

**ADVISORY 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), READ WITH SECTION 6(4)(c)(ii), (d)(ii) AND (iii) OF THE PUBLIC PROTECTOR ACT, 1994**



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**INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO FAILURE BY FUNTIONARIES OF THE DR JS MOROKA LOCAL MUNICIPALITY TO PROVIDE ADEQUATE AND CLEAN WATER TO THE COMMUNITIES OF WARD 1 TO WARD 31**

<b>TABLE OF CONTENTS</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>PAGE NO</b>
	<b>LIST OF ACRONYMS AND ABBREVIATIONS</b>	<b>2</b>
<b>1</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>2</b>	<b>THE COMPLAINT</b>	<b>3</b>
<b>3</b>	<b>POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>	<b>4</b>
<b>4</b>	<b>ISSUE IDENTIFIED FOR INVESTIGATION</b>	<b>6</b>
<b>5</b>	<b>THE INVESTIGATION</b>	<b>6</b>
<b>6</b>	<b>THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</b>	<b>10</b>
<b>7</b>	<b>FINDINGS</b>	<b>41</b>
<b>8</b>	<b>RECOMMENDATIONS</b>	<b>43</b>
<b>9</b>	<b>MONITORING</b>	<b>44</b>

## LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYM/ABBREVIATION	DESCRIPTION
Administrator	Administrator of the Dr JS Moroka Local Municipality
COGTA	Mpumalanga Provincial Department of Co-Operative Governance and Traditional Affairs
DWS	Department of Water and Sanitation
High Court	Mpumalanga Division of the High Court of South Africa
IDP	Integrated Development Plan
Investigation Team	Public Protector Investigation Team
MIG	Municipal Infrastructure Grant
MOU	Memorandum of Understanding
Municipality	Dr JS Moroka Local Municipality
NDM	Nkangala District Municipality
Public Protector	Public Protector of the Republic of South Africa
Public Protector Act	Public Protector Act, 1994
SAHRC	South African Human Rights Commission
WSA	Water Service Authority

## **1. INTRODUCTION**

1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1), read with sections 6(4)(c)(ii), (d)(ii) and (iii) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8(1) read with sections 6(4)(c)(ii), (d)(ii), (iii) and 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation to affected parties for such persons to note the outcome of the investigation and the Public Protector's recommendations. A copy of this report is issued to the following persons:

1.2.1 Mr MJ Msibi, the Member of the Executive Council for Co-operative Governance and Traditional Affairs;

1.2.2 Mr Samkelo Ngubane, the Head of Department of Co-operative Governance and Traditional Affairs;

1.2.3 Mr Fikile Guma, the Provincial Head: Mpumalanga, Department of Water and Sanitation;

1.2.4 Ms Nomsa Mtsweni, the Executive Mayor; and

1.2.5 Ms Monica Mathebela, the Municipal Manager.

1.3 A copy of the report is also provided to Mr George Thukwane, the Complainant.

1.4 This report relates to a complaint lodged in respect of allegations of improper conduct and maladministration relating to the failure by the functionaries of the Dr JS Moroka Local Municipality (the Municipality) to provide adequate and clean water to the communities of Ward 1 to Ward 31 of the Municipality.

## **2. THE COMPLAINT**

2.1 The complaint was lodged with the Public Protector on 26 January 2021, by Mr George Thukwane (the Complainant) on behalf of the Siyabuswa community, as

well as other communities under the jurisdiction of the Municipality. The Complainant alleged *inter alia*, that:

- 2.1.1 In some of the wards of the Municipality, particularly in Ward 1 to Ward 31, the water supply is very poor;
- 2.1.2 The community receives water every two (02) weeks for only a few hours. The water is dirty and it seems that the water is not undergoing a proper cleaning process;
- 2.1.3 There are private trucks which sell Municipal water to the communities. However, there are also Municipal trucks that are providing water to the communities during days when there is no supply from the Municipality. The challenge is that the provision of water by the Municipal trucks happens between 08h00 and 16h00, when many people are at work and therefore not able to collect water;
- 2.1.4 The Municipality obtained a High Court Interdict against the communities under Case Number 2712/2020: Middelburg, Mpumalanga, dated 15 September 2020, in terms of which the Administrator of the Municipality, Mr Thisha Mhlanga, (Mr Mhlanga) interdicted the community from going to the premises of the Municipality to lodge complaints regarding water shortages, and they could be arrested if the interdict is transgressed;
- 2.1.5 The Administrator, whose term and appointment are questionable, is untouchable; and
- 2.1.6 The Municipality failed to ensure that the community has access to adequate and clean water supply.

### **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. 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.

3.4 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 and investigation, if she 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.”*(Own emphasis)

3.5 The Public Protector Act<sup>1</sup> further confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

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<sup>1</sup> Section 6(4)(b)

3.6 The Municipality is an organ of state in terms of section 239 of the Constitution and the conduct of its functionaries amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act, 1994.

#### **4. ISSUE IDENTIFIED FOR INVESTIGATION**

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

4.1.1 Whether the functionaries of the Municipality failed to provide access to adequate and clean water to the communities of Ward 1 to 31 of the Municipality, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.

4.2 The issue relating to the High Court interdict against the community was not investigated as the Public Protector does not have the necessary jurisdiction to investigate the matter in terms of section 182(3) of the Constitution, which provides that the Public Protector may not investigate court decisions. The alleged irregular appointment of Mr Mhlanga as the Acting Municipal Manager is dealt with in terms of a separate investigation under the Public Protector Reference No. 7/2-000666/21.

#### **5. THE INVESTIGATION**

##### **5.1 The investigation process**

5.1.1 The investigation included the exchange of documents between the Public Protector and the Municipality, inspections *in loco* conducted, analysis of the relevant documentation, consideration and application of the relevant laws, regulatory framework, and prescripts.

## 5.2 **Methodology**

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

5.2.2 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.

## 5.3 **Approach to the investigation**

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

5.3.1.1 What happened?

5.3.1.2 What should have happened?

5.3.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct and/or maladministration?

5.3.1.4 In the event of a violation, what action should be taken?

5.3.2 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 case, the factual enquiry principally focused on whether there was a failure by the Municipality to provide adequate and clean water to the communities in Ward 1 to 31.

5.3.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standards that should have been met by the functionaries of the Municipality in ensuring that the community has access to adequate and clean water.

## 5.4 **Key sources of information**



#### 5.4.1 Documents and correspondence

- 5.4.1.1 Amanzi Water Scientific Services Report, dated 31 December 2020;
- 5.4.1.2 Complaint email sent to the Public Protector, dated 21 January 2021;
- 5.4.1.3 Letter from the Public Protector to the Municipality, dated 03 February 2021;
- 5.4.1.4 Letter from the Public Protector to the Department of Water and Sanitation (DWS), dated 15 February 2021;
- 5.4.1.5 Letter from the Public Protector to the Mpumalanga Provincial Department of Co-Operative Governance & Traditional Affairs (COGTA), dated 25 February 2021;
- 5.4.1.6 Email from the DWS to the Public Protector, dated 16 March 2021;
- 5.4.1.7 Letter from the Public Protector to COGTA, dated 12 April 2021;
- 5.4.1.8 Letter to the Public Protector from the Municipality, dated 26 April 2021;
- 5.4.1.9 Letter from the Public Protector to the Municipality, dated 21 May 2021;
- 5.4.1.10 Letter to the Public Protector from the Municipality, dated 26 May 2021;
- 5.4.1.11 Email from the Public Protector to the Municipality, dated 27 May 2021;
- 5.4.1.12 Letter from the Public Protector to the Complainant, dated 06 October 2021;
- 5.4.1.13 Letter from the Public Protector to DWS, dated 14 October 2021;
- 5.4.1.14 Report on the Joint Inspection *in loco* conducted with the South African Human Rights Commission (SAHRC) on 20 and 21 October 2021;
- 5.4.1.15 Undated copy of the Municipality's Capital Projects for 2021/2022;
- 5.4.1.16 Letter from the Public Protector to the Municipality, dated 14 February 2022;
- 5.4.1.17 Certificate of Completion: Construction of Convertible Water Borne (CWB) toilets in Ga-Morwe signed by the Municipality, dated 15 February 2022;
- 5.4.1.18 Letter from the Municipality to the Public Protector, dated 18 March 2022;
- 5.4.1.19 Certificate of Practical Completion: Construction of Setateng water reticulation signed by the Municipality, dated 15 June 2022;
- 5.4.1.20 Auditor General South Africa Final Management Report from the Municipality, dated 30 June 2022;
- 5.4.1.21 Certificate of Completion Replacement of bulk-line and installation of a pump station at Makopanong signed by the Municipality on 25 July 2022;
- 5.4.1.22 Letter from the Public Protector to the Municipality, dated 12 August 2022;
- 5.4.1.23 Letter from the Public Protector to the Municipality, dated 29 August 2022;
- 5.4.1.24 Letter from the Municipality to the Public Protector, dated 07 September 2022;
- 5.4.1.25 Letter from the Public Protector to the Municipality, dated 14 September 2022;

- 5.4.1.26 Letter from the Public Protector to the Municipality, dated 23 September 2022;
- 5.4.1.27 Certificate of Completion: Construction Libangeni Oxidation ponds signed by the Municipality, dated 29 September 2022;
- 5.4.1.28 *Subpoena* issued to the new Municipal Manager (Ms MM Mathebela), dated 11 October 2022;
- 5.4.1.29 Letter from the Public Protector to the Municipality, dated 21 November 2022;
- 5.4.1.30 Letter to the Public Protector from the Municipality, dated 29 November 2022;
- 5.4.1.31 Certificate of Completion: Construction of Ga Phaahla Sewer outfall reticulation and pre-cast toilet structure (re-cast toilet structure) signed by the Municipality, dated 26 July 2023;
- 5.4.1.32 Certificate of Completion: Replacement of bulk-line and installation of a pump station at Siyabuswa signed by the Municipality, dated 23 September 2023;
- 5.4.1.33 Undated copy of Dr JS Moroka Municipality water status per ward of October 2023;
- 5.4.1.34 Certificate of Practical Completion: Construction of Mapotla supply signed by the Municipality, dated 02 October 2023;
- 5.4.1.35 Letter from the Public Protector to the Municipality, dated 06 October 2023;
- 5.4.1.36 Internal Memorandum on the number of boreholes in the Municipality, dated 19 October 2023;
- 5.4.1.37 Internal Memorandum on the number of portable water storage tanks in the Municipality, dated 19 October 2023;
- 5.4.1.38 Internal Memorandum on the number of water tankers in the Municipality, dated 19 October 2023;
- 5.4.1.39 Internal Memorandum on the Municipality's short term, medium term and long-term interventions to address water challenges, dated 19 October 2023;
- 5.4.1.40 Letter from the Municipality to the Public Protector, dated 20 October 2023;
- 5.4.1.41 Weltevreden Water purification works, draught schedule supply of 20 October 2023; and
- 5.4.1.42 Letter from the Municipality to the Public Protector, dated 20 October 2023.

#### 5.4.2 **Legislation and other prescripts**

- 5.4.2.1 Constitution of the Republic of South Africa, 1996;
- 5.4.2.2 Public Protector Act, 1994;

- 5.4.2.3 Local Government: Municipal Systems Act, 2000
- 5.4.2.4 Local Government: Municipal Finance Management Act, 2003; and
- 5.4.2.5 Water Services Act, 1997.

#### 5.4.3 **Case Law**

- 5.4.3.1 Mabuza and Others v City of Johannesburg and Others 2010 BCLR 239 (CC)

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

#### **6.1 Whether the functionaries of the Municipality failed to provide access to adequate and clean water to the communities of Ward 1 to 31 of the Municipality, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act**

##### *Common cause*

- 6.1.1 The Municipality employs different methods to provide communities under its jurisdiction with water. In areas where there is water reticulation infrastructure such as those found in Ward 1 to Ward 22, communities access water on a regular basis through their own taps, while some access water through communal taps.
- 6.1.2 In areas without water reticulation infrastructure, especially those located in Wards 23 to 31, the communities access water through boreholes, water storage tanks and water tankers, although water is not always available in all communities.
- 6.1.3 The Municipality has installed water storage tanks in different areas and uses water tankers to deliver water to these storage tanks. Boreholes are also used to

supply water to the storage tanks. However, in some of the areas, communities do not always have access to water.

*Issue in dispute*

- 6.1.4 The issue for the Public Protector's determination is whether the Municipality has effective and efficient measures in place to ensure the provision of sufficient, sustainable, and clean water to the communities it serves.

*Complainants' version*

- 6.1.5 The Complainant contended that the wards in question receive poor water supply from the Municipality. The community receives water every two (02) weeks for only a few hours and the water might not be undergoing proper cleaning;

- 6.1.6 There are private trucks that sell municipal water to the communities, as such, the community must pay for that water. Furthermore, even though the municipal trucks provide water to the communities during days when there is no water supply from the Municipality, those municipal trucks deliver water when most people are at work and are therefore unavailable to receive the water.

*The Municipality's version*

*Response from the erstwhile Administrator and Acting Municipal Manager, Mr BM Mhlanga*

- 6.1.6 The Public Protector sent an allegations letter dated 03 February 2021 to Mr BM Mhlanga (Mr Mhlanga), to respond to the allegations raised.

- 6.1.7 Mr Mhlanga responded through a letter dated 11 February 2021, providing the background to the matter and the challenges experienced regarding the provision of water to the community. Mr Mhlanga stated *inter alia* that:

- 6.1.7.1 There had been a persistent drought for years which resulted in low river flows and the subsequent drying of dams. This was the case with the Mkhombo Dam, which is located in Siyabuswa, which serves as the main source of raw water for the vast semi-rural communities of the Municipality, the Thembisile Hani Local Municipality as well as the Sekhukhune District Municipality;
- 6.1.7.2 Due to recurring drought conditions, the Mkhombo Dam level dropped to 01% in June 2019 and it had been declining since the start of the drought in 2014;
- 6.1.7.3 The declining trend was due to the fact that in addition to abstractions of water from the ground to meet raw water demand, the shallow dam basin and large surface area leads to elevated evaporation;
- 6.1.7.4 The Mkhombo Dam catchment area was characterised by low seasonal rainfall and low runoff, which had since been magnified by prevailing drought conditions. The Mkhombo Dam has a storage capacity of two hundred and five million (205 000 000) cubic litres, but over the years, it has hardly ever filled up due to its catchment characteristics;
- 6.1.7.5 The Municipality is both the Water Service Authority (WSA) and water service provider, with an estimated population of two hundred and forty-nine thousand seven hundred and five (249 705) persons and sixty-two thousand one hundred and sixty-two (62 162) households;
- 6.1.7.6 The Municipality has a sixty million litres (60MI) purification plant and more than two hundred (200) boreholes which supply the entire Municipality and surrounding areas. It is estimated that less than 09%, namely five thousand and eighty-six (5 086) households still require basic levels of service for water and less than 10%, that is, eight thousand seven hundred (8 700) households experience intermittent water supply;
- 6.1.7.7 The Municipality also experienced challenges of boreholes drying up, due to the drought, theft of cables and vandalism of such infrastructure by criminals;

- 6.1.7.8 To overcome these challenges, the Municipality identified and embarked on the following intervention measures to address water supply challenges faced by the Municipality:
- (a) Short term intervention strategy which involved the supply and distribution of water to water storage tanks in various communities through water tankers (trucks);
  - (b) Medium term intervention strategy which involved the supply of water through boreholes and the implementation of the Municipality's Water and Sanitation Projects funded through Municipal Infrastructure Grant for the 2021/22 financial year and almost all of them are completed or at completion stage; and
  - (c) Long term intervention strategy which involves building the Rust de Winter Dam to access water from the dam. The DWS has appointed the Nkangala District Municipality (NDM) as the implementing agent that will facilitate the conducting of a feasibility study, designing and construction of the project, which will involve the construction of a small plant, reservoir tanks, bulk line, and reticulation.
- 6.1.7.9 The Municipality has forty-five (45) water storage tanks and twenty-three (23) water tankers, however, thirteen (13) of the tankers are not operational. NDM has provided seven (07) water tankers, which included three (03) water trucks with the capacity of 02 X 18 000L (litres) and 01 X 10 000L (litres);
- 6.1.7.10 The Municipality's medium-term intervention was to ensure that communities have access to water and groundwater was identified as one of the key interventions. A total of two hundred (200) boreholes were drilled. Out of the 200 boreholes, only one hundred and fifteen (115) are functional whilst eighty-five (85) boreholes had dried up and out of that 85, some boreholes were vandalised and affected by cable and transformer theft;

- 6.1.7.11 About ten (10) villages benefited from the Municipality's Water and Sanitation Projects, funded through the Municipal Infrastructure Grant (MIG) for the 2021/22 financial year;
- 6.1.7.12 The Municipality's long-term intervention measure is to build the Rust de Winter Dam. The Municipality requested funds from the DWS, through COGTA and the aim was to supplement the current source of water. The request for the drought relief programme was approved on 10 July 2019 and an amount of eighteen million rand (R18 000 000) was allocated to the Municipality to resolve the water crisis; and
- 6.1.7.13 The DWS appointed the NDM as the implementing agent and five million rand (R5 000 000) was allocated to conduct a feasibility study. The NDM is currently at the design stage, which is budgeted for thirteen million rand (R13 000 000). The construction cost is not yet determined considering that it will involve the construction of a small plant, reservoir tanks, as well as bulk line and reticulation.

*Information received from DWS*

- 6.1.8 On 14 June 2023, during a telephonic discussion held with the Investigation Team, Mr Patrick Ntabeni (Mr Ntabeni), the District Director of the DWS, confirmed that the DWS approved the drought relief programme of the Municipality in 2019.

*Inspection in loco by the Investigation Team*

- 6.1.9 During the investigation, the Public Protector noted that the South African Human Rights Commission (SAHRC) was conducting a similar investigation after it received two (02) complaints in March 2020 from different communities under the jurisdiction of the Municipality. The SAHRC reported to have completed its investigation and was in the process of issuing a report.
- 6.1.10 Given the overlapping jurisdiction of the respective Constitutional institutions and the fact that both were investigating similar complaints, the Public Protector and

the SAHRC agreed to conduct a joint investigation of the alleged water access challenges relating to the Municipality.

- 6.1.11 As part of the investigation, the respective institutions conducted a joint site inspection on 20 and 21 October 2021, to verify the allegations made and the extent to which the reported challenges exist, and the impact thereof on communities. Both the Municipality and the DWS joined the inspection *in loco*, where various areas, including Phake-Thabeng (Ward 07), Libangeni (Ward 16), Masobye (Ward 31), Mantlole (Ward 30), Seabe Nokaneng (Ward 25) and Marapyane (Ward 24 & 25) were visited. The DWS was represented by Mr Ntabeni and the Municipality was represented by Mr Freddy Shabangu, the Manager of Water and Sanitation.
- 6.1.12 The joint site inspection established, through interviews with community members that, although residents' experiences of water access are not uniform, there are general water access challenges across the communities. The level of access to water varied from community to community. However, some residents reported receiving water through the water reticulation system, whilst others received water through water tankers from the Municipality or private vendors.
- 6.1.13 Insofar as the frequency of the water supply, the following was observed:
- 6.1.13.1 Loding, Extension 1 in Mzindela - water is accessible daily through communal taps;
  - 6.1.13.2 Loding Extensions 2 and 3 - no water is provided, residents buy from private water tankers;
  - 6.1.13.3 Phake section K - water is provided once a week from communal taps, during the daytime;
  - 6.1.13.4 Phake section L - water is provided once a month through water tankers; and
  - 6.1.13.5 Libangeni, water is provided three (03) times a week through water tankers.
- 6.1.14 The joint inspection established that the water supply challenges within the Municipality are further compounded by the fact that the supply in most areas is



not provided as scheduled, which means that some residents may miss their fair share of supply even on the days when water is available.

*Meeting held with Mr Mhlanga*

- 6.1.15 On 01 March 2022, the Investigation Team held a meeting with Mr Mhlanga, during the discussion he stated, *inter alia*, as follows:
- 6.1.15.1 The Municipality has two (02) water sources, namely the Weltevreden (Kameelrivier) Water Treatment Works (the source being the 24% full Mkhombo Dam) and boreholes water supply. Weltevreden supplies 32 million litres per day, as opposed to 64.8 million cubic litres per day that it is supposed to supply. Five (05) million cubic litres come from the boreholes, as opposed to 11.7 million cubic litres per day, that it is supposed to supply;
- 6.1.15.2 In addition, the Municipality has a Service Level Agreement to supply both Thembisile Hani Local Municipality and Sekhukhune District Municipality with water every day through the Waalkraal Pump Station, but it cannot meet its obligation given its water shortage status;
- 6.1.15.3 A regional scheme called the Western Highveld, which crosses the borders of five (05) Municipalities and three (03) provinces is supplied from the Mkhombo Dam, while the Loskop supply scheme is used on an emergency basis and can only supply the Municipality with 06 million cubic litres of water per day; and
- 6.1.15.4 The Municipality has a total of twenty-six (26) command reservoirs with four (04) key major strategic reservoirs that feed the rest of the remaining reservoirs which are, Waalkraal reservoir, Kameelrivier crossing anchor reservoir, Bloemfontein command reservoir and the Kuilen command reservoir. At the time of the meeting, these reservoirs were empty due to the shortage of raw water caused by the drought.

*Response from the current Municipal Manager, Ms N.M Mathebela*

- 6.1.16 The Public Protector sent a letter dated 12 August 2022, to the current Municipal Manager, Ms Mathebela, who was appointed on 01 April 2022, to request further information. In her response letter dated 07 September 2022, Ms Mathebela stated *inter alia*, that:
- 6.1.16.1 The Municipal Infrastructure Grant (MIG) funds' allocation for the Municipality, was one hundred and thirty-two million four hundred and eighty-two thousand rand (R132 482 000) for the 2021/2022 financial year and the total spending for water and sanitation by the end of March 2022 was seventy-six million one hundred and eight thousand three hundred and thirty-eight rand (R76 108 338);
- 6.1.16.2 The water project in Siyabuswa, which is for the refurbishment of the existing water pipeline from the Mthombo Dam Balancing Weir, to supplement the raw water supply to Weltevreden Treatment Plant, was a multi-year project and the budget adjustment was made in January 2021 and subsequently in January 2022;
- 6.1.16.3 The status of the 2021/2022 projects that could not be completed, are as follows:
- (a) The project for water in Siyabuswa, which is the refurbishment of the existing water pipeline from Mkhombo Dam balancing Mthombo Weir to supplement raw water supply to Weltevreden Treatment Plant was at 95% completion;
  - (b) Setateng water reticulation was at 98%, awaiting Eskom connection;
  - (c) Mbongo water reticulation at 98%, awaiting Eskom connection;
  - (d) Masakeng Ward 28 borehole and elevated Tanks were at 98%, awaiting Eskom connection;
  - (e) Siyabuswa wastewater treatment works was at completion stage at 98% and it is a multiyear project;

- (f) Construction of Libangeni Oxidation ponds was at 99% and at completion stage;
- (g) Construction of sewer reticulation in Libangeni was at 60% progress, the project started late; and
- (h) Makopanong Bulk-line project is completed, at 100%.

6.1.16.4 The Municipality is a WSA and its key mandate is to ensure the provision of services to communities in a sustainable manner in compliance with the provisions of section 152 of the Constitution;

6.1.16.5 In an endeavour to sustain the little that the Municipality has, it decided on rationing the water supply so that all communities should share what is available;

6.1.16.6 The Municipality’s Water and Sanitation Projects funded through the Municipal Infrastructure Grant for the 2021/22 financial year updates, as of November 2022, are reflected per the table below:

No	Village Name Project Location: and Ward No	Project Category & Name	MIG the Source of Funding & Budget amount	Construction Status/ Progress	Comments and Challenges	Remedial Action
1.	DR JSM LM Tooiskraal Ward 1-8	Refurbishment of Mthombo Bulk line to supply to Weltevreden Waste Treatment Plant including upgrading of pump station	R52 952 179.78	Construction 97%	The transformer was installed in October 2022, only one PRV valve outstanding and casting of manhole	The Contractor is to increase labour on site during December 2022 and the Supplier must deliver one outstanding PRV valve out of two
2.	Mbongo Ward 17	Water: Construction of Mbongo water reticulation	R11 024 893,16	Construction 97%	Transformer was installed in October 2022, only the snag list of end caps of pipes is outstanding	Contractor must complete the snag list by mid-December 2022 to complete the site
3.	Nokaneng Ward 28	Construction of Setateng water reticulation	R11 434 335.00	Construction 95%	Waiting for Eskom connection	Eskom was requested to provide a schedule for commission.
4.	Maphotla Ward 14	Water: Construction of	R1 032 769.00	Construction 65%	None	Project is under construction

		Maphotla water reticulation				
5.	Siyabuswa Ward 4	Sanitation: Upgrading of Siyabuswa waste treatment water plant	R25 286 462,85	Construction 95%	Municipality experiencing vandalism and cable theft	Contractor is busy with the replacement of cable
6.	Libangeni Ward 16 & 17	Sanitation: Upgrading of Libangeni oxidation pond and palisade fencing	R25 850 553,66	Construction 95%	Practically complete	Contractor is busy with the snag list
7.	Libangeni Ward 16 & 17	Sanitation: Construction of sewer Reticulation and Precast Toilets Libangeni	R32 914 659,85	Construction 60%	Project Budget was multi year	Project is also budgeted for 2022/2023
8.	Ga-Phaahla Ward 1	Sanitation: Upgrading of Ga-Phaahla wastewater treatment works, sewer outfall, sewer reticulation and precast toilets	R2 479 742,00	Design 100%	Was only budgeted for the design in the financial year 2021/2022	Project is budgeted to commence with the construction in the financial year 2022/2023
9.	Ga-Morwe Ward 9 & 10	Sanitation: CWB toilets at Ga Morwe	R1 163 586, 00	Complete 100%	None	None
10.	Mabusabesala Ward 11	Sanitation: CWB toilets at Mabusabesala	R163 586,00	Complete 100%	None	None
11.	Makopanong Ward 2	Replacement of pipeline & installation of the pump in Makopanong	R15 667 937 937 ,90	Complete 100%	None	None
12.	Siyabuswa D & Makopanong Ward 2	Replacement of pipeline & installation of the pump in Siyabuswa D / Makopanong	R15 667 937 937 ,90	Complete 100%	None	None

### *Subpoena Hearing held with the Municipality*

6.1.17 The Investigation Team sent further letters of enquiry to Ms Mathebela on 14 September 2022 and 23 September 2022 respectively, to obtain additional information. Due to the delays by the Municipality to provide additional information and documents to the Public Protector, a *subpoena* in terms of section 7(4)(a) of the Public Protector Act, was issued and served on Ms Mathebela on 11 October 2022. A *subpoena* hearing was held on 02 November

2022, at the Public Protector's offices in Mpumalanga. Ms Mathebela and her team reported as follows during the *subpoena* hearing:

- 6.1.17.1 The Municipality acknowledged that there is a water crisis in its area but stated that it was doing its best to provide water to the community. The situation has, however, improved due to summer rainfall during the last quarter of 2022. The four (04) key major strategic reservoirs can feed the twenty-six (26) command reservoirs that ensure that most communities access water almost every day. Water supply through water tankers has also improved since seven (07) extra trucks were allocated to the Municipality by the NDM;
- 6.1.17.2 There is a constant influx of new families into the informal areas and the Municipality would not always be aware of these families will eventually demand services from the Municipality, which poses a challenge;
- 6.1.17.3 The Municipality is providing water to the communities through different means. However, not everyone in the community is accessing water generally. Some residents access water from taps within their yards, especially residents in Siyabuswa. Some residents access water from communal taps, while most of the residents access water through "JoJo"<sup>2</sup> tanks, which are supplied with water by municipal water tankers. There are also individuals who receive water directly from the water tankers, and they have to bring their own containers to the trucks or water tankers;
- 6.1.17.4 As far as the allegation of providing poor quality water is concerned, it is the responsibility of the Municipality to ensure the supply of clean water. Consequently, the Municipality entered into a Service Level Agreement with a company called Amanzi-Water Scientific Services (Pty) Ltd (Amanzi-Water), from January 2019 to January 2023. Amanzi-Water is an independent laboratory whose responsibility it is to test the quality of water on a regular basis before it is supplied to the public;

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<sup>2</sup> A JoJo tank is a robust, durable water storage tank made from high quality polyethylene and can be used to store municipal-, borehole- or rainwater.

- 6.1.17.5 Amanzi-Water issued certificates of analysis to the Municipality containing the outcome of every test and the date on which it was conducted. It confirmed that after the old asbestos pipes were replaced in the Siyabuswa area in November 2021, no complaints of dirty water were received;
- 6.1.17.6 Over and above the provision of water through municipal trucks between 08h00 to 16h00 midweek, the Municipality also provides water over weekends to those residents who are unable to access water during normal working hours;
- 6.1.17.7 The Municipality experiences incidents of vandalism by the community on its infrastructure and ongoing projects from time to time; and
- 6.1.17.8 The Municipality had to hire security personnel to protect its boreholes.

*The second inspection in loco*

6.1.18 The Investigation Team conducted follow-up inspections *in loco* from 12 to 14 December 2022 at various communities within the Municipal area. The purpose of this inspection was to determine whether the water supply situation had improved after the Municipality had completed certain projects. The inspection established the following from various communities:

No	Location	Section	Water Challenges
1.	Maphotla	New Stands	Water reticulation infrastructure is in the old section. There is a reservoir. Water is always available. The water reticulation is not yet extended to the New Stands section. In the New Stands there are water storage tanks. There is no Municipal borehole nearby. Water is provided by municipal water tankers at the New Stands bi-weekly or every three weeks. One water storage tank was found empty.
2.	Nokaneng	1. Staten 2. Ditshwatleng	It is alleged that water is provided once a month. It is stated that it is only upon

		<ol style="list-style-type: none"> <li>3. Magareng</li> <li>4. Lengeleng</li> <li>5. New stands</li> <li>6. Mampatile</li> <li>7. King Sashe</li> </ol>	<p>request for water when there is a bereavement/funeral in a particular family where the Municipality provides water. Not all municipal boreholes have water. There is a steel reservoir in Ditshwatleng community which is operational and water is always available.</p>
3.	Ga Seabe	<ol style="list-style-type: none"> <li>1. Tirateng</li> <li>2. Seteng</li> <li>3. Notsoseng</li> <li>4. Leseleseleng</li> <li>5. Lehabane</li> <li>6. Ramalo</li> <li>7. Phumolong</li> <li>8. Tressteng</li> <li>9. Greenside</li> </ol>	<p>The Municipality is not providing water to the communities. It is reported that almost every household has a borehole, hence, as far as the community is concerned there are no water challenges. There is one steel water reservoir in Greenside which supplies to a limited number of communities.</p>
4.	Mmamethlake	<ol style="list-style-type: none"> <li>1. Morning side/ Sunny view</li> </ol>	<p>It was reported by the Community that water is not a problem, as they rely on boreholes. What they consider to be a major problem is stormwater damaging their streets, however, they are aware that there is a municipal stormwater drainage project.</p>
5.	Machiding	New stands	<p>There is a reservoir that supplies water to the community. The community is subdivided into two sides for the purpose of supplying water interchangeably, meaning that one side gets water for the whole day and the other community will get water on the next day. There are no water challenges since they are comfortable with the current arrangement.</p>
6.	Machiding	KwaNdebele section / (new stands)	<p>There is no water reticulation infrastructure at the new stands. Water is provided by the Municipality once a month which results in residents buying water from neighbours and private tankers.</p>

7.	Phake	<ol style="list-style-type: none"> <li>1. Phola Park</li> <li>2. Thabeng</li> <li>3. Rebone</li> </ol>	<p>It is reported by the community that boreholes are not working. The Municipality provides water through water tankers every Thursday. Communities access water from water storage tanks. In areas where there are no water storage tanks, water is provided in most cases between 11h00 and 12h00 during the week, where residents bring their own containers to get water, but this service is not consistent.</p>
8.	Phake	<ol style="list-style-type: none"> <li>1. Ra-Nkaile</li> <li>2. New Stands</li> </ol>	<p>The community accesses water from community taps. There is a steel reservoir from which water is supplied. They access water every day. However, in the New Stands which were established around 2019, there is no water being provided by the Municipality. Water is also bought from those who have boreholes in their yards or from private water tankers.</p>
9.	Watervaal A & Watervaal B	Section B	<p>Water is always available, supplied from the reservoir since the beginning of 2022. Watervaal B residents rely on private tankers to have access and they buy water. There are no JoJo storage tanks.</p>
10.	Mapotla	Wolwekraal	<p>The community relies on private tankers who run the business of selling water. The reservoir is in Section B which is far. It is only when the community has an event like a funeral when the Municipality provides water on request.</p>
11.	Marapyane	<ol style="list-style-type: none"> <li>1. Tsakani</li> <li>2. Masoganeng</li> <li>3. New Honey Section</li> <li>4. Maseding</li> <li>5. Matjialla</li> <li>6. Moeding</li> </ol>	<p>These communities rely on buying water from private tankers. There is one reservoir that is under construction next to the Marapyane Mall.</p>



		<p>7. Moletjie</p> <p>8. Letshwahleng</p> <p>9. Montlhe section</p> <p>10. Ntoane section</p> <p>11. Ditshwatlheng</p> <p>12. Legotlong</p> <p>13. Legodi</p> <p>14. Matutubele</p>	
12.	Pankop	<p>1. Mantlole</p> <p>2. Matebeleng</p>	<p>These communities rely on buying water from private water tankers. There is a borehole that supplies water to the nearest reservoir, but the tank only supplies one section of the community. The Municipality does not provide water to many people, hence, residents installed boreholes in their yards.</p>
13.	Pankop	Mashube	<p>There is a steel reservoir that has been without water for the past four years. There is a shop owner who has a borehole in his yard and he decided to graciously extend his water tap outside his yard for the nearby community to access water 24/7. It is only when the community has an event like a funeral that the Municipality provides water on request. Water is bought from those who have boreholes.</p>
14.	Pankop	Mantlole	<p>This section is next to a reservoir, but it only supplies the opposite village where infrastructure is installed. Due to "illegal" connections, the water supply does not reach its intended recipients. It is reported that there are four boreholes that are five years old and only one is operational. Communities rely on boreholes in their respective yards.</p>
15.	Libangeni/Vaalbank	Suffrage Ward 16 & 17	<p>Municipal water tankers provide water where people bring their containers to</p>

			fetch water. The community relies mostly on private water tankers who sell water from their boreholes.
16.	Senotlelo	Sections A-L	Community access water from the Mkhombo Dam. Boreholes are no longer working. Section L is an exception in that it does not have access to water like other sections.

*Follow up meeting with the Municipality*

6.1.19 A follow up meeting was held with Ms Mathebela and her team on 16 October 2023 where the Investigation Team sought clarity and updated information relating to, *inter alia*, the following:

- 6.1.19.1 The latest update of the 2021/2022 MIG projects;
- 6.1.19.2 Copies of Certificates of Completion in respect of all projects;
- 6.1.19.3 When the Municipality expects to complete the projects that are still outstanding;
- 6.1.19.4 During the December 2022 inspection *in loco*, the Investigation Team found that some of the villages (Machiding, Marapyane, Pankop etc.) were not provided with water. Clarity was sought as to whether the position has improved; and
- 6.1.19.5 An explanation of the water test results by Amanzi-Water.

*Discussion with the Municipality on the questions raised*

- 6.1.20 The Municipality responded to the above questions as follows:
- 6.1.20.1 Only three (03) of the 2021/2022 MIG Water and Sanitation projects have not been completed, but they are at the completion stage;
  - 6.1.20.2 In the Mathanjane area, one of the Municipality’s three (03) regions, there is no water reticulation installed and communities access water through boreholes. There are many boreholes in this area, but some are non-functional due to

vandalism and theft of transformers and cables. This region covers Ward 23 to 31 and includes villages such as Marapyane, Phake and Pankop;

- 6.1.20.3 The Municipality initiated a project called Letsema Teamwork, where they visit communities to focus on issues like water provision, roads and other basic needs. As such, the Municipality is kept abreast of developments in the communities;
- 6.1.20.4 On the issue of the water testing results, the functionaries of the Municipality stated that Amanzi-Water is an accredited service provider. They also explained that the water that is distributed to the communities is clean and safe for human consumption. They also added that the Blue Drop Watch Report<sup>3</sup> confirmed that the Municipality's water treatment system is one of the best in the province;
- 6.1.20.5 The Municipality undertook to forward Completion Certificates; and
- 6.1.20.6 In terms of the plans the Municipality has to ensure that communities that are not receiving water will be catered for, the Municipality stated that there are two (02) new projects, namely the Bloemfontein Command Reservoir Bulk line installation and Kuilen Command Reservoir bulk line installation, that have commenced in the 2023/24 financial year.

*Documents received from the Municipality*

- 6.1.22 On 23 November 2023, the Investigation Team received the following documents, as requested by the Municipality during the meeting of 16 November 2023:

*Certificates of Completion*

- 6.1.23 Eleven (11) projects were completed, and the Municipality provided the Investigation Team with copies of the Completion Certificates. Out of the twelve

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<sup>3</sup> Blue Drop Report index issued by the DWS assesses the state of drinking water quality in all Municipalities in South Africa (see discussion at par. 6.1.25 infra)

(12) projects, only one (01) project mentioned below is still under construction, though nearing completion, therefore the certificate has not been issued:

- (a) Libangeni Ward 16 & 17, Sanitation: Construction of sewer reticulation and pre-cast toilets, Libangeni, is at 70%.

*Internal memorandum on the number of portable water storage tanks at the Municipality*

- 6.1.24 A copy of the Municipality's Internal Memorandum on the number of portable water storage tanks, dated 19 October 2023, indicated that there is a total of one hundred and sixty-five (165) water storage tanks, covering Ward 01 to Ward 26.

*Internal memorandum on the number of water tankers in the Municipality*

- 6.1.25 A copy of the Municipality's Internal Memorandum on the number of water tankers, dated 19 October 2023, indicated that the Municipality has a total of twenty-three (23) water tankers; eight (08) of the water tankers were decommissioned due to age; five (05) of the tankers are non-functional, and only ten (10) water tankers are functional.

*Water tankers weekly programme*

- 6.1.26 The programme (undated) indicates the name of the area/village and the day of the week when water is provided by the Municipality. The programme runs every weekday, including Saturdays and Sundays.

*The Blue Drop Watch Report, 2023*

- 6.1.27 The Blue Drop certification programme is a DWS incentives-based regulatory mechanism introduced in 2008. The aim of this regulatory tool is to improve Municipal drinking water quality, wastewater management as well as water

conservation and demand management and to provide safe drinking water to all citizens of South Africa.<sup>4</sup>

- 6.1.28 The Blue Drop Report confirmed that the Municipality was found to be one of the best overall performing Municipalities at 86% after the City of Mbombela Municipality, Thembisile Hani Local Municipality and Steve Tshwete Local Municipality. This outcome emanated from the inspection of 17 water supply systems, offering a representative overview of systems owned and operated by Municipalities, water boards and water service providers. The inspection took place during the period December 2022 to February 2023.
- 6.1.29 The report was informed by a Technical Site Assessment (TSA), which was done at WSA systems, as part of the Blue Drop audit cycle. The purpose of the TSA is to verify the findings of the (desktop) audit with the status on the ground (physical inspections). The TSA score percentage (%) reflects the condition of the raw water handling system, the water treatment plant, the delivery system, and the distribution system. A high TSA score (100%) indicates that the infrastructure, equipment, and processes are in excellent condition, whilst a low TSA score (0%) indicates failure and dysfunctional process and infrastructure.
- 6.1.30 In short, the Blue Drop report confirms that the Municipality is supplying quality water that is safe to drink. It further states that the Municipality's water treatment system is one of the top four in the province.

*Amanzi Water Scientific Services full report*

- 6.1.31 A certificate dated 31 December 2020 confirmed that Amanzi Water was credited by the National Laboratory Association, South Africa. The report confirmed that the microbiological results from the analysis show that the water supplied to the residents is safe to drink with E. coli testing 0 or less than 1. Furthermore, the report also states that the Municipality managed to get a score of 86% overall in

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<sup>4</sup> Blue Drop Progress Report, 2022, Department of Water and Sanitation

the Blue Drop Assessment in 2023 for the management of water quality, making it into the top four water treatment systems with low risk in the province.

*Status of the 2021/2022 MIG water and sanitation projects*

6.1.32 The Municipality submitted the table below as the latest update on the status of the 2021/2022 MIG water and sanitation projects:

No	Village Name Project Location: and Ward No	Project Category & Name	Construction Status/Progress	Comments and Challenges	Remedial Action
1.	DRJSMLM Tooiskraal Ward 1-8	Refurbishment of Mthombo Bulk line to supply to Weltevreden Waste Treatment Plant including upgrading of pump station	100%	Project is complete and currently is on 12 months liability period	There is a contractor liable for fixing
2.	Mbongo Ward 17	Water: Construction of Mbongo water reticulation	100%	Project is complete and currently is on 12 months liability period	There is a contractor liable for fixing
3.	Nokaneng Ward 28	Construction of Setateng water reticulation	100%	Project is complete and currently is on 12 months liability period	There is a contractor liable for fixing
4.	Maphotla Ward 14	Water: Construction of Maphotla water reticulation	95%	Project is practically complete with the snag list of Eskom connection and commissioning	To get programme of action from Eskom
5.	Siyabuswa Ward 4	Sanitation: Upgrading of Siyabuswa waste treatment water plant	100%	Project is complete and currently is on 12 months liability period	There is a contractor liable for fixing
6.	Libangeni Ward 16 & 17	Sanitation: Upgrading of Libangeni oxidation pond and palisade fencing	95%	Project is practical and complete with the snag list of commissioning	Currently the contractor is busy with the commissioning
7.	Libangeni Ward 16 & 17	Sanitation: Construction of sewer Reticulation and Precast Toilets Libangeni	100%	None	None
8.	Ga-Phaahla Ward 1	Sanitation: Upgrading of Ga-Phaahla wastewater treatment works, sewer outfall, sewer reticulation and precast toilets	100%	None	None

9.	Ga-Morwe Ward 9 & 10	Sanitation: CWB toilets at Ga Morwe	98%	none	None
10.	Mabusabesala Ward 11	Sanitation: CWB toilets at Mabusabesala	100%	None	None
11.	Makopanong Ward 2	Replacement of pipeline & installation of the pump in Makopanong	100%	None	None
12.	Siyabuswa D & Makopanong Ward 2	Replacement of pipeline & installation of the pump in Siyabuswa D / Makopanong	75%	During the construction stage contractor experienced damage to asbestos pipeline, and high water table and those items caused financial constrain on the project	Municipality applied for extra funding from the MIG through the recommendation of DWS

*Third inspection in loco*

6.1.33 An inspection *in loco* was conducted on 16 and 17 November 2023 at areas that seemed not to be receiving adequate supply of water during the second inspection *in loco*. The Investigation Team was accompanied by Mr Peter Mahlangu, the Municipal Technician, who directed the team to various projects.

6.1.34 On the first day of inspection the following was noted:

No	Village Name Project Location: and Ward No	Project Category & Name	Inspection in Loco
1.	DRJSMLM Tooiskraal Ward 1-8	Refurbishment of Mthombo Bulk line to supply to Weltevreden Waste Treatment Plant including upgrading of pump station	The project is complete; however, the transformer was stolen, Eskom is due to replace same as the theft occurred within the 12 month' retention period.
2.	Mbongo Ward 17	Water: Construction of Mbongo water reticulation	The project was completed in October 2022 and residents received water for two months before the borehole submerged into the water when the Mbongo dam increased its capacity due to summer rains.
3.	Nokaneng Ward 28	Construction of Setateng water reticulation	Three boreholes are operational, residents receive water regularly.

4.	Maphotla Ward 14	Water: Construction of Maphotla water reticulation	The project is practically complete. The municipality is waiting for Eskom to appoint a service provider to install a transformer.
5.	Makopanong Ward 2	Replacement of pipeline & installation of the pump in Makopanong	The project is complete and it supplies water to the communities.
6.	Siyabuswa D & Makopanong Ward 1	Replacement of pipeline & installation of the pump in Siyabuswa D / Makopanong	The project is complete and operational.
7.	Siyabuswa Ward 4	Sanitation: Upgrading of Siyabuswa waste treatment water plant	The project is complete, however, the transformer is damaged beyond repair. The municipality is to procure a new transformer.
8.	Libangeni Ward 16 & 17	Sanitation: Upgrading of Libangeni oxidation pond and palisade fence	Upgrading of the Project is complete but fencing by palisade is still outstanding. It is not yet operational.
9.	Libangeni Ward 16 & 17	Sanitation: Construction of sewer Reticulation and Precast Toilets Libangeni	Construction is ongoing as it is a multi-year project
10.	Ga-Phaahla Ward 1	Sanitation: Upgrading of Ga-Phaahla wastewater treatment plant.	The first phase is complete and operational.
11.	Ga-Morwe Ward 9 & 10	Sanitation: Provision of CWB toilets at Ga Morwe	The project is completed, and CWB toilets are used.
12.	Mabusabesala Ward 11	Sanitation: Provision of CWB toilets at Mabusabesala	The project is completed CWB toilets are used.

6.1.35 The inspection on the second day focused on those communities that did not receive water from the Municipality on a regular basis and who are forced to buy water from private water tankers or those who could afford to install boreholes in their yards. These are areas where there is no water reticulation and they rely on boreholes.

6.1.36 The following Wards were visited to determine if there was an improvement in the provision of water as was reported by the Municipality during the *Subpoena* hearing held on 02 November 2022. During the inspections, the following was noted:



*Machiding KwaNdebele section (new stands) (Ward12)*

- 6.1.36.1 Residents are still buying water from private water tankers because the Municipality is not providing water consistently. Residents reported that the Municipality does provide water through water tankers once a month.

*Mapotla - Wolwekraal (Ward14)*

- 6.1.36.2 The community is still relying on private tankers who sell water. The reservoir in section B is far from them and does not cater to their area.

*Marapyane (Maseding, Moeding, Tsakani, Masoganeng and others) (Ward 23 & 24)*

- 6.1.36.3 These communities are still buying water from private tankers. There is one reservoir that is under construction next to the Marapyane Mall.

*Pankop (Matebeleng) (Ward 30)*

- 6.1.36.4 The *status quo* has not changed, these communities are still buying water from private water tankers. There is a borehole which supplies water to the nearest reservoir. The water tank only supplies one section of the community. The Municipality does not provide water to many people in the area and as a result residents installed boreholes in their yards.

*Pankop - Masobye (Ward 31)*

- 6.1.36.5 These communities are buying water from private tankers. There is a steel reservoir that has been without water for the past four years.

*Pankop - Mantlole (Ward 30)*

- 6.1.36.6 This section is next to a reservoir, but it only supplies the opposite village where infrastructure is installed. The community is not receiving water from the Municipality.

*Independently obtained information*

- 6.1.37 The Minister of Water and Sanitation, Mr Senzo Mchunu (the Minister) in response to a parliamentary question (question number 81 - internal question paper number 3) dated 25 February 2022, confirmed the interventions by the Municipality to provide water to the community. He indicated that forty-five (45) water storage tanks were provided by the DWS, which are replenished by the Municipality.
- 6.1.38 The Minister further stated that an emergency pipeline from the Loskop Irrigation Water Supply system to augment raw water supply to the Municipality is being refurbished. The pipeline provides 6 megalitres per day. This intervention is funded by the Provincial COGTA through a Municipal Infrastructure Grant allocation of fifty-three million eight hundred thousand rand (R53 800 000). The completed pipeline will provide raw water to the Weltevreden Water Treatment Plant. The DWS has allocated five million rand (R5 000 000) which has been approved for the 2022/23 financial year to conduct feasibility studies for the Western Highveld Bulk Water Supply Scheme.

*Applicable law*

**The Constitution of the Republic of South Africa, 1996**

- 6.1.39 The Constitution is the supreme law of the Republic of South Africa and any law inconsistent with it, is invalid<sup>5</sup>. Section 27 of the Constitution provides amongst other things that:

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<sup>5</sup> Section 2 of the Constitution.

*“(1) Everyone has the right to have access to-*

*(a) .....*

*(b) sufficient food and water.”*

6.1.40 Section 152(1)(b) of the Constitution provides that *“(t)he objects of local government are to ensure the provision of services to communities in a sustainable manner”*. Subsection (2) provides that *“A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).”*

6.1.41 Section 195 of the Constitution lays down the basic values and principles governing public administration as follows:

*“(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) Services must be provided impartially, fairly, equitably and without bias.*

*(e) ...*

*(f) Public administration must be accountable.*

*(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.*

*(2) The above principles apply to-*

*(a) administration in every sphere of government;*

*(b) organs of state; and*

*(c) public enterprises.”*

### **Local Government: Municipal Systems Act, 2000**

6.1.42 In terms of section 1 of the Local Government Municipal Systems Act (Municipal Systems Act), “*basic municipal services mean a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment*”.

6.1.43 Section 4 of the Local Government Municipal Systems Act provides that:

*“(2). The council of a municipality, within the municipality’s financial and administrative capacity and having regard to practical considerations, has the duty to—*

*(a) ...*

*(b) provide, without favour or prejudice, a democratic and accountable government;*

*(c) ...*

*(d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;*

*(e) ...*

*(f) give members of the local community equitable access to the municipal services to which they are entitled;*

*(g) ...*

*(h) ...*

*(i) promote a safe and healthy environment in the municipality; and*

*(j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.”*

6.1.44 Section 11(3) of the Municipal Systems Act provides that a municipality exercises its legislative or executive authority by, *inter alia*, developing and adopting policies, plans, strategies and programmes, including setting targets for delivery and passing by-laws.

6.1.45 Section 21 of the Municipal Systems Act, also provides that:

- “(1) When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done -*
- (a) in the local newspaper or newspapers of its area;*
  - (b) in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or*
  - (c) by means of radio broadcasts covering the area of the municipality.”*
- (2) Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.”*

6.1.46 Section 23(1) of the Municipal Systems Act further provides that: *“A municipality must undertake developmentally oriented planning to ensure that it (a) strives to achieve the objects of local government set out in section 152 of the Constitution;*

6.1.47 Section 73(1) of the Municipal Systems Act places a general obligation on a municipality to give effect to the provisions of the Constitution to do the following:

- “(a) give priority to the basic needs of the local community;*
- (b) promote the development of the local community; and*
- (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services”.*

6.1.48 Section 76 of the Municipal Systems Act provides that *“A municipality may provide a municipal service in its area or a part of its area through-*

- (a) ...*
- (b) an external mechanism by entering into a service delivery agreement with (iii) an organ of state, including (bb) a licensed service provider registered or recognised in terms of national legislation”.*

### **Municipal Finance Management Act, 2003**

- 6.1.49 Section 63(1)(a) of the Municipal Finance Management Act (MFMA) provides that the Accounting Officer of a Municipality is responsible for the management of the assets of the Municipality, including the safeguarding and the maintenance of those assets.

### **Water Services Act, 1997**

- 6.1.50 Section 1 of the Water Services Act provides that:

*“water services authority” means any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993) responsible for ensuring access to water services”.*

*“water services institution” means a water services authority, a water services provider, a water board and a water services committee”*

- 6.1.51 Section 3 of the Water Services Act provides that:

- “(1) Everyone has a right of access to basic water supply and basic sanitation.*
- (2) Every water services institution must take reasonable measures to realise these rights.*
- (3) Every water services authority must, in its water services development plan, provide for measures to realise these rights”.*

- 6.1.52 Section 11 of the Water Services Act provides that:

*“(1) Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical, and sustainable access to water service.”*

- 6.1.53 Section 11 of the Water Services Act further provides that:

“(3) *In ensuring access to water services a water services authority must take into account among other factors –*

*(a) alternative ways of providing access to water services”*

## **CASE LAW**

6.1.54 The Constitutional Court in *Mazibuko and Others v City of Johannesburg and Others*<sup>6</sup> held as follows:

*“Applying this approach to section 27(1)(b), the right of access to sufficient water, coupled with section 27(2), it is clear that the right does not require the state upon demand to provide every person with sufficient water; rather it requires the state to take reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water, within available resources.”*

### *Analysis*

6.1.55 In terms of the evidence obtained from the last two inspections *in loco* conducted by the Investigation Team on 12 to 14 December 2022 and 16 November 2023, respectively, there is a marked improvement in the provision of water in certain communities. It was, however, also established that despite the efforts by the Municipality to provide water to all communities, there are still villages under its jurisdiction that do not have adequate access to water and some residents still rely on private water tankers for the supply of water for a fee.

6.1.56 The Municipality’s efforts in utilising alternative ways of providing water to the communities as envisaged in section 11(3)(a) of the Water Services Act, in the form of boreholes, water storage tanks and water tankers, as a short-term intervention strategy, has proven to be inadequate. The improvement is mainly in areas where the 2021/2022 MIG projects are completed. More needs to be done to ensure that all communities have access to water.

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<sup>6</sup> 2010 BCLR 239 (CC) 50

- 6.1.57 Section 27 of the Constitution and section 3 of the Water Services Act, require the Municipality, as an organ to state, to ensure that everyone's basic right of access to water is progressively realised. The judgment in *Mazibuko and Others v City of Johannesburg and Others* also confirmed that the Municipality should take reasonable steps within its budget to ensure that the community has access to water.
- 6.1.58 The role of the Municipality, as defined in section 152(1) of the Constitution, is to strive within its financial and administrative capacity to, amongst others, ensure the provision of services (including water supply) to its communities.
- 6.1.59 The Public Protector has noted with concern that the number of functioning boreholes has declined. In 2021 the Municipality had a total of two hundred (200) boreholes of which hundred and fifteen (115) were functional and eighty-five (85) were non-functional. By October 2023, the Municipality had only one hundred and five (105) boreholes. Out of the 105 boreholes, only eighty-five (85) boreholes are functional whilst twenty (20) are non-functional due to insufficient underground water, theft of cables, equipment, and vandalism.
- 6.1.60 The forty-five (45) water storage tanks that the Municipality had distributed to various strategic places are currently not sufficient to supply water to all communities. The Municipality had twenty-three (23) water tankers, however, eight (08) have since been decommissioned due to aging and five (05) are non-functional. As such, the ten (10) remaining functional water tankers are not enough to service all the communities that do not have access to water through the water reticulation system.
- 6.1.61 The reduction in the number of both functional boreholes and water tankers indicates that the capacity of the Municipality to provide adequate water is limited, which negatively affects the provision of water to some communities. The declining number of boreholes and water tankers compels some members of the communities to purchase water from private water tankers.



- 6.1.62 Section 1 of the Municipal Systems Act imposes an obligation on the Municipality to provide a municipal service that is necessary to ensure an acceptable and reasonable quality of life, which if not provided, would endanger public health. In line with this obligation the Municipality appointed Amanzi-Water in terms of section 76(b)(iii)(bb) of the Municipal Systems Act to test the water quality and the results confirmed that the water provided by the Municipality is safe for consumption and met the required standards.
- 6.1.63 The Municipality is empowered by section 23(a) of the Municipal Systems Act, to undertake developmentally orientated planning so that it strives to achieve its constitutional obligations such as the provision of water to its communities. It is therefore the responsibility of the Municipality to install enough reservoirs, and this will ensure that the provision of water is sustainable.
- 6.1.64 The evidence before the Public Protector indicates that the Municipality, in cooperation with COGTA and DWS, has put interventions in place to address or mitigate the challenges in supplying water to the community, as also alluded to in the Minister's response to the parliamentary question regarding water supply by the Municipality.
- 6.1.65 Section 21(1) of the Municipal Systems Act prescribes how the Municipality should communicate any notification to the community. The Municipality is obliged to communicate its water delivery schedules to the community and where the Municipality is not able to deliver on time, it must notify the relevant communities accordingly and provide an alternative date for the delivery. Communication can be done through various means, such as local newspapers and radio broadcasts. The Municipality in the spirit of section 21 uses the loud hailing method to communicate any changes in the schedule to the community.

*Conclusion*

- 6.1.66 Based on the evidence obtained, the inspections conducted and the interaction with the relevant stakeholders, it is concluded that not all communities within the jurisdiction of the Municipality have access to adequate water.

6.1.67 The Public Protector takes note, however, of the 2023/2024 ongoing projects such as the Bloemfontein Command Reservoir bulk line installation and the Kuilen Command Reservoir bulk line installation, which are aimed at providing adequate water to communities who are still not receiving sufficient water supply. As a result, the Public Protector deems it prudent to make recommendations to address the current deficiencies that contribute to the lack of water being provided to these communities. The Public Protector will continue to monitor the progress on these ongoing interventions by the Municipality.

## 7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the functionaries of the Municipality should have complied with and the impact thereof on good administration, the Public Protector makes the following findings:

**7.1 Whether the functionaries of the Municipality failed to provide access to adequate and clean water to the communities of Ward 1 to 31 of the Municipality, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act**

7.1.1 The allegation that the Municipality failed to provide access to adequate water to the communities of Ward 1 to Ward 31 of the Municipality, is **partially substantiated**, whilst the allegation of failure to provide clean water to the communities of Ward 1 to 31 of the Municipality, **is not substantiated**.

7.1.2 The Municipality experienced persistent droughts resulting in low river flows and the subsequent drying out of dams, as was the case with the Mkhombo Dam which had been declining since the onset of the drought in 2014. As a result, some of the communities still face challenges regarding access to adequate water.

- 7.1.3 The Municipality has put reasonable measures in place within its available resources to ensure that everyone within its jurisdiction has access to water, in discharging its obligations to supply water to its residents as required by sections 27, 39(1), 152(1) and 195 of the Constitution; sections 73, 76(a)(i) and 79 of the Local Government: Municipal Systems Act; and sections 3(1), (2) & (3) of the Water Services Act. Such measures consist of short-term, medium-term, and long-term intervention strategies.
- 7.1.4 As part of the medium-term intervention strategy for water and sanitation, the Municipality subdivided the MIG into twelve projects, of which six were for the provision of water and the other six for sanitation.
- 7.1.5 In certain communities, for instance, in Wards 29, 30 and 31, a number of boreholes are not functional due to insufficient groundwater, infrastructure vandalism and theft of transformers and cables.
- 7.1.6 The water purification results by Amanzi-Water confirmed that the water provided by the Municipality is clean and safe for human consumption. The Municipality also managed to get a score of 86% overall in the Blue Drop Assessment in 2023 for the management of water quality.
- 7.1.7 Due to a lack of resources the Municipality is not able to provide access to adequate water to all its communities. For instance, in communities such as those located in Wards 23 to 31 which were found to still be without water provision. However, the Municipality has initiated the Bloemfontein Command Reservoir bulk line installation and Kuilen Command Reservoir bulk line installation projects in the 2023/24 financial year to ensure that these communities are also catered for.
- 7.1.8 The Municipality does not have an effective means of communicating the schedules or dates of water supply to various communities, where they provide water through water tankers. There is no clear and sustainable communication strategy since the communities in remote areas do not know when water tankers will be visiting their areas, despite the Municipality reporting that the

communication to the communities is done through loud hailing by Ward Councillors and Ward Committee members.

## **8. RECOMMENDATIONS**

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

### **The Municipal Manager**

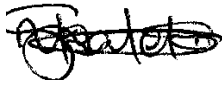
8.1.1 Within **hundred and eighty (180) calendar days** upon receipt of this report, develop a long term intervention plan wherein both COGTA and DWS are requested, with the support from Treasury, to fund through the MIG and other funding models, the installation of enough reservoirs at strategic communities and install water reticulation systems for the whole Municipality within the next five (05) financial years, within available resources, in order to comply with the requirements set out in section 23(1)(a) of the Municipal Systems Act, 2000 read with section 152(1)(b) of the Constitution.

8.1.2 Within **ninety (90) calendar days** upon receipt of this report, develop a communication strategy on how the Municipality will effectively communicate the schedules or dates of water supply to various communities, in line with section 21(1) and (2) of the Municipal Systems Act.

8.1.3 Within **hundred and eighty (180) calendar days** upon receipt of this report, take steps to ensure that municipal infrastructure is safeguarded and maintained in line with the provisions of section 63(1)(a) of the MFMA.

**9. MONITORING**

- 9.1 The Municipal Manager, to report to the Public Protector on the implementation of the recommendations **within thirty (30) calendar days** after the expiry of the one hundred and eighty (180) day period stated in paragraph 8 above.



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**ADV KHOLEKA GCALEKA  
PUBLIC PROTECTOR  
REPUBLIC OF SOUTH AFRICA  
DATE: 28 MARCH 2024**

*Assisted by: Ms N Motsitsi  
Executive Manager: PII Inland*