

UNIVERSITY STATEMENT

07 September 2024

Dear Staff and Students

THE STATE OF GOVERNANCE AND MANAGEMENT AT DUT: CONTROVERSIES AROUND OUR CONSTRUCTION PROJECT DUT355¹

Embedded in our DNA as DUT people are our values and principles. They are the bedrock of our Living Values Framework (LVF).

For the last 18 months or so, rumour, innuendo and slander have been rife at DUT about the 'imminent' suspension of the Vice-Chancellor & Principal, Professor Thandwa Mthembu, on account of DUT355. There has not been any statement made in this regard, neither by Council nor by Executive Management. For this, we apologise for failing you all on our value of *transparency*.

There are times when our values and principles find themselves in direct tension and/or in sequential disorder that compromises one over the other. In this case, *transparency* had to trail *fairness*, *professionalism*, and *accountability*, amongst others. Council had to be given enough space to deal with the matter confidentially. Management highly commends our Council for this. Sadly, some leaks started to surface as early as the last quarter of 2023 and more virulently and poignantly after Council's 6 April 2024 meeting.

The award to the contractor and site establishment date back to late 2019 when Covid-19 was just about to engulf the world after which the long lockdown period started. As a result of this and other reasons like DUT not having had a Project Management Office, year to year escalations, variations, and extension of time claims, DUT355 experienced protracted delays. Late in 2022, Management learned from the appointed Principal Agent² that project DUT355 would not be completed on time and within budget.

¹ **Project DUT355** involves the construction of our new engineering building and lecture halls at Indumiso Campus. It also involves the construction of a student centre, multi-purpose halls and a parking garage at Steve Biko Campus.

² In a construction project, the **Principal Agent (PA)** is the representative of the client, which is DUT in the case of DUT355. In managing the project, the PA coordinates all aspects of a construction project and is the client's representative who makes professional decisions regarding immediate problems arising on site from time to time.



At the beginning of 2023, Management approached the Finance Committee for additional funds, which Management had reduced drastically from the initial amount the PA had suggested. Council generously granted additional funds at its special meeting of 17 April 2023. Council also resolved that a forensic investigation on the delays must be instituted.

DUT355 is practically complete as we write. In contrast, several universities which got funds from DHET in 2018 at the time we also received funds for DUT355 are far from completing theirs. Some are still in the planning phase. In fact, the rest of the public sector and even the private sector are replete with examples of projects that fail to complete on time and at original cost. There is a Zulu proverb that goes: *'kushaywa edonsayo'* (the strongest bull, which pulls the planter more effectively, gets more whips). Despite being ahead of many in implementing our DUT355, Management has, indeed, suffered many whips in this regard.

Something very unfortunate and scandalous happened with the procurement process leading to the appointment of the audit firm which conducted the forensic investigation. While the procurement process started in accordance with DUT's procurement policy and procedures, it, sadly, ended in their transgression. Towards the end of it after the Bid Adjudication Committee (BAC) had made a recommendation of award, the BAC's recommendation was, rather eerily, rejected by a task team led by the chair of the Audit Committee³ in preference for an audit firm the BAC had disqualified legitimately. Section 217 of our Constitution⁴ demands that procurement must be guided by at least five (5) principles, as presented in the footnote below. A company, which had submitted its proposal about 9½ hours after the deadline, with the highest cost *nogal*, was eventually appointed.

The forensic investigation started about June 2023. The havoc it wreaked in its disrespectful, unfair, unprofessional and unaccountable conduct during the forensic investigation is too ghastly to recall. But Management persevered, reporting all their experiences to Exco of Council.

After many iterations, a draft report was eventually presented at a special meeting of 6 April 2024. It is ironic that an audit firm which had been appointed to investigate DUT355's delays and cost overruns, could, itself, not complete the investigation on time and at what was already the highest cost

³ Ironically, the main function of the Audit Committee is to ensure that financial and other controls are not transgressed.

⁴ Section 217 (1) of the Constitution: When an organ of state in the national, provincial or local government sphere of government, or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system that is *fair, equitable, transparent, competitive and cost-effective*.

it had tendered amongst the three tenderers. It ran a relatively huge overrun, which was accepted. Unlike with DUT355 overruns, there was no resolution to investigate its delays and overruns in cost! As the English idiom goes, *'what is good for the goose is not good for the gander'* in this case.

Like has been done at DUT before when reports on forensic investigations had been completed, legal opinions were sought as part of the quality check and to determine how sustainable the findings and recommendations are, so that actions to be taken could be beyond reproach. Three scathing legal opinions later these opinions all point to the findings and recommendations – to suspend and discipline the Vice-Chancellor, Prof Thandwa Mthembu – to be irrational, unjustifiable and illegal.

After the legal opinions, more iterations and engagements with the audit firm ensued. By this time, all internal members of Council had been excused from these engagements for, ostensibly, being conflicted even though no findings and recommendations on them existed. It is instructive to remember that Sections 7 and 8 of the DUT Statute make Council's composition clear that it consists of both internal and external members. Further, there is a list of functions that cannot be delegated to any of its sub-structures, which includes matters of appointment (or otherwise) of the Vice-Chancellor. Thus, the exclusion of internal members from the engagements is questionable at best, and at worst, highly irregular.

Despite this, external members of Council, decided to accept, adopt and implement the findings and recommendations at their 3 August 2024 and 17 August 2024 meetings, to the exclusion of internal members as explained above. At their meeting of 17 August 2024, the Chairperson of Council was ejected from the meeting on spurious grounds of being conflicted. Despite the same group of external members of Council having been informed in a letter of 6 August 2024 that some of them had expressed interest in DUT tenders to some of the members of Management in 2018 and later, including in DUT355 itself and the security tender, they were not deemed conflicted.

As you are all aware, rumour, innuendo and slander intensified more especially since the meeting of Convex of 29 June 2024. At that meeting, some of the representatives of Convocation in Council boasted about Prof Thandwa Mthembu's suspension being imminent. Between 3 August 2024 and now, some external members of Council, with the Chair of Council having been ejected, have been working frenetically to implement what is an impugned and irregular decision. We must all be *fair, professional, accountable* and perform our duties with *integrity*.



DURBAN UNIVERSITY OF TECHNOLOGY
INYUVESI YASETHEKWINI YEZOBUCHWEPHESHE

We live in a country, which has the rule of law and a judiciary that is a model for Africa and the rest of the world. So many of our people died fighting for this democracy. Some remain with indelible emotional and physical scars of that time. We shall not betray them. In addition to our Constitution, DUT has its Statute, policies and procedures that may not be transgressed at a whim, no matter where one may be in the university hierarchy. We salute many internal Council members who did not cower when it seemed some external members wanted to make themselves Council to their exclusion.

Ultimately, the truth will prevail. None of us will accept decisions and injunctions based on impugned reports and irregular processes.

In closing, this is how we found *transparency* trailing *fairness*, *professionalism*, *accountability* and *integrity*. We hope, at last, you have a sense of what has been happening over the last 18 months, almost, around DUT355.

Sincerely

DUT Executive Management

