

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

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HIGHER EDUCATION ACT (ACT 101 OF 1997, AS AMENDED)**REPORT OF THE INDEPENDENT ASSESSOR INTO THE AFFAIRS OF THE MANGOSUTHU UNIVERSITY OF TECHNOLOGY, PROFESSOR ANTHONY STAAK TO THE MINISTER OF HIGHER EDUCATION, SCIENCE AND INNOVATION, DR BE NZIMANDE**

I, **Dr BE Nzimande, MP**, Minister of Higher Education, Science and Innovation in accordance with Section 47 (2) of the Higher Education Act (Act 101 of 1997, as amended), publish the Report of the Independent Assessors, Professor Anthony Staak appointed under Sections 44 (1) of the same Act, on the investigation conducted into the affairs of the University of the Mangosuthu University of Technology, as set out in the Schedule.



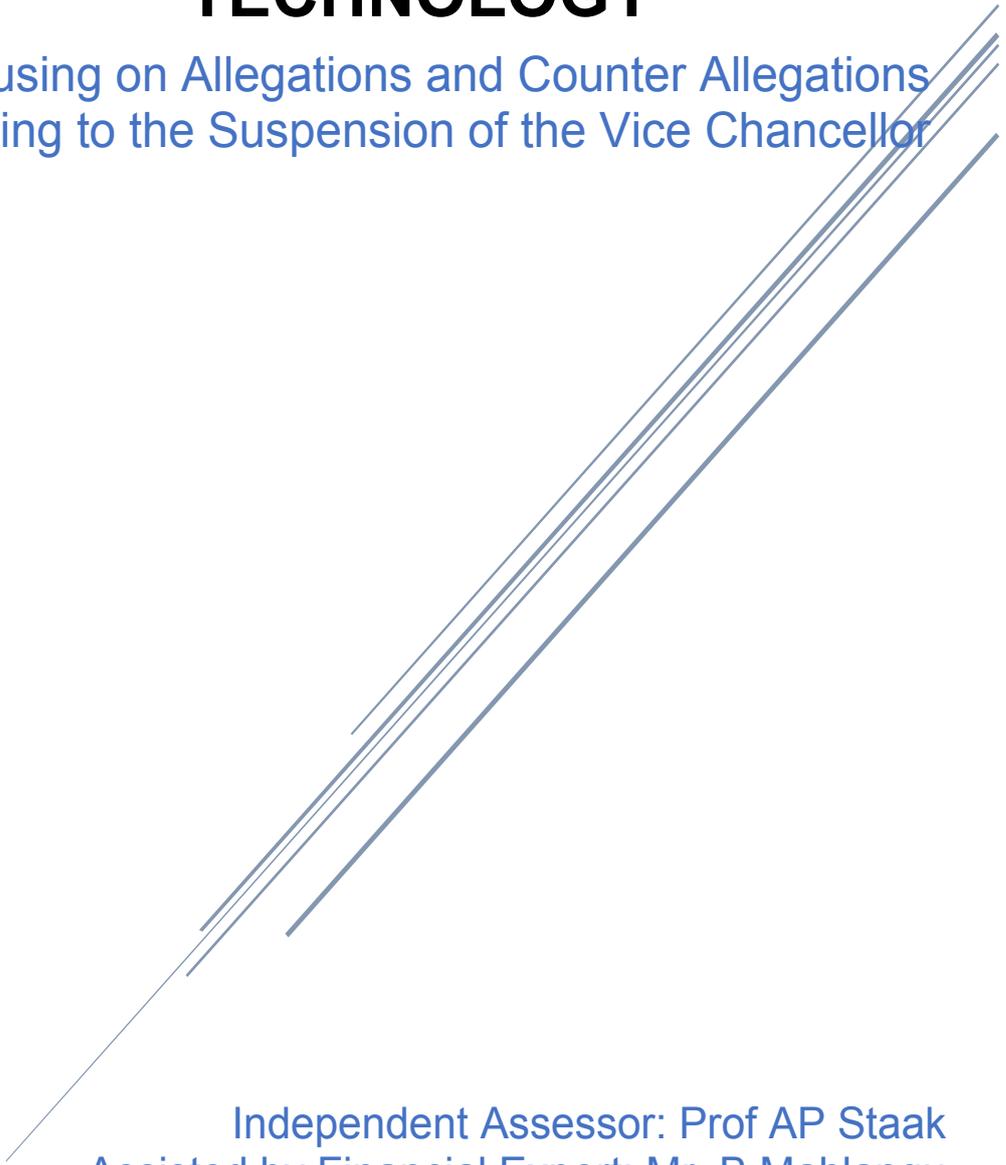
Dr BE Nzimande, MP

Minister of Higher Education, Science and Innovation

Date: 11/03/2022

REPORT OF THE INDEPENDENT ASSESSOR ON THE MANGOSUTHU UNIVERSITY OF TECHNOLOGY

Focusing on Allegations and Counter Allegations
leading to the Suspension of the Vice Chancellor



Independent Assessor: Prof AP Staak
Assisted by Financial Expert: Mr. B Mahlangu
15 November 2021

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SECTION 1

1.1 Acknowledgements

It would not have been possible to conclude this investigation in the limited time available without the support of the team from the Department of Higher Education and Training. A schedule of interviews, both physical and virtual played an important part in the investigation. Special thanks to Tintswalo Ngwenya and Sonnika Lundt for arranging these and to AB Heyns for his prompt and meticulous transcription of proceedings.

The investigation also involved a physical visit to the MUT campus. Thanks to Tintswalo and Sonnika for accompanying me on this visit and providing all the assistance that was needed. Thanks also to Sabelo Radebe for attending to the logistics relating to transport and accommodation. A sincere word of thanks to Phillia Vukea for providing very necessary background information, in the form of well collated documentation and for advising on the procedural aspects of the investigation. Thanks also to Thandi Lewin for her detailed briefing session. All this support was provided in a highly professional manner.

Thanks to all those who generously gave of their time to participate in interviews. These included not only staff and students of MUT, but also external members of council both past and present. Numerous electronic submissions were received from the MUT community. All these contributions are much appreciated.

We received a warm welcome at the University and staff went out of their way to make our visit as comfortable as possible. Thanks to the Acting Vice Chancellor, Prof Marcus Ramogale for his role in this regard. And then a special word of thanks to Mr Phumzile Masala, the Acting Registrar for his prompt response to all requests for institutional documentation, and for granting me electronic access to the "registrar's files" which greatly facilitated the retrieval of documents. There were many other members of staff, who assisted behind the scenes, in particular staff in the areas of IT technical support and transport. To them I offer my gratitude.

A particular word of thanks is due to Mr Bulelani Mahlangu, the co-opted financial expert who assisted by providing the detailed analysis of the financial affairs of the University. It was a pleasure working with him throughout the investigation.

Finally, thanks to the Minister of Higher Education, Science and Innovation for entrusting me with this assignment.

1.2 Executive Summary

I was appointed to conduct an investigation with a narrow terms of reference. I was asked to focus my attention on a series of allegations and counter allegations relating to governance and management at the Mangosuthu University of Technology (MUT). More specifically, I was required to examine the allegations made by the Vice-Chancellor (VC), Dr Duma Malaza in his correspondence with the Minister, as well as the allegations of misconduct and mismanagement that were levelled against the VC. I was also required to investigate the circumstances surrounding the suspensions of the VC and two other senior managers in April 2020 and May 2020.

It is evident that MUT has a history of governance and management that has been plagued with challenges. The current crisis came to the head with a series of accusations and counter accusations often levelled in a highly acrimonious manner, which culminated in a decision to suspend the VC taken at an emergency meeting of council on 29 April 2020.

From the interviews that I conducted, and the electronic submissions received, it soon became clear that the campus was divided on the issue of the suspensions, on the role of Council and on the performance of management.

The views expressed while covering a broad spectrum of opinions, could be distilled into two diametrically opposed positions. On the one hand, it was alleged that certain elements in Council were making a concerted effort to get rid of a VC who is committed to good governance, so that procurement processes could be influenced.

On the other hand, the Council alleges that it is the VC who is trying to have council removed so that corruption at the University may continue. There are suspicions that inadequate reporting by management is deliberate so that corruption will avoid scrutiny and go undetected.

While I deal with the specific allegations in the body of the report, I could find no evidence to support either of these diametrically opposed positions. I could find no evidence of Council involvement in procurement processes or of Council overreach. On the contrary, the Council members I interviewed (past and present) demonstrated a clear understanding of their role in governance and oversight. With the support of Council, the Supply Chain Management (SCM) policy had been amended to remove any involvement of Council in procurement processes, and Council was not involved in any staff appointments except at the levels stipulated in the Statute. The MUT Statute is currently being revised to strengthen good governance at the University.

I could not find any evidence that linked the VC or any of the suspended staff to corruption at the institution. On the contrary, I gained the impression of a VC committed to rooting out corruption. During his relatively short period in office, the VC had commissioned a number of forensic audits and investigations into various processes and activities at the University including the procurement process, the payroll system, an investigation into ghost employees and the part-time class system which uncovered irregularities and incidences of corruption. Where required, disciplinary action was taken.

MUT has a chequered history of governance and management failure. Ministerial interventions have been imposed, councils and management have been removed but the problems have persisted. I am of the view that similar interventions will not solve these problems, as I believe that the problems at MUT are systemic and embedded in the culture of the institution. It is a culture that not only stifles the academic project but has also become an enabler for corrupt activities.

To effectively address this problem, we require council and management to cooperate closely with each other and to focus their undivided attention on bringing about the cultural transformation that is required. Instead, we had a Council Chair and a VC at loggerheads with each other and deeply suspicious of each other's intentions. This relationship was acrimonious and adversarial to say the least. The situation was no doubt fueled by anonymous allegations (mostly unsubstantiated), which should have been dealt with in a more appropriate manner. Both parties must share the blame for this, as not enough was done to nurture a relationship of trust and mutual respect between these two senior officers of the University.

In order for the systemic problems at MUT to be effectively addressed, the trust relationship between Chair of Council and the VC must be restored so that Council can support management in undertaking this complex, but necessary task.

In the report I examine the circumstances surrounding the suspension of the VC and the other members of senior management. I found that the decision to suspend the VC was driven by emotions and did not take into consideration the full implications that such a decision would have on the University. In other words, due diligence was not applied. I also found that the process of suspending the VC and the other senior managers was not conducted in a fair and transparent manner. To this end I recommend that the suspension of the VC and the other senior officials be lifted.

Under the circumstances I doubt whether the VC would consider returning to the institution. I would also caution against this, and I explain why in the report. From my observations I do not believe that the current Chair of Council is best positioned to steer Council in the direction that would help nurture and restore the relationship of trust with the VC and provide management with the necessary support

it requires. To this end I recommend that he should consider stepping down from the position as chair, in the best interest of the University. I provide more detail in this report.

In response to the adverse findings emanating from the previous Independent Assessors report, the Minister proposed the establishment of a Multidisciplinary Task Team (MDTT) to provide MUT with technical support in a range of areas and to assist with capacity building. There is a great need for this. Hence, I also recommend that the establishment of the MTTD be fast tracked. The instability at the institution is in no small measure a consequence of the large number of acting positions at senior level. The permanent appointment of staff into these positions must be prioritized.

In February this year the Minister received a request from MUT for bridging finance, which sparked a concern about cash flow problems at the University. The terms of reference also stipulated that I focus on this problem. This matter is dealt with in detail in a high-level report on the financial position of the University, which was drafted by the financial expert I coopted on the team for this purpose. The full report is included as an annexure. Our findings indicate that the cash flow situation at MUT is largely dependent on the timely receipt of funding from NSFAS. If MUT robustly pursues the R105m owed to it by NSFAS flowing from the previous financial year, and receives the funds within this year, it is unlikely to experience a cash flow problem.

Our financial analysis also suggests that the control environment in certain areas are substantially weak and that there are serious challenges in supply chain management and contract management. In relation to this we recommend that independent and comprehensive investigations be conducted into the areas identified in the report.

1.3 Terms of reference

The terms of reference for this investigation, as published in the Government Gazette No. 45062 on 27 August 2021, are provided in Annexure A. The terms of reference are narrow in nature and require the Independent Assessor to conduct an investigation into the affairs of the MUT, following a series of allegations and counter-allegations relating to the governance and management of the University. The overall purpose of the investigation is to advise the Minister on the source and nature of problems, and measures required to restore good governance and management.

More specifically the allegations refer to those made by the VC, Dr Duma Malaza in his correspondence to the Department in March 2020 and April 2020, as well as the counter allegations of misconduct and mismanagement against the VC contained mainly in an email from the Chair of Council, as well as in a report tabled by the Chair of Council at an emergency meeting of Council on 29 April 2020. The investigation is required to establish the circumstances and reasons for the

suspension of the VC and other senior managers in April 2020 and May 2020 and to assess the functioning, efficacy and relationships between the governance and executive management structures and portfolios.

The Minister received a letter from the acting VC in February 2021 requesting bridging finance to overcome cash-flow challenges at the university. This sparked a concern about the cash flow circumstances at MUT. Hence this investigation is also required to probe the circumstances that led to the cash-flow problems of the University and make recommendations that can improve the cash flow position of the university.

1.4 Methodology

At the commencement of the investigation a briefing session was convened by the Department of Higher Education and Training (the Department or DHET). This session proved extremely helpful as it provided an historical context for the investigation and dealt with the events leading up the current challenges faced by the University. Copious documentation, all relevant to the investigation was made available online, and I was introduced to the team from the Department who would provide assistance and logistical support for the investigation.

I also requested the support of someone with specific financial expertise to assist with the investigation into the cash flow problems at the university. The appropriate terms of reference for this component of the investigation was agreed upon and Mr Bulelani Mahlangu was appointed.

After working through much of the preliminary documentation a programme for the investigation was drawn up. This involved in the main identifying lines of enquiry, requesting further supporting documentation, analyzing these documents and developing a programme of interviews. A notice was posted to the campus community at MUT informing them of the investigation and the associated terms of reference. The campus community was also invited to make electronic submissions to the Independent Assessor on any matter that might be of relevance to these terms of reference.

I am required to highlight instances where access to information was problematic. My experience has been quite the opposite. Without exception all documentation requested was promptly provided. For this the Office of the Registrar in particular must be commended. The Acting Registrar also provided online access to his files containing all governance related information at the University. However, it is noted that a suspended staff member indicated that his laptop had been confiscated and that he was denied access to the files he needed to make a complete submission to me.

A series of interviews was conducted at the University from the 12-15 October 2021. While some interviews were held with individuals, most of the interviews on campus involved various stakeholder groupings as the intention was also to gain an impression of the culture and group dynamics prevalent at the University. Due to COVID-19 lockdown restrictions many staff were working off campus, hence the interviews with groups were hybrid in nature, a combination of face-to-face and virtual.

The next round of interviews was much more targeted in terms of information required from specific individuals. These were conducted exclusively on-line. During the interviews it soon became apparent that there were divisions among staff between those who supported the suspension of the VC and those who opposed it and that the perspectives of individuals were influenced to a large extent by their lived experience and their specific affiliations. Hence the inherent biases and partiality of those interviewed had to be taken into consideration when evaluating what was presented. The same applied to the many submissions received.

Findings were made on the basis of the interviews conducted, submissions received and on the analysis of the documentation available. The full schedule of interviews is provided in Annexure C.

The question of independence was raised on many occasions during the investigation, mostly in relation to the independence of council members and whether it was possible for internal council members in particular to apply independence of mind in execution of their fiduciary responsibilities. But it was also raised in respect of my own independence relative to the Minister who had appointed me and the DHET officials who had a presence at all the interviews. I give the assurance that the opinions expressed in this report are mine alone, and that there was no consultation or engagement with the DHET on any of the findings and recommendations emerging from the investigation.

SECTION 2

2.1 Historical Context and Background to the Investigation

The origins of MUT date back to 1979 when it was founded as an institution under the auspices of the then Kwazulu Bantustan. As a Technikon at the time its primary focus was on skills, technical and vocational training. In terms of the National Plan on Higher Education the Mangosuthu Technikon became the Mangosuthu University of Technology in 2007. It however retained its focus on skills, technical and vocational training and its PQM comprised mainly undergraduate qualifications, notably the national diploma but later also the BTech degree. It remained primarily a teaching and learning institution. It is located in the sprawling township of Umlazi, south of Durban.

The demographics of the student population reflect that of its surrounding area, predominantly (Zulu speaking) African and largely from disadvantaged communities. It has also retained its strong community focus, and its vision speaks of an institution that is “anchored in our community”. It is by far the smallest of the six universities of technology in the country with approximately 14500 students.

Of significance to this investigation is the history of governance and management at the institution which has been plagued with challenges. As early as 1999 Prof Jaap Durand was appointed as an independent assessor at Mangosuthu Technikon. His report recommended that disciplinary action be taken against the VC, Prof Ndlovu but the Council decided to lift his suspension and he once again resumed duty.

In 2008 Dr Vincent Maphai was appointed as an independent assessor, again to investigate the breakdown in governance and management at the institution. The report recommended that the VC, Prof Aaron Ndlovu be suspended and disciplinary actions be taken against him. It recommended the dissolution of Council for failure to execute its governance functions, and it recommended the appointment of an administrator. Prof Ndlovu resigned.

Prof Jonathan Jansen was appointed as the Administrator but his tenure was cut short when he accepted the appointment as the VC of Free State University in July 2009. Dr Mashupye Kgaphola was appointed to continue as administrator. Dr Kgaphola subsequently applied for the vacant VC post and was appointed to that position by the new council in August 2010. The Chairperson of Council at the time was Mr Jerome Ngwenya, a former judge of the High Court.

However, tensions began to emerge in the relationship between VC and the Chair of Council. In a letter to the Minister in February 2016, the VC highlighted a number of issues relating to interference of council in the management and operation of the university, among these the procurement of services and failure to approve a Supply Chain Management policy.

This letter from the VC followed the suspension of a number of senior managers at the University, including the VC. The decision to suspend members of senior management was taken by the Executive Committee of Council (EXCO) and not by a resolution of Council, a clear case of EXCO overstepping its mandate.

The Department then examined the minutes of Council and EXCO meetings and uncovered instances where EXCO was taking decisions and not informing Council of these decisions, and where Council was indeed interfering in operational matters. After ratifying the EXCO decision to suspend members of senior management, Council commissioned Ubuntu Business Advisory

Services (UBAC) to conduct a forensic investigation into alleged irregularities committed by senior management.

The UBAC report highlighted shortcomings in the University's procurement, human resource and financial management policies and procedures. It also drew attention to instances where policies and procedures had not been adhered to by senior management.

The VC and other senior executives resigned even before the UBAC report was finalized, and Professor Marcus Ramogale, who was Deputy Vice-Chancellor (DVC): Teaching and Learning, was appointed the Acting VC.

In June 2017, Prof Ramogale informed the Department that the acting appointments of himself and his executive team had been terminated by the Chair of Council without giving any reasons. He also alleged that the termination was a result of a decision of EXCO and not a resolution of Council. The Chair of Council appointed Prof Zodwa Dlamini who was the DVC: Research, Innovation and Engagements as the Acting VC.

The term of Judge Ngwenya and a number of other council members expired soon thereafter, in August 2017 and a relatively new Council was constituted with Mr Morailane Morailane being elected as Chairperson of Council in September 2017. Mr Morailane had been a member of the Council since October 2014. In a letter to the Minister dated 18 October 2017, the Chair of Council requested the appointment of an Independent Assessor to MUT and indicated that the "principal purpose of the assessment should be to try and identify any governance failures and its own complicity leading to the management failures contained in the forensic report ... so that there is no repeat of such failures".

On 22 May 2018 the Minister appointed Prof Barney Pitso Motsepe and Ms Judy Favish as Independent Assessors with a mandate to investigate the state of governance and management, including policies and procedures pertaining to financial management, management and administrative matters, supply chain management, human resources, information technology and infrastructure development and procurement at MUT; and advise the Minister on the source and nature of the problems facing MUT, and on measures required to restore good governance and management at the University.

In the same month, May 2018 the Council appointed Dr Duma Malaza as the new VC. The report of the Independent Assessors was submitted to the Minister on 30 June 2018 and published in the Government Gazette of 23 November 2018. The report of the Independent Assessors made a number of recommendations that could assist in strengthening governance at the institution and also

support the management function. Some of these recommendations will be referenced later in this report.

The report of the Independent Assessors was also shared with the Council of MUT. The Council was asked to respond to the findings and recommendations of the report. The University provided a detailed response in a letter dated 18 November 2018, indicating its position on each of the findings and recommendations and outlining steps that had already been taken to address some of the problems identified in the report.

More specifically Finding 12 in the Independent Assessors' report asserts that "The relationship of trust between the Chair of Council and the Vice Chancellor, and between Council and the Executive Management of Council must be restored. That means that the roles between the two statutory structures must be better managed. The Chairperson of Council must assert his/her role as responsible for governance and oversight, and the Vice Chancellor as chief executive responsible for Management, and Administration, as well as the Academic Leader of the university."

Council in a letter to the Minister dated 18 November 2018 noted the following: "**Council notes that the breakdown in trust between Council and Management certainly existed during the tenure of the previous Council. Currently there is a good professional working relationship between the two parties. Both Council and Management are not aware of the breakdown in trust. There has not been any evidence presented to support this finding with respect to the current Council and management**".

Barely a year later the Department received a letter from the VC dated 19 March 2020, raising some disturbing issues relating among other things to council interference in procurement matters and what he perceived as threats from Council to him and other senior managers who opposed their interference in such matters. A similar letter followed on 25 March 2020, in which he alleged further unethical conduct of the Chairperson.

In a letter dated 30 April 2020, the Deputy Chairperson of Council, Dr NZ Qunta, informed the Department that an emergency meeting of Council the day before had resolved to place the VC on suspension.

One cannot but help feeling a strange sense of *de ja vu* as once again successive VCs are complaining to the Minister of excessive interference by council in operational matters, and successive councils are summarily suspending their VCs. In a relatively short space of time we are once again witnessing a deterioration of relationships between governance and management, and a breakdown in trust between the two senior officers of the university.

2.2 The build-up of tensions between the Vice Chancellor and Council

2.2.1 Events up to January 2020

From the interviews it emerged that tensions between the VC and Council started to develop during a workshop at which the VC was asked to produce his Strategic Plan for MUT. The VC was previously responsible for strategic planning at UKZN. The Chair of Council was a management consultant in strategy development. There were differences in their approach to this matter. To the Chair it was uncertain whether the VC was willing to take the strategic direction of the university to where Council wanted it to go. The VC indicated that the strategic plan was developed strictly according to DHET framework. It was eventually approved by council.

Tensions also arose on the issue of insourcing or outsourcing of services such as security, cleaning and transport, among others. Council wanted the VC to advise on the viability of these two options. While a report on this matter was tabled at the September 2019 meeting of Council, it was noted at the same meeting that MUT had already put out a call for tenders, in a sense pre-empting a Council decision on this matter.

There were differences of opinion between the VC and Chair of Council on the role and function of the EXCO of council. The Chair of Council felt that EXCO should have regular meetings to focus on oversight of the VC and the Registrar's office. The VC felt that this was a clear indication of overreach on the part of Council. He felt that EXCO should only meet on an ad hoc basis to deal with issues referred to it by Council.

Finally, there were differences on the revised organizational structure that the VC had proposed. The Chair and others argued that the span of control was too wide with the VC expanding his Executive Management Committee (EMC) to include executive deans and some senior directors. The VC argued that such a structure was needed to further empower his senior managers so that they could effectively support the implementation of the strategic plan. The proposed organizational structure was eventually approved at the September 2019 meeting of Council subject to the grading of the positions. The grading was outsourced and was tabled at the Council meeting in December 2019. Some queries were raised by council, and it was decided that the matter should be tabled again at the March meeting of Council. However, the VC immediately began implementing the new structure based on his understanding that grading of staff was a delegated function of the VC. The VC felt that these tensions had their roots in the culture embedded in the institution and the style of behaviour often displayed. He was aware of deep divisions in Council and Senate over his appointment and claims that even while Council was deliberating on the appointment he received a request from a Council member for a secretive meeting (which he refused) which indicated that there

were hidden agendas that were being pushed and which he interpreted as an attempt to capture senior appointees. One of the other suspended officials attested to a similar experience soon after his appointment.

During his induction process he claims that he was also informed by a Councillor on the side that the company involved in the security tender had been around for a long time, and it would be a pity if their contract was terminated during his term. On taking office he discovered that there were serious findings against the security company in the MORAR forensic report that investigated alleged supply chain irregularities. He summarily terminated the contract of this company.

2.2.2. January 2020 to April 2020

The above incidences all contributed to the build-up of tensions between the VC and Council, and more specifically the Chair of Council in the months leading up to January 2020, when matters came to a head. The contestation was sparked by a series of incidents which coincided with the period during which the security tender was being scrutinized.

On 11 January 2020, the VC received an email from the Chair of Council which discusses possible amendments to the SCM Policy, intended to strengthen the oversight role of Council. This email was followed by another from the Chair of the Audit Risk and Compliance Committee (ARCC), Mr Sifiso Keswa basically supporting the Chairperson's views and providing input of his own. The VC interpreted this as interference in the security tender. I have checked the emails and can confirm that no mention was made of the security tender in either of the emails.

The VC also received a report from Dr Mabaso, the Acting DVC: Resources and Planning alleging that the Chair of ARCC, Mr Keswa had phoned him on 14 January 2020 indicating that he had received disturbing news that "you guys have received kick-backs of R700 000 from the security service provider". When Dr Mabaso denied this, Mr Keswa is alleged to have said "I will fire you". Mr Keswa confirmed that he had contacted Dr Mabaso but simply to inquire about the allegations of kick-backs. He claims that he did not make any accusations, nor did he threaten to fire Dr Mabaso.

The VC also claimed that the use of the Council WhatsApp chat group had become very toxic as it was used at times to attack or belittle management. As an example, he claims that in the beginning of March 2020 the Chair of Council communicated via WhatsApp to all Council members, questioning the decision of management to cooperate with the metro police and the security cluster in dealing with student unrest on campus. He felt that through this action, the Chair of Council was undermining management and portraying management as weak. The Chair also questioned the decision of the Senate to bring forward the 2020 autumn recess in the light the national state of

emergency response to the COVID-19 pandemic. It had to be pointed out to the Chair that the Statute empowered Senate to decide on academic matters such as these. He claims that on one occasion, the engagement on this WhatsApp forum questioned the authority of the VC to act as the Chief Accounting Officer of the University. He provided a screenshot of the conversation. However, the conversation simply discusses whether the VC is the accounting authority or the accounting officer and does not question the authority of the VC.

At the ARCC meeting on 28 February 2020 the performance of management came under attack and the meeting resolved that Council should initiate a disciplinary process against management for non-performance related to the performance information report for the 4th quarter of 2019. The VC felt that this attack on management was unwarranted as the Committee's previous meeting had agreed that an improved and efficient system of reporting would come on stream with effect from the second quarter of 2020 (reporting against performance in the first quarter of 2020). The VC also noted that the Chair of Council attended this meeting of ARCC, which he felt was irregular.

According to the VC the meeting of the Human Resources Committee (HRC) on 26 February 2020 proceeded in the same vein, with a focused attack on management. The Committee demanded from management reports on matters not captured in the minutes, resolutions, and action list of the previous meeting. It was the first time that the Committee requested management to produce reports on every aspect or viewpoint raised in a meeting. The tone at the Planning and Resources Committee (PRC) meeting was no different. According to the VC the PRC rejected some of the reports from management outright, with no rationale.

At a meeting of the Finance and Investment Committee (FIC) on 02 March 2020 management was severely criticized for poor performance, specifically for the failure to submit reports to the Committee, failure to produce reports that are of good quality and standard as prescribed by council, failure to produce certain policies and failure to effect input on policies. The meeting resolved that Council should initiate a disciplinary process against management for non-performance. The VC provided a detailed written response to these allegations, pointing out that reports generated by management and submitted to Council and its sub-Committees were guided by the approved Schedule of Mandated Reports, which management had complied with. He appealed to FIC to be specific on the required standard for reporting, and to point out which reports were problematic,

On the 11 March 2020, the VC received an email from the Chair of Council, with heading "Allegations of improper misconduct" indicating that he had received allegations from different sources (mostly anonymous) relating to improper conduct by the VC and his management. He requested a detailed response to these allegations as he intended to table whatever he deemed appropriate at the next meeting of Council. The detailed response provided by the VC is contained in a letter dated 19 March

2020. The allegations were wide-ranging and cover issues relating to irregular appointments, infrastructure concerns, the implementation of the new organizational structure and student concessions. The VC's response, which categorically denied these allegations, is detailed enough and considered adequate. Moreover, the VC indicated that these allegations should have been channeled via appropriate structures at the University, particularly the whistle-blowing facility which was set up to accommodate complaints of this nature. The whistle-blowing reports are tabled at ARCC. The Chair of Council was of the view that staff do not trust the whistle-blowing facility, hence their approach directly to him. Once he was made aware of these allegations he was duty bound to raise them with the VC.

The VC interpreted this sequence of events all happening within a short space of two months, as an orchestrated attempt to undermine management and set him up for disciplinary action, to be meted out at the next meeting of Council.

The VC wrote to the DHET alerting the Department of these concerning developments at MUT. He felt that under these circumstances it was becoming extremely difficult for him to carry out his duties. In a letter of 19 March 2020, he outlined what he termed worrisome developments relating to

- the practice of EXCO assuming the role of "overseeing" the office of the VC and the Registrar, that had led to the breakdown in the relationship between the previous Council and management
- the interference of the Council in procurement processes
- the "*deep state of corruption*" that had been uncovered by investigations commissioned by management, which could require external support, given the existing tensions between Council and management.
- what he perceived to be threats to himself and other senior managers who had apparently stood firm against the interference of Council in operational matters.

The VC followed this up with a letter to the DHET on 25 March 2020 in which he collated the information on the irregularities at the University and provided the evidence to back up his allegations. Much of the evidence related to the sequence of events mentioned above. The claim that the University is in a "state of deep corruption" is based mostly on the outcome of a MORAR forensic report (August 2019) which uncovered irregularities in tender processes, implicating certain University officials. There was no indication that any of the current Council members was implicated on these irregularities. There was also no evidence to support the claim that Council was interfering in procurement matters, more specifically the security tender.

On 21 April 2020 the VC wrote to the Registrar instructing him to convene an urgent meeting of council within the next 10 days. He was gravely concerned that Council had not met in the first

quarter, and in the light of the COVID-19 lockdown there was no indication when council would next meet. He warned that the situation was paralyzing the operations and the smooth running of the University. The letter was copied to the Minister. Attached to this letter was the VC's report to be tabled at this urgent meeting of Council.

The Registrar forwarded the letter and attachment to the Chair of Council. The Chair responded by email, copied to the Minister. He expressed dismay at the action of the VC for not following due process and sharing his report with the Minister before providing Council with the opportunity to engage with it. He also added that this was the first time that he was made aware of the problems detailed in the report. He confirmed that Council would meet within the next seven days.

2.3 The Suspension of the Vice Chancellor and Senior Officials

The emergency meeting of Council was convened as a virtual meeting on 29 April 2020. The agenda featured two items, the report of the VC and the response of the Chair of Council. Provision was also made for Council resolutions arising from these reports.

2.3.1 Relevant excerpts from the VC's report

In the preamble the VC indicates that the purpose of the report is to "highlight the current state of affairs at the University in an attempt to halt a developing conflict between some members of Council and Management from reaching irreconcilable proportions".

He mentions the significant progress that management has made since his appointment, among others

- The development of a new strategic plan
- A new executive structure approved by council
- An Annual Operating plan
- A Biannual reporting system on a university-wide scorecard

He also makes mention of the challenges that he faced, namely

- A dysfunctional finance department
- A procurement unit completely devoid of appropriate skills
- A HR Department characterized by lack of proper skills
- An Information Technology & Network Department dismally incompetent to provide strategic support to the university
- A dysfunctional office of the Registrar.

He mentions resistance in certain quarters of Council towards the proposed management structure and the proposal to restructure the procurement unit. He alludes to severe conflict that has developed over recent months citing the Council WhatsApp group, the postponement of the council meeting leading to failure to take resolutions on urgent matters and a strong resurgence of interest and involvement of members of Council in procurement matters, particularly the security tender.

He also mentions the convening of regular Council Exco meetings in the absence of a charter, the emails from the two chairpersons regarding the ongoing process of awarding the security tender and the ARCC committee's recommendation to discipline management for failure to report on performance information. Since the tone at the FIC and HRC meetings were the same, he concludes that it was evident that there was an orchestrated plan underway to discipline management coinciding with the award of the security tender.

He accuses the Chair of relying on gossip and hearsay stories to build a case for charges of misconduct against the VC. He infers that the allegations were concocted and put together in a meeting or from a private conversation that the Chair has had with some members of the University community.

He registers his concern at the readiness of the Chairperson to entertain allegations put before him by the Acting Senior Director: Human Resources, Mr Mthimkhulu instead of following prescribed University grievance procedures. He points out that the University was in the process of placing Mr Mthimkhulu under precautionary suspension following an audit trail revealing irregular financial transactions in the University payroll system that benefitted him financially. It was only then that Mr Mthimkhulu came up with his unsubstantiated claims of bribery and kickbacks relating to the security tender.

Management had also completed an investigation on the existence of ghost employees on the University payroll system, which uncovered irregular payments and would soon execute a thorough review of the payroll system.

He asserts that the negative culture (as noted in the previous Independent Assessors report) still prevails at the institution and claims that the University cannot perform some of its vital functions, since the DVC: Institutional Support, the Executive Director: Human Resources and the Executive Director: Institutional Advancement remain vacant. The weakness of the Registrar has also contributed to the governance failure, a matter that requires urgent attention.

Finally, he calls for the University to expedite the process of executive appointments.

2.3.2 Relevant excerpts from the Chairs Response

In his response, the Chair begins by providing his understanding of the respective roles of the important structures and officers of the University such as the Chair, the VC and the Registrar and reasserts Council's stance of non-interference in management issues. He then responds to the VCs letter by dealing in detail with each of the allegations and points out that there is little or no evidence to support these allegations and that the various assertions are devoid of truth, and that in some instances the concerns raised are in fact the responsibility of management and not of Council.

He alleges unethical and dishonorable conduct on the part of the VC for copying the Minister in his letter to the Registrar calling for this urgent meeting.

He then lists the following allegations which did not feature in the email to the VC on 11 March 2021 and which relate to the following:

- the appointment of the Senior Director: Operations, who he claims did not meet the minimum requirements for the position. He alleges that this is another instance where the VC has abused processes to *"produce a desired outcome concocted to come up with a solution outside the ambit of council's reach, scrutiny and involvement."*
- irregularities with regard to the filling of the Acting DVC: Resources and Planning post which he claims was tailored to suit a particular candidate;
- irregularities relating to the process to recruit the new Executive Director: Human Resources;

as well as the following new allegations of irregular actions:

- The appointment of someone to VC's office without due authorization;
- An instruction to the Bid Adjudication Committee to reverse its award; and
- The award of acting allowances to shop stewards in contravention of applicable rules

He asks Council to consider that *"some of the examples and allegations against the VC and his management team (where applicable) may be indicators of rampant and systematic corruption and fraud using powers bestowed on the VC to use as he wishes and dispensing largesse to a compliant and supportive management team to perpetuate this alleged corruption and fraud unabated with promises of future reward."*

He ends off by stating that *"we have entered the terrain of war. In my view this is a war for the soul of MUT, good governance and autonomy"*, and calls for a forensic investigation into all these allegations, including the claim of bribery lodged by Mr Mthimkhulu.

Both the VC and the Chair were afforded the opportunity to respond to questions on their presentations, and thereafter were asked to recuse themselves together with the Registrar and Mr Keswa who were also implicated in the allegations.

A heated discussion ensued. It was agreed that a forensic investigation into all the allegations be undertaken and that Council arrange a meeting with the Minister to deal with the allegations that were made in the VC's letter. The Chair of Council had already agreed to step down while the investigation was underway. There was no consensus on whether the VC should be placed on precautionary suspension. Eventually the matter was put to the vote, and the majority voted in favour of suspension. Prof Ramogale was asked to act as VC.

2.4 Developments after the Suspension of the VC

On 28 May 2020, the Council appointed SNG to conduct a forensic investigation into the allegations and counter allegations made at the emergency meeting of council. The terms of reference of this investigation were extremely broad and included an investigation of all 29 tenders that were awarded in the past 18 months, the alleged corruption relating to the security tender, besides the allegations and counter allegations made in the letters and emails between the VC and Chair of Council.

The DHET received a letter from the Deputy Chairperson of Council, Dr NZ Qunta, dated 30 April 2020, apprising the Minister on developments at the emergency meeting of Council and requesting a meeting with the Minister.

This was followed by a letter to the Minister dated 8 May 2020, pointing out inaccuracies in the letter sent to him by the VC, and claiming that the actions of the VC were irregular as he should have first given Council an opportunity to resolve the issues in the letter before approaching the Minister.

Thereafter the Department received numerous correspondence from individuals and stakeholders either questioning the suspension of the VC or supporting it. A number of these stakeholders called for the dissolution of council.

In light of these developments at MUT the Minister gave the Council notice to issue a directive in a letter dated 8 May 2020, in terms of section 42 of the Act.

The notice requested the Council to:

- a) demonstrate what it and the Management have done regarding the findings and recommendations of the Report of the Independent Assessor.
- b) present a plan with clear timelines and deliverable of how the recommendations of the Report will be implemented.
- c) demonstrate how the findings and recommendations have been incorporated into the strategic plan and other plans of the University.
- d) report on the Council's resolution regarding the proposed MDTT and how it plans to implement that. (The MDTT refers to the Multi-Disciplinary Task Team that was proposed by the Minister in a meeting with Council in May 2018, primarily to provide technical support in a range of areas and to assist with capacity building at MUT. The MDTT was intended to enhance the capacity of the university to fulfil its mission and accomplish its goals).
- e) report on actions taken on the MORAR report of August 2019 into alleged supply chain management irregularities.
- f) furnish reasons for the suspension of the VC.

The Council furnished a detailed response to each of the points in the notice and provided documents supporting the claim that good progress had been made in the implementation of the previous Independent Assessor's recommendations.

While in general the response was deemed satisfactory, the Minister proceeded to issue a directive to the MUT Council, as follows:

- The MUT be subjected to a three-year period of increased and regular scrutiny. During this period, the Council will be expected to report bi-annually (through a mid-term and the Annual Report) on the implementation of the Report and other measures to address the findings of the Report, and to strengthen governance and management systems, processes and procedures at the University.
- The Council to address the findings related to the Registrar.
- The University to work with the Department in the establishment of the MDTT.

The latter two points relate to findings in the previous Independent Assessors' report that had not been addressed. In particular, the Report identified weaknesses in the Registrar's office and a lack of understanding of the important role that the office must play in governance and management delivery.

The Minister also met with the MUT Council on 15 July 2020 to explore ways in which the Department and the University could work together to address the challenges experienced by the University. The Minister raised the concerns that he harboured, which emanated from the many correspondence he

had received on the matter. In her response the Interim Chair of Council demonstrated that most of the allegations made were untrue and indicated that the Council was committed to addressing the challenges faced by the University. More than one council member intimated that the allegations were simply a ploy by the VC to remove Council so that the "looting at the institution may continue".

On the 20 October 2020, the SNG report on the "Forensic Investigation into Allegations of Corruption and Irregularities at the Mangosuthu University of Technology" was presented to the Interim Chair of Council, Dr Z Qunta.

The report uncovered some irregularities in the procurement processes and HR practices and recommended disciplinary action against the suspended officials. The report dismissed all allegations made by the VC, which it found could not be substantiated. As a result of this report, Council decided that the Chair had been exonerated and he was allowed to take up his position as Chair of Council once again.

The report recommended that Council consider taking disciplinary action against the suspended officials. Council proceeded to do so and commenced a disciplinary process. At the time of compiling this report, the disciplinary matter has not been resolved, and the officials remain suspended after a period of more than 18 months.

SECTION 3

3.1 Analysis of Allegations and Counter Allegations

From opinions expressed during interviews and from the electronic submissions received, it became evident that deep divisions existed on the issue of the suspensions, on the role of Council and on the performance of management.

In summary, I was confronted with two diametrically opposed positions on alleged corruption at MUT.

On the one hand, there were those who alleged that certain elements in Council were making a concerted effort to get rid of a VC who is committed to good governance, so that they will be free to influence the procurement processes, in particular the security tender, to their benefit.

On the other hand, there are those who allege that it is the VC who is trying to have council removed so that corruption at the University may continue. Some raised suspicions that the inadequate reporting by management is deliberate so that corruption will avoid scrutiny and not be detected by council.

This narrative is apparent in the response of the Chair of Council to the VC's report, which I have quoted above, as well as in the discussions at the meeting with the Minister, as noted above, and is perpetuated in communiques such as the press release on 21 February 2021 which depicts Council's engagement in this matter as "a relentless exercise to deal with a legacy of rampant corruption and resisting a fightback by beneficiaries of corruption". More specifically, one of the interviewees referred to the suspended officials as the "UKZN Triumvirate" and alleged that the other suspended officials were appointed by the VC to help feather his own nest.

3.1.1 Allegations made by the VC

As mentioned in an earlier section there were a number of clashes between the VC and Council which the VC may have interpreted as an attempt to frustrate his efforts to bring about positive change and inculcate good governance. According to this scenario he believed that it was in the interest of Council to have a weak management so that certain individuals on Council could "capture" the institution.

But there is little evidence to back up this position. The emails that the VC refers to in his letter to the Minister and in his report to council, do not mention the security tender, and appear to refer to the SCM policy. There is nothing suspicious about the WhatsApp chats that I had an opportunity to inspect. The decisions by all three Committees of Council to adopt a similar position on management's performance, with two even recommending that management be disciplined for poor performance does suggest some lobbying beforehand but could simply have been sparked by a genuine concern about the poor quality and inadequacy of reports tabled at these committee meetings. It may well be true that reports were tabled at these meetings according to the mandated schedule for reporting, but as confirmed in many of the interviews with Councilors, in a number of instances reports had to be withdrawn due to the poor standard of reporting.

In his letter to the Minister, the VC also refers to the "Deep State of Corruption" at MUT. This stems from the findings of the MORAR Inc. forensic investigation (dealt with in further detail below), which uncovered irregularities in the procurement process, as well as the KPMG report that identified fraudulent payments and payroll irregularities. None of these reports implicate members of management or members of council in any of the irregular or fraudulent activities.

In the same letter the VC raises concerns about the role of the EXCO. The VC and the Chair of Council hold differing views on the role of EXCO and it is not clear whether the view of EXCO proposed by the Chair actually translates into Council overreach. The appropriate role of EXCO needs to be resolved and will probably need to be benchmarked against good practice elsewhere, taking due cognizance of the specific context prevailing at MUT.

The VC was also of the view that the Chair of Council was collecting grievances from staff and students and waiting for the appropriate moment to use these against him. While I do agree that these should have been channeled via the MUT whistle blower's facility, and do find it strange that the grievances were not dealt with immediately they were received, the Chair's letter was not accusatory, but simply requested a response to a list of concerns that were sent to him.

When one examines the list of allegations in the email that sparked the conflict, nine deals with concerns and alleged irregularities in HR matters mainly around appointments, three are basically complaints about the poor state of infrastructure on campus, and three relate to concerns of students, how demands of students are dealt with, and concessions granted to students. Nowhere is there anything to suggest corruption, malfeasance or rampant looting on the part of management, or the VC. I have noted the VCs response to each of these allegations and consider it adequate.

The SNG report deals in detail with each of the allegations made by the VC in his report to Council and concludes that in the absence of supporting evidence, these allegations are unsubstantiated. However, it is important to note the context in which these allegations were made. The VC was of the view that council was obstructing his attempts at developing a strategic plan and his attempts to put in place an organizational structure to support the implementation of the plan. He interpreted the oversight mandate of EXCO as an example of Council overreach, he believed that the messages on the Council WhatsApp's group directly questioned his authority and he viewed the telephone query about the security tender as an example of Council interference. This against the background of three Committees of Council threatening to discipline management, all coinciding with the award of the security tender, was interpreted by him as an orchestrated attempt by Council to remove him so that they could directly influence the procurement process.

There was the suggestion that these allegations in the absence of supporting evidence was a clear illustration that the VC had become paranoid. However, the VC's reaction must also be considered in a context where there have been many examples in recent years across the higher education landscape, of Council "capture" of institutions and Council directly interfering in operational matters in a quest to plunder institutional resources.

3.1.2 Allegations made against the VC

The Chair's response that was tabled at Council also contained a few new allegations that were not included in the email of 11 March 2020. Only one relates to an award of a tender. The remainder deal with HR matters. It should be noted that all these allegations were made in the absence of any evidence, and the VC was not afforded an opportunity to respond to the allegations that were tabled for the first time at the Council meeting where he was suspended.

The other matter the Chair asked Council to investigate was the allegation made by Mr Mthimkhulu “*which are now in the papers*”. Mr Mthimkhulu alleged that Mr Khumalo, Senior Director of Operations was offered a bribe relating to the security tender. However, no evidence was produced to support this allegation. On the contrary, the VC in his report indicates that he was much disturbed by the readiness of the Chair to entertain this allegation by Mr Mthimkhulu instead of directing him to follow prescribed University grievance procedures. He also mentioned that he was in the process of placing Mr Mthimkhulu on suspension following an audit trail implicating him in irregular financial transactions relating to the payroll system. In the absence of any evidence supporting Mr Mthimkhulu’s claim, this should have been considered as the possible rationale for him making a false claim. In fact, both the VC and Dr Mabaso indicated that these allegations by Mr Mthimkhulu are baseless and merely an attempt to deflect attention from his own irregular actions.

All these allegations were examined in detail by SNG and findings and recommendations are contained in the report. Since neither of those suspended had an opportunity to respond to any of these findings and recommendations, I raised these with the persons concerned and gave special attention to the adverse findings and recommendations that were made against those suspended, especially those where disciplinary action was recommended. I draw my own conclusions in the section dealing with the Forensic report.

At the time of these allegations and counter allegations there were reports from two forensic investigations relating to tender irregularities.

MORAR Inc. produced a report dated 15 August 2019 on “Investigation into Alleged Supply Chain Management Irregularities”. The report uncovers irregularities relating to tenders awarded to five companies spanning a period from August 2016 to August 2018. The irregularities related to the purchase of furniture and appliances where the supplier was paid before any goods were delivered; three tenders awarded for separate infrastructure projects without proper procurement processes being followed; and a security company operating on campus without a valid contract, besides the company not being registered with PSiRA, a legislative requirement. Disciplinary action was recommended against a number of staff members for not complying with the relevant policies and procedures. The only member of the Executive that was implicated in any of these irregularities, was Prof Ndlazi who was Executive Director in the Office of the Vice Chancellor and previously Acting DVC: Resources and Operations. She chaired the Bid Adjudicating Committee which approved a bid above the threshold of R15m, whereas according to the SCM policy (at the time) bids exceeding this threshold needed to be tabled at Council for approval. Disciplinary proceedings were instituted against all implicated in these irregularities. Prof Ndlazi subsequently resigned from the institution. The VC also terminated the contract of the security company.

The point however is that none of the current executive management was implicated in any of these irregularities. A number of these tenders were initiated either before the VC assumed office or soon thereafter. There is also no evidence that any of the Council members were involved in these irregularities.

KPMG was commissioned to conduct an audit of the security tender as part of the Annual Audit Coverage Plan. They produced a report dated February 2020 on the "Security Tender Review". The audit noted inaccuracies and inconsistencies at the evaluation stage of the tender and recommended that management consider cancelling the tender should they believe that the observations noted within the report indicate that the process followed may have been flawed. However, it is important to note that MUT used the external service provider PURCOSA to conduct part of the procurement process. PURCOSA was subsequently involved with the advertisement, compulsory briefing, opening and announcement of closing bids prices and evaluations thereof. All the management responses to the various audit findings are provided by PURCOSA, some of which were noted, while others were contested. Management had considered the KPMG report and was in the process of referring the report back to the Bid Adjudication Committee (BAC) and Bid Evaluation Committee (BEC) when the suspensions were imposed.

While irregularities may have been uncovered by the audit there is no evidence of corruption, either on the part of Management or of Council.

3.2 Analysis of the suspensions

The suspension of the senior officials was contested during interviews and from documents received on the grounds that the meeting was not properly constituted at the time, since external members of Council made up less than 60% of those attending the meeting. It is true that due to resignations on council, the composition of council had dropped below 60%.

However, according to paragraph 16.2 of the MUT statute matters can be decided by the majority of members present at the meeting provided the number present at the meeting are at least 50% plus one of the total number holding office at the date of the meeting and provided that the majority are external members of council. These conditions were met.

There were also concerns raised that since this was an emergency meeting of council, only the matter for which the meeting was called, namely the consideration of the VC's report, could be entertained. However, the agenda of the meeting reflects both the VC's report and the Chairperson's response, and also makes provision for resolutions by Council. It is reasonable to consider a response to a report that is presented and to allow for resolutions on matters discussed.

While the suspension may well have been procedurally correct one needs also to consider whether it was substantively fair to those suspended, and whether it was sensible under the circumstances.

The possible reasons for the suspension, should only relate to the matters discussed at the meeting, which were the following:

1. The allegations made in the email of 11 March 2020 that the VC received from the Chair of Council.
2. The new allegations made by the Chair of Council in his response.
3. The allegations of bribery lodged by Mr Mthimkhulu.
4. The fact that the VC wrote directly to the Minister.

I shall consider each of these reasons on its merit.

As already mentioned previously there is nothing in the allegations made in the email to suggest corruption on the part of the VC. Those that refer to the poor state of the infrastructure and engagement with students are purely operational matters and cannot be categorized as "improper misconduct". The VC responded to each of the emailed allegations in his letter to the Chair of Council. It was perhaps only the HR related allegations that required further interrogation. But then surely the approach should have been to meet with the VC to discuss his responses to each of these allegations and to test the veracity of each of the responses. Certainly, the nature of complaints in the email of the 11 March 2020 was not sufficient grounds for suspension, especially since these complaints were made without the support of any evidence.

It would also have been unfair to suspend the VC on the basis of the new allegations made for the first time by the Chair without giving the VC an opportunity to respond to these allegations, especially given the fact that these allegations were also not supported by a shred of evidence. All but one of the new allegations were related to irregular appointments of staff, and were no doubt fueled by rumours that the VC was attempting to surround himself with a team that would allow him to perpetuate corruption. The appointment of Mr Khumalo from UKZN was specifically mentioned. Yet had the VC been given an opportunity to respond he would have shown that the process to appoint Mr Khumalo was completed prior to his assumption of duties at MUT. I deal with this matter in greater detail later in the report. The other allegation relates to "an instruction by the VC to BAC to reverse its award". I deal with this matter later in the report. But had the VC been approached these matters could have easily been clarified.

I have already mentioned the bribery allegation of Mr Mthimkhulu. No evidence was produced to support his claim. While an allegation of this nature must be taken seriously and should be reported

to the authorities, in the absence of any evidence this allegation cannot form the basis of suspending the VC, more specifically since the allegation did not even implicate the VC, but was directed at the Senior Director of Operations, Mr Khumalo.

The only other possible reason for the suspension is the fact that the VC wrote directly to the Minister, without providing Council with an opportunity to try to resolve the issues first. However, if the suspension was for this reason, it could not have been precautionary but punitive, since there is no way in which the VC could have interfered with the investigation into this matter. It was simply the case of requesting the VC to provide an explanation for his actions, for an independent person to consider this explanation, make a ruling on the matter and recommend an appropriate sanction if necessary.

The VC's letter to the Minister no doubt incensed the majority of Council members particularly since the letter also raised concerns about the behavior of certain members of Council. From all accounts the meeting involved heated discussions between those in favour of suspending the VC and those opposed. There was no consensus of opinion. Even the minutes of the meeting reflect that "Members were urged to be respectful, polite with each other and use words wisely." One wonders whether under such circumstances it was possible for all participants in the debate to exercise sound, independent judgement on the matter at hand, in the light of the fact that the VC's letter to the Minister implicates some external members of Council. It was also clear from the interviews that through some of his decisions the VC had already alienated certain of the internal Council members. In one instance in particular, an internal member of Council, also a prominent member of the union was being investigated for allegedly depositing funds meant for the hire of venues on campus, into her own private banking account. The VC had commissioned KPMG to conduct an investigation into the hire of venues. The KPMG report confirmed that funds had been diverted into the private banking account of the individual concerned and recommended that a criminal case be opened. It is debatable whether, under these circumstances this member of Council could have exercised an independent judgement.

The actions of the VC are related to tensions that had arisen between him and the Chair of Council that appear to have developed over a period of time but came to a head in the first three months of 2020. The previous Independent Assessors' report makes a strong recommendation for the establishment of an Ombudsman or an Alternative Dispute Resolution mechanism to deal with possible conflict situations such as this. Unfortunately, this was one of the recommendations that was not implemented. In the circumstances, it would have been more appropriate to consider a process of mediation between the Chair and the VC, and to mete out the necessary sanction if there was a need for such. I do not believe that a precautionary suspension of the VC was the correct decision.

This is especially the case if one considers the situation that the University found itself in at the time of the suspensions. The country had just entered hard lockdown presenting enormous challenges to the University. The VC's letter highlights the severe lack of capacity in senior positions, which was confirmed by many of the interviewees. Suspending a VC, Chief Audit Executive and Senior Director Operations would have had an adverse impact on an already precarious situation at the University. Then there is also the reputational damage that such suspensions would have caused. Once again MUT would be in the press for the wrong reasons. Any potential funder would have had second thoughts supporting an institution where the impression is created that corruption by top management is rampant. Already the University was struggling to recruit staff. The suspension of senior executives would surely have had a negative impact on the potential of the University to attract good caliber staff. For a university struggling to post a cash surplus on its balance sheet, cost must surely have been a consideration as well. The financial analysis estimates the cost of salaries of the three officials who were placed on precautionary suspension with full pay for almost 18 months to be in the region of R10m. Then there are also legal fees and the cost of three forensic investigations that must be factored in. As our financial analysis shows, MUT can ill afford these costs.

Thus far I have only focused on the suspension of the VC, which I believe was inappropriate under the circumstances. There were alternative approaches to dealing with the matter. I find the suspension of Dr Mabaso and Mr Khumalo even stranger. Neither of them were even mentioned in the meeting of council, except in relation to the irregular appointments attributed to the VC, and the bribery allegations of Mr Mthimkhulu. A decision was taken to suspend them without indicating to them precisely what the specific allegations against them refer to, without presenting any evidence to support the allegations, and without giving them an opportunity to respond to these allegations. Dr Mabaso's letter of suspension mentions specifically two items; the alleged irregularities in awarding the security tender and the allegation that possible corruption was reported to him. Standard practice would have been to present the allegations and to ask them to provide reasons why they should not be suspended. This was not done. One cannot help but get the sense that the "UKZN Triumvirate" was being targeted.

I have already referred to the terms of reference of the SNG Audit as being extremely broad, which some have even likened to a "fishing expedition". In the light of the above I am inclined to agree with that sentiment, as it appears that this was a case of first suspending individuals and then commissioning a broad investigation with the hope that it will come up with something to justify the suspension.

3.3 Analysis of the SNG Forensic Report

The SNG report on the “Forensic Investigation into Allegations of Corruption and Irregularities was made available to MUT on 20 October 2020.

As mentioned above the report uncovered some irregularities in the procurement processes and HR practices and recommended disciplinary action against the suspended officials. The report dismissed all allegations made by the VC, which it found could not be substantiated. On the basis of the report, Council decided to institute disciplinary action against the suspended officials.

From the report it is evident that the recommendations were made in the absence of a response from the suspended officials to the findings in the report, and in most instances with minimal input by the officials. The VC requested that questions be submitted to him in writing, which was done. The VC responded by indicating he needed to be given four weeks in order to respond effectively to some of the questions, but permission for this was not granted. A questionnaire was also sent to Dr Mabaso, who provide a detailed response. SNG indicated that they proceeded to prepare the report using limited information from the VC and Dr Mabaso.

As neither of the suspended officials were given an opportunity to respond to the initial allegations made against them, nor were they provided with an opportunity to discuss the findings of the SNG report, I decided to ask them to respond to each of the findings where disciplinary action is recommended against them.

3.3.1 RFB: MUT 18/2018 completion of New Student Centre located at MUT

SNG recommended taking disciplinary action against Dr Malaza and Dr Mabaso for approving the appointment of Makhathini Projects on the basis of incorrect deduction of points from Rodpaul Construction, which resulted in Makhathini being awarded the tender at a significantly higher price.

The VC indicated that he signed that document in support of the work that had been done and the processes followed by the relevant committees, as required by the SCM policy. He was also satisfied that the matter had been referred for legal opinion. He supported the legal opinion. He felt that it was unrealistic to expect the VC to engage with individual scores.

This matter warrants closer examination.

Rodpaul Construction scored the most points in the tender process and was issued with a letter of intention to award. When Makhathini Projects was informed that their bid was unsuccessful they

submitted an appeal. MUT then appointed Biyela Attorneys for a legal opinion on Makhathini Project's appeal. The attorneys advised that "the issues contained in the appeal letter carried a lot of weight" and recommended that the award to Rodpaul Construction not be confirmed. According to the legal opinion Rodpaul Construction ought to have had 22 points deducted which would have disqualified them from further evaluation. The attorney's report was discussed at the Bid Adjudication Committee (BAC), and the committee resolved to amend the report in line with the attorney's recommendation and submit the corrected report to the EMC for support and approval. The "Reviewed Adjudication Report" was supported by Dr Mabaso as Chair of BAC and approved by Dr Malaza as Chair of EMC on 31 October 2019.

As part of the forensic investigation SNG once again reviewed the scoring for Rodpaul Construction and Makhathini Projects and concluded that the findings of Biyela Attorneys were incorrect, and that points should not have been deducted from Rodpaul Construction. Hence, according to SNG Rodpaul Construction should not have been disqualified from the process and should have been awarded the bid (which was the original decision). It is very strange that SNG should recommend that the VC be disciplined under these circumstances. He supported a Reviewed Adjudication Report based on the Attorney's recommendation. Was he expected to revisit the process a third time, or check on the scoring himself? What guarantee is there that he would have arrived at the same conclusion as SNG? The same argument applies to the recommendation that Dr Mabaso be disciplined. Both the signatures of Dr Malaza and Dr Mabaso are simply informed by the business process flow. In this case it was the outcome of the BAC resolution on the matter.

3.3.2 RFB: MUT 19/2018: Construction of New Engineering Laboratories & Offices including Quantity Surveying & Construction Management Offices

SNG recommended that MUT should consider instituting disciplinary action against Dr Malaza for failing to ensure that Council was notified of the award of RFBMUT 19/2018 to Afriscan Construction, as required by paragraph 13.2 of the SCM policy.

According to Dr Malaza, Management provided quarterly updates on the progress with respect to procurement awards through the tabling of a Quarterly Procurement Report at Council and FIC meetings. I have checked the schedules and this award is number 7 on the schedules. The Procurement Report is a standing item on the FIC and Council agendas. Moreover, the item "Report on BID RFB MUT 19/2018 - Construction of New Engineering Laboratories" appears on the agenda of the Council meeting of 27 June 2019 and the FIC agenda of 22 May 2019. Therefore, Council and FIC should have been aware of this award.

3.3.3. RFB: MUT 26/2019 - Appointment of service provider for the installation, maintenance and replacement of air conditioning

SNG recommended that MUT should consider taking disciplinary action against Dr Malaza, in his capacity as the VC, for failing to ensure that Council was notified of the approved bidder, Cold Point Aircon Services, as required by paragraph 13.2 ("Formal Bidding Process") of the MUT SCM policy.

According to Dr Malaza Council approved the award of RFBMUT 26/2019 with the approval of the Annual Procurement Plan 2019. Management provided quarterly updates on the progress with respect to these awards which is reflected on the Quarterly Procurement Report schedule. I have checked these schedules and this award appears at number 42 on these schedules. The 2019 Procurement Plan was a standing item on the FIC and Council agendas. Therefore, Council and FIC should have been aware of this award.

3.3.4 RFB: MUT 22/2019- Appointment of a service provider for the provision of Security Services

SNG recommended that MUT should consider disciplinary action against Dr Malaza and Dr Mabaso for failing to disclose the adverse findings of the KPMG report during the PRC meeting held on 25 February 2020, during the ARCC meeting on 28 February 2020 and during the FIC meeting of 02 March 2020.

This matter must be viewed in its proper context.

Firstly, management commissioned the KPMG audit as part of the Annual Audit Coverage Plan. Secondly, an external service provider PURCOSA was used to conduct part of the procurement process. PURCOSA was subsequently involved with the advertisement, compulsory briefing, opening and announcement of closing bids prices and evaluations thereof. All the management responses to the various audit findings relating to inaccuracies and inconsistencies at the evaluation stage were provided by PURCOSA.

Based on an interview with PURCOSA, SNG established that the evaluation process was conducted by PURCOSA at their offices which are situated in Midrand, Gauteng. MUT staff did not have contact with the score sheets, nor was individual scoring conducted by MUT staff as the process was implemented by PURCOSA.

Thirdly the specific recommendation in the KPMG report is that Management should consider cancelling the tender should they believe that the observations noted within this report indicate that the process followed may have been flawed. This report was received during February 2020, the

same month as the meetings of the Council subcommittees. Management had decided to refer the KPMG report to the BAC and BEC for consideration and comment. Hence the process had not been concluded. When this matter was put to Dr Malaza he indicated that the Acting Director: Risk & Compliance had reported the KPMG audit report to ARCC at the meeting of 28 February 2020. I have checked the ARCC agenda. It appears in item 7 "Progress Report on the Implementation of the Internal Audit Plan". Item 10.1 of the attachment deals with the KPMG review of the security tender, and page 9 of this attachment provides the recommendations of the KPMG report. Dr Malaza believes that this was reported to the appropriate structure, ARCC and any reporting outside of this structure would have been irregular.

Given this context, the recommendation that the VC should be disciplined merely perpetuates the narrative that the VC is trying to conceal corrupt activities relating to the security tender. This is unfortunate, because the KPMG audit was a due diligence exercise undertaken by Management to identify any irregularities in the security tender process. While the matter was still work in progress, the findings of the KPMG report were reported to ARCC.

3.3.5 Allegations made by Mr I Mthimkhulu regarding the security tender

SNG recommended that MUT should consider disciplinary action against Dr Mabaso for failing to ensure that the allegation of bribery relating to the security tender was investigated and for failing to inform Council of the said allegation.

SNG also implied that they would have made similar recommendations against Mr Keswa (for failure to report the alleged corrupt activities) but he is no longer in the employ of MUT.

It is difficult to understand how SNG could have arrived at this recommendation in the absence of any evidence. SNG concludes that "Mr Mthimkhulu appears to have sent a WhatsApp message to Dr Mabaso relating to an allegation of fraud, albeit he did not transfer/ forward the message to us for fear of his security."

Dr Mabaso denies that he received a WhatsApp message informing him of the alleged bribery. Mr Keswa indicated that he had contacted Dr Mabaso to enquire about the allegation of a security tender kickback. Dr Mabaso claims that he was actually accused of taking a bribe by Mr Keswa. If Dr Mabaso is to be believed, why should he be expected to report the allegation if someone was incorrectly accusing him of taking a bribe (he reported the accusation to Dr Malaza).

Mr Keswa denies that he made any accusation relating to the bribe. He claims that it was the Chair of Council that had asked him to take the matter up with Dr Mabaso. If Mr Keswa is to be believed,

then it is the Chair of Council who should be disciplined and not him for not reporting the bribery allegation, as it is then the Chair of Council that was informed by Mr Mthimkhulu of the bribery allegation.

Nowhere did KPMG give any consideration to the narrative put forward by Dr Mabaso that Mr Mthimkhulu had concocted the allegation as a means of deflecting attention from the allegations that were made against him relating to payroll irregularities. For the sake of consistency in respect of conclusions drawn from the investigation, all these allegations should be dismissed, as none is backed up by any evidence whatsoever. There can be no justification for giving more credence to any one of these claims over the other. It is unfair to make adverse findings against both Dr Mabaso and Mr Keswa on the basis of these unsubstantiated allegations.

It should be noted however, that in his interview Mr Mthimkhulu indicated that he has copies of the WhatsApp messages to support his claim, but will not release these messages for fear of his safety. While his dilemma in this matter is certainly appreciated, in the absence of hard evidence it is difficult to arrive at any other conclusion than that which is stated above.

3.3.6 RFB: MUT 32/2019: Appointment of HR Consultant

SNG recommended that MUT consider taking disciplinary action against Dr Mabaso for the following reasons:

- a) Approving HR Touch invoices between 03 February 2020 to 03 March 2020 totaling R1 069 500.00 before the contract dated 09 March 2020 was signed between MUT and HR Touch; and*
- b) Included in the aforementioned R1 069 500.00 was an invoice of R92 000.00 pertaining to services rendered by HR Touch in respect of which no competitive procurement process had occurred or a variation order approved by the VC.*

I have checked the SCM Policy. Section 25.8 states that "No service provider will commence work until a valid contract or service level agreement is signed by both parties". A service level agreement between MUT and HR Touch was signed on 08 January 2020. Hence there is nothing irregular about the payments to HR Touch in March 2020 and February 2020.

Both Dr Malaza and Dr Mabaso claim that all work done by HR Touch was part of a project plan, which specified the deliverables of the project. According to the project plan the EMC Lekgotla was planned for March 2020, but took place earlier, in February 2020. The payment in question was part of the scope of the entire HR Consultancy project. The amount paid was to be adjusted accordingly

in the subsequent payment. They were paid earlier because the Lekgotla took place earlier. There was no variation in the scope of work, nor the total budget of the project.

SNG also recommended that MUT consider taking disciplinary action against Dr Malaza and Dr Mabaso for fruitless and wasteful expenditure of R221 286.12 pertaining to the acting allowance paid to Mr Mthimkhulu as Senior Director: HR&D during the time when HR Touch was contracted to, inter alia, "Assume all responsibilities normally assigned to the Senior Director of Human Resources and Development."

Section 24 of the SCM policy makes provision for the appointment of consultants in areas where there is a deficiency in capacity in the organization. There was a major capacity deficit in the HR department. According to Dr Malaza and Dr Mabaso during the period that HR Touch was appointed, the Acting Senior Director: HR was still required to sign-off on all HR documents, and present reports to Management and Council committees, since consultants are not employees of the University. HR Touch had specific deliverables in terms of their contract and the Acting Senior Director: HR had responsibilities that could not be covered by the consultants. They point out that consultants were used in many other areas in the University, yet all these functions retain their HoDs. Hence the practice does not necessarily translate to fruitless and wasteful expenditure.

3.3.7 RFB: MUT 14/2018 for the Refurbishment of Air-conditioning Systems

SNG recommended that MUT management should consider disciplinary action against Mr Khumalo and Mr Mzolo for failing to escalate to the BEC and / or BAC the matter raised by Peak Maninga that Amakhaza Moia's bid was non-responsive.

After the contractor Amakhaza Moia was appointed it was noted that certain key items were omitted from the Bill of Quantities (BoQ) which resulted in a substantial contract variation being sought by the contractor. The BoQ was drawn up by Peak Maninga, who was appointed as the Principal Agent for the project by MUT. The matter went to adjudication and the adjudicator ruled in favour of the contractor. It was clear that the contractor had grounds for claiming a variation since the BoQ was incomplete.

However, Peak Maninga, who was not involved in the award of the tender later claimed that the contractor's bid should have been declared non-responsive at the tender stage, as their tender did not include the particular model of equipment specified in the BoQ.

Mr Khumalo first of all pointed out that he joined MUT three months after the tender was awarded. He also indicated that there are conditions of tender regarding submission of alternative offers,

according to which the contract should be deemed invalid unless the contractor supplies the equipment specified in the BoQ at no additional cost. A meeting which included Peak Maninga adopted a resolution that the contractor should conform with the specifications as enshrined in the tender document without any additional cost implications to the contract. This as an alternative to cancelling the contract.

The contractor complied and supplied the equipment specified in the BoQ and this was eventually approved by Peak Maninga on 04 March 2019. According to Mr Khumalo this closed all contractual concerns regarding the equipment specification as he had enforced the conditions of contract. He felt that he had no reason to advise BEC and BAC of a rectified contractual agreement which was purely an administrative issue. He claims that Peak Maninga was merely shifting blame for inevitable consequences of their failure to prepare a complete the BoQ.

3.3.8 Appointment of the Acting Senior Director of HR and Development, Mr Mthimkhulu

MUT should consider taking disciplinary action against Dr Mabaso for motivating for Mr Mthimkhulu's appointment to the position of Acting Senior Director: HR&D despite Mr Mthimkhulu not possessing the minimum 5 years' experience stated in the Expression of Interest document. MUT should consider taking disciplinary action against Dr Malaza for appointing Mr Mthimkhulu to the position of Acting Senior Director: HR&D prior to approval/ finalization of the appointment by EMC.

Dr Mabaso points out that the recommendation to appoint Mr Mthimkhulu was a decision of the selection panel, and he supported the decision of the panel.

The VC pointed out that there is a framework for acting appointments, to avoid issues such as favouritism. There is a preamble to the framework which states that EMC acts in an advisory function to the VC. The second point details the delegations given to the VC. For transparency sake, for positions at this level, he established a committee to engage with interested parties, which made recommendations which he then finalised with input from EMC before he approved the recommendation.

3.3.9 Alleged irregular appointment of Executive Director of Human Resources and Development

SNG recommended that MUT consider instituting disciplinary action against Dr Malaza for initiating a process to appoint an Executive Director: HR (a position that is in the new top-management structure, stated as level/grade 3) without following the "Guidelines for the Appointment of Members of Executive Management in Grades 2 – 3".

The VC indicated that the owner of the appointment process is HR, according to the delegations of authority. HR initiated this process, but he chaired the meeting. It was only after he had chaired the meeting that he was alerted that HR had faulted by not including Council representation on the committee. He was new to the institution and did not identify the oversight. The Registrar admitted that the framework document had not been communicated widely. Once he learnt of the problem, he recommended that the process be stopped. He gave Council the option of either condoning the process or abandoning the process. Council decided on the latter.

3.3.10 Alleged appointment of the Dean of Students as Acting Director Protection Services, a position allegedly lower than her substantive position

SNG recommends that MUT should consider disciplinary action against Dr Malaza for approving Ms Kweyama's appointment as an Acting Director: Protection Services without the EMC's finalization to appoint Ms Kweyama as well as without an expression of interest being circulated as required by the Framework for the Endorsement of Acting Positions approved by MUT Council.

The VC claims that this was a secondment and not an appointment to an acting position. Ms Kweyama's appointment letter confirms that this was a secondment. Hence the expression of interest that is required to be circulated by the Framework for the Endorsement of Acting Positions was not applicable in this case.

3.3.11 Alleged appointment of the Senior Director: Operations, Mr Khumalo, without necessary qualifications and subsequent inflated salary

We recommend that MUT should consider instituting disciplinary action against Dr Malaza for failing to ensure that Mr Khumalo's appointment was ratified by Council as required by paragraph 11.4.3 of the Recruitment and Selection Policy

The VC pointed out that Mr Khumalo was appointed before he joined the University. The interview panel for Mr Khumalo's appointment was chaired by the Acting VC. This was confirmed as follows: the closing date for applications was 17 November 2017, shortlisting took place in January 2018 and February 2018. The interview report is dated 27 February 2018. The appointment served at council on 28 March 2018 and was referred to the Institutional Forum (IF) for consideration. Council resolved that if the IF supported the appointment, a recommendation would be made to Council for approval by round robin. IF supported the appointment. The VC took office in May 2018.

3.3.12 Alleged elevation of grades: Director: Risk and Compliance

While SNG found that the allegation that Dr Mabaso was promoted from level/grade 5 to 3 within one year was unsubstantiated, SNG recommended that MUT consider disciplinary action against Dr Malaza for not ensuring that Dr Mabaso's appointment as CAE was ratified by Council as required by paragraph 11 of the Recruitment and Selection Policy and sections 8(4)(b) and 46(1)(h) of MUT's Statute.

According to the VC, Council approved the structure on condition that the positions must be graded by an external company, and the VC must make the appointment. The VC had submitted formally the previous and the desired structure, as well as transitional arrangements. The transitional arrangements indicated how staff would transition. The first was internal placement of people who meet the requirements of the positions, who would be assessed by HR and placed accordingly. Those positions that were not filled through the placement process would be advertised through the University Recruitment Policy, which was a competitive process. People who met the first criteria when the positions were graded did not only include Dr Mabaso, but also the DVC: Teaching and Learning who moved laterally, and the CFO was elevated because he met the requirements. There are supporting documents that demonstrate the transitional arrangements as well as the assessments of the candidates. These were reported to the HR committee of Council.

3.3.13 Alleged irregular allowance paid to Mr Linda Nzama, the Shop Steward

MUT should consider taking disciplinary action against the VC, Dr Malaza, for proceeding to sign the recognition agreement with NEHAWU:

- a) Despite a concern raised by the attorneys pertaining to the fairness of a clause regarding discussions to place the Shop Steward "in a relevant department in line with accumulated experience to a senior position" on relinquishing of the position; and*
- b) Despite the Registrar's advice to wait for an EMC process.*

According to the VC, the shop steward position dated back long before he joined MUT. The position was created and KPAs were developed in 2016. Mr Nzama was the shop steward. There was a need to revise the recognition agreement with the unions. The revised agreement was submitted to the EMC, accompanied by a legal opinion. The legal opinion was requested by the VC, to assess whether the legal agreement met all the requirements. EMC considered the revised agreement and legal opinion and identified labour issues that needed to be addressed. The VC then recommended that a task team of EMC and union members be established to form a bargaining forum chaired by the Legal Officer. EMC resolved that this task team finalise the agreement. He signed the agreement on the basis of the task team recommendation. Subsequently HR wrote to the Registrar indicating

that this issue of outstanding payment for the shop steward was poisoning the relationship between Management and the union. The VC then approved the payment.

3.3.14 Alleged irregular appointment of Ms Petro Butler

SNG found that the appointment was irregular and recommended that MUT should determine (in consultation with MUT's legal advisors) whether to recover the said costs from Dr Malaza or to condone them, as guided by National Treasury's Framework for Irregular Expenditure.

The VC confirmed that Ms Butler assisted in his office with the drafting of the strategic plan, but she has since retired. He claims that he did not sign any form for her appointment as it was purely an HR process.

We have seen from the above that in each of the instances where adverse findings were made against the suspended officials, either documents could be provided to contradict the findings, or the suspended officials were able provide explanations which could have been considered credible.

3.3.15 Allegations and Counter Allegations

The SNG report also considers the allegations made by the VC in his report to Council or in comments made at the Council meeting. The report deals with each individually and finds that these are unsubstantiated and recommends that Council considering disciplinary action against the VC for the raising of multiple allegations that could not be substantiated.

I also raised these matters with the VC, and even although he could not provide the evidence to back up his claims, he did provide a context for these claims, which in the interest of fairness should have been recorded.

However, I find it strange that the investigation does not devote the same rigour in considering the allegations made by the Chair of Council in his report.

For instance, the Chair points out in his report that the position of Senior Director: Operations has been a position requiring a Master's degree for candidates and incumbents. The new incumbent did not possess this qualification at the time of appointment. The question is how did he get to be appointed. He then alleges that *"this is another innovative instance tailored to produce a desired outcome concocted to come up with a solution outside the ambit of Council's reach, scrutiny and involvement."*

As I have already shown, the processes around the appointment of Mr Khumalo happened before the VC was appointed at the University. The closing date for applications was 17 November 2017, shortlisting took place in January 2018 and February 2018. The interview report is dated 27 February 2018. The appointment served at council on 28 March 2018 and was referred to the IF for consideration. IF supported the appointment. The VC took office in May 2018. There is no way that this could have been “another innovative instance tailored to produce a desired outcome concocted to come up with a solution outside the ambit of Council’s reach, scrutiny and involvement” as the VC was not involved in the process. This is not even mentioned in the report. The inconsistency in this respect is glaring.

Likewise, in his report the Chair alleges that the VC appointed a lady to his office without any authorization and into a non-existent position. If one examines the SNG investigation on this matter, it is clear that HR was involved in this process. Nowhere is it shown that the VC approved the appointment.

The Chair also alleges that the VC instructed the BAC to reverse its award to a specific service provider and to award it to another service provider with respect to the infrastructure project to finish the student centre. As explained previously, attorneys were appointed to provide a legal opinion when one of the service providers lodged an appeal against an award. On the basis of the attorney’s opinion the BAC amended its report and produced a Reviewed Adjudication Report which was approved by the VC as chair of EMC. There is no evidence that the VC instructed the BAC to reverse its award.

According to the Chairperson of Council’s report dated 29 April 2020, he alleged that there was refusal to implement resolutions of Council regarding MUT Management not ensuring instances of Irregular, Fruitless, Wasteful and Unauthorized Expenditure (IFAWUE) were reduced.

The SNG report concludes that the allegation that MUT Management did not implement Council resolution (regarding IFAWUE) could not be substantiated because at the time of reporting, there were ongoing discussions of the IFAWUE register and its intended use in so far as consequence management thereof is concern.

Clearly there are also instances where the allegations of the Chair of Council are unsubstantiated, yet there is no suggestion that disciplinary action be taken against the Chair. Both the VC and Chair made allegations that were unsubstantiated by evidence. The VC based his allegations on the interpretation of events, which I believe was an overreaction to those events. I believe that the Chair based his allegations on a series of rumours that supported a particular narrative, which were also unsubstantiated at the time.

3.5 Analysis of the Disciplinary Action

A closer reading of the SNG report reveals that the report does not recommend that Council take disciplinary action, but rather recommends that council *consider* taking disciplinary action against the suspended individuals. I believe that the recommendation is worded as such in acknowledgement of the fact that the suspended persons did not have an opportunity to respond to the findings nor the recommendations, and that in the interest of fairness the principle of *audi alteram partem* should have been applied.

Moreover, the report records the following limitation: *“Any documents or information brought to our attention subsequent to the date of our fieldwork, which could affect our findings, may require our findings to be adjusted and qualified accordingly.”*

Given the expressed limitations of the SNG report, I believe that at the very least Council should have engaged the suspended individuals on the findings and recommendations contained in the report, before instituting disciplinary action. I attempted to do this and, in many instances, found that documents could be produced that contradicted the findings, or that the responses provided an alternative perspective which sounded credible and should have been considered. Council should have created an environment where the suspended persons would have felt comfortable to give their side of the story.

It would appear that certain members of Council had already adopted the position that irrespective of the outcome of the report, the suspended officials should not be allowed to return to the institution. Hence additional charges were levied relating to allegations not considered in the SNG report, which no doubt further stretched out the period of suspension, which is already in its nineteenth month. Most recently there was even a decision by Council that the VC must retire as he had reached the retirement age of 65. This is a strange decision, considering that Council must have been aware of his age at the time that he was granted a five-year contract.

A decision was also taken by Council to pay the legal fees of Mr Mthimkhulu who is currently being sued for defamation. According to Council minutes, the decision to pay his legal fees was based on a motivation that, were it not for him, the irregularities in the security tender would not have been uncovered. I have already shown that it was the KPMG investigation, commissioned by Management that uncovered inaccuracies and inconsistencies in the evaluation stage of the tender, which was outsourced to PURCOSA. The bribery allegations of Mr Mthimkhulu, which were investigated by SNG were unsubstantiated and did not uncover anything. Whoever provided this motivation has clearly misled Council.

SECTION 4

4.1 Observations arising from Interviews and Submissions

During the course of the investigation a number of persons were interviewed, including different stakeholder groupings at the University, as well as present and past Council members. Electronic submissions were received from students and staff. It was apparent from these interviews and various submissions that major divisions existed on campus and the perspectives of individuals were influenced to a large extent by their lived experience and their specific affiliations. Hence the particular bias and partiality of submissions needed to be acknowledged and factored into any analysis of the situation. Nevertheless, collectively the points of view expressed by interviewees and contained in numerous submissions have assisted greatly in shaping my findings.

I found it useful to consider the observations made in the previous Independent Assessor's report as a framework for evaluating these submissions, as it provides the necessary context and background, it allows one to cluster the inputs in a meaningful way and it also provides a sense of whether progress has been made in critical areas since the previous assessment.

4.2 Culture

The previous report noted that *"the newly appointed Vice Chancellor Dr Duma Malaza has inherited a deeply divided institution, and with systems of management not functioning optimally, and with a staff component that is demoralized and uninspired"* and concluded that none of the recommendations would be effective *"unless the institutional ethos and culture was open, creative, innovative, critical and affirming. Approaches to management may need to change, and the university must become a forum for the free expression of ideas, and critical debate."*

Sadly, the interviews and submissions revealed that these deep divisions still remain and the University is far from becoming a forum for free expression of ideas and critical debate. When staff were interviewed in a group situation, there was a reluctance for people to speak openly about their concerns. MUT was described as a highly political space comprising of people with different agendas. Circumspection was the order of the day, as those who spoke feared they might be identified with one or other grouping or faction on campus.

Worse still, I was given the impression that a culture of victimization persists. Many of the submissions were made on the condition of anonymity as there was clearly a fear of reprisal. I was alerted to irregular activities in certain areas where staff who pointed this out and refused to turn a blind eye were removed. The Operations division was used as an example, where a member of staff

is currently suspended and one has not had his contract renewed. They both claim that they were targeted after raising concerns about procurement processes, irregular appointments and irregular contracts that were signed. The impression created is that the Operations division has been captured by the unions and any attempt to regularize processes is met with strong resistance.

While I have no evidence to support these allegations, I had access to the KPMG report on an "Investigation into Allegations of Irregular Payments made to Officials in respect of Venue Hire". The report found that payments were made into the private banking accounts of two staff members and recommended that disciplinary action be taken and criminal charges be opened. Both staff members are union officials, and one is currently an internal member on Council. While I was informed that the disciplinary process has commenced, I am concerned at the protracted time that it has taken to resolve this matter. It is just on one year since this KMG report was submitted to Management.

Mr Mthimkhulu also pointed out inconsistencies in approach. He was placed under precautionary suspension while allegations of his involvement in payroll irregularities was being investigated, despite limited evidence linking him to these irregularities. In this instance there was clear evidence that payments had been diverted into private banking accounts, yet none of the staff implicated were suspended. The independent investigation by Biyela Attorneys subsequently cleared Mr Mthimkhulu of any wrongdoing in the payroll irregularities.

I am also concerned at the protracted time that is typically taken to conclude disciplinary related matters. I was informed that the staff member in operations was suspended for dereliction of duty and poor performance. The staff member claims that he was never given an opportunity to make a submission on any matter relating to his suspension. This is now his 11th month of suspension. It would appear that this is a deliberate attempt to keep this staff member out of the division. It was mentioned in one of the interviews that this person was part of the VC's network. Precautionary suspensions of this nature come at a cost, and at an even bigger cost if it is used to allow irregular activities to continue undetected.

The high-level financial analysis highlighted areas that required further investigation, areas where it is likely that the institution may be bleeding funds. One of these areas is the part-time hour system where over R30m was already spent this year up to September 2021. When Management tried to investigate and tighten controls, there were threats of a strike. The Acting DVC: T&L investigated one department, and found that claims were inflated by as much as 600%. Staff admitted wrongdoing and I am informed that disciplinary action will be taken. Management has taken a decision to phase out part-time classes, beginning next year. But this will no doubt meet with resistance. I raise this not only to highlight the need to have effective controls, policies, procedures and systems of

accountability in place, but also to demonstrate evidence of a culture of self-enrichment that seems to have taken hold at the institution.

4.3 Governance and Management

The previous Independent Assessors report noted that *“The relationship between the Council Chairperson and the Vice Chancellor needed to be managed carefully but with mutual respect. That is the collective leadership without which the university cannot succeed. In other words, Council must abide by the Code of Conduct, and Council must hold Management to account in a fair and transparent manner. Management must produce reports that guide Council in its decision-making responsibilities”*.

I shall comment on observations I made from the interviews on areas that I believe are relevant to this investigation.

4.3.1 Relationship between Council Chair and Vice-Chancellor (VC)

Clearly the relationship between the Council Chairperson and the VC was not managed carefully. Within two years of the VC's appointment there was a total breakdown in trust between the two. The VC believes that this is a result of Council overstepping its mandate and interfering in operational matters. He cites contestation around the strategic plan and organizational structure, and queries by Council members relating to the SCM process. The Chairperson believes that in doing so Council was merely exercising its oversight role. The VC feels that the numerous reports that Management is required to submit is an indication of overreach on the part of council and a desire to become involved in the detail. The Council Chair is of the view that Council has empowered Management to make the decisions to run the University, and the reports are necessary for it to exercise its oversight role effectively.

Some of those interviewed characterised the relationship between Chair and VC as hierarchical and lacking mutual respect with the Chair talking down to the VC and belittling his reports. The Chair claims that he was merely responding to reports that were substandard, and that he tends to be direct in his responses. However, one gains the impression that these criticisms were not always made in a collegial and constructive manner, and the approach was not supportive. The previous Independent Assessor's report also indicates that *“personal relations ought to be humanizing, affirming and positive to bring out the best in everyone”*. While this was stated in the context of the culture at the institution, I believe that it should also apply to the relationship between the VC and the Chair.

From the email exchanges and letters between the two it is clear that the relationship was highly adversarial and acrimonious. Good cooperation between the two and support from the Chair would have been critical elements in addressing the systemic problems at MUT. Instead they were constantly at loggerheads with each other. The required levels of collegiality, professionalism and decorum were not displayed. Both parties must bear responsibility for the deterioration in this relationship.

The Chair deliberately distanced himself from the operations of the University. It appeared that he insisted on keeping this distance to protect his fiduciary independence. He indicated that he did not even have tea with the VC for fear that this might be misconstrued as interference in Management issues. Perhaps this might have been the appropriate approach for a University that is running smoothly. However, given the enormous challenges that MUT is facing, contact outside the quarterly Council meetings may have been required, if only to work through the agenda for Council meetings, to clarify misconceptions and to resolve any misunderstandings before council meetings take place.

I believe that if communication protocols had been agreed upon at the outset, and conflict resolution mechanisms put in place much of the subsequent contestation could have been avoided.

4.3.2 The Quality of Reporting

There was general consensus that the quality of reports submitted to Council left a lot to be desired. The financial expert, Mr Mahlangu had an opportunity to examine the financial reports and identified a number of gaps. The VC indicated that there was an agreed upon Schedule of Mandated Reports and a framework and template for monitoring institutional performance as well as a policy development schedule in order to help streamline the reporting process, but frequently more reports were requested, reports that were unscheduled and not even reflected as action items in previous minutes. As the VC indicated in one of his letters, to meet expectations he would have to “bring a truckload of reports to these meetings”.

Both the VC and Acting VC claimed that there was over reporting at the level of Council which placed unnecessary pressure on an overstretched management team. While it is true that ultimately the VC must be held accountable for the poor quality of reporting, in practice these reports must be produced in the line, and the VC inherited a situation where a number of key positions in line management were vacant.

There is a severe lack of capacity in line management as well as a lack of a performance culture, which made it difficult to produce reports of the required standard. I was given the impression that work ethic is a problem. Staff engage with their work with the minimum level of enthusiasm. Clearly

there is an urgent need to fill vacancies in critical areas and embark on a staff development process to address the capacity deficit. There is also a need to infuse a culture of service and to put accountability mechanisms in place. I was informed that a performance management system is in the process of being finalized, and is scheduled for rollout in 2022. This needs to be fast tracked for not only will it assist with monitoring performance, it will also serve to identify development needs of staff in order to improve performance.

There was the view held by some that the VC was simply incompetent, especially in the light of the poor quality of reports that were tabled at council, for which he was ultimately responsible. However, it is difficult to arrive at this conclusion in the absence of a performance management system based on a performance contract with the VC.

4.3.3 Council Overreach

The Council members interviewed (past and present) demonstrated a clear understanding of their role in governance and oversight. With the support of Council, the SCM policy had been amended to remove any involvement of Council in procurement processes, and Council was not involved in any staff recruitment except at the levels stipulated in the Statute. The University statute was being revised to strengthen the governance role of council.

However, there were differences of opinion between the VC and Chair of Council over what constitutes Council overreach. I have already mentioned their opposing views on the role and function of the EXCO of Council, where the Chair of Council felt that EXCO should have regular meetings to focus on the oversight of the VC and the Registrar's office. The VC felt that this was a clear indication of overreach on the part of Council. He felt that EXCO should only meet on an ad hoc basis to deal with issues referred to it by council.

It was also noted that a number of reports to Council were of an operational nature, and the problem of over reporting was interpreted as a desire on the part of Council to engage in operational matters. It also appeared that the VC interpreted any query by Council members as an interference in operational matters.

From the above there appears to have been a lack of understanding and certainly a lack of agreement on what constitutes council overreach and council interference in operational matters. It would have been essential, at the outset to have clarified these matters through workshops and benchmarking against the practices of other universities.

4.3.4 Management

The large number of vacancies and lack of permanent appointments at senior level have contributed to the severe lack of capacity at this level. Staff and students complained about under performance in key portfolios, and singled out poor maintenance and the deteriorating infrastructure on campus as a prime example. Management also concurred that there were major challenges in the area of operations, but highlighted the difficulties experienced in recruiting staff, largely due to the location of the campus in the heart of the largest township in KZN, but also due to the poor image that the institution projects. The problem with acting appointments is that the incumbents are seldom willing to initiate change where needed, think strategically or plan ahead, as they are usually given short term contracts in these acting positions. Some have described the institution as being in a severe state of paralysis as a result of all the acting appointments.

Before the suspension of the VC, the following positions were vacant at executive level:

- DVC: Institutional Support
- Three (3) Executive Faculty Deans
- Executive Director Human Resources & Development
- Executive Director Institutional Advancement
- Senior Director Strategy Coordination

Currently there are a number of acting positions at executive level, some as a result of the suspensions. These are listed as follows:

- Acting Vice Chancellor
- Acting DVC Teaching and Learning
- Acting DVC Resources and Planning
- Acting Registrar
- Acting Senior Director Human Resources
- Acting Senior Director Vice Chancellors Office
- Acting Senior Director Operations

Clearly the large number of senior officials serving in an acting capacity has contributed to the instability of the institution. The suspension of senior executives for alleged corruption also sends out a negative message, which has further impacted on the stability.

The township location has not only created challenges for staff recruitment. From various interviews it is clear that interference from the local community, business forums in particular is a major concern. Extortion rackets are evident, projects are held to ransom, threats relating to procurement processes

are commonplace and even death threats have been reported. This all contributes to an environment where corruption can flourish.

There has also been criticism levelled at the VC for his failure to unite the campus. He inherited a deeply divided institution and my observation is that the problem still persists. His approach to management may have actually exacerbated divisions. With the revised organisational structure, it appears that he had centralized more power into his own office and alienated members of his executive management team. The impression was created that his executive management team was not always involved in decision making, and that he would often not consult with them, but rather with his colleagues from UKZN, thereby creating further friction. There were also reports that he aligned himself with members of a particular union on campus, whom he perceived to be more influential, thus alienating members of the other union.

4.3.5 Council

While examining the minutes of Council meetings one cannot help but be struck by the fact that these meetings tend to last 10-13 hrs and are sometimes even adjourned. Lengthy meetings adversely affect attention span, lead to frustration and fatigue, and tend to compromise the quality of discussion and decision making around strategic issues. From the interviews various reasons were put forward for this, ranging from over emphasis on operational issues, overreporting, poor quality of reports submitted, poor management of the Council agenda and the structure of the agenda itself. Criticism was levelled at the Chair who was described as overly pedantic demanding details on just about everything and tolerating lengthy discussions on numerous items that were included purely for noting.

I am of the view that the agenda of council meetings need to be restructured to foreground strategic matters. Council needs to monitor the progress made with achieving strategic objectives and progress with closing out risks identified in the risk register. Council needs to approve policies and exercise its oversight role to ensure that the institution is well managed. Reports to council should be of a strategic nature, meet a required standard and provide sufficient information to enable Council to effectively execute its responsibilities. It would be advisable to undertake a benchmark exercise to determine how the agenda of council can be optimized.

On the composition of Council, it should be noted that there have been seven resignations of external council members in the period March 2020 and September 2021. In addition, one councillor did not renew his term of office. From the interviews I am left with no doubt that this spate of resignations has robbed Council of members of high calibre with a skill set that would have made any council proud.

There were concerns expressed about the ability of internal members of council to exercise their independence of mind and take decisions in the interest of the institution and not in the interest of the constituency that nominated them. Some even went so far as to suggest that the governance model is flawed as there will always be pressure from these constituencies and these members of council have difficulty understanding their fiduciary responsibilities under these circumstances. I interviewed members on the executive of both unions at MUT and noted that some of these executive members were also serving on Council and held influential positions on the Institutional Forum. A view was expressed that the unions wield a disproportional influence on governance structures at the University.

It was indicated that Council has introduced probity tests for external council members which are undertaken before they join the Council. University appointed external council members are also interviewed before they are appointed, to gauge whether they understand their fiduciary responsibilities. Induction workshops are organized which focus on the role of council and governance. The probity tests and interviews do not apply to internal members of council.

4.4 The Academic Project

The previous Independent Assessor's report notes the following: *"At Council we could find no evidence that Council deliberated on academic matters beyond making appointments. As such, the relationship between Senate and Council is at best confusing. We gather that not even the strategic policies of the institution were debated by Senate, but they were approved. We had the sense that Senate was not performing credible oversight on academic matters."*

The University appears to have put in place steps to address this adverse finding in the previous Independent Assessor's report. There was a review of Senate sub committees which led to a restructuring of these committees in order to improve the functioning of Senate. Several workshops and seminars were convened to stimulate academic debate on campus. These occur outside of the Senate meetings.

However, a view was also expressed that Senate tended to be purely "tick-box" in its approach rather than engage in strategic academic discussion. I have noted from the minutes that Senate meetings could last as much as 5-7 hrs, and the agenda is filled with matters related to academic administration. One wonders whether there is sufficient time to debate strategic and substantive issues central to the academic project. The Acting DVC T&L was scheduled to lead a discussion on the important matter of academic culture at the institution at a recent Senate meeting, but could not do so due to lack of time.

It would appear that SENEX meets on an ad hoc basis to deal with urgent issues referred to it by Senate. Senate may consider delegating the purely administrative matters such as marks amendments, appointment of examiners and moderators, approval of graduation lists, recognition of prior learning, exemptions and recognitions, among others academic administrative matters, to SENEX for consideration and approval. SENEX could then meet on a regular basis to consider these matters and submit a report to Senate for ratification. This will shorten Senate meetings and free up time for discussion and debate on strategic issues central to the academic project.

Concerns were also expressed that Council did not give sufficient attention to the academic project. In a discussion on the matter it was pointed out that the minutes of senate meetings are included in Council documents for noting. It was also pointed out that the VC was expected to cover academic matters in his report to Council. While it is true that the VC's report does cover some academic matters, it may be worthwhile to include a Senate Report as a standing item on the Council agenda which should be a high-level report on the strategic matters and conceptual issues that were discussed at the Senate meeting. The Council representative on Senate could present such a report, which would serve to give prominence to academic matters at Council.

4.5 The Office of the Registrar

The previous Independent Assessor's report notes that *"the Office of the Registrar is a critical key to Governance and Management in the institution. From our observations, the person of the Registrar currently is very weak and does not understand his role even though he has been in office for 20 years. He does not understand, in our view, that he is the custodian of the laws, policies and rules of the university. He should be empowered to function like a Company Secretary, to act at all times with professional authority, and with the knowledge of the laws and policies of the institution binding on Council and Management alike"*.

The weakness in the Registrar's office also emerged from the interviews, though recent improvements were noted. I believe that many of the problems experienced between Council and Management could have been avoided if the Registrar's office was able to take a position and advise in areas whenever instances of council interference in operational matters become apparent, or when Management appeared to operate outside the delegation of authority framework.

The University indicated that the weakness identified is currently being addressed with the filling of two Deputy Registrar's positions. The Registrar has recently retired, and an Acting Registrar has been appointed in his place.

4.6 Ombudsman

The previous independent assessor's report notes that *"The university must establish the Office of the Ombudsman. This should allow complaints to be raised internally and adjudicated and resolved without recourse to the law. This alternative dispute legal resolution mechanism must be undertaken by an independent person, outside of the structures of the university, and both Council and Executive Management must undertake to honour the rulings of such an ADR system"*.

The University has not addressed this matter. Besides playing an important role in proactively resolving internal disputes and saving the institution enormous legal costs, I believe this mechanism could also have played a critical role in resolving the tensions that arose between the VC and the Chair of Council over their differences between what constitutes council overreach. The moment these differences emerged the matter should have been referred to the alternative dispute resolution (ADR) system where it could have been adjudicated by an independent person.

SECTION 5

5.1 Findings

In this investigation I interviewed a wide range of persons. I also considered the viewpoints presented in a large number of electronic submissions. I was particularly interested in the various perspectives of what gave rise to the tensions between Management and Council in such a relatively short period of time. I was also interested in determining the circumstances that gave rise to the conflict between the VC and Council in the first quarter of 2020, which eventually led to the suspension of the VC. I had to acknowledge the deep divisions that existed on this matter, and the likelihood that almost all whom I interviewed or who made submissions would have an inherent bias based on their lived experience, their context and background.

The old Latin adage *"Quot homines tot sententiae: suus cuique mos"* (there are as many men as opinions: each has his own correct way) most certainly rang true.

It was left to me to examine the documents that I had access to, which included a number of audit reports and reports on forensic investigations, to corroborate the various assertions made. These findings are made on the basis of evidence contained in these documents, or on the balance of probabilities in instances where evidence is lacking.

From the interviews and electronic submissions two diametric opposing narratives emerged. On the one hand, there is the VC who alleges that there are certain elements in council who are making a

concerted effort to get rid of a VC who is committed to good governance, so that they can influence the procurement processes.

On the other hand, the Council alleges that it is the VC who is trying to get Council removed so that corruption at the University may continue. There are suspicions that the inadequate reporting is deliberate so that corruption will avoid scrutiny and not be detected by Council.

Finding 1: *There is no evidence to suggest that either the VC or any of the suspended members of management or any members of Council are involved in any corrupt activity.*

The MORAR audit report identifies instances of tender irregularities. The associated tender processes mostly occurred before the VC was appointed or soon thereafter. No member of the current management team or Council was implicated. Those involved have been disciplined and some staff members have been fired.

The SNG report does not implicate any of the suspended members of staff in corrupt activities. Where they have recommended disciplinary action against these members of staff, it has been in response to allegations of irregular appointments or omitting to table reports. In almost all instances, when presented with the findings and recommendations, those suspended were either able to produce evidence which I believe effectively countered these findings and recommendations, or provided an explanation which could be considered credible.

The KPMG audit focused specifically on the security tender and uncovered inaccuracies and inconsistencies at the evaluation stage of the tender process. However, it is clear from the report that the evaluation stage of the tender process was outsourced to PURCOSA. MUT staff were not involved in this part of the process.

Finding 2: *There is little or no evidence to support the allegations made by the VC in the report he presented to Council at the meeting on 29 April 2020. Likewise, there is little or no evidence to support the allegations contained in the response from the chair presented at the same meeting.*

I provide a detailed analysis of these allegations earlier in this report, but both sets of allegations must be viewed in the context in which they were made.

The VC was clearly frustrated at the difficulty he experienced in getting Council approval for his strategic plan as well as the organizational structure he required to support the implementation of the plan. He perceived this as obstructionist. He considered the Chair's interpretation of the mandate

of EXCO as an example of council overreach, and viewed the WhatsApp message which he claims questions his authority and the telephone query about the tender security as an example of council interference. He observed this against the background of all three Committees of Council resolving that Management should be disciplined by Council, all coinciding with the award of the security tender. He viewed this as an orchestrated attempt by Council to remove him so that certain members of Council could directly influence the procurement process. He communicated with the DHET and the Minister to alert them of the pending threat of his removal. I believe that this was an overreaction on the part of the VC.

The Chair of Council viewed the allegations in the VCs report as a direct attempt to undermine Council and viewed his report to the Minister as a request for Ministerial intervention. It was then that he started "joining the dots" and began to give credence to the many concerns that were placed at his door. In this scenario, the inadequate reporting was seen as a deliberate attempt to conceal corrupt activities and the irregular appointments were attempts by the VC to surround him with persons that would support these corrupt activities. This view was mostly fueled by unsubstantiated rumours that the VC had recruited colleagues from UKZN to support his corrupt activities. I have shown that the recruitment in question was finalized before the VC joined MUT.

Finding 3: *The process of suspending the VC and the other senior managers was not conducted in a fair and transparent manner.*

I have dealt with this matter in detail in the section dealing with the suspension of senior managers. But in a nutshell, new allegations were made for the first time by the Chair without giving the VC an opportunity to respond to these allegations, especially given the fact that these allegations were not supported by a shred of evidence.

Dr Mabaso and Mr Khumalo names only cropped up in the context of the allegation of bribery. Again, no evidence was presented to support this allegation. The context in which those allegations were made were either not considered or presented. They were suspended without any indication of what the specific allegations against them refer to, without any evidence being presented, and without giving them an opportunity to respond to these allegations.

I believe that these decisions were taken in the heat of the moment without due consideration of the broader implications of suspending senior officials. The impartiality of certain members of Council are also called into question. Alternative dispute resolution mechanisms should have been considered in dealing with the conflict.

The similar argument prevails over the decision to extend the suspension once the findings and recommendations of the SNG report were presented to Council. These findings and recommendations were not discussed with the persons suspended and they were not given an opportunity to respond. I did just that and found that in almost all instances either evidence was produced to counter these findings or the explanations they provided could be considered as credible.

Finding 4: *The trust relationship between the VC and the Council chair should have been managed in a much better manner and if sufficient attention had been given to this matter, I believe much of the conflict that arose subsequently could have been avoided.*

Both parties must bear the blame for this. The centrality of this matter was emphasized in the previous Independent Assessor's report. There are numerous examples of universities where a breakdown in this relationship has been one of the main factors in governance failure.

There must be a clear distinction between council's role in governing the institution, and the VC's role in managing the institution. Management must ensure that reports and documentation of a required standard are presented to council to enable it to execute its role of governance and oversight effectively. Proper communication channels between council chair and VC need to be put in place. As I have indicated above, many instances arose where there was contestation on what constitutes council overreach, and on the level and quality of reporting from management. The conflict could have been based on a misunderstanding between the two parties, but there does not appear to have been any effort to find common ground. Communication between the two parties remained poor. The tensions were no doubt fueled by rumours and misperceptions of each other's motives which were largely unsubstantiated.

Finding 5: *The problems at MUT are systemic and has its roots in the prevailing culture at the institution.*

It was evident from the interviews and submissions made that deep divisions among staff still remain. Staff do not feel free to express their ideas openly for fear of being identified with one or other grouping or faction on campus. The impression was created that a culture of victimization persists. Many of the submissions were made on the condition of anonymity as there was clearly a fear of reprisal.

Work ethic also comes into question. It is difficult to understand how the quality of reports submitted to council can remain an issue for such an extended period of time. While the VC is accountable, he

cannot be expected to draft these reports himself. They are produced in the line. Is it a case of incapacity, incompetence, or “a don't care attitude” and lack of a performance culture? Clearly there is a need for accountability mechanisms to be put in place. The implementation of a performance management system is long overdue.

There also appears to be evidence that a culture of self-enrichment has taken hold. This became apparent from the outcome of the investigation into part-time classes. On the balance of probabilities there are a number of irregular activities taking place in other areas as well, which are flagged as areas of concern in the report of the financial expert. I base this conclusion on the various audit reports that have uncovered irregularities in the procurement process, the payroll process, and payments and the identification of ghost employees. If proper policies, procedures and controls have not been put in place, there is a strong likelihood that these irregular activities are still continuing. This assertion is supported by interviews and submissions of suspended staff who allege that there are irregular activities, particularly in the area of operations.

Finding 6: *While concrete steps have been taken to improve the academic culture of the institution, more can still be done to ensure that the academic project receives the prominence that it warrants.*

I believe that this can be achieved by setting aside more time for discussion and debate at meetings of Senate around strategic and substantive issues central to the academic project. The Senate agenda appears to be overcrowded with academic administration matters. I believe that there are a number of matters that can be delegated to SENEX for decision and approval, and which only need to be ratified at a full meeting of Senate.

Likewise, I believe that the academic project will benefit if the Council agenda made provision for a standing report from Senate, which could foreground academic issues. This should be a high-level report on the strategic issues and conceptual issues that were discussed at the Senate meeting. Council meetings are also unbelievably long and perhaps through proper management of the agenda and through the delegation of some of these matters to council committees, adequate time can be set aside for the presentation of a senate report.

Finding 7: *While good progress has been made in implementing the recommendations of the previous Independent Assessor's report, two areas namely the creation of an Alternative Dispute Recognition mechanism (or Ombudsman), and the strengthening of the Registrar's office were neglected which could have provided important interventions to help avert the current crisis.*

As was noted previously areas of the conflict arose from differences in opinions of what constitutes council overreach and council interference in operational matters. Had there been an ADR mechanism in place at the time it could have gone a long way towards proactively resolving these disputes. The moment accusations and counter accusations emerged that matter should have been referred to the ADR system for resolution.

Likewise, the Registrar's office, besides providing administrative support to council is also required to provide advice on legal, regulatory and governance matters. A strong Registrar's office would have been able to intervene and bring both the chair of council and the VC to order and advise on the way forward. The previous Independent Assessor's report noted the absence of an ADR system, and identified weaknesses in the office of the Registrar and indicated that the incumbent was not sufficiently knowledgeable about his role. Had these matters been addressed timeously, they could have made a difference.

Findings relating to the financial analysis into cash flow problems experienced by MUT.

Part of the terms of reference for the Independent Investigation involved an examination of the cash flow problems being experienced at MUT. To assist with this task, I used the services of Mr Bulelani Mahlangu who has the requisite expertise in financial matters. Through his investigation he was also able to provide an opinion on the overall financial health of the University and on the adequacy of submissions by management to the Finance and Investment Committee of council. I have included the full report of Mr Mahlangu in Annexure 4. I have lifted out the main findings of the report which relate to the cash flow position of MUT. These are presented below:

- *From an analysis of the cash-flow projection that was in place at the beginning of the year it was determined that the amount requested by MUT in the letter to the DHET in February 2021 was reasonable.*
- *Had the R212m received between January 2021 and August 2021 as part of the R314m owed by NSFAS to MUT been received by end of 2020, there would have been no need for MUT to request financial assistance.*
- *The cash flow situation at MUT is largely dependent on the timeous receipt of funding from NSFAS. If MUT robustly pursues the R105m owed to it by NSFAS and which flows from the previous financial year and receives it within this year, it is unlikely to experience a cash flow problem.*
- *The retained income (R260m at 31 December 2020) was not underpinned by cash, but by assets that were not liquid, and therefore could not be used.*

- *Approximately 73% of students at MUT are funded by NSFAS and the shift in the start of the academic year which resulted in NSFAS making the first payments in April 2021 has had a huge impact on MUT*
- *MUT has not taken advantage of what can be referred to as low hanging fruit in the sense that the excess funds have been invested in instruments that pay much less than the current going market rates, in some cases the differential is as much as 2-3%.*
- *Our assessment reveals that MUT does not have a going concern problem for now, partly because what is referred to as Current Liabilities are in reality payable over a number of years.*
- *In terms of long-term planning, the University does not yet have a financial sustainability plan to help it reduce overreliance on NSFAS and government.*
- *According to Management, the process of developing a turnaround plan has already started and this will be presented at the Council meeting of December 2021.*
- *Based on the findings of the auditors and various forensic investigations, there are serious challenges with Supply Chain Management and Contract Management. While there has been a focus on dealing with irregular expenditure much more still needs to be done. The overall impression is that the control environment in certain areas is substantially weak.*

5.2 Formulation of Recommendations

5.2.1 Preamble

There are a number of possible recommendations that can flow from the above findings. Ultimately these recommendations should focus on measures that need to be put in place to help the University recover from its current governance and management crisis. Such a crisis is no stranger to MUT. As I have noted earlier in this report, MUT has been plagued with management and governance challenges over the past two decades. Three previous Independent Assessments have been conducted and on one occasion the University has been placed under administration. Yet despite these interventions, the problems persisted. What should be recommended on this occasion, that could make a difference? This is also a question I posed to many of the interviewees. And as can be expected, the responses varied dramatically. I will mention two, since they are different from what has been proposed before.

More than one person recommended that MUT be merged with another university in the region. In support of this it was mentioned that MUT is by far the smallest university of technology in the country, comparable in size with the satellite campuses of some larger universities. It tends to be isolated with relatively few partnerships. Very little research is conducted relative to other universities. I was provided with a sheet listing the "UoT World Rankings for 2020" where the other

five UoTs had a ranking nestled in the band 1000 – 3300, while MUT was an outlier ranked 7390. While it is acknowledged that the basis of any ranking system for universities will be contested, the gap between MUT and the other UoTs in the country appears to be significant and may be difficult to breach without support from a merger partner. However, I did not consider a merger to be a viable option. The huge cost associated with merger, both from a financial and human capital perspective, is vastly underestimated. So too are the challenges associated with the harmonization of back-office operations, policies and procedures and most important of all the harmonization of a culture across campuses. Invariably, the net result is that both institutions in the merger suffer as a consequence. In the case of MUT, there would also be political considerations to take cognizance of, as well as its stated mission of providing service to the surrounding community in Umlazi.

The other recommendation that was put forward and that appeared to be popular among stakeholders was that the Council of MUT be dissolved. The reasons provided related to Council overreach, and council meddling in the affairs of the University. In all the documents I worked through or interviews I conducted, I could not find any clear evidence to support this. On the contrary, Council appears to have put in place measures to limit interference in operational matters at the University. The SCM policy no longer requires Council approval for tenders above a certain threshold. All procurement is conducted by Management, without the involvement of Council. Likewise, Council is not involved in any appointments, except those stipulated by the statute (peromnes grades 1 to 3). Councillors interviewed are very aware of their governance and oversight role and there did not appear to be any role confusion from their perspective. The Chair even indicated that he avoids any contact with the VC outside of quarterly council meetings (or the ad hoc EXCO meetings) as this might be misconstrued as council interference in operational matters.

I have raised major concerns with the manner in which the suspension of the VC and other senior officials were dealt with. I deal with this matter in greater detail elsewhere in this report. My general feeling is that a different approach to resolving the conflict should have been adopted. However, I did not consider this to be sufficient reason to recommend the dissolution of council.

5.2.2 Recommendations

In the light of the findings and giving due consideration to the terms of reference and the need to act in the best interest of MUT, I have distilled what has emerged from this independent investigation into the following four recommendations, each with corresponding recommendations flowing from them:

Recommendation 1: *A concerted effort should be made to transform the culture of the University.*

Elsewhere in the report I have made the point that the problems at MUT are systemic and are embedded in the culture of the institution. There is a dire need to create a culture where the free expression of ideas and critical debate are encouraged and where concerns can be raised and criticism levelled without fear of reprisal, a culture which is enabling and aligns with the values of the institution. Staff need to engage in discussion around the vision, mission and strategic plan and Academic Identity document of the University to ensure that there is sufficient buy-in. Staff need to understand what it is to act in the best interest of the university and need to commit to moving in that direction.

- The previous IA report recommended that a culture survey be conducted among staff to serve as a barometer on institutional culture. This has not yet been done, and needs to be given priority. Appropriate measures then need to be put in place to address the issues that emerge from the survey.
- The instability at the institution is in no small measure a consequence of the large number of senior officials serving in an acting capacity. Some have described the institution as being in a severe state of paralysis as a result of all the acting appointments. This has no doubt had an adverse effect on the morale of staff and the culture at the institution. To this end it is recommended that the permanent appointment of staff into these positions must be prioritized
- There is a need for accountability mechanisms to be put in place. It is recommended that the implementation of a performance management system be prioritized. Not only will this help infuse a performance culture, but it will serve to identify the development needs of staff in order to improve performance.
- Appropriate interventions to improve the academic culture at MUT also need to be considered. Elsewhere in the report I recommend the delegation of functions and the restructuring of the agenda of Senate meetings to free up space for discussion and debate on strategic and conceptual issues central to the academic project.
- I also recommend that a report from Senate feature on the agenda of Council meetings to give more prominence to academic matters.
- The problem with the current culture is that it can serve as an enabler for corrupt and irregular activities, and arising from our financial analysis of the institution, we have flagged some areas where controls are weak, and where there is every likelihood that the systems are being abused. We recommend that further audits and investigations be undertaken in these areas.

Recommendation 2: *Measures need to be put in place to ensure that the trust relationship between the VC and the Chair of council is properly managed and nurtured.*

The previous IA report emphasized the need for this matter to be given special attention. There is no evidence to suggest that it has. Whereas the VC and the Chair should have been cooperating with each other to deal with the systemic and cultural problems inherent in the institution, they were instead involved in contestation with each other over an understanding of their respective roles. It is evident from the tone of the letters and emails that they exchanged, that the relationship was adversarial and acrimonious.

- Clarity needs to be sought and agreement reached on the role of EXCO, and on what activities constitutes council overreach.
- It is recommended that protocols governing communication between the VC and Chair be agreed upon. There may well be the need for contact with each other outside of the quarterly meetings of council (and possibly at the meetings of EXCO) to prepare among other things the agenda for council, and resolve any misconceptions and misunderstandings before meetings of council. Such meetings should not be misconstrued as interference in the operational matters of the university.
- It is recommended that the office of an ombudsman or some alternative dispute resolution mechanism be established to deal, among other things with any conflict that may arise between the VC and chair of council. This mechanism must involve an independent person external to the University, and both the VC and Chair should agree to abide by whichever rulings are made.
- Special attention should be given to strengthening the office of the registrar, which has an essential role to play in advising on governance and compliance.

Recommendation 3: *The suspension of the Vice-Chancellor and the other two senior officials be lifted.*

Not only do I believe that the process to suspend these officials was unfair and lacked transparency, but it comes at a huge cost to the institution not only in terms of financial loss but also in terms of reputational damage, which has a major impact on the ability to attract students, staff and funding. It further weakened capacity at senior management level where a number of critical positions were already vacant. It perpetuates the narrative that senior management are involved in “rampant corruption” and “looting” at the institution. I could find no evidence to support this claim. I also have the sense that once the decision to suspend was taken, a sentiment was shared among some that these officials must be prevented from ever returning to the institution. Hence the decision to immediately proceed to disciplinary hearings once the SNG findings were presented (without providing those suspended an opportunity to respond to the findings), the decision to levy additional

charges which has further drawn out the process (the suspensions are now in their 19th month) and most recently the decision to force the VC to retire.

- I am aware that there are investigations currently taking place, including those in response to serious allegations of death threats to staff at MUT. These must continue. However, they are not of a nature that a precautionary suspension is warranted. The potential for interference with these investigations is independent of the suspension status of the individuals concerned.
- Under the circumstances I doubt whether the VC will wish to return to the University. I would caution that he does not. Whereas he inherited a deeply divided institution, from his standpoint the situation has retrogressed. In a sense he has isolated himself. He has alienated his executive team, and possibly certain members of Council. Without the full support of council and his executive management team the pressing challenge of transforming the culture of the institution may be insurmountable.
- From my observations I do not believe that the current Chair of Council is best positioned to steer council in the direction that would help nurture and restore a relationship of trust with the VC and provide management with the necessary support it requires. There is no evidence to suggest that the relationship has been supportive in the past and involved mutual respect. Instead it has been hierarchical and adversarial. To this end I recommend that he should consider stepping down from the position of chair of council, in the best interest of the University.

Recommendation 4: *The Multidisciplinary Task Team (MDTT) as proposed by the Ministry be implemented without delay*

In response to the adverse findings emanating from the previous IA report, the Minister proposed the establishment of an MDTT to assist MUT in improving its governance and management systems in a range of areas. The proposal was made by the Minister in a meeting with Council in May 2018. The proposal envisaged the appointment of experts in specified areas, to advise line managers in those areas on how best to address the weaknesses that have been identified, to provide technical expertise and to assist with capacity building. While I believe that this matter is being given attention, progress in implementation has been slow.

- It is recommended that the establishment of the MDTT be fast tracked. The MDTT terms of reference is being finalized, and seven areas have been identified where assistance will be rendered. One of these is governance. I believe that such assistance will be invaluable in helping to strengthen the office of the Registrar, and in helping to develop the protocols needed to maintain the relationship of trust and cooperation between council and management.

- It recommended that the MDTT assist management in setting targets for improvement for the next 5 years and that measures be put in place to hold management accountable for delivery.
- One of these targets should relate to the establishment of partnerships with other Universities of Technology (UoTs). While MUT is a member of Technological Higher Education Network South Africa (THENSA) to which the other five UoTs are also affiliated, it should engage with these UoTs through the various projects of THENSA, which include capacity building projects. It should actively pursue partnerships with the other UoTs through THENSA, which will enable staff to benefit from the exchange of ideas with colleagues at the other UoTs, and will also allow MUT to benchmark good practice elsewhere.

5.3 Recommendations relating to the financial analysis into cash flow problems experienced by MUT

As I mentioned previously, Mr Bulelani Mahlangu conducted a high-level financial analysis of the institution in order to understand the cash flow problems being experienced by the University. The full report is contained in Annexure 4. Below I present the main recommendations that emerge from that report:

- MUT management needs to change its approach to dealing with NSFAS. Management needs to be pro-active and timeously engage NSFAS regarding any outstanding balances. Any amounts outstanding should be recovered within the financial period to which they apply.
- MUT needs to change its investment approach and make use of external expertise where necessary.
- Management must prepare regular and reliable cash-flow projections. This does not appear possible without augmenting the finance system.
- A financial sustainability plan is critical and should be comprehensive. Our recommendations in this regard underpin the philosophy that it should address not only all aspects of its income statement and balance sheet, but also the support system in the form of human resources, infrastructure, governance and leadership.
- There are control weaknesses that were identified in different investigations or audits, which seem to indicate far larger problems. In our view further investigations will be necessary to determine the full nature and extent of these weaknesses.
- Given the complexities and the nature of the allegations at MUT and our high-level control environment assessment, we recommend that independent and comprehensive investigations be conducted into the following areas: secondary contracts and part-time lecturing (evening classes); Student residence leases and related expenditure, such as transport costs; Payroll integrity; the HR database (with the focus on possible ghost employees) and Capital Projects (with emphasis on tenders issued from May 2020).

ANNEXURE A: Terms of Reference of the Independent Assessor

Terms of Reference of the Independent Assessor to Conduct an Investigation into the Affairs of the Mangosuthu University of Technology (MUT)

(As published in the Government Gazette No. 45062, Notice No. 674 on 27 August 2021)

INTRODUCTION

1. In terms of Section 44 of the Higher Education Act, 101 of 1997, as amended (the Act), the Minister of Higher Education, Science and Innovation appoints **Professor Anthony Staak** as an Independent Assessor to conduct an investigation into the affairs of the Mangosuthu University of Technology, following a series of allegations and counter-allegations relating to the governance and management of the University. The overall purpose of the investigation is to advise the Minister on the source and nature of problems; and measures required to restore good governance and management.

SCOPE OF THE INVESTIGATION

2. The Independent Assessor shall conduct an investigation into
 - a) various allegations made by the Vice-Chancellor (VC), Dr Duma Malaza in his correspondence to the Department in March and April 2020;
 - b) allegations of misconduct and mismanagement against the VC;
 - c) circumstances and reasons for the suspension of the VC and other senior managers in April 2020;
 - d) the functioning, efficacy and relationships between the governance and executive management structures and portfolios;
 - e) the circumstances that led to the cash-flow problems of the University; and
 - f) any matters that, in the opinion of the Assessor, may impact on the effective functioning of the University, from the analysis of problems relating to governance and management.
3. The Independent Assessor shall report to the Minister in writing of the findings of the investigation together with the reasons upon which the findings are based; and suggest in the report appropriate measures and provide the reasons why the measures are needed.
4. The Independent Assessor must be mindful of the provisions of section 45A of the Act in conducting the investigation.

DURATION

5. The Independent Assessor must in terms of section 47 of the Act, complete his work and submit a written report to the Minister within 45 days from 1 October 2021. The delayed period of assessment is as a result of the independent assessor not being immediately available to commence the investigation.

ANNEXURE B: List of Acronyms

Acronym	Meaning
ADR	Alternative Dispute Resolution
ARCC	Audit, Risk and Compliance Committee
BAC	Bid Adjudication Committee
BEC	Bid Evaluation Committee
BoQ	Bill of Quantities
CFO	Chief Financial Officer
DHET	Department of Higher Education and Training
DVC	Deputy Vice-Chancellor
EMC	Executive Management Committee
EXCO	Executive Committee of Council
FIC	Finance and Investment Committee
IFAWUE	Irregular, Fruitless, Wasteful and Unauthorized Expenditure
KPA	Key Performance Area
KPMG	KPMG international auditing firm
MDTT	Multi-disciplinary Task Team
MORAR	MORAR Incorporated Chartered Accountants
MUT	Mangosuthu University of Technology
NEHAWU	National Education Health and Allied Workers Union
NSFAS	National Student Financial Aid Scheme
PQM	Programme and Qualifications Mix
PRC	Planning and Resources Committee
PSIRA	Private Security Industry Regulation Act 56 of 2001
PURCOSA	Purchasing Consortium of Southern Africa
SCM	Supply Chain Management
SENEX	Executive Committee of Senate
SNG	SNG Grant Thornton Auditing Firm
THENSA	Technological Higher Education Network South Africa
UBAC	Ubuntu Business Advisory and Consulting
UKZN	University of KwaZulu-Natal
UoT	University of Technology
VC	Vice-Chancellor

ANNEXURE C: Programme of Interviews

MEETINGS AND INTERVIEWS CONDUCTED BY THE INDEPENDENT ASSESSOR

INTRODUCTORY MEETINGS WITH INSTITUTIONAL STRUCTURES		
Date	Engagement	Participant(s)
12/10/21	Meeting with the Acting VC and Acting Registrar	Prof M Ramogale (Acting VC) Mr P Masala (Acting Registrar) ^a
	Meeting with the SRC	Mr M Gumede (SRC President)
	Meeting with NEHAWU	1. Mr MC Cele 2. Mr SG Magagula 3. Mr SS Mncube 4. Mr BS Shamase 5. Ms PJ Hlophe 6. Mr LZ Mthimkhulu 7. Mr LP Nzama (Chairperson) ^a 8. Mr JN Ellenson 9. Mr HS Khawula
	Meeting with TENUSA	1. Prof L Naidoo 2. Mr BK Zwane (Chairperson) 3. Mr N Fuyane (SG) 4. Mr TF Zwane
	Meeting members of the Convocation Exco (Including Convocation representatives on Council)	1. Mr S Dlamini (President & Council Member) ^a 2. Ms SZ Mnyandu (Council Member) 3. Mr T Hadebe (IF Member) 4. Mr S Mbonambi ^a (IF Member) 5. Mr S Ndlovu; ^a (Treasurer)
13/10/21	Meeting with the Executive Management	1. Mr B Mahlangu (Financial Expert appointed by the IA) 2. Prof Ramogale (Acting VC) ^a 3. Dr J Van Koller (Acting DVC: 4. Resources & Planning) 5. Dr JM Makua (Acting DVC: Teaching & Learning) ^a 6. Mr P Masala (Acting Registrar) ^a 7. Ms M Mkhize (Senior Director: Marketing & Communication) ^a 8. Mr R Delomoney (CFO) ^a 9. Ms N Mabona (Interim Senior Director: HR) ^a 10. Prof M Cooposamy (Dean of Faculty of Natural Sciences) ^a 11. Dr B Ntshangase (Dean of Faculty of Management Sciences) ^a 12. Prof BF Bakare (Dean of Faculty of Engineering) ^a

		<p>13. Mr G Govender (Acting Senior Director: VC's Office) ^a</p> <p>14. Dr T Kweyama (Dean of Students) ^a</p> <p>15. Mr M Kau (Interim Senior Director: Operations) ^a</p>
	Meeting with the Council Executive Committee (Excluding EMC members)	<p>1. Mr M Morailane (Chairperson of Council) ^a</p> <p>2. Mr OM Galane (Deputy Chairperson) ^a</p> <p>3. Mr T Toni (Chairperson of the Planning and Resources Committee) ^a</p> <p>4. Mrs N Mlaba (Chairperson of the Audit, Risk & Compliance Committee) ^a</p> <p>5. Ms TH Zwane (Chairperson of Human Resources Committee) ^a</p> <p>6. Ms S Mnyandu (Chairperson of Student Affairs Committee) ^a</p> <p>7. Mr S Dlamini (Chairperson of Finance and Investment Committee) ^a</p>
	Meeting with the Executive Committee of Senate (Excluding EMC members)	<p>1. Mr RF Chidzonga ((Faculty of Engineering))</p> <p>2. Mrs JI Baah (Faculty of Engineering)</p> <p>3. Dr TT Poswa (Faculty of Natural Sciences)</p> <p>4. Prof M Cooposamy (Faculty of Natural Sciences) ^a</p> <p>5. N Magiya (Matshiya) (Faculty of Management Sciences) ^a</p> <p>6. Dr Mvuyana (Faculty of Management Sciences) ^a</p> <p>7. Prof BF Bakare (Faculty of Engineering) ^a</p> <p>8. Dr Mthembu (Faculty of Natural Sciences) ^a</p> <p>9. Dr B Ntshangase (Faculty Management Sciences) ^a</p>
15/10/21	Meeting with Members of the Institutional Forum (IF)	<p>1. Mr L Mthimkhulu (Chairperson)</p> <p>2. Mr T Hadebe</p> <p>3. Dr BYC Mvuyana</p> <p>4. Mr S Mthethwa</p> <p>5. Dr JM Makua</p> <p>6. Prof AM Msomi</p> <p>7. Mr S Mbonambi</p> <p>8. Mrs J Baah</p> <p>9. Mr AZM Kubone</p> <p>10. Dr TT Poswa</p> <p>11. Mr LP Nzama</p>
	Meeting with Internal Members of Council	<p>Mr G Govender (Senate)</p> <p>Prof L Naidoo (Academic Employees)</p> <p>Mr BK Zwane (Academic Employees)</p> <p>Ms SI Hlongwane (Non-academic Employees)</p> <p>Mr BSD Ntuli (Non-academic Employees)</p>
^a Attended remotely		

INDIVIDUAL INTERVIEWS		
Date	Name	Position
14/10/21	Dr V Reddy	Former Ministerial appointed member of Council <i>(Dec 2018 - Nov 2022; Resigned February 2021)</i>
	Dr D Malaza	Suspended VC
	Dr J Mabaso	Suspended Chief Audit Executive
15/10/21	Prof M Ramogale	Acting VC
25/10/21	Prof NJ Grove ^a	Former Ministerial appointed member of Council <i>(Dec 2018 - Nov 2022; Resigned June 2021)</i>
26/10/21	Dr F Randerer ^a	Former Ministerial appointed member of Council <i>(June 2012 - May 2016; June 2016 - May 2020)</i>
	Mr MJ Sikhosana ^a	Former Council appointed Member of Council <i>(Apr 2017 - Mar 21; Resigned March 2020)</i>
	Mr M Monde ^a	Former Council appointed Member of Council <i>(Jun 2017 - May 2021)</i>
27/10/21	Dr NZ Qunta ^a	Former Council appointed Member of Council <i>(Jun 2018 - May 2022; Resigned in May 2021)</i>
	Mr S Keswa ^a	Former Council appointed Member of Council <i>(Aug 17 - Jun 21; Resigned in May 2020)</i>
	Ms LP Thabethe ^a	Former Council appointed Member of Council <i>(Dec 2020 - Nov 2024; Resigned in September 2021)</i>
02/11/21	Mr M Khumalo ^a	Suspended Senior Director: Operation
03/11/21	Dr D Malaza ^a	Suspended VC
04/11/21	Mr M Morailane ^a	Chairperson of Council
09/11/21	Prof M Ramogale ^a	Acting VC
23/11/21	Mr L Mthimkhulu ^a	Former Acting Senior Director: HRD
^a Attended remotely		

ANNEXURE: 4 MUT IA Financial Report

Report to the Independent Assessor – Report of the Financial Expert Mr Bulelani Mahlangu 31 October 2021

Terms of Reference

The Independent Assessor decided to co-opt additional expertise specifically to pursue all matters relating to the investigation into the circumstances that led to the cash-flow problems of the University. The terms of reference of the Financial Expert were as follows:

1. Conduct a detailed analysis of the financial statements of MUT since 2018 and of other relevant documentation, i.e. to determine the circumstances that led to the cash-flow problems of the University;
2. Provide an opinion on the current state of MUT's financial health and whether MUT is a going concern in financial terms;
3. To provide an opinion on the quality and adequacy of reports submitted by management to the Finance and Investment Committee and the Audit, Risk and Compliance Committee of Council;
4. In consultation with the Independent Assessor make recommendations to address the cash flow problems experienced by MUT; and
5. Make any other recommendations that could help improve the financial position of the University.

1. High Level Procedures Performed

- a) Reviewed the Annual Financial Statements for the periods 2018 to 2020;
- b) Reviewed the minutes of the Council, Finance & Investment Committee (FIC) and Audit, Risk and Compliance Committee (ARCC) meetings, together with management's submissions;
- c) Reviewed the reports from independent parties – Management Reports prepared by the Auditors, and Actuarial Report IRO Post-Retirement Medical Aid;
- d) Reviewed the Management's submissions for the period ended 30 June 2021 presented at the FIC meeting of 23 August 2021;
- e) Discussed with NSFAS officials regarding MUT balances and outstanding amounts;
- f) Interviewed people charged with governance - Chairpersons of FIC and ARCC
- g) Interviewed the following MUT personnel, the VC, Acting VC, Acting DVC T&L, CFO, Director: Risk & Compliance and the Acting Director: Risk & Compliance; Supervisor: Student Housing, and Senior Director: Operations.

2. MUT Cash Position

2.1 MUT's Cash Situation when the Bridging Finance was Requested

In a letter dated 15 February 2021 the Acting VC wrote to DHET requesting it to permit MUT to use the infrastructure funding as bridging finance or to arrange an overdraft facility, in order to fund an anticipated cash deficit. The amount requested was R75m. A number of reasons were advanced for the deficit, the primary one being that contrary to the practice in the past, NSFAS had not paid University claims during January and February 2021. According to the CFO, as at end of December 2021 NSFAS owed MUT just over R314m.

I performed a high-level review of the University's 30 June 2021 Cash-Flow Projection (CFP) in order to assess how the R75m requested was arrived at, and whether it was reasonable given the financial affairs of the University at that time. I took management's word that the projection was similar to that at the beginning of 2021. I was able to determine that by allowing for no NSFAS receipts during the February and March in the projections, the deficit as at end of March 2021 worked out to be R49m. There have been reported instances where institutions experiencing financial distress used grants to fund their operating working capital requirements without first engaging the DHET. In this regard, the University should be commended for first seeking DHET's approval.

It is clear that there was some uncertainty towards end of last year regarding when the 2021 academic year would start. Having said that, it does appear that the institutions were warned timeously regarding the delays that could be expected on the NSFAS side.

From a governance point of view the matter was tabled by the CFO at the Executive Management Committee (EMC) meeting in January 2021 with the initial cash deficit forecast. The Acting VC subsequently raised this matter at the FIC meeting of 22 February 2021. Based on what is articulated in the minutes, there is no indication that that FIC or any governance structure took a formal decision to recommend for approval or approve the proposal to approach DHET. The Acting VC has indicated that the matter was discussed by EXCO, and the minutes of the meeting of 11 March 2021 reflect that. The matter was tabled at the Council meeting of 24 March 2021 for noting. It is worth noting that a request to the funder for financial assistance can never be a minor detail. It is a matter that requires to be dealt with formally in terms of the governance processes and be captured clearly in the minutes regarding which structure approved and when.

2.2 MUT's Current Cashflow Position

Like with all other universities MUT receives six tranches (because of COVID they were fewer) of cash from NSFAS, and this is paid two months in advance. DHET's tranches generally comes almost every month between April and November, a substantial portion of which gets paid between April and May. The last payment from NSFAS is processed in October. Ordinarily the timing of the cash inflows does not pose a problem. However, with the pushing out of the academic year, the institutions' CFP essentially would have to extend by the number of months added to the academic year, or alternatively institutions would have to prepare a 12- month rolling cashflow projections.

Current indications are that the 2021 academic year is only planned to be completed in January/February 2022, and it is expected that DHET will soon provide direction in terms of the start of the 2022 academic year. For the better part of this investigation, I had to work with the 30 June 2021 CFP because this was the latest available. On 2 November I was furnished with one for the period ended 30 September 2021. I understand from the CFO that he introduced the CFP mechanism early this year, and he anticipates that it will get better over time. It is regrettable that the finance system does not permit for an efficient manner of generating up to date CFP.

Based on the 30 June 2021 CFP, MUT was to have about R137m in its bank account as at end of December 2021, and per the one for the period ended 30 September 2021 the balance is estimated at R213m. The material difference in the projected balances, i.e. R137m versus R213m, is one good reason why regular CFP are critical for decision making. The expenditure in respect of the three months from January to March 2020 was in the region of R267m.

2.3 Principles of good cashflow management and considerations

- a) Take in as much cash as quickly as possible – generally delays can be expected with some of the privately funded students. There is no reason why the NSFAS process should not work well for MUT.
- b) Delaying the payment period – MUT's practice of paying 30 days from invoice is quite common, but it is also possible to apply a supplier discrimination practice to stretch the payment terms.
- c) Investing idle cash – given the nature of the tender processes and infrastructure projects, substantial amounts of cash are likely to lie idle for long periods.
- d) Making cashflows visible – regular cash flow reporting is required to truly foster a cash management culture.
- e) Matching funding to cash flow obligation – the asset instrument should be used to appropriately cater for the liability.

2.4 Control Mechanism

According to the CFO the earmarked grant funds are held in separate investment accounts with various financial institutions. The University uses ABSA as its primary bankers and its own call account with ABSA is named accordingly to identify it as MUT Own Funds while the funds on call in the ABSA account is named appropriately to identify it as MUT – Restricted Fund Call account. There are several call accounts, and the process works the same with other banks. When monies are received in respect of grants, they are transferred to the MUT- Restricted Funds call account. These funds are then reimbursed back to MUT from the MUT- Restricted Fund Call account upon written approval by the Vice Chancellor.

The Senior Director: Operations has indicated that he has raised serious concerns about lack of application of the Purchase Order (PO) process in respect of capital project. In his view the lack of this system has substantially compromised the budgeting process and his assessment is that funds have been lost as a consequence thereof. The Finance Director has responded to say that MUT does have a PO system, however the challenge is that POs for contracts are not created upfront for the full value. She indicates that SMC is currently looking at a system that can do proper contract management.

2.5 Conclusions

Based on the above the following are my views:

- a) That the University genuinely thought that a cash injection would be necessary, and the amount requested seems reasonable;

- b) Based on the date on the letter to DHET, there is no indication that the request for funding was formally approved by Council or a delegated structure before DHET was approached. It would appear that the matter was presented at the governance structures meeting subsequent to the request having been sent to DHET.
- c) MUT has a reasonable control mechanism in the form of having call accounts that are used for isolating grant funding, however lack of a PO system for contracts presents a very big risk;
- d) That given the amount of R314m outstanding in December 2020, Management should have pro-actively engaged NSFAS towards end of 2020 or even beginning of 2021 in order to resolve the outstanding queries. It is very clear that even if MUT had received half of this amount due, it would have made a difference.
- e) MUT currently does not have a robust mechanism to help it manage its cashflow regularly, even if the data is not real-time. If I had access to a September month end CFP (instead of the June one) this would have allowed me to have a better sense of the likely cash balances at end of December 2021.
- f) If MUT robustly pursues the R105m owed to it by NSFAS and which flows from the 2020 year (see 3.1.2 under NSFAS balances below) and get it within this year, it unlikely to seek short term financial help from DHET.

3. Analyses of the Annual Financial Statements

3.1 Annual Financial Statements – Balance Sheet

Adjusted Net Balance Sheet – I have focused on the elements of the balance sheet that will result in cash inflows or outflows.

ELEMENT	NOTE	2020	2019	2018
		R000	R000	R000
Property Plant & Equipment (PPE)	1	956 636	848 248	504 552
Current Assets				
Inventories		926	1 586	1 760
Student Debt	2	350 634	219 674	264 625
Investments		2 880	3 456	3 589
Cash	3	977 266	822 671	611 649
		1 331 706	1 047 387	881 623
Non-Current Liabilities				
Post Retirement Medical Aid		32 438	33 679	32 684
Loans and Grants	4	786 682	807 087	669 683
		819 120	840 766	702 367
Current Liabilities				
Loans, Grants and Trade	5	353 849	202 083	198 060
Credit Balances in Student Accounts	6	83 115	84 347	70 508
Provisions		41 445	36 688	26 182
		478 409	323 118	294 750
Net Position		34 177	- 116 497	- 115 494
Net Position after allowing for the possibility of MUT recovering less from NSFAS		- 15 863	- 166 497	- 165 494

Below is an analysis of the balance sheet items, with focus on material balances.

The Net Position shows a significant change between 2019 and 2020, moving from a potential cash deficit of R116m to a cash surplus of R34m, an improvement of R150m.

Only R212m of the R314m student debt due from NSFAS had been received by the time we wrote this report. There are still significant uncertainties regarding other outstanding balances and in order to cater for that we have made an assumption that as much as R50m (2020) and R50m (2019) will not be recovered from debtors in general. The net effect of this adjustment is to worsen the position of the University from solvent position of R34m to a technical insolvency of R16m as at end of 30 December 2020.

3.1.1 – PPE -The analysis above has limitations in the sense that I have disregarded Property Plant and Equipment (PPE) from my calculations. It is a unique and specialised asset the value of which is very difficult to determine using market principles.

3.1.2 – Student Debt - the balance at December 2020 has increased significantly because of increase in the amounts owed by NSFAS. According to the CFO, the 31 December 2020 balance included an amount of R314m reflected as due from NSFAS.

3.1.2.1 NSFAS balance

Given the fact that 73% of the students at MUT are funded by NSFAS it became very clear that the process of submitting and monitoring payments from NSFAS is crucial.

As soon the Independent Assessor was appointed, I made contact with NSFAS in order to find out how far they were with the process referred to as Close Out Project (COP). The project was set up in order to establish the correct balances owed to NSFAS or by it to various institutions in respect of the 2017 to 2019 financial years. One of the triggers for this project is that the remittance process by NSFAS only commenced recently (late 2018 or in 2019), and before that there were no such monthly remittances from NSFAS. A remittance advice helps the receiving party to determine the specific details of who and how much is being paid in respect of each student.

On the 22nd of October 2021 I attended the first meeting of MUT and NSFAS, which was aimed at discussing the COP findings. A balance of R105,8m from 2020 is what NSFAS reflects as owing to MUT. The next phase is for MUT to present its own position.

I have not yet been able to establish the exact amount MUT reflects as outstanding on its side. What may complicate the matter is the fact that MUT was paid an amount of about R30m early last year towards Historic Debt. That process was paused, as the Historical Debt resolution was considered to be an integral part of the COP. A lot of progress has been made to get to a point that NSFAS can sit down with the institutions, but it does appear that much more work still needs to be done.

The following represents the various amounts paid by NSFAS towards the outstanding balance of R314m as at 31 December 2020 mentioned above.

EP NUMBER	DATE PAID	DESCRIPTION	BATCH-ENTRY	AMOUNT PAID
EP15665	12-Jan-21	MUT 20 DHET	12556-23	R27 079 826
EP15791	05-Feb-21	MUT 20 DHET	12911-19	R27 088 071
EP16051	18-Mar-21	MUT 20 DHET	14679-71	R18 884 089
EP16817	09-Jun-21	MUT 20 DHET	17017-8	R136 165 438
EP17154	16-Aug-21	MUT 20 DHET	18040-12	R1 582 735
				R210 800 159

If the system was efficient, this amount would have been paid to MUT by 30 December 2020 or so. This would have eliminated the need for financial distress at MUT. At the time of writing this report, we had not yet been presented by NSFAS with written reasons for the delays. A verbal comment I was provided with is that MUTs capacity to submit correct data all the time is in question and that in

certain cases it was incorrect interpretation of the rules. In response to my question regarding why NSFAS payments in respect of 2020 were spread out as show above, NSFAS officials explained that there were some complications due to the extended academic year and confirmation of additional budget on their side was received late. The result was that top ups for 2020 were processed late.

Failure to recover this balance on time not only made MUT doubt its ability to meets its short-term obligation, but it has effectively deprived MUT interest income.

The following was submitted to us by NSFAS to indicate some of the challenges they have in the current year with respect to MUTs submission.

ROW LABELS	COUNT OF ID NUMBERS
Course Code Mismatch	489
Duplicate Registration	36
Funding Condition	1
Grand Total	526

It has to be noted though that with respect to 2021 claims and based on what has been received up to so far, there is unlikely to be a repeat of end of 2020, where there was substantial amount of money owed by NSFAS.

3.1.3 – Cash - Refer to **note 3.2.1** below under ‘investment income’.

3.1.4 – Loans and Grants - The interest rate on the two unsecured loans is 11.06% and 13.04% respectively, and it is fixed. There may well have been genuine reasons for fixing interest at that time, but on the face of it, it does not seem like it was prudent to fix when the rates are so high. Fixing the rate may provide certainty but deprives an entity the flexibility. A reduction in interest rate of up to 3% for instance would result in reduction in annual instalments by R2.5m, and the **Net Present Value** over the next nine years would be approximately R18m.

3.1.5 – (Loans, Grants and Trade): Accounts Payable increased significantly at 31 December 2020 compared to the previous year. The balance also includes an amount of R124m, referred to as Deferred Revenue. This will be the portion of the 2020 revenue (tuition fees and accommodation fees) that were deferred and recognised only in 2021 as a result of the 2020 academic year only being completed in the first quarter of 2021. It is an accounting adjustment to recognise the revenue over the period during which the services were rendered but has no cashflow effect.

3.1.6 – Credit Balances in Students Accounts

The account arises from the fact that students sometimes deposit the student fees, but the details are not correct, or sometimes it is over-payment. It is often difficult to deal with the cases where students input wrong information. Where students have over-paid, it should be easier to process, even though institutions seldom do that.

3.2 High Level Analysis of the Income Statement

ELEMENT	Note	2020	2019	2018
		R000	R000	R000
Total income	1	1 067 113	999 148	945 329
Total expenditure		1 036 482	915 787	862 524
Salaries - Academic	2	231 779	235 586	210 579
Salaries - Non-academic	2	231 725	201 982	174 769
Depreciation	1	109 020	104 949	12 427
Other expenses	3	463 958	373 270	464 749
Surplus		30 631	83 361	82 805
Add back: depreciation and amortisation		109 020	104 949	12 427
Working capital changes adjustments		61 213	- 29 201	49 921
Other adjustments		14 694	56 009	- 106 201
Cash Generated by Operations		215 558	215 118	38 952

Income Statement

3.2.1 Total income

Other income - The total income of R1.067 billion at 31 December 2020 includes an amount of R11.54m which relates to other activities. The CFO has explained that currently there is little to no income from research as it has not been commercialised as yet at MUT, and that the Research Unit is under-capacitated. This aspect is to be addressed as part of the MUT's turnaround plan.

Depreciation - due to the application of the International Financial Reporting Standard (IFRS) 16 the amount reflected as payment in the income statement will differ from that actual paid, as some of the payments are treated as payment for right of use of the student accommodation. The result is that only R179m of the R259m is processed through the student lease account, and the rest is sits in depreciation and finance costs.

Investment income – At 30 June 2020 the investments stood at R1.28bn. Except for R66m which earned interest rate at 5.46%, the rest of the funds were invested at between 2.2% and 4.45%. Based on the schedule provided, R646m (of the R1,28bn) earned average interest of 2,625%.

Perusal of the market reveals that a few banks are offering very competitive rates which can range from 4.35% to 5.6%, without changing the risk profile. An additional 3% on R646m would yield R19m. Given the fact that MUT has had substantial grant funding balances for some time, it is regrettable to see just how much interest income may have been lost as result of not taking key investment decisions much earlier.

The University has approved a Cash and Investment Policy with risk management principles to direct the extent of diversification and according to the CFO they will be reviewing their investments strategy.

Tuition fees - The tuition fee increase for 2021 was 4.7%.

3.2.2 Salaries – Non-academic salaries seem to have increased dramatically over the past 2 years. The ratio between academic and non-academic has shifted from 1.2:1 to 1:1 in 2 years. According to the CFO this was partly due to the increase in the number of non-academic staff. He also indicated that the salary increases for 2021 was 0% for employees in the P1- P4 category, and 5.08% + R100 increase in the housing allowance, for employees in the P5 – P16 category.

Also included in salaries is the salary cost of suspended senior employees as at 30 September 2021

Job Title	Department	Date Suspended	Paid Whilst Suspended	# Of Months in suspension
Director #	Protection Services	Sep-19	R2 125 755	23
VC:R&P (Acting)	VC Office	May-20	R1 471 153	17
VC	VC Office	May-20	R4 857 399	17
Senior Director	Operations	May-20	R2 809 233	17

Dismissed on 19 August 2021

3.2.3 Other expenses – Council Member Stipends – the financial statement show that the 2020 doubled that of 2019. The Acting VC has explained that many more meetings of the EXCO took place during 2020.

Other expenses also included student residence related expenditure

Included in the total income is student accommodation of R331m and R309m for 2020 and 2019, respectively. The corresponding costs per the above schedule are R287m and R217m for 2020 and 2019. It is difficult to work out the surplus or deficit for the reasons that the employee costs and bad debt write off associated with the management of the residences have not been isolated.

Number of students	NOTE	2020	2019
Internal residences		1 888	1 888
External residences		8 654	7 654
		10 542	9 542
Expenditure in accounting terms			
		R000	R000
Student lease expense	1	179 808	107 148
Depreciation		77 350	79 000
Student Transport		30 394	30 920
		287 552	217 068
Expenditure in cash terms			
Student lease expense	1	259 471	189 267
Student Transport		30 394	30 920
		289 865	220 187

R259m represents the actual cash-outflow. The monthly payment of R289m gives us a sense of the quantum of loans that the University would be able to raise in order to build their own residences. At a discount rate of 8%, a R289m annual payments would allow the University to raise a loan of R2.8bn. Given an average cost per bed of R250 000, it would cost MUT R2.163bn to build residences to house 8 654 students. It may not be feasible at this stage for the University to provide all accommodation, but the net gain of R657m (R2.8bn – R2.163bn) demonstrates that it would be worth the University's while to consider owning more of its own residence, if it can get the land.

3.3 Analysis of Cash Generated By Operations (CGBO)

Cash Generated by Operations represents the amount of **cash a company generates (or consumes) from carrying out its operating activities** over a period of time

If we focus on December 2020, CGBO is more than seven times the size of surplus and generally this would imply a healthy cash situation. The challenge lies in the working capital part, in either the student debt subsequently having to be written down or the expected cash from NSFAS not being access on time.

Conclusion: Based on the information above, the following is what I can conclude:

- a) The cash generated by operations is one strong indicator that generally MUT should generally not have challenges in its ability to pay for services as they fall due;
- b) Given the NET POSITION, the R260m reflected as Retained Income in the AFS of 31 December 2020 is not represented by liquid assets;
- c) Investment allocation is not efficient;

- d) By sweating its assets and tightly managing costs, MUT can easily generate healthy surplus, and as consequence build its reserves;
- e) NSFAS process has not been managed effectively and efficiently;
- f) There is a strong likelihood that in general terms MUT charges much less for its offerings than its competitors; etc.

4. MUT's Financial Health – Going Concern Issue

4.1 Going concern

For the purposes of our report, we have adopted an accounting understanding of the term as a starting point. Going concern sometimes refer to entity's current financial condition, including its liquidity sources at the date that the financial statements are issued (for example, available liquid funds and available access to credit). The funds are necessary to maintain the entity's operations considering its current financial condition, obligations, and other expected cash flows **within one year** after the date that the financial statements are issued.

When evaluating an entity's ability to meet its obligations, management shall consider **quantitative and qualitative** information about the following conditions and events, among other relevant conditions and events known and reasonably knowable at the date that the financial statements are issued.

One factor that is often not given sufficient consideration when commenting on or assessing whether a higher education institution is a going concern is the fact that the government, as the primary funder, may consider factors other than those that are finance related in determining whether or not to continue funding an institution. It may not always be practical to do so but it does seem like a negative going concern opinion should not be expressed without first discussing the matter with DHET. This is not to say that the assessment has no value, it can certainly serve a useful function as an *early warning system*.

A quasi-actuarial balance sheet approach seems much more robust than the accounting-based balance sheet. The actuarial approach allows for applying probability theory to a set of facts and uses econometric modelling as a basis for constructing cash-based balance sheet.

The limitation of the accounting-based approach to constructing a balance sheet is best illustrated by in 4.2 below.

4.2 Pay as You Go Approach

The pay as you go approach makes recognition of the fact that only a fraction of an obligation is likely to require cash outflows in the short term.

It can be illustrated as follows:

ELEMENT	2020	2021	2022
	R000	R000	R000
Provision for leave and bonus	31 271	32 835	34 476
Post Retirement Obligation	32 438	32 061	31 516
Credit Balances in Student Debtors	83 115	80 000	77 000
Payments processed	6 436	6 550	7 143
	153 260	151 446	150 135
Leave pay and bonus paid/projected	3 464	3 637	3 819
Post Retirement Medical Aid	2 972	2 913	3 324
	6 436	6 550	7 143

Post Retirement balances were taken from the actuarial report of 31 December 2020.

As can be seen from the above even though the liability under consideration in 2020 is R153m, only R6.43m thereof will translate into cash outflow.

4.3 Auditors' Assessment

The external auditors included a high-level overview of the University's financial viability as at 31 December 2019 and 2020. The auditors assessed the financial viability status of NSFAS as 'concerning'.

4.4. Conclusion

- Based on the above analysis, I conclude that MUT does not have a going concern problem for now.

5. Material Findings from Audits and Other Forms of Investigations/Enquiry

5.1 Material Internal Audit investigations

I interviewed the suspended Director: Risk & Compliance and he highlighted a number of investigations that would require a follow up because in his opinion they had a serious impact on the cashflows. We have picked only five of those he had brought to our attention.

ELEMENT	Note	INVESTIGATION	AMOUNT	Finding/Observation	MUT's response
Ghost Employees	1	Internal/SNG	2 400 000	SNG recommended clean up of HR data	KPMG will be re-engaged
Secondary Contracts and Evening Classes	2	Internal	Still to be determined	Executive and Internal Audit have done work	Ready to move to a full scale forensic
Residences Overcharging	3	Internal		Report is still a draft was never presented	MUT will respond when the investigation is complete
Supply Chain	4	Morar	Over R60m	SCM shortcomings have been highlighted by many parties	Some of those implicated by Morar have been dismissed
Payroll Manipulation	5	Internal		Employees were able to increase even their own salaries	

5.1.1 Ghost Employees – Modus Operandi – A duplicate employee profile is created, the banking details will be manipulated, and the profile is deleted after the payroll has been processed. This matter was presented for further investigation and the recommendation was for MUT to first clean up the HR data. The R2.4m relates to only four instances/employee investigated, and as a result there is a strong view that this is just tip of the iceberg.

5.1.2 Secondary Contracts and Evening Classes – Modus Operandi – Some staff members were likely paid for no work done. In certain instance the number of attendance details were deliberately distorted.

Evening classes cost	2021	2020	2019
Balances	27m*	20m	29m
* For nine months			

The VC flagged this as a big problem and indicated that at the time of his suspension it had already been discussed at the EMC and the responsibility for investigating had been determined. According to the Acting VC a fixed remuneration model was adopted at the insistence of the union/s. The Acting

DVC Teaching & Learning indicates that often the schemes used were so sophisticated that they benefited from having a whistle-blower who fully understood how this was done.

I also interviewed the Acting Director: Risk & Compliance (DRC) about activities she thinks can contribute to better cashflow management, and she provided comments in respect of the evening classes and SCM. She has informed me an internal audit exercise was done on the secondary contracts and evening class arrangement, and she was working with the Acting DVC:Teaching & Learning. According to her the investigations started in July 2021. She also indicated that the findings had not yet been presented to the ARCC but her initial recommendation is a forensic investigation will be required to have a better understanding of the system. According to the CFO the cost linked to this project increased from R20m in 2020 to R27m by September 2021.

At our meeting, Acting DVC: T&L and Acting VC explained that the programme was instituted some years back as a response to the call for massification of education in order to promote access. They indicated that this issue remains a sensitive one and attempts to deal with it in the past met with fierce resistance. The DVC: T&L led the process of investigating and worked with Internal Audit. Given the limited capacity internally, he has also recommended a thorough investigation as a follow up to the work done by Internal Audit. The CFO has confirmed that there was no cost benefit analysis done to determine whether running this programme was run at a profit or loss. He further adds that at the moment the University does not have the capability of detailed costing of all programmes which it runs.

They have also indicated that an Executive decision was taken at the meeting of 21 October to discontinue the evening classes.

Regarding SCM, the Acting DRC feels that lack of capacity in this area is a big contributor to the current challenges at SCM. The Chair of ARCC also indicated that what remains a concern is the capacity in the SCM unit itself, as this results in challenges in terms of contract management. She thinks that it be addressed with the approval of the new organizational structure.

5.1.3 Residences and overcharging – the audit picked up a number of weaknesses, namely:

- Duplicate payments;
- Incorrect billing;
- Invoice incorrectly calculated; an
- Contract terms not followed.

The audit report was never tabled at the EMC or ARCC because the Director: Risk & Compliance was suspended before tabling it. I asked for clarity and some figures after noting the fact that the student operating lease account as noted in 3.2.1 under 'expenditure' had increase significantly,

from R107m in 2019 to R179m in 2020. Based on the discussion with the Student Housing Supervisor, I was able to establish that a significant part of this can be explained by the fact that there was increased number of students who qualified for NSFAS last year, and as a consequence the number of students staying at the residents also increased significantly.

In response to my question regarding ~~how~~ the process of identifying the service providers, the Supervisor explained to me that the Student Housing Unit often gets enquiries from people who would like to provide student accommodation. I asked if there was an established channel for anyone outside the University to perhaps send an e-mail to in order to have records of people who have submitted their profiles. From the response I got, I did not get a sense that there is a standalone database of these unsolicited proposals. He indicated that there is a panel (himself, 2 SRC Presidents, an SCM official, and a Safety and Health representative) who go out to inspect the accommodation offered. If the service provider meets the requirements, then information is relayed to the VC, who then makes an offer to the service provider. I asked if there was a system in place to ensure that no member of panel or staff benefits by providing student housing without declaring, he indicated that he would not know if SCM runs other processes in this regard.

He says that there was an attempt to run a proper tender process in 2019 but this was abandoned after SCM highlighted certain flaws in the process. His recollection is that the last time a proper process was run was in 2016 or 2017. Many current suppliers are on one-year contract as the intention is to enter into longer term contracts with landlords as from the beginning of 2022.

The CFO has indicated that Student Housing has been mandated to conduct full assessment on all building currently being leased by MUT in order to determine which landlords were complying or partially complying with the minimum norms and standards for student accommodation. He says that the report will be used to determine which landlords MUT would be willing to enter into new longer-term lease agreements with. The report is still to be presented to the EMC.

He also indicates that SCM issued an Expression of Interest (EOI) which is open advertisement for all potential providers of student accommodation to respond. This process was run by an external service provider and is currently at evaluation stage. He says that the purpose of this exercise is to expand the pool of service providers for this commodity. The evaluation will be finalised by the end of November 2021.

5.1.4 Payroll – Modus Operandi - based on the reports, payroll was breached several times. Unauthorised employees were able to create own contracts, change amounts, and even change the duration of contracts.

5.1.5 Supply Chain – a significant part of SCM issues were dealt with in the Morar Report, and this is one element where MUT applied consequence management with great effect.

5.2 Material Findings by External Auditors

The un-qualified audit opinion in respect of the 2020 financial year end represents a significant improvement compared to a qualification in 2018. In 2018 the auditors cited unquantified irregular expenditure and incorrect Net Book Value figures as the primary reasons for the negative audit opinion. It takes a lot to recover from a qualified opinion, and Management should be commended.

With respect to the 2020 financial year end, the auditors noted that there has been a significant improvement in the preparation of financial statements and performance reporting compared to the prior years. They further stated that “Management needs to further strengthen the oversight and monitoring on financial and performance reporting to eliminate material misstatements identified through the audit, which were subsequently corrected”.

The auditors had the following comment to make in terms of internal control deficiencies:

“The university does not have procedures to ensure compliance with the supply chain management system. Furthermore, errors were identified during the year on procurement processes and on contract registers, such as:

- Contracts registers are not complete and accurate.
- The register submitted did not include amounts for all expenditure that was incurred in the current year for quotations.
- Preferential points were incorrectly calculated for one supplier”

Similar concerns were raised in the 2019 audit. With respect to SCM, the auditors commented that the documentation was either poor or non-existent.

5.3 Irregular Expenditure

At the end of the 2020 financial year the balance of irregular expenditure was R141m. Part of this balance is R110m that was carried forward from the 2019 year-end. We noted in the minutes that this matter was discussed many times, and at various forums.

According to the CFO and the Acting VC, the irregular expenditure emanated from a whole range of circumstances, some deliberate and others not, in the context of SCM and Contracts Management. The CFO points to complexities associated with the application of PFMA concepts in a university environment. The CFO says that as a response to this problem a number of initiatives were

undertaken to address the problem, including developing the IFAWUE (irregular, fruitless & wasteful and unauthorised expenditure) Framework. Consequence management has taking place following the findings of the Morar investigation.

The Chairperson of ARCC indicated that Council monitors very closely on irregular expenditure and would interrogate reasons provided by Management for any non-compliance. She has added that most irregular expenditure results from contracts that are under investigation.

Having read the minutes of FIC and Council, I am also of the view that this matter has been discussed a number of times by the different governance structures. I noted that some of the transactions were taken to Council for condonation, and others required more work. The FIC minutes were silent on the identity of those transactions that have been referred to Council for condonation.

The Acting Director: Risk & Compliance has indicated that some internal audit work has been done on the Irregular Expenditure process. Some of their findings indicate that the compiling of the irregular expenditure is suspect, with some of the transactions seemingly left out deliberately.

5.4 Security Tender

We are informed that the security tender was put on hold by Council, and the rationale provided was that the disciplinary process should be first dealt with before the tender process can resume. Without more details regarding the rationale, it would seem that there may have been excessive caution, especially by a structure that is ultimately charged with ensuring that irregular expenditure does not take place. The tender expired on 31 July 2020. In our view a new tender process should have been started immediately after the expiry, and where Council was unsure, they could get legal guidance from the inhouse legal expertise.

5.5 Conclusion

Based on the findings of the auditors, there are serious challenges with SCM and Contract Management. Seemingly a lot of work has been done in order to deal with irregular expenditure but more still needs to be done. Based on the preliminary findings of some the investigations done, I am left with the impression that the control environment in certain areas is substantially weak.

6. Submissions to the Governance Structures - FIC, ARCC and Council

6.1 Minutes and Submissions

I reviewed the minutes of meetings which took place on the following dates:

FIC – (2 March 2020, 31 July 2020, 22 Feb 2021, 17 May 2021, 31 May 2021, 30 July 2021)

Council – (24 June 2020, 27 August 2020, 2 Dec 2020, and 24 March 2021)

ARCC – (31 March 2021, 30 July 2021, 23 August 2021)

My observation is that the meetings dealt with standard but necessary matters such as Management Accounts, Irregular Expenditure, Procurement Plans, Consequence Management, Supply Chain and Contract Management and Finance related policies, and student debt, etc.

My biggest focus was on FIC activity because this is where the finance/cashflow matters get interrogated in depth.

Based on the minutes I reviewed, I noted that the issue of quality of submissions by Management often came up at the FIC meetings. I got the impression that Members often needed to assist the Executive in order to ensure that quality submissions are made to Council.

FIC has also been vocal about SCM or irregular expenditure (and condonation) and contract management, etc. Council and ARCC also raised concerns about some of the SCM processes.

The issue of quality of the submissions was raised very sharply at the FIC meeting of 25 March 2020, and the Chair of FIC wrote to Council to raise concerns about Management's failure to, 1) produce reports and policies, 2) produce 3) to effect recommended changes to policies, etc.

Management differed and indicated that the submission to Council failed to outline in what ways the submissions do not meet the standard. Council considered this matter and referred to the Acting VC. It also noted that other Committees were having similar challenge.

Submissions - It was confirmed by the CFO that all finance related reports that serve at FIC, also serve at Council, unless FIC does not recommend a report/s to serve at Council. It is fair to say that the engagement at both the FIC and ARCC is very robust. Below are some submissions (6.1.1 and 6.1.2) that drew my attention, they were presented at the FIC meeting of August 2021:

6.1.1 Report on use of restricted funds & financial sustainability on 30 June 2021

This report included the following:

“It may occur that at a point in time the cash available will be less than restricted grants. This is more especially during the first quarter of the year. The reasons for this could vary and include the following:

- cash collections from students over the period are very low,
- NSFAS making late payments,
- Block and Fee Gap grant from DHET not received”.

6.1.2 Cash & Cash Equivalents

The table below summarises the comparison of the **Cash & cash equivalents** against the Deferred Income (Restricted Funds) and Student debt as at 30 June 2021 against previous periods.

Cash & cash equivalent vs Earmarked Grants & Student Debt

ELEMENT	30-Jun-21	31-May-21	31-Dec-20	30-Sep-20	30-Jun-20
Cash & cash equivalent	1 263 639	948 971	980 136	1 110 041	1 109 794
Earmarked Grants	905 316	941 662	837 150	807 765	830 306
MUT unrestricted cash	358 323	7 309	142 986	302 276	279 488
Total Student Debt Before Impairment	727 321	593 181	579 858	534 378	939 007

The submission went on to further state “The above indicates that MUT has a positive balance of R358m of owned funds at the end of the second quarter”.

Two new programmes, Analytical Chemistry and Advanced Diploma in Agriculture, were referred to Council for approval without any accompanying cost benefit analysis. To its credit, Management did a benchmark in terms of the fee to be charged.

The following are some of my observations regarding the FIC submissions:

- The Management Accounts were not accompanied by cashflow projections. Alternatively, the Management Accounts were not reconciled to the cash position.
- The Student Balances and NSFAS Funding submission had improved but it still does not systematically present the overall position in a manner that would give the FIC Member a sense of the balance sheet account.
- I do not see any presentation of full set of financial statements, i.e. Balance Sheet, Income Statement and Cashflow Statement. This should be standard, at least for 3rd and 4th quarters (notes would be optional);

- d) The comment regarding “cash balances sometimes being below the balance per grant funding” suggests that there have been instances where capital grants were used to finance working capital. The policy on irregular expenditure may already cater for this, failing which the cash and investment policy or even grants policy would have to state succinctly that grant funding cannot be used for any other purpose without the authorisation of the Council.
- e) For too long the University has left money in assets that generate low interest.
- f) The presentation in respect of cash and cash equivalents is misleading in the sense that it portrays R358m as being enough to cater for other expenses. It does not indicate what the commitments are against the R358m.

The Chairperson of ARCC has indicated that the issue of financial sustainability was flagged as a concern when Management presented their budget for approval. The meeting also urged Management to also focus on the opportunities available for generating third stream of income.

The Chairperson of FIC has indicated that the Committee has raised concerns regarding the risk of possible delays in receiving government funding. He said that the Committee also highlighted the need for MUT to generate third stream income and one initiative that is currently being discussed by the Convocation, concerns how they can raise funds for the University. He also made the point that when Council was asked to approve the two programmes, namely Analytical Chemistry and Advanced Diploma in Agriculture, there was a robust discussion about this presentation and one point that was raised very strongly was: why some of the MUT programmes were much cheaper than those of their competitors.

I also asked the CFO regarding what he considers to be major issues from a cashflow improvement point of view. He cited several interventions that are required, some of them are structural. For the purposes of my report the two that I thought are quite key are 1) a more robust debt collection process, and 2) a review of the fee structure. This is line with own our finding regarding fees and we drew comparison with two other universities.

Based on the minutes, in my view none of Council, FIC or ARCC seemed to deal with the matter of financial sustainability or in a comprehensive and integrated manner. I could not see anywhere in FICs minutes or submissions where finance strategy was discussed. In terms of the Risk Appetite Statement of 2019 under financial and commercial activities financial sustainability is listed amongst those activities for which the institution has low appetite. By implication the ARCC would be expected to deal with this matter extensively and elevate its concerns to the Council. If these structures dealt with the matters of finance strategy or finance risk strategies, then it is not so obvious from the minutes.

There are varying factors that can be considered when talking about financial suitability and the ones I considered were: growth and capacity to do so, evaluating the cost structure, assessing the efficiency of the allocation of resources, managing assets and debt in integrated manner, adopting a value chain analysis approach, assessing the possibilities of sharing the resources (e.g. IT infrastructure), on-line capabilities and possibilities, green energy, etc)

Having said that it is important to recognise that the Executive is now looking at the issue of a financial sustainability plan and have to report to Council during December 2021. I would expect to see this being part of the agenda of all three structures, namely Council, FIC and ARCC, and for the plan to be comprehensive.

6.2 CVs of the FIC and ARCC Chairpersons

I asked for the CVs of the FIC and ARCC Chairpersons, and I noted that the Chairperson of FIC had completed his studies in 2018. There was not much mentioned in the CV I was provided with by way of work experience. At our meeting with the Acting VC, he explained that there was an open process followed, and the fact that he was the Deputy Chairperson of FIC at the time when the election of the Chairperson took place, did play a role.

6.3 Conclusion

Based on the above, my views are the following:

- a) ARCC and FIC generally ask very pertinent questions, and they probe;
- b) Some of the finance reports lack the structure and content to help FIC to make add more value or make meaningful decisions (to help with decision making); and
- c) Compliance related matters have been strongly pursued, however the issue of financial sustainability was not comprehensively dealt with by any of the governance structures, either as a standalone or as part of a strategic conversation about the University as a whole.

7. Recommendations

7.1 Cash Management

The following are recommendations we would like to make in respect of cash management strategies:

- 7.1.1 MUT should consider engaging the services of an **asset consultant** in order to explore the possibilities of using investment instruments that are safe and offer competitive rates. Linked

to this, the University needs to develop a **capital projects specific cash-flow projection** in order to determine the average cash idle time and therefore identify the appropriate investment instrument. Being able to approach a bank with a considerable amount to invest, e.g. R200m or R300m (this has to be within the risk appetite), can give the institution increased power to negotiate better interest rates. We implore the University to ask DHET for permission to keep the returns above a certain level, e.g. keep returns above the current upper 4.5% mark, provided MUT can demonstrate that they are not just hoarding the cash;

- 7.1.2 MUT must pro-actively engage NSFAS about the possibility of getting paid earlier, even if this was a fraction of the monies that would be paid in January or February. The senior people at MUT ought to be visible and engage NSFAS. Based on my discussion with NSFAS they are willing to listen to institutions who come up with genuine reasons for cashflow distress;
- 7.1.3 Prepare a rolling cashflow projection. In other words, instead of doing a cashflow that ties to the year end of the University, present a 12- month cashflow at FIC meeting. These monthly cashflow projections should be presented at the Executive meetings until the cash position stabilises. Linked to this is the recommendation listed under 7.2 below regarding the finance system infrastructure;
- 7.1.4 Our view is that the Cash-Flow Projection should be presented together with the Management Accounts at FIC. Alternatively, they should also include a reconciliation between the accounting and cash figures. Structuring the reports in a meaningful way is key and please refer to Annexure 1 as one way of presenting Student Debt;
- 7.1.5 MUT should pressurise NSFAS to finalise the Close Out Report as it relates to MUT as soon as possible. Whatever the minimum on which both parties agree on, MUT should insist that it gets paid to MUT as soon as possible, while the other queries are still be resolved;
- 7.1.6 With respect of the R105m outstanding, MUT should push NSFAS to have this paid within 2021.

7.2 Financial Sustainability and Other

In response to our question regarding where the process of developing a turnaround strategy is, the CFO informed us that a strategy session took place late September 2021, and the following are some of the interventions the Executive is going to consider, 1) Cost reduction, 2) Leverage funding, 3) Not a research-led university and have to change course, 4) Seek funding from local and

international funding agencies, 5) Generate 3rd stream income, 6) Review secondary and part time contracts.

According to the CFO the turnaround plan will be divided into medium term (2022 to 2025) and long-term plan, i.e. 2026 onwards and this will be incorporated into MUT's 5 year strategy 2026 – 2030. It was also resolved that all departments should come up with five activities that will contribute to the University's financial sustainability.

Based on the discussion with the Acting VC, the requirement to put a turnaround plan together came from Council, and this is now forming part of his KPIs.

We have noted the University's initiative in terms of its finances, and we support the focus. In order to supplement its efforts, we would also like to recommend the following:

- 7.2.1 **Regarding third stream income and commercialisation**, we commend the idea of creating an Institutional Advancement Directorate and of the possibility of reviewing the internal debt collection capacity. We strongly suggest that MUT should **partner** with some of the higher education institutions, some of them have mastered the issue of business development units within the Higher Education Sector. A formal MOU in this regard can be structured.
- 7.2.2 **SCM interventions** – MUT should consider having a co-sourcing SCM arrangement until the unit stabilizes. Co-sourcing is used extensively in Internal Auditing. There are also service providers who specialise in running tender processes, and this is one option MUT should consider for complex tenders, including security and construction ones.
- 7.2.3 **Security tender and student accommodation** – we strongly recommend that an open procurement process should be take place sooner than later, and the process can be outsourced if there is limited internal capacity. In my understanding an Expression of Interest (EOI) process should be followed by an RFP or tender process, as it is risky to award a contract on the basis of an EOI.
- 7.2.4 **Debt restructuring** – MUT should consider going to the market to get debt management expertise to propose how to restructure ABSA loan.

7.2.5 **Set targets for generating surplus** – For instance they could have a target of having R100m as cash reserves in 5 years, and this should form part of the VC's KPIs. This would push the University to look for savings on a yearly basis.

7.2.6 Revenue

7.2.6.1 Fees – normal courses

ELEMENT	MUT		CUT		DUT		CPUT	
	2019		2017		2018		2019	
Subsidy	425	62%	483	52%	1001	56%	1530	66%
Tuition	252	37%	363	39%	710	40%	712	31%
Other lmc	11	2%	80	9%	71	4%	61	3%
	688		926		1782		2303	

Comparison based on figures alone can be simplistic. One positive to take out of this comparison though is that even though an entity is small (example of CUT) it can still excel when it comes to research and generating own income. MUT has a chance and scope to improve in the area of "other income". By reviewing and increasing its fees, it would reduce its dependence on government funding, and DUT in this case is a good example.

A benchmark on many more courses should be done, and scenario planning be used to answer questions such as: what would happen to overall revenue if the overall Diploma in HR cost was increased by 5% to 10% over a 2-year period, first 5% then 5%, as an example. Increasing student fees is a delicate matter and as a result a special discount dispensation may have to be created for students who are already in the system.

Fee Structure 2021			
	MUT	CPUT	DUT
Diploma in Human Resources (3 Year)	59 510	73 675	84 990
Diploma in Accounting/Accountancy (3 Year)	72 430	71 035	98 700
B Tech Chem Eng/Adv Diploma in Chem Eng	33 090	38 361	37 725

7.2.6.2 **Short-term courses and programmes** - Higher Education Institutions generate substantial amounts of revenue by offering short courses. But for this to be sustainable, it should be done subject to the proviso that a business plan (incorporating a product/profitability analysis, fees charged by competitors, relevance, size of market, etc) of the proposed course or programme is done and the governance structures are presented with comprehensive proposals that enable an intelligent analysis. MUT has to do the necessary benchmarking and come up with a list of short-term courses that can be offered.

7.2.6.3 **Fundraising** - Any entity that requires a B-BBEE certificate can get points by giving grants or donations to other entities. MUT can target banks, insurance companies and telecommunication companies and write proposals to each. They would have to identify projects that require funding, as many funders may prefer funding a project rather than giving cash.

7.2.7 **Cost reduction** – University VAT can be complex, and lack of understanding of **vat law** may lead to serious cash leakage. MUT must engage service of tax consultant on a contingency basis. **Municipality rates** is one area that requires attention. It is reported that many government institutions and even entities like universities are not properly demarcated, or properly registered at the deeds office or appropriately categorized for rates purposes. There are people who specialise in this type of work who can be engaged.

7.2.8 **The finance system infrastructure** – ITS has serious limitations and getting a meaningful finance report can be a huge challenge. If MUT wants an alternative ERP solution, it can leverage what other higher education institutions are using. UCT has successfully implemented SAP as their ERP. Attempting to implement SAP from standard whether industry solution or vanilla is expensive. As an option MUT could approach UCT to leverage their configured/customized solution. MUT would need to buy SAP licences but their implementation cost would be minimized. UCT may want to recover some of their costs from MUT, but this would be far cheaper than attempting a green field implementation. It does not have to be UCT, it can be any other university.

7.2.9 **Post-Retirement Medical Aid** – medical aid inflation per the actuarial reports was 6.8% in December 2020 however the discount rate is 9%. We recommend that MUT approaches at least three insurance companies to establish if there are better ways of managing this liability. Some of the retirees may even prefer cash. Alternatively use asset consultant (an actuary) to make proposals regarding finding investment that can match the profile of the liability.

7.2.10 **FIC capabilities** – co-opting people may be a cheaper way-of accessing expertise, without have to pay them as consultants. A structure like FIC may benefit greatly from such an arrangement because it deals with interrelated yet specialised areas of finance. A strong finance background in terms of training and/or of implementing effective finance interventions, rather than generic leadership capability, should be a strong consideration in deciding who the Chairperson of FIC should be.

7.2.11 **Lease versus own** – as indicated under **Student Residences Income and Expenditure** above, there may be instances where it is more cost effective for the

University to own its own residences. We recommend that this point be considered as part of the MUT's long term planning.

7.3 Governance Related Matters

Given the complexities and the nature of the allegations at MUT, our high-level control environment assessment, we recommend that DHET institutes an independent and comprehensive investigation into the following areas:

- Secondary contracts and part-time lecturing (evening classes), i.e. expand on the work done by Internal Audit so far;
- Student residence leases and related expenditure, such as transport costs, etc. The investigation should include their entire process, from sourcing, contract preparation, supplier invoice review, POs, payment, etc.
- Irregular expenditure, with focus on reasonableness of reasons advanced for condonations.

We further recommend that Council should be urged to do investigations in the following areas:

- Payroll integrity (are employees paid in line with their positions, and is the pay reasonable given the level and what is paid to peers)
- Tenders issued (excluding capital projects) from May 2020;
- HR database - with focus on whether there are ghost employees, and
- Capital Projects – with emphasis on tenders issued from May 2020, and all payment made with effect from 1 January 2018.

Annexure 1

STUDENT DEBT AND NSFAS FUNDING				
Nsfas	MUT	Paid by NSFAS	Outstanding	Explanation for discrepancy
Opening balances	14 000 000			
Historic Debt	1 000 000	500 000	500 000	NSFAS has put this process on hold
Standard claims from previous year	13 000 000	7 500 000	5 500 000	NSFAS says this is unfunded mandate
Claims Submitted during the year			-	
Claim 1 - January	50 000 000	50 000 000	-	
Claim 2 - March	50 000 000	48 000 000	2 000 000	Dispute over data
Claim 6 - October	50 000 000	38 000 000	12 000 000	Note 1
			20 000 000	
Other student debtors				
Opening balance	560 000 000			
Repaid by students				
Quarter 1	6 000 000			
Quarter 4	3 000 000			
	9 000 000		560 000 000	
Cost of collection				
Quarter 1	2 000 000			
Quarter 4	1 000 000			
	3 000 000			
Net inflow	6 000 000			
Net closing			551 000 000	
Less: Written Off or Provided For			- 400 000 000	
Balance Sheet			151 000 000	
Note 1 - the payment of R38m includes R1m that was disputed in March MUT is still investigating the other R1m and will submit in August 2021				