GLIMMER OF HOPE

Report of the Public Protector on an investigation into allegations of maladministration and poor governance by the Dipaleseng Local Municipality, the South African Police Service and the Mpumalanga Departments of Human Settlements and Public Works.

Report No. 19 of 2011/12
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Executive summary

(i) *Glimmer of Hope* is the report of the Public Protector in response to complaints lodged with her office in February 2010 and thereafter, in connection with alleged maladministration and poor governance by the Dipaleseng Local Municipality (the Municipality) in the Mpumalanga Province, the South African Police Service (SAPS) and the Mpumalanga Departments of Human Settlements and Public Works, Roads and Transport.

(ii) The complaints followed violent protests by residents of Siyathemba against a lack of service delivery and access to public facilities in the township. It consisted of a wide variety of subjects, including the construction of houses, the upgrading of a school, a lack of debt and revenue management by the Municipality, a lack of planning and the absence of a Police Station in Siyathemba. The incorporation of Balfour into the province of Gauteng was another major object of frustration, as was the alleged failure on the part of the Mpumalanga Department of Public Works, Roads and Transport to maintain public roads in the Balfour area.

(iii) The investigation also discovered the illegal use of a property as a taxi rank, delays in concluding the sale of municipal land, credit note fraud and the theft of electricity.

(iv) The investigation of the Public Protector was conducted over a period of 18 months and included interviews with the complainants and other residents of Balfour and Siyathemba, the Municipal Manager and other senior officials of the Municipality and the government departments involved. Voluminous correspondence and documentation relating to the matters concerned were perused and the relevant provisions of the Constitution, 1996 and other legislation and prescripts applicable to local government considered and applied.

(v) The response of the Ministry of Cooperative and Traditional Affairs to the Provisional Report of the Public Protector on the investigation conducted, emphasised the review of municipal boundaries by the Municipal Demarcation Board which is currently being conducted and include consultation with the Dipaleseng Local Municipality and its stakeholders.
(vi) The Public Protector’s general findings in relation to the complaints lodged are that:

The following matters were resolved during the period of the investigation:

(a) The new Taxi Rank was opened and is now being utilised by commuters.

(b) The renovation of the Hoër en Laerskool Balfour was completed.

(c) The Disaster Management Centre in Balfour is now operational.

(d) Municipal vehicles have been licensed.

(e) The resources of the SAPS in Balfour have been improved and a new police station will be constructed in Siyathemba.

(f) Houses in Siyathemba were completed, new houses constructed and construction repairs made in appropriate cases.

(g) The R 51 road between Balfour and Grootvlei was repaired and will be maintained until its rehabilitation in 2014.

(h) The defects relating to the construction of roads in Balfour and Siyathemba were remedied.

(i) The Municipality is in the process of implementing the Batho Pele principles and Service Standards.

(j) Three high light masts will be installed in Ward Three before the end of the current financial year.

(k) The property of a resident that complained to the Municipality without success was connected to the sewerage network.

(l) A settlement was reached with another dissatisfied resident in respect of an electrical connection to his property and he was compensated.
(m) A road island in was constructed in Voortrekker Street.

Findings made from the investigation:

(n) The staff members of the Finance Department are generally competent in terms of their qualifications and experience to perform their tasks. However, staff retention is a challenge, especially due to the remuneration that the Municipality is able to offer.

(o) The benefits and salary increases of members of the Municipal Council are not determined by the Municipality, but by the Minister of Cooperative Governance and Traditional Affairs. The Municipality is obliged to remunerate councillors accordingly.

(p) The senior officials of the Municipality have the appropriate qualifications and experience to perform their tasks. The perception of non-delivery on their part is partly due to the capacity constraints experienced by the Municipality from time to time.

(vii) The Public Protector’s specific findings are that:

(a) The failure by the Municipality to take timeous and appropriate action against the owner of the property (stand 1104 Balfour) for the illegal use thereof as a taxi rank, amounts to maladministration.

(b) The Budget and Treasury Office of the Municipality is deficient and its failure to fully comply with the Credit Control Policy of the Municipality in respect of the recovering of debts and revenue, amounts to maladministration.

(c) The failure of the Municipality to comply with the requirements of the Municipal Systems Act in respect of the preparation and implementation of its Integrated Development Plan, amounts to maladministration.

(d) The delay in conclusion of the sale of land referred to in this report was partly due to failure on the part of the Municipality to provide the purchasers with information
and to insist on the finalisation of the transfer of the properties, and amounted to maladministration.

(e) The utilisation of the Community Hall as a pre-school, under circumstances where no rental agreement had been entered into with the owners and the maintenance of the building left to them without any enforceable arrangement, is improper. The Municipality also runs the risk of civil claims for damages should one of the learners be injured, especially as its insurance probably does not cover the use of a municipal facility for an unintended purpose. The conduct of the Municipality in this regard amounts to maladministration.

(f) The Municipality is obliged by law to have an active website, especially as it had evidently decided previously that it is affordable, i.e. before the previous website was discontinued. The delay in setting up the new website results in non-compliance by the Municipality with the relevant provisions of the Municipal Systems Act, which is improper and amounts to maladministration.

(g) The failure by the Municipal Manager to report his knowledge and/or suspicion of credit note fraud amounting to approximately R 1,5 million by officials of the Municipality to the SAPS, was unlawful and constituted improper conduct and maladministration.

(h) The failure by the Municipal Manager to report the findings of the Municipal Finance Unit of the Mpumalanga Department of Cooperative Governance and Traditional Affairs on the theft of electricity by a former Councillor to the SAPS is unlawful, improper and amounted to maladministration.

(viii) The remedial action that is to be taken, as envisaged in section 182(1)(c) of the Constitution, is the following:

(a) The MEC for Cooperative Governance and Traditional Affairs of the Mpumalanga Provincial Government in terms of section 105 of the Municipal Systems Act, to:
(aa) Assess the support needed by the Municipality to strengthen its capacity to manage its integrated development planning and financial affairs, within 30 days from the date of this report;

(bb) Take the appropriate action to support the Municipality, within 60 days from the date of this report; and

(cc) Monitor the Municipality in the management of its financial affairs and integrated development planning.

(b) The Executive Mayor of the Municipality to take urgent steps to ensure that the Municipal Manager reports to the Municipal Council on the complaints received by the Municipality and the manner in which it was resolved, on a regular basis;

(c) The Municipal Manager of the Municipality to take urgent steps to:

(aa) Expedite the transfer of Erf 1838 to the name of the purchaser;

(bb) Regularise the utilisation of the Community Hall referred to in this report as a pre-school in order to ensure that the Municipality’s risks are contained, the premises is properly maintained and a formal rental agreement is entered into. The said agreement should make provision for measures to ensure that the hall is made available, at no costs to the Municipality, for community purposes when so required;

(cc) Ensure that the website of the Municipality is re-activated within 30 days from the date of this report;

(dd) Instruct the attorneys of the Municipality to take legal action against the owner of stand 1104 Balfour for the illegal utilisation of the premises as a taxi rank, within 10 days from the date of this report;

(ee) Ensure the Municipality’s full compliance with its Credit Control Policy;
(ff) Ensure that the Municipality’s Integrated Development Plan complies with the relevant legislation and other prescripts and is properly implemented;

(gg) Liaise with the Mpumalanga Department of Human Settlements for the handing over of title deeds to the beneficiaries of houses in Siyathemba, within 30 days from the date of this report;

(hh) Ensure that the relationship between the Municipality and attorneys representing residents of the area is improved;

(ii) Report the theft of electricity referred to in this report to the SAPS; and

(jj) Improve the relationship between the relevant officials of the Municipality and the Fire Protection Association of Dipaleseng in the interest of disaster management.
PROVISIONAL REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND POOR GOVERNANCE BY THE DIPALESENG LOCAL MUNICIPALITY, THE SOUTH AFRICAN POLICE SERVICE AND THE MPUMALANGA DEPARTMENTS OF HUMAN SETTLEMENTS AND PUBLIC WORKS, ROADS AND TRANSPORT

1. INTRODUCTION

1.1 *Glimmer of Hope* is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act). It deals with the Public Protector’s findings following an investigation into allegations of maladministration and poor governance by the Dipaleseng Local Municipality (the Municipality) in the Mpumalanga Province, the South African Police Service (SAPS) and the Mpumalanga Departments of Human Settlements and Public Works, Roads and Transport.

1.2 The report is submitted to:

1.2.1 The Speaker of the National Assembly;

1.2.2 The President of the Republic of South Africa;

1.2.3 The Minister of Cooperative Governance and Traditional Affairs;

1.2.4 The Speaker of the Mpumalanga Provincial Legislature;

1.2.5 The Premier of the Mpumalanga Provincial Government;

1.2.6 The Members of the Executive Council of the Mpumalanga Provincial Government responsible for Co-operative Governance and Traditional Affairs, Human Settlements and Public Works;

1.2.7 The Speaker of the Dipaleseng Municipal Council;

1.2.8 The Executive Mayor of the Dipaleseng Local Municipality;
1.2.9 The Municipal Manager of the Dipaleseng Local Municipality.

1.3 Copies of the report are also distributed to:

1.3.1 The Chairperson of the Balfour Business Chamber, Mr J Van Tonder, who lodged the original complaint referred to in this report;

1.3.2 Mr M I Makhubu, a Councillor of the Dipaleseng Municipal Council;

1.3.3 The National Commissioner and the Mpumalanga Provincial Commissioner of the South African Police Service;

1.3.4 The Executive Mayor and the Municipal Manager of the Gert Sibande District Municipality; and

1.3.5 The Chairperson of the Municipal Demarcation Board.

2. BACKGROUND

2.1 The Dipaleseng Local Municipality

2.1.1 The Dipaleseng Local Municipality (the Municipality) is located in the Mpumalanga Province, approximately 70 kilometres from Johannesburg. It falls within the area of the Gert Sibande District Municipality and its main offices are situated in the town of Balfour.

2.1.2 The area of jurisdiction of the Municipality, which covers approximately 2615 km$^2$, is in close proximity of the major mining and commercial centres of Nigel, Springs, Benoni and Brakpan.

2.1.3 The Municipality serves a population of approximately 38 617 people, who are mainly resident in the towns and settlements of Balfour, Siyathemba, Dasville, Greylingstad, Grootvlei, Val and Willemsdal.

2.1.4 The economy of the area is predominantly agricultural. Karan Beef operates the most extensive feedlot in Africa and has a major abattoir in the town of Balfour. Mining is also growing in importance in the area.
2.2 The Town of Balfour

2.2.1 Balfour was proclaimed as a town in 1898. It was originally called Mchattiesburg, but was later renamed in honour of a former British Prime Minister, Sir Arthur Balfour. The township of Siyathemba forms an integral part of the town.

2.2.2 During the demarcation of provincial boundaries after the change of government in 1994, Balfour was made part of the province of Mpumalanga.

Satellite picture of the town of Balfour, including Siyathemba

2.3 The public protests at Balfour in 2009/2010

2.3.1 In July 2009, residents of the Siyathemba violently protested against the Executive Mayor and the Council of the Municipality. Their protests were reportedly about the lack of service delivery to and public facilities in the township¹.

¹ See for example the report of published on page 3 the Star of 23 July 2009.
2.3.2 Shortly thereafter, on 4 August 2009, President J G Zuma paid a surprise visit to Balfour and interacted with the community of Siyathemba about their grievances. The key issues raised with the President were reported by the Star of 5 August 2009 as being the lack of a Police Station in Siyathemba, the incorporation of Balfour in the province of Gauteng, unemployment and a lack of housing and health facilities. It was also stated in the report that:

“Resident David Mosuwe told Zuma he wanted the area to be incorporated into Gauteng because Joburg was more accessible in terms of sports facilities than Nelspruit.”

2.3.3 Following the said visit of the President to Balfour, a Ministerial Task Team (under the direction of the Minister of Cooperative Governance and Traditional Affairs) was appointed to attend to the complaints lodged by the residents. However, early in February 2010, violence flared up again in Siyathemba. Angry residents burned down the library, torched offices of the Municipality, looted the shops of foreigners and barricaded entrance roads with burning tyres. A number of people were arrested when the South African Police Service (SAPS) intervened. The unrest was caused by the perception of residents that despite the appointment of the Ministerial Task Team, nothing had changed in the 6 months since the visit of the President.²

2.3.4 At that stage various stakeholders approached the Public Protector to intervene. She promptly had a meeting with the former Minister of Cooperative Governance and Traditional Affairs and proposed a joint visit to Siyathemba. In pursuit of this agreement, the Public Protector and the Minister visited Balfour on 18 February 2010 to assess the reasons for the violent protests.

² As reported by the Citizen, the Times and the Star on 10 February 2010.
2.3.5 The Ministerial Task Team continued with its interventions at the Municipality relating to complaints regarding poor service delivery, with the Public Protector continuing to collaborate. The Public Protector decided to conduct an investigation into specific complaints of maladministration and poor governance, including allegations of corruption. The investigation of the Public Protector referred to in this report coincided with the interventions of the Ministerial Task Team and focused on complaints and allegations of maladministration and poor governance.

2.3.6 The Speaker of the National Assembly, the Minister of Cooperative Governance and Traditional Affairs, the Speaker of the Mpumalanga Provincial Legislature and the Premier of the Mpumalanga Provincial Government, were informed, on 24 February 2010, of the decision of the Public Protector to conduct the investigation in coexistence with the service delivery intervention by the Minister of Cooperative Governance and Traditional Affairs.

2.3.7 The President visited Balfour again on 22 May 2010 and reported to the community on the progress made by the Government to improve service delivery in areas such as health, sports and recreation, sanitation, economic development and water supply.

3 THE COMPLAINTS

3.1 During the visit of the Public Protector to Balfour, referred to above, the Chairperson of the Balfour Business Chamber, Mr J Van Tonder, and a Councillor of the Municipality, Mr M I Makhubu, raised a number of frustrations and complaints on behalf of businesses and residents of Balfour and Siyathemba.

3.2 Mindful of the interventions of the Ministerial Task Team, which focussed primarily on the improvement of service delivery, and in order to avoid a duplication of interventions and investigations, the Public Protector decided to investigate the following allegations of maladministration and poor governance made against the Municipality, the SAPS and the Mpumalanga Departments of Human Settlements and Public Works Roads and Transport:

3.2.1 The construction by the Municipality of a Taxi Rank that was not finished on the date stipulated in the procurement contract, the further funding of the project when the
contractor who was supposed to have completed the project was already paid, the planning of the project and the fact that the Taxi Rank was still not operational at the time the complaint was lodged.

3.2.2 The construction of a fence at a public school in Balfour. The complainants were under the impression that contractors were appointed by the Municipality to erect a new fence on the border of the school grounds of the Hoër en Laarskool Balfour, which was never completed. The safety of the children attending the school was allegedly at stake, as it was without a fence since June 2008.

3.2.3 The Municipality had no emergency and disaster plans in place.

3.2.4 The Municipality had no credit control/debt collection policy. Accounts were not sent to residents timeously or at all and only certain categories of residents were paying for services.

3.2.5 The staff members of the Finance Department were said to be incompetent and the Department was alleged to have a high staff turnover.

3.2.6 The benefits and salary increases awarded to members of the Municipal Council were too high and could not be afforded by the Municipality.

3.2.7 The standard of education and training of senior officials of the Municipality was doubtful.

3.2.8 No proper town planning was in place at the Municipality, resulting in a lack of any growth and affecting the economy of the area.

3.2.9 The Municipal Manager was failing in his duty to maintain the property of the Municipality, such as municipal vehicles which were not registered or licensed.

3.2.10 The infrastructure and equipment of the SAPS in Balfour were in a dilapidated state. The Business Chamber was providing financial support to the SAPS to purchase and maintain equipment.

3.2.11 Toilets were not installed in a number of houses built in Siyathemba in terms of the Reconstruction and Development Programme (RDP) of the Government, despite the
fact that it was included in the specifications and the contractor was paid for the installation.

3.2.12 A number of RDP houses that were supposed to have been constructed in terms of a housing project in Siyathemba, were never built. Approximately 130 owners of new houses had not received titled deeds for their properties.

3.3 The following additional complaints were lodged with and allegations made to the investigation team assisting the Public Protector during the investigation:

3.3.1 The provincial roads leading to Balfour are in a bad state. Particular reference was made to the R51 between Balfour and Grootvlei, which had broken up in places, due to the heavy vehicles transporting coal to a nearby power station that belongs to Eskom.

3.3.2 The Municipality paid a contractor for the construction and upgrading of streets that were paved. In some cases, the paving broke up shortly after the streets were completed and repairs had to be made.

3.3.3 Complaints lodged with the Municipal Manager and the Municipality were not responded to.

3.3.4 The Municipality does not comply with the Batho Pele Principles and has no Service Charter.

3.3.5 The Municipality sold three properties by auction about four years ago. The conditions of sale provided that it had to be developed within a certain period. No development has taken place and the Municipal Manager cannot account for approximately R3 million that was paid for the properties.

3.3.6 Certain areas were excluded from the high mast lights project without any explanation provided by the Municipality.
3.3.7 The Community Hall of the Municipality was allocated to the Balfour Primary School about 2 years ago, without consulting the community.

3.3.8 Financial irregularities that occur on a daily basis at the Municipality amount to corruption by certain officials and must be stopped.

3.3.9 There is a lack of communication between local attorneys representing residents of the Balfour and Siyathemba and the Municipality relating to legal disputes that often result in unnecessary litigation and wasted legal costs.

3.3.10 The decision of the Government to move Balfour from the province of Gauteng to the province of Mpumalanga following the demarcation process that was conducted after 1994, is a major issue for residents of Balfour. They are of the view that the Gauteng Provincial Government can provide better services to Balfour due to its close proximity to major centres such as Johannesburg and Pretoria. It was also alleged that there was no proper consultation with the Balfour community, that the said decision was taken against their will and that it caused them to be improperly prejudiced. An example that was referred to, is the complaints about RDP housing that have to be attended to by provincial officials of Nelspruit, which is much further from Balfour than Johannesburg, where the Gauteng Department of Human Settlements is located. Many of the affected people cannot afford to travel to Nelspruit to raise their concerns and to interact with officials in connection with complaints about service delivery by the Mpumalanga Provincial Government.

3.3.11 The website of the Municipality is not functional.

3.3.12 The dwelling of the property located at 29 Minnaar Street, Balfour that belongs to Ms Kahn, was not connected to the main sewerage line of the Municipality, as was supposed to have happened in terms of a sewerage project of the Municipality. Several complaints lodged with the Director: Infrastructure Services of the Municipality heeded no result.

3.3.13 Mr S Adam, who is the owner of a property where a building for a supermarket (U-Save) was constructed in Voortrekker Street, incurred substantial costs to install a connection point to the main electricity line of the Municipality, as it failed to comply with its responsibility in this regard. He also claimed that despite having raised the
matter on several occasions with the Director: Infrastructure Services of the Municipality, who promised to look into the matter, nothing was done.

3.3.14 Businesses in Balfour took it upon themselves to repair a number of potholes in Voortrekker Street. As the damage to the street was evidently caused by heavy vehicles turning, it was proposed to the Municipality that a permanent road island be constructed in the middle thereof. The Municipality agreed to this and the suggestion that oil drums could be positioned in the middle of the street in the meantime. This arrangement was made with the Director: Infrastructure Services of the Municipality. Several subsequent requests that the drums should be removed and replaced by the road island, as agreed, heeded no result.

4 THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4.1 The Public Protector is an independent institution, established in terms of Chapter 9 of the Constitution. Section 182(1) (a) of the Constitution provides that the Public Protector has the power to:

4.1.1 Investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper, or to result in any impropriety or prejudice;

4.1.2 To report on that conduct; and

4.1.3 To take appropriate remedial action.

4.2 In terms of section 182(2) of the Constitution, the Public Protector has the additional powers and functions prescribed by national legislation.

4.3 Section 6(4) of the Public Protector Act provides that the Public Protector shall be competent to investigate on his or her own initiative or on receipt of a complaint, *inter alia* any alleged:

4.3.1 Maladministration in connection with the affairs of government at any level;
4.3.2 Act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

4.4 The Public Protector also has the powers, in terms of section 6(4)(b) of the Act, to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by mediation, conciliation, negotiation or any other means that may be expedient under the circumstances.

4.5 The Public Protector may, in terms of section 8(1) of the Public Protector Act, make known to any person any finding, point of view or recommendation in respect of the matter investigated by him or her.

4.6 In determining whether conduct was improper or constituted maladministration or any other improper conduct envisaged by the Public Protector Act, the Public Protector compares the conduct of government entities and officials complained of against the relevant legislation and other prescripts, to ascertain whether such conduct complied with the constitutional requirements of fairness, reasonableness, transparency and local and international best practices. As indicated above, the mandate of the Public Protector is not limited to the investigation of complaints, but he/she can also investigate suspicions or allegations of improper conduct on own initiative.

4.7 The complaints lodged and the allegations made against the Dipaleseng Local Municipality, the SAPS, and the Mpumalanga Departments of Public Works, Roads and Transport and Human Settlements, referred to in this report, fall within the jurisdiction and powers of the Public Protector.

5 THE INVESTIGATION

The investigation was conducted in terms of Section 182 of the Constitution and sections 6 and 7 of the Public Protector Act, 1994.

5.1 The scope of the investigation

The scope of the investigation was confined to run from the period that the first violent protests took place in Siyathemba in June 2009, until the conclusion of the
last enquiries made from the Municipality, in September 2011. It should be noted that
due to interaction between the Public Protector and the Municipality, the
Mpumalanga Departments of Public Works, Roads and Transport and Human
Settlements and the SAPS, a number of the issues raised by the complainants were
resolved or addressed during the course of the investigation\(^3\).

5.2 Method of gathering evidence

The following methods of gathering evidence and analysing information were
employed:

5.2.1 Interviews conducted

Interviews were conducted with:

5.2.1.1 The Principal of the Hoër en Laerskool Balfour, Mr G Noome;
5.2.1.2 Mr M Makhubu, a Councillor of the Municipality;
5.2.1.3 The Acting Station Commissioner of the Balfour Police Station, Colonel L
    Khoabane;
5.2.1.4 Mr S Adam, a local businessman;
5.2.1.5 Ms S Kahn, a local businesswoman;
5.2.1.6 Mr Z Maya, the Convener of the Dipaleseng Residents Committee;
5.2.1.7 Mr P J Ellis, a retired resident of Grootvlei;
5.2.1.8 The Manager and staff of the Balfour Post Office;
5.2.1.9 Ms A Bekker, the Editor of the Balfour Herald;
5.2.1.10 Mr W Fourie, a local attorney;

\(^3\) See paragraph 11.1 below
5.2.1.11 Mr J Van Tonder of the Balfour Business Chamber;

5.2.1.12 The Municipal Manager and Heads of Departments of the Municipality;

5.2.1.13 Ms A N Majova, the Senior Manager: Programme Management of the Mpumalanga Department of Public Works;

5.2.1.14 Mr D Dube, the Head of the Mpumalanga Department of Human Settlements; and

5.2.1.15 Mr F Robbertse of the Mpumalanga Department of Co-operative Governance and Traditional Affairs.

5.2.1.16 Telephonic interviews were conducted during the investigation with:

- Mr F Kotze, a former employee of the Municipality; and

- Mr J Viviers of the Special Investigations Unit in Nelspruit.

5.2.2 Relevant sites and locations visited

The following sites and locations were visited:

5.2.2.1 The Balfour Police Station;

5.2.2.2 The Hoër en Laerskool Balfour;

5.2.2.3 The Taxi Rank in Balfour;

5.2.2.4 Several houses and vacant stands in Balfour and Siyathemba;

5.2.2.5 The Disaster Management Centre in Balfour;

5.2.2.6 Several roads in and around Balfour and Siyathemba;

5.2.2.7 The settlement of Grootvlei;
5.2.2.8 The Community Hall in Balfour; and

5.2.2.9 The U-Save Supermarket opposite the new Taxi Rank.

5.2.3 Analyses of documentation and/or information

The following were analysed and perused:

5.2.3.1 The written complaints lodged by the Chairperson of the Balfour Business Chamber, Mr J Van Tonder and a Councillor of the Municipality, Mr M Makhubu;

5.2.3.2 A written complaint lodged by Mr S Adam during the course of the investigation and related documentation provided by him;

5.2.3.3 The 2009/10 Workplace Skills and Development Plan of the Municipality;
5.2.3.4 The 2009/10 Final Budget document of the Municipality;

5.2.3.5 The 2009/10 Integrated Development Plan Review of the Municipality;

5.2.3.6 Deeds of sale and other relevant documents relating to properties sold by the Municipality in 2006;


5.2.3.8 Records of the Human Resource Department and documents relating to the appointment, qualifications and training of staff of the Municipality;

5.2.3.9 Correspondence between the Chief Financial Officer and the Head of the Mpumalanga Department of Co-operative Governance and Traditional Affairs relating to the determination in December 2009 of the upper limits of salaries and benefits of the different members of the Municipal Councils and reports submitted to the Municipal Council in relation thereto;
5.2.3.10 Reports of the Municipal Manager submitted to the Municipal Council on the construction of roads in Balfour and Siyathemba;

5.2.3.11 The Complaints Register of the Municipality;

5.2.3.12 Records of disciplinary action taken against officials by the Municipality;

5.2.3.13 A report of the Municipal Finance Unit of the Mpumalanga Department of Cooperative Governance and Traditional Affairs entitled: Report on the investigation into allegations of fraud, corruption and theft at the Dipaleseng Local Municipality, issued on 2 July 2010;

5.2.3.14 Correspondence between the Municipality and Haarhoff, Fourie & Singh attorneys;

5.2.3.15 Report of the Ministerial Task Team, entitled: Working together improving service delivery in Dipaleseng Local Municipality, dated 13 May 2011;

5.2.3.16 Draft Service Standards of the Dipaleseng Local Municipality;

5.2.3.17 Tender documents of the Gert Sibande District Municipality pertaining to the Balfour Taxi Rank and Trading Stalls for the Dipaleseng Local Municipality; and

5.2.3.18 The issues raised at the meeting attended with stakeholders by the Public Protector and the former Minister of Cooperative Governance and Traditional Affairs.

5.2.4 Correspondence

Correspondence between the Public Protector and:

5.2.4.1 The Municipal Manager and Chief Financial Officer of the Municipality;

5.2.4.2 Mr W L Fourie of Haarhoff, Fourie & Singh Attorneys;

5.2.4.3 The Head of the Mpumalanga Department of Public Works, Roads and Transport, Mr K M Mohlasedi;

5.2.4.4 The Head of the Mpumalanga Department of Human Settlements, Mr D Dube;
5.2.4.5 The former Executive Mayor of the Municipality, Mr M B Tsotetsi;

5.2.4.6 The former Speaker of the Municipal Council of the Municipality, Mr N S Nhlapo;

5.2.4.7 The Mpumalanga Provincial Commissioner of the SAPS;

5.2.4.8 The Principal of the Hoër en Laerskool Balfour; and

5.2.4.9 The Minister and the Acting Minister of Cooperative Governance and Traditional Affairs.

5.2.5 **Legislation and other prescripts**

The relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

5.2.5.1 The Constitution;

5.2.5.2 The Public Protector Act;

5.2.5.3 The Local Government: Municipal Systems Act, 2000;

5.2.5.4 The Local Government: Municipal Finance Management Act, 2003;

5.2.5.5 The Disaster Management Act, 2002;

5.2.5.6 The Prevention and Combatting of Corrupt activities Act, 2004; and

5.2.5.7 The Principles and Policy on Credit Control and Debt Collection of the Municipality.
THE LEGAL AND REGULATORY FRAMEWORK

6.1 The Constitution

6.1.1 In terms of section 152(1) of the Constitution, the objects of local government include:

6.1.1.1 To provide democratic and accountable government for local communities;

6.1.1.2 To ensure the provision of services to communities in a sustainable manner;

6.1.1.3 To promote social and economic development; and

6.1.1.4 To encourage the involvement of communities in matters of local government.

6.1.2 Section 154(1) provides that:

“The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.”

6.2 The Local Government: Municipal Systems Act, 2000

6.2.1 Section 16 of the Act obliges municipalities to develop a culture of municipal governance that complements formal representative government with a system of participatory governance. They must for this purpose encourage and create conditions for the local community to participate in the affairs of the municipality.

6.2.2 A municipality must, in terms of 17(2) establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality and must for this purpose provide, inter alia, for the receipt, processing and consideration of petitions and complaints lodged by members of the local community.

6.2.3 Section 21B provides that each municipality must establish its own official website if it decides that it is affordable, and place on the website information required to be
made public in terms of the Act and the Municipal Finance Management Act. The municipal manager must maintain and regularly update the website.

6.2.4 A municipality must in terms of section 23, undertake developmentally-oriented planning so as to ensure that it strives to achieve, inter alia, the objects of local government set out in section 152 of the Constitution.

6.2.5 In terms of section 25(1), each municipal council must, within a prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality which:

6.2.5.1 Links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality;

6.2.5.2 Aligns the resources and capacity of the municipality with the implementation of the plan;

6.2.5.3 Forms the policy framework and general basis on which annual budgets must be based; and

6.2.5.4 Is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.

6.2.6 Section 35 provides that an integrated development plan adopted by the council of a municipality:

6.2.6.1 Is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality;

6.2.6.2 Binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails; and
6.2.6.3 Binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law.

6.2.7 Section 36 of the Act provides that:

“A municipality must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its integrated development plan.”

6.2.8 The Member of the Executive Council (MEC) for local government in a province must, in terms of section 105 of the Act, establish mechanisms and processes to-

6.2.8.1 Monitor municipalities in the province in managing their own affairs, exercising their powers and performing their functions;

6.2.8.2 Monitor the development of local government capacity in the province; and

6.2.8.3 Assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their functions.

6.3 The Local Government: Municipal Finance Management Act, 2003

6.3.1 The object of this Act is, in terms of section 2, to secure sound and sustainable management of the fiscal and financial affairs of municipalities.

6.3.2 Section 34 provides that the national and provincial governments must by agreement assist municipalities in building the capacity of municipalities for efficient, effective and transparent financial management. The national and provincial governments must furthermore support the efforts of municipalities to identify and resolve their financial problems.

6.3.3 The municipal manager of a municipality is, in terms of section 60, its accounting officer.
6.3.4 In terms of section 61, the accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure, inter alia that:

6.3.4.1 The resources of the municipality are used effectively, efficiently and economically;

6.3.4.2 Full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards; and

6.3.4.3 Disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct.

6.3.5 The accounting officer of a municipality is, in terms of section 64, responsible for the management of the revenue of the municipality. He/she must take all reasonable steps to ensure that the municipality has effective revenue collection systems consistent with the Act and the municipality’s credit control and debt collection policy.

6.3.6 Section 171(3) provides that a senior manager or other official of a municipality exercising financial management responsibilities and to whom a power or duty was delegated, commits an act of financial misconduct if that senior manager or official deliberately or negligently:

6.3.6.1 Fails to carry out the delegated duty;

6.3.6.2 Contravenes or fails to comply with a condition of the delegated power or duty;

6.3.6.3 Makes an unauthorised, irregular or fruitless and wasteful expenditure; or

6.3.6.4 Provides incorrect or misleading information to the accounting officer for the purpose of preparing financial documents.

6.3.7 A municipality must in terms of section 171(4):

6.3.7.1 Investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
6.3.7.2 If the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official

6.4 The Disaster Management Act, 2002

6.4.1 Section 44 of the Act provides that each metropolitan and district municipality must establish and implement a framework for disaster management in the municipality aimed at ensuring an integrated and uniform approach to disaster management in its area by the municipality and statutory functionaries of the municipality, including, in the case of a district municipality, the local municipalities in its area.

6.4.2 A district municipality must, in terms of section 43, establish its disaster management centre after consultation with the local municipalities within its area and may operate such centre in partnership with those local municipalities.

6.4.3 Section 44 provides that a municipal disaster management centre must specialise in issues concerning disasters and disaster management in the municipal area.

6.5 The Prevention and Combatting of Corrupt Activities Act, 2004

6.5.1 Section 34 of this Act obliges any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed, inter alia, an offence relating to corrupt activities of officials or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, to report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.
6.6 The Principles and Policy on Credit Control and Debt Collection of the Municipality (the Credit Control Policy)

6.6.1 The Policy provides for measures or action to be taken “to secure payment of accounts that are in arrears” including terminating the provision of services and civil litigation.

6.6.2 It also provides for the legal costs incurred in the recovery of amounts in arrears to be levied against the account of the debtor and for interest to be charged on the amount due.

7 ANALYSIS OF THE INFORMATION OBTAINED DURING THE INVESTIGATION

The following is an analysis of the evidence and information relied upon, as supported by the relevant documentation, obtained from the Municipality and the Mpumalanga Provincial Departments of Public Works, Roads and Transport, and Human Settlements and the SAPS.

7.1 The construction and opening of the new Taxi Rank in Balfour

7.1.1 As indicated in paragraph 3.2.1 above it was alleged that:

7.1.1.1 The construction of the Taxi Rank was a project of the Municipality;

7.1.1.2 The project was not completed on time;

7.1.1.3 Additional funding had to be obtained for the completion of the project after the contractor who was supposed to have completed it had already been paid in full;

7.1.1.4 The project was not properly planned; and

7.1.1.5 At the time the complaint was lodged, the Taxi Rank was not opened, despite having been completed.
7.1.2 Residents also raised their concerns about vacant land in the main street of Balfour that was used as an illegal taxi rank and the failure of the Municipality to take appropriate steps against the owner.

7.1.3 Mr S Adam, who owns a business on the opposite side of the street where the “new” Taxi Rank is located, was one of the main complainants in this regard. He claimed that he invested a substantial amount of money in establishing a supermarket that would serve the commuters frequenting the new Taxi Rank. The undue delay in opening the rank for business caused him to be prejudiced as he was losing out on the return on his investment.

7.1.4 When the Taxi Rank was visited by the investigation team on 25 February 2010, it was found to be deserted and the access gates locked.

7.1.5 It was established that the construction of the Taxi Rank and trading stalls was a project of the Gert Sibande District Municipality. The tender documents and the information obtained from the District Municipality indicated that the initial stages of the project commenced in 2005. Its completion was delayed because of “earthwork challenges” that were not anticipated and required extra funding, which was not readily available.

7.1.6 The date for the official opening of the Taxi Rank was communicated by the Municipality to Mr Adam and the community, as 28 August 2009.

7.1.7 During discussions with the local Taxi Association about the opening of and their relocation from the illegal to the new Taxi Rank, the Municipality was advised that the Taxi Association insisted that certain improvements be made relating to storm water drainage, the building of an access ramp and the converting of part of the building into an office for the Association, before they would relocate.

7.1.8 Although the Municipality met some of the demands of the Taxi Association, the requests for improvements to the structure could only be attended to in the 2010/11 financial year.
7.1.9 The Public Protector raised the matter with the Municipal Manager on 2 March 2010. A settlement was reached with the Taxi Association the next day and the Taxi Rank was opened on 8 March 2010.

7.1.10 It was observed during a visit to Balfour on 31 March 2010 that the “old” taxi rank was still being used by taxis and commuters. From enquiries made in this regard it was established that the majority of taxis used the new rank and that the old rank was only frequented by taxis that travel long distances.

7.1.11 The Municipal Manager confirmed that the old taxi rank was illegal in terms of the zoning of the property concerned. The owner was advised to stop the utilisation of the land for a taxi rank by the end of June 2010, failing which legal action would be taken against it by the Municipality.

7.1.12 However, the efforts made by the Municipality to convince the owner of the land to stop the illegal activities taking place, were unsuccessful.

7.1.13 The matter was again raised with the Municipal Manager on 3 August 2011. In his response, Mr Malebye submitted a copy of a notice of intention to institute legal action that was served on the owner of the property concerned on 12 August 2011.

7.1.14 When the investigation team visited Balfour on 25 August 2011, the situation had not changed.

7.2 The renovation and upgrading of the Hoër en Laerskool Balfour

7.2.1 The initial complaint related only to the fence on the perimeter of the school grounds that was removed by a contractor, without replacing it, as they were supposed to have done.
7.2.2 The absence of a fence resulted in a number of incidences of theft at the school and posed a serious security risk to the safety of learners during school days.

7.2.3 During the investigation, it was established that the replacing and upgrading of the said fence was part of a contract for the renovation and upgrading of the school, which was awarded to a company in 2007 by the Mpumalanga Department of Public Works, Roads and Transport (and not by the Municipality, as was alleged).

7.2.4 According to the Principal of the school and the contents of correspondence between him and the Heads of the Mpumalanga Departments of Education and Public Works, numerous problems were experienced with the contractor that was appointed, since the project started. It included poor workmanship, failure to complete milestones of the project and the removal of the old fence and only erecting about 200m of the total of 2200m of new fencing.

7.2.5 By February 2009, the upgrading and renovation had still not been completed.

7.2.6 Numerous attempts made by the Principal to raise his concerns with the Mpumalanga Departments of Education and Public Works, yielded no results.

7.2.7 It further transpired that the contractor involved indeed failed to comply with the requirements and conditions of the contract and eventually abandoned the project in 2009.

7.2.8 According to the Senior Manager: Programme Management of the Mpumalanga Department of Public Works, the delay in finalising the renovation and upgrade project at the school was mainly due to the legal difficulties that were experienced to cancel the contract and to appoint a new service provider.

7.2.9 After the intervention of the Public Protector in March 2010, a new contractor was appointed by the Department to complete the project.
7.2.10 The Principal of the school confirmed in August 2011 that the upgrading and renovation project had been completed, save for minor outstanding issues that were being attended to.

7.3 The emergency and disaster plans of the Municipality

7.3.1 The complaints in this regard related mainly to the response times of fire engines and ambulances and the absence of a central disaster management facility.

7.3.2 From the investigation, it was established that disaster management in the area of the Municipality is the responsibility of the Gert Sibande District Municipality, by virtue of the provisions of Chapter 5 of the Disaster Management Act, 2002.

7.3.3 The availability and response times of ambulances, are a competency and the responsibility of the Mpumalanga Provincial Government of Health.

7.3.4 The Gert Sibande District Municipality completed its Disaster Management Framework early in 2010, as is required by the said Act.

7.3.5 The construction in Balfour by the Gert Sibande District Municipality of a new Disaster Management Centre was completed during the period that the investigation was conducted.

7.3.6 The Centre will be operated in partnership with the Dipaleseng Local Municipality and will ultimately have a 24 hour call centre for all emergencies, offices, space for the housing of disaster management equipment such as fire engines, and facilities for staff.

7.3.7 The Municipal Manager of the Municipality stated in a letter addressed to the Public Protector on 29 July 2011 that: “the Disaster Management Centre is fully furnished. There are 19 new Fire Officers employed on a 12 month
contract and the Centre has 21 Fire Officers and it will soon be operating on two shifts, 24 hours service. This has been done together with Working on Fire. The District Municipality is currently in a process of procuring a Call-Centre facility for the Disaster Management Centre.”

7.4 Credit control and debt collection

7.4.1 During the investigation it transpired that the gist of the discontent amongst residents in respect of service accounts was that the Municipality was allegedly failing in applying and complying with its Credit Control Policy.

7.4.2 Issues such as the failure by the Municipality to deliver accounts for services regularly and timeously, the delay in attending to queries regarding accounts rendered and the lack of action taken against certain residents who defaulted in payment for services, were clearly the cause of much dissatisfaction.

7.4.3 It was established that the Municipal Council indeed approved a Credit Control Policy for the Municipality on 29 May 2008 which became effective on 1 July 2008. The Policy was subsequently amended with effect from 1 July 2011.

7.4.4 An example of the alleged failure of the Municipality to comply with the Policy raised by witnesses during the investigation, pertained to the amount owed by the owner of a property referred to as “P99 Eskom”. It was averred that despite owing the Municipality more than R42 000 by February 2010, no action had been taken against the owner. However, services were terminated in respect of other residents who were in arrears with the payment of their service accounts.

7.4.5 According to the Municipal Manager, a notice of arrears was served on the owner of the property, as long ago as on 14 October 2008. At that stage the amount in arrears was R 22 815.25. Services to the property were however only terminated “late in 2009” and interest to the amount of R4 470 was levied on the outstanding amount.

7.4.6 No further action was taken against the owner of the said property and by August 2011, the outstanding amount was R 56 027.
7.4.7 The Municipal Manager further explained that the services to the property were discontinued in early 2010. The investigation team visited the property concerned during the investigation and found it dilapidated and abandoned.

7.4.8 It was further indicated by the Municipal Manager that the delay in the recovery of the outstanding amount was due to capacity constraints experienced in the Budget and Treasury Office of the Municipality. Steps were however taken to recover the outstanding amount from the owner of the property, who is allegedly employed by a government department, by means of civil court action.

7.4.9 It was also established during the investigation that the information data of the Municipality in respect of revenue earned from property taxes and services was suspect and unreliable.

7.4.10 The Auditor General issued a disclaimer of opinion on the financial statements of the Municipality in reports issued from 2004 to 2010. Part of the basis for the disclaimer of opinion was the lack of proper and reliable records in respect of the revenue that the Municipality earned or was supposed to have earned from rates and taxes.

7.4.11 In this regard the Municipal Manager indicated that capacity constraints experienced by the Budget and Treasury Office was exacerbated by the disciplinary action that had to be taken against three members of the office for alleged serious financial misconduct. All three were suspended pending the outcome of the enquiry.

7.4.12 Pertaining to the steps taken by the Municipality to address the difficulties experienced by the Budget and Treasury Office, the Municipal Manager indicated that:

7.4.12.1 National Treasury has deployed a financial expert in the Office to support the Municipality;

7.4.12.2 “As part of addressing/clearing the issues raised by the Auditor-General in his 2009/10 audit, a professional team from the financial management environment have (sic) been appointed to support the municipality. The team has been onsite since its appointment in February 2011 working closely with
our staff members to ensure skills transfer. As part of monitoring, a steering committee has been established composed of the Provincial Treasury, SALGA MP, Cogta MP, appointed service provider, Senior Management of the municipality and the Auditor-General on an ad-hoc basis, Audit-Committee members and the Internal Audit unit of the municipality. This committee has been meeting on monthly (sic) since March 2011 to track progress made in addressing the audit report issues.”

7.4.12.3 The Municipality has commenced with a data cleansing project to verify its information in respect of the services rendered to households. The project includes the identification of pre-paid meters that have been manipulated not to take readings. “This project is envisaged to be completed by end of September 2011. Those that are (sic) found to be on the wrong site (sic) of the law, the Municipality will act in accordance with the policies of Council.”

7.4.12.4 A new integrated financial system was implemented from 1 July 2011.

7.4.13 It was also established that the amount owed to the Municipality in terms of rates and taxes on 31 January 2010 was R 94 252 625. According to the Municipal Manager, this outstanding amount accumulated since 2003.

7.5 The competencies of the staff of the Finance Department

7.5.1 The Chief Financial Officer provided detailed information in this regard. From this information and the personnel records of the Municipality, it was established that the qualifications and experience of key staff members of the Finance Department are as follows:
<table>
<thead>
<tr>
<th>Designation</th>
<th>Qualification</th>
<th>Employed by the Municipality in:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Financial Officer</td>
<td>B.COM Accounting</td>
<td>2003</td>
</tr>
<tr>
<td>Debtors Clerk</td>
<td>B Compt</td>
<td>2007</td>
</tr>
<tr>
<td>SCM Accountant</td>
<td>B Compt</td>
<td>2008</td>
</tr>
<tr>
<td>Financial Manager</td>
<td>National Diploma in Internal Auditing</td>
<td>2009</td>
</tr>
<tr>
<td>Accountant-Income</td>
<td>B COM Accounting</td>
<td>2006</td>
</tr>
<tr>
<td>Senior Creditors Clerk</td>
<td>Certificate in Bookkeeping</td>
<td>2009</td>
</tr>
<tr>
<td>Finance Clerk</td>
<td>Diplomas in Bookkeeping and Practical Accounting</td>
<td>2003</td>
</tr>
</tbody>
</table>

7.5.2 The remaining 10 staff members all have at least Grade 12 qualifications. One of them joined the Municipality in 1987, one in 1992, one in 1995, two in 2007 and the others from 2007 to 2009.

7.5.3 From 2007 to date eight former staff members left the Municipality. One retired, two accepted better offers elsewhere, two resigned after being implicated in theft and the other three because of personal or domestic reasons. According to the Municipal Manager staff retention is a challenge for the Municipality, especially in terms of the levels of remuneration that it can pay in respect of skilled staff with experience.

7.6 The benefits and salary increases awarded to members of the Municipal Council

7.6.1 The interviews conducted with the complainants who raised this matter revealed that they were under the impression that the salaries and benefits of the members of the Municipal Council were determined by the Municipality.

7.6.2 However, it was established from the investigation that the salary and benefits of municipal councillors are in fact determined by the Minister of Cooperative Governance and Traditional Affairs by virtue of the provisions of the Remuneration of Public Offers Bearers Act, 1998.

7.6.3 The records of the Municipality in respect of the Councillors in office at the time when the complaint was lodged showed that the said Minister accordingly determined the
upper limits of salaries and allowances of members of municipal councils in a
Government Gazette that was published on 23 November 2009.

7.6.4 The Municipal Council subsequently resolved, on 14 December 2009, to approve the
remuneration packages as determined by the Minister and on 15 December 2009 in
writing requested the concurrence of the Mpumalanga MEC for Cooperative
Governance and Traditional Affairs. The Head of the Department responded on 24
December 2009, informing the Municipal Manager that the MEC concurred and
confirmed the salary packages and allowances, as approved by the Council.

7.7 The standard of education and training of senior officials of the Municipality

7.7.1 This allegation was clearly founded on a perception of the complainants based on the
lack of service delivery by the Municipality in certain areas of its responsibility.

7.7.2 It was established from the investigation that the Municipal Manager and the
managers that are directly accountable to him (as contemplated by section 57 of the
Municipal Systems Act, 2000) are appropriately qualified to perform their respective
functions.

7.7.3 The records of the Municipality also indicated that the Municipal Manager and the
other said managers, except for the CFO, attended a number of training courses
since 2007, including a Municipal Leadership Programme, a Supply Chain
Management Course, a Project Management Course, a Contract Management
Course and a Financial Management Course.

7.7.4 The Municipality also submitted a Workplace Skills Plan and Training Report to the
Local Government Sector Education Training Authority, in compliance with the
provisions of the Skills Development Act, 1998 and the Skills Development
Regulations.
7.8 Development planning

7.8.1 In his response to this complaint, the Municipal Manager referred to the Integrated Development Plan (IDP) adopted by the Municipality, in terms of Chapter 5 of the Municipal Systems Act, and which is reviewed annually, as is required.

7.8.2 It was noted that the 2009/10 version of the IDP contained a comprehensive action plan for the Municipality for the 2009/10 financial year.

7.8.3 It was however also noted that the Auditor General stated in his report on the financial statements and performance information of the Municipality for the year ended 30 June 2010, issued on 16 December 2010, that: “The IDP of the municipality did not include the key performance indicators and performance targets determined in terms of its performance management system, as required by sections 26(i) and 41(1)(b) of the MSA (Municipal Systems Act) and regulation 12 of the Municipal Planning and Performance Management Regulations, 2001.”

7.8.4 The Auditor-General further found that the planned performance targets as per the IDP were not:

7.8.4.1 Specific in clearly identifying the nature and the required level of performance;

7.8.4.2 Measurable in identifying the required performance; and

7.8.4.3 Time bound in specifying the time period or deadline for delivery.

7.8.5 The planned indicators in the IDP were found not to be verifiable, as it was not possible to validate the processes and systems that produced the indicators.

7.8.6 The Municipal Manager indicated during the investigation that the new organogram of the Municipality will include a Department of Planning and Development. It could however not be implemented to date, due to a lack of funds.

7.8.7 He furthermore explained that the Development Bank of South Africa approved the Municipality’s application for the funding of the development of infrastructure master
plans, including land use management and geographical information systems. Service providers have already been appointed and “are on site”.

7.9 Licensing of municipal vehicles

7.9.1 According to the CFO, the vehicles in daily use by the Municipality, are all fairly new.

7.9.2 From the observations made during the investigation, it appeared that most of the vehicles used by the Municipality are in a fairly well maintained condition.

7.9.3 The picture below was taken by the investigation team on 11 March 2010 in a public street in Balfour. The windscreen shown is that of a truck of the Municipality with registration no: BLJ 562 MP. As can clearly be seen, the licence of the vehicle expired on 30 September 2008. Further investigation into the reasons why the vehicle was not licenced revealed that the licence was only paid for on 30 September 2009, but that it was not issued as the vehicle had to undergo a road worthy test because it was not licensed for a year.

When the matter was raised with the Director: Infrastructure Services, Mr L Msibi, who was responsible for ensuring that the vehicle concerned was road worthy and properly licensed, he was not aware of the fact that it was illegally used on public roads, transporting employees of the Municipality.
7.9.5 Mr Msibi was requested to submit the files containing the licence documents of the municipal vehicles under his supervision. A sample taken from the file revealed that at least another 26 vehicles of the Municipality were not licenced.

7.9.6 In his initial response when this matter was raised and the list of unlicensed vehicles provided to him, the Municipal Manager indicated that the new organisational structure of the Municipality would include the position of a Fleet Management Officer, who would be responsible for the vehicles of the Municipality.

7.9.7 On 29 July 2011, the Municipal Manager informed the Public Protector that all the vehicles on the list had been licensed, except those that were in the process of being de-registered due to being scrapped. However, he also advised that: “Fleet Management Officer not yet appointed due to the financial constraints. Each department is currently responsible for its own vehicle until the cash flow situation of the municipality improves.”

7.10 The SAPS in Balfour and Siyathemba

7.10.1 It was established during the investigation that the allegations relating to the poor infrastructure and lack of equipment of the SAPS in Balfour pertained to incidents where the Business Chamber provided assistance to the Balfour Police with the provision of toner and ink cartridges, fingerprint pads and stamps and in respect of tyre repairs of Police Vehicles.

7.10.2 The then Acting Station Commissioner confirmed that the Balfour Police Station did experience certain challenges in the past as far as the provision of equipment and repairs to vehicles were concerned. These challenges were addressed.

7.10.3 The absence of a Police Station in Siyathemba was raised as one of the major complaints of residents of the area.

7.10.4 These matters were raised with the Mpumalanga Provincial Commissioner of the SAPS, who advised on 5 August 2011 that:

7.10.4.1 The National Office of the SAPS approved the construction of a new Police Station at Siyathemba, which would improve policing in the area. Construction will
commence as soon as the Department of Public Works has identified and cleared the appropriate site.

7.10.4.2 As far as the resources at Balfour Police Station are concerned, four additional vehicles and 2 additional members have been allocated; and

7.10.4.3 He has appointed a Lieutenant Colonel as Station Commander and a full Colonel as Cluster Commander to “ensure efficient command and control in the Balfour Area.”

7.11 Housing in Siyathemba

7.11.1 With the assistance of one of the complainants, Mr M Makhudu, it was established during the investigation that a number of houses constructed by the Mpumalanga Provincial Government in Siyathemba were handed over without the toilet facility that was included in the design.

7.11.2 It was also observed that several steel structures were erected on otherwise vacant plots, without any indication of further construction. A number of houses visited in Siyathemba also had serious construction defects.

7.11.3 The Public Protector raised these matters with Mr D Dube, the Head of the Mpumalanga Department of Human Settlements who confirmed that the complaints were justified. The Department made an assessment of the situation and appointed service providers to install toilets in the houses concerned and to repair and construct houses where appropriate.

7.11.4 On 3 August 2011, Mr Dube confirmed that the projects were completed. The outstanding toilets were installed, 23 houses repaired, 47 steel structures demolished and new houses constructed. A total of 205 houses were completed in Siyathemba Ward 1 Extension 5. He also indicated that his Department was in the process of taking legal action against the relevant building contractors who failed to deliver houses in terms of the specifications agreed upon and to claim damages from them.
7.11.5 As far as the handing over of title deeds to the relevant owners of RDP houses is concerned, Mr Dube stated that:

“We further confirm that most of the Title Deeds are at the Municipality, which are ready to be handed over to the relevant beneficiaries. It should be noted that as the Department we are bound to liaise with the Municipality and cannot do the handover on our own without their involvement. Enquiries were made and were informed (sic) that the municipality is still not ready with the date of the hand over function…”

7.12 Road R51 between Balfour and Grootvlei

7.12.1 The main complaint regarding the condition of provincial roads in the Balfour area related to the R51 between Balfour and Grootvlei. This road is utilised on a daily basis by heavy trucks transporting coal from mines to the Grootvlei power station.

7.12.2 Over time the road deteriorated dramatically and several huge potholes were observed early in the investigation period. These potholes were the cause of several serious accidents.

7.12.3 The Public Protector raised the matter with the Head of the Mpumalanga Department of Public Works, Roads and Transport.

7.12.4 On 24 August 2011, the Head of the Department advised that: “The road network has deteriorated over the years because the provincial maintenance budget is too limited to fully address the network repair and maintenance needs. This then led to the establishment of the coal haul road rehabilitation programme in a joint effort between this Department, National Treasury, the Department of Public Enterprises, Department of Transport, Eskom and SANRAL.”
7.12.5 Eskom has made repairs to the R51 with the approval of the Mpumalanga Department of Public Works, Roads and Transport, in terms of the said project. However, these repairs are already deteriorating and require rehabilitation.

7.12.6 The Head of the Department further confirmed that the R51 “is planned for rehabilitation from May 2014 to December 2015.”

7.13 The construction of roads in Balfour and Siyathemba

7.13.1 The Municipal Manager and the Director: Infrastructure Services of the Municipality acknowledged during the investigation that there were quality problems in respect of the construction of the section of the road linking Balfour and Siyathemba, the road joining the R51 and the paving of a road in Extension 5 of Siyathemba.

7.13.2 As these defects were discovered before the project was completed and signed off, the contractor was held liable for the remedial work that had to be done, in terms of the contract. At the time of the conclusion of the investigation, most of the remedial work had been completed.

7.14 Attending to complaints

7.14.1 During the investigation, several instances of complaints lodged with the Municipality and/or the office of the Municipal Manager that were not responded to, were raised.

7.14.2 It was established that the Municipality’s system of handling complaints was ineffective and not properly managed.
7.14.3 Subsequent to the commencement of the investigation referred to in this report, the Municipality appointed a Manager: Legal and Administration, who is responsible for ensuring that the complaints mechanism works effectively and efficiently.

7.14.4 It was noted that some improvements were made to the complaints mechanism. In this regard, the Municipal Manager stated that:

“We have developed a complaint reporting mechanism where members of the community are welcomed (sic) to lodge complaints pertaining to service delivery issues. On a monthly basis we are reporting to the Mayoral Committee on complaints received via the Municipal Reception Office.”

7.14.5 The Municipal Manager, however, conceded that the handling of complaints remains a challenge.

7.15 The application of the *Batho Pele Principles* and the development of service standards

7.15.1 During the investigation it was observed that the Municipality had placed a banner in the foyer of its offices that states that it subscribes to the *Batho Pele Principles*.

7.15.2 According to the Municipal Manager, the Department of Public Service and Administration held a workshop with councillors and officials of the Municipality on the *Batho Pele Principles* and its application.

7.15.3 The Municipality also developed and adopted a *Batho Pele Policy*, which, according to the Municipal Manager, is being implemented.
7.15.4 It was also established from the Municipal Manager that the Municipality, with the assistance of the South African Local Government Association, developed Service Standards, which were approved by the Municipal Council and were being implemented at the time of the conclusion of the investigation.

7.16 The alienation of land by the Municipality

7.16.1 The investigation established that the complaint regarding the alienation of land by the Municipality, related to three municipal properties that were sold at an auction in June 2006. The conditions of sale included a requirement that 50% of the purchase price had to be paid to the Municipality immediately, which was duly received and reflected in the financial records of the Municipality.

7.16.2 The remaining amount was to be held in trust by the attorneys representing the Municipality in the sale.

7.16.3 No indication could be found that it was a condition of sale that the said properties had to be developed before a specified date.

7.16.4 Only one of the purchasers subsequently managed to obtain transfer of his property. Transfer of the other two properties was subject to a subdivision and rezoning, which caused a delay.

7.16.5 During the course of the investigation, it transpired that the second property had indeed been paid for and was transferred to the new owner.

7.16.6 The difficulties experienced in respect of the remaining property, referred to as Erf 1838, related to uncertainties in respect of its exact borders. At the conclusion of the investigation, the Municipal Manager indicated that the purchaser’s conveyancer had been provided with all the information to finalise the transfer of the property.
7.17 The high light mast project

7.17.1 The installation of high light masts in certain areas of the Municipality was part of a project that included the installation of street lights.

7.17.2 The complaint lodged in this regard related to the absence of a high light mast in Ward 3 in Balfour.

7.17.3 The Municipal Manager indicated during the investigation that 150 street lights were installed in Ward 3 and that an additional three high light masts will be installed in the said Ward before the end of the 2011/12 financial year.

7.18 The Community Hall of the Municipality

7.18.1 It transpired during the investigation that a Community Hall is being used as a pre-school on a daily basis.

7.18.2 As far as the arrangement for rental of the facility, maintenance and payment for services by the owners of the pre-school are concerned, the Municipal Manager advised on 29 July 2011 that:

“The finalisation of the (rental) agreement was put on hold as a result of the engagements between the Municipality and the Department of Education to acquire the pre-fabricated (sic) moveable classes to be allocated to the crèche in the school yard. The Community Hall is accessible to the community for usage through request like any other municipal facilities. The account for services has been opened for the payment of services rendered to the crèche.”
7.19 Financial irregularities and investigations into misconduct

7.19.1 In his report on the financial statements of the Municipality as at 30 June 2010, dated 16 December 2010, the Auditor-General stated the following in respect of investigations into financial misconduct conducted at the Municipality:

“The interim findings of an investigation into theft and fraud by clerks and cashiers at the municipality's offices identified credit note fraud in excess of R1,5 million.

Clerks issued fraudulent credit notes to write off accounts outstanding in return for bribes. Accounts were also closed without reason and any subsequent receipts into these accounts were taken for personal use.” (emphasis added)

7.19.2 The investigation team enquired into the matter and in his response, dated 12 August 2011, the Municipal Manager stated that:

“The investigation referred to in the last paragraph of the Auditor-General (sic) is as a result of the report to the Public Protector, your investigation and subsequent investigation by the Municipality which led to the suspension of three employees. The basis for their suspension was as a result of the issuing of unfounded credit notes. Internal processes are continuing as per the prescripts of the South African Local Government Bargaining Council. There has been a delay in concluding disciplinary hearing (sic) due to the unavailability of the tribunal members; however the matter has now been set down for hearing on the 19th August 2011. As the matter is still sub’judice (sic) all reports relating to it will be forwarded to your office once it is finalised. (emphasis added)

7.19.3 The Municipal Manager was advised, on 30 August 2011, that the sub-judice rule does not apply to investigations conducted by the Public Protector in respect of disciplinary matters. He was requested to provide the details and copies of the relevant documentation pertaining to the actions taken by the Municipality, including the interim report referred to by the Auditor-General. He was further requested to:

“Kindly indicate why the Municipality needs to be advised by the tribunal dealing with disciplinary matters on whether or not the matter should be reported to the South
African Police Service (SAPS), especially taking into account the amount involved. Is there any justifiable reason why the matter cannot be reported to the SAPS immediately?"

7.19.4 From the documentation subsequently provided by the Municipal Manager, it appeared that two of the employees involved only received written warnings as sanction in the disciplinary enquiries.

7.19.5 In the first case, the representative of the employee raised a number of procedural deficiencies in respect of the charges. The Municipality accepted a plea of guilty on 21 June 2011, on an alternative charge of negligence and accepted the sanction of a written warning. It was not clear from the documentation provided what exactly the charges against the employee amounted to. The record of the proceedings provided, furthermore, does not indicate the reasons why the Municipality was prepared to accept a plea of guilty on the alternative charge.

7.19.6 The charges brought against the second employee were the following:

- 7.19.6.1 Corruption; and/or
- 7.19.6.2 Fraud; and/or
- 7.19.6.3 Gross dishonesty; and/or
- 7.19.6.4 Bringing the Municipality into disrepute; and/or
- 7.19.6.5 Gross indolence and/or negligence in the discharge of duties.

7.19.7 The amount involved in the said charges was R 13 822.

7.19.8 On 21 June 2011, the Municipality and the second employee referred to above, agreed to a settlement in terms of which she entered a plea of guilty on the alternative charge of gross indolence and/or negligence in the discharge of her duties. The Municipality further agreed to a written warning as the appropriate sanction. However, the record of the proceedings does not indicate the reasons why the Municipality was prepared to accept a plea of guilty on the alternative charge.

7.19.9 No indication was provided of the status in respect of the charges brought against the third employee.
7.19.10 No explanation was provided as to why this serious matter was not reported to the SAPS for investigation.

7.20 **Communication between the Municipality and attorneys representing the interests of residents**

7.20.1 According to the Municipal Manager, the relationship between the Municipality and local firms of attorneys is satisfactory. The exception is the relationship between *Haarhoff, Fourie & Singh*.

7.20.2 The Municipality appointed a Director: Legal and Administration during the period of the investigation, whose tasks include interaction with attorneys that approach the Municipality.

7.20.3 At the conclusion of the investigation, it was evident that some progress had been made to resolve outstanding issues between *Haarhoff, Fourie & Singh* and the Municipality.

7.20.4 The Municipal Manager advised on 29 July 2011, that engagements with the said firm were continuing in an attempt to “settle other matters.”

7.20.5 The investigation team visited *Haarhoff, Fourie & Singh* on 25 August 2011. Mr Fourie of the firm confirmed that several meetings had taken place between him and the Director: Legal and Administration of the Municipality and that the next meeting was scheduled for that morning, but the official failed to attend without any apology. When he was contacted by the investigation team, the Director’s explanation was that he was involved in another urgent meeting. He however promised to meet with Mr Fourie on 29 August 2011, but again cancelled the meeting at short notice.

7.21 **The incorporation of Balfour into the Gauteng Province**

7.21.1 It was evident during the investigation that one of the main causes of the unrest in the Balfour area in 2010, was the dissatisfaction of residents about being part of the Mpumalanga Province.
7.21.2 The Acting Minister of Cooperative Governance and Traditional Affairs, Mr N Mthethwa MP, visited Balfour on 13 May 2011, to report back to the community on the progress made by the Ministerial Task Team.

7.21.3 According to media reports on his visit, Mr Mthethwa informed the community that the Government had already taken a decision on the incorporation of Balfour into the Gauteng Province and that its decision would be made public soon.

7.21.4 The matter was referred to in the Provisional Report of the Public Protector issued on 8 October 2011, to which the Ministry of Cooperative Governance and Traditional Affairs responded, as referred to in paragraph 10.3 below.

7.22 The website of the Municipality

7.22.1 During the course of the investigation it was noted that the website of the Municipality was out dated and not functioning properly. It was eventually closed down and not functional at the time of the conclusion of the investigation.

7.22.2 The Municipal Manager stated in this regard, on 29 July 2011 that:

“The development bank of Southern Africa (sic) came at (sic) the municipality on the 15th of April 2011 to present their Siyaphambili Project which inter alia addresses the issue of internet connection as well as the development of the municipality’s website. They have done an assessment on our current infrastructure to ascertain its suitability and capacity. They have indicated that a major overhaul of our ICT infrastructure has to be undertaken. At this point we are currently waiting for them to finalise their internal processes and roll out the programme.”

7.23 Ms Kahn’s problem resolved

7.23.1 Shortly after the Public Protector raised Ms Kahn’s problem with the Municipal Manager, it was resolved.

7.23.2 It was, however, observed during the investigation that Ms Kahn’s case was but one example of the frustration experienced by residents with the lack of response to service delivery complaints by the Municipality.
7.24 Settlement reached with Mr S Adam

7.24.1 Due to the intervention of the Public Protector in the dispute between Mr Adam and the Municipality, a settlement was reached and Mr Adam was paid an amount of R 61 544 on 10 December 2010.

7.25 The road island in Voortrekker Street

7.25.1 It was observed during the investigation that damage to the road surface caused by heavy vehicles turning in Voortrekker Street, was the reason for the complaint.

7.25.2 The construction of the proposed road island by the Municipality was completed as part of its construction and rehabilitation of roads project before the investigation was concluded.

7.26 Theft of electricity

7.26.1 The Chief Financial Officer of the Municipality indicated during the investigation that the theft of electricity is of major concern as it has a devastating impact on its revenue.

7.26.2 The Municipal Finance Unit of the Mpumalanga Department of Cooperative Governance and Traditional Affairs conducted an investigation into allegations of the theft of electricity by a former Councillor.

7.26.3 In its report issued on 2 June 2010, the Unit found that there was sufficient evidence indicating that an illegal electricity connection was made to a property belonging to the said Councillor. It was also found that the pre-paid electricity meter on the property was probably tampered with as the Councillor’s consumption was much more than the electricity purchased by him.

7.26.4 In addition, the report found that the Councillor was in arrears with the payment of his services account in respect of another property.

7.26.5 The report recommended that action be taken against the former Councillor in respect of his arrears and the illegal electricity connections found.
7.26.6 The Municipal Manager responded as follows on 29 July 2011 to enquiries relating to the report made during the investigation:

“The Administration was aware of the investigation conducted by MP Cogta on the abovementioned matter; however the final report was not officially presented to the Accounting Officer. A follow (sic) will be made with the department (sic) of Cooperative Governance and Traditional Affairs to acquire the copy (sic) of the report for further engagement with the new leadership for possible processing.”

7.27 The Report of the Ministerial Task Team

7.27.1 The Ministerial Task Team referred to above, issued a report on the progress made with its interventions at the Municipality on 13 May 2011 in respect of, inter alia, the following:

7.27.1.1 Road rehabilitation;

7.27.1.2 Water reticulation and sanitation;

7.27.1.3 Housing;

7.27.1.4 Electricity;

7.27.1.5 Street lights;

7.27.1.6 A new Community Hall;

7.27.1.7 Social development matters;

7.27.1.8 Health; and

7.27.1.9 Sporting facilities.

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4 See paragraph 2.3.3 above
8. EVALUATION OF EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

8.1. Complaints and allegations based on misunderstandings or lack of information

8.1.1 It was evident from the investigation that a number of the complaints lodged and allegations made were based on a misunderstanding or a lack of information.

8.1.2 Complainants were under the mistaken impression that the construction of the new Taxi Rank, the renovation of the Hoër en Laerskool Balfour, the emergency and disaster planning for the area, the benefits and salary increases of members of the Municipal Council, and the building of houses in Siyathemba were the sole responsibilities of the Municipality.

8.1.3 The lack of information and the said misunderstanding could, at least in part, be ascribed to the failure by the Municipality to communicate properly with members of its community when complaints were lodged.

8.2. Credit control and debt collection

8.2.1 As the accounting officer of the Municipality, the Municipal Manager is responsible, in terms of the Municipal Finance Management Act, for ensuring the effective collection of revenue for the Municipality.

8.2.2 The evidence obtained shows that despite some effort made by the Municipality and other organs of state assisting it to improve the situation, effective credit control and debt collection is still a major challenge. In his response to the Public Protector in this regard, during the investigation, the Municipal Manager conceded that the implementation of credit control by the Municipality “is still seriously impeded.”

8.2.3 In the example referred to in paragraph 7.4.4 above, it took almost three years to take action against the owner of a property who failed to pay his services account and owes the Municipality a substantial amount of money.

8.2.4 What makes matters worse is that some of the key officials involved in the process had to be charged with financial misconduct.
8.2.5 The Mpumalanga MEC for Cooperative Governance and Traditional Affairs has a responsibility in terms of section 105 of the Municipal Systems Act to assess the support needed by the Municipality to strengthen its capacity to manage its financial affairs. No indication was found during the investigation that such an assessment has been made in the current financial year.

8.3 Development planning

8.3.1 Development planning is a crucial activity of a Municipality to ensure that maximum benefit is obtained for its community from the money allocated and earned by it. Failure in this regard can have catastrophic results, as is evident from the events that occurred in the Balfour area in 2009 and 2010.

8.3.2 Capacity constraints in the Municipality clearly played a role in impeding its compliance in this regard.

8.3.3 The MEC for Cooperative Governance and Traditional Affairs of the Mpumalanga Provincial Government has, in terms of section 105 of the Municipal Systems Act, a responsibility to assess the support needed by the Municipality in this regard and to take the appropriate action to improve the situation.

8.3.4 No indication was found during the investigation that such assessment was done.

8.4 The complaints mechanism of the Municipality

8.4.1 Section 17(2) Municipal Systems Act requires the Municipality to have appropriate mechanisms and processes in place for the receipt, processing and consideration of complaints lodged by members of the community.

8.4.2 Although the evidence indicates that the Municipality has taken steps to improve its complaints mechanism and processes, no indication of the monitoring of the success rate of the complaints mechanism and the satisfaction of the complainants was provided.

8.4.3 It was noted that the Mayoral Committee was regularly informed of complaints lodged by members of the community. However, in order to give effect to the said provisions of the Municipal Systems Act, the Municipal Council has to take responsibility for
ensuring that the complaints mechanism is effective and that it improves the lives of members of the community.

8.5 Investigations in respect of financial misconduct

8.5.1 According the report of the Auditor-General referred to in paragraph 7.19.1 above, an internal investigation of the Municipality found credit note fraud in excess of R1.5 million.

8.5.2 It also found that officials of the Municipality issued fraudulent credit notes to write off accounts in return for bribes and that accounts were closed after which payments were “taken for personal use.”

8.5.3 The Municipal Finance Management Act requires of the accounting officer of a municipality to take serious action against officials in respect of financial misconduct, including reporting the matter to the SAPS, in appropriate circumstances.

8.5.4 Serious charges were brought against the three officials involved. However, the Municipality was satisfied to accept guilty pleas on a lesser alternative charge and to issue written warnings as a sanction.

8.5.5 Due to the apparent reluctance of the Municipality to provide the full details for its decision to accept guilty pleas under such serious circumstances and as the proceedings have been concluded, it was not possible to evaluate the veracity thereof during the investigation.

8.5.6 In the light of to his apparent knowledge or suspicion in respect of the conduct of the officials concerned and the amount involved, the Municipal Manager was obliged, in terms of the Prevention and Combatting of Corrupt Activities Act, 2004, to report it to the SAPS.
8.6 The theft of electricity

8.6.1 The evidence indicated that one of the major challenges facing the Municipality is the collection of revenue. The theft of electricity was identified as a main cause of the loss of revenue for the Municipality. However, it could not be established with certainty during the investigation what steps the Municipal Manager has taken to address this issue.

8.6.2 It was furthermore not clear why the report of the Municipal Finance Unit of the Mpumalanga Department of Cooperative Governance and Traditional Affairs had to be “officially presented” before action could be taken in respect of evidence of theft by a former Councillor found during an official investigation.

8.6.3 The Municipal Manager is responsible in terms of the Municipal Finance Management Act for the management of the revenue of the Municipality. He also has to ensure that the mechanisms earning revenue for the Municipality is effective and protected. Theft of electricity is a criminal offence that impacts on all the members of the community and has to be reported to the SAPS in order for the guilty parties to be held accountable. The Municipality must be seen to be acting against those that abuse its resources to the detriment of tax payers.

8.7 Interaction with attorneys representing residents

8.7.1 From the investigation it was evident that residents often approached attorneys for assistance when they were dissatisfied with the response or lack of response received from the Municipality to their complaints.

8.7.2 The involvement of attorneys has a cost implication for residents and often the Municipality when it results in litigation.

8.7.3 Disputes can often be resolved informally as is indicative of the recent interaction between the Municipality and Haarhoff, Fourie & Singh.

8.7.4 The Municipal Manager has a responsibility, as the accounting officer, to limit the risks of litigation against the Municipality and should therefore endeavour to have a
proper and professional relationship with attorneys representing the interests of residents to avoid unnecessary legal action and the associated costs.

9 **THE PROVISIONAL REPORT OF THE PUBLIC PROTECTOR**

9.1 The Public Protector issued a Provisional Report on the investigation to the complainants and other relevant parties involved on 8 October 2011.

9.2 The Provisional Report was distributed on the basis of confidentiality to provide the recipients thereof and the individuals implicated therein an opportunity to respond to its contents.

10 **RESPONSES TO THE PROVISIONAL REPORT**

10.1 The response of the Executive Mayor of the Municipality

10.1.1 The Executive Mayor responded on 21 November 2011. She advised that the credit note fraud referred to in paragraph 8.5 above, “had since been reported to the police in Balfour under Case No: 33/09/2011.”

10.1.2 She further stated that: “We would like to express our sincere gratitude on the work done by the Public Protector more particular in reference to the recommendations made to the Municipality. We are convinced that the immediate implementation of the recommendations will fast track our core function of delivering basic services to the people of Dipaleseng.”

10.2 The response from Mr J Van Tonder

10.2.1 In his response dated 22 November 2011, Mr J Van Tonder of the Dipaleseng Business Chamber and one of the complainants referred to in paragraph 2 above, confirmed that a number of challenges had been addressed since the investigation of the Public Protector commenced.

10.2.2 However, Mr Van Tonder indicated that there was still a concern about the operational efficiency of the Disaster Management Centre, which was partly due to a lack of cooperation on the part of the Municipality with the Fire Protection Association of Dipaleseng, a voluntary community organisation.
10.3 The response from the Ministry of Cooperative Governance and Traditional Affairs

10.3.1 Adv T Ntsewa, the Special Adviser to the Minister of Cooperative Governance and Traditional Affairs responded to the Provisional Report of the Public Protector on 8 December 2011. On behalf of the Minister he stated that:

“He (Minister R Baloyi) joins the residents (of Balfour) in celebrating the advances made in our collective quest to build better communities, and to improve the lives of all our people. We still believe that working together with them, more can be achieved.”

10.3.2 As far as the possible determination of the boundaries of Balfour and Dipaleseng (referred to in paragraph 7.21 above) is concerned, Adv Ntsewa advised that:

“…you are aware that our constitutional framework implores government to afford the citizens the right to administrative justice, which entails public consultations in the form of public hearings and notices. The Municipal Demarcation Board (MDB), an independent public body was established through this Department to facilitate, through public consultations, the demarcation and delimitation of municipal wards and/or their boundaries.

To this end, the Municipal Demarcation Board has, following the visit on the 13th of May 2011 to Balfour by the then Acting Minister of Cooperative Governance and Traditional Affairs, the Honourable Mr Nathi Mthethwa, through circular 1/2011 dated 28 June 2011, published a programme of consultations with communities and stakeholders who may want their wards and municipal boundaries reviewed. In terms of the said programme, the MDB visited Gert Sibande District’s Dipaleseng Municipality on the 2nd of August 2011.

We await the public announcement of the outcomes of the public meetings (including that with the Dipaleseng Municipal communities) by the Demarcation Board.”

10.3.3 According to Circular 1 of the MDB, dated 28 June 2011, and the media statement issued in respect thereof on the same date, the MDB is currently conducting an intensive three year consultative process that will inform the determination of
municipal boundaries across the whole country. One of the possible outcomes of this process is the adjustment and/or re-alignment of municipal boundaries, which need to be finalised by the beginning of 2013 in order for the national voters role to be finalised for the 2014 national and provincial elections.

10.3.4 The contents of the said Circular confirm that the Dipaleseng Local Municipality forms part of the list of municipalities to be consulted in said review process of the MDB, in terms of the relevant provisions of the Local Government: Municipal Demarcation Act, 1998.

11 GENERAL FINDINGS

11.1 Complaints resolved

As indicated in paragraph 7 above, the following complaints were resolved during the course of the investigation:

11.1.1 The new Taxi Rank was opened and is now being utilised by commuters.

11.1.2 The renovation of the Hoër en Laerskool Balfour was completed.

11.1.3 The Disaster Management Centre in Balfour is now operational.

11.1.4 Municipal vehicles have been licensed.

11.1.5 The resources of the SAPS in Balfour have been improved and a new police station will be constructed in Siyathemba.

11.1.6 Houses in Siyathemba were completed, new houses constructed and construction repairs made in appropriate cases.

11.1.7 The R 51 road between Balfour and Grootvlei was repaired and will be maintained until its rehabilitation in 2014.

11.1.8 The defects relating to the construction of roads in Balfour and Siyathemba were remedied.
11.1.9 The Municipality is in the process of implementing the *Batho Pele* principles and Service Standards.

11.1.10 Three high light masts will be installed in Ward Three before the end of the current financial year.

11.1.11 Ms Kahn’s property was connected to the sewerage network of the Municipality.

11.1.12 Mr Adam reached a settlement with the Municipality and was compensated.

11.1.13 The road island in Voortrekker Street was constructed.

### 11.2 Findings made from the investigation

11.2.1 The staff members of the Finance Department are generally competent in terms of their qualifications and experience to perform their tasks. However, staff retention is a challenge, especially due to the remuneration that the Municipality is able to offer.

11.2.2 The benefits and salary increases of members of the Municipal Council are not determined by the Municipality, but by the Minister of Cooperative Governance and Traditional Affairs. The Municipality is obliged to remunerate councillors accordingly.

11.2.3 The senior officials of the Municipality have the appropriate qualifications and experience to perform their tasks. The perception of non-delivery on their part is partly due to the capacity constraints experienced by the Municipality from time to time.

### 12 SPECIFIC FINDINGS

The Public Protector’s specific findings are that:

12.1 The failure by the Municipality to take timeous and appropriate action against the owner of the property (stand 1104 Balfour) for the illegal use thereof as a taxi rank, amounts to maladministration.
12.2 The Budget and Treasury Office of the Municipality is deficient and its failure to fully comply with the Credit Control Policy of the Municipality in respect of the recovering of debts and revenue, amounts to maladministration.

12.3 The failure of the Municipality to comply with the requirements of the Municipal Systems Act in respect of the preparation and implementation of its Integrated Development Plan, amounts to maladministration.

12.4 The delay in the conclusion of the sale of land referred to in paragraph 7.16 above was partly due to delays on the part of the Municipality to provide the purchasers with information and to insist on the finalisation of the transfer of the properties, and amounted to maladministration.

12.5 The utilisation of the Community Hall as a pre-school, referred to in paragraph 7.18 above, under circumstances where no rental agreement had been entered into with the owners and the maintenance of the building left to them without any enforceable arrangement, is improper. The Municipality also runs the risk of civil claims for damages should one of the learners be injured, especially as its insurance probably does not cover the use of a municipal facility for an unintended purpose. The conduct of the Municipality in this regard amounts to maladministration.

12.6 The Municipality is obliged by law to have an active website, especially as it had evidently decided previously that it is affordable, i.e. before the previous website was discontinued. The delay in setting up the new website results in non-compliance by the Municipality with the relevant provisions of the Municipal Systems Act, which is improper and amounts to maladministration.

12.7 The failure by the Municipal Manager to report his knowledge and/or suspicion of credit note fraud amounting to approximately R 1,5 million by officials of the Municipality to the SAPS, was unlawful and constituted improper conduct and maladministration.

12.8 The failure by the Municipal Manager to report the findings of the Municipal Finance Unit of the Mpumalanga Department of Cooperative Governance and Traditional Affairs, on the theft of electricity by a former Councillor to the SAPS is unlawful, improper and amounted to maladministration.
13 REMEDIAL ACTION

The remedial action that is to be taken, as envisaged in section 182(1)(c) of the Constitution, is the following:

13.1 The MEC for Cooperative Governance and Traditional Affairs of the Mpumalanga Provincial Government in terms of section 105 of the Municipal Systems Act, to:

13.1.1 Assess the support needed by the Municipality to strengthen its capacity to manage its integrated development planning and financial affairs, within 30 days from the date of this report;

13.1.2 Take the appropriate action to support the Municipality, within 60 days from the date of this report; and

13.1.3 Monitor the Municipality in the management of its financial affairs and integrated development planning.

13.2 The Executive Mayor of the Municipality to take urgent steps to ensure that the Municipal Manager reports to the Municipal Council on the complaints received by the Municipality and the manner in which it was resolved, on a regular basis;

13.3 The Municipal Manager of the Municipality to take urgent steps to:

13.3.1 Expedite the transfer of Erf 1838 to the name of the purchaser;

13.3.2 Regularise the utilisation of the Community Hall referred to in this report as a pre-school in order to ensure that the Municipality's risks are contained, the premises is properly maintained and a formal rental agreement is entered into. The said agreement should make provision for measures to ensure that the hall is made available, at no costs to the Municipality, for community purposes when so required;

13.3.3 Ensure that the website of the Municipality is re-activated within 30 days from the date of this report;
13.3.4 Instruct the attorneys of the Municipality to take legal action against the owner of stand 1104 Balfour for the illegal utilisation of the premises as a taxi rank, within 10 days from the date of this report;

13.3.5 Ensure the Municipality’s full compliance with its Credit Control Policy;

13.3.6 Ensure that the Municipality’s Integrated Development Plan complies with the relevant legislation and other prescripts and is properly implemented;

13.3.7 Liaise with the Mpumalanga Department of Human Settlements for the handing over of title deeds to the beneficiaries of houses in Siyathemba, within 30 days from the date of this report;

13.3.8 Ensure that the relationship between the Municipality and attorneys representing residents of the area is improved;

13.3.9 Report the theft of electricity referred to in this report to the SAPS; and

13.3.10 Improve the relationship between the relevant officials of the Municipality and the Fire Protection Association of Dipaleseng in the interest of disaster management.

14 MONITORING

14.1 The MEC for Cooperative Governance and Traditional Affairs of the Mpumalanga Provincial Government, the Executive Mayor and the Municipal Manager of the Municipality are to submit action plans in respect of the relevant remedial action referred to in paragraph 13 above to the Public Protector within 30 days from the date of this report.

14.2 The MEC for Cooperative Governance and Traditional Affairs of the Mpumalanga Provincial Government, the Executive Mayor and the Municipal Manager of the Municipality are to submit quarterly reports, as from the date of this report, to the
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Public Protector on the progress made with the implementation of the relevant remedial action referred to in paragraph 13 above.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
Date: 29 February 2012

Assisted by: Adv C H Fourie
Executive Manager: Good Governance and Integrity
Public Protector South Africa