



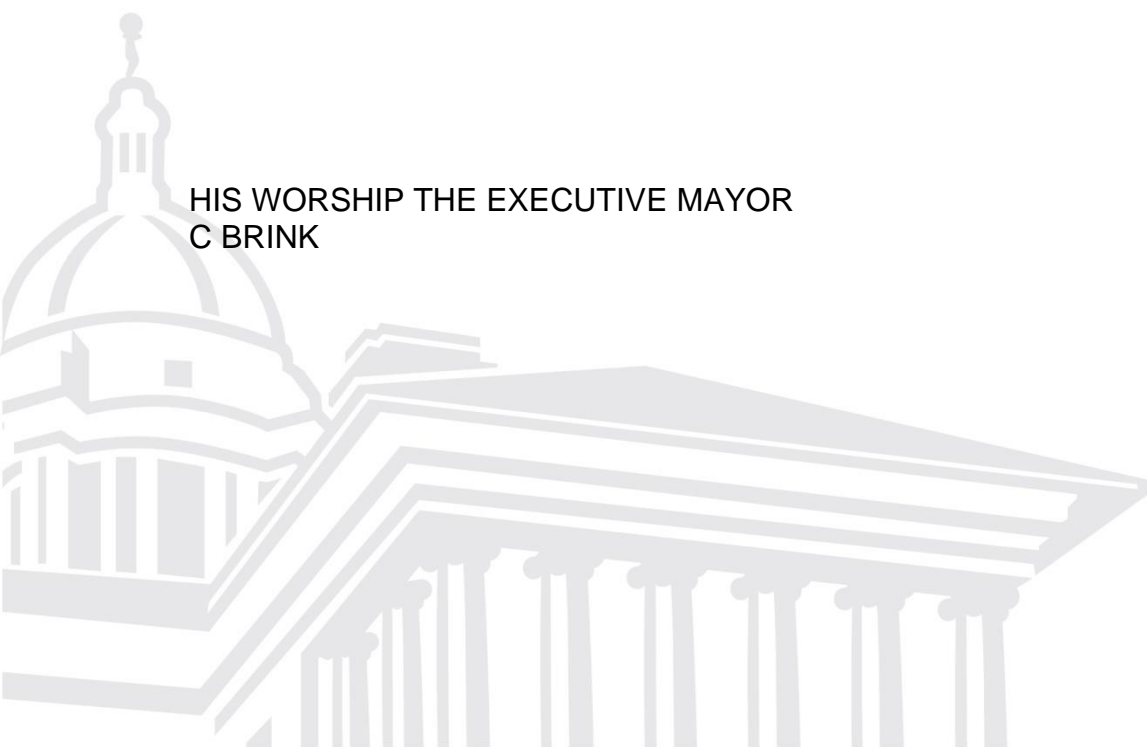
COUNCIL MEETING: 25 APRIL 2024

ANNEXURE A.2

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HIS WORSHIP THE EXECUTIVE MAYOR
C BRINK



A. MAYORAL COMMITTEE: 20 MARCH 2024: ANNEXURE A.2

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A. MAYORAL COMMITTEE: 20 MARCH 2024: ANNEXURE A.2

I. APPLICATIONS FOR LEAVE OF ABSENCE

RESOLVED:

That the following applications for leave of absence be ACCEPTED:

1. Member of the Mayoral Committee for Utility Services and the Regional Operations and Coordination; and
2. The Member of the Mayoral Committee for Roads and Transport.

II. APPROVAL OF THE MINUTES OF THE MAYORAL COMMITTEES: 21 FEBRUARY 2024 AND 6 MARCH 2024

RESOLVED:

- (a) That the minutes of the Mayoral Committee meeting of 21 February 2024, be approved; and
- (b) That the minutes of the Supplementary Mayoral Committee meeting of the 6 March 2024 be approved subject to the following amendments:

Page 8, item 3.1.1 Emergency Services Department, Report on Disaster Management threshold contingency reserve for the City of Tshwane

RESOLVED:

That recommendation 4 be amended to read as follows:

“That a follow up report that would include the names of the Non-Governmental Organisations that operate in the disaster and relief support sector be submitted to the Mayoral Committee.”

A. MAYORAL COMMITTEE: 20 MARCH 2024: ANNEXURE A.2

III. MATTERS CONSIDERED

Reference no. 96098/1
Siphumeze Cwayi (6039)
MAYORAL COMMITTEE: 20 March 2024

**1. CITY STRATEGY AND ORGANISATIONAL PERFORMANCE DEPARTMENT
TABLING OF THE PROPOSED 2023/24 DEPARTMENTAL BUSINESS PLAN
SCORECARD ADJUSTMENT**

1. PURPOSE

The purpose of the report is to table the proposed 2023/24 Adjusted Departmental Business Plans.

2. STRATEGIC PRIORITIES

- A professional public service that drives accountability and transparency.

3. BACKGROUND

Departmental business plans are a planning tool for departments to procure capacity required to achieve the City's Objectives. Through business plan proposals departments motivate and demonstrate the human and financial capacity required to deliver on their mandate.

The business plan adjustment process seeks to update plans as approved at the beginning of the financial year in support of the Service Delivery and Budget Implementation Plan (SDBIP). These plans include measurable performance objectives for the current year, quarterly projections of service delivery targets and other performance indicators in the same format as required for the municipalities.

In keeping with the service delivery and in support of the SDBIP, the business plan scorecards are expected to be adjusted in line with the SDBIP and the MTREF as and when it is adjusted to ensure operational alignment.

Consistent with the annual plans, lack of capacity and lack of operational functional relations persists although most departments opted to keep such requirements and rather negotiate the movements in the new financial year.

As the operating and implementation function of the city, the business plan process takes into account the operational imperatives of the National Treasury Circular 88 indicators.

4. DISCUSSION

4.1 DISCUSSION

Informed by the municipal constitutional objectives, the city has developed priority objectives to guide the city towards achieving these constitutional objectives. For this reason, departments capacity needs as outlined in the original business plan documents are crucial to attain the above constitutional mandate.

4.2 COMPONENTS AND COMPILATION OF THE SCORECARD

4.2.1 Compilation of the scorecard

A total of 694 KPIs are captured the 2023/2024 adjusted business plan scorecard, out of the 694 KPIs, 328 are C88 indicators. 162 KPIs of the 694 KPIs (23%) were adjusted as opposed to 30% adjustments in the same period last year. Only 12 KPIs are proposed to be removed from the scorecard with reasons as opposed to 64 KPI which were proposed to be removed in the same period last year. This reduction in [technical] adjustment is welcomed as an improvement in the planning process.

The 328 C88 indicators in the adjustment scorecards, serve to support the National Treasury planning and reporting process on service delivery, whose technical indicators are planned and reported at the operational level in support of the SDBIP.

In support of this scorecard, departments are urged to update Systems Descriptions to ensure that KPIs are supported by credible evidence and processes.

4.3 Overview of the Departmental Scorecard Adjustment

The table below illustrates nine KPI proposed for removal. Attention is drawn to reasons provided removal of KPIs, this essentially means there will be no monitoring of the functions, therefore departmental heads are urged to ensure that functions continue optimally.

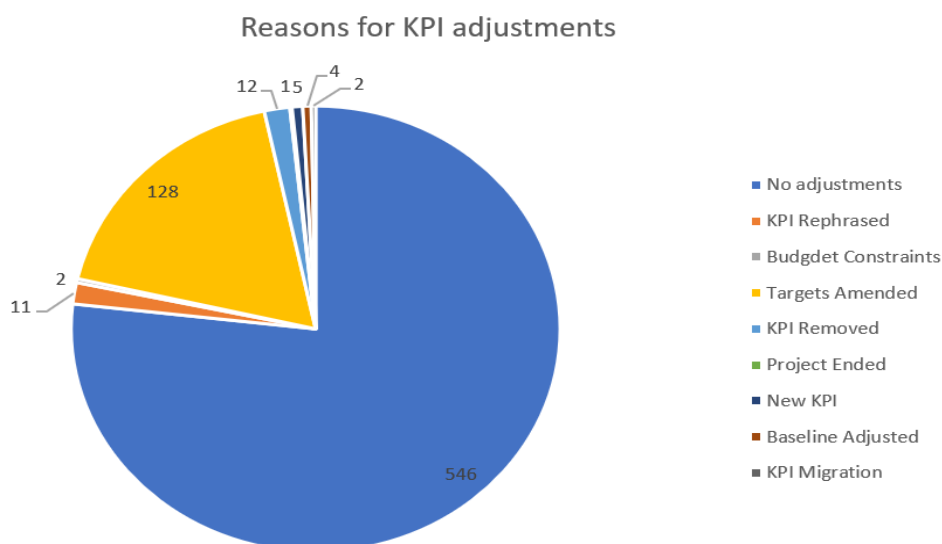
4.3.1 Table 1: KPIs removed from the scorecard.

Name of Department	KPI Code	Key Performance Indicator	Reason for adjustment
Group Human Capital	N/A	Number of IOD investigations conducted	The department had intense discussions on the 1 KPI which was realistically unachievable and the other KPI with an overachievement. It was then noted and agreed that the two KPI's should be integrated and should read as: Number of IOD's reported and investigated (reflecting backlog and current cases)
Group Human Capital	N/A	Number of trainings on the preferred culture for the Organization	Training as been conducted with departments and change management has laid a ground for departments to take over this function as the city introduced new values.

Name of Department	KPI Code	Key Performance Indicator	Reason for adjustment
Group Legal and Secretariat Services	N/A	Percentage of implemented Contract Management Strategy	The strategy is city wide concentrated and not specifically only for the department. Deliverables of strategy are involving multiple role players and there are no deliverable measures in place yet to monitor and provide evidence. As soon as the department's role is clearly specific, clarified and there are no interdependencies it will be reinstated.
Group Property Management	N/A	Number of reports submitted to BAC for expired leases, transfer and/or right to use on Council immovable assets	High level of non-responses from applicants in confirmatory correspondences and number of negative comments received from Group Legal & Secretariat Services for direct allocations. The matter is pending the outcome of a legal opinion and as it is not within the Department's control, the KPI needs to be removed.
Group Property Management	N/A	Number of real estate market analysis reports compiled	Capacity and information constraints experienced, therefore the KPI needs to be removed.
Group Property Management	N/A	Number of statutory compliances building equipment serviced (heavy roller doors)	There is no approved tender for roller doors, and it is foreseen that it will not be in place in the 2023/24 financial year, therefore the KPI should be removed (also due to the huge dependency on Supply Chain Management).
Group Property Management	N/A	Number of expired (month-to-month) leases terminated from the building rental portfolio	The market has been tested twice and if not responsive the second time, the Department might have to deviate based on exceptional circumstances. The KPI should be removed, as it is beyond the Department's control.
Group Property Management	N/A	Number of leased buildings with optimal office space planning	The 9-year position is not supported politically, therefore the KPI needs to be removed, as it is not practical to implement.
ROC	N/A	Total wastewater/sanitation callouts received	Repetition
ROC	WS3.1	Percentage of callouts responded to within 48 hours (sanitation/wastewater)	The KPI is not due for reporting, according to the C88 prescripts.
Shared Services	N/A	Percentage in compliance with Fleet Management Policy	KPI to be removed: During Q2 review session, most of the provisions in the policy were not implemented because that are no longer applicable and practical, as a result the policy will be reviewed.

4.3.2 Frequency of reasons for KPI adjustments

The chart below outlines the frequency of reasons for KPI adjustments. Only 23% of KPI are proposed for adjustment.



5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF AUDIT EXECUTIVE

Comments requested on 08 February 2024 3:24:55 PM and not received by 13 February 2024 5:29:40 PM.

5.2 COMMENTS OF THE CHIEF FINANCIAL OFFICER

Cognisance is taken of the content of the report.

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans.

There are no financial implications emanating as a result of this report for the City of Tshwane.

The proposed adjusted business plans should be aligned to the 2023/24 Medium-Term Revenue and Expenditure Framework.

5.3 COMMENTS OF THE CHIEF OF EMERGENCY SERVICES

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans.

The Emergency Services Department take note of the content of the report, and it is in support of the recommendations as contained in the report.

5.4 COMMENTS OF THE CHIEF OF POLICE

The purpose of the report is to table the proposed 2023/24 Departmental Business Plan Scorecard Adjustment. TMPD takes cognisance of the report but would like to indicate that it has no intention to revise any of its targets. The affected KPIs have been brought to the attention of the City Strategies and Organisational Performance Department for amendment.

5.5 COMMENTS OF THE CHIEF OF STAFF

Comments requested on 08 February 2024 3:25:01 PM and not received by 13 February 2024 5:29:38 PM.

5.6 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans.

In terms of Section 11 (3) (a) (b) & (n) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereafter called "MSA"), a municipality exercises its legislative or executive authority by developing and adopting policies, plans, strategies and programs, including setting of targets for delivery, promoting and undertaking development and also by doing anything else within its legislative and executive competence.

Section 51 of the MSA places a duty on the Municipality within its administration and financial capacity to establish and organize its administration in a manner that would enable the Municipality to amongst others, be performance orientated and focused on the objects of local government as embodied in Section 152 of the Constitution of the Republic of South Africa.

The report clearly highlighted that it complied with the MFMA circular 13 dated 31 January 2005 which provides guidance and assistance to municipalities in the preparation of the Service Delivery and Budget Implementation Plan (SDBIP) as required by the Municipal Finance Management Act (MFMA). The SDBIP gives effect to the Integrated Development Plan (IDP) and budget of the municipality and will be possible if the IDP and budget are fully aligned with each other, as required by the MFMA.

The circular also emphasis that, budget gives effect to the strategic priorities of the municipality and is not a management or implementation plan. The SDBIP therefore serves as a contract between the administration, council and community expressing the goals and objectives set by the council as quantifiable outcomes that can be implemented by the administration over the next twelve months.

Having regard to the aforesaid, and with specific reference to the contents of the report, Group Secretariat and Legal Services support the report and its recommendations.

5.7 COMMENTS OF THE GROUP HEAD: COMMUNICATIONS, MARKETING AND EVENTS

Comments requested on 08 February 2024 3:24:59 PM and not received by 13 February 2024 5:29:39 PM.

5.8 COMMENTS OF THE GROUP HEAD: COMMUNITY AND SOCIAL DEVELOPMENT SERVICES

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans.

The proposed adjustment of the SDBIP target, Number of work opportunities created by the department through EPWP is due to the fact that the current target of one hundred and twenty (120) is not aligned to the target set by the EPWP Division of eighty (80). The adjustment is meant to align the target with the EPWP target. The CSDS Department supports the purpose, contents, and recommendations of the report in line with the applicable policies and regulations.

5.9 COMMENTS OF THE GROUP HEAD: CUSTOMER RELATIONS MANAGEMENT

It is noted that the purpose of the report from the City Strategy and Organisational Performance Department is to table the proposed 2023/2024 Departmental Business Plan scorecard adjustment. The Customer Relations Management Department (CRM) has scrutinised this report and confirms that it is correct. No adjustments had been made to CRM's key performance indicators (KPIs).

The report content and its recommendations are supported.

5.10 COMMENTS OF THE GROUP HEAD: ECONOMIC DEVELOPMENT AND AMP; SPATIAL PLANNING

The Economic Development and Spatial Planning Department support the report and its recommendations.

5.11 COMMENTS OF THE GROUP HEAD: ENERGY AND ELECTRICITY

Comments requested on 08 February 2024 3:24:53 PM and not received by 13 February 2024 5:29:40 PM.

5.12 COMMENTS OF THE GROUP HEAD: ENVIRONMENT AND AGRICULTURE MANAGEMENT

Comments requested on 08 February 2024 3:24:58 PM and not received by 13 February 2024 5:29:39 PM.

5.13 COMMENTS OF THE GROUP HEAD: GROUP HUMAN CAPITAL MANAGEMENT

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans.

Group Human Capital Management department takes cognisance of the contents and supports the recommendations of the report.

5.14 COMMENTS OF THE GROUP HEAD: GROUP PROPERTY

The Group Property Department takes note of the content of the report and supports the recommendations of the report.

5.15 COMMENTS OF THE GROUP HEAD: HEALTH

The purpose of the report is to table the proposed 2023/24 FY adjusted Departmental Business plans. The health department takes cognisance and supports the recommendations in the report.

Adjustment of the key performance indicator on multisector HIV and AIDS response programme from "number of people reached with door-to-door AIDS education" to "number of people reached through multisector HIV, TB and STIs programmes" will enable inclusion of all people reached than only including those reached through door to door. Reduction in the number of people to be reached from 2 500 000 to 1 800 000 is due to delayed commencement of the programme owing to finalisation of matters pertaining to cost containment and exemption of this programme from cost containment as it is funded through conditional grant.

5.16 COMMENTS OF THE GROUP HEAD: HUMAN SETTLEMENT

Comments requested on 08 February 2024 3:25:04 PM and not received by 13 February 2024 5:29:38 PM.

5.17 COMMENTS OF THE GROUP HEAD: REGIONAL OPERATIONS AND COORDINATION

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans.

ROC takes cognisance of the contents of the report.

However, CSOP is requested to amend the following KPI targets as per the original submission from ROC:

KPI	Annual Target	Q3	Q4
Customer Average Interruption Duration Index (CAIDI)	Annual Reporting Indicator	Annual Reporting Indicator	Annual Reporting Indicator
Number of potholes reported	Reporting Indicator	Reporting Indicator	Reporting Indicator
Number of blockages in sewers that occurred	Reporting Indicator	Reporting Indicator	Reporting Indicator
Total sewer length in KMs	Reporting Indicator	Reporting Indicator	Reporting Indicator
Number of water mains failures (including failure of valves and fittings)	Reporting Indicator	Reporting Indicator	Reporting Indicator
Number of unplanned water service interruptions	Reporting Indicator	Reporting Indicator	Reporting Indicator
Total number of water service connections	Reporting Indicator	Reporting Indicator	Reporting Indicator
Number of storm water catch pits cleaned	3000	420	0
Length in (kilometers) of storm water drainage systems cleaned	0.75km	0	0
Sum of available hours for all community halls in the period of assessment	Reporting Indicator	Reporting Indicator	Reporting Indicator
Total connected kVA served	Annual Reporting Indicator	Annual Reporting Indicator	Annual Reporting Indicator
Sum of total connected kVA of load interrupted in kVA per defined period	Annual Reporting Indicator	Annual Reporting Indicator	Annual Reporting Indicator

ROC supports the report its objectives and recommendations, provided that the above inputs and amendments from ROC are included in the final report.

5.18 COMMENTS OF THE GROUP HEAD: ROADS AND TRANSPORT

The Department Roads and Transport supports the report on the proposed 2023/24 departmental business plan scorecard adjustments, as well as its recommendations.

5.19 COMMENTS OF THE GROUP HEAD: SHARED SERVICES

The purpose of the report is to table the proposed 2023/24 adjusted departmental business plans. The adjustments are in line with the submission from the department. Recommendations of the report are supported.

5.20 COMMENTS OF THE GROUP HEAD: WATER AND SANITATION

Comments requested on 08 February 2024 3:24:57 PM and not received by 13 February 2024 5:29:40 PM.

5.21 COMMENTS OF THE OFFICE OF THE CHIEF OPERATIONS OFFICER

Cognisance is taken regarding the contents of the report. The proposed adjustments are supported based on confirmation by the various departments in the cluster.

6. IMPLICATIONS

6.1 HUMAN RESOURCES

Initial 2023/2024 Business Plan reflects Human Capacity Resources requirements by departments.

6.2 FINANCES

Budget is required in line with departmental plans.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

This report is written in support of the MFMA Circular 13.

6.4 COMMUNICATION

Approved report must be circulated to all departments for implementation.

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

Approved 2023/2024 Business Plan.

7. CONCLUSION

That the business plan scorecard be used as reporting mechanism to measure the City's operational planning in support of the short and the medium-term planning and reporting.

This emphasises the importance of operational activities, process mapping, clear roles and responsibilities and accountability for all resources allocated to departments.

CSOP once again request the executive to finalise structural functions relationships between departments especially the functional relationship between ROC and those departments that it supports.

RESOLVED:

1. That the adjustment to the 2023/24 Business Plans Scorecard, be approved; and
2. That the departmental reporting per quarter be tracked against the approved Adjusted Departmental Scorecards as contained herewith.

Reference no. 06259/1]
 Verusha Morgan (7305)
 MAYORAL COMMITTEE: 20 March 2024

2. GROUP PROPERTY DEPARTMENT A REPORT ON THE RULE THAT PROHIBIT EMPLOYEES TO OCCUPY THE CITY'S PROPERTIES

1. PURPOSE

The purpose of the report is as follows:

- a. To address the item on the Mayoral Committee action list and to provide the Committee with an explanation on the legislative prescripts prohibiting Council employees and/or officials and/or councillors from occupying Council owned assets;
- b. To provide the implementation plan to ensure compliance; and
- c. To request approval for the new property allocation process.

2. STRATEGIC PRIORITIES

- A City that delivers excellent services and protects the environment;
- A City that keeps residents safe; and
- A City that cares for residents and promotes inclusivity.

3. BACKGROUND

3.1 REGULATION 44 OF THE SUPPLY CHAIN MANAGEMENT REGULATIONS

The City has historically allocated residential properties to council employees and/or officials and/or councillors without following any Supply Chain Management (SCM) processes. The properties were allocated on a first-come-first-serve basis. In 2019 the City centralised the management and custodianship of immovable properties under Group Property, and this also included a substantial portfolio of residential assets. As part of the ongoing clean-up initiatives, Group Property approached National Treasury for guidance on the application of Supply Chain Regulation 44 which states as follows:

The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award to a person—

(a) who is in the service of the state..

The department sought clarity on whether the continued granting of leases to employees constitutes an "award" as envisaged in the Regulation. In response, National Treasury provided guidance via letter. An excerpt from the letter states as follows:

In terms of the Municipal Finance Management Act (MFMA), especially Regulations 44 of the SCM Regulations, a municipality or municipal entity may not make award to a person who is in the service of the state. Therefore, please note that the municipality must conduct its affairs according to the policies duly adopted and consistent with the local government legislative framework. This means that the municipality would be required to develop a mechanism, consistent with the legal framework, which was introduced in 2005, to enable smooth transition from historical practices. The renewal of the lease agreements with the employees would fall foul of Regulation 44.

A meeting was also arranged with National Treasury and then Accounting Officer (Dr M. Mosola), GSO (Ms Lorette Tredoux) as well as Group Legal Services Department and Group Property Department. The above advice was further reiterated by National Treasury.

In light of the volatile labour relations issues experienced in 2019 and the expectations from staff already occupying the premises a legal opinion was also sought to confirm the National Treasury guidance before drafting a report to Council for approval.

LEGAL OPINION ON COMPLIANCE WITH REGULATION 44

As an additional due diligence measure, and in consideration of the implications of the National Treasury Advisory Note, Group Property instructed Group legal and Secretariat Services to obtain an opinion of Senior Council on the matter. A legal opinion was then received from on 2 September 2019 stating, among others, that:

- *Regulation 44 of SCM Regulations, in strict terms forbids City of Tshwane (CoT) to let any municipal property to its employees, officials and councillors;*
- *The above legislation is directed at the prevention and/or curtailment of the systematic corruption that is prevalent in all spheres of Government and which threatens to destroy our democracy based on the rule of law;*
- *With the above mentioned, it is impossible to contemplate, for instance, that in circumstances where housing needs to be provided to municipal employees and officials in order to operate critical management services that cannot function properly without 24/7 supervision, that they ought to be exempted from the said regulatory regime;*
- *In addition thereto, section 170 of the MFMA provides that the National Treasury, on good grounds, accommodation offered on site to employees and officials required to supervise critical municipal services at depots, ought to be exempted from the provisions of Regulation 44 of SCM Regulations;*
- *Unless Treasury has, upon written application by CoT, exempted certain classes of accommodation from the provisions of Regulation 44 of the SCM Regulations, CoT accounting officer, chief financial officer, senior managers and officials may be subjected to the disciplinary proceedings prescribed in sections 171 and 172 of the MFMA and to criminal proceedings in terms of sections 173 and 174 of the MFMA for letting property to state employees;*
- *The CoT is advised to immediately determine the location and exact property description of those residential properties that are required to provide accommodation to those employees or officials that need to supervise critical municipal service installations and depots. In respect of such properties, consultant needs to immediately seek exemption from Treasury in terms of section 170 of the MFMA;*

- *In respect of all other municipal properties not exempted in terms of section 170 of the MFMA and which are occupied by tenants who are state employees, the CoT must give adequate notice to all occupiers or termination of any lease or other arrangement in terms of which such properties are being let or occupied; and*
- *Thereafter the CoT must evict all occupiers who remain in occupation due regard being had to the prescripts of the Constitution, PIE and other relevant legislation.*

Within the above context there were some properties that were applied for in terms of exemption as per Section 170 of the MFMA, these were approved by National Treasury. A further 214 properties were identified for transfer for social housing purposes to Housing Company Tshwane, Council resolution to sell via auction for some of the properties was obtained and the remainder of the residential portfolio were submitted to Council for consideration on the way forward on 28 November 2019. Council did not support the report and withdrew all recommendations. The details and proposed way forward are contained below.

4. DISCUSSION

4.1 OVERVIEW OF THE RESIDENTIAL PORTFOLIO

The Department is currently managing 333 properties. The table below indicates the current breakdown of leased residential stock managed by Group Property Department:

Property Description	Number of Properties
Houses	159
Complex	120
Service residential Units	54
Total	333

In addition to the above, the City donated 214 properties to Housing Company Tshwane (HCT) for social housing purposes through the directive of MAYCO and subsequent resolution of Council in November 2019.

The overview of the tenancy within the 333 residential units under Group Property is as follows:

- The 183 employees (officials and councillors) with active billed accounts are 183 and accounts for R1,130,436.21 in monthly billed rental instalment;
- The total number of employees with up-to-date billed rental accounts is 122 out of the 183 rental accounts;
- There are a total of 50 external tenants with active rental accounts and they account for R299,626.76 in monthly billed rental instalment; and
- The total number of external tenants with up-to-date rental accounts under this portfolio is 14.

4.2 NATIONAL TREASURY GUIDANCE ON REGULATION 44 OF THE SUPPLY CHAIN MANAGEMENT REGULATIONS

The City has historically allocated residential properties to council employees and councillors without following any Supply Chain Management (SCM) processes. The properties were allocated via a waiting list.

As part of the ongoing clean-up initiatives, Group Property approached National Treasury for an advisory note on the application of Supply Chain Regulation 44 which states as follows:

The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award to a person—

(a) who is in the service of the state.

An excerpt from the National Treasury guidance states as follows:

In terms of the MFMA, especially Regulations 44 of the SCM Regulations, a municipality or municipal entity may not make award to a person who is in the service of the state. Therefore, please note that the municipality must conduct its affairs according to the policies duly adopted and consistent with the local government legislative framework. This means that the municipality would be required to develop a mechanism, consistent with the legal framework, which was introduced in 2005, to enable smooth transition from historical practices. The renewal of the lease agreements with the employees would fall foul of Regulation 44.

In an attempt to ensure compliance a report was submitted to Council dated 28 November 2019, the report was referred back and all recommendations were withdrawn. The department however complied with exemption in terms of Section 170 of the MFMA as indicated below. The way forward in addressing the remainder of the portfolio issues is contained under 4.3.2. of this report.

4.3 IMPLEMENTATION PLAN - KEY INTERVENTIONS AND ROADMAP TOWARDS COMPLIANCE WITH REGULATION 44

The National Treasury guideline and legal opinion provide the CoT with the following two directives namely;

- Only officials using residential properties for provision of services must be allowed to continue residing in these. Pursuant to this, the city needs to immediately seek exemption from Treasury in terms of section 170 of the MFMA; and
- Ensure compliance with regulation 44 of the Municipal Supply Chain Management Regulation and rectify the irregular historical practices and terminate existing contracts with council employees, officials and councillors giving them a fair notice to vacate the properties and place the lease of properties on open market or use them for social purposes.

This section outlines the various measures under way in response to the Treasury directive and the legal opinion with specific reference to the 333 residential dwellings under Group Property. The 333 is made up of the following tenancy mix:

- 183 properties occupied by employees/councillors with active billed rental accounts;
- 50 properties occupied by external tenants with active rental accounts with arrear rental amount of R7,904,644.29; and
- 100 properties are illegally occupied.

4.3.1 EXEMPTION IN TERMS OF SECTION 170 - COMPLETE

Group Property Department identified 55 properties located in waterworks depots and nature reserve that are currently used to ensure continuation of service and these are:

- 4 Houses in Baviaanspoort waterworks;
- 4 houses in Bon Accord query;
- 1 house in Booyens Nursery;
- 4 Houses in Daspoort waterworks;
- 4 houses in Derdepoort resort;
- 1 house in Faerie Glen Nature Reserve;
- 1 house in Fort Klapperkop Nature Reserve;
- 5 houses in Groenkloof Nature Reserve;
- 1 house in Groenkloof Reservoir;
- 1 flat in Joos Bekker Park;
- 1 house in Pretoria Cemetery;
- 3 houses in Rietvlei Nature Reserve;
- 7 houses in Rietvlei waterworks;
- 9 houses in Rooiwal Waterworks;
- 2 houses in Zandfontein Cemetery; and
- 7 houses in Zeekoegat waterworks.

An application was sent to National Treasury to request exemption from Regulation 44 Supply Chain Management Regulations to continue with the utilisation of these properties for the provision of services. The said exemption was granted. Within the 55 Properties, the following measures are already underway:

- Two (2) eviction notices have been issued and the matters are currently with Group Legal Services Department for eviction through the courts;
- Six (6) contravention notices have been issued for the service houses due to non-payment, the arrear rental value of the contravention notices is R504,992.44;
- Four (4) termination notices have been issued on tenant residing in these services houses, the arrear rental value of these contravention notice is R270,274.80; and
- Continuous tenant verification and audit to ascertain the tenancy and usage of these properties.

4.3.2 COMPLIANCE WITH NATIONAL TREASURY AND LEGAL OPINION

The second element of the process was to effect evictions on the rest of the property portfolio. In consideration of the potential impact of such a far-reaching eviction proceeding, it was decided that an endorsement of council is required. To this end, Group Property drafted a report to Council outlining the context of the National Treasury advisory along with the legal opinion. As part of this exercise, guidance was

also solicited from Group Legal on what would constitute “fair notice” and for mapping the process of eviction.

The report made several recommendations with the overarching intention being to facilitate systematic eviction of employees. The report was discussed in Council on 28 November 2019, but it was not favourably received. Council then resolved that the report must be referred back and all recommendation must be withdrawn. Councillors expressed grave disagreement with the National Treasury guidance and Legal opinion.

With the lack of support for the implementation of the National Treasury guidance from Council, Group Property Department attempted to explore other options to address the irregularity, such as using the properties for its social housing, advertise for rental on an open market, dispose assets by way of auctioning provided due notice is given to current occupants.

To achieve the objective of cleaning up the residential portfolio there are several measures that are current being rolled out and these are outlined briefly:

4.3.2.1 PROPERTIES TO BE SOLD IN AUCTION - TRANSFER ANTICIPATED BY Q4 2024/2025 FY

In its meetings held 24 March 2016 and 30 June 2016 council approved the sale of at least 152 standalone houses and 2 flats by way of auction. These properties are occupied by council employees, officials, and councillors. The above-mentioned legal opinion also means that these employees, officials and councillors will not be able to bid for the properties as this would constitute an award to a person in the service of the state and would fall foul of SCM Regulation 44. The sale could not be implemented due to long-standing prohibition against the sale of council owned land. As part of addressing the City’s cash position, a motivation was submitted to the Accounting Office (Mr J. Mettler) for the sale of the said properties, and this was accordingly approved on 22 March 2023. A procurement process is current under way for the appointment of the auctioneer. According to interval valuations, the earmarked properties will yield a revenue of R200 000 000. However, the department has instructed independent valuers to undertake market valuations in preparation for the auction process and to ensure that the City receives maximum revenue for the stock.

4.3.2.2 EVICTION OF DEFAULTING EMPLOYEES , OFFICIALS AND COUNCILLORS - PHASE 1 IN PROGRESS ALL INSTRUCTIONS TO GROUP LEGAL BY Q2 2024/25FY

Along with the auction process, the Department is undertaking a comprehensive eviction process, with the initial target being the employees, officials and councillors whose accounts are in arrears. The following measures have already been implemented in this regard:

- 51 eviction notices have been issued;
- 49 cases have been referred to Group Legal Services Department for eviction; and
- An additional 20 cases are in the process of being referred to Group Legal for eviction.

In the bid to improve revenue performance from the residential portfolio, Group Property submitted a request to Group Human Capital Management to recover rental by way of salary deductions. This was however not implemented as it was considered contrary to Labour Relations.

4.3.2.3 NOTICE TO VACATE OF CURRENT EMPLOYEES AND COUNCILLORS - PHASE 2 NOTICES TO BE SENT BY Q2 2024/25 FY

The remainder of the leases need to be aligned to the National Treasury guidance (Regulation 44) and notice to terminate and/or evict these employees must then be implemented. Both the National Treasury guidance and Legal Opinion pointed to the need to give employees reasonable notice. In order to further clarify the directive, Group Property obtained an advisory opinion from Group Legal Services on the process to be followed towards full implementation of the eviction proceedings in compliance with the treasury directive and in the context of the need to grant “reasonable notice”.

Risk and Challenges:

The main risk and challenges experienced when the properties are vacated are as follows:

- Security costs for safeguarding property once vacated;
- Potential theft and vandalism;
- Potential further illegal occupation; and
- Loss of revenue from rentals.

To address the above some of the residential stock is being sold via auction, a further report is being drafted for Council approval to confirm the properties that are not required for basic services as contemplated by the MFMA as well as the Municipal Asset Transfer Regulations and may be rented. Once approval is obtained these will follow the SCM and/or Land Management Policy. The Land Management Policy that is currently under review is intended to incorporate a process to ensure efficiency in the residential lease portfolio.

In the interim the following mitigation is proposed to address the National Treasury guidance and current leases to employees, councillors, and officials in the employ of the state.

4.3.2.4 INTRODUCTION OF A NEW PROPERTY ALLOCATION PROCESS - UPON APPROVAL

Along with the set of measures outlined in the preceding section, Group Property Department is introducing a new application and placement process for the properties that remain under the department’s custodianship. The said approach is benchmarked against other Cities (Cape Town and Johannesburg) and comprises the following steps:

- Applicants who intend to apply for residential lease agreement must fill in the approved lease application forms obtainable from Group Property Department, Property Revenue and Contract Management section;

- The lease application form must be filled in by the prospective applicant, signed and returned to Group Property with supporting documents (Certified copy of ID, three months bank statement, three months' pay-slip);
- A vetting process is being introduced, to assess the credit-worthy status of the applicant and to also confirm that they are not an employee of the City;
- Group Property will process the signed application form together with supporting documents and put the application of the applicant who meets all the requirements on the Waiting List;
- Only the applicants who have completed the lease application forms, submitted all supporting documents, and qualified will be placed on the Waiting List;
- Once a vacant property becomes available through a termination of lease by one of the tenants, the first application on the Waiting List will be informed in writing when the property is ready for leasing and occupation;
- Should the first applicant on the Waiting List decline the request to sign a lease and occupy the property, the next applicants on the list will be notified of the available property up until one of them sign a lease, pay the deposit amount, and moves into the property;
- No lease agreement will be concluded with a person who failed to submit the lease applications form and the required supporting documents; and
- After the conclusions of the residential lease agreement, the successful applicant will be required to pay the full deposit amount equivalent to the monthly rental amount before taking occupation of the property.

4.4 KEY TRANSVERSAL CHALLENGES

Some of the key transversal challenges in the bid to implement this roadmap will include the following.

- Conflict of interest - Current councillors, officials and employees residing in Council properties are conflicted as most have a role in contract and law enforcement (i.e. some tenants are working for Tshwane Metro Police Department (TMPD), Group Financial Services, Group Human Resources Management, Group Property Department, Energy and Electricity etc. and may potentially derail some of the actions taken to deal with contract and law enforcement;
- Evictions on residential properties requires the City to provide temporary alternative accommodation;
- The City does not have adequate financial resources to pay legal fees to pursue eviction cases, provide alternative accommodation which comes with huge operational costs for services, transportation, and security in many instances;
- Through precedence, the City established that most evicted occupants utilize temporary alternative accommodation as permanent residence; and
- The timeframes for implementation of evictions and steps to be followed are lengthy as indicated in the 2019 memo from Group Legal Services.

5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF FINANCIAL OFFICER

Cognisance is taken of the contents of the report.

The purpose of the report is to provide the Mayoral Committee with an explanation on the legislative prescripts prohibiting Council employees from occupying assets.

Note of National Treasury's guideline regarding Council employees from occupying assets and two legal opinion provided to the City as alluded in paragraph 3 and 4 of the report.

It is a concern to Group Financial Services that there are arrears on Council employees/councillors, former Councillors and employees municipal services accounts for longer than 3 months which is against the provision of the Municipal Systems Act 32 of 2000.

Non-payment by account holders (Council employees/councillors) for their municipal services has a direct negative impact on the City's ability to deliver on its legal mandate in respect of service delivery to its clients and in general to meet its objects as provided for in Section 152 of the Constitution of South Africa Act 108 of 1996.

Therefore, Item 10 of Schedule 2 of the Municipal Systems Act 32 of 2000 must applied to employees with accounts in arrears for a period longer than 90 days in respect of municipal services, whereby the outstanding monies are recouped via salary deductions.

Group Financial Service will render further financial comments on further report in this regards.

5.2 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The purpose of the report is to provide the Mayoral Committee with an explanation on the legislative prescripts prohibiting Council employees from occupying assets.

Section 51 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereafter referred to as the "MSA") provides that, a municipality must within its administrative and financial capacity, establish and organize its administration in a manner that would enable the Municipality to be responsive to the needs of the local community; facilitate a culture of public service and accountability amongst its staff; and be performance orientated and focused on the objects of local government as embodied in Section 152, of the Constitution of the Republic of South Africa.

In terms of section 38 (c) of the MSA a municipality is required to administer its affairs in an economical, effective, efficient and accountable manner.

Note is taken as per the contents of the report that, the city has historically allocated residential properties to council employees and councillors without following any supply chain management processes. The properties were allocated simply on a first come first serve basis. This department then saw a need to request National Treasury guidance as to whether Regulation 44 of the SCM Regulations precludes the city from letting its capital assets to its employees.

The requested guidance from the National Treasury as contained in the letter dated 7/08/2018 guides that, " In terms of the MFMA, especially Regulations 44 of the SCM Regulations, a municipality or municipal entity may not make award to a person who is in the service of the state. Therefore, please note that the municipality must conduct its affairs according to the policies duly adopted and consistent with the local government legislative framework. This means that the municipality would be required to develop a mechanism, consistent with the legal framework which was

introduced in 2005, to enable smooth transition from historical practices. The renewal of the lease agreements with the employees would fall foul of Regulation 44”.

A legal opinion was then sourced and obtained from Advocate Allen Liversage SC on 2 September 2019 which as per paragraph 6 of the Legal Opinion concluded as follows:

1. Unless Treasury has, upon written application by Consultant, exempted certain classes of accommodation from the provisions of Regulation 44 of the SCM Regulations, Consultant’s accounting officer, chief financial officer, senior managers and officials may be subjected to the disciplinary proceedings prescribed in sections 171 and 172 of the MFMA and to criminal proceedings in terms of sections 173 and 174 of the MFMA for letting property to state employees;
2. Consultant is advised to immediately determine the location and exact property descriptions of those residential properties that are required to provide accommodation to those employees or officials that need to supervise critical municipal service installations and depots. In respect of such properties, Consultant needs to immediately seek exemption from Treasury in terms of section 170 of the MFMA;
3. In respect of all other municipal properties not exempted in terms of section 170 of the MFMA and which are occupied by tenants who are State employees, Consultant must give adequate notice to all occupiers of termination of any lease or other arrangement in terms of which such properties are being let or occupied; and
4. Thereafter Consultant must evict all occupiers who remain in occupation, due regard being had to the prescripts of the Constitution, PIE and the legislation discussed in the opinion.

This report is in compliance with the provisions of regulation 13 of Performance Management Regulations, 2001, published under the Municipal Systems Act, 2000, which states that the purpose of reporting or giving feedback is to assist in monitoring, which aims to provide managers, decision makers and other stakeholders with a regular feedback on the progress made with implementation so that corrective measures may be put in place, where necessary.

Having taken regard to the aforesaid and with specific reference to the contents of the report, Group Legal and Secretariat Services Department takes cognisance of the report and the recommendation thereof.

6. IMPLICATIONS

6.1 HUMAN RESOURCES

None.

6.2 FINANCES

None.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

Litigation with some employees on the implementation of the 2016 Council Resolution approving the sale of these properties.

6.4 COMMUNICATION

None.

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

Council Resolution of 28 November 2019.

7. CONCLUSION

Compliance with Regulation 44 is long overdue however the process is mired in legal challenges thus making it difficult for the City to manage these properties in commercial manner.

IT WAS RECOMMENDED (TO THE MAYORAL COMMITTEE: 20 MARCH 2024):

1. That the Committee approves the implementation plan and property allocation process contained in the body of the report; and
2. That the Committee endorses the legislative prescripts prohibiting Council employees, officials and councillors from occupying Council owned assets in giving effect to Regulation 44 of the Supply Chain Management Regulations as per the Legal Opinion and National Treasury Guidance.

During the consideration of the report, it was:

NOTED:

- (a) **With concern that when a similar report served in Council in 2019 and was not approved, there may have been a conflict of interest where some councillors who would have been impacted by the implications of the report were permitted to participate in the discussions of the report;**
- (b) **That there were residential units that were transferred to Housing Company Tshwane, which housed both employees and councillors, but which were not mentioned in the report; and**
- (c) **That the provisions of Regulation 44 of the Supply Chain Management Regulations were binding on the Chief Executive Officers of the municipal entities as much as they were on the City Manager;**

It was further agreed:

That the recommendation 1 be amended to read as follows:

- **That the Mayoral Committee takes note of the implementation plan and property allocation process which the City Manager had undertaken to bring the City of Tshwane into compliance with regulation 44 of the Supply Chain Management Regulations;**

That following additional recommendations be added:

- **That the City Manager implements payroll deductions on employees of the City in occupation of Council properties and that he considers payroll deductions on councillors to meet their rental obligations to the City;**
- **That the City Manager informs the Chief Executive Officer of Housing Company Tshwane of the outcome of the legal opinion obtained in respect of the provisions of Regulation 44 of the Supply Chain Management Regulations with regards to the occupancy of residential properties by councillors and employees of the municipality;**
- **That following such information, the Chief Executive Officer of Housing Company Tshwane submits a report to the Mayoral Committee on the implementation of the provisions of Regulation 44 of the Supply Chain Management Regulations;**
- **That the Executive Mayor writes a letter to former councillors requesting them to vacate council owned properties;**
- **That the City Manager writes a letter to the Speaker on the breaching of the code of conduct for councillors by councillors who occupy municipal residential properties;**
- **That a progress report on the implementation of the rule that prohibits employees of the City from occupying City properties be submitted to the Mayoral Committee; and**
- **That the City Manager ensures that the Chief Executive Officer of Housing Company Tshwane acts accordingly in respect of evictions on the entity's properties that were unlawfully occupied.**

In view of the above, it was:

RESOLVED:

1. **That the Mayoral Committee takes note of the implementation plan and property allocation process which the City Manager has undertaken to bring the City of Tshwane into compliance with regulation 44 of the Supply Chain Management Regulations;**

2. That the City Manager implements payroll deductions on employees of the City in occupation of Council properties and that he considers payroll deductions on councillors to meet their rental obligations to the City;
3. That the City Manager informs the Chief Executive Officer of Housing Company Tshwane of the outcome of the legal opinion obtained in respect of the provisions of Regulation 44 of the Supply Chain Management Regulations with regards to the occupancy of residential properties by councillors and employees of the municipality;
4. That following such information, the Chief Executive Officer of Housing Company Tshwane submits a report to the Mayoral Committee on the implementation of the provisions of Regulation 44 of the Supply Chain Management Regulations;
5. That the Executive Mayor writes a letter to former councillors requesting them to vacate council properties;
6. That the City Manager writes a letter to the Speaker on the breaching of the code of conduct for councillors by councillors who occupy municipal residential properties;
7. That a progress report on the implementation of the rule that prohibits employees of the City from occupying City properties be submitted to the Mayoral Committee; and
8. That the City Manager ensures that the Chief Executive Officer of Housing Company Tshwane acts accordingly in respect of evictions on the entity's properties that were unlawfully occupied.