

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8 (1) OF THE
PUBLIC PROTECTOR ACT, 1994**



REPORT NUMBER: 02 OF 2023/2024

ISBN NUMBER: 978-1-991244-34-5

**INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE CITY OF EKURHULENI
METROPOLITAN MUNICIPALITY TO ENSURE THAT SEWAGE INFRASTRUCTURE
LOCATED ADJACENT TO THE PAN IN BIRCH ACRES, KEMPTON PARK IS
PROPERLY MAINTAINED**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ABBREVIATIONS	DESCRIPTIONS
CCTV	Closed Circuit Television
Constitution	Constitution of the Republic of South Africa, 1996
Complainant	Mr Herman Mashaba President of ActionSA on behalf of residents of Norkem Park
Dr. Imogen Mashazi	City Manager
IDP	Integrated Development Plan
Investigation Team	Public Protector Investigation Team
MSA	Municipal Systems Act, 2000
Municipality	Ekurhuleni Metropolitan Municipality
Mr Thokozani Maseko (Mr Maseko)	Divisional Head of Operations Water and Sanitation
NEMA	National Environmental Management Act, 1998
Pan	A small reservoir created by excavating open ground, to collect and store surface runoff from uncultivated ground, from hillsides, roads, rocky area and open range lands
PVC	Polyvinyl Chloride
Public Protector Act	Public Protector Act, 1994
SHE	Safety, Health and Environment
WULA	Water Usage License Authorisation

1. INTRODUCTION

- 1.1. This is a report of the Public Protector issued in terms of section 8(1) of the Public Protector Act, 1994, which provides that *“The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation, in respect of a matter investigated by the Public Protector”*.
- 1.2. This report relates to an investigation into allegations of failure by officials of the Ekurhuleni Metropolitan Municipality (the Municipality) to ensure that the sewage infrastructure located adjacent to the Pan in Birch Acres, Kempton Park, in the jurisdiction of the Municipality, is properly maintained.
- 1.3. The Public Protector’s mandate is derived from section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and the Public Protector Act, 1994 (the Public Protector Act), to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the office, with the view to identifying the most probable underlying root causes of the problems, complaints or undesired events within relevant public bodies or authorities.
- 1.4. The aim is to formulate and establish corrective actions to at least mitigate, if not eliminate, those root causes and to produce significant long-term improvements in public administration.
- 1.5. The point of departure is that any complaint might be a symptom of an underlying organisational failure, *inter alia* in areas such as systems, procedures and human error. By addressing the underlying deficiencies in the systems that are the causes of the complaints, the Public Protector aims to

reduce the number of individual complaints, in turn, working collaboratively with stakeholders to get the problems resolved and to provide constructive feedback that will enable it to address the root causes of complaints and prevent a recurrence.

2. THE COMPLAINT

2.1. The complaint was lodged with the Gauteng Provincial Office of the Public Protector on 20 April 2021, by Mr Herman Mashaba¹ (Mr Mashaba), on behalf of Mr Euclid Palmer and other residents (the Complainants) of the Norkem Park residential area in Kempton Park, Gauteng. In essence, the Complainants alleged that:

2.1.1. Birch Acres, in the Norkem Park residential area suffers from sewage system blockages during the rainy season, which cause sewage spillage to flow into the properties of the local residents and into the local church grounds in the area adjacent to the Pan;

2.1.2. During the rainy season, the residents experience continuous environmental and health pollution which is caused by the sewage spillage and the stench emanating therefrom;

2.1.3. During the summer season, the stench becomes unbearable to the residents of the area due to the heat;

2.1.4. The unbearable state of affairs has existed for years and the Municipality has done nothing to remedy the situation despite residents continuously reaching out to it; and

¹ The leader of a political party, called Action SA.

2.1.5. The residents informed Mr Mashaba of this environmental hazard. ActionSA conducted an inspection of the area in order to understand the residents' complaints and confirmed that the residents suffer from continuous environmental pollution caused by sewer blockages, spills and stench.

2.2. In summation, the Complainants alleged that the Municipality failed to ensure that the sewage infrastructure in the area is properly maintained.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution) to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that:

“The Public Protector has the power, as regulated by national legislation –
(a) to 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;
(b) to report on that conduct; and
(c) to take appropriate remedial action”.

3.3. Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation.

3.4. The Public Protector's powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the

powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.5. Section 6(4)(c)(ii) of the Public Protector Act provides that, the Public Protector *“shall be competent at any time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority”*.

3.6. The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and sections 6(4) of the Public Protector Act, 1994.

4. ISSUE CONSIDERED AND INVESTIGATED

4.1. Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.1. Whether functionaries of the Municipality failed to properly maintain the sewage infrastructure located adjacent to the Pan in Birch Acres, Kempton Park, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation is conducted in terms of sections 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2. Approach to the investigation

5.2.1. The approach to the investigation included the exchange of documents, inspection *in loco*, analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

5.2.2. The investigation was approached using an enquiry process that seeks to determine:

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?
- (d) In the event of a violation, what action should be taken?

5.2.3. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally

focused on whether the alleged conduct of the Municipality was inconsistent with the applicable prescripts.

- 5.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the functionaries of the Municipality in ensuring that the sewage infrastructure located adjacently to the Pan in Birch Acres, Kempton Park was maintained to prevent sewage spillage and the stench emanating therefrom.

5.3. **Key sources of information**

- 5.3.1. Complaint letter, dated 04 April 2021;
- 5.3.2. Allegations letter from the Public Protector Investigation Team (Investigation Team) to the City Manager, Dr Imogen Mashazi, dated 15 June 2021;
- 5.3.3. Environmental Study Report from Mr Edwin Morulane, dated 17 June 2021;
- 5.3.4. Email response from Mr Thokozani Maseko (Mr Maseko), Divisional Head of Operations Water and Sanitation to the Investigation Team, dated 04 February 2022;
- 5.3.5. Email response from Mr Maseko and Mr Vincent Nkosi, the Acting Divisional Head of Operations Water and Sanitation to the Investigation Team, dated 14 July 2022;
- 5.3.6. Response email from Mr Maseko to the Investigation Team, dated 20 September 2022;
- 5.3.7. Update email from Mbali Matiwane, Divisional Head: Operations Water and Sanitation Department on the intervention measures on Birch Acres Pikkewyn Street, dated 19 May 2023.

5.4. Legislation and other prescripts

- 5.4.1. The Constitution of the Republic of South Africa, 1996;
- 5.4.2. The Public Protector Act, 1994; and
- 5.4.3. Local Government Municipal Systems Act, 2000.

6. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

6.1 Whether functionaries of the Municipality failed to properly maintain the sewage infrastructure located adjacent to the Pan in Birch Acres, Kempton Park, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

Common Cause

- 6.1.1. There is a Pan that runs parallel to the Municipality's sewage infrastructure and is connected to the sewage line serving houses on Pikkewyn Street Birch Acres within the Norkem Park residential area in Kempton Park, which falls under the jurisdiction of the Municipality.
- 6.1.2. During the rainy season, additional water collects in the Pan and surrounding areas, resulting in an overflow of water that fills into the sewage infrastructure thus causing sewerage spillage into the Pan.

Issue in dispute

- 6.1.3. The issue for the Public Protector's determination is whether functionaries of the Municipality failed to maintain the sewage infrastructure located adjacent to the Pan in Birch Acres, Norkem Park, which results in sewage system blockages and overflows during seasonal rainfall, causing pollution in the area.

The Complainant's version

- 6.1.4. Mr Mashaba, acting on behalf of the Complainants, submitted that ActionSA conducted a site visit to Pikkewyn Street and engaged with residents. According to Mr Mashaba, the residents were dissatisfied with the Municipality's failure to resolve the continuous environmental pollution, as well as the stench resulting from the sewage spillage in the area.

The Municipality's version

- 6.1.5. The Investigation Team sent an allegations letter dated 15 June 2021, to the City Manager: Dr. Imogen Mashazi (Dr. Mashazi), to respond to the allegations raised.
- 6.1.6. A response dated 04 February 2022, was received from Mr Thokozani Maseko (Mr Maseko), the Divisional Head of Operations Water and Sanitation. In the response, Mr Maseko stated that:
- 6.1.6.1. The Municipality has always responded to calls of sewer overflows and blockages as and when they are reported. The challenge is that during the wet season or when experiencing heavy rains, the water level of the Pan rises,

which also affects the sewer line, as the manholes are submerged under water;

- 6.1.6.2. Furthermore, when the Pan water level is high during the rainy season, sand and silt are also deposited into the sewer line and decrease the normal flow of sewage in the main sewer, causing it to block the manhole. In order to attend to the blockages, the Municipality's Water and Sanitation Department team has to drain the Pan to lower the water level, to enable them to access the lower manholes;
- 6.1.6.3. The Municipality has received several complaints about sewage overflows which were attended to by the Municipality's Department of Water and Sanitation;
- 6.1.6.4. The Municipality has commenced with the installation of a non-return valve to affected stands in order to prevent back flowing of sewage from mainlines to the houses. The installations at 21B and 19 Pikkewyn Street would be finalised by 13 February 2022;
- 6.1.6.5. CCTV inspections will be conducted after the repairs to ensure that the sewer line in 21B and 19 Pikkewyn Street is running without any disruption;
- 6.1.6.6. The Municipality will continuously monitor the performance of the sewer network and close the communication gap with the affected residents; and
- 6.1.6.7. The sewer system would be upgraded during the 2022/2023 financial year, as the Municipality's Water and Sanitation Department was in the process of planning and budgeting for the project.

- 6.1.7. Mr Maseko and Mr Vincent Nkosi, the Acting Divisional Head of Operations in the Water and Sanitation Department, submitted further information to the Investigation Team in an email dated 14 July 2022, wherein they stated that:
- 6.1.7.1 The line diversion from the manhole at the local church, running along 21B and 19 Pikkewyn Street, outside of the fence wall up to Marobe Street, will be running parallel to the existing line, but outside of the houses at Pikkewyn Street. This will accommodate the sewer line coming from Bunku Heights Complex. Furthermore, the line would be constructed with durable material (PVC) which will be easy to maintain;
- 6.1.7.2 This will give an opportunity to the Municipality's team to raise and seal all manholes which are submerged when the Pan water level is high;
- 6.1.7.3 The proposed line length is approximately 350m of 250mm diameter PVC pipe and will be a combination of conventional open excavation and drilling under the Eskom electrical power pylon (Eskom will be contacted for a wayleave application²); and
- 6.1.7.4 The Municipality's Water and Sanitation Department had already started with the wayleave application process with Eskom and would appoint a consultant for diversion of the sewer line to attend to the Water Use License, since the sewer pipe is within a wetland;
- 6.1.8 Mr Maseko submitted a job card for sewer maintenance to the Investigation Team on 04 February 2022. It was noted from the job card that the

² Definitions of way leaves from [Oxford Languages](#): a right of way granted by a [landowner](#), generally in exchange for payment and typically for purposes such as the [erection](#) of [telegraph](#) wires or laying of pipes.
"companies must have way leaves for work they want to carry out on private land"

Municipality's technician was deployed at number 12 Pikkewyn Street, Birch Acres and they established that the aforesaid residence was the cause of the blockage to the sewage pipe in the area.

Inspection in loco by the Investigation Team

6.1.9 On 20 September 2022, the Investigation Team conducted an Inspection *in loco* at the Pan and the surrounding residential area in Birch Acres, Kempton Park.

6.1.10 During the site visit, Mr Euclid Palmer (Mr Palmer), who is one of the Complainants and a resident of Birch Acres, was interviewed. During the interview, he put emphasis on the sewage spillage the residents of Pikkewyn Street are experiencing and further stated that this has been a challenge since 2001.

6.1.11 The following observations as captured in the images below were made by the Investigation Team:



Picture 1: The Municipality's sewage manhole situated at back of the Church at 21 Pikkewyn Street overflowing with waste water



Picture 2: Sewage wastewater forming a pond at the church's back yard at 21 Pikkewyn Street.

Interview with Mr David Sadiki, Municipal Head of Department for Roads and Storm Water

- 6.1.12 After the Inspection in *Loco* was completed, the Investigation Team proceeded to the Municipality and interviewed Mr David Sadiki (Mr Sadiki), the Head of the Department for Roads and Stormwater.
- 6.1.13 Mr Sadiki provided an overview of the challenges faced by the Municipality and indicated that:
- 6.1.13.1 During the 2021/22 financial year, the Department procured the services of a professional service provider, Willem Lubbe *Pr.Scl.Nat Wetland Specialist*

SACNASP Reg. No. 004750 to conduct an environmental study of the Pan, which included establishing the root cause of flooding in the surrounding areas.

6.1.13.2 In this regard he provided the Investigation Team with a copy of the environmental study report dated 31 October 2022, titled: *Flooding of The Norkem Park Residential Area around Norkem Park Pan*.

6.1.13.3 The Environmental Study report included the following:

- (a) Water Testing;
- (b) Land Surveying;
- (c) Flood line delineation; and
- (d) Wetland delineation.

6.1.13.4 According to Mr Sadiki, the environmental study depleted the funds for the Pan project. Notwithstanding the advanced stage of the project, there were more outstanding studies that needed to be completed before a final determination could be made on the best way forward, which included the following:

- (a) Hydrogeology Study; and
- (b) Water Use Licence Authority (WULA).

6.1.13.5 Mr Sadiki further stated that an additional amount of seven hundred and fifty thousand rands (R750 000.00) would be required to conduct the outstanding studies, however, due to budgetary constraints, the Municipality was unable to prioritise these studies in the 2021/2022 financial year;

6.1.13.6 He submitted that the Municipality would source additional funding in the 2022/2023 financial year and then Consultants will be instructed to continue

with the investigations in order to assist in exploring a viable solution along the Pan area.

*Further submission from Mr Maseko: Divisional Head of Operations
Water and Sanitation*

- 6.1.14 On 20 September 2022, Mr Maseko submitted further information to the Investigation Team following the *inspection in loco* stated above. He stated that:
- 6.1.14.1 The Municipality's Water and Sanitation Department in Kempton Park has been struggling with the sewer overflow which affected a few houses in Pikkewyn Street. The houses which were affected are 18, 19, 21, a church at 21 Pikkewyn Street and 25, as well as the Bunku Heights Complex in Brombeer Street, Kempton Park;
- 6.1.14.2 One of the main challenges was that the sewer pipe material for the line in Pikkewyn Street was a clay pipe and every time when their teams use jetting or hydro blast trucks, the line gets broken easily due to the force of the machines;
- 6.1.14.3 The sewer line from house 21 to 25 on Pikkewyn Street, is almost 9m deep underground, making it difficult to excavate as the line is in close proximity to the housing structures which pose a danger to them;
- 6.1.14.4 Accessing manholes inside the residents' properties and acquiring permission to access the premises from the owners causes delays in unblocking and repairing of the line;
- 6.1.14.5 The blockages are costly to the Municipality as teams are attending to them almost every second week and sometimes it takes time to unblock resulting in

his Departmental resources being concentrated in one area while they are responsible for maintaining over 980km of sewer pipes in the Kempton Park Service Delivery Area;

- 6.1.14.6 The process of WULA is anticipated to be in place by December 2022 and the Panel of sewer contractors is anticipated to be appointed by January 2023;
- 6.1.14.7 The commencement of the sewer line upgrade in Pikkewyn Street (from Lourie Street to Maraboe Street) and Mooirivier Street would be in February 2023;
- 6.1.14.8 All houses which were affected by sewer spillage have been cleaned and disinfected and, in the meantime, the Water and Sanitation Department will continue with the sweeping of the affected sewer line as part of preventative maintenance; and
- 6.1.14.9 The Municipality became aware of the sewage problem after it was reported by various Councillors and community members within the Birch Acres area.
- 6.1.15 On 18 May 2023, the Public Protector Investigation Team requested further information on the developments made by the Municipality and an update on the intervention measures on Birch Acres – Pikkewyn Street.
- 6.1.16 A response email dated 19 May 2023, was provided by Ms Mbali Matiwane Divisional Head: Operations Water and Sanitation Department showing the progress made, as at 19 May 2023.

**6.1.17 SUBJECT: WATER AND SANITATION DEPARTMENTAL INTERVENTION
MEASURES OF BIRCH ACRES – PIKKEWYN STREET SEWERAGE**

Short Term Intervention					
Intervention	Activity	Timeframes	Responsible Department	Status on Progress November 2022	Status on Progress May 2023
Response to sewer blockages/ overflows	Continuous monitoring of sewer blockages through site inspection weekly and camera inspection.	Twice a week	Water and Sanitation -Operations Division (Lufuno Netshiluvhi)	On going	On going
	Unblock sewer blockages as an when occur	As and when occurs	Water and Sanitation - (Lufuno Netshiluvhi)	On going	On going
	Repair broken channels as and when occur	As and when found	Water and Sanitation -Operations Division (Lufuno Netshiluvhi)	As and when found	Ongoing
	Control and drain storm water at the church (21 Pikkewyn)	As and when required	Water and Sanitation - (Lufuno Netshiluvhi)	When the levels are high, team will attend	Ongoing
Medium Term Intervention					

Intervention	Activity	Timeframes	Responsible Department	Status on Progress November 2022	Status on Progress May 2023
Preventative maintenance Pikkewyn street sewer line	Raise and seal the manhole at property number 19, 21A and B to prevent stormwater infiltration from the pan.	15 November 2022	Water and Sanitation -Operations Division (Lufuno Netshiluvhi)	On progress	The manhole at Number 19 was raised, and the installation of non-return valves at 21A, 21B have been completed.
	Sweeping of the sewer line	Before end 30 November 2022	Water and Sanitation -Operations Division (Lufuno Netshiluvhi)	30 November 2022	Completed
	Repair broken line and channel as they occur	On Going	Water and Sanitation -Operations Division (Lufuno Netshiluvhi)	As and when found	The broken sewer line was repaired on 23 March 2023
Long Term Solution					
Intervention	Activity	Time frames	Responsible Department	Status on Progress November 2022	Status on Progress May 2023
Sewer pipe upgrade for Chloorkop and Birchleigh	<ul style="list-style-type: none"> Review detailed design Geotechnical Investigation EIA 	31 January 2023	Water and Sanitation -Planning Division) (DH KALE)	<ul style="list-style-type: none"> Detailed design review is completed Geotechnical Engineers 	<ul style="list-style-type: none"> No action required Geotech investigations underway, for

reticulation system	<ul style="list-style-type: none"> • WULA application 			appointed for Geotech investigation <ul style="list-style-type: none"> • Scoping and technical report submitted to GDARD • Scoping report submitted to DWS. 	completion before end of June 2023 <ul style="list-style-type: none"> • Awaiting approval of Environmental Authorization • WULA application outcome received with further actions required i.e. conduct public participation, which will be completed before end of June 2023
	The department is attending to the Procurement of the Sewer Panel of Contractors (anticipated to be finalised in December 2022)	August 2022-31 January 2023	Water and Sanitation – Projects Division (Dikeledi Malatji- Chief Engineer)	In Progress	A panel of contractors for the replacement of sewer pipes was appointed on 15 March 2023
	The Upgrade is anticipated to commence in February 2023.	February 2023- June 2025	Water and Sanitation (Dikeledi Malatji- Chief Engineer)	Department busy with Procurement of panel of sewer contractors, and WULA application process.	Construction timelines are dependent on the approval of Environmental Authorization and WULA

Applicable law

The Constitution of the Republic of South Africa, 1996 (the Constitution)

6.1.18 Section 24³ the Constitution provides that everyone has the right-

- (a) *to an environment that is not harmful to their health or well- being; and*
- (b) *.....*

6.1.19 Section 152 of the Constitution provides *inter alia* that:

(1) The objects of local government are -

- (a) *To provide democratic and accountable government of local communities;*
- (b) *To ensure the provision of services to communities in a sustainable manner;*
- (c) *...;*
- (d) *To promote a safe and healthy environment; and*
- (e) *...*

(2) *A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).*

6.1.20 Section 195 of the Constitution provides that public administration in every sphere of government must be underpinned by amongst others, the following democratic values and principles -

³ Constitution of the Republic of South Africa, 1996

- (1) *Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
- (a) *A high standard of professional ethics must be promoted and maintained;*
 - (b) *Efficient, economic, and effective use of resources must be promoted;*
 - (c) *Public administration must be development-oriented;*
 - (d) *Services must be provided impartially, fairly, equitably, and without bias;*
 - (e) *People's needs must be responded to, and the public must be encouraged to participate in policy-making;*
 - (f) *Public administration must be accountable;*
 - (g) *.....*
 - (h) *.....*
 - (i) *Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation. (Own emphasis)*

6.1.21 Section 237 of the Constitution states that:

“All constitutional obligations must be performed diligently and without delay”

The Municipal Systems Act, 2000

6.1.22 Section 77(b)(iii) which deals with the occasions when municipalities must review and decide on mechanisms to provide municipal services and states that, a municipality must review and decide on the appropriate mechanism to provide a municipal service in the municipality or a part of the municipality in the case of a municipal service provided through an external mechanism contemplated in section 76, when an existing municipal service or part of that

municipal service is to be significantly upgraded, extended or improved and such upgrade, extension or improvement is not addressed in the service delivery agreement;

6.1.23 Section 78 of the MSA provides that:

“(1) When a municipality has in terms of section 77 to decide on a mechanism to provide a municipal service in the municipality or a part of the municipality, or to review any existing mechanism —

(a) it must first assess —

(i) the direct and indirect costs and benefits associated with the project if the service is provided by the municipality through an internal mechanism, including the expected effect on the environment and on human health, well-being and safety.”

The City of Ekurhuleni Metropolitan Municipality Stormwater Management Policy (undated)

6.1.24 Clause 10 of the City of Ekurhuleni Metropolitan Municipality Stormwater Management Policy provides that:

“A detailed maintenance schedule must be included in the stormwater management report⁴. The aim is to summarize the design, site controls, to define required maintenance activities to keep the drainage system operational, and to inform owners and site managers of the required activities.”
(Own emphasis)

⁴ “A comprehensive detailed report entailing all related aspects to storm water management as portrayed in the Municipal Stormwater Policy and addressing the requirements of the Design Guidelines and standards of the COE.”

Analysis

- 6.1.25 Section 24 of the Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected through reasonable legislative measures. Accordingly, it is the duty of the Municipality to ensure that this constitutional right is realised.
- 6.1.26 In terms of section 152(1)(a) of the Constitution, it was expected of the Municipality to resolve the sewerage spillage without undue delay in fulfilling its constitutional obligation to provide an accountable government for local communities as envisaged in this section, since according to Mr Palmer, a resident of Norkem Park who was interviewed by the Investigation Team during the inspection in loco, indicated that the residents have been experiencing the persistent sewerage spillage and the resultant pollution and stench since 2001.
- 6.1.27 The obligation of local government to ensure the provision of services to communities in a sustainable manner and to promote a safe and healthy environment are also enshrined in section 152(1)(b) and (d) of the Constitution. Therefore, in terms of these provisions, the Municipality is obliged to ensure the maintenance of sewage infrastructure on municipal land, to prevent blockages and spillages resulting in pollution which affects the surrounding residents and communities.
- 6.1.28 In terms of section 195 of the Constitution, the Municipality is required to promote and maintain a high standard of professionalism by ensuring the economic use of resources in a fair, equitable, impartial manner and without bias.

- 6.1.29 Whilst the Municipality has conceded that the residents of Norkem Park have faced challenges of sewerage spillage and further advanced reasons such as financial constraints as a hindrance to the speedy resolution of the matter, the unreasonable delay to rectify the situation is not in accord with the provisions of section 195(e) of the Constitution which enjoins state organs to respond to people's needs and section 237 of the Constitution which imposes a duty on state officials to perform their constitutional obligations diligently and without delay.
- 6.1.30 Section 77 of the MSA makes provision for instances where the Municipality must review and decide on a mechanism to provide a municipal service. These occasions include when an existing municipal service is to be significantly upgraded, extended or improved or when requested by the local community.
- 6.1.31 In terms of the above provision the Municipality is required to review, where necessary, and decide on mechanism to provide a municipal service.
- 6.1.32 The Public Protector takes note of the measures taken by the Municipality in its budget for the 2021/22 financial year as provided by Mr Sadiki that his Department procured the services of a professional service provider, Willem Lubbe Pr.Scl.Nat Wetland Specialist to conduct an environmental study of the Pan and establish the root cause of flooding in the surrounding areas. However, the Public Protector is concerned that the environmental study depleted the entire funds that were allocated for the Pan project when according to Mr Sadiki, there were more outstanding studies that needed to be completed before a final determination could be made on the best way forward, including, hydrogeology study, as this could be indicative of poor or inadequate planning by the Municipality.

6.1.33 The Public Protector further takes cognisance of the intervention measures provided by Ms Mbali Matiwane, the Divisional Head: Operations Water and Sanitation Department showing the progress made, as at 19 May 2023, including the appointment of panel of contractors even though the project is again behind the envisaged timeframe as such procurement according to the plan was anticipated to be finalised in December 2022. Furthermore, the upgrade projected to commence in February 2023, which means the project is running behind schedule which may result in further prejudice to the residents of Norkem Park.

Conclusion

6.1.34 South Africa is founded on, *inter alia*, the values of a democratic government, which includes principles of accountability and responsiveness. Therefore, whenever a service delivery system is adopted by a particular municipality, it remains the responsibility of that municipality to be accountable for all its activities, which includes the assurance of service provision of an acceptable quality.

6.1.35 The provision of services to local communities in a sustainable manner is also a constitutional imperative for all municipalities. In light of this constitutional requirement, service provision is an ongoing process. However, ongoing service provision depends on municipal institutions that are properly managed both financially and administratively.

6.1.36 The evidence obtained indicates that notwithstanding the short-term interventions by the Municipality, the functionaries did not dispute that the infrastructure is still prone to blockages and spillages especially during heavy rainfall which pollutes the immediate environment in which the community resides.

- 6.1.37 The Municipality has subsequently put measures (short, medium and in the long term) in place to address these challenges, including the procurement of contractors and a WULA application as required, to prevent the recurrence of blockages. The Municipality by its admission, acknowledged that it had provided a long term solution to ensure the uninterrupted flow of the sewage pipe at Birch Acres in a sustainable manner, resulting in these communities being exposed to an unsafe and unhealthy environment, in contravention of the obligations imposed upon municipalities in terms of section 24(a) of the Constitution.
- 6.1.38 The updated intervention measures provided by the Municipality also demonstrate that the Municipality is addressing these challenges as they have undertaken to upgrade the sewer pipe reticulation system which commenced from February 2023 and is due to be concluded by June 2025. However, as stated above, the Public Protector notes that there may already be challenges in maintaining the projected timeframes as anticipated in the intervention plan and urges the Municipality to prevent any further prejudice that may be suffered by this community.

7. **OBSERVATIONS**

- 7.1 It has been noted by the Public Protector that the issue of sewage spillage relates to administrative deficiencies dating as far back as 2001. The root cause of the problem identified is the sewerage infrastructure that has been neglected and poorly maintained which results in large volumes of rainwater accumulating in the Pan during the rainy season and causing sewerage spillage.
- 7.2 The Public Protector notes that the Municipality attends to the sewage blockages, as and when they are reported. However, the challenge of the

sewage spillage still persists while the community awaits the implementation of a permanent solution.

- 7.3 Whilst the Public Protector notes the updated intervention measures as contained in the plan provided by the Municipality on 19 May 2023, which demonstrates the upgrade of the sewer pipe reticulation system and commenced in February 2023, with the anticipated completion being in June 2025, however, had the Municipality ensured that they put measures in place on time at the sewage pipeline running along Pikkewyn Street adjacent to the Pan, the sewage spillage to the properties of residents of Pikkewyn Street, could have been prevented.

8. INTERVENTION

- 8.1 It is therefore recommended, in terms of Section 6(4)(c)(ii) of the Public Protector Act, that:

The City Manager

- 8.1.1 Within **ninety (90) calendar days** from the date of receipt of this report, ensure that an inspection is conducted to confirm that the construction of the proposed PVC sewer pipeline has commenced within the project timelines, as per section 63(1) of the MFMA;
- 8.1.2 **Within ninety (90) calendar days** upon receipt of this report, monitor and report to Council on whether the recurring problems faced by Complainants relating to the sewage blockage have been appropriately and timeously addressed through the upgrading of the sewer pipelines, as per the

intervention measures proposed by the Municipality's Water and Sanitation Department; and

- 8.1.3 **Within thirty (30) calendar days** upon receipt of this report ensure that the affected members of the community are informed of the intervention plan by the Municipality and the progress towards the implementation and finalisation thereof, to permanently resolve the sewage infrastructure issues as indicated in its intervention measures, proposed by the Municipality's Water and Sanitation Department.

9 CONCLUSION

- 9.1 The Public Protector considers this matter as finalised and cannot take the matter any further. Should any party be dissatisfied with this decision, they are at liberty to explore the legal remedies at their disposal.



ADV Kholeka Gcaleka
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 JUNE 2023

Assisted by: Adv E De Waal
Senior Manager: PII Inland