



# **SPECIAL ETHICS COMMITTEE INVESTIGATION REPORT**

**INVESTIGATION INTO ALLEGATIONS OF MISCONDUCT  
BY THE MAYOR, THE SPEAKER AND DEPUTY MAYOR OF  
ABAQULUSI LOCAL MUNICIPALITY**

Prepared by  
**The Special Ethics Committee of  
AbaQulusi Local Municipality**

**07 JUNE 2022**



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## GLOSSARY

<b>No</b>	<b>Abbreviation</b>	<b>Full Name</b>
1	<b>Avis</b>	Avis Southern Africa (Pty) Ltd (Co. Reg. K1967010320)
2	<b>MFMA</b>	Municipal Finance Management Act of 2005
3	<b>PO</b>	Purchase Order
4	<b>Qomkufa Security</b>	Qomkufa Trading cc. (Co.Reg. B2009004219)
5	<b>RIS</b>	RIS Hire (Pty) Ltd (Co. Reg. K2019556899)
6	<b>SCM</b>	Supply Chain Management
7	<b>The Committee</b>	AbaQulusi Local Municipality Special Ethic Committee
8	<b>The Council</b>	AbaQulusi Local Municipality Council
9	<b>The Municipality</b>	AbaQulusi Local Municipality
10	<b>Waphata</b>	Waphata Group (Pty) Ltd
11	<b>Hon Mayor</b>	Honourable Mayor of Abaqulusi Local Municipality
12	<b>Hon Deputy Mayor</b>	Honourable Deputy Mayor of Abaqulusi Local Municipality
13	<b>Hon Speaker</b>	Honourable Speaker of Abaqulusi Local Municipality Council

## DISCLAIMER

- This report is produced by the Special Ethics Committee (**Committee**) in accordance with a Council resolution by AbaQulusi Local Municipality on 25 February 2022.
- The investigation focused on addressing the scope of work in accordance with a brief that was received from AbaQulusi Local Municipality.
- The findings and conclusions contained in this report are a result of documents perused which were provided by AbaQulusi Local Municipality, and interviews conducted with various witnesses identified in these documents.
- Should other documents become apparent, or the interviewees had provided false information, the findings herein are likely to be affected.
- We have included all information relevant to the review and related circumstances available to us; however, we cannot vouch for the completeness of such information. We therefore reserve the right to amend, at a later stage, any findings, conclusions, or recommendations made in the event such an amendment is deemed necessary under the circumstances if additional evidence becomes available.
- The findings herein were a result of an investigation that was conducted.
- The report is intended to report on the findings of the investigation.

## DETAILED REPORT

### 1. BACKGROUND AND INTRODUCTION

#### BACKGROUND

- 1.1. AbaQulusi Local Municipality (**the Municipality**) is one of the municipalities under Zululand District.
- 1.2. On 25 January 2022, the African National Congress Councillors submitted motions of no confidence regarding the Mayor, Deputy Mayor and Speaker of the Municipality with allegations being mentioned in the motion.
- 1.3. On 25 February 2022, the AbaQulusi Local Municipality Council (**Council**) convened, and motions of no confidence were part of the agenda for this particular sitting. The Council resolved that the motions of no confidence would not be discussed and that the Special Ethics Committee be appointed to investigate the allegations mentioned in the motions of no confidence.

#### INTRODUCTION

- 1.4. This is an investigation report on the examination conducted by a Special Ethics Committee as per above-mentioned mandate. The report consists of findings, conclusions, and recommendations for corrective actions.

## 2. INVESTIGATION OBJECTIVES

- 2.1. To identify any Councillor and/or other parties responsible for irregularities, misconduct and any other transgression identified in matters raised by in the allegations
- 2.2. To recommend corrective actions flowing from identified transgressions.

## 3. EXAMINATION SCOPE AND LIMITATIONS

### SCOPE

The following scope of work was attached to the mandate given to the Special Ethics Committee, as part of the mandate to conduct the investigation:

- 3.1. A Special Ethics Committee formed in terms of Local Government Municipal Structures Act no 117 of 1998 read with Section 2 of Schedule 7 to the Local Government: Municipal Structures Amendment Act 2021 tasked to investigate and make recommendations on the alleged breach of provisions of Code of Conduct for Councillors.
- 3.2. The following allegations were investigated by the committee; -

The following allegations were brought against the Hon Mayor Cllr M Maphisa (**Hon Mayor**):

- The Hon Mayor is using the Hired car which was never authorized by the Council as from September 2021 with two additional security guards without any threat analysis done by the SAPS.
- Contravening the law enforcement laws by using the blue lights on his car.

- On 15 December 2021 the Council appointed interviewing panel for the appointment of the Municipal Manager, but the Hon Mayor failed or neglected to have the Municipal Manager appointed until the Special Ethics Committee was established.
- The Hon Mayor who is the finance chairperson is failing to manage properly the finances of the Municipality.
- An allegation of assault by Hon Mayor and pointing of firearm by one of his bodyguards brought to the Hon Speaker by Mr King Masikane.

The following allegations were brought against the Deputy Mayor, Hon Cllr. Mazibuko **(Hon Deputy Mayor)**:

- Unofficial use of the state vehicle, He gave his car to the bodyguards to transport Cllr NP Ndlela to the Zululand District. That is an expenditure which is fruitless.

The following allegations were brought against the Speaker, Hon Cllr. Khumalo **(Hon Speaker)**:

- He has failed to supervise the Mayor and the Deputy Mayor to adhere with the laws and the regulations for the municipal vehicle, he eventually failed to perform his delegated powers.
- He has failed to supervise the chairperson of the Panel for appointment of the mayor.

## LIMITATIONS FACED BY THE COMMITTEE

- 3.3. The Hon Mayor and Deputy Mayor came before the committee on 07 April 2022 represented by an attorney Shaheed Abdulla. Their attorney undertook to deliver their written submission of the Hon Mayor and Hon Deputy Mayor before 23 April 2022, being the day on which the two Hon Councillors were scheduled to deliver their testimony before the committee. Written submissions were not delivered and neither the Hon Mayor, Hon Deputy Mayor nor their attorney appeared before the committee to deliver any testimony.
- 3.4. Acting Municipal Manager Mr JS Landman appeared before the committee, the committee requested him to gather relevant documentation and return to present it before the committee. The committee Subsequently invited him to appear on 05 May 2022. He ignored the invitation, neither appeared nor sent an apology to the committee.
- 3.5. Mr Thabo Xaba is Director of Community Services, he appeared before the committee and was requested to gather relevant documentation and comeback to present it before the committee. He did not come back to present such documentation and testify despite having been formally invited to return to the committee on 05 May 2022.
- 3.6. Mr Mpilo Sibiya is former Manager at the office of the Municipal Manager. During his appearance before the committee, he stated that these investigations might end up in court and that he does not want to implicate himself. He asked to be informed of his rights and asked for the following:
- Terms of reference talking to formation of the Committee
  - Source document for the allegations



- 3.7. Requested documents were provided to Mr Sibiya and he was subsequently forwarded another invitation to appear before the Committee on 05 May 2022, he neither showed up nor sent an apology.
- 3.8. The deliberate action of officials that ignored invitations has seriously limited the committee's access to required information. The committee recommends for council to consider disciplinary action against all councillors and officials who failed to appear before it in absence of any formal apology as such amounted to serious insubordination, withholding of information and disregard of council authority.

#### 4. INVESTIGATION APPROACH

- 4.1. The committee's approach was informed by the scope provided by the terms of reference and available information. Committee's key investigation activities included:
- Review of data, documents and collection all information and/or evidence relating to the allegations levelled against the Hon Mayor, Deputy Mayor, and Speaker of Abaqulusi Local Municipality.
  - Interviewing all parties who may have had information relating to the allegations raised against relevant councillors to obtain evidence from interviewees/witnesses that may be in their possession.
- 4.2. The following documents were made available to the Special Ethics Committee to obtain understanding of allegations raised.
- Quotations for Vehicle Hire.
  - Deviation Form motivating for the procurement of vehicle hire.
  - Purchase Requisition for Vehicle Hire.
  - Purchase Order for Vehicle Hire.
  - Tender document for panel of service providers for provision of rental vehicles.

- Appointment letter for the VIP Close Protection Services.
- Payment Batches indicating payments made to Qomkufa Security Services for the provision of VIP Close Protection Services.
- Troika Minutes dated 13 December 2021
- EXCO minutes dated 24 January 2022
- Correspondences between the chairperson of the committee and witnesses invited.
- Bidvest Tracker records for the Deputy Mayor's vehicle.
- Affidavit of Nondumiso Simphiwe Phungula
- Expenditure records on vehicle rental contract with RIS.

4.3. The following individuals were invited to present evidence before the Special Ethics Committee.

Table 01: Individuals invited

No	Full Name	Position
1	<b>Mrs Phungula</b>	Manager: Expenditure
2	<b>Mr MB Sibiya</b>	Manager: Office of the Municipal Manager
3	<b>Mr T Xaba</b>	Director: Community Services
4	<b>Mrs SP Dlamini</b>	Director: Corporate Services
5	<b>Mr TS Mthembu</b>	Manager: Public Safety
6	<b>Mr JS Landman</b>	Acting Municipal Manager
7	<b>Mrs Caren Birkenstock</b>	Manager: Fleet
8	<b>Councillor LN Khan</b>	ANC Whip
9	<b>Mr MPE Mthembu</b>	Chief Financial Officer
10	<b>Councillor MB Khumalo</b>	Speaker of the Municipality
11	<b>Mr K Masikane</b>	Member of community
12	<b>Mrs Masikane</b>	Member of Community

## 5. DETAILED FINDINGS

### ALLEGATIONS LEVELLED AGAINST THE MAYOR OF ABAQULUSI LOCAL MUNICIPALITY

#### MAYOR IS USING A HIRED BACK-UP VEHICLE NOT AUTHORISED BY COUNCIL WITH TWO ADDITIONAL GUARDS WITHOUT ANY THREAT ANALYSIS DONE BY SAPS

##### Criteria

In terms clause 2 of the Municipal Structures Act 117 of 1998 General conduct of councillors, a councillor must perform the functions of office in good faith, honestly and a transparent manner and 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.

#### CIRCULAR IN RESPECT OF PERSONAL SECURITY (BODYGUARDS) FOR COUNCILLORS NO 33 of 2020

The circular instructs as follows: -

##### CLAUSE 1.1.

*“The provision of personal security must be implemented in accordance with clause 15(1)(g) of Government Gazette No. 475 dated 24 April 2020, which provides that Mayors and Speakers are entitled to two bodyguards. Deviation from the norm may only be based on the recommendations of the South African Police Service (SAPS). Any other councillor, subject to a threat and risk analysis conducted by SAPS. The said notice is attached hereto.”*

##### CLAUSE 1.2.

*“The implementation thereof in respect of all councillors, other than the Mayors and Speakers, is subject to the said analysis indicating and confirming that there is a need for personal security (bodyguards) to be provided to the relevant councillor/s.”*

### **Clause 1.5.**

*“When providing security to councillors, Council must: 1.5.4. Comply with the Council’s approved supply chain management policy and processes in accordance with the prescripts of the Municipal Finance Management Act should personal security be privately contracted or outsourced.”*

### **Section 32(1)(d) of the Municipal Finance Management Act of 2005** provides that:

*“(1) without limiting liability in terms of common law or other legislation – (d) any political officer-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.”*

### **Section 171(1)(c) of the Municipal Finance Management Act of 2005** provides that:

*“(1) the accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently – (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure;”*

## **Findings**

### **ADDITION OF A GUARD AND BACK-UP VEHICLE**

- 5.1. An appointment letter dated 15 September 2016 was sent to Qomkufa Trading cc (**Qomkufa Security**), notifying them of their appointment for provision of VIP Close Protection Services for the Mayor, Deputy Mayor, and Speaker. The letter indicated that Qomkufa Security would provide these services until the end of the political officer-bearers term of office at a total amount of **R160 000,00** per month. The appointment letter did not specify the number of guards to be allocated to each office-bearer.
- 5.2. The committee could not identify the procurement process followed in acquiring these services nor could the scope of work be defined.
- 5.3. The committee discovered evidence of invoices submitted by Qomkufa Security for VIP Security provided to the Municipality as well as their

subsequent payment. In terms of the evidence discovered, the service provider claimed payment for an additional guard and back-up vehicle for the Hon Mayor starting in June 2021 and not September 2021 as per allegation.

- 5.4. The Committee examined the payment batches including supporting documents needed to facilitate payments made to Qomkufa Security such as invoices.
- 5.5. The Committee also reviewed invoices submitted by Qomkufa Security and noted that between June 2021 and 30 April 2022, a back-up vehicle for the Hon Mayor and five (5) VIP Protection guards assigned between the Cllr. Maphisa and Cllr. Khumalo.
- 5.6. According to invoices submitted by Qomkufa Security the back-up vehicle was provided for the Hon Mayor. It is driven by an additional security guard at a monthly rate of **R22 857.00** (from June 2021 to November 2021, thereafter R9000.00 from December 2021 till date) and a rate of **R24 000.00** being 3000 kilometres at **R8.00** per kilometre is charged for the back-up vehicle.
- 5.7. From the month of **June 2021 to April 2022**, the Municipality made the following payments for the back-up vehicle.

*Table 02 Municipal Expenditure on additional security and back-up vehicle*

<i>Month</i>	<i>Cost of back-up vehicle</i>	<i>Cost of additional guard driving back-up vehicle.</i>	<i>VAT</i>	<i>Total</i>
<i>June</i>	<i>R24 000.00</i>	<i>R22 857.00</i>	<i>R7028.55</i>	<i>R53 885.55</i>
<i>July</i>	<i>R24 000.00</i>	<i>R22 857.00</i>	<i>R7028.55</i>	<i>R53 885.55</i>
<i>August</i>	<i>R24 000.00</i>	<i>R22 857.00</i>	<i>R7028.55</i>	<i>R53 885.55</i>
<i>September</i>	<i>R24 000.00</i>	<i>R22 857.00</i>	<i>R7028.55</i>	<i>R53 885.55</i>
<i>October</i>	<i>R24 000.00</i>	<i>R22 857.00</i>	<i>R7028.55</i>	<i>R53 885.55</i>
<i>November</i>	<i>R24 000.00</i>	<i>R22 857.00</i>	<i>R7 028.55</i>	<i>R53 885.55</i>

<i>December</i>	<i>R24 000.00</i>	<i>R9 000.00</i>	<i>R4 950.00</i>	<i>R37 950.00</i>
<i>January</i>	<i>R24 000.00</i>	<i>R9 000.00</i>	<i>R4 950.00</i>	<i>R37 950.00</i>
<i>February</i>	<i>R24 000.00</i>	<i>R9 000.00</i>	<i>R4 950.00</i>	<i>R37 950.00</i>
<i>March</i>	<i>R24 000.00</i>	<i>R9 000.00</i>	<i>R4 950.00</i>	<i>R37 950.00</i>
<i>April</i>	<i>R24 000.00</i>	<i>R9 000.00</i>	<i>R4 950.00</i>	<i>R37 950.00</i>
<b>Total</b>	<b>R264 000.00</b>	<b>R182 142.00</b>	<b>R66 921.30</b>	<b>R513 063.30</b>

- 5.8. The committee found that the Municipality paid a total of **R513 063.00** for the Hon Mayor's back-up vehicle and additional security guard till date inclusive of total VAT amount of **R66 921.30**
- 5.9. The Municipality paid a standard amount of **R24 000.00** per month for the back-up vehicle alone totalling **R264 000.00** from June 2021 to April 2022.
- 5.10. The total amount paid by the Municipality between June 2021 and April 2022 for the additional guard allocated to Hon Mayor is **R182 142.00**.

### **TESTIMONY OF HON SPEAKER CLLR MB KHUMALO**

- 5.11. Hon Speaker of Abaqulusi Municipality Cllr MB Khumalo (**Speaker**) testified before the Committee that by law, the Hon Mayor and Hon Speaker of the Municipality are entitled to two guards each, and that in the event of any additional guard being added to the officer bearers a risk assessment and threat analysis need to be conducted. According to Speaker, only South African Police Services (**SAPS**) can conduct a threat analysis.
- 5.12. Hon Speaker testified that council can however resolve to afford security to the relevant councillor whilst waiting for SAPS threat analysis.
- 5.13. Lastly, Hon Speaker testified before the committee that as chairperson of Council he is not aware of any Council resolution or SAPS threat analysis report that provided for addition of a back-up vehicle for the Hon Mayor of the Municipality. He also confirmed that there is no existing legal basis for

provision of VIP Protection Services currently provided for the Deputy Mayor of Abaqulusi Local Municipality.

#### **AFFIDAVIT SUBMITTED BY EXPENDITURE MANAGER MS PHUNGULA**

5.14. Ms Nondumiso Simphiwe Phungula (**Ms Phungula**) is employed as Expenditure Manager of Abaqulusi Local Municipality, she submitted written testimony in the form of a sworn affidavit whereby she stated that on 18 June 2021, she received two (**2**) invoices by Qomkufa Security signed by Mr TS Mthembu and Mr T Xaba. One of the invoices was for VIP close protection including an additional VIP close protector and back-up vehicle, she claims to have enquired with Mr Mthembu if *“this was in order, and he replied by saying yes”*.

#### **TESTIMONY OF PUBLIC SAFETY MANAGER MR TS MTHEMBU**

5.15. Mr TS Mthembu is the Public Safety Manager at Abaqulusi Local Municipality, he testified before the committee that the additional back-up car was brought to his attention through a phone call by the service provider and that he brought this to the attention of his superior Mr T Xaba expecting him to engage the Municipal Manager on the issue of being addressed by a service provider instead of the office of the Municipal Manager. According to Mr Mthembu he is not aware if such an engagement took place.

#### **TESTIMONY OF DIRECTOR OF COMMUNITY SERVICES:**

##### **MR T XABA**

5.16. Mr Thabo Xaba (**Mr Xaba**) is Director of Community Services, he also presented himself before the committee and testified that before the month of June 2021.

5.17. According to Mr Xaba, he became aware of a back-up car and back-up security guards by the invoice tendered by from Qomukufa Company in the month of June 2021. The invoice was billing the Municipal for two extra security guards and a back-up car.

- 5.18. It is Mr Xaba's evidence that he thereafter enquired from the relevant section about this invoice, and he was informed that Qomukufa was given instructions to supply the mayor with back-up cars and additional Security guards by the former Municipal Manager.
- 5.19. Subsequent to that, Mr Xaba claims to have received an instruction from then Municipal Manager (**Mr MPE Mthembu**) to sign those invoices for payment. That was communicated verbally to him.
- 5.20. Committee found Mr Xaba's testimony to be evasive of not very clear. He had no documentary evidence to provide the Committee. He requested for the Committee to inform him of the evidence they need as well as documents that they will require from him so that he can prepare prior and come present same before the Committee at the next session. These were provided.
- 5.21. On 5 May 2022 Mr Xaba was invited to come to give further evidence, however he did not come and there was no explanation provided to the Committee as to why he did not show up.
- 5.22. In absence of a service level agreement for the VIP security contract awarded in 2016, the Committee could not establish if the contract between the Municipality and Qomkufa Security included a provision for a back-up vehicle.

#### **KWAZULU NATAL COGTA CIRCULAR 33 OF 2020 ON VIP SECURITY GUARDS**

- 5.23. The Committee found that in terms of Circular 23 of 2020 by KwaZulu Natal Department Cooperative Governance and Traditional Affairs (**KZN COGTA**), the Hon Mayor and Hon Speaker of Council can be assigned a maximum of two (2) VIP Protection guards each. Clause 1.1 of the circular states that any deviation from the set-out norm of two guards should be based on recommendations of SAPS.
- 5.24. Circular 33 of 2020 was addressed to all Mayors, Speakers and Municipal Managers of Municipalities. Hon Mayor Cllr Maphisa occupied the position of



Mayor of Abaqulusi Local Municipality at the time of the communique. KZN COGTA Circular 33 of 2020 was communicated to his office amongst others. Hon Mayor is fully aware of the contents of the circular and thus expected to comply with its instruction. The Hon Mayor ignored compliance by the KZN COGTA circular and used an additional guard and additional vehicle without approval by council and SAPS involvement as required by the circular and confirmed by Hon Speaker to the cost of **R513 063.00** as of 30 April 2022.

- 5.25. Hon Mayor decided to and continues to use a back-up vehicle and security guard in 2021 with full knowledge of absence of a threat analysis recommendation by SAPS as per instruction KZN COGTA circular 33 of 2020 and no Council approval.
- 5.26. Hon Mayor's actions also contravene section 32(1)(d) of the Municipal Finance Management Act MFMA in that it exposed the Municipality to unauthorised by council, irregular, fruitless and wasteful expenditure to an amount of **R513 063.00**.

#### **TESTIMONY OF CHIEF FINANCE OFFICER MR MPE MTHEMBU**

- 5.27. Mr MPE Mthembu is the Municipality Chief Finance officer (**CFO**), he also confirmed during his testimony before the Committee that he informed the Hon Mayor of the need for a threat analysis before adding security beyond the two guards allowed by KZN COGTA.

#### **TESTIMONY OF CLLR LN KHAN**

- 5.28. Councillor NL Khan of African National Congress (**ANC**) whip, she placed on record that after realizing that the Hon Mayor was using additional security bodyguards, they as ANC checked previous council minutes to establish if there was discussion of any threats directed to the Hon Mayor as well and as SAPS threat analysis and there was none.

## Conclusion

- 5.29. The action of using an extra VIP Protection guard and back-up vehicle Hon Mayor was in contravention of **KZN COGTA Circular No: 33 of 2020** in that no SAPS threat analysis was carried out and **Section 32(1)(d)** of the MFMA in that it exposed the Municipality to unauthorised by council, irregular, fruitless and wasteful expenditure to an amount of **R513 063.00**.
- 5.30. The Hon Mayor had full knowledge of his contravention of Circular no 33 of 2020 as the Circular was also addressed to his office as Mayor of Abaqulusi Local Municipality. Hon Mayor was advised by Chief Finance Officer of same. Hon Speaker of Abaqulusi Local Municipality confirmed that no permission was sought from council for and additional guard and back-up vehicle. This allegation is founded since the back up car is paid for on a monthly basis at a rate of **R24 000.00**. There is also evidence of an additional guard.
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## MAYOR IS CONTRAVENING LAW ENFORCEMENT LAW BY USING BLUE LIGHTS ON HIS VEHICLE

### CRITERIA

**KZN COGTA Circular No. 11 of 2012** sets out the following: -

#### Clause 3.

*"The South African Police Services Policy on VIP Protection is based on a National Cabinet decision dated 06 October 2004, which provides that only the following functionaries qualify for protection in transit and in some instances for static protection:*

- (a) The President and former Presidents*
- (b) The Deputy President*
- (c) Cabinet Ministers and Deputy Ministers*
- (d) Premiers and Members of the Provincial Executive Councils*

- (e) *The National Speaker, Deputy National Speaker, Chairperson of NCOP, Deputy Chairperson of NCOP and Speakers of various Provincial Legislatures; and*
- (f) *The Chief Justice, Deputy Chief Justice, President and Deputy President of the Supreme Court of Appeal Judge President and the Judge President of the Labour Court.”*

#### **Clause 4**

*“As indicated above, VIP Protection services fall squarely within the ambit of police services and it must be noted that traffic and municipal police duties do not include VIP Protection services, as a result of which the use of blue lights by traffic officers and metro police is only authorised whilst in execution of their duties which excludes providing VIP Protection services to Mayors, Councillors and Municipal officials.”*

#### **Findings**

- 5.31. Circular No 11 of 2012 prohibits usage of blue lights by office-bearers and officials at local municipality level.
- 5.32. Speaker of Abaqulusi Local Municipality testified before the committee that he has seen the vehicle of the Hon Mayor and that of Hon Deputy Mayor using blue lights.

#### **TESTIMONY OF MR TS MTHEMBU**

- 5.33. Mr TS Mthembu who is Manager of Public Safety also testified before the committee on the issue of usage of blue lights, according to him he has no knowledge of any office-bearer of Abaqulusi Local Municipality using blue lights.

#### **TESTIMONY OF CLLR LN KHAN**

- 5.34. Cllr Khan also testified that she represents the ANC Caucus in Council, acting as its whip. It was her evidence that some Public Members reported to them that they saw Mr Mayor travelling on blue lights during inauguration and that the said members neither took pictures nor videos of that incident.

5.35. Cllr Khan further stated that the members concerned did not want their identity to be disclosed for their safety.

5.36. The committee was not presented with any evidence beyond verbal testimony of the Speaker and Cllr Khan, the latter's testimony was of hearsay nature, committee thus could not conclude that this allegation is founded.

## Conclusion

5.37. Witnesses did not present the committee with any evidence beyond that which is oral on alleged usage of blue lights. No photographic evidence was presented to support oral evidence of the allegation. This allegation is unfounded.

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**ON 15 DECEMBER 2021 COUNCIL APPOINTED INTERVIEWING PANEL FOR THE APPOINTMENT OF THE MUNICIPAL MANAGER BUT HON MAYOR FAILED OR NEGLECTED TO HAVE THE MUNICIPAL MANAGER APPOINTED UNTILL THE SPECIAL ETHICS COMMITTEE WAS ESTABLISHED.**

## CRITERIA

### **The Regulations on Appointment and Conditions of Employment of Senior Managers of 2014.**

These regulations assign specific responsibilities to the mayor during the process of recruitment, selection and appointment of the Municipal Manager. The specific responsibilities are set out as follows:

- *Regulation 7(1) provides that the mayor must, upon receipt of official notification that the post of the Municipal Manager has become vacant, obtain approval from the municipal council to fill the post.*

- *Regulation 10(5) tasks the mayor with a responsibility to provide monthly reports to the Executive Committee regarding the process on the filling of the vacant post of the Municipal Manager.*
  
- *The mayor or his/her delegate must be the chairperson of the selection panel for the appointment of the Municipal Manager, in terms of Regulation 12(3)(a).*
  
- *Regulation 13 assigns the mayor, in consultation with the selection panel to compile a list of all applicants and create a shortlist out of the full complement of applicants, which must be finalised within 30 days of the closing date of the advertisement for the post of Municipal Manager.*
  
- *Within 21 days after the finalisation of the shortlist, Regulation 14(1) mandates that a screening process of all shortlisted candidates be conducted and the mayor, in sub-regulation (2) must compile a written report on the outcome of the screening process before the interviews take place.*

## **Findings**

### **TESTIMONY OF HON SPEAKER CLLR MB KHUMALO**

- 5.38. Hon Speaker of Abaqulusi Municipality confirmed that on **18 November 2021** the vacancy of Municipal Manager was declared by Council.
- 5.39. Hon Speaker further stated that council resolved on **15 December 2021** that Municipal Manager be appointed and for the Hon Mayor to Chair the panel entrusted with filling the post.
- 5.40. On **9 February 2022** the Hon Speaker wrote to the Hon Mayor requesting a *“full report of the process of appointment of the Municipal Manager for Abaqulusi Municipality”* after a motion of no confidence on Hon Speaker was

raised by the African National Congress. The committee was presented with a copy of the letter dated **9 February 2022**.

- 5.41. Hon Speaker also furnished the committee with a copy of the mayor's responding letter dated **11 February 2022** in which the Hon Mayor stated that he is not accountable to the Hon Speaker and that there is no legislation on him to do so.
- 5.42. Hon Mayor further stated in his letter that he would prepare a report to Council pertaining to the Hon Speaker's enquiry.
- 5.43. On 11 May 2022, Municipality Council again resolved and instructed the Hon Mayor to finalise the process of appointing Municipal Manager. Hon Mayor failed to sign and effect appointment of Municipal Manager despite Municipal Council instruction,
- 5.44. At establishment of this committee, the Hon Mayor had not tabled such a report to council and the process of appointing the Municipal Manager had not yet been finalised.
- 5.45. The Hon Mayor did not present himself before the committee to present his testimony on this issue.

## **Conclusion**

- 5.46. When this committee was established, the Hon Mayor had not effected appointment of the Municipal Manager as per council resolution dated **15 December 2021**. The allegation that the Hon Mayor had not done anything to effect the process upon establishment of the Special Ethics Committee is without substance as there might be steps taken already since the appointment is not a single activity but a process. This allegation is thus unfounded.

## **THE HON MAYOR WHO IS THE FINANCE CHAIRPERSON IS FAILING TO MANAGE PROPERLY THE FINANCES OF THE MUNICIPALITY**

- 5.47. This allegation does not provide sufficient detail to enable the committee to investigate fully. No specific evidence could be obtained to support the allegation.
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## **ALLEGATION OF ASSUALT BY MR KING MASIKANE**

### **Finding**

#### **TESTIMONY BY MR KING MASIKANE**

- 5.48. He placed on record that on the 1st of November 2021 he was in town with his mother and two others in his car when a Toyota Fortuner motor vehicle driven by private security personnel collided with his car. He testified that he got off to check the damage during which the Hon Mayor alighted from another car and approached the scene, very angry. Other two men whom he believed were his bodyguards also approached and started man handling him.
- 5.49. Mr Masikane stated that the Hon Mayor subsequently joined the man handling process and assaulting him. According to Mr Masikane, his mother tried to stop the physical altercation, however she was allegedly also insulted by the mayor.
- 5.50. It is Mr Masikane's evidence that he tried to lay assault charges against the Hon Mayor. He testified that a female police officer that he found at the charge office laughed at him when he explained that he wanted to press charges against the Hon Mayor and his bodyguards. Lastly Mr Masikane testified that he only succeeded opening the case after having utilized services of an attorney and through assistance by station commander Mr Potgieter.
- 5.51. Mr Masikane's version was collaborated by her mother who also appeared before the committee.

5.52. This matter is still under SAPS investigation, Mr Masikane did not provide any evidence beyond that which is oral, the committee can therefore not comment on the criminal liability without having sight of witness statements as per SAPS docket to avoid witnesses entering contradictory written statements under oath.

### **Conclusion**

5.53. Mr Masikane's matter is under SAPS investigation and the committee could not invite SAPS officers to provide details on the matter pending the outcome of the criminal investigation.

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## **ALLEGATIONS LEVELLED AGAINST HON SPEAKER OF ABAQULUSI LOCAL MUNICIPALITY.**

**THE HON SPEAKER FAILED TO SUPERVISE THE MAYOR AND DEPUTY MAYOR TO ADHERE WITH THE LAWS AND REGULATIONS FOR THE MUNICIPAL VEHICLE, HE EVENTUAL FAILED TO PERFORM HIS DELEGATED POWERS.**

### **Criteria**

**Section 37(4) of the Municipal Structures Act 117 of 1998 states that:** - *Speaker of Municipal Council must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 5.*

Paragraph 36(1)(a) of the **Municipal Supply Chain Regulations of 2005** provides that: *“(1) A supply chain management policy may allow the accounting officer – (a) to dispense with the official procurement processes established by the policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only – (i) in an emergency; - (ii) if such goods or services are produced or available from a single provider only; - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile; - (iv) acquisition of animals for zoos; or – (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes;”*

### **Finding**

5.54. Hon Speaker of the Municipality carries a duty to ensure compliance with the Councillors Code of Conduct within Council.

### **TESTIMONY BY HON SPEAKER CLLR MB KHUMALO**

5.55. Hon Speaker testified that on **13 December 2021**, a TROIKA meeting was held. Present at the Meeting were the following individuals: -

- Hon Mayor: Cllr MC Maphisa
- Hon Speaker: Cllr MB Khumalo
- Hon Deputy Mayor: Cllr MA Mazibuko

➤ Acting Municipal Manager: Mr MPE Mthembu

5.56. Hon Speaker presented the committee with of the above-mentioned TROIKA meeting minutes. Item: 5 on page: 2 of the minutes states that the Acting Municipal manager presented the following items:

- The budget appropriated in the approved budget for the purpose of buying vehicles for office bearers is **R800 000.00** per office bearer
- The vehicles may be procured through a National Treasury Transversal tender which would shorten the procurement period.
- The Municipality does not have a fleet policy that would regulate the use of the vehicles procured as tools of trade for office for officer bearers but only have a fleet management policy regulating the use of municipal pool vehicles.

5.57. Upon deliberation of the items set out on page: 2 of the minutes, the Hon Speaker expressed concern about absence of a council guiding policy to regulate usage of vehicles to be bought. According to minutes Hon Speaker also raised a concern on leased vehicles without an approved policy, citing the example of the late former Mayor who was ordered to pay an amount of more than **R300 000.00** due to similar situations.

5.58. A resolution taken on that issue was that a fleet policy for office bearers be developed and the process of purchasing vehicle halted until finalisation of such policy.

#### **TESTIMONY OF CORPORATE SERVICES DIRECTOR MRS SP DLAMINI**

5.59. Mrs SP Dlamini (**Mrs Dlamini**) is employed as Corporate Service Director, she placed on record that she is the Head of six (6) sections within the Municipality and she is deals mainly with Human Resources. One of those departments involves Fleet Management inclusive of tools of trade for Council.

5.60. Mrs Dlamini stated that in December 2021, she received a call from Mr Mthembu, who was the Acting Municipal Manager at that time informing her

that the mayor had a car breakdown on his way to Vryheid and he was standing on the side of the road. It was about 16:45 at that time. Mr Mthembu allegedly further stated that Mayor's life was in danger and that Mrs Dlamini must hire a car to assist him. She testified that they had to act swiftly for security reasons of the mayor.

- 5.61. The vehicle was not secured on that day, a Toyota Prada was subsequently hired on the 03 December 2021. Mrs Dlamini testified to that Hon Deputy Mayor also had no car before inauguration as his personal car was involved in an accident. It transpired that Hon Deputy Mayor was experiencing problems when performing his duties, therefore, a car was hired for him as well.
- 5.62. According to Mrs Dlamini the Hon Speaker on the other hand refused to take the car because of 2002 policy (old) which is still in place. According to 2002 policy, a hired car allocated to the mayor must only be driven by designated person and it must be returned back to the Municipal premises.
- 5.63. There is **R2,4 million** allocated to procure vehicles for the Mayor, Deputy Mayor and the Speaker. Restrictions being that each car must not **exceed R800 000.00**. However, in the absence of the policy, the vehicles have not been procured.

**TESTIMONY OF MR MPE MTHEMBU ACTING MUNICIPAL MANAGER AT THE TIME AND CURRENT CFO**

- 5.64. Mr MPE Mthembu was Acting Municipal Manager when the two vehicles were hired, he is now Chief Finance Officer. He gave evidence before the committee on leasing of vehicles by the Municipality for Hon Mayor and Hon Dep Mayor.
- 5.65. According to Mr Mthembu, Hon Mayor approached him after his appointment as the Acting Municipal Manager on **18 November 2021** and instructed that he must make sure that the cars are made available for office-bearers on the inauguration day.
- 5.66. According to Mr Mthembu during that time there was no guiding policy on how vehicles would be utilised by Office Bearers. It was still in a process of being developed by the Corporate Service department.
- 5.67. Mr Mthembu further testified that on the 19 November 2021, the mayor came to his office to follow up on the issue of cars to be leased. The Director of Corporate Service was also called to join the meeting, she advised against hiring of vehicles in the absence of guiding policy.
- 5.68. Mr Mthembu stated that the Hon Mayor subsequently instructed Fleet Manager who was going to be assisted by the Manager to the office of MM, Mr Sibiya, to hire the cars despite him as acting Municipal Manager advising that it was unlawful to do so in the absence of a guiding policy and Council Resolution.
- 5.69. On 18 January 2022 an internal memorandum was written by Director of Corporate Services Mrs SP Dlamini to “EXCO/COUNCIL” seeking adoption of a newly drafted at that time ABAQULUSI MUNICIPALITY FLEET POLICY FOR OFFICE BEARERS. The memo was signed, supported and approved by Acting Municipal Manager at the time, Mr MPE Mthembu on 19 January 2022.

- 5.70. The Executive Committee (EXCO) subsequently held a meeting on 24 January 2022 at 10:00 am whereby the item of adoption of the newly drafted fleet policy was to be tabled. The meeting was chaired by the Hon Mayor. Minutes of the meeting were made available to the committee.
- 5.71. In terms of item no. 4 of the EXCO minutes, the Hon Mayor made an announcement for four items to be withdrawn from the agenda. Amongst items withdrawn was item EC02/2022 which was discussion on adoption of the draft ABAQULUSI MUNICIPALITY FLEET POLICY FOR OFFICE BEARERS. The policy has not been adopted till date.

### **TESTIMONY OF FLEET MANAGER MRS BIRKENSTOCK**

- 5.72. On 29 November 2021, a request for deviation from normal Supply Chain Management (**SCM**) process was compiled by Mrs Caren Birkenstock (**Mrs Birkenstock**).
- 5.73. Mrs Birkenstock who is the Fleet Manager testified that she was approached by her Director Mrs Dlamini from Corporate Services to look into hiring cars for office bearers.
- 5.74. It also Mrs Birkenstock's evidence that there was no policy at the time guiding usage of vehicles by office bearers and that they had to refer to the old policy which spoke directly to the Mayor and Deputy Mayor's utilization of Municipal cars. The policy states that such cars are only for official use, they sleep on Council grounds and to be driven and escorted by a Municipal appointed Traffic Warden. They as Fleet then came to a decision of setting up a new policy which would guide them under current conditions.
- 5.75. Mrs Birkenstock testified that she constantly received phone calls from her director to procure motor vehicles although she felt that there was no urgency. Vehicles had no service delivery related issues in that month of December.
- 5.76. The instructions from her director were that the mayor wanted Prada, automatic 4 x 4 and they started negotiating for more acceptable rates with Car Rental Services Company as it was extremely expensive.
- 5.77. She further testified that they were successful and after having procured the aforesaid motor vehicles, she then received an instruction to supply a fuel card.

### **REGULATION 36 DEVIATION USED TO SECURE RENTED VEHICLES**

- 5.78. The committee discovered that the deviation form by Mrs Birkenstock was supported by Ms Nxumalo and Mrs N Phungula on 29 November 2021. It was subsequently approved by Mr MPE Mthembu on the same date. It is noted that the recommended supplier was Waphata Group (Pty) Ltd (**Waphata**) at a

total amount of **R32 672,00** (for 8 days ending on 3 December 2021) and RIS Vehicle Hire (Pty) Ltd (**RIS**) for **R213 870,00** (beginning on 3 December 2021).

- 5.79. The committee found that the reason/motivation provided for the request for deviation from SCM processes was that the vehicles were needed and will be rented for 90 days pending finalisation of purchase of vehicles.
- 5.80. The Committee further found that three quotations were sourced from service providers before and after the deviation from normal SCM processes was approved.
- RIS quotation dated 30 November 2021: Toyota Fortuner at **R27 326,09** (VAT excl.) per month
  - RIS quotation dated 30 November 2021: Toyota Prado at **R47 421,09** (VAT excl.) per month
  - Waphata quotation dated 23 November 2021: Toyota Prado at **R69 305,01** (VAT incl.) per month.
  - Waphata quotation dated 26 November 2021: Toyota Fortuner at **R52 363,79** per month.
  - Avis's quotation indicating pickup date of 19 November 2021: Toyota Fortuner at **R66 916,52** for three months.
- 5.81. The Committee further noted that quotations from RIS were sourced on 30 November 2021, yet the deviation from normal SCM processes was compiled on 29 November 2021 indicating the prices offered by RIS.
- 5.82. An evaluation summary dated 1 December 2021 was compiled detailing the summary of quotations submitted and the recommended service provider. The calculation of amounts depicted on the evaluation sheet are unclear.
- 5.83. A Purchase Order (**PO**) dated 2 December 2021, with PO number: 031348, was sent to RIS notifying them of their appointment. The committee noted that there was no specified description of items procured on the PO, it is therefore not clear what goods or services were being acquired.

- 5.84. The Committee noted that there was no other procurement process followed for acquiring the services of RIS after the 90 period which lapsed on 3 March 2022.
- 5.85. The committee further noted that RIS still provides the vehicles utilized by the Mayor and Deputy Mayor without any extension on the current contract or any evidence of a procurement process being instituted for acquiring the services.
- 5.86. RIS has currently exceeded the period agreed upon by over 30 days, which is equivalent to 33,33% of the contractual value, which exceeds the 15% threshold acceptable.
- 5.87. The table below depicts the Municipal costs on leasing and usage of two vehicles by Hon Mayor and Hon Deputy Mayor as at 31 March 2022:

*Table 03: Cost incurred for leased vehicles as at 31 March 2022 incl. fuel*

<b>OFFICE BEARER</b>	<b>RENTED VEHICLE</b>	<b>PERIOD</b>	<b>AMOUNT</b>
Cllr M Maphisa	Toyota Prado	03DEC21- 31 MAR22	<b>R281 551.34</b>
Cllr. MA Mazibuko	Toyota Fortuner	03DEC21- 31 MAR22	<b>R187 489.87</b>
<b>Total</b>			<b>R469 041.21</b>

## **Conclusion**

- 5.88. Acting Municipal Manager testified that at the time when vehicles were leased from RIS raised concerns and advised against leasing of vehicles in absence of a council approved policy. The vehicles were leased nonetheless by way of Regulation 36 deviation. At a TROIKA meeting both the Acting Municipal Manager and Hon Speaker reiterated concern of usage of vehicles without policy guiding their usage. The leased vehicles are still being used without any council approved policy.



- 5.89. There is no evidence of an SCM process for extending the leasing of vehicles in question. Any extension of a contract without following the relevant SCM processes is in contravention of MFMA Circular No. 62 and exposes the Municipality to irregular expenditure. The allegation against the Hon Speaker is unfounded, according to minutes, he voiced concerns on the illegality of the usage of Municipal vehicles without policy at Troika meeting, the Hon Mayor and Hon Deputy Mayor ignored such concerns. Between 03 December 2021 and 31 March 2022, the Municipality incurred costs to an amount **R469 041.21** for such leased vehicles.
- 5.90. After being drafted by Corporate Services and included at an EXCO meeting agenda, the Hon Mayor withdrew the item of adoption of the ABAQULUSI MUNICIPALITY FLEET POLICY FOR OFFICE BEARERS at the meeting on 24 January 2022. The policy has never been adopted till date.

## **ALLEGATIONS LEVELLED AGAINST DEPUTY MAYOR**

**UNNOFICIAL USE OF THE STATE VEHICLE, HE GAVE HIS CAR TO THE BODYGUARDS TO TRANSPORT CLLR NP NDLELA TO THE ZULULAND DISTRICT. THAT IS AN EXPENDURE THAT IS FRUITLESS.**

### **Criteria**

**In terms of clause 14 of the Code of Conduct for Councillors** *A councillor may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.*

### **Findings**

- 5.91. On 23 April 2022, Chairperson of the committee wrote a letter to Ms Birkenstock and requested her secure tracker reports for the vehicle used by the Deputy Mayor for the date 7 January 2022.
- 5.92. Tracker records were provided and show that the vehicle did not go to Zululand District on the day in question.

### **Conclusion**

- 5.93. Tracker records show that the Deputy Mayor's vehicle did not go to Zululand District on the day in question the vehicle was at Vryheid for the entire duration of the day. This allegation is unfounded.

## 6. OVERALL CONCLUSIVE SUMMARY

Based on the investigation conducted and evidence gathered during our investigation, the following overall conclusions are submitted by the committee:

### ALLEGATIONS AGAINST HON MAYOR

- 6.1. The action of appointing an extra VIP Protection guard and back-up vehicle by Hon Mayor was in contravention of KZN COGTA Circular No: 33 of 2020 in that no SAPS threat analysis was carried out and Section 32(1)(d) of the MFMA in that it exposed the Municipality to unauthorised by council, irregular, fruitless and wasteful expenditure to an amount of **R513 063.30**.
- 6.2. The Hon Mayor had full knowledge of his contravention of Circular no 33 of 2020 as the Circular was also addressed to his office as Hon Mayor of Abaqulusi Local Municipality when it was issued by KZN COGTA, he was also advised by CFO of same. Hon Speaker of Abaqulusi Local Municipality confirmed that no permission was sought from council for an additional guard and back-up vehicle. This allegation is founded.
- 6.3. The committee wishes to make it clear that it is fully aware that certain officials testified that the late Municipal Manager Mr Ntanzi allegedly instructed addition of back up security for the Hon Mayor through the service provider, it is for that reason that the Hon Mayor is not held responsible for the allocation of the additional security but his deliberate and continued usage of additional VIP security thereof in full knowledge of non-compliance with prescribed legal requirements by KZN COGTA and that Council was neither informed nor it's approval sought amounting to breach of Code of conduct for councillors.
- 6.4. Hon Mayor's actions and implicated officials exposed the Municipality to wasteful expenditure in that neither evidence nor reasons were provided to

council showing that there was/is a need for an additional guard and back-up vehicle from June 2021 until date.

- 6.5. The deliberateness and seriousness of the Hon Cllr Maphisa and Hon Cllr Mazibuko's misconduct leads to a conclusion by the committee of their unfitness to continue holding their offices, as office bearers of Abaqulusi Council.
- 6.6. On the allegation of usage of blue lights, witnesses did not present the committee with any evidence beyond that which is oral on alleged usage of blue lights. No photographic evidence was presented to support oral evidence of the allegation. This allegation against the Hon Mayor is unfounded.
- 6.7. On the allegation of failure to appoint the Municipal Manager, the Hon Mayor had not at the time the committee was established effected appointment of the Municipal Manager as per council resolution dated 15 December 2021. However, the allegation that the Hon Mayor had not done anything to effect the process upon establishment of the Special Ethics Committee is not supported by any evidence and therefore unfounded.
- 6.8. Mr Masikane's matter is under SAPS investigation and therefore the committee cannot invite SAPS officers to provide details on the matter pending the outcome of the criminal investigation. Mr Masikane and his mother provided overly sensitive testimonies about their alleged unfortunate encounter with the Hon Mayor and his bodyguards. The evidence delivered however was not sufficient for the committee to conclude on the matter within the time allocated.

## ALLEGATIONS AGAINST HON SPEAKER

- 6.9. On the allegation raised against the Hon Speaker, Acting Municipal Manager at the time testified before the committee that when he was instructed by Hon Mayor, he raised concerns and advised against leasing of vehicles in absence of a council approved policy. It is also evident in the minutes of the TROIKA meeting minutes the Acting Municipal Manger at the time and Hon Speaker as required by the Municipal Structures warned the Hon Mayor and Deputy Mayor of unlawfulness of using vehicles in absence of policy. At the time, vehicles were already leased by way of Regulation 36 deviation and such warnings were ignored.
- 6.10. The leased vehicles are still being used without any council approved policy. There is also no evidence of an SCM process followed to extend the leasing of vehicles in question beyond approved 90 days (03 December 2021 to 03 March 2022). Any extension of a contract without following the relevant SCM processes is in contravention of MFMA Circular No. 62 and exposes the Municipality to irregular expenditure in terms of section 32 of the MFMA. The allegation against the Hon Speaker is unfounded, according to minutes, he voiced concerns and disapproval of the illegality of the usage of Municipal vehicles without policy at Troika meeting, the Hon Mayor and Hon Deputy Mayor ignored such concerns. Total cost of renting the two vehicles stood at an amount of **R469 041.21** at 31 March 2022.
- 6.11. The committee recommends for Council to consider taking corrective measures against the above set out misconduct by the Hon Mayor, Hon Deputy Mayor, and implicated officials for exposing the Municipality to unauthorised (no council approved policy on their usage of vehicles) irregular (continued usage of vehicles beyond expiration of approved Regulation 36 of MFMA deviation period of 90 days) and wasteful expenditure (other options were available and presented by the acting Municipal Manager and were simply disregarded).

- 6.12. Hon Mayor and Deputy Mayor could have fixed their private vehicles and continued using them like they did during the previous term in light of absence of Municipality owned vehicles and Council approved policy on usage of hired vehicles by office bearers which amounts to serious misconduct and violation of code of conduct for councillors. The Hon Mayor and Dep Mayor continue to subject the Municipality to irregular and wasteful expenditure beyond the approved deviation period of 90 days. In light of the evidence discovered, the committee therefore recommends for council to consider taking steps against the two office bearers.
- 6.13. Corporate Services department ensured that a policy ABAQULUSI MUNICIPALITY FLEET POLICY FOR OFFICE BEARERS was drafted to regulate usage of vehicles by office bearers and wrote a memo to EXCO on 18 January 2022 seeking its adoption. The Hon Mayor withdrew the item of adoption of the policy from the agenda at EXCO meeting on 24 January 2022 without providing valid reasons. The Hon Mayor interfered with the adoption process and the policy has not been adopted till date.

#### ALLEGATIONS LEVELLED AGAINST HON DEPUTY MAYOR

- 6.14. Tracker records show that the Hon Deputy Mayor's vehicle did not go to Zululand District on the day in question the vehicle was at Vryheid for the entire duration of the day. This allegation against the Hon Deputy Mayor is unfounded.

## MATTERS RECOMMENDED FOR FURTHER INVESTIGATION

The committee hereby recommends to council that full forensic investigations be carried out by service providers/ forensic investigators into the following matters that did not fall within the scope of this investigation: -

- 1.1. Committee discovered that Municipality was spending substantial amounts for fuel on vehicles rented for Hon Mayor and Hon Deputy Mayor. The committee therefore recommends that a further investigation be lodged with specific focus to trip records of Hon Mayor and Deputy Mayor for two rented vehicles being used without any council approved policy. Table below sets out the expenditure status of both vehicles between 03 December 2021 and 31 March 2022: -

OFFICE BEARER	VEHICLE DESCRIPTION	FUEL COSTS	RENTAL COSTS
Hon Mayor	Toyota Prado <b>KD82HK GP</b>	R41 302.48	R240 248.86
Hon Deputy Mayor	Toyota Fortuner <b>KH37FT GP</b>	R40 156.34	R147 333.53
<b>Total Cost</b>		<b>R81 458.82</b>	<b>R387,582.39</b>

- 1.2. Above set out expenditure includes that which took place during the approved 90 days deviation period and beyond (the Municipality still pays for these vehicles till despite absence of any legal procurement process to justify them). The committee therefore recommends for a full quantification of all amounts paid beyond the approved deviation period and for the council to recovery from employees of the municipality responsible for such as well as office bearers.

- 1.3. The committee also discovered evidence of expenditure by the Municipality on VIP Security for the Hon Deputy Mayor of Abaqulusi Local Municipality in absence of provision for such by KZN COGTA Circular No. 33 of 2020. There is no evidence of Council having approved this as well. The Committee further found evidence that provision of such security personnel allocated to the Hon Deputy Mayor has to date exposed the Municipality to expenditure of **R103 500.00**. The committee hereby recommends a quantification on amount spent on VIP security for the Hon Deputy Mayor. It is further recommended for council to take necessary steps and effect recovery of this amount.
  
  - 1.4. Mr Masikane and his mother provided overly sensitive testimonies about their alleged unfortunate encounter with the Hon Mayor and his bodyguards. The evidence delivered however was not sufficient for the committee to conclude on the matter.
  
  - 1.5. The matter of Mr Masikane is still under investigation by SAPS, however the committee noted how most of Mr Masikane's testimony pointed to reluctance by the SAPS to finalise the matter. The committee therefore recommends for council to either wait for finalisation of the criminal investigation or alternatively engage services of a forensic firm that will investigate alongside SAPS and produce a report on factual findings as well information discovered by SAPS thus far.
  
  - 1.6. Lastly the committee recommends for council to sanction a forensic investigation to fully establish the role of officials and Municipal employees in assisting the occurrence of founded allegations herein. The committee could not expand the investigation to that extent due to time constraints.
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**Report adopted by Special Ethics Committee on the 7<sup>th</sup> of June 2022 at  
Abaqulusi Local Municipality Main-Building**

**Signed by Special Ethics Committee Chairperson, On behalf of the Committee.**

 7/06/2022

\_\_\_\_\_  
Cllr Swelakhe Shelembe  
**Abaqulusi Local Municipality  
Special Ethics Committee**