidance circular 11, require that the municipality provide information per allocation received per vote and include:</p> <ul style="list-style-type: none"> <li>▪ The current year and details of spending on all previous conditional grants, for the previous two financial years. Information is to be provided per vote. (For example, municipalities must report on all transfers received from provincial housing departments for housing subsidy grants for three financial years, and indicate how such funds were spent, and for what projects.</li> <li>▪ Information stating whether the municipality has complied with the conditions of the grants, allocations in terms of section 214(1)(c) of the Constitution and allocations received from other than another organ of state. Where there is non-compliance, details of the reasons for non-compliance are to be provided.</li> <li>▪ Information on whether allocations under the DORA were delayed or withheld and the reasons advanced for this.</li> </ul> <p>This information is required on all allocations excluding the municipality's portion of the equitable share and where prescribed otherwise by the nature of the allocation.</p> <p>The Auditor-General will ensure that the audit process includes a proper assessment (and reconciliation) on all national grants received by a municipality. Council should consider this aspect of the audit report and comments by the audit committee on the use of allocations received.</p> <p>Council should be satisfied that –</p> <ul style="list-style-type: none"> <li>▪ the information has been properly disclosed;</li> <li>▪ conditions of allocations have been met; and</li> <li>▪ that any explanations provided are acceptable.</li> </ul> <p>The comments of the Auditor-General and the views of the audit committee should be used to determine the accuracy and appropriateness of this information.</p>	

3. Disclosures in notes to AFS	Considerations relating to section 124	Responses/Comments
<p>Information relating to benefits paid by municipality and entity to councillors, directors and officials</p>	<p>Information on the following items is to be included in the notes to the annual report and AFS:</p> <ul style="list-style-type: none"> <li>• salaries, allowances and benefits of political office bearers, councillors and boards of directors, whether financial or in kind;</li> <li>• any arrears owed by individual councillors to the municipality or entity for rates and services, which at any time were outstanding for more than 90 days, including the names of councillors;</li> <li>• salaries allowances and benefits of the municipal manager, CEO of a municipal entity, CFO and every senior manager;</li> <li>• contributions for pensions and medical aid;</li> <li>• travel, motor car, accommodation, subsistence and other allowances;</li> <li>• housing benefits and allowances;</li> <li>• overtime payments;</li> <li>• loans and advances, and;</li> <li>• any other type of benefit or allowance related to staff.</li> </ul> <p>Council should be satisfied that –</p> <ul style="list-style-type: none"> <li>• the information has been properly disclosed;</li> <li>• conditions of allocations have been met; and</li> <li>• that any explanations provided are acceptable.</li> </ul> <p>The comments of the Auditor-General and the views of the audit committee should be used to determine the accuracy and appropriateness of this information.</p>	

4. Municipal Performance	Considerations	Responses/Comments
<p>The annual performance reports of the municipality and entities</p>	<p>Section 46, MSA requires municipalities to submit a performance report reflecting the performance of the municipality and each service provider, a comparison of the performance with targets set for the previous year and measures taken to improve performance. The report must form part of the annual report. Questions that may be considered are –</p> <p><b>Has the performance report been included in the annual report?</b></p> <p><b>Have all the performance targets set in the budgets, SDBIP, service agreements etc, been included in the report?</b></p> <p><b>Does the performance evaluation in the annual report compare actual performance with targets expressed in the budgets and SDBIP approved for the financial year?</b></p> <p>In terms of key functions or services, how has each performed? Eg. have backlogs for water, sanitation and electricity been reduced? What are the refuse collection volumes, library usage statistics etc?</p> <p>To what extent has performance achieved targets set by council?</p> <p>Is the council satisfied with the performance levels achieved?</p> <p>Is the community satisfied with performance? Has a customer satisfaction survey been undertaken and, if so, how do the results align with the annual report contents? What were the outcomes of public consultation and public hearings?</p> <p>What actions have been taken and planned to improve performance?</p> <p>Is the council satisfied with actions to improve performance?</p> <p>Did the targets set in the budgets, SDBIP agree with the targets set in the performance contracts of the municipal manager and each senior manager?</p> <p>Does the report evaluate the efficiency of mechanisms applied to deliver the performance outcomes?</p> <p>Taking into account the audit report and opinion and the views of the audit committee, is performance considered to be efficient and effective?</p> <p>To what extent have actions planned for the previous year been carried over to the financial year reported upon? <b>Have any actions planned in the reported year been carried over to the current or future years?</b> If so are any explanations been provided by the municipal manager and are these satisfactory?</p> <p>Council should comment and draw conclusions on information and explanations provided.</p>	
<p>Audit reports on performance</p>	<p>Section 45, MSA requires that the Auditor-General must audit the results of performance measurements, as part of the internal auditing processes and annually. <b>Have the recommendations of internal audit been acted on during the financial year? Have recommendations by internal audit and/or the auditor-general been included in action plans to improve performance in the following year?</b></p>	

<b>4. Municipal Performance</b>	<b>Considerations</b>	<b>Responses/Comments</b>
Performance of municipal entities and municipal service providers	<p>The annual report of the municipality should provide an assessment of the performance of the municipal entities and all contracted service providers. This is in addition to the separate annual reports of the entities.</p> <p>The report should evaluate the effectiveness of these services and whether alternative mechanisms should be considered.</p> <p>Is the council satisfied with the evaluation and conclusions of the municipality? What other actions are considered necessary to be taken by the accounting officers?</p>	
For municipal entities – an assessment of the entity’s performance against any measurable performance objectives set in terms of the service delivery agreement or other agreement between the entity and municipality	<p>This is the separate report of the municipal entity and should contain details of service delivery agreements with the municipality and the performance measures therein.</p> <p>Council should consider similar issues to that outlined above for municipal performance to determine a view on the performance of municipal entities.</p> <p>To what extent were the objectives and performance measures of the entity aligned to the overall strategic objectives of the municipality and its IDP? Is the report of the municipal entity consistent with the conclusions on performance evaluation by the municipality? What specific actions should be taken by the entity and the municipality to improve performance?</p>	

<b>5. General information</b>	The following general information is required to be disclosed in the annual report.	<b>Responses/Comments</b>
Relevant information on municipal entities	The municipality should disclose all information relating to the municipal entities under the sole or effective control of the municipality. Information to be disclosed includes names and types of entities, members of the board, addresses and contact details for entities, the purpose of the entity, the functions and services provided, the type and term of service level agreements with the entities.	
The use of any donor funding support	<p>What donor funding has the municipality received?</p> <p>Have the purposes and the management agreements for the funding been properly agreed upon?</p> <p>Have the funds been used in accordance with agreements?</p> <p>Have the objectives been achieved?</p> <p>Has the use of funds been effective in improving services to the community?</p> <p>What actions need to be taken to improve utilisation of the funds?</p>	
Agreements, contracts and projects under Private-Public-Partnerships	Information similar to the details of municipal entities should be provided. Council should ensure that all details have been supplied.	
Service delivery performance on key services provided	<p>This may be a high level summary, in addition to detailed information on performance, which sets out overall performance under the strategic objectives of the municipality. Overall results on the strategic functions and services should be summarised. This should cover all services whether provided by the municipality, entities or external mechanisms.</p> <p>Council may draw conclusions on the overall performance of the municipality. This information may be found in an executive summary section of the annual report and or in statistical tables.</p>	
Information on long-term contracts	Details of all long-term contracts including levels of liability to the municipality should be included. Council should ensure all information is correctly supplied.	
Information technology and systems purchases and the effectiveness of these systems in the delivery of services and for ensuring compliance with statutory obligations	<p>Details of significant IT activities should be outlined indicating the effectiveness of the IT projects and the quality of IT services.</p> <p>Council should consider how effectively the IT services support and facilitate performance of the municipality and whether value for money has been obtained. Details of any future IT proposals should be summarised. Council should comment and draw conclusions on the information provided.</p>	
Three year capital plan for addressing infrastructure backlogs in terms of the Municipal Infrastructure Grant (MIG) framework	<p>A summary of the long-term capital plans and <b>how these address the backlogs of services in the municipality should be provided.</b></p> <p>This should include details of types and scale of backlogs, projected cost implications, strategies to address the backlogs and plans proposed and/or approved. The summary here should cross reference to the performance reports in the annual report and also will be highlighted in the coming budgets.</p> <p>Council should consider whether the plans appropriately address the backlogs and are consistent with the strategic policy directions of council and needs of the community.</p>	

6. Other considerations recommended		Responses/Comments
Timing of reports	<p><b>Was the report tabled in the time prescribed?</b>  <b>Has a schedule for consideration of the report been adopted?</b></p>	
Oversight committee or other mechanism	<p><b>What mechanisms have been put in place to prepare the oversight report?</b>  <b>Has a schedule for its completion and tabling been adopted?</b></p>	
Payment of performance bonuses to municipal officials	<p>Refer to Section 57 MSA as amended. Bonuses based on performance may be awarded to a municipal manager or a manager directly accountable to the municipal manager after the end of the financial year and only after an evaluation of performance and approval of such evaluation by the municipal council. Preferably such evaluation should be considered along with the annual report. The basis upon which performance is evaluated for payment of bonuses should be reconciled with the municipal performance reported in the annual report.</p> <p><b>Have bonuses been paid based on achievements of agreed outputs and after consideration of the annual report by council?</b>  <b>If so has a proper evaluation of performance been undertaken?</b>  <b>Was the evaluation approved by council?</b>  <b>Does the performance evaluation align and reconcile with the performance reported in the annual report? If not, what reasons have been given for non-reporting of the basis of evaluation in the annual report?</b>  <b>Are the payments justified in terms of performance reported in the annual report?</b></p> <p>Conclusions and comments on the evaluation and payment of performance bonuses of council should be included in the oversight report.</p>	