



**dpwr**

Department:  
**Public Works and Roads**  
North West Provincial Government  
Republic of South Africa

# REPORT NO. 33

## OF 2025/26

ISBN Number : 978-0-6398968-5-4

**INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE FUNCTIONARIES OF THE NORTH WEST DEPARTMENT OF PUBLIC WORKS AND ROADS TO RESPOND TO A REQUEST TO UPGRADE ROAD Z456 FROM GRAVEL TO SURFACE STANDARD AT NYETSE AND REAGILE VILLAGES SITUATED WITHIN THE RAMOTSHERE-MOILLOA LOCAL MUNICIPALITY**

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## LIST OF ACCRONYMS AND ABBREVIATIONS

ACRONYMS/ABBREVIATIONS	DESCRIPTIONS
Constitution	The Constitution of the Republic of South Africa, 1996
DBSC	Departmental Bid Specification Committee
NWDPWR	North West Department of Public Works & Roads
GIAMA	Government Immovable Assets Management Act, 2007
IAM Policy	North West Department of Public Works and Roads Immovable Assets Management Policy, 2018
IDP	Integrated Development Plan
PFMA	Public Finance Management Act, 1999
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 as amended
The Municipality	Ramotshere-Moiloa Local Municipality
The Public Protector	Public Protector of the Republic of South Africa
The Road	Road Z456
The Roadshow	2022 Public Protector Roadshow

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## EXECUTIVE SUMMARY

- (i) 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), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), which empowers the Public Protector to make known the findings of the investigation, point of view or recommendation of any matter investigated by her.
  
- (ii) The report relates to an investigation into allegations of undue delay by the functionaries of the North West Department of Public Works & Roads (the NWDPWR), to respond to a request to upgrade and convert Road Z456 from gravel to tar (surface standard) passing through Nyetse and Reagile villages in Ramotshere-Moiloa Local Municipality.
  
- (iii) The investigation originates from a complaint lodged on 01 March 2022, by the community members from Nyetse and Reagile villages (the Complainants), during the Public Protector's Roadshow held in 2022 in the North West Province (the Roadshow).
  
- (iv) In the main, the Complainants alleged that:
  - (a) The NWDPWR has failed to respond to their request to have Road Z456, which passes through their respective villages, upgraded and converted from gravel to surface standard. This road passes through the villages Nyetse and Reagile from Poosedumane to Mokgola. The Complainants use the road to access their basic needs, workplaces, schools, health services and the nearby town of Zeerust.
  
  - (b) In February and March 2021, Bahurutshe-Ba-Ga-Moiloa Tribal Authority at Nyetse Village (the Tribal Authority), and Nyetse Primary and Maruapula

Secondary Schools, situated at Nyetse Village, wrote letters informing the NWDPWR, at the Lehurutshe District Office, about the poor condition of the road. During rainy seasons, the road becomes inaccessible thus making it difficult for learners to access schools and for workers to reach their workplaces.

- (c) In 1995, during the era of Councillor Sebego, who was the Ward Councillor for both villages, the Municipality included the upgrade of the road in its Integrated Development Plan (IDP). The upgrade of the road was Gazetted and budgeted for by the NWDPWR. This resulted in a consultant being appointed, who took road measurements, however, nothing had transpired since.
- (d) The Complainants have been engaging the NWDPWR, Lehurutshe local office, as well as the Municipality with a view to solicit answers. At one-point, municipal officials informed the Complainants that the road in question is a Provincial Road, therefore it is not the Municipality's responsibility to upgrade it.
- (e) At the time of the Public Protector's Roadshow in 2022, the Complainants informed the Public Protector that despite engaging the NWDPWR, the latter did not respond to their concerns about the condition of the road, and would appreciate the intervention by the Public Protector to ensure that the NWDPWR responds to their request and advise them on the possibility of upgrading and converting Road Z456 from gravel to surface standard.
- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
  - (a) Whether the functionaries of the NWDPWR unduly delayed to respond to the request of the communities of Nyetse and Reagile villages to upgrade and convert Road Z456 joining Poosedumane and Mokgola villages from gravel to surface standard, if so, whether such conduct is improper as

envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.
- (vii) On 21 October 2025, a notice in terms of section 7(9)(a) of the Public Protector Act, (section 7(9) notice) was issued to the MEC, Ms E Mokua; HoD for the NWDPWR, Mr MI Kgantsi; the Complainants Representatives, Cllr Justice Keebine and Mr S Letswenyo; the Chief of Nyetse Tribal Authority, Mr MW Mangope; the Principals of Maruapula Secondary and Nyetse Primary Schools, Ms GG Mokotedi, and Ms MG Moilola respectively, to afford them an opportunity to respond on the likely adverse findings and proposed remedial action. Section 7(9) provides that persons implicated in an investigation by the Public Protector, are to be afforded an opportunity to make representations regarding the likely adverse findings and remedial action. Section 7(9) notice is also issued to the affected persons to afford them an opportunity to make representations.
- (viii) A response to the section 7(9)(a) notice was received on 11 November 2025, from the HoD, the contents of which were noted and discussed with the Investigation Team on 10 December 2025. The contents of the letter received from the HoD and the agreement reached on 10 December 2025, were duly considered by the Public Protector.
- (ix) Having regard to the evidence and regulatory framework determining the standards that the NWDPWR should have complied with, the following findings are made:

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- (a) Whether the functionaries of the NWDPWR unduly delayed to respond to the request of the communities of Nyetse and Reagile villages to upgrade and convert Road Z456 joining Poosedumane and Mokgola villages from gravel to surface standard, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.
- (aa) The allegation that the functionaries of the NWDPWR unduly delayed responding to the request of the Communities of Nyetse and Reagile villages to upgrade and convert Road Z456 from gravel to surface standard, **is substantiated.**
- (bb) Road Z456 is one of the NWDPWR gravel roads and although in 2021 the Complainants requested the NWDPWR to upgrade the road to a surface standard road, no response was received from the NWDPWR. The NWDPWR only responded to the needs of the Complainants in August 2023, when undertaking to upgrade the road.
- (cc) Failure by the NWDPWR to respond to the needs of the Complainants was in contravention of sections 195(1)(e) and 237 of the Constitution that requires the NWDPWR to respond to the needs of the Complainants diligently and without delay.
- (dd) In response to the needs of the Complainants, the NWDPWR had already commenced with upgrades of Road Z456 and Road D2242, respectively. Due to financial constraints in 2026/2027 financial year, the NWDPWR committed to undertake the following:
- (i) In the long term, to fully upgrade Road Z456 and Road D2242 to a surface standard subject to future funding improvements.

- (ii) In the immediate term, to gravel the road using nano-modified technology to improve durable weather-resilient roads surface to benefit the communities.
- (ee) Accordingly, the conduct of the functionaries of the NWDPWR constitute improper conduct as envisaged in section 182(1) of the Constitution and does not amount to maladministration in terms of section 6(4)(a)(i) and (iii) of the Public Protector Act.
- (x) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, is the following:

#### **The MEC for the NWDPWR**

- (a) Take cognisance of the findings and ensure implementation of the remedial actions contained in this report.

#### **The Head of Department**

- (b) Ensure compliance with the NWDPWR undertaking made in terms of the letter dated 12 December 2025, regarding the upgrade of road Z456 and road D2242 from gravel to surface standard.
- (c) Within **thirty (30) calendar days** of receipt of the final report, in terms of Rule 43(1) of the Public Protector rules provide the Public Protector with the project milestones for the upgrade of road Z456 from gravel to tar
- (d) Within **ninety (90) calendar days** of receipt of the final report, in terms of Rule 43(1) of the Public Protector rules provides the quarterly progress reports on the upgrade of road Z456 from gravel to tar to the Public Protector.

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### **The Director General for National Treasury**

- (e) Take cognisance of the report and provide financial support to the Department in the budget allocation for the 2026-2027 financial year in order to undertake the upgrade of road Z456 and road D2242 from gravel to surface standard.

### **The HoD for Provincial Treasury**

- (f) Take cognizance of the report and remedial action and provide financial support to the Department in building its capacity for efficient management and upgrading of road Z456 and road D2242 from gravel to surface standard as contemplated in section 18(2)(e)(f) and section 6(2)(d) of the PFMA.

## 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) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto*, 2018, as amended (Public Protector Rules), which empower the Public Protector to make known the findings of an investigation, to the following affected parties (including the Complainant) for such persons to note the outcome of the investigation and to implement the remedial action:
- 1.2.1 Ms Elizabeth Mokuwa, Member of the Executive Council;
- 1.2.2 Mr Moses I Kgantsi, the Head of Department for the NWDPWR;
- 1.2.3 Cllr Justice Keebine and Mr S Letswenyo, the Complainants Representative;
- 1.2.4 Mr MW Mangope, the Chief of Nyetse Tribal Authority;
- 1.2.5 Ms GG Mokotedi, the Principal of Maruapula Secondary School; and
- 1.2.6 Ms MG Moiloa, the Principal of Nyetse Primary School.
- 1.2.7 Dr Duncan Pieterse, Director-General for National Treasury,
- 1.2.8 Mr Ndlela Kunene, Head of Department for the North West Treasury
- 1.3 The report relates to an investigation into allegations of undue delay by the functionaries of the North West Department of Public Works & Roads (the NWDPWR), to respond to a request to upgrade and convert road Z456 from gravel to tar (surface standard) which road passes through Nyetse and Reagile villages in the Ramotshere-Moiloa Local Municipality.

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## 2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged on 01 March 2022, by the community members from Nyetse and Reagile villages (the Complainants), during the Public Protector's Roadshow held in 2022 in the North West Province (the Roadshow).

2.2 In the main, the Complainants alleged that:

2.2.1 The NWDPWR has failed to respond to their request to have Road Z456, which passes through their respective villages, upgraded and converted from gravel to surface standard. This road passes through the villages of Nyetse and Reagile from Poosedumane to Mokgola. The Complainants use the road to access their basic needs, workplaces, schools, health services, and the nearby town of Zeerust.

2.2.2 In February and March 2021, Bahurutshe-Ba-Ga-Moiloa Tribal Authority at Nyetse village (the Tribal Authority), and the Nyetse Primary and Maruapula Secondary Schools, situated at Nyetse village, wrote letters informing the NWDPWR, at the Lehurutshe District Office, about the poor condition of the road. The community advised the NWDPWR that during rainy seasons, the road becomes inaccessible thus making it difficult for learners to access school and for workers to reach their workplaces.

2.2.3 In 1995, during the era of Councillor Sebego, who was the ward councillor for both villages, the Municipality included the upgrade of the road in its Integrated Development Plan (IDP). The upgrade of the road was Gazetted and budgeted for by the NWDPWR. This resulted in a consultant being appointed, who took road measurements, however, nothing had since transpired.

2.2.4 The Complainants have been engaging the NWDPWR, Lehurutshe local office, as well as the Municipality with a view to solicit answers. At one-

point, municipal officials informed the Complainants that the road in question is a Provincial Road, therefore it is not the Municipality's responsibility to upgrade it.

- 2.2.5 At the time of the Public Protector's Roadshow on 01 March 2022, the Complainants informed the Public Protector that despite engaging the NWDPWR, the latter did not respond to their concerns about the condition of the road, and would appreciate the intervention by the Public Protector to ensure that the NWDPWR responds to their request and advise them on the possibility of upgrading and converting road Z456 from gravel to surface standard.

### 3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

- 3.1 The Public Protector is an independent constitutional institution established in terms of 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) of the Constitution 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 The NWDPWR 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)(a)(i) of the Public Protector Act.

#### 4. **ISSUE IDENTIFIED 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 the functionaries of the NWDPWR unduly delayed to respond to the request of the communities of Nyetse and Reagile villages to upgrade and convert Road Z456 joining Poosedumane and Mokgola villages from gravel to surface standard, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

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

##### 5.1 **Investigation Process**

- 5.1.1 The investigation process included exchange of documents with the NWDPWR as well as the analysis of relevant documentation and information obtained during the investigation, consideration and application of the relevant laws and prescripts.

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## 5.2 Methodology

5.2.1 The investigation is conducted in terms of section 182 of the Constitution read with 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 how to resolve a dispute of alleged improper conduct or maladministration.

## 5.3 Approach to the Investigation

5.3.1 The approach to the investigation included an exchange of letters and e-mails between parties relevant to the investigation, receipt, analysis and review of relevant documentation and information. The approach further included consideration and application of relevant laws, the regulatory framework, and guidelines.

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

5.3.2.1 What happened?

5.3.2.2 What should have happened?

5.3.2.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power, or improper conduct?

5.3.2.4 In the event of an improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?

5.3.3 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. Evidence is evaluated and a determination is made on a balance of probabilities. In this case, the factual enquiry principally focused on whether the functionaries of the NWDPWR failed to respond to the request to upgrade Road Z456 from gravel to surface standard by the Nyetse and Reagile communities.

5.3.4 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 NWDPWR in the execution of their duties regarding the subject matter of the complaints.

5.3.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct of maladministration, where possible and appropriate.

#### 5.4 **Key sources of information**

##### 5.4.1 **Correspondence sent and received**

5.4.1.1 Letters from Maruapula Secondary School, dated 24 February 2021, and Nyetse Primary School dated 25 February 2021, address to the Manager: Department of Roads and Transport;

5.4.1.2 Complaint letters received from KE Tsholo and Mr J Keebine, dated 01 March 2022;

5.4.1.3 Letter from the Investigation Team to the then Administrator for the NWDPWR, Mr M Moremi, dated 25 March 2022;

5.4.1.4 Letter from the Investigation Team to Mr Moses I Kgantsi, the Head of the NWDPWR (HoD) dated 06 December 2022;

5.4.1.5 Letter of response from the HoD, dated 15 December 2022;

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- 5.4.1.6 Letter from the Investigation Team to the HoD, dated 20 April 2023;
  - 5.4.1.7 Response letter received from the HoD, dated 10 August 2023;
  - 5.4.1.8 Letter from the HoD, Appointing TDR Projects as the Project Consultants, dated 14 February 2024;
  - 5.4.1.9 Contract No: PWR 112/23 – Agreement for Consulting Engineering Services Entered Between the NWDPWR and TDR Project, dated 08 March 2024;
  - 5.4.1.10 Letter from Mr SM Ntlatleng, the NWDPWR Director: Planning and Design (Director: Planning and Design), informing TDR Projects About the Approval of Altered Project Description, dated 16 August 2024;
  - 5.4.1.11 Update letter received from the HoD, dated 02 February 2025;
  - 5.4.1.12 Letter from Director: Planning and Design, informing TDR Projects About the Approval of the Inception Report, dated 09 April 2025;
  - 5.4.1.13 Letter from Mr SI Diko, the NWDPWR Acting Chief Director: Transport Infrastructure, Informing TDR Projects About the Approval of Concept and Viability Report, dated 09 April 2025;
  - 5.4.1.14 Update letter received from the HoD, dated 11 August 2025;
  - 5.4.1.15 Response letter on Road Z456, Prioritisation, Funding, Constraints, and Agreed Intervention Measures, received from the HoD, dated 12 December 2025.

## 5.4.2 Meetings held

5.4.2.1 Meeting held on 18 October 2022, between the Public Protector's Investigation Team (Investigation Team) and the functionaries of the NWDPWR, led by the HoD.

5.4.2.2 Meeting held on 10 December 2025, between the Public Protector's Investigation Team (Investigation Team) and the functionaries of the NWDPWR, led by the HoD, in response to the Notice issued in terms of section 7(9)(a) of the Public Protector Act, 1994.

## 5.4.3 Legislation and other prescripts

5.4.3.1 The Constitution of the Republic of South Africa, 1996

5.4.3.2 Public Finance Management Act, 1999

5.4.3.3 Government Immovable Assets Management Act, 2007

5.4.3.4 North West Department of Public Works and Roads Immovable Assets Management Policy: 23 March 2018: (IAM Policy)

5.4.3.5 Public Protector Act, 1994;

### *Case Law*

5.4.3.6 *Associated Institutions Pension Fund and Others v Van Zyl and Others (268/03) [2004] ZASCA 78; [2004] 4 All SA 133 (SCA); 2005 (2) SA 302 (SCA)*

## 5.4.4 Notices issued in terms of section 7(9)(a) of the Public Protector Act

5.4.4.1 On 21 October 2025, notice in terms of section 7(9)(a) of the Public Protector Act, (section 7(9) notices) was issued to Ms E Mokuwa, the MEC, Mr MI Kgantsi, the Head of the Department (HoD) and the Complainants.

5.4.4.2 Sections 7(9)(a) and (b) of the Public Protector Act provide the persons/parties implicated and/or affected by an investigation by the Public Protector, an opportunity to make representations in response thereto.

5.4.4.3 A response to section 7(9)(a) notice was received on 11 November 2025, from the HoD. The contents thereof were noted and considered by the Public Protector.

## 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 the functionaries of the NWDPWR unduly delayed to respond to the request of the communities of Nyetse and Reagile villages to upgrade and convert road Z456 joining Poosedumane and Mokgola villages from gravel to surface standard, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

### *Common cause*

6.1.1 Road Z456 is a gravel road joining Poosedumane and Mokgola village, passing through Nyetse and Reagile villages.

6.1.2 The Complainants are residents of the areas of Nyetse and Reagile villages and use the road to access their daily basic needs at both Zeerust town and other nearby local villages.

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*Issue in dispute*

- 6.1.3 The issue for the Public Protector's determination is whether the NWDPWR did not consider the pleas of the Complainants to improve the condition of Road Z456 and upgrade it from gravel to surface standard.

*The Complainants' version*

- 6.1.4 The Complainants contended that they have been complaining about the condition of the road since 2021, to the NWDPWR, Lehurutshe Local Office. That during the rainy seasons, the villages of Nyetse and Reagile become inaccessible, as the bridge gets flooded. This makes the road impassable resulting in them being cut off from the outside world and thus making it difficult for them to access basic services, their workplaces, and schools.

*The NWDPWR's version*

- 6.1.5 In a letter dated 25 March 2022, the Public Protector raised the allegations with the then Administrator for the NWDPWR, Mr Molate Moremi (Mr Moremi) requesting his response to the allegations. No response was received from Mr Moremi, whose term as Administrator ended in July 2022.
- 6.1.6 On 26 August 2022, the complaint was brought to the attention of the HoD.
- 6.1.7 On 18 October 2022, Investigation Team held a meeting with the functionaries of the NWDPWR, led by the HoD. During these deliberations, the functionaries of the NWDPWR expressed doubts whether the road fell within its responsibility to maintain or even to upgrade. For this reason, it was resolved that a joint "*inspection in loco*" by the Investigation Team and the functionaries of the NWDPWR be conducted before the NWDPWR could respond to the allegations.

### *Inspection in loco*

6.1.8 An “*inspection in loco*” was conducted on 19 October 2022, by the Investigation Team and the Engineering Technician Candidate, Ms L Madede, a functionary of the NWDPWR. She confirmed that road Z456, indeed fell within the responsibility of the NWDPWR and she provided a map which outlines the location and description of the road.

6.1.9 The following observations were made during the inspection *in loco*:

6.1.9.1 Road Z456 is a gravel road as can be seen in figure 1 below. It is a road connecting road P48/1 at Poosedumane village through Reagile and Nyetse villages to road P224/1 to Mokgola village.



*Figure 1: Road Z456, between Poosedumane and Mokgola village passing through Reagile and Nyetse villages*

6.1.9.2 Road Z456 has a low water bridge, as can be seen in figure 2 below, which allows for the flow of water from the nearby Sehujwana Dam during the rainy season.



Figure 2: Bridge on road Z456, constructed to allow waterflow from the nearby Sehujwana dam

#### *Further interaction with the NWDPWR*

- 6.1.10 After several reminders to the HoD to respond to the allegations as undertaken at the meeting held on 18 October 2022, the HoD ultimately responded to the Investigation Team in a letter dated 10 August 2023, attached to an e-mail dated 22 August 2023.
- 6.1.11 In the response, the HoD confirmed that the inspection of the road was conducted on 19 October 2022, by both the Investigation Team and the functionary of the NWDPWR. He further stated that:
- 6.1.11.1 The road has little traffic and is a gravel road of approximately fifteen (15) kilometres (km) which passes through Reagile and Nyetse villages;
- 6.1.11.2 Since the inspection on 19 October 2022, the NWDPWR has taken a decision to add the project to upgrade road Z456 from gravel to surface standard, to the 2023/24 financial year projects. The request to appoint a consultant was submitted to the BID Specification committee on 06 July

- 2023, and the advert would be sent out to appoint a suitable consultant for the project;
- 6.1.11.3 The process will then be followed by the appointment of the contractor through a supply chain process; and
- 6.1.11.4 The NWDPWR will provide the Investigation Team with progress reports regarding the implementation of the project.
- 6.1.12 Attached to Mr Kgantsi's letter dated 10 August 2023, was an internal memorandum from Mr MH Phahlane, the Chief Director: Transport Infrastructure (Mr Phahlane), dated 04 August 2023, to Ms Eva Kgang, Director: Legal Services giving an update on the status of the project as follows:
- 6.1.12.1 On 11 July 2023, a proposed design of road Z456 was submitted by the Supply Chain Management Unit to the Departmental Bid Specification Committee (DBSC), for consideration and to the Departmental Bid Adjudication Committee on 14 July 2023; and
- 6.1.12.2 In line with the NWDPWR's priorities, the Chief Directorate: Transport Infrastructure re-prioritized its projects and gave special attention to road Z456. The decision demonstrates the NWDPWR's commitment to addressing the needs of the community and ensuring the successful completion of the upgrade of road Z456.
- 6.1.13 On 17 May 2024; 19 July 2024, and 29 July 2025, the progress reports on the implementation of the road project were requested from the NWDPWR. On 05 September 2024, through an e-mail, Mr David Manamela Senior Legal Administration Officer: Legal Services, (Mr Manamela), informed the Investigation Team that TDR Projects (PTY) LTD (TDR Projects) was appointed to do a detailed design of the road, and the consultant was at stage 2, which is the "Preliminary Design Stage".

6.1.14 A further update report dated 12 November 2024, from Mr Sydney Ntlatleng, Director Planning and Design: Transport Infrastructure titled *“THE UPGRADING FROM GRAVEL TO SURFACE STANDARD (SURFACE STANDARD) OF ROAD Z456 AND ROAD D2242 FROM ROAD P48/1 TO ROAD R49, THROUGH THE VILLAGES OF REAGILE, NYETSE AND MOKGOLA FOR 21.4KM”*, was received from the NWDPWR attached to an e-mail of the same date. The report stated that:

6.1.14.1 The original scope of work, which included the upgrading of road Z456 from gravel to surface standard, has been extended to include road D2242 from the intersection with road P224/1, to intersection with road R49 to Mokgola village. The scope was therefore extended by 5.4km yielding a total scope of 21.4km;

6.1.14.2 TDR Consulting’s scope of civil engineering services included, but are not limited to the following:

No.	Stage	Description
1.	Inception stage	Scoping report, which gives background and initial information relating to the project
2.	Concept and viability stage	Preliminary Design reporting
3.	Design development stage	Detailed design reporting
4.	Documentation and procurement stage	Producing of tender documents and procurement documents in reparation of tender
5.	Construction stage	Implementation of construction works
6.	Close-out stage	Closing processes of project including close-out reporting

6.1.14.3 The project progress is as follows:

No.	Stage	Progress/status
1.	Inception stage	Completed and approved on 10 July 2024, and amendment of scope was approved on 14 August 2024.
2.	Concept and viability stage	Approved and to be complete on 31 January 2025.
3.	Design development stage	In progress and anticipated to be completed on 15 June 2025
4.	Documentation and procurement stage	To commence after completion of stage 3 (estimated from 16 June 2025)
5.	Construction stage	To commence after stage 4 after approval of stage 4 and subject to funds availability

6.1.15 On 11 August 2025, the HoD, further provided an update that the NWDPWR received the Specialist report late, and this delayed the completion of stage 2. However, stage 2 had since been completed and approved on 09 April 2025. Stage 3 is in progress and is anticipated to be completed on 30 September 2025, and to be followed by stage 4 subject to a budget.

6.1.16 The following documents were provided as proof that the road upgrade was taking place:

*APPOINTMENT LETTER OF TDR PROJECTS (PTY) LTD*

6.1.16.1 TDR Projects was appointed on 14 February 2024, as a project consultant for the “Planning, Design and Contract Supervision for the contract PWR 112/23: The Upgrading from Gravel to Surface Standard of Road Z456 from

Road P48/1 to Road P224/1, through the Villages of Reagile to Nyetse of Approximately 15KM”

#### *AGREEMENT FOR CONSULTING ENGINEERING SERVICES*

- 6.1.16.2 The Agreement was signed between the NWDPWR represented by the HoD and TDR Projects represented by the Director KR Rikhotso on 08 March 2024, as an agreement for consulting engineering services for planning, design, and contract supervision for the contract on the upgrade of road Z456.

#### *LETTER ON CONCEPT AND VIABILITY REPORT APPROVAL*

- 6.1.16.3 A letter dated 09 April 2025, was addressed to TDR Projects acknowledging receipt of the Concept and Viability Report (Report) for the project dated 05 December 2024 and revised on 12 March 2025.
- 6.1.16.4 The NWDPWR further informed TDR Projects that the report was approved and can commence with stage 3, on Design Development.

#### *Response to the section 7(9)(a) notice*

- 6.1.17 On 21 October 2025, a notice in terms of section 7(9)(a) of the Public Protector Act, read with rule 41(1) and 42(1) of the *Rules Relating to the Investigation by the Public Protector and Matters Incidental Thereto, 2018, as amended*, was issued to MEC; HoD and the Complainants.
- 6.1.18 On 11 November 2025, the Public Protector received a response from the HoD, stating that:
- 6.1.18.1 The functionaries of the NWDPWR are committed towards cooperating with the Public Protector to ensure that the roads are trafficable within the NWDPWR available funds.

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- 6.1.18.2 The NWDPWR's ability to upgrade rural roads such as Z456 is severely constrained by declining equitable share allocation over recent years. The 27% reduction in funding over four years, necessitated the reprioritisation of available funds toward roads with higher traffic volumes and greater socio-economic benefits.
- 6.1.18.3 The designed development stage for Road Z456, has already been completed; however, budget and priority list remains a challenge. The NWDPWR cannot move to implement stage four when the budget has not been secured.
- 6.1.18.4 The NWDPWR then committed to do the following in the interim:
- (i) Continue routine maintenance of Road Z456 to ensure accessibility;
  - (ii) Improve connectivity through linkages to road D2279; and
  - (iii) Reassess Z456's prioritisation as part of future budget reviews and funding engagements with the National Treasury.
- 6.1.18.5 The NWDPWR remained committed to service delivery and continues to explore cost effective ways to enhance rural road access across the province.
- 6.1.19 On 10 December 2025, a meeting was held between the Investigation Team and the functionaries of the NWDPWR, led by the HoD and the deliberations and the decisions of the meeting were reduced in a letter dated 12 December 2025, received from the HoD.
- 6.1.20 In the letter dated 12 December 2025, the NWDPWR indicated that:
- 6.1.20.1 After careful consideration of the needs of the Complainants, the NWDPWR agreed to implement the following intervention strategy for Road Z456:

(i) **“Deferred Full Upgrade**

*The upgrade of Road Z456 to a surface (tarred) standard will be deferred to outer financial year, beyond 2027/2028, subject to future funding improvements.*

(ii) **Engineered Gravel Road Using Nano-Modified Technology**

*The Department will implement an improved engineered gravelled solution using Nano Technology across the full 21.4 km of Road Z456. This approach provides a durable weather-resilient, and cost-effective upgrade suitable for immediate community benefit.*

(iii) **Benefits of Nano-Modified Gravel**

*This technology offers:*

- (a) Enhanced structural strength and extended lifespan;*
- (b) Improved resistance to moisture, erosion, and wash-aways;*
- (c) Reduced dust and environmental impact;*
- (d) Lower maintenance requirements and lifecycle costs;*
- (e) Faster implementation using locally available materials”.*

6.1.20.2 The NWDPWR confirmed the following timelines:

Activity	Planned Date
Completion of internal procurement processes	April 2026
Contractor to be on site	May 2026
Construction duration	May 2026 – March 2027 (±10 Months)
Practical completion	March 2027

6.1.20.3 The NWDPWR further agreed on the stakeholder engagement and reporting as follows:

Engagement/ Reporting Activities	Scheduled Date
Presentation of project specifications and nano technology to the Public Protector	January 2026
Joint Department-Public Protector Community meeting in Nyetse	Early in 2026
Quarterly progress reports during construction	May 2026 – March 2027
Final project completion report	April 2027

*Applicable Law*

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

- 6.1.21 Section 195(1) of the Constitution provides that *“Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the promotion and maintenance of high standards of professional ethics”*.
- 6.1.22 Section 195(1)(e) provides that the *“People’s needs must be responded to, and the public must be encouraged to participate in policy-making”*.
- 6.1.23 Section 195(1)(f) provides that the *“Public administration must be accountable”*.
- 6.1.24 Section 237 of the Constitution provides that *“All constitutional obligations must be performed diligently and without delay”*.
- 6.1.25 Schedule 5, part A of the Constitution, provides for the functional areas of exclusive provincial legislative competence and amongst them are the *“provincial roads and traffic ...”*

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## **Public Finance Management Act, 1999**

- 6.1.26 Section 38(1)(d) of the PFMA provides for that the *“accounting officer for a department is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, ...”*

## **Government Immovable Assets Management Act, 2007**

- 6.1.27 Section 1 of the Government Immovable Assets Management Act, 2007 (GIAMA) provides that an *“immovable asset means any immovable asset acquired or owned by government”*.

## **North West Department of Public Works and Roads Immovable Assets Management Policy: 23 March 2018**

- 6.1.28 Clause 3 of IAM policy, provides for the following definitions:

**“Asset** - *Assets are the resources controlled by the Department as a result of the past events and from which future economic benefits or service potential are expected to flow to the Department.*

**Immovable assets** - *Infrastructure including but not limited to roads; harbours, ...*

**Upgrade** – *Means in terms of GIAMA guidelines – comprehensive capital works that increases the value of an existing immovable asset and extends the area of or add new functionality to the asset...*

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## Case law

- 6.1.29 In *Associated Institutions Pension Fund and Others v Van Zyl and Others*<sup>1</sup> (Van Zyl and Others); the Supreme Court of Appeal held that “*the reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case .... The investigation into the reasonableness of the delay has nothing to do with the court’s discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable...*”.

### Analysis

- 6.1.30 The evidence before the Public Protector indicates that the Tribal Authority and the schools in the areas of Nyetse and Reagile villages, approached the NWDPWR during February and March 2021 respectively, complaining about the condition of Road Z456. However, as of 01 March 2022, when the Complainants approached the Public Protector, the NWDPWR, had not responded to the Complainants’ request to upgrade the aforesaid road.
- 6.1.31 By failing or unduly delaying responding to the aforesaid request, the NWDPWR acted in contravention of section 195(1)(e) and (f) read with section 237 of the Constitution, which imposes a duty on the NWDPWR to perform its obligations diligently and without delay. Further, schedule 5, part A of the Constitution includes “*provincial roads and traffic ...*” as the functional areas of exclusive provincial legislative competence, thus putting Road Z456 squarely within the competence of the NWDPWR.
- 6.1.32 The functionaries of the NWDPWR did not dispute the knowledge of the complaints about the conditions of the road raised in March 2021 by the Complainants but only in August 2023, did the NWDPWR confirm that Road

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<sup>1</sup> (268/03) [2004] ZASCA 78; [2004] 4 All SA 133 (SCA); 2005 (2) SA 302 (SCA)

Z456 is one of its immovable assets and undertook to upgrade it from gravel to a surface standard road.

- 6.1.33 The question of reasonableness or unreasonableness according to *Van Zyl and Others*, entirely depends on the circumstances of each case, and it involves an investigation into the facts of the matter to determine whether in all the circumstances of that case, the delay was reasonable. In this instance, it took two (2) years before the NWDPWR could respond to the need of the Complainants to have the Road Z456 upgraded to a surface standard.
- 6.1.34 Through the intervention of the Public Protector, the functionaries of the NWDPWR have already commenced with the road upgrade project. The consultant has been appointed, work has commenced, and the concept and viability report have been issued. Further, stage three (3) of the project, which involved the Design Development of the road has been completed.
- 6.1.35 Following the issuing of the section 7(9)(a) notice to all affected parties, only the HoD responded. His response was considered and, on 10 December 2025, a meeting was held with the HOD to discuss the submission, prior to the finalisation of the matter. During the deliberations on the response, the NWDPWR made a revised commitment to upgrade of Road Z456, citing financial challenges. The new commitment included deferred the full road upgrade to future financial years beyond 2027/2028 financial year and in the interim to implement an improved engineered gravelled solution using nano-modified technology, to make the road durable and weather-resilient, thus improving access during rainy seasons.
- 6.1.36 By committing to upgrade Road Z456 deferment to do so to future financial years, the HOD acted in line with the provisions of section 38(1)(d) of the PFMA which requires the accounting officer be responsible in the management and safe-guarding of the assets and liabilities of the department.

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## *Conclusion*

- 6.1.37 The evidence received reveals that the Complainants approached the NWDPWR requesting the latter to upgrade the Road Z456 from gravel to surface standard in 2021 and their requests were not responded to, until the matter was raised with the Public Protector for intervention.
- 6.1.38 Although the NWDPWR had not responded to the request of the Complainants, through the intervention of the Public Protector, the NWDPWR has committed to upgrade Road Z456 together with Road D2242 from gravel to a surfaced standard. Due to financial constraints for the 2026/2027 financial year, the NWDPWR committed to undertake the following:
- 6.1.38.1 In the long term, to fully upgrade the road Z456 and road D2242 to a surface standard subject to future funding improvements.
- 6.1.38.2 In the immediate term, to gravel the road using nano-modified technology to improve durable weather-resilient roads surface to benefit the communities.

## **7. FINDINGS**

Having regard to the evidence, the regulatory framework determining the standards that the NWDPWR 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 NWDPWR unduly delayed to respond to the request of the communities of Nyetse and Reagile villages to upgrade and convert Road Z456 joining Poosedumane and Mokgola villages from gravel to surface standard, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and**

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**amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

- 7.1.1 The allegation that the functionaries of the NWDPWR unduly delayed responding to the request of the Communities of Nyetse and Reagile villages to upgrade and convert road Z456 from gravel to surface standard, **is substantiated.**
- 7.1.2 Road Z456 is one of the NWDPWR gravel roads and although in 2021 the Complainants requested the NWDPWR to upgrade the road to a surface standard road, no response was received from the NWDPWR. The NWDPWR only responded to the needs of the Complainants in August 2023, after the intervention of the Public Protector.
- 7.1.3 The failure by the NWDPWR to respond to the needs of the Complainants was in contravention of sections 195(1)(e) and 237 of the Constitution that requires the NWDPWR to respond to the needs of the Complainants diligently and without delay.
- 7.1.4 In responding to the needs of the Complainants, the NWDPWR has already commenced with upgrades of Road Z456 and Road D2242, respectively. Due to financial constraints for the 2026/2027 financial year, the NWDPWR committed to undertake the following:
- 7.1.4.1 In the long term, to fully upgrade the road Z456 and road D2242 to a surface standard subject to future funding improvements.
- 7.1.4.2 In the immediate term, to gravel the road using nano-modified technology to improve durable weather-resilient roads surface to benefit the communities.
- 7.1.5 Accordingly, the conduct of the functionaries of the NWDPWR constitute improper conduct as envisaged in section 182(1) of the Constitution and

does not amount to maladministration in terms of section 6(4)(a)(i) and (iii) of the Public Protector Act.

## 8. REMEDIAL ACTION

8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this notice upon the conclusion of an investigation where adverse findings are made.

8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*, the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.

8.3 Having regard to the evidence and the regulatory framework determining the standard the NWDPWR should have complied with, the appropriate remedial action taken in terms of section 182(1)(c) of the Constitution are the following:

### **The MEC for the NWDPWR**

8.3.1 Take cognisance of the findings and ensure implementation of the remedial actions contained in this report.

### **The Head of Department**

8.3.2 Ensure compliance with the NWDPWR undertaking made in terms of the letter dated 12 December 2025, regarding the upgrade of road Z456 and road D2242 from gravel to surface standard.

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- 8.1.1 Within **thirty (30) calendar days** of receipt of the final report, in terms of Rule 43(1) of the Public Protector rules provide the Public Protector with the project milestones for the upgrade of road Z456 from gravel to tar
- 8.1.2 Within **ninety (90) calendar days** of receipt of the final report, in terms of Rule 43(1) of the Public Protector rules provides the quarterly progress reports on the upgrade of road Z456 from gravel to tar to the Public Protector.

### **The Director General for National Treasury**

- 8.3.3 Take cognisance of the report and provide financial support to the Department in the budget allocation for the 2026-2027 financial year in order to undertake the upgrade of road Z456 and road D2242 from gravel to surface standard.

### **The HoD for Provincial Treasury**

- 8.3.4 Take cognizance of the report and remedial action and provide financial support to the Department in building its capacity for efficient management and upgrading of road Z456 and road D2242 from gravel to surface standard as contemplated in section 18(2)(e)(f) and section 6(2)(d) of the PFMA.

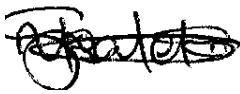
## **9. MONITORING**

- 9.1 The HoD for the NWDPWR must submit action plans to the Public Protector within thirty (30) calendar days from the receipt of this report on the implementation of the remedial actions referred to in paragraph 8 above, respectively.
- 9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with

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within the period prescribed in this report to avoid being in contempt of the Public Protector.

- 9.3 The Public Protector will monitor the process of implementing the proposed intervention measures to remedy the non-compliance with the provisions of sections 195(1)(e) and 237 of the Constitution until full upgrade of Roads Z456 and D2242 to surface standard by the NWDPWR.



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**ADV. KHOLEKA GCALEKA**  
**PUBLIC PROTECTOR**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE: 31 DECEMBER 2025**

*Assisted by: Sechele Keebine*  
*Provincial Representative: NW*