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Dear Sir

RE: RESPONSE TO UNSIGNED AFFIDAVIT REGARDING PROPOSED WRITE-OFF OF UIFWE UNDER SECTION 32 OF THE MFMA

The National Treasury refers to your unsigned affidavit, received via e-mail on 14 August 20262026, concerning the proposed write-off of Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFWE) reflected in the Nelson Mandela Bay Municipality's (Municipality) UIFWE Register. The National Treasury has considered the affidavit against section 32 of the Local Government: Municipal Finance Management Act 56 of 2003, the Prescription Act 68 of 1969 and MFMA Circular No: 68 (Circular 68), dealing with the processing of UIFWE. While the affidavit, in National Treasury's view, identifies several correct legal principles, they are not consistently applied to the proposed write-off.

At paragraphs 3 to 5 of your unsigned affidavit, you state that UIFWE regarded as legally irrecoverable through prescription should be investigated by the Municipal Public Accounts Committee (MPAC) and, where appropriate, recommended to Council for certification and write-off under section 32 of the MFMA. Paragraph 9 correctly states that the Municipality must recover UIFWE from the liable person unless the statutory requirements for write-off are met. The statutory starting point is therefore recovery. A write-off occurs only after a proper investigation establishes that recovery is no longer legally possible.

This position is reinforced at paragraphs 16 to 18 of the unsigned affidavit, where the affidavit relies on the *Mbambisa* judgment and accepts that section 32 creates a mandatory recovery obligation. The later recommendation for a broad historical write-off must therefore be consistent with that obligation.

The National Treasury's main concern arises from paragraphs 34 and 35 of the unsigned affidavit. Paragraph 34 correctly states that the Municipality should not assume that all UIFWE recorded by a certain date has prescribed. It recognises that prescription depends on when the Municipality knew the identity of the responsible person and the facts required to pursue recovery. Paragraph 35 then calls for an item-by-item prescription assessment supported by the factual record for each UIFWE entry. The National Treasury agrees with this approach.

For avoidance of doubt, an "item-by-item" assessment means that UIFWE recoverability must be considered at the level at which the UIFWE was actually incurred. It does not mean a single assessment for an entire financial year, directorate, contract or aggregated register balance. Each individual amount must be examined on its own facts, including each invoice, payment, transaction, purchase order, or other discrete item of expenditure giving rise to UIFWE. For each such amount, the Municipality must determine the person potentially liable, the basis of liability, the date on which the Municipality knew or reasonably ought to have known the relevant facts and identity of that person, and the recovery steps taken.

However, paragraphs 36 to 40 of the unsigned affidavit appear to depart from that position. Paragraph 36 records that Circular 68 recommends that an incident report be submitted within 10 days of an item being entered into the UIFWE Register. Paragraphs 37 to 40 then appear to use the five-day and ten-day periods to determine when prescription starts and ends. Circular 68 may assist in deciding whether the Municipality acted with reasonable care, but its administrative timeframes cannot automatically determine when a debt became due for prescription purposes.

The affidavit itself records the correct prescription test. A debt becomes due when the creditor knows the debtor's identity and the material facts giving rise to the debt, subject to deemed knowledge where reasonable care would have produced that information. This requires a factual inquiry into each matter. Different UIFWE items may involve different persons, discovery dates, investigations and recovery steps.

Paragraphs 41 and 42 of the unsigned affidavit also require correction. Paragraph 41 refers to prescription commencing fifteen days after 30 June 2023 and then gives the date 15 July 2023, while paragraph 42 states that the claims would probably prescribe by 14 July 2026. Since prescription is central to the proposed write-off, the dates and legal basis should be verified before the matter proceeds.

The most material concern arises from paragraph 44 of the unsigned affidavit. The affidavit asks MPAC to investigate and recommend that all UIFWE on the Register as at 30 June 2021 be written off as irrecoverable due to prescription. The stated amount is R23 085 242 601.33. This appears inconsistent with paragraphs 34 and 35, which require an item-by-item assessment.

The inconsistency is clearer when paragraph 45 of the unsigned affidavit is considered. For the 2022 and 2023 financial years, the affidavit states that irrecoverability should only be determined after an item-by-item assessment. No clear legal basis is provided for applying an individual assessment from 2022 onwards while applying a broad financial-year approach to earlier expenditure. The same legal test should apply to each claim.

The National Treasury cannot support a blanket conclusion or recommendation that all UIFWE up to 30 June 2021 has prescribed. The age of the UIFWE incurred may justify an urgent investigation, but it does not, on its own, establish prescription. Each item should be assessed against the identity of the liable person, the facts giving rise to liability, the date those facts became known or could reasonably have become known, the recovery action taken and any event affecting prescription.

The affidavit correctly recognises, at paragraphs 46 to 49, that write-off does not end criminal or disciplinary consequences management. It also recognises at paragraphs 50 to 52 that where UIFWE became irrecoverable because recovery duties were not discharged, the Municipality may need to consider separate claims for loss or damage under section 176(2) of the MFMA. These processes should remain separate from the accounting write-off.

The appropriate way forward is for the Municipality to complete an item-level assessment of all UIFWE proposed for write-off. That assessment should identify the amount, nature of the irregularity, potentially liable persons, evidence of fault, dates of relevant knowledge, recovery steps, prescription position and consequence-management status. Once that work is complete, MPAC can conduct the investigation required by section 32 of the MFMA and place a reasoned recommendation before Council.

The unsigned affidavit is legally defective because paragraph 44 seeks a broad write-off of UIFWE up to 30 June 2021, amounting to R23 085 242 601.33, without first completing the item-by-item assessment required by paragraphs 34 and 35. Any decision by MPAC or Council based on this defective process will be unlawful and expose responsible officials and councillors to misconduct proceedings. The affidavit, whether unsigned or signed, should therefore not be served before MPAC or Council in its present form.

The National Treasury requires written confirmation, by 20 August 2026, that the unsigned affidavit has been withdrawn and that the legal concerns have been reported to MPAC and Council. The UIFWE report to be submitted to MPAC and Council should include the item-by-item assessment contemplated in paragraphs 34 and 35 of the unsigned affidavit, together with the guidance set out in this letter. Each individual UIFWE amount, including each invoice, payment or transaction, should be assessed for liability, recoverability, relevant dates, recovery steps and prescription. MPAC and Council should therefore receive the full item-level basis before considering any amount for certification as irrecoverable or write-off under section 32 of the MFMA.

The National Treasury trusts that you will urgently action this communication.

Kind regards

OGALALETSENG GAAREKWE
DEPUTY DIRECTOR-GENERAL: INTERGOVERNMENTAL RELATIONS
19 August 2026

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