A

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: UM 192/22

In the matter between:

RECORDS OFFICE
NORTH WEST HIGH COURT
PRIVATE BAG X2018 MMABATHO 2735
2022 -10- 07
COUNTER NO.7
REPUBLIC OF SOUTH AFRICA

SAKELIGA NPC — **First applicant**

CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC — **Second applicant**

BAREND LOURENS SNYMAN — **Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY — **First respondent**

THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY — **Second respondent**

PREMIER OF THE NORTH WEST PROVINCE — **Third respondent**

PROVINCIAL EXECUTIVE OF THE NORTH WEST PROVINCE — **Fourth respondent**

MEMBER OF THE EXECUTIVE COUNCIL:

NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE,

HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS **Fifth respondent**

MEMBER OF THE EXECUTIVE COUNCIL:

NORTH WEST PROVINCE: FINANCE **Sixth respondent**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA **Seventh respondent**

MINISTER: NATIONAL DEPARTMENT OF

COOPERATIVE GOVERNANCE AND

TRADITIONAL AFFAIRS **Eighth respondent**

MINISTER: NATIONAL DEPARTMENT OF FINANCE **Ninth respondent**

MINISTER: WATER AND SANITATION **Tenth respondent**

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY **Eleventh respondent**

ESKOM SOC LTD **Twelfth respondent**

MAGALIES WATER BOARD **Thirteenth respondent**

THE ADMINISTRATOR: DITSOBOTLA

LOCAL MUNICIPALITY **Fourteenth respondent**

NOTICE OF MOTION

PART A:

BE PLEASED TO TAKE NOTICE THAT the applicants shall make application to the above Honourable Court on **Thursday 13 October 2022** at 10h00, or as soon thereafter as counsel for the applicants may be heard, for an order in terms of **PART A** of this application in the following terms:

1 THAT the normal rules pertaining to the service, times and filing of applications be dispensed with and that Part A of this application be determined on an urgent basis in terms of the provisions of Rule 6(12)(a) and (b) of the uniform rules of court.

2 THAT pending the outcome and final determination of Part B of this application, and the successful implementation of the provision of the basic service of providing water to the community of the first respondent, the Ditsobotla Local Municipality ("**Ditsobotla**"), it is ordered:

2.1 That the first applicant and its duly authorised representative/s be authorised to take all such steps as may be necessary to return to the communities in the towns of Lichtenburg and Coligny, and surrounding areas, the basic service of potable water supply through reticulation through the existing water infrastructure, including but not limited to accessing any part of the potable water reticulation system, unlocking, alternatively opening, of any gates and entrances to any water infrastructure for purposes of filling reservoirs and tanks, and the commissioning of any necessary equipment and the conducting of any

necessary work for purposes of ensuring the supply of potable water to the aforesaid communities of Ditsobotla.

2.2 That in the event that the first applicant or its duly authorised representative/s is frustrated in any manner in ensuring access to the basic service of water as contemplated in the prayer above, the sheriff of this court is authorised and instructed to take all such steps as may be necessary to ensure that the first applicant or its duly authorised representative/s is able to take such steps necessary to ensure access to the basic service of water within the jurisdictional area of Ditsobotla.

2.3 That Ditsobotla shall be liable for all reasonable and necessary costs incurred by the first applicant in ensuring access to the basic service of water as is contemplated in the prayers above.

3 THAT the third respondent, alternatively the fifth respondent, further alternatively such respondent as the court determines to be responsible for ensuring access to the basic service of water within the jurisdictional area of Ditsobotla, be ordered and directed to report back to the court on affidavit within 10 (ten) days of this order, such affidavit to address all steps that shall be taken to ensure the provision of access to the basic service of water within the jurisdictional area of Ditsobotla, including dates when such steps shall be completed.

4 THAT in the event that the court finds that the remedy sought herein is for any reason not appropriate, the court grant an order that is just and equitable, as envisaged in section 172 of the Constitution of the Republic of South Africa, 1996 (the "**Constitution**"), which has the remedial effect of the urgent restoration of the basic municipal service of water to the community of Ditsobotla.

5 THAT Ditsobotla, and any of the further respondents to this application that oppose the relief sought herein, be ordered to pay the costs of Part A of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved, such costs to include the costs consequent upon the employ of two counsel where so employed.

6 THAT the court grant the applicants such further and/or alternative relief as the court deems meet.

TAKE FURTHER NOTICE that the founding affidavit of **CHRISTO BESTER**, as well as the annexures thereto, will be used in support of the application.

TAKE FURTHER NOTICE that the applicant has appointed **KRIEK WASSENAAR & VENTER INCORPORATED c/o LABUSCHAGNE ATTORNEYS,** of the address indicated below, at which address all notices and service in these proceedings will be accepted.

TAKE FURTHER NOTICE that, if you intend opposing **PART A** of this application:

a. you are required to appoint an address as referred to in Rule 6(5)(b) at which you will accept service of all documents in these proceedings;

b. you must deliver a notice of intention to oppose the application on or before **16h00 on Friday 7 October 2022**; and

c. you must deliver an answering affidavit, if any, in response to the application, on or before **14h00 on Tuesday 11 October 2022**.

TAKE FURTHER NOTICE that **Part A** of the application shall be enrolled for hearing on the urgent court roll on **Thursday 13 October 2022** at 10h00, or as soon thereafter as counsel for the applicant may be heard.

KINDLY PLACE PART A OF THE APPLICATION ON THE ROLL ACCORDINGLY.

PART B:

BE PLEASED TO TAKE FURTHER NOTICE THAT the applicant shall make application to the above Honourable Court on **Thursday 10 November 2022** at 10h00, or as soon thereafter as counsel for the applicant may be heard, for an order in terms of **PART B** of this application in the following terms:

1 THAT the normal rules pertaining to the service, times and filing of applications be dispensed with and that Part B of this application be determined on an urgent basis in terms of the provisions of Rule 6(12)(a) and (b) of the uniform rules of court.

2 THAT it be declared that the first respondent, the Ditsobotla Local Municipality ("**Ditsobotla**"), as a result of a crisis in its financial affairs, is in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments and is unable to meet its obligations and financial commitments.

3 THAT it be declared that the Provincial Executive for the Province of the North West Province, as contemplated in section 139 of the Constitution (the "**Provincial Executive**"), cannot, alternatively has not and does not, further

alternatively has not and does not adequately, exercise the powers, alternatively perform the functions, referred to in section 139(5) of the Constitution of the Republic of South Africa (the "**Constitution**").

4 THAT it be declared that the failure of the National Executive, as contemplated in section 139 of the Constitution ("the "**National Executive**"), to intervene in terms of section 139(7) of the Constitution constitutes a breach of section 139(7) of the Constitution.

5 THAT pending the resolution of the crisis in the financial affairs of Ditsobotla and the securing of the ability of Ditsobotla to meet its obligations to provide basic services:

5.1 The National Executive is directed as a matter of urgency to forthwith invoke section 139 (7) of the Constitution in respect of Ditsobotla, and to exercise the powers and perform the functions referred to in section 139 (5) of the Constitution, and in this regard to:

5.1.1 forthwith implement a recovery plan aimed at securing the ability of Ditsobotla to meet its obligations to provide basic municipal services (as defined in the Local Government: Municipal Finance Management Act, Act 56 of 2003) (the "**basic municipal services**") to the community of Ditsobotla;

5.1.2 forthwith approve a temporary budget or revenue-raising measures or any other measures intended to give effect to the aforesaid recovery plan to provide for the restoration of basic

municipal services to the community of Ditsobotla and thereafter the continued functionality of Ditsobotla.

5.1.3 forthwith assume responsibility for the implementation of the recovery plan in order to restore basic municipal services to the community of Ditsobotla and thereafter the continued functionality of Ditsobotla.

6 In the alternative to prayer 5: THAT pending the resolution of the crisis in the financial affairs of Ditsobotla and the securing of the ability of Ditsobotla to meet its obligations to provide basic services, alternatively the successful and effective intervention of the National Executive as envisaged in section 139(7) of the Constitution, whichever of the aforesaid occurs first:

6.1 The Provincial Executive is directed as a matter of urgency to forthwith invoke and exercise the powers and perform the functions referred to in section 139 (5) of the Constitution in respect of Ditsobotla, and in this regard to:

6.1.1 forthwith implement a recovery plan aimed at securing the ability of Ditsobotla to meet its obligations to provide basic municipal services to the community of Ditsobotla.

6.1.2 forthwith approve a temporary budget or revenue-raising measures or any other measures intended to give effect to the aforesaid recovery plan to provide for the restoration of basic municipal services to the community of Ditsobotla and thereafter the continued functionality of the Ditsobotla.

6.1.3 forthwith assume responsibility for the implementation of the recovery plan in order to restore basic municipal services to the community of Ditsobotla and thereafter the continued functionality of Ditsobotla.

7 In the alternative to prayers 5 and 6: THAT pending resolution of the crisis in the financial affairs of Ditsobotla and the securing of the ability of Ditsobotla to meet its obligations to provide basic services, alternatively the successful and effective invocation of and exercise of the powers and functions by the Provincial Executive as is envisaged in section 139 (5) of the Constitution, further alternatively the successful and effective intervention of the National Executive as envisaged in section 139 (7) of the Constitution, whichever of the aforesaid occurs first:

7.1 The Provincial Executive is directed as a matter of urgency to forthwith take all such steps as may be necessary and assume responsibility for the restoration of and provision of basic municipal services to the community of Ditsobotla.

8 In the alternative to prayers 5, 6 and 7: THAT pending the resolution of the crisis in the financial affairs of Ditsobotla and the securing of the ability of Ditsobotla to meet its obligations to provide basic services, alternatively the successful and effective invocation of and exercise of the powers and functions by the Provincial Executive as is envisaged in section 139 (5) of the Constitution, further alternatively the successful and effective intervention of the National Executive as envisaged in section 139(7) of the Constitution, whichever of the aforesaid occurs first:

8.1 The municipal manager of Ditsobotla, alternatively the acting municipal manager of Ditsobotla, further alternatively such respondent that the court determines to be responsible for the provision of basic municipal services, be ordered and directed forthwith to take all such steps as may be necessary to restore basic municipal services to the community of Ditsobotla as a matter of urgency.

8.2 In the alternative to prayer 8.1, and only in the event that the court finds that those cited in prayer 8.1 do not have the duty, alternatively the capacity, to restore basic municipal services to the community of Ditsobotla:

8.2.1 The Provincial Executive, alternatively the National Executive, be ordered and directed to immediately appoint and instruct an administrator with such powers and duties to ensure the restoration of basic municipal services to the community of Ditsobotla to take all such steps as may be necessary to ensure the restoration of basic municipal services to the community of Ditsobotla as a matter of urgency.

8.3 In the further alternative to prayers 8.1 and 8.2, THAT a 'special master' be appointed with all such powers and duties as may be necessary to ensure the restoration of basic municipal services to the community of Ditsobotla as a matter of urgency, and subject to the following:

8.3.1 Such special master is to be identified and appointed forthwith by the applicant, alternatively by the honourable court.

8.3.2 Such special master shall have such powers and duties necessary to ensure the restoration of basic municipal services to the community of Ditsobotla as determined by the honourable court.

9 THAT National Treasury be ordered and directed to make available such part of the funds due to Ditsobotla as its share of the local government's equitable share referred to in section 214 (1) (a) of the Constitution in order to restore basic municipal services to the community of Ditsobotla, such funds to include the funds necessary to make payment of the salaries of the employees and administration of Ditsobotla whose services are necessary to restore and to continue to provide basic municipal services to the community of Ditsobotla, and such funds necessary to make payment of the monthly payment of the providers of basic municipal services such as the twelfth and thirteenth respondents.

10 THAT the seventh to the tenth respondents, alternatively the third to the sixth respondents, further alternatively such respondent or respondents as the court deems appropriate, be ordered and directed to monitor the restoration of and continuation of basic municipal services to the community of Ditsobotla, and for such purpose is ordered and directed:

10.1 To report back to this court on affidavit all relevant facts dealing with the restoration of and continuation of basic municipal services to the community of Ditsobotla, and all facts relevant to any challenges in this regard, such report to be served on the applicants and to be filed on the court file within 10 days of this order;

10.2 Thereafter, and until the court finds that the crisis in the financial affairs of Ditsobotla has been resolved and the ability of Ditsobotla to meet its obligations to provide basic services has been secured, to file a report in affidavit form at the end of each calendar month dealing with the provision of basic municipal services to the community of Ditsobotla, and all facts relevant to any challenges in this regard, such report to be served on the applicants and to be filed on the court file on or before the last day of each calendar month.

11 THAT in the event that the court finds that the remedies sought by the applicants are for any reason not appropriate, the court grant an order that is just and equitable as envisaged in section 172 of the Constitution which has the remedial effect of the restoration of basic municipal services to the community of Ditsobotla and thereafter the continued functionality of Ditsobotla, the resolution of the crisis in the financial affairs of Ditsobotla and the securing of the ability of Ditsobotla to meet its obligations to provide basic services, alternatively the court grant an order that is just and equitable as envisaged in section 172 of the constitution which has the remedial effect that alleviates the constitutional infringements set out in the founding affidavit hereto.

12 THAT it be declared that the conduct of the third to the sixth respondents in failing to engage meaningfully with the first applicant is inconsistent with the Constitution.

13 THAT the seventh to the tenth respondents, alternatively the third to the sixth respondents, further alternatively such respondent or respondents as the court deems appropriate, be ordered and directed to meet with the applicants and their

representatives in order to meaningfully engage on the issues underlying the financial crisis of the municipality and the various breaches of constitutional rights in relation to the complete failure of Ditsobotla to provide basic municipal services to the community of Ditsobotla.

14 THAT the applicants be granted leave to supplement the founding affidavit, to amend the notice of motion, and to seek such further relief as may be necessary should further breaches, and/alternatively continued breaches, of the constitutional rights of the communities of Ditsobotla, in relation to the provision of basic municipal services to the communities of Ditsobotla, occur after the granting of this order, alternatively should the applicants be of the view that the respondents have failed to comply with the order of this court, in which event the respondents shall have a period of 15 (fifteen) days to answer such supplemented papers and to such supplementary relief claimed.

15 THAT the first to the tenth respondents, alternatively the third to the sixth respondents, further alternatively the seventh to the tenth respondents, further alternatively the first and second respondents, and any of the further respondents that oppose the relief sought herein, be ordered to pay the costs of this application, jointly and severally, the one to pay the other to be absolved, on the scale as between attorney and client, the one paying the other to be absolved, such costs to include the costs consequent upon the employ of two counsel where so employed.

16 THAT the court grant the applicants such further and/or alternative relief as the court deems meet.

TAKE FURTHER NOTICE that the founding affidavit of **CHRISTO BESTER**, as well as the annexures thereto, will be used in support of the application.

TAKE FURTHER NOTICE that the applicants have appointed **KRIEK WASSENAAR & VENTER INCORPORATED c/o LABUSCHAGNE ATTORNEYS, MAHIKENG** of the address below, at which address all notices and service in these proceedings will be accepted.

TAKE FURTHER NOTICE that, if you intend opposing **PART B** of this application:

a. you are required to appoint an address as referred to in Rule 6(5)(b) at which you will accept service of all documents in these proceedings;

b. you must deliver a notice of intention to oppose the application on or before **Wednesday 12 October 2022**; and

c. you must deliver an answering affidavit, if any, in response to the application, on or before **Monday 31 October 2022**.

TAKE FURTHER NOTICE that the application in terms of Part B of this application shall be enrolled for hearing on the urgent court roll on **Thursday 10 November 2022** at 10h00, or as soon thereafter as counsel for the applicants may be heard.

KINDLY PLACE <u>PART B</u> OF THE APPLICATION ON THE ROLL ACCORDINGLY.

Dated at **PRETORIA** on **6 OCTOBER 2022.**

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SERVICE BY E-MAIL AND SHERIFF

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CC: MKHABELA HUNTLEY ATTORNEYS INC.

ATTORNEYS FOR THE 12TH RESPONDENT

IN CASE NR 311/2021

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SERVICE BY HAND AND E-MAIL

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	**First applicant**
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	**Second applicant**
BAREND LOURENS SNYMAN	**Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY	**First respondent**
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	**Second respondent**
PREMIER OF THE NORTH WEST PROVINCE	**Third respondent**
PROVINCIAL EXECUTIVE OF THE NORTH WEST PROVINCE	**Fourth respondent**

MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS	**Fifth respondent**
MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	**Sixth respondent**
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**Seventh respondent**
MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**Eighth respondent**
MINISTER: NATIONAL DEPARTMENT OF FINANCE	**Ninth respondent**
MINISTER: WATER AND SANITATION	**Tenth respondent**
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	**Eleventh respondent**
ESKOM SOC LTD	**Twelfth respondent**
MAGALIES WATER BOARD	**Thirteenth respondent**
THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY	**Fourteenth respondent**

FOUNDING AFFIDAVIT

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I, the undersigned,

CHRISTO BESTER

hereby state under oath as follows:

1 I am an adult male non-practising attorney and head of affiliations of the first applicant, Sakeliga NPC, which has its offices at Building A, Fifth Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

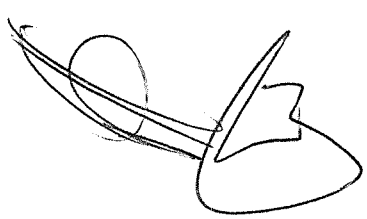
2 Sakeliga NPC and the second applicant have resolved to bring this application. The third applicant acts in his personal capacity. I attach hereto a copy of a resolution confirming the required authority to institute these proceedings on behalf of Sakeliga NPC in respect of the current constitutional crisis in the first respondent, which I attach and mark **CC1**.

3 The facts set out herein are true and correct, and such facts fall within my personal knowledge unless the contrary is indicated by the context.

THE PARTIES

The first applicant

4 The first applicant is **SAKELIGA NPC**, with registration number 2012/043725/08. The first applicant is a non-profit company duly registered and incorporated in terms of the company laws of South Africa and has its principal place of business at Building A, Fifth Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province. I shall refer to the first applicant herein as either "**the first applicant**" or "**Sakeliga**".

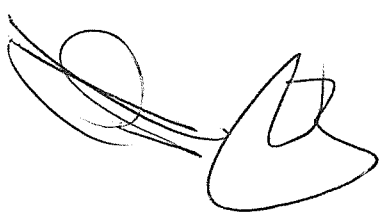


5 Sakeliga is a business interest organisation with a supporter and donor base of more than 17,000 businesspeople, companies and organisations, and a network of more than 40,000 subscribers in South Africa.

6 Sakeliga was established in 2011 and was incorporated and registered as a non-profit company in terms of the Companies Act, Act 71 of 2008, in 2012. Sakeliga's main objective is the protection of constitutional rights, constitutional order, the rule of law, free-market principles, and a just and sustainable business environment within the Republic of South Africa.

7 In seeking to achieve its objectives, Sakeliga lobbies to promote a free market and economic prosperity to create a favourable business environment in the interest of its supporters and the common good. In order to give effect to its main objective, Sakeliga also provides support to its supporters and the public at large, which support includes legal support. Further, to achieve its objectives and to perform its functions and mandate, as an ancillary object, Sakeliga seeks to act in the interest of its supporters and members of the public to protect their businesses and other constitutional rights.

8 What I have set out above is also evident from an extract of Sakeliga's memorandum of incorporation, a copy of which I attach hereto marked **CC2**. I respectfully draw the court's attention to clause 4 of the memorandum of incorporation which sets out in more detail the objects, ancillary objects as well as the powers of the first applicant. I request the court to incorporate the content thereof herein as if specifically set out. I do not attach a full copy of the memorandum of incorporation to these papers, because it will make these papers unnecessarily long. Should the court or any of the respondents wish to



have sight of the full memorandum of incorporation, the first applicant shall make this available.

The second applicant

9 The second applicant is the **CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC**, a non-profit company with separate legal personality from its members, registered in terms of the relevant laws of South Africa, with primary business address at 132 Lentsela Street, Ipelegeng, Schweizer-Reneke, North West Province. I shall refer to the second applicant herein as either "**the second applicant**" or the "**CGGSJ**".

10 The CGGSJ was established in 2020 as a public interest organisation with the goal of promoting, advocating for and defending good governance, ethical leadership, and accountability, especially in the context of local government. Of specific concern to the CGGSJ is ensuring justice, especially for the poor and marginalised communities who suffer most due to municipal maladministration, corruption and the wastage of public funds.

11 Corruption, nepotism, criminality, the lack of service delivery and municipal failure in the North West Province are particularly concerning to the CGGSJ.

12 The CGGSJ is specifically mandated to participate in litigation in the public interest to further its objectives and promote its goals. The CGGSJ is mandated to take any action necessary, including litigation, to maintain a constitutional order, the rule of law and the furtherance of the right to self-determination, especially for poor and vulnerable communities at local government level.

13 The CGGSJ has specifically authorised this application, as is evidenced by the resolution attached hereto as annexure **CC3** and a supporting affidavit by its executive director, Mr Mandla Bocye Mpempe, which will also be attached hereto.

The third applicant

14 The third applicant is **BAREND LOURENS SNYMAN**, a major male businessman with residential address at 34 Doornfontein Way, Lichtenburg, North West Province and primary business address at 38 Greef Street, Lichtenburg, North West Province. I shall refer to the third applicant herein as either "**the third applicant**" or "**Snyman**".

15 The third applicant is a permanent resident of the first respondent municipality.

16 As will be shown later in this affidavit, the third applicant, his family, business and employees are directly affected by the governmental failures of the first respondent. The third applicant has a material and direct interest in the outcome of the litigation and the relief sought. A confirmatory affidavit for the third applicant will be attached to this affidavit.

The respondents:

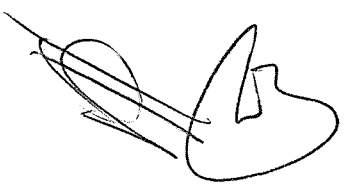
17 The first respondent is the **DITSOBOTLA LOCAL MUNICIPALITY**, a municipality established in terms of the Local Government: Municipal Structures Act, Act 117 of 1998 (the "**Structures Act**"), read with section 155 of the Constitution of the Republic of South Africa, 1996 (the "**Constitution**"). I shall refer to the aforesaid respondent herein as either "**the municipality**" or simply

"**Ditsobotla**". Ditsobotla has its address and offices at Civic Centre, Corner Nelson Mandela and Transvaal streets, Lichtenburg, North West Province.

18 The second respondent is the **MUNICIPAL MANAGER**, alternatively the **ACTING MUNICIPAL MANAGER** of the municipality with offices at Civic Centre, Corner Nelson Mandela and Transvaal streets, Lichtenburg, North West Province.

19 The third respondent is the **PREMIER OF THE NORTH WEST PROVINCE** cited herein in his nominative capacity. According to the official website of the North West provincial government, the current incumbent in the aforesaid position is Mr Bushy Kaobitsa Maape. I shall refer to the Premier of the North West Province herein as "**the Premier**". The Premier is the head of the provincial executive, and the head of the executive council of the North West Province. The Premier has offices situated at Garona Building, Second Floor, East Wing, Corner James Moroka and University Drive, Mmabatho, North West Province.

20 The fourth respondent is the **PROVINCIAL EXECUTIVE OF THE NORTH WEST PROVINCE**, with offices situated at Garona Building, Second Floor, East Wing, Corner James Moroka and University Drive, Mmabatho, North West Province. Whilst I am advised that the citation of the Premier as the head of the provincial executive of the North West Province is the correct respondent to cite in his representative capacity as the official responsible for the aforesaid provincial executive, the Premier has taken a point in the first application (referred to more fully later in this affidavit) that the failure to join the "*provincial executive council*" constitutes a non-joinder. Whilst I am advised that such point is without merit, a technical and dilatory stratagem, solely in order to avoid any technical delays in

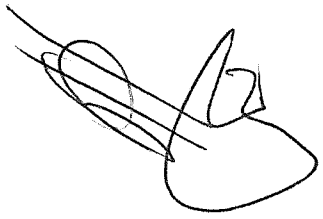


this matter I have cited the Provincial Executive of the North West province herein.

21 The fifth respondent is the **MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS** cited herein in her nominative capacity. According to the official website of the North West provincial government, the current incumbent in the aforesaid position is Ms Lena Miga. I shall refer to the aforesaid respondent as "**the COGTA MEC**". The COGTA MEC has offices situated at Garona Building, Second Floor, East Wing, Corner James Moroka and University Drive, Mmabatho, North West Province.

22 The sixth respondent is the **MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE** cited herein in her nominative capacity. According to the official website of the North West provincial government, the current incumbent in the aforesaid position is Ms Motlalepula Rosho. I shall refer to the aforesaid respondent as "**the Finance MEC**". The Finance MEC has offices situated at Garona Building, Second Floor, East Wing, Corner James Moroka and University Drive, Mmabatho, North West Province.

23 The seventh respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**, Mr Matamela Cyril Ramaphosa, cited herein in his nominative capacity. I shall refer to the aforesaid respondent as "**the President**". The President is the head of the National Executive. Section 85(1) of the Constitution vests the executive authority of the Republic of South Africa in the President. The president has offices situated at the Union Buildings, Government Avenue, Pretoria, Gauteng.



24 The eighth respondent is the **MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**, Ms Nkosazana Clarice Dlamini-Zuma, cited herein in her nominative capacity. I shall refer to the aforesaid respondent as "**the COGTA Minister**". The COGTA Minister is the head of the National Department of Cooperative Governance and Traditional Affairs, with offices situated at 87 Hamilton Street, Arcadia, Pretoria, Gauteng Province.

25 The ninth respondent is the **MINISTER: NATIONAL DEPARTMENT OF FINANCE**, Mr Enoch Godongwana, cited herein in his nominative capacity. I shall refer to the aforesaid respondent as "**the Finance Minister**". The Finance Minister is the head of the National Department of Finance and National Treasury, with offices situated at 40 Church Square, Old Reserve Bank Building, Second Floor, Pretoria, Gauteng Province.

26 The tenth respondent is the **MINISTER: WATER AND SANITATION**, Mr Senzo Mchunu, cited herein in his nominative capacity. I shall refer to the aforesaid respondent as "**the Water Minister**". The Water Minister is the head of the National Department of Water and Sanitation, with offices situated at 185 Francis Baard street, Pretoria, Gauteng Province.

27 The eleventh respondent is the **NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY** a district municipality established in terms of the Local Government: Municipal Structures Act, Act 117 of 1998 (the "**Structures Act**"), read with section 155 of the Constitution of the Republic of South Africa, 1996 (the "**Constitution**"). I shall refer to the aforesaid respondent herein as either "**the district municipality**" or simply "**Ngaka**". The district municipality has its

address and offices at corner of Carrington Street and 1st Avenue, Industrial Site, Mahikeng.

28 The twelfth respondent is **ESKOM SOC LTD**, a state-owned company incorporated in accordance with the relevant laws of the Republic of South Africa with registered address at Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg, Gauteng. I shall refer to the aforesaid respondent as "**Eskom**".

29 The thirteenth respondent is the **MAGALIES WATER BOARD**, a state-owned entity and Water Board established in terms of section 29 of the Water Services Act, Act 108 of 1997, with offices situated at 38 Heystek Street, Rustenburg, North West Province. I shall refer to the aforesaid respondent as "**Magalies Water**".

30 The fourteenth respondent is the appointed **ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY**, an appointment ostensibly having been made in terms of section 139(1), alternatively section 139(5) of the Constitution in respect of the Ditsobotla Local Municipality. The applicants have no further information regarding the appointment of the administrator, whose full and further information is unknown to the applicants at this stage, and have cited the administrator based on the recent allegation of the state respondents that such an administrator has been appointed. The administrator is deemed to have offices at the municipal offices of the first respondent at Civic Centre, Corner Nelson Mandela and Transvaal streets, Lichtenburg, North West Province. I shall refer to the aforesaid respondent as the "**administrator**".

31 Eskom and Magalies Water are joined because of their potential interest in the outcome of this application. No cost order is sought against the aforesaid respondents unless any one of them opposes the present application.

32 A copy of these papers will also be served on the State Attorney Mmbatho and the State Attorney Pretoria.

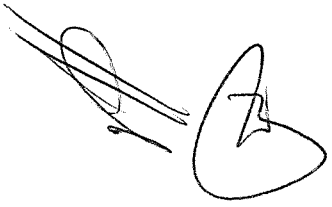
33 Due to the urgency of this application, the applicants will in addition to any physical service attempted, seek service of the application via e-mail to the known email addresses of the respondents. Copies will also be served via e-mail to the legal representatives of those respondents in this application who are also respondents in the application issued in this Honourable Court under case number M311/2021. The applicants will file the necessary service affidavits as soon as possible.

LOCUS STANDI OF FIRST AND SECOND APPLICANTS

34 Sakeliga and the CGGSJ:

34.1 Bring this application by virtue of section 38 (a) of the Constitution, acting in their own interest in accordance with their respective objectives directed at protection of a constitutional order, constitutional rights, and the rule of law.

34.2 Also bring the application in the interest of a group or class of persons in terms of section 38(c) of the Constitution, specifically their respective supporters and members residing in or conducting business within Ditsobotla.



34.3 Furthermore, also make this application in the public interest in terms of section 38 (d) of the Constitution.

PURPOSE OF THE APPLICATION

35 This is an urgent application in which the applicants seek an urgent and effective interim remedy in respect of what is currently a serious constitutional crisis in the municipality of Ditsobotla.

36 At date of deposing to this affidavit:

36.1 The offices of the municipality are locked and closed.

36.2 Municipal employees have not been fully paid and refuse to work due to non-payment of salaries end of August 2022 and end of September 2022.

36.3 There is no individual (not to speak of any leadership) in control of the municipality. It is a riderless municipality due to reasons which will be explained below.

36.4 There is a vacuum in respect of any person who is responsible for overseeing and implementing the provision of basic municipal services.

36.5 Anarchy reigns in the municipal area of Ditsobotla, and the provision of the most basic municipal services has ground to a halt.

36.6 There has been a complete collapse of the municipality, with devastating consequences to the community of the municipality.

37 As a result of the aforesaid, and the further facts which I address later in this affidavit, the community of the municipality are not receiving basic municipal

services, namely such municipal services that are necessary to ensure an acceptable and reasonable quality of life and which, if not provided, endanger the economic viability of the community. The failure is also a serious public health, safety and environmental concern.

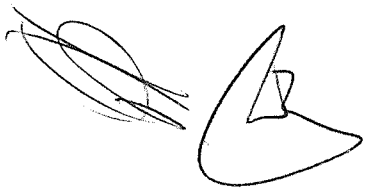
38 The extent of the constitutional crisis is set out below, read together with the supporting affidavits that are attached to this affidavit. The matter is of extreme urgency, and it is imperative that the state be directed to remedy the serious breaches of its constitutional duties effectively.

39 As a result of the financial and constitutional crisis, the following essential municipal services, amongst other essential services, have currently ground to a halt:

39.1 The towns of Lichtenburg and Coligny are receiving little to no water due to water not being pumped and reservoirs running dry.

39.2 There are no municipal staff available to attend to breakdowns in the water and electricity reticulation networks. Many residents have been without water and/or electricity due to breakdowns in the network for weeks.

39.3 The general failure in the supply of water to the Lichtenburg and Coligny areas is of even greater concern. Lichtenburg and Coligny receive almost 99% of all their water from boreholes situated on municipal grounds and concession areas. For Ditsobotla to have water, the municipal pumps must keep running. Currently, the lower-lying areas of town receive about an hour of low pressure and limited water in the afternoons. However,



the supply is irregular and has become even more irregular over the last few weeks. There are further large sections of the community that do not have direct access to any water at all.

39.4 Large portions of Lichtenburg and Coligny are without any municipal water. Some areas in the two towns have been without any water for almost 5 weeks. The applicants attach a diagram as annexure **CC4** showing the general areas that have been without any water for extended periods of time:

39.4.1 Area A (general approximated area between markers A1, A2, A3 and A4) –

(a) This area is the Bhoikutso township in Lichtenburg, which has been without water since approximately 22 September 2022.

(b) Despite taps being installed close to and in-between dwellings, the community has seen the return of a terrible situation where small children have to fetch water over long distances of kilometres from boreholes and the few working taps in the area. Community members from Lichtenburg also assist with trucking in water from farms and other areas with private boreholes. The tragedy is exacerbated by the fact that whilst there are taps near dwellings such taps are without water.

(c) Mr Chris Breedt, a businessman from Lichtenburg who is also the current chairman of the Lichtenburg Chamber of

Commerce, has confirmed that many people in the area who cannot carry water to their residences are required to purchase water from other members of the community who have started selling water sourced from nearby farms or boreholes.

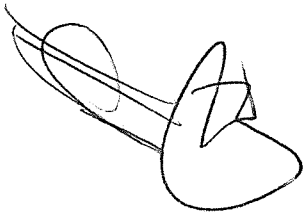
39.4.2 Area B (general approximated area between markers B1, B2, B3 and B4) and Area C (general approximated area between markers C1, C2, C3 and C4) –

(a) The areas represent two areas in the town of Lichtenburg that have received little to no water since approximately 30 August 2022.

(b) These areas are a mix of residential and commercial properties.

(c) The commercial properties include some of the bigger businesses in the town, such as Chick Man Hyper, OK Foods Lichtenburg, Superspar and NWK Lichtenburg. It also serves many of the town's fast food, restaurant, entertainment, and accommodation areas.

(d) The Lichtenburg Technical College, Lichtenburg Primary School and the Hoërskool Lichtenburg are also situated in Area B. The rights of children and learners are directly and severely impacted by the situation.



(e) Areas B and C are required to deal with high volumes of people every day. The lack of municipal water affects these businesses' ability to manage hygiene and provide bathroom facilities to customers.

(f) Mr Breedt, for instance, owns the *Active Extreme Fitness* centre in the area. His business requires at least 2000 litres of water a day to maintain basic equipment hygiene and provide customers with water. He is required to collect water from family members in town who have access to a borehole in order to continue business operations. This has become an expensive and time-consuming daily activity. Mr Breedt has reported that his operation can no longer provide showering facilities to athletes.

(g) OK Food Lichtenburg has been without water since 6 September 2022. The business has installed water storage systems on the property, but the water requirements of the store force it to refill tanks three to four times a day. In order to remain profitable, the store has had to appoint drivers, who travel up to 80km per trip, to source and collect water from surrounding farms. A supporting affidavit by Mr Leon Seindis, the owner of the store, will be attached hereto.

(h) Even consulting business are affected. Mrs Susara Johanna Fransiena Pienaar, an employee of JJ van den Berg Administrators, has confirmed that her place of employment



has been without water from approximately 6 September 2022. They also have to rely on water tanks and self-sourced water in order to continue business operations. A supporting affidavit by Ms Pienaar will also be attached.

(i) I also attach as annexure **CC5**, photographs showing the extensive water storage systems that residents, educational institutions such as the Laerskool Lichtenburg and businesses such as Chick Man Hyper had to install in order to continue its operations.

39.4.3 Area D (general approximated area between markers D1, D2, D3 and D4)–

(a) The area represents a large portion of the town of Coligny which has also been without water.

(b) Most of the affected properties that are sitting without water are residential properties. The area includes a large informal settlement that is without any water.

(c) I attach hereto photographs taken between 26 September 2022 – 3 October 2022 marked **CC6**.

39.5 Photographs taken on 3 October 2022 at 17h00 by Mr Breedt, show that the Lichtenburg reservoir supply levels stand at less than 25% capacity. I refer to the photographs attached and marked **CC7**. Absent urgent intervention, the community will continue to suffer a lack of sufficient water, and might even face dry town reservoirs.

39.6 There is no refuse collection in any of the two affected towns. Residents are required to dispose of their own residential and commercial waste (at an additional cost). Entrepreneurial minded residents have been offering waste removal services, but these services come at a cost and the staff do not have the necessary training and equipment to effectively manage all of the waste generated by Lichtenburg and Coligny.

39.7 Unfortunately, due to a lack of supervision and vehicles capable of accessing the municipal refuse dump sites, many people who are unable to traverse the entrance of the site, have started dumping refuse at the dump site entrance, making it more and more problematic to properly dispose of waste due to the build up at the gate. I attach hereto a photograph taken by Mr Breedt on 26 September 2022 as annexure **CC8.** Also included is a photo of sewage build up outside of the Lichtenburg sewage treatment plants. I also attach hereto, as annexure **CC9,** photographs taken on 4 October 2022 by Mrs Vera Pietersen, showing illegal dumpsites being created next to public roads.

39.8 Sewage is becoming an increasing health risk in both Lichtenburg and Coligny. There is no one to clear blocked sewage pipes, resulting in sewage spilling into and onto the streets. This is especially problematic in Coligny, where residents, unable to clear large municipal sewage lines without proper tooling, have started pooling money in order to carry the costs of suction vehicles to clear sewage and grey water build up behind major blockages. Because the community is unable to clear major blockages, the clearing of backed-up sewage has become a full-time job

in Coligny, with residents managing sewage removal on rotation. Unfortunately, large portions of Coligny are unable to organise and pay for such private systems.

39.9 Businesses and residents in Lichtenburg have also been struggling with sewage, even before the closure of municipal offices. Businesses for instance must choose between clearing their own sewage or paying an additional 'fee' (bribe) to municipal employees. If a bribe is not paid, municipal employees refuse to assist the public. I refer to the affidavit of Mr Seindis.

39.10 The employees of the municipality have not been paid their salaries. As a result, the employees of the municipality are not attending to the provision of basic municipal services. Worse still, certain of such employees have organised themselves into vigilante units, apparently terminating the power of community members and businesses and thereafter demanding cash payments to reconnect such power. It is not an exaggeration to describe the situation in Lichtenburg and Coligny as anarchy. I attach in support hereof an article published in the Beeld of 23 September 2022 as annexure **CC10**. I have myself also been in contact with municipal employees, who out of fear for victimisation are not willing to provide affidavits, who have confirmed to me that they have not been paid salaries at the end of August 2022 and again at the end of September 2022.

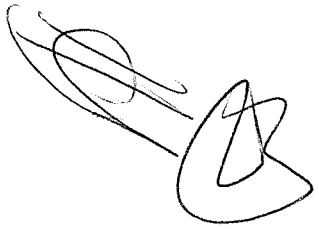
39.11 Ditsobotla's debt to Eskom has continued to spiral and has grown to almost R1 billion. I attach hereto a copy of the most recent Eskom

account I could find as annexure **CC11**. I also attach hereto as annexure **CC12** an Eskom notice dated 4 September 2022, in which the power supplier again threatens to terminate the supply of electricity to Ditsobotla due to the non-payment of accounts.

39.12 The closing of the administrative offices in Ditsobotla will only further hamper the municipality's inability to collect rates and taxes. There is no one currently available to issue and collect invoices. There is no one to pay Eskom, nor any of the other service providers and creditors of the municipality.

39.13 There is general decay in the maintaining of infrastructure. The closing of municipal offices has resulted in a total collapse in maintenance services. There is a serious risk of unattended manholes and other infrastructure causing real harm to the public, and to the safety of the community.

39.14 Dr Gerrie van den Berg, a general medical practitioner in Lichtenburg, has also informed me that his practice has experienced a sharp increase in gastroenteritis, diarrhoea and other stomach-related conditions. He is of the opinion that the poor quality of water that people are sourcing and the general decline in hygiene in Ditsobotla is a direct cause of the increase in stomach related illness in the town. The health of the community has been impacted due to the crisis and is under threat. He has also raised concerns regarding the risk of more serious diseases developing if water and sanitation services are not restored. A confirmatory affidavit will be attached.



39.15 Further supporting affidavits of residents in Ditsobotla will be provided to explain the dire position that the residents and business find themselves in.

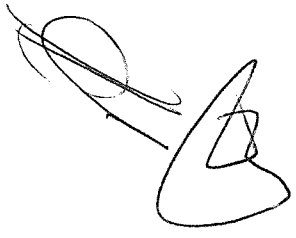
40 The complete collapse of the municipality and the complete failure to provide any basic municipal services is endangering public health, safety, and the environment. It is also destroying a local economy that has already seen large businesses fleeing to more sustainable areas. The situation is dire.

41 I respectfully state that the firm hand of the law is urgently necessary to address the aforesaid which has been caused by government's non-compliance with constitutional standards due to inattentiveness, incompetence, and intransigence. The urgent, interim remedial measures sought in this application are aimed at addressing and remedying institutional dysfunction that threatens and has impaired rights at a systemic and basic level and continues to do so on a daily basis to the severe and extreme prejudice of the community.

42 The applicants seek an order that is just and equitable, on an urgent basis, in order to afford its members and the community of the municipality a practical and effective remedy.

43 The current state of affairs has a direct and seriously prejudicial impact on every citizen that resides within the jurisdictional area of the municipality.

44 In addition to the serious impact on the basic rights of the third applicant and the communities and people within the municipality, including the supporters of the first and second applicants, the current collapse further seriously infringes on the



right of the first applicant's supporters who conduct business within the jurisdictional area of the municipality:

44.1 to be productive members of the community within which they reside;

44.2 to conduct business;

44.3 to be economically sustainable and profitable;

44.4 to offer continued and sustainable employment to other members of their community;

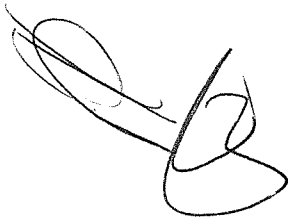
44.5 to participate effectively in economic and social activities within the community; and

44.6 to contribute to the growth and well-being of the communities as a whole, and maintain a stable income for their businesses, and employees, and this affects families in particular.

45 The supporting affidavits that will be attached hereto confirm the aforesaid facts. The situation currently is that it is extremely difficult to conduct normal and sustainable business within the jurisdictional area of the municipality without basic municipal services.

46 Based on the facts set out in this affidavit, the applicants seek an urgent remedy in respect of the current constitutional crisis as set out in these papers. I do not repeat the relief sought in the notice of motion herein in order to avoid burdening these papers, and I refer the court to the notice of motion prefixed hereto.

47 As is apparent from the notice of motion, the applicants seek relief in two parts:



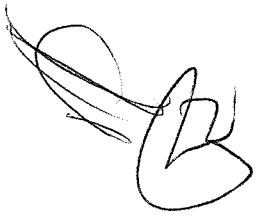
47.1 In **Part A**, the applicants seek extremely urgent relief in order to restore water to the community of Ditsobotla. I respectfully state that the current deprivation of the community and people of Ditsobotla of water is an issue that requires very urgent intervention which cannot await the hearing of Part B of this application. Further facts are set out in the body of this affidavit in support of the extremely urgent relief sought in Part A.

47.2 In **Part B**, the applicants seek an urgent remedy to the remainder of the issues arising from the collapse of local government, the financial crisis in Ditsobotla, and the serious and persistent material breaches of the obligations of Ditsobotla to provide basic services and to meet its financial commitments in Ditsobotla. Local government has entirely collapsed, and Provincial government has not and cannot exercise the powers and functions it has assumed. Urgent intervention is desperately needed but also Constitutionally required.

LEGISLATION RELEVANT TO THE APPLICATION:

48 In order to assist the court in the determination of a just and equitable remedy in this matter, and in order to provide legal context to the relief sought, I set out certain provisions of legislation which are relevant to this application. The applicants shall refer the court to further law and authority at the hearing of the application.

49 It is trite that the Constitution imposes various obligations on all branches of government. The obligations imposed by the Constitution must be fulfilled and any law or conduct inconsistent with it is invalid. (Section 2 of the Constitution)



50 While section 40 of the Constitution vests governance of the Republic in the three distinctive, interdependent, and interrelated national, provincial, and local spheres, section 41 requires all spheres of government and all organs of state *inter alia* to:

50.1 secure the well-being of the people of the Republic; (Section 41(1)(b) of the Constitution)

50.2 provide effective, transparent, accountable and coherent government for the Republic as a whole; (Section 41(1)(c) of the Constitution)

50.3 be loyal to the Constitution, the Republic, and its people; (Section 41(1)(d) of the Constitution)

50.4 respect the constitutional status, institutions, powers, and functions of government in the other spheres. (Section 41(1)(e) of the Constitution)

51 Section 152(1) of the Constitution provides for the following objects of local government, as a sphere of government:

51.1 to provide democratic and accountable government for local communities; (Section 152(1)(a) of the Constitution)

51.2 to ensure the provision of services to communities in a sustainable manner; (Section 152(1)(b) of the Constitution)

51.3 to promote social and economic development; (Section 152(1)(c) of the Constitution)

51.4 to promote a safe and healthy environment; (Section 152(1)(d) of the Constitution) and

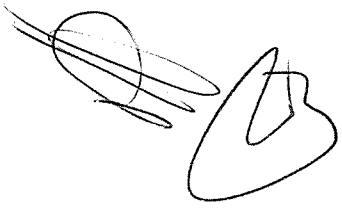
51.5 to encourage the involvement of communities and community organisations in the matters of local government. (Section 152(1)(e) of the Constitution)

52 Section 152(2) of the Constitution requires a municipality to strive for the achievement of these objects.

53 Section 73 of the Systems Act requires, in peremptory terms, a municipality to give effect to the provisions of the Constitution and: to give priority to the basic needs of the local community; promote the development of the local community; and ensure that all members of the local community have access to at least the minimum level of basic municipal services.

54 The term "basic municipal service" is defined in the Local Government: Municipal Finance Management Act, Act 56 of 2003 (the "**MFMA**") as follows: "*means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment*".

55 Section 135 of the MFMA requires in peremptory terms that: "*A municipality must meet its financial commitments.*" Section 65(2) of the MFMA requires the municipality to make payment of all money owing by it within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure.



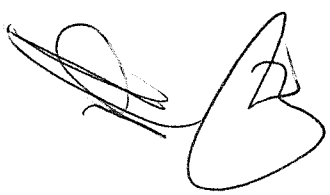
56 Section 154 of the Constitution requires the provincial and national spheres of government to support and strengthen the capacity of municipalities to manage their affairs, exercise their powers and perform their functions.

57 Section 155(6) of the Constitution, read together with section 105 of the Systems Act, empowers the COGTA MEC to monitor municipalities in her province with a view to assessing the support needed to strengthen the capacity to manage their own affairs.

58 In the context of stopping funds to municipalities, section 38(3) of the MFMA provides that: "*If the stopping of funds ... affects the provision of basic municipal services in the municipality, the provincial executive must monitor the continuation of those services. Section 139 of the Constitution applies if the municipality cannot or does not fulfil its obligations with regard to the provision of those services.*"

59 Within the context of the aforesaid provisions, section 139 of the Constitution permits and requires provincial governments to supervise the affairs of local governments and to intervene when things go awry. A municipality has an obligation to provide service delivery in the form of access to basic services and a failure to provide basic municipal services warrants an intervention. Where the municipal council has failed to deliver basic services, an appropriate step could be to assume responsibility to ensure that the minimum standards for the rendering of the services are met.

60 The Constitution thereby provides that provincial governments must not only support but also monitor municipalities and see to the effective performance of



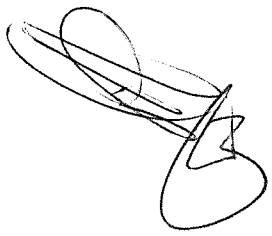
their functions. A provincial executive is fully entitled, if not obliged, to ensure that the Constitution and applicable legislation are adhered to by municipalities.

61 To this end section 139(1) provides: (my emphasis)

> *When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive* ***may*** *intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—*
>
> *(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;*
>
> *(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to —*
>
> *(i) maintain essential national standards or meet established minimum standards for the rendering of a service;*
>
> *(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or*
>
> *(iii) maintain economic unity; or*
>
> *(c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.*

62 Section 139(1) of the Constitution creates a mechanism of intervention by the provincial executive. Section 139(1) of the Constitution confers a power coupled with a duty on the part of the provincial government. The provincial government has a constitutional duty to intervene where a municipality cannot, or does not, fulfil its executive obligations.

63 Section 139(5) of the Constitution provides: (my emphasis)



If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive ***must***—

(a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which—

(i) is to be prepared in accordance with national legislation; and

(ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and

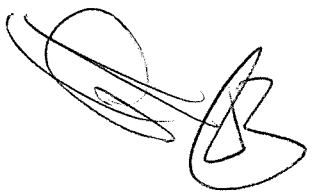
(b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—

(i) appoint an administrator until a newly elected Municipal Council has been declared elected; and

(ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or

(c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.

64 The peremptory language of section 139(5) therefore creates a mechanism of mandatory intervention. Where there is a financial crisis in the municipality, the provincial executives' recourse is in section 139(5) and not section 139(1) of the Constitution.



65 Where the provincial executive fails in its duty to exercise the powers and functions required by section 139(5) of the Constitution either adequately or at all, section 139(7) requires in mandatory terms that the national executive must intervene. Section 139(7) provides that: (my emphasis)

> *If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive* ***must intervene*** *in terms of subsection (4) or (5) in the stead of the relevant provincial executive.*

66 Section 139(8) provides that:

> *National legislation may regulate the implementation of this section, including the processes established by this section.*

67 The national legislation which regulates the implementation of section 139 of the Constitution is the MFMA.

68 Section 139(1) of the MFMA provides that: (my emphasis)

> *If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its financial obligations or financial commitments, the provincial executive* ***must*** *promptly-*
>
> *(a) request the Municipal Financial Recovery Service-*
>
> *(i) to determine the reasons for the crisis in its financial affairs;*
>
> *(ii) to assess the municipality's financial State;*
>
> *(iii) to prepare an appropriate recovery plan for the municipality:*
>
> *(iv) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan: and*
>
> *(v) to submit to the MEC for finance in the province-*

(aa) the determination and assessment referred to in subparagraphs (i) and (ii) as a matter of urgency; and

(bb) the recovery plan and recommendations referred to in subparagraphs (iii) and (iv) within a period, not to exceed 90 days, determined by the MEC for finance: and

(b) consult the mayor of the municipality to obtain the municipality's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan."

69 The *Municipal Financial Recovery Service* referred to in section 139(1)(a) of the MFMA is defined in section 1 of the MFMA as the body established by section 157 of the MFMA, and functioning, in terms of section 157(2), within the National Treasury.

70 Section 139(3) of the MFMA provides that:

An intervention referred to in subsection (1) supersedes any discretionary provincial intervention referred to in section 137, provided that any financial recovery plan prepared for the discretionary intervention must continue until replaced by a recovery plan for the mandatory intervention.

RELEVANT BACKGROUND FACTS:

The first application:

71 As a result of the collapse of governance in the Ditsobotla municipality (as well as another municipality in the North West Province, being the Naledi Local Municipality ("**Naledi**")), Sakeliga launched an application out of this court under case number M311/2021 during or about May 2021. I shall refer to the aforesaid application under case number M311/2021 as the "**first application**". I attach a copy of the amended notice of motion relevant to the first application hereto

marked annexure **CC13**. Relief to the following effect is sought in the first application:

71.1 That Ditsobotla and Naledi be found to be in serious and persistent material breach of their constitutional obligations to provide basic services and to meet their financial commitments. (Prayer 1)

71.2 The Premier and the MECs' failure to implement mandatory interventions in respect of Ditsobotla and Naledi be found to be inconsistent with the Constitution. (Prayer 2)

71.3 The Premier, representing the provincial executive, be ordered to implement mandatory interventions in both Ditsobotla and Naledi forthwith. (Prayer 3 read with prayer 4)

71.4 The Premier, in the same capacity, be ordered, in the event that the municipality, Naledi, their respective administrations or municipal councils resist the intervention aforesaid, to dissolve the resistant municipality's council and appoint administrators to take over control of the affected municipality. (Prayer 4)

71.5 The COGTA Minister and Finance Minister be ordered to:

71.5.1 determine the reasons for the crisis in the financial affairs of each affected municipality; (Prayer 5.1)

71.5.2 assess the financial status of each affected municipality; (Prayer 5.2)



71.5.3 instruct the Municipal Finance Recovery Service to prepare recovery plans for each affected municipality; (Prayer 5.3)

71.5.4 recommend appropriate changes to the budget and revenue raising measures of each affected municipality that will give effect to the recovery plan developed for the affected municipality; (Prayer 5.4)

71.5.5 submit the determination, assessment, recovery plan and recommendations referred to *supra* in respect of each affected municipality to the Finance MEC. (Prayer 5.5)

71.6 The COGTA MEC be ordered to prepare and file a report every 2 calendar months / 60 days in respect of each affected municipality, providing updates on the implementation on the recovery plans for each affected municipality. (Prayer 6)

71.7 The MECS, the COGTA Minister and the Finance Minister be ordered to provide Sakeliga with copies of all reports and recovery plans prepared in respect of Ditsobotla and Naledi. (Prayer 7)

71.8 Pending the proper implementation of a financial recovery plan, a Special Master be appointed to each of the affected municipalities with powers, *inter alia*, to: collect municipal income; ringfence municipal income; and pay municipal service providers on a monthly basis. (Prayers 8 and 9)

71.9 The Special Master appointed to each of the affected municipalities prepare and file a report on each affected municipality's compliance with

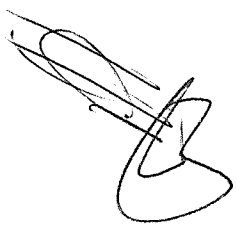
and enforcement of section 32 of the MFMA for the financial years 2017 to 2022. (Prayer 10)

71.10 The Special Master appointed to each of the affected municipalities prepare and file a report in respect of the accounting systems, practices and failures of each affected municipality, insofar as it relates to the prevention, management and recovery of unauthorised, irregular or fruitless and wasteful expenditure by the affected municipality concerned and the affected municipality's failure to address the issues raised by the Auditor-General as required by section 131(1) of the MFMA; (Prayer 11)

71.11 The respondents be ordered to co-operate with the Special Master appointed to each of the affected municipalities in the execution of that Special Master's duties in terms of the order. (Prayer 12)

71.12 The Court determine the remuneration of the Special Master appointed to each of the affected municipalities and to give any further directions as to the execution of that Special Master's duties in terms of the order as the Court may deem necessary. (Prayer 13)

71.13 Should the Court find that any of the conduct of Ditsobotla and/or Naledi is inconsistent with the Constitution, (as sought in prayer 2 of the amended notice of motion), but that the further relief sought by Sakeliga is inappropriate in the circumstances, that the Court then make an order which is just and equitable under section 172 of the Constitution and which will have the remedial effect of alleviating or correcting the constitutional infringements complained of. (Prayer 15)



72 The first application has been opposed by various respondents and is currently pending. As a result of outstanding interlocutory applications and in order to ensure finalisation, the case has been referred to case management. A case management meeting with the presiding judge occurred on 7 September 2022, and a further case management hearing has been scheduled for 17 November 2022 in order to dispose of interlocutory applications. The matter has been enrolled for hearing on 23 and 24 March 2023. I attach hereto as annexure **CC14** a copy of the case management order of 7 September 2022.

Facts in the first application:

73 The facts set out below have been established in the first application in relation to the municipality, and the further respondents in the first application. Such facts are either common cause or not denied by the state respondents in the first application. It is important to note that whilst the Ditsobotla municipality had opposed the application, it failed to deliver any answering affidavits. I deal with certain of the common cause facts that are relevant to the Ditsobotla municipality below.

74 The COGTA MEC prepared and signed a report titled "*REPORT ON THE STATE OF LOCAL GOVERNMENT IN THE NORTH WEST PROVINCE*", which is dated 24 August 2020. I attach a copy thereof hereto marked **CC15** (the "**COGTA report**").

75 The COGTA report confirms that Ditsobotla is, because of financial crisis, in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments.

76 In addition to the COGTA report, the Finance Minister, through National Treasury, periodically publishes "*National Treasury: The state of local government finances and the financial management report*", which details the financial health of South Africa's municipalities. As at the date of the founding affidavit in the first application, the 2019 Treasury report was the most recently available Treasury report, a copy of the relevant extracts of which I attach hereto marked **CC16** (the "**Treasury report**").

77 The annual Treasury reports published between 2009 and 2019 reveal that Ditsobotla has been identified as a municipality in financial distress since 2013 and has been under some form of intervention in terms of section 139 of the Constitution in 2013, 2014, 2016 and 2017. Until Friday 30 September 2022, I was under the impression that all previous interventions in respect of Ditsobotla were discretionary interventions and not mandatory interventions. All interventions have failed and proven entirely ineffective.

78 In respect of Ditsobotla, the COGTA report highlights the following concerns:

78.1 The appointment of the Municipal Manager and other Senior Managers had controversies and irregularities; (Paragraph 5.1.14(a) of the COGTA report)

78.2 Reference is made to an "Administrator", suggesting Ditsobotla has been under prior intervention / administration; (Paragraph 5.1.14(a) of the COGTA report)

78.3 Municipal employees, predominantly SAMWU shop stewards, have been dismissed without disciplinary processes, creating tension between the

Municipality and the Local Labour Forum; (Paragraph 5.1.14(a) of the COGTA report)

78.4 Only two of six senior management positions are filled, being the Municipal Manager and Chief Financial Officer; (Paragraph 5.1.14(a) of the COGTA report)

78.5 The work of the Municipal Public Accounts Committee ("**MPAC**") is not properly resourced and the committees' reports are not processed by the Municipal Council; (Paragraph 5.1.14(a) of the COGTA report)

78.6 Serious and damning allegations exist against key office bearers; (Paragraph 5.1.14(a) of the COGTA report)

78.7 Ditsobotla experiences community protests which result in closure of the Municipal Offices; (Paragraph 5.1.14(a) of the COGTA report)

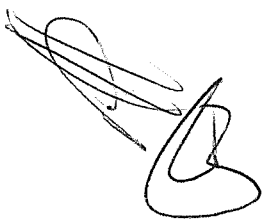
78.8 Employees are on strike in protest against the Municipal Manager; (Paragraph 5.1.14(a) of the COGTA report)

78.9 Ditsobotla's financial position is dire:

78.9.1 The approved budget is not cash-backed; (Paragraph 5.1.14(b) of the COGTA report)

78.9.2 Ditsobotla is "*not financially viable*"; (Paragraph 5.1.14(b) of the COGTA report)

78.9.3 Ditsobotla fails to pay its creditors and fulfil other commitments; (Paragraph 5.1.14(b) of the COGTA report)



78.9.4 There are serious cash flow challenges; (Paragraph 5.1.14(b) of the COGTA report)

78.9.5 There is an ever-increasing creditor balance, in violation of section 65(2)(e) of the MFMA, which requires that "*all money owing by the municipality be paid within 30 days of receiving the relevant invoice or statement*"; (Paragraph 5.1.14(b) of the COGTA report)

78.9.6 Ditsobotla owes Eskom R627,717,201, of which R607,004,585 (97%) is overdue; (Paragraph 5.1.14(b) of the COGTA report)

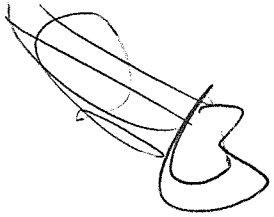
78.9.7 Attorneys have been appointed to conduct a forensic investigation into the loss and embezzlement of integrated national electrification plan ("**INEP**") funds; (Paragraph 5.1.14(b) of the COGTA report)

78.9.8 Supply chain management receives no attention because the position of the supply chain management manager is vacant; (Paragraph 5.1.14(b) of the COGTA report)

78.9.9 Ditsobotla does not run on a proper municipal IT system; (Paragraph 5.1.14(b) of the COGTA report)

78.9.10 Ditsobotla has received three consecutive disclaimer audit opinions for the financial years 2016 / 2017 to 2019 / 2020. (Paragraph 5.1.14(b) of the COGTA report).

78.10 <u>Regarding Ditsobotla's service delivery:</u>



78.10.1 There are generally incidents of non-compliance with service delivery commitments by Ditsobotla; (Paragraph 5.1.14(c) of the COGTA report)

78.10.2 Ditsobotla does not collect refuse; (Paragraph 5.1.14(c) of the COGTA report)

78.10.3 Communities had to dispose of their own refuse which led to violent protests; (Paragraph 5.1.14(c) of the COGTA report)

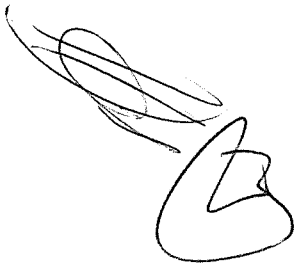
78.10.4 Access roads are not maintained; (Paragraph 5.1.14(c) of the COGTA report)

78.10.5 Internal roads have deteriorated to a point where most tarred roads have informally turned into gravel roads. (Paragraph 5.1.14(c) of the COGTA report)

78.11 At the end of the COGTA report the COGTA MEC makes the following recommendation: "It is recommended that the Provincial Executive Council mandate the MEC of COGTA working with the MEC of PT to develop a municipal recovery programme focusing on ... [Ditsobotla]...". (As far as I am aware, there is no such "municipal recovery programme".)

79 Ditsobotla's annual financial statements demonstrate:

79.1 "*Fruitless and wasteful expenditure*" increased 439% between year-end 2017 and year-end 2019, an increase of R125,338,759 in Rand terms.



79.2 This is part of a significant downward trend, as fruitless and wasteful expenditure had increased by R24,250,084 between year-end 2016 and year-end 2017.

79.3 "*Irregular spending*" increased 738% between year-end 2017 and year-end 2019, an increase on R105,618,899 in Rand terms.

80 A useful summary of the fruitless and wasteful spending; irregular spending; and unauthorised spending on the part of Ditsobotla is contained in paragraph 73.1 of the founding affidavit in the first application (derived from the audited financial statements of Ditsobotla) which I insert herein below:

	Fruitless & Wasteful spending	Irregular spending	Unauthorised	Total
2020	n/a	n/a	n/a	
2019	n/a	R 6 540 112.00	n/a	R 6 540 112.00
2018	R 29 716 991.00	R 67 848 016.00	R 61 958 614.00	R 159 523 621.00
2017	R 35 127 494.00	R 2 076 713.00	R 28 227 765.00	R 65 431 972.00
2016	R 29 515 344.00	R 3 163 057.00	R 60 158 320.00	R 92 836 721.00
2015	R 61 958 614.00	R 28 227 765.00	R 60 158 320.00	R 150 344 699.00
2014	R 60 158 320.00	R 333 671 280.00	R 54 322 626.00	R 448 152 226.00

81 It is clear from the financial track record of Ditsobotla that it does not conduct proper financial management of the municipality. Ditsobotla has failed to provide the Auditor-General with sufficient information to conduct the audit on its financial affairs required by Section 183 of the Constitution and Section 4(1) of the PAA for five of six audit periods between 2014 and 2019.

82 Ditsobotla's audit report for financial year-end 2018, a copy of which I attach hereto marked **CC17** (the "**Auditor-General report**"), evidences the fact of the financial crisis in the municipality and contains the following findings by the Auditor-General:

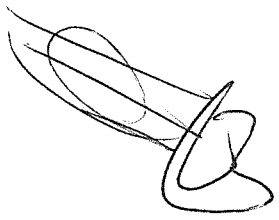
82.1 The Auditor-General could not express an opinion on Ditsobotla's financial statements for the period because of the significance of the matters described as the basis for the disclaimer of opinion section of the report, and the failure by Ditsobotla to provide sufficient appropriate audit evidence to provide a basis for an audit opinion on its financial statements. (Paragraph 2 of the Auditor-General report)

82.2 Adequate management, accounting and information systems were not in place (Paragraph 47 of the Auditor-General report)

82.3 Ditsobotla's financial statements were not prepared by the municipality in accordance with section 122 of the MFMA and included material misstatements which were raised by the auditors but not adequately corrected. (Paragraph 39 of the Auditor-General report)

82.4 Ditsobotla could not provide sufficient appropriate audit evidence in respect of almost every aspect of its: assets, (Paragraph 3 of the Auditor-General report); liabilities, (Paragraph 4 of the Auditor-General report); general expenses; (Paragraph 20 of the Auditor-General report); contractual commitments; (Paragraph 24 of the Auditor-General report); debtor accounts; (Paragraph 5 of the Auditor-General report); accounts receivable; (Paragraph 8-10 of the Auditor-General report) or creditor accounts. (Paragraph 23 of the Auditor-General report)

82.5 Ditsobotla does not have an adequate system to account for its contingent liabilities as required by GRAP 19. (Paragraph 22 of the Auditor-General report)



82.6 Ditsobotla could not provide sufficient appropriate audit evidence for cash and cash equivalents of R43,168,235. (Paragraph 7 of the Auditor-General report)

82.7 Ditsobotla could not provide sufficient appropriate audit evidence regarding revenue from municipal service charges of R329,799,777. (Paragraph 15 of the Auditor-General report)

82.8 Ditsobotla could not provide sufficient appropriate audit evidence regarding revenue from retail water service charges of R64,799,674. (Paragraph 16 of the Auditor-General report)

82.9 Ditsobotla could not provide sufficient appropriate audit evidence for property rates collected of R56,084,797. (Paragraph 18 of the Auditor-General report)

82.10 Ditsobotla could not provide sufficient appropriate audit evidence for general expenses of R101,744,342. (Paragraph 20 of the Auditor-General report)

82.11 Ditsobotla incurred unauthorised expenditure of R38,186,563, although the Auditor-General could not confirm that this was the full extent of unauthorised expenditure because Ditsobotla did not disclose its unauthorised expenditure as required by section 125 of the MFMA. (Paragraph 26 of the Auditor-General report)

82.12 Ditsobotla spent R8,476,149 during the year under review in contravention of the supply chain management requirements but did not

disclose any irregular expenditure as required to do by 125 of the MFMA. (Paragraph 27 of the Auditor-General report)

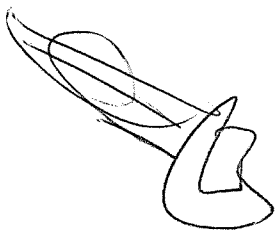
82.13 Ditsobotla made payments of R53,620,717 during the year under review that were regarded as fruitless and wasteful expenditure, however no fruitless and wasteful expenditure was disclosed as required by section 125 of the MFMA. (Paragraph 28 of the Auditor-General report)

82.14 Ditsobotla failed to take reasonable steps to prevent unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure as required by section 62(1)(d) of the MFMA. (Paragraph 48 - 50 of the Auditor-General report)

82.15 Unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure was not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(b) of the MFMA. (Paragraph 51 - 53 of the Auditor-General report)

82.16 Allegations of financial misconduct laid against officials of the municipality were not investigated, as required by section 171(4)(a) of the MFMA. (Paragraph 54 of the Auditor-General report)

83 The lack of proper accounting practices, financial procedures, accounting system and management oversight in themselves reflect a financial crisis in the municipality. It is evident that there are no proper controls in place. The auditor general is, due to a lack of evidence, in no position to check whether the unauthorised, irregular, fruitless and wasteful spending is indeed accurate. Ditsobotla cannot account for millions of Rand's worth of cash and cash



equivalent transactions. Regardless of the repeated audit failures over the years, neither the Provincial Executive nor the National executive have effectively intervened.

84 Due to the collapse of governance, the municipality can no longer effectively:

84.1 maintain the electricity reticulation networks;

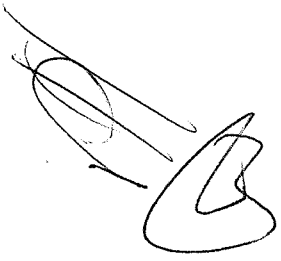
84.2 collect, allocate and account for monies for electricity so distributed;

84.3 settle the Eskom liabilities as they become due and payable (mostly due to collected electricity payments not being ring fenced and used to finance other activities).

85 I pause to point out that Eskom filed its own substantial, explanatory affidavit in the first application supporting the relief sought by Sakeliga and setting out the following facts *inter alia* relevant to Ditsobotla:

85.1 Due to late or no payment on the electricity account, Ditsobotla was charged the following amounts on **interest alone**: R29,919,204.45 in 2017; R52,000,498.16 in 2018; R66,015,949.68 in 2019; R29,278,192.15 in 2020.

85.2 The auditor general has correctly categorised the aforesaid as wasteful expenditure: the misuse of scarce public resources by the municipality is inimical to the principle of legality and the rule of law since the municipality cannot account for how it uses scarce public resources and how it complies with its statutory obligations, including prioritising paying for basic services such as electricity.



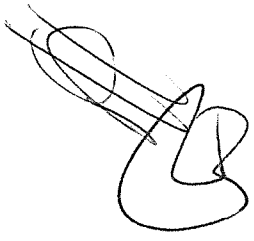
85.3 In terms of an order of this Court dated 14 February 2020, Ditsobotla is required and is ordered to: "*punctually pay [Eskom] for the ongoing monthly supply of electricity to, and use by, its consumers other than the Applicants [to that application]*". The municipality continues to be in breach of the court order, and has "*... consistently demonstrated its contempt, wilful disobedience and defiance of the court order...*".

85.4 Ditsobotla is in breach of the Constitution by failing to "*structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community*" in terms of section 153(a) of the Constitution.

85.5 Eskom requires the assistance of the court as final arbiter to hold the municipality to its Constitutional and statutory obligations and not absolve the delinquent municipalities to escape public scrutiny for how they allocate the resources for basic services like electricity.

85.6 The overwhelming and uncontested evidence is that the municipality continuously collects from the ratepayers, while failing to prioritise the payment of Eskom. The continued default by the municipality prejudices the residents of Ditsobotla who are the ratepayers and Eskom.

85.7 The municipality is in contravention of its licence condition issued by NERSA, and the use of the equitable share by the municipality is unlawful.



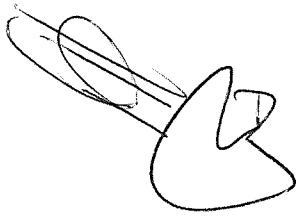
85.8 At the end of July 2021, the electricity debt that Ditsobotla owed to Eskom stood at R696,368,372.35, and as of 17 September 2021 the municipality remained in arrears towards Eskom in the amount of R735,829,062.00.

85.9 In terms of the financial statements attached to the affidavit of Eskom and marked "ESK2", as at 30 June 2019 the municipality's total liabilities exceeded its assets by R947,800,223.00 (in other words, as at that time already, the municipality was insolvent to the extent of almost 1 Billion Rand).

86 In July 2020, Sakeliga's attorneys addressed a request for access to information in terms of PAIA to Ditsobotla, for access to various municipal documents such as the Auditor-General's audit reports, management reports, annual performance reports, annual compliance reports, non-compliance recommendations and various others, all of which related to the municipality. Despite repeated requests and demands, and despite thereafter being ordered and compelled by order of this court to provide the documentation sought in the request for information, Ditsobotla failed to provide the documents requested. The failure and / or refusal by Ditsobotla to provide Sakeliga with standard, statutorily required documentation is further indicative of complete administrative collapse within the municipality.

87 In addition to the above, Sakeliga submitted photographic and further evidence:

87.1 which demonstrates that there has been no improvement in the maintenance of municipal roads and other infrastructure between the COGTA MEC's report, dated 24 August 2020, and 10 March 2021 when the photographs were taken;



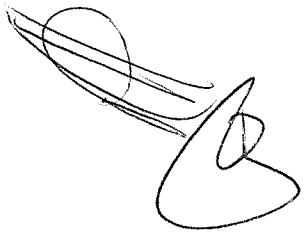
87.2 which demonstrates that service delivery is practically non-existent in the municipality; and

87.3 that businesses in the municipality are failing and either closing or relocating out of the municipality.

88 The municipality fails to settle its outstanding water debts and has millions of Rand's due and owing to the relevant water board.

89 At date of the first application the municipality owed Eskom a sum of R691,783,110.00.

90 As a result of the financial crisis and governance collapse at the municipality, water supply has become irregular and unpredictable and the municipality no longer has the necessary skills and funds to service the water reticulation networks; the municipality no longer maintains the electricity reticulation networks and infrastructure, resulting in regular interruptions in the supply of electricity to the businesses and homes of the community of the municipality; the stormwater network of the municipality has become basically non-existent; the sewerage network is failing resulting in raw sewage spilling into business premises and onto the streets; sewerage treatment plants are not properly maintained and continue to seep raw sewerage into the Harts River which as a consequence provides polluted water to the town of Schweizer-Reneke that falls within the Kgetlengrivier Local Municipality, the municipality no longer possesses the required skills and/or funds to ensure continuous and reliable refuse removal service delivery, resulting in refuse being dumped along the roads of Lichtenburg and dumping sites that are not adequately maintained by the municipality;



Lichtenburg is no longer a desirable place for conducting business resulting in loss of business, job losses and the town's economic lifeblood.

91 The common cause facts in the first application show incontrovertibly that:

91.1 Ditsobotla is experiencing a crisis in its financial affairs and has been in financial distress for years.

91.2 The financial crisis which Ditsobotla is experiencing has resulted in a serious and persistent material breach of both:

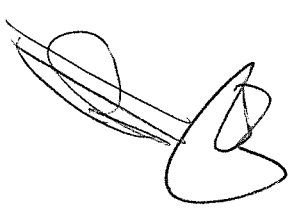
91.2.1 Its obligations to provide basic services; and

91.2.2 Its obligations to meet its financial commitments.

91.3 Mandatory intervention in terms of section 139 of the Constitution is urgently required in respect of the municipality.

92 Based on the common cause facts in the first application, it was mandatory in terms of the Constitution of the Republic for the Provincial executive to intervene. Indeed, one would have expected the Provincial executive to have complied with its Constitutional duty in this regard. This is what the Constitution in peremptory terms requires. Instead, the state respondents to the first application opposed the first application.

93 It is relevant that in the first application, apart from technical points raised, the Finance Minister took a position that appears to support a mandatory intervention. The following was stated under oath on behalf of the Finance Minister (I attach hereto marked **CC18** the extract from the answering affidavit



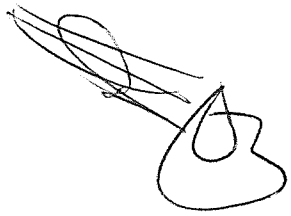
filed on behalf of the Finance Minister which contains the allegations set out below - Finance Minister, answering affidavit, paragraph 22 to 31):

93.1 On 17 May 2021, the Finance MEC submitted a memorandum to the chairperson of the Executive Council (the 'provincial executive' as contemplated in section 139 of the Constitution) regarding the implementation of section 139(5) of the Constitution (mandatory intervention) in respect of 13 municipalities (including the Ditsobotla Local Municipality).

93.2 The municipality (amongst certain other municipalities) was "*... identified as facing* ***severe financial problems requiring the implementation of the mandatory interventions in terms of section 139 (5) of the Constitution****, read together with Chapter 13 of the MFMA.*" (my emphasis)

93.3 In terms of section 136(1) of the MFMA, upon becoming aware that there is a serious financial problem in a municipality, the COGTA MEC is required promptly to follow the steps set out in section 136 of the MFMA, including determining whether the situation justifies or requires a provincial intervention in terms of section 139 of the Constitution.

93.4 In making such determination section 138 of the MFMA (criteria for determining serious financial problems) and section 140 of the MFMA (criteria for determining serious or persistent material breach of financial commitments) are relevant.



93.5 In paragraph 26 to 30 of the answering affidavit filed on behalf of the Finance Minister, the alleged "Steps taken in respect of [the municipality and Naledi]" are set out. In paragraph 31 of the aforesaid answering affidavit the following is stated under oath: (my emphasis)

"31 As this Honourable Court can see from the above, the process takes time, but it is important to note that the process is underway and the National Treasury will be offering support to the province to ensure that the process is achieved and that the municipalities are back on their feet and ready to function at full capacity."

94 With reference to the facts that I address below, and in respect of the statements made under oath on behalf of the finance minister, addressed above, there is one of two possibilities:

94.1 either provincial executive has not taken the steps which are set out in the affidavit filed on behalf of the Finance Minister and such allegations are false; or

94.2 the Provincial Executive cannot and has not exercised the powers and performed the functions referred to in section 139 (5) of the Constitution.

95 The provincial government and executive in the North West province has itself been under continuing administration.

96 All parties to the first application are *ad idem* that Ditsobotla has for years experienced a crisis in its financial affairs, and the municipality continues to experience a serious crisis in its financial affairs, and as a result is in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments. The aforesaid facts are further confirmed in the



documents furnished after the filing of the answering affidavits in the first application. In this regard, shortly after receipt of the answering affidavits, Sakeliga delivered a notice in terms of rule 35(12) of the uniform rules of court where it sought access to documents referred to in the answering affidavits and annexures thereto. In breach of the rules of court, and thereafter having ignored a rule 30A notice, and thereafter in contempt of an order of this court to provide the documentation sought, the respondents furnished two documents namely: a document titled "*REPORT ON RATIO ANALYSIS TO ASSESS THE SERIOUSNESS OF THE STATUS OF MUNICIPAL FINANCE IN RELATION TO THE CRISIS*" (the "**crisis report**") and a document titled "*BUDGET ANALYSIS REPORT MILESTONE 2*" (the "**analysis report**"). I attach a copy of the crisis report hereto marked **CC19** and the analysis report marked **CC20**.

97 The following *inter alia* is relevant in relation to the **crisis report** ("**CC??**" hereto): (my emphasis)

97.1 The content of the crisis report was "*... presented, discussed and **accepted by the Provincial Treasury** ...*" (Crisis report, paragraph 6)

97.2 The crisis report confirms that an "*... assessment of the seriousness of the state of municipal finance in relation to the crisis in Ditsobotla Local Municipality ... was undertaken ...*" (Crisis report, paragraph 1.1)

97.3 The **financial position** of the municipality reflects *inter alia*: *"A **continuous exposure to significant cashflow risk and state of insolvency** ... with low cash reserves and current liabilities in excess of current assets which may eventually result in **liquidation of non-current assets to settle current liabilities** ...*" (Crisis report, paragraph 1.2)

97.4 The **financial performance** of the municipality reflects *inter alia*: (Crisis report, paragraph 1.3)

*"Creditors payment period has been **excessively above the norm for the entire 5 financial years which indicates non-compliance with the MFMA regulations** guiding the payment of creditors which may result in interest being charged by creditors and lawsuits being instituted to the Municipality; resulting in **fruitless and wasteful expenditure which has been noted to be above the norm throughout the five financial years**.*

***Understatement and incorrect disclosure of contracted services** which is a non-compliance with the GRAP standards."*

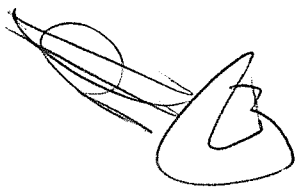
97.5 The budget implementation of the municipality reflects *inter alia*: (Crisis report, paragraph 1.4)

*"Overspending on operational expenditure budget for three of the five financial years ... indication of any effective controls in place... indication of **poor budgeting controls**.*

*In addition, the municipality has a **cumulative unauthorised expenditure of R87 080 043** in 2018/19 which has **not yet been dealt with in accordance with section 32 of the MFMA**."*

97.6 At the conclusion of the executive summary of the crisis report the following is concluded: (Crisis report, paragraph 1.5)

*"Based on the desktop analysis of the financial ratios the indicators have revealed evidence that **the Ditsobotla Municipality is facing significant fiscal and service delivery difficulties, which undermines the effective and efficient performance of its functions and mandate**. More importantly these difficulties are becoming **increasingly severe and unless focused action is undertaken to address the underlying causes, Ditsobotla Municipality will find it increasingly difficult to perform its mandate**."*



97.7 In conclusion the following is stated in the crisis report: (Crisis report, paragraph 5) (my emphasis)

*"From the perspective gained from the **financial and performance analysis Ditsobotla Local Municipality is under serious financial crisis and an intervention is inevitable** to assist the municipality to remain financially sustainable ..."*

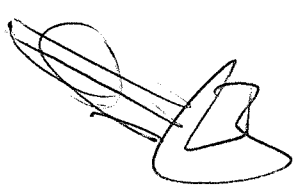
98 Further argument, in so far as may be necessary, shall be advanced with reference the content of the crisis report.

99 The following *inter alia* is relevant in relation to the **analysis report** (**CC20** hereto): (my emphasis)

99.1 The content of the analysis report was "*... presented, discussed and **accepted by the Provincial Treasury** ...*" (Analysis report, paragraph 8)

99.2 It is confirmed that an "*... assessment of the municipality based on Section 139 indicators which shows if a municipality is in financial distress was done and **the municipality triggered S138 and S140 of the MFMA for the years [2015, 2016, 2017, 2018, 2019, 2020]** therefore it is a candidate for intervention.*" (Analysis report, paragraph 1, page 6) (my emphasis)

99.3 Interest on outstanding debtors increased by 522% in 2018/19 and 100% in 2019/20. "*Continuous raising of interest on outstanding debtors is worrying as this is **continuously increasing the debt which the municipality is failing to collect**...*" (Analysis report, page 12, third last bullet point)

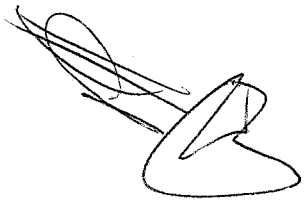


99.4 "*Section 18(1)(a) of the MFMA states that an annual budget may only be funded from realistically anticipated revenues to be collected." (Analysis report, paragraph 5.13, page 15) "The municipality tabled a* ***deficit budget on financial performance*** *in the most recent financial year, which implies that budgeted revenue was exceeded by the budgeted expenditure, this is* ***a clear indication that the budget was unfunded for this year which is a non-compliance with Section 18 of the MFMA.***" (Analysis report, page 17, third bullet point)

99.5 "*... The debtors balance is continuously rising year by year with no expectation of reducing ... 85% of the total debtors' balance is being owed for more than 90 days and it is highly probable that they are not going to be recovered considering the period the money has been owed for.* ***Revenue collection of the municipality requires urgent attention and corrective measures should be implemented...***" (Analysis report, page 23)

99.6 "*The* ***available cash is not sufficient to cover payment plans entered into with Eskom ... Creditors exceeds available cash and investments, meaning the Municipality is unable to service the financial obligations as they are due and payable.***" (Analysis report, page 24)

99.7 "*... the level of achievement of basic services provision is not being completed by the municipality which is an indication that* ***the municipality is not addressing service delivery performance...***" (Analysis report, page 25)



99.8 "*... Failure to provide details of* ***Free Basic Services provided to indigent communities suggests that the Municipality is misappropriating the Equitable Share allocation meant for the intended beneficiaries***." (Analysis report, page 25)

99.9 Under the heading "SECTION 138 INDICATORS" (Analysis report, page 26) the following is stated:

"... the following factors, singly or in combination, may indicate a ***serious financial problem****:*

The ***municipality triggered the following subsections****:*

(a) the ***municipality has failed to make payments as and when due****; which is witnessed by an creditors payment period which are* ***abnormally above the norm of 30 days over the entire 5-year period under review and creditors age analysis with over 350 million rand being owed for more than 90 days at 30 June 2020****.*

...

(d) The municipality had an ***operating deficit in excess of five percent of revenue*** *in the most recent financial year for which financial information is available, as witnessed by a* ***negative net operating surplus margin for the four out of five years since 2014/15 financial year****.*

...

(e) ***Non submission of Annual Financial Statements to Auditor General for auditing within two months after the end of the financial year as required by section 126(1)(a) of the MFMA****. For the past recent financial year Auditor General reported late submission of AFS by the municipality.*

(f) The ***Auditor-General has withheld an opinion or issued a disclaimer*** *due to inadequacies in the financial statements or records of the municipality, or has issued an opinion which identifies a serious*

financial problem in the municipality, as witnessed by the qualified audit opinions in 2015/16 and disclaimer of opinion over 4 years of the 5 years under review.

(h) Current Ratio below the norm over the 5 years is a material existing condition which indicates that the ***municipality is likely to be unable for financial reason to meet its obligations****."*

99.10 Under the heading "*SECTION 140 INDICATORS*" (Analysis report, page 27) the following is stated, *inter alia*:

"In all the years under review, the ***percentage of creditors as a percentage of the budgeted operating expenditure has drastically exceeded 2%*** *which is in* ***contravention of S140(2)(c) therefore the municipality is a material breach of financial commitments and [indeed] a candidate for intervention****."*

99.11 In conclusion the following is stated:

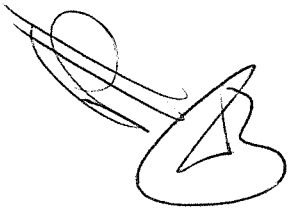
"... the ***municipality triggered both S138 and S140 of the MFMA*** *therefore it is a candidate for intervention.* ***Intervention is inevitable to assist the municipality to remain financially sustainable****." (Analysis report, page 28, paragraph 6)*

100 The following recommendations are made *inter alia*: (Analysis report, page 28, paragraph 7) (my emphasis)

"...

Deterioration of budgeted figures has been witnessed year by year being at its worst in the most recent financial year which calls for urgent attention for intervention, otherwise the municipality will not be able to deliver on its mandate in the foreseeable future *..."*

101 Further argument, in so far as may be necessary, shall be advanced with reference the content of the analysis report.



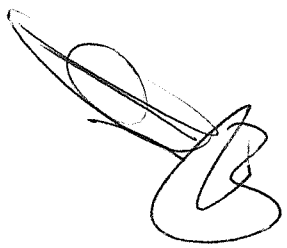
THE CURRENT CONSTITUTIONAL CRISIS AND STEPS TAKEN BY THE APPLICANTS:

102 On 21 September 2022, Sakeliga was informed by certain of its supporters and affiliated organisations who conduct business in the jurisdictional area of Ditsobotla that the North West Provincial Executive had proceeded to invoke section 139(1)(c) of the Constitution, and had called for the disbanding of the municipal Council of the municipality, the appointment of an administrator, and the development of a recovery plan.

103 On 22 September 2022, Sakeliga was provided with what purports to be an extract from the minutes of a meeting of the North West Provincial Executive Council dated 15 September 2022, a copy of which I attach to marked **CC21**.

104 Despite repeated failures of similar voluntary interventions in terms of section 139(1) of the Constitution, and despite the facts that I have addressed above, it appeared to Sakeliga that the Provincial Executive had again elected to follow voluntary intervention (in terms of section 139(1) of the Constitution) instead of mandatory intervention which is required in terms of section 139(5) read with section 139(7) of the Constitution.

105 This came as a surprise to Sakeliga and its supporters. Sakeliga was not informed by any of the litigants in the first application, that any intervention steps had been taken. In the light of the common cause facts in this matter, and the fact that such voluntary intervention had repeatedly failed, this did not appear to Sakeliga to be an effective remedy at all.

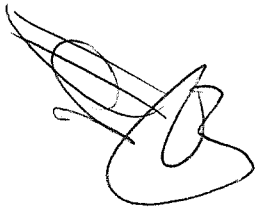


106 Indeed, as is evident from the current total collapse of the municipality, nothing that has been done by the Provincial Executive to date, has been effective.

107 On 23 September 2022, Sakeliga's attorney of record directed a letter to those respondents that appear on the addressee portion of the letter, a copy of which I attach to marked **CC22**. I do not intend repeating the content thereof herein *verbatim* and I request the court to read the content thereof herein as if specifically set out herein.

108 The facts indicate quite clearly that a voluntary intervention in terms of section 139(1) of the Constitution is not an option, and that insofar as any Provincial intervention has been made, the provincial executive cannot and does not exercise the necessary powers and perform the necessary functions:

108.1 Ditsobotla does not keep full and proper records of its affairs. This has resulted in repeated disclaimed Auditor-General of South Africa ("**AGSA**") opinions being issued. According to the AGSA's Material Irregularities Status Report, as of 15 April 2022, the Municipality's failure to correct its financial accounting failures is substantially harming the institution. In the opinion of the Auditor-General, the municipality's financial position was **so poor that it disclosed a material uncertainty regarding its ability to continue operations**. I attach a copy of the relevant page from the AGSA Material Irregularities Status Report of 15 April 2022 hereto marked **CC23**. Ditsobotla has also been identified as one of twenty-four public institutions that have failed to make any progress in resolving material irregularities over the last audit period.



108.2 According to the AGSA's General Report, issued on 15 June 2022, Ditsobotla's audit outcome has been identified as a *repeat disclaimed opinion*, under circumstances where the accounting officers have taken *little or no action*. I attach a copy of the relevant page from the AGSA General Report of 15 June 2022 hereto marked **CC24**. The audit outcomes have remained disclaimed outcomes and unchanged since at least 2016.

108.3 Unauthorised expenditure increased from R87.1 million (2019) to R134 million (2020). Fruitless and wasteful spend increased from R153.9 million (2019) to R209.1 million (2020). Irregular spending increased from R119.9 million (2019) to R159.9 million (2020). No further entity specific opinions have been made available since publication of the AGSA General Report. However, Sakeliga has been advised that the issue has not improved.

108.4 Municipal workers regularly face problems with the prompt payment of salaries. According to Sakeliga's supporters in Ditsobotla, the municipality has still not paid employees for August 2022 due to 'cash flow problems' (the municipality's spokesperson, Pius Batsile admitted this fact to journalists on 22 September 2022). Sakeliga has been advised that salaries for September 2022 have already become due, but that payment is unlikely.

108.5 The failure to pay employees, the lack of any presence of an appointed administrator, if any, and the anarchy resulting from the dissolving of the municipal council, have resulted in unsupervised desperate employees

misusing their positions in the municipality to conduct unlawful collection practices with the hope of 'securing' their salaries.

108.6 As of 23 September 2022, a handful of workers were working (without payment) to ensure that at least water and electricity services remain. Most of the municipal staff refused to return to work. All other services, even emergency services, had stalled. (This position changed since 23 September 2022 - as is evident from the facts that I have set out already. There are members of the community without any water whatsoever.)

108.7 The municipal offices have been closed, and no one is supervising the municipality.

108.8 The provincial executive continued to withhold the municipality's equitable share.

108.9 Ditsobotla remains in breach of its contractual and public duty to pay Eskom. Ditsobotla's outstanding account with Eskom is currently almost R1 Billion in arrears, and the amount due and owing by Ditsobotla to Eskom as of 19 September 2022 is **R897 804 049.87**. (In this regard, I have already attached the most recent Eskom account that I have in my possession hereto marked **CC11**, and the "*NOTICE OF DISCONNECTION FOR NON-PAYMENT*" hereto marked **CC12**). The situation is dire.

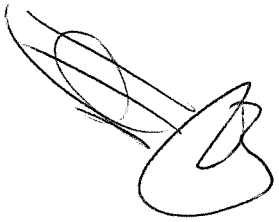
108.10 As has been demonstrated in this affidavit, the municipality has persistently and continuously been in breach of its service delivery obligations. However, the collapse of governance within Ditsobotla has

now reached new heights, and the failure to deliver basic municipal services and the consequent breaches of the rights of the community of Ditsobotla have become extreme. I refer the court in this regard to the facts that I have set out under the heading "PURPOSE OF THE APPLICATION", read together with the supporting affidavits referred to therein, which address the current constitutional crisis.

108.11 Should any of the facts set out in this affidavit be denied by a respondent, then the applicants shall request the court to conduct an inspection *in loco* which will show unequivocally the desperate and dire situation, and will confirm the facts deposed to herein.

109 The complete collapse of the municipality and the complete failure to provide any basic municipal services is endangering public health, safety, and the environment.

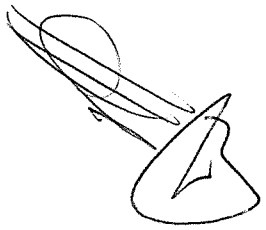
110 It appears that there is a dispute between the three levels of government: the municipality, local government, wants no intervention; the provincial executive, whilst confirming in fact that a mandatory section 139(5) is needed, has ineffectively embarked on a discretionary section 139(1) intervention; the national executive stated under oath that a mandatory section 139(5) intervention will be embarked upon and is necessary. The stalemate, disputes and loss of leadership has led to a situation where the people and community of Ditsobotla are suffering and experiencing severe prejudice. It is their rights which are being breached on a daily basis, and their constitutional rights which are being infringed. It is urgently necessary for the courts to step in and provide an effective remedy.



111 Whilst government pontificates, the community of Ditsobotla is suffering and without a remedy. I respectfully state that this is an exceptional case that cries out for an exceptional solution or remedy to avoid a further constitutional crisis. The flagrant breach of the state's positive constitutional duties requires the implementation of systemic relief.

112 The current collapse in municipal government at Ditsobotla has shifted the need for mandatory intervention from a constitutional priority to a constitutional emergency. The main features of the crisis in Ditsobotla are (1) the severe and persistent financial mismanagement at Ditsobotla, (2) the refusal by the provincial executive to implement mandatory intervention, (and insofar as any mandatory intervention has been invoked, the complete failure on the part of the provisional executive to exercise the powers and functions required in terms of section 139(5) of the Constitution), (3) the severe cash-flow problems facing the municipality, and the subsequent failure to pay employees, Eskom and the relevant Water authorities, (4) the closing of the municipal offices, (5) the failure to ensure that an administrator is duly appointed to ensure that basic municipal services can continue and (6) the dispute between the municipal council and the provincial executive regarding those intervention steps already taken by the province.

113 In the letter of 23 September 2022, Sakeliga requested an urgent meeting with government representatives, and further demanded the following undertakings from government:



"*25.1 That the provincial executive immediately impose urgent mandatory intervention in Ditsobotla in terms of section 139(5) of the Constitution, alternatively and in the event of the provincial executive failing and/or refusing to do so, that the national executive impose urgent mandatory intervention in Ditsobotla in terms of section 139(7) of the Constitution;*

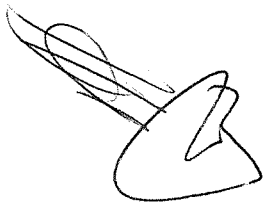
25.2 That an administrator be appointed by no later than 27 September 2022;

25.3 That that the provincial executive release to the administrator a sufficient portion of Ditsobotla's equitable portion in order to allow the administrator to pay employee salaries for August 2022 and September 2022 by no later than 27 September 2022;

25.4 That the appointed administrator be authorised to pay municipal employees and to oversee the day to day management and control of the municipal administration and service delivery functions by no later than 28 September 2022;

25.5 That the appointed administrator be instructed to meet with Sakeliga and the residents of Ditsobotla to discuss the municipality's current problems and seek solutions."

114 Over the weekend of 24 and 25 September 2022, Sakeliga was placed in possession of:

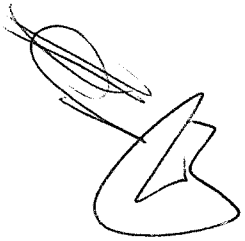


114.1 a letter from the Finance MEC to the Mayor of Ditsobotla dated 19 June 2022, a copy of which I attach hereto as annexure **CC25**, stating as follows:

"This serves to inform you that the introductory of the intervention team will conduct the status quo assessment. The purpose of the status quo assessment is to identify the municipalities that are on financial crisis in line with the provisions of chapter 13 of the MFMA and subsequently placed under mandatory intervention in line with section 139 (5) (a) and (c) of the Constitution read together with section 139 of the MFMA."

114.2 a letter from National Treasury dated 2 September 2022 confirming that the equitable share to Ditsobotla was withheld. I attach a copy of the letter hereto as annexure **CC26**. I incorporate the content of the letter herein and specifically refer to the paragraph that reads as follows:

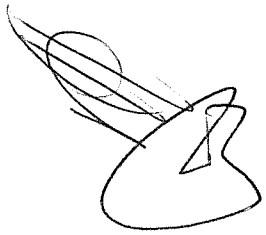
> *"Given these challenges, the **municipality was identified to be in financial and service delivery crisis since it met the criteria outlined in Section 140 of the MFMA**. The **municipality has met the legal requirements for a mandatory intervention under Section 139(5) of the Constitution** read together with Chapter 13 of the Municipal Finance Management Act of 2003 (Act No. 56 of 2003). Whilst the process of developing and **implementing the mandatory intervention in the municipality** is in process, the National Treasury will closely monitor the state of affairs in the municipality to ensure and enforce compliance with the provisions of the MFMA."*



115 On Monday, 26 September 2022, the Kriek Wassenaar and Venter ("**KWV**") received a noncommittal email from the attorney of record representing certain of the respondents (the "**State attorney**") stating in essence that the requested meeting "*... is short notice and therefore impractical ...*" and committing to revert "*... as soon as practically possible with a date of the proposed meeting.*" I attach a copy of the email hereto as annexure **CC27**. The demand for undertakings sought by KWV was completely ignored.

116 Accordingly, KWV responded on the same day by email a copy of which I attach hereto as annexure **CC28** as follows:

> *"I acknowledge receipt of your email below, which refers to an urgent letter direct to our client in response to the collapse of government in the Ditsobotla Local Municipality.*
>
> *You will note from the contents of the letter that our client deems the matter to be of a most severe nature. The urgency of the matter requires an urgent response. Refusal to urgently deal with the case is most concerning to our client and will most likely result in urgent litigation between the parties. Our client has appointed senior counsel to attend to the drafting of an urgent application.*
>
> *We would, of course, prefer to avoid urgent litigation, but that will require that your clients urgently start meaningfully engaging with our client. Refusing our invitation is at your clients' own peril. Urgent events result in urgent letters with urgent demands. The urgent situation in Ditsobotla has not been convenient for anybody.*
>
> *Our letter does not only require a meeting. The letter also seeks various urgent undertakings from the government to avoid litigation. Your e-mail under reply has failed to respond to the undertakings sought.*



Our instructions are that the matter in Ditsobotla has further deteriorated over the weekend. Your lacklustre response forces us to proceed with an urgent application."

117 On 27 September 2022, the state attorney responded by email, a copy of which I attach hereto as annexure **CC29**. In the email, the State attorney indicated that their instructions were to hold a meeting with Sakeliga and interested parties virtually on Microsoft teams on Friday 30 September 2022 at 10h00. The following was stated further:

"... It is our understanding that the undertaking you are seeking from our Clients have been complied with:

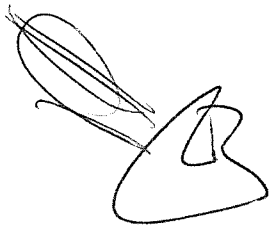
1. *The intervention has been imposed*
2. *The administrator will be appointed*
3. *The equitable share will be released as soon as the Administrator assume office*

4. It is the duty of the Accounting Officer who is the Municipal Manager to effect payments of employees, and to generally disburse the Municipal funds inclusive of service delivery related functions, and not the duty of Council in this instance the Administrator's duty. We however can confirm that the Administrator will oversee the day to day management and control of the municipal administration and service delivery functions.

5. Depending on the Administrator availability and resources such meeting will be arranged between Sakeliga and residents of Ditsobotla..."

On 27 September 2022, KWV directed a letter in response, a copy of which I attach hereto as annexure **CC30** stating as follows inter alia:

"...

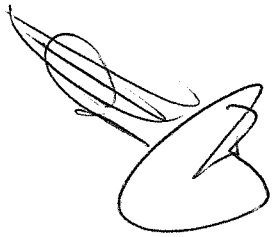


2. Our client does not share your clients' view that they have already complied with the demands in our letter. Our primary concern is with the failure to implement mandatory section 139(5) intervention. Unless the required mandatory intervention has since been implemented, your clients continue with voluntary intervention under circumstances where mandatory constitutional intervention has become an urgent imperative. Furthermore, our client requires the immediate deployment of an administrator to take control of the municipality and to ensure that basic service delivery is restored. Even the undertaking that the administrator will meet with our client has been qualified.

3. On your clients' admission, Ditsobotla's equitable share is still being withheld pending the appointment of an administrator. However, your clients are also the party responsible for the appointment of the said administrator. Notwithstanding our demand, your clients have failed to provide us with a date for the appointment and deployment of an administrator. Our letter did not demand undertakings that something will potentially happen on an unknown future date.

4. Our client requires urgent and decisive action by the government in response to a potentially serious humanitarian and constitutional crisis developing in Ditsobotla.

5. The lack of urgency on the part of provincial and national governments is concerning. We have received reports from the community that, due to the closing of the municipal offices and the non-payment of employees, Ditsobotla is facing a serious risk of running out of water. There is simply no one available to grant access to municipal works to turn on the municipality's water pumps and maintain reservoir levels. Large portions of the municipality are already sitting without water. Our instructions are that residents are required to source their water from alternative sources. Those who can afford it, use vehicles to collect and distribute water. Despite having access to water, residents residing in informal settlements must again collect water by wheelbarrow. There is simply no one in the municipality to fix the available water systems.



6. Your clients' position that the financial officer must pay employees screams a lack of appreciation of the current crisis. Our client has been advised that the municipal offices have remained closed and that there is no money to pay employees. The withholding of the equitable share under these circumstances, especially considering the delay in appointing and deploying an administrator, is a major contributor to the current constitutional crisis.

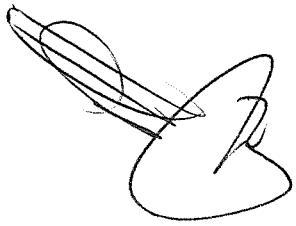
7. We deem the matter to be of the utmost urgency. Our senior counsel is continuing to prepare an urgent application given the failure to respond to our client's demands adequately.

8. However, we accept your offer for a virtual meeting on 30 September 2022 at 10h00. We will attend the meeting with the hope of avoiding urgent litigation and potentially settling disputes in regards to Ditsobotla. We trust that actual decision-makers from various government spheres will be available to engage with our client and leaders in the community meaningfully. The fact that we are accepting the invitation does not detract from the urgency of the matter.

..."

118 In the light of the state respondents undertaking to urgently engage with Sakeliga, Sakeliga accordingly attempted to practically address the crisis that had arisen in Ditsobotla in a meaningful way with the state.

119 On 28 September 2022, KWV provided an agenda, as requested, a copy of which I attach hereto as annexure **CC31**. In addition, on the same day, KWV directed a letter to the state attorney a copy of which I attach hereto as annexure **CC32**. In the letter, KWV on behalf of the applicants requested information and documentation in order to meaningfully engage with government. KWV pointed out that there was one issue that was of such urgency that it could not await the



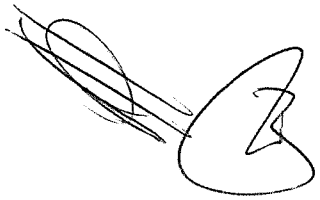
meeting of 30 September 2022, namely the termination of the water supply to the community of the municipality.

120 To date of this affidavit, the respondents have yet to respond to any of the issues raised by KWV in the letters of 28 September 2022.

121 On 28 September 2022, KWV provided to the State Attorney a list of delegates who would be attending the meeting. The list included various representatives from Sakeliga, the CGGSJ, KWV, business and residents in Ditsobotla. A copy of the delegation list is attached as annexure **CC33**.

122 On 29 September 2022, Sakeliga was furnished with a letter from the Finance Minister to the Premier, a copy of which I attach hereto as annexure **CC34.** This was the first time that Sakeliga had sight of this letter which is of fundamental importance. As is apparent from the letter, the letter was copied to all those listed on the last page of the letter, including various of the respondents in the first application as well as the present application. It is astounding that the state respondents have never to date disclosed the existence of this letter which effectively concedes the fact that **mandatory intervention in Ditsobotla is required**. I request the court to specifically have regard to the content of the letter which exposes urgency of intervention in Ditsobotla since at least 2021 and the ineffective handling of the process leading up to the September 2022 collapse.

123 On 30 September 2022, a virtual engagement was held between representatives for the applicants and representatives from the government. A copy of the digital attendance list is attached as annexure **CC35**. Mr Wassenaar from KWV led the discussion on the part of the applicants and the community. The following representatives were *inter alia* present:



123.1 Mr Mpho Mogale – Acting Deputy Director-General National COGTA;

123.2 Mr Thabang Lesita – obo COGTA Minister;

123.3 Adv Sibongile Sigodi – obo Presidency;

123.4 Ms Lesego Mathe - obo COGTA MEC;

123.5 Mr Ramagaga – obo COGTA MEC;

123.6 Adv Ratshikana – obo Premier;

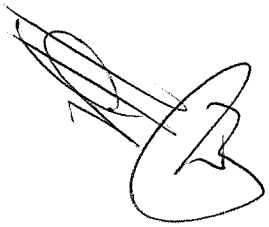
123.7 Ms LE Mmutle – obo Premier;

124 At the meeting:

124.1 Mr Wassenaar informed government of *inter alia* the collapse in municipal government, the non-payment of municipal employees, the collapse in service delivery and specifically the major issues facing the community in respect of the management of sewage and water services.

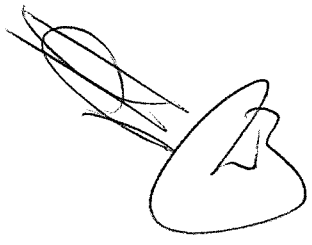
124.2 Mr Le Roux, Sakeliga's chief executive officer, confirmed that Sakeliga has had concerns regarding the direction Ditsobotla was heading for some time, but that the municipality had now entered an acute and intolerable phase over the recent weeks. He stressed that the applicants and their supporters would prefer to avoid litigation, but that the applicants and their supporters viewed the matter as very serious, requiring urgent response.

124.3 Mr Wassenaar made the following statements that are important to this application:



124.3.1 *"We are not seeking a complete recovery within a day, but we do insist now on emergency, urgent and immediate recovery of delivery and municipal services there. That is the desired outcomes we would like to see from this meeting and I would – we have been addressing various letters over the last week since 23 September and we are not of the view that any proper responses has been received and this crisis is only increasing and we would really implore government today to inform us of their position, to engage with us and the community [...]"*

124.3.2 *"We have got people driving around already with water containers, giving water to the community on their own account from boreholes on their property. It is not, we are not, this is not a community who is against order, who wants to avoid government or to do it themselves. It is a desperate community we are sitting here with and we are unfortunately asking questions regarding the effectiveness of whatever is being planned currently because whatever is being done in the political offices in Mahikeng and Pretoria on ground level, we are not seeing any proper intervention. We are not seeing proper, proper correction of the crisis currently, and that is the primary outcome for today, we would like to avoid litigation by having clear and effective results from the meeting and outcomes, but if not, unfortunately where we are standing today, especially in view of the current litigation, we have no choice but to again approach the court and it is not a threat to*



try and force anyone in a corner. It is a threat of desperation to assist the public there who are really suffering."

124.3.3 *"Our concern is with the actual management and day-to-day operations of the municipality, which is the problem currently and I think just to maybe guide you to what we would like to have an effective discussion around is firstly the crisis currently with the municipality being closed. The water supply issue specifically for us at this stage is the most urgent crisis, but also then the administration issue. Whether it is a 139(1) or 139(5) intervention, why has an administrator not been deployed yet?"*

124.3.4 *"You pulled the plug on finance. It results in a total breakdown of actual services due to employees. There is no one taking control of the bank account. There is no one taking control of the management and the administration and we now sit with a riderless municipality."*

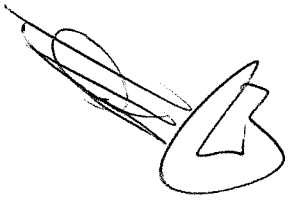
124.3.5 *"But one of my questions to this is how is it acceptable for government to take a week, almost two weeks – well, since 15 September actually to roll out an administrator to a municipality where you on your own admission has now said gangsterism is the primary management of the entity? And how is it acceptable for government to allow people to run out of water and to run out of services where sewage is spilling into the streets and into residential areas and specifically next to informal settlements where they do not have the accessibility*

to avoid the sewage, how is that acceptable to the National Provincial Government? [...] Do you not have any emergency support to send through to at least go and address this whilst the systems are in place? This cannot be constitutional. This is a breach of section 41 of the constitution due to the breakdown in cooperative governance here. You need to cooperate and coordinate and how it is that we are now basically figuring it out as we go?"

124.4 Ms Mmutle confirmed that a Mr Radinaledi Mosiane had been appointed to act as the administrator of Ditsobotla, but that he has yet to be deployed. According to her, the municipality's equitable share could only be fast-tracked once the administrator has been deployed and in control of the municipality.

124.5 Mr Mogale confirmed that the reason for the withholding of Ditsobotla's equitable share was that Ditsobotla currently has two municipal managers and two municipal bank accounts. The release of an equitable share could only occur once the administrator has sorted out the bank account and municipal manager issue. He also warned that it would be unlikely that the administrator would take immediate control, due to the number of systems which he would have to put in place and the finalisation of certain appointments which he needed to make in order to take control of the municipality.

124.6 In regards to the issue of water, Mr Mogale made the following statement:



"The issue of water, it is the, Ngaka District Municipality is the service authority that is providing and they also as a district municipality have been having problems to try and render services in the municipality given all these gangsterism, that this place is managed by gangsterism you know, per se. So it is a combination of efforts that has to be done but I think let us – all I am saying to you, Chairperson, is let us allow the process to be mainstreamed by the administrator and then as soon as that is done then the issue of – because if you say he must meet the staff for instance it can only be done if all these things, systems are put in place [...]"

124.7 Unfortunately, Mr Mogale was unable to provide any undertakings in response to questions by Mr Wassenaar regarding whether the supply of water would be returned to normal by Monday, 3 October 2022. However, he did undertake to enquire about the matter and provide a response.

124.8 Mr Ramagaga confirmed that the province was aware of the water issue and explained their position as follows:

"After a resolution was taken by EXCO to invoke section 139(1)(c) as soon as water interruptions were reported I immediately engaged with the district municipality, spoke to the district municipal manager and fortunately at that time he was with his executive mayor, to explain that, yes, whilst we have problems of water and sanitation in Ditsobotla as a local municipality. Ngaka Modiri Molema is a Water Services Authority. The buck stops with them. The fact that they have appointed Ditsobotla as a water services provider is neither nor there. "

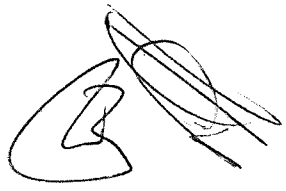
124.9 Mr Ramagaga then informed the meeting that Ditsobotla is already under section 139(5) administration. Ms Mmutle confirmed that an *assessment* team had been appointed and that they are working with the office of the provincial treasury. Ms Mmutle confirmed that Ditsobotla was placed

under section 139(5) administration on 24 November 2021. (I pause to point out that was the first that KWV or Sakeliga had ever heard that Ditsobotla had been placed under mandatory intervention in terms of section 139(5) of the Constitution. It is fair to state that this disclosure came as somewhat of a surprise. Despite the first application, seeking such mandatory intervention, none of the respondents to the first application had ever whispered a word about this. If true, then this demonstrates incontrovertibly that the provincial executive has not and cannot exercise the powers and functions imposed under section 139(5) of the Constitution read together with relevant legislation. The continued financial crisis and complete breakdown of basic municipal services, and the further facts set out in this application confirms this.)

124.10 Government was unwilling to give any clear commitments or replies to the undertakings sought by Sakeliga in their letter, and the requests made by Mr Wassenaar during the meeting. In closing, Mr Wassenaar stated the following:

"We urge government also to talk to us when we reach out to government, either via litigation, because litigation is an invitation by groups frustrated by a lack of response to engage with government and it is unfortunate that it often leads to years of litigation, only to find out that the thing we, one of the big features of our case has already been resolved on 24 November 2021 and we have never been notified formally of it.

But be that as it may, on our side we do require a clear response as to what, when exact dates where service delivery will be recovered by Monday morning at nine. Failing that Sakeliga has instructed that we proceed with urgent application against government. We would even



want to cooperate with government to break through any legislative barriers on an interim basis in order to allow government to intervene.

It is not acceptable for legislation and barriers to stop people from having basic services and stop government from effectively intervening. And we would like government to please meet over the weekend and today and come back to us Monday morning with a response."

125 After the meeting on 30 September 2022, KWV forwarded a letter to the State Attorney, requiring that government provide a proper reply as to government's plans to ensure the return of basic service delivery in Ditsobotla. The applicants warned that if no clear undertakings where received, an urgent application will be brought. A copy of this letter is attached as annexure **CC36.**

126 To date of this affidavit and to my knowledge, the administrator, if duly appointed as was alleged:

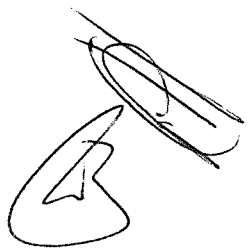
126.1 Has yet to inform the communities of his appointment;

126.2 Has yet to be deployed to Ditsobotla, alternatively has yet to take effective and actual control of the administration of Ditsobotla;

126.3 Has yet to take control over the supply of basic services to the communities in Ditsobotla;

126.4 Has yet to ensure the supply of potable water services to the communities in Ditsobotla;

126.5 Has yet to contact the applicants to discuss or inform them of the implementation of emergency measures in Ditsobotla;



126.6 Has yet to ensure the reopening of the municipal offices and the return of municipal employees.

127 The applicants have no alternative but to launch the present application.

REQUIREMENTS FOR AN INTERDICT

128 In the event that the court may find that certain of the relief sought herein is interdictory in nature, I respectfully state that the applicants have made out a case for an interdict. Whilst the applicants seek an interim order in these proceedings, pending the resolution of the crisis in the financial affairs of the first respondent and the securing of the ability of the first respondent to meet its obligations to provide basic services, I respectfully state that the applicants have in fact made out a case for both final and interim interdictory relief.

The Right

129 The community of the municipality, including the members of the applicant, have made out a case for a clear right, including the clear constitutional right to the provision of basic municipal services, and the further clear rights addressed below. As has been demonstrated in this affidavit, the community of the municipality, including the members of the applicant, have a right to require the respondents to act in terms of the mandatory provisions of relevant legislation and the Constitution.

130 The municipality has the constitutional duty to ensure that there is proper and effective service delivery within its municipal area. When a constitutional crisis prevails, as it does in the municipality, the provincial executive and the National executive have a duty to step in and to ensure that the rights of the community

are not fundamentally breached. The community of the municipality, including the members of the applicant, have the right to require such state respondents to comply with their constitutional duties and to require provision of basic municipal services.

131 The community of the municipality, including the members of the applicant, have constitutional rights which are fundamentally infringed by the conduct and omissions set out in this affidavit.

132 Each of the first applicant's members within the municipal area of the municipality are ratepayers. The failure of the respondents to adhere to the legislative obligations that they have, constitutes illegal conduct. The applicants have a right to prevent such illegal conduct. Each of the business owners has the section 22 of the constitution right to freedom of trade, occupation, and profession. This entails that these basic rights ought to be advanced by the municipality providing basic municipal services.

133 Sakeliga has a clear right, on behalf of its members residing within the jurisdictional area of the municipality and in the public interest, and the applicants have a clear right to enforce their rights in terms of the relief sought in the notice of motion.

Apprehension of harm should the relief not be granted:

134 The members of the first and second applicants, as well as the community of the municipality, including the third applicant, his family, business and employees, have suffered and continue to suffer breaches of their fundamental rights. The current constitutional crisis within the municipality has escalated such harm to a



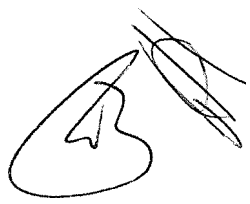
level where there are practically no basic municipal services available to the community. As has been illustrated in this affidavit above, water has run out in large parts of the jurisdictional area of the municipality, and the further basic municipal services addressed in this affidavit have ground to a halt.

135 The harm is self-evident, and every day that passes brings further irreparable harm to each of them members of the community and disability. Constitutional rights are directly and continuously breached on a daily basis, and the harm is serious and persistent. Further argument shall be advanced with reference to the facts set out in this affidavit.

Balance of convenience:

136 I respectfully state that the balance of convenience favours the granting of the orders sought. The community of the municipality and the members of the first and second applicants have a right to basic municipal services. All that the application seeks to do is to provide a practical remedy to ensure that such basic municipal services are provided pending some form of effective intervention by the state. The remedy is not only practical but Constitutionally required and peremptory. In circumstances where all that is sought is compliance with the Constitution and relevant legislation, none of the respondents can argue that they are prejudiced in any manner by the relief sought.

137 On the other hand, the community of the municipality, including the third applicant, and the members of the first and second applicants suffer serious and irreparable harm on a daily basis as a result of the constitutional crisis in the municipality and the practically total collapse of the provision of municipal services.



138 I respectfully state that the balance of convenience favours the granting of the relief sought in this application.

No alternative remedy:

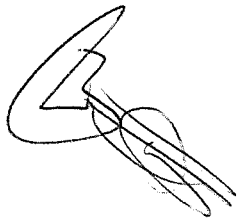
139 The applicants and their supporters have done all within their power to seek an effective and practical lawful resolution regarding the collapse of provision of basic municipal services within the municipality. They have no alternative remedy but to seek relief from this court.

FAILURE TO TAKE CONSTITUTIONALLY REQUIRED STEPS:

140 The Constitutional failures of the municipality are wide ranging, unlawful, and persistent. The facts in this regard have been addressed in the body of this affidavit already.

141 The conduct and omissions of the municipality have breached and continue to breach the basic human rights of the community of the municipality.

142 Without derogating from the aforesaid wide-ranging breaches that have been addressed herein, the section 27 of the Constitution right guaranteeing everyone the right to have access to sufficient water is currently being breached and continues to be breached. The right of everyone to an environment that is not harmful to their health and wellbeing, as contemplated in section 24 of the Constitution is currently being breached and continues to be breached. Section 152(1) of the Constitution enjoins local government to provide services to communities in a sustainable manner and to promote a safe and healthy environment. In terms of section 156 (1) (a), read with Schedule 4B of the Constitution, local government is responsible for administering "water and



sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems." The fundamental right to *inter alia* dignity under section 10 of the Constitution is further breached by virtue of the failures relating to access to sufficient water, basic sanitation, a safe environment, and the provision of further basic municipal services. It is inconsistent with the right to dignity to have to live without access to sufficient water, sanitation, and basic municipal services.

143 The municipality, as a result of a crisis in its financial affairs, is in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments. The municipality is further unable to meet its obligations to provide basic services and to meet its financial commitments.

144 The contention on the part of the state respondents made during the 30 September 2022 meeting that Ditsobotla has been under section 139(5) intervention since 24 November 2021 demonstrates that the provincial executive cannot or does not or does not adequately exercise the powers and perform the functions referred to in section 139(5) of the Constitution. In this regard, based on the information that I have available to me:

144.1 the provincial executive has failed since November 2021 to impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services.

144.2 the provincial executive has failed since November 2021 to impose a recovery plan aimed at securing the municipality's ability to meet its financial commitments.



144.3 Despite request no recovery plan has been provided, and as is evident from the meeting held on 30 September 2022, there does not appear to be any plan at all to address the constitutional crisis, and specifically the issues of the failure of the municipality to meet its obligations to provide basic services and to meet its financial obligations.

144.4 the provincial executive has failed since November 2021 to provide the necessary legislative measures, including a budget or any revenue-raising measures, necessary to give effect to a recovery plan. Insofar as any such measures have in fact been put in place, these have quite evidently been ignored by the municipality and the provincial executive has failed to take any required steps in this regard. The provincial executive has not utilised the relevant provision of the Constitution to dissolve the Municipal Council, to appoint an administrator, to approve a temporary budget or revenue-raising measures or any other measures to give effect a recovery plan to provide for the continued functioning of the municipality.

144.5 The provincial executive has failed since November 2021 to take responsibility for the implementation of any recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.

144.6 Insofar as any such mandatory steps may have been taken, the facts and the Constitutional crisis that the municipality currently finds itself in demonstrate incontrovertibly that the provincial executive has not

adequately exercised the powers and performed the functions referred to in section 139(5) of the Constitution.

145 Based on the information available to me, the provincial executive has failed since November 2021, and has failed to promptly:

145.1 to request the Municipal Financial Recovery Service-

145.1.1 to determine the reasons for the crisis in its financial affairs;

145.1.2 to assess the municipality's financial State;

145.1.3 to prepare an appropriate recovery plan for the municipality:

145.1.4 to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan: and

145.1.5 to submit to the MEC for finance in the province-

(a) the determination and assessment referred to in subparagraphs 145.1.1 and 145.1.2 above as a matter of urgency; and

(b) the recovery plan and recommendations referred to in subparagraphs 145.1.3 and 145.1.4 within a period, not to exceed 90 days, determined by the MEC for finance: and

145.2 to consult the mayor of the municipality to obtain the municipality's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan.

URGENCY:

146 The urgency in this matter lies in the fact of the recent total collapse of the Ditsobotla municipality and the disruption and failure to provide basic essential services to the people and communities of the municipality.

147 The application seeks to address the most urgent and detrimental problems in the municipality and to restore service delivery.

148 Fundamental human rights are being seriously breached on a daily and ongoing basis. The facts in the body of the affidavit demonstrate the urgency of the matter, and those facts shall be relied upon in advancing the case that this matter ought to be heard and determined on an urgent basis.

149 The community of the municipality, including the people and children in the jurisdictional area of the municipality, schools and businesses, and some of the most vulnerable, are directly affected by the constitutional crisis. It is urgently necessary for urgent court intervention.

150 The crisis has reached a point where the health and safety of the community of the municipality is in jeopardy. In fact, this is no longer simply a threat to health and safety – people are becoming sick due to the complete collapse of the municipality and the health hazards that have ensued based on the complete collapse of basic sanitation and the water crisis.

151 Children and the vulnerable are directly affected. The crisis has led to a situation where children are forced to walk miles with heavy buckets and vessels to collect water. Schooling is affected. The dignity of all is seriously impacted. The crisis calls for urgent intervention.

152 The situation is such that, absent an intervention, thousands of ordinary people stand to suffer irreparable harm. The situation has led to lawlessness, to vigilante gangs exploiting the collapse, and to the break down of law and order. Even the state respondents refer to the situation as that of 'gangsterism'. The state respondents cannot honestly contend that the matter is not extremely urgent. On their own version we have a serious crisis on our hands.

153 Both Part A and Part B of the notice of motion are urgent. However, Part A is particularly urgent. I refer to and incorporate herein the facts set out under the heading "PURPOSE OF THE APPLICATION" and the supporting affidavits attached hereto that deals with the water crisis. It is a matter of days before the reservoirs in the municipality run out of water. There are already large areas and communities without any water, or extremely limited supply thereof. The fundamental rights of the community are being directly infringed in a serious way. The breach of the right to water impacts the right to dignity but in fact also the right to life. The factual consequences of such a breach are real and terrible – water is required for life; water is required for sanitation and health; water is required for a safe environment. From businesses that cannot run, cannot serve their customers, cannot generate income, and consequently fail with consequences to the community and their employees, to the mother with an infant that needs water to sanitise bottles, cleanse her infant and make formula safe to drink – the crisis is urgent and the matter is of extreme urgency. The real life factual examples (all of which I cannot set out in this affidavit) of the consequences of the water crisis are vast and extremely prejudicial and harmful. Urgent intervention is required. Ironically the solution to this crisis is not very

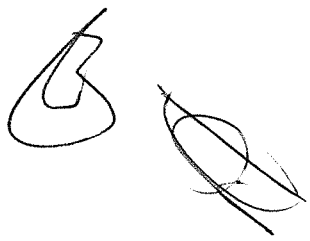
difficult to implement. But absent implementation, and absent an urgent order in this matter, people suffer and shall continue to suffer irreparable harm.

154 I respectfully request the court to condone the short time periods afforded for the filing of papers in Part A, and any non-compliance with the uniform rules and the relevant practice directives of the urgent court. I respectfully state that the hearing of Part A of the application cannot wait later than the week of 10 October 2022 for hearing and determination. There are already large parts of the community without water. The levels of the reservoirs are such that the week of by the week of 10 October 2022 reservoirs will be completely depleted and thousands more people without any potable water. If the reservoirs dry up, many of those who now have to walk kilometres to get water to drink will have no water to collect.

155 Should any of the respondents allege that the matter is not urgent, the court shall respectfully be requested to conduct an inspection in loco which shall reveal the crisis and collapse that has been explained in this affidavit.

156 In respect of Part B, the applicants have afforded the respondents as much time as is possible in the circumstances, and they cannot be prejudiced in this regard. For the reasons set out above, Part B of this application is urgent and I respectfully request the court to enrol and hear Part B of the application on an urgent basis.

157 I respectfully state that the matter is urgent. The applicants and the community of the municipality shall not obtain substantial redress at a hearing in due course. I respectfully request the court to enrol and adjudicate the matter on an urgent basis as sought in the notice of motion.



THE WATER CRISIS AND URGENT IMMEDIATE INTERIM SOLUTION

158 Despite request and thereafter demand for immediate steps to restore water to the community of Ditsobotla, these have been ignored.

159 The water crisis and the facts relevant thereto have been addressed in the body of this affidavit read together with the supporting affidavits. Further argument shall be advanced in this regard at the hearing of this matter.

160 The municipality is facing a water crisis. The rights of the people of municipality of access to basic water supply and basic sanitation is being breached and continues to be breached. There are already large areas without any water, whether potable or otherwise. Absent urgent intervention, thousands more people will be without water at all. The reservoirs have not been filled and there is an imminent threat of a complete starvation of water to the residents.

161 The solution to the problem is relatively simple. Practically all of the water supply in the municipality comes from boreholes and from underground aquifers. The water is available but in order to provide it to the residents, the pumps must be turned on and remain on to keep up an adequate supply of water and pressure to ensure that water reaches all of the people of the municipality.

162 Whilst the municipality has previously allowed the community to steps in and to assist with the pumping of water, the applicants do not wish to take the law into their own hands, and for this reason seek the consent of the court to ensure that water is pumped and available.

163 Should the court be inclined to grant such an order, which I respectfully state is urgently necessary, the applicants shall utilise the services of professionals to

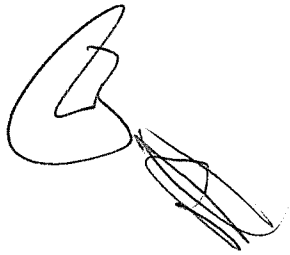
restore potable water supply through reticulation through the existing water infrastructure. For this purpose, and to avoid taking the law into their own hands, an order is sought that the first applicant, and/alternatively second applicant, using relevant professionals in the field, be authorised to access the potable water reticulation system, to unlock any gates and entrances to any water infrastructure for purposes of filling reservoirs and tanks, and the commissioning of any necessary equipment and the conducting of any necessary work for purposes of ensuring the supply of potable water to the communities of Ditsobotla.

164 The solution is as simple as turning on the borehole pumps, certain of which are powered by generators (for which diesel may need to be purchased), to ensure that the reservoirs that supply the community with water are filled and running the pumps in order to ensure that the community has at least a basic supply of potable water.

MEANINGFUL ENGAGEMENT

165 Sakeliga and its supporters are aggrieved by the failure by all spheres of government to meaningfully engage with them over the last 18 months, but especially during the months preceding the collapse in Ditsobotla.

166 Sakeliga's supporters are people and businesses directly affected by state failure. Despite litigation having been initiated by Sakeliga and its supporters in the first application to seek long-term solutions, specific mandatory intervention, and court oversight in Ditsobotla, Sakeliga and its supporters have only been ignored.



167 Whilst national and provincial executives plan, the residents of Ditsobotla face the consequences of failing municipal structures and constant service delivery failures.

168 Not a single party to the first application provided Sakeliga the courtesy of informing it of the developments in the provincial executive's 'intervention' plans. Sakeliga only found out about the municipal collapse in Ditsobotla when supporters started contacting Sakeliga on 21 September 2022 about the closure of the municipal offices and the unlawful debt-collection activities being employed by desperate unpaid employees.

169 Sakeliga and its supporters in Ditsobotla are surprised with every major development and need to spend many hours each time to try and source information held by government in order to understand what is developing. The allegation made during the 30 September 2022 meeting that Ditsobotla has been under section 139(5) intervention since 24 November 2021, is especially disheartening. By failing to inform Sakeliga of this fact, despite pending litigation seeking similar relief, Sakeliga has continued to spend money pursuing relief in the first application, blissfully unaware of the steps taken by the respondents.

170 In a similar vein, the CGGSJ's, that focusses on the plight of the poor and vulnerable in Ditsobotla and the North West Province, is unable to provide any information to the communities affected by the decisions of government, due to the lack of engagement, feedback and communication on the part of the intervening spheres of government.

171 Despite the engagement meeting and the request for clear undertakings and an open line of communication in order to prevent urgent litigation, government has

again chosen not to respond to Sakeliga's demands. Nothing changed. Government has not even been able to ensure that water supply is returned to the town.

172 The applicants insist that government continues to engage with the applicants and their supporters. This is a mechanism to resolve matters positively and in the interests of the state parties, the community of the municipality and the administration of justice.

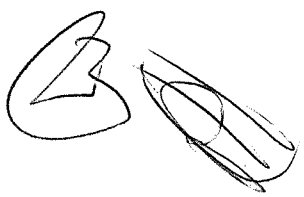
173 The applicants and the community of Ditsobotla have valuable contributions that they can make. The applicants have attempted to engage meaningfully to attempt to find effective solutions to the fundamental breaches. Absent meaningful engagement, the valuable contributions that the applicants can make in attempting to resolve the crisis and issues faced are lost. Absent meaningful engagement, the applicants and the community are left in the dark both figuratively and literally.

174 The applicants and their supporters have a right to meaningful engagement, especially where state failures directly affect the dignity and constitutional rights of the community of Ditsobotla.

CONCLUSION:

175 An urgent remedy is called for. The municipality, the centre of the quality of life of every person who lives in its jurisdictional area, has collapsed.

176 An urgent remedy is essential to restore basic municipal services.



177 The conduct of the Municipality and those responsible for such conduct does / do not comply with legislative and Constitutional obligations. As a direct consequence fundamental human rights are breached and continue to be breached. The court is requested to grant a just, equitable and effective remedy.

178 The interests of the communities of Ditsobotla, including those of the business community that serves such communities and that forms part of such communities, must come first.

179 The applicants seek a proper, fitting, suitable and effective remedy in this matter.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

a. he knows and understands the contents of this affidavit;

b. he has no objection to taking an oath;

c. he considers the oath to be binding on his conscience.

THUS signed and sworn before me, at PRETORIA on this the **6th** day of **OCTOBER 2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

COMMISSIONER OF OATHS
FULL NAMES:
BUSINESS ADDRESS:
DESIGNATION:

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

I the undersigned

PIETER JACOBUS LE ROUX

hereby delegate to **CHRISTO BESTER**, the following powers and authority:

1) the authority to authorise and/or to institute on behalf of Sakeliga, such further legal proceedings, which may include urgent proceedings, against the **DITSOBOTLA LOCAL AUTHORITY *and such further parties as may be necessary***, which includes but is not limited to appeals and/or reviews of any matter related thereto, and/or the right to have Sakeliga appear, argue, act, support and/or oppose any matter before any state authority or judicial body in furtherance of this delegation.

2) the authority to represent Sakeliga in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of Sakeliga as its lawful representative.

3) the authority to incur costs on behalf of Sakeliga and to appoint, instruct and direct attorneys, experts and/or consultants to assist Sakeliga with any matters relating to paragraph 1) above;

Signed at Pretoria on 5 OCTOBER 2022

PIETER JACOBUS LE ROUX – CEO

teenstrydigheid effektiewelik aan te spreek, en

3.3.3. Die aksies neem wat binne hul uitsluitlike diskresie nodig is om die oortreding, botsing en/of teenstrydigheid aan te spreek, wat insluit maar nie beperk is tot die voorstel van wysigings tot die Akte en die belê van 'n spesiale Ledevergadering ten einde daardie wysigings goed te keur.

4. DOELSTELLINGS EN MAGTE VAN DIE MAATSKAPPY

4.1. Ter nakoming van artikel 1 van bylaag 1 tot die Wet, verklaar die Maatskappy hiermee die volgende hoofdoelstellings:

4.1.1. Die bevordering van konstitusionele orde, vryemarkbeginsels en 'n kapitaalkragtige, regverdige, en volhoubare sake-omgewing in die Republiek;

4.1.2. Die skepping van 'n selfstandige sakegemeenskap in die Republiek;

4.1.3. Die behoud van eiendomsreg, holisties gesien, ooreenkomstig die Grondwet van die Republiek;

4.1.4. Om, sonder inperking, bydraes en skenkings te doen tot die Helpende Hand Beursfonds en/of die Solidariteit Helpende Hand NPC;

4.1.5. Om kollektief namens Lede, ondersteuners en die publiek met Owerhede te onderhandel en verhoudinge met Owerhede asook plaaslike, nasionale en internasionale instansies en persone te beding te einde die doelstellings van die Maatskappy te bevorder;

4.2. Die Maatskappy verklaar hiermee die volgende aanvullende doelstellings, maar sonder inperking van die algemene aard van die Maatskappy hoofdoelstellings:

4.2.1. Om as 'n openbare sakewaghond wat fokus op die regte en belange van sy Lede, ondersteuners en lede van die publiek in die algemeen, op te tree;

4.2.2. Om ondersoek in te stel oor gevalle waar die regte van Lede, ondersteuners asook die publiek oor die algemeen, geskend en/of ingeperk word, en om waar nodig ook op te tree ten einde daardie regte te beskerm of te bevorder.

4.3. Die volgende magte word ook, sonder inperking van die algemene magte van die Maatskappy soos uitgeoefen Direksie kragtens die Wet, aan die Maatskappy verleen:

4.3.1. Om deur selfregulering en privaat institusionele infrastruktuur 'n alternatiewe

sake-omgewing te skep waarbinne ekonomiese aktiwiteit voortgesit kan word;

4.3.2. Om die Maatskappy se Lede, ondersteuners en lede van die publiek in die uitoefen van hul belange en regte, hetsy op plaaslike, nasionale of internasionale vlak, by te staan, te adviseer, te ondersteun en/of te verteenwoordig.

4.3.3. Om die publiek oor die algemeen by te staan met die bevordering van hul regte op 'n plaaslike, nasionale en internasionale vlak;

4.3.4. Om 'n vrye, onafhanklike en goedgunstige sake-omgewing in die Republiek te beskerm, stimuleer en waar nodig te skep;

4.3.5. Om regsgedinge in te stel, daartoe toe te tree, om sake te opponeer en/of te verdedig, om as *amicus curiae* in sake op te tree, deel te neem aan appèlle, hersienings, en om voor enige Owerheid te verskyn, submissies te maak, te argumenteer, op te tree, teen te staan en/of te ondersteun.

4.3.6. Om met die Owerhede, politieke partye, lede van die sakewêreld, die media asook enige ander lid van die publiek te kommunikeer, te onderhandel, in te debat te tree en om ook waar nodige daardie persone en/of instansies te voorsien met voorstelle, vertoë, submissies, verslae, argument en/of inligting.

4.3.7. Om navorsing ter bevordering van hierdie doelstellings te doen asook om inligting in te samel, statistiek op te bou, te verwerk en te publiseer;

4.3.8. Om onafhanklike regsadvies oor enige saak wat enige doelstelling van hierdie Akte raak, te bekom en waar nodig om ook regsverteenwoordiging aan te stel om die Maatskappy te verteenwoordig in die bevordering van hierdie doelstellings.

4.3.9. Om met ander organisasies of persone met soortgelyke doelstellings te onderhandel, ooreenkomste te sluit, projekte te hardloop, sake te bevorder, befondsing te voorsien, befondsing te ontvang, ondersteuning te bied en/of te affilieer.

4.3.10. Om deel te neem in die bestuur, beheer of aktiwiteite van enige ander organisasie wat soortgelyke doelstellings as die van die Maatskappy het en om in hulle te belê, belange te bekom en/of om vennootskappe of samewerkingsooreenkomste met hulle aan te gaan.

4.3.11. Om enige persoon of organisasie te vergoed vir hul dienste gelewer aan of

C013

CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC
REGISTRATION NUMBER: 2020/486118/08

RESOLUTION PASSED BY DIRECTORS AT MR. MANDLA MPEMPE'S HOUSE ON 4TH OCTOBER 2022

PRESENT:

Mr. Strike Moyakhe [Chairperson]
Mr. Mandla Mpempe [Executive Director]
Mrs. Rebecca Sediti [Management]
Mrs. Lebogang Sedidi [Administrator/Secretariat]

RESOLVED:

1) All persons with voting rights having received due notice and being present at the meeting.

2) That Mandla Mpempe is given the full and complete authority to authorise and represent the organisation in the application against the Ditsobotla Local Municipality and various other state departments along with Sakeliga NPC and other applicants.

3) This authority includes without limiting the generality of the authority granted, the authority to institute, and/or oppose any application of whatsoever nature to be brought by and/or against the organisation before any authority, judicial body, tribunal, arbitrator, mediator and/or presiding officer. This authority also includes, but is not limited to, the authority to institute or proceed with any special procedure in law, including but not limited to urgent applications, appeals and/or reviews of any matters.

4) Mandla Mpempe is furthermore pursuant to paragraph 2) above authorised to sign and/or depose to any document on behalf of and in the name of the organisation as its lawful representative and, also to appoint and instruct the attorneys KRIEK WASSENAAR & VENTER INC who will act for the applicants.

5) Mandla Mpempe is hereby granted all necessary powers to take any such further steps and to do all further things necessary on behalf of the organisation to give effect to this resolution.

CERTIFIED ON 4 OCTOBER 2022

Mr. Strike Moyakhe [Chairperson]

Mr. Mandla Mpempe [Executive Director]

Mrs. Rebecca Sediti [Management]

Ms. Lebogang Sedidi [Administrator/Secretariat]

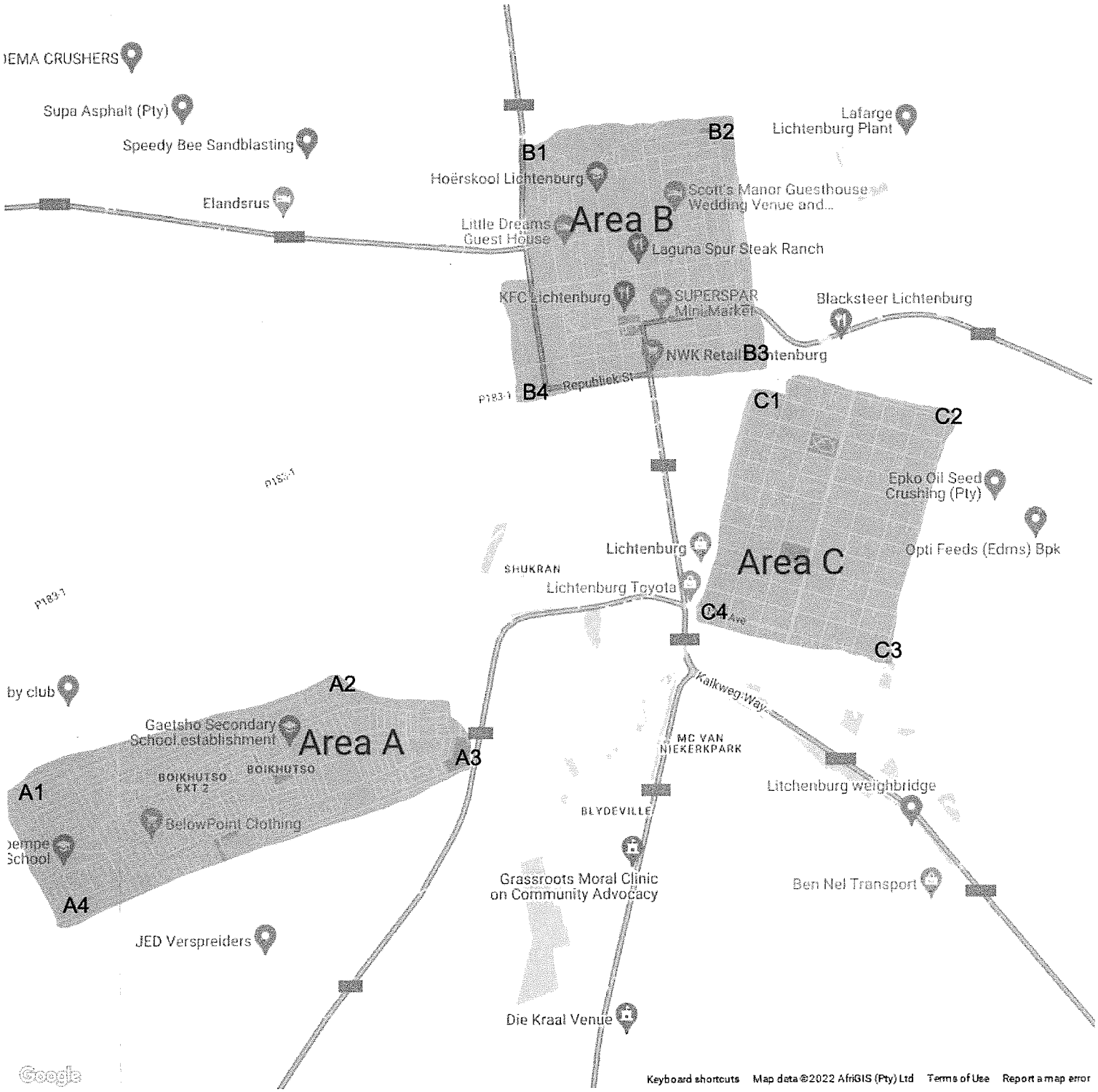
CENTRE for GOOD GOVERNANCE and SOCIAL JUSTICE (NPC)
CIPC number: 2020/486118/08
Ipelegeng
SCHWEIZER RENEKE
2780
Cell: 072 3939 449

NPO number: 254-808 NPO
P.O. Box 970
SCHWEIZER RENEKE
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083 860 8341

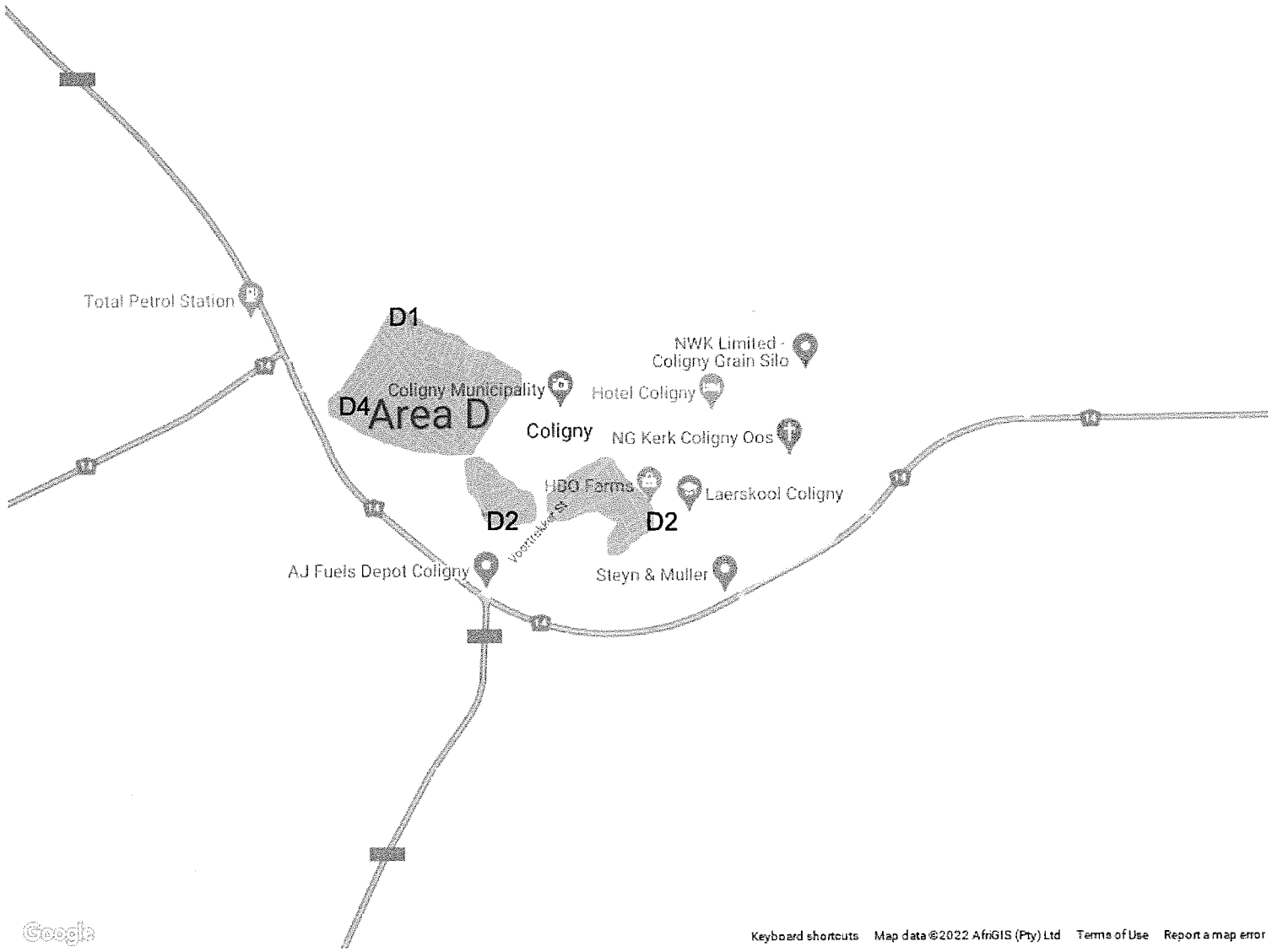
email: admin@goodgovernance.co.za

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LICHTENBURG TOWN



COLIGNY TOWN



C019

PHOTOGRAPH 1

Date taken: 2022/09/26



PHOTOGRAPH 2

Date taken: 2022/09/26



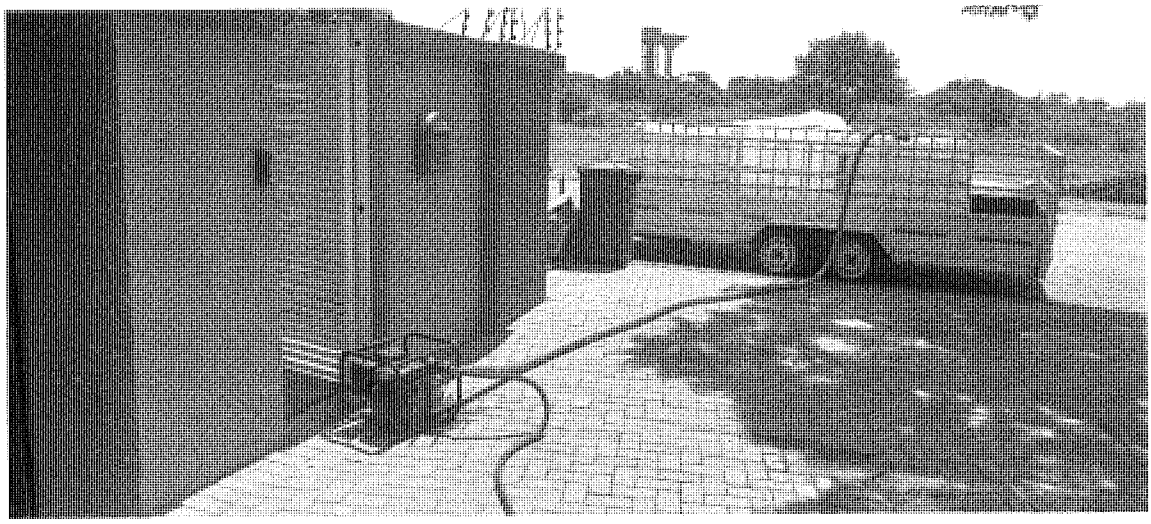
PHOTOGRAPH 3

Date taken: 2022/09/26



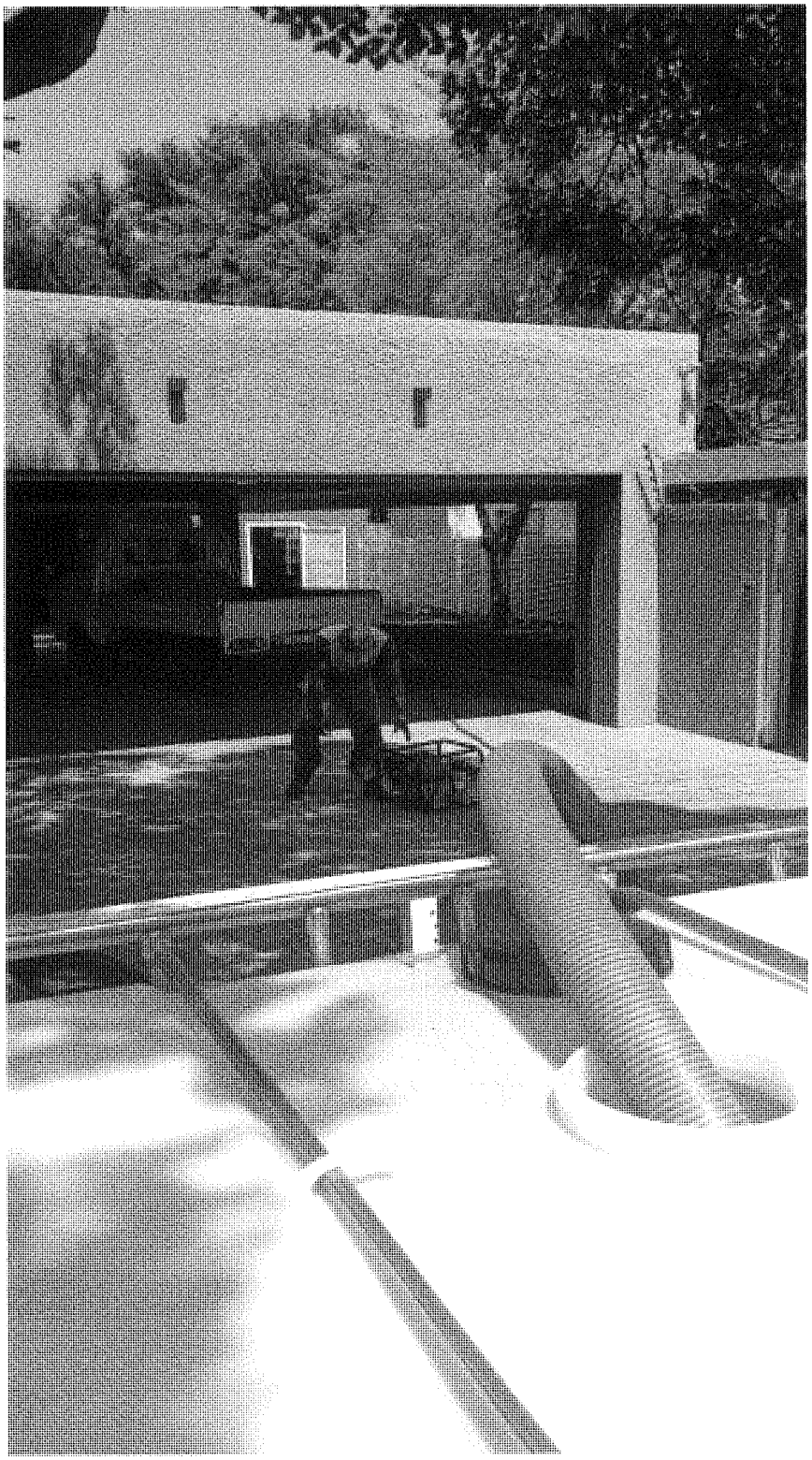
PHOTOGRAPH 4

Date taken: 2022/09/26



PHOTOGRAPH 5

Date taken: 2022/09/26



PHOTOGRAPH 6

Date taken: 2022/09/26



PHOTOGRAPH 7

Date taken: 2022/10/03



PHOTOGRAPH 1



Date taken: 2022/09/26

PHOTOGRAPH 2

Date taken: 2022/09/26



PHOTOGRAPH 3

Date taken: 2022/09/26



PHOTOGRAPH 4

Date taken: 2022/09/26



PHOTOGRAPH 5

Date taken: 2022/09/26



PHOTOGRAPH 6

Date taken: 2022/09/26



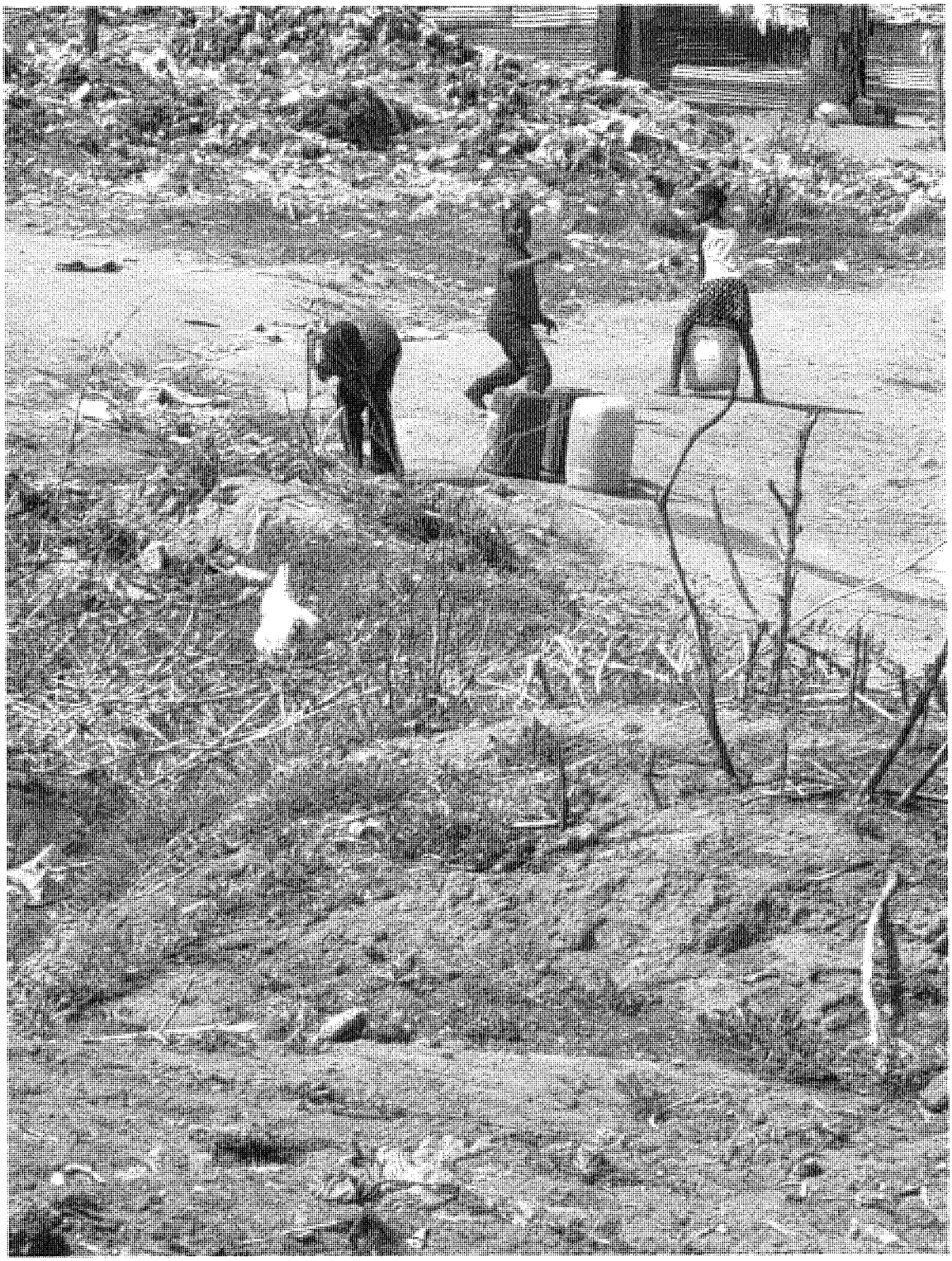
PHOTOGRAPH 7

Date taken: 2022/09/26



PHOTOGRAPH 8

Date taken: 2022/09/26



PHOTOGRAPH 9

Date taken: 2022/09/26



PHOTOGRAPH 10

Date taken: 2022/10/03



PHOTOGRAPH 11

Date taken: 2022/10/03



PHOTOGRAPH 12

Date taken: 2022/10/03



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PHOTO 1

Date taken 3 October 2022

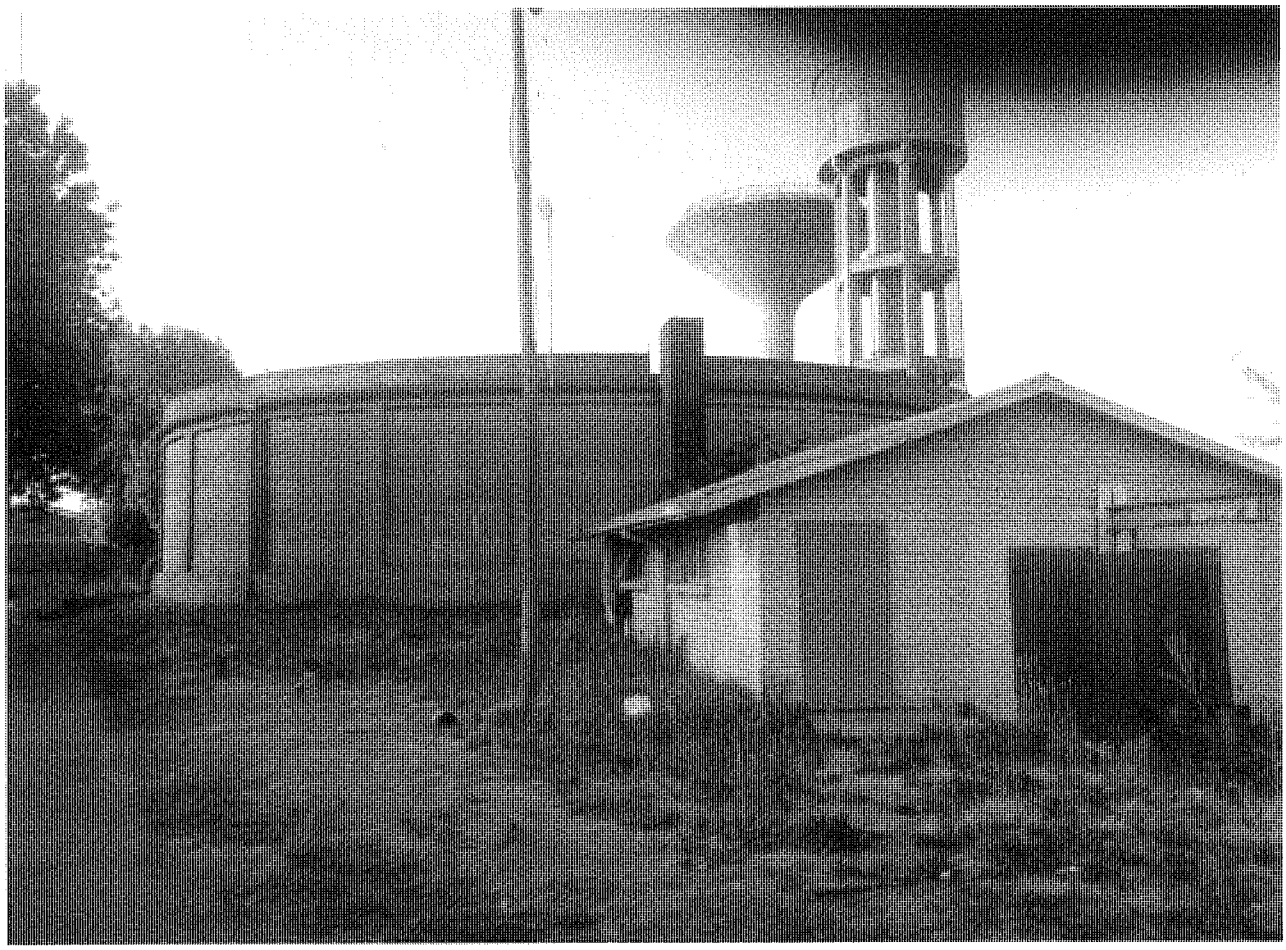


PHOTO 2

Date taken 3 October 2022



PHOTOGRAPH 1

Date taken: 2022/09/26



PHOTOGRAPH 2

Date taken: 2022/09/26



PHOTOGRAPH C1

DATE TAKEN: 2022/10/04



ILLEGAL DUMPING SITES - LICHTENBURG

PHOTOGRAPH C1

DATE TAKEN: 2022/10/04



ILLEGAL DUMPING SITES - LICHTENBURG

LICHTENBURG-OMGEWING

Chaos heers by Ditsobotla

Krag afgesny 'om geld vir salarisse te kry'

Susan Cilliers

Die plaaslike munisipaliteit in die Lichtenburg-omgewing is blykbaar nou so desperaat om salarisse te betaal dat hy links en regs kragtoevoer begin afsny.

Werkers van die Ditsobotla-munisipaliteit in Noordwes het steeds nie hul Augustus-salaris ontvang nie weens "konstant vlaagprobleme", het Pius Batsile, munisipale woordvoerder, gister bevestig.

Intussen het die September-betaaltyd reeds aangebreek.

Net die heel noodsaaklikste water- en elektrisiteitsdienste word gedurende werktye deur 'n handjievol personeellede gelewer omdat die meeste werkers weens die niebetaling nie werk nie. Dienste soos vullisverwydering en na-ure-nooddienste bestaan nie, sê George Visser, VF Plus-raadslid in Ditsobotla.

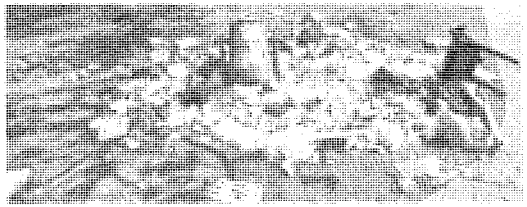
Die munisipale kantore is ook geskuif.

Die Hoërskool Lichtenburg het Woensdag een van die kragslag-offers geword. Sy kragtoevoer is omstreeks 15:30 afgeskakel. Dit is ondanks die feit dat die skool ingevolge 'n hofbevel van 2017 sy elektrisiteitsrekening direk by Eskom vereffen.

"Ons Eskom-rekening en ander munisipale gelde is heeltemal op datum," sê Dawie Mathee, die skoolhoof.

"Ons kragtoevoer is onwettig afgesny. Wanneer die skool nie kragtoevoer het nie, is daar nie water vir kosmaak, toilette of was by die skool of koshuis nie. Ons matrieks skryf rekordeksamen en daar is geen tyd in die koshuis waar hulle moet studeer nie. Ons moes skarrel sodat hul le Woensdagaand by maats in die dorp inligeplaas kon word. Ek en Carin Visser (DA-LP) het tot laataand probeer om die situasie te herstel."

Mathee sê die skool se kragtoevoer is gisteroggend herstel na-dat hy die munisipale bestuurder ingelig het hulle is op pad na die hoogeregshof in Mmabatho om 'n hofbevel te bekom dat die kragtoevoer dadelik herstel moet word. "Die munisipale bestuurder (Tsietsi Sheman) het verskoning gevra vir die misverstand."



Só hoop vullis in Lichtenburg op terwyl dienste nie gelewer word nie.
Foto: JONAN BEZUIDENHOUT

Chris Breedt, voorsitter van die Lichtenburg-sakekamer, sê hulle is ook in die proses om 'n hofbevel te kry om 'n stokkie te steek voor die munisipaliteit se "onwettige" optrede om links en regs kragtoevoer af te sny.

"Die munisipale rekeninge is chaoties, dispute is nie opgeklaar nie en daar is nie sprake van die vereiste kennisrydperk van sewe dae voordat kragtoevoer afgeskakel word nie."

Batsile kon nie kommentaar lewer op die afsny van kragtoevoer nie.

Intussen blaas die provinsiale regering se uitvoerende raad ook in Ditsobotla se nek om sy raad te ontbind en 'n administrateur aan te stel. Sake by die reeds sukkelende munisipaliteit het sedert die plaaslike verkiesings verlede jaar hly versleg weens ANC-binnegevegte in die raad. Dit het daartoe gelei dat daar vir maande twee parallele rade met onder andere 'n ele burgemeester en munisipale bestuurder was.

Dit en die munisipaliteit se bemarde geldsake het daartoe gelei dat die nasionale tesourie in Julie die raad se billike aandeel weerhou het – tot tyd en wyl aan 'n rits vereistes oor hoofsaaklik finansiële verantwoordbaarheid voldoen word.

Visser sê hoewel die provinsiale regering in 'n onlangse kennisgewing gesê het die raad moet onmiddellik ontbind word en dat die munisipaliteit onder administrasie geplaas word, kan dit op die vroegste teen 30 September gebeur omdat die Nasionale Raad van Provinsies en die minister dit eers moet goedkeur.

Die raad het dharom, en ook onder meer omdat die provinsiale se besluit op "onjuiste feite gegrond en voortydig is", teen die besluit geappelleer deur in 'n prokureursbrief aan die provinsiale te vra dat dit teruggetrek word.

Die raad wil ook die hof nader om die provinsiale en nasionale tesourie te dwing om die billike aandeel uit te betaal.

Intussen het die raad op 2 September die parallele rade beëindig en een burgemeester, een speaker, een hoofswep en een waarnemende munisipale bestuurder verkies.

Batsile het gister gesê hulle wag nog op uitsluitsel oor die ontbinding en om onder administrasie geplaas te word.

Dineo Thapelo, woordvoerder van Noordwes se departement van samewerkende regering en tradisionele sake, het bevestig hulle het die brief van die raad ontvang.

CC11
0144

Eskom

CENTRAL REGION
PO BOX 8610 JHB 2000

Eskom

CONTACT CENTRE: (0860) 037566
FAX NO: 0862 437 566
E-MAIL: customerservices@eskom.co.za
WEB: WWW.ESKOM.CO.ZA

TEL: 08600 37566
SMS: 35328

ESKOM HOLDINGS SOC LTD REG NO 2002/015527/30
VAT REG NO 4740101508

CUSTOMER SELF SERVICE WEBSITE:
https://csonline.eskom.co.za

LICHTENBURG TRANSITIONAL LOCAL
ATT TOWN TREASURER MR WP POOL
PO BOX 7
LICHTENBURG
2740

CENTRAL REGION
PO BOX 8610 JHB 2000

YOUR ACCOUNT NO	7809564658
SECURITY HELD	1.48
BILLING DATE	2022-09-23
TAX INVOICE NO	780509759615
ACCOUNT MONTH	SEPTEMBER 2022
CURRENT DUE DATE	2022-10-24
VAT REG NO	4410109930

DIRECT DEPOSIT DETAIL

BANK:	First National Bank
BRANCH CODE:	255005
BANK ACC NO:	62006191077

TAX INVOICE

E-MAIL: ylaher99@gmail.com

ACCOUNT TRANSACTION SUMMARY

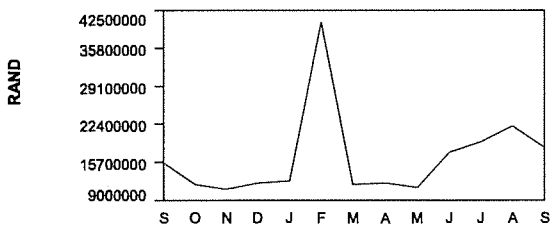
ADMINISTRATION CHARGE		R	11,687.62
TRANSMISSION NETWORK CAPACITY		R	322,589.34
DIST. NETWORK CAPACITY CHARGE		R	646,247.74
NETWORK DEMAND CHARGE		R	889,270.33
ANCILLARY SERVICE (ALL)		R	53,248.93
ENERGY CHARGE (STD)	3,683,439.00	R	4,687,150.31
ENERGY CHARGE (PEAK)	1,725,501.00	R	5,846,639.33
ENERGY CHARGE (OFF)	3,465,885.00	R	2,509,066.54
ELECTRIFICATION AND RURAL SUBS (ALL)		R	1,041,016.73
REACTIVE ENERGY	899.00	R	190.50
SERVICE CHARGE		R	182,989.28
TOTAL CHARGES FOR BILLING PERIOD		R	**16,190,096.65**

ACCOUNT SUMMARY FOR SEPTEMBER 2022

BALANCE BROUGHT FORWARD	(Due Date 2022-09-19)	R	878,001,649.22
PAYMENT(S) RECEIVED	(Summary - See attachment for details)	R	-3,714,083.32
TOTAL CHARGES FOR BILLING PERIOD		R	16,190,096.65
ADJUSTMENT	Interest on overdue account	R	4,158,576.74
ADJUSTMENT	Interest on overdue account	R	739,296.08
VAT RAISED ON ITEMS AT 14%		R	0.00
VAT RAISED ON ITEMS AT 15%		R	2,428,514.50

ARREARS						
>90 DAYS	61-90 DAYS	31-60 DAYS	16-30 DAYS	CURRENT		
824,943,185.	0.00	49,344,380.53	0.00	23,516,483.97	TOTAL DUE	R 897,804,049.87

Account OVERDUE - Subject to Disconnection



ACCOUNT NO / REFERENCE NO
7809564658

NAME
LICHTENBURG TRANSITIONAL

FAX NUMBER
0186325247

Post Office 0934 7809564658

11341 7809564658

>>>> 9207 2780 9564 6587

Click to pay via payat

TOTAL AMOUNT DUE

897,804,049.85

PAYMENT ARRANGEMENT

INSTALMENT
0.00

ARREARS (Due Immediately)
874,287,565.90

DUE DATE (For Current Amount)
2022-10-24

AMOUNT PAID

LATE PAYMENT CHARGES WILL BE ADDED TO OVERDUE ACCOUNT

PAGE RUN NO	EP 1
BILL GROUP	
BILL PAGE	1 OF 4

CE145

Eskom

LICHTENBURG TRANSITIONAL LOCAL
ATT TOWN TREASURER MR WP POOL
PO BOX 7
LICHTENBURG
2740

Date: 2022-09-04

Telephone: (0860) 037566

NOTICE OF DISCONNECTION FOR NON-PAYMENT
ACCOUNT NUMBER: 7809564658

According to our records you are in breach of your electricity supply agreement (ESA) due to the non-payment of the above account. The overdue amount as at the date of this notice is **R 347135182.09**

If you have not paid or made a payment arrangement by **2022-09-17** your electricity supply will be disconnected without further notice and thereafter your ESA will be terminated.

You will be required to comply with the following conditions, before your electricity supply can be reconnected.

1. Pay the full outstanding amount, including interest thereon;
2. Pay a reconnection fee and if applicable a new connection charge;
3. Provide an updated cash deposit or guarantee

Reconnection of electricity supply takes place during normal working hours (Monday to Friday) and immediate reconnection of the supply after payment cannot be guaranteed.

Please make use of our on-line platforms (Alfred Our Chatbot; CS-Online or MyEskom Customer App) to check your account balances. Alternatively contact our Contact Centre (0860) 037566 for assistance.

All of Eskom's rights are reserved

Yours sincerely

Senior Manager Finance

Eskom Distribution
Maxwell Drive, Sunninghill, Sandton, JOHANNESBURG
PO Box 1091, JOHANNESBURG, 2001
Tel : +27 86 003 7566
www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

CASE NO.: M311/2021

In the application between:

SAKELIGA NPC	Applicant
and	
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	1st Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	2nd Respondent
THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	3rd Respondent
THE MINISTER OF FINANCE	4th Respondent
DITSOBOTLA LOCAL MUNICIPALITY	5th Respondent
NALEDI LOCAL MUNICIPALITY	6th Respondent
THE PREMIER: NORTH WEST PROVINCE	7th Respondent
ESKOM SOC LIMITED	8th Respondent
MAGALIES WATER BOARD	9th Respondent
SEDIBENG WATER BOARD	10th Respondent

FILING NOTICE

DOCUMENTS TO BE FILED:

- **NOTICE OF MOTION – AMENDED**

FILED BY: **KRIEK WASSENAAR & VENTER INC. ATTORNEYS**
Applicant's Attorneys
Tel.: 012 756 7566
Fax: 086 596 8799
Email: peter@kriekprok.co.za
Ref.: PJ Wassenaar/es/QB0616
c/o SMIT STANTON INCORPORATED
29 Warren Street
Golf View
Mahikeng
Tel.: 018 381 0180
Fax: 086 274 6253
E-mail: litigation1@smitstanton.co.za
Ref.: KRI19/0002/21

Dated at **PRETORIA** on this the 04 day of **MARCH 2022**.

KRIEK WASSENAAR & VENTER INC. ATTORNEYS
Applicant's Attorneys
in the interlocutory application
Tel.: 012 756 7566
Fax: 086 596 8799
Email: peter@kriekprok.co.za
Ref.: PJ Wassenaar/es/QB0616
c/o SMIT STANTON INCORPORATED
29 Warren Street
Golf View
Mahikeng
Tel.: 018 381 0180
Fax: 086 274 6253
E-mail: litigation1@smitstanton.co.za
Ref.: KRI19/0002/21

TO: **THE REGISTRAR OF THE HIGH COURT**
MAHIKENG

AND TO: **THE STATE ATTORNEY, MMABATHO**
1st - 4th and 7th Respondents' Attorneys
1st Floor, East Gallery
Mega City Complex
Corner Sekame Road & Dr James Moroka Drive
Mmabatho
Ref.: N Mekgwe/0955/21/P3
Email: NMekgwe@justice.gov.za

ELECTRONIC SERVICE VIA EMAIL
IN TERMS OF RULE 4A(1)(c)

AND TO: **THE STATE ATTORNEY, PRETORIA**
4th Respondents' Attorneys
40 Church Square
2nd Floor, Old Reserve Bank Building
Pretoria CBD
Email: zzenani@justice.gov.za
c/o THE STATE ATTORNEY, MMABATHO
Email: NMekgwe@justice.gov.za

ELECTRONIC SERVICE VIA EMAIL
IN TERMS OF RULE 4A(1)(c)

AND TO: **TIRO ATTORNEYS**
5th Respondents' Attorneys
43 Shippard Street
Office no. 06. Shasons Center
Tel: 018 381 0119
Fax: 086 460 7839
Ref: Mr Molefe/D0012
Email: mmolefe94@gmail.com

ELECTRONIC SERVICE VIA EMAIL
IN TERMS OF RULE 4A(1)(c)

AND TO: **MODIBOA ATTORNEYS INC.**
6th Respondents' Attorneys
No. 107 Readman Street
Wilkoppies, Klerksdorp
Tel.: 018 468 1970 / 1725
Fax: 018 468 1531 / 086 228 0747

Email: info@modiboaattorneys.co.za
Ref.: Mr L Modiboa/00519/nlm/CIV
c/o MOTSHABI & ASSOCIATES
12 Havenga Street
Golf View, Mahikeng
Tel.: 018 381 8187 / 8909
Fax: 018 381 8131
Ref.: Mr P Molelekeng/T01378/CIV

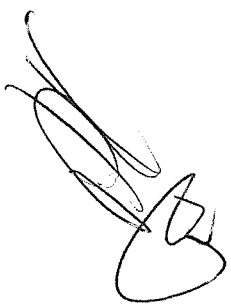
ELECTRONIC SERVICE VIA EMAIL
IN TERMS OF RULE 4A(1)(c)

AND TO: **MKHABELA HUNTLEY ATTORNEYS INC.**
8th Respondents' Attorneys
Block C
7 Eton Road
Tel.: 011 783 8020
Email: wendel@mhalaw.co.za
Ref.: ESK3/0008/W Bloem
c/o ME TLOU ASSOCIATES ATTORNEYS
43 Corner Baden Powell & Visser Streets
Golfview, Mahikeng
Tel.: 018 011 0036
Email: naledi@tlouattorneys.co.za

ELECTRONIC SERVICE VIA EMAIL
IN TERMS OF RULE 4A(1)(c)

AND TO: **MAENETJA ATTORNEYS**
8th Respondents' Attorneys
65 & 74 Rigel Avenue North
Waterkloof, Pretoria
Tel: 012 327 4480
Cell: 071 418 0396
Ref.: Mr Walter Mashapa/TJM/ESKOM/001
Email: walter@maenetjaattorneys.co.za
c/o ME TLOU ASSOCIATES ATTORNEYS
43 Corner Baden Powell & Visser Streets
Golfview, Mahikeng
Tel.: 018 011 0036
Email: naledi@tlouattorneys.co.za

ELECTRONIC SERVICE VIA EMAIL
IN TERMS OF RULE 4A(1)(c)



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

CASE NO.: M311/2021

In the application between:

SAKELIGA NPC	Applicant
and	
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	1st Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	2nd Respondent
THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	3rd Respondent
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DITSOBOTLA LOCAL MUNICIPALITY	5th Respondent
NALEDI LOCAL MUNICIPALITY	6th Respondent
THE PREMIER: NORTH WEST PROVINCE	7th Respondent
ESKOM SOC LIMITED	8th Respondent
MAGALIES WATER BOARD	9th Respondent
SEDIBENG WATER BOARD	10th Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicant intends making application to this Court for an order in the following terms:

1. That the fifth and sixth respondent municipalities be found, in terms of Section 139 (5) of the Constitution, read with Sections 136 (4), 139 and 140 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA"), to be in serious and persistent material breach of their obligations to provide basic services and to meet their financial commitments.

2. That the first, second and seventh respondent's failure to implement mandatory interventions in respect of or within the fifth and sixth respondent municipalities, in terms of Section 139 (5) read with Sections 136 (4), 139 and 140 of the MFMA, be found to be inconsistent with Sections 2, 10, 24, 139 (5), 195 and 237 of the Constitution.

3. That the seventh respondent, in the capacity as the head of the executive council of the Northwest province, be directed to forthwith implement a mandatory intervention as envisaged in Sections 139 (5) of the Constitution and Section 139 (5) of the MFMA and to comply with the provisions of the said legislation.

4. That the intervention referred to in prayer 3 *supra* be a mandatory intervention, as envisaged in Section 139 of the MFMA and that, should the fifth and sixth

respondent municipalities, its administration and/or its respective councils resist such intervention, directing the seventh respondent, in his capacity as the head of the executive council of the Northwest province to dissolve each of the councils of the affected municipalities and that administrators be appointed to take over the control of the affected municipalities.

5. That on the implementation of the mandatory interventions as referred in prayer 3 the third and fourth respondents be directed to forthwith, alternatively that the seventh respondent, in his capacity as the head of the executive council of the Northwest province be directed to request the third and fourth respondents to forthwith:

5.1. determine the reasons for the crisis in each of the affected municipalities' financial affairs;

5.2. assess each of the municipalities' financial status;

5.3. instruct the Municipal Finance Recovery Service of the fourth respondent to prepare a recovery plan for the affected municipalities;

5.4. recommend appropriate changes to the municipalities' budgets and revenue raising measures that will give effect to a recovery plan, as developed;

5.5. submit to the second respondent the determination and assessment, referred to in prayers 5.1 and 5.2 *supra*, together with the recovery plan and recommendations, referred to in prayers 5.3 and 5.4 *supra*.

6. That the first respondent be directed to prepare a report to be filed on the court file in this case, every 60 (sixty) days (or two calendar months) after the date of this court order, setting out the steps taken by the respondents, as the case may be, in recovering the fifth and sixth respondent municipalities, which report shall provide updates on the implementation of the developed financial recovery plan.

7. The first to fourth respondents are directed to provide copies of all reports and recovery plans prepared with reference to the recovery of the fifth and sixth respondent municipalities, to the applicant.

8. That, pending the proper implementation of the financial recovery plan, Advoca Auditors, Lynnwood, Pretoria, Gauteng Province, or such other expert or expert entity/firm as this Court may deem fit, be appointed as a so-called special master in respect of the fifth and sixth respondents, with the following duties:

8.1. collecting and overseeing the ringfencing in separate municipal bank accounts all municipal income generated from the sale of electricity and the sale of water;

8.2. effecting the distribution of the municipal income received and ringfenced in terms of prayer 8.1 above, to:

8.2.1. the monthly running account of Eskom and/or any other supplier of bulk electricity to the municipality on receiving a proper invoice from the supplier; and

8.2.2. the monthly running account of Magalies Water and/or any supplier of bulk water service to the municipality on receiving a proper invoice from the supplier;

8.2.3. paying contractors required to conduct emergency maintenance to the sanitation, storm water, electricity and water reticulation networks within the municipalities;

8.2.4. transferring the balance available for distribution after the payment of the suppliers, mentioned in prayers 8.2.1, 8.2.2 and 8.2.3 above, to the municipality in question.

8.3. provide, within 14 (fourteen) days after each month-end, a proper account in respect of all money received or collected in respect of electricity and/or water from the community within the municipal area of the relevant municipality and all money paid out in accordance with prayers 8.2.1 up to 8.2.4 above.

9. That the special master shall have, in addition, the powers as set out in the schedule attached to this notice of motion and marked as **Annexure "Z"**, alternatively such powers as this Court may deem fit and appropriate.

10. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities, on each municipality's compliance and enforcement of Section 32 of the MFMA for the financial years ending 2017, 2018, 2019, 2020 and 2021, which report must:

10.1. specify every incident of unauthorised, irregular or fruitless and wasteful spending and the person/s liable for that expenditure;

10.2. specify every resolution passed and/or further action taken by each of the municipalities, as is required by Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA, in relation to each incident of unauthorised, irregular or fruitless and wasteful spending;

10.3. specify every incident of non-compliance with Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA.

11. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities involved, in respect of the accounting systems, practices and failures of each municipality, specifically insofar as it relates to the prevention, management and recovery of unauthorized, irregular or fruitless or wasteful spending and the fifth and sixth respondent's failures to address issues raised by the Auditor-General as required by Section 131(1) of the MFMA.

12. The respondents are directed to co-operate with the special master in the preparation and execution of the special master's duties in terms of the order, and shall ensure that:

12.1. the special master is provided with all documents and requested required and requested by the special master;

12.2. that officials of the fifth and sixth respondents are reasonably available to meet with the special master if so requested and provide the special master with such information as may reasonably be requested;

12.3. that all requests of the special master be timeously responded to.

13. That the Court determine the remuneration of the special master and give any further directions regarding the terms of the appointment of the special master as the Court deems necessary.

14. Once the reports envisaged in these orders have been received, alternatively if any of the respondents fails to comply with the provisions of this order, the applicant shall be entitled to supplement these papers, amend its notice of motion and seek such further relief as may be necessary to give effect to this order.

15. In the alternative to all the above, and should this Court find that any of the respondents' conduct is inconsistent with the Constitution as envisaged in prayer 2 *supra,* but that the remedies sought by the applicant are for some reason not found to be appropriate, the applicant requests this Court to make an order that is just and equitable as envisaged in section 172 of the Constitution which will have a

remedial effect in the sense that it alleviates the Constitutional infringements complained about.

16. That the first to sixth respondents be ordered to pay the costs of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved. Costs against the seventh to ninth respondents will only be sought in the event of them electing to oppose the application.

17. Further and/or alternative relief.

Dated at **MAHIKENG** on this the **26th** day of May **2021**.

KRIEK WASSENAAR & VENTER INC. ATTORNEYS
Applicant's Attorneys
in the interlocutory application
Tel.: 012 756 7566
Fax: 086 596 8799
Email: peter@kriekprok.co.za
Ref.: PJ Wassenaar/es/QB0616
c/o SMIT STANTON INCORPORATED
29 Warren Street
Golf View
Mahikeng
Tel.: 018 381 0180
Fax: 086 274 6253
E-mail: litigation1@smitstanton.co.za
Ref.: KRI19/0002/21

TO: **THE REGISTRAR OF THE HIGH COURT**
MAHIKENG

AND TO: **THE STATE ATTORNEY, MMABATHO**
1st - 4th and 7th Respondents' Attorneys
1st Floor, East Gallery
Mega City Complex
Corner Sekame Road & Dr James Moroka Drive

Annexure Z

POWERS AND CAPACITIES OF THE APPOINTED SPECIAL MASTER OF
THE DITSOBOTLA LOCAL MUNICIPALITY
and
THE NALEDI LOCAL MUNICIPALITY

a) To open, on behalf of The Ditsobotla Local Municipality and The Naledi Local Municipality 2 (two) additional municipal banking accounts in respect of each of these municipalities, wherein all income derived from water sales and electricity sales shall be received and ringfenced.

b) To take control of and operate the newly opened banking accounts of the municipalities, for the exclusive purpose as envisaged in 8.2 of the order of this Court.

c) To appoint and pay contractors to conduct maintenance to the sanitation, storm water, electricity and water reticulation networks within the areas of the municipalities.

d) To incur all necessary expenditure to maintain the sanitation, storm water, electricity and water reticulation networks within the areas of the municipalities.

e) To claim all costs, charges and other expenditure reasonably incurred by the special master, including but not limited to travelling, telephone calls and accommodation in the execution of the special master's duties in terms of the order of this Court, which shall include own remuneration, as costs payable from the ringfenced municipal accounts at the rate of R2 500.00 per hour.

f) To engage the assistance of legal, accounting, administrative or other professionals or technical assistance as may reasonably be deemed necessary for the performance of the special master's duties in terms of the order of this Court and to defray the reasonable charges and expenses thus incurred from the ringfenced municipal accounts.

***

CC164/60
GW1671

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE NO: M 311/2021

Held at MMABATHO on this the 07th day of SEPTEMBER 2022
BEFORE the Honourable Madam Justice SNYMAN J

In the matter between:

Private Bag X2018, Mmabatho 2735
2022 -09- 26
NWD-NW-005

SAKELIGA NPC	Applicant
And	
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	1st Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	2nd Respondent
THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	3rd Respondent
THE MINISTER OF FINANCE	4th Respondent
DITSOBOTLA LOCAL MUNICIPALITY	5th Respondent
NALEDI LOCAL MUNICIPALITY	6th Respondent
THE PREMIER: NORTH WEST PROVINCE	7th Respondent
ESKOM SOC LIMITED	8th Respondent
MAGALIES WATER BOARD	9th Respondent
SEDIBENG WATER BOARD	10th Respondent

HAVING HEARD ADV EGAN on behalf of the Applicant and ADV MODIKWA with ADV DUBE and ADV MAJOKO on behalf of the Respondents and having read the Notice of Motion and other documents filed of record;

IT IS ORDERED

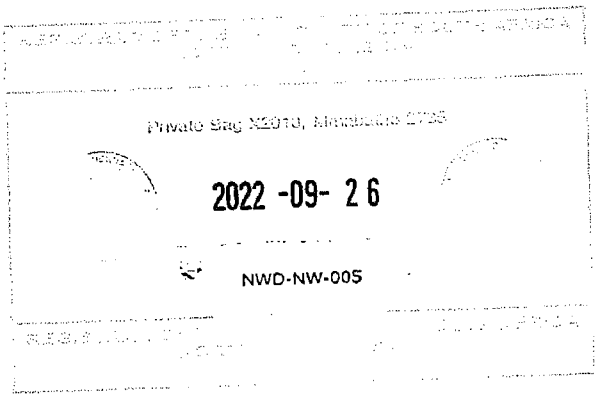
1. THAT: Matter is to proceed virtually on either interlocutory application brought by Naledi Local Municipality and/or Case Management on the 17th day of NOVEMBER 2022;

2. THAT: The Applicant to file any Supplementary documents and/or Heads of argument on/before 07th day of OCTOBER 2022;

3. THAT: The Respondent to file any Supplementary documents as well as Heads of argument on/before the 11th day of NOVEMBER 2022;

4. THAT: The Applicant is to set down the matter for hearing on the 23rd & 24th MARCH 2023 on which the main application is to be heard; and

5. THAT: The cost of the case management meeting of 07th day of SEPTEMBER 2022 is costs in the cause.



BY THE COURT
REGISTRAR OF HIGH COURT
NORTH WEST HIGH COURT
MAFIKENG
REGISTRAR

S & S Att

0162
CCTS

coghsta
Cooperative Governance, Human Settlements and Traditional Affairs
North West Provincial Government
REPUBLIC OF SOUTH AFRICA

The Chairperson
PC on Co-operative Governance and Traditional Affairs
P.O BOX 15
CAPE TOWN
8000

Date: 24 August 2020

Dear Hon. A F Muthambi

SUBJECT : REPORT ON THE STATE OF LOCAL GOVERNMENT IN THE NORTH WEST PROVINCE

---

1. PURPOSE

The purpose of the submission is to present to the **PC on Co-operative Governance and Traditional Affairs** a **"STATE OF LOCAL GOVERNMENT REPORT IN THE NORTH WEST PROVINCE"**

2. BACKGROUND

Section 152(1) of the Constitution, stipulates that the mandate of Local Government is to provide democratic and accountable government for local communities; ensure provision of services to the communities in a sustainable manner; promote social and economic development; promote a safe and healthy environment and encourage the involvement of communities and community organizations in the matters of Local Government. These constitutional mandates remain our foundation to put necessary systems and controls in place if we were to change the phase of Local Government in our province.

Section 152(2) of the Constitution stipulates that a municipality must strive, within its financial and administrative capacity, to achieve the mandate as set out in Section 152(1) above.

Section 153 of the Constitution further stipulates that a municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community.

The National and Provincial Government in terms of Section 154 of the Constitution must by legislative and other measures support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

Despite these empowering provisions of legislation aimed at '***Making Local Government Work for Everyone***' *and ensuring* '***Accountable, Responsive and Accessible,*** it is a well-documented fact that local government in the North West is in a state of paralysis; our municipalities have invariably and in varying degrees been and/or are bedeviled by immense capacity challenges. These challenges includes but not limited to the following:

a) Failure and collapse of governance and administrative systems in municipalities;

b) Legislative provisions & prescripts flouted, in particular Supply Chain Management (SCM) processes and procedures;

c) Declining Audit Outcomes with increasing trend of Unauthorised Irregular Fruitless and Wasteful (UIF&W) Expenditure;

d) Non-compliance with MFMA and other legislative conditions that led to loss and or withholding of Equitable Share and Conditional Grants such as MIG over the years;

e) Inability to provide sustainable, uninterrupted and quality services and

f) Weak Public Participation and accountability systems.

3. BASIC INFORMATION REGARDING THE MUNICIPALITIES IN THE PROVINCE

The following table provides statistics in terms of categorising our municipalities in the province and also to share the type of the mayoral council system per municipality.

3.1. Legend:

C1	District Municipalities which are Not Water Services Authorities
C2	District Municipalities which Are Water Services Authorities
B1	Local Municipality with a Large Budget and Containing a Secondary City
B2	Local Municipality with a Large Town as a Core
B3	Local Municipality with a Small Town, with relatively Small Population and Significant proportion of Urban Population but with no Large town as Core.
B4	Local Municipality which are mainly Rural with Communal Tenure and with, at most, One or Two Small Towns in their Area.

	MUNICIPALITY	CATEGORY (LGTAS)	COUNCIL SYSTEM	NUMBER OF WARDS	NUMBER OF COUNCILORS PR+WC
1.	NgakaModiriMolema District Municipality	C 2	Executive Mayor, Mayoral Committee, Speaker and Council Committees.	0	14
2.	Mahikeng Local Municipality	B2	Executive Mayor, Mayoral Committee, Speaker and Council Committees.	35	69
3.	Tswaing Local Municipality	B4	Mayor, Executive Committee, Speaker and Council Committees.	15	29

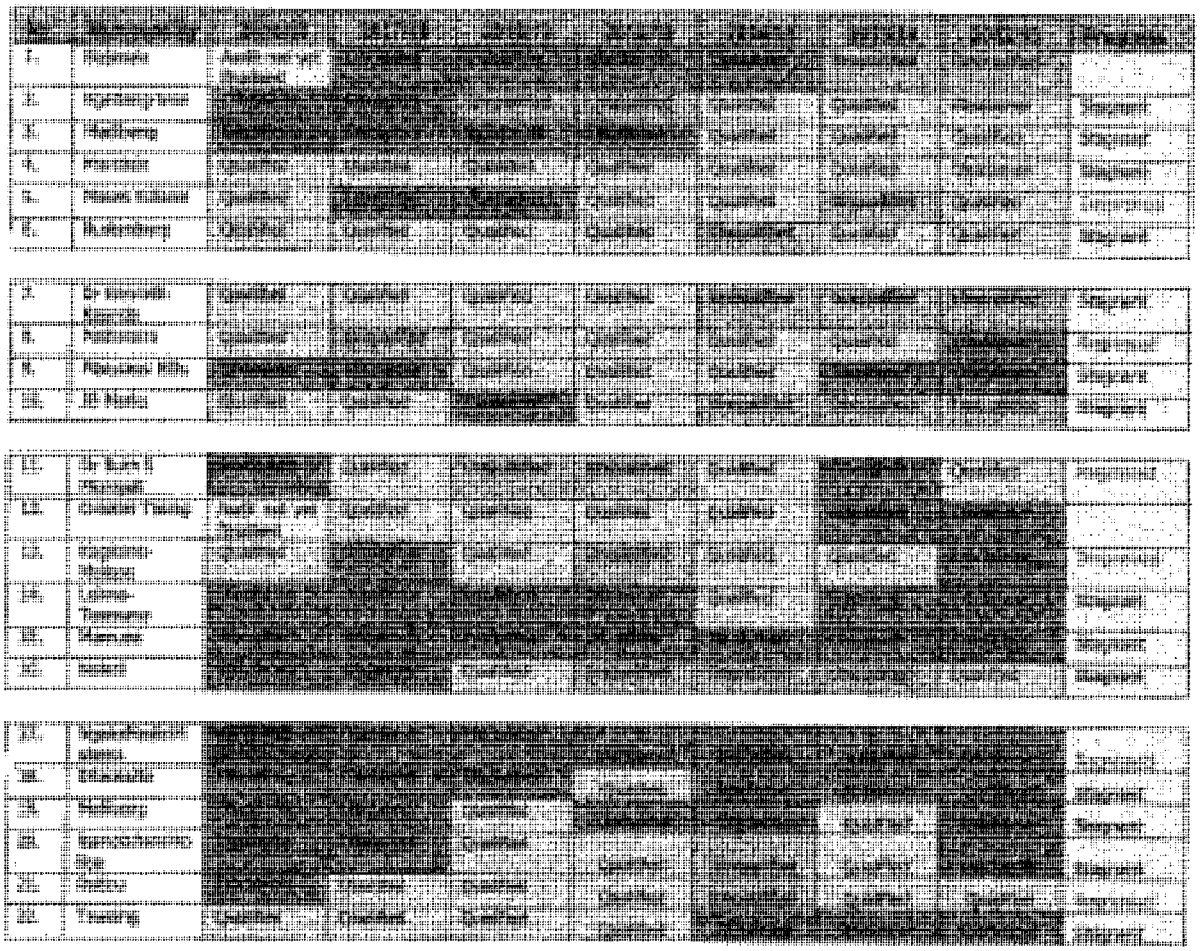
	MUNICIPALITY	CATEGORY (LG1AS)	COUNCIL SYSTEM	NUMBER OF WARDS	NUMBER OF COUNCILLORS PR+WC
4.	Ditsobotla Local Municipality	B3	Mayor, Executive Committee, Speaker and Council Committees.	20	40
5.	Ratlou Local Municipality	B4	Mayor, Executive Committee, Speaker and Council Committees.	14	28
6.	RamotshereMoiloa Local Municipality	B3	Mayor, Executive Committee, Speaker and Council Committees.	19	38
7.	Dr. Ruth SegomotsiMompati District Municipality	C 2	Executive Mayor, Mayoral Committee, Speaker and Council Committees	0	16
8.	Naledi Local Municipality	B3	Mayor, Executive Committee, Speaker and Council Committees	10	10
9.	Mamusa Local Municipality	B3	Plenary type municipality constituted by a full-time Mayor as the chairperson of Council and Council Committees.	9	18
10.	Greater Taung Local Municipality	B4	Mayor, Executive Committee, Speaker and Council Committees.	24	48
11.	LekwaTeemane Local Municipality	B3	Plenary type municipality constituted by a full-time Mayor as the chairperson of Council and Council Committees.	8	16

	MUNICIPALITY	CATEGORY (LGTAS)	COUNCIL SYSTEM	NUMBER OF WARDS	NUMBER OF COUNCILORS PR & WC
12.	Kagisano Molopo Local Municipality	B4	Mayor, Executive Committee, Speaker and Council Committees.	15	29
13.	Bojanala Platinum District Municipality	C 1	Executive Mayor, Mayoral Committee, Speaker and Council Committees.	0	29
14.	Kgetlengrivier Local Municipality	B3	Mayor, Executive Committee and Council Committees.	8	15
15.	Moses Kotane Local Municipality	B4	Mayor, Executive Committee and Council Committees.	34	68
16.	Madibeng Local Municipality	B1	Executive Mayor, Mayoral Committee and Council Committees.	41	81
17.	Rustenburg Local Municipality	B1	Executive Mayor, Mayoral Committee and Council Committees.	45	89
18.	Moretele Local Municipality	B4	Mayor, Executive Committee, Speaker and Council Committees.	26	52
19.	Dr. Kenneth Kaunda District Municipality	C 1	Executive Mayor, Mayoral Committee, Speaker and Council Committees.	0	16
20.	City of Matlosana Local Municipality	B1	Executive Mayor, Mayoral Committee and Council Committees.	39	77
21.	JB Marks Local Municipality	B1	Executive Mayor, Mayoral Committee and Council Committees.	34	67

	MUNICIPALITY	CATEGORY (LGTAS)	COUNCIL SYSTEM	NUMBER OF WARDS	NUMBER OF COUNCILLORS (PR&WC)
22.	Maquassi Hills Local M Municipality	B3	Mayor, Executive Committee and Council Committees.	11	22

4. SUMMARY OF AUDIT FINDINGS FOR LOCAL GOVERNMENT

The table below summarises the audit outcome of all municipalities in the North West Province for the past seven (07) financial years to date:



04 Regressions
09 No Improvement, receiving disclaimer audit outcomes
05 No Improvement, stagnant in terms of receiving Qualified audit outcomes
02 Improvement from Disclaimer to Qualified
02 Audit process not yet finalised

#. Bojanala District: AFS submitted 30 Jan 2020, off-site audit currently in progress.

#. Greater Taung: AFS submitted 30 Jan 2020, off-site audit currently in progress.
Anticipated completion date is June 2020

4.1.1. Provincial Overview

NW audit opinion	2018/19-Interim	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13
Clean	0	0	0	0	0	0	0
Unqualified with findings	0	1	2	4	6	5	3
Qualified	8	8	12	12	10	9	6
Disclaimer	11	13	8	7	7	9	14
Adverse	1	0	0	0	0	0	0
Outstanding	2	0	0	0	0	0	0
Total	**22**	**22**	**22**	**23**	**23**	**23**	**23**

4.1.2. Municipalities receiving Disclaimer Audit opinions fo

No.	Name of Municipality	Number of Years
1.	NgakaModiriMolema	06 <
2.	Mamusa	06 < (Disclaimer since inception
3.	Bojanala	04
4.	Lekwa-Teemane	04
5.	Madibeng	04
6.	Ditsobotla	03

5. STATE OF GOVERNANCE IN NORTH WEST MUNICIPALITIES

The Governance Committee in the main assessed Municipalities in terms of the four key focus areas of the Back to Basics (Pillars) namely:

a) Governance and Administration
b) Financial Management and Viability
c) Service Delivery and Infrastructure Development

5.1. AN OVERVIEW ON THE STATE OF MUNICIPALITIES

5.1.1 Dr. Ruth SegomotsiMompati District Municipality

Dr. Ruth Segomotsi Mompati District Municipality (previously Bophirima District Municipality) is in the North West Province of South Africa, with the Botswana border immediately to the north. This area characterised by cattle farming as the most significant economic activity, is commonly known as the 'Texas of South Africa'.

The District is one of four in the province, with poor rural areas, formerly situated in the former Bophuthatswana homeland. With the population dispersed across more than 470 villages and towns in a 250km radius (approximately 50km north to south and 200km east to west), this district presents unique management and organisational challenges.

There are five local municipalities which fall within its jurisdiction and there is largely rural, consists of a few small towns, with Vryburg as the base of the DRSM offices.

Over past three years, the DRSM has been plagued with crisis after crisis, scandal after scandal, ranging from total failure to deliver water and sanitation services as the Water Service Authority to incremental decline in the governance as evidenced by the free fall from successive Unqualified Audit Report to Disclaimer Report by the Office of the Auditor-General.

a) Governance and Administration (Building Stable Institutions)

It must be noted that since the current Council was elected in 2016, the Auditor General Report has regressed from Unqualified to Qualified and now Disclaimer Opinion. This is against the backdrop of DRSM having been a beacon of hope and best placed to be the first NW municipality to get a Clean Audit, having run a record unbroken 16 Unqualified Audit Report in the period preceding the election of the current Municipal Council.

The municipality will approach the next Local Government Electionson the back foot unless the downward spiral is halted and reversed. This implies consequence management for the officials and councillors who presided over this morass, to restore institutional integrity and regain trust by the community.

All senior management posts are filled, with the recent appointment of Director Technical Services.

b) Sound Financial Management

VBS Investment

DR. Ruth Segomotsi Mompati District Municipality invested R150, 7m in VBS Mutual Bank and lost the funds which were meant for the following critical investments:

a) Infrastructure Development,
b) Economic Development;
c) Job Creation,
d) Free Basic Services and
e) Office Building

The District Municipality according to Auditor General in his 2018/2019 Financial Year Report had to ***significantly scale back its Rural Sanitation Programme***as a result of lack of funding. The District Municipality has failed to provide the support to its local municipalities as a Water Service Authority. The use of water tankering is continuing to deplete funds which should be utilised to maintain water and sanitation infrastructure.

It should be noted that DRSMDM pays about R350 000.00 per month on office rental when the municipality would have completed its own building thus freeing these funds for other critical infrastructure development, investment and poverty eradication purposes.

Impact on Financial Health (Liquidity)

According to Auditor General Report of 2018/2019 Financial Year, the municipality had to enter into a repayment agreement with National Treasury to repay the R150.7 m, to avoid withholding of the entire amount from the equitable share.

The arrangement with National Treasury resulted in a significant increase in outstanding payables and the unspent conditional grants in the current year as a result of these cash flow constraints.

Consequence Management

Auditor General in his 2018/2019 Financial Year Report is stressing that even though the Municipal Manager was suspended, no decisive action has been taken to effect consequence management despite disciplinary board making recommendations to Council. The Council instead of taking decisive action opted to generate a resolution to reinstate the Municipal Manager.

c) Service delivery & Infrastructure Development

The District is a Water Services Authority with local Municipalities and Water Board being appointed as the water services provider. As indicated above the VBS Investment had negatively impacted on capacity of the district to effective manage the water services function.

The size of the Sewer Plant in Naledi LM was reduced by half due to loss of VBS investment and the lifespan of the Sewer Plant was reduced by half, meaning that government will soon be faced with the reality of having to spend much more on an asset that should last 30 years and the District Municipality according to Auditor General in his 2018/2019 Financial Year Report had to ***significantly scale back its Rural Sanitation Programme*** as a result of lack of funding. The District Municipality has failed to provide the support to its local municipalities as a Water Service Authority. The use of water

tankering is continuing to deplete funds which should be utilise to maintaining water and sanitation infrastructure.

The 2019/20 MIG expenditure as at 30th June 2020 is 77%. The municipality was allocated a total amount of R 138 393 000.00 of which R 107 090 187.00 was spent with a balance of R 31 302 814.00

5.1.2. Kagisano Molopo Local Municipality

The municipality is situated in a rural area within the Dr RSM District Municipality with a population of 102 703 as per the 2016 community survey, consisting of 15 wards. The municipality is grant dependant as it does not have service charges, such as electricity, water and sanitation, which results in a low income from own revenue generated sources.

Water shortage and sanitation within the municipality is a concern as the municipality has been highly affected by draught. Landfill site powers and functions are still not cleared between the District and Local Municipality, resulting in environmental issues not being addressed. MEC for Cooperative Governance and Traditional Affairs will make a final determination on the matter.

a) Governance & Administration (Building Stable Institutions)

The municipality invoked section 139 (1) (b) Intervention of the RSA Constitution in September 2018. The Intervention was as a result of governance and finance systems failures characterised by political and administrative instability and non-compliance to supply chain management processes which impacted negatively on service delivery.

After a protracted resistance which lasted almost a period of 8 months, the municipality took the Provincial Government to court to challenge the Intervention, the court ruled in favour of the municipality. The Provincial has since applied for a leave to appeal which

was granted by the Court. The appeal will take place as soon as the date is set by the Court.

There are currently two (2) vacancies within senior management, i.e. Planning and Development, Infrastructure and Technical services resulting in service delivery initiatives not being implemented.

The position of Municipal Manager, Planning and Human Settlements, Community Services, Corporate Services, Local Economic Development are filled. The Council and its committees are functional.

b) Sound Financial Management

The municipality has adopted an unfunded budget. There UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. The municipality has received a qualified audit opinion for the 2018/19 financial year which is an improvement when comparing it with the 2017/18 audit opinion. According to the audited AFS for 2018/19 financial year, the Unauthorised, Irregular, Fruitless and Wasteful expenditure (UIF&W expenditure) stands at R676 759 704.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R2 400 000)
- 2016-17 (R1 817074)
- 2017-18 (R890 000)

b) Service delivery & Infrastructure Development

There is a lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipment. The municipality is experiencing dire shortage of water which exacerbated by unresolved issue of service provision by and between the municipality and District Municipality.

Kagisano-Molopo is one of the 3 municipalities in the Province that recorded 100% expenditure of the 2019/20 MIG allocation. The municipality's allocation was R39 568 000.00 for the 2019/20 financial year.

5.1.3. Naledi Local Municipality

Naledi Local Municipality is a category B Municipality situated in the Dr Ruth Segomotsi Mompati District in the North West Province of South Africa. It covers an area of approximately 7 264 square kilometres with a total population of 68 803 – according to the Community Survey of 2016 by Statistics South Africa and is divided into 10 wards representing the interests of the communities of Vryburg, Kismet Park, Huhudi, Colridge, Dithakwaneng, Stella Devondale, Broedersput(Tlhakeng) and the newly developed extension 25/28.

a) Governance & Administration

This is a municipality that was placed on intervention by the provincial government (in terms of Section 137 of the MFMA, and 139 of the Constitution) with the support of national government. The National Council of Provinces (NCOP) supported the invocation of section 137 of the MFMA but not Section 139 (1) (b) of the Constitution, the led to the Provincial Government withdrawing the Intervention after a period of six months. The municipality has during the intervention, embraced and demonstrated commitment and support towards the realisation of the objective of the intervention.

Prior to the provincial intervention, the Executive Committee and Council were not functional. Failure by Council to fill senior management positions within the prescribed period has dismally affected the performance of the municipality.

During the Intervention, a number of tangibles were recorded such as filling of position of Corporate Services, Community and Technical Services; restored stability, most of the

labour related challenges have been resolved. Improved Council functionality and public participation.

Post the intervention, the municipality started to experience again political and administrative instability. The position of the Municipal Manager and Chief Financial Officer remains vacant despite efforts to fill the positions. The municipality resolved not to appoint a municipal manager after following a recruitment and appointment process.

The issue of the recruitment and appointment of the Municipal Manager has recreated chaos in the Council and Administration and also attracted a lot of community interest. As a result, the municipal offices were closed for almost a period of three weeks and in that period community couldn't access services.

MPAC has been performing its minimum statutory duties, but has regressed due to lack of permanent support staff in the unit. There is only one support staff member appointed to assist MPAC. There is insufficient support for MPAC to address the increasing UIF&W expenditures. The municipality participates in the district shared audit committee.

b) <u>Sound Financial Management</u>

Poor audit outcomes with recurrent audit findings for the past seven financial years has received 3 unqualified, 2 qualified and 2 disclaimer audit opinions.

The municipality has received a disclaimer audit outcome for two consecutive years i.e. 2017/18 and 2018/19 financial years, there is no improvement registered.

During the 2018/19 financial year, the municipality submitted its annual financial statements late to AGSA, which is in contravention to the legislated date which states that AFS should be submitted to AG within two (2) months after the financial year end.

The approved budget is not cash-backed, as a result, the municipality is not financially viable and fails to pay its creditors and fulfill other financial commitments. This is evident due to the fact that most of its creditors are not paid within 30 days as per MFMA prescripts.

The municipality has not complied with the submission of section 71 reports as per requirements of MSCOA, information on debtors and creditors age analysis could not be verified to determine the current status. Total creditors as at the end of January 2020 amount to R127 millions of which 97 percent or R124 million is outstanding for over 90 days. The municipality is unable to implement credit control measures to recover outstanding debts from consumers. This is justified by a total of R423 million outstanding debtors as at the end of January 2020.

There is a costly EPWP programme which the year to date its expenditure is at R2.5 million against the grant allocation that is R1.6 million. Employment guidelines in this program is grossly mismanaged. There is gross non-compliance to Supply Chain Management (SCM) processes, wherein SCM processes are conducted manually.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R2 800 000)
- 2016-17 (R2 394 823)
- 2017-18 (R2 100 000)

This clearly shows that UIF&W expenditures are not investigated and loss of money not recovered as per the requirements of section 32 of MFMA.

c) Service delivery & Infrastructure Development

The refuse removal and the cleaning of the town and townships not adequately performed. No landfill sites at Stella and Rekgaratlhile. There is interrupted supply of water due to lack of maintenance and non-payment for water services. The old and

inadequate infrastructure and poor maintenance in general result in blockages leading to spillages of sewerage.

This anomaly has attracted unwarranted sporadic national media coverage. Poor expenditure of MIG which affect infrastructure development and lack of upgrade of water reticulation systems resulting in shortages of water, also lack of installation of meters for domestic consumption for about 9000 households, hence the municipality experience community protests relating to water.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R16 979 000.00, Expenditure R 10 390 566.12, % expenditure 61% and R 6 588 433.88 balance.

5.1.4. Greater Taung Local Municipality

Greater Taung Local Municipality is a category B4 municipality within the Dr. Ruth Segomotsi Mompati District. It is a low capacity predominantly rural municipality with communal tenure and a population size of 177 642 and 48 613 households. The municipality is constituted by 26 wards with councilors comprising of Mayor, Executive Committee, Speaker and Council Committees. According to census 2011 results, the municipality population has decreased from 182 163 in 2001 to 177 642 in 2011. Despite the decrease in population size, the municipality is still the highest in population size within the District.

a) Governance & Administration (Building Stable Institutions)

The position of Municipal Manager, Planning and Human Settlements, Technical Services and Community Services, Chief Financial Officer and Corporate Services are filled(Corporate Services to started on 1st July 2020). Council and its committees are functional.

b) Sound Financial Management

The municipality has submitted the 2018/19 Annual Financial Statements late to the Auditor General for auditing on the 30th January 2020, audit process has not yet finalised.

The municipality has been receiving qualified audit opinionfor the past consecutive years, since 2014/15.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for 2019/20 was R 47 604 000, expenditure R 47 604 000, % expenditure 80% and R 37 864 680 balance.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R2 400 000)
- 2016-17 (R1 817074)
- 2017-18 (R890 000)

c) Service Delivery & Infrastructure Development

Lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipments. Shortage of water including unresolved issue of service provision by and between the municipality and the District Municipality.

5.1.5. Mamusa Local Municipality

Mamusa LM is a category B municipality (established in terms of the Municipal Structures Act, Act No. 6 of 2004) in the Dr Ruth Segomotsi Mompati District. The municipality is licenced to provide electricity only in town. Dr Ruth Segomotsi Mompati District is a water authority however Mamusa is performing this function within the area of jurisdiction.

It is one of the municipalities that struggling with collection of their revenue which impacted negatively on its financial sustainability and delivery of basic services.

The municipality remains problematic and lacks sound financial management; and good governance. There are many on-going political and service delivery risks associated with the instability of the municipality

a) Governance & Administration (Building Stable Institutions)

The Municipality received an amount of R 7 million from their insurers to enable them to reconstruct the municipal administration block that burned during riots in June 2017, approximately 26months after the incident the municipal building still lay in ruins because the funds provided by the insurer were misused and Council has failed to provide oversight and hold those responsible for the misuse accountable. The municipality and municipal services are therefore inconvenienced as a result of the burned building.

The municipality is facing a series of costly litigations which led to municipal assets being attached in the past few months. Council and its newly established committees are functional. The newly elected council participated in the induction programme facilitated by both Cogta and SALGA. Out of five Senior Managers, three positions are vacant and only two filled, i.e. Director Community Services and Director Corporate Services. The positions of MM is not filled, former Administrator is appointed in an acting capacity, the Chief Financial Officer is on suspension.

b) Sound Financial Management

The municipality has adopted an unfunded budget, the budgeted expenditure far exceed the projected revenue. The UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. No consequence management cases have been concluded. Poor audit outcomes with recurrent audit findings pertaining to

UIF&W and the municipality have not addressed them in accordance with section 32 of the MFMA owing to lack of oversight and consequence management. The municipality has been receiving disclaimer audit opinions since inception. There are serious leadership challenges to oversee effective mSCOA. The municipality is unable to honour the payment obligation and do not get consistent support from the system vendor.

c) Service delivery& Infrastructure Development

Lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipment. Shortage of water including unresolved issue of service provision by the District municipality on water and sanitation. No operations and maintenance plans for internal roads.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 15 696 000, Expenditure R 13 180 506.91, % expenditure 84% and R 2 515 493.09 balance.

5.1.6. Lekwa-Teemane Local Municipality

Lekwa-Teemane LM is a category B municipality (established in terms of the Municipal Structures Act, Act No. 6 of 2004) in the Dr Ruth Segomotsi Mompati District. It is known for its diversified economy which agriculture is the predominant economic activity, and the Vaal Dam which provides water to the municipality and the surrounding arrears.

Lekwa-Teemane municipality has been under severe financial challenges in the form of cash flow problems and inability to raise sufficient revenue which impacted negatively on its financial sustainability and delivery of basic services.

The municipality remains problematic and lacks sound financial management; and good governance. There are many on-going risks associated with the instability of the municipality

a) Governance & Administration (Building Stable Institutions)

This is a municipality that was placed on intervention by the provincial government with the support of national government and the National Council of Provinces (NCOP). The municipality has during the intervention, demonstrated inconsistent support for provincial intervention (minimum resistant/disregard of the authority of the provincial and national government, including Parliament).

There are serious problems in the municipality because systems have collapsed, the MPAC and other Committees are not functional. The municipality not holding public / community meetings with specific reference to ward 6. Material conditions at the municipality determine the type of intervention needed to rescue the municipality.

The divisions amongst the ANC councillors are hampering on the functionality of the administration. The Provincial executive has taken a cautious decision to place the municipality under section 139(1)(b) of the constitution due to collapse of systems and poor or biased service delivery. MPAC is not functional and there's a general lack of commitment from members. The Municipal Manager has been recently suspended by Council, pending the disciplinary processes. All other positions for section 56/57 Managers are filled except for the Director Technical Services.

b) Sound Financial Management

The municipality required much needed assistance on revenue enhancement. Total outstanding Debtors as at June 2020 amounted to R 955 million, of which R888 million is owed for over a year. Collection of some of these outstanding debtors is of a concern

especially households debt. Households constitutes most of the outstanding debt at R788 million, followed by Commercials at R121 million, government R45 million and R372 000 attributed to other'"

The total outstanding creditors as at end of June 2020 amounted to R386 million, of which R339 million is outstanding for more than a year. Total debt owed to Eskom as at July 2020 amount to R45 482 924 and R37 459 889 is overdue for more than 30 days period.

The UIF&W expenditure of the municipality is increasing and not dealt with in accordance with section 32 of the MFMA. The mSCOA implementation is progressing well through the commitment of Municipal Leadership however not all modules offered by the system have been fully implemented. The Municipality is still highly dependent to the system vendor.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R6 671 099)
- 2016-17 (R1 800 000)
- 2017-18 (R1 800 000)

Poor audit outcomes with recurrent audit findings pertaining to UIF&W expenditure and the municipality has received consecutive disclaimers with regard to AG's reports, in the past seven financial years has received 5 disclaimers and 1 qualified audit opinions. The municipality maintained a disclaimer audit opinion from 2017/18 to 2018/19. The result is indicative that there is no consequence management.

There instances are the cash flow situation deteriorated to an extent that the municipality is unable to honour its financial obligations.

c) Service delivery & Infrastructure Development

The conditions are real at the municipality as service delivery is skewed - the Christiana town receiving or enjoying more advantage than the Bloemhof town as far as service delivery is concerned.

Service delivery yellow fleet not roadworthy and very unsafe as result the municipality has procured and announced the delivery of two new service delivery bakkies. Furthermore, the municipality is changing from conventional to pre-paid electricity meters. Despite all the challenges refuse collection is happening in the municipality. Skewed service delivery in Bloemhof and Christiana continues to be a challenge.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 14 793 000 and further adjusted to R10 000 000, Expenditure R19 782 059.82, % expenditure 80% and R 5 010 940.18 balance.

5.1.7. Bojanala Platinum District Municipality

The Bojanala Platinum District Municipality (BPDM) is the home of the cradle of humankind and is strategically located on the 'platinum belt' of the north-eastern side of the North West province. To the north the BPDM is surrounded by Waterberg District Municipality (Limpopo Province), Tshwane Metropolitan Municipality (Gauteng Province), West Rand District Municipality (Gauteng Province) to the Southeast. To its south is surrounded by Dr Kenneth Kaunda District Municipality and the Ngaka Modiri Molema District Municipality to the west.

The Bojanala Platinum District Municipality accounts for a total population of 1.81 million, or 44.5% of the total population in the North-West Province, which is the most populous

District in the North-West Province for 2018. The ranking in terms of the size of Bojanala Platinum compared to the other District remained the same between 2008 and 2018. The Bojanala District spans over 18 333km², and has 5 local municipalities (Kgetleng-Rivier, Madibeng, Moses Kotane, Moretele and Rustenburg) with a total of 139 wards.

a) Governance & Administration (Building Stable Institutions)

The District Municipality is on the municipalities in the Province with a full complement of senior management positions. The municipality experienced labour unrest which affected its ability to perform constitutional obligations during 2019/20 Financial Year. Key to labour unrest, was a failure by the Municipality to pay salaries and employee benefits due to financial crisis.

Bojanala Platinum District Municipality has been experiencing financial crisis since beginning of the financial year 2019/20. The financial crisis was excercebated by the misappropriation of R134 million that was erroneously transferred to the municipality by then Department of Local Government and Human Settlement and had to be repaid by the District Municipality.

On the 16th October 2019, the Council convened a special sitting to assess the situation it found itself in. In that sitting, the Council resolved to place the Municipal Manager and Chief Financial Officer on precautionary suspension in terms of paragraph 6 of the Local Government: Disciplinary Regulations for Senior Managers and ultimately suspended the two senior managers pending the disciplinary process.

The disciplinary processes has commenced after a delay due to the outcome of the forensic investigation conducted. Council took time to meet and consider the report which gave effect to the disciplinary process of the Municipal Manager and Chief Financial Officer.

The municipality was also without a Council Speaker for some time, thus making the convening of meetings very hard. A Speaker was ultimately elected in October 2019. Management of Council meetings are still a challenge to date. Council Committees for most part of 2019 were not sitting regularly to consider regulatory reports.

The Provincial Government is currently providing support and capacity building measures to the District Municipality through Section 154 of the Constitution. The support provided by the Provincial Government is in a form of an Acting Municipal Manager and the Acting Chief Financial Officer. The Provincial Government is also assisting the District Municipality by preparing Financial Recovery Plan.

b) Sound Financial Management

As indicated above, Bojanala Platinum District Municipality has been experiencing financial crisis since beginning of the financial year 2019/20. The financial crisis was excercebated by the misappropriation of R134 million that was erroneously transferred to the municipality by then Department of Local Government and Human Settlement and had to be repaid by the District Municipality. To date, it is not known how and for what the allocation was used for

Creditors were outstanding for up to 180 days (some more than 6 months unpaid), due to mismanagement of cash flows. The municipality operated on an overdraft facility in 2019. In Nov 2019, the municipality owed its creditors in excess of R80million. The municipality currently, in May 2020, owes creditors an amount in excess of R52million after having gone through invoices and assess and enter into the system. Some have been negotiated with and payment arrangements made.

The municipality has a limited budget to support its local municipalities. There was bad financial management by the previous Council. Over-expenditure of 100% to 300% reported.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R2 100 000)
- 2016-17 (R1 678 464)
- 2017-18 (R1 900 000)

Poor audit outcomes with recurrent audit findings pertaining to UIF&W expenditure and the municipality in the past six financial years has received 2 unqualified and 4 disclaimer audit opinions. The last financial year i.e. 2017/18 the municipality received a disclaimer which shows stagnation. The UIF&W expenditure is growing every year.

The municipality submitted the Annual Financial Statements late to Auditor General for auditing on the 30th January 2020, audit process is currently underway. Effectively implemented the following modules on the mSCOA system:

- Revenue and grant management
- Procurement (SCM)
- Budget and planning

With regard to mSCOA implementation, asset management and payroll are hosted on a sub-system. Implementation challenges include:

- Lack of training
- Ineffective utilization of the system

There has not been any receipt MFMA Section 71 reports by the Executive Mayor which are obligatory in terms of the MFMA to report on the finances of the municipality. The Executive Mayor and her Executive (Mayoral Committee) has never raised the lack of these reports to her Municipal Manager and CFO so that she is on par with the financial affairs of the municipality. The Mayoral Committee as a collective failed in their duties to ensure the sound financial management of the municipality.

If the above MFMA Section 71 reports, inclusive of the MFMA Section 52 (d) Quarterly Financial reports were properly dealt with by Council, Council could have taken action to remedy the financial situation. Council found itself in sever financial distress as far back as March 2019. The Annual Financial Statements for the 2018/19 financial year were never submitted by the relevant officials and this led to the municipality not being audited. The Council should have known that the matter was unattended and causing the municipality not to be audited for the 2018/19 FY. Gross financial mismanagement has been identified in the Forensic Report that was tabled in Council.

c) Service delivery & Infrastructure Development

The municipality is not a Water Services Authority and is not playing coordinating and /or supporting role to its local municipalities. The District does not have resources to support infrastructure development projects in local municipalities.

5.1.8. Moses Kotane Local Municipality

Moses Kotane Local Municipality is a category B4 Municipality located within the Bojanala District Municipality in the North West Province. It was established after re-demarcation of Municipal boundaries and subsequent municipal elections in 2000.

The Municipality covers an area of approximately 5220km² and is mostly Rural in nature comprising 107 villages and 2 Two townships namely Mogwase and Madikwe. Moses Kotane Local municipality is known as one of the best tourism attraction areas through Sun City in the Pilanesberg as well as Madikwe Game Reserve. The municipality is striving to promote the minerals, agricultural, tourism, Arts & Culture as their cornerstone.The economy of Moses Kotane is mainly characterized by Tourism, Mining and Agriculture,

owing to its location within the major tourism and mining belt of the North West province around Pilanesberg and Sun City.

a) Governance & Administration (Building Stable Institutions)

Council is fully functional and stable has ensured that planned programmes are implemented and realized which bodes well for service delivery acceleration and other governance. There are two vacancies for senior management positions, namely; Head of Dept. Corporate Services and Head of Dept. Infrastructure and Technical Services. All other Senior Management positions are filled. The Municipality is at an advance stage of recruitment and appointment process to fill Corporate Services and Infrastructure and Technical Director positions.

Appointment of the ICT Company is under the investigation by the Hawks and is depleting Council resourcesas it is expensive. There is also a service provider appointed for fleet management with a contract value of R 9million.

MPAC is functional and continues to sit for critical matters. The oversight report was adopted by council in May 2020. The municipality has recently appointed support staff to MPAC which commenced its duties on the 1 July 2020. Council adopts MPAC recommendations, but the weakness is that the adopted recommendations are given to Management for implementation without any political oversight role by Council.

b) Sound Financial Management

The municipality has adopted an unfunded budget as the budgeted expenditure exceeds the anticipated revenue to be collected. As at June 2020, the total outstanding Debtors amounted to R 1.2 billion, of which R1.1 billion or 91% is owed for over a year. Collection of some of these outstanding debtors is of a concern especially households debt. Households constitutes most of the outstanding debt at R809 million, followed by

Commercials at R220 million, government R184 million and R7 million or 6% of the debt is attributed to other' category'
The municipality has improved from a disclaimer in 2017/18 financial year to a qualified audit outcome in 2018/19 financial year.

UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. No consequence management cases have been concluded. According to the audited AFS for 2018/19 financial year, the Unauthorised, Irregular, Fruitless and Wasteful expenditure (UIF&W expenditure) stands at R923 556 913. Poor audit outcomes with recurrent audit findings pertaining to UIF&W and the municipality have not addressed them in accordance with section 32 of the MFMA owing to lack of oversight and consequence management.

The following are the figures for the utilisation of Consultants by municipality:

a. 2015-16 (R0.00)
b. 2016-17 (R 4 09 528)
c. 2017-18 (R2 100 000)

There are serious leadership challenges to oversee effective mSCOA. The municipality is unable to honour the payment obligation and do not get consistent support from the system vendor. Moses Kotane is one of the 2 municipalities that have improved on their audit opinions, from Disclaimer in 2017/18 to qualified audit opinion in 201819.

c) Service Delivery & Infrastructure Development

Lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipment. No operations and maintenance plans for internal roads.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for R 149 692 000, Expenditure R101 331 863.51 % expenditure 68% and R 48 360 136.49 balance.

5.1.9. Madibeng Local Municipality

The Madibeng Local Municipality is a local municipality in Bojanala Platinum District Municipality. It consists of 41 wards and 81 members elected by mixed member proportional representation.Madibeng Local Municipality is classified as category B municipality with Executive Mayoral and ward type system of municipality. It is strategically located in NW Province, centrally between Pretoria (50 km), Johannesburg (80 km) and Rustenburg (45 km). Predominantly rural: revenue base therefore limited.

a) Governance & Administration (Building Stable Institutions)

The municipality has during the intervention, embraced and demonstrated commitment and support towards the realisation of the objective of the intervention.A brief overview of the status quo at the municipality since the municipality was placed under administration. The situation in the municipality can be described as stable and improving although there are serious underlying challenges which will take a long time to address. The damage inflicted to the municipal finances, coupled with the dilapidated state of municipal infrastructure will require a complete turn–around in the way in which the municipality is managed politically and administratively.

The intervention team was warmly welcomed by the majority if not all the stakeholders in the municipality. To date there has been no visible active resistance to efforts to stabilise the municipality from both the political and administrative wings of council, including community structures. As this report will indicate, the community has lost trust in the current political leadership of the municipality and the starting point in bringing long-term stability in the municipality is to win back the community's trust.

There is general stability in the municipality which is characterised by: Council and Mayoral Committee meetings as per council agenda, the majority of portfolio committees are meeting regularly and only a few meetings are postponed, MPAC and Audit Committee are also functional, and there is still mistrust among councillors organised labour continuously engaged through the Local Labour Forum.

Ward committees have been established in all the forty one municipal wards and they are functional. There is however not adequate public participation as there are limited engagement of communities in the form of community meetings. Communities regard the municipality as corrupt and uncaring. Although there is general stability in that there has been no labour unrest in the past eight months, the administrative wing of the municipality is characterised by:

Low staff morale, only three of the seven senior management positions are filled. Four positions of Municipal Manager, Chief Financial Officer and Directors of Infrastructure and Technical and Human Settlement and Planning are vacant, the organisational structure is bloated at the top and is not aligned to the municipal functions, high number of unresolved labour matters, blurred lines of responsibility between council and administration, there is general trust deficit of council by communities, council seem to be too scared to engage communities

There is a document on Forensic Investigation on the municipality where no action is taken. There is also a need to investigate the IT contract because the IT Company, has 5 different accounts with the municipality. Council has not yet followed on the disciplinary process following the investigations conducted on VBS. Disciplinary process has not started, Officials were initially suspended but to date the other one is back in the employ of the municipality while the former Municipal Manager has been employed in Waterberg

District Municipality in Limpopo province. No Consequence management has been undertaken.

The investigations implicated one member of the Mayoral Committee. MPAC is hitting the wall on cases of maladministration of credit cards, illegal debit orders in the municipal primary bank account. There is an irregular staff appointment that needs to be investigated because of the allegations of flawed recruitment processes. There is a need to conduct life style audit starting with Councillors. There are also allegations of irregular appointments of contractors and related payments - all contract awarded until April 2019 needs to be investigated. There is a degree of mischief in the municipality. The situation at Madibeng LM is a cause for grave concern and calls for the institution of Section 106 of the Municipal Systems Act (MSA) investigation.

The committee is divided into two groups wherein the minority component is supportive of the Executive Mayor whilst the balance of the Committee (about six) are not in support of the Executive Mayor. The Intervention Team impressed upon the members of the Mayoral Committee to participate and honour the schedules of the Portfolio Committees as Chairpersons of such committees has the potential to strengthen the Mayoral Committee reports which the Administrator will from time to time table before Council for noting and decision making when so required.

Some members hold the view that there is section 139 (1)(b) intervention and therefore the mayoral committee must not be convened because it has no powers. There is a need to have workshops/working sessions with MMCs and TROIKA to deal with the challenges to the extent of ascertaining how they affect governance issues and to empower the functionality of the Mayoral Committee.

The Administrator has cleared the misunderstandings and reinforced the need to respect the legislative prescripts to both councillors and officials. There are community intermittent projects stoppage which negatively affect the progress of certain projects.

These need urgent political intervention. The structures involved in these disruptions are being profiled to determine the root cause of the problem so that a proper prognosis can be instituted.

The limited capacity of MPAC and its implications on accountability and leadership. The MPAC has not been able to do effective oversight and this has compromised the measures to hold Councillors and officials accountable. Consequence management is thus not implemented despite huge irregular expenditure (R130 million) and other forms of misconduct or non-performance as well as disclaimer audit opinion of over the last three financial years. MPAC is unable to deal with UIF&W expenditures due to capacity constraints.

There are Councillors who for a long time, owe the municipality for rates and services. These Councillors remain in active service and ordinarily, must be champions of payments for rates and services to realise the most needed revenue for the municipality. The Speaker should have also instituted action against Councillors involved as demanded by the Code of Conduct of Councillors (Schedule 2 of the Systems Act). There is neither commitment to make reasonable arrangement to settle the debt, nor was there any action taken. Political Leadership and discipline is required to appreciate the roles and responsibilities of various committees and structures of Council.

It is therefore recommended that the councillors be engaged to ensure that there is meaningful and continuous interface with the communities to explain challenges relating to service delivery in general, the need for payment of services in areas where no payment of services is done and also explain the planned phases of delivery to various communities or wards.

Three is a possibility of escalating protests and destruction of critical infrastructure owing to lack of information or poor communication to communities. This will escalate with the

advance of the 2021 local government elections where populism and candidacy to elections will take centre stage. It is therefore important for councillors to hold frequent and regular ward and sectional meetings to keep the existing gap narrower with the view to close it completely.

b) Sound Financial Management

The mSCOA implementation is progressing well through the commitment of Municipal Leadership however not all modules offered by the system have been fully implemented. The Municipality is still highly dependent to the system vendor. The municipality is in financial distress, thus being highly indebted to its creditors. This opens room for potential litigations. This is evident on the total outstanding creditors as at end of June 2020 which amount to R598 million. Total debt owed to Eskom as at July 2020 amount to R172 018 384 of which R110 450 325 is overdue for more than 30 days period.

Total outstanding Debtors as at June 2020 amounted to R 2.6 billion, of which R2.3 billion is owed for over a year. Collection of some of these outstanding debtors is of a concern especially households debt. Households constitutes most of the outstanding debt at R1.9 billion, followed by Commercials at R554 million, government at R178 million.

The municipality has been receiving Disclaimer audit opinions for the past 4 consecutive financial years. The municipality was identified as one of the top 10 contributors to a high Irregular expenditure in the country during the 2016/17 financial year. There is generally none implementation of legislative frameworks to address the UIF&W expenditures, which leads to an annual increase. The UIF&W expenditures increased to R3 460 380 422 for the 2018/19 F/Y from R3 033 645 601 in the 2017/18 F/Y The AG has raised a finding on illegal debit orders in the municipality's primary bank account which have not been dealt with for more than 2 years. There are allegations of fraud and corruption including tender rigging.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R4 800 000)
- 2016-17 (R4 300 000)
- 2017-18 (R4 500 000)

Poor audit outcomes with recurrent audit findings pertaining to UIF&W expenditure and the municipality in the past six financial years has received 3 disclaimers and 3 qualified audit opinions. The municipality has received a disclaimer audit opinion during the 2018/19 financial year which shows stagnation. The result is indicative that there is no consequence management and financial viability of the municipality is under profound scrutiny. There is a need to test the authenticity of all Regulation 32 of SCM appointments.

c) Service delivery & Infrastructure Development

The municipality's service delivery challenges are primarily in the provision of clean water and reliable energy. Among others the following are the municipality's service delivery status: old, dilapidated and inadequate water network, poor state of internal roads, especially in villages, insufficient funding for infrastructure, vandalism of municipal infrastructure, stoppages of projects by business forums.

Treatment of Sewerage network is currently compromised due to ageing infrastructure and vandalism, and does not operate optimally. Most of the sewerage pump stations around the municipality are not functional and as a result, there are spillages within the residential areas and continuous contamination of the Crocodile River. Provision of clean water is a huge challenge for the municipality. The municipality owes the Water Board millions of rands. The municipality is experiencing continued community protests. There

is no operations and maintenance plan for roads and water infrastructure assets. Uneven provision of services, poor standard of internal roads.

There is non-compliance with the regulatory environment governing the provision of services. There is also lack of adequate operating plant and equipment. Shortage of water including unresolved issue of service provision by and between the municipality and the City of Tshwane.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 281 797 000, Expenditure R136 221 809.70, % expenditure 48% and R145 575 190.30 balance.

5.1.10. Moretele Local Municipality.

Moretele LM is a Category B municipality located within the Bojanala Platinum District in the North West Province,provides all the basis service to the communities, except for electricity services which are being performed by Eskom. The municipality services communities which are predominantly in rural areas and indigent, as a result,is highly depend on government grants to provide services to communities.

a) Governance & Administration (Building Stable Institutions)

There are heightened political tensions in council and EXCO. Sabotage is prevalent in the running of Council. Incidents of political interference in the administration are prevalent and this accounts to disrespect for the rule law. A municipal official stole a water JoJo tank meant to assist the community, was reported but no consequences were meted against same.

Organizational culture is not in keeping with acceptable ethical norms and standards that is, employees report late for work and knock off early.There are other people in the

municipality who are equally implicated in the VBS scandal not only the Municipal Manager.

MPAC needs to be reconstituted and include the representation of the opposition parties as a sign of good practice. It also needs support staff to complement its daunting task.

It is alleged that the Mayor appointing and entertaining rented crowds / people to disrupt operations of the municipality. The infighting among Councillors is growing and thus affect their oversight role which then impact on service delivery.
A number of cases have been referred to the Financial Disciplinary Board for processing. The municipality was visited by the Hawks and SIU on the appointment of an ICT service provider through Regulation 32 of SCM regulations. The investigation report on the ICT is finalised and shared with the municipality to implement its recommendations.

Prevalence of malfeasance during the tenure of the then Acting Municipal Manager, resulted in the appointment of an ITC service provider, through usage of Regulation 32 of the National Treasury Regulations (tapping from similar appointment by Madibeng LM). The appointment of the ITC company by the then Acting Municipal Manager, remains irregular and unlawful. Currently, the municipality has extended the contract of the ICT service provider.

It also points out sharply to weak or lack political oversight, in that on a monthly basis, a financial report is submitted to the Mayor in terms of Section 71 of the MFMA. It therefore, insinuates that the centre is not holding.

b) <u>Sound Financial Management</u>

The municipality has adopted an unfunded budget for the 2020/21 financial year. The audited financial statements also indicate that the municipality will run shot of resources to can address its creditor's commitments. The audited 2018/19 Annual Financial

Statements indicates a creditors balance of R273 million, R236 millions of which relates to Current Liabilities.

There is steep cost incurred by the municipality in the information communication technology which could be avoided as it drains the limited financial resources of the municipality. The Mayor and Executive Committee do not consider and deliberate on the monthly financial report submitted in terms of Section 71 of the MFMA. This is because the Members of EXCO, do not report to office to play political oversight.

There UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. According to the audited AFS for 2018/19 financial year, the Unauthorised, Irregular, Fruitless and Wasteful expenditure (UIF&W expenditure) stands at R1 759 397 699. The municipality has been stagnant on qualified audit opinions since 2013/14. The issue of the investment of the municipal funds with VBS is currently handled by the Directorate of Priority Crimes Investigations Directorate (DPCIP) commonly known as the Hawks.

The disciplinary hearing report on VBS was concluded and received by council during a special council meeting, the council has not yet acted on the report. Stagnant audit outcomes with recurrent audit findings pertaining to UIF&W and the municipality have not addressed them in accordance with section 32 of the MFMA owing to lack of oversight and consequence management.

The following are the figures for the utilisation of Consultants by municipality:

a. 2015-16 (R3 900 000)
b. 2016-17 (R6 092 475)
c. 2017-18 (R4 500 000)

Municipality is experiencing implementation challenges due to non-functionality of most modules on the system and lack of support and training from Municipality. This resulted

in the municipality opting to run on the mSCOA system parallel to a non-mSCOA compliant system.

c) Service delivery & Infrastructure Development

Lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipment. Shortage of water including unresolved issue of service provision by and between the municipality and the City of Tshwane.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for 2019/20 was R 114 780 000.00, expenditure R107 642 154.36, % expenditure 94% and the balance is R 7 137 845.64.

Uneven distribution of projects, at a glance through municipal budgets and annual reports will reveal that only few highly favoured wards is were projects of high values are concentrated. It is evident that one Ward has more than one project during the financial year while some Wards do not have even one project for that financial year.

5.1.11. Kgetleng-Rivier Local Municipality

Kgetleng-Rivier local municipality is spread over 3 973 square km of land and has 8 wards with a population of 51 049 and 17 401 households. The municipality is required by the Water Services Act 108 of 1997 to provide the right of access to basic water supply & sanitation.

a) Governance & Administration

This is a municipality that was placed on intervention by the provincial government with the support of national government and the National Council of Provinces (NCOP). The municipality has during the intervention, demonstrated inconsistent support for the

intervention (minimums resistance/disregard of the authority of the provincial and national government, including Parliament).

There is governance stability in the municipality since the provincial intervention, characterized by weak oversight. Council and its committees do meet as per the revised council calendar. MPAC has only one permanent support staff, yet managed to compile a backlog of oversight reports from the financial year 2008/09, the 2018/19 Oversight report is not yet tabled. The municipality does not have a disciplinary board, and therefore does not have enough resources to deal with UIF&W expenditures.

There is community buy-in in the current paradigm shift in council. Although still tense, no protests or disruptions have taken place of late. Resolutions register is in place including tracking of implementation. The municipality is prone to litigations due to negligent decision making.

The positions of Municipal Manager, Technical and Community Services and Chief Financial Officer are filled and only Local Economic and Corporate Services are vacant. The process to fill the two vacant positions is awaiting Council approval. The Local Labour Forum is not functional due to the term of Officer Bearers of the Trade Unions having lapsed and once processes of fresh elections are completed, establishment process shall commence and a program of action be developed.

b) <u>Financial Management</u>

The Approved 2020/21 Budget is not cash-backed, as a result, the municipality is not financially viable and fails to pay its creditors and fulfill other commitments. The debtors' book is high and could only be serviced once the equitable share is transferred. No outstanding payments to third party contributions.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R2 500 000)
- 2016-17 (R1 700 000)
- 2017-18 (R1 700 000)

The UIF&W expenditure remains not investigated owing to lack of internal capacity, thus resulting in transgression of applicable legislation, lack of oversight and consequence management. The municipality has thus been exposed to a mixture of, disclaimer, unqualified two qualified audit outcomes and the last financial being a disclaimer leading to regression. The municipality has maintained a disclaimer audit opinion for the 2018/19 financial year.

The municipality is experiencing challenges with implementation of mSCOA due to poor contract management and failure to work amicably with the vendor to deliver the expected results. The municipality is experiencing system challenges, mainly due to lack of capacity and support from the system vendor. It is also notable that the MIG allocation which is intended to reduce infrastructure backlog to enhance service delivery is not adequately utilised.

The financial challenges of the municipality have a potential to collapse the provisioning of services to the Community and this might lead to a total collapse of governance.

c) Service Delivery & Infrastructure Development

The persistent draught has reversed all the gains with regard to water provision by the municipality. Poor water conservation and water demand management strategies not in place and this is compounded by the cracking of the dam-wall. Water provision is adversely affected by lack of operation and maintenance of water treatment plant and waste water treatment plant characterized by sewer spillage in the townships.

Lack of waste management plan and poor maintenance of landfill sites including non-compliance of the landfill side with applicable legislation exacerbates the non-compliance with environmental legislation. The incomplete project of waste water treatment plant has received R 5million financial boost from the Provincial Infrastructure Grant (PIG) and expected completion time is 2019. Water tankering remains a key cost driver without leaving any infrastructure legacy for the municipality.

Road maintenance of potholes is progressing well with the assistance from the Department of Public Works and Roads, including grass cutting on the sides of several roads.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R25 847 000.00, Expenditure R 16 838 131.71, % expenditure 65% and R 9 008 868.29 balance.

5.1.12. Rustenburg Local Municipality

Rustenburg Local Municipality is a category B1 municipality within the Bojanala Platinum District. It is a secondary city with the largest budget and a population size of 549 575 and 199 044 households. It is constituted by 38 wards with councilors comprising of Executive Mayor, Mayoral Committee and Council Committees. The municipality is responsible for the provision of basic services as legislated in Chapter 7 of the Constitution and in terms of schedules 4 and 5. According to census 2011 results, the municipality population size has increased from 387 097 in 2001 to 549 575 in 2011.

a) Governance & Administration (Building Stable Institutions)

The Council is a hung Council led by a coalition arrangement. The recruitment process of the Municipal Manager is underway. The Municipality has so far appointed three Municipal Managers in a space of four years. The municipality has experienced raids from the Haws, Public Protector and Minister of COGTA and reports are still outstanding.

There are several media leaks that have been circulating revealing a worrying situation in the municipality, for instance, alleged leaked communication between the Council Whip and Councillor of the EFF. The MPAC is performing its minimum statutory functions, although there has been insufficient support from administration.

b) Sound Financial Management

The municipality is highly indebted through loans for its resource projects. The Auditor General report has revealed a number of fraudulent transactions in the Supply Chain Management space of the municipality, for example, one service level agreement was signed between a company called R&T on the 2nd March 2018 yet the first invoice of five R 5 061 999.33 was already received twelve days thereafter, (invoice date 14 March 2018).

The municipality is currently transacting in the mSCOA chart and is able to produce reports on the same system. Debtors balance as at June 2020 amounted to R5.6 billion, of which R5 billion or 89% is outstanding for more than 90 days.

The major contributor is household which constitute 78% or R4.4 billion followed by at R689 million and government at R22 million. R503 million is been attributed to other' category. The total outstanding creditors as at end of June 2020 amounted to R1.1 billion, of which R665 million or 58% were outstanding for more than 90 days.

Eskom debt as at July 2020 amounted to R286 233 296 of which R148 497 842 is overdue. This included the disputed balance of R100 million which was referred to NERSA for the building of the substation standard charges.

The UIF&W expenditure stands at R7 199 326 which makes the municipality to be considered one of the top 10 contributors to UIF&W in the province.

Poor audit outcomes with recurrent audit findings pertaining to UIF&W expenditure and the municipality in the past six financial years has received 1 unqualified and 5 qualified audit opinions. During the 2018/19 financial year, the municipality maintained the qualified audit opinion.

c) Service delivery& Infrastructure Development

Backlog with regard to road infrastructure. Potholes and street lights need attention.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 235 107 000, Expenditure R 224 394 872.94, % expenditure 95% and R10 712 127.06 balance.

5.1.13. NgakaModiriMolema District Municipality

Ngaka Modiri Molema District is one of four district municipalities in the North West province and covers an area of approximately 28 114km². There is currently 961 960 people living in Ngaka Modiri Molema District Municipality and is comprised of 268 099 households. There are 640 000 (67.66%) people living in poverty, using the upper poverty line definition, across Ngaka Modiri Molema District Municipality - this is 3.14% higher than the 621 000 in 2008.

a) Governance & Administration (Building Stable Institutions)

All positions of senior Managers including Municipal Manager are filled. The expenditure on personnel budget is accounts for over 47% of total expenditure which is not sustainable considering that the municipality is grant funded at 98% total revenue. There is an organizational process to address the issue of high personnel budget.

There was an investigation by the Public Protector of South Africa against the municipality. There are aggrieved employees who were favoured by the Remedial Action of the Public Protector. A Council resolution to adopt the outcome of the report including implementing the remedial action but to date, no progress has been registered including reporting back to the department of COGHSTA on implementation.

MPAC is partially functional and performing its minimum responsibilities. The support staff's contracts have been linked to the current chairperson's term of office. The municipality will not have institutional memory should the current chairperson vacate the office for any reason.

b) Sound Financial Management

The municipality has approved the budget that is unfunded. As a result of lack of capacity in the Budget and Treasury Office, there is non- compliance with Municipal Budgeting and Reporting Regulations (MBRR)..

Regarding internal controls, there is no virement policy, segregation of duties, lack of business processes. The municipality developed standard operating procedures (SOP) to improve internal controls and is currently transacting in the mSCOA chart and is able to produce reports on the same system however: not all modules are active e.g., Contract Management. Section 71 reports are not submitted as legislated.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R3 000 000)
- 2016-17 (R2 094 916)
- 2017-18 (R3 500 000)

This clearly shows that UIF&W expenditures are not investigated and recovered as per the requirements of MFMA section 32. The municipality has been receiving Disclaimer audit opinions for over the past 6 financial years, For 2018/19 financial year the

municipality has regressed from disclaimer to adverse audit opinion. This is so because of lack of oversight and consequence management. The municipality is one of the top ten contributors to UIF&W in the province.

c) Service delivery & Infrastructure Development

Lack of water across the district due to draught and lack of Adequate Water infrastructure to address water shortages. The municipality disputed Sedibeng Water Board debt over bulk supply and operations and maintenance resulted in understatement of contracted services expenditure in the AFS.

Under budgeting of operations and maintenance of waste water treatment plant. There is lack of business processes to deal with lack of payments and cash management, including lack of operational procurement plan and sound cash flow projections due to lack of internal controls. Furthermore, there is an unfunded incomplete/abandoned project which adversely affects service delivery, particularly on provision of water and sanitation.

There is huge backlog of water and rural sanitation projects which are not costed due lack of technical capacity. There is generally lack of water conservation leading to water losses and loss of revenue due to illegal and unmetered yard connections in various areas of the district roll-out the draught relief programme funded by the department of Water and Sanitation augment the DRF through internal funding to drill new boreholes in the next financial year.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 299 499 000.00, Expenditure R 264 601 047.50, % expenditure 88% and R 34 897 952.50 balance.

There is a recent report from the Public Protector indicating that the Municipality is failing its obligations to fulfil its responsibility of providing decent access to water and sanitation as a Water Service Provider. Upon the interaction by the MEC responsible for COGHSTA with the municipality, it was discovered that the decision by the provincial government that the budget allocation of water and sanitation to its residents to paid directly to Sedibeng Water Board, is not assisting the municipality fulfilling its obligations.

5.1.14. Ditsobotla Local Municipality

Ditsobotla Local Municipality is located in the Ngaka Modiri Molema District Municipality in the North West Province and covers approximately 6500 km². The municipality is home to approximately 181 8651 people. The total number of households with access to piped water stands at 43 162 of the total households which translates to 79%, the number of households without access to water is approximately 6 000 based on the emergence of informal settlements notably in Itekeng Tlhabologang and Blydeville

a) Governance and Administration (Building Stable Institutions)

The appointment of Municipal Manager and that of Senior Managers had its controversies and irregularities. The Administrator identified serious procedural flaws relating to these appointments including the fact that as Administrator, he was not involved in the process despite the terms of reference directing that he facilitates and lead these processes.

The Municipal Manager with the support of other Councillors have dismissed more than eleven employees, most of whom were newly elected SAMWU Shop stewards. Their dismissal happened without any disciplinary hearing and has created unnecessary tension in the administration and Local Labour Forum.

Only two (2) positions of Senior Managers are filled, namely the Municipal Manager and the Chief Financial Officer, the remaining four (4) positions are vacant.

The work of the Municipal Public Accounts Committee (MPAC) is not properly resourced. MPAC reports are not processed as expected by the municipal council. Serious and damning allegations against key office bearers and some Councillors have not been allowed space to be tabled.

The municipality is experiencing community protests which resulted in the closure of municipal offices. The employees are also on strike, complaining of the conduct of the Municipal Manager.

b) Sound Financial Management

The approved budget is not cash-backed, as a result, the municipality is not financially viable and fails to pay its creditors and fulfil other commitments. There are serious cash flow challenges hence its inability to meet its financial obligations. Section 65(2)(e) of the MFMA states that all money owing by the municipality must be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure.

The ever increasing creditor book balance is a clear indication that Municipalities fail to honour the latter section of the MFMA. The municipality owes Eskom bulk account a total amount of R627 717 201 million of which R607 004 485 is overdue for more than 30 days period.

Firm of attorneys have been appointed to conduct forensic investigations with regard to the loss and embezzlement of INEP funds. A register of all UIF&W Expenditures has been

developed by the MPAC - it forms part of the Post Audit Action Plan. The Supply Chain management unit is not given attention as the position of SCM Manager is not filled.

Municipality is still operating on the old system version of SEBATA FMS and in a process to migrate to EMS. Municipality having internal capacity challenges to effectively implement mSCOA.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R3 500 000)
- 2016-17 (R3 200 000)
- 2017-18 (R2 900 000)

This clearly shows that UIF&W expenditures are not investigated and recovered as per the requirements of MFMA section 32. Poor audit outcomes with recurrent audit findings pertaining to UIF&W expenditure and the municipality in the past seven financial years has received 6 disclaimers and 1 qualified audit opinions. The UIF&W expenditure stands at R360 893 730 in 2018/19 financial year. The municipality has received 3 consecutive disclaimer audit opinion from financial year 2016/17 to 2018/19. The result is indicative that there is no consequence management.

c) Service Delivery & Infrastructure Development

The municipality is not collecting refuse as expected, as a result the communities have to dispose of their own refuse. This led to residents waging violent protests.

There is generally incidents of non-compliance with service delivery commitments as the access roads are not maintained. The internal roads have totally deteriorated to appoint

wherein most of the tarred roads, have informally turned into gravel roads including the town of Lichtenburg.

Ditsobotla LM is one of the three municipalities that have spent 100% of their MIG allocation.

5.1.15. Mahikeng Local Municipality

Mahikeng Local Municipality is a B2 category municipality in Ngaka Modiri Molema District Municipality, capital city of the North West Province. It is demarcated into 31 wards comprising of Executive Mayor, Mayoral Committee, Speaker and Council Committees. It is a medium capacity, semi-urban and predominantly rural municipality with a limited revenue base. It has no electricity license as revenue source with high consumer debt and poor Operations and Maintenance of infrastructure. The municipality has a population size of 291 527 with a total number of households estimated to 84 239 and this therefore means that the population has increased from 259 478 in 2001 to 291 527 in 2011.

a) Governance and Administration (Building Stable Institutions)

This is a municipality that was placed on intervention by the provincial government with the support of national government and the National Council of Provinces (NCOP). The administration started from 1 September 2018 being placed under 137 of the MFMA, on 5 December 2018 EXCO took a decision to escalate the intervention to Section 139 (1) (b) of the constitution.

The Intervention Team started effectively with its work during the month of March 2019 after numerous engagements with Council and Mayoral Committee in which the objective of the intervention was outlined, including the Terms of Reference for the Intervention Team. The delay was as a result of resistance and rejection of the Provincial Intervention. The intervention was later extended until the municipal end of financial year, i.e. 30 June 2020.

There is governance stability in the municipality since the provincial intervention, Council and its committees do meet as compared to previous years where the municipality was facing difficulties and service delivery protests. The municipality has resolved the appointment of Municipal Manager's position.

The municipality investments with the VBS and the repossession of the White and Yellow Fleet affected the financial position of the municipality adversely. The poor financial position of the municipality also affected payments of staff statutory deductions such as pension fund

b) <u>Sound Financial Management</u>

The municipality has adopted an unfunded budget for the 2020/21 financial year. The municipality is unable to implement credit control measures to recover outstanding debts from customers. As at the end of June 2020, the total outstanding debtors amount to R1.8 billion of which 93 percent or R1.7 billion is outstanding for over a year. Households constitutes most of the outstanding debt at R948 million, followed by government department at R717 million and commercial or business at R174 million. The outstanding creditors is standing at R112 million as at January 2020, the municipality is not reporting consistently on section 71 reports.

The UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. The results of lack oversight led to negative audit outcomes as follows, five disclaimer opinions, two qualified audit opinions for the past seven years. The municipality has received disclaimers for two consecutive years, i.e. 2017/18 and 2018/19 financial years. The UIF&W expenditure stands at R2 018 535 768 in 2018/19 financial year. The municipality is one of the top ten contributors to UIF&W in

the province. The MPAC has no capacity to address the UIF&W expenditures. There is no permanent support staff of MPAC office, only one official seconded from Speaker's office.

Poor audit outcomes with recurrent audit findings pertaining to UIF&W and the municipality have not addressed them in accordance with section 32 of the MFMA owing to lack of oversight and consequence management.

The municipality has spent 100% of MIG allocation as at the end of June 2020.

VBS Investment

Mahikeng Local Municipality invested R83, 4m in VBS Mutual Bank and lost the funds which were meant for the following critical investments:

a) Infrastructure Development,
b) Economic Development;
c) Job Creation,
d) Free Basic Services

Impact on Financial Health (Liquidity)

According to the report of the Auditor General for the financial year 2018/2019, at Mahikeng LM, the loss of R83, 4 million added further pressure on the municipality's ability to pay suppliers. The municipality had R7 million bank balance at year-end compared to payables in excess of R553 million.

Consequence Management

Auditor General in his 2018/2019 Financial Year Report emphasised that even though the Municipal Manager was suspended and released from his employment contract, no decisive action has been taken to effect consequence management against those responsible. Lack of implementing consequence management is a direct result of lack political oversight.

The VBS investment saga affected the stability of Council, there is no cohesion amongst TROIKA and this affected the functioning of Council. There has been attempts to remove the Executive Mayor, Speaker and Single whip of Council, the cause amongst others include VBS investment.

The lack of leadership was quite glaring since Council could not seat to conduct oversight over the Executive and the Administration thus the VBS and Kwane saga which saw millions of the Municipality's yellow and white fleet being lost leaving Mahikeng residents without machinery and equipment to deliver services. Non-payment of suppliers by Mahikeng resulted in the cancellation of a contract for vehicles leased for the waste and refuse removal. As a result all refuse removal services at the municipality came to a halt.

The matter relating to inconsistent appointment of personnel in political offices outside policy prescripts is still to be addressed. The political disruptions in council have affected the business of council negatively and will require constant intervention in order to restore public confidence in the Councillors.

Mafikeng Local Municipality presented the tabled19/20 MTREF budget in full compliance with Section 16(2) of the Municipal Finance Management Act (MFMA, Act No. 56 of 2003), the IDP consultation did not take place as scheduled due to meetings being disrupted by factions fighting within the Council. Therefore, the credibility of the budget could not be determined and also if the budget is funding the prioritised needs of the community as community consultation did not happen.

The municipality is reliant on government grants to fund its capital programmes and even more worrisome is the fact that the funding of capital expenditure from own generated revenue is not realistic. The tabled budget is not funded over the 2019/20 MTREF. The 19/20 MTREF budget is not sustainable, not funded and cannot meet the financial

commitments of the municipality. Operating surpluses over the medium term are not realistic and are based on overstated revenue and will not be able to address maintenance of ageing infrastructure and funding of capital projects.

5.1.16. RamotshereMoiloa Local Municipality

Ramotshere Moiloa Local Municipality (MLM) is a category B municipality (established in terms of the Municipal Structures Act, Act No. 6 of 2004) in the Ngaka Modiri Molema District. The municipality is licenced to provide electricity in town. Ngaka Modiri Molema District Municipality is a water authority and provides water to the remote villages. Ramotshere provides water in town only. Its estimated budget is R 476 million in the 2020/21 financial year. The municipality has been experiencing financial and service delivery challenges due to administrative instability and poor governance structures.

a) Governance & Administration (Building Stable Institutions)

The municipality has during the intervention, embraced and demonstrated commitment and support towards the realisation of the objective of the intervention. To date council, its Committees and EXCO meetings are convened as per the developed corporate calendar. Management meetings and action plan developed and managed including tracking of Council resolution implementation.

All senior management posts are filled except Chief Audit Executive and the LLF is functional. We have noted recently with serious concern signs of regression with respect to the functionality of EXCO.

MPAC is not functional because of lack of commitment by members, non-attendance of some members to the meetings (struggle to form a quorum). MPAC recommendations are not adopted in council, which renders it as ineffective. Management does not respond to request of information from the committee, the effectiveness of MPAC is also

hampered by non-implementation of the committee's recommendations. The oversight report for 2018/19 could not be adopted prior to the lockdown. The committee had 3 support staff, including a manager who has been placed under suspension. MPAC is reportedly not informed of the progress pertaining to the case. This creates a void in the MPAC office as the support staffs serve as an institutional memory of the committee.

The municipality received disclaimer audit opinion for 2 consecutive years, from 2017/18 to 2018/19. There is no evidence that the municipality is implementing audit remedial plans, and recommendation of the internal audit unit as well as the MFMA Sec 166 Audit Committee. Legislative frameworks to address the UIF&W expenditures are not implemented which leads to an annual increase in the UIF&W expenditures.

b) Sound Financial Management

The approved budget is not cash-backed, as a result, the municipality is not financially viable and fails to pay its creditors and fulfil other commitments. There are serious cash flow challenges hence its inability to meet its financial obligations.

This is evident due to the fact that most of its creditors are not paid within 30 days as prescribed by the MFMA. Recently the municipality experienced electricity disruptions as a result of non-payment of Eskom account. The municipality owes a total of R49 million to Eskom as at the July 2020. Furthermore, the municipality is unable to implement credit control measures to recover outstanding debts from customers.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R2 500 000)
- 2016-17 (R1 700 000)
- 2017-18 (R1 700 000)

c) Service Delivery & Infrastructure Development

The persistent drought has reversed all gains with regard to water provision by the municipality. Service delivery is adversely affected lack of operation and maintenance of water treatment plant and waste water treatment plants characterized by sewer spillages in the townships. There is lack of the waste management plan and poor maintenance of landfill sites including non-compliance of the landfill sites with applicable legislation.

The role of the District municipality as a Water Service Authority, undermines the constitutional rights to access basic services like water and sanitation.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 37 154 000.00, Expenditure R 19 534 522.79, % expenditure 53% and R 17 619 477.21 balance.

5.1.17. Ratlou Local Municipality

Ratlou LM is a category B municipality situated in the Ngaka Modiri Molema District Municipality in the NW Province. The municipality is predominantly rural in nature and is constituted by about 26 villages and commercial farms. The size of municipal area is 14, 618 km2, with a population density of 24.37 per square kilometre and is divided into 14 wards.

a) Governance & Administration (Building Stable Institutions)

The functionality of Council and its committees is restored. They convene as per schedule. There are instances where Council sitting is disrupted by members of the community,

Ratlou LM has a history unstable administrative leadership for the past four years where they were not able to appoint a substantive Municipal Manager and Chief Financial Officer. The municipality only managed appoint a substantive Municipal Manager and the Director Technical Services.

The positions of the CFO and other senior managers, namely Director Community Services, Director Corporate Services and Town Planning & Development are still vacant. The instability in senior administrative leadership has an impact on the performance of the municipality, hence the qualified audit opinions over the past three years (2015/2016 to 2017/2018), and regression in 2018/19 financial year to a disclaimer audit outcome.

The MPAC has reported that it is not receiving sufficient support from both administration and council. MPAC is partially functional and performing its minimum statutory functions.

b) Sound Financial Management

The municipality has adopted an unfunded budget as the total expenditure exceeds anticipated revenue projections to be collected. The UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. The recorded Irregular, fruitless and wasteful expenditure amount to R121 216 763 in 2018/19 financial year. No consequence management cases have been concluded.

Poor audit outcomes with recurrent audit findings pertaining to UIF&W and the municipality have not addressed them in accordance with section 32 of the MFMA owing to lack of oversight and consequence management. The municipality has been stagnant of qualified audit opinion for the past 3 consecutive financial years, and now regressed to a disclaimer in the 2018/19 financial year.

The following are the figures for the utilisation of Consultants by municipality:

a. 2015-16 (R2 3000)
b. 2016-17 (R 1900 000)
c. 2017-18 (R1 700 000)

Municipality had implementation challenges due to aged ICT infrastructure the municipality has since upgraded the server in order to improve mSCOA implementation. The Municipality is over reliant on the system service provider for implementation of mSCOA due to lack of capacity and training.

c) Service Delivery & Infrastructure Development

Lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipment. Shortage of water including unresolved issue of service provision by the District municipality on water and sanitation. No operations and maintenance plans for internal roads.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 29 400 000, Expenditure R6 902 041.04 % expenditure 23% and R 22 497 958.96 balance.

5.1.18. Tswaing Local Municipality

According to census 2011 Tswaing local municipality has a total population of 124 218 people with a population growth rate of 0.84%.The main economic sectors is agriculture and small scale mining provide and elaborate on efforts/plans by the municipality to address. The municipality still faces challenges of serious back logs in the provision of water, electricity, sanitation, roads and street lighting. The main reason for this is the increased population influx from the neighbouring farms and villages, partly due to the natural growth of the population. The unemployment rate as at 2011 was 28.7%, whilst the youth unemployment rate was 40.1% .the elderly (65+) constitute 6% of the population and individuals of working age (15-64) constitutes 58%.

a) Governance & Administration (Building Stable Institutions)

The municipality was placed under Administration on 2 May 2019 by the Executive Committee (EXCO) of the Province. The intervention commenced on the 17th of July 2019 and expires on 30 June 2020. The intervention team started effectively with its work during the month of July 2019 after numerous engagements with council in which the objective of the intervention was outlined, including the terms of reference for the intervention team. The intervention team spent a lot of time stabilizing the volatile situation within the municipality by engaging the different stakeholders and pressure groups across the municipality.

The intervention team has assisted in resuscitating the following governance structures: Portfolio committees resuscitated and functional. EXCO, Council are functional and resolution register is kept and regularly updated.
MPAC was not functional and has been resuscitated, to that end this committee has managed to sit and completed oversight reports for the past ten financial years (2008/09 to 2017/18). The MPAC oversight reports were tabled before council on 22 august 2019. The biggest challenge with MPAC to function effectively is the lack of complete staff complement. The municipality does not have Audit committee. Financial Disciplinary Board still to be appointed by Council.

Now recently the municipality is experiencing political instability, which resulted in the ousting of the Mayor and the suspension of the MM and the CFO??
Most of the ward committees are dysfunctional and no effective interaction with communities done. A disjuncture between committees and departments is a challenge.

The municipal council is in dysfunctional and as such cannot provide any oversight to the administration. The council committees are dysfunctional and the municipality is unable to discharge on its mandate as espoused in the Constitution and key pieces of legislation. Councillors are colluding with officials for service providers are paying kickbacks.

Councillors and officials are frustrating municipal processes in order to benefit themselves materially.

b) Sound Financial Management

The municipality has adopted an unfunded budget. There UIF&W is growing and is linked to transgression of supply chain management prescripts and lack of oversight. The results of lack oversight led to negative audit outcomes as follows, one disclaimer opinion and three qualified opinion. The municipality maintained a qualified audit opinion from 2015/16 to 2018/19.

The total outstanding Debtors as at June 2020 amounted to R 247million, of which R225 million is owed for over a year. Collection of some of these outstanding debtors is of a concern especially households debt. Households constitutes most of the outstanding debt at R219 million, followed by Commercials at R24 million and government R3.6 million

The total outstanding creditors as at end of June 2020 amounted to R165 millions of which R137 million is outstanding for more than a year. Total debt owed to Eskom as at July 2020 amount to R71 271 976 and 64 884 486 is overdue for more than 30 days period.

A number of cases are fraud remains unresolved. No consequence management cases have been concluded. Poor audit outcomes with recurrent audit findings pertaining to UIF&W and the municipality have not addressed them in accordance with section 32 of the MFMA owing to lack of oversight and consequence management. The results of lack oversight led to negative audit outcomes as follows, one disclaimer opinion and three qualified opinion which is a stagnant.

The following are the figures for the utilisation of Consultants by municipality:

a. 2015-16 (R2 500 000)
b. 2016-17 (R4 662902)
c. 2017-18 (R2 100 000)

The Municipality does not utilize all available modules on the system and opts to perform manual transactions. There is heavy reliance on the system service provider caused by lack of training and capacity.

c) Service delivery & Infrastructure Development

Lack of operating and maintenance for internal roads remains a problem, associated with lack of adequate operating plant and equipment. Shortage of water including unresolved issue of service provision by the District municipality on water and sanitation. No operations and maintenance plans for internal roads.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 29 274 000, Expenditure R 22 432 476.64, % expenditure 77% and R 6 841 523.36 balance.

5.1.19. Dr. Kenneth Kaunda District Municipality

Dr. Kenneth Kaunda District Municipality, which is one of the four category C (district) municipalities in the North West Province, with a total population of 742 822 people, in accordance to Stats SA Community Survey of 2016.

The population is unevenly distributed among the three (3) local municipalities and the average annual growth rate of the district is 1.07% which dropped from 1.16% between 2001 and 2011 (which can be attributed to death, migration etc.).

Dr. Kenneth Kaunda district is a category C municipality situated in the southern portion of the North West province. The district municipality has three local municipalities under its jurisdiction namely and has devolved all of its powers and functions allocated in terms of Section 84 of the Municipal Structures Act. The municipality retained powers and

functions that relates only to provision of Environmental Health Services, Disaster Management and Fire Services across the entire district area of jurisdiction. As a result, the District Municipality is highly dependent of government grants, as its primary source of income. The funding mix of Dr. Kenneth Kaunda District Municipality made up of 98% government grants as well as own revenue which contributes 2% of the total revenue base.

a) Governance & Administration (Building Stable Institutions)

Dr Kenneth Kaunda District municipality has fully functioning governance structures in place which are the Shared Audit and Risk Committee, Internal Audit, MPAC and Disciplinary Board to assist Council with discharging the powers and functions.

The vacancies at senior management positions are at Director: Community Services and Director LED and Planning. Recruitment process was halted by the Covid-19 lock down, but it is now activated. Other senior management positions including the Municipal Manager are substantively filled. MPAC is performing its minimum statutory functions, but does not have enough capacity to investigate the UIF&W expenditures.

b) Sound Financial Management

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R3 100 000)
- 2016-17 (R2 900 000)
- 2017-18 (R3 000 000)

Poor audit outcomes with recurrent audit findings pertaining to UIF&W expenditure and the municipality in the past seven financial years has received 3 unqualified and 4 qualified audit opinions. According to the audited AFS for 2018/19 financial year, the

Unauthorised, Irregular, Fruitless and Wasteful expenditure (UIF&W expenditure) stands at R220 546 415. The municipality has been stagnant on qualified audit opinions since 2015/16 financial year to 2018/19 financial year. .

The mSCOA implementation is progressing well through the commitment of Municipal Leadership however not all modules offered by the system have been fully implemented. The Municipality is still highly dependent to the system vendor.

c) Service delivery & Infrastructure Development

The municipality is not a Water Services Authority and is not playing coordinating and /or supporting role to its local municipalities. Infrastructure development projects have not been implemented, resulting in local municipality playing the role of salaries with no developmental program.

5.1.20. Maquassi Hills Local Municipality

Maquassi Hills is a category B municipality (established in terms of the Municipal Structures Act, Act No. 6 of 2004) in the Dr Kenneth Kaunda District.It is bordered by Tswaing in the north, the Free State Province in the south, City of Matlosana and the Free State in the east, and Dr Ruth Segomotsi Mompati District in the west.

It is one of the three municipalities that make up the district, accounting for a third of its geographical area. The main Economic Sectors are Agriculture (49%), domestic (17%), community services (15%), and manufacturing (14%). The municipality has been under severe financial challenges in the form of cash flow problems and inability to raise sufficient revenue which impacted negatively on its financial sustainability and delivery of basic services.

The municipality lacks sound financial management; and good governance. There are many on-going risks associated with the instability of the municipality

The Municipality is spread over 4 678.4 square kilometres and has 11 wards with a population of 82 013 and 24 077 households (based on the Community Survey of 2016). The Municipality is required by the Water Services Act to provide the right of access to basic water supply & sanitation, hence 22 247 (92.4%) households have access to water supply and 21 717 (90.2%) households have access to sanitation out of 24 077 total households.

a) Governance & Administration (Building Stable Institutions)

This is a municipality that was placed on intervention by the provincial government with the support of national government and the National Council of Provinces (NCOP). The municipality has during the intervention, demonstrated total disregard for the authority of the Provincial and National government, including Parliament.

The former administrator Mr. T. Mokhatla was rejected from the onset by the municipal council to the point where he had to be replaced by Ms. D. Tlhoaele and the team. Similarly her team also experienced resistance from councillors in the municipality, which resulted in three months of the intervention period being lost. Councillors were involved in violent activities to challenge the intervention.

There is instability of Council characterized by infighting that led to political instability and weak oversight. Furthermore, this has also led to non-functionality of Council and its Committees and in particular the MPAC.

MPAC is not fully resourced with permanent support staff and tools of trade. The institution has a back-log of oversight reports from 2008/09 to current. Lack of stability in council and non-commitment of majority of members has rendered the MPAC dysfunctional.

The recruitment and appointment of senior managers was conducted without the involvement of the Administrator. This act borders on non-compliance to the Terms of Reference of the Intervention. The MEC issued a directive to the Mayor for the attention of Council, directing that they should not appoint any senior manager without consulting the Administrator since the municipality is under Section 139(1) (b) of the constitution.

The Council disregarded the directive of the MEC and continued with the appointments. Only two Councillors disassociated themselves from the whole council process of perpetual defiance. Section 106 of the Municipal Systems Act was invoked and the report was submitted to the office of the Mayor for tabling in Council, but to date it's still pending to be tabled in Council.

The report resulted in some of the senior officials and the Mayor being implicated in wrong doing, especially with regard to misuse of municipal vehicles. Public participation at Ward level has completely collapsed, and this is a recipe for violent public protests.

b) <u>Sound Financial Administration</u>

The municipality is considered one of the top 10 contributors to UIF&W expenditures in the province. The municipality regressed from a qualified audit opinion in 2016/17 to a disclaimer in 2017/18, and maintained a disclaimer in the 2018/19 financial year.

The municipality has approved the budget that is not funded, this mainly of the fact that the municipality has projected to have a positive net cash from operating activities without factoring in all arrangements in place with creditors. The approved budget is not cash-backed, as a result, the municipality is not financially viable and fails to pay its creditors and fulfil other commitments. The total outstanding creditors as at end of June 2020 amounted to R242 million, of which R201 million or 76% were outstanding for more than 90 days. Eskom debt as at July 2020 amounted to R 38 524 785 of which R29 336 967 is overdue for more than 30 days period.

The total outstanding Debtors as at June 2020 amounted to R 1.5billion, of which R1.4 billion or 95% is over 90 days. Households constitutes most of the outstanding debt at R1.4 billion, followed by commercial /business R60 million, government R11 million

The municipality is experiencing low revenue collection due to poor revenue management.

The UIF&W expenditure stands at R1 089 367 513 for 2018/19 which makes the municipality to be considered one of the top 10 contributors to UIF&W in the province. With regard to mSCOA compliance – there are serious leadership challenges to oversee mSCOA implementation.
In the past seven financial years the municipality received 4 disclaimers and 3 qualified audit opinions, for 2018/19 financial year, the municipality maintained a disclaimer audit outcome.

c) Service delivery & Infrastructure Development

The communities of the municipality could go for a long period of up to three weeks without water. The water crisis was reported as early as May 2019 and to date the situation is still to be addressed in totality. Service delivery is adversely affected by lack of operation and maintenance of water treatment plant and waste water treatment plant characterized by sewer spillages in the townships.

There is lack of plan for waste management and poor maintenance of landfill sites. There is also poor water conservation and water demand management strategies.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 28 209 000.00, Expenditure R 27 164 239, % expenditure 96% and R 1 044 761 balance.

5.1.21. City of Matlosana Local Municipality

City of Matlosana is a category B municipality (established in terms of the Municipal Structures Act, Act 6 of 2006) in the DR Kenneth Kaunda District Municipality, in the North West Province. The main economic activity in the municipal area is gold mining with Anglo Gold Ashanti being the biggest player in the market. The gold mining sector in the country has been decreasing due to supply and demand as well as the pricing of the commodity.

This has negatively affected the economy of the municipality resulting in some areas being as distressed mining towns. The job losses have increased poverty and ability of households and businesses to pay for municipal services. The municipality in current state remains financial not viable due to low collection rates and increasing debt book which has a direct impact on service delivery

a) Governance & Administration (Building Stable Institutions)

The City of Matlosana have been having challenges dating as far as 2017. The Mayoral Committee is divided and is not coherent, including TROIKA. Some Councillors are a grouping of the Speaker and others are a grouping of the Executive Mayor.

This anomaly is impacting negatively on governance and oversight of council, thus creating an enabling environment for the collapse of service delivery and violent service delivery protests. Meetings of Committees of Council are not convened and/or poorly attended. All senior management positions are filled. MPAC is partially functional with only one permanent support staff. It does not have sufficient capacity to address the increasing UIF&W expenditures.

The municipality continues to experience great instability in that there's been a huge involvement of criminal elements which threaten both the functionality of the municipality

and the council proceedings. A number of councilors have reported on many occasions how they are under threat and are not able to exercise oversight or even interrogate council matters without being intimidated.

After the concerted effort by the MEC to strengthen Council, the following occurrences took place in the municipality; it was reported that council sat to discuss the performance report of the Accounting officer, of which a number of thugs were bussed into that meeting and the council sitting was disrupted with councillors being poured with water while in council chambers.

There was a council meeting that took place in which the MPAC tabled its oversight report, upon deliberations by council on the report the council resolved to put the Municipal Manager on precautionary suspension given the financial misconduct allegations.

The Executive Mayor was ssubsequently instructed by Council to inform the Municipal Manager of its decision and further resolved that the Executive Mayor should write to the Municipal Manager within seven days informing him of the decision. It is alleged that the Executive Mayor did not oblige to that council resolution and instead a council meeting was convened by the Speaker at a later stage and reversed the decision arising from the minutes.

As a result of the above there was a removal of some members of the Mayoral Committee by the Executive Mayor. Council is currently kept in the dark about the precautionary suspension of the Municipal Manager as the Executive Mayor elected not to implement the Council resolutions, and is working in cahoots with the Speaker to undermine the authority of Council.

b) <u>Sound Financial Management</u>

The approved budget is not cash-backed, the budgeted expenditure exceeds anticipated revenue to be collected. The total outstanding creditors as at end of June 2020 amounted to R1.3 billion, of which R1 billion or 76% were outstanding for more than 90 days period. Eskom debt as at 31 July 2020 amounted to R524 516 492, of which R417 901 942 is overdue for more than 30 days period. The municipality is not financially viable and fails to pay its creditors within 30 days period.

The municipality is unable to implement credit control measures to recover outstanding debts from consumers. This is justifiable by a total of outstanding Debtors as at June 2020 amounting to R 4.4billion, of which R4 billion is over 90 days. Collection of some of these outstanding debtors is of a concern especially households debt. Households constitutes most of the outstanding debt at R3.9 billion, followed by commercial /business at R398 million and government at R111 million

The UIF&W expenditure stands at R5 316 108 187 which makes the municipality to be considered one of the top 10 contributors to UIF&W in the province.

The following are the figures for the utilisation of Consultants by municipality:

- 2015-16 (R4 800 000)
- 2016-17 (R4 300 000)
- 2017-18 (R4 500 000)

Improved audit outcomes is indicative that the municipality is in the right direction with regard to oversight and consequence management. The municipality in the past seven financial years has received 1 disclaimer and 4 qualified audit opinions. It has regressed from unqualified audit opinion in 2017/18, to qualified audit opinion in 2018/19. The Municipal Manager is currently is currently facing criminal charges and Council has not been able to process this matter in line with the spirit of the relevant legislation.

c) Service delivery & Infrastructure Development

The municipality is characterized by ageing infrastructure. There is frequency of sewerage spillages. Road infrastructure is dominated by potholes but the municipality is currently attending to the problem. Poor contract management resulting in several blocked projects. This is directly denying communities of their expected services, and there is no action taken against both responsible officials and service providers.

The following is a reflection of the MIG allocation during the 2019/20 financial year, allocation for was R 87 489 000, Expenditure R 52 721 954.28, % expenditure 60% and R 34 767 045.72 balance.

5.1.22. JB Marks Local Municipality

JB Marks Local Municipality is a Category B municipality situated within the Dr Kenneth Kaunda District in the North West Province. It is the largest municipality of three in the district, making up almost half its geographical area.

It was established by the amalgamation of the former Ventersdorp and Tlokwe City Council Local Municipalities in August 2016. It combines the following areas from the Tlokwe Region: Ikageng and its extensions, Potchefstroom town, Mohadin, Promosa, Matlwang, Leliespan/Baitshoki, Haaskraal, Turfvlei, Vyfhoek, Mooibank, Machavie, Buffeldoorn, Miederpark, Kopjeskraal, Wilgeboom, Lindequesdrift. (Agricultural Holdings) Rooipoortjie, Venterskroon, Buffelshoek. (Rural) Vredefort Dome. (World Heritage Site) Vaal River. (Tourism attraction) and the rural hinterland.

Ventersdorp Region consists of a vast rural / commercial farming area as well as the urban area of Ventersdorp, Tshing and Toevlug and has six (6) villages namely Goedgevonden, Welgevonden, Tsetse, Ga-Magopa, Boikhutso and Boikhutsong.

a) Governance and Administration (Building Stable Institutions)

The Municipal Council rejected the NW EXCO resolution to invoke Section 139(1) (b) and accordingly approached Mmabatho High Court on an urgent basis to review and set aside this decision. The MEC of COGHSTA opposed this court application and was successful in his argument that the matter was not urgent since the decision had been made and communicated to the municipality a couple of months preceding the urgent court application challenging it. In other words, the NW EXCO decision to place the municipality under administration through S139(1)(b) remained in force until set aside successfully by the municipality through the normal court application in which process the merits of the matter would be considered. In effect, the invocation of S139 (1) (b) remained in force.

Accordingly, the MEC COGHSTA, instructed the Administrator to resume his duties as per the Terms of Reference and submit monthly progress report on the terms of reference. The Administrator obliged and resumed his duties as there was legal certainty and clarity. The municipal council, however, defied the court ruling and resolved to not accept being placed under administration.

Since the application by JB Marks Council to set aside Provincial EXCO resolution on urgency was dismissed, the application was enrolled again for hearing in the ordinary course which was initially set down in the court roll of 28 February 2020. The matter was removed from the roll by the Municipality without consulting with the Provincial Government. The matter is again enrolled on the court roll and is set for hearing on the 31st July 2020.

Due to continued resistance of the Provincial Intervention by the municipality which affected the effective implementation of the Intervention, thus undermining the authority of the provincial government, the National Council of Provinces, and the Minister responsible for local government; the Ministry of COGTA came down to Klerksdorp in an attempt at inter-governmental dispute resolution. Even though terms were agreed upon, the municipality again reneged on the agreement on invocation of S139 (1) (b).

Present at this meeting with the Deputy Minister COGTA were MEC COGHSTA, Executive Mayor and Municipal Manager of JB Marks LM and the Administrator. It becomes fundamentally important to observe that, the municipality have been constantly defiant to the authority of the Provincial Government with respect to the implementation of the Provincial Intervention.

The MEC of COGHSTA made efforts again during the month of April 2020 to engage with Municipal Leadership to reconsider their stance with regard to Provincial Intervention. A meeting was coordinated for 3 and 6 April 2020 with Members of Troika, Members of Mayoral Committee and Municipal Manager. Both meetings couldn't materialise, the Municipal Leadership requested a postponement to a later date due to COVID-19.

The department has therefore agreed to the postponement. Finally the meeting took place on 5 May 2020 in which the MEC and the Deputy Minister emphasised that the Municipality is still under administration until the Provincial EXCO resolve otherwise, but should be noted that the Mayoral Committee is not in support of the Intervention and requested that only Council can rescind its decision to reject the intervention.

The department sought a legal opinion from the Senior Counsel representing EXCO in the matter between provincial governments V/S JB Marks LM regarding implementation of Section 139 (1) (b). The legal opinion suggest that in an instance that the effective date of intervention is postponed, and such decision is challenged in the High Court, the municipality has prospects of success.

Allegations of Maladministration of the Trust Fund Account

It becomes fundamentally important to observe that, the municipality have been constantly defiant to the authority of the MEC of COGHSTA. This is evident in the municipality's practice of intransigent behaviour towards a letter of enquiry by the MEC on matters related to malfeasance, which are also a subject of investigations by the Hawks.

The municipality continue to give no cooperation to the Hawks and the MEC in spite the fact that, there is empirical evidence of financial impropriety against some Councillors and officials involving royalties paid towards the municipality by one mining house into a Trust fund Account that is allegedly being held at Willem Coetzee Attorneys. For example, there were local and national media reports about an alleged Durban July Trip that took place at great financial cost to the municipality.

Apparently officials who are not as per their job description part of the Sub-Directorate: Local Economic Development were part of the expensive trip, monies from the Trust Fund were allegedly paid into the personal bank account of officials and it ended up as a trip not being value for money.

In addition, there is an amount of R 200 000.00 which was withdrawn through the Executive Mayor purporting to assist the Non-Governmental Organisations. It is on record that the Executive Mayor made a promise to the attorneys who are the administrators of that the money shall be returned to the **trust account later, but in vain.**

Financial Governance

Council not sitting regularly as Scheduled, this is evident by the approval of the 2020/21 Budget and IDP after the legislated time frame.

MPAC is not functional because of non-attendance of some members to the meetings (struggle to form a quorum). MPAC recommendations are not adopted in council, which renders it as ineffective.

Although the municipality has improved audit opinion for 2017/18 financial year from disclaimer to Qualified audit opinion, it remained stagnant with a qualified audit opinion for the 2018/19 financial year. The municipality was identified as one of the top 10 contributors to a high UIF&W expenditure in the country during the 2017/18 financial

year with UIF&W expenditure of R 3 084 446 315 for the 2018/19 financial year and R2 889 876 047 for the previous financial year.

Legislative frameworks to address the UIF&W expenditures are not implemented which leads to an annual increase in the UIF&W expenditures

b) Sound Financial Management

Total outstanding Debtors as at June 2020 amounted to R 636 million, of which R478 million is owed for over a year. Collection of some of these outstanding debtors is of a concern especially households debt. Households constitutes most of the outstanding debt at 244 million, followed by government at 65 million, businesses R45million and R281million is classified under "other".

Total outstanding creditors as at end of June 2020 amounted to R31 million. R138 598 135 is owed to Eskom and R58 034 057 is overdue debt

6. OBSERVATIONS AND CONCLUSION

As indicated above the greatest challenge facing the municipalities is the **trust deficit** which can be directly attributed to the conduct of the municipality's political leadership since their election in 2016. As a result of this trust deficit, majority of the municipal councils has no relationship with communities and this makes it difficult to convince communities to play their part in service delivery by paying for services rendered.

There is therefore a need to focus on winning the trust of the community by strengthening council's capacity to play an **oversight role** and improving the image of the municipalities as a **caring, responsive and corruption free institutions**.

The inability of several municipalities to **collect revenue** from the provision of basic services results in low revenue collection rate and ultimately the **inability to meet**

financial obligations. Continuous failure to collect revenue has a negative impact on the maintenance of revenue generating assets and ultimate loss of revenue. Low revenue collection, **threatens municipal sustainability**.

Underspending on capital projects (MIG) results in municipalities losing out on funding through stopping of grant funding and roll-over processes thereby affecting service delivery which is the cornerstone of existence of municipalities. Incapacity challenges, especially in Finance and Technical services, characterised by poor project management planning, results in many municipalities in the province not spending their capital budget as expected, **undue delays in supply chain management** and high vacancy rate in senior positions.

There is **notable liquidity risks** at municipalities that are highly indebted to ESKOM, Water Boards, Auditor General and other key creditors. Despite the hands-on-support by the Provincial Treasury on revenue management and implementation of credit control policies, municipalities remain stagnant. This is so because, there is **political inertia and lack of oversight** by Councils, characterised by **lack of accountability** to both the higher authorities of national and provincial government and the electorate in general.

Leadership in all municipal councils, did not provide adequate political oversight and monitoring of the control environment, financial performance, implementation of consequence management, **over recurring Supply Chain Management transgressions** and lack of implementation of post audit action plan. One of the key elements that characterise the desperate governance situation is the **anecdotal evidence of disregard for the local government applicable legislation, unethical leadership, disregard of democratic centralism, and a culture of non-accountability.**

We have a responsibility as a collective-Municipalities, National and Provincial Government and all oversight bodies to improve the state of municipalities in line with our legislative mandate to achieve a developmental local government as articulated on the White Paper for Local Government.

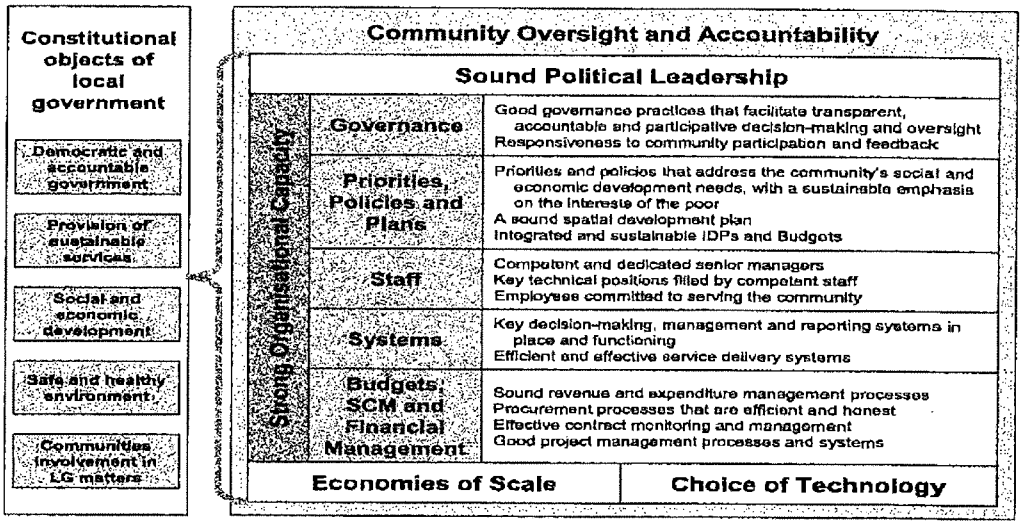
The ideal municipality we want must:

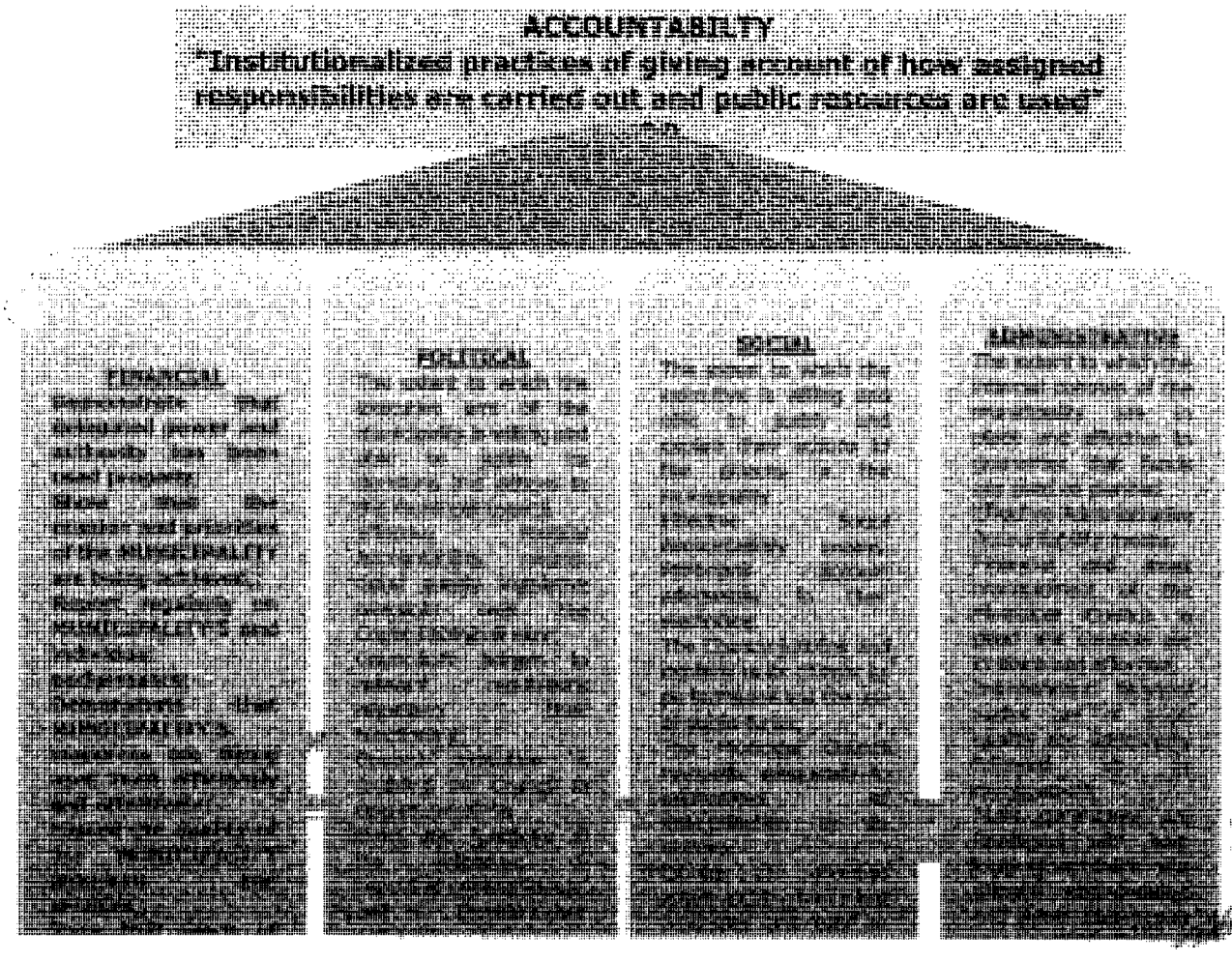
- Provide democratic and accountable government for local communities
- Be responsive to the needs of the local community
- Ensure the provision of services to communities in a sustainable manner
- Promote social and economic development
- Promote a safe and healthy environment
- Encourage the involvement of communities and community organisations in the matters of local government
- Facilitate a culture of public service and accountability amongst its staff
- Assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms.

We should all strive for a:

- **Functional, Well-Performing Municipality**
- **Sustainable Municipality**
- **Accountability**

Key elements of a functional, well-performing municipality


Constitutional objects of local government
Democratic and accountable government
Provision of sustainable services
Social and economic development
Safe and healthy environment
Communities involvement in LG matters
Community Oversight and Accountability
Sound Political Leadership
Governance
Good governance practices that facilitate transparent, accountable and participative decision-making and oversight
Responsiveness to community participation and feedback
Priorities, Policies and Plans
Priorities and policies that address the community's social and economic development needs, with a sustainable emphasis on the interests of the poor
A sound spatial development plan
Integrated and sustainable IDPs and Budgets
Staff
Competent and dedicated senior managers
Key technical positions filled by competent staff
Employees committed to serving the community
Systems
Key decision-making, management and reporting systems in place and functioning
Efficient and effective service delivery systems
Budgets, SCM and Financial Management
Sound revenue and expenditure management processes
Procurement processes that are efficient and honest
Effective contract monitoring and management
Good project management processes and systems
Capacity
Strong Organisation
Economies of Scale
Choice of Technology


ACCOUNTABILITY
"Institutionalized practices of giving account of how assigned responsibilities are carried out and public resources are used"
FINANCIAL
POLITICAL
SOCIAL

Departmental officials will be assigned to implement the Municipal Recovery Programme in the context of District Development Model.

8. FINANCIAL IMPLICATIONS

Use the budget allocated for 2020/21 Financial Year to fund the Municipal Recovery Programme.

9. CONSULTATION IMPLICATIONS

The MEC for COGTA and PT to engage with the both political and administrative leadership of the affected municipalities for the implementation of Municipal Recovery Programme.

10. POLITICAL IMPLICATIONS

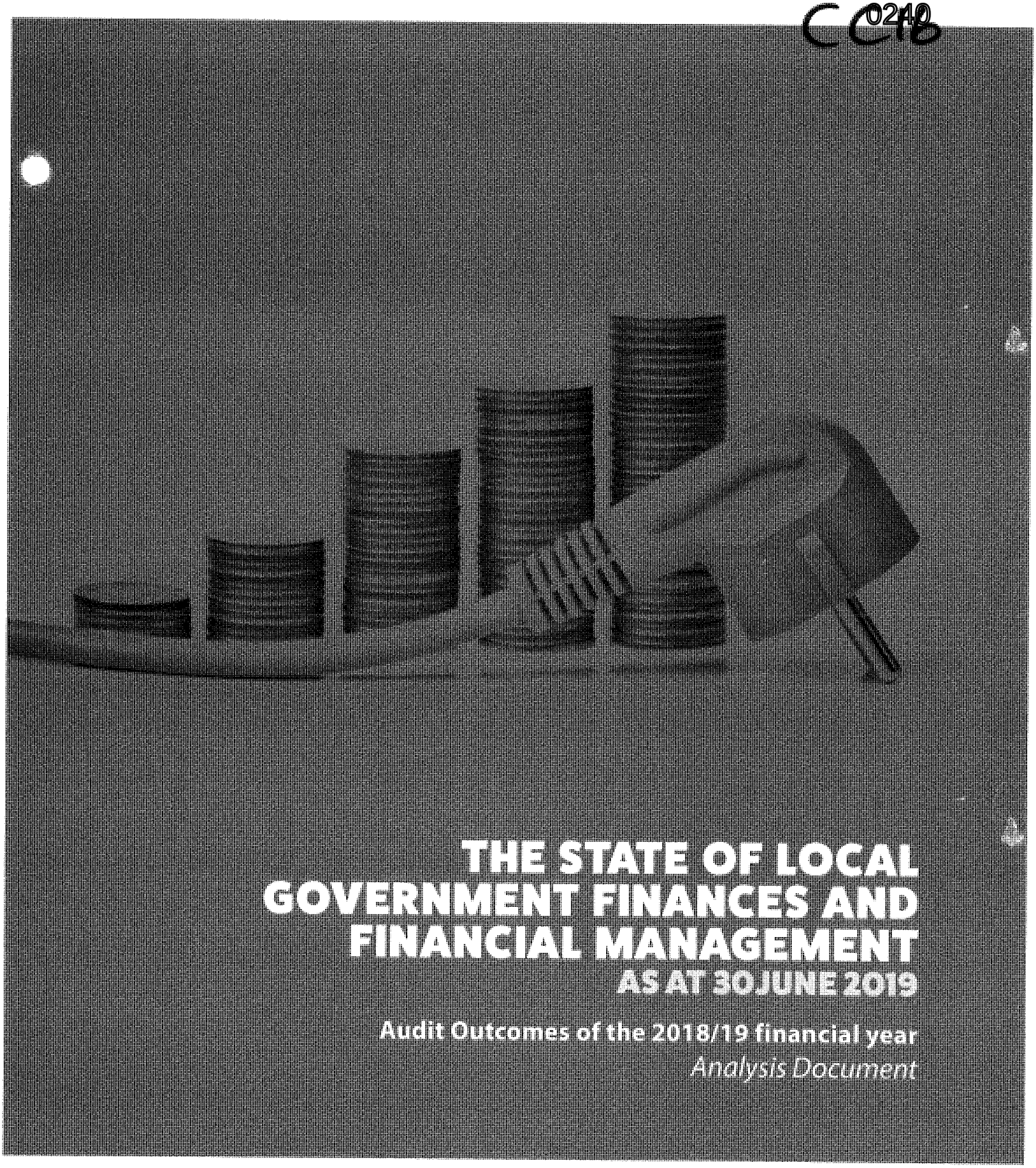
The MEC for COGTA and PT to engage with the both political and administrative leadership of the affected municipalities for the implementation of Municipal Recovery Programme.

11. RECOMMENDATION

It is recommended that the Provincial Executive Council mandate the MEC of COGTA working with MEC of PT to develop a Municipal Recovery Programme focusing on Kgetleng; Moretele; Maqquasi Hills; Ditsobotla; Mahikeng; Lekwa-Teemane; Ratlou; Mamusa; Naledi; Dr RSM and Bojanala DM.

HON. B. MOILOA
MEC: COGHTSA
DATE: 24/08/2020

CC18 0240



THE STATE OF LOCAL GOVERNMENT FINANCES AND FINANCIAL MANAGEMENT AS AT 30 JUNE 2019

Audit Outcomes of the 2018/19 financial year

Analysis Document

national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

STAY SAFE
PROTECT SOUTH AFRICA

THE STATE OF LOCAL GOVERNMENT FINANCES AND FINANCIAL MANAGEMENT
AS AT 30 JUNE 2019

Audit Outcomes of the 2018/19 financial year
Analysis Document

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REPUBLIC OF SOUTH AFRICA

MUNICIPALITIES IN FINANCIAL DISTRESS

113. Municipalities are responsible for their own fiscal sustainability. Section 135 of the MFMA assigns municipalities the primary responsibility to avoid, identify and resolve financial problems that they may experience. Section 154(1) of the Constitution requires the national government and provincial governments, by legislative and other measures, to "support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions." It is only once these measures have failed to resolve challenges facing a municipality that other spheres of government are empowered to intervene in the affairs of a municipality.

114. The National Treasury, in exercising its oversight role in relation to municipalities, monitors the fiscal health and sustainability of the local government sphere and individual municipalities. This includes evaluating and assisting municipalities that are currently, or are likely to, experience financial distress.

115. Financial distress in this context is defined as the sustained inability of a municipality to fund the delivery of basic public goods and other requirements as per their constitutional mandate. This has far reaching implications for the political, social and economic state of affairs in a municipality.

116. National Treasury has developed a diagnostic tool for fiscal health. It should be noted that this tool simply reports fiscal distress when it has occurred, instead of predicting it. It also does ***not*** capture the service delivery side of fiscal distress in a municipality. Although valuable for oversight purposes, it is not the only instrument necessary to proactively prevent the occurrence or mitigate the impact of the financial distress.

117. **Annexure A1** lists the 163 municipalities (an increase from 125 municipalities as reported in the 2017/18 State of Local Government Finances and Financial Management Report) that are evaluated to be experiencing some form of financial distress in 2018/19, based on the financial health assessment. Annexure A1 also provides a consolidated analysis of the 257 municipalities' audit outcomes, those identified as financially distressed and trends for the 2018/19 financial year. The list in annexure A1 shows that four (4) of the 20 municipalities that received unqualified audit opinion with no findings, were classified as financially distressed. Thirty-eight of the 91 municipalities that received unqualified audit report with findings, were classified as financially distressed. This suggests that the result of the audit outcome is not on its own a reflection of good financial health, nor is it intended to be. An audit opinion relates to whether the financial statements give a fair and accurate account of the municipalities finances. If they accurately report huge debts, they will receive an unqualified audit opinion. Of the 83 municipalities that received qualified audit opinion, 65 were financially distressed. Of the 33 municipalities that received disclaimers, 30 of them were financially distressed. All two 10 municipalities that received adverse opinion were financially distressed. Twenty-four of the 28 municipalities whose audit opinions are still outstanding are financially distressed.

MANIFESTATIONS OF FINANCIAL DISTRESS

118. Liquidity challenges are the most common manifestation of financial distress in a municipality. Municipalities with liquidity challenges are failing at effectively delivering services, billing for services and collecting the revenue due. Consequently, outstanding debtors are increasing, and municipalities are not able to maintain positive cash flows to pay creditors within the thirty days' timeframe as legally prescribed.

119. Outstanding consumer debt owed to municipalities, as reported in terms of 2018/19 audit outcomes, has increased significantly since 2011. Currently, the outstanding municipal debt (R132.9 billion as per the audited AFS for 2018/19 (R115.8 billion in 2017/18)) exceeds the total amount allocated to local government through direct and

indirect grants from the national fiscus (R114.9 billion). While households continue to be the largest contributor to outstanding municipal debt comprising 64.8 per cent of the total, there is wide-spread non-payment across all customer segments.

120. Municipalities in turn owe creditors R137.9 billion (audited AFS, 2018/19) (R109.8 billion in 2017/18). This includes all categories of creditors and indicates that many municipalities are not paying creditors within the required 30-day period (as per sections 65(1) and (2)(e) of the MFMA). Although it is the monies owed to Eskom and Water Boards that has attracted most attention, cases of non-payment of other municipal creditors and suppliers have resulted in attachment and sale-in-execution of municipal assets by the courts. In some cases, this can further undermine the ability of the municipality to deliver basic services.

CAUSES AND EFFECTS OF LOCAL GOVERNMENT FINANCE FAILURES

121. When diagnosing the reasons that contribute to the municipal liquidity challenges it is prudent to holistically examine the organisational and operational management inefficiencies. Among the audit issues raised with respect to municipal financial management inefficiencies are weak internal controls; weaknesses and non-compliance to policies and procedures; and fruitless and wasteful, unauthorised and irregular expenditure.

122. Causes of financial distress can be classified into:

- *Structural (or fixed) factors*, including the erosion or interruption of the tax base, decrease in population size, residents' socio-economic status, government resource allocation, loss of financial independence (e.g. through reliance on government transfers), and decline in economic productivity. Structural factors are known to be the hardest to resolve, as they are sometimes outside the municipality's control;
- *Organisational factors* including mismanagement, transparency and labour unions power in public administration and other political factors. Organisational factors are relatively easier to resolve because they are often internal to the organisation. Research shows that mismanagement, one of the organisational factors, is a major cause of fiscal distress; and
- *Hybrid factors*, which relate to intergovernmental relations and coordination. Sometimes grey areas exist in intergovernmental relations, especially regarding roles, responsibility and accountability.

123. When National Treasury engaged the defaulting municipalities, the following issues were tabled for consideration as the root causes that impact on their ability to operate:

- Several municipalities with poor cash flows have adopted unfunded budgets. Unrealistic budgeted revenue collection levels are not realised while operating costs (such as employee related costs) remain high with no effort made to contain expenditure particularly on non-priority spending has led to persistent negative cash balances;
- Weak management of the overall revenue value chain, including tariff setting for trading services, administering the property transfer process, and misalignment of tariffs, billings and credit control measures with indigent policies. The local government equitable share is mainly used to fund operating costs rather than utilised for the purpose of service delivery targeting the poorest of the poor;
- Weak internal controls, risk management and supply chain management (SCM) inefficiencies resulting in poor audit outcomes and wasteful expenditure;



MUNICIPALITIES IN FINANCIAL DISTRESS

- Historically inadequate budget allocation for repairs and maintenance and asset management have weakened revenue potential;
- Limited evidence based financial management such as cash flow management;
- Inefficient management of electricity demand means that penalty charges are unnecessarily incurred (fruitless and wasteful expenditure);
- Payment arrangements negotiated with creditors are not subsequently provided for in the municipal budget. It may be argued that the signed payment arrangements are merely a case of malicious compliance; and
- Inadequate human resources capacity and a shortage of technical skills.

124. In most cases weak municipal leadership underpins these issues. Political instability, poor administrative governance and weak financial management remains the common denominator and at the heart of the problem impacting on the municipality's ability to deliver services as per their mandate. Key issues include:

- Ineffective councils and governance structures that contributes to weak fiscal discipline and consequently financial mismanagement;
- An inappropriate or ineffective political-administrative interface within a municipality, with councillors irregularly involved in administrative decisions or action, and administrators often participating in political or factional activities;
- Vacant positions for municipal managers or appointment of temporary incumbents: accountability is notably weaker at municipalities where the position of municipal manager is vacant or occupied by an "acting" incumbent, as an "acting" municipal manager is less inclined to take decisions and responsibility for actions; and
- The absence of a suitably competent CFO: this presents a risk to sound financial management as it provides opportunities for the flouting of internal controls, non-compliance to the legal framework and general mismanagement of public funds.

125. The AG has also identified key causative factors for financial distress as the lack (or total absence) of leadership commitment, and a management system that is almost completely devoid of consequences for poor performance and wrong-doing.

MUNICIPALITIES IN FINANCIAL DISTRESS

SUPPORT AND REFORMS TO MUNICIPALITIES PROVIDED BY THE NATIONAL TREASURY

126. South Africa's local government financial management system has undergone a number of reforms and there has been considerable progress. It is internationally acknowledged that South Africa has some exceptional financial management legislation. National government has introduced changes to the local government equitable share formula, announced multi-year allocations, and other reforms to bring predictability and certainty into the fiscal system. However, there is still a long way to go before all 257 municipalities are fully functional and sustainable. A multi-pronged approach that includes addressing operational inefficiencies, incompetence and governance failures is required to ensure sound fiscal discipline in the longer term.

127. The financial management reform agenda for local government is an evolutionary process and needs to be nurtured to maturity. Government has initiated a number of capacity building initiatives to support municipalities in achieving this, including:

a) ***Implementing Minimum Competency Levels:*** Prescribed minimum competency levels were introduced 13 years ago for Municipal Managers, Chief Financial Officers (CFOs) and Chief Executive Officers (CEOs) of municipal entities where they exist, Senior Managers, SCM managers and Middle Managers including other officials dealing with financial management (FM) and supply chain management (SCM). Table 21 below summarises the provincial patterns of enrolment in the Minimum Competency Levels programme across the regulated positions. Out of 2 747 municipal officials, only 1 565 officials meet the minimum competency levels as at 31 January 2020. Out of 248 CFOs[8], only 128 (51.6 per cent) have achieved minimum competency levels. 53.7 per cent of senior managers have achieved minimum competency levels.

However, please note that the amendment to the regulation, through Government Gazette No. 41996 of 26 October 2018, allows municipalities to appoint officials that have not completed the required unit standards and this affects the number of officials compliant with the regulation since 2007. The officials are given 18 months from day of appointment to obtain the unit standards.

Table 21: Minimum competency levels among senior municipal officials as at 30 June 2019

TABLE 21: NATIONAL STATUS OF THE MINIMUM COMPETENCY LEVELS BY POSITION

8 This list includes CFOs from the Municipal Entities

Province	Accounting Officer	Meet Minimum Competency	Chief Executive Officer - Entity	Meet Minimum Competency	Chief Financial Officer - Municipality	Meet Minimum Competency	Chief Financial Officer - Entity	Meet Minimum Competency	Senior Manager (MSA S56)	Meet Minimum Competency	Head of Supply Chain Management unit	Meet Minimum Competency	Supply Chain Management Manager	Meet Minimum Competency	Middle Manager: Finance	Meet Minimum Competency
EC Eastern Cape	38	31	2	2	38	20	1	0	154	87	12	6	48	35	156	94
FS Free State	20	13	2	2	22	9	1	0	65	29	8	2	18	14	115	43
GT Gauteng	11	9	16	6	11	8	16	3	79	45	6	3	68	50	66	47
KZN Kwazulu-Natal	54	36	2	0	52	27	2	1	166	103	13	10	54	40	166	100
LIM Limpopo	25	17	1	1	26	12	1	0	101	43	7	3	21	16	128	62
MP Mpumalanga	21	13	0	0	19	11	0	0	72	35	7	3	21	12	79	42
NC Northern Cape	32	23	0	0	32	10	0	0	70	24	19	3	19	10	68	43
NW North West	22	8	0	0	19	9	0	0	76	31	4	3	16	8	79	35
WC Western Cape	30	24	0	0	29	22	1	0	90	72	17	12	33	25	80	58
TOTAL	**253**	**174**	**23**	**11**	**248**	**128**	**22**	**4**	**873**	**469**	**93**	**45**	**298**	**210**	**937**	**524**

Source: National Treasury - Capacity Building Unit

b) ***The Municipal Standard Chart of Accounts (mSCOA)*** Regulations were promulgated on 22 April 2014 and prescribes the uniform recording and classification of municipal budget and financial information at a transaction level. All municipalities and municipal entities had to comply with the Regulations by 01 July 2017.

*m*SCOA is one of the key game changers to address municipal performance failures. This standard classification framework enforces the link between planning (IDP) and the budget through the project segment and enables annual reporting and performance management linked to strategic service delivery objectives. It should be noted that the *m*SCOA Regulations also incorporates the modernisation of the Local Government business processes through the regulation of minimum business processes and system specifications.

Phase 5 of the reform commenced on 01 April 2017 and focus on the implementation (post 01 July 2017) and institutionalisation of *m*SCOA. Notwithstanding the massive strides that has been made with *m*SCOA implementation and the institutionalisation thereof in a relatively short period of time, a number of challenges are still hampering the effective implementation of the *m*SCOA reform at municipalities.

Extensive engagements were held with key system providers during which the system functionality on the following modules were demonstrated live: IDP and Budget (November 2018); SCM (February 2019); and Asset Management (June/July 2019). These engagements provided National and Provincial Treasuries with an understanding of what functionality is available on each system and what the key system related challenges are.

MUNICIPALITIES IN FINANCIAL DISTRESS

Although these demonstrations indicated that most of the financial systems in the market contain the required functionality, it was evident that municipalities are not using their systems optimally. Some of the challenges that were identified in this regard include the following:

- Some municipalities have budgetary constraint / inadequate funds to:
  - Purchase all the modules of the core financial system or upgrade to the Enterprise Resource Planning (ERP) (*m*SCOA enabling) version of systems;
  - Acquire the required licences to use system solutions; and
  - Upgrade and maintain their servers, hardware and software to become and remain *m*SCOA complaint.
- Due to perceived non-compliance of some systems with *m*SCOA, a number of municipalities are still transacting on their legacy systems that are not *m*SCOA enabling, while they are paying for maintenance and support for the *m*SCOA enabling system that was procured. This constitutes fruitless and wasteful expenditure;
- A number of municipalities are not using all the modules of the core financial system (using 3rd party systems) while they have procured these modules. This is once again fruitless and wasteful expenditure;
- Dependency on system vendors to operate financial systems is still a challenge. Some municipalities are not taking ownership for their own data and processes, (e.g. cleansing, testing version changes, transaction capturing, etc.);
- Weak contract management is implemented by municipalities to address non-compliance or lack of support by system vendors. This is exacerbated when service level agreements (SLAs) are unfairly prejudiced and protecting the system vendor but the municipality signed (therefore agreed to it) such a SLA;
- Non-payment of vendors by municipalities, resulting in support services (not the access to the actual financial system) being suspended by the vendor until payment has been received;
- Information and communications technology (ICT) connectivity problems at rural municipalities' impact on submission of data strings to cloud/web-based solutions and the Local Government Upload Portal; and
- Poor ICT internal controls and securities impact on the optimal use of core financial systems solutions.

Most municipalities are using third party systems in conjunction with their core financial management and internal control system due to cost implications and resistance to change.

Two years into implementation, at least 11 of the 18 systems in the municipal space (including those municipalities with in-house systems) are complying with the minimum *m*SCOA requirements, while the submission rate of financial information in the form of *m*SCOA data strings by municipalities are exceeding 80 per cent.

Ultimately the aim is to get to a point where all municipalities budget and transact directly in and report from their core financial system. This will result in one version of the 'truth' where the financial performance reported to Council will not differ from the performance information submitted to and published by National and Provincial Treasuries. This will also reduce the reliance on consultants and system vendors to prepare municipal reports.

Further training and change management is required as *m*SCOA has not been fully embraced as yet and it is still seen as a finance reform and not a business reform and municipal officials are still not budgeting and transacting correctly.

MUNICIPALITIES IN FINANCIAL DISTRESS

Poor ICT connectivity and maintenance at municipalities are impacting on the implementation of the *m*SCOA reform and there is a need for an intergovernmental ITC Working Group that looks into the ICT infrastructure needs and challenges of municipalities.

c) ***Capacity building grants:*** R7.1 billion (for the period 2016/17 to 2019/20) and R6.6 billion (for the period 2020/21 to 2022/23) was allocated to support capacity building in municipalities to improve financial management. However, despite this unqualified audit outcomes (both with findings and without findings) were reduced from 147 municipalities in 2016/17 to 111 municipalities in 2018/19.

TABLE 22: CAPACITY BUILDING AND OTHER CURRENT GRANTS TO LOCAL GOVERNMENT, 2016/17 - 2022/23

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
R MILLION	OUTCOME			ADJUSTED BUDGET	MEDIUM-TERM ESTIMATES		
Direct transfers	1 675	1 815	1 400	1 897	1 959	2 067	2 149
Municipal disaster relief	118	341	–	335	354	373	391
Municipal demarcation transition	297	140	–	–	–	–	–
Municipal systems improvement	–	–	23	–	–	–	–
Municipal human settlements capacity							
Municipal emergency housing	–	–	38	149	159	168	175
Infrastructure skills development	130	141	141	149	153	162	168
Local government financial management	465	502	505	533	545	575	596
"Expanded public works programme integrated grant for municipalities"	664	691	693	730	748	790	819
Indirect transfers	**19**	**103**	**71**	**111**	**128**	**135**	**140**
Municipal systems improvement	19	103	71	111	128	135	140
Total	**1 695**	**1 919**	**1 470**	**2 008**	**2 087**	**2 203**	**2 289**

Source: National Treasury

Table 22 shows capacity building and other current grants to local government for the period 2016/17 and 2022/23. Among these programmes, the Financial Management Grant (FMG) was introduced in 2004 in response to the scarcity of suitably skilled and experienced municipal finance staff, especially in rural areas. It funds among others the appointment of financial management and accounting graduates as interns in municipalities. Interns are sourced from a pool of unemployed regionally-based Accounting, Economics, Finance and Risk Management graduates and appointed for 24 to 36 month periods. In 2018/19, R505 million in FMG funding was transferred to municipalities, of which 38 per cent was spent on the appointment of at least five interns per municipality; 20 per cent on upgrading and maintenance of financial management systems; 15 per cent on training municipal officials to attain minimum competencies; and 14 per cent on the preparation and timely submission of Annual Financial Statements.

d) ***Municipal Finance Improvement Programme (MFIP III):*** The MFIP procured and deployed 80 technical advisors

(TAs) during the 2019/20 financial year. The increased number of TAs placed compared to previous years was mainly as a result of the increase in the number of municipalities supported that were classified by National Treasury and Department of Cooperative Governance (DCoG) as financially distressed and institutionally dysfunctional. As at 31 March 2020, the programme was supporting the following institutions and work streams:

- Direct capacity support to municipal budget and treasury offices in general financial management: 23 TAs were deployed in municipalities across the nine provinces;
- Direct capacity support to the municipal finance units of provincial treasuries: 32 TAs were placed, of whom five provided general support. Specialist support was offered in the following game changer areas: supply chain management (seven advisors), the Municipal Standard Chart of Accounts or *m*SCOA (six advisors), asset management (seven advisors) and revenue management (seven advisors);
- 18 TAs were placed to provide direct capacity support to the following National Treasury Chief Directorates: Local Government Budget Analysis, MFMA Implementation and SCM Policy and Legal on the six game changers (funded budgets, revenue management, *m*SCOA, asset management, SCM and audit outcomes), the Financial Management Capability Maturity Model, the Municipal Financial Recovery Service; and
- Seven TAs were procured to provide programme and project management capacity support to the officials in the MFIP project management unit.

MFIP capacity building and skills transfer initiatives support various institutional and technical areas in financial management in terms of the Municipal Finance Management Act and the local government reform agenda of the National Treasury. While these interventions are mostly informal and non-accredited, they assist in enhancing the practical, on-the-job skills of officials involved in municipal financial management. During the year, 2 280 capacity building sessions were held, involving 13 603 officials. The municipal advisors conducted 948 capacity building sessions, reaching 1 507 officials across 29 municipalities. The provincial advisors conducted 199 capacity building sessions, involving 1 007 officials from both provincial treasuries and municipalities. Finally, MFIP specialists conducted 1 133 capacity building sessions with 11 089 officials on topics such as SCM, revenue management, asset management, *m*SCOA and the Municipal Financial Recovery Service.

e) ***Cities Support Programme (CSP):*** Located within the IGR division of the National Treasury, the CSP is aimed at supporting metros to drive an effective spatial transformation agenda. The second phase of the CSP started in March 2019 and its focus continues to be working with metros and a broad range of stakeholder to support the achievement of the immediate outcomes in the CSP Theory of Change being:

- Capable cities: where metros are to implement strategies to accelerate inclusive economic growth by building inclusive, productive and sustainable cities;
- Enabling fiscal and financial platform: ensuring the alignment of fiscal frameworks, policies, incentives and grants by all sector departments to support sustainable urban financing and transformation; and
- Enabling policy environment: strengthened intergovernmental relations and coordination to support the transformation agenda of metro and reviewed and refined national and provincial policies and plans to support metros in implementing reforms and promote metros' role in the transformation agenda.

For this second phase, the CSP is tasked to institutionalise and embed changes into the policy environment and the fiscal and financial platforms.

The Programme is implemented through five components, namely Municipal Governance and Fiscal Reforms, Public Transport, Human Settlements, Economic Development and Climate Resilience in the form of 40 support projects in the eight metros.

f) ***Revenue Management Support:*** A Revenue Management work stream is being implemented by a collective effort of the National Treasury, the Department of Cooperative Governance and provincial treasuries and their associated municipalities to achieve the following objectives:

- Strengthening support with respect to oversight of municipal revenue budget assessments with a view to protect and optimise municipal revenue streams (provincial specific strategies to specifically include this);
- Assessing the credibility of the municipal revenue base and its revenue generation potential to maximise revenue collection (General Valuation Roll and supplementary valuation processes);
- Identify and fix the weaknesses in tariff determination processes (this will rely on *m*SCOA and correctly understanding costs per service; consumption patterns and demand management);
- Improving municipal revenue governance arrangements and implement effective cash management systems;
- Assisting with establishing a revenue committee at the municipality with a revenue champion to lead (preferably someone outside the BTO that reports directly to the municipal manager);
- Achieve alignment between revenue management strategies and policies; and
- Improve financial management performance in municipalities.

The focus is on the revenue value chain and all related internal and external dependencies and identifying catalytic areas where attention should be focused to derive the largest financial benefit. Various stakeholders are part of this work stream to avoid duplication in efforts.

INTERVENTIONS IN MUNICIPALITIES

128. The powers of other spheres of government to intervene in the affairs of a municipality is regulated by the Constitution and the MFMA. Section 139 of the Constitution provides for provincial (and national) interventions in municipalities as a last resort in response to serious problems. It envisages three kinds of failures in local government, with responses to address each of these problems, set out in the different sub-sections. The role of the province is to assess the nature of the problem, and to respond in terms of the relevant sub-section of Section 139 of the Constitution as follows:

- Section 139(1) should be invoked in response to a "failure to fulfil an executive obligation": these are discretionary interventions;
- Section 139(4) should be invoked in response to a failure by Council to pass a budget or budget related measures: this refers to a failure to fulfil a legislative function and is a mandatory intervention; and
- Section 139(5) should be invoked in response to a financial crisis, specifically a material breach of financial obligations or ability to provide basic services: these are also mandatory interventions.

MUNICIPALITIES IN FINANCIAL DISTRESS

129. Sections 139(4) and (5) of the Constitution are regulated by Chapter 13 of the MFMA. Chapter 13 also addresses the requirements for discretionary interventions that require the development of a financial recovery plan. Any mandatory intervention invoked in a municipality must be referred to the Municipal Finance Recovery Services Unit within the National Treasury for the development of a financial recovery plan. Section 139(7) of the Constitution also provides that if the province fails to intervene when the conditions for a mandatory intervention exist, the national executive must do so.

130. Research conducted on behalf of the National Treasury into the efficiency of Section 139 interventions revealed that triggers for Section 139 interventions have not usually been informed by a careful review of the problems in municipalities. Since 1998 to 2018, 140 interventions have been invoked in municipalities. 15 of these interventions have subsequently been set aside. Of the remaining interventions, most were invoked in terms of Section 139(1) of the Constitution, even though in many cases conditions existed for invoking a Section 139(5) intervention. Only 11 interventions were actually initiated using other subsections of Section 139 and 4 of these were invoked in combination with Section 139(1). Of these 11 interventions, 6 interventions were in terms of Section 139(4) (failure to pass a budget) and 5 were in terms of Section 139(5) (as a result of a financial crisis in the municipality).

131. As at January 2020, there were 36 interventions in terms of Section 139 of the Constitution. Most of these interventions were in North West Province (9 municipalities), followed by KwaZulu-Natal Province (8 municipalities) and Mpumalanga (6 municipalities). Gauteng only recorded one intervention, while Limpopo and Northern Cape only recorded two interventions.

132. As at January 2020, financial recovery plans were in place in 33 municipalities with 9 of these being voluntary recovery plans. More and more municipalities are requesting voluntary financial recovery plans. As January 2020, there were 16 municipalities that had made requests for a voluntary financial recovery plans.

133. The State of Local Government and Financial Management Reports comprehensively discusses the financial health of all 257 of the country's municipalities. **Annexure A1** lists the 163 municipalities that were assessed as in financial

ANNEXURE A1

Municipalities in financial distress as at 30 June 2019 *(municipalities identified as being in financial distress are highlighted).*

As a result of expanding the set of indicators from eight to thirteen the scoring had to be adjusted as follows:
1 – Good
0 – Poor

A municipality shows signs of financial distress when it receives a score of less than 7 from the 13 indicators. Also note that when the municipality's current assets/current liabilities are less than 1 or when the total assets/total liabilities are less than 1, it is an indication of financial distress, irrespective of the total score.

Please note that the Auditor General's data shown below reflects the audit outcomes as released by Auditor General when they first ran their first snap shots by end January. National Treasury is aware that after the end January deadline, subsequently, AG has since concluded the audit for some municipalities that appear to be outstanding below.

PROVINCE	CAT	DEMARCATION DESCRIPTION	DEMARC CODE	DISTRICT	FINANCIAL DISTRESS	AUDIT OUTCOMES	MM VACANCY	CFO VACANCY
Eastern Cape	A	Buffalo City	BUF	Metro	Financial Distress	Qualified	Permanent	Permanent
Eastern Cape	A	Nelson Mandela Bay	NMA	Metro	-	Outstanding	Acting	Acting
Eastern Cape	B	Blue Crane Route	EC102	Sarah Baartman	Financial Distress	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Dr Beyers Naude	EC101	Sarah Baartman	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Eastern Cape	B	Kou-Kamma	EC109	Sarah Baartman	-	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Kouga	EC108	Sarah Baartman	-	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Makana	EC104	Sarah Baartman	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Eastern Cape	B	Ndlambe	EC105	Sarah Baartman	-	Qualified	Permanent	Permanent
Eastern Cape	B	Sundays River Valley	EC106	Sarah Baartman	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Eastern Cape	C	Sarah Baartman	DC10	Sarah Baartman	-	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Amahlathi	EC124	Amathole	Financial Distress	Qualified	Permanent	Permanent
Eastern Cape	B	Great Kei	EC123	Amathole	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Eastern Cape	B	Mbhashe	EC121	Amathole	-	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Mnquma	EC122	Amathole	Financial Distress	Qualified	Permanent	Permanent
Eastern Cape	B	Ngqushwa	EC126	Amathole	Financial Distress	Qualified	Permanent	Acting
Eastern Cape	B	Raymond Mhlaba	EC129	Amathole	Financial Distress	Qualified	Permanent	Acting
Eastern Cape	C	Amathole	DC12	Amathole	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Eastern Cape	B	Emalahleni (EC)	EC136	Chris Hani	Financial Distress	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Engcobo	EC137	Chris Hani	-	Unqualified - With findings	Permanent	Permanent
Eastern Cape	B	Enoch Mgijima	EC139	Chris Hani	Financial Distress	Outstanding	Permanent	Acting
Eastern Cape	B	Intsika Yethu	EC135	Chris Hani	Financial Distress	Qualified	Permanent	Permanent
Eastern Cape	B	Inxuba Yethemba	EC131	Chris Hani	Financial Distress	Unqualified - With findings	Acting	Permanent
Eastern Cape	B	Sakhisizwe	EC138	Chris Hani	Financial Distress	Qualified	Acting	Permanent
Eastern Cape	C	Chris Hani	DC13	Chris Hani	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Eastern Cape	B	Elundini	EC141	Joe Gqabi	-	Unqualified - With findings	Permanent	Permanent

ANNEXURE A1

PROVINCE	CAT	DEMARCATION DESCRIPTION	DEMARC CODE	DISTRICT	FINANCIAL DISTRESS	AUDIT OUTCOMES	MM VACANCY	CFO VACANCY
Limpopo	C	Waterberg	DC36	Waterberg	-	Unqualified - With findings	Permanent	Acting
Limpopo	B	Elias Motsoaledi	LIM472	Sekhukhune	Financial Distress	Qualified	Acting	Acting
Limpopo	B	Ephraim Mogale	LIM471	Sekhukhune	-	Qualified	Acting	Acting
Limpopo	B	Makhuduthamaga	LIM473	Sekhukhune	Financial Distress	Unqualified - With findings	Permanent	Permanent
Limpopo	B	Tubatse Fetakgomo	LIM476	Sekhukhune	Financial Distress	Qualified	Acting	Permanent
Limpopo	C	Sekhukhune	DC47	Sekhukhune	Financial Distress	Qualified	Permanent	Acting
Mpumalanga	B	Albert Luthuli	MP301	Gert Sibande	-	Unqualified - With findings	Permanent	Permanent
Mpumalanga	B	Dipaleseng	MP306	Gert Sibande	Financial Distress	Disclaimer of opinion	Acting	Permanent
Mpumalanga	B	Govan Mbeki	MP307	Gert Sibande	Financial Distress	Outstanding	Permanent	Permanent
Mpumalanga	B	Lekwa	MP305	Gert Sibande	Financial Distress	Disclaimer of opinion	Permanent	Acting
Mpumalanga	B	Mkhondo	MP303	Gert Sibande	Financial Distress	Qualified	Permanent	Permanent
Mpumalanga	B	Msukaligwa	MP302	Gert Sibande	Financial Distress	Adverse opinion	Permanent	Permanent
Mpumalanga	B	Pixley Ka Seme (MP)	MP304	Gert Sibande	-	Disclaimer of opinion	Acting	Permanent
Mpumalanga	C	Gert Sibande	DC30	Gert Sibande	-	Unqualified - No findings	Permanent	Permanent
Mpumalanga	B	Dr J.S. Moroka	MP316	Nkangala	Financial Distress	Outstanding	Acting	Acting
Mpumalanga	B	Emakhazeni	MP314	Nkangala	Financial Distress	Adverse opinion	Permanent	Acting
Mpumalanga	B	Emalahleni (MP)	MP312	Nkangala	Financial Distress	Qualified	Permanent	Permanent
Mpumalanga	B	Steve Tshwete	MP313	Nkangala	-	Unqualified - With findings	Permanent	Permanent
Mpumalanga	B	Thembisile Hani	MP315	Nkangala	-	Qualified	Permanent	Acting
Mpumalanga	B	Victor Khanye	MP311	Nkangala	Financial Distress	Disclaimer of opinion	Acting	Permanent
Mpumalanga	C	Nkangala	DC31	Nkangala	-	Unqualified - No findings	Permanent	Permanent
Mpumalanga	B	Bushbuckridge	MP325	Ehlanzeni	Financial Distress	Unqualified - With findings	Permanent	Acting
Mpumalanga	B	City of Mbombela	MP326	Ehlanzeni	Financial Distress	Qualified	Permanent	Permanent
Mpumalanga	B	Nkomazi	MP324	Ehlanzeni	-	Unqualified - With findings	Permanent	Permanent
Mpumalanga	B	Thaba Chweu	MP321	Ehlanzeni	Financial Distress	Qualified	Acting	Permanent
Mpumalanga	C	Ehlanzeni	DC32	Ehlanzeni	-	Unqualified - With findings	Permanent	Permanent
North West	B	Kgetlengrivier	NW374	Bojanala Platinum	Financial Distress	Disclaimer of opinion	Permanent	Permanent
North West	B	Madibeng	NW372	Bojanala Platinum	Financial Distress	Disclaimer of opinion	Acting	Acting
North West	B	Moretele	NW371	Bojanala Platinum	Financial Distress	Qualified	Acting	Acting
North West	B	Moses Kotane	NW375	Bojanala Platinum	Financial Distress	Qualified	Permanent	Permanent
North West	B	Rustenburg	NW373	Bojanala Platinum	Financial Distress	Qualified	Acting	Acting
North West	C	Bojanala Platinum	DC37	Bojanala Platinum	Financial Distress	Outstanding	Permanent	Permanent
North West	B	Ditsobotla	NW384	Ngaka Modiri Molema	Financial Distress	Disclaimer of opinion	Acting	Acting
North West	B	Mafikeng	NW383	Ngaka Modiri Molema	Financial Distress	Disclaimer of opinion	Acting	Acting
North West	B	Ramotshere Moiloa	NW385	Ngaka Modiri Molema	Financial Distress	Disclaimer of opinion	Permanent	Permanent
North West	B	Ratlou	NW381	Ngaka Modiri Molema	Financial Distress	Disclaimer of opinion	Acting	Acting
North West	B	Tswaing	NW382	Ngaka Modiri Molema	Financial Distress	Qualified	Permanent	Permanent
North West	C	Ngaka Modiri Molema	DC38	Ngaka Modiri Molema	-	Outstanding	Acting	Permanent
North West	B	Greater Taung	NW394	Dr Ruth Segomotsi Mompati	-	Outstanding	Permanent	Permanent
North West	B	Kagisano-Molopo	NW397	Dr Ruth Segomotsi Mompati	Financial Distress	Qualified	Permanent	Permanent
North West	B	Lekwa-Teemane	NW396	Dr Ruth Segomotsi Mompati	Financial Distress	Disclaimer of opinion	Permanent	Acting

ANNEXURE A1

PROVINCE	CAT	DEMARCATION DESCRIPTION	DEMARC CODE	DISTRICT	FINANCIAL DISTRESS	AUDIT OUTCOMES	MM VACANCY	CFO VACANCY
North West	B	Mamusa	NW393	Dr Ruth Segomotsi Mompati	Financial Distress	Outstanding	Permanent	Permanent
North West	B	Naledi (NW)	NW392	Dr Ruth Segomotsi Mompati	Financial Distress	Outstanding	Acting	Permanent
North West	C	Dr Ruth Segomotsi Mompati	DC39	Dr Ruth Segomotsi Mompati	Financial Distress	Disclaimer of opinion	Acting	Acting
North West	B	City of Matlosana	NW403	Dr Kenneth Kaunda	Financial Distress	Qualified	Permanent	Acting
North West	B	J B Marks	NW405	Dr Kenneth Kaunda	Financial Distress	Qualified	Permanent	Permanent
North West	B	Maquassi Hills	NW404	Dr Kenneth Kaunda	Financial Distress	Disclaimer of opinion	Acting	Acting
North West	C	Dr Kenneth Kaunda	DC40	Dr Kenneth Kaunda	-	Qualified	Permanent	Acting
Northern Cape	B	Ga-Segonyana	NC452	John Taolo Gaetsewe	Financial Distress	Outstanding	Permanent	Permanent
Northern Cape	B	Gamagara	NC453	John Taolo Gaetsewe	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Joe Morolong	NC451	John Taolo Gaetsewe	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Northern Cape	C	John Taolo Gaetsewe	DC45	John Taolo Gaetsewe	Financial Distress	Unqualified - No findings	Permanent	Permanent
Northern Cape	B	Hantam	NC065	Namakwa	Financial Distress	Unqualified - With findings	Permanent	Permanent
Northern Cape	B	Kamiesberg	NC064	Namakwa	Financial Distress	Disclaimer of opinion	Permanent	Acting
Northern Cape	B	Karoo Hoogland	NC066	Namakwa	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Khai-Ma	NC067	Namakwa	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Nama Khoi	NC062	Namakwa	Financial Distress	Qualified	Permanent	Acting
Northern Cape	B	Richtersveld	NC061	Namakwa	Financial Distress	Qualified	Acting	Acting
Northern Cape	C	Namakwa	DC6	Namakwa	Financial Distress	Unqualified - With findings	Permanent	Permanent
Northern Cape	B	Emthanjeni	NC073	Pixley ka Seme (NC)	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Kareeberg	NC074	Pixley ka Seme (NC)	-	Unqualified - With findings	Permanent	Permanent
Northern Cape	B	Renosterberg	NC075	Pixley ka Seme (NC)	Financial Distress	Outstanding	Acting	Acting
Northern Cape	B	Siyancuma	NC078	Pixley ka Seme (NC)	Financial Distress	Unqualified - With findings	Acting	Permanent
Northern Cape	B	Siyathemba	NC077	Pixley ka Seme (NC)	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Thembelihle	NC076	Pixley ka Seme (NC)	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Ubuntu	NC071	Pixley ka Seme (NC)	Financial Distress	Qualified	Acting	Permanent
Northern Cape	B	Umsobomvu	NC072	Pixley ka Seme (NC)	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	C	Pixley Ka Seme (NC)	DC7	Pixley ka Seme (NC)	Financial Distress	Unqualified - With findings	Permanent	Permanent
Northern Cape	B	!Kai! Garib	NC082	Z F Mgcawu	Financial Distress	Disclaimer of opinion	Acting	Acting
Northern Cape	B	!Kheis	NC084	Z F Mgcawu	Financial Distress	Disclaimer of opinion	Acting	Acting
Northern Cape	B	Dawid Kruiper	NC087	Z F Mgcawu	Financial Distress	Unqualified - With findings	Permanent	Permanent
Northern Cape	B	Kgatelopele	NC086	Z F Mgcawu	Financial Distress	Disclaimer of opinion	Permanent	Permanent
Northern Cape	B	Tsantsabane	NC085	Z F Mgcawu	Financial Distress	Outstanding	Permanent	Permanent
Northern Cape	C	Z F Mgcawu	DC8	Z F Mgcawu	Financial Distress	Unqualified - With findings	Permanent	Permanent
Northern Cape	B	Dikgatlong	NC092	Frances Baard	Financial Distress	Disclaimer of opinion	Permanent	Acting
Northern Cape	B	Magareng	NC093	Frances Baard	Financial Distress	Qualified	Permanent	Permanent
Northern Cape	B	Phokwane	NC094	Frances Baard	-	Outstanding	Acting	Acting
Northern Cape	B	Sol Plaatje	NC091	Frances Baard	-	Qualified	Acting	Acting
Northern Cape	C	Frances Baard	DC9	Frances Baard	-	Unqualified - With findings	Permanent	Acting
Western Cape	A	Cape Town	CPT	Metro	-	Unqualified - With findings	Permanent	Permanent
Western Cape	B	Bergrivier	WC013	West Coast	-	Unqualified - No findings	Permanent	Permanent
Western Cape	B	Cederberg	WC012	West Coast	Financial Distress	Unqualified - No findings	Permanent	Acting

Auditing to build public confidence

AUDITOR-GENERAL
SOUTH AFRICA

Report of the auditor-general to the North West provincial legislature and the council on the Ditsobotla Local Municipality

Report on the audit of the financial statements

Disclaimer of opinion

1. I was engaged to audit the financial statements of the Ditsobotla Local Municipality set out on pages xx to xx, which comprise of the statement of financial position as at 30 June 2018, the statement of financial performance, statement of changes in net assets, cash flow statement and the statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. I do not express an opinion on the financial statements of the municipality. Because of the significance of the matters described in the basis for disclaimer of opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

Basis for disclaimer of opinion

Property, plant and equipment

3. I was unable to obtain sufficient appropriate audit evidence for property, plant and equipment due to differences between the financial statements and the accounting records. I was unable to confirm these assets by alternative means. Consequently, I was unable to determine whether any adjustments to property, plant and equipment of R869 673 552 disclosed in note 4 and depreciation expense of R40 951 003 disclosed in note 28 to the financial statements, were necessary.

Payables from exchange transactions

4. I was unable to obtain sufficient appropriate audit evidence for payables from exchange transactions due to differences between the financial statements and the accounting records. I was unable to confirm these payables by alternative means. Consequently, I was unable to determine whether any adjustment to payables from exhange transactions of R493 488 099 disclosed in note 17 to the financial statements, was necessary.

Consumer debtors

5. The municipality did not have adequate processes and systems in place to correctly account for impairment on consumer debtors as required by GRAP 104, *Financial instruments* as an impairment assessment of outstanding consumer debts was not performed. I was unable to quantify the resultant misstatement as it was impracticable to do so. In addition, I was unable to obtain sufficient appropriate audit evidence for consumer debtors due to differences between

the financial statements and the accounting records. I was unable to confirm these debtors by alternative means. Consequently, I was unable to determine whether any further adjustment to consumer debtors of R348 936 971 (2017: R152 224 803) disclosed in note 12 to the financial statements was necessary.

Investment property

6. I was unable to obtain sufficient appropriate audit evidence for investment property as the municipality did not maintain a register for investment property. I was unable to confirm the investment property by alternative means. Furthermore, during 2017 the municipality incorrectly included sold properties in the investment property register contrary to the requirements of GRAP 16, *Investment properties*, which resulted in investment property being overstated by R48 583 657. This misstatement was still not corrected in the current year. Consequently, I was unable to determine whether any further adjustment to investment property of R104 569 063 (2017: R104 569 063) disclosed in note 3 to the financial statements was necessary.

Cash and cash equivalents

7. I was unable to obtain sufficient appropriate audit evidence for cash and cash equivalents due to differences between the financial statements and the accounting records. I was unable to confirm these cash and cash equivalents by alternative means. Consequently, I was unable to determine whether any adjustment relating to cash and cash equivalents of R43 168 235 (2017: R66 650 284) disclosed in note 13 to the financial statements was necessary.

Receivables from non-exchange transactions

8. During 2017 the municipality did not have adequate systems to maintain records for receivables from non-exchange transactions. This resulted in receivables from non-exchange transactions being overstated by R7 016 043 and payables from exchange transactions also being overstated by the same amount. This misstatement was still not corrected in the current year.

9. In addition, the municipality incorrectly recognised outstanding debts on property rates as consumer debtors. This resulted in consumer debtors being overstated and receivables from non-exchange transactions being understated by R95 705 590 (2017: 72 802 391).

10. Furthermore, I was unable to obtain sufficient appropriate audit evidence for receivables from non-exchange transactions due to the status of the accounting records and non-submission of information in support of these receivables. I was unable to confirm these receivables by alternative means. Consequently, I was unable to determine whether any adjustment was necessary to receivables from non-exchange transactions of R11 060 586 disclosed in note 10 to the financial statements.

VAT receivable

11. I was unable to obtain sufficient appropriate audit evidence for the VAT receivable due to differences between the financial statements and the accounting records. I was unable to confirm the VAT receivable by alternative means. Consequently, I was unable to determine whether any adjustment relating to VAT receivable of R42 061 467 disclosed in note 11 to the financial statements was necessary.

Employee benefit obligation

12. I was unable to obtain sufficient appropriate audit evidence that management had properly accounted for the employee benefit obligation, due to the status of the accounting records and the non-submission of information in support of the employee benefit obligation. I was unable to confirm the employee benefit obligation by alternative means. Consequently, I was unable to determine whether any adjustment to the employee benefit obligation of R17 820 000 disclosed in note 7 to the financial statements, was necessary.

Provisions

13. I was unable to obtain sufficient appropriate audit evidence that management had properly accounted for provisions, due to the status of the accounting records and non-submission of information in support of these provisions. I was unable to confirm these provisions by alternative means. Consequently, I was unable to determine whether any adjustment to provisions of R29 272 946 disclosed in note 16 to the financial statements was necessary.

Accumulated surplus

14. I was unable to obtain sufficient appropriate audit evidence for the accumulated surplus due to differences between the financial statements and the accounting records. I was unable to confirm this account balance by alternative means. Consequently, I was unable to determine whether any adjustment relating to the accumulated surplus of R874 935 524 disclosed in note 14 to the financial statements was necessary.

Service charges

15. I was unable to obtain sufficient appropriate audit evidence that revenue from service charges had been properly accounted for, due to the status of the accounting records and non-submission of information in support of this revenue. I was unable to confirm revenue from service charges by alternative means. Consequently, I was unable to determine whether any adjustment to service charges of R329 799 777 disclosed in note 20 to the financial statements, was necessary.

16. Furthermore, I was unable to obtain sufficient appropriate audit evidence that revenue, expenditure and receivables relating to the provision of retail water services have been correctly accounted for by the municipality as the service delivery agreement entered into between the Ngaka Modiri Molema District Municipality as water service authority and the municipality as water service provider had expired. In terms of section 22 of the Water Services Act, 1997 (Act No. 108 of 1997), no person may operate as a water service provider without the approval of the water service authority. I was unable to confirm, by alternative means, that the local municipality was authorised to operate as the water service provider. Consequently, I was unable to determine whether any adjustments relating to revenue from sale of water of R64 799 674 included in the service charges disclosed note 20 to the financial statements or any other related receivable, expenditure relating to the provision of retail water services by the municipality, were necessary.

Interest received (trading)

17. I was unable to obtain sufficient appropriate audit evidence that interest received had been properly accounted for, due to the status of the accounting records and non-submission of information in support of this revenue. I was unable to confirm revenue from interest by alternative means. Consequently, I was unable to determine whether any adjustment to interest received of R41 415 396 disclosed in the Statement of Financial Performance, was necessary.

Property rates

18. I was unable to obtain sufficient appropriate audit evidence that management had properly accounted for property rates, due to the status of the accounting records and non-submission of information in support of this revenue. I was unable to confirm the revenue from property rates by alternative means. Consequently, I was unable to determine whether any adjustment to property rates of R56 084 797 disclosed in note 24 to the financial statements, was necessary.

Other income

19. During 2017, I was unable to obtain sufficient appropriate audit evidence for other income as the municipality did not have an adequate system of internal control to account for other income and did not keep proper records. I was unable to determine whether any adjustment to

the other income of R5 772 829 disclosed in note 22 and 23 to the financial statements was necessary. My audit opinion on the financial statements for the period ended 30 June 2017 was modified accordingly. I was still unable to confirm this other income by alternate means. Consequently, my opinion on the current period's financial statements is also modified because of the possible effect of this matter on the comparability of the current period's figures.

General expenses

20. I was unable to obtain sufficient appropriate audit evidence for general expenses due to differences between the financial statements and the accounting records and for an adjustment to the corresponding figure due to non-submission of information in support of this adjustment. I was unable to confirm these expenses by alternative means. Consequently, I was unable to determine whether any adjustments relating to general expenses of R101 744 342 (2017:R89 567 620) disclosed in note 33 to the financial statements, were necessary.

Impairment loss

21. During 2017, I was unable to obtain sufficient appropriate audit evidence for impairment of assets as the municipality did not have an adequate system of internal control to account for impairment losses and did not keep proper records. I was unable to determine whether any adjustment to the impairment loss of R8 852 806 disclosed in note 29 to the financial statements was necessary. My audit opinion on the financial statements for the period ended 30 June 2017 was modified accordingly. I was still unable to confirm this impairment loss by alternate means. Consequently, my opinion on the current period's financial statements is also modified because of the possible effect of this matter on the comparability of the current period's figures.

Contingencies

22. The municipality did not have an adequate system to account for its contingent liabilities as required by GRAP 19, *Provisions, contingent liabilities and contingent assets*. This resulted in certain contingencies being understated by R9 585 490. In addition, I was unable to obtain sufficient appropriate audit evidence that management had properly accounted for all contingencies due to the status of accounting records and the non-submission of information in support of these contingencies. I was unable to confirm this disclosure by alternative means. Consequently, I was unable to determine whether any further adjustment to contingencies of an undisclosed amount in note 40 to the financial statements, were necessary.

Commitments

23. I was unable to obtain sufficient appropriate audit evidence that management had properly disclosed contractual commitments for the acquisition of property, plant and equipment as required by GRAP 17, *Property, plant and equipment* for the current and prior period, due to the municipality not having an adequate system to maintain records of commitments. I was unable to confirm these commitments by alternative means. In addition, in the previous year commitments were understated by R31 892 498. Consequently, I was unable to determine whether any further adjustment to commitments of R0 (2017: R16 384 328) disclosed in note 39 to the financial statements, was necessary.

Prior-year adjustments

24. The municipality did not correctly disclose prior period errors in note 42 to the financial statements, as required by GRAP 3, *Accounting policies, estimates and errors* as the nature and the amount of the correction for each financial statement item affected and the amount of the correction at the beginning of the earliest prior period, were not disclosed. In addition, I was unable to obtain sufficient appropriate audit evidence for the prior-year adjustments disclosed as the supporting information was not provided. I was unable to confirm these disclosures by alternative means. Consequently, I was unable to determine whether any further adjustment to

the the disclosure of prior-year adjustments in note 42 to the financial statements, was necessary.

Cash flow statement

25. I was unable to obtain sufficient appropriate audit evidence for the calculation of net cash flows from operating activities as well as investing activities in the cash flow statement, as the municipality did not appropriately account for cash and non-cash items as required by GRAP 2 *Cash flow statements*. The municipality's system did not allow for the performance of alternative procedures to determine the extent of this misstatement. Consequently, I was unable to determine whether any adjustment to the net cash flows from operating activities and investing activities in the cash flow statement and the note thereto, was necessary.

Unauthorised expenditure

26. Section 125 of the Municipal Finance Management Act of South Africa, 2003 (Act No. 56 of 2003) (MFMA) requires the disclosure of unauthorised expenditure incurred. The municipality incurred unauthorised expenditure of R38 186 563 during the current year, (previous years: R255 408 303) due to overspending of individual votes within the budget, however no unauthcrised expenditure was disclosed. As the municipality did not quantify the full extent of the unauthorised expenditure, it was impracticable to determine the total unauthorised expenditure that should have been disclosed.

Irregular expenditure

27. Section 125 of the MFMA requires the disclosure of irregular expenditure incurred. The municipality made payments of R8 476 149 during the current year, (previous years: R80 301 548) in contravention with the supply chain management requirements, however no irregular expenditure was disclosed. As the municipality did not quantify the full extent of the irregular expenditure, it was impracticable to determine the total irregular expenditure that should have been disclosed.

Fruitless and wasteful expenditure

28. Section 125 of the MFMA requires the disclosure of fruitless and wasteful expenditure incurred. The municipality made payments of R53 620 717 during the current year, (previous years: R50 959 266) that were regarded as fruitless and wasteful expenditure, however no fruitless and wastful expenditure was disclosed. As the municipality did not quantify the full extent of the fruitless and wasteful expenditure, it was impracticable to determine the total fruitless and wasteful expenditure that should have been disclosed.

Material losses and MFMA disclosures

29. The municipality did not disclose water and electricity distribution losses as required by section 125(2)(d)(i) of the MFMA. As the municipality did not have adequate control measures in place to accurately determine the nature and extent of these losses, I was unable to quantify the resulting understatement as it was impracticable to do so. In addition, the municipality did not include the other compulsory MFMA disclosures as required by section 125(1)(b) and (c) of the MFMA, in the financial statements, I was unable to quantify the omitted disclosure as it was impracticable to do so.

Other matter

30. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Unaudited disclosure notes

31. In terms of section 125(2)(e) of the MFMA, the municipality is required to disclose particulars of non-compliance with the MFMA. This disclosure requirement did not form part of the audit of the financial statements and accordingly I do not express an opinion thereon.

Responsibilities of the accounting officer for the financial statements

32. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the SA standards of GRAP and the requirements of the MFMA and the DoRA and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

33. In preparing the financial statements, the accounting officer is responsible for assessing the municipality's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the or to cease operations, or there is no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the financial statements

34. My responsibility is to conduct an audit of the financial statements in accordance with International Standards on Auditing (ISAs) and to issue an auditor's report. However, because of the matters described in the basis for disclaimer of opinion section of my report, I was not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

35. I am independent of the in accordance with the International Ethics Standards Board for Accountants' *Code of ethics for professional accountants* (IESBA code) together with the ethical requirements that are relevant to my audit of the financial statements. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.

Performance information reporting

36. I am unable to audit and report on the usefulness and reliability of the performance information as the annual performance report of the municipality was not prepared as required by section 46 of the Municipal Systems Act of South Africa, 2000 (Act No. 32 of 2000) (MSA) and section 121(3)(c) of the MFMA.

Report on audit of compliance with legislation

Introduction and scope

37. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof I have a responsibility to report material findings on the compliance of the municipality with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.

38. The material findings on compliance with specific matters in key legislation are as follows:

Annual report and annual financial statements

39. The financial statements submitted for auditing were not prepared in all material respects in accordance with the requirements of section 122(1) of the MFMA. Material misstatements identified by the auditors in the submitted financial statements were not adequately corrected and the supporting records could not be provided subsequently, which resulted in the financial statements receiving a disclaimer audit opinion. Similar non-compliance was also reported in the prior year.

40. The 2016-17 annual report was not tabled in the municipal council within seven months after the end of the financial year, as required by section 127(2) of the MFMA. Similar non-compliance was also reported in the prior year.

41. The council failed to adopt an oversight report, containing the council's comments on the annual report, within the prescribed timelines as required by section 129(1) of the MFMA. Similar non-compliance was also reported in the prior year.

Revenue management

42. An adequate management, accounting and information system which accounts for revenue and debtors was not in place, as required by section 64(2)(e) of the MFMA. Similar non-compliance was also reported in the prior year.

43. I was unable to obtain sufficient appropriate audit evidence that accounts for service charges were prepared on an accrual basis, as required by section 64(2)(c) of the MFMA.

44. I was unable to obtain sufficient appropriate audit evidence that interest had been charged on all accounts in arrears, as required by section 64(2)(g) of the MFMA.

Assets management

45. An adequate management, accounting and information system which accounts for assets was not in place, as required by section 63(2)(a) of the MFMA.

Expenditure management

46. Money owed by the municipality was not always paid within 30 days, as required by section 65(2)(e) of the MFMA. Similar non-compliance was also reported in the prior year.

47. An adequate management, accounting and information system was not in place which recognised expenditure when it was incurred, as required by section 65(2)(b) of the MFMA.

48. Reasonable steps were not taken to prevent unauthorised expenditure, as required by section 62(1)(d) of the MFMA. The full extent of the unauthorised expenditure could not be quantified as indicated in the basis for qualification paragraph. Similar non-compliance was also reported in the prior year.

49. Reasonable steps were not taken to prevent irregular expenditure, as required by section 62(1)(d) of the MFMA. The full extent of the irregular expenditure could not be quantified as indicated in the basis for qualification paragraph. Similar non-compliance was also reported in the prior year.

50. Reasonable steps were not taken to prevent fruitless and wasteful expenditure, as required by section 62(1)(d) of the MFMA. The full extent of the fruitless and wasteful expenditure could not be quantified as indicated in the basis for qualification paragraph. Similar non-compliance was also reported in the prior year.

Consequence management

51. Unauthorised expenditure incurred by the municipality was not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(a) of the MFMA.

52. Irregular expenditure incurred by the municipality were not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(b) of the MFMA. Similar non-compliance was also reported in the prior year.

53. Fruitless and wasteful expenditure incurred by the municipality was not investigated to determine if any person is liable for the expenditure, as required by section 32(2)(b) of the MFMA. Similar non-compliance was also reported in the prior year.

54. Allegations of financial misconduct laid against officials of the municipality were not investigated, as required by section 171(4)(a) of the MFMA.

Strategic planning and performance management

55. A performance management system was not established, as required by section 38(a) of the MSA. Similar non-compliance was also reported in the prior year.

Conditional grants

56. Performance in respect of programmes funded by the Municipal Infrastructure grant (MIG) and Integrated National Electrification Programme grant (INEP) was not evaluated, as required by section 12(5) of the DoRA. Similar non-compliance was also reported in the prior year.

57. The INEP grant was not spent for its intended purposes in accordance with the applicable grant framework, as required by section 17(1) of the DoRA.

Procurement and contract management

58. Sufficient appropriate audit evidence could not be obtained that contracts and quotations were awarded in accordance with the legislative requirements as no record management system was in place. Similar non-compliance was also reported in the prior year.

59. Sufficient appropriate audit evidence could not be obtained that some goods and services with a transaction value of below R200 000 were procured by obtaining the required price quotations as required by SCM regulation 17(a) & (c). Similar non-compliance was also reported in the prior year.

60. Sufficient appropriate audit evidence could not be obtained for some of quotations accepted from prospective providers, that these providers were on the list of accredited prospective providers or meet the listing requirements prescribed by the SCM policy, as required by SCM regulations 16(b) and 17(b). Similar non-compliance was also reported in the prior year.

61. Sufficient appropriate audit evidence could not be obtained that awards and contracts were awarded only to bidders who submitted a declaration on whether they were employed by the state or connected to any person employed by the state, as required by SCM regulation 13(c). Similar non-compliance was also reported in the prior year.

62. Sufficient appropriate audit evidence could not be obtained that quotations and contracts were only accepted from bidders whose tax matters had been declared by the South African Revenue Service to be in order, as required by SCM regulation 43. Similar non-compliance was also reported in the prior year.

63. Sufficient appropriate audit evidence could not be obtained that deviations approved by the accounting officer were only if it was impractical to invite competitive bids, as required by SCM regulations 19(a) and 36(1). Similar non-compliance was also reported in the prior year.

64. Sufficient appropriate audit evidence could not be obtained that bid specifications were unbiased and allowed all potential suppliers to offer their goods or services, as required by SCM regulation 27(2)(a). Similar non-compliance was also reported in the prior year.

65. Sufficient appropriate audit evidence could not be obtained that invitations for competitive bidding were advertised for a required minimum period of days, as required by SCM regulation 22(1) & 22(2). Similar non-compliance was also reported in the prior year.

66. Sufficient appropriate audit evidence could not be obtained that the preference point system was applied in all procurement of goods and services above R30 000 as required by section 2(a) of the Preferential Procurement Policy Framework Act. Similar non-compliance was also reported in the prior year.

67. Sufficient appropriate audit evidence could not be obtained that construction contracts were awarded to contractors that were registered with the Construction Industry Development Board (CIDB) and qualified for the contract in accordance with section 18(1) of the CIDB Act. Similar non-compliance was also reported in the prior year.

68. Sufficient appropriate audit evidence could not be obtained that all extensions or modifications to contracts were approved by a properly delegated official, as required by SCM regulation 5.

69. The performance of contractors or providers was not monitored on a monthly basis, as required by section 116(2)(b) of the MFMA.

70. Awards were made to providers who are in the service of other state institutions, in contravention of MFMA section 112(j) and SCM regulation 44. Similar awards were identified in the previous year and no effective steps were taken to prevent or combat the abuse of the SCM process, as required by SCM regulation 38(1).

71. Persons in the service of the municipality who had a private or business interest in contracts awarded by the municipality failed to disclose such interest, in contravention of SCM regulation 46(2)(e). Similar non-compliance was also reported in the prior year.

Internal control deficiencies

72. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance thereon. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for disclaimer of opinion, the findings on the performance report and the findings on compliance with legislation included in this report.

- Leadership did not ensure that there is appropriately skilled staff in key positions within the finance, performance and compliance units. Furthermore, leadership's in-year monitoring and oversight was inadequate to prevent material limitations in the financial statements, non-compliance with laws and regulations and the absence of a system to support the collection, processing and reporting of performance against pre-determined objectives.
- Lack of sufficiently skilled staff negatively impact on the implementation of proper systems to collate, process and report financial and performance information. This has led to excessive reliance on consultants to compile financial information and statements. Lack of internal controls and oversight contributed to inaccurate and unreliable financial reports and records. Furthermore, there are no systems in place to enforce compliance with laws and regulations and no actions are taken against staff that is responsible for these transgressions.
- There were no appropriate governance structures at the municipality, as an audit committee and internal audit unit were not appointed for the year under review.

AUDITOR-GENERAL

Rustenburg

30 November 2018

AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

Case No: M311/2021

In the matter between:

SAKELIGA NPC	Applicant
and	
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE HUMAN SETTTLEMENT AND TRADITIONAL AFFAIRS	First Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	Second Respondent
THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent
DITSOBOTLA LOCAL MUNICIPALITY	Fifth Respondent
NALEDI LOCAL MUNICIPALITY	Sixth Respondent
THE PREMIER: NORTH WEST PROVINCE	Seventh Respondent
ESKOM SOC LIMITED	Eighth Respondent
MAGALIES WATER BOARD	Nineth Respondent
SEDIBENG WATER BOARD	Tenth Respondent

FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

DONDO MOGAJANE

do hereby make oath and state that:

1 I am an adult male Director-General of the National Treasury, whose Executive Authority is the Minister of Finance, the fourth respondent in this matter.

2 By virtue of my position, I am duly authorised to make this affidavit on behalf of the fourth respondent and to oppose this application on behalf of such respondent.

3 The facts to which I depose are within my own knowledge, or derived from records under my control, and are true and correct. Where I deal with questions of law, I do so on the advice of the fourth respondent's legal representatives.

4 I have read the founding affidavit filed on behalf of the applicant in this matter. I shall respond only to the allegations of fact contained in the founding affidavit insofar as they relate to the fourth respondent.

(ii) Dissolve the Municipal Council if the municipality cannot or does not approve legislative measures necessary to give effect to the recovery plan and appoint an administrator until a newly elected Municipal Councill has been declared elected;

(iii) If the municipal council is not dissolved assume responsibility for the implementation of the recovery plan to the extent that the municipality fails to do so.

20.3 Third: only in the event that the Provincial executive does not adequately exercise the powers and functions in terms of section 139(4) and 139(5) is the national executive required to intervene in the stead of the provincial government.

21 Having discussed the constitutional structure for governance and intervention, I turn to discuss the steps taken by the province in respect of Ditsobola and Naledi local municipalities.

The province is in the process of initiating a mandatory intervention

22 On 17 May 2021, the second respondent submitted a memorandum to the chairperson of the Executive Council. The subject of the memorandum was the implementation of section 139(5) of the Constitution read with Chapter 13 of the MFMA. This memorandum is attached as "**DM1**".

23 The purpose of the memorandum was to provide an update on progress in relation to the implementation of the mandatory intervention in 13 municipalities (including the fifth and sixth respondent) identified as facing severe financial problems requiring the implementation of the mandatory interventions in terms of section 139(5) of the Constitution, read together with chapter 13 of the MFMA.

24 According to section 136(1) of the MFMA, if the MEC for local government in a province becomes aware that there is a serious financial problem in a municipality, the MEC must promptly:

24.1 Consult the mayor of the municipality to determine the facts;

24.2 Assess the seriousness of the situation and the municipality's response to the situation; and

24.3 Determine whether the situation justifies or requires a provincial intervention in terms of section 139 of the Constitution

25 In determining whether the municipality's financial situation justifies or requires a provincial intervention in terms of section 139 of the Constitution, the results of the assessment of the following sections should be considered:

25.1 MFMA section 138 – Sets out the criteria for determining serious financial problems; and

25.2 MFMA section 140 – Sets out the criteria for determining serious or persistent material breach of financial commitments.

Steps taken in respect of fifth respondent and sixth respondent

26 The North West MEC: Finance had a meeting with the mayor and councillors of the fifth respondent on 8 July 2021 and sixth respondent on 6 July 2021, to engage on the diagnostic assessment of the state of affairs at the municipality and to present the intention to invoke section 139(5)(a) and (c) of the Constitution read with section 139 of the MFMA. It was agreed that:

26.1 The Mayor would table the MFMA section 138 and 140 feedback report to the Municipal Council within 30 days and submit the Council resolution to the Provincial Treasury;

26.2 The municipalities committed to work with the Provincial Treasury to determine the root cause and the extent of their performance failures;

26.3 The municipalities agreed to the preparation and implementation of financial recovery plans to address the financial crisis;

26.4 The municipalities agreed that the Provincial Treasury working in collaboration with National Treasury could conduct the *status quo* analysis which will inform the preparation of the financial recovery plan;

26.5 The municipalities agreed to the establishment of the political oversight structure comprising of political office bearers from the three spheres of government - namely the National Minister of Finance and the Minister Co-operative Governance as well as their deputies; the North West Provincial MEC's for Finance and Co-operative Governance and the

local mayors and councillors - as well as the technical multi-disciplinary implementation task team comprising of senior officials from the three spheres of government to oversee the entire process.

27 The second and third respondents will conduct quarterly reviews on the implementation of the financial recovery plan (still to be prepared) and to assess the progress in addressing the identified financial problems.

28 Subsequent to the MEC's sessions with all the identified municipalities including the fifth and sixth respondent, the Provincial Executive Council ("PEC") will in due course make a decision to invoke Mandatory Intervention in terms of section 139(5)(a).

29 The Provincial Treasury may in the interim conduct the status *quo* assessment report in line with section 154 of the Constitution which can be used to inform the preparation of a financial recovery plans. Section 154 of the Constitution provides that national and provincial government must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. Naledi Municipality is receiving support in terms of section 154 of the Constitution.

30 Once a resolution to invoke a mandatory intervention has been taken by the PEC, in terms of section 139(1)(a) of the MFMA, the PEC must request the Municipal Finance Recovery Services ("MFRS") to assist with the preparation of

a financial recovery plan. In terms of section 139(1)(a)(v)(bb) of the MFMA the recovery plans and recommendations must be prepared within a period, not exceeding 90 days, determined by the MEC for Finance.

31 As this Honourable Court can see from the above, the process takes time, but it is important to note that the process is underway and the National Treasury will be offering support to the province to ensure that the process is achieved and that the municipalities are back on their feet and ready to function at full capacity.

THE RELIEF SOUGHT IS IN PRAYER 5 IS PREMATURE

32 The fourth respondent submits that the relief sought in prayer 5 which seeks to direct the Minister of Finance and the third respondent to take steps to intervene is premature because:

32.1 it subverts the constitutional structure for intervention by seeking to direct the national sphere of government to intervene while the provincial sphere of government has not completed the constitutionally mandated steps for intervention;

32.2 Only if the Provincial Executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in sections 139(4) or (5) can the national sphere of government intervene in terms of section 139(7) of the Constitution;

0272
CC19

provincial treasury

Department:
Provincial Treasury
North West Provincial Government
Republic of South Africa

REPORT ON RATIO ANALYSIS TO ASSESS THE SERIOUSNESS OF THE STATUS OF MUNICIPAL FINANCE IN RELATION TO THE CRISIS

2014/15 to 2018/19 FY

DITSOBOTLA LOCAL MUNICIPALITY

Prepared by:

THUSO Financial Consultants

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1. EXECUTIVE SUMMARY

1.1 Introduction

An assessment of the seriousness of the state of municipal finance in relation to the crisis in Ditsobotla Local Municipality (the Municipality) was undertaken using the MFMA Circular No. 71 Financial Ratios and Norms developed by the National Treasury for assessment of sustainable management of fiscal and financial affairs of municipalities.

A detailed analysis of the results of 32 financial ratios will be used to provide an overview of the financial crisis status within the municipality. Ratios are divided into various categories to address different financial aspects and operations of a municipality.

1. Financial Position
2. Financial Performance
3. Budget Implementation

The results of the analysis will be a measure of the need for intervention to analyse the root causes of the current financial distress in order to come up with remedies to improve the short-term financial liquidity and the long-term financial sustainability of the municipality. Overall efforts will place the municipality on a sustainable footing which will result in an effective and efficient organization that is financially stable and able to provide services to the community on a sustainable basis.

Key aspects needing attention are highlighted in the detailed report. These require attention from the municipal Council and municipal management.

1.2 Financial Position

The technical financial position incorporates; asset management, debtors management, liquidity management and liability management. It has been noted that for three of the five financial years the municipality has been prioritising more expenditure towards current operations than towards future and for the entire five financial periods the municipality has been insufficiently spending on repairs and maintenance which all holds potential risks to service delivery.

Challenges in collecting outstanding amounts due has been witnessed with low debtors collection rate and excessively high net debtors days for the major part of the period under review.

A continuous exposure to significant cashflow risk and state of insolvency has been witnessed with low cash reserves and current liabilities in excess of current assets which may eventually result in liquidation of non-current assets to settle current liabilities.

Low capital cost and debt ratio throughout the period under review indicating inability to access borrowed funds because of the distressed financial position.

1.3 Financial Performance

The technical financial performance incorporates; efficiency, distribution losses, revenue and expenditure management. It has been identified that for four of the five financial years under review the municipality has recorded a negative net operating surplus margin implying that the municipality is operating at a deficit in all services. Non-Disclosure of the electricity and water distribution losses which is a non-compliance with GRAP standards and the requirements of section 125 of the MFMA.

Creditors payment period has been excessively above the norm for the entire 5 financial years which indicates non-compliance with the MFMA regulations guiding the payment of creditors which may result in interest being charged by creditors and lawsuits being instituted to the Municipality; resulting in fruitless and wasteful expenditure which has been noted to be above the norm throughout the five financial years.

Understatement and incorrect disclosure of contracted services which is a non-compliance with the GRAP standards.

1.4 Budget Implementation

Notable observations identified under Budget Management includes under spending of capital expenditure budget for three of three of the five financial periods under review which is an indication of cashflow problems within the municipality as the monies would have been spend on operational activities.

Overspending on operational expenditure budget for three of the five financial years which is an indication of ineffective controls in place which ensures that expenditure is incurred in accordance with an approved budget. The fluctuations are also an indication of poor budgeting controls.

In addition, the municipality has a cumulative unauthorised expenditure of R87 080 043 in 2018/19 which has not yet been dealt with in accordance with section 32 of the MFMA.

1.5 Conclusion

Based on the desktop analysis of the financial ratios the indicators have revealed evidence that the Ditsobotla Municipality is facing significant fiscal and service delivery difficulties, which undermines the effective and efficient performance of its functions and mandate. More importantly these difficulties are becoming increasingly severe and unless focussed action is undertaken to address the underlying causes, Ditsobotla Municipality will find it increasingly difficult to perform its mandate.

2. PURPOSE

Municipalities need to implement and maintain sound and effective financial management practices for the long-term sustainability and improvement in service delivery. To support local government in their financial management, the North West Provincial Treasury has contracted Thuso Financial Consultants to do an assessment of municipal state of financial crisis using the 32 Financial Ratios. The purpose of this report is to outline the results obtained from the assessment and determine the seriousness of the financial crisis status to inform the required support measures in the implementation of the MFMA and complementary legislation.

3. MANDATE/SCOPE OF WORK

The Project scope entails undertaking an assessment of the financial state and performance of each municipality. The project will be implemented in phases with project milestones. At this stage the following will be the deliverables of milestone 1 of Phase 1:

Milestone 1: Project inception and Ratios

- Develop Project Charter and Project Implementation Plan
- Develop Information Requirements
- Population of Ratio Dashboards
- Annual ratios calculations as per National Treasury Circular 71 for each municipality for five (5) years ending 2019.
- Ratio trend analysis report for five (5) years ending 2019.

4. DETAILED ASSESSMENT FINDINGS/OBSERVATIONS

4.1 Technical Financial Position

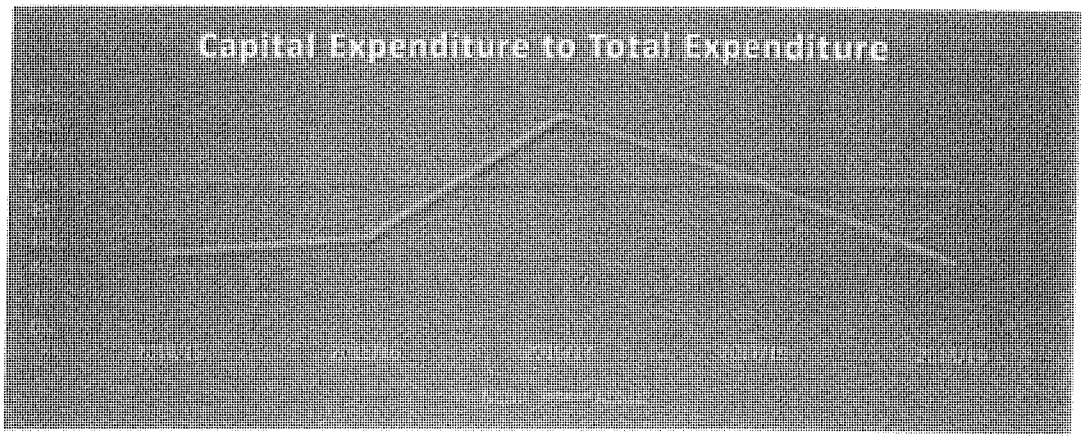
4.1.1 Asset Management Utilization

1. Lower spending in infrastructure

Finding/Observation

Capital Expenditure to Total Expenditure ratio measures level of investment in assets in relation to total expenditure made by the municipality in each year and the recommended norm range lies between 10% and 20%. Based on the assessment done it was identified that the municipality has been spending lower than the recommended level in infrastructure which holds potential risks to service delivery. Over the three of the five financial years under review the municipality's Capital Expenditure to Total Expenditure ratio has been below the norm averaging at 8.2% each year.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

In 2014/15 and 2015/16 the municipality was at 5% and 6% respectively which significantly improved to 15% in 2016/17. However, the ratio declined in the succeeding years to 5% in 2018/19. Capital expenditure has been below the normal in 3 out of the last 5 years which indicates lower spending by the municipality on infrastructure.

Operating below the norm indicates that the municipality is prioritizing more on expenditure towards current operations than for future capacity in terms of Municipal Services. It is critical that capital expenditure is largely directed toward service delivery infrastructure and not administrative assets.

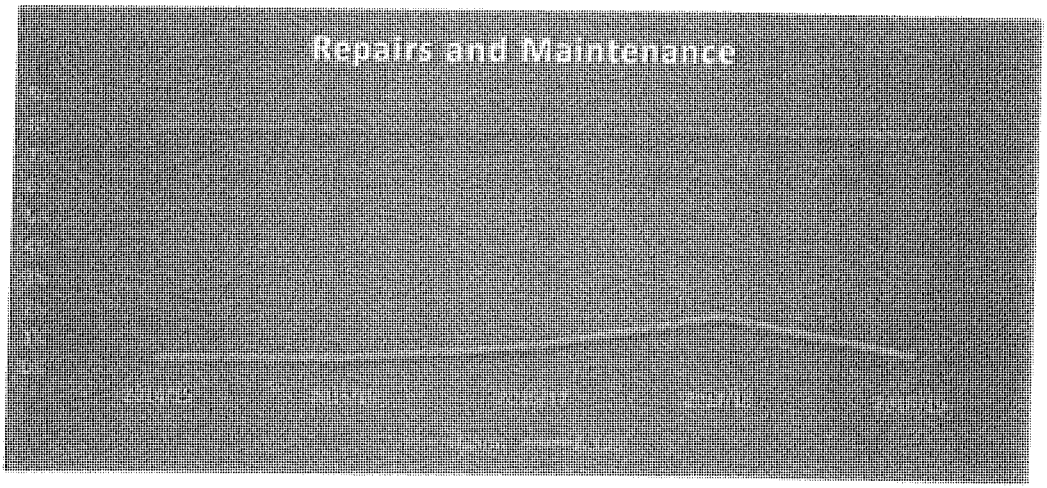
Lower investment in assets holds potential risks to service delivery. It is important for the municipality to have a well-maintained asset base to ensure continued operations and service provision and from which future revenue flows will be secured.

2. Insufficient spending on Repairs and Maintenance

Finding/Observation

The Repairs and Maintenance Ratio measures the level of repairs and maintenance to ensure adequate maintenance to prevent breakdowns and interruptions to service delivery. The acceptable norm is set at 8%. Based on the assessment done it was identified that the municipality has not been spending sufficient monies towards repairing and maintaining its assets. Over the 5 financial years under review the municipality's repairs and maintenance ratio was averaging at 0.84% which is significantly below the acceptable norm.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

Over the periods under consideration the municipality has been significantly operating below the norm. This is an indication of insufficient spending on repairs and maintenance to the extent that it could impact on the use of the assets and has a resulting increase on the impairment of useful assets.

The municipality need to ensure adequate maintenance of assets to prevent breakdowns and interruptions to service delivery.

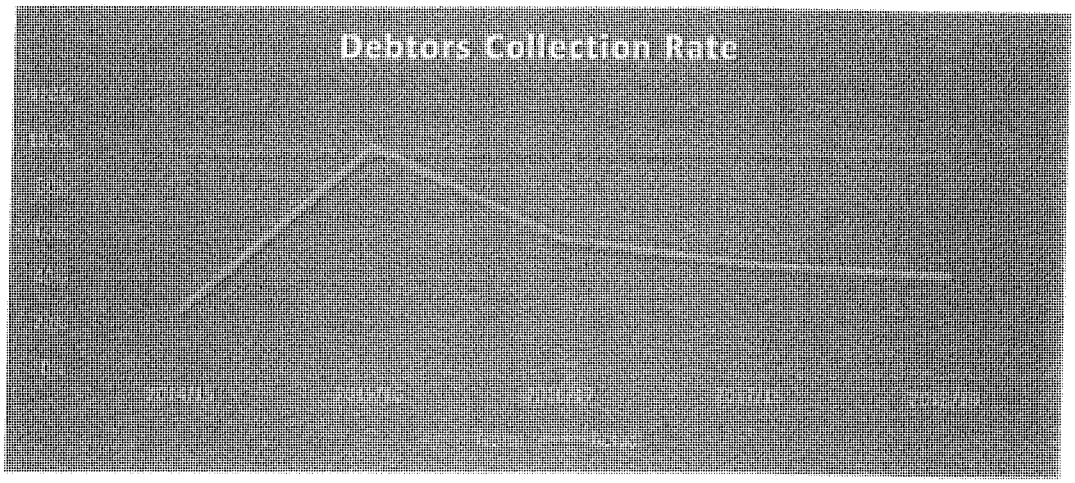
4.1.2 Debtors Management

1. Low Debtors Collection Rate

Finding/Observation

Collection Rate Ratio provide an indication of the performance against quality of credit control and quality of revenue management. The recommended norm of this ratio is 95%. Based on the assessment done it was identified that the municipality has been operating below the norm for 4 of the 5 years under review indicating that the municipality has been collecting billed revenue at a lower level than recommended for the major part of period under review. The collection rate for the municipality was averaging at 53.6% for each year over the 5 financial years.

The line graph below shows the trend over the 5 financial years under review:



Interpretation of Results

The municipality's Collection Rate has been below the norm for 4 of the 5 years under review and has been regressing from 2016/17 to 2018/19. This is an indication that the municipality is continuously taking longer than before to collect payments from debtors which might lead to cash shortages.

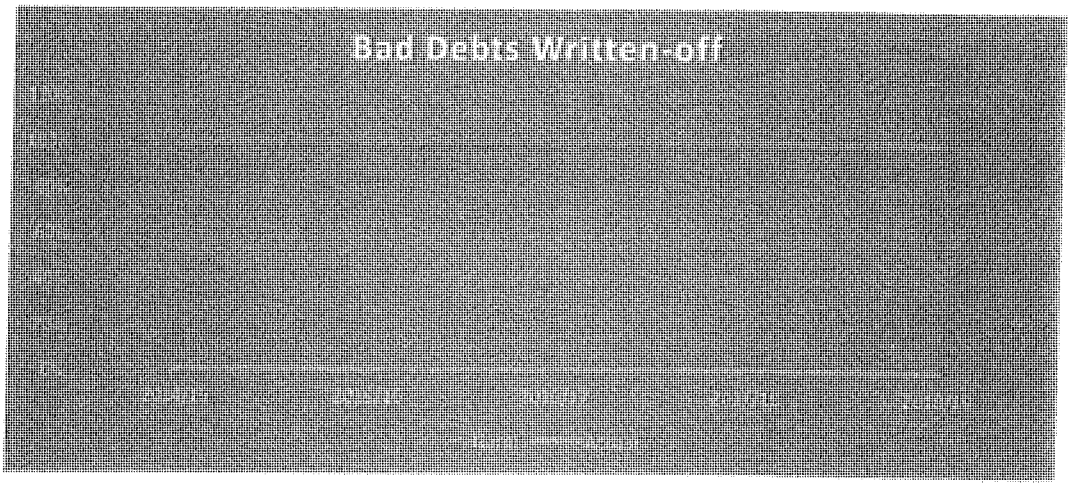
Revenue collection (billing), and credit control of the municipality requires urgent attention and corrective measures should be implemented. Quality Credit Control should be implemented to ensure that what is billed is collected. Revenue Management should ensure affordable tariffs are set and correct billing is done.

2. *Bad Debts* not being written-off

Finding/Observation

Bad Debts Written-off as % of the Bad Debts Provision ratio assesses the sufficiency of the provision for bad debts. Based on the assessment results it has been identified that the municipality has not been writing off long outstanding debts after a provision for bad debts has been raised over the entire 5 financial years under review. It is recommended that 100% of the debtors identified as potential defaulters should then be written off in the next period to indicate a level of accuracy in calculation of the provision for Bad Debts.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

The results of this ratio clearly indicates that the municipality has not written off any bad debts for the past 5 years. The outstanding debtors balance keeps increasing every year as defaulting debtors are not being correctly accounted for. This is an indication that there is lack of financial management capacity within the municipality to correctly manage and account for debtors.

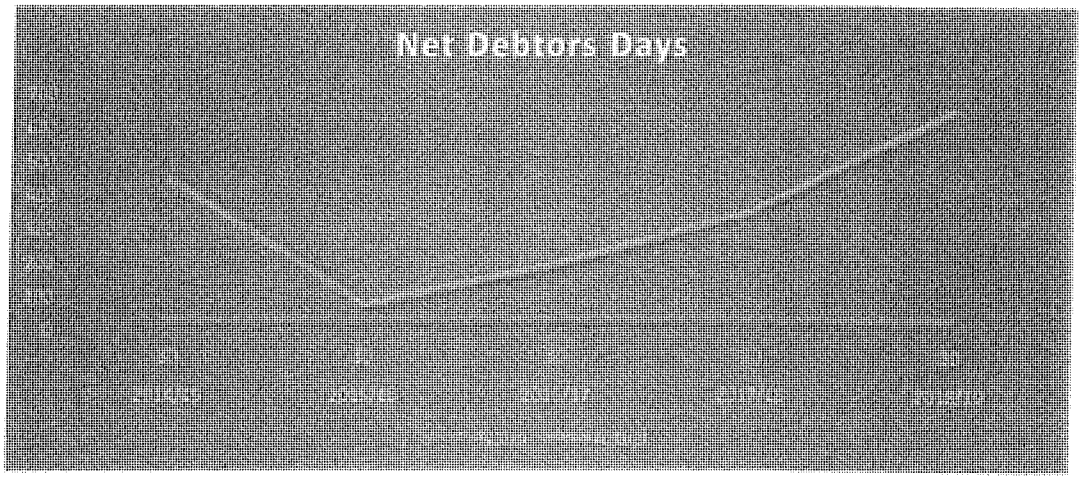
The municipal officials should seek council resolution to write off all irrecoverable debt for a true and fair view to be presented on the financial information disclosed in the AFS of the municipality.

3. *High Net Debtors Days*

Finding/Observation

Net Debtor Days refers to the average number of days required for a Municipality or Municipal Entity to receive payment from its Consumers for bills/invoices issued to them for services and the norm is set at an average of 30 days. Based on the assessment done it was identified that the municipality is experiencing challenges in collecting outstanding amounts due. This is witnessed by the net debtors days ratio which has been excessively above the norm averaging at 343 days over the 5 financial years under review.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

Net Debtors' Days ratio for the past five years has been above the norm of 30 days. This is an indication that the municipality is exposed to significant cash flow risk and it is experiencing challenges in the collection of outstanding amounts due.

The municipality needs to reassess its indigents register if it shows a true reflection of the situation on the ground and try to improve its debt collection processes.

4.1.3 Liquidity Management

1. Low Cash Reserves

Finding/Observation

Cash/Cost Coverage Ratio assesses the municipality's ability to meet at least its monthly fixed operating commitments from cash and short-term investment without collecting any additional revenue during that month. The norm range of Cash/Cost Coverage Ratio is 1-3 months. Based on the assessment done it was identified that the municipality is currently vulnerable and at a higher risk in the event of financial 'shocks/set-backs'. The ratio has been below the norm for the 2 recent consecutive years of the 5 financial years under review.

The line graph below shows the trend of the ratio over the 5 financial years:



Interpretation of Results

The municipality's ratio has been within the norm from 2014/15 to 2016/17 and fallen to be below the norm in 2017/18 and 2018/19 financial years. This indicates that the municipality is currently vulnerable and at a higher risk in the event of financial set-backs.

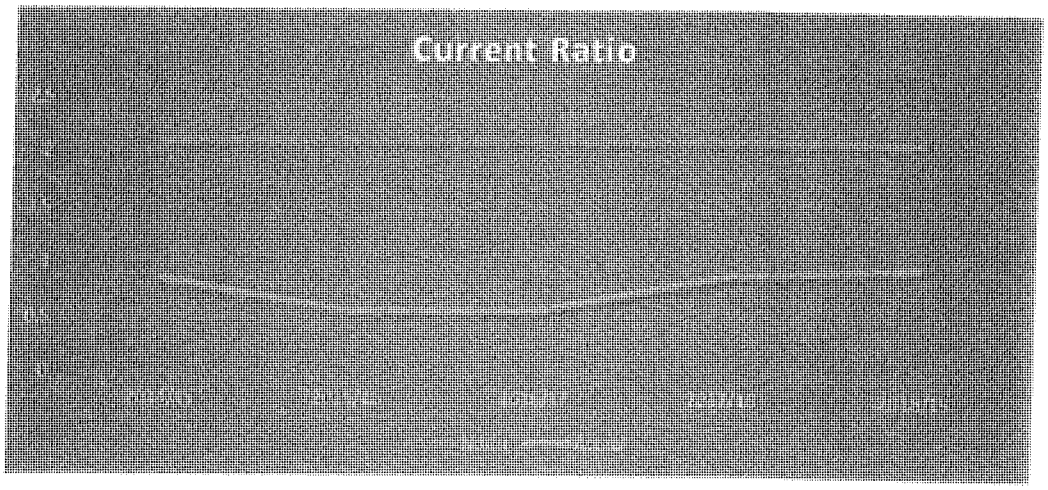
It was clear that the municipality's ability during 2017/18 and 2018/19 to meet its obligations to provide basic services and honour its financial commitments was compromised.

2. Current Liabilities in excess of Current Assets

Finding/Observation

Current Ratio assesses the municipality's ability to pay back its short-term Liabilities (Debt and Payables) with its Short-term Assets (Cash, Inventory, Receivables). Based on the assessment done it was identified that the municipality's current liabilities exceed its current assets. The Ratio norm is set at 1.5 to 2:1. For the entire 5-year period the current ratio has been significantly below the norm averaging at 0.564 each year.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

The municipality's Current Ratio has been below the norm for the entire 5 financial years under review. This is an indication that current liabilities exceed current assets, highlighting insufficient cash to meet short-term financial obligations.

The municipality need to increase its current assets to appropriately cover current liabilities otherwise it will risk non-current assets to be liquidated to settle current liabilities.

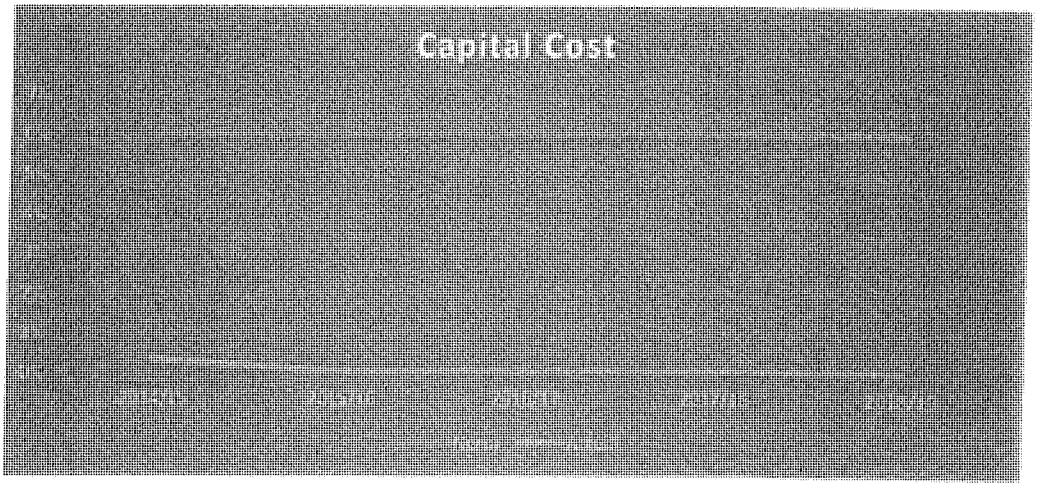
4.1.4 Liability Management

1. Low Capital Cost Ratio

Finding/Observation

Based on the assessment done it was identified that the municipality had a capital cost ratio of 0% throughout the 5 years under review.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

Operating below the norm could indicate that the Municipality has cash flow problems where it is unable to access borrowed funds.

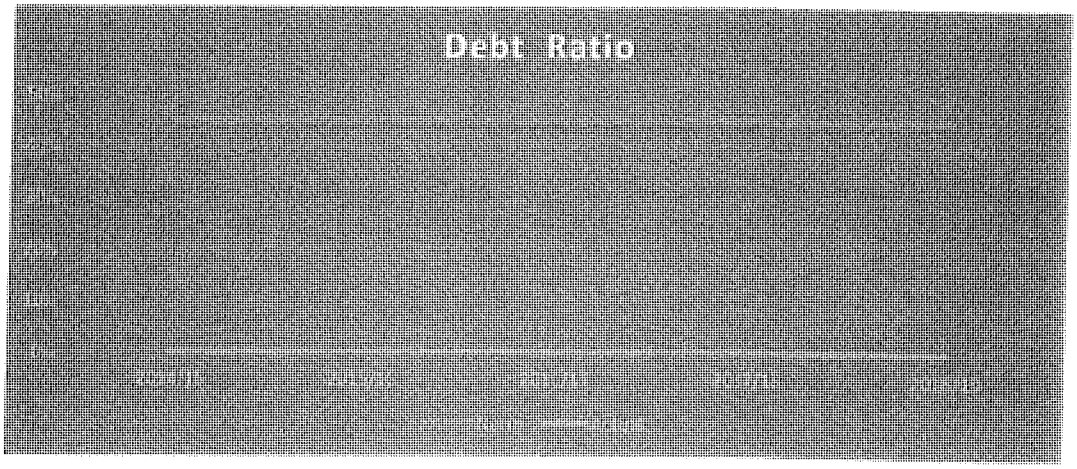
Relating to the low cash reserves and low current ratio this also support that the municipality is in a state of insolvency and it is unable to access borrowed funds.

2. Low Debt Ratio

Finding/Observation

Based on the assessment done it was identified that the municipality debt ratio has been way below the norm over the entire 5 financial years under review.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

Operating below the norm could indicate that the municipality is unable to access borrowed funds because of its financial distress position.

4.1.5 Sustainability

Finding/Observation

Based on the assessment done it was identified that the municipality did not have any cash backed reserves for all the five years under review.

Interpretation of Results

If a Municipality has no cash reserves it could negatively impact its ability to comply with the conditions for creating the reserves and on its ability to fund current and future operations.

4.2 Technical Financial Performance

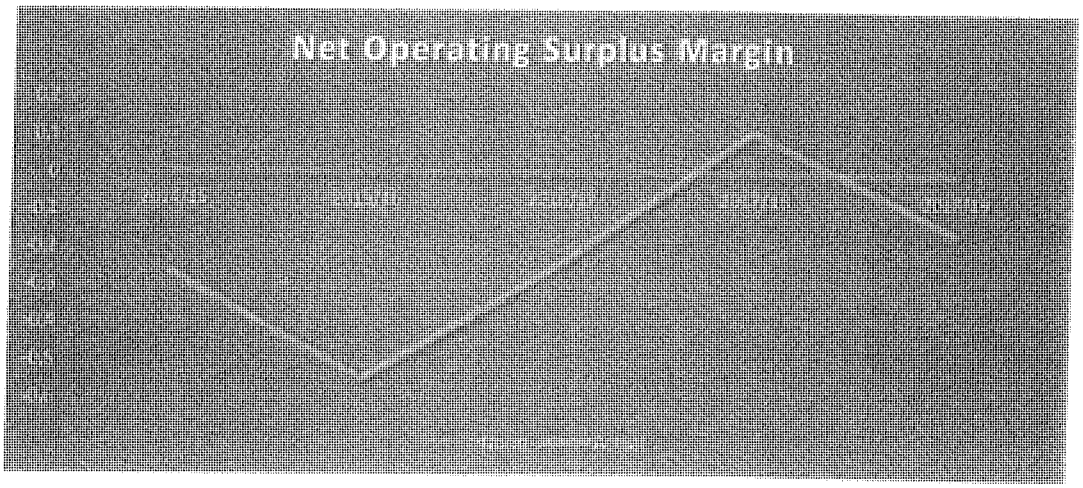
4.2.1 Efficiency

1. Negative Net Operating Surplus Margin

Finding/Observation

Net Operating Surplus Margin Ratio assesses whether the municipality is at least recovering operational costs for the services being delivered. Based on the assessment done it was identified that the municipality has been in overall providing services at a deficit for 4 of the 5 financial years under review. This is witnessed by a negative net operating surplus margin averaging at -22% each year which is significantly below the acceptable norm.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

The ratio has been below the norm for 4 of the 5 financial years under review which is an indication that the municipality has been operating at a deficit for these 4 years.

The significant deficit in 2015/16 was a result of an increase operating expenditure and the decrease in revenue. Measures must be implemented to address this situation to ensure sustainable service delivery.

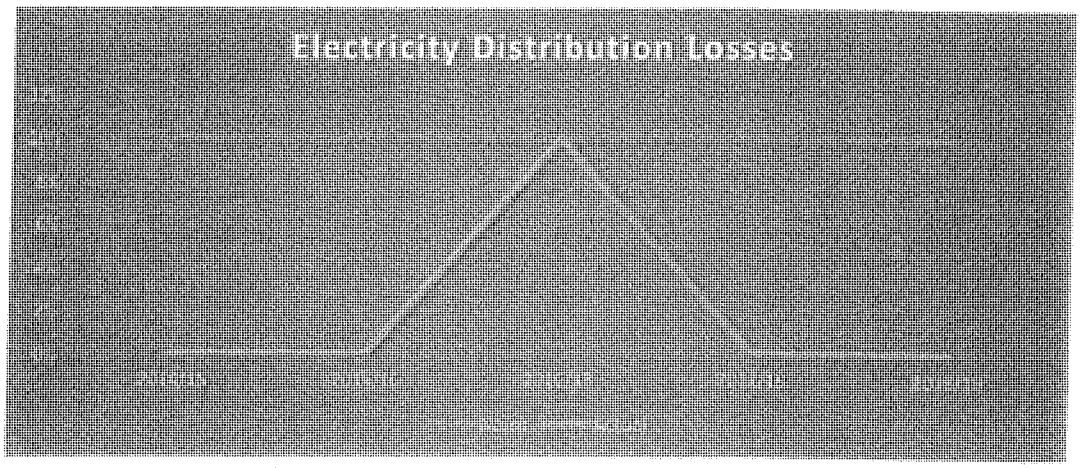
4.2.2 Distribution Losses

1. Non-Disclosure of Electricity Distribution Losses

Finding/Observation

The Electricity Distribution Losses Ratio measures the percentage loss of potential revenue from Electricity Services through electricity units purchased and generated but not sold as a result of losses incurred through theft (illegal connections), non or inaccurate metering or wastage. Based on the assessment done it was identified that the municipality has not been disclosing the distribution losses of electricity for 4 of the 5 financial years under review. This is a non-compliance with the GRAP standards on the presentation of Annual Financial Statements.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

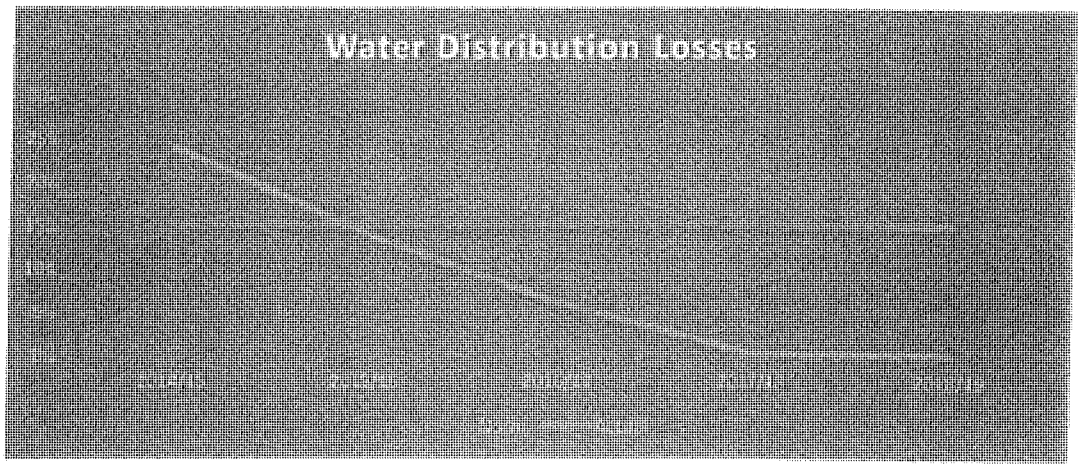
Electricity Distribution losses were not disclosed in the 2015, 2016, 2018 and 2019 Annual Financial Statements which is a non-compliance with GRAP standards and as required by section 125 of the MFMA.

2. ***Non-Disclosure of Water Distribution Losses***

Finding/Observation

The Water Distribution ratio determines the percentage loss of potential revenue from water service through kilolitres of water purchased but not sold as a result of losses incurred through theft (illegal connections), non- or incorrect metering or wastage as a result of deteriorating water infrastructure. Based on the assessment done it was identified that the municipality has not been disclosing the water distribution losses for the recent consecutive years 2017/18 and 2018/19. This is a non-compliance with the GRAP standards on the presentation of Annual Financial Statements.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

Water losses were within the norm in 2015/2016 and was below the norm in 2015/16, 2016/2017 indicating an increase in distribution efficiency.

The municipality did not disclose water distribution losses from 2017/18 and 2018/19 which is a non-compliance with GRAP standards and as required by section 125 of the MFMA.

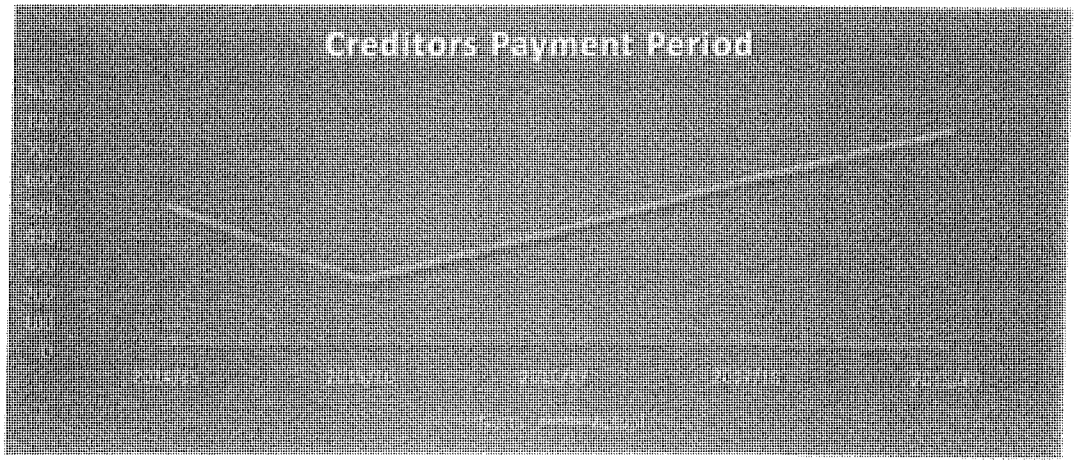
4.2.3 Expenditure Management

1. Excessive Creditors Payment Period (Trade Creditors)

Finding/Observation

Creditors Payment Period Ratio indicates the average number of days taken for Trade Creditors to be paid. It is a set standard that the municipality must not exceed an average of 30 days without paying its creditors in terms of the MFMA regulations and Circular 71 norms. Based on the assessment done it was identified that the municipality is not complying with MFMA regulations guiding the payment of creditors. The creditors days ratio has been excessively above the norm averaging at 508 days each year which is excessively above the recommended norms and standards.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

The municipality's ratio is significantly above the norm which is an indication that the municipality is experiencing cash flow problems. In addition, a ratio that exceeds the norm indicates that the Municipality may not be adequately managing its working capital or that effective controls are not in place to ensure prompt payments.

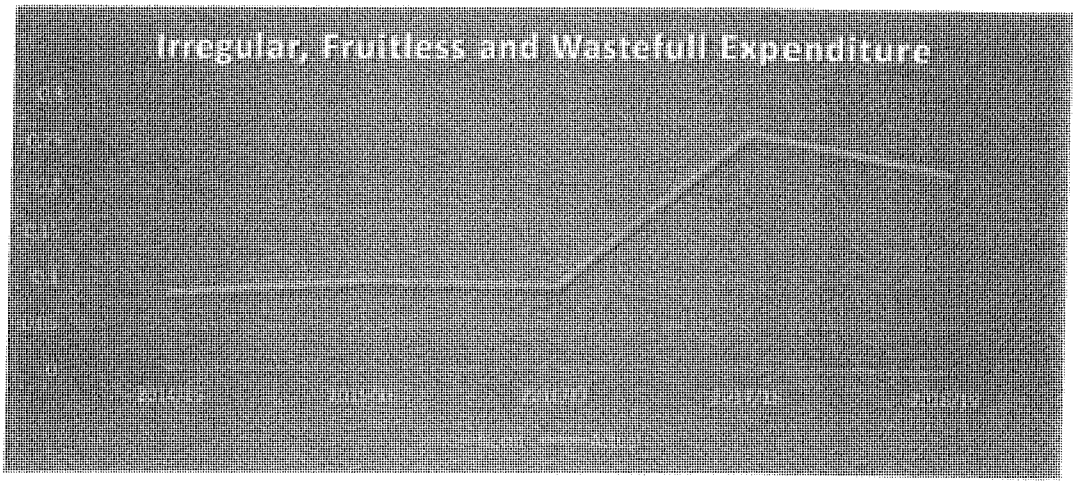
Urgent attention must be paid to cash flow management, avoidance of interest charged by creditors and non-compliance with MFMA regulations guiding the payment of creditors should be considered.

2. High Levels of Irregular, Fruitless and Wasteful and Unauthorised Expenditure

Finding/Observation

Municipalities are recommended to comply with the prescripts of the MFMA and complimentary legislation in order to avoid incurrence of Irregular, Fruitless and Wasteful and Unauthorised Expenditure. Based on the assessment done it was identified that the municipality is not complying with MFMA regulations and guideline resulting in incurrence of irregular, fruitless and wasteful and unauthorised expenditure above the norm for all the past five financial years.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

The municipality's ratio for the past 5 financial years is above the norm. This indicates weaknesses within the municipality's SCM processes and non-compliance with procurement regulations and guidelines.

The municipality must investigate the incurrence of this expenditure in line with applicable legislation.

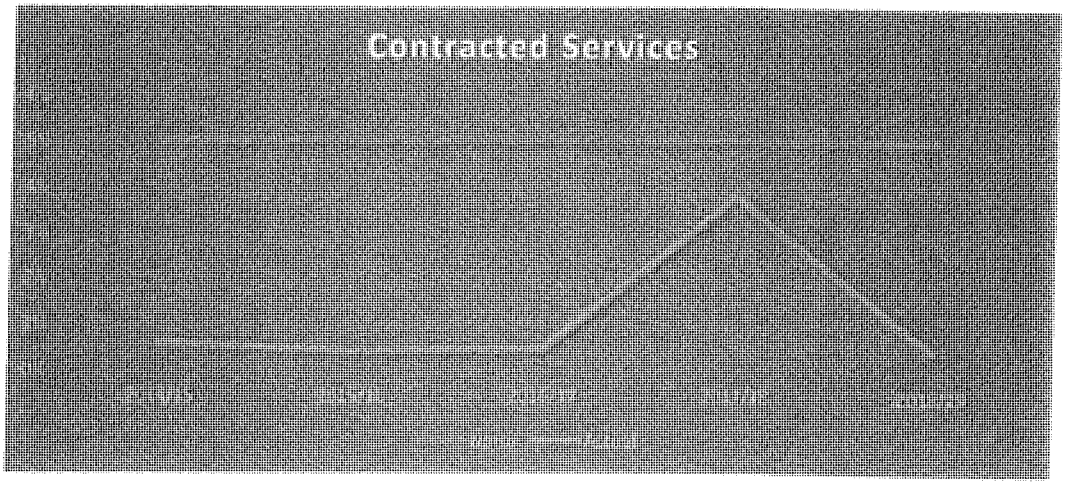
3. Lower Contracted Services

Finding/Observation

Based on the assessment done it was identified that the municipality's contracted services ratio has been below the acceptable norm throughout the 5 financial years under review.

A zero percent has been recorded in 2015/16, 2016/17 and 2018/19 which is unusual.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of Results

Operating below the norm could an indication of incorrect disclosure of the contracted services expenditure.

This is a non-compliance with the GRAP standards for the presentation and disclosure of Annual Financial Statements.

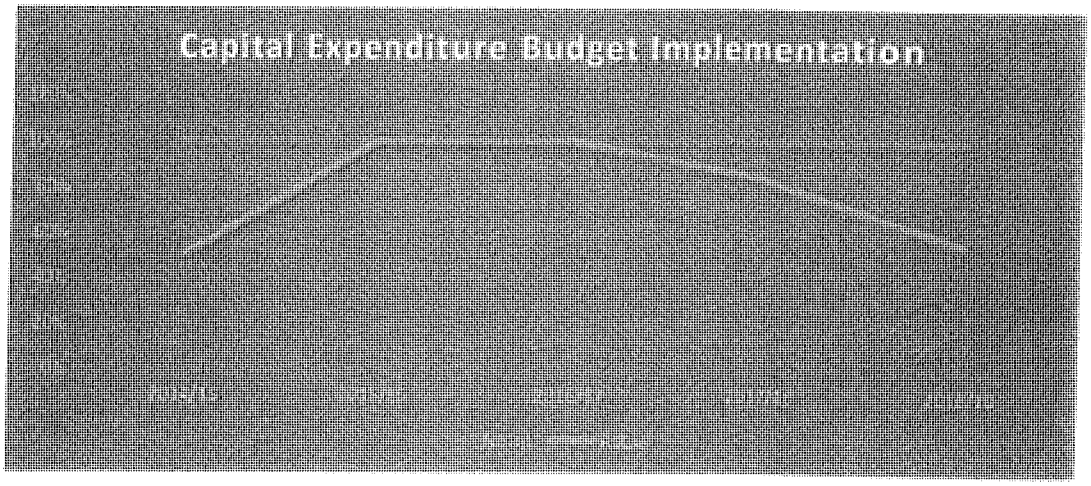
4.3 Budget Implementation

1. Underspending of Capital Expenditure Budget

Finding/Observation

Municipalities are expected to have effective controls in place to ensure that expenditure is incurred in accordance with an approved budget. Based on the assessment done it was identified that the municipality's Capital Expenditure Budget Implementation Indicator has been below the norm for 3 of the 5 financial periods under review pointing either challenge to implement, issues of financial controls and management and/or poor budgeting.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of results

The capital budget indicator has been less than 95% for 3 of the 5 years under review. This indicates discrepancies in planning and budgeting, capacity challenges to implement projects and/or a lack of effective controls in place to ensure that expenditure is incurred in accordance with an approved budget. Ideally, under-spending should be as a result of improved efficiencies and not as a result of non-implementation of programmes and/or projects.

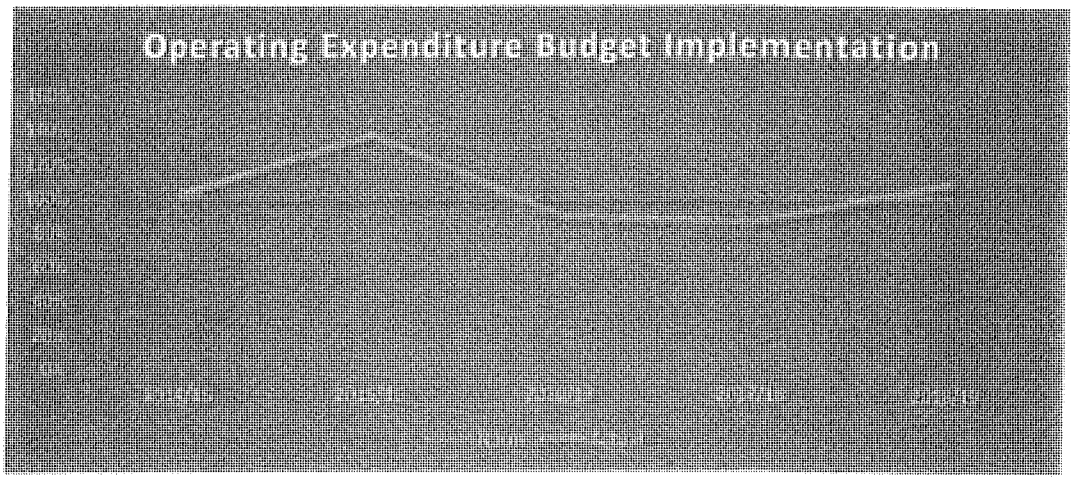
Underspending of the capital expenditure budget may also be an indication that the municipality is experiencing cash flow difficulties to implement projects as a result of spending capital expenditure budgeted funds on operating activities for which the funds were not intended for.

2. *Overspending of Operating Expenditure Budget*

Finding/Observation

Municipalities are expected to have effective controls in place to ensure that expenditure is incurred in accordance with an approved budget. Based on the assessment done it was identified that the municipality's Operating Expenditure Budget Implementation Indicator was above the norm for 3 of the 5 financial years under review. This shows that the municipality has been spending more than the budget over all these years.

The line graph below shows the trend of the ratio over the 5 financial years under review:



Interpretation of results

There has been overspending on operating expenditure for the 3 out of 5 years under review. This is an indication of ineffective controls in place which ensures that expenditure is incurred in accordance with an approved budget. In addition, this shows inaccurate budgeting methods.

5. CONCLUSION

From the perspective gained from the financial and performance analysis Ditsobotla Local Municipality is under serious financial crisis and an intervention is inevitable to assist the municipality to remain financially sustainable.

The municipality need to improve its liquidity position by implementing good debtor's management process and billing of cost reflective tariffs to reduce deficits witnessed in all services, in order to stabilise financially.

Institutionally the municipality need to capacitate its employees and follow the prescripts of the MFMA and complementary legislation in order to reduce high reported irregular, fruitless & wasteful and unauthorized expenditure.

The municipality need to ensure adequate repairs are done to infrastructure to avoid high impairment, breakdowns and interruption of service delivery. Most of the key financial and service delivery ratios are unfavorable and without intervention, the municipality will not be able to deliver on its mandate in the foreseeable future.

5. SIGN OFF AND ACKNOWLEDGEMENT OF RECEIPT

Whilst due care has been taken by Thuso Financial Consultants in the preparation of the opinions, assessments and information provided in this document Thuso does not give any warranties as to their correctness, accuracy or completeness, nor do they assume liability for any losses arising from actions taken based on the information provided.

This document contains information that is confidential and is for use by intended parties only.

Yours Sincerely

D Muradya

Director: Thuso Financial Consultants

The contents of this report were presented, discussed and accepted by the Provincial Treasury represented by the following officials.

21/05/2021

K Kumbe

Project Manager

21/05/2021

L Nengovhela

Project Sponsor

7. ANNEXURES

7.1 Annexure A - 2015 Circular 71 Ratios

7.2 Annexure B - 2016 Circular 71 Ratios

7.3 Annexure C - 2017 Circular 71 Ratios

7.4 Annexure D - 2018 Circular 71 Ratios

7.5 Annexure E - 2019 Circular 71 Ratios

7.6 Annexure F - Trend Analysis For 5 Financial Years 2014/15 to 2018/19

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provincial treasury

Department:
Provincial Treasury
North West Provincial Government
Republic of South Africa

BUDGET ANALYSIS REPORT

MILESTONE 2

ENTRUST AND CONQUER

DITSOBOTLA LOCAL MUNICIPALITY

Prepared by:

THUSO Financial Consultants

Together moving Bokone Bophirima forward.

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1. EXECUTIVE SUMMARY

Ditsobotla Local Municipality (the Municipality) is a Category B Municipality situated in the Ngaka Modiri Molema District of the North West Province. Other than the Equitable shares allocations from the National Government, the Municipality derives its other significant revenue from sources such as property rates taxes, services charges levied from sales of water and electricity as well as from collection of solid waste and waste water. Other sources of revenue which are trivial include traffic fines, sale of cemeteries, sale of tender documents, agency fees charged on administration of services conducted on behalf of the North West Department of Transport Management.

Ditsobotla Local Municipality is unable to generate and collect sufficient revenue to be able to finance its operating and capital expenditure, expenditure management is a serious concern as the Municipality is over committed. Consequently, the cash coverage of the Municipality is very low resulting in the Municipality being unable to settle its financial obligations and commitments as and when they fall due, the Municipality is also unable to generate surpluses and invest them in the capital reserve account that will be utilised to fund capital future replacement procurements. The result of this is that the Municipality is highly reliant on Government Grants to fund its capital projects.

Poor planning and spending on capital projects have resulted in the municipality being unable to finish its planned projects and consequently being unable to meet the service delivery needs of communities. Service delivery backlog still exist in critical areas such as provision of basic water electricity sanitation as well as removal of waste to ensure that the environment is preserved.

Financial accounting and reporting have also been identified as an area where the Municipality fails to register good performance. The internal control environment of the Municipality has collapsed and this can be attributed to the fact that the municipality has failed to implement standard operating procedures relating to financial management, accounting and reporting, as a result, critical records and documents pertaining to directions and events are not being properly secured and kept for audit purposes, transactions and events are not being recorded in the financial system and accounts are not being reconciled and properly closed on monthly basis.

FINANCIAL MANAGEMENT

Financial Management is a vital activity in any organization. It is the process of planning, organizing, controlling and monitoring financial resources with a view to achieve organizational goals and objectives. The Municipal Finance Management Act describes financial management as a process of controlling and managing the financial administration of the municipality which amongst others include taking reasonable steps to ensure that the resources of the municipality are used effectively, efficiently and economically, and that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards.

Proper financial management must ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented through strict implementation and effective operating of key internal controls. Disciplinary actions or, where appropriate, criminal proceedings must be instituted against any official of the Municipality who has committed an act of financial misconduct or an offence in terms of Chapter 15 of the MFMA.

Critical Financial Management components that will be discussed based on the scope of this milestone deliverables includes;

- Budget Management
- Financial Accounting and Reporting

BUDGET MANAGEMENT

Section 18(1)(a) of the MFMA states that an annual budget may only be funded from realistically anticipated revenues to be collected.

Section 16(1) of the MFMA states that the Council of a Municipality must for each financial year approve an annual budget for the Municipality before the start of that financial year. A Municipality must adopt a funded budget to ensure that there are sufficient financial resources to enable delivery of services as would have been determined by the communities through the Integrated Development Planning processes. A Municipality is directed to determine a projection of revenue that is anticipated to be collected and appropriate it to fund the anticipated expenditure.

Table below shows a summary of the A4 Budgeted Financial Performance for the past five (05) budget years in which budget deficit was recorded:

North West: Ditsobotla(NW384) - Table A4 Budgeted Financial Performance (Summary)					
Description	2015/16	2016/17	2017/18	2018/19	2019/20
Total Revenue (excluding capital transfers and contributions)	375 745 000	406 246 000	405 542 000	506 456 476	565 583 018
Total Expenditure	371 877 035	406 246 000	400 220 000	488 317 087	624 264 866
Surplus/(Deficit)	**3 867 965**	**-**	**5 322 000**	**18 139 389**	**- 58 681 848**
Transfers and subsidies - capital	-	39 875 000	55 133 000	45 851 000	75 961 098
Surplus/(Deficit) after capital transfers and contributions	**3 867 965**	**39 875 000**	**60 455 000**	**63 990 389**	**17 279 250**

Drawing from the table above, the Municipality has been tabling and subsequently adopting surplus budgets for the past five (05) budget years.

Although there were surplus budgets, these other factors contributed to the budget being **UNFUNDED:**

1. Revenue has been overstated.
2. Some expenditure items have been understated.
3. The available cash is not sufficient to cover payment plans entered into with Eskom and water board.
4. Creditors exceeds available cash and investments, meaning the Municipality is unable to service the financial obligations as they are due and payable.

Based on the above, the status of the budget for the period under review is presented below:

2015/16	2016/17	2017/18	2018/19	2019/20
UNFUNDED	UNFUNDED	UNFUNDED	UNFUNDED	UNFUNDED

Tabling and adopting an unfunded budget might be an indication that the Municipality is struggling to generate as well as collecting billed revenue for appropriation into funding the expenditure priorities, or the Municipality might be collecting sufficient revenue but struggling with expenditure management, thereby spending on non-core and non-essential expenditure items.

Overspending is normally caused by the Municipality incurring more expenditure than the anticipated revenue, this inevitably leads to the Municipality being unable to settle the invoices received from service providers and as a consequence, increasing the creditors book. The creditors book that does not have concomitant cash reserves results in the budget being unfunded, Ditsobotla Local Municipality has for a long period of time been exposed to these challenges which eventually escalated to become a crisis.

FINANCIAL ACCOUNTING AND REPORTING

Municipalities have been directed to implement the Municipal Standard Chart of Accounts (mSCOA) effective from 01 July 2017, the Municipal Standard Chart of Accounts would ensure that Municipalities record, classify and account for their transactions in a manner that is uniform and standardised. Municipalities were also assessed to determine their Financial Management Capacity Maturities and Municipalities were directed to develop action plans to address capacity gaps identified by the Financial Management Capacity Maturity Model (FMCMM). The intervention and directive was for Municipalities to customise, adopt and implement Standard Operating Procedures (SOPs) to ensure that internal controls are implemented in Municipalities for improved financial management.

Ditsobotla Local Municipality has failed to adequately implement the above directives and measures as a result the financial accounting reporting of the Municipality has not improved and this is confirmed by the negative audit outcomes that the Municipality has been receiving over the past five years as demonstrated below;

Audit Opinions

2014/15	2015/16	2016/17	2017/18	2018/19
Disclaimer of opinion	Qualified	Disclaimer of opinion	Disclaimer of opinion	Disclaimer of opinion

SECTION 139 INDICATORS

An assessment of the municipality based on the Section 139 indicators which shows if a municipality is in financial distress was done and the municipality triggered S138 and S140 of the MFMA for the years shown in the table below therefore it is a candidate for intervention.

The table below summarises the analysis of section 138 and section 140 triggers:

Year	S138 Trigger	S140 Trigger
2015/16	Yes	Yes
2016/17	Yes	Yes
2017/18	Yes	Yes
2018/19	Yes	Yes
2019/20	Yes	Yes

2. LEGISLATIVE BACKGROUND

Provincial interventions to resolution of financial problems

According to S136 (1) of the MFMA if the MEC for local government in a province becomes aware that there is a serious financial problem in a municipality, the MEC must promptly:

(a) Consult the mayor of the municipality to determine the facts;

(b) Assess the seriousness of the situation and the municipality's response to the situation; and

(c) Determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution

3. SCOPE OF WORK

The scope of work at this stage entails the following;

- Analysis of financial performance of the municipality by analysis the following reports:
  - Sec 71 Reports
  - Sec 72 Reports
  - Audit reports
  - Municipal Budgets
- Section 138 and 140 indicator analysis
- Analysis report to determine facts and performance trend.

4. APPROACH AND METHODOLOGY

4.1 DATA COLLECTION

The supporting data collected and used in the analysis included, Mid-Year Budget and Performance Reports, Annual Reports, Annual Financial Statements, Management and Audit Reports issued by the AGSA.

4.2 ASSESSMENTS

A desktop analysis was conducted to assess the state of municipal finance and performance. Key financial challenges were identified with possible reasons and contributing factors of the crisis being highlighted.

5. OBSERVATIONS/FINDINGS

5.1 BUDGET MANAGEMENT ANALYSIS

5.1.1 Unfunded Budget Historic Status

For a projected revenue collection to be deemed realistic the Municipality must take into account the projected revenue for the current year based on collection levels to date as well as actual revenue collected in previous financial years.

Funding the budget basically means "funding the expenditure". Funding the expenditure in essence means that the Municipality will realistically project revenue that it anticipates to collect during the budget year. The Municipality will then fund the expenditure by appropriating the realistically anticipated revenue to budgeted expenditure.

The implication of the above is that, budgeted expenditure should not exceed budgeted revenue because budgeted expenditure can only be to the maximum of the realistically budgeted revenue. It then follows that, a budget wherein expenditure exceeds anticipated revenue is not compliant with provisions of Section 18(1)(a) of the MFMA, and such budget is **UNFUNDED**.

Table below shows a summary of the A4 Budgeted Financial Performance for the past five (05) budget years in which budget surplus was recorded:

North West: Ditsobotla(NW384) - Table A4 Budgeted Financial Performance (Summary)					
Description	2015/16	2016/17	2017/18	2018/19	2019/20
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Surplus/(Deficit) after capital transfers and contributions	**3 867 965**	**39 875 000**	**60 455 000**	**63 990 389**	**17 279 250**

Drawing from the table above, although the Municipality has been tabling and subsequently adopting surplus budgets for the past five (05) budget years there are other factors that need to be considered to determine whether the budgeted was funded/unfunded.

Table below shows a comparison of creditors and cash & cash equivalents and investments for the past five (05) years under review:

Comparison of Trade Creditors and Cash and Cash Equivalents					
Description	2015/16	2016/17	2017/18	2018/19	2019/20
Payables from exchange transactions	327 478 506	430 293 416	462 523 100	623 583 881	820 058 001
Cash and Cash equivalents	64 032 349	66 650 284	11 172 668	25 478 242	5 613 635
Creditors as a % of budgeted operating expenditure					

Factors which have contributed to the budget being **UNFUNDED** are the following:

1. Revenue has been overstated.
2. Some expenditure items have been understated.
3. The available cash is not sufficient to cover payment plans entered into with Eskom and water board.
4. Creditors exceeds available cash and investments, meaning the Municipality is unable to service the financial obligations as they are due and payable.
5. No provisions were made for Free Basic services.

Based on the above, the status of the budget for the period under review is presented below:

2015/16	2016/17	2017/18	2018/19	2019/20
UNFUNDED	UNFUNDED	UNFUNDED	UNFUNDED	UNFUNDED

Tabling and adopting an unfunded budget might be an indication that the Municipality is struggling to generate as well as collecting billed revenue for appropriation into funding the expenditure priorities, or the Municipality might be collecting sufficient revenue but struggling with expenditure management, thereby spending on non-core and non-essential expenditure items.

Overspending is normally caused by the Municipality incurring more expenditure than the anticipated revenue, this inevitably leads to the Municipality being unable to settle the invoices received from service providers and as a consequence, increasing the creditors book. The creditors book that does not have concomitant cash reserves results in the budget being unfunded, Ditsobotla Local Municipality has for a long period of time been exposed to these challenges which eventually escalated to become a crisis.

5.1.2 Revenue

Section 18(1)(a) of the MFMA states that an annual budget may only be funded from realistically anticipated revenues to be collected.

For a projected revenue collection to be deemed realistic the Municipality must take into account the projected revenue for the current year based on collection levels to date as well as actual revenue collected in previous financial years.

Revenue is defined as the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners. Therefore, any funds which do not increase the net assets base of the Municipality cannot be classified and recognised as revenue.

Operating Revenue

The table below depicts revenue adjusted budget for the five (05) financial years ending 2019/20.

North West: Ditsobotla(NW384) - Table A4 Budgeted Financial Performance (Revenue)										
Description	Ref	2015/16	2016/17	2017/18	2018/19	2019/20	Percentage Growth each year			
	1	Adjusted Budget	Adjusted Budget	Adjusted Budget	Adjusted Budget	Adjusted Budget	2016/17	2017/18	2018/19	2019/20
Revenue By Source		R000	R000	R000	R000	R000				
Property rates	2	48 306	52 000	55 000	55 000	61 000	8%	6%	0%	11%
Service charges - electricity revenue	2	160 992	171 000	172 000	190 216	195 306	6%	1%	11%	3%
Service charges - water revenue	2	34 869	43 892	38 000	58 125	49 000	26%	-13%	53%	-16%
Service charges - sanitation revenue	2	7 430	11 497	10 000	34 000	34 000	55%	-13%	240%	0%
Service charges - refuse revenue	2	9 390	12 981	13 000	16 000	19 000	38%	0%	23%	19%
Rental of facilities and equipment		3 092	3 748	3 500	2 000	1 067	21%	-7%	-43%	-47%
Interest earned - external investments		1 100	1 100	1 000	1 000	2 000	0%	-9%	0%	100%
Interest earned - outstanding debtors		6 336	4 500	4 500	28 000	56 000	-29%	0%	522%	100%
Dividends received		-	-	-	-	-				
Fines, penalties and forfeits		325	205	200	201	507	-37%	-2%	0%	153%
Licences and permits		2 522	2 149	300	4 300	2 900	-15%	-86%	1333%	-33%
Agency services		4 581	4 032	4 000	-	7 600				
Transfers and subsidies		95 419	96 792	102 042	115 707	135 203	1,4%	5%	13%	17%
Other revenue	2	1 383	1 350	2 000	1 908	2 000	-2%	48%	-5%	5%
Gains on disposal of PPE		-	1 000	-	-	-				
Total Revenue (excluding capital transfers and contributions)		375 745	406 246	405 542	506 456	565 583	8%	0%	25%	12%

The following are highlights of the observations made from the table above:

- Property Rates budget increase of 8% and 6% was recorded in 2016/17 and 2017/18 financial years respectively. The budget was stagnant in 2018/19 indicating a deterioration in the revenue generating potential of the municipality during this year. An increase of 11% was witnessed in 2019/20 indicating an improvement.

- Electricity maintained an increase on budgeted revenue of 6%, 1%, 11% and 3% in 2016/17, 2017/18, 2018/19 and 2019/20 respectively. The increases in 2016/17 and

2019/20 were below the CPI indicating that these increases were not real growth as the growth rate was below inflation rate.

- Water budgeted revenue increased by 26% in 2016/17 and decreased by 13% in 2017/18. Another increase of 53% was recorded in 2018/19 and in the most recent financial year 2019/20 a decrease of 16% was recorded. There is an inconsistence in budgeting for water revenue as the amounts keep fluctuating from year to year and being at worst in the most recent years call for urgent attention for corrective measures to be implemented.

- Sanitation budgeted revenue increased by 55% in 2016/17 and decreased by 13% in 2017/18. A significant increase of 240% was recorded in 2018/19 and there was no movement in 2019/20. Inconsistent fluctuations in budgeted sanitation revenue are concerning which may require urgent attention to analyse the cause for corrective measures to be implemented.

- Refuse budgeted revenue increased by 38% in 2016/17, and remained stagnant in 2017/18 and a sharp increase of 23% in 2018/19. In 2019/20 an increase of 19% was recorded.

- Transfers and subsidies budget increased by 1,4%, 5%, 13% and 17% in 2016/17, 2017/18, 2018/19 and 2019/20 respectively. The transfers and subsidies budget has been gradually increasing over the years.

- Rental of facilities and equipment budget increased by 21% in 2016/17, decreased by 7% in 2017/18, decreased by 43% and 47% in 2018/19 and 2019/20 respectively. The budgeted revenue from Rentals have been decreasing for the past 4 years and should be investigated to determine the reason for the decline in revenue.

- Interest on investment revenue maintained the same revenue in 2016/17 decreased by 9% in 2017/18 and remained constant in 2018/19 and increased by 100% 2019/20.

- Interest on outstanding debtors decreased by 29% in 2016/17 and remained stagnant in 2017/18. An increase of 522% and 100% in two consecutive years 2018/19 and 2019/20. Continuous raising of interest on outstanding debtors is worrying as this is continuously increasing a debt which the municipality is failing to collect. Raising of interest will only get to worsen the status of the debt rather than incentivize debtors to pay their outstanding debts. Corrective measures need to be devised and implemented to curb the issue of revenue collection and long outstanding debtors.

- License and permits decreased by 15% in 2016/17 and maintained a decrease of 86% in 2017/18. A drastic increase of 1333% was recorded in 2018/19 and 33% in 2019/20. The significant fluctuating movements implies that municipality's projections are not realistically anticipated and calls for urgent attention for corrective measures to be devised and implemented.

- Other revenue also recorded significant fluctuations of -2%, 48%, -5% and 5% over the respective years 2016/17, 2017/18, 2018/19 and 2019/20 which implies unrealistic projections and inconsistent revenue classification.

The following table reflects a comparison of the actual and budgeted revenue per source for the five (05) financial years ending 30 June 2020.

TOTAL REVENUE PER SOURCE COMPARATIVE ANALYSIS FOR FIVE (5) YEARS ENDING 30 JUNE 2020					
Description	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**
Property Rates					
Budgeted	48 306 000	52 000 000	55 000 000	55 000 000	61 000 122
Actual	37 295 453	49 089 879	56 084 599	59 996 429	65 614 538
Variance					
Variance %					
Actual Growth Rate	**0%**	**32%**	**14%**	**7%**	**9%**
Service Charges					
Budgeted	212 681 000	239 370 000	233 000 000	298 341 430	297 306 067
Actual	176 744 513	235 481 620	307 950 307	269 511 966	177 272 318
Variance					
Variance %					
Actual Growth Rate	**26%**	**33%**	**31%**	**-12%**	**-34%**
Grants					
Budgeted	95 419 000	96 792 000	102 042 000	115 707 000	135 203 000
Actual	122 798 276	151 228 079	130 293 224	161 400 036	157 555 796
Variance					
Variance %					
Actual Growth Rate	**27%**	**23%**	**-14%**	**24%**	**-2%**
Other Revenue					
Budgeted	19 339 000	18 084 000	15 500 000	37 408 046	72 073 829
Actual	31 108 415	37 916 532	51 692 530	70 467 577	70 194 634
Variance					
Variance %					
Actual Growth Rate	**-49%**	**22%**	**36%**	**36%**	**0%**
Total Revenue					
Budgeted	375 745 000	406 246 000	405 542 000	506 456 476	565 583 018
Actual	367 946 657	473 716 110	546 020 660	561 376 008	470 637 286
Variance					
Variance %					
Actual Growth Rate	**10%**	**29%**	**15%**	**3%**	**-16,2%**
Own Revenue					
Budgeted	280 326 000	309 454 000	303 500 000	390 749 476	430 380 018
Actual	245 148 381	322 488 031	415 727 436	399 975 972	313 081 490
Variance					
Variance %					
Actual Growth Rate	**3%**	**32%**	**29%**	**-4%**	**-21,7%**
Own Revenue as % of Total Revenue (Actual)	**67%**	**68%**	**76%**	**71%**	**67%**

The following are highlights of the observations made from the table above:

- Property rates showed a consecutive under achievement of revenue targets over two out of the five years under review. The extent of the under achievement each year was -23% and -6% for 2015/16 and 2016/17 respectively. Under achievement of property rates budget is an indication of either ineffective billing or weakness in compilation of budgets or issues of financial controls and management of the municipality.

- Service charges recorded an under achievement of its revenue targets for 4 out of the 5 years under review. The extent of the variance between budgeted and actual revenue each year was -17%, -2%, 32%, -10% and -40% for the five years under review respectively. An adverse variance is an indication of poor budgeting methods and unrealistic determination of budgeted figures.

- Transfers and subsidies/Grants recorded an over achievement of budget in all the financial years as a result budgeted amount being lesser than actual amounts received for the 5 years. This indicates ineffective budget and forecasting controls.

- Other revenue recorded an under achievement of revenue targets for the last year, 2019/20 with the extent of the variance between the actual and budget being -3%.

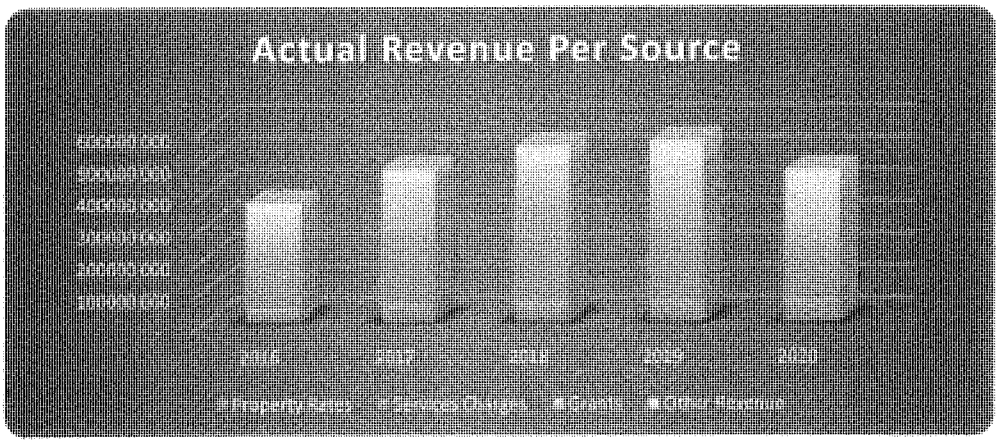
- Total Revenue, recorded an underachievement of -2% and -17% in 2015/16 and 2019/20 respectively. Under achievement of budget is an indication of either a challenge in capacity to implement, ineffective billing and credit control, weakness in compilation of budgets or issues of financial controls and management of the municipality. The municipality needs to investigate the cause in order to devise corrective measures to be implemented.

- Own Revenue, recorded an under achievement of revenue targets for 2 of the 5 years under review. An under achievement was recorded in 2015/16 and 2019/20 with the extent of variance between actual and budgeted revenue being -13% and -27% for the respective financial years. Own revenue constitutes an average of 70% of the total revenue for each year.

The following table reflects actual revenue per source for the five (5) financial years ending 30 June 2020.

ACTUAL OPERATING REVENUE PER SOURCE FOR THE 5 YEARS ENDING 30 JUNE 2020						
Year	Property Rates	Services Charges	Grants	Other Revenue	Total	Own
2016	37 295 453	176 744 513	122 798 276	31 108 415	367 946 657	245 148 381
2017	49 089 879	235 481 620	151 228 079	37 916 532	473 716 110	322 488 031
2018	56 084 599	307 950 307	130 293 224	51 692 530	546 020 660	415 727 436
2019	59 996 429	269 511 966	161 400 036	70 467 577	561 376 008	399 975 972
2020	65 614 538	177 272 318	157 555 796	70 194 634	470 637 286	313 081 490
Total	**268 080 898**	**1 166 960 724**	**723 275 411**	**261 379 688**	**2 419 696 721**	**1 696 421 310**
%	11%	48%	30%	11%	100%	70%

The graph below reflects sources of revenue for the municipality for the five (5) financial years.



Total revenue raised by the municipality for the 5 years amounts to R2.4 billion and service charges is the biggest source of revenue which contributes 48%, followed by grants transfers at 30% then other revenue and property rates at 11%.Of total revenue, own revenue accounted an average of 70%.

Revenue collection remains a challenge witnessed by high debt impairment amounts, low collection rate and high net debtors days throughout the five years and that derails service delivery.

5.1.3 Expenditure

Section 18(1)(a) of the MFMA states that an annual budget may only be funded from realistically anticipated revenues to be collected.

Funding the budget basically means "funding the expenditure". Funding the expenditure in essence means that the Municipality will realistically project revenue that it anticipates to collect during the budget year. The Municipality will then fund the expenditure by appropriating the realistically anticipated revenue to budgeted expenditure.

The implication of the above is that, budgeted expenditure cannot exceed budgeted revenue because budgeted expenditure can only be to the maximum of the realistically budgeted revenue. It then follows that, a budget wherein expenditure exceeds anticipated revenue is not compliant with provisions of Section 18(1)(a) of the MFMA, and such budget is **UNFUNDED**.

Operating Expenditure

The table below depicts operating expenditure adjusted budget for the 5 financial years ending 30 June 2019-20.

North West: Ditsobotla(NW384) - Table A4 Budgeted Financial Performance (Expenditure)										
Description	Ref	2015/16	2016/17	2017/18	2018/19	2019/20	Percentage Growth each year			
	1	Adjusted Budget	Adjusted Budget	Adjusted Budget	Adjusted Budget	Adjusted Budget	2016/17	2017/18	2018/19	2019/20
Expenditure By Type		R000	R000	R000	R000	R000				
Employee related costs	2	145 253	156 292	167 882	186 213	187 531	8%	7%	11%	1%
Remuneration of councillors		12 910	13 700	14 700	31 186	16 500	6%	7%	112%	-47%
Debt impairment	3	28 893	20 000	20 500	39 343	233 107	-31%	3%	92%	492%
Depreciation and asset impairment	2	32 531	31 764	31 764	50 123	30 000	-2%	0%	58%	-40%
Finance charges		1 100	870	930	-	-	-21%	7%	-100%	0%
Bulk purchases - electricity	2	105 000	123 000	96 244	86 000	96 000	17%	-22%	-11%	12%
Inventory consumed	8	5 000	18 000	18 000	6 417	12 800	260%	0%	-64%	99%
Contracted services		16 200	22 600	19 500	60 813	35 327	40%	-14%	212%	-42%
Transfers and subsidies		8 000	320	11 000	839	-				
Other expenditure	4,5	17 000	19 700	19 700	27 383	13 000	16%	0%	39%	-53%
Losses		-	-	-	-					
Total Expenditure		371 877	406 246	400 220	486 317	624 265	9%	-1%	22%	28%
Surplus/(Deficit)		3 868	-	5 322	18 139	(58 682)	-100%		241%	-424%

The following are highlights of the observations made from the table above:

- Employee related costs recorded a budget increase of 8%, 7%, 11% and 1% in 2016/17, 2017/18, 2018/19 and 2019/20 respectively. The increase in employee costs budget over the years could be a sign of an increase in 'acting' costs for unfilled vacancies.
- Remuneration of councilors maintained an increase over the first 3 years of 6%, 7% and 112% respectively. In 2019/20 there was a drastic decrease of 42% for the remuneration budget.
- Debt impairment recorded a decrease of 31% in 2016/17 and later maintained an increase of 3%, 92% and 492% for the years 2017/18, 2018/19 and 2019/20. A continuous increase is an indication that the municipality has continuously failed to collect amounts due for services rendered by the municipality.
- Depreciation and asset impairment has recorded a decrease of 2% and 40% in 2016/17 and 2019/20 respectively. The only increase of 58% was recorded in 2018/19.
- Finance charges decreased by 21% in 2016/17 and increased by 7% in 2017/18. The budget decreased by 100% in 2018/19 and remained constant in 2019/20. A decrease in budgeted finance charges indicates a reduction in debt which is being incurred by the municipality.

- Bulk purchases: Electricity recorded an increase of 17% and 12% in 2016/17 and 2019/20 respectively. A continuous decrease in successive years 2017/18 and 2018/19 of -22% and -11% was recorded indicating that the municipality planned to procure less electricity from the previous years. The municipality is advised to curb distribution loss by budgeting sufficiently for repairs or maintenance of infrastructure assets.

- Contracted services recorded an increase of 40% in 2016/17 and an abnormal increase of 212% in 2018/19. Decreases of 14% and 42% in 2017/18 and 2019/20 respectively reflect lack of consistency in budgeting methods for contracted services.

- The municipality tabled a deficit budget on financial performance in the most recent financial year, which implies that budgeted revenue was exceeded by the budgeted expenditure, this is a clear indication that the budget was unfunded for this year which is a non-compliance with Section 18 of the MFMA.

The following table reflects a comparison of the actual and the budgeted operating expenditure per source for the five (5) financial years ending 30 June 2020.

OPERATING EXPENDITURE PER SOURCE COMPARATIVE ANALYSIS FOR FIVE (5) YEARS ENDING 30 JUNE 2020								
Year	Description	Employee Costs	Bulk Purchases	Debt Impairment	Depreciation & Asset Impairment	Contracted Services	Other Expenditure	Total
2015/16	Budgeted	145 252 976	105 000 000	28 883 000	32 531 000	16 200 000	44 010 059	371 877 035
	Actual	151 384 869	125 220 265	55 307 230	64 224 886	2 065 640	134 061 423	532 264 313
	Variance							
	Variance %							
2016/17	Budgeted	156 292 000	123 000 000	20 000 000	31 764 000	22 600 000	52 590 000	406 246 000
	Actual	168 253 411	114 710 529	11 322 031	54 690 992	2 119 513	121 114 876	472 211 352
	Variance							
	Variance %							
2017/18	Budgeted	167 882 000	96 244 000	20 500 000	31 764 000	19 500 000	64 330 000	400 220 000
	Actual	172 220 854	82 341 359	-	41 879 230	1 586 366	120 635 475	418 663 284
	Variance							
	Variance %							
2018/19	Budgeted	186 213 476	86 000 000	39 343 000	50 123 000	60 812 766	65 824 845	488 317 087
	Actual	194 792 930	156 643 065	46 015 095	36 101 566	2 188 750	140 581 046	576 322 452
	Variance							
	Variance %							
2019/20	Budgeted	187 530 775	96 000 000	233 106 696	30 000 000	35 327 000	42 300 395	624 264 866
	Actual	165 911 712	148 458 609	389 086 122	28 119 917	13 674 866	118 329 563	863 580 789
	Variance							
	Variance %							

The following are highlights of the observations made from the table above:

- Employee related costs recorded an overspending of the budget for four of the five years under review in 2015/16, 2016/17, 2017/18 and 2018/19. The municipality overspent on the employee costs in these years despite an increase in the budgets for the afore

mentioned years. This is an indication of poor budgeting methods and unrealistic determination of budgeted figures.

- Bulk purchases recorded an overspending in 3 of the 5 years under review and the extent of the overspending was by 19%, 82% and 55% in 2015/16, 2018/19 and 2019/20 respectively. A decrease of budget 2018/19 of 11% was recorded which was unrealistic when the municipality ended up overspending in this year in which the budget was reduced. This is an indication of poor budgeting methods and unrealistic determination of budgeted figures.

- Debt impairment was under budgeted in three of the 5 years under review with an adverse percentage variance of -91%, -17% and -67% in 2015/16, 2018/19 and 2019/20 respectively. Although the debt impairment budget remained fairly high, budget increases in 2016/17 and 2017/18 led to a positive variance over these years. The adverse variance of the budget and actual reflects debtors were impaired more than what was anticipated reflecting that the recoverability of debtors is on a worse state than what the municipality is anticipating.

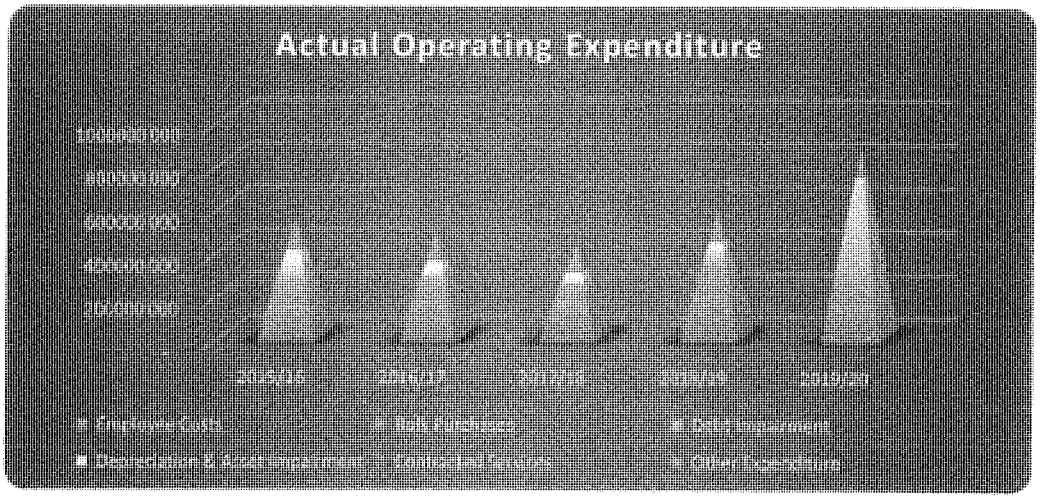
- Depreciation and asset impairment recorded an unfavorable variance for 3 out of the 5 years under review indicating that poor budget and depreciation policies are being implemented.

- Contracted services recorded a favorable variance for the 5 years under review. However there have been drastic increases in the budget despite the actual expenditure being lower that the budget the prior year. This is an indication of poor budget management and controls.

The following table reflects actual operating expenditure per source for the five (5) financial years ending 30 June 2020.

ACTUAL OPERATING EXPENDITURE PER SOURCE FOR THE 5 YEARS ENDING 30 JUNE 2020							
Year	Employee Costs	Bulk Purchases	Debt Impairment	Depreciation & Asset Impairment	Contracted Services	Other Expenditure	Total
2015/16	151 384 869	125 220 265	55 307 230	64 224 886	2 065 640	134 061 423	532 264 313
2016/17	168 253 411	114 710 529	11 322 031	54 690 992	2 119 513	121 114 876	472 211 352
2017/18	172 220 854	82 341 359	-	41 879 230	1 586 366	120 635 475	418 663 284
2018/19	194 792 930	156 643 065	46 015 095	36 101 566	2 188 750	140 581 046	576 322 452
2019/20	165 911 712	148 458 609	389 086 122	28 119 917	13 674 866	118 329 563	863 580 789
Total	852 563 776	627 373 827	501 730 478	225 016 591	21 635 135	634 722 383	2 863 042 190
%	30%	22%	18%	8%	1%	22%	100%

The graph below reflects sources of expenditure for the municipality for the five (5) financial years.



The muncipality recorded a total operating expenditure of R2.8 billion over the five years under review. Employee costs are the main cost driver as they constitute an average of 30% of the total expenditure in each year, followed by bulk purchases and other expernditure at 22%, followed by debt impairement at 18%, depreciation and asset impairement at 8% and contracted services at 1%. Contracted services shows to have contributed only 1% of the total expenditure which is likely an under statement due to misclassification of contracted services in the annual financial statements.

Debt impairments amounts are of great concern as they constitute R501 million of the total own generated revenue of R1.6 billion which translates to an average of 31% for each of the five financial years under review. This is an indication that 31% of the billed revenue is being written off each year reflecting inability to collect revenue.

Depreciation & asset impairment constitutes an average of 8% of the total expenditure which is an indication that municpality's assets continue to depreciate rapidly and loosing their value in use. To compensate for this the municipality is expected to invest more on repairing and maintaining its service delivery assets to ensure that their life span as well as the value-in-use gets to be preserved and extended.

5.1.4 Capital Spending

North West: Ditsobotla(NW384) - Table A5 Budgeted Capital Expenditure by Funding										
Description	Ref	2015/16	2016/17	2017/18	2018/19	2019/20	Percentage Growth each year			
	1	Adjusted Budget	Adjusted Budget	Adjusted Budget	Adjusted Budget	Adjusted Budget	2016/17	2017/18	2018/19	2019/20
Funded by		R000	R000	R000	R000	R000				
National Government		37 392	39 875	55 133	45 851	43 440	7%	38%	-17%	-5%
Provincial Government						28 421				
District Municipality										
Transfers and subsidies - capital										
Transfers recognised - capital	4	37 392	39 875	55 133	45 851	71 861				
Borrowing	6									
Internally generated funds		-	-	-	-	3 000				
Total Capital Funding	7	37 392	39 875	55 133	45 851	74 861				
Grant Funding as % of Total Capital Funding		100%	100%	100%	100%	96%				

The following are highlights of the observations made from the table above:

- The funding provided by the National Government has increased for the years 2016/17 and 2017/18 and eventually started decreasing for the last two years under review. The budgeted grants increased by 7% in 2016/17 and by 38% in 2017/18, in 2018/19 the budget decreased by 17% and by 5% in 2019/20. This is an indication that the National Treasury has reduced the level of funding it was offering to the municipality most likely due to non-compliance to its regulations.

- There were no internally generated funds budget for the 4 out of 5 years under review. This indicates that the Municipality has been highly reliant on Government Grants to fund its capital projects.

- From the calculation Grant Funding as a percentage of Total Capital Funding it can be concluded that the municipality is highly dependent to grant funding for their capital projects funding witnessed by average of 99% grant funding percentage over the years under review.

The following table reflects a comparison of the budgeted and the actual capital expenditure for the five (5) financial years ending 30 June 2020.

Comparison of the Budgeted Capital Expenditure and Actual Capital Expenditure					
	2015/16	2016/17	2017/18	2018/19	2019/20
Budget Capital Expenditure	37 392 000	39 875 000	55 133 000	45 851 000	74 861 098
Actual Capital Expenditure	**34 237 443**	**80 506 698**	**46 244 856**	**30 577 658**	**19 137 226**
Investment Property Additions	-	-	-	-	-
PPE Additions	33 758 172	80 506 698	46 244 856	30 577 658	19 137 226
Intangible Additions	479 271	-	-	-	-
Heritage Assets Additions	-	-	-	-	-
Variance	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Variance %	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

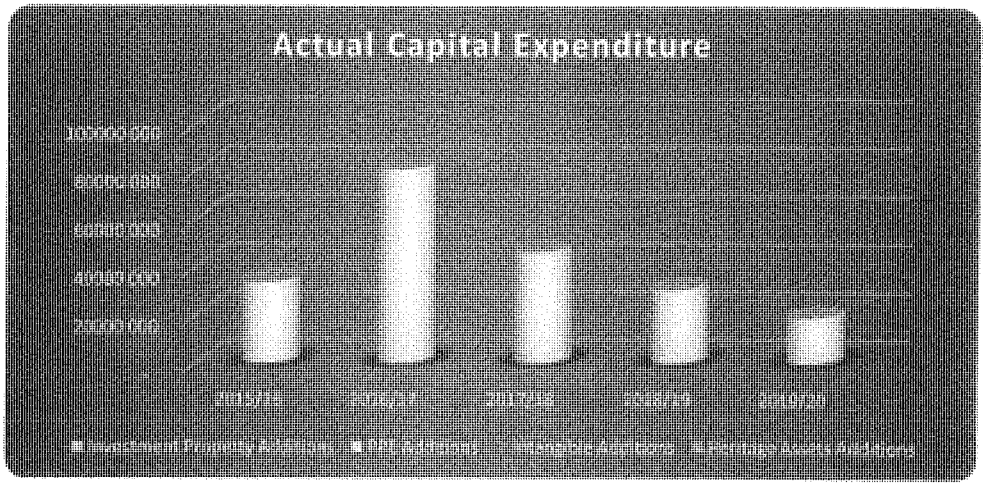
The following are highlights of the observations made from the table above:

- Capital expenditure was underspent for all the years except in 2016/17 where the budget was overspent by R40 631 698, the extend of the variance from the budget being 102%.
- Underspending of the capital expenditure budget may also be an indication that the municipality is experiencing cash flow difficulties to implement projects as a result of spending capital expenditure budgeted funds on operating activities for which the funds were not intended for.
- Variances witnessed all the years indicates discrepancies in planning and budgeting, capacity challenges to implement projects and/or a lack of effective controls in place to ensure that expenditure is incurred in accordance with an approved budget.

The table below reflects percentage capital expenditure per each category of assets for the municipality for the five (5) financial years

Actual Capital Expenditure Percentage per each Category of Assets					
Description	2015/16	2016/17	2017/18	2018/19	2019/20
Investment Property Additions	0%	0%	0%	0%	0%
PPE Additions	99%	100%	100%	100%	100%
Intangible Additions	1%	0%	0%	0%	0%
Heritage Assets Additions	0%	0%	0%	0%	0%

The graph below reflects capital expenditure per each category of assets for the municipality for the five (5) financial years.



Property Plant and Equipment is the highest spender category of the capital budget followed by intangible assets. Nothing was spent on investment property and heritage assets for the all the five years under review.

5.1.5 Debtors Age Analysis

The table below presents debtors book of the Municipality for the five (5) years ending 30 June 2020.

DEBTORS AGE ANALYSIS FOR THE FIVE (5) YEARS ENDING 30 JUNE 2020							
Year	Description	00-30 Days	31-60 Days	61-90 Days	Over 90 Days	Total	% of Total
2015/16	Organs of State	1 590 275	1 348 385	1 041 250	44 980 957	48 960 867	18%
	Commercial	9 505 522	2 011 113	2 101 334	21 344 870	34 962 839	13%
	Households	9 125 741	4 964 813	5 212 752	167 804 084	187 107 390	69%
	Total	**20 221 538**	**8 324 311**	**8 355 336**	**234 129 911**	**271 031 096**	
2016/17	Organs of State	7 558 694	2 304 117	26 578 634	55 516 671	91 958 116	23%
	Commercial	11 177 418	2 603 969	3 124 002	40 691 994	57 597 383	15%
	Households	36 640 820	8 368 662	6 342 445	190 497 158	241 849 085	62%
	Total	**55 376 932**	**13 276 748**	**36 045 081**	**286 705 823**	**391 404 584**	
2017/18	Organs of State	3 241 182	1 084 732	921 335	26 719 010	31 966 259	5%
	Commercial	15 667 845	9 298 700	8 099 898	160 425 239	193 491 682	32%
	Households	21 112 141	17 555 344	12 016 751	329 423 128	380 107 364	63%
	Total	**40 021 168**	**27 938 776**	21 037 984	**516 567 377**	**605 565 305**	**85%**
2018/19	Organs of State						#DIV/0!
	Commercial						#DIV/0!
	Households						#DIV/0!
	Total	-	-	-	-	-	
2019/20	Organs of State						#DIV/0!
	Commercial						#DIV/0!
	Households						#DIV/0!
	Total	-	-	-	-	-	#DIV/0!

Low revenue collection negatively affects Municipalities' ability to finance their operations which subsequently lead to increased debtors. Households debtors constitute the major part of the debtors book balance averaging at 64% of the total debtors. The debtors balance is continuously rising year by year with no expectation of reducing. The above table indicates that **85%** of the total debtors' balance is being owed for more than 90 days and it is highly probable that they are not going to be recovered considering the period the money has been owed for. Revenue collection of the municipality requires urgent attention and corrective measures should be implemented.

Quality credit control and effective collection methods needs to be implemented to improve collection of billed revenue. Revenue Management should ensure affordable tariffs are set and correct billing is done. Number of indigent households supported by the municipality may need to be reviewed.

Debtors age analysis information was not captured in the budget tables for the years 2018/19 and 2019/20 highlighted in red above which was a limitation in our analysis.

5.1.6 Creditors Age Analysis

The table below presents the outstanding creditors of the Municipality for the five (5) years ending 30 June 2020.

CREDITORS AGE ANALYSIS FOR THE FIVE (5) YEARS ENDING 30 JUNE 2020							
Year	Description	00-30 Days	31-60 Days	61-90 Days	Over 90 Days	Total	% of Total
2015/16	Bulk Electricity	12 876 568	45 981 386	36 569 795	65 100 358	160 528 107	96%
	Bulk Water	-	375 987	-	6 720 489	7 096 476	4%
	Trade Creditors	-	-	-	-	-	0%
	Auditor-General	-	-	-	-	-	0%
	Total	**12 876 568**	**46 357 373**	**36 569 795**	**71 820 847**	**167 624 583**	
2016/17	Bulk Electricity	-	15 296 339	10 119 919	194 933 090	220 349 348	98%
	Bulk Water	-	-	-	4 098 322	4 098 322	2%
	Trade Creditors	-	-	-	-	-	0%
	Auditor-General	-	-	-	-	-	0%
	Total	-	**15 296 339**	**10 119 919**	**199 031 412**	**224 447 670**	
2017/18	Bulk Electricity	-	470 916	27 300 270	274 762 768	302 533 954	96%
	Bulk Water	3 049 472	-	-	9 772 404	12 821 876	4%
	Trade Creditors	-	-	-	-	-	0%
	Auditor-General	-	-	-	-	-	0%
	Other	-	-	-	-	-	0%
	Total	**3 049 472**	**470 916**	**27 300 270**	284 535 172	**315 355 830**	**90%**
2018/19	Bulk Electricity						#DIV/0!
	Bulk Water						#DIV/0!
	Trade Creditors						#DIV/0!
	Auditor-General						#DIV/0!
	Total						
2019/20	Bulk Electricity						#DIV/0!
	Bulk Water						#DIV/0!
	Trade Creditors						#DIV/0!
	Auditor-General						#DIV/0!
	Total	-	-	-	-	-	**#DIV/0!**

Total outstanding creditors over 90 days reported at 30 June 2018 amounted to over R300 million. This is non-compliance with Section 65(2)(e) of the MFMA which requires Municipalities to pay invoices or statements within 30 days of receipt. The above table indicates that over **90%** of the total creditors' balance is outstanding for more than 90 days and that indicates financial distress. Non payment of creditors can further be attributed to poor cash flow management and low revenue collection.

Eskom which supplies bulk electricity is the highest owed creditor currently constituting 96% of the total creditors.

The available cash is not sufficient to cover payment plans entered into with Eskom.

Creditors exceeds available cash and investments, meaning the Municipality is unable to service the financial obligations as they are due and payable.

Creditors age analysis information was not captured in the budget tables for the years 2018/19 and 2019/20 highlighted in red above which was a limitation in our analysis.

5.1.7 Basic Services Provision

NW384 Ditsobotla - Table A10 Basic service delivery measurement

Description	Ref	2016/17	2017/18	2018/19	Current Year 2019/20			2020/21 Medium Term Revenue & Expenditure		
		Outcome	Outcome	Outcome	Original Budget	Adjusted Budget	Full Year Forecast	Budget Year 2020/21	Budget Year +1 2021/22	Budget Year +2 2022/23
Households receiving Free Basic Service	7									
Water (6 kilolitres per household per month)		-	-	-	-	-	-	-	-	-
Sanitation (free minimum level service)		-	-	-	-	-	-	-	-	-
Electricity/other energy (50kwh per household per month)		-	-	-	-	-	-	-	-	-
Refuse (removed at least once a week)		-	-	-	-	-	-	-	-	-
Cost of Free Basic Services provided - Formal Settlements (R'000)	8									
Water (6 kilolitres per indigent household per month)		-	-	-	-	-	-	-	-	-
Sanitation (free sanitation service to indigent households)		-	-	-	-	-	-	-	-	-
Electricity/other energy (50kwh per indigent household per month)		-	-	-	1 571	1 571	1 571	-	-	-
Refuse (removed once a week for indigent households)		-	-	-	-	-	-	-	-	-
Cost of Free Basic Services provided - Informal Formal Settlements (R'000)		-	-	-	-	-	-	-	-	-
Total cost of FBS provided		-	-	-	1 571	1 571	1 571	-	-	-
Highest level of free service provided per household										
Property rates (R value threshold)										
Water (kilolitres per household per month)										
Sanitation (kilolitres per household per month)										
Sanitation (Rand per household per month)										
Electricity (kwh per household per month)										
Refuse (average litres per week)										
Revenue cost of subsidised services provided (R'000)	9									
Property rates (tariff adjustment) (impermissable values per section 17 of MPRA)										
Property rates exemptions, reductions and rebates and impermissable values in excess of section 17 of MPRA)		-	-	-	-	-	-	-	-	-
Water (in excess of 6 kilolitres per indigent household per month)		-	-	-	-	-	-	-	-	-
Sanitation (in excess of free sanitation service to indigent households)		-	-	-	-	-	-	-	-	-
Electricity/other energy (in excess of 50 kwh per indigent household per month)		-	-	-	-	-	-	-	-	-
Refuse (in excess of one removal a week for indigent households)		-	-	-	-	-	-	-	-	-
Municipal Housing - rental rebates										
Housing - top structure subsidies	6									
Other										
Total revenue cost of subsidised services provided		-	-	-	-	-	-	-	-	-

The following are highlights of the observations made from the table above:

- Table A10 of A schedules which indicates the level of achievement of basic services provision is not being completed by the municipality which is an indication that the municipality is not addressing service delivery performance.
- The table is supposed to provide details of how the Municipality is delivering services to the communities and consequently reducing the developmental backlogs.
- How the Municipality is providing Free Basic Services to indigent communities and consequently reducing the financial and poverty strains.
- Failure to provide details of Free Basic Services provided to indigent communities suggests that the Municipality is misappropriating the Equitable Share allocation meant for the intended beneficiaries.

5.2 SECTION 138 INDICATORS

In terms of Section 138 which states that 'When determining for the purposes of section 137 the seriousness of a financial problem, all relevant facts must be considered, and the following factors, singly or in combination, may indicate a serious financial problem:

The municipality triggered the following subsections:

(a) the municipality has failed to make payments as and when due; which is witnessed by an creditors payment period which are abnormally above the norm of 30 days over the entire 5-year period under review and creditors age analysis with over 350 million rand being owed for more than 90 days at 30 June 2020.

	Norm	2014/15	2015/16	2016/17	2017/18	2018/19
Creditors Payment Period (Trade Creditors)	30 days					

(d) The municipality had an operating deficit in excess of five percent of revenue in the most recent financial year for which financial information is available, as witnessed by a negative net operating surplus margin for the four out of five years since 2014/15 financial year.

	Norm	2014/15	2015/16	2016/17	2017/18	2018/19
Net Operating Surplus Margin	= or > 0%					

(e) Non submission of Annual Financial Statements to Auditor General for auditing within two months after the end of the financial year as required by section 126(1)(a) of the MFMA. For the past recent financial year Auditor General reported late submission of AFS by the municipality.

(f) The Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the municipality, or has issued an opinion which identifies a serious financial problem in the municipality, as witnessed by the qualified audit opinions in 2015/16 and disclaimer of opinion over 4 years of the 5 years under review.

(h) Current Ratio below the norm over the 5 years is a material existing condition which indicates that the municipality is likely to be unable for financial reason to meet its obligations.

	Norm	2014/15	2015/16	2016/17	2017/18	2018/19
Current Ratio	1.5 - 2:1					

5.3 SECTION 140 INDICATORS

S140 of the MFMA provides criteria for determining serious or persistent material breach of financial commitments. S140(2) states factors which singly or in combination, may indicate that a municipality is in serious material breach of its obligations to meet its financial commitments:

S140(2)(C) the municipality has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two per cent of the municipality's budgeted operating expenditure.

The table below presents the percentage of total creditors (payables from exchange transactions) as a percentage of the budgeted operating expenditure.

Trade Creditors as percentage of Budgeted Operating Expenditure					
Description	2015/16	2016/17	2017/18	2018/19	2019/20
Payables from exchange transactions	327 478 506	430 293 416	462 523 100	623 583 881	820 058 001
Budgeted Total Expenditure	371 877 035	406 246 000	400 220 000	488 317 087	624 264 866
Creditors as a % of budgeted operating expenditure	88%	106%	116%	128%	131%

In all the years under review, the percentage of creditors as a percentage of the budgeted operating expenditure has drastically exceeded 2% which is in contravention of S140 (2)(c) therefore the municipality is in material breach of financial commitments and in did a candidate for intervention.

6. CONCLUSION

From the perspective gained from the budget analysis Ditsobotla Local Municipality is struggling to generate as well as to collect billed revenue for appropriation into funding the expenditure priorities, or the Municipality might be collecting sufficient revenue but struggling with expenditure management, thereby spending on non-core and non-essential expenditure items.

In addition, the municipality triggered both S138 and S140 of the MFMA therefore it is a candidate for intervention. Intervention is inevitable to assist the municipality to remain financially sustainable.

7. RECOMMENDATIONS

The municipality need to improve its liquidity position by implementing good debtor's management process and review its tariffs to ensure they are cost reflective to reduce deficits witnessed in all services, in order to stabilise financially.

Institutionally the municipality need to capacitate its employees and follow the prescripts of the MFMA and complementary legislation in order to reduce high reported irregular, fruitless & wasteful and unauthorized expenditure.

Deterioration of budgeted figures has been witnessed year by year being at its worst in the most recent financial year which calls for urgent attention for intervention, otherwise the municipality will not be able to deliver on its mandate in the foreseeable future.

The municipality needs to start reporting on service deivery performance which it has not been reporting on for the past years to indicate their level of achievement of basic services provision.

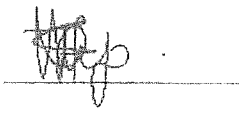
We therefore recommend a status quo assessment for factual correctness and context of the identified possible causes of the financial difficulties indicators raised during the analysis in order to devise corrective measures for implementation.

8. SIGN OFF AND ACKNOWLEDGEMENT OF RECEIPT

Whilst due care has been taken by Thuso Financial Consultants in the preparation of the opinions, assessments and information provided in this document Thuso does not give any warranties as to their correctness, accuracy or completeness, nor do they assume liability for any losses arising from actions taken based on the information provided.

This document contains information that is confidential and is for use by intended parties only.

Yours Sincerely



D Muradya

Director: Thuso Financial Consultants

The contents of this report were presented, discussed and accepted by the Provincial Treasury represented by the following officials.



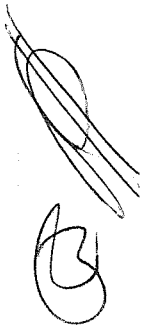
Ms M Ledingoane

Director: MFM



Ms L Nengovhela

Project Sponsor



C0321

Office of the Premier

North West Provincial Government
REPUBLIC OF SOUTH AFRICA

EXECUTIVE SUPPORT

EXTRACT FROM THE MINUTES OF SPECIAL VIRTUAL MEETING 10/2022 OF THE NORTH WEST PROVINCIAL EXECUTIVE COUNCIL HELD ON WEDNESDAY, 13 SEPTEMBER 2022

3.1 **INVOCATION OF SECTION 139 (1)(C) OF THE CONSTITUTION IN THE DITSOBOTLA LOCAL MUNICIPALITY**

The Executive Council, having considered the status report of the Ditsobotla Local Municipality as presented, resolved as follows:

a) EXCO invoked Section 139 (1) (c) of the Constitution of the Republic of South Africa in the Ditsobotla Local Municipality, with immediate effect.

b) EXCO mandated the MEC responsible for Cooperative Governance & Traditional Affairs to notify both the national Minister of COGTA, the National Council of Provinces and the Provincial Legislature of the decision to invoke Section 139 (1)(c) the Constitution of the Republic of South Africa in the Ditsobotla Local Municipality with immediate effect.

c) EXCO mandated the MEC responsible for Cooperative Governance & Traditional Affairs to communicate the decision with the leadership of the affected municipality and other stakeholders

d) EXCO mandated the MEC responsible for Cooperative Governance & Traditional Affairs to appoint an Administrator to implement the decision of EXCO, in consultation with the Premier.

e) Once the Administrator has been appointed, National Treasury be informed accordingly and that the Equitable Share of the Ditsobotla Local Municipality be released as a matter of urgency.

f) EXCO agreed that in view of the Ditsobotla Local Municipality being in financial distress, a financial recovery plan should be developed and implemented for the Municipality to become sustainable.

B K Jonkers
Executive Council Support
Date: 15/09/2022

0329
CC22

KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB1021
Your ref:

23 September 2022

THE PRESIDENT
REPUBLIC OF SOUTH AFRICA
UNION BUILDINGS
PRETORIA

URGENT ATTENTION

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Mr President/Minister/Sir/Madam

URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS

IN RE: DITSOBOTLA LOCAL MUNICIPALITY

1. We act on the instructions of Sakeliga NPC ("our client" / "Sakeliga").

2. Sakeliga is a non-profit business interest organisation with the objective of protecting constitutional rights, constitutional order, the rule of law, free market principles and a just and sustainable business environment within the Republic of South Africa. Our client specifically seeks to promote economic prosperity and the sustaining of favourable business environments in the interest of the common good.

3. Sakeliga is already the applicant in a High Court application issued in the North West High Court, Mahikeng, under case number M311/2021. Except for the President, all the parties to which this letter is addressed are also parties to the litigation.

4. Sakeliga inter alia seeks a structured interdict with the intention that the Court, for as long as it may be necessary, retains a constitutional oversight role to ensure that all relevant players in the three different spheres of government (national, provincial and local government) comply with their constitutional duties in regard to the severely financially distressed Ditsobotla Local Municipality. The application has one goal: ensuring effective and functional local government.

5. Ditsobotla Local Municipality has over the last 10 years suffered a progressive collapse in municipal governance. Currently, the residents and businesses within Ditsobotla suffer due to municipal management and basic service delivery failure. Despite various attempts to enforce voluntary intervention in terms of section 139(1) of the Constitution, the North West province has been unsuccessful in its attempts to remedy the growing crisis in Ditsobotla.

6. Ditsobotla is a debt-ridden and failing municipality plagued by mismanagement, political factionalism, and corruption. Fiscal and administrative control in the municipality is non-existent. The municipality is factually insolvent. According to our client's records, the municipality has received year-on-year qualified audits with serious detrimental findings. This situation has had a direct negative social and economic impact on every resident and every business operating within its jurisdictional area. Many businesses, including large industries, have moved their operations to other jurisdictions. Ditsobotla has become an unsustainable and unprofitable economy for business.

7. Gross mismanagement in the municipality also endangers the national electricity and water networks. Ditsobotla plays a significant role in the Eskom debt-crisis. According to our client's records, the municipality has also failed to pay its debts to the former Sedibeng Water Board. Sedibeng Water has apparently since the issuing of Sakeliga's application collapsed.

8. Like the Eskom debt-crisis, concerns exist about the municipality's ability to provide its residents proper water, sanitation, and other municipal services. Sakeliga believes that Ditsobotla is no longer in a position, financially and administratively, to manage and maintain effective municipal services in its area.

9. In the already issued application, our client *inter alia* seeks the following relief:

    9.1 That Ditsobotla be found to be in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments;

    9.2 That the provincial government's failure to implement mandatory intervention in terms of section 139(5) of the Constitution, read with sections 136(4), 139 and 140 of the MFMA, be found to be inconsistent with the Constitution;

    9.3 That the MEC for Cooperative Governance, alternatively the provincial government of North West province, be directed to apply mandatory intervention as envisaged in section 139 of the MFMA;

    9.4 That the provincial government be directed to:

        9.4.1 Determine the reasons for the crisis in Ditsobotla's financial affairs;

        9.4.2 Assess the financial status of the municipality;

9.4.3 Instruct the Municipal Finance Recovery Service of the National Treasury to prepare a recovery plan for Ditsobotla;

9.4.4 Recommend appropriate changes to the municipality's budget and revenue raising measures that will give effect to a recovery plan, as developed.

9.5 That the MEC: Cooperative Governance be directed to prepare a report to be filed with the court every two calendar months after the granting of the order, setting out the steps taken by the respondents, as the case may be, in recovering the Ditsobotla Local Municipality, which report shall provide updates on the implementation of the developed financial recovery plan;

9.6 That all reports prepared during the recovery of Ditsobotla be provided to Sakeliga and its local supporters.

10. It is worth mentioning that the national and provincial respondents to the application have all opposed our client's application. Ditsobotla has filed a notice of intention to oppose but failed to file any answering affidavits in response to the applicant's constitutional challenge. Eskom Holdings SOC Ltd, who is also a respondent in the application, filed an affidavit which largely supports the applicant's relief.

11. We can confirm that the application has been referred to case management and that a meeting with the presiding judge occurred on 7 September 2022. A further case management hearing has been scheduled for 17 November 2022 to dispose of interlocutory applications and finally enrol the matter for hearing on 23 and 24 March 2023.

12. Sakeliga believes that answering affidavits filed by the respondents, except those filed by Eskom, have raised only procedural defences to the constitutional challenge, whilst effectively admitting that Ditsobotla is in long-term systemic financial and administrative collapse.

13. On 21 September 2022, our client was informed by supporters conducting business in Ditsobotla, that the provincial government on 15 September 2022 proceeded to invoke section 139(1) of the Constitution and called for the disbanding of the municipal council, the appointment of an administrator and the development of a recovery plan. This decision to again invoke discretionary intervention, particularly in the view of the severe and persistent breach by Ditsobotla of its ability to provide basic services and the serious and continuing crisis in

Ditsobotla's financial affairs, came as a shock to our client – especially given the already pending litigation seeking mandatory intervention.

14. On what basis can voluntary intervention in terms of section 139(1) of the Constitution still be an option?

15. According to the records available to our client:

15.1 Ditsobotla does not keep full and proper records of its affairs. This has resulted in repeated disclaimed Auditor-General of South Africa ("AGSA") opinions being issued. According to the AGSA's *Material Irregularities Status Report* as of 15 April 2022, the Municipality's failure to correct its financial accounting failures is substantially harming the institution. In the opinion of the Auditor-General, the municipality's financial position *was so* ***poor that it disclosed a material uncertainty regarding its ability to continue operations.*** *(AGSA* Material Irregularities Status Report 15 April 2022 p72-p73).

15.2 Ditsobotla has also been identified as one of twenty-four public institutions that have failed to make any progress in resolving material irregularities over the last audit period. ***(AGSA* Material Irregularities Status Report 15 April 2022 p5)**.

15.3 According to the AGSA's General Report issued on 15 June 20222, Ditsobotla's audit outcome has been identified as a *repeat disclaimed opinion*, under circumstances where the accounting officers have taken *little or no action* **(AGSA General Report 15 June 2022 p52)**. The audit outcomes have remained disclaimed outcomes and unchanged since at least 2016.

15.4 Unauthorised expenditure increased from R87.1 million (2019), to R134 million (2020). Fruitless and wasteful spend increased from R153.9 million (2019), to R209.1 million (2020). Irregular spending increased from R119.9 million (2019) to R159.9 million (2020). No further entity specific opinions have been made available since publication of the AGSA General Report. However, Sakeliga has been advised that the issue has not improved.

15.5 Municipal workers regularly face problems with the prompt payment of salaries. According to Sakeliga's supporters in Ditsobotla, the municipality has still not paid employees for August 2022 due to 'cash flow problems' (the municipality's

spokesperson, Pius Batsile has admitted this fact to journalists on 22 September 2022). Sakeliga has been advised that salaries for September 2022 has already become due, but that payment is unlikely.

15.6 The failure to pay employees, the lack of an appointed administrator and the anarchy resulting from the dissolving of the municipal council, have resulted in unsupervised desperate employees misusing their positions in the municipality to conduct unlawful collection practices with the hope of 'securing' their salaries.

15.7 Only a handful of workers are working (without payment) to ensure that at least water and electricity services remain. Most of the municipal staff have refused to return to work. All other services, even emergency services, have stalled.

15.8 The municipal offices have been closed, and no one is supervising the municipality.

15.9 The provincial executive has continued to withhold the municipality's equitable share.

15.10 Ditsobotla remains in breach of its contractual and public duty to pay Eskom. According to our sources, Ditsobotla's outstanding account with Eskom is currently more than R806 million in arrears.

16. The municipality is clearly in persistent breach of its service delivery obligations. Ditsobotla's financial crisis cannot be ignored or denied anymore.

17. Section 139(1) can only be implemented under circumstances where there is a failure to fulfil an *executive obligation in terms of the Constitution or legislation*. The section is not designed for cases of serious financial and service delivery collapse.

18. Where a municipality faces *a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments*, **the relevant provincial executive is constitutionally obligated to intervene in terms of section 139(5) of the Constitution.** If the provincial executive fails to intervene, the obligation falls onto the national executive to do so in terms of section 139(7) of the Constitution.

19. Sakeliga believes that the provincial executive is acting in breach of its constitutional obligations by placing Ditsobotla under section 139(1) voluntary intervention under circumstances where a clear case for mandatory intervention under section 139(5) has existed since prior to the

issuing of our client's first application. However, the current collapse in municipal government at Ditsobotla has shifted the need for mandatory from a constitutional priority to a constitutional emergency.

20. The main features of this crisis in Ditsobotla are (1) the severe and persistent financial mismanagement at Ditsobotla, (2) the refusal by the provincial executive to implement mandatory intervention, (3) the severe cash-flow problems facing the municipality, and the subsequent failure to pay employees, (4) the closing of the municipal offices, (5) the failure to ensure that an administrator is appointed to ensure that basic municipal services can continue and (6) the dispute between the municipal council and the provincial executive regarding those intervention steps already taken by the province.

21. Sakeliga and its supporters are aggrieved by the failure by all spheres of government to meaningfully engage with them over the last 18 months, especially during the months preceding the collapse in Ditsobotla. Our client's supporters are people and businesses directly affected by state failure. Despite litigation having been initiated by Sakeliga and its supporters to seek long-term solutions, specific mandatory intervention, and court oversight in Ditsobotla, our client and its supporters have only been ignored. Whilst national and provincial executives plan, the residents of Ditsobotla face the consequences of failing municipal structures and constant service delivery failures.

22. Not a single party to Sakeliga's current application before the High Court has provided our client the courtesy of informing us of the developments in the provincial executive's 'intervention' plans. Our client only found out about the municipal collapse in Ditsobotla when supporters started contacting Sakeliga on 21 September 2022 about the closure of the municipal offices and the unlawful debt-collection activities being employed by desperate unpaid employees.

23. Sakeliga insists that government, especially the national executive, meet with our client to meaningfully engage on the issues underlying the crisis and possible solutions to those problems facing recovery. Our client and its supporters have a right to meaningful engagement, especially where state failures directly affect municipal residents' dignity and constitutional rights.

24. Our client requests an urgent meeting with government representatives and suggests a meeting on 27 September 2022 at 09h00, alternatively for an urgent time and date to be arranged.

25. Furthermore our client demands the following undertakings from government:

25.1 That the provincial executive immediately impose urgent mandatory intervention in Ditsobotla in terms of section 139(5) of the Constitution, alternatively and in the event of the provincial executive failing and/or refusing to do so, that the national executive impose urgent mandatory intervention in Ditsobotla in terms of section 139(7) of the Constitution;

25.2 That an administrator be appointed by no later than 27 September 2022;

25.3 That that the provincial executive release to the administrator a sufficient portion of Ditsobotla's equitable portion in order to allow the administrator to pay employee salaries for August 2022 and September 2022 by no later than 27 September 2022;

25.4 That the appointed administrator be authorised to pay municipal employees and to oversee the day to day management and control of the municipal administration and service delivery functions by no later than 28 September 2022;

25.5 That the appointed administrator be instructed to meet with Sakeliga and the residents of Ditsobotla to discuss the municipality's current problems and seek solutions.

26. Our client requires a response to this letter by no later than Monday, **26 September 2022 at 10h00**. Our client reserves the right to approach the High Court for constitutional, declaratory, and mandatory relief, which can include relief sought by means of an urgent application. Our client would of course prefer to meaningfully engage with government to seek solutions.

27. We respectfully await your urgent response.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za

Elektronies getekend
Electronically signed

Rohann Eloff

From: Rohann Eloff
Sent: Friday, 23 September 2022 16:25
To: president@po.gov.za; malebo@presidency.gov.za; tyrone@gcis.gov.za; president@presidency.gov.za; info@cogta.gov.za; MandisaMB@cogta.gov.za; ZandileZ@cogta.gov.za; ThinavhuyoN@cogta.gov.za; sifison@cogta.gov.za; Lungim@cogta.gov.za; LegadimaL@cogta.gov.za; MathoM@cogta.gov.za; minreg@treasury.gov.za; mary.marumo@treasury.gov.za; Cleopatra.Mosana@treasury.gov.za; Nokwanda.Mahori@treasury.gov.za; vngesi@nwpg.gov.za; MGasemene@nwpg.gov.za; Bmohlakoana@nwpg.gov.za; gbowker@nwpg.gov.za; BSetswambung@nwpg.gov.za; sanders@nwpg.gov.za; marcia@nwpg.gov.za; dthapelo@nwpg.gov.za; cmotshabi@nwpg.gov.za; krabanye@nwpg.gov.za; syende@nwpg.gov.za; mapodile@nwpg.gov.za; mathibeditsholofelo@gmail.com; nmatseke@nwpg.gov.za; IKunene@nwpg.gov.za; gabebogosi@nwpg.gov.za; info@tiroattorneysinc.co.za; mmolefe94@gmail.com; Mekgwe Nthabiseng; BMoloto@justice.gov.za; MMoholo@justice.gov.za; Zingisa.Zenani@treasury.gov.za; Zenani Zingisa
Cc: Peter Wassenaar; Melissa Jansen van Vuuren
Subject: URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS - IN RE: DITSOBOTLA LOCAL MUNICIPALITY
Attachments: President and others sent 2022-09-23.pdf

Importance: High

Tracking:

Recipient	Delivery
president@po.gov.za	
malebo@presidency.gov.za	
tyrone@gcis.gov.za	
president@presidency.gov.za	
info@cogta.gov.za	
MandisaMB@cogta.gov.za	
ZandileZ@cogta.gov.za	
ThinavhuyoN@cogta.gov.za	
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mmolefe94@gmail.com	
Mekgwe Nthabiseng	
BMoloto@justice.gov.za	
MMoholo@justice.gov.za	
Zingisa.Zenani@treasury.gov.za	
Zenani Zingisa	
Peter Wassenaar	Delivered: 2022/09/23 16:26
Melissa Jansen van Vuuren	Delivered: 2022/09/23 16:26

Good day

We refer to the above matter and attached hereto a letter for your urgent attention.

Kindly confirm receipt of same.

Yours faithfully

Rohann Eloff

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

∘ (t) (+27) 12 803 4719 ∘ (f) (+27) 86 596 8797

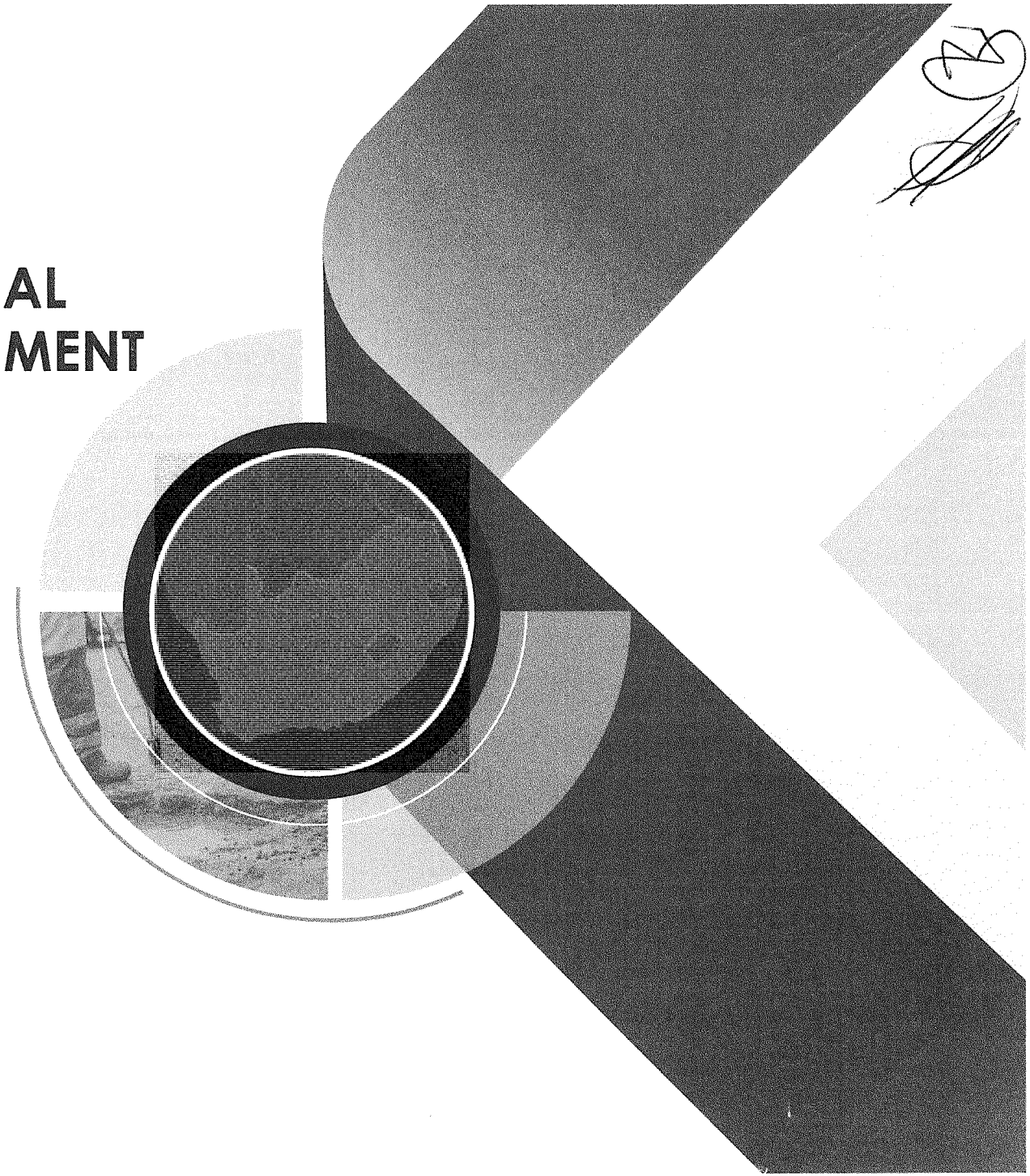
∘ (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

∘ (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 ∘ BTW Reg: 4020260685 ∘ Reg: 2012/030418/21

CC23 0340

STATUS OF MATERIAL IRREGULARITIES IN NATIONAL, PROVINCIAL AND LOCAL GOVERNMENT

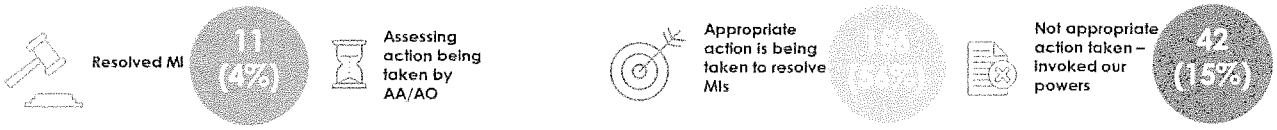
15 April 2022



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Status of the 278 MIs



We did not hesitate to use our enforcement mandate if the AO/AA did not take appropriate action.

Actions taken by the AGSA

156 MIs – Appropriate actions is being taken to resolve MIs

11 MIs – Resolved MIs

29 MIs – Lack of progress by AO/AA resulting in recommendations issued

1. Maluti-A-Phofung LM
2. Masilonyana LM
3. Tokologo LM
4. Govan Mbeki LM
5. City of Tshwane MM (3)
6. Msunduzi Municipality
7. Kai !Garib LM
8. Joe-Morolong LM
9. City of Matlosana LM (2)
10. Ditsobotla LM
11. Dr Ruth Segomotsi Mompati DM
12. JB Marks LM
13. Kgetlengrivier LM
14. Madibeng LM
15. Mahikeng LM
16. Mamusa LM
17. Ngaka Modiri Molema DM (3)
18. Ramotshere Moiloa LM
19. Lekwa Teemane LM
20. Naledi LM
21. Department of Health – EC
22. National Skills Fund
23. Department of Cooperative Governance
24. Department of Defence

7 MIs – Recommendations not implemented by AO/AA resulting in remedial action issued

1. Ngaka Modiri Molema DM (3)
2. Human Settlements – FS (2)
3. Passenger Rail Agency of SA
4. Department of Defence

5 MIs – Lack of progress by AO/AA resulting in referral for investigation to public body

1. Matjhabeng LM
2. Health – NC
3. National Treasury
4. Department of Defence
5. South African Post Office Limited

1 MI – Lack of progress by AO/AA in referral for investigation to publicic body and recommendations

1. Free State Development Corporation

The report is presented per sphere of government. Included in the report are the 278 MIs to which the AO/AA responded. The movement from total MIs notified to those reported in the MI report is as follows:

No.	Notified	Type	MI description	Status	Status description
			Irregularity: Non-compliance with section 65(2)(f) of the MFMA Impact: Material financial loss of R43,3 million		The municipality also instructed the attorneys to initiate legal action to recover the losses, which was still in progress. The municipality referred the matter to the Hawks. This investigation was still underway.
Ditsobotla LM					
113.	11 June 2021	Repeat disclaimed audit opinion	The municipality did not keep full and proper records of its financial affairs, which resulted in a repeat disclaimed opinion on its financial statements of 2019-20. The impact was substantial harm to the municipality as its financial position was so poor that it disclosed a material uncertainly regarding its ability to continue operations. This, in turn, is likely to have an impact on the municipality's ability to discharge its service-delivery mandate. Irregularity: Non-compliance with section 62(1)(b) of the MFMA Impact: Substantial harm to public sector institution	Recommendations	The AO failed to implement the planned actions to resolve the MI. We notified the AO of the following recommendations, which should be implemented by 9 June 2022: • The non-compliance with section 62(1)(b) of the MFMA should be investigated to determine the reasons and circumstances that led to the non-compliance for the purpose of taking appropriate corrective actions and addressing control weaknesses. • Based on the reasons and circumstances, appropriate action should be taken to develop and commence with the implementation of an action plan to address poor record keeping so that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards, as required by 62(1)(b) of the MFMA. The plan should include anticipated time frames and address the following key areas, as a minimum: o Complete asset register of all of the municipality's infrastructure assets, including work in progress and information for assets that have been fully depreciated but are still in use o Billing information and reconciliations to support revenue from service charges o Reconciliations of all bank accounts of the municipality

No.	Notified	Type	MI description	Status	Status description
					o Payment vouchers, creditor statements and creditor reconciliations for purchases. The expenditure incurred should be supported by sufficient evidence that goods and services paid for were received. We further recommended that the AO should take appropriate action to develop and commence with the implementation of an action plan to address the financial problems of the municipality, as required by section 135(1) and 135(3)(a) of the MFMA, by 9 September 2022. The plan should describe the anticipated time frame and milestones to be achieved and include, as a minimum, strategies to: • increase the collection of revenue • efficiently manage the available resources of the municipality • enter into payment arrangements with major suppliers • repair and maintain infrastructure assets • optimise costs in respect of bulk purchases. The above time frames for the implementation of the recommendations will run concurrently.
Dr Ruth Segomatsi Mompati DM					
114.	3 March 2021	Loss of investments	During 2018, the municipality invested with VBS, which was not a registered bank in terms of the Banks Act. Irregularity: Non-compliance with municipal investment regulation 6(c) Impact: Material financial loss of R150 million (Recovered loss to date: R10,5 million)	Appropriate action is being taken to resolve the MI	A claim was lodged with the liquidators. The municipality received a payment of R10,5 million from the VBS liquidators. An investigation was undertaken and responsible officials identified. Certain officials were disciplined in respect of their involvement in the matter, including the suspended AO, where disciplinary proceedings were also finalised during December 2021, and the contract was terminated.

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AUDITOR-GENERAL
SOUTH AFRICA



Consolidated general report
on local government audit outcomes
MFMA 2020-21

We are fully committed to implementing the enhanced powers given to our office – without fear, favour or prejudice. If accounting officers and authorities, supported by their political leadership, fulfil their legislated responsibilities and commit to taking swift action when we notify them of an MI, there is no need for us to use our remedial and referral powers. Yet we do not hesitate to use these powers when accounting officers or authorities do not deal with MIs with the required seriousness.

In 29 cases where municipal managers did not appropriately address the MIs we reported to them, we used our expanded mandate by including recommendations in the audit reports or the auditor-general invoked her additional powers of referral and remedial action. The municipalities where we took further action (as detailed in the following graphic), are also where we typically experience a slow response to our findings and to improving the control environment.

Further action taken



CC25 0346

provincial treasury

Department:
Provincial Treasury
North West Provincial Government
Republic of South Africa

Second Floor, Garona Building, Mmabatho
Private Bag X2060
MMABATHO 2735
www.treasury.nwpg.gov.za

Enquiries: MJ Nengovhela
Tel: 018 388 2142
Email: Lramatlhape@nwpg.gov.za

OFFICE OF THE MEC

Cllr. M Mokgothu
The Mayor
Ditsobotla local Municipality
P. O. Box 7
LICHTENBURG
2470

Dear Cllr. Mokgothu

INTRODUCTION OF THE CONSULTANTS AT THE MUNICIPALITY TO CONDUCT STATUS QUO ASSESSMENT

This serves to inform you that the introductory of the intervention team will conduct the status quo assessment.The purpose of the status quo assement is to identify the municipalities that are on financial crisis in line with provisions of chapter 13 of the MFMA and subsequently placed under mandatory intervention in line with section 139 (5) (a) and (c) of the Constitution read together with section 139 of the MFMA.

The meeting is arranged as follows:

Date : 22 June 2022
Venue : Ditsobotla Local Municipality
Time : 09H00

Yours sincerely

MS MZ ROSHO
MEC FOR FINANCE

DATE: 17/06/2022

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 • 40 Church Square, PRETORIA, 0002 • Tel: +27 12 315 5111, Fax: +27 12 406 9055 • www.treasury.gov.za

FROM: Mr J Hattingh, Tel: 012 315 5183, **Email:** jan.hattingh@treasury.gov.za

Ref No: NW384/9

The Acting Municipal Manager
Ditsobotla Municipality
P O BOX 7
LICHTENBURG
2740

Dear Acting Municipal Manager

WITHHOLDING OF THE EQUITABLE SHARE TO DITSOBOTLA MUNICIPALITY AND SET OF CONDITIONS TO ADHERE TO FOR THE JULY 2022 TRANCHE

The letter dated 04 July 2021 from the North West Provincial Treasury to the Mayor hereby refers.

The National Treasury is aware of the most recent political infighting in Ditsobotla Local Municipality as well as the alleged leadership battle between two Municipal Managers. As a result of this leadership challenges, there is allegedly disagreements over who should have access to and control over the municipal banking accounts. It is disheartening to observe this debacle in Ditsobotla in spite of numerous municipal government structures' efforts, recommendations or initiatives from national and provincial departments, and interventions put in place to remedy the situation. Notably, the municipality has persistently demonstrated leadership instability (both at the political and administrative level), negative audit outcomes and unfunded budgets for the past five years. At most, the weak oversight by councils, significant financial problems and lack of consequence management led to this crisis. Consequently, the municipality's ability to fulfil its constitutional mandate, i.e., to provide sustainable services to its community, was negatively impacted by these operational inefficiencies.

The municipality has been obtaining disclaimer audit opinions over the past three consecutive years (2016/17 – 2020/21) as a result of internal controls deficiencies and inadequate record keeping. This is a worse position as the municipality continuously fail to provide evidence for financial information and disclosures in the financial statements. The concern is that the municipality has been relying on consultants to fill the capacity gap within the Budget and Treasury Office (BTO).

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Furthermore, provision for service delivery has deteriorated in the municipality due to aged infrastructure, which in most cases is affected by inadequate repairs and maintenance. As a result, there are constantly service protests in the municipality. Residents of Ditsobotla have lost confidence in the municipality to deliver basic services.

Given these challenges, the municipality was identified to be in financial and service delivery crisis since it met the criteria outlined in Section 140 of the MFMA. The municipality has met the legal requirements for a mandatory intervention under Section 139(5) of the Constitution read together with Chapter 13 of the Municipal Finance Management Act of 2003 (Act No. 56 of 2003). Whilst the process of developing and implementing the mandatory intervention in the municipality is in process, the National Treasury will closely monitor the state of affairs in the municipality to ensure and enforce compliance with the provisions of the MFMA.

Additionally, the municipality has been adopting unfunded budgets for the past five financial years (2017/18 – 2021/22). Similar to previous years, National Treasury's preliminary assessment indicates that 2022/23 MTREF budget is also unfunded and unsustainable over the medium term in contravention of the provisions of Section 18 of the MFMA, which provides that a budget must essentially be funded from a combination of cash derived from realistically anticipated revenues to be collected in that year and cash backed surpluses of previous years not committed for other purposes and borrowed funds. Therefore, adopting an unfunded budget constitutes a serious and material breach of the MFMA.

The municipality has also failed to implement the measures necessary to address the challenges and adhere to the requirements outlined in the letter from the North West provincial government. It is within this context that the National Treasury withheld the July 2022 Equitable Share in terms of Section 216(1) of the Constitution, which clearly state that the National Treasury must prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing, generally recognised accounting practice, uniform expenditure classifications, and uniform treasury norms and standards. Further, the above stated directs the National Treasury to enforce compliance with the measures established in terms of the controls and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of these measures.

The municipality is herewith given an opportunity in terms of Section 38(2)(a) of the Municipal Finance Management Act (MFMA) to submit written representations to National Treasury for the release the Equitable Share and all other funds to the municipality that are due in terms of S38(1)(a) and (b) of the MFMA by providing the following information:

1. Provide names of the Mayor, Speaker and other councillors elected in terms of the Structure Act as amended;

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2. Provide a council resolution on the appointment of both acting Municipal Manager and Chief Financial Officer;
3. Provide minutes and all other documentation (attendance register etc.) as evidence that the council that adopted the 2022/23 MTREF Budget was approved by a legally constituted council in terms of the Structure Act as amended;
4. Submit the 2022/23 MTREF budget information i.e. Adopted Budget A1 budget schedule, Service Delivery and Budget Implementation (SDBIP) and Integrated Development plan (IDP);
5. Provide the process plan for the recruitment and filling of all vacant senior positions (the plan should not exceed three months);
6. Submit Council resolution on the invocation of S139(5)(a) and (c) of the constitution read with section 139 of the Municipal Finance Management Act (MFMA);
7. Submit the Council Resolution on the roadmap to implement the SIU report;
8. Submit a detailed report on the unspent INEP grant earmarked for the upgrading the power station and measures put in place to address the impasse;
9. Submit a progress report of the Disciplinary Board on matters referred to in relation allegations against municipal officials;
10. Provide a council resolution on how the municipality will address the Eskom debt;
11. Convene Council to approve the funding plan to address the budget deficit over the medium term and submit the Council resolution in this regard;
12. Complete the capturing of the Web enabled Audit action plan and FMCMM including its implementation;
13. Submit council resolution on the implementation of consequence management in line with section 171 of the MFMA reporting requirements;
14. Submit the report on the readiness by the municipality to submit the 2021/22 financial statements as required by section 121 and 122 of the MFMA inclusive of the process plan; and
15. Submit approved names of officials delegated as bank signatories.

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The above information should formally be submitted within seven days (7) of the date of the letter to National Treasury. Once the National Treasury has received all these documents and has done its own independent assessment and evaluation of the factual information, a meeting will be arrangement with the Municipality to share our observations and findings.

Kind regards,

MALIJENG NGQALENI
DEPUTY DIRECTOR-GENERAL: INTERGOVERNMENTAL RELATIONS
DATE: 2 September 2022

CC: Head Official, North West Provincial Treasury, Mr Israel Kunene
MFMA Coordinators, North West Provincial Treasury, Ms Linda Ramatlhape
Acting CFO, Ditsobotla Municipality, Mr I R Tsie
Office of the Auditor-General

Elbie Swanepoel

From: Moholo Musa <MuMoholo@justice.gov.za>
Sent: 26 September 2022 15:59
To: Melissa Jansen van Vuuren; Peter Wassenaar; Zenani Zingisa
Cc: Mahlakoleng Morongwa; Mabulwane Masego Gratitude
Subject: SAKELIGA//COGTA AND OTHERS

YOUR REF: QB1021
OURREF:955/21/P3

The above matter and more specifically your dated 23 September 2022 and received by writer on the 26th September 2022 at 14H32 pm refers.

We acknowledge receipt thereof without prejudice.

We further confirm that we have also taken note of the contents.

We however advise that the time allowed for the meeting is short notice and therefore impractical.

We commit to revert to you as soon as practically possible with a date of the proposed meeting.

Best Regards

Mr. M Moholo
Office of The State Attorney -Mmabatho
1st Floor, Mega City Complex
Cell: 073 263 2315
Tel: 018 384 0269
Fax: 018 384 0363
MuMoholo@justice.gov.za
the doj & cd
Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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0352
CC28

Elbie Swanepoel

From: Peter Wassenaar
Sent: 26 September 2022 16:14
To: Moholo Musa; Melissa Jansen van Vuuren; Zenani Zingisa; Rohann Eloff
Cc: Mahlakoleng Morongwa; Mabulwane Masego Gratitude
Subject: Sakeliga - President of South Africa and others (Ditsobotla)(1) - QB1021

Sir / Madam

I acknowledge receipt of your email below, which refers to an urgent letter direct to our client in response to the collapse of government in the Ditsobotla Local Municipality.

You will note from the contents of the letter that our client deems the matter to be of a most severe nature. The urgency of the matter requires an urgent response. Refusal to urgently deal with the case is most concerning to our client and will most likely result in urgent litigation between the parties. Our client has appointed senior counsel to attend to the drafting of an urgent application. We would, of course, prefer to avoid urgent litigation, but that will require that your clients urgently start meaningfully engaging with our client. Refusing our invitation is at your clients' own peril. Urgent events result in urgent letters with urgent demands. The urgent situation in Ditsobotla has not been convenient for anybody.

Our letter does not only require a meeting. The letter also seeks various urgent undertakings from the government to avoid litigation. Your e-mail under reply has failed to respond to the undertakings sought.

Our instructions are that the matter in Ditsobotla has further deteriorated over the weekend. Your lacklustre response forces us to proceed with an urgent application.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Inc
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

From: Moholo Musa <MuMoholo@justice.gov.za>
Sent: Monday, 26 September 2022 15:59
To: Melissa Jansen van Vuuren <melissa@kriekprok.co.za>; Peter Wassenaar <peter@kriekprok.co.za>; Zenani Zingisa <ZZenani@justice.gov.za>
Cc: Mahlakoleng Morongwa <MMahlakoleng@justice.gov.za>; Mabulwane Masego Gratitude <MMabulwane@justice.gov.za>
Subject: SAKELIGA//COGTA AND OTHERS

YOUR REF: QB1021
OURREF:955/21/P3

The above matter and more specifically your dated 23 September 2022 and received by writer on the 26th September 2022 at 14H32 pm refers.

We acknowledge receipt thereof without prejudice.

We further confirm that we have also taken note of the contents.

We however advise that the time allowed for the meeting is short notice and therefore impractical.

We commit to revert to you as soon as practically possible with a date of the proposed meeting.

Best Regards

Mr. M Moholo

Office of The State Attorney -Mmabatho
1st Floor, Mega City Complex

Cell: 073 263 2315

Tel: 018 384 0269

Fax: 018 384 0363

MuMoholo@justice.gov.za

the doj & cd
Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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Elbie Swanepoel

From: Moholo Musa <MuMoholo@justice.gov.za>
Sent: 27 September 2022 13:10
To: Peter Wassenaar; Melissa Jansen van Vuuren; Zenani Zingisa; Rohann Eloff
Cc: Mahlakoleng Morongwa; Mabulwane Masego Gratitude
Subject: RE: Sakeliga - President of South Africa and others (Ditsobotla)(1) - QB1021

YOUR REF: QB1021
OURREF:955/21/P3

The above matter and more specifically your letter dated the 23rd September 2022 refers.

We continue to act for the Premier and MEC: Cooperative Governance and Traditional Affairs North West Province.

It is our instructions that the we should meet with you on Friday the 30th September 2022 at 10H00 am on virtual platform Microsoft Teams to be precise.

It is further our instruction to solicit from you as we hereby do the Agenda of the said meeting by no later than Wednesday the 28th September 2022 at 10H00am

It is our understanding that the undertaking you are seeking from our Clients have been complied with:

1. The intervention has been imposed
2. The administrator will be appointed
3. The equitable share will be released as soon as the Administrator assume office
4. It is the duty of the Accounting Officer who is the Municipal Manager to effect payments of employees, and to generally disburse the Municipal funds inclusive of service delivery related functions, and not the duty of Council in this instance the Administrator's duty. We however can confirm that the Administrator will oversee the day to day management and control of the municipal administration and service delivery functions.
5. Depending on the Administrator availability and resources such meeting will be arranged between Sakeliga and residents of Ditsobotla.

It is our clients view that protracted litigation is not in the best interest of the residents of Ditsobotla therefore we are willing and able to engage to find solutions.

We eagerly await your response.

From: Peter Wassenaar [mailto:peter@kriekprok.co.za]
Sent: Monday, 26 September 2022 16:14
To: Moholo Musa <MuMoholo@justice.gov.za>; Melissa Jansen van Vuuren <melissa@kriekprok.co.za>; Zenani Zingisa <ZZenani@justice.gov.za>; Rohann Eloff <rohann@kriekprok.co.za>
Cc: Mahlakoleng Morongwa <MMahlakoleng@justice.gov.za>; Mabulwane Masego Gratitude <MMabulwane@justice.gov.za>
Subject: Sakeliga - President of South Africa and others (Ditsobotla)(1) - QB1021

Sir / Madam

I acknowledge receipt of your email below, which refers to an urgent letter direct to our client in response to the collapse of government in the Ditsobotla Local Municipality.

You will note from the contents of the letter that our client deems the matter to be of a most severe nature. The urgency of the matter requires an urgent response. Refusal to urgently deal with the case is most concerning to our client and will most likely result in urgent litigation between the parties. Our client has appointed senior counsel to attend to the drafting of an urgent application. We would, of course, prefer to avoid urgent litigation, but that will require that your clients urgently start meaningfully engaging with our client. Refusing our invitation is at your clients'

own peril. Urgent events result in urgent letters with urgent demands. The urgent situation in Ditsobotla has not been convenient for anybody.

Our letter does not only require a meeting. The letter also seeks various urgent undertakings from the government to avoid litigation. Your e-mail under reply has failed to respond to the undertakings sought.

Our instructions are that the matter in Ditsobotla has further deteriorated over the weekend. Your lacklustre response forces us to proceed with an urgent application.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

From: Moholo Musa <MuMoholo@justice.gov.za>
Sent: Monday, 26 September 2022 15:59
To: Melissa Jansen van Vuuren <melissa@kriekprok.co.za>; Peter Wassenaar <peter@kriekprok.co.za>; Zenani Zingisa <ZZenani@justice.gov.za>
Cc: Mahlakoleng Morongwa <MMahlakoleng@justice.gov.za>; Mabulwane Masego Gratitude <MMabulwane@justice.gov.za>
Subject: SAKELIGA//COGTA AND OTHERS

YOUR REF: QB1021
OURREF:955/21/P3

The above matter and more specifically your dated 23 September 2022 and received by writer on the 26th September 2022 at 14H32 pm refers.

We acknowledge receipt thereof without prejudice.

We further confirm that we have also taken note of the contents.

We however advise that the time allowed for the meeting is short notice and therefore impractical.

We commit to revert to you as soon as practically possible with a date of the proposed meeting.

Best Regards

Mr. M Moholo
Office of The State Attorney -Mmabatho
1st Floor, Mega City Complex
Cell: 073 263 2315

Tel: 018 384 0269
Fax: 018 384 0363
MuMoholo@justice.gov.za
the doj & cd
Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB1021
Your ref: 955/21/P3

27 September 2022

STATE ATTORNEY – MMABATHO
1ST FLOOR, MEGA CITY COMPLEX

By e-mail: MuMoholo@justice.gov.za
zzenani@justice.gov.za
mmahlakoleng@justice.gov.za
mmabulwane@justice.gov.za

Sir/Madam

URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)

1. We refer to your e-mail of 27 September 2022.

2. Our client does not share your clients' view that they have already complied with the demands in our letter. Our primary concern is with the failure to implement mandatory section 139(5) intervention. Unless the required mandatory intervention has since been implemented, your clients continue with voluntary intervention under circumstances where mandatory constitutional intervention has become an urgent imperative. Furthermore, our client requires the immediate deployment of an administrator to take control of the municipality and to ensure that basic service delivery is restored. Even the undertaking that the administrator will meet with our client has been qualified.

3. On your clients' admission, Ditsobotla's equitable share is still being withheld pending the appointment of an administrator. However, your clients are also the party responsible for the appointment of the said administrator. Notwithstanding our demand, your clients have failed to provide us with a date for the appointment and deployment of an administrator. Our letter did not demand undertakings that something will potentially happen on an unknown future date.

4. Our client requires urgent and decisive action by the government in response to a potentially serious humanitarian and constitutional crisis developing in Ditsobotla.

5. The lack of urgency on the part of provincial and national governments is concerning. We have received reports from the community that, due to the closing of the municipal offices and the non-payment of employees, Ditsobotla is facing a serious risk of running out of water. There is simply no one available to grant access to municipal works to turn on the municipality's water pumps and maintain reservoir levels. Large portions of the municipality are already sitting without water. Our instructions are that residents are required to source their water from alternative sources. Those who can afford it, use vehicles to collect and distribute water. Despite having access to water, residents residing in informal settlements must again collect water by wheelbarrow. There is simply no one in the municipality to fix the available water systems.

6. Your clients' position that the financial officer must pay employees screams a lack of appreciation of the current crisis. Our client has been advised that the municipal offices have remained closed and that there is no money to pay employees. The withholding of the equitable share under these circumstances, especially considering the delay in appointing and deploying an administrator, is a major contributor to the current constitutional crisis.

7. We deem the matter to be of the utmost urgency. Our senior counsel is continuing to prepare an urgent application given the failure to respond to our client's demands adequately.

8. However, we accept your offer for a virtual meeting on 30 September 2022 at 10h00. We will attend the meeting with the hope of avoiding urgent litigation and potentially settling disputes in regards to Ditsobotla. We trust that actual decision-makers from various government spheres will be available to engage with our client and leaders in the community meaningfully. The fact that we are accepting the invitation does not detract from the urgency of the matter.

9. An agenda will be provided shortly. We request that you kindly also provide us with a list of attendees to the meeting so that the necessary Teams meeting invitation can be distributed.

Yours faithfully,

KRIEK WASSENAAR & VENTER INC
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za

Elektronies geteken
Electronically signed

Elbie Swanepoel

From: Elbie Swanepoel
Sent: 27 September 2022 15:53
To: Moholo Musa; Zenani Zingisa; 'mmahlakoleng@justice.gov.za'; 'mmabulwane@justice.gov.za'
Cc: Melissa Jansen van Vuuren; Rohann Eloff
Subject: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA)(1)
Attachments: State Attorney Mmabatho sent 2022-09-27.pdf

Sensitivity: Private

Good day,

We refer to the above and attach hereto a letter for your attention.

Kindly acknowledge receipt hereof.

Regards,

ELBIE SWANEPOEL

Kriek Wassenaar & Venter Ing

Regsekretaresse / Legal Secretary

• *(t) (+27) 12 803 4719* • *(f) (+27) 86 596 8516*

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite # 11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685

Date : **30 September 2022**

Time : **10h00**

Location : **Virtual Teams Meeting**

Attendees : **To be confirmed**

MEETING AGENDA

AGENDA ITEMS

1 Welcoming and attendance.

2 Sakeliga and community preliminary remarks and desired meeting outcomes relating to Ditsobotla Local Municipality ("Ditsobotla"):

2.1 Mandatory intervention in Ditsobotla;

2.2 Urgent appointment and deployment of administrator to Ditsobotla;

2.3 Urgent release of equitable share;

2.4 Municipal staff salaries and re-engagement;

2.5 Urgent restoration of water services in municipal area;

2.6 Urgent restoration of general municipal services in municipality;

2.7 Undertaking by the government to engage with Sakeliga and the community actively and meaningfully during the recovery of Ditsobotla.

3 Government's initial remarks and desired meeting outcomes.

4 Discussion of government's feedback on Kriek Wassenaar & Venter Inc. letter of 28 September 2022.

5 Explanation of the provincial government's position regarding mandatory intervention and the recovery of Ditsobotla.

6 Explanation of national government's position regarding mandatory intervention and the recovery of Ditsobotla.

7 Roadmap to improved transparency, process, community engagement and the recovery of Ditsobotla.

8 Further discussion and solution seeking.

9 Meeting close.

Please ensure that all attendees provide their e-mail addresses to Melissa Jansen van Vuuren (melissa@kriekprok.co.za) before 30 September 2022 at 09h00 if a meeting link is required.



KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB1021
Your ref: 955/21/P3

28 September 2022

STATE ATTORNEY – MMABATHO
1ST FLOOR, MEGA CITY COMPLEX

URGENT

By e-mail: MuMoholo@justice.gov.za
zzenani@justice.gov.za
mmahlakoleng@justice.gov.za
mmabulwane@justice.gov.za

Sir/Madam

URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)

1. We refer to the agreed virtual engagement meeting scheduled for 30 September 2022 at 10h00.

2. We request that your offices kindly provide us with a list of attendees. Please provide us with the necessary e-mail addresses for each attendee so that a Microsoft Teams link can be generated. Please also advise on the relevant state departments which will be represented at the meeting. Your offices already represent both provincial and national executives.

3. In order for our client to meaningfully engage with government during the meeting, we urgently require the following information/documentation:

   3.1 A copy of the Ditsobotla 'status report' referred to in the provincial executive's section 139(1)(c) decision/resolution of 15 September 2022.

   3.2 Full information regarding the current status of the section 139(1) intervention.

   3.3 Confirmation of whether an administrator has been appointed. We kindly request that you provide us with the name of the person whom your clients have appointed to act as administrator for Ditsobotla Local Municipality;

3.4 Confirmation of the date of deployment of the administrator to Ditsobotla Local Municipality;

3.5 Confirmation that the administrator will take part in the engagement meeting on 30 September 2022;

3.6 Confirmation of all current supervisory and monitoring steps taken by government in regards to the closure of municipal offices and services in Ditsobotla Local Municipality (in addition to the appointment of an administrator);

3.7 Confirmation of all current emergency measures taken by government in order to address the disruption in the supply of potable water to the communities in the Ditsobotla Local Municipality;

3.8 Confirmation of all emergency and other measures undertaken by government in order to ensure the urgent restoration of existing basic service delivery in Ditsobotla Local Municipality (electricity, water, sanitation, sewerage and refuse collection services);

3.9 Confirmation of the current equitable share being withheld by the provincial and/or national treasuries in respect of Ditsobotla Local Municipality;

3.10 All status update reports in regards to the financial crisis in Ditsobotla Local Municipality since 1 January 2022;

3.11 A confirmation of whether government has engaged with Eskom Holdings Soc Ltd and the relevant water boards to ensure that the supply of electricity and water to Ditsobotla Local Municipality is not disrupted whilst the provincial and/or national executives engage section 139 administration. Alternatively, an explanation as to what intergovernmental procedures have been followed in respect of Eskom Soc Ltd and the relevant water boards to resolve any disputes concerning the continued supply of electricity and water to Ditsobotla Local Municipality during the engagement of its administration in terms of section 139;

3.12 Confirmation of the scope of intergovernmental engagement with and regarding the administration of Ditsobotla Local Municipality in terms of section 139, since 15 September 2022;

3.13 A copy of the recovery plan, alternatively a draft recovery plan, for Ditsobotla Local Municipality, alternatively an explanation as to the status of the development of a municipal recovery plan for Ditsobotla Local Municipality;

3.14 Confirmation of whether the Municipal Recovery Task Team of the National Treasury has been engaged or requested to assist in the development of a municipal recovery plan for Ditsobotla;

3.15 Confirmation of whether the provincial and/or national executives have taken control of the municipal bank account of Ditsobotla Local Municipality since the decision was taken to dissolve the municipal council, alternatively, an explanation as to what supervisory steps have been taken to ensure proper municipal oversight of the municipal management in Ditsobotla Local Municipality until such time as an administrator has been deployed;

3.16 An explanation as to the reasons for the delay in the appointment of an administrator for Ditsobotla Local Municipality;

3.17 All reports issued to the National Assembly and/or the National Council of Provinces in regards to the administration of Ditsobotla Local Municipality.

4. Our client and the community do not have the same access as the government to the information listed above. Our client and its community supporters are serious about ensuring stability and the recovery of Ditsobotla Local Municipality. We sincerely desire to engage with the government on 30 September 2022 in a constructive manner. Please urgently provide the requested information and documentation.

5. We look forward to our meeting on 30 September 2022 and hope that sufficient agreement can be reached between the parties in order to avoid urgent litigation.

6. There is one aspect that is of such urgency that it cannot wait for an outcome in the meeting, namely the termination of the supply of potable water to the communities in Ditsobotla. We require that your clients take urgent steps to immediately restore the supply of potable water. Please urgently revert in this regard.

7. We await your list of attendees and will also provide our own within the next day. Our client's rights remain strictly reserved and we will continue in the preparation of our urgent application.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za

Elektronies geteken
Electronically signed

NJ Nel

From: NJ Nel
Sent: Wednesday, 28 September 2022 14:06
To: MuMoholo@justice.gov.za; ZZenani@justice.gov.za; mmahlakoleng@justice.gov.za; mmabulwane@justice.gov.za
Cc: Peter Wassenaar; Elbie Swanepoel
Subject: URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)
Attachments: State Attorney Mmabatho sent 2022-09-28.pdf; Agenda 2022-09-30.pdf

Importance: High

Tracking:

Recipient	Delivery
MuMoholo@justice.gov.za	
ZZenani@justice.gov.za	
mmahlakoleng@justice.gov.za	
mmabulwane@justice.gov.za	
Peter Wassenaar	Delivered: 2022/09/28 14:06
Elbie Swanepoel	Delivered: 2022/09/28 14:06

Good day

We refer to the abovementioned matter.

Kindly find attached hereto a letter for your urgent attention as well as an Agenda for the meeting scheduled to take place on 30 September 2022 at 10h00.

Kindly acknowledge receipt hereof.

Yours faithfully,

N.J. Nel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685 • Reg: 2012/030418/21

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

This e-mail is subject to certain conditions. Click here for more information.

Date : **30 September 2022**
Time : **10h00**
Location : **Virtual Teams Meeting**

SAKELIGA DELEGATION / ATTENDEES

ATTENDING

No	Attendee	Designation	E-Mail
1	Piet Le Roux	Sakeliga NPC - CEO	p.leroux@sakeliga.co.za
2	Pèter Wassenaar	Kriek Wassenaar Venter Inc - Attorney	peter@kriekprok.co.za
3	Christo Bester	Sakeliga NPC	c.bester@sakeliga.co.za
4	Tian Alberts	Sakeliga NPC	t.alberts@sakeliga.co.za
5	Chris Breedt	Chamber of Commerce – Chairman	chris@wtts.co.za
6	Benedict Modise	NWK	benedict@nwk.co.za
7	Dr Gerrie v/d Berg	GP	accounts@vdbven.co.za
8	John Rankin	TLU / TAU	rankinjohn@me.com
9	Naude Pienaar	Agri North West	naudepienaar@vodamail.co.za
10	Mandla Boyce Mpempe	Centre for Good Governance and Social Justice NPO – CEO	mandlampempe@gmail.com

Elbie Swanepoel

From: Elbie Swanepoel
Sent: 28 September 2022 16:22
To: Moholo Musa; Zenani Zingisa; Mahlakoleng Morongwa; mmabulwane@justice.gov.za
Cc: Peter Wassenaar
Subject: URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)
Attachments: State Attorney Mmabatho sent (2) 2022-09-28.pdf; Sakeliga Delegation 2022-09-30.pdf

Importance: High
Sensitivity: Private

Good day,

We refer to the above and attach hereto a letter, with attachment thereto, for your **urgent attention**.

Regards,

ELBIE SWANEPOEL

Kriek Wassenaar & Venter Inc

Regsekretaresse / Legal Secretary

∘ *(t) (+27) 12 803 4719* ∘ *(f) (+27) 86 596 8516*

∘ (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

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CE 0370 34

MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 Tel: +27 12 323 8911 Fax: +27 12 323 3262
P O Box 29, Cape Town 8000 Tel +27 21 401 7000
Website : www.treasury.gov.za , email : minreg@treasury.gov.za

Ref: M3/4/3/2(1110-2021)

Hon Premier Bushy Maape
North West Provincial Government
Private Bag X 65
MMABATHO
2735

Dear Premier Maape

INTERVENTIONS TO ADDRESS MUNICIPALITIES IN CRISIS

In April 2021, National Government was for the first time ordered by a High Court to intervene in the financial and service delivery affairs of a municipality as provided for in S139(7) of the Constitution of South Africa, 1996. The intervention was the result of a court action initiated by the business community in the municipality who were suffering financially as a result of the municipality's inability to provide consistent and reliable services coupled with the subsequent failure of the Provincial Executive to successfully monitor and oversee the S139(5) intervention invoked in this municipality in 2018.

National Treasury believes that this landmark decision by the Gauteng High Court will set a precedent for many other frustrated communities who suffer similarly in other parts of the country. In order to ensure that such matters are addressed consistently amongst Provinces, in full compliance with S139 Constitutional provisions and to avoid further litigation, his Excellency, the President of South Africa, instructed in May 2021 that a list be compiled of all municipalities in the country currently in a financial and service delivery crisis.

To comply with this request and ensure objectivity in this process, the National Treasury and the Department of Cooperative Governance developed a matrix. The matrix was based on the four pillars of municipal sustainability, namely, governance, service delivery, institutional capability and financial management. Information on hand for all municipalities were populated into the matrix and the final analysis showed that there are 43 municipalities in the country who are in a financial and service delivery crisis. These municipalities require urgent intervention in terms of S139 of the Constitution. However, some of these municipalities already have S139 interventions underway and it will be necessary for the Province to review these interventions to determine if they are still appropriate under the circumstances.

To assist in this task, the National Treasury and CoGTA have recently concluded roadshows in all nine provinces on the correct interpretation and implementation of S139 interventions. Provinces were alerted to the hierarchy of interventions provided for in the Constitution and the conditions that must exist for each type of intervention to be invoked. In particular, Provinces were reminded that a S139(1) intervention should not be invoked when the criteria for persistent financial problems and crises are already present in a municipality. The correct mode of intervention in this case would be to invoke a mandatory intervention in terms of S139(5) of the Constitution read together with Chapter 13 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

Such intervention would require the MEC for Finance in a Province to request from the Minister of Finance, the development of a financial recovery plan by the Municipal Finance Recovery Services Unit in the National Treasury. Typically, legislation allows for a financial recovery plan to be concluded within 90 days inclusive of all consultations that must take place with municipal stakeholders, including the municipality's top creditors. However, given the urgency of the situation, an interim recovery plan will be drafted for implementation within the first month of the intervention being invoked. This interim plan will focus on issues across all the sustainability pillars that can be remediated swiftly within the municipality without significant cost burdens or additional resources being required. Parallel to this process, a financial recovery plan will be prepared and approved by the MEC for Finance in the Province and handed to the municipality for implementation.

The Provincial Executive will be required to monitor on a monthly basis, the implementation thereof by the municipality to ensure that objectives are met timeously, challenges are unblocked and that there is incremental and sustained improvement in municipal performance. Should the Province not be successful in overseeing this intervention, National Government retains the right to intervene under S139(7) of the Constitution, however, this is a remedy of last resort and we are confident that Provinces will be able to effectively fulfil their functions in this regard.

For the North West Province, the attached addendum to this letter lists the municipalities identified as being in a financial and service delivery crisis. Of these municipalities, 2 municipalities already have existing interventions. We recommend that these interventions be revised where necessary to ensure that they give effect to the right mode of intervention under S139 of the Constitution and Chapter 13 of the MFMA. To assist the Province, the attached addendum further articulates the mode of intervention per municipality in your province that must be considered and implemented by the Provincial Executive Council (EXCO).

We would also like to draw the attention of Provinces on how to deal with current interventions following the local government elections in November 2021. In this regard, Provinces are reminded that any intervention invoked prior to the local government elections will not result in an automatic termination of the intervention following the election of a new municipal council. Sections 148 (1) and (2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), provides clear guidelines as to conditions that must exist in order to terminate a discretionary or mandatory intervention.

The National Treasury has shared this information with the National Department of Cooperative Governance and the Provincial Treasury in your province. Should, you require any further clarification or information, please contact Ms Malijeng Ngqaleni, Deputy Director-General: Intergovernmental Relations at the National Treasury.

We would also like to reiterate that while we have shared the information with National CoGTA and we are working very closely, this process is not synonymous with the Municipal Support and Intervention Plan (MSIP) process of CoGTA currently underway. These processes are complementary, however, the National Treasury is giving effect to both Constitutional considerations and the instruction from His Excellency, the President of South Africa.

We trust that the Province will find this in order and look forward to your cooperation and monthly progress reports in terms of Section 142 of the MFMA.

Your sincerely,

ENOCH GODONGWANE
MINISTER OF FINANCE
DATE: 26/10/2021

CC: Minister of Corporative Governance and Traditional Affairs, Dr. Nkosazana Dlamini Zuma
MEC: Cooperative Governance and Traditional Affairs: North West Province, Ms Lenah Migah
MEC: Provincial Treasury: North West Province, Ms Motlalepula Ziphora Rosho
HOD: Cooperative Governance and Traditional Affairs, North West Province, Mr James Keatlegile Mashego (Acting)
HOD: North West Provincial Treasury, Mr Ndlela Kunene
MFMA Co-ordinator, North West Provincial Treasury: Ms Linda Nengovhela

ADDENDUM

NWS LIST OF 9 MUNICIPALITIES OF THE 43 IDENTIFIED AS BEEN IN CRISIS AND THE PROPOSED MODE OF INTERVENTION:

1.	*Madibeng*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
2.	*Kgetlengrivier*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
3.	*Ratlou*	*S139(1)(c) of the Constitution and 139 of the MFMA*
4.	*Tswaing*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
5.	*Mafikeng*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
6.	*Ditsobotla*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
7.	*Ramotshere Moiloa*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
8.	*Dr Ruth S-Mompati*	*S139(5)(a) & (c) of the Constitution with S139 of the MFMA*
9.	*J B Marks*	*Continue with S139(1)(b) of the Constitution*

1. Summary

Meeting title	Sakeliga / President of South Africa and others (DITSOBOTLA LOCAL MUNICIPALITY) - Meeting
Attended participants	29
Start time	22/09/30, 09:43:09
End time	22/09/30, 11:32:49
Meeting duration	1h 49m 41s
Average attendance time	1h 21m 57s

2. Participants

Name	First join	Last leave	In-meeting duration	Email	Participant ID (UPN)	Role
Peter Wassenaar	22/09/30, 09:45:03	22/09/30, 11:29:19	1h 44m 16s	peter@kriekprok.co.za	peter@kriekprok.co.za	Presenter
Piet le Roux	22/09/30, 09:45:18	22/09/30, 11:29:23	1h 44m 4s	p.leroux@sakeliga.co.za	p.leroux@sakeliga.co.za	Presenter
NJ Nel	22/09/30, 09:46:39	22/09/30, 11:30:06	1h 43m 27s	nj@kriekprok.co.za	nj@kriekprok.co.za	Organiser
Naude Pienaar (Guest)	22/09/30, 09:48:25	22/09/30, 10:09:23	20m 57s			Presenter
Rohann Eloff	22/09/30, 09:49:08	22/09/30, 11:29:30	1h 40m 22s	rohann@krlekprok.co.za	rohann@kriekprok.co.za	Presenter
Melissa Jansen van Vuuren	22/09/30, 09:49:35	22/09/30, 11:29:37	1h 40m 1s	melissa@kriekprok.co.za	melissa@krlekprok.co.za	Presenter
Christo Bester	22/09/30, 09:58:17	22/09/30, 11:29:52	1h 31m 35s	c.bester@sakeliga.co.za	c.bester@sakeliga.co.za	Presenter
Tian Alberts	22/09/30, 09:58:19	22/09/30, 11:29:29	1h 31m 10s	t.alberts@sakeliga.co.za	t.alberts@sakeliga.co.za	Presenter
Johan Kriek	22/09/30, 10:00:09	22/09/30, 11:29:36	1h 29m 26s	johan@kriekprok.co.za	johan@kriekprok.co.za	Presenter
Benedict Modise	22/09/30, 10:01:18	22/09/30, 11:29:22	1h 28m 4s	benedict@nwk.co.za	benedict@nwk.co.za	Presenter
John Rankin (Guest)	22/09/30, 10:01:20	22/09/30, 11:29:28	1h 28m 7s			Presenter
Kedibone Mhlaba	22/09/30, 10:01:22	22/09/30, 11:29:24	1h 28m 2s	KediboneM@cogta.gov.za	KediboneM@cogta.gov.za	Presenter
Lesego Mathe	22/09/30, 10:01:22	22/09/30, 11:29:28	1h 21m 27s	llmathe@nwpg.gov.za	llmathe@nwpg.gov.za	Presenter
Mpone Motsamai	22/09/30, 10:01:24	22/09/30, 11:29:33	1h 28m 9s	MponeM@cogta.gov.za	MponeM@cogta.gov.za	Presenter
Thabang Samuel Lesita	22/09/30, 10:01:24	22/09/30, 11:29:48	1h 28m 23s	ThabangL@cogta.gov.za	ThabangL@cogta.gov.za	Presenter
Sibongile Sigodi	22/09/30, 10:01:25	22/09/30, 11:29:20	1h 27m 55s	Sibongile@presidency.gov.za	Sibongile.Sigodi@presidency.gov.za	Presenter
Mokadikoa chauke	22/09/30, 10:01:27	22/09/30, 11:29:21	1h 27m 53s			Presenter
Annelize Lee (Guest)	22/09/30, 10:02:16	22/09/30, 11:29:36	1h 27m 19s			Presenter
ADV. M MAJOKO (Guest)	22/09/30, 10:02:45	22/09/30, 11:29:28	1h 26m 43s			Presenter
Chris (Guest)	22/09/30, 10:03:51	22/09/30, 11:32:49	1h 28m 58s			Presenter
Moholo Musa	22/09/30, 10:03:51	22/09/30, 11:29:20	1h 25m 28s	MuMoholo@justice.gov.za	MuMoholo@justice.gov.za	Presenter
Boitumelo Tlhale	22/09/30, 10:04:26	22/09/30, 11:29:31	1h 25m 4s	BoitumeloT@nwpg.gov.za	BoitumeloT@nwpg.gov.za	Presenter
Naude Pienaar (Guest)	22/09/30, 10:06:10	22/09/30, 11:32:41	1h 26m 30s			Presenter
ratshikana	22/09/30, 10:06:13	22/09/30, 11:00:15	54m 1s			Presenter
Mpho Mogale	22/09/30, 10:06:51	22/09/30, 11:29:22	1h 22m 30s	MphoM@cogta.gov.za	MphoM@cogta.gov.za	Presenter
Elizabeth Mmutle (Guest)	22/09/30, 10:18:55	22/09/30, 11:29:33	1h 10m 37s			Presenter
Loyiso Ncoko	22/09/30, 10:18:58	22/09/30, 11:29:17	1h 10m 18s	LoyisoN@cogta.gov.za	LoyisoN@cogta.gov.za	Presenter
SETH RAMAGAGA	22/09/30, 10:33:52	22/09/30, 11:29:14	55m 21s			Presenter
Tshepo Khasi	22/09/30, 11:08:58	22/09/30, 11:29:21	20m 22s	TshepoK@cogta.gov.za	TshepoK@cogta.gov.za	Presenter

3. In-Meeting activities

Name	Join time	Leave time	Duration	Email	Role
Peter Wassenaar	22/09/30, 09:45:03	22/09/30, 11:29:19	1h 44m 16s	peter@kriekprok.co.za	Presenter
Piet le Roux	22/09/30, 09:45:18	22/09/30, 11:29:23	1h 44m 4s	p.leroux@sakeliga.co.za	Presenter
NJ Nel	22/09/30, 09:46:39	22/09/30, 11:30:06	1h 43m 27s	nj@kriekprok.co.za	Organiser
Naude Pienaar (Guest)	22/09/30, 09:48:25	22/09/30, 10:09:23	20m 57s		Presenter
Naude Pienaar (Guest)	22/09/30, 10:06:10	22/09/30, 11:32:41	1h 26m 30s		Presenter
Rohann Eloff	22/09/30, 09:49:08	22/09/30, 11:29:30	1h 40m 22s	rohann@krlekprok.co.za	Presenter
Melissa Jansen van Vuuren	22/09/30, 09:49:35	22/09/30, 11:29:37	1h 40m 1s	melissa@kriekprok.co.za	Presenter
Christo Bester	22/09/30, 09:58:17	22/09/30, 11:29:52	1h 31m 35s	c.bester@sakeliga.co.za	Presenter
Tian Alberts	22/09/30, 09:58:19	22/09/30, 11:29:29	1h 31m 10s	t.alberts@sakeliga.co.za	Presenter
Johan Kriek	22/09/30, 10:00:09	22/09/30, 11:29:36	1h 29m 26s	johan@kriekprok.co.za	Presenter
Benedict Modise	22/09/30, 10:01:18	22/09/30, 11:29:22	1h 28m 4s	benedict@nwk.co.za	Presenter
John Rankin (Guest)	22/09/30, 10:01:20	22/09/30, 11:29:28	1h 28m 7s		Presenter
Kedibone Mhlaba	22/09/30, 10:01:22	22/09/30, 11:29:24	1h 28m 2s	KediboneM@cogta.gov.za	Presenter
Lesego Mathe	22/09/30, 10:01:22	22/09/30, 10:16:42	15m 20s	llmathe@nwpg.gov.za	Presenter
Lesego Mathe	22/09/30, 10:21:05	22/09/30, 10:58:54	37m 48s	llmathe@nwpg.gov.za	Presenter
Lesego Mathe	22/09/30, 11:01:09	22/09/30, 11:29:28	28m 19s	llmathe@nwpg.gov.za	Presenter
Mpone Motsamai	22/09/30, 10:01:24	22/09/30, 11:29:33	1h 28m 9s	MponeM@cogta.gov.za	Presenter
Thabang Samuel Lesita	22/09/30, 10:01:24	22/09/30, 11:29:48	1h 28m 23s	ThabangL@cogta.gov.za	Presenter
Sibongile Sigodi	22/09/30, 10:01:25	22/09/30, 11:29:20	1h 27m 55s	Sibongile@presidency.gov.za	Presenter
Mokadikoa chauke	22/09/30, 10:01:27	22/09/30, 11:29:21	1h 27m 53s		Presenter
Annelize Lee (Guest)	22/09/30, 10:02:16	22/09/30, 11:29:36	1h 27m 19s		Presenter
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Chris (Guest)	22/09/30, 10:03:51	22/09/30, 11:32:49	1h 28m 58s		Presenter
Moholo Musa	22/09/30, 10:03:51	22/09/30, 11:29:20	1h 25m 28s	MuMoholo@justice.gov.za	Presenter
Boitumelo Tlhale	22/09/30, 10:04:26	22/09/30, 11:29:31	1h 25m 4s	BoitumeloT@nwpg.gov.za	Presenter
ratshikana	22/09/30, 10:06:13	22/09/30, 11:00:15	54m 1s		Presenter
Mpho Mogale	22/09/30, 10:06:51	22/09/30, 11:29:22	1h 22m 30s	MphoM@cogta.gov.za	Presenter
Elizabeth Mmutle (Guest)	22/09/30, 10:18:55	22/09/30, 11:29:33	1h 10m 37s		Presenter
Loyiso Ncoko	22/09/30, 10:18:58	22/09/30, 11:29:17	1h 10m 18s	LoyisoN@cogta.gov.za	Presenter
SETH RAMAGAGA	22/09/30, 10:33:52	22/09/30, 11:29:14	55m 21s		Presenter
Tshepo Khasi	22/09/30, 11:08:58	22/09/30, 11:29:21	20m 22s	TshepoK@cogta.gov.za	Presenter

CC 0375/56

KRIEK WASSENAAR & VENTER ING
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB1021
Your ref: 955/21/P3

30 September 2022

STATE ATTORNEY – MMABATHO **URGENT**
1ST FLOOR, MEGA CITY COMPLEX

By e-mail: MuMoholo@justice.gov.za
zzenani@justice.gov.za
mmahlakoleng@justice.gov.za
mmabulwane@justice.gov.za

Sir/Madam

URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)

1. We refer to the engagement meeting of 30 September 2022.

2. We confirm that no specific outcomes could be agreed upon during the meeting. We understand that government is still trying to break through various legislative barriers and other barriers in order to ensure that the administrator is deployed and that he will be able to ensure that municipal services are returned to the community.

3. We refer your clients back to our letters since 23 September 2022. Our demands have not changed and we do require that government provide us with clear undertakings as to how they intend to ensure that basic services are returned in Ditsobotla, by no later than Monday, 3 October 2022 at 09h00. Failing a full and proper reply and clear undertakings as to urgent steps taken in order to restore basic services, our client will have no choice but to approach the court for urgent relief.

4. We thank government for the engagement but do require decisive and immediate intervention in order to protect the interest of the communities served within Ditsobotla.

Yours faithfully,

KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR www.kwv-inc.com
(f) 086 586 8516 (t) (+27) 12 756 7566 • (f) (+27) 86 596 8799 (a) 3rd Floor, HB Forum Building, 13 Stamvrug Road, Val de Grace, Pretoria 0184
(e) peter@kriekprok.co.za (p) Postnet Suite # 11, Privaatsak / Private Bag X025, Lynwood Ridge, 0040 • BTW Reg: 4020260685

Direkteure/ Directors: Johan Kriek (B Proc, LLM), Péter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB), Kayla Dames (Bcom LLB), Rohann Eloff (Bcom LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD) , Sylvia Adriana Venter (LLB)
• Reg: 2012/030418/21
Docdate 20220308

NJ Nel

From: NJ Nel
Sent: Friday, 30 September 2022 14:02
To: Moholo Musa; ZZenani@justice.gov.za; Mahlakoleng Morongwa; mmabulwane@justice.gov.za
Cc: Elbie Swanepoel
Subject: URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)
Attachments: State Attorney Mmabatho sent 2022-09-30.pdf

Importance: High

Good day

We refer to the abovementioned matter and attach hereto a letter for your urgent attention.

Kindly acknowledge receipt hereof in writing.

Yours faithfully

N.J. Nel

Kriek Wassenaar & Venter Ing

Kandidaatprokureur / Candidate Attorney

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• (p) Postnet Suite #11, Privaatsak / Private Bag X025, Lynnwood Ridge, 0040 • BTW Reg: 4020260685 • Reg: 2012/030418/21

Hierdie e-pos is onderhewig aan voorwaardes. Kliek hier vir meer besonderhede.

This e-mail is subject to certain conditions. Click here for more information.

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	First applicant
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	Second applicant
BAREND LOURENS SNYMAN	Third applicant

and

DITSOBOTLA LOCAL MUNICIPALITY	First respondent
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	Second respondent
PREMIER OF THE NORTH WEST PROVINCE	Third respondent
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	Fourth – Fourteenth respondents

KE

KE MP

SUPPORTING AFFIDAVIT

I, the undersigned,

MANDLA BOYCE MPEMPE

do hereby confirm under oath as follows:

1 I am a major male executive director of the Centre for Good Governance and Social Justice (CGGSJ), the second applicant, a non-profit organisation with business address at 132 Lentsela Street, Ipelegeng, Schweizer-Reneke, North West Province.

2 I can confirm that I am duly authorised to attest to this affidavit on behalf of the third applicant.

3 I confirm that the contents hereof falls within my personal knowledge, unless specifically indicated otherwise, and is both true and correct.

4 I confirm that I have read the founding affidavit of Christo Bester, and that the second applicant confirms the corectness thereof in as far as it relates to the second applicant and supports the relief sought therein.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

KE MA

(a) he knows and understands the contents of this affidavit;

(b) he has no objection to taking an oath;

(c) he considers the oath to be binding on his conscience.

THUS signed and sworn before me, at IPELEGENG on this the 06th day of OCTOBER 2022, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

17052173
SGT
SUBI

COMMISSIONER OF OATHS
FULL NAMES: KEDUDIMETSE SUBI
BUSINESS ADDRESS: 5375 CEDAR STR. SCHWEIZER-RENEKE 2780
DESIGNATION: CONSTABLE

TIRELO YA MAPODISI A AFRIKA BORWA
CSC
06 OCT 2022
IPELEGENG
SUID-AFRIKAANSE POLISIEDIENS
SOUTH AFRICAN POLICE SERVICE

KE MA

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	First applicant
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	Second applicant
BAREND LOURENS SNYMAN	Third applicant

and

DITSOBOTLA LOCAL MUNICIPALITY	First respondent
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	Second respondent
PREMIER OF THE NORTH WEST PROVINCE	Third respondent
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	Fourth – Fourteenth respondents

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BAREND LOURENS SNYMAN

do hereby confirm under oath as follows:

1 I am a major male businessman and the third applicant.

2 I confirm that I am permanently residing within the town of Lichtenburg. My residential address is 34 Doornfontein Way, Lichtenburg, 2740.

3 I am the owner of G3 Brokers. The business conducts business from 38 Greef Street in Lichtenburg. I confirm that the contents hereof fall within my personal knowledge, unless specifically indicated otherwise and is both true and correct.

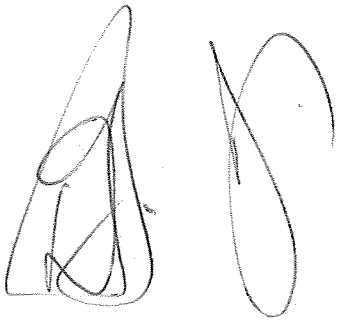
4 I can confirm that my residence has been without water since approximately 4 September 2022. As far as I have been able to determine, the surrounding properties and businesses are also without water supply. I furthermore confirm that my business has interrupted water supply and is without water at least two times every week since approximately 4 September 2022. My business only receives water for about two hours daily which is insufficient considering our demand.

5 I do have water storage systems installed on my property. I have installed JoJo tanks of 7500 litres and 5000 litres at both my residential and business premises respectively. In addition to the water storage system, I drive to a farm located about 15km from Lichtenburg to pump water from the farm's borehole into a

trailer with water tanks which I then in turn use to fill my Jojo tanks and to dispense water to my residential and business premise as required. I specifically incurred the cost for the purchase of the trailer with water tanks to address the water problem and it cost me approximately R28 000.00. In addition thereto, I also incurred R5 000.00 for a small water pump which I installed on the farm in order to pump water from the borehole.

6 I confirm that my business deals with the sale of short-term and life insurance policies which means that we regularly receive walk-in clients. The lack of water leads to severe sanitation problems for both my staff and the walk-in clients that we regularly deal with. The business has about 15 full-time employees who now have to plan their day around the water crisis. My business needs approximately 2 500 litre water per day to conduct our trade in a safe and sanitary environment. As previously mentioned, I have implemented several water security measures at a great expense to lessen the losses that we suffer as a result of the water shortage. Besides the costs already mentioned, we incur further costs with regard to the fuel and running costs of the transport of water to the business. My business's profitability has been affected in so far as additional costs had to be incurred for drinking water, transport of water for sanitary and other uses and upgrades to the business infrastructure to adapt to the circumstances.

7 The lack of water results in further sewage and sanitation issues which we personally have to address since the municipality fails to deploy personnel to assist businesses with their sewage and sanitation needs. This has resulted in us incurring personal expenses for our plumbing needs.



8 The refuse and waste management has also broken-down to such a degree of disrepair that we had to take matters in our own hands. I purchased another trailer specifically for transporting the refuse and waste from my residence and business premises to the waste and refuse dump. The cost of this trailer amounted to approximately R10 000.00 which I had to incur additionally due to the municipality's dilapidation.

9 The municipality has furthermore failed to maintain the roads in Lichtenburg which has led to the road being in an absolute state of disrepair. I have incurred various personal costs to fix the road in front of my residence and in front of my business. These costs have amounted to more than R100 000.00 for materials and labour in order to repair the roads.

10 I do not know what the reason is for the interruption in the supply of water to the property. I have been unable to make contact with the municipal offices and have been informed that the offices have closed. As of date of this affidavit and as far as I have been able to determine, the offices of the Ditsobotla Local Municipality remains closed for business. There are no municipal employees available to assist me.

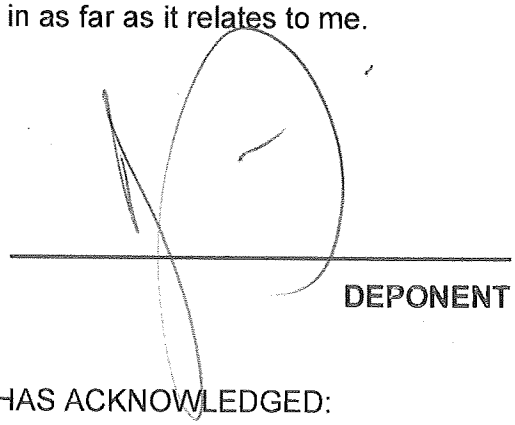
11 The Lichtenburg community is one of the only reasons why people are still surviving. There is no visible or known support from the municipality, provincial government, or the national government.

12 The situation is becoming desperate. There are too many people without water and other services for the community to support. We cannot do without water much longer. The general lack of service delivery in regards to water, sanitation, electricity supply and refuse collection is becoming unbearable. The additional

cost in order to self-service is having a direct effect on my household and ability to earn an income in Lichtenburg.

13 From the 15 employees employed at G3 Brokers, most of them struggle with the lack of water, but are able to find alternative sources of water. The business's personal situation and ability to adapt has meant that we have not had to retrench employees as a result of the municipality crisis, but the amount of residents leaving Lichtenburg could result in a shortage of clients for my business.

14 I confirm that I have read the founding affidavit of Christo Bester and that I confirm and support the contents thereof, in as far as it relates to me.



DEPONENT

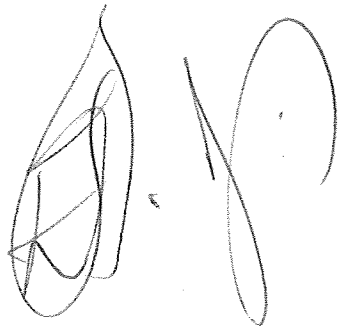
I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he/she knows and understands the contents of this affidavit;

(b) he/she has no objection to taking an oath;

(c) he/she considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at LICHTENBURG on this the 6th day of October **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.



COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

DESIGNATION:

I CERTIFY THAT THIS DOCUMENT IS A TRUE COPY
OF THE ORIGINAL WHICH WAS EXAMINED BY ME
AND FROM MY OBSERVATIONS THE ORIGINAL
HAS NOT BEEN ALTERED IN ANY MANNER.

CERTIFIED AT Lichtenburg ON 6/10/2020

Post DF Senekal

COMMISSIONER OF OATHS - EX OFFICIO

PASTOR DAVID FREDERIK SENEKAL
ID: 5209135099085
CHRISTIAN LIFE CHURCH
77 LE ROUX STR, LICHTENBURG 2740

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC **First applicant**

CENTRE FOR GOOD GOVERNANCE

AND SOCIAL JUSTICE NPC **Second applicant**

BAREND LOURENS SNYMAN **Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY **First respondent**

THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER

OF THE DITSOBOTLA LOCAL MUNICIPALITY **Second respondent**

PREMIER OF THE NORTH WEST PROVINCE **Third respondent**

AND ELEVEN OTHER RESPONDENTS

(AS PER NOTICE OF MOTION) **Fourth – Fourteenth respondents**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

PÈTER JOHANNES WASSENAAR

Do hereby confirm under oath that:

1 I am a major male attorney and director of the firm Kriek Wassenaar & Venter Incorporated (hereinafter referred to as '**KWV**') situated at 3rd Floor HB Forum Building, 13 Stamvrug Street, Val De Grace, Pretoria.

2 The facts deposed to herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct.

3 I am the attorney of record for the applicants.

4 I have read the founding affidavit by Christo Bester. I confirm the correctness of the contents thereof in as far as it relates to me and KWV.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he/~~she~~ knows and understands the contents of this affidavit;

(b) he/~~she~~ has no objection to taking an oath;

(c) he/~~she~~ considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at PRETORIA on this the 6th day of OCTOBER **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

DESIGNATION:

PHILIPPUS JOHANNES DILLIERS
Commissioner of Oaths
Ex Officio Practising Attorney
Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	**First applicant**
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	**Second applicant**
BAREND LOURENS SNYMAN	**Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY	**First respondent**
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	**Second respondent**
PREMIER OF THE NORTH WEST PROVINCE	**Third respondent**
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	**Fourth – Fourteenth respondents**

SUPPORTING AFFIDAVIT

I, the undersigned,

MARIA JACOBA JANSEN VAN RENSBURG

do hereby confirm under oath as follows:

1 I am a major female business manager.

2 I confirm that I am permanently residing within the town of Lichtenburg. My residential address is 58 11th Avenue, Lichtenburg, 2740.

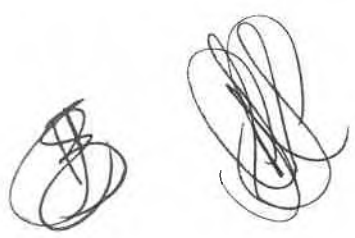
3 I am the manager of Lichtenburg Kantoormeubels and my family owns several properties in Lichtenburg. The business conducts business from 25 Dr Nelson Mandela Drive, Lichtenburg, 2740. I confirm that the contents hereof fall within my personal knowledge, unless specifically indicated otherwise and is both true and correct.

4 I can confirm that both my residence and place of employment has interrupted water supply and is without water for most of the week since approximately 6 September 2022. As far as I have been able to determine, the surrounding properties are also without water supply.

5 We do have water storage systems installed on the properties. At the business premise we have two 20 000 litre and one 10 000 litre Jojo tanks while we have three 10 000 litre Jojo tanks at our residential premise. In addition to the water storage system, we have to transport water from a farm located about 60km from Lichtenburg where we have to pump water from the farm's borehole into trucks

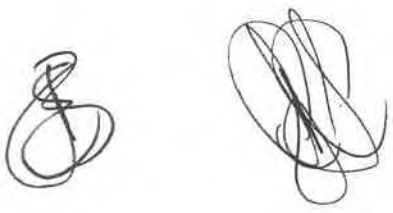
and trailers which we then in turn use to fill the Jojo tanks and to dispense water to the residential and business premise as required. These transport costs are not only personally incurred for our trade in stationery and other similar goods, but also to supply the surrounding properties with their water and sanitation needs which form part of their rental contract with us.

6 I can confirm that our business suffers severe financial losses as a result of the lack of service delivery from the municipality. The sewage system in Lichtenburg is blocked as a result of the failure from the municipality to deliver necessary services. I confirm that I informed the municipality about specific blockages at our family's property and asked that they could come and repair the blockages in the sewage system. I was however informed that the municipality employees are unwilling to repair the sewage system themselves due to the lack of funds for payment of employees and purchase of materials such as pipes. The Ditsobotla Local Municipality is dilapidated to such an extent that the community have to take municipal service delivery in their own hands. As a result, our business had to incur several costs with regards to the purchase of pipes and other materials to repair the sewage system. On the day on which repairs were done, our staff as well as about 10 municipal employees repaired the sewage system. After the sewage system was repaired the municipal employee approached us and asked for payment in the amount of R1 500.00 for their services. They furthermore indicate that we had to pay for any future repairs that we expect them to carry out. Consequently, we had to repair the sewage blockage by personally purchasing materials and incurring costs for a TLB (Tractor Loader Backhoe) and operator to mend the sewage system to such a degree that it could operate.



7 Our business and the properties that we rent out needs approximately 5 000 litre water per day to conduct our trade in a safe and sanitary environment. It costs our business about R1 500.00 per day to ensure that these properties receive 5 000 litres of water for its daily water and sanitation usage. Our business's profitability has been affected in so far as additional costs had to be incurred for drinking water, transport of water for sanitary and other uses, upgrades to the business infrastructure to adapt to the circumstances as well as the loss suffered by employees having to leave their normal tasks and complete tasks which should have been completed by municipal employees.

8 We have, on several occasions, requested our electricity account form the municipality, but was informed that we just have to pay the normal amount that we pay on a monthly basis to prevent the municipality from cutting of our electricity. They indicated that once payment is received and the amount is allocated, our account will be placed in credit for payment made above the account balance. We therefore made payments amounting to more than R23 000.00 for electricity, but even after this, during the month of September the electricity supply was cut off for approximately 3 days. On enquiry, they could only supply us with an account for the month of May and indicated that they are switching systems and that it is difficult to generate accounts for account holders. We, in turn confronted them with all our proof of payments made and inquired how they could cut of electricity without proof that the account is paid in short. They could not supply us with an answer and agreed to switch our electricity back on which took a further day.



9 The refuse and waste management has also broken-down to such a degree of disrepair that we had to take matters in our own hands. I confirm that the community of Lichtenburg have to attend to their own refuse and waste removal. Our employees use our truck for transporting the refuse and waste from our residences, business and from the businesses that rent from us to the waste and refuse dump. This amounts to several trips daily to empty more than 8 wastebaskets at the refuse and waste dump. Besides the costs already mentioned, we incur further costs with regard to the fuel in order to transport the refuse and waste due to the municipality's dilapidation.

10 The municipality has furthermore failed to maintain the roads in Lichtenburg which has led to the road being in an absolute state of disrepair. We have incurred various personal costs to fix the road in front of our residences, the business and in front of the property that we rent out.

11 I do not know what the reason is for the interruption in the supply of water to the property. I have been unable to make contact with the municipal offices and have been informed that the offices have closed. As of date of this affidavit and as far as I have been able to determine, the offices of the Ditsobotla Local Municipality remains closed for business. There are no municipal employees available to assist me.

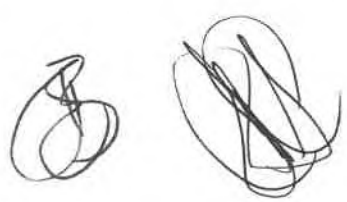
12 The Lichtenburg community is one of the only reasons why people are still surviving. There is no visible or known support from the municipality, provincial government, or the national government.

13 The situation is becoming desperate. There are too many people without water and other services for the community to support. We cannot do without water

much longer. The general lack of service delivery in regards to water, sanitation, electricity supply and refuse collection is becoming unbearable. The additional cost in order to self-service is having a direct effect on my household and ability to earn an income in Lichtenburg.

14 Our business employs about 10 people from the Lichtenburg community. Most of our employees struggle with the lack of water but are able to find alternative sources of water. The business's personal situation and ability to adapt has meant that we have not had to retrench employees as a result of the municipality crisis, but the number of residents leaving Lichtenburg could result in a shortage of clients for our business. Furthermore, more than 100 employees of the Lichtenburg and surrounding areas are dependent on our ability to adapt to the situation since the companies that rent from us employ various people from the community. We therefore not only have to cater for our own business needs with regards to the water, sanitation, electricity, waste, and sewage problems but also for the companies who have contracted with us and expect to receive certain services as prescribed in our rental agreements. To this date none of our tenants have moved out due to the municipality's dilapidation, but it is a serious concern for us as property owners.

15 I support urgent intervention in the Ditsobotla Local Municipality. I specifically and urgently support any application in as far as it seeks to urgently restore basic service delivery and especially water supply to the towns in the municipality. The issue is becoming most desperate and of great concern to me as a resident.



DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) ~~he~~/she knows and understands the contents of this affidavit;

(b) ~~he~~/she has no objection to taking an oath;

(c) ~~he~~/she considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at Lichtenburg on this the 6th day of OCTOBER **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

COMMISSIONER OF OATHS

FULL NAMES: ANNA ELIZABETH BOSHOFF
BUSINESS ADDRESS: Kommissaris van Ede / Commissioner of Oaths
DESIGNATION: Administrative Manager
Legal Aid South Africa
25 Bantjes Street, Lichtenburg
Tel: 018-632 7600

LEGAL AID SOUTH AFRICA
PO Box 1208
06 OCT 2022
Lichtenburg 2740 / Docex 7
LICHTENBURG JUSTICE CENTRE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	First applicant
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	Second applicant
BAREND LOURENS SNYMAN	Third applicant

and

DITSOBOTLA LOCAL MUNICIPALITY	First respondent
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	Second respondent
PREMIER OF THE NORTH WEST PROVINCE	Third respondent
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	Fourth – Fourteenth respondents

SUPPORTING AFFIDAVIT

I, the undersigned,

SUSARA JOHANNA FRANSIENA PIENAAR

do hereby confirm under oath as follows:

1 I am a major female secretary.

2 I confirm that I am permanently residing within the town of Lichtenburg. My residential address is 22 Lovedale Street, Burgersdorp, Lichtenburg, 2740.

3 I am employed at JJ van den Berg Administrator. The business conducts business from 5th Avenue, no 8, Burgersdorp, Lichtenburg, 2740. I confirm that the contents hereof fall within my personal knowledge, unless specifically indicated otherwise and is both true and correct.

4 I can confirm that my place of employment has been without water since approximately 6 September 2022. As far as I have been able to determine, the surrounding properties and businesses are also without water supply.

5 I confirm that my place of employment does have water storage systems installed on the property i.e. JoJo tanks. In addition to my water storage system, we have to transport water to my place of employment every second day by way of trucks. We transport approximately 3000 litres of water every second day which costs about R 750.00 per freight. My employer's business's profitability has been affected in so far as additional costs had to be incurred for the supply of drinking water and the transport of water for sanitary and other uses.

S J F Pienaar

14.03

6 I confirm that the community of Lichtenburg have to attend to their own refuse and waste removal as the Ditsobotla Local Municipality no longer ensures that the community's refuse and waste is removed. I am forced to hire gardening services to attend to my refuse and waste removal. Due to the lack of municipal service delivery for the past 6 years, and specifically service deliver in regards to refuse and waste removal, the community had no other option but to start dumping refuse on public parks in the residential areas, which is becoming a health crisis.

7 I confirm that my employer specialises in financial administration and all tax affairs and as such we regularly receive walk-in clients. The lack of water causes sewage and sanitation problems for the employees and the walk-in clients that we regularly deal with. This led to the unfortunate circumstances that the amount of walk-in client we receive now compared to prior to the water crisis, has decreased, which is detrimental to my business.

8 I do not know what the reasons is for the interruption in the supply of water to the property. I have been unable to contact the municipal offices and have been informed that the offices have closed. As of date of this affidavit and as far as I have been able to determine, the offices of the Ditsobotla Local Municipality remains closed for business. There are no municipal employees available to assist me.

9 The Lichtenburg community is one of the only reasons why people are still surviving. There is no visible or known support from the municipality, provincial government, or the national government.

SJ Pienaar

CSI.
M.J

10 The situation is becoming desperate. There are too many people without water and other services for the community to support. We cannot do without water much longer. The general lack of service delivery in regards to water, sanitation, electricity supply and refuse collection is becoming unbearable. The additional cost in order to self-service is having a direct effect on my household and ability to earn an income in Lichtenburg.

11 I support urgent intervention in the Ditsobotla Local Municipality. I specifically and urgently support any application in as far as it seeks to urgently restore basic service delivery and especially water supply to the towns in the municipality. The issue is becoming most desperate and of great concern to me as a resident.

12 I confirm the photographs attached to the founding affidavit of Christ Bester provided by me.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he/she knows and understands the contents of this affidavit;

(b) he/she has no objection to taking an oath;

(c) he/she considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at Lichtenburg on this the 06 day of Oktober **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

CSI M.J.S

7240348-9
CST
Correctional Services

COMMISSIONER OF OATHS

FULL NAMES: MAGOBITSHAITE J MOEPI

BUSINESS ADDRESS: 24 LANDROSS MARTIN AVENUE LICHTENBURG

DESIGNATION: CONSTABLE

SOUTH AFRICAN POLICE SERVICE
05 -10- 2022
COMMUNITY SERVICE CENTRE

SJ f Piencar
Bencar
CST

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	**First applicant**
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	**Second applicant**
BAREND LOURENS SNYMAN	**Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY	**First respondent**
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	**Second respondent**
PREMIER OF THE NORTH WEST PROVINCE	**Third respondent**
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	**Fourth – Fourteenth respondents**

SUPPORTING AFFIDAVIT

I, the undersigned,

LEONDAS SEINDIS

do hereby confirm under oath as follows:

1 I am a major male businessperson.

2 I confirm that I am permanently residing within the town of Lichtenburg. My residential address is 6 Bantjies Street, Lichtenburg, North West, 2740.

3 I am the owner of OK Foods Lichtenburg. The business conducts business from 17 Gerrit Maritz Street, Lichtenburg, North West, 2740. I confirm that the contents hereof fall within my personal knowledge, unless specifically indicated otherwise and is both true and correct.

4 I can confirm that my business has been without water since approximately 6 September 2022. As far as I have been able to determine, the surrounding properties and businesses are also without water supply.

5 My business primarily sells foods and other household goods. Thus, we specifically require water for thorough cleaning and packaging of our products in order to conduct business in a safe and sanitary environment. I do have water storage systems installed on my property, however, due to the water crisis we currently experience we have to transport water to my business 3 to 4 times a day by way of trucks. The operation and profitability of my business relies on the usage of water. In order not to lose any production or products due to water

shortage, I had to hire a driver who drives about 20km per trip to collect water to fill my water storage tanks and to transport water to my residential and business premises as needed. In addition to the hiring of a driver, I also make use of my delivery trucks to collect water and as a result, my employees can no longer attend to deliveries to customers as they did prior to the water crisis in Lichtenburg, which contributes to my business's financial loss. This unforeseen expense is costing me around R 8 000.00. My business's profitability has been affected in so far as additional costs had to be incurred for the supply of drinking water and the transport of water for sanitary and other uses.

6 The sewage system in Lichtenburg is blocked as a result of the municipality ceasing their service delivery. I confirm that I informed the municipality about the blockage and asked that they could come and repair the sewage system. The municipal employees stated that in return for their municipal services they request that extra service money be paid to them personally first before they will assist. As of date of this affidavit, the sewage blockage has still not been repaired in Lichtenburg. The Ditsobotla Local Municipality is dilapidated to such an extreme extent that the community have to take municipal service delivery in their own hands and as a result, I, and the rest of the community, have to deal with our own sewage problems and dump our own refuse and waste.

7 The lack of water results in further sewage and sanitation issues which we personally have to address since the municipality fails to deploy personnel to assist businesses and private residence with their sewage and sanitation needs. I confirm that my business employs more than 100 people from the Lichtenburg community and as a result of the limited water supply, my employees are unable

to use the premises' toilets during business hours, due to sewage blockage and sanitary reasons.

8 During last year the electricity supply was cut off for approximately 10 days. During this period my business suffered a great financial loss in about R180 000.00.

9 I do not know what the reason is for the interruption in the supply of water and other municipal services. I have been unable to make contact with the municipal offices and have been informed that the offices have closed. As of date of this affidavit and as far as I have been able to determine, the offices of the Ditsobotla Local Municipality remains closed for business. There are no municipal employees available to assist me.

10 The Lichtenburg community is one of the only reasons why people are still surviving. There is no visible or known support from the municipality, provincial government, or the national government.

11 The situation is becoming desperate. There are too many people without water and other services for the community to support. We cannot do without water and other municipal services much longer. The general lack of service delivery in regard to water, sanitation, electricity supply and refuse collection is becoming unbearable. The additional cost in order to self-service is having a direct effect on my household and ability to earn an income in Lichtenburg.

12 I support urgent intervention in the Ditsobotla Local Municipality. I specifically and urgently support any application in as far as it seeks to urgently restore basic

service delivery and especially water supply to the towns in the municipality. The issue is becoming most desperate and of great concern to me as a resident.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he/she knows and understands the contents of this affidavit;

(b) he/she has no objection to taking an oath;

(c) he/she considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at Lichtenburg on this the 06 day of October **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

SHGT. O.N. MACEZU

COMMISSIONER OF OATHS

FULL NAMES: Ont Macezu

BUSINESS ADDRESS: 24 London Maftis Drive

DESIGNATION: SAP

IKELO YA MAPODISI A AFRIKA BORWA
COMMUNITY SERVICE CENTRE
2022 -10- 06
LICHTENBURG
SUID AFRIKAANSE POLISIEDIENS
SOUTH AFRICAN POLICE SERVICE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	**First applicant**
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	**Second applicant**
BAREND LOURENS SNYMAN	**Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY	**First respondent**
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	**Second respondent**
PREMIER OF THE NORTH WEST PROVINCE	**Third respondent**
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	**Fourth – Fourteenth respondents**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

DR GERT JOHANNES VAN DER BERG

do hereby confirm under oath as follows:

1 I confirm that I am a major male medical doctor practising as such from 24 Scholtz Street, Lichtenburg, 2740 Lichtenburg, North West Province.

2 I can confirm that the contents hereof falls within my personal knowledge, unless specifically indicated otherwise, and is both true and correct.

3 I serve the Lichtenburg and surrounding communities.

4 My practice has over the last 4 weeks seen a drastic increase in viral gastroenteritis, diarrhoea, nausea, vomiting and other stomach-related illnesses.

5 I am of the view that the increase in cases is a direct result of the lack of proper and regular clean water in the Ditsobotla Local Municipality.

6 It is my professional opinion that the affected towns of Lichtenburg and Coligny (and their surrounding communities), are at risk of being exposed to more serious diseases such as cholera developing with the supply of regular clean portable water is not restored. I am also concerned about the exposure of residents to raw untreated sewerage in the two towns, but especially within the Coligny and Boikhutso areas.

7 It is also my professional opinion that the breakdown in the delivery of basic municipal services will, if not returned to normalcy, develop into a potentially serious public health concern.

DDEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he knows and understands the contents of this affidavit;

(b) he has no objection to taking an oath;

(c) he considers the oath to be binding on his conscience.

THUS signed and sworn before me, at Lichtenburg on this the 6th day of October **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

COMMISSIONER OF OATHS

FULL NAMES: LIAAN JOHANNES KRIEL

BUSINESS ADDRESS: 24 BUCHANANSTRAAT /STREET
LICHTENBURG

DESIGNATION: KOMMISSARIS VAN EDE/
COMMISSIONER OF OATHS
PRAKTISERENDE PROKUREUR/
PRACTISING ATTORNEY

SUPPORTING AFFIDAVIT

I, the undersigned,

Cobus van Tonder

do hereby confirm under oath as follows:

1 I am a major male business owner of long standing company in Coligny.

2 My business address is 116 Voortrekker Street. Witch is the main road of the mentioned town.

3 I am the owner of TCC Bande & Vervoer. I confirm that the contents hereof fall within my personal knowledge, unless specifically indicated otherwise and is both true and correct.

4 I can confirm that my business has been without water for a long period of time. And that I therefore had to make a decision on installing a JOJO tank for the storage of water. As far as I have been able to determine, the surrounding properties are also without water supply.

5 I do not have permanent water storage systems installed on my property. We have a JOJO tank and a steel water tank that we help the community of Thlabologang and Scotland with, when they have functions and funerals. We have to arrange transport and ask the community and/or the municipality to fill the tank with water.

6 The manucipality has a tracktor with a sewerage tank that operates in town to pump the sewerage tanks of houses not connected to the main sewer line. The

TEMPLO YA MAPODISI A AFRIKA BORWA
SECTION
2022 -10- 03

tracktor has broken down multiple times and we as a community collect funds from residents to maintain the tractor and the sewerage tank. There is just one tank and tractor. The tank has been fixed multiple times as it has a problem and keeps indenting. Support has been welded over and inside this tank and again was paid for by community members. The main sewer line from Thlabologang is always blocked and the raw sewerage then streams down the streets. Businesses in the main street whom of them selling food have raw sewerage in front of their businessess

7 Raw sewerage end up outside residents homes and push up into houses. Leaving houses unhygienic and very unhealthy.

8 The community donates money so we can keep the sewerage tank working and diesel is provided for the tractor as well.

9 Waste disposal is also non operational. The same tractor uses for the sewer tank is supposed to be used with a trailer to go through town and collect waist from houses and businesses.

10 Again we as a community pay a few people to keep our main road neat and tidy. Every fortnight as well as Sassa days the town looks like a rubbish dump.

11 I do not know what the reason is for the interruption of municipal duties. As of date of this affidavit and as far as I have been able to determine, the offices of the Ditsobotla Local Municipality remains closed for business. There are no municipal employees available to assist me.

TIGELO YA MAPOLISI A AFRIKA BORWA
SECTOR COMMANDER
2022 -03- 08

12 The Coligny community is one of the only reasons why people are still surviving. There is no visible or known support from the municipality, provincial government or the national government.

13 The situation has becoming desperate. There are too many people without water and other services for the community to support. We cannot do without water much longer. The general lack of service delivery in regards to water, sanitation, electricity supply and refuse collection is becoming unbearable. The additional cost in order to self-service is having a direct effect on households to earn an income in Coligny

14 I support the intended application of Sakeliga NPC and other applicants for urgent intervention in the Ditsobotla Local Municipality. I specifically and urgently support the application in as far as it seeks to urgently restore basic service delivery and especially water supply to the towns in the municipality. The issue is becoming most desperate and of great concern to me as a resident.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he/she knows and understands the contents of this affidavit;

(b) he/she has no objection to taking an oath;

TIKELO YA MAPOLISA AFRIKA BORWA
SECTOR COMMANDER
2022 -10- 06
COLIGNY

(c) he/she considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at Colligny on this the 6TH day of October 2022, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

TIRELO YA MAPODISI A AFRIKA BORWA
SECTOR COMMANDER
2022 -10- 06
COLIGNY
SUID AFRIKAANSE POLISIEDIENS
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

FULL NAMES: GRANNEWE KGOKONG

BUSINESS ADDRESS: 98 VOORTREKKER STR COLIGNY

DESIGNATION: CAPT

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: _____

In the matter between:

SAKELIGA NPC	**First applicant**
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	**Second applicant**
BAREND LOURENS SNYMAN	**Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY	**First respondent**
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	**Second respondent**
PREMIER OF THE NORTH WEST PROVINCE	**Third respondent**
AND ELEVEN OTHER RESPONDENTS (AS PER NOTICE OF MOTION)	**Fourth – Fourteenth respondents**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

CHRIS BREEDT

Do hereby confirm under oath that:

1 I am a major male businessman 113 Church street, Lichtenburg, North West Province.

2 The facts deposed to herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct.

3 I have read the founding affidavit by Christo Bester. I confirm the correctness of the contents thereof in as far as it relates to me.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

(a) he/she knows and understands the contents of this affidavit;

(b) he/she has no objection to taking an oath;

(c) he/she considers the oath to be binding on his/her conscience.

THUS signed and sworn before me, at LICHTENBURG on this the 6 day of Oct **2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

M Retief

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

DESIGNATION:

Certified a true copy of the original document.
FULL NAMES: Maria Dorothea Retief
SIGNATURE: M Retief
COMMISSIONER OF OATHS
Designation: Business Accountant in Practice (SA)
PRACTICE NR: SAIBR 2580
Date: 6/10/2022
Place: Lichtenburg
Address: 163 Scholtz Street

B

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE NO: UM 192/2022

Held at MMABATHO on this the 13th day of OCTOBER 2021
BEFORE the Honourable Madam Justice MAHLANGU AJ

In the matter between:

SAKELIGA NPC	1st Applicant
CENTER FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	2nd Applicant
BAREND LOURENS SNYMAN	3rd Applicant
and	
DITSOBOTLA LOCAL MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER/ACTING MUNICIPAL MANAGER OF THE DISTOBOTLA LOCAL MUNICIPALITY	2nd Respondent
THE PREMIER OF NORTH WEST PROVINCE	3rd Respondent
PROVINCIAL EXECUTIVE OF THE NORTH WEST PROVINCE	4th Respondent
MEMBER OF THE EXECUTIVE COUNCIL: NORHT WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS	5th Respondent
MEMBER OF THE EXEVUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	6th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	7th Respondent

MINISTER NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	8th Respondent
MINISTER: NATIONAL DEPARTMENT OF FINANCE	9th Respondent
MINISTER: WATER AND SANITATION	10th Respondent
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	11th Respondent
ESKOM SOC LTD	12th Respondent
MAGALIES WATER BOARD	13th Respondent
THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY	14th Respondent

HAVING HEARD ADV G R EGAN on behalf of the Applicants and ADV SCHOLTZ on behalf of the 1st and 2nd Respondents, ADV MAJOKO on behalf of the 3rd Respondent, ADV MOKADIKOA SC on behalf of the 4th to 8th Respondents, ADV MAKGELE on behalf of the 11th and ADV MONNAHELA and ADV SELEKE on behalf of the 14th Respondent and having read the Notice of Motion and other documents filed of record;

IT IS ORDERED

1. THAT: The 14th Respondent, the administrator of Ditsobotla Local Municipality ensures the supply of water at the rectification system assisted by municipal infrastructure support agent.

2. THAT: The Applicant be allowed to be observant of the water supply of Ditsobotla Municipality.

3. THAT: The 14th Respondent provide to provide the report about the water in the Ditsobotla Municipality within 15 days of this order.

4. THAT: The costs of this application be determined on the 10th of NOVEMBER 2022 of the hearing of Part B on this Notice of Motion.

BY THE COURT

REGISTRAR OF HIGH COURT NORTH WEST HIGH COURT MAHIKENG

REGISTRAR