



# City of Tshwane Metropolitan Council

**Final report: Dinokeng Festival Investigation**

1 August 2017

This report contains 91 pages

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## Abbreviations

Baloyi	Joshua Baloyi, Functional Head: Creditors
Burgess	Denzel Burgess, Director: Events Compliance
CIPC	Companies and Intellectual Property Commission
Coetzee	Etienne Coetzee, Erstwhile Head of Legal at Cullinan Diamond Mine
Computicket	The ticketing platform used by the Management Company JV to sell tickets for the Dinokeng festival
CoT	City of Tshwane Metropolitan Council
Dinokeng Music Festival	The TribeOne Dinokeng Music festival, to be held in Cullinan on 26 September 2014 to 28 September 2014
EIA	Environmental Impact Assessment
JOC	Joint Operations Committee
Kemp	Juan Kemp, General Manager of Cullinan Diamond Mine
Key e-mail accounts	The email accounts, located on the CoT server, of Kolisa, Kwele and Ndlovu
Kolisa	Mthobeli Kolisa, Acting Deputy City Manager: Infrastructure and Community Services
Krynauw	Mike Krynauw, Functional Head: Integrated Transport Monitoring
Kwele	Lindiwe Kwele, erstwhile Deputy City Manager

Louw	Jandre Louw, Director of Rockstar and Director of TribeOne
Mahlati	Landela Mahlati, Executive Director: Housing Provision and Resource Management Division
Makgata	Makgorometjie Makgata, Strategic Executive Director: City Planning
Management Company JV	The term used in the contract, concluded between the Management Company JV and CoT, to refer to both Sony Music and Rockstar
MFMA	Municipal Finance Management Act No 56 of 2003
Ndlovu	Nomasonto Ndlovu, Group Head: Communication and Marketing
Ngobeni	Jason Ngobeni, erstwhile CoT City Manager
Richards	Elane Richards, Director: Asset Compliance and Control
Rockstar	Rockstar 4000 Music and Entertainment
SAP	Accounting software package used by CoT
Seoe	Mathakane Seoe, Director: Strategic Events
Sony Music	Sony Music Entertainment Africa (Pty) Ltd
TribeOne	TribeOne Festivals (Pty) Ltd
VAT	Value- Added Tax
Watson	Sean Watson, Managing Director of Sony Music and Director of TribeOne
WBS	Work Breakdown Structure



WIP	Work- in- progress
Xaba	Ntokozo Xaba, Deputy Director: Capital and Maintenance Projects

## 1 Objectives of our investigation

We have been mandated to conduct an investigation into the planning, approval and implementation of the Dinokeng Music Festival. It was envisaged that the information obtained during our investigation would be sufficient to respond to the following questions:

- Whether due processes were followed when the Dinokeng Music Festival was initiated and the approvals obtained;
- The nature of the payments made by CoT for the Dinokeng project with specific focus on the recipients of these payments, the agreements between CoT and these recipients and whether payments were refunded when the festival did not materialise;
- The actual project expenditure versus the project budget;
- Whether any fruitless and wasteful expenditure were incurred regarding the Dinokeng Music Festival project;
- The reasons why the Dinokeng Music Festival project failed;
- Who the owner of the land is on which the Dinokeng Music Festival project was implemented; and
- Whether a conflict of interest existed between the CoT City Manager and a certain service provider to CoT on the Dinokeng Music Festival project.

## 2 Pertinent aspects regarding our report

### 2.1 Scope and nature of our review

The scope of our work was limited to a review of the documentation and information provided to us during the course of the engagement. We have not verified the validity or authenticity of the relevant records and documentation, other than the instances specifically indicated in this report.

This engagement was not performed by us in the capacity as a Registered Auditor and does not constitute an audit. There are no International Engagement Standards applicable to a review of this nature. We have performed the procedures we considered appropriate in the circumstances.

### 2.2 Limitations and subsequent events

We have attempted to include all information relevant to the specific transactions. However, it is possible that documents and information exist which were not made available to us, or which we were unable to locate.

Any documents or information brought to our attention subsequent to the date of this report which would affect the findings in this report, will require our findings to be adjusted and qualified accordingly.

The following specific limitations should be noted:

- We were unable to consult with Sony Music and Rockstar due to ongoing litigation between CoT and these parties regarding the Dinokeng Music Festival;
- The following documents were requested, but not provided during the course of our investigation:
  - No official project file was available. Officials within the Events Management Services department provided us with their working files, but the documentation contained in these files was not complete and certain project-related documentation was not available. In order to mitigate this challenge, we searched key e-mail accounts, extracted from the server, to locate documentation relevant to our objectives;



- CoT was required to make three payments to Sony Music as a financial contribution in terms of the contract. Only one payment relating to the CoT financial contribution to the Dinokeng Music Festival was supported by an invoice from Sony Music. This payment related to the first payment made to Sony Music on 30 January 2014, in the amount of R10 million. CoT was unable to provide us with the Sony Music invoices relating to the other two payments, being the second payment to Sony Music on 25 February 2014, in the amount of R5 million, and the third payment to Sony Music on 6 August 2014, in the amount of R10 million.
- Complete payment packs, supporting payments relating to the financial contribution made to Sony Music and payments made to various contractors regarding infrastructure development were not available.

Initially, the Finance Department informed us that they could not use the WBS number allocated to the Dinokeng Music Festival to extract payments relating to the project. According to Baloyi, an invoice could only be located on the system if the relevant invoice number was provided. We have been informed subsequently that the WBS number could be used to identify project related payments.

In an attempt to mitigate the unavailability of supporting documentation relating to payments, we obtained view-only access to the CoT SAP system to extract information directly from the SAP system. During this review, relevant payments were identified, but the supporting documents remained outstanding.

We further understand that payments regarding the development of the Dinokeng Music Festival were made from projects, other than the Dinokeng Music Festival project, using other WBS numbers. We did not have sufficient information to identify payments made from other projects towards the Dinokeng Music Festival project.

- Finance documents requested from the archive could not be retrieved.
- The Finance Department were unable to confirm whether one-time vendor payments were made to either Sony Music, Rockstar or TribeOne;. We were only provided with draft versions of policies and SOPs relating to the financial controls at CoT. However, we have been informed by the Finance Department that the draft policies and SOPs were used during 2013 and 2014.

- It should be noted that this report was not prepared for purposes of litigation (including disciplinary action). Should CoT decide to use aspects of our report in litigation, we will be required to conduct additional procedures to enhance the relevant section of our report.
- No delegation of authority relating specifically to the approval and release of payments could be provided to us by CoT.

### **2.3 Restriction on distribution of report**

This report was prepared solely for the purposes of reporting our findings to you. This report should therefore not be utilised for any other purpose. No part may be quoted, referred to or disclosed in whole or in part, by any party, without our prior consent.

### **2.4 Legal advice**

Although our report may contain references to relevant laws and legislation, we do not provide legal opinion on the compliance with such laws and our findings in this report are not to be construed as providing legal advice. Our discussion of the relevant laws is intended solely to facilitate the determination of applicable facts which may be relevant to the interpretation and/or application of such laws. Should such interpretation require legal advice, we recommend that independent legal advice be obtained.

### 3 Procedures performed

#### 3.1 Consultations conducted

We *inter alia* conducted the following consultations during the course of our investigation:

Name	Designation	Role: Dinokeng Festival
<b>COT Officials</b>		
Bruno Seabela	Group Legal	Assistance with the litigation pertaining to the project
Denzel Burgess	Director: Events Compliance	Responsible to ensure event compliance and involved in the JOC procedures pertaining to the project
Elane Richards	Director: Asset Compliance and Control	Information regarding the capitilisation of expenditure relating to the festival
Joshua Baloyi	Functional Head: Creditors	Contact person at the Finance Department
Justice Sekokotla	Director: Electrification and Service Connections	Installation of internal reticulation, streetlights and high masts

Name	Designation	Role: Dinokeng Festival
<b>COT Officials</b>		
Landela Mahlali	Executive Director: Housing Provision and Resource Management Division	Installation of water connection at the festival site
Leloko Puling	Environment and Agriculture Management	Ensuring EIA is performed for the festival site
Lindiwe Kwele	Erstwhile Deputy City Manager	Project management of the Dinokeng Music Festival project
Makgorometjie Makgata	Strategic Executive Director: City Planning	Identification of the owner of the festival site and assistance with the lease agreement between CoT and Cullinan Diamond Mine
Mathakane Seoe	Director: Strategic Events	Logistical arrangements and project management
Melissa Vere	Legal Advisor of City Manager	Assistance with the urgent application

Name	Designation	Role: Dinokeng Festival
<b>COT Officials</b>		
Mike Krynauw	Functional Head: Integrated Transport Monitoring	Preparation of roads, parking and transport
Mthobeli Kolisa	Acting Deputy City Manager: Infrastructure and Community Services	Coordinator/ Project Manager of the infrastructure of the project
Nomasonto Ndlovu	Group Head: Communication, Marketing and Events	Project management of the Dinokeng Music Festival project
Ntokozo Xaba	Deputy Director: Capital and Maintenance Projects	Preparation of stage area and laying of grass
Stephens Notoane	Acting Group Head: Utility Services Department	Installation of water connection at the festival site
Tich Mekhoe	Director: Corporate Events Management	Contact person at Events Management

Name	Designation	Role: Dinokeng Festival
<b>COT Officials</b>		
Umar Banda	Acting Group Chief Financial Officer	Contact person at the Finance Department
<b>Third parties</b>		
Siobhan Muller	Councilor	Knowledge of the festival
Juan Kemp	General Manager: Cullinan Diamond Mine	Involved in negotiations between Cullinan Diamond Mine and CoT
Etienne Coetzee	Erstwhile Head of Legal at Cullinan Diamond Mine	Engaged CoT regarding the installation of the fence and outstanding legal matters
Andre van der Walt	Councilor	Knowledge of the festival

## 3.2 Procedures performed

In meeting the engagement objectives as described above, we conducted the following procedures:

- Obtained and reviewed relevant CoT policies and procedures;
- Obtained and reviewed the MFMA and applicable regulations;
- Performed Corporate Intelligence searches regarding entities and individuals involved in the project;
- Obtained and reviewed vendor on-boarding documentation obtained and reviewed (ongoing as new vendors are identified);
- Obtained and reviewed personnel files of project manager and Deputy City Manager at the time of the festival. (Infrastructure Manager file still outstanding);
- Obtained the electronic server folders of the project manager, infrastructure manager and the Deputy City Manager at the time. Key words were identified and were ran against the data to extract potentially relevant documents and correspondence;
- Obtained and reviewed documentation and correspondence obtained from Cullinan Diamond Mine;
- Reviewed documentation and correspondence obtained from the City Planning Department regarding the ownership of the land and the negotiations pertaining to the lease agreement between CoT and Cullinan Diamond Mine;
- Obtained and reviewed the contract concluded between the parties;
- Reviewed the history of the project, as set out in the Founding Affidavit of the Urgent Court application, brought by the CoT to compel the organisers to proceed with the festival (September 2014);
- Obtained and analysed payment packs relating to the payments made to Sony Music;
- Consultation with Infrastructure Project Manager;
- Consultations with various services leads, as per the consultation schedule;
- Requested the contracts with the service providers, the completion certificates and email correspondence from the various service leads; and

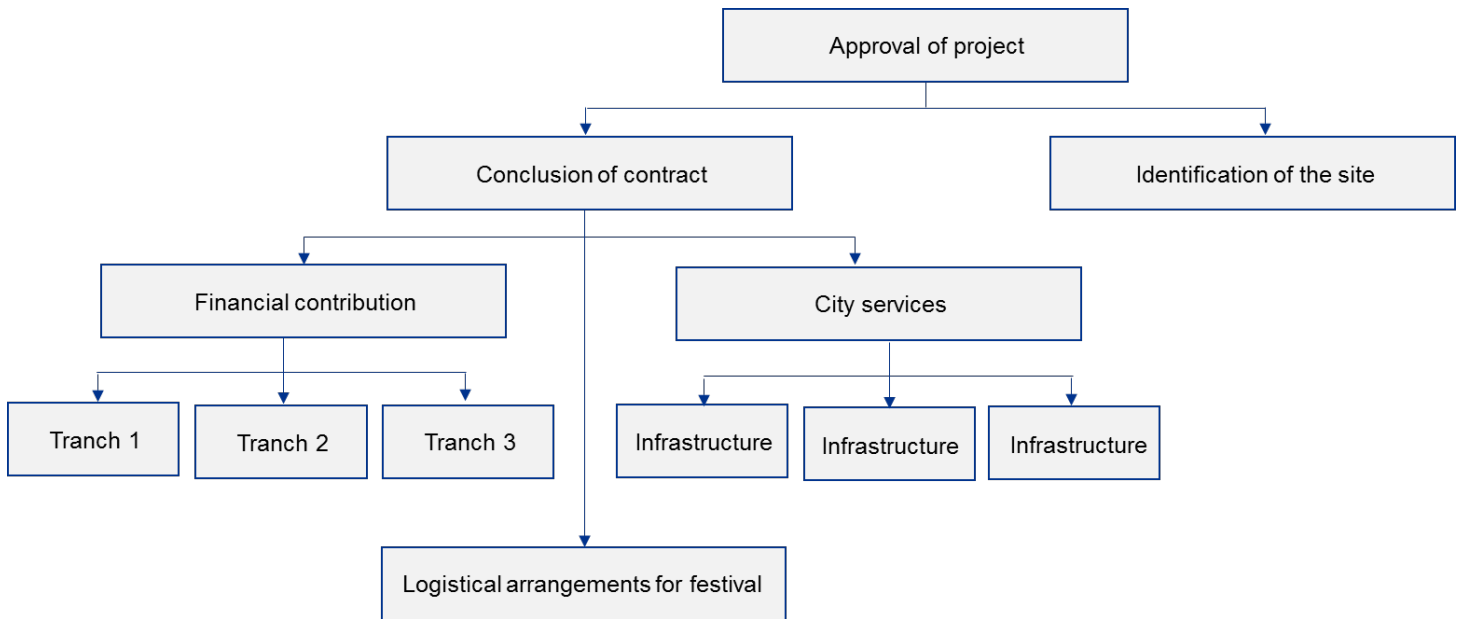


- Identification of service providers involved and requesting relevant payment packs from the Finance Department on an ongoing basis.



## 4 Structure of our investigation

We structured our investigation as follows:



## 5 Approval of the project

The following aspects were considered in this regard:

- The initiation of the Dinokeng project; and
- The approval of this project.

### 5.1 The approval of the Dinokeng Music Festival project

From email correspondence between Watson and Ndlovu, it appears that Watson approached Ndlovu and proposed the Dinokeng Music Festival concept to Ndlovu. We understand that Sony Music, on or about May 2013, presented the Dinokeng Music Festival concept to the Mayoral Committee.

The approval of aspects of the Dinokeng project is evidenced in the following three Mayoral Committee reports:

- The first Mayoral Committee report regarding the Dinokeng Music Festival, drafted by Ndlovu and approved by Kwele and Ngobeni on 21 April 2013 had the purpose of obtaining approval for CoT to partner with Sony Music in hosting the Dinokeng Music Festival. This report was approved by the Mayoral Committee on 8 May 2013;
- The second Mayoral Committee report, captioned *“Dinokeng Fest partnership agreement report”* was drafted by Ndlovu with the purpose of tabling the Dinokeng Music Festival agreement. This report was approved by the Mayoral Committee on 21 August 2013; and
- The third Mayoral Committee report, compiled by Kolisa, was submitted by the Environmental Management Services Department to the Mayoral Committee and related to the implementation and roll out of services and infrastructure for the Dinokeng festival site. We noted that no “Mayoral Committee approved” stamp was appended to this report. However, the report was approved by the following persons:
  - Kolisa: (SED Environmental Management Services);
  - Boshielo: (Deputy City Manager: Service Delivery and Operations);
  - Ngobeni: (City Manager);
  - Mashaba: (MMC Agriculture and Environment); and
  - Ramokgopa: (Executive Mayor.)

It is our understanding that the Mayoral Committee and the individuals listed above had the authority to approve the reports set out above.

## 5.2 The initiation of the Dinokeng Music Festival project

The concern identified regarding the initiation of the Dinokeng Music Festival is that the City Events Implementation Guideline was not considered in the consideration and/ or initiation of the Dinokeng Music Festival.

This City Events Implementation Guideline was approved by the Mayoral Committee on 15 August 2012 and the Communication, Marketing and Events Department was required to use this guideline.

The purpose of this guideline is explained as follows:

*“The centralisation of events was intended to assist departments and the City in prioritising high impact events based on strategic objectives of the City that have the purpose of strengthening the City’s brand. The event evaluation framework will ensure that event proposals are evaluated against City objectives. This would also help to manage the central budget more effectively.”*

The following should be noted in this regard:

- This guideline includes an Event Evaluation Framework which needs to be completed when evaluating an event at CoT.

The Event Evaluation Framework indicates that:

*“In order to ensure that acceptable level of service is delivered by Events receiving investment from CoT, the City will strictly enforce the following terms of delivery from those Events...*

*Upon application, Event owners must submit a full outline of credentials, including industry track record and reference list....”*

- Ndlovu indicated that this Event Evaluation Framework was not considered since this framework was only considered for smaller events and not significant events such as the Dinokeng Music Festival or the Tshwane Open. As a result of this failure, Sony Music’s and Rockstar’s credentials and track record could not be considered by the Mayoral Committee;

- We understand that both Sony Music and Rockstar are record labels and their primary business is to recruit and develop new artists;
- Their primary business is not to arrange music festivals. We could not establish any prior experience in this regard by either of these entities, based on a search of public available information; and
- Despite the fact that the purpose of the City Events Implementation Guide was specifically indicated for use in high impact events based on strategic objectives of CoT that have the purpose of strengthening the CoT's brand, this guide was not followed for the Dinokeng Music Festival. The lack of credentials of the proposed partner regarding an event of this scale is something that should have been considered and communicated to the Mayoral Committee.
- According to Ndlovu, no formal due diligence process is followed by CoT in any aspect of its business. However, an in-house internet search and a request for credentials may have indicated the lack of experience in event management by the Management Company JV.

## 6 Identification of Site

The following aspects were considered in this regard:

- The ownership of the site developed for the Dinokeng project;
- Involvement of City Planning and Cullinan Diamond Mine;
- The EIA process; and
- Subsequent use of the site.

### 6.1 The ownership of the site

The relevant site, being *the farm Louwsbaken 476 Portion 0 (remaining extent)* is 60% owned by “Government” and 40% by the Premier Transvaal Diamond Mining Co Pty Ltd.

The “Government” portion is held on behalf of Government by the Department of Public Works.

Cullinan Diamond Mine is the sole shareholder of Premier Transvaal Diamond Mining Co (Pty) Limited.

We understand that based on legislation, Cullinan Diamond Mine holds all the rights to manage this property and the Department of Public Works will be entitled to share in the proceeds of a sale of the property, based on its 60% ownership.

We have been informed by Kemp that the ownership status of the site was brought to the attention of Louw at the launch of the Dinokeng Music Festival during November 2013.

However, we were only able to confirm knowledge of the ownership of the site by CoT from 14 March 2014 onwards. This transpired from correspondence between Ndlovu and Makgata when Ndlovu enquired about the ownership of the festival site.

### 6.2 Negotiation of potential lease agreement

From correspondence between Ndlovu and Coetzee, it appears as if the negotiations regarding a potential lease agreement between CoT and Cullinan Diamond Mine commenced on 22 April 2014.

From available documentation, it appears that the mine suggested a lease agreement on the following basis:

- Lease period of five years with the option to extend the lease agreement for another four years;
- The land developed by CoT must ultimately become the property of CoT;
- The proposed lease amount was a R1 000 per annum; and
- The main goal of the lease agreement was to ensure that CoT take responsibility for the security and personal liability aspects of the festival and festival site.

It transpired that no lease agreement was concluded between the mine and CoT. As a result of this failure, the mine informed Ngobeni on 22 August 2014 that contractor activities will be stopped by 26 August 2014, due to the fact that no lease agreement was in place.

We understand that negotiations proceeded after this, without success.

The term of the lease (long term vs shorter term) was apparently the biggest stumbling block in this regard. The mine indicated that it would not consider a lease with a longer term than the proposed 5 years with a possible extension. Ngobeni represented CoT in this regard.

It further appears that Section 33 of the MFMA imposes significant duties on a municipal entity when entering into a contract with future budgetary implications. From available correspondence, it appears that this was not adhered to at the time of the negotiation of the lease agreement.

Further to this, we understand that the procurement of the lease agreement, the parameter fence and possibly the EIA, was done outside the normal procurement process and should have been approved following the submission and approval of a deviation report. Based on available information, it appears that this process was not followed and no lease agreement was concluded regarding the relevant property.

The procurement of the EIA and the procurement of the parameter fence are discussed in more detail below.

### **6.3 The procurement and non-completion of the EIA**

In terms of the contract concluded between CoT and the Management Company JV, the Management Company JV was responsible for obtaining the EIA. From the report Kolisa submitted to the Mayoral Committee during August 2014, it transpired that the Management Company JV did not take responsibility for the EIA, despite the fact that the EIA was stipulated as their responsibility in the contract. Kolisa suggested that CoT take the responsibility of the EIA to ensure that the festival is not cancelled because of a failure to obtain an EIA.

From email correspondence it appeared that CoT initially requested the mine to appoint an EIA consultant for which CoT would reimburse the mine. However, we understand that this request constituted a contravention of supply chain management processes within the CoT, which may have resulted in CoT incurring irregular expenditure in contravention of the MFMA.

However, subsequent to this request, it was decided to reduce the area required for the festival, which resulted in an EIA not being required any more.

### **6.4 The construction of the parameter fence**

One of the requirements by the mine, relating to the festival site was that a parameter fence had to be constructed. According to the contract between CoT and the Management Company JV, it was CoT's responsibility to provide "fencing" for the Dinokeng festival. No further information was stipulated in the contract relating to the specifications and parameters of the fence. During a joint meeting between CoT, the mine and the Management Company JV, the mine was requested to construct the fence. We understand that Ngobeni indicated in this meeting that CoT would reimburse the mine for expenses incurred in this regard. Louw inspected a similar fence constructed for the mine elsewhere and approved the specific type of fence to be constructed.

The fence was constructed by the mine and an invoice was submitted to CoT in the amount of R3 990 164.58, including VAT. At the date of this report, no payment has been made by CoT in this regard.

Ndlovu indicated that she was not involved in the negotiations regarding the payment for the fence and could not provide further information in this regard.

According to an internal legal opinion provided by a certain Elias Ngolele of Group Legal Services at CoT, the procurement of the fence via the mine instead of per a tender process contravened CoT's supply chain management processes and ultimately the MFMA.

## **6.5 Motivation for the selection of the site**

From the court documentation relating to the litigation between CoT and the Management Company JV, it appears that each party contends that the other identified the site.

During our investigation, we became aware that CoT owed the mine a significant amount of money relating to bulk services provided by the mine to the community on behalf of CoT. We considered and explored the possibility that the motivation for the selection of the site was a potential set-off of the development cost against the money owed by CoT to the mine. However, available information indicates that this was not the case.



## 7 Conclusion and subsequent management of the contract

Aspects for consideration:

- The conclusion of the contract between CoT and the event organisers;
- Due diligence performed regarding the parties involved in the contract; and
- The contract content and subsequent management of the contract.

### 7.1 Conclusion of the contract

The contract for the hosting and management of the Dinokeng Music Festival, was concluded between CoT, Sony Music and Rockstar on 26 September 2013. Sony Music and Rockstar were jointly referred to in the contract as the “*Management Company JV*”.

The following persons represented each of the contract parties:

- Watson represented Sony Music;
- Louw represented Rockstar; and
- Ngobeni represented CoT.

Ngobeni was authorised by the Mayoral Committee on 21 August 2013 to sign this agreement on behalf of CoT.

### 7.2 Due Diligence performed regarding the parties involved in the contract

As discussed above, Sony Music and Rockstar were the parties CoT contracted with regarding the Dinokeng Music Festival. The Event Evaluation Framework was not considered. Furthermore, no due diligence was performed on Sony Music and Rockstar, as discussed above.

During a review of the CIPC data base, performed to gain an understanding of the connectivity of the parties CoT contracted with, we identified that Louw and Watson were both directors of an entity styled “*TribeOne Festivals*”. Although TribeOne was not identified as a party to the Dinokeng Music Festival contract, we noted that the “TribeOne” name was used to promote the festival and the name of the entity was used in dealings with service providers of the Dinokeng Music Festival.

In light of this, we performed further CIPC searches regarding TribeOne Festivals.

According to CIPC, TribeOne Festivals was registered on 11 July 2012. The Directors of TribeOne Festivals were indicated as follows:

- Louw;
- Watson;
- A certain Craig Winston Brown; and
- A certain Nomsisi Zukiswa Kuzwayo.

The CIPC report reflects that Louw was the sole director upon registration of the entity on 11 July 2012, after which the other directors were appointed on 1 January 2014, after conclusion of the Dinokeng Music Festival contract.

We further noted that Craig Winston Brown is a director of Sony Music Entertainment Africa. No links, other than the joint directorship in TribeOne Festivals could be identified between Nomsisi Zukiswa Kuzwayo and the parties to the contract, being CoT, Sony Music and Rockstar.

## **7.3 Contract content and subsequent management of the contract**

### **7.3.1 Responsibilities of the contract parties**

In considering the content of the contract, the subsequent management of the contract and possible flaws in this regard, we compared the responsibilities per party, reflected in the contract to the information available regarding the subsequent management and implementation of the contract.



Our findings are reflected in the table below:

Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Project management of festival across all aspects	<p>We noted that Ndlovu sent a letter to Louw, dated 24 June 2014, in which she voiced her dissatisfaction regarding the project management relating to the Dinokeng Music Festival. She listed a number of project management aspects that the Management Company JV should implement as a matter of urgency.</p> <p>The late submission of the project plans by the Management Company JV placed significant pressure on CoT to construct the infrastructure.</p> <p>The Management Company JV appointed a dedicated project manager for the Dinokeng festival project, namely a Sindile Xulu.</p>
Overall strategy and implementation of the festival	<p>During our perusal of the email correspondence, we identified a number of plans relating to the implementation and overall strategy of the festival. However, little confirmation of the actual successful implementation of these plans were available. An example of such instance is the planning of marketing events in various African countries. However, no confirmation of successful implementation of these events was available.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Securing and payment of artists for performance at the festival	<p>From our review of available information, we identified artist line-ups for the Dinokeng festival as well as plans by the Management Company JV relating to the booking of artists for the Dinokeng festival.</p> <p>We identified emails from a number of booking agents to the Management Company JV, indicating that artists were booked, but that the deposit was still outstanding or that the artist has not received the balance of the amount due in terms of the booking. We noted that some of these emails were sent by the booking agents during September 2014, in close proximity to the cancellation date of the Dinokeng festival.</p> <p>We further identified concerns raised by a booking agent, who appeared to have been employed by Rockstar on a part-time basis. The booking agent indicated in the e-mail that she was not informed of cancellations of bookings, changes to the performance schedules etc. She further stated that she was not privy to approved budgets, payment schedules and international contracts and therefore have minimal information regarding Rockstar's obligations.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
	<p>She further indicated that although Louw indicated that certain artists and suppliers were paid, she was informed by these parties that they have not received payment.</p> <p>No proof of payments to the artists were provided to us by the booking agents we contacted. Furthermore, at date of this report, our attempts to engage with Nicki Minaj’s agents have been unsuccessful.</p>
Save to the extent that there is an obligation on Tshwane to provide infrastructure to this end, to provide suitable toilet, ablution and hygiene facilities	Based on our review of the available information, we could not find any documentation, indicating that the Management Company JV did anything in this regard.
Stage facilities in order to erect, repair, maintain and remove all scaffolding, stage and related structures and equipment	The stage would have been constructed a couple of days before the festival. However, this never transpired as the Management Company JV sent a letter to CoT on 11 September 2014, indicating that CoT repudiated their contract with the Management Company JV.



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Broadcasting and filming arrangements	<p>We identified various emails and schedules relating to arrangements with the SABC.</p> <p>We further noted email correspondence during June 2014, in which the Management Company JV indicated that the SABC partnership had not yet been confirmed and that media partnerships with a number of South African entities, for example, Multichoice DSTV, Vuzu and Mzansi have only been confirmed <i>“in principle”</i>.</p>
Accommodation for patrons and artists and access to sites	<p>An amount of R1 million was confirmed to have been paid by the Management Company JV to the Sheraton Hotel as a deposit relating to the accommodation for the artists for the Dinokeng Music Festival.</p>
Environmental impact assessment studies	<p>We could find no evidence to suggest that the Management Company JV took responsibility for the environmental impact assessment studies. From available information, it appears that CoT took responsibility for appointing a suitable service provider to perform the EIA. We further understand that the EIA assessment was not performed, due to a change in the festival site layout.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Sufficient and suitable food and drink vendors for patrons	<p>We noted various emails, plans and documentation relating to the appointment of food and drink- vendors for the Dinokeng festival.</p> <p>We understand that “<i>town hall sessions</i>” were scheduled by the Management Company JV during April 2014 to meet with various types of vendors. From available information, it could not be confirmed whether these town hall sessions took place.</p> <p>According to a contact report, the vetting of the vendor applications did not commence by 22 July 2014.</p> <p>It further appears from email correspondence that only one vendor was still required on 11 September 2014, specifically a confectionaries vendor.</p> <p>From available information, one vendor claimed that he was not timeously informed of the cancellation of the event and claimed compensation for loss of income due to the cancellation of the festival.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Security arrangements	Eyethu Events was appointed by the Management Company JV as the events safety and security service provider for the Dinokeng Music Festival. It was agreed that Eyethu Events will provide a safety and security planning and implementation file to CoT's JOC for review and approval. Upon the JOC's approval of the file, a compliance certificate would have been issued to the Management Company JV on the day of the festival. This would serve as a confirmation that all of CoT's safety and security guidelines and applicable legislation have been complied with. We understand that a safety and security file was provided by Eyethu Events to the JOC during June 2014 and that it was approximately 80% completed, according to Burgess. The JOC did not receive any further files from Eyethu Events.
Banking facilities for patrons	We identified that options for banking facilities were explored by the Management Company JV. No confirmation of the successful implementation of these options were available.





Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Dispatch of all VIP invitations (including to all embassies) and hosting of VIPs including accommodation and transport	We identified VIP invitations sent by the Management Company JV to senior CoT Officials and other senior government officials.
Parking facilities	From available information, it appears that the Management Company JV identified relevant parking sites and engaged with CoT to assist them in communicating with relevant local governmental entities and business to use their property for park and ride areas. We were informed that CoT's Transport Planning Infrastructure Division incurred internal cost relating to the clearing of the festival site for parking facilities.
Development of phased ramp up of the marketing of the Festival and the co-ordination and implementation thereof including staging of " <i>Road to Dinokeng</i> " activations	<p>We identified plans and email correspondence relating to international Dinokeng marketing events, for example Louw proposed that their international marketing route be as follows: "...SA – Ghana – Nigeria – New York." However, we could find no supporting information to confirm that these marketing events were executed.</p> <p>We identified that a social media manager was only appointed by the Management Company JV on 8 July 2014.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
Content production in respect of the festival	No information was available in this regard.
The design and implementation of a comprehensive marketing strategy that covers various media including outdoor, press, radio, mobile, online and other	<p>We noted that Ndlovu sent a letter to Louw, dated 24 June 2014, in which she voiced her dissatisfaction with Louw regarding the Dinokeng festival progress. She indicated that the agreed marketing plan, including the roll out plan for announcing which artists will be performing at the Dinokeng festival, should be actioned by the Management Company JV.</p> <p>Subsequently, on 30 June 2014, a comprehensive “<i>TribeOne marketing plan</i>” was submitted by the Management Company JV to CoT.</p> <p>Although not specifically indicated in the contract, based on available information, the Management Company JV took responsibility for the ticket sales under the marketing strategy.</p> <p>We identified a detailed ticketing plan, styled “<i>Rockstar4000 TribeOne festival-ticketing.</i>” This document contained an extensive ticketing plan. We noted that some of the items appeared to be scheduled to commence relatively late, for example the confirmation of ticket prices was scheduled for the middle of June 2014, which may imply that sales could only commence thereafter.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
	<p>Despite the extensive plan, we confirmed that Computicket only sold 318 tickets for this event. It should be noted that Computicket was only instructed to sell Dinokeng Music Festival tickets during August 2014. According to the Management Company JV, approximately 4 000 tickets were sold in total, shortly before the event.</p>
<p>To procure all suitable and commercially viable public liability insurance cover in respect of the production areas for which Rockstar is responsible in terms of his Letter of Intent</p>	<p>No information was available in this regard.</p>
<p>Arranging and facilitating advertising signage for sponsors at the Festival and Securing additional sponsors and promoters of the Festival</p>	<p>A CoT progress update, dated 23 July 2014, indicated that the confirmed sponsors for the event to date was CoT and an entity styled "<i>Power Horse</i>". From publically available information, Power Horse is an international energy drink manufacturer.</p> <p>It appears from this report that the Management Company JV was still in the process of engaging entities for sponsorships. There was no further information to suggest that the sponsorships of any of these entities were confirmed.</p>



Responsibility in terms of contract	Available information
<b>Management Company JV</b>	
	<p>We further identified email correspondence during June 2014 from a distributor of alcoholic beverages who requested a detailed artist line-up before confirming their sponsorship to the Dinokeng Music Festival. Louw indicated to them that he is unable to provide them with the line-up due to confidentiality and he also indicated that the proposed level of sponsorship by the entity, being R1 million was <i>“a very low level of sponsorship”</i>. No information was available to suggest that this entity was confirmed as a sponsor to the Dinokeng festival.</p>
<b>CoT</b>	
A financial contribution to CoT in the total amount of R25 million	The financial contribution CoT made to the Management Company JV is discussed in detail below in <i>“Section 8 Financial Contribution”</i>



Responsibility in terms of contract	Available information
<b>CoT</b>	
<p>Infrastructure development and support (Including without limitation in respect of the provision of amenities, water, electricity supply, fencing, demarcation, facilities, sewerage infrastructure. (Including toilets and potable water drinking facilities) and the like) necessary to support the Festival and shall include, in particular, the clearing of land and the erection of fixed infrastructure facilities in the demarcated areas, in accordance with the agreed plans with the Management Company JV</p>	<p>The infrastructure services CoT provided are discussed in detail below in <i>“Section 9 Infrastructure provided”</i></p>
<p>Road traffic management services and infrastructure</p>	<p>We identified a number of CoT e-mails and plans relating to the road traffic management services being arranged.</p>
<p>Assistance and collaboration in dealing with all government agencies and authorities</p>	<p>We identified email correspondence in which CoT engaged with Department of Public Works regarding the Dinokeng festival site.</p>



Responsibility in terms of contract	Available information
<b>CoJ</b>	
Health, sanitation and safety initiatives, interventions and services at the Festival	<p>As discussed above, the Management Company JV appointed a company, namely Eyethu Events, to take responsibility for the safety and security plans for the Dinokeng festival. Burgess explained that Eyethu Events is a well-known entity in the industry with a well established reputation.</p> <p>CoT's JOC was responsible to evaluate the safety and security files, submitted to them by Eyethu Events and subsequently approve the plans if deemed satisfactory with applicable legislation.</p> <p>We obtained and reviewed a number of CoT minutes of meeting and emails relating to discussions regarding the health and safety aspects which need to be considered for the festival from a JOC's point of view.</p>
Facilitation and assistance in holding and securing inter-government and departmental meetings necessary for purposes of advancing the festival	Limited minutes of meetings in this regard could be identified from the available information



Responsibility in terms of contract	Available information
<b>CoT</b>	
Procuring all suitable and commercially viable public liability insurance cover in respect of the production areas for which the Municipality is responsible in terms of this Agreement	No information in this regard could be obtained.

7.3.2

### 7.3.3 Benefits to be derived by CoT

The financial benefits to CoT appears to be limited. The only income to CoT provided for in the contract related to 15% of all net income on traditional merchandise, being apparel, where CoT branding is used. No provision was made by CoT to directly share in any income derived from the festival. Ndlovu confirmed that the brand development was the main focus for CoT regarding the Dinokeng Music Festival.

According to the contract, CoT wanted to achieve the following strategic brand development objectives:

- Establish CoT as the capital city in South Africa with the capacity to host such a festival;
- To ensure global brand exposure to CoT;
- The Management Company JV would host small events to ensure wider participation by the CoT community;
- The number of national and international visitors to CoT would increase; and
- To bring about social cohesion and showcase CoT's capacity to host events.

Despite this, Ndlovu indicated that CoT did not have the right to name the festival. She confirmed that CoT agreed that the word "Dinokeng" would form part of the name of the festival. According to Ndlovu, an economic benefit study, to be performed after the event, would have indicated the benefit derived from the event by CoT.



## 8 Financial contribution

Aspects for consideration:

- The financial obligations of CoT in terms of the contract;
- Payments effected relating to each of the tranches; and
- Proof of expenses incurred, if any.

### 8.1 The financial obligations of CoT in terms of the contract

It should be noted that the agreement concluded between CoT and the Management Company JV envisaged two categories of expenditure to be incurred by CoT regarding the Dinokeng Music Festival, namely:

- A financial contribution towards the festival; and
- Expenditure relating to the development of certain infrastructure at the site where the festival would take place.

In addition to the above expenditure, CoT was also required to provide “City Services”, such as the JOC and Environmental Management Services.

This section of our report specifically focusses on the financial contribution made by the CoT towards the Dinokeng Music Festival.

The agreement concluded between CoT and the Management Company JV provided for a three year contract during which the Dinokeng Music Festival would take place annually.

The contract stipulated the following relating to the financial contribution to be paid by CoT to the Management Company JV regarding year one (2013-2014) of the production of the Dinokeng Music Festival:

*“.....The Municipality hereby commits and undertakes to pay the Management Company JV a fee equal to the Agreement of R25 000 000 (twenty five million rand), excluding VAT.”*

It was further agreed that the following financial contributions would be paid by CoT to the Management Company JV regarding year two and year three of the Dinokeng Music Festival:

- R22 000 000, excluding VAT, for the period 10 September 2014 to 9 September 2015;  
and
- R18 000 000, excluding VAT, for the period 10 September 2015 to 9 September 2016.

No basis was available in any of the documents reviewed for the calculation of the amounts to be contributed by CoT on an annual basis. We further did not see any calculation or undertaking regarding the financial contribution to be made by the Management Company JV. Ndlovu agreed that CoT was not provided with a budget, providing insight regarding how the amount of R25 million was calculated and what the Management Company JV's contribution would be.

Schedule 2 of the agreement between CoT and the Management Company JV provided the following payment plan relating to the financial contribution of R25 million to be paid by CoT to the Management Company JV during year one of the Dinokeng Music Festival:

*“...Securing of Naming Rights and Securing of international Artists: R 10 000 000 (ten million rand) payable within 10 (ten) days of the commencement date; and*

*Phases 1 and 2 Event Build up and Global Campaign rollout:*

*R5 000 000 (five million rand) to be paid by 30th January 2014:*

*Phases 3 and 4 Event Build up and Global Campaign rollout R10 000 000 to be paid by 30 July 2014...”*

The contract did not contain any clauses that would provide the CoT with oversight regarding the application of the funds or enable the CoT to review the application of the funds by the Management Company JV, such as:

- Audit rights regarding the application of the funds;
- Milestone requirements for each payment; or
- The submission of supporting documentation by the Management Company JV to the CoT, evidencing the application of each payment.

This omission regarding control measures occurred despite an e-mail by Ndlovu to Louw, dated 11 July 2013, where she indicated to Louw that “tranches”, which we understand to relate to the three payments to be made during year one, should be dependent upon the Management Company JV reaching certain milestones.

According to email correspondence, the contract was *inter alia* reviewed by the Seabela, Ndlovu and Kwele prior to conclusion of the contract.

## 8.2 Payments effected pertaining to the financial obligations of CoT relating to the Dinokeng Music Festival

The table below reflects the amounts that were due to the Management Company JV in terms of the contract, the due dates for payment as stipulated in the contract between CoT and the Management Company JV, as well as when actual payments were made by CoT:

Payment as per contract (excluding VAT)	Payment due date as per contract	Reason for payment as per contract	Payment as per invoice (including VAT)	Payment date
R10 000 000	Ten days from the commencement date of 1 November 2013 Payment due date was therefore 11 November 2013.	Securing of “naming rights” and international artists	R11 400 000	30 January 2014
R5 000 000	30 January 2014	Phases 1 and 2 of the “Event Build up and Global Campaign rollout”		25 February 2014
R10 000 000	30 July 2014	Phases 3 and 4 of the “Event Build up and Global Campaign rollout”	R11 400 000	06 August 2014
R25 000 000			R28 500 000	



We noted that the payments were made after the due dates stipulated in the contract. However, since no evidence could be located of penalties relating to these late payments, we did not pursue this any further.

Upon request, the Finance Department at CoT provided us with some supporting documentation for the payments made by CoT to the Management Company JV, as set out in the table below. It should be noted that only one invoice from Sony Music was available in this regard.

Date payment was made to Sony Music	Amount (including VAT)	Supporting documentation provided by the Finance Department	Details	Documentation not provided
30 January 2014	R11 400 000	None	N/A	<ul style="list-style-type: none"> <li>— Request for Cashfocus</li> <li>— Remittance Advice</li> <li>— Invoice</li> </ul>
25 February 2014	R5 700 000	<ul style="list-style-type: none"> <li>— Request for Cash Focus</li> <li>— Remittance Advice</li> </ul>	<ul style="list-style-type: none"> <li>— Compiled by: Jackie Swanepoel (Admin Officer)</li> <li>— Approved by: Caleb Mouse (Deputy Director)</li> <li>— Released by: Elrico Mathys</li> </ul>	Invoice

Date payment was made to Sony Music	Amount (including VAT)	Supporting documentation provided by the Finance Department	Details	Documentation not provided
06 August 2014	R11 400 000	<ul style="list-style-type: none"> <li>— Request for Cash Focus</li> <li>— Invoice</li> </ul>	<ul style="list-style-type: none"> <li>— Compiled by: Lucky Matjeni (Admin Officer)</li> <li>— Approved by: Caleb Mouse (Deputy Director)</li> <li>— Released by: Joshua Baloyi (Functional head)</li> </ul>	Remittance Advice

In an attempt to confirm the completeness of the information regarding the financial contribution made by CoT towards the Dinokeng Music Festival, we requested the Finance Department to assist us in establishing whether any one-time vendor payments were made to any of the contracting parties, namely Sony Music, Rockstar or an entity styled TribeOne, who apparently represented the Management Company JV in certain instances. We were unable to locate any further payments by CoT to any of these entities, despite various attempts in this regard.

### **8.3 Proof of the expenses incurred by the Management Company JV relating to the Dinokeng Music Festival**

As discussed above, the Management Company JV was not contractually required to provide CoT with proof of the application of the financial contribution made by CoT.

In order to determine the application of the financial contribution made by CoT, we enquired whether CoT had any proof of the application of funds. We were informed by Seoe that CoT was not in possession of any proof of the expenses incurred by the Management Company JV.

Upon perusal of the e-mail correspondence, we obtained an e-mail from Louw to Ndlovu, dated 22 July 2014, purporting to be a reconciliation of expenditure incurred against the payments received from CoT. The list related to application of the first two payments by CoT in the total amount of R15 million and reflected expenses from 17 September 2013 to 7 July 2014.

The total expenditure reflected in this reconciliation is R6 086 371.12 and can be categorised as follows:

- Payments to secure the following international artists:
  - KID INK: R527 340;
  - J-Cole: R938 999;
  - Nicki Minaj: R5 480 690; and
  - Macklemore and Ryan Lewis: R3 451 175.

- Advertising expenses, such as:
  - Billboards;
  - Website page and ticketing web application;
  - Publishing in magazines;
  - Performance fees (events not specified);
  - Printing; and
  - Promotional material (Rockstar T-shirts, notebooks and postcards).
- Flights and accommodation for Louw to travel to the UK;
- Flights relating to a Uganda, Ghana and Zambia press conference as well as flight and accommodation to travel to Durban;
- Overheads relating to town hall sessions;
- Public relations expenses and press conferences expenses (including snacks and drinks at the press conference);
- Deposit relating to accommodation for artists for the Dinokeng festival at the Sheraton Hotel, in the amount of R1 million;
- Costs relating to the Dinokeng festival launch on 7 November 2013, including *inter alia*:
  - Payment of performing artists, their accommodation, car hire and drivers;
  - Sound equipment rental;
  - Wall banners and signs;
  - TV production crew and crew catering;
  - Event security supervision;
  - Bar hire and drinks;
  - Stretch tents;
  - Small promotional boxes for guests;
  - Furniture hire;
  - Stage and event set up;
  - Lighting for the stage; and
  - Dancers.



Due to the fact that CoT could not provide us with any proof that the above expenses were in-fact incurred by the Management Company JV, we performed high level procedures to attempt to verify some of these expenses. The results of our procedures were as follows:

### ***Sheraton hotel***

The reconciliation reflected that a payment of R1 million was made to the Sheraton Hotel for *“accommodation for artists for the festival”*

From a review of the key e-mail accounts, we identified a pro-forma invoice from the Sheraton Hotel to Sony Music, dated 5 September 2014. The invoice reflected a total amount of R3 071 753.40 for accommodation, of which R1 million has already been paid to the Sheraton Hotel, according to the invoice.

Upon enquiry, the Sheraton Hotel indicated that they received the cancellation notification and that the remaining amount of R2 071 753.40 was due by Sony Music as a *“100% cancellation fee according to the signed contract.”*

We could not obtain any further information to confirm whether Sony Music paid the outstanding amount to the Sheraton Hotel.

### ***Billboards***

According to the reconciliation, expenses were incurred relating to billboards. An email from Louw to Ndlovu, dated 6 May 2014, reflected two pictures of a large Dinokeng festival billboard, close to what appears to be a highway.

### ***Diplomatic services***

The reconciliation reflected that an amount of R150 000 was paid to a certain Thandiwe S January Mclean for *“diplomatic services”*.

From a review of the key e-mail accounts, we identified email correspondence between Thandiwe, Louw and Ndlovu relating to requests for *“further”* payments by Thandiwe. From the content of the e-mails it appears that she assisted Louw with arrangements for marketing events in African countries. No supporting documentation was attached to the relevant e-mails.

No further information regarding other expenditure, except for the above, could be found in the emails.

### **General observation regarding the application of funding**

It should also be noted that the description in the contract of the intended application of the financial contribution made by CoT is vague (“*Securing of Naming Rights*” and “*Event Build up and Global Campaign rollout*”) and it was therefore not possible to comment in detail regarding the correctness of the application of the funding.

## **8.4 Allegations of insufficient funding during in September 2014**

We were provided with copies of the following text messages between Ndlovu and Louw, exchanged during September 2014, regarding a request from the Management Company JV for more funding.

On 3 September 2014, Louw indicated that:

*“Hi Sonto. Had the status with finance yesterday evening after our meeting. The ticket sales scenario we are faced with as discussed is if the ticket sales don’t increase dramatically to the 30,000 tickets sold mark we discussed then we are exposed by R35mil in cashflow shortfall for this year. That’s the worst case scenario if we do not sell any more tickets at all. If Sony underwrites R15 mil will CoT be able to underwrite the balance R20 mil?”*

We noted that Watson sent an sms to Kwele where he indicated that:

*“I’ve sent you the email requested. We have less than an hour to retain the international artists. Let me know if you need anything else from us”,*

Kwele responded as follows:

*“But u don’t expect us to just hand over R25m without any authorisation also”*

*“ Fact: our justification for breaching MFMA by paying u guys all d R25m was to ensure that artists are secured so I don’t think EM will accept this excuse.”*

From the above sms exchange, it appears that the Management Company JV experienced financial pressure shortly before the festival date. It further appears that this may have been due to poor ticket sales.

With regards to Kwele’s statement that the R25 million paid to the Management Company JV was to ensure that artists are secured, we noted that, according to the contract, it was indicated that the first R10 million payment from CoT to the Management Company JV will be used by the Management Company JV for the “*securing of naming rights and international artists*”. The remaining payments to the Management Company JV, amounting

to R15 million, were indicated to be used for the “*Event Build up and Global Campaign rollout.*”

As discussed above, CoT did not receive any proof of the application of the financial contribution made by them. Although the contract stipulated that the first tranche of the financial contribution by CoT would be used to secure the artists, we were unable to obtain any confirmation that the funds were applied as intended.

Furthermore, the fact that the Management Company JV required more funds to secure the international artists, after the initial R10 million payment was already earmarked for this, should have raised concerns with Kwele and Ndlovu regarding the application of the CoT’s financial contribution. This would have been the opportune time for Kwele and Ndlovu to request proof of expenditure of their financial contribution of R25 million. Based on available information, it appears that no such action was taken by either Ndlovu or Kwele. Ndlovu indicated that Kwele was communicating directly with the Management Company JV. It was Ndlovu’s understanding that the event was approved and managed at Mayoral Committee/City Manager level and that she was not responsible to make decisions regarding the potential cancellation of the event. Such decisions would be considered at the Mayoral Committee/City Manager level.

## **8.5 Budget vs actual expenditure with reference to the CoT Financial Contribution**

As discussed above, a financial contribution in the amount of R25 million was made by CoT towards the Dinokeng Music Festival. However, as set out below, it appears that the Mayoral Committee report only referred to a total cash contribution in the amount of R20 million over a period of three years when conclusion of the contract for the Dinokeng Music Festival was approved.

The first Mayoral Committee report, regarding the Dinokeng Festival, drafted by Ndlovu on or about 28 March 2013 and approved by Kwele and Ngobeni on 21 April 2013, described the financial implications of the Dinokeng Music Festival as follows:

*“The budget will be executed in line with the 2013/14 budgets and centralization model for strategic events, however, all partner departments will need to budget for non-event related costs like infrastructure development and other costs that may arise.*”

*To secure host destination rights, the project requires R25m, and this will be split between financial contribution and in-kind contribution (including JOC services, infrastructure and local marketing)”.*

From the above, it appears that the budget presented to the Mayoral Committee implied that the financial contribution would only be a smaller part of an overall project budget of R25 million. It can therefore not be argued that the mayoral committee approved a financial contribution in the amount of R25 million, when the following recommendations were made:

*“It is recommended that:*

- 1. The Mayoral Committee approves in principle the hosting of the DINOKENG FEST to be hosted in Cullinan in 2014, subject to budget availability.*
- 2. DINOKENG FEST forms part of the strategic events which will anchor South Africa’s twenty (20) years of Democracy celebrations in 2014*
- 3. The City Manager be granted permission sign [sic] a contract to partner with Sony Entertainment, and an SLA be drawn to inform the nature of the partnership and ensure measurable benefits and ROI to the City.*
- 4. CME be mandated to lead the project assisted by SRAC department, RED and City planning.*

The second Mayoral Committee report regarding the Dinokeng Festival, drafted by Ndlovu on or about 8 August 2013 and approved by the Mayoral Committee on 21 August 2013, according to a stamp affixed to the document, tabled the “Dinokeng Fest” partnership agreement.

The following was stated in the summary of the partnership agreement regarding the required budget:

*“The partnership agreement, as attached in Annexure A, will be signed for a period of 3 years and the city’s financial contribution will be capped at R20 m cash grant. In addition to the cash contribution, the city is required to provide the following:*

*Bulk water infrastructure, electricity, storm water drainage and drainage for ablution facilities, IT/WI-FI connectivity, fencing etc. as well as City services (Metro Policy, EMS etc.) Such investment is estimated at R25 million.”*

It would therefore appear that the summary of the contract, provided to the Mayoral Committee, set out the required budget as follows:

- A financial contribution, capped at R20 million over a period of three years; and
- Infrastructure and city services (Metro Police, Environmental Management Services etc.) at an estimated R25 million.

The budget was repeated in the section of the Mayoral Committee report that dealt with the financial implications of the project, when it was stated:

*“To secure the host destination rights, the project requires:*

- *R20 million cash contribution*
- *R5 m JOC City services*
- *Infrastructure investment (to be quantified)*

Reference was further made to the fact that deposits would have to be paid to secure top billing artists.

It was resolved:

1. *That cognisance be taken of the Dinokeng Fest MOU; and*
2. *That the Mayoral Committee grants the City Manager the authority to sign the Dinokeng Fest MOU.”*

Upon review of Annexure A, we noted that provision was made for a contribution by CoT in the amount of R25 million for the first year of the festival. However, paragraphs 6.4 and 6.5 provide for further negotiation of the fee for the second and third year, respectively, of the Dinokeng Music Festival.

As discussed above, a contract was ultimately concluded, agreeing on a financial contribution in the amount of R65 million over a period of three years, with a contribution in the first year in the amount of R25 million, a contribution in the second year amounting to R22 million and a contribution in the third year amounting to R18 million.

It would therefore appear that the contribution of R25 million for the first year was approved by the Mayoral Committee. However, the second and third year contributions contained in the contract were never approved by the Mayoral Committee.

With consideration to what was discussed regarding Section 33 above, the conclusion of this contract, which has significant future budgetary implications, may have been in contravention of Section 33 of the MFMA.

## **8.6 Financial contribution by the Management Company JV**

The only financial obligations stipulated in the contract related to the financial contribution to be paid by CoT to the Management Company JV. No specific financial obligations were indicated for the Management Company JV in the contract.

Other non- financial contributions to be made by CoT and the Management Company JV respectively were stipulated in the contract and are discussed in detail in Section 7.3 of our report.

## 9 Infrastructure provided

Aspects for consideration:

- The infrastructure CoT was required to provide;
- The budget for the infrastructure;
- Various CoT departments and contractors involved; and
- Capitalisation and safeguarding of assets.

### 9.1 The infrastructure services CoT was required to provide

According to the contract between CoT and the Management Company JV, CoT was required to provide the following “*infrastructure development support*” for the Dinokeng Music Festival:

- Amenities;
- Water;
- Electricity supply;
- Fencing;
- Demarcation;
- Facilities;
- Sewerage infrastructure (including toilets and portable drinking water facilities); and
- In particular, the clearing of land and the erection of fixed infrastructure facilities in the demarcated areas, in accordance with the agreed plans with the Management Company JV.

From the above, it is clear that the specifications relating to the infrastructure services CoT was required to provide was stipulated in very vague terms in the contract.

We further noted that, according to Ndlovu’s affidavit, CoT requested project plans relating to the infrastructure from the Management Company JV, which was only provided to CoT during mid-2014.

## 9.2 The budget for the infrastructure

According to the report to the Mayoral Committee, drafted by Kolisa, and approved on 20 August 2014, it was envisaged that not all site facilities and infrastructure would be completed in time. Kolisa therefore proposed that the following infrastructure components be implemented for the 2014 Dinokeng Music Festival and that their estimated cost would be as follows:

Department	Responsibility	Estimated cost
Infrastructure (Electricity)	Installation of bulk and reticulation electricity infrastructure for the site	R12 million
Infrastructure (Water and sanitation)	Installation of bulk and reticulation water and sanitation infrastructure for the site.	R2.5 million
Roads and Storm water	Re-gravelling of external road infrastructure for the site	R3 million
	Construction of storm water system for the site	R1.5 million
	Provision of public transport services	R10.46 million
	Provision of traffic and informational signage	R600 000
	Main event site walkways and service roads	R1 million
Information and Communication Technology	Installation of Wi-Fi (first layer, 20 hotspots)	R5 million



Department	Responsibility	Estimated cost
Environmental Services Management	Internal security fencing.	R1 million
	Administrative outbuildings (post September 2014).	R0.00
	Grassing and landscaping of stage areas (portion of 18 ha).  (The following was stated in this regard: <u><i>This is a seasonal deliverable to be carried out during summer periods and before the next festival event.</i></u> )	R0.00
	Environmental requirements (applications, management plans, compliance and authorisations).	R500 000
Total		R40 560 000

We noted that the above “*Total*” reflected in the table is incorrect. Upon a recalculation of the amounts listed above, we established that the total estimated budget was R37 060 000.

The report further indicated that the allocations listed above would require re-prioritisation of the affected departments’ budgets and that the envisaged re-prioritisation of the affected departments’ budgets would constitute allocation of funds into new projects or transfers of funds between already approved CAPEX projects.

### 9.3 Various CoT departments and contractors involved

Our understanding is that the following CoT departments provided infrastructure services for the Dinokeng Music Festival:

- Energy and Electricity;
- Roads and Transport;
- Group Information and Communication Technology;
- Housing and Human Settlements; and
- Environmental Management Services.

The below table provides the following detailed information regarding the services these departments rendered for the Dinokeng Music Festival and the expenditure incurred by each of the departments:

- The budget approved by the Mayoral Committee for the department;
- The services rendered by each department for the Dinokeng Music festival;
- The expenditure incurred by each department for the Dinokeng Music Festival, as per a draft “*Status update on the Dinokeng (Tribeone) festival*”, drafted by Ndlovu, and dated 20 October 2014;
- The amounts paid to contractors for services rendered, based on invoices provided to us by the departments; and
- The amounts purported to have been incurred by the departments on SAP, as per the available WBS numbers of the departments.

In an attempt to verify the information provided by Ndlovu in the draft report, styled “*Status update on the Dinokeng (Tribeone) festival*”, dated 20 October 2014, we requested the appointment documents and payment documents relating to contractors used from each of the above listed departments. We further requested the financial documents relating to the payments made to the relevant contractors from the Finance Department.

The Finance Department indicated that they first require the invoice number or purchase order number to enable them to locate the financial information. The Finance Department was further unable to provide us with more information when we enquired about whether WBS numbers can be used to trace payments relating to the Dinokeng Music Festival. (We were informed that a WBS is a unique number allocated by each department to their respective projects.)

In order to mitigate the unavailability of financial documentation to an extent, we obtained access to CoT's SAP system to retrieve the required information directly from SAP. In doing so, we used the WBS numbers from the relevant departments relating to the Dinokeng Music Festival, (in instances where a WBS number was created by the relevant department), and obtained a view of the payments made under each WBS number. Our findings in this regard are reflected in the column styled "Amounts as reflected on SAP" in the table below.

The reason for the differences identified between the amounts reflected on SAP under each of the WBS's and the invoices provided to us could not be provided. We noted that a number of departments did not have readily available explanations relating the information on SAP versus the information in their files.

We could also not establish the reasons for the differences in the amounts as reported by Ndlovu in her report and the amounts as per the invoices provided by the departments and amounts as reflected on SAP.

We further noted that no supporting documentation is loaded onto SAP. It is therefore a concern that payments were apparently released by the Finance Department without considering the documentation in support of the information that was captured on the system.

Due to the limitations discussed above, we could only consider the documentation provided to us by the relevant departments, which is reflected in the column styled "*amounts paid to contractors as per documentation provided*" in the table below:

Department	Budget approved by MC	Services rendered	Amounts reported by Ndlovu	Amounts per invoices provided	Amounts as per SAP
Energy and Electricity	R12 000 000	Installation of bulk electricity, internal reticulation, street lights and high mast lights	R 8 163 069.68	R5 228 154.92	R6 106 986.15
Roads and Transport	R16 560 000	Construction of road infrastructure and signs	R 2 309 928.90	According to roads, all costs incurred were departmental costs	R779 455.48
Group Information and Communication Technology	R15 000 000	Installation of 20 Wi-Fi hot spots	R 5 000 000.00	R3 402 985.04	No information available
Housing and Human Settlements	R2 500 000	Construction of internal water network	R 4 464 232.71	R1 497 697.97	No information available

<b>Department</b>	<b>Budget approved by MC</b>	<b>Services rendered</b>	<b>Amounts reported by Ndlovu</b>	<b>Amounts per invoices provided</b>	<b>Amounts as per SAP</b>
Environmental Management Services	R1 500 000	Preparation of stage area including site clearance, levelling, installation of irrigation system with a borehole, and laying of instant lawn grass	R 3 085 729.62	R3 014 197.89	R2 644 033.24
<b>Total</b>	<b>R37 560 000</b>		<b>R23 022 960.91</b>	<b>R13 143 035.80</b>	<b>R9 530 474.87</b>

As discussed above, we considered the documentation provided to us by the relevant departments, supporting payments in an amount of R13 143 035. 80. The documents provided by the departments consisted of *inter alia* the following:

- The documentation relating to the appointment of the contractors;
- Invoices submitted by contractors; and
- Completion certificates, where available.

The contractors used for the Dinokeng Music Festival infrastructure services were all existing contractors to CoT when they were requested to perform services relating to the Dinokeng Music Festival. The terms of their pre-existing appointments by CoT made provision for rendering certain types of services to CoT in the area where the Dinokeng Music Festival took place. The appointments did not relate to specific contracts. We understand that contractors were used on an *ad hoc* basis by CoT to render the services listed in their contracts.

The table below reflects the documentation we received from the departments regarding the contractors they appointed and the payments made to these contractors:

Department	Contractors appointed	Services rendered	Payments made to contractors
Energy and Electricity	Tlopo Construction	Installation of cables to the site and providing internal reticulation, mini substations and distribution boxes	R4 018 986.67
	Zim Electrical	Installation, connection and energising the high masts	R656 397.63
	Sectional Poles	Installation of the high masts.	R552 770.62

Department	Contractors appointed	Services rendered	Payments made to contractors
Roads and Transport	It was indicated by Roads that only internal costs were incurred	N/A	N/A
Group Information and Communication Technology	Project Isizwe	Installation of 20 Wi-Fi hot spots	R3 402 985.04
Housing and Human Settlements	Makole Civils CC	Construction of internal water network	R1 497 697.97
Environmental Management Services	Gau Flora	Site clearance, levelling, installation of irrigation system with a borehole, and laying of instant lawn grass	R3 014 197.89
Total			R13 134 035.80

We analysed the information provided by the departments for each of the contractors appointed. We supplemented the information provided with documents obtained during a review of the key e-mail accounts. Our findings are set out below per department.

### 9.3.1 Energy and Electricity

#### 9.3.1.1 Appointment of contractors

##### ***Tlopo Construction***

Tlopo Construction was appointed by CoT from 1 July 2012 by means of a tender awarded to them for “Low-voltage and medium-voltage network construction.” They were appointed to provide these services at Region 5. We understand that the Dinokeng area falls under Region 5.

This tender was extended by Ngobeni on 27 August 2014 for a period not exceeding six months.

We understand that Tlopo Construction performed the Dinokeng festival services under this extension. Due to the broad description of the appointment, it appears that the services rendered for the Dinokeng Music Festival may fall within the scope of this contract.

##### ***Zim Electrical***

Zim was awarded a tender on 1 July 2011 for public lighting infrastructure maintenance and construction for a period of three years with effect from 01 July 2011 for Region 5.

An extension letter was provided to Zim Electrical, dated 27 August 2014, for the continuation of services under the above tender.

We understand that Zim Electrical performed the Dinokeng Music Festival services under this extension. Due to the broad description of the scope of services, it appears that this appointment covered the services rendered for the Dinokeng Music Festival.

##### ***Sectional Poles***

Sectional Poles was awarded a tender on 05 August 2011 for the supply, delivery, installation, and commissioning of lighting masts and scissor masts. The end date of the appointment was not specified in the document provided to us and it is therefore not clear from this document whether their appointment was still active when they were appointed to render services relating to the Dinokeng Music Festival. We understand that Sectional Poles rendered services for the Dinokeng Music Festival under this appointment.



### 9.3.1.2 *Payments to contractors*

The payments made to the contractors were within the budget for the Energy and Electricity Department, as approved by the Mayoral Committee on 20 August 2014.

### 9.3.1.3 *Physical verification of the infrastructure*

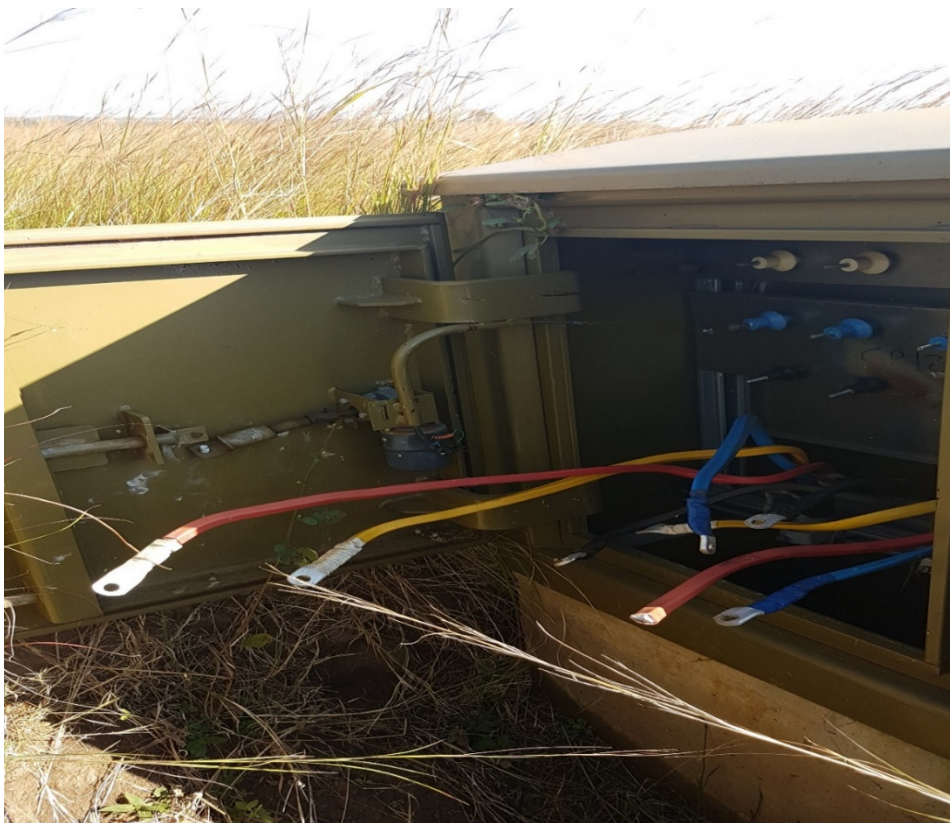
We performed a high level inspection during a site visit of the Dinokeng Music Festival site on 31 May 2017.

We identified the following electrical assets on the site:

- Four high masts;
- Two mini substations;
- One protective structure; and
- Approximately 54 streetlights.

From the below images, it appears that a number of streetlights were vandalised and it appears that the mini substations were stripped:





The maintenance of the CoT infrastructure is discussed in more detail in Section 9.4 below.

## **9.3.2 Roads and Transport**

### *9.3.2.1 Appointment of contractors*

We understand that only internal costs were incurred by the Roads and Transport Department and that no contractors received payment for services rendered for the Dinokeng Music Festival.

### *9.3.2.2 Payments to contractors*

Although the Roads and Transport Department indicated that no payments were made to contractors, we noted that an amount of R779 455.48 was reflected on SAP under the Dinokeng festival WBS number. We followed up with Roads and Transport to determine whether this amount related to internal costs and at the time of this report, we were still awaiting a response.

### *9.3.2.3 Physical verification of the infrastructure*

Krynauw informed us that the Roads and Transport Department performed the following departmental services for the Dinokeng Music Festival:

- Grading of the main gravel road running through the mine's property;
- Creating an access road to the main stage to serve as a path for construction vehicles;
- Clearing the area where the stage would be set up to ensure the ground is level and clean;
- Cutting of the grass at the parking area; and
- Preparing of temporary signage.

We performed a high level inspection during a site visit of the Dinokeng Music Festival site on 31 May 2017 and we identified the following road infrastructure on site:

- A main road from entrance to exit of site; and
- Gravel walkways.

The below pictures reflect a gravel walkway and the main road as per our site inspection on 31 May 2017:



The pictures below reflects the clearing of the stage area during September 2014.



### 9.3.3 Information and Communication Technology

#### 9.3.3.1 *Appointment of contractor*

Project Isizwe, a non-profit organisation, entered into an agreement with CoT on 6 August 2014 to provide 20 Wi-Fi hot spots for the Dinokeng Music Festival. No concerns relating to their appointment were identified.

#### 9.3.3.2 *Payments to contractor*

We noted that the payment to Isizwe, amounting to R3 402 985.04, is within the budget as approved by the Mayoral Committee.

#### 9.3.3.3 *Physical verification of the infrastructure*

We were provided with the below picture from Isizwe, which reflects the Wi-Fi masts, positioned on wooden poles at the festival site. (It should be noted that the lawn planted, discussed below, can also be seen on this picture):





Upon our site visit on 31 May 2017, we noted that the Wi-Fi masts were removed, as per the image below:



We requested more information from Project Isizwe and they explained that “...*due to the high rate of theft and vandalism we decided to remove the equipment from that location and re-deployed it in other parts of the City...*”

We were unable to obtain more information from the Information and Communication Technology Department regarding where the Wi-Fi masts were moved to and the arrangements in this regard as we were informed by the department that all individuals who were involved in the Dinokeng Music Festival are no longer employed at CoT.

We noted that Ndlovu subtracted the payment for the Wi-Fi mast in the report she drafted relating to the expenditure on the Dinokeng festival. This could be due to the fact that they were re-deployed elsewhere and capitalised under another CoT project. We were not able to verify this with Ndlovu before issuing this report.

## 9.3.4 Housing and Human Settlements

### 9.3.4.1 Appointment of contractor

Mahlati explained to us that Paul and Partners were performing reticulation services at Refilwe Township as the engineers, together with the contractor, Makole Civils. The Housing and Human Settlements Department therefore requested Makole Civils to assist with the reticulation of the Dinokeng Music Festival, with Paul and Partners as the engineers on the project.

Mahlati provided us with the appointment documentation relating to both Paul and Partners and Makole Civils relating to the Refilwe Township project.

Paul and Partners was appointed on 31 May 2013 as a professional Service Provider, resulting from a tender process.

Paul and Partners' appointment was later extended on 29 October 2013 by Ngobeni to the appointment as “*Programme Manager-Multidisciplinary Team*” for a period of three years. According to the appointment letter, Housing and Human Settlements required resources to assist CoT with responding properly to housing challenges in the CoT jurisdiction.

Although we were informed by Mahlati that Paul and Partners was appointed for reticulation services in the Refilwe Township, this appointment was not clear from the documentation provided to us by Mahlati.



Makole Civils was appointed on CoT's panel of contractors on 15 November 2012. On 15 March 2013, Makole Civils was appointed for water and sewer reticulation and servicing of 700 stands for Refilwe Manor Ext 9.

Based on the appointment letters provided to us of Paul and Partners and Makole Civils, it appears that the work performed by both Paul and Partners and Makole Civils for the Dinokeng Music Festival was done without having concluded a contract or agreement with them for these specific services. Mahlati confirmed that no extension letters were provided to Paul and Partners or Makole Civils.

#### **9.3.4.2** *Payments to contractors*

We were only provided with the information relating to the payment made to Makole Civils relating to the Dinokeng Music Festival and not with any information relating to the payments made to Paul and Partners. We were unable to locate any payments to Makole Civils and Paul and Partners on the SAP system, as we understand that no WBS was created for the Dinokeng Music Festival and that payments were made under other existing CoT projects.

We therefore cannot conclude whether the payments to the contractors were made within the budget as approved by the Mayoral Committee.

We noted that the amount reported by Ndlovu as incurred by the department for the Dinokeng Music Festival, exceeded the budget as approved by the Mayoral Committee for the department. However, as discussed above, these amounts reported by Ndlovu could not be verified on the SAP system or to any other documentation and we therefore cannot draw a definite conclusion regarding the status of the expenditure in this regard.

#### **9.3.4.3** *Physical verification of the infrastructure*

The internal water network could not be verified during the site visit.

### **9.3.5 Environmental Management Services**

#### **9.3.5.1** *Appointment of contractor*

Gau Flora was awarded the tender for the implementation of a variety of thematic parks in the City of Tshwane as and when required for a 36 month period with effect from 01 March 2013. Xaba explained that due to the broad terms of Gau Flora's appointment, no further appointment for the Dinokeng Music Festival was required.

It appears from the above that Gau Flora's appointment at CoT was sufficient to include services rendered for the Dinokeng Music Festival, as Gau Flora provided typical services for the development of a park, for example the planting of grass.

#### 9.3.5.2 *Payments to contractor*

It was indicated in the Environmental Management Services budget, as approved by the Mayoral Committee, that no funds were estimated for grassing and landscaping under the 2014 budget, as it was a seasonal deliverable, to be carried out during summer time. However, the Mayoral Committee approved an amount of R6 000 000 for landscaping services under the 2015/2016 budget.

According to the invoice provided by Gau Flora, they provided park development services in Cullinan, including *inter alia* earth works and compost, planting of a lawn and irrigation.

It therefore appears that the Environmental Management Services Department did not have the approval of the Mayoral Committee to incur expenditure relating to park development in the 2014 budget.

The Environmental Management Services Department however, re-prioritized funds in their budget relating to park development to compensate Gau Flora for the services rendered.

#### 9.3.5.3 *Physical verification of the infrastructure*

During our site visit on 31 May 2017, we noted that the stage area where the grass was planted was overgrown and the lawn planted could not be seen.

## 9.4 **Capitalisation and safeguarding of assets**

### 9.4.1 **Capitalisation of assets**

We were informed by Xaba that due to CoT not concluding a lease agreement with the mine, CoT was unable to capitalise the expenditure on SAP relating to the Dinokeng Music Festival.

Richards informed us that in the normal course of business, expenses relating to capital assets would be capitalised by CoT on the system. However, in the case of the Dinokeng festival, the infrastructure work performed on the Dinokeng site could not be capitalised as there was no lease agreement with the mine. She further explained that the costs have not been capitalised and that they are currently still in WIP on the system.

The implication of the failure to capitalise the costs filters through to the financial statements as the assets within the financial statements as well as the depreciation are not measured and calculated accurately. Therefore, the carrying value of assets as well as the profit for the period could be under or overstated because of the failure to capitalise expenditure.

Moreover, a decision to write-off the expenditure incurred needs to be taken by CoT as the infrastructure has been vandalised and is not in good working condition and the assets have depreciated in value.

#### **9.4.2 Safeguarding of assets**

As discussed above, upon a site inspection we performed on 31 May 2017, we noted that the infrastructure was not maintained or was vandalised/damaged and that the festival site was not secured and could easily be accessed by the general public.

In this regard, we identified a letter from the mine to CoT during November 2014 relating to security risks at the Dinokeng festival site. The mine noted that the following concerns were noted during an inspection at the festival site:

- Damage was done to the CoT transformer in an apparent attempt to remove the copper inside the transformer; and
- The electrical fence was cut in order to gain access to the festival site.

The mine informed us that CoT subsequently provided security guards at the festival site for a few months but that these security measures implemented by CoT was not sufficient to safeguard the infrastructure.

Based on the above, CoT failed to safeguard the infrastructure installed on the Dinokeng festival site.

## 10 Logistical arrangements

In addressing the mandate objective regarding the reasons for the failure of the Dinokeng Music Festival, we considered the following two aspects:

- Was the Dinokeng project treated as a bona-fide project by the Management Company JV ; and
- If the project was treated as a bona-fide project, consider potential reasons why the project failed.

### 10.1 Indications that this was a *bona-fide* project

In order to address whether the Dinokeng project was treated as a *bona-fide* project, we considered whether the Management Company JV implemented the following key aspects relating to the festival, as per their contract with CoT:

- The appointment of food and drink vendors;
- The booking of artists;
- The marketing of the event;
- Ticket sales; and
- Safety and security measures.

The level of implementation regarding these aspects is discussed in Section 7.3 of our report where we address the responsibilities of the Management Company JV as per the contract with CoT.

In this regard, we verified that efforts were made by the Management Company JV to execute the aspects listed above, indicating that the Dinokeng Music Festival was treated as a bona fide project by the Management Company JV.

### 10.2 Potential reasons why the Dinokeng project failed

We identified the following aspects as potential reasons why the Dinokeng project failed:

- The time management regarding the implementation of certain aspects of the project and time limits placed on the development of the infrastructure as a result of the failure by the Management Company JV to timeously provide CoT with the required information and plans;

- The number of tickets sold by the Management Company JV and their financial position;
- The ownership of the site and the fact that the terms of the lease agreement could not be agreed upon;
- The lack of due diligence and feasibility studies relating to the Dinokeng Music Festival; and
- The lack of decisive action by CoT when concerns on the project were identified during June 2014.

The table below contains more information regarding the reasons for failure, set out above:

Potential reasons	Detailed information regarding the potential reasons	Responsible party in terms of the contract
<p>The time management and time limits placed on the development of the infrastructure</p>	<p>The time management on the project is a concern in that a number of the key action points of the project were only addressed during mid-2014. These action points include:</p> <ul style="list-style-type: none"> <li>— The marketing plan was only provided to CoT on 30 June 2014;</li> <li>— A social media manager was only appointed on 8 July 2014;</li> <li>— The “Gantt” chart was not provided to CoT by 24 June 2014, and as a result, CoT did not have sufficient information to start with the infrastructure timeously, which placed significant pressure on CoT to complete the infrastructure in a short period of time;</li> <li>— The vetting of the vendor applications was not yet started on 22 July 2014; and</li> <li>— The ticket sales of Computicket were only opened on 12 August 2014.</li> </ul>	<p>Management Company JV</p>

Potential reasons	Detailed information regarding the potential reasons	Responsible party in terms of the contract
<p>Number of tickets sold</p>	<p>As discussed above in Section 7.3. of the report, the Management Company JV indicated shortly before the event that approximately 4 000 tickets were sold in total. We were able to confirm that 318 of those tickets were sold by Computicket in the amount of R183 910. We understand that a minimum sale of 30 000 tickets were required to prevent a shortfall in funds.</p> <p>We noted that, as a result of the low ticket sales, the Management Company JV subsequently requested a further R20 million contribution from CoT on 3 September 2014, which request we understand to be rejected by CoT.</p> <p>We also noted that the Management Company JV failed to pay a number of artists and service providers.</p> <p>It appears from the above that the Management Company JV's financial position may have contributed to them not being able to execute their duties timeously and according to the terms stipulated in the contract.</p>	<p>Management Company JV</p>
<p>Identification of ownership of the site</p>	<p>As indicated above in Section 6.1, knowledge of the ownership of the site was first obtained by CoT on 14 March 2014. Subsequent thereto, CoT failed to secure a lease agreement with Cullinan Diamond Mine. The rights to the festival site were therefore not secured before the festival.</p>	<p>CoT</p>

<b>Potential reasons</b>	<b>Detailed information regarding the potential reasons</b>	<b>Responsible party in terms of the contract</b>
<p>Due diligence and feasibility studies performed</p>	<p>As discussed in Section 5.1 above, the lack of credentials of the proposed partner of an event of this scale was something that should have been considered and communicated to the Mayoral Committee. Furthermore, if CoT had performed basic research on the feasibility of the Management Company JV's proposal in the context of the South-African market and music festival space, some risks could have been identified and explored earlier. An example of an aspect that should have been questioned and understood was how the Management Company JV intended to attract 100 000 attendees to a new event, where the biggest similar event, (Oppikoppie) only managed to attract approximately 20 000 attendees. Had these two aspects been considered more carefully by CoT, CoT might have re-considered the extent of the investment they provided for the festival.</p>	<p>CoT</p>



Potential reasons	Detailed information regarding the potential reasons	Responsible party in terms of the contract
<p>No decisive action when concerns were identified</p>	<p>As discussed above, Ndlovu raised concerns relating to the completion of the project in a letter to the Management Company JV during June 2014. She indicated in the letter that “..... <i>I am very concerned as to whether Rockstar4000 has the right capacity and ability to deliver this project</i>”.</p> <p>Ndlovu informed us that she copied Kwele in this correspondence.</p> <p>Despite these concerns being raised, CoT started with the infrastructure development on the festival site. Had Kwele re-evaluated the potential for success of the festival at this point, wasteful expenditure on the infrastructure development could have been avoided.</p>	<p>CoT</p>

## 11 Conclusions

Based on the information contained in our report, we conclude regarding the questions posed in our engagement letter, as set out hereinafter.

### 11.1 Were due process followed when the Dinokeng Music Festival was initiated and approved

Due process was not followed in the initiation of the Dinokeng Music Festival in that the City Events Implementation Guide, as approved by the Mayoral Committee on 15 August 2012, was not used by the Communication, Marketing and Events Department, despite the fact that the purpose of the guideline was set out as follows:

*“The centralisation of events was intended to assist departments and the City in prioritising high impact events based on strategic objectives of the City that have the purpose of strengthening the City’s brand. The event evaluation framework will ensure that event proposals are evaluated against City objectives. This would also help to manage the central budget more effectively.”*

The guideline further indicated that credentials, including industry track record and reference lists of the “events owners” had to be considered by CoT, to ensure that acceptable level of service is delivered by the event owners who are receiving investments from CoT.

This guideline was not considered by the Communication, Marketing and Events Department and, as a result, the credentials of the Management Company JV were not considered. This consideration was also not included in the report approved by the Mayoral Committee.

It is our understanding that the Mayoral Committee and the individuals who approved the conclusion of the Dinokeng Music Festival contract, had the required authority to do so. Although the necessary approvals were obtained, it appears that critical information was excluded from the Mayoral Committee report in that the City Events Implementation Guideline was not followed by the Communication, Marketing and Events Department.

## 11.2 The nature of the payments made by CoT, the recipients of these payments and whether any refunds were paid

The nature of the payments and the recipients thereof can be summarised as follows:

- An amount of R25 million was paid to Sony Music in three instalments as a Financial Contribution to the Dinokeng Music Festival. Due to CoT not enforcing any audit rights relating to the application of the funds paid to Sony Music, no supporting documents could be provided to us regarding the application of the financial contribution. We therefore cannot conclude on the recipients of the financial contributions and whether the Management Company JV received any refunds in this regard.
- Further amounts were paid by the relevant departments within the CoT to contractors for various services rendered during the installation of infrastructure at the Dinokeng Music Festival site. Ndlovu reported that the total expenditure for the infrastructure for the Dinokeng Music Festival was R23 022 960.91

We could only confirm R13 143 035.80 of this expenditure, as per the information provided to us by the departments. This amount represents payments made to contractors and does not include internal departmental costs, for example costs relating to the building material for the festival.

We therefore cannot conclude on the actual costs incurred relating to the infrastructure for the festival.

We, however, understand that only R5 million of the infrastructure was recovered when the Wi-Fi masts were apparently re-deployed by CoT to other areas and that the remaining costs for the infrastructure were lost due to damage or theft of the infrastructure or due to the fact that the infrastructure was built on property not belonging to CoT. In this regard, a loss of R18 022 960.91 (R23 022 960.91- R5 000 000) is estimated based on Ndlovu's report and a loss of R8 143 035.80 (R13 143 035.80- R5 000 000) could be independently calculated based on the documentation provided to us by the departments.

- No refunds paid were identified. CoT instituted legal action against the members of the Management Company JV to recover the financial contribution made by the City of Tshwane towards the Dinokeng Music Festival.

### 11.3 The actual project expenditure vs the project budget

The actual project expenditure vs the project budget should be considered with reference to the two categories of expenditure on the Dinokeng Music Festival, namely the financial contribution made by CoT and the development of Infrastructure.

With reference to the financial contribution, we noted that CoT paid R25 million, which was approved by the Mayoral Committee. The draft agreement, approved by the Mayoral Committee, provided for a payment of R25 million during the first year of the Dinokeng Music Festival. The contract further provided that the financial contributions for the second and third year would be negotiated at a later stage.

However, the contract concluded between CoT and the Management Company JV indicated that CoT would provide a financial contribution of R25 million in year one, R22 million in year two and R18 million in year three.

Ngobeni signed the agreement providing for unapproved payments in the amount of R22 million and R18 million respectively on behalf of CoT. It should be noted that the provisions of this contract relating to the future payments appears to be in contravention of Section 33 of the MFMA.

From available information, it appears as if the development of Infrastructure was completed within the approved budget of R40 560 000. However, this finding should be qualified, with consideration to the limitations and challenges experienced in trying to obtain financial and supporting information, for example, the Finance Department could not provide us with a view of all of the project-related expenditure for the Dinokeng Music Festival, as some of the expenses were paid from WBS numbers which were specifically created by each CoT department for the Dinokeng Music Festival, whilst other expenses were paid through existing projects' WBS numbers, which could therefore not be identified on the system as expenses relating to the Dinokeng Music Festival.

### 11.4 Whether fruitless and wasteful expenditure was incurred

Fruitless and Wasteful expenditure is defined in the MFMA as follows:

*"...expenditure that was made in vain and would have been avoided had reasonable care been exercised"*

From our findings above, it appears that both the financial contribution made by CoT and the Infrastructure-related expenditure potentially constituted fruitless and wasteful expenditure.

The financial contribution in the amount of R25 million was made in vain since the event contributed towards did not take place. This expenditure could have been avoided, had proper due diligence been performed, as per the City Events Implementation Guideline regarding the credentials and experience of the members of the Management Company JV and the feasibility of the event.

Reasonable care was further not taken by CoT when the contract was drafted in such a way that CoT had no oversight regarding the application of its financial contribution and no milestones had to be reached by the Management Company JV prior to the payment of an instalment of the financial contribution.

We understand that CoT instituted a claim against the Management Company JV in the High Court to recover the financial contribution made. Any recovery in this regard may reduce the amount of fruitless and wasteful expenditure incurred.

The payments towards infrastructure, to a maximum of R18 022 960.91, were also made in vain since the infrastructure was installed on property that did not belong to CoT and CoT therefore derived no benefit from the development. This expenditure could have been avoided, had the City of Tshwane refrained from proceeding with the development of infrastructure under circumstances where no lease agreement was in place regarding the property to be developed. Ngobeneni was aware of the fact that no lease agreement was concluded and that the development of infrastructure proceeded. He failed to prevent the fruitless and wasteful expenditure incurred in this regard.

It should further be noted that CoT raised serious concerns during June 2014 regarding the capability of the Management Company JV to organise the event successfully. The Deputy City Manager was aware of the concerns raised at the time. Despite this, CoT proceeded to incur the expenditure relating to the development of the required infrastructure.

## 11.5 The reasons why the project failed

The following were identified as potential reasons for the failure of the Dinokeng Music Festival project:

- The time management regarding the implementation of certain aspects of the project and time limits placed on the development of the infrastructure as a result of the failure by the Management Company JV to timeously provide CoT with the required information and plans;
- The small number of tickets sold by the Management Company JV and their financial position;
- The ownership of the site and the fact that the terms of the lease agreement could not be agreed upon;
- The lack of due diligence and feasibility studies relating to the Dinokeng Music Festival; and
- The lack of decisive action by CoT when concerns on the project were identified during June 2014.

## 11.6 The ownership of the land and the reason why the specific site was chosen

The relevant site, being *the farm Louwsbaken 476 Portion 0 (remaining extent)* is 60% owned by “Government” and 40% by the Premier Transvaal Diamond Mining Co Pty Ltd.

The “Government” portion is held on behalf of Government by the Department of Public Works.

Cullinan Diamond Mine is the sole shareholder of Premier Transvaal Diamond Mining Co (Pty) Limited.

We understand that based on legislation, Cullinan Diamond Mine holds all the rights to manage this property and the Department of Public Works will be entitled to share in the proceeds of a sale of the property, based on its 60% ownership.

No reason why the specific site was chosen could be identified.

## **11.7 Whether conflict of interest exist between the City Manager and a CoT service provider**

No conflict of interest was identified between the City Manager at the time and the service providers used during the Dinokeng Music Festival.

## **11.8 Other**

### **11.8.1 Expected contributions by the Management Company JV**

Although financial contributions to be provided by CoT over a period of three years, in the total amount of R65 million, was clearly stipulated in the contract, no expected financial contribution by the Management Company JV was stipulated in the contract.

### **11.8.2 Due diligence performed regarding the parties involved in the contract**

Sony Music and Rockstar were the parties CoT contracted with relating to the Dinokeng Music Festival.

We identified a company styled "*TribeOne Festivals*", with both Louw and Watson as directors of the company. It is a concern that, although no mention was made of the "*TribeOne*" name or entity in the contract, the name "*TribeOne Dinokeng festival*" was the name used to market the festival subsequent to the conclusion of the contract.

## 12 Recommendations

### 12.1 Possible action against individuals

CoT should consider obtaining legal advice regarding the suitability of corrective action to be instituted against the following individuals under the circumstances set out below:

- Ndlovu failed to implement the requirements of the City Events Implementation Guide prior to drafting the report to be submitted to the Mayoral Committee, requesting approval for CoT to take part in this event. This had the effect that the Mayoral Committee was not informed that Sony and Rockstar did not have prior experience in organising events at the scale of the Dinokeng Music Festival when the approval of the festival was considered;
- Ngobeni concluded a contract on behalf of CoT under circumstances where the terms of the contract was different from the contract terms approved by the Mayoral Committee. We understand that the terms of the contract concluded by Ngobeni may also have been in contravention of Section 33 of the MFMA;
- Ngobeni was aware of the fact that no lease agreement was concluded and that the development of infrastructure on the land where CoT had no legal rights proceeded. He failed to prevent the fruitless and wasteful expenditure incurred when infrastructure was developed on this land; and
- It should further be noted that CoT raised serious concerns during June 2014 regarding the capability of the Management Company JV to organise the event successfully. Kwele was aware of the concerns raised at the time. Despite this, CoT proceeded to incur the expenditure relating to the development of the required infrastructure. It should be considered whether the accounting officer and/or Deputy City Manager at the time should be held responsible for the fruitless and wasteful expenditure incurred in this regard.



## 12.2 The way forward

CoT should consider updating the control environment regarding the management of events to include the following:

- All project expenditure (internal expenditure and payments to external service providers) should be allocated correctly to the same WBS number to ensure that CoT is able to obtain an exact understanding of the nature and amount of expenditure regarding a specific project;
- A document retention protocol should be developed and implemented to ensure that project-related documentation and correspondence are retained for future reference;
- Implementation of the City Events Implementation Guide should be mandatory for all events;
- Due diligence regarding service providers, with specific focus on references and credentials, should be mandatory; and
- In instances where CoT is required to make a financial contribution, CoT should do so based on the other contract party achieving certain milestones. CoT should further have and exercise an audit right regarding payments made by the other contract party with public funding, provided by CoT.

## 13 Disclaimer

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The information contained in this report is based on prevailing conditions and KPMG’s view as at 25 July 2017.

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