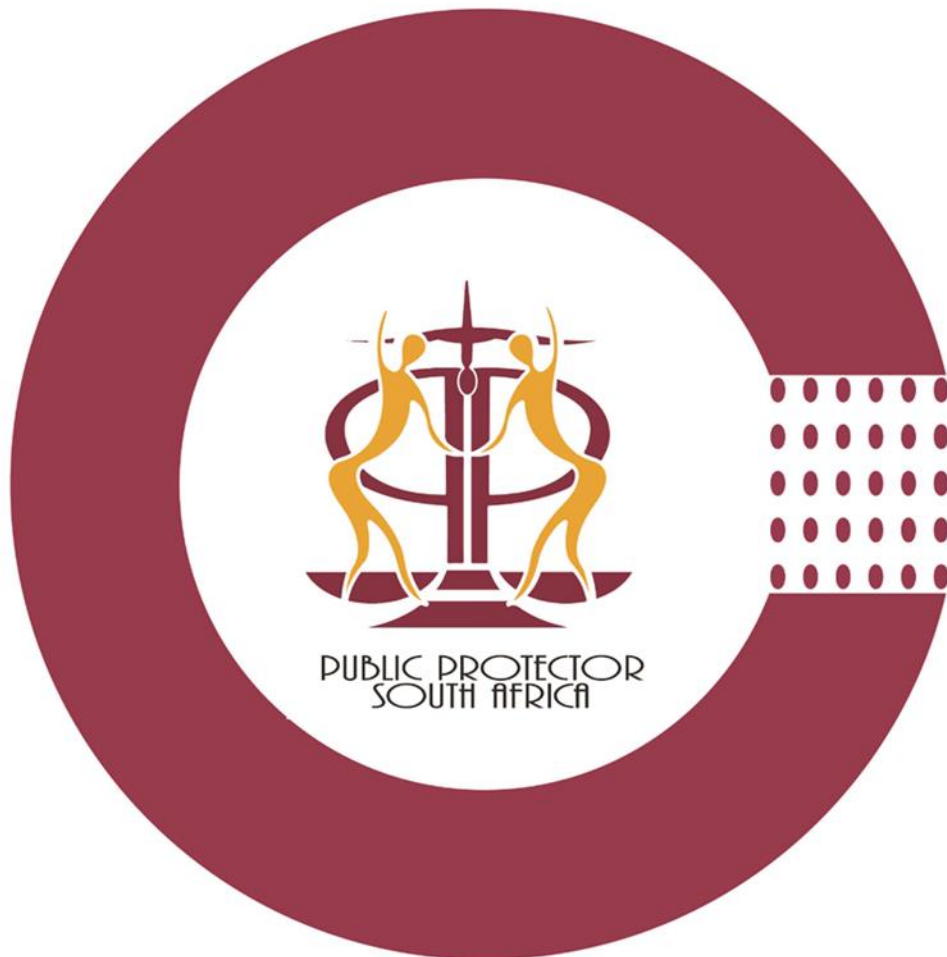


**REPORT OF THE PUBLIC PROTECTOR ISSUED IN TERMS OF SECTION 182(1)(b) OF
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8
(1) OF THE PUBLIC PROTECTOR ACT, 1994**



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REPORT NO. 24 OF 2023/2024
ISBN NUMBER: 978-1-7764603-7-3

**INVESTIGATION INTO ALLEGATIONS OF FAILURE AND/OR UNDUE DELAY BY THE
CITY OF TSHWANE METROPOLITAN MUNICIPALITY TO SUPPLY THE RESIDENTS
OF HAMMANSKRAAL AREA WITH CLEAN WATER THAT IS SUITABLE FOR HUMAN
CONSUMPTION**

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LIST OF ACRONYMS AND ABBREVIATIONS

Acronym / Abbreviation	Description
BAC	Bid Adjudication Committee
BNR	Biological Nutrient Reactor
Capex	Capital Expenditure
COGTA	Cooperative Governance and Traditional Affairs
Constitution	Constitution of the Republic of South Africa, 1996
CoT	City of Tshwane Metropolitan Municipality
Commission	Independent Commission of Inquiry into the Hammanskraal Water Crisis
DAF	Dissolve Air Flootation
DBSA	Developmental Bank of Southern Africa
DFFE	Department of Forestry, Fisheries, and the Environment
DG	Director-General
DoRA	Division of Revenue Act, 2023
DPP	Director of Public Prosecutions
DWS	Department of Water and Sanitation
E-mail	Electronic mail correspondence
EMI	Environmental Management Inspectors
ERWAT	Ekurhuleni Water Care Company
Investigation Team	Public Protector's Investigation Team
IDD	Infrastructure Delivery Division
IDP	Integrated Development Plan
IGR	Inter-Governmental Relations
ISUPG	Informal Settlements Upgrading Partnership Grant
MEC	Member of Executive Council
Metros	Metropolitan Municipalities
MFMA	Municipal Finance Management Act, 2003
MINMEC	Ministers and Members of Executive Councils

Acronym / Abbreviation	Description
MTREF	Medium Term Revenue and Expenditure Frameworks
MWB	Magalies Water Board
MoA	Memorandum of Agreement
MoU	Memorandum of Understanding
NCOP	National Council of Provinces
NT	National Treasury
NWA	National Water Act, 1998
NWPP	National Water Partnerships Programme
NWSMP	National Water and Sanitation Master Plan
O&M	Operation & Maintenance
Opex	Operating expenses
OUTA	Organisation Undoing Tax Abuse
PAJA	Promotion of Administrative Justice Act, 2000
Public Protector Rules	Rules relating to investigations by the Public Protector and Matters Incidental Thereto, 2018, (as amended)
Portfolio Committee	Parliamentary Portfolio Committee on Water and Sanitation
Public Protector Act	Public Protector Act, 1994
Public Protector	Public Protector South Africa
PPP	Paycheck Protection Program
PST	Primary Sedimentation Tanks
RAS	Return Activated Sludge
Rooiwal WWTW	Rooiwal Wastewater Treatment Works
SALGA	South African Local Government Association
SANS	South African National Standards
SAPS	South African Police Service
SLA	Service-Level Agreement

Acronym / Abbreviation	Description
SIU	Special Investigating Unit
TVC	Total Viable Count
TWTW	Temba Water Treatment Works
USDG	Urban Settlement Development Grant
WWTW	Wastewater Treatment Works

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice, and section 8(1) of the Public Protector Act, 1994 which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of undue delay and/or failure by the City of Tshwane Metropolitan Municipality (CoT) to supply the residents of the Hammanskraal area with clean water that is suitable for human consumption.
- (iii) The complaint was lodged by Mr Edwin Bapela (the Complainant) on 01 September 2021, who in the main alleged that:
 - (a) The CoT is failing to provide the residents of Hammanskraal with clean water that is suitable for human and animal consumption;
 - (b) As of 2021, two (2) reports relating to the same matter were issued by the Hammanskraal Community Water Inquiry¹ and the South African Human Rights Commission (SAHRC) respectively, confirming that the water in Hammanskraal is not of good quality;
 - (c) It has been fifteen (15) years and despite the two (2) reports, the CoT continues to supply the residents with unsafe water that threatens their livelihood and health; and

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The Complainant attached this report as an annexure in his complaint to the Public Protector.

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- (d) At times, communities in Hammanskraal endure weeks without a supply of water, which is against the rights that are enshrined in the Constitution.
- (iv) Based on the analysis of the complaint, the following issue was considered and investigated:
- (a) Whether there is undue delay and/or failure by the City of Tshwane Metropolitan Municipality to supply the residents of Hammanskraal with clean water that is suitable for human consumption, and if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act.
- (b) The investigation was conducted in terms of section 182(1) of the Constitution read with sections 6 and 7 of the Public Protector Act. It included an analysis of all relevant documents, application of relevant laws, case law and related prescripts.
- (v) On 30 August 2023, Notices in terms of section 7(9)(a) of the Public Protector Act,² (the Notices) were issued to the City Manager of the CoT, Mr Johann Mettler (Mr Mettler); the Executive Mayor of the CoT, Mr Cilliers Brink (Mr Brink); the Director-General (DG) of the Department of Water and Sanitation (DWS), Dr Sean Phillips (Dr Phillips); the Minister of Water and Sanitation, Mr Senzo Mchunu (Mr Mchunu); the DG of National Treasury (NT), Dr Duncan Pieterse (Dr Pieterse); the DG of the Department of Cooperative Governance and Traditional Affairs (CoGTA), Dr Mbulelo Tshangana (Dr Tshangana); the Member of the Executive Council for CoGTA in the Gauteng Province, Mr Mzikayifani Khumalo (Mr Khumalo); and to the DG of the Department of Human Settlements (DHS) Mr

² Which enjoins the Public Protector, during the course of an investigation, to afford any person being implicated and/or affected in the matter under investigation, and where such implication may be to the detriment and/or interest of that person or where an adverse finding and/or remedial action pertaining to that person may result, an opportunity to respond in connection thereto.

Siyabonga Charles Zama (Mr Zama), on 13 September 2023, respectively, to afford them an opportunity to respond to the interim findings.

- (vi) Written responses to the Notices were received from Mr Mettler, Mr Brink, Dr Phillips, Mr Mchunu, Dr Pieterse, Dr Tshangana, Mr Khumalo and Mr Zama.
- (vii) Having regard to the evidence and regulatory framework determining the standard that should have been complied with, the following findings are made:
 - (a) **Whether there is undue delay and/or failure by the City of Tshwane Metropolitan Municipality to supply the residents of Hammanskraal with clean water that is suitable for human consumption, and if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act**
 - (aa) The allegation that there is undue delay and/or failure by the CoT to supply the residents of Hammanskraal with clean water that is suitable for human consumption is **substantiated**.
 - (bb) On the strength of the evidence placed before the Public Protector it is apparent that residents of Hammanskraal are not receiving clean water that is suitable for human consumption due to a partially functional and/or dysfunctional state and condition of the Rooiwal Waste Water Treatment Works (Rooiwal WWTW).
 - (cc) The lack of access to clean and potable water poses a danger to the lives of affected community members, constitutes a continuous gross inconvenience and improper prejudice to the residents of Hammanskraal.
 - (dd) In terms of the evidence before the Public Protector the Rooiwal WWTW lacks adequate and optimum functional capacity in respect of its original design to treat

the inflow of wastewater. As a result, the Rooiwal WWTW has a problem of cleaning organic and solid waste as well as other water pollutants it receives from its increased catchment areas, such as households and factories.

- (ee) According to the CoT's own presentation to the Parliamentary Portfolio Committee on Human Settlements, Water and Sanitation, dated 10 September 2019, the hydraulic flow or the amount of water coming into the Rooiwal WWTW plant to be treated is approximately 130 million litres per day and the plant experiences an 18% overload. The plant was designed to treat only 110 million litres per day.
- (ff) As a result of this hydraulic overload and recurring mechanical breakdowns of machinery as indicated in the evidence, the final treated wastewater discharged from the Rooiwal WWTW plant into the Apies River does not comply with the quality standards set, which is a serious non-compliance issue.
- (gg) Ultimately, treated wastewater from Rooiwal WWTW pollutes the Apies River and Leeuwkraal Dam, which is a source of drinking water to the Hammanskraal and surrounding areas.
- (hh) The Temba Water Treatment Works (TWTW) is not mechanically designed to treat raw sewage and sludge, since it is not a wastewater plant, but a water purification plant. As a result, the CoT has noted from its periodic water tests quality failures of the following parameters from TWTW:
 - (a) Ammonia;
 - (b) Phosphate;
 - (c) Nitrites-Nitrate; and
 - (d) Colour, Taste and Odour.
- (ii) The above indicated parameters are as a result of the poor raw water quality at the Leeuwkraal Dam resultant from the effluent discharged from the Rooiwal

WWTW, which the CoT has unduly delayed and/or failed to address over the years. This conduct failure and/or undue delay by the CoT exposes a health risk to the community of Hammanskraal and remains incompatible with obligations imposed on the CoT by sections 27(1)(b), 152(1), 153, 156 and 237 of the Constitution.

- (jj) The conduct of the CoT is also at variance with the obligations imposed on the Municipality by sections 4(2), 8(2), 23(1), 73(1) and 83(3) of the Local Government Municipal Systems Act. The conduct of the CoT is further irreconcilable with the provisions of sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.
- (kk) While the CoT remains the authority with direct jurisdiction on water related services in Hammanskraal, the poor quality of water in the area is a reflection of poor inter-governmental relations on all affected spheres of government. For this reason, this matter should be treated as an emergency, which requires a buy-in of other affected organs of state and a mutual recognition of the pressing need to address water problems in the area. This calls for a collective synergy, proper co-operation and the necessary support to the CoT by other spheres of government - such as DWS, CoGTA, DHS and NT - as contemplated in section 41(1) of the Constitution, in order to find long-term and lasting solutions to the water challenges in Hammanskraal.
- (ll) Under these circumstances, the conduct of the CoT, in failing and/or unduly delaying to upgrade and maintain the Rooiwal WWTW, amounts to improper conduct as contemplated in terms of section 182(1)(a) of the Constitution, undue delay and improper prejudice as contemplated by section 6(4)(a)(ii) and (v) of the Public Protector Act.
- (viii) The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action to redress the conduct referred

to in this report upon finalisation of an investigation where adverse findings are made.

- (ix) In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.
- (x) Taking into account the submissions and information that were presented before the Public Protector, the appropriate remedial actions that the Public Protector is taking in terms of section 182(1)(c) of the Constitution, are the following:

The Municipal Manager of the CoT

- (aa) Within **sixty (60) calendar days** from the date of receipt of the final report, in line with the responsibilities of the Municipal Manager in terms of section 55 of the Local Government Municipal Systems Act, develop an Implementation Plan setting out the measures, including prioritisation of capital funding within its available resources to be undertaken to upgrade and refurbish the Rooiwal WWTW in order to address the ongoing water quality failures at the TWTW, as highlighted in this report;
- (bb) Submit the Implementation Plan to the Executive Mayor of the CoT for tabling before the Municipal Council of the CoT and to the Member of the Executive Council (MEC) for CoGTA in the Gauteng province for monitoring of implementation;
- (cc) As undertaken in the response to the Notice, ensure that the approved 2023/24 Medium Term Revenue and Expenditure Framework (MTREF) with a reprioritised Urban Settlement Development Grant (USDG) allocation of R450 million over the next three years for the completion of Phase 1 of the Rooiwal

WWTW refurbishment and upgrade project is effectively used for that purpose and certify to the National Treasury that the allocation is specifically and exclusively appropriated in that budget for utilisation only according to the purpose of the allocation as contemplated in section 11(2) of DoRA; and

- (dd) As undertaken in the response to the Notice, ensure that the R60 million operational grant funding sought from the DBSA to fund the Rooiwal WWTW's Maintenance Plan is effectively and sufficiently utilised for that purpose, as and when the application for funding is approved.

The Executive Mayor of the CoT

- (ee) Within **sixty (60) calendar days** from the date of receipt of the final report, table a copy thereof through the Speaker of the Municipal Council of the CoT for discussion in line with his/her powers and functions in terms of section 56 of the Municipal Structures Act; and
- (ff) Receive and consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by the CoT to address deficiencies and shortcomings at the Rooiwal WWTW, which result in water quality failures at the TWTW, as highlighted in this report.

The Minister for Water and Sanitation

- (gg) Within **sixty (60) calendar days** from the date of this report, take appropriate steps or measures as he may deem necessary to work collaboratively with the CoT in addressing the water challenges in Hammanskraal in order to eradicate the situation that contributes to the poor quality of water at TWTW, as highlighted in this report, in line with the principles of cooperative governance envisaged in Sections 41 and 154 of the Constitution.

The MEC for COGTA in the Gauteng province

- (hh) Within **sixty (60) calendar days** from the date of receipt of the Implementation Plan developed by the Municipal Manager, establish appropriate monitoring mechanisms in line with the powers vested to him/her under section 105(1) of Local Government Municipal Systems Act in order to oversee the CoT's progress in connection with measures to address the ongoing poor quality of water at the TWTW, as highlighted in this report.

The Director-General of the Department of Human Settlements

- (ii) Within **sixty (60) calendar days** from the date of receipt of the final report in line with the provisions of section 9(1)(b) of DoRA develop monitoring mechanisms for the financial and non-financial performance of the CoT regarding the Hammanskraal Water Project funded by an allocation in Part B of Schedule 4, in accordance with subsection (2) and the applicable framework, for the current financial year;
- (jj) In terms of section 9(1)(e) and (f) of DoRA, provide National Treasury with monitoring information on the financial and non-financial performance by the CoT of the USDG against the capital budget and the service delivery and budget implementation plan; and
- (kk) Urgently evaluate the performance of the Hammanskraal Water Project funded by the allocation contemplated in Part B of Schedule 4 of DoRA and submit such evaluations to the National Treasury and the Minister of Human Settlements with recommendation on action to be taken.

1. INTRODUCTION

1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) read with section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8(1) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation, to affected parties (including the Complainant) for such persons to note the outcome of the investigation and to implement the remedial action.

1.3 The report is submitted to the following persons:

1.3.1 The Municipal Manager of the CoT, Mr J Mettler;

1.3.2 The Executive Mayor of the CoT, Mr C Brink;

1.3.3 The Director-General of the DWS, Dr S Philips;

1.3.4 The Minister of Water and Sanitation, Mr S Mchunu;

1.3.5 The Director-General of the National Treasury, Dr D Pieterse;

1.3.6 The Director-General of the Department of Human Settlements, Mr SC Zama;

1.3.7 The MEC for CoGTA in the Gauteng Province, Mr M Khumalo; and

1.3.8 A copy of the report is also provided to Mr E Bapela, (the Complainant).

1.4 The report relates to an investigation into allegations of undue delay and/or failure by the City of Tshwane Metropolitan Municipality (CoT) to supply the residents of the Hammanskraal area with clean water that is suitable for human consumption.

2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector on 01 September 2021. The Complainant in the main alleged that:

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- 2.1.1 The CoT is failing to provide the residents of Hammanskraal with clean water that is suitable for human and animal consumption;
- 2.1.2 As of 2021, two (2) reports relating to the same matter were issued by the Hammanskraal Community Water Inquiry and the South African Human Rights Commission (SAHRC) respectively, confirming that the water in Hammanskraal is not of good quality;
- 2.1.3 It has been fifteen (15) years and despite the two (2) reports, the CoT continues to supply the residents with unsafe water that threatens their livelihood and health; and
- 2.1.4 At times, communities in Hammanskraal endure weeks without the supply of water, which is against the rights that are enshrined in the Constitution.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

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

“The Public Protector has the power, as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*

(c) *to take appropriate remedial action”.*

- 3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.
- 3.4 The CoT is an organ of state in terms of section 239 of the Constitution and its conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

Section 6(9) of the Public Protector Act

- 3.5 The complaint relates to an incident that emanated approximately fifteen (15) years ago, prior to reporting of the matter to the Public Protector. Accordingly, where an incident or matter reported to the Public Protector occurred more than two years prior to the reporting of the matter to the Public Protector, he/she is expected to exercise his/her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on special circumstances as envisaged in Rule 10(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 as amended.³ (Public Protector Rules). Section 6(9) of the Public Protector Act provides that:

“Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall

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Published under Government notice No 945, Government Gazette 41903 of 14 September 2018 and amended in Government Notice No 1047, Government Gazette 43758 dated 2 October 2020.

not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.”

- 3.6 In *Manyike v S⁴ Shongwe* AJP stated that what constitutes exceptional circumstances depends on the facts of each case. Reference was made to Thring J in *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas & Another*,⁵ who remarked that:

“What is ordinarily contemplated by the words “exceptional circumstances” is something out of the ordinary and of an unusual nature; something which is accepted in the sense that the general rule does not apply to it; something uncommon, rare or different . . .”

- 3.7 Accordingly, the exercise of discretion referred to in terms of section 6(9) of the Public Protector Act to entertain this particular complaint was exercised based on the following special circumstances⁶ as envisaged in Rule 10(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 as amended⁷ (the Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act:

- 3.7.1 The ***nature of the allegations are very serious and still persist***, in that, at the time of the lodgement of this complaint, the residents of Hammanskraal still did not have access to clean water;

4 (527/17) [2017] ZASCA 96 (15 June 2017) at paragraph 3.

5 2002 (6) SA 150 (C) at 156H.

6 In *Gordhan v Public Protector and Others* [2019] JOL 45246 (GP) and *Gordhan and Others v Public Protector and Others* (36099/2098) [2020] ZAGPPHC 777 (17 December 2020), the Supreme Court of Appeal (the SCA) and the High Court in Pretoria respectively, held that, it is only where special circumstances exist, that complaints that are older than two years can be entertained, and that, the particulars of the special circumstances must be succinctly set out.

7 Published under Government notice No 945, Government Gazette 41903 of 14 September 2018 and amended in Government Notice No 1047, Government Gazette 43758 dated 2 October 2020.

- 3.7.2 The ***nature of the allegations*** further ***reveal the possibility of un-remedied injustice***, in that, even though there have been attempts to resolve the water crisis in Hammanskraal as evident in the reports issued by the SAHRC,⁸ DWS⁹ and Hammanskraal Community Water Inquiry¹⁰, which have all tried to address the water complaints, the water crisis however remained on-going at Hammanskraal at the time of lodgement of this complaint;
- 3.7.3 The Public Protector also formed a reasonable view that the investigation of this complaint would be in the ***public interest*** since this matter affects the greater community and the wider population of approximately twenty-one thousand three hundred and forty-five (21 345) people of Hammanskraal as a whole;¹¹ and
- 3.7.4 The ***opportunity to address injustice***, which may result if the matter is not investigated, was another factor considered. The prejudice to the residents of Hammanskraal which emanates from poor water quality would remain if this complaint is not investigated.

4. THE ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
- 4.1.1 Whether there is undue delay and/or failure by the City of Tshwane Metropolitan Municipality to supply the residents of Hammanskraal with clean water that is suitable for human consumption, and if so, whether such conduct is improper as

8 Dated 26 October 2021.

9 Dated 12 July 2022.

10 Dated August 2021.

11 Available at <https://www.statssa.gov.za>, accessed on 25 July 2023.

envisaged in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

4.1.2 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is in a position to make findings and take appropriate remedial action.

4.1.3 Evidence indicating improper conduct relating to undue delay and/or failure by the CoT was established, and the Public Protector has made adverse findings against CoT and is taking appropriate remedial action to address the undue delay and/or conduct failure that is prevailing.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, which confers on the Public Protector the powers to investigate, report and take appropriate remedial action in response to alleged improper or prejudicial conduct in state affairs. Section 182(2) of the Constitution enables these powers to be supplemented by national legislation and to this end the Public Protector Act is *inter alia* the legislation envisaged in that section.

5.1.2 The investigation was conducted in terms of section 182 of the Constitution and Sections 6 and 7 of the Public Protector Act.

5.1.3 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration with due regard to the circumstances of each case. The Supreme Court of Appeal reiterated that the Public Protector is given broad

discretionary powers as to which complaints to accept, which allegations of maladministration to investigate, “*how to investigate them and what remedial action to order – as close as one can get to a free hand to fulfil the mandate of the Constitution*”.¹²

5.2 Approach to the investigation

5.2.1 The approach to the investigation included analysis of the relevant documentation, interviews, site inspections and application of the relevant laws, regulatory framework and prescripts.

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

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

5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation by the Public Protector, to enable the issue(s) to be adequately

¹² *Minister of Home Affairs and Another v Public Protector of the Republic of South Africa* (308/2017) [2018] ZASCA 15; [2018] 2 All SA 311 (SCA); 2018 (3) SA 380 (SCA) (15 March 2018) at paragraph 37.

addressed by proving or disproving matters relevant to the issue(s) being investigated. In this particular case, the factual enquiry principally focused on whether the alleged conduct of the CoT was inconsistent with the applicable prescripts.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the CoT.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct, what it would take to remedy the wrong, or where appropriate, to place the Complainant as close as possible to where she/he would have been, but for the improper conduct.

5.3 **The Investigation Process**

5.3.1 The approach to the investigation included an exchange of documents between the Public Protector, the CoT, the DWS, DHS, National CoGTA, CoGTA in the Gauteng Province, the SAHRC, the Development Bank of Southern Africa (DBSA), the National Treasury (NT), the Special Investigating Unit (SIU), the South African Police Service (SAPS), the Organisation Undoing Tax Abuse (OUTA) and the Auditor-General South Africa (AGSA), who are in possession of information which has a bearing on the investigation of this matter and analysis of the relevant documentation and consideration of the relevant laws, regulatory framework, and prescripts.

5.4 **Key sources of information**

Documents and e-mail correspondence

5.4.1 A copy of a written complaint from the Complainant, dated 21 September 2021;

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- 5.4.2 A copy of presentation of the CoT to Parliament, dated 10 September 2019;
 - 5.4.3 A copy of Hammanskraal Community Water Inquiry report, dated August 2021;
 - 5.4.4 A copy of SAHRC's Report, dated 26 October 2021;
 - 5.4.5 The allegations letter from the Public Protector to the CoT, dated 12 January 2022;
 - 5.4.6 A copy of the response letter received from the CoT, dated 02 February 2022;
 - 5.4.7 A copy of the DWS Report, dated 12 July 2022;
 - 5.4.8 A copy of the response letter received from CoT, dated 21 February 2023;
 - 5.4.9 The Follow-up enquiry letter from Public Protector to the CoT, dated 23 May 2023;
 - 5.4.10 A copy of the response email received from the CoT, dated 23 May 2023;
 - 5.4.11 A copy of an additional response received from the CoT, dated 24 May 2023;
 - 5.4.12 Further information request letter from the Public Protector to the DWS, dated 06 June 2023;
 - 5.4.13 The information request letter from the Public Protector to the DBSA, dated 06 June 2023;
 - 5.4.14 The Information request letter from the Public Protector to the NT, dated 06 June 2023;
 - 5.4.15 The Clarity seeking letter from the Public Protector to the SIU, dated 06 June 2023;

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- 5.4.16 Further information request letter from the Public Protector to OUTA, dated 06 June 2023;
 - 5.4.17 A response letter received from OUTA, dated 07 June 2023;
 - 5.4.18 A copy of response letter received from the DBSA, dated 15 June 2023;
 - 5.4.19 A clarity seeking letter from Public Protector to the CoT, dated 20 June 2023;
 - 5.4.20 A copy of response letter received from the DWS; dated 22 June 2023;
 - 5.4.21 A copy of response letter received from the CoT, dated 28 June 2023;
 - 5.4.22 A clarity seeking letter from the Public Protector to SAPS, dated 04 July 2023;
 - 5.4.23 A copy of response letter received from SAPS, dated 20 July 2023;
 - 5.4.24 A copy of response letter received from the SIU, dated 20 July 2023;
 - 5.4.25 A copy of response letter received from NT, dated 03 August 2023;
 - 5.4.26 An information request letter from the Public Protector to the AGSA, dated 18 August 2023;
 - 5.4.27 A copy of a response received from the AGSA dated, 11 September 2023;
 - 5.4.28 A copy of the Proclamation No. 138 of 2023, dated 22 September 2023 was received from SIU on 26 September 2023;
 - 5.4.29 Letter from the Public Protector to DWS, dated 06 October 2023 and
 - 5.4.30 Copy of a response letter received from DWS, dated 09 October 2023.

Inspection *in loco*

- 5.4.31 A joint inspection *in loco* was conducted by the CoT, the Investigation Team and the SAHRC at the Rooiwal WWTW on 01 June 2023; and
- 5.4.32 A joint inspection *in loco* was conducted by the CoT and the Investigation Team at the TWTW on 14 July 2023.

Meetings and interviews

- 5.4.33 Meeting held between the Investigation Team and the CoT on 18 January 2023;
- 5.4.34 Briefing meeting between the CoT and the Investigation Team preceding the inspection *in loco* at Rooiwal WWTW held on 01 June 2023;
- 5.4.35 Virtual meeting held between, the DWS, CoT, SAHRC and the Investigation Team on 05 June 2023;
- 5.4.36 Briefing meeting between the CoT and the Investigation Team preceding the inspection *in loco* at TWTW on 14 July 2023.

5.5 Legislation and other prescripts

- 5.5.1 Constitution of the Republic of South Africa, 1996;
- 5.5.2 Division of Revenue Act, 2023;
- 5.5.3 Local Government Municipal Structures Act, 1998;
- 5.5.4 Local Government Municipal Systems Act, 2000;
- 5.5.5 Municipal Finance Management Act, 2003;

5.5.6 National Environmental Management Act, 1998;

5.5.7 National Water Act, 1998;

5.5.8 Public Protector Act, 1994 and

5.5.9 Water Services Act, 1997;

Case Law considered

5.5.10 *Manyike v S* (527/17) [2017] ZASCA 96 (15 June 2017);

5.5.11 *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, and another* 2002 (6) SA 150 (C);

5.5.12 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011); and

5.5.13 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 and

5.5.14 *Gordhan v Public Protector and Others* [2019] JOL 45246 (GP) and *Gordhan and Others v Public Protector and Others* (36099/2098) [2020] ZAGPPHC 777 (17 December 2020).

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

- 5.5.15 Notices in terms of section 7(9)(a) of the Public Protector Act were issued to Mr Mettler, Mr Brink, Dr Phillips, Dr Pieterse, Mr Mchunu, Dr Tshangana and Mr Khumalo, respectively, dated 30 August 2023; and
- 5.5.16 The Notice in terms of section 7(9)(a) of the Public Protector Act, dated 30 August 2023, which was issued to Mr Tshangana, was redirected to Mr Zama on 14 September 2023;

Responses to Notices issued in terms of section 7(9) of the Public Protector Act

- 5.5.17 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act (the Notice) was received from Mr Mchunu, dated 06 September 2023 and the same was countersigned by Dr Philips on 11 September 2023;
- 5.5.18 A response to the Notice dated 12 September 2023 with various annexures was received from Mr Mettler and the same was confirmed by Mr Brink on an even date;
- 5.5.19 A response to the Notice was received from Dr Pieterse, dated 15 September 2023;
- 5.5.20 A response to the Notice was received from Mr Khumalo, dated 19 September 2023; and
- 5.5.21 A response to the Notice was received from Mr Zama, dated 02 October 2023.

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

6.1 Whether there is undue delay and/or failure by the City of Tshwane Metropolitan Municipality to supply the residents of Hammanskraal with clean water that is suitable for human consumption, and if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act

Common cause

6.1.1 CoT is classified as a Category A municipality by the Municipal Demarcation Board in terms of section 4 of the Local Government, Municipal Structures Act, 1998. The CoT was established on 05 December 2000, through the integration of various municipalities and councils that had previously served the greater Pretoria area and surrounding areas, including Hammanskraal;¹³

6.1.2 Rooiwal Wastewater Treatment Works (Rooiwal WWTW) is one of the CoT's wastewater works plants, situated in Region Two, next to the Apies River and the Rooiwal Power Station;

6.1.3 The Rooiwal WWTW discharges its effluent directly into the Apies River and remains a major contributor to the water flows into the Apies River;

6.1.4 The Apies River discharges into the Leeuwkraal Dam downstream of the Rooiwal WWTW. The Apies River flows through the middle of the CoT, past Rooiwal WWTW, along Hammanskraal and ultimately into the Leeuwkraal Dam;

¹³ Available at <https://www.tshwane.gov.za>, accessed on 27 July 2023.

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- 6.1.5 The Temba Water Treatment Works (TWTW) extracts its bulk water from the Leeuwkraal Dam, which serves as a reservoir for Hammanskraal raw water;
- 6.1.6 The residents of Hammanskraal and the surrounding areas receive their reticulation supply of potable water for domestic use from the TWTW, where it is supposed to undergo the treatment and purification processes in order to meet required drinking water standard;
- 6.1.7 On or about 2019 and thereafter during 2022, the DWS, the SAHRC, and the Parliamentary Portfolio Committee on Water and Sanitation, conducted site visits at the Rooiwal WWTW and TWTW, with a view to provide intervention mechanisms to the water crisis in Hammanskraal;
- 6.1.8 The SAHRC, the DWS and the independent Hammanskraal Community Water Enquiry Panel respectively issued reports, with directives on the Hammanskraal water crisis and proposed recommendations to compel the CoT to resolve the water challenges; and
- 6.1.9 At the time of reporting of the complaint to the Public Protector, during September 2021, the Hammanskraal water challenges had not been resolved.

Issue in dispute

- 6.1.10 The issue for determination by the Public Protector is whether there is undue delay and/or failure by the CoT to supply the residents of Hammanskraal with clean water that is suitable for human consumption.

The Complainant's version

- 6.1.11 The Complainant contended that the CoT, despite various reports relating to the above-mentioned matter, which were issued by the independent panel of

Hammanskraal Community Water Inquiry and the SAHRC, continued to provide the residents of Hammanskraal area with water of poor quality that was not safe for human consumption. It has been fifteen (15) years since the CoT started supplying the residents with unsafe water, which threatens their livelihood and health.

- 6.1.12 The Complainant also contended that at times, communities in the Hammanskraal area spent weeks without water supply from the CoT, which conduct is in contravention of their rights protected in the Constitution.

Response(s) from the CoT

- 6.1.13 On 12 January 2022, the Public Protector Investigation Team (Investigation Team) issued an allegations letter for the attention of Mr Warren Khoza based in the office of the City Manager to submit a detailed response to the complaint received from the Complainant.

- 6.1.14 The Investigation Team received a response letter from the office of the City Manager, dated 02 February 2022, signed by Mr Stephens Ntoane, the Group Head Water and Sanitation, who responded as follows:

- 6.1.14.1 TWTW receives poor quality raw water because of the partially treated effluent from the Rooiwal WWTW. The poor-quality effluent is discharged into the Apies River and further downstream into the Leeuwkraal Dam. The Leeuwkraal Dam is the abstraction point for TWTW;

- 6.1.14.2 *“Rooiwal WWTW is hydraulically and organically overloaded. This resulted in ammonia, nitrate, nitrite, and phosphate failures in the final water treated for potable uses at the Temba WTW. Potable water treatment facilities are not designed to remove these parameters which require biological treatment*

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- ordinarily provided for in wastewater treatment. Delays in upgrades and expansions at the Rooiwal WWTW, however led to a breakthrough in these parameters because of inefficiencies in the system” (sic);*
- 6.1.14.3 TWTW supplies water for domestic purposes such as for drinking, given the failures still experienced in the system. Water from Soshanguve DD reservoir (a Rand Water Supply) and Babelegi reservoir from Magalies Water is supplied through water tankers for drinking purposes as a short-term interim intervention.
- 6.1.14.4 The following areas of Hammanskraal that are supplied by Rand Water and Magalies Water for drinking purposes:
- (a) Magalies Water: Marokolong; Babelegi; Industries; Ramotse and Moretele area; and
 - (b) Rand Water and Magalies Water: Sekampaneng; Suurman; Manyeleti; Unit D; and Outstad.
- 6.1.14.5 The areas situated at the western parts of Hammanskraal that are supplied by Rand Water for human consumption through water pipes are the following:
- (a) Refentse and New Eersterust.
- 6.1.14.6 To provide a lasting solution, a project for refurbishing Rooiwal WWTW is currently underway to improve the effluent quality from this plant (long term intervention).
- 6.1.14.7 The completion of phase one (1) of the Rooiwal WWTW project upgrade will improve the raw water quality discharged into Leeuwkraal Dam via Apies River. Good raw water quality will enable TWTW to produce potable water suitable for potable uses. The scope of the project includes the following aspects:

- (a) Upgrading of the inlet works at the Rooiwal North Plant;
- (b) Upgrading of the biological reactors mixing and aeration system;
- (c) Upgrading of the anaerobic digester on the Rooiwal East Plant;
- (d) Upgrading of the anaerobic digesters on the Rooiwal West Plant;
- (e) Upgrading of the top sludge dewatering facility; and
- (f) Upgrading of the Rooiwal North Plant flow balancing tank control systems.

6.1.14.8 The physical progress for phase one was at 54% as at the date of this response and its expected completion was earmarked for 02 October 2022.

6.1.14.9 Phase two (2) of the project would address additional treatment capacities required for 2 X 40 Ml/d treatment modules with four biological reactors including sludge handling and sludge disposal facilities. The design has been completed and the project is therefore well defined, however, a mechanism for the delivery of the project still needs to be finalised.

6.1.14.10 The estimated cost of the Rooiwal WWTW project was the amount of two billion and five hundred million rand (R2, 5 billion), which the CoT did not have. However, the CoT was exploring alternative measures to source funding for the project.

6.1.14.11 Completion of phase one of Rooiwal WWTW will result in improved effluent discharged into Apies River. Good quality effluent into Apies River will improve the Leeuwkraal Dam. Phase two of the Rooiwal WWTW project will further improve the final wastewater discharge and sustain good water quality and unlock growth and development in the Rooiwal drainage basin.

Presentation of the CoT to Parliament dated 10 September 2019

6.1.15 According to the CoT's presentation to the Parliamentary Portfolio Committee on Human Settlements, Water and Sanitation, dated 10 September 2019, the

following is highlighted and identified as some of the problems at Rooiwal WWTW:

- (a) The plant does not have sufficient capacity to treat the incoming wastewater/sewage flow;
- (b) In terms of the type and strength of the sewage coming to Rooiwal (organic loading), the plant experiences a 70% overload;
- (c) Regarding the hydraulic flow (amount of water) coming into the plant to be treated (130 million litres per day), the plant experiences an 18% overload (the plant can only treat 110 million litres per day);
- (d) The final treated wastewater discharged from the plant into the Apies River does not comply with the set standards (a serious non-compliance issue) and
- (e) Treated wastewater from Rooiwal WWTW pollutes the Apies River and Leeuwkraal Dam (source of drinking water to the Temba/Hammanskraal area).

Meeting between the CoT officials and the Investigation Team

- 6.1.16 On 18 January 2023, the Investigation Team held a meeting with the CoT's officials to obtain a status update on the Hammanskraal water crisis. During the meeting the functionaries of the CoT reiterated their position that the Hammanskraal water project remained incomplete and stagnant due to a lack of funding of the amount of approximately between two billion and five hundred million rand (R2, 5 billion) to three billion rand (R 3 billion), however, alternative funding sources such as the involvement of DBSA were being explored.

- 6.1.17 During the said meeting, the CoT also indicated that it would soon provide the Public Protector with records of correspondence or documents exchanged between the CoT, DWS and SAHRC pertaining to the Hammanskraal water crisis.

Documentary evidence received from CoT

Letter from CoT to the Public Protector dated 21 February 2023

- 6.1.18 On 21 February 2023, the Investigation Team received a letter from the CoT with two reports, namely DWS' Report and the SAHRC's Report respectively, as well as correspondence between CoT and the National Treasury (NT).

The DWS' Report, dated 12 July 2022

- 6.1.19 The DWS Report provided the background on how the CoT carried out its water treatment works project and stated the following:
- (a) The CoT has fifteen (15) WWTWs in the area of CoT whereby four (4) of which are in conditions that required refurbishment and upgrade due to the aged Infrastructure as well as hydraulic and organic overloading. The four WWTWs that required refurbishment and upgrade are: Rooiwal WWTW; Klipgat WWTW; Baviaanspoort WWTW; and Sunderland Ridge WWTW;
 - (b) The Rooiwal WWTW's wastewater contributes directly to the impact on quality of water treated at TWTW, the Sunderland Ridge WWTW and contributes to the direct impact on quality of water treated at Brits WWTW, while Klipgat WWTW's contribution was not mentioned;

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- (c) Both DWS and the Parliamentary Portfolio Committee on Water and Sanitation (the Portfolio Committee) conducted oversight visits at the aforesaid four WWTWs during a site inspection that took place from 21 June to 22 June 2022. The Portfolio Committee directed the DWS to make recommendations to the CoT to appoint the water service provider to conduct operations, maintenance and refurbishment of the Rooiwal WWTW which resulted in the appointment of Ekurhuleni Water Care Company (ERWAT);
- (d) During the site inspection, the DWS found that there were incomplete works at the three (3) WWTWs, one of which was Rooiwal WWTW that has two divisions, namely North and South which operated as follows:

Rooiwal North WWTW

- (aa) The Rooiwal North WWTW was operating above the design capacity;
- (bb) No contractor was on site to implement phase 1 of the project and therefore no progress was made;
- (cc) Screenings conveyer belt was still not working;
- (dd) Four vortex de-gritters pumps were not working;
- (ee) Three Primary Sedimentation Tanks (PSTs) were not operational; and
- (ff) There was diversion of black raw sewage into the Apies River.

Rooiwal South WWTW

- (gg) The Rooiwal South WWTW has two vortex de-gritters that were not operational;

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- (hh) Eight PSTs on the eastern side were also not operational;
 - (ii) Refurnished seven digesters were reported blocked due to said eight PST which were non-operational; and
 - (jj) Sixteen bio filter tanks arms were no longer rotating due to blockages.
- (e) The report, however, also indicated that the ERWAT left the site at the Rooiwal WWTW due to contractual disputes with the CoT, whereafter the DWS approached the NT for funding in order to comply with the recommendations by the SAHRC report;
- (f) However, the NT could not provide financial assistance on the basis that the CoT was previously provided funding for rehabilitation and upgrading of the Rooiwal WWTW, through its urban settlement development grant allocations.

The SAHRC's Report, dated 26 October 2021

- 6.1.20 The SAHRC indicated that a thorough investigation was conducted and made adverse findings relating to the pollution of rivers by the CoT's sewage and WWTWs as alleged by the complainant. The SAHRC further indicated that during enquiries into the matter, the CoT advised the SAHRC about an amount of nine billion and two hundred million rands (R9.2 billion) that was needed to complete the Hammanskraal Water project.
- 6.1.21 According to the report of the SAHRC, the following are some of the recommendations made to the CoT:
- 6.1.21.1 To ensure the declaration of the situation of WWTWs as a national disaster in accordance with the Disaster Management Act, 2002 (Disaster Management Act)

as well as the establishment of a National Water Care Entity to ensure that laboratories located in the Municipal areas were upgraded, operated and maintained to reach the ISO17025 accreditation and that water quality was capable of being assessed against the Blue Drop and Green standard of Assessments; and

- 6.1.21.2 The Minister of Water and Sanitation should take over the water and sanitation from the CoT.

The Hammanskraal Community Water Inquiry report dated August 2021

- 6.1.22 This report was submitted to the Public Protector by the Complainant when he lodged his complaint. The report is a product of an Independent Commission of Inquiry into the Hammanskraal Water Crisis (the Commission) and it provided an overview of the public hearings that were convened to ventilate the issues surrounding the ongoing water crisis in the area. According to this report the hearings were held from 16 to 18 April 2021 at Ebenezer Bible Church in Temba.
- 6.1.23 The hearings were conducted in public and were accessible to anyone who wished to attend. The CoT declined the invitation to attend the Commission's hearing and no reasons were given.
- 6.1.24 The purpose of the Commission was to investigate the extent of the contamination of water in and around Hammanskraal, the effect on human life and to establish the cause thereof.
- 6.1.25 The Commission found, amongst other things, that the CoT trampled or infringed the right of residents of Hammanskraal as guaranteed in section 27(1) of the Constitution in a sense that, besides having no sufficient water, the little that is available is contaminated with human waste and/or had a bad smell of chlorine

or human waste and that this plight has lasted for sixteen (16) years. The Commission did not make any recommendations in its report, save to indicate its intention to approach the court, should the CoT fail to remedy the water crisis.

Response from DWS, dated 22 June 2023

6.1.26 On 06 June 2023, the Investigation Team sent a letter to the Director General of DWS, Dr Sean Phillips (Dr Phillips) to request further information regarding the Hammanskraal matter and to establish the steps taken by DWS against the CoT for non-compliance with the required water quality standards in connection with the pollution of water through effluent discharged from Rooiwal WWTW to the Apies River, Leeuwkraal Dam and ultimately to TWTW.

6.1.27 On 22 June 2023, Dr Phillips provided the Investigation Team with a letter in which he indicated that:

6.1.27.1 The DWS as the custodian of Water resources had issued compliance measures in terms of the National Water Act, 1998 (NWA),¹⁴ regarding wastewater treatment in the CoT. Regarding the non-compliance directive relating to Hammanskraal water pollution, the following was indicated:

Name of WWTW	Enforcement action taken	Date issued	Water Resources
Rooiwal WWTWs	Directive Court Case in High Court Pretoria	08-03-2011	Apies
Temba WTWs	Pre-directive	11-11-2016	Apies
Babelegi WWTWs	Pre-directive	11-11-2016	Apies

¹⁴ This include a directive issued by DWS on 03 March 2011 in terms of section 53(1) of NWA against the CoT for pollution of Apies River with a partially treated effluent emanating from Rooiwal WWTW.

6.1.27.2 The joint interim and/or short-term measures put in place by DWS to ensure that the residents of Hammanskraal are protected from further using unsafe water that will expose them to waterborne disease, are as follows:

- (a) As the first intervention put in place, the CoT will continue to provide Hammanskraal residents with water through mobile tanks from designated water filling points, with testing of water provided from tankers, and residents are requested to participate in monitoring tankers and testing thereof;
- (b) Output: The water that meets drinking water standards is provided to Hammanskraal residents and the start date for the provision of water is already implemented while the ending date will be in March 2024;
- (c) Second Intervention put in place - To install wastewater technology solutions at Rooiwal WWTW for treatment of the sewerage in order to increase quality of discharged effluent into Apies River;
- (d) Output: The *E-coli* levels of treated sewage water that flows into Apies River have been reduced and the start date for the said reduced *E-coli* will be in August 2023, while the ending date was set for March 2024;
- (e) Third Intervention put in place - The provision of alternative water that is suitable for human consumption is sourced from Magalies Water for Hammanskraal residents through emergency construction of a 30-40MI/day package plant at Klipgat WTW. The Klipgat WTW will then provide drinking water in the Hammanskraal water distribution system; and
- (f) Output: To improve the provision of water through piped system to all Hammanskraal Communities and the start date will be in July 2023, while the ending date is set for March 2024.

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- 6.1.27.3 The CoT had made a public announcement warning to Hammanskraal residents not to consume the water from the TWTW that was distributed through taps. The water for human consumption is supplied by water tankers abstracted from the Magalies Water and Rand Water sources;
- 6.1.27.4 On 12 March 2019, the DWS issued a Notice of Motion against CoT to seek relief from the North Gauteng High Court (High Court) for a declaratory order with intention to compel the CoT to comply with its legal obligations in ensuring that all WWTWs around the area of CoT are well restored and kept in proper a condition of repair. On 18 March 2019, the CoT approached the Court by filing its Notice of Intention to oppose the declaratory order and later filed an answering affidavit;
- 6.1.27.5 While the matter was before the High Court, the SAHRC issued a report dated 21 October 2021 with findings and recommendations that the DWS must take over all sanitation functions in the CoT. The DWS initiated intervention processes in terms of section 63 of the Water Services Act,¹⁵ by approaching the current Executive Mayor of the CoT, Mr Cilliers Brink (Mr Brink) but the intervention was refused;
- 6.1.27.6 DWS does not have voted funds to provide Metropolitan Municipalities with water and sanitation functions. The DWS then engaged with NT with the intention to seek funding in order to assist the CoT financially to address the Hammanskraal water crisis;
- 6.1.27.7 The NT in response, indicated that the CoT has funding to address the water crisis in Hammanskraal through its Urban Settlement Development Grant (USDG) and as such NT declined DWS' request for funding, emphasising that the CoT must utilise its USDG to address the Hammanskraal water crisis;

¹⁵ Section 63 of Water Services Act provides that if a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant Province to intervene in terms of section 139 of the Constitution.

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- 6.1.27.8 The repair and upgrade of the Rooiwal WWTW is imperative and has to be dealt with as a matter of national urgency and required an estimated cost of the entire rehabilitation and upgrade of the Rooiwal WWTW for the next three (3) financial years amounting to four billion rand (R4 billion);
- 6.1.27.9 The project of Rooiwal WWTW can be implemented through stages in order to stop or reduce the pollution from Rooiwal WWTW to Apies River in the early stages;
- 6.1.27.10 Mr Brink raised the CoT's lack of capacity in terms of funds to address all sanitation challenges that the CoT is currently experiencing and further stated that had the CoT been in possession of sufficient funds, it would have addressed the said challenges timeously on its own;
- 6.1.27.11 Prior to the outbreak of the cholera pandemic in Hammanskraal, Mr Brink approached the Minister of Water and Sanitation for a meeting with the purpose to develop a better working relationship between DWS and CoT;
- 6.1.27.12 However, subsequent to the cholera outbreak on 26 May 2023, the Mayor and Minister convened a meeting and agreed upon the following terms, that:
- (a) The DWS and CoT will form a partnership working jointly in order to manage the Hammanskraal water crisis project by fixing the Rooiwal WWTW;
 - (b) The CoT will contribute a portion of its USDG. At the beginning of June 2023, the CoT obtained the Council's approval for R450 million through Medium Term Revenue and Expenditure Frameworks (MTREF);
 - (c) The NT will be approached and requested to top-up the said R450 million to enable the Hammanskraal water crisis project to be fully implemented;

- (d) The DBSA will be appointed as an independent implementing agent to manage implementation; and
- (e) Both the DWS and CoT will then form a joint technical steering committee to oversee the Hammanskraal water crisis.

6.1.27.13 The longer-term plans with timeframes that have been agreed upon with the CoT are as follows:

No.	Description of activity	Outputs	Start date	End date
1.	Phase 1 Acceleration of the completion of the current project at Rooiwal WWTW which is at 68% completion	To improve the quality of effluent from the WWTW that is being discharged into the Apies River in turn, to enable the TWTW to function better and	Sept 2023	Nov 2024
2	Phase 2 Upgrading of Rooiwal WWTW to add 50ML/day of wastewater treatment capacity and de-silting of sludge at Leeukraal Dam	produce quality drinking water	Oct 2024	June 2025

No.	Description of activity	Outputs	Start date	End date
3.	Phase 3 Upgrading of Rooiwal WWTW by an additional capacity of 80ML/day		Jul 2024	June 2026

6.1.27.14 On 30 May 2023, a joint meeting was held between the Director-General (DG) of DWS, NT, CoT's Manager and other relevant officials where it was agreed upon that:

- (a) The funding must be secured to fix and upgrade Rooiwal WWTW;
- (b) The financial task team consisting of the NT, DWS, the CoT and DBSA must develop a financial plan for the project and various options must be explored and considered, but not limited to increasing the CoT's contribution from its USDG allocation;
- (c) Shifting of funds from other grants and DBSA loan finance and timeframe cannot be set out for development of financing plan as it is dependent on agreements being reached with NT;
- (d) The first stage of the project will start by using the CoT's USDG, possibly added up by a DBSA loan or bridging finance while the financial task team completes the financing plan for the whole project;
- (e) The DWS and the CoT's steering committee must be operational as soon as the financing plan is completed. The CoT's steering committee must therefore initiate the process of appointing the DBSA as implementing agent

and the said process and engagements with the DBSA are currently underway;

- (f) The CoT's steering committee must urgently oversee the development of detailed technical plans for the repairs and upgrades, including scoping the project stages and tender specifications for the first stage. The work and processes is currently underway;
- (g) The technical plans must ensure that the project is as economical and competitive as possible, including the implementing agent fees;
- (h) The technical task team must develop high-level timeframes for the whole project and for the various stages; and
- (i) The CoT has recently taken the decision to appoint the DBSA as implementing agent and engagements with DBSA are currently underway, hence Memorandum of Understanding (MoU) has not yet been approved and signed.

Response from the DBSA

- 6.1.28 On 06 June 2023, the Investigation Team sent a letter to the Chief Executive Officer and Managing Director of DBSA, Ms Boitumelo Mosako (Ms Mosako) to request information regarding the role of DBSA in the plan to upgrade and refurbish Rooiwal WWTW.
- 6.1.29 On 15 June 2023, Ms Mosako responded to the Investigation Team and provided a copy of the Memorandum of Understanding (MoU) and addendum between the DBSA and DWS, concluded on 02 April 2019. Ms Mosako further stated that:

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- 6.1.29.1 On 02 April 2019, DBSA and DWS concluded the MoU together with the addendum thereto that was signed on 09 November 2021. The DBSA was appointed as an implementing agent for the DWS to carry the construction and maintenance of water infrastructure projects;
- 6.1.29.2 On 10 May 2022, DBSA, DWS and South African Local Government Association (SALGA) concluded a Memorandum of Agreement (MoA) which establishes the National Water Partnerships Programme (NWPP) in support of the implementation of the National Water and Sanitation Master Plan (NWSMP) published by the DWS;
- 6.1.29.3 The NWPP is overseen by a Programme Management Office, which is housed within the DBSA on behalf of the DWS;
- 6.1.29.4 Regarding the DBSA's plan and role in the Hammanskraal water crisis project:
- (a) The DBSA, through its Infrastructure Delivery Division (IDD) was recently requested for assistance to complete Phase 1 of the Rooiwal WWTW. Further, the DBSA, through its collaboration with DWS and NT, is investigating various long term funding options for the refurbishment, upgrading, operations and maintenance of the Rooiwal WWTW; and
 - (b) Both above-mentioned initiatives are currently in the due diligence phase and are subject to DBSA's internal approval processes prior to final arrangements being concluded with the CoT. However, no agreements have been signed with the CoT.

Response from the National Treasury

- 6.1.30 On 06 June 2023, the Investigation Team addressed correspondence to the Acting Director-General for NT, Mr Ismail Momoniat (Mr Momoniat) requesting

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- information and the role of NT or any financial plans for the upgrade or funding of Rooiwal WWTW project.
- 6.1.31 Mr Momoniat responded to the Investigation Team as per letter dated 03 August 2023 and stated, *inter alia*, that:
- 6.1.31.1 The NT was made aware of this matter over a year ago and directed the CoT to use the resources provided through the fiscus to fund this project, in this case the Division of Revenue Act, 2022;
- 6.1.31.2 The CoT was also advised during the 2022 Budget and Benchmark Engagement on 13 May 2022, where the 2022/23 tabled MTREF budget was assessed to priorities capital funding for this project;
- 6.1.31.3 It must be noted that the CoT appointed a contractor CMS NJR and Blackhead on 05 August 2019 for the construction of phase 1 upgrades and refurbishments at Rooiwal WWTW plant for a period of three years amounting to R291, 4 million;
- 6.1.31.4 The contract was terminated on 30 July 2022, due to poor performance and failure by the contractor to execute the work;
- 6.1.31.5 The NT has been informed that the CoT has allocated R 450, 5 million over the 2023/24 MTREF for the completion of phase one of Rooiwal WWTW plant; and
- 6.1.31.6 The view of the NT is that the former Council for the CoT allocated its available resources to the most pressing priorities, over this project in Hammanskraal.

Additional Responses from the CoT

Response letter from CoT dated 24 May 2023

- 6.1.32 On 23 May 2023, the Investigation Team sent a follow-up enquiry through a letter to the CoT addressed to Mr Warren Khoza, based in the office of the City Manager, requesting the status update in resolving the Hammanskraal Water crisis due to the latest media reports, following the outbreak of cholera in the area.
- 6.1.33 The CoT responded through a letter dated 24 May 2023 from Mr SR Notoane (Mr Notoane), the Group Head Water and Sanitation and stated, amongst other things, that the CoT is conducting tests at various network points to determine where the infection originated.
- 6.1.34 Mr Notoane further clarified that water supplied by water tankers, water produced from the TWTW plant (albeit intended for non-potable uses) and the distribution network tested negative for E-coli and faecal coliforms, ruling out the possibility of waterborne diseases at these points.

Response email from the CoT dated 23 May 2023

- 6.1.35 The Investigation Team further received an email from Mr T Nyambeni, Acting Director in the office of the City Manager in which he stated the following:

“The process has been initiated on the part of the CoT to have a joint round table with the SAHRC and the complainants (Hammanskraal and Mamelodi community members) on the very same matter and that same was escalated to both Mayoral Committee and Provincial levels, that all the parties, including the National Department of Water and Sanitation’s Deputy Minister Mahlobo, are now seized with this matter to chart the way forward to resuscitate the plan as presented to Parliament to have DBSA to join the parties”.

Response letter from the CoT dated 28 June 2023

- 6.1.36 On 20 June 2023, the Investigation Team sent a letter to the office of the City Manager, seeking clarity amongst other things, on measures taken by the CoT to comply with directives issued by DWS on the non-compliance with the required water quality standards and prevention of water pollution. On 28 June 2023, the City Manager, Mr Johan Mettler (Mr Mettler) responded as follows:
- 6.1.36.1 Measures were taken by the CoT as the responsible Water Service Authority to comply with the directives issued by DWS against the CoT for its non-compliance with the required water quality standards, and to prevent pollution of water through effluent discharged from Rooiwal WWTW to the Apies river, Leeuwkraal Dam and ultimately to TWTW;
- 6.1.36.2 There are interim or short term measures put in place by the CoT to ensure that the residents of Hammanskraal are protected from further using unsafe water that will expose them to waterborne diseases;
- 6.1.36.3 Although the TWTW supplies water to Hammanskraal residents only for domestic purposes, the western part of Hammanskraal is supplied with water from Rand Water supply through pipelines from Soshanguve DD reservoir, while the eastern parts of Hammanskraal are supplied with water through pipelines from the Magalies Water system as a short-term intervention;
- 6.1.36.4 The Central part of Hammanskraal is being supplied with water that is suitable for human consumption through water tankers and the sampling schedule happens at regular intervals to test the quality of water;
- 6.1.36.5 Rooiwal WWTW phase 1 project was allocated a total amount of four hundred and fifty million rand (R450 million) for the 2023/24 Medium Term Revenue and

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- Expenditure Framework and one hundred and fifty million rand (R150 million) split from 2023/24 to 2025/26 financial year;
- 6.1.36.6 The deliverables for Rooiwal WWTW Phase 1, particularly for the 2023/24 financial year will include a review of the design, procurement of the contractor and commencement of construction which will include civil works and installation of mechanical and electrical works. The project's actual implementation timelines will be confirmed upon finalising the appointment of DBSA;
- 6.1.36.7 The process to appoint the DBSA as an implementing agent with the role including *inter alia* procurement, contract administration and project management related activities is underway;
- 6.1.36.8 In respect of the expansion of the Rooiwal WWTW by an additional 130 Ml/d, which is estimated at R3.8 billion, engagements with NT and DBSA are still ongoing as the CoT does not have the required budget for implementation of the 130 Ml/d expansion;
- 6.1.36.9 The role of the DBSA will also include procurement, contract administration and project management related activities; Further thereto, the deliverables for Rooiwal WWTW phase 1 for 2023/24 financial year will incorporate a review of the design, procurement of the contractor and commencement of construction consists of civil works and installation of mechanical and electrical works;
- 6.1.36.10 The CoT has allocated R450 million over a 3-year period from its capital budget for the completion of Phase 1 Rooiwal WWTW upgrade. Funding for phase 2 (130 Ml/d expansion) is currently sourced through NT; the DBSA will also assist the CoT to source the funding and/or loans; and
- 6.1.36.11 Magalies Water is embarking on a project to construct a new water treatment package plant (Magalies Water's expansion of their existing Klipdrift Water

Purification plant) that is aimed at providing the central part of Hammanskraal with water.

Inspection in loco conducted by the Investigation Team at Rooiwal WWTW

- 6.1.37 On 01 June 2023, the Investigation Team conducted a joint inspection *in loco* at Rooiwal WWTW with officials from the CoT, which was preceded by a briefing meeting with the CoT's personnel working at the plant, namely, the Acting Director at Rooiwal WWTW, Mr Kernels CM Estherhuys (Mr Estherhuys), Ms Maletjeka Papo, Deputy Director: Office of the COO, Raymond Phaswana, Functional Head, Plant Manager and Acting Director Infrastructure at the CoT, Ms Refilwe Juta as well as the SAHRC's Legal Officer and Investigator, Ms Harriette Buga.
- 6.1.38 Mr Estherhuys outlined the overview of challenges experienced at the Rooiwal WWTW and stated that there is partially treated wastewater being discharged into the Apies River downstream to Leeuwkraal Dam from which the TWTW abstracts bulk water. He further stated that:
- 6.1.38.1 The Rooiwal WWTW operates at 68%, which implies that it does not carry its daily operations optimally;
- 6.1.38.2 Rooiwal WWTW has a problem with organic treatment capacity on the basis that it is receiving high volume of wastewater that carries pollutants from its ever growing catchment areas, such as houses and factories;
- 6.1.38.3 The maintenance plan for machinery is not fully funded and therefore Rooiwal WWTW required to be urgently upgraded;
- 6.1.38.4 The CMS and JR Blackhead Consortium-JV was appointed to do upgrades, however, the CoT terminated its contract prior to its completion stage of the

project and consequently, the project remained partially functional at only 68% to date;

6.1.38.5 The salient points identified as challenges that contributed adversely to the Rooiwal WWTW being partially dysfunctional are as follows:

- (a) Rooiwal WWTW inlet capacity is often hydraulically compromised and at times is unable to deal with all the amount of wastewater flowing in from its catchment areas such as residential houses, factories and industries. Three mechanical screens and its sifting bars were removed and taken for repairs, which meant that screening must be done manually and this often results in raw solid sludge passing through to primary sedimentation tanks;
- (b) Rooiwal WWTW has primary sedimentation tanks, three (3) of which take sludge/organic waste and the fourth one at the time of inspection was under construction and as a result of overload, some sludge pass through to the reactors (which is the heart of the plant) where all biological nutrients are removed;
- (c) Rooiwal WWTW has six reactors in total and all of them have broken pipes and require to be repaired or replaced and as a result thereof remnants cannot effectively be removed. Consequently, the wastewater passes to the secondary sedimentation tank;
- (d) Rooiwal WWTW has eighteen secondary sedimentary tanks, but at the time of inspection, some were not working and therefore required to be repaired. The secondary sedimentary tanks separate micro-organisms with treated water, whereafter all the micro-organisms are circulated back and some are thrown away, while the remaining go to the ponds where solid wastewater that would have escaped from secondary sedimentary tanks gets treated;

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- (e) Rooiwal WWTW has two ponds in total which requires to be cleaned or dredged with specialised machines from contractors. The ponds were last cleaned in 2018 and consequently discharge solid wastewater into the Apies river;
 - (f) If the wastewater discharged by Rooiwal WWTW is properly treated, Hammanskraal area would have been supplied with water that is suitable for human consumption;
 - (g) The water purification machinery and equipment at TWTW by design is not able to clean wastewater to the acceptable and potable quality standard, because it is a water purification plant that largely uses biological dosing chemicals; and
 - (h) Until Rooiwal WWTW, which is a wastewater treatment plant is funded with the amount of R 4 billion to upgrade its machinery and increase its capacity to carry out operations through all its process phases, the quality of water will remain poor at TWTW.
- 6.1.39 The following photographs were taken by the Investigation Team during the *in loco inspection* at Rooiwal WWTW:



Figure 1: The photo depicts inflow of wastewater at the inlet area, Rooiwal WWTW at the time of inspection.



Figure 2: The photo depicts, amongst other things, a conveyer-belt which was not working due to faulty automated mechanical screens/bars having been removed for repairs at the inlet area, Rooiwal WWTW at the time of inspection.



Figure 3: The photo depicts an estuary of Apies River which appears polluted with an effluent discharge at the time of inspection.

Meeting between the Public Protector, DWS, SAHRC and the CoT held on 05 June 2023 and correspondences received from the stakeholders

- 6.1.40 On 05 June 2023 a joint virtual meeting was held between the Public Protector, DWS, SAHRC and the CoT regarding the proposed way-forward, measures put in place by both the CoT and DWS as well as progress on the implementation of such measures. In the meeting, it was indicated, amongst other things, by the Director-General of DWS, Dr Sean Phillips that there is an MoU concluded with other stakeholders such as DBSA, which shall be appointed as implementing agent to implement the upgrading and refurbishment of Rooiwal WWTW.

Submission from OUTA, dated 6 June 2023

- 6.1.41 On 06 June 2023, the Investigation Team addressed correspondence to OUTA requesting information and documentation incidental or with a bearing on this investigation.

- 6.1.42 On 07 June 2023, OUTA responded to the Investigation Team with a report titled *OUTA Hammanskraal Potable Water* dated 29 May 2023.¹⁶ According to the report from OUTA, water quality is compared against the South African National Standards (SANS) 241:2015 drinking water standards and the Quality of Domestic Water Supplies limits. The aim of their study was to determine if the submitted water samples were fit for domestic and potable uses based on microbiological variables alone. The samples were taken by Aquatico and submitted to the Aquatico Laboratory on 25 May 2023. The report provides *inter alia* the following:
- 6.1.42.1 Three (3) of the four (4) sites were clear of *E.coli*¹⁷ (bacterium) but raised red flags for the water quality at the Hammanskraal Community Centre and one of the tanker filling points, whereat the water quality exceeded the SANS 241-1:2015 drinking water standard limits in terms of the recorded total coliform concentration. Where the heterotrophic plate count and Total Viable Count (TVC) count were above the SANS 241:2015, these red flags were raised with the CoT, however, the CoT did not provide any response to OUTA to date.
- 6.1.42.2 Charlotte Maxeke Infection Control Laboratory: Laboratory Report Number: HM 0234969 - Tshwane results: One sample from the test shows high levels of *E.coli* namely, *2419 per 100ml* taken on 20 May 2023. OUTA shared test result with the CoT to understand where and when they were taken, especially since all media reports stated that the water was clear of *E.coli*.

¹⁶ Compiled by Aquatico Scientific.

¹⁷ In the report *E.coli* is described as the most commonly used bacterial indicator of faecal pollution and normally inhabit the digestive system of warm-blooded animals, including humans. These bacteria are found in wherever the water is contaminated with faecal waste of humans or animal origin. *E. coli* is likely to cause gastro-intestinal diseases that are typically characterised by diarrhoea and sometimes by fever and other secondary complications. Dehydration from diarrhoea may be life threatening, particularly in infants. Sensitive groups include HIV positive individuals, some infants under the age of two years old and individuals on immune-suppressive medication, e.g. chemotherapy.

- 6.1.42.3 In conclusion, the report by Aquatico Scientific indicated that high heterotrophic plate counts were detected at Hammanskraal Community Centre and Tanker Filling Point which increases the risk of infectious disease transmission. High TVC counts are usually an indication of inadequate treatment, post-treatment contamination or after-growth in the distribution system. The detection of Coliforms¹⁸ at Tanker Filling Point increases the likelihood of the presence of pathogenic organisms. The elevated TVC counts are most likely due to low free chlorine residual concentrations within the distribution system or contamination of source water at Tanker Filling Point.
- 6.1.42.4 The recommended free chlorine concentration for drinking water is between 0.2 and 0.8 mg/l. At the localities with high TVC counts, on-site free chlorine values were below 0.2 mg/l which can allow for microbial growth within the distribution system. The sample from Water Tankers had low TVC counts and no *E. coli* or total coliform concentrations. The reason for low numbers in this sample is most likely due to the high free chlorine concentration recorded on-site. Continuous chlorine exposure at this elevated concentration can have chronic effects thus free chlorine should be reduced if water is to be supplied out of the tanker for a prolonged period.
- 6.1.42.5 The absence of cholera from all samples may indicate that the cholera incidents in the area are linked to environmental samples and not directly to the potable water supply.
- 6.1.42.6 Based on the abovementioned exceedances the water from Hammanskraal Community Centre and Tanker Filling Point is not fit for potable use and improved treatment is essential. The water from Hammanskraal Ward 74 is considered

¹⁸ In the report **Coliform** bacteria is said to comprise of bacterial species of a faecal origin, as well as several other bacterial groups and are indicative of the general hygienic quality of the water. Total coliform bacteria can be found in high numbers wherever faecal contamination of water, or where there is contamination by bacteria commonly occurring in soil. Total coliform is likely to cause gastro-intestinal diseases that are typically characterized by diarrhoea and sometimes by fever and other secondary complications.

conditionally acceptable but TVC values should be reduced over the long term. The water from Water Tanker can be considered safe for human consumption in the short term but free chlorine values should be reduced if consumption takes place over a longer period.

Inspection in loco conducted at the TWTW plant on 14 July 2023

- 6.1.43 On 14 July 2023, the Investigation Team conducted an inspection *in loco* at TWTW with the CoT's Deputy Director for Operations and Maintenance at TWTW, Mr Siphon Madhlabane, who outlined the overview of the TWTW and challenges experienced regarding the partially treated wastewater abstracted from the Leeuwkraal Dam as follows:
- 6.1.43.1 TWTW abstracts partially treated wastewater from Leeuwkraal Dam through pumping, which is not suitable for human consumption. The abstracted wastewater from Leeuwkraal Dam flows into TWTW's Inlet-Tower before the Inlet-Tower chemicals (such as lime and ozone) are dosed into the raw water as part of purification process;
- 6.1.43.2 The Inlet-Tower splits to different phases from phase one (1) to phase six (6). From there, they dose polymer and chloride to bind together suspended solid waste;
- 6.1.43.3 The suspended solids go to sedimentation tanks where the decant clears water on the top and suspended solids settle down. After decanting, clear water shall float through a process of Dissolve Air Flootation (DAF). After floatation, the flow goes to filtration done by sand-filter filtration. After filters it goes to granular activated carbon filters whereafter chlorine is dosed into the filters before it goes to Reservoir number 5, known as (contact tank);

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- 6.1.43.4 The Reservoir number 5 then gravitates water to Reservoirs number 4, 3, 2 and 1. The Reservoirs pump water to the towers for distribution;
- 6.1.43.5 The problem areas of chemical determinants and parameters such as ammonia, nitrate, nitrite and phosphate identified in TWTW emanate from Rooiwal WWTW that has direct impact on the quality of water at TWTW. Rooiwal WWTW is supposed to limit those parameters or chemical determinants;
- 6.1.43.6 TWTW by its own design as a water purification plant is unable to treat the abovementioned chemicals/pollutants as it is not designed to treat these chemicals but only purifies water. As a result, the TWTW distributes poor quality water with these toxic chemicals to the community;
- 6.1.43.7 Other problem areas/challenges which can cause waterborne diseases that may exist if wastewater is not properly treated, are those known as microbiological determinants such as *E-Coli and Coliform*, which are supposed to remain at zero. However, both these were never detected in TWTW during interval testing;
- 6.1.43.8 Water testing at TWTW is done weekly by Rietvlei Laboratory which belongs to the CoT;
- 6.1.43.9 Currently, Hammanskraal Community is using water for other domestic purposes only, but not for human consumption. The water tankers from the CoT deliver clean water from Magalies water daily to the Community for human consumption.
- 6.1.43.10 The following photographs were taken by the Investigation Team during the *in loco inspection*:



Figure 4: The photo depicts an estuary of Leeuwkraal Dam, which is an abstraction reservoir for Temba WTW at the time of inspection.



Figure 5: The photo depicts infrastructure pumps abstracting raw water from Leeuwkraal Dam to Temba WTW plant for purification and distribution to the community at the time of inspection.

Submission from the Special Investigating Unit (SIU)

- 6.1.44 A letter dated 06 June 2023, was addressed to the attention of the National Head of the SIU to seek clarity or confirmation on whether the SIU is officially investigating the contractual issues arising from the Hammanskraal water project in relation to contractor that left the construction site at Rooiwal WWTW and was terminated before completion of the project.
- 6.1.45 On 20 July 2023, the SIU responded to the abovementioned letter through its Gauteng Provincial Head, Mr S Reddy (Mr Reddy) who indicated that:
- 6.1.45.1 The SIU received these allegations relating to Rooiwal WWTW through a whistleblower. The allegations were reviewed, and a motivation was submitted for proclamation through the Department of Justice to be signed by the President. The SIU is still awaiting feedback in this regard and has not yet commenced the investigation. However, it is anticipated that the investigation will focus on the following:
- (a) The procurement, contracting and the payment with regard to contract number USD WS 30-2017/18 as well as any unauthorised irregular, wasteful and fruitless expenditure incurred; and
 - (b) Any unlawful and improper conduct by the officials of the municipality, state officials, service provider, any entity or person in connection with contract number USD WS 30-2017/18.
- 6.1.46 Subsequently, on 26 September 2023, Mr Reddy furnished the Investigation Team with the SIU Proclamation Number 138 of 2023, dated 22 September 2023 and gazetted as No. 49328 by the order of the President of the Republic of South Africa, Mr MC Ramaphosa.

According to the Terms of Reference, SIU's investigation must cover the following:

- (a) serious maladministration in connection with the affairs of the CoT;
- (b) improper or unlawful conduct by officials or employees of the CoT;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the CoT; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof, which has taken place between 01 January 2018 and the date of publication of the Proclamation or which took place prior to 1 January 2018 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said SIU by the Act, including the recovery of any losses suffered by the Municipality, in relation to the said matters in the Schedule.

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- 6.1.47 In terms of the Schedule to the Proclamation 138 of 2023, the following is covered by SIU' investigation:
- a. the procurement of and contracting for goods, works or services by or on behalf of the CoT and payments made in respect thereof in a manner that was not fair, competitive, transparent, equitable or cost-effective; contrary to applicable legislation; manuals, guidelines, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or manuals, policies, procedures, prescripts, instructions or practices of or applicable to the CoT, and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the CoT or the State in respect of tender number USD WS 30-2017/18 for the construction of Phase 1 upgrades and urgent refurbishment at the Rooiwal Waste Water Treatment Works and
 - b. Any unlawful or irregular conduct by— (a) employees of the Municipality; or (b) any other person or entity, relating to the allegations referred to in paragraph 1 of this Schedule.

Submission from the South African Police Service (SAPS)

- 6.1.48 A letter dated 04 July 2023 was addressed to the National Commissioner for the SAPS, General Fanie Masemola. This was to seek clarity or confirmation on whether SAPS investigated the criminal case that was opened by DWS in August 2019 against the CoT at Mabopane Police Station under case number: 356/08/2019 on the basis of untreated sewage being discharged into the Tolwane River, amongst others.
- 6.1.49 On 20 July 2023, SAPS responded to the abovementioned letter and confirmed that the DWS opened the criminal case against the CoT at Mabopane SAPS under Mabopane CAS 356/08/2019 and the Director of Public Prosecutions

(DPP) office in the Northwest office referred the case docket to the Environmental Management Inspectors (EMI's) of the Department of Forestry, Fisheries and the Environment (DFFE) for further investigations.

- 6.1.50 The outcome of the abovementioned matter is still pending on the basis that the investigation is still ongoing and as soon as it is completed, it will be given to the DPP North West for a prosecutorial decision. There was no additional information that the SAPS could provide until the decision of the DPP Northwest is known.

Submissions from the Auditor-General South Africa

- 6.1.51 On 18 August 2023, the Investigation Team addressed correspondence to the Auditor-General South Africa (AGSA) *inter alia* requesting: - confirmation whether AGSA has conducted any audit at the CoT's Rooiwal WWTW and/or in connection with Hammanskraal water issues; the audit report findings and recommendations made regarding the condition of the Rooiwal WWTW and/or Hammanskraal water issues; and any other information relevant to assist the Public Protector to complete the investigation and make a fair determination on the issue.
- 6.1.52 The Auditor-General of South Africa, Ms Tsakani Maluleke responded to the Investigation Team as per letter dated 11 September 2023, with Annexures "A" and "B", namely an Audit document titled Procurement and Contract Management: USD WS 30-2017/18 Tender for the construction of phase 1 upgrades and urgent refurbishment at the Rooiwal Wastewater Treatment Works (WWTW) [2018], and a document titled Communication of Audit Findings from the regularity audit of the Tshwane Municipality for the period ended 30 June 2021, respectively.
- 6.1.53 Annexure A affirms that the AGSA had conducted audit on the tender for construction of phase 1 upgrades stated above and made certain findings and

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- recommendations, which were communicated to the CoT relating to the procurement and appointment of the successful company.¹⁹
- 6.1.54 Annexure B on the other hand indicates certain findings which are essentially similar in nature to the provisional findings of the Public Protector, *inter alia*, relating to:
- 6.1.54.1 Rooiwal WWTW's incapacity to operate within its design capacity due to its handling of more volume of effluent than it was designed to; and
- 6.1.54.2 The CoT's budgetary constraints, which affect the implementation of proactive maintenance at the WWTW, the planned extensions/refurbishments of the plant and its ability to implement the items indicated in the maintenance plan of the plant.
- 6.1.55 The Public Protector has noted that most of audit findings by the AGSA are identical to the observations made by the Public Protector during the course of this investigation.
- 6.2 **Responses to Notices issued in terms of section 7(9) of the Public Protector Act**
- Responses from the CoT*
- Letter from the City Manager*
- 6.2.1 Mr Johann Mettler, City Manager of the CoT, responded to the Notice through a letter dated 12 September 2023. He stated *inter alia* that:

¹⁹ The aspect relating to procurement and appointment of the successful company did not form part of the issue investigated by the Public Protector.

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- 6.2.1.1 Pursuant to the meeting between the CoT management and the Investigation Team on 18 February 2023 regarding the Hammanskraal water challenges, CoT provided all outstanding documentation on the Rooiwal WWTW project;
- 6.2.1.2 The CoT explicitly stated in the said documentation that the project was incomplete due to the CoT's funding challenges, and that alternative funding was being sought through engagement with the DBSA. The CoT had also apprised the Executive Mayor about the content of the Notice regarding the remedial actions to be implemented by the CoT, namely: -
- (a) Development of the Implementation Plan within sixty (60) calendar days by the Municipal Manager on measures to be taken to upgrade and refurbish Rooiwal WWTW to address to ongoing water quality failures; and
 - (b) The tabling of the Implementation Plan at the Municipal Council of the CoT by the Mayor, and submission of the said Plan to the MEC for CoGTA in Gauteng province for monitoring of implementation purpose.
- 6.2.1.3 The CoT has made progress towards the alleviation of the plight of Hammanskraal communities in relation to the poor water quality produced at the TWTW. Towards the end of the year 2022, the CoT convened various engagements with DWS, which were facilitated by the SAHRC, regarding the four critical wastewater treatment works;
- 6.2.1.4 Rooiwal WWTW is one of the critical plants in the treatment of effluent discharged at Rooiwal and abstracted at the TWTW for drinking water production purposes;
- 6.2.1.5 The DWS served the CoT with draft court orders for the four critical WWTW to which the CoT provided an action plan that stated the requirements for

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- operations, maintenance and capital upgrade, and expansion requirements to meet the discharge quality standards;
- 6.2.1.6 The action plan was presented to the DWS in a meeting held between the CoT and DWS on 13 December 2022, after which a formal report was submitted to DWS on 14 December 2022. The details of the action plan, including the various funding scenarios that were explored and are attached as Annexure A to the response letter;
- 6.2.2 The action plan focused on the four critical WWTWs as per the request from the DWS. A follow-up meeting was held on 26 May 2023 between the Minister of Water and Sanitation, Mr Mchunu, and the Executive Mayor of Tshwane, Mr Brink, who resolved and agreed to work together to resolve the Hammanskraal water situation as follows:
- 6.2.2.1 The DWS and the CoT will partner to jointly manage the project to fix the infrastructure problem in Hammanskraal;
- 6.2.2.2 The CoT will contribute a portion of its USDG allocation and reprioritise from allocated funding to cover any shortfalls;
- 6.2.2.3 The National Treasury will be requested to supplement these allocations to enable the project to be fully implemented;
- 6.2.2.4 A competent independent implementing agent (the DBSA) will be appointed to manage the implementation;
- 6.2.2.5 The DWS and the CoT will form a joint steering committee to oversee the project;

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- 6.2.2.6 The project will be implemented in stages, with an emphasis on work to stop or reduce the pollution from Rooiwal WWTW as prioritised in the early stages; and
- 6.2.2.7 Technical officials from the DWS and the CoT will engage on more detailed technical preparation work.

Budget Allocation (Medium-term Revenue and Expenditure Framework)

- 6.2.3 On 31 May 2023, the CoT's Council approved the 2023/24 Medium-term Revenue and Expenditure Framework (MTREF) with the USDG having been reprioritised to allocate R450 million over the next three years for the completion of Phase 1 of the Rooiwal WWTW refurbishment and upgrade project. The approved MTREF budget was attached as Annexure B;
- 6.2.4 The budget allocation includes additional work over the outstanding scope of Phase 1 aimed at realising improved treated effluent quality from Rooiwal WWTW. The project scope of works was attached as Annexure C.

Approval of Memorandum of Understanding

- 6.2.5 On 05 July 2023, the Mayoral Committee approved a report on Memorandum of Understanding (MoU), which mandated the City Manager to conclude an MoU with the DBSA (Annexure D). The MoU was concluded on 24 July 2023 (Annexure E). The signing of the MoU was the action required before the appointment of the DBSA Infrastructure Delivery Division could be finalised through a section 110 appointment;

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- 6.2.6 The report for the appointment of the DBSA as implementing agent was tabled at the Bid Adjudication Committee (BAC) on 31 August 2023 and recommended for approval by the City Manager;
- 6.2.7 After the appointment of the DBSA, a service-level agreement (SLA) will be finalised between the CoT and the DBS' Infrastructure Delivery Division as the implementing agent, which will subsequently commence with procurement to appoint a professional service provider for scope finalisation, designs, exact cost estimates and time frames; and
- 6.2.8 The DWS has further collaborated with Magalies Water to expand Magalies Water's Klipdrift Water Treatment Plant by 50 ML per day. This additional water will be channelled towards TWTW so that the people of Hammanskraal can be supplied with potable water while the longer-term interventions are being implemented.

Action Plan

- 6.2.9 An action plan has also been formulated for the 130ML per day expansion of Rooiwal WWTW, refurbishment of TWTW, as well as the interim of supply of water to the Hammanskraal community from a package plant to be constructed by Magalies Water; and
- 6.2.10 A presentation on the current interventions in Hammanskraal and the details of the collaboration agreement as well as the action plan towards completing Phase 1, 2 and 3 of the Rooiwal WWTW refurbishment, upgrade and expansion project (Annexure F) has been drafted. The timelines in the presentation, in relation to the completion of Phase 1, will be updated upon appointment of the implementing agent.

Joint Steering Committee

- 6.2.11 A joint Technical and Financial Steering Committee, with participants from the CoT, DWS, CoGTA, NT, DBSA and Magalies Water, has been formulated to oversee the implementation of the intervention. The joint task team meets on a bi-weekly basis to monitor the progress of implementing the action plan and the agreement between the CoT and the DWS.
- 6.2.12 The CoT has also lodged an application for R60 million operational grant funding through the DBSA. The grant funding will be used to fund the Rooiwal WWTW maintenance plan, which has been developed and estimated at R64, 6 million. Furthermore, the CoT will continue to implement maintenance plans at all WWTWs based on the available budget.
- 6.2.13 The table below shows the CoT's 2023/24 financial year maintenance budget requirements for all WWTWs.

WWTW	2023/24 maintenance plan budget require	2023/24 allocated budget
Sandspruit	R10,1 million	R5.6 million
Klipgat	No budget allocated	R4.3 million
Rietgat	R15,8 million	R3,3 million
Temba	R8,7 million	R2,6 million
Babelegi	R3,2 million	R1,5 million
Rooiwal	R64,6 million	R11,9 million
Daspoort	R14,2 million	R3,8 million

Sunderland Ridge	R19,4 million	R5,5 million
Zeekoegat	R60,7 million	R7,1 million
Refilwe	R2,1 million	R1,4 million
Rayton	R1,8 million	R1,4 million
Baviaanspoort	R10,7 million	R3,9 million
Ekangala	R8,2 million	R2,9 million
Godrich	R7,4 million	R3,7 million

- 6.2.14 The CoT has made several strides towards addressing the water situation in Hammanskraal since its last engagement with the Public Protector. The remedial action sought by the Public Protector in terms of the development and submission of an action plan to Council and the MEC for CoGTA within 60 days of the final report will be implemented by the CoT Manager and the Executive Mayor;

Letter from the Executive Mayor of CoT

- 6.2.15 On 13 September 2023, Mr Brink responded to the Notice through correspondence, dated 12 September 2023 stating *inter alia* that:
- 6.1.15.1 He enclosed a letter prepared by the City Manager setting out the progress which has been made to date in addressing the water crisis in Hammanskraal. This submission includes a detailed Action Plan, relevant budget documents and allocations as well as MoU which has been entered into between CoT and the DBSA. Furthermore, he affirmed that the CoT would comply with all other

obligations set out in the Remedial Actions of the report within the specified timeframe.

Supporting documents from the CoT received on 13 September 2023

Report of the CoT's Special Council Meeting

- 6.1.16 A report from the Special Council meeting dated 31 May 2023, reflects the 2023/24 MTREF for the CoT. The purpose of the report was to obtain approval for the 2023/24 of the MTREF in terms of section 24 of the MFMA.²⁰

Report on CoT's approval to enter into an MoU with the DBSA

- 6.1.17 The report dated 05 July 2023 addressed to the Mayoral Committee provides for the request and approval for the CoT to enter into an MoU with the DBSA for a period of five years.

Copy of the MoU between CoT and DBSA

- 6.1.18 A copy of the five-year term MoU entered into between the CoT and DBSA entails the roles and responsibilities of the parties as stated below.
- 6.1.18.1 The CoT will endeavour to facilitate access to, interface and liaise with various internal and external stakeholders and provide DBSA with the support on the infrastructure plans, programmes and projects, *inter alia* as follows:
- (a) collating and disseminating information on selected infrastructure projects; facilitating legal and regulatory approvals on Projects, approvals from

²⁰ Section 24 of MFMA deals with approval of annual budgets by Municipal Council, which must happen at least 30 days before the start of the budget year.

Management, Council and the Minister, and facilitation of intergovernmental cooperation for execution of Projects:

6.1.18.2 The DBSA will endeavour to provide infrastructure support to the CoT, including *inter alia*:

- (a) Infrastructure Planning, Technical Assistance and Project Preparation, Financing for the design, construction, operation, and maintenance of infrastructure projects;
- (b) Infrastructure Delivery including managing design and construction of infrastructure projects, project management support as well as maintenance and refurbishment of social infrastructure projects.

CoT's Presentation to the National Council of Provinces

6.1.19 The CoT's presentation dated 13 September 2023 was aimed to provide progress report to the National Council of Provinces (NCoP) on the current progress made by the Joint-Technical Steering Committee on the implementation of the Hammanskraal Integrated Partnership and Intervention Support.

Letter from the CoT to the Minister of Water and Sanitation (1)

6.1.20 The letter dated 10 December 2021 titled *Response to Request to Support Section 139(1) Intervention*, from former Executive Mayor of CoT, Cllr Randal

Williams addressed to Minister of Water and Sanitation (Mr Mchunu), *inter alia* indicates that:

- 6.1.20.1 The CoT welcomes receiving the support from other spheres of government aimed at addressing the root cause of water challenges it faces, however, CoT did not agree with the notion regarding recommendation for intervention by National Government into CoT's water challenges, that CoT's water department be taken over by national department.²¹ CoT further indicated that intervention by the Gauteng Provincial Government in terms of section 139(1) of the Constitution was undesirable, and that intervention from provincial and national spheres of government must be preceded by utilisation of the section 154 provision of the Constitution which relates to cooperative governance.²²

Letter from CoT to Minister of Water and Sanitation (2)

- 6.1.21 The letter dated 11 April 2022 from Cllr Williams addressed to Minister of Water and Sanitation in response to the letter dated 11 March 2022, indicates CoT's anticipated Phase 2 Capital expansion project as approximately R2.5 billion, which funding was committed by the previous Minister.
- 6.1.22 The letter also indicates a request for intervention of the Minister in releasing the committed additional funding to assist the CoT with phase 2 expansion project with R2 – 3 billion over the next three to five years period as stipulated in the final

²¹ Recommendation from the SAHRC Report dated 12 July 2022.

²² Section 154(1) of the Constitution states that the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

project plan, and a request for update on the development of the R500 million pipeline that the Minister had committed.

- 6.1.23 In conclusion, it is indicated that, to ensure resolution of the issue of Rooiwal WWTW, CoT will need the assistance of all spheres of government to partner with it in both financial resources and expertise.

Letter from CoT to DWS

- 6.1.24 A letter dated 14 December 2022 from Mr Mettler addressed to the DG of the DWS, which highlights *inter alia* the following:

6.1.24.1 CoT's Council had approved budgets that did not adequately fund the implementation of the wastewater master plan, which led to the master plan not being adhered to and not implemented in terms of the required expansions and upgrades;

6.1.24.2 The four WWTWs namely, Rooiwal,²³ Klipgat, Baviaanspoort and Sunderland Ridge are at the critical state and the non-compliant effluent discharged into water resources negatively affects the quality of raw water abstracted for drinking purposes;

6.1.24.3 The 2010 master plan indicated the expansions that were required, the estimated capital costs and the year by which the expansions were to be completed at all the WWTWs. The most pertinent WWTW [Rooiwal and Temba] are reflected as follows:

²³ Own underlining.

WWTW	Expansion 1 (completion)	Expansion 2 (completion)	Expansion 3 (completion)	Expansion 4 (completion)
New Temba	20MI/d upgrade R 296 Million (2022)	-	-	-
Rooiwal N and S	40MI/d upgrade R 455 Million (2016)	50MI/d upgrade R 594 Million (2021)	50MI/d upgrade R 767 Million (2026)	50MI/d upgrade R 1 026 Million (2031)
Rooiwal East	20MI/d upgrade R 186 Million (2016)	20MI/d upgrade R 353 Million (2027)	-	-

6.1.24.4 The 2010 master plan was not implemented due to non-allocation of sufficient budget for the WWTWs by Council. The master plan was reviewed and the WWTW Capital Investment Plan was completed in 2020.

6.1.24.5 The phasing thereof and provisional project costs of upgrade and expansion Plan is indicated as follows:

Project	Project description	Provisional Project Cost
Rooiwal Phase 1	Upgrade of existing infrastructure. (current)	R 335 million
Rooiwal Phase 2	80 MI/d extension and sludge facility extension project	R 2.1 billion
Rooiwal Phase 3	50 MI/d extension project	R 850 million

6.1.24.6 However, the implementation of the 2020 Capital Investment Plan required a total budget allocation of **R9.2 billion**, which the CoT did not have due to its then financial situation;

6.1.24.7 The decreased maintenance budget allocations over the years also resulted in a measure of considered neglect on preventative maintenance instead of reactive maintenance for process continuity;

6.1.24.8 Regarding previous engagements and commitments, all commitments made to Parliament were honoured, the Rooiwal WWTW Phase 1 project was halted at 68% completion due to termination of the contract on 30 July 2022 with the appointed contractor due to a dispute, the implementation of maintenance plans was subject to the available budget, and engagements with various stakeholders were continuing as and when required;

6.1.24.9 Rooiwal WWTW allocated funding for 2022/23 financial year is indicated as follows:

Expense	Required	Approved budget	shortfall
Maintenance	R60 246 557	R15 061 193	R45 185 364
Chemicals	R23 040 573	R6 910 575	R16 129 575

6.1.24.10 The budget allocation for WWTWs since the 2020/21 financial year is indicated as stated below:

Project Description	Budget 2020/21	Budget 2021/22	Budget 2022/23	Budget 2023/24	Budget 2024/25
Rooiwal WWTW Phase 1: Upgrading of Existing Infrastructure	115 000 000	124 000 000	40 000 000	-	-
Rooiwal WWTW Phase 2: 80MI/d Extensions	-	-	2 000 000	75 000 000	145 0 000

6.1.24.11 Based on the above, the CoT will not be able to implement some of its other priorities, *inter alia* new water and sewer reticulation infrastructure, water and sewer reticulation network upgrades and expansions, and water treatment plant upgrades and expansions;

6.1.24.12 Different scenarios and their implications are indicated *inter alia* as follows:

- (a) A portion of the CoT's USDG will be committed to the repayment of loans/concessions for the next 20 years. However, the CoT will not be able to implement some of its other priorities;
- (b) Full allocation to all WWTWs, the CoT's USDG will be committed to the WWTW Capital Investment Plan for the next 15 years. However, the CoT will not be able to implement some of its other priorities;
- (c) Fifty percent (50%) allocation to all WWTWs, the CoT's USDG will be committed to the WWTW Capital Investment Plan for over 20 years. However, the CoT will not be able to implement most of its other priorities;

Alternative scenarios to improving operation and maintenance

- (a) Reprioritise and allocate sufficient Operation & Maintenance (O&M) budget to all WWTWs. However, Service delivery of other services collapse;
- (b) Reprioritise and allocate all O&M budget within the department to WWTWs. However, Service delivery collapse in terms of water services provision and bulk water infrastructure maintenance;

- (c) Converting a part of the USDG to fund O&M to shore up the O&M budget, with a concomitant decrease in Capital Expenditure (Capex). No budget is available for human settlement planning. This requires an amendment of grant conditions;
- (d) Focus available budget solely on WWTWs currently deemed critical. However, this will lead to total collapse of other WWTWs;
- (e) Include O&M into Paycheck Protection Program (PPP) or similar funding mechanisms envisaged in Capex projects. However, this is subject to ability to repay loans;

6.1.24.13 The national DWS and the SAHRC have been requested, in a meeting held on 13 December 2022, to participate and assist the CoT's Water and Sanitation department in motivating for the required budget in the consultations to be held.

6.1.24.14 The funding and implementation of the Capex and Operating expenses (Opex) interventions will address the elimination of partially treated sewage from discharging into the natural water sources; compliance with effluent quality standards; protection of the ecosystem and downstream users; compliance with the NWA; and the concerns raised by the SAHRC.

Report on the completion of Rooiwal Phase 1:

6.1.24.15 The CoT's report (undated) provides the scope of work for the appointment of a consulting engineering firm to render professional engineering services in the completion of the Rooiwal Wastewater Treatment Phase 1 Upgrade and Refurbishment and the execution of new upgrades.

6.1.24.16 The estimated combined costs for completion of the Rooiwal Wastewater Treatment (WWTW) Phase 1 Upgrade and Refurbishment and new upgrades is “**R323, 570,306** (exclusive of 10% contingencies)”.

6.1.24.17 The cost for the completion of Rooiwal WWTW Phase 1 Upgrade and Refurbishment scope is estimated at “**R115,882,747** exclusive of 10% contingencies”, whilst the costs for the Rooiwal WWTW new scope of Works is estimated at “**R207,687,560** exclusive of contingencies”.

Responses from the DWS

Letter from Minister of Water and Sanitation

6.1.25 On 06 September 2023, the Investigation Team received a response letter (together with Annexure A and Annexure B) from the Minister of Water and Sanitation, Mr Mchunu, indicating *inter alia* that:

6.1.25.1 He has considered the content of the Remedial Action cited in the Notice, which requires him to take appropriate steps or measures as he may deem necessary in line with his powers as contemplated in terms of section 73(1) of the Water Services Act, to ameliorate the situation that contributes to the poor quality of water at TWTW;

6.1.25.2 As it appears in the report, the DWS endeavoured to intervene through section 63 of the Water Service Act, 1997 (WSA), but the CoT refused an invitation for intervention through correspondence dated 11 April 2022;

6.1.25.3 The correspondence dated 01 June 2022 from NT indicates that NT approached both the CoT and DWS and emphasised that DWS may not use its funds to assist CoT to address the water and sanitation challenges in Hammanskraal, but CoT

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- must use its USDG to fund the necessary upgrade and refurbishment of the water and sanitation system;
- 6.1.25.4 The DWS continued to engage with CoT in ensuring that CoT avert the pollution and comply with drinking water quality standards. Consequently, DWS implemented the following measures to ensure that Hammanskraal communities are supplied with potable water that is suitable for human consumption:
- 6.1.25.5 The DWS issued a directive to Magalies Water Board (MWB) in terms of section 41 of the Water Services Act, 1997 for short to medium terms measures to address water challenges in Hammanskraal, while government's focus is on the long-term solution;
- 6.1.25.6 MWB presented a proposal to the DWS in the form of business plan which amongst others proposes to construct a water treatment package plant to provide immediate relief, which will be situated at Klipdrift Water Treatment Plant premise;
- 6.1.25.7 The package plant will produce drinking water on a gradual basis starting with 10MI/day up 40MI/day and will be connected to the Temba water reticulation system. It is envisaged that the project will start delivering at least 10MI/day of potable water by end of March 2024;
- 6.1.25.8 An amount of R480 million was made available by DWS through its budget adjustment, however the said R480 million is pending for NT's approval in ensuring that the said business plan is implemented by MWB;
- 6.1.25.9 The MWB has to this end applied for a loan at the DBSA for construction of the package plant, which is pending approval. The MWB is currently proceeding with planning and design work for the package plant;
- 6.1.25.10 Due to non-compliance by CoT which might have resulted in the cholera outbreak and subsequent engagements between the Minister of DWS and the Mayor, the CoT placed aside R150 million in the 2023/2024 financial year for upgrading and

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- refurbishing of the Rooiwal, to ensure that phase 1 of the Rooiwal upgrade is completed;
- 6.1.25.11 The CoT is currently finalising the appointment of the DBSA as the implementing agent for phase 1 of the Rooiwal project, while a technical team consisting of DWS, CoT, MWB and Rand water are assessing the overall long-term plan in order to address the Rooiwal challenges and further improvements to the TWTW to ensure that the delivery of portable water from TWTW to Hammanskraal meets drinking water quality standards;
- 6.1.25.12 The current wording of section 63 of the Water Services Act makes it practically difficult for the Minister to take over a water or wastewater function in a very poorly performing municipality, because the municipal water and sanitation function is self-financing and is therefore supposed to be funded from the sale of water and from sanitation charges;
- 6.1.25.13 According to CoT's current form, sections 63 and 73 of the Water Services Act, do not enable billing and revenue collection for water and sanitation to be taken over by the Minister of DWS, and therefore there is no mechanism in place for funding of water and sanitation function if taken over by the Minister of DWS;
- 6.1.25.14 To address this position, the DWS is currently in the process of amending the Water Services Act and the proposed amendments will be tabled at the next

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- Cabinet meeting for Cabinet to approve the Amendment Bill to be published for public comment;
- 6.1.25.15 The amendments will therefore introduce an operating license system for Water Service Providers and enable the Minister of Water and Sanitations to appoint a licensed Water Service Provider on behalf of a Water Services Authority;
- 6.1.25.16 The amendments will also make clear that the Water Service Provider function includes billing and revenue collection for water and sanitation services;
- 6.1.25.17 Consequently, it is not financially possible for the Minister to take over the function or part thereof in the CoT by invoking sections 63 or 73 of the Water Services Act. For the Minister of DWS to take over water and sanitation functions under current legislation, both DWS and CoT would need to ring-fence the activities, assets, personnel and finances for water and sanitation in the CoT and transfer these functions to the DWS. Those functions are currently not ring-fenced in the CoT and are spread across different departments of the CoT.
- 6.1.25.18 The billing and revenue collection for water and sanitation services would need to be separated from billing and revenue collection for other services, ring-fenced, and the revenues would need to be paid to the DWS, but currently, there is no legal mechanism for DWS to force the CoT to pay these revenues to the DWS; and
- 6.1.25.19 Consequently, the DWS is of the view that the best way forward is to work collaboratively with CoT in addressing the water and sanitation challenges in the CoT and that the current leadership of the CoT is working much more collaboratively with the DWS than the previous leadership.

Response from DG of DWS

- 6.1.25.20 On 07 September 2023, the Investigation Team received the response letter to the Notice from DG of DWS, Dr Phillips, through an email from Deputy-Director:

Executive Support and Strategic Partnership of DWS, Ms Karin Sebastian. The response letter was countersigned by Dr Phillips and it was the same letter signed by Minister Mchunu on 06 September 2023 bearing the same contents.

Additional from DG of DWS

6.1.25.21 On 06 October 2023, the Investigation Team addressed a letter to Dr Phillips, communicating proposed amendments to the intended remedial action, due to the difficulties raised by DWS with current wording of sections 63 and 73 of Water Services Act, 1997. On 09 October 2023, Dr Phillips responded and stated that DWS has considered the proposal to amend the remedial action and is in agreement thereto.

Response from COGTA

6.1.26 Mr Tshangana, the DG of COGTA responded to the Notice, in a letter dated 11 September 2023 *inter alia* as follows:

6.1.26.1 That he is not the transferring national officer in respect of the allocation in Part B of Schedule 4 of the DoRA, which funds may have been used in the Hammanskraal Water Project.²⁴ Consequently, he advised that the Notice be re-directed to the DG of the Department of Human Settlements (DHS) who is the transferring national officer regarding the USDG allocation.

Response from the National Treasury

6.1.27 Dr Pieterse, the DG of National Treasury responded to the Notice, in a letter dated 15 September 2023 stating *inter alia* that:

²⁴ In terms of Part B, Schedule 4 of the DoRA the Urban Settlement Development Grant, which supplements the capital budget of metropolitan municipalities is voted to the budget of the Department of Human Settlement, under **Vote Number 33**.

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- 6.1.27.1 The PFMA sets out the responsibilities of accounting officers which include *inter alia* the efficient and effective management of revenue, expenditure, assets and liabilities and that the public finance management system holds accountable programme managers for their management decisions;
- 6.1.27.2 Section 214 of the Constitution provides requirements for ensuring how revenue raised nationally is shared with sub-national governments. As withdrawal from National Revenue Fund must be in terms of an act of Parliament, the National Treasury's role in the allocation process is a coordinating role as per section 6(1) of the PFMA;
- 6.1.27.3 The National Treasury is also responsible for setting of uniform norms and standards, including classification and reporting systems that accounting officers are required to comply with;
- 6.1.27.4 The provisional remedial action in the Notice does not consider:
- (a) The national Treasury does not have the power to ensure that funding is appropriated to the CoT to address the Hammanskraal water crisis;
 - (b) Parliament decides on the proposals made by the Executives for allocations to municipalities from the national government's equitable shares;
 - (c) Parliament is vested with the legislative authority to amend and approve the draft division of revenue legislation envisaged in section 214 of the Constitution and the draft appropriation legislation envisaged in section 213(2)(a) of the Constitution which includes the vote for the budget for the national DHS;
 - (d) The Money Bill and Related Matters Act, 2009 sets out procedures for Parliament to amend the draft legislation in this regard;

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- (e) The National Treasury cannot assume the powers of the national transferring officer of conditional grants provided for in terms of section 9 of the DoRA as specified in in the Notice;
 - (f) To this end, the USDG which substitutes the budget of metropolitan municipalities is voted on the budget of the Department of Human Settlements whose accounting officer (DG) bears the responsibility for the transfer of such allocation as well as the enforcement of conditions of the transfer as per conditional grant framework, and the National Treasury can therefore not assume the responsibility of the DHS as specified in the Notice;
 - (g) The National Treasury also has no authority to ensure that the relevant municipal council, as the approver of municipal budget, ring-fence the allocation for specific purposes;
 - (h) Consequently, the proposed remedial action that the National Treasury must, in accordance to section 11(2) of DoRA, ensure the CoT Manager must certify to the National Treasury that the municipality has specifically and exclusively appropriated Schedule 4 allocation budget for utilisation only according to the purpose of the allocation for the Hammanskraal Water project, would undermine the authority of the relevant duly elected municipal council;
 - (i) However, the National Treasury would take the necessary and appropriate steps to ensure transparency and effectiveness in the management of public funds, as it can only do so within the confines of the empowering provisions of the law, which includes not undermining or assuming the authority of Parliament or municipal council, and the responsibilities of accounting officers of national departments in the budget formulation and execution processes.

Response from the MEC for CoGTA in the Gauteng Province

- 6.1.28 Mr Khumalo, the MEC for CoGTA in the Gauteng Province, responded to the Notice on 26 September 2023, by a letter dated 19 September 2023 as follows:
- 6.1.28.1 Acknowledging that the content of the Notice details several enquiries and responses from the DWS, and that the CoT had continuously failed to provide potable water to the community of Hammanskraal due to limited budget to undertake the refurbishment and capacity upgrade at Rooiwal WWTW in the shortest period possible, with the CoT indicating a need for approximately R4.2 billion to adequately address the inefficiencies at Rooiwal WWTW;
- 6.1.28.2 That CoGTA in the Gauteng Province holds regular Inter-Governmental Relations (IGR) sessions with the CoT, DWS and other key stakeholders on the issue at hand, and his department has full knowledge of the plight of the community of Hammanskraal and is working jointly with the CoT to resolve the water crisis in Hammanskraal;
- 6.1.28.3 With regard to the Remedial Action directed to the MEC to establish appropriate mechanisms in line with the powers vested in him under section 105 of the Municipal Systems Act, to oversee CoT's progress in connection with measures to address the ongoing poor quality of water at TWTW as indicated in the report, his department is committed to: *“Facilitate and coordinate necessary support for the successful implementation of the Rooiwal WWTW facility refurbishment and upgrade initiatives; and Establish, if not in existence or strengthen the existing IRG structure to optimally exercise oversight and support to the programme”*.

Response from the DG in the Department of Human Settlements

- 6.1.28.4 Mr Zama, the DG for the DHS, responded to the Notice in a letter dated 02 October 2023, as follows:
- 6.1.28.4.1 That it is his understanding that reference to CoGTA in the Notice, in particular the remedial actions is substituted to mean Department of Human Settlements;
- 6.1.28.4.2 DHS administers both the Urban Settlements Development Grant (USDG) and the Informal Settlements Upgrading Partnership Grant (ISUPG) in Metros with the intention to fund the Human Settlements policy priorities for all the eight Metros. The two grants have different stated outputs as outlined in their separate grant frameworks as contained within the Division of Revenue Act (DoRA).
- 6.1.28.4.3 In the current 2023/24 financial year, the CoT has a total allocation from Human Settlements Grants of R1,7 billion consisting of:
- (a) USDG – R1,09 billion
 - (b) ISUPG – R6,19 million
- 6.1.28.4.4 The business plan approval letters of both grants for the 2023/24 financial year to the CoT indicate that the Metro has set aside R50 million (consisting of R47 millions of USDG & R3.4 million ISUPG) to specifically address the Hammanskraal water project.
- 6.1.28.4.5 The DHS as mandated by section 9 of the Division of Revenue Act (DORA), has in place processes to monitor the performance of Metros (in this case the CoT) regularly and closely as follows:

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- (a) Monitor the financial and non-financial information reports as submitted by Metros in terms of section 71 of MFMA and in accordance with the applicable framework under DORA;
 - (b) Monitor information on financial and non-financial performance of the USDG against the capital budget and the service delivery and budget implementation plan;
 - (c) Assess performance from the submitted quarterly performance reports from Metros in line with the DORA prescripts;
 - (d) Quarterly performance reviews whereby performance is discussed and accounted for in detail by the Metros;
 - (e) Structured project verification visits to Provinces & Metros (CoT);
 - (f) Quarterly performance assessment reports submitted to National Treasury;
and
 - (g) Technical Ministers and Members of Executive Councils (MINMEC) and full MinMEC sessions held on quarterly basis which are used to discuss performance and related compliance concerns obtained from reported quarterly performance assessment reports. These sessions are attended by Accounting Officers and Political Office bearers at Provincial (MEC's) and Metros (Mayors) level.

6.1.28.4.6 The DHS humbly submits that the above process followed in terms of section 9 of DORA covers the remedial actions set out in the Notice, and the DHS commits to furnish the reports as requested.

6.1.28.4.7 In response to the performance evaluation of the said project, the USDG framework places responsibility on the National Department as the Transferring officer to undertake performance evaluation exercise on an annual basis and report and submit such report to National Treasury. Although the evaluation report covers all the Metros, the DHS commits to utilise its resources to focus specifically on the Hammanskraal project as set out in the Notice. The outcomes of the evaluation exercise will be submitted as indicated in the Notice.

6.1.28.4.8 The DHS further submits that it is not liable for the affairs of CoT, however, insofar as it relates to the R50 million that the CoT has allocated to address the Hammanskraal water project, DHS commits to monitor financial performance monthly while non-financial performance will be monitored on quarterly basis (as per DORA provisions).

Applicable law and prescripts

The Constitution of the Republic of South Africa, 1996

6.1.29 Section 7(2) of the Constitution stipulates that the state must respect, protect, promote and fulfil the right in the Bill of Rights.

6.1.30 Section 8(1) of the Constitution provides that the Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all organs of state.

6.1.31 Section 27(1)(b) of the Constitution states that everyone has the right to have access to sufficient food and water. In terms of section 27(2) of the Constitution the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.

6.1.32 Section 41 of the Constitution is titled "*Principles of Co-operative Government and Intergovernmental Relations* and states, *inter alia*, that:

“(1) All spheres of government and all organs of state within each sphere must—

- (a) preserve the peace, national unity and the indivisibility of the Republic;*
- (b) secure the well-being of the people of the Republic;*
- (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;*
- (d) be loyal to the Constitution, the Republic and its people....”*

6.1.33 Section 151 of the Constitution states, *inter alia*, that:

- 1. The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.*
- 2. The executive and legislative authority of a municipality is vested in its Municipal Council.*
- 3. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution...*

6.1.34 Section 152(1) of the Constitution mandates the municipalities to strive to achieve the following objectives:

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

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- 6.1.35 Section 153 of the Constitution provides that municipalities have a developmental duty which entails:
- (a) *“To structure and manage their budget, administration and planning processes in a manner that prioritizes the basic needs of their communities whilst promoting social and economic development within their communities; and*
 - (b) *To participate in national and provincial development programmes.”*
- 6.1.36 Section 156 of the Constitution sets out the powers and functions of municipalities and stipulates that a *“municipality has executive authority in respect of, and has the right to administer—*
- (a) *the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and*
 - (b) *any other matter assigned to it by national or provincial legislation”.*
- 6.1.37 Section 195(1) of the Constitution provides, *inter alia*, that:
- “Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
- (a) *A high standard of professional ethics must be promoted and maintained;*
 - (b) *...;*
 - (c) *Public administration must be development-oriented;*
 - (d) *Services must be provided impartially, fairly, equitably and without bias;*
 - (e) *People’s needs must be responded...;*
 - (f) *Public administration must be accountable; and*
 - (g) *Transparency must be fostered.”*

6.1.38 In terms of section 239 of the Constitution an ‘*organ of state*’ means—

- “(a) *Any department of state or administration in the national, provincial or local sphere of government*²⁵...”

Municipal Finance Management Act, 2003 (MFMA)

6.1.39 Section 5(2) of the MFMA provides inter alia that: “*To the extent necessary to comply with subsection (1) the National Treasury may-*

- (a) *monitor the budgets of municipalities to establish whether they-*
 - (i) *are consistent with the national government's fiscal and macro-economic;*
 - (i) *comply with Chapter 4;*
- (b) *promote good budget and fiscal management by municipalities and for this purpose monitor the implementation of municipal budgets. including their expenditure, revenue collection and borrowing;*
- (c) *monitor and assess compliance by municipalities and municipal entities with-*
 - (i) *this Act: and*
 - (ii) *any applicable standards of generally recognised accounting practice and uniform expenditure and revenue classification systems;*
- (d) *investigate any system of financial management and internal control in any municipality or municipal entity and recommend improvements;*
- (e) *take appropriate steps if a municipality or municipal entity commits a breach of this Act, including the stopping of funds to a municipality in term of section 216(2) of the Constitution if the municipality or a municipal entity under the sole or shared control of that municipality commits a serious or persistent*

25 Own underlining.

material breach of any measures referred to in that section and take any other appropriate steps necessary to perform its functions effectively.”

- 6.1.40 Section 36(1) of the MFMA indicates amongst other things that in order to provide predictability and certainty about the sources and levels of intergovernmental funding for municipalities, the accounting officer of a national or provincial department responsible for the transfer of any proposed allocations to a municipality, must by no later than 20 January of each year notify the National Treasury or the relevant provincial treasury, of all proposed allocations, and the projected amounts of those allocations to be transferred to each municipality during each of the next three years.
- 6.1.41 Section 37(1)(b) states that municipalities must provide budgetary and other financial information to relevant national and provincial organs of state.
- 6.1.42 Section 71(1) stipulates that the accounting officer of a municipality must by no later than 10 working days after the end of each month submit to the mayor of the municipality and the relevant provincial treasury a statement in the prescribed format on the state of the municipality's budget reflecting the following particulars for that month and for the financial year up to the end of that month:
- (a) actual revenue, per revenue source;
 - (b) actual borrowings;
 - (c) actual expenditure per vote;
 - (d) actual capital expenditure. per vote;
 - (e) the amount of any allocations received;
 - (f) actual expenditure on those allocations. excluding expenditure on-
 - (i) its share of the local government equitable share: and
 - (ii) allocations exempted by the annual Division of Revenue Act from compliance with this paragraph 3

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- (g) when necessary, an explanation of-
 - (i) any material variances from the municipality's projected revenue by source, and from the municipality's expenditure projections per vote;
 - (ii) any material variances from the service delivery and budget implementation plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the municipality's approved budget.

6.1.43 Section 74(1) states that the accounting officer of a municipality must submit to the National Treasury or the Provincial Treasury, to the department for local government in the province or to the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.

Local Government Municipal Systems Act, 2000

6.1.44 Local Government Municipal Systems Act is a principal instrument enacted to give effect to the constitutional obligations in relation to municipalities.

6.1.45 Section 1 defines "**basic municipal services** as *"a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment"*.

6.1.46 Section 3(1) provides that Municipalities must exercise their executive and legislative authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.

6.1.47 Section 4(2) provides that the council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has a duty to-

- “(b) Provide, without favour or prejudice, democratic and accountable government;*
- (c) ...;*
- (d) Strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;*
- (e) ...;*
- (f) Give members of the local community equitable access to the municipal services to which they are entitled;*
- (g) ...;*
- (h) ...;*
- (i) Promote a safe and healthy environment in the municipality;*
- (j) Contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.*

6.1.48 According to section 8(2) a municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers. Section 11(3) provides for the exercise of legislative and executive authority by municipalities through a number of means.²⁶

²⁶ These include:

- “(a) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery;*
- (b) promoting and undertaking development;*
- ...;*
- (e) implementing applicable national and provincial legislation and its by-laws;*
- ...;*
- (h) preparing, approving and implementing its budgets;*

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- 6.1.49 Section 23(1) places an obligation on municipalities to undertake developmentally oriented planning in order to ensure that they achieve the objects of local government in section 152 of the Constitution, give effect to their developmental duties in section 153 of the Constitution, and together with other organs of state contribute to the progressive realisation of the fundamental rights contained in the Constitution.
- 6.1.50 Section 55 stipulates amongst other things that, as head of the administration, the Municipal Manager is responsible, *subject to the policy directions of the council*, for the formation and development of an economical, effective, efficient and accountable administration that is equipped to implement the Integrated Development Plan (IDP) in accordance with the municipality's performance management system and is responsive to the needs of the local community.
- 6.1.51 Section 73(1) places a general duty on municipalities 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 services.

Local Government Municipal Structures Act, 1998

- 6.1.52 Section 83(3) of the Local Government Municipal Structures Act, 1998, provides that a district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by-

... ;

(n) doing anything else within its legislative and executive competence.”

ensuring integrated development planning for the district as a whole; and promoting bulk infrastructural development and services for the district as a whole.

6.1.53 Section 56(1) indicates functions and powers of the Executive Mayor and stipulates amongst other things that the Executive Mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the Executive Mayor in terms of the Executive Mayor's delegated powers.

6.1.54 Section 56(2) states *inter alia* that the Executive Mayor must -

- (a) identify the needs of the municipality;
- (b) review and evaluate those needs in order of priority;
- (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
- (d) recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

The National Water Act, 1998

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- 6.1.55 Section 2 (2) of the National Water Act (NWA), provides that the purpose of the Act is to ensure that the nation and water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors:
- (a) *Meeting the basic human needs of present and future generations;*
 - (b) *Promoting equitable access to water;*
 - (c) *Redressing the results of past racial and gender discrimination;*
 - (d) *Promoting the progressive, sustainable and beneficial use of water in the public interest;*
 - (e) *Facilitating social and economic development;*
 - (f) *Providing for growing demand for water use;*
 - (g) *Protecting aquatic and associated ecosystems and their biological diversity;*
 - (h) *Reducing and preventing pollution and degradation of water resources;*
 - (i) *Meeting international obligations...*
- 6.1.56 Section 3(1) of the NWA states, *inter alia*, that “*as the public trustee of the nation’s water resources the National Government acting through the Minister must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate*”. In terms of section 3(2), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values. Section 3(3) of the Water Act states that the National Government acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.
- 6.1.57 Section 19 of NWA stipulates amongst other things that an owner of land, a person in control of land or a person who occupies or uses the land on which any activity or process is or was performed or undertaken; or any other situation exists, which causes, has caused or is likely to cause pollution of a water

resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

- 6.1.58 Section 53 of the NWA provides for rectification of contraventions of NWA and states amongst other things that the responsible authority shall take any other action necessary, including issuing written notices or directives against the contravening party to rectify the contravention. A responsible authority may also carry out any works to rectify the contravention and recover its reasonable costs from the person on whom the notice was served or apply to a competent court for appropriate relief.

The Water Services Act, 1997

- 6.1.59 Section 2 of the Water Services Act provides *inter alia* that the main objects of the Act are to provide for:
- (a) The right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being;
 - (b) The setting of national standards and norms and standards for tariffs in respect of water services;
 - (c) The preparation and adoption of water services development plans by water services authorities;
 - (d) A regulatory framework for water services institutions and water services intermediaries;
 - (e) The establishment and disestablishment of water boards and water services committees and their duties and powers;

- (f) The monitoring of water services and intervention by the Minister or by the relevant province;
- (g) Financial assistance to water services institutions;
- (h) The gathering of information in a national information system and the distribution of that information;
- (i) The accountability of water services providers, and
- (j) The promotion of effective water resource management and conservation.

6.1.60 Section 3 of the Water Services Act provides, *inter alia*, that:

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

6.1.61 According to section 11(1) of the Water Services Act, every Water Service Authority²⁷ has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure, affordable, economical and sustainable access to water services. In terms of section 11(2) of the Water Services Act the duty is subject to the following factors:

- (a) The availability of resources;

²⁷ *Water Services Authority* means any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993) responsible for ensuring access to water services.

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- (b) The need for equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction;
 - (c) The need to regulate access to water services in an equitable way;
 - (d) The duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;
 - (e) The duty to conserve water resources;
 - (f) The nature, topography, zoning and situation of the land in question; and
 - (g) The right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.

6.1.62 Section 62 of the Water Services Act deals with the monitoring of water services institutions and provides that:

- (1) *The Minister and any relevant province must monitor the performance of every water services institution in order to ensure:*
 - (a) *Compliance with all applicable national standards prescribed under this Act;*
 - (b) *Compliance with all norms and standards for tariffs prescribed under this Act, and*
 - (c) *Compliance with every applicable development plan, policy*

statement or business plan adopted in terms of this Act...

- 6.1.63 Section 63(1) of the Water Services Act states that if a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant province to intervene in terms of section 139 of the Constitution.
- 6.1.64 In terms of section 73(1) of the Water Services Act, the Minister amongst other things may construct, operate, alter or repair any water services work with the permission of the relevant water services institution. The Minister may also contract with any person to perform any work which s/he is authorised to perform under this Act; act as a water services provider under contract or approval only if the relevant water services authority is unable to provide the water services; provide water services in emergency situations, perform the functions of a water services authority or water board and issue guidelines to water services institutions on performing their functions in terms of this Act.

National Environmental Management Act, 1998

- 6.1.65 Section 2(2),(3) and (4) of National Environmental Management Act²⁸ (NEMA) provides inter alia:

“(2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably....”

28 Act 107 of 1998.

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- (3) *Development must be socially, environmentally and economically sustainable.*
- (4) (a) *Sustainable development requires the consideration of all relevant factors including the following:*
- (i) *That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;*
 - (ii) *That pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;*
 - (iii) *.....;*
 - (iv) *that the waste is avoided or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner.*

Division of Revenue Act, 2023 (DoRA)

6.1.66 Section 1 of the DoRA describes “*transferring officer*” as the accounting officer of a national department that transfers a Schedule 4, 5 or 7 allocation to a province or municipality or spends a Schedule 6 allocation on behalf of a province or municipality;

6.1.67 “*Urban Settlements Development Grant*” means the Urban Settlements Development Grant referred to in Part B of Schedule 4 of DoRA.²⁹

²⁹ The specific purpose of USDG is to supplement the capital revenue of metropolitan municipalities in order to implement infrastructure projects that promote equitable, integrated, productive, inclusive and sustainable urban development. and it is voted to the Department of Human Settlements (Vote 33).

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- 6.1.68 Section 2(a) of the DoRA provides that the objects of this Act are as required by section 214(1) of the Constitution to provide for-
- (i) the equitable division of revenue raised nationally among the three spheres of government;
 - (ii) the determination of each province's equitable share of the provincial share of that revenue; and
 - (iii) other allocations to provinces, local government or municipalities from the national government's share of that revenue and conditions on which those allocations are made;
- (b) to promote predictability and certainty in respect of all allocations to provinces and municipalities, in order that provinces and municipalities may plan their budgets over a multi-year period and thereby promote better coordination between policy, planning and budgeting; and
- (c) to promote transparency and accountability in the resource allocation process, by ensuring that all allocations, except Schedule 6 allocations, are reflected on the budgets of provinces and municipalities and the expenditure of conditional allocations is reported on the receiving provincial departments and municipalities.
- 6.1.69 Section 6(2) of the DoRA provides that if the actual revenue raised nationally in respect of the 2023/24 financial year exceeds the anticipated revenue set out in Column A of Schedule 1, the excess accrues to the national government, and may be used to reduce borrowing or pay debt as part of its share of revenue raised nationally.

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- 6.1.70 In terms of section 6(3) further allocations may be made from the excess revenue envisaged in subsection (2), in accordance with the applicable legislation envisaged in section 12 of the Money Bills and Related Matters Act, 2009, to— (a) national departments; (b) provinces; or (c) municipalities.
- 6.1.71 Section 9(1) states *inter alia* that the transferring officer of a Schedule 4 allocation must ensure that transfers to all provinces and municipalities are deposited only into the primary bank account of the relevant province or municipality and monitor information on financial and non-financial performance of the Urban Settlements Development Grant against the capital budget and the service delivery and budget implementation plan.
- 6.1.72 Section 10(1)(a) stipulates amongst other things that the transferring officer of a Schedule 5 or 6 allocation must certify to the National Treasury that any monitoring or system that is used, is compatible and integrated with and does not duplicate other relevant national, provincial and local systems.
- 6.1.73 Section 11 indicates *inter alia* that the receiving officer of a Schedule 4 allocation is responsible for complying with the applicable framework; and the manner in which the allocation received from a transferring officer is allocated and spent. Further that the receiving officer of a municipality must ensure and certify to the National Treasury that the municipality indicates each programme partially or fully funded by a Schedule 4 allocation in its annual budget and that the allocation is specifically and exclusively appropriated in that budget for utilisation only according to the purpose of the allocation.
- 6.1.74 Section 20(1) provides that if satisfied that the relevant provincial department or municipality has demonstrated the capacity to implement projects, the NT may, at the request of the transferring officer and after consultation with the receiving officer, convert any portion of an allocation listed.

Case law

- 6.1.75 The issue of essential municipal services has been a subject of various court litigation in the recent past. In the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*,³⁰ the Constitutional Court stated that section 73(1) of the Local Government Municipal Systems Act places a general duty on municipalities 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 services*”.
- 6.1.76 The Constitutional Court further stated that section 4(2)(j) of the Local Government Municipal Systems Act requires municipalities to contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 27 of the Constitution.
- 6.1.77 In another analogous matter concerning the issue of municipal services involving *Government of the Republic of South Africa and Others v Grootboom and Others*³¹ the Constitutional Court stated that “*effective implementation requires at least adequate budgetary support by national government*”.

Analysis

- 6.1.78 Upon the factual analysis and evaluation of evidence at the disposal of the Public Protector, it has been established that the residents of Hammanskraal are currently receiving water of poor quality from TWTW. The water from TWTW is not suitable for human consumption, because of the partially treated wastewater

³⁰ (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paragraph 53.

³¹ (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) at paragraph 68.

from Rooiwal WWTW, which is channelled into the Apies River through to Leeuwkraal Dam.

- 6.1.79 Leeuwkraal Dam being an abstraction point and a reservoir for TWTW, means that it receives a poorly treated wastewater from Rooiwal WWTW. As a water purification plant TWTW is not designed to treat raw wastewater.
- 6.1.80 As a result, the water from the taps of the residents in Hammanskraal, which they receive from TWTW's reticulation network, is currently unsafe for consumption and exposes residents to waterborne diseases and other associated health risks.
- 6.1.81 In terms of the relevant constitutional provisions as cited above, it is evident that the CoT is an organ of state and a municipality constituted at a local sphere of government. Furthermore, in terms of the provisions of the Constitution and the applicable legislation, the CoT has a duty to provide basic water and administer water and sanitation limited to potable water supply systems and domestic wastewater and sewage disposal systems in a sustainable manner.
- 6.1.82 The CoT is a public administration authority envisaged in the Constitution and is expected to maintain a high standard of professional ethics, foster transparency and to be accountable and impartial when engaging administrative processes such as delivery of municipal services to its communities.
- 6.1.83 In line with the relevant legislative injunctions, Local Government is expected to co-operate and work collaboratively with other spheres and levels of government, such as DWS, DHS, COGTA, NT, including MoU partners, in order to ensure effective delivery of quality water in Hammanskraal and to address what appears to be a legacy of improper planning by different administration within the CoT.

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- 6.1.84 There are specific obligations to the accounting officer of a national or provincial department responsible for the transfer of any proposed allocations to a municipality, such as to notify the National Treasury or the relevant provincial treasury, of all proposed allocations, and the projected amounts of those allocations to be transferred to each municipality during each of the next three years. The transferring officer of a Schedule 4 allocation must monitor information on financial and non-financial performance of the Urban Settlements Development Grant against the capital budget and the service delivery and budget implementation plan.
- 6.1.85 In this instance, Part B, Schedule 4 of the DoRA indicates that USDG, which supplements the capital budget of metropolitan municipalities is voted to the budget of the Department of Human Settlements, thereby making the DG a transferring officer contemplated in Schedule 4, Part B of DoRA.
- 6.1.86 The Constitution states that all constitutional obligations must be performed diligently and without delay. Self-evidently, the CoT has an obligation to perform its constitutional obligations diligently and without delay, in order to be compliant with the dictates of the supreme law of the Republic of South Africa.
- 6.1.87 The CoT, as a Water Service Authority has a constitutional and legislative obligation to provide clean and safe water to the residents of Hammanskraal. While the duty to provide water and sanitation services is subject to the availability of resources, it remains the legal obligation of the CoT to ensure the progressive realisation of these inalienable rights of access to water within its available means.
- 6.1.88 Right of access to water as contemplated in the Constitution is an unqualified socio-economic right. The unqualified nature of the right to have access to clean water means that it is an immediately enforceable right and therefore the obligation is on the state to ensure the progressive realisation thereof. This is a

governmental duty incumbent on the CoT as the municipality, which has an administrative jurisdiction over Hammanskraal.

- 6.1.89 All the above legal provisions cumulatively oblige the CoT, as part of the process of integrated development planning, to take all reasonable and necessary steps within the legal framework to ensure, amongst other things, that the inhabitants of Hammanskraal have access to municipal services, including potable water.
- 6.1.90 The CoT admitted during the investigation that water from TWTW cannot be consumed or used for drinking, but only for other domestic purposes. As an interim measure, the CoT came up with an alternative intervention by providing the residents of Hammanskraal with drinking water through scheduled delivery by water tankers.
- 6.1.91 The CoT further conceded that Rooiwal WWTW is currently not operating optimally in treating wastewater, therefore, TWTW cannot effectively purify water that is suitable for human consumption.
- 6.1.92 The Public Protector has also noted that over the years, various non-compliance directives were issued by DWS against the CoT under the National Water Act, 1998 in connection with Rooiwal WWTW's discharge of polluted effluent to the Apies River, down to Leeuwkraal Dam, which is an abstraction point for TWTW.
- 6.1.93 Copies of directives³² in possession of the Public Protector reveal that on 04 February 2011, site inspection was conducted by DWS at Rooiwal WWTW after receiving a complaint of water pollution by CoT. During this inspection DWS established amongst other things that various pump station reactor screws were not operational, which caused Return Activated Sludge (RAS) rate to be slow and resulted in sludge carry over. Two blowers supplying air and mixing the content at Biological Nutrients Reactors (BNR) were also not working. There

³² As per letter dated 08 March 2011 signed off by DWS' Marie Brisley-Clavis, Regional Head Northwest.

was also floating scum from the reactors due to the sceptic state of the reactors. The final effluent of water was black in colour with lots of scum due to a partial treatment.

- 6.1.94 The CoT conceded³³ to the findings of the DWS' directives and accepted that the design treatment capacity of the Rooiwal WWTW is 220MI/day. The average dry weather flow is 203MI/day. CoT indicated that between 26 December 2010 and 25 January 2011 the peak inflow at Rooiwal was 660MI/day and that with this high inflow sludge is washed out of the process and settled out in a series of ponds before it is discharged into the Apies River. The ponds are now full of settled sludge and after every rainfall a lot of the settled sludge is washed out to the river.
- 6.1.95 It is also apparent from the evidence before that Public Protector that other bodies, including the SAHRC, have also investigated, made adverse findings on this issue against the CoT and proposed certain recommendations, yet the predicament or the prejudice faced by the residents of Hammanskraal still prevails.
- 6.1.96 The CoT has indicated that it has no budget or financial means to immediately upgrade Rooiwal WWTW. However, the CoT did not specify its inability to reallocate or prioritise funds to meet this essential service obligation. In the matter of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*, the Constitutional Court has roundly rejected this kind of defence and stated that “*determination of the reasonableness of measures within available resources cannot be restricted by budgetary and other decisions that may well have resulted from a mistaken understanding of constitutional or statutory obligations*” and/or lack. In other words, it is not sufficient for the CoT to state that it has not budgeted for

³³ As per letter dated 16 February 2011 signed off by CoT's LL Makibinyane, Strategic Executive Director: Public Works and Infrastructure Development.

something, if it should indeed have planned and budgeted for it in the fulfilment of its obligations.³⁴

6.1.97 The Court further held that it would hardly be possible for the municipality to carry out its constitutional and legislative obligations without being entitled or obliged to fund itself in the sphere of emergency.³⁵

6.1.98 In the circumstances, the recent outbreak of cholera disease in Hammanskraal and the fact that water is a basic human necessity can now be reasonably viewed as an emergency requiring cooperative governance, support by national government and prioritisation of funds by the CoT to in order to be addressed.³⁶

6.1.99 It follows therefore that recognition of the pressing need to address the Hammanskraal water crisis needs budgetary planning that calls for proper co-operation amongst different spheres of government and not just CoT alone.³⁷

³⁴ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paragraph 74.

³⁵ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paragraph 53.

³⁶ Section 154 of the Constitution provides that the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers to perform functions.

³⁷ Section 139 of the Constitution states, *inter alia*, that:

(1) *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 to-*

(i) *maintain essential national standards or meet established minimum standards for the rendering of a service;*

(ii) ...

(iii) *Maintain economic unity...*"

Observations by the Public Protector

- 6.1.100 The Public Protector has observed from the AGSA's audit findings that budget constraint is a major factor impacting *inter alia* on the CoT's implementation of maintenance at the Hammanskraal WWTW, the punctual completion of planned extensions/refurbishments of the plant and the ability to effectively implement the maintenance plan.
- 6.1.101 The CoT has approved the 2023/24 MTREF with the USDG having been reprioritised to allocate R450 million over the next three years for the completion of Phase 1 of the Rooiwal WWTW refurbishment and upgrade project.
- 6.1.102 In an effort to collaborate in resolving the crisis at Hammanskraal, CoT concluded an MoU with the DBSA on 20 July 2023, which provides a framework for collaboration for infrastructure planning, technical assistance and funding between the Parties for CoT's capital expenditure programmes and infrastructure projects.
- 6.1.103 A Service-Level Agreement (SLA) is to be concluded soon after the appointment of the DBSA through the section 110 process of the MFMA. The procurement served before the BAC on 31 August 2023 and the appointment was pending approval by City Manager.
- 6.1.104 The CoT has also lodged an application for R60 million operational grant funding through the DBSA to fund the Rooiwal WWTW maintenance plan estimated at R64, 6 million.
- 6.1.105 The Minister of DWS and CoT had agreed amongst other things to partner and jointly manage the project to resolve the Hammanskraal crisis, and to this end, to request NT to supplement CoT's USDG allocations to enable the project to be fully implemented.

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- 6.1.106 To alleviate the problem further, the DWS has collaborated with Magalies Water and undertook to expand Magalies Water's Klipdrift Water Treatment Plant for water to be channelled towards TWTW for the people of Hammanskraal.
- 6.1.107 The CoT has formulated an Action Plan and a Joint Technical and Financial Steering Committee, consisting of the CoT, DWS, CoGTA, NT, DBSA and Magalies Water is to oversee the implementation of the intervention, and biweekly monitor the progress of implementing the Action Plan and the agreement between the CoT and the DWS.
- 6.1.108 The CoT welcomes the proposed remedial action in terms of the development and submission of an action plan to Council and the MEC for CoGTA within 60 days and commits to implement same.
- 6.1.109 The NCoP is acquainted on the current progress made by the joint-technical steering committee on the implementation of the Hammanskraal Integrated Partnership and Intervention Support.
- 6.1.110 The CoT was offered intervention by national government taking over the water project, but it declined to accept the proposed intervention on the basis that cooperative intervention in terms of section 154 of the Constitution being a desirable measure of intervention.
- 6.1.111 The DWS is constrained from using its funds to assist CoT to address the water and sanitation challenges in Hammanskraal but must use its USDG allocation.
- 6.1.112 An interim relief has been offered by DWS by issuing a directive to MWB in terms of section 41 of the Water Services Act, 1997 for measures to address the water challenges in Hammanskraal.

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- 6.1.113 MWB's proposed business plan to construct a water treatment package plant at Klipdrift Water Treatment Plant for immediate relief is pending approval of the DWS' allocation of R480 million to the project by NT.
- 6.1.114 MWB is continuing with the planning and design work for the package plant and has to this end applied for a loan at the DBSA to fund the project.
- 6.1.115 Section 63 and 73 of the Water Services Act makes it practically problematic for the Minister of Water and Sanitation to take over a water or wastewater function in a very poorly performing municipality, because the municipal water and sanitation function must be funded from the sale of water, and from sanitation charges.
- 6.1.116 There is no mechanism in place for funding of water and sanitation function if taken over by the Minister of Water and Sanitation and to this end, the DWS is in the process of proposing amending the Water Services Act and the proposed amendments will be tabled at the next Cabinet meeting for Cabinet's approval of the Amendment Bill to be published for public comment.
- 6.1.117 However, having regard to the above assertions, note has been taken of the provisions of section 63(6) which makes provision for the Minister after taking over any function of a water services authority- (a) having tabled a notice to that effect in the National Council of Provinces within 14 days of the commencement of its first sitting after taking over that function, to (b) on behalf of that water services authority, exercise all the powers and carry out all the duties relating to that function.
- 6.1.118 The NT is not empowered by provisions of the law to monitor the CoT to ensure that the CoT has specifically and exclusively appropriated Schedule 4 allocation budget for utilisation only according to the purpose of the allocation for the Hammanskraal Water project. The function resonates with the transferring officer of the relevant national department, which is the DHS in this instance.

6.1.119 It is noted that the National Treasury would take the necessary and appropriate steps to ensure transparency and effectiveness in the management of public funds within the confines of the empowering provisions of the law, without interference in the budget formulation and execution processes of the CoT and related national departments.

6.1.120 There has been a concerted effort made by the DWS, CoT and DBSA to resolve the crisis in Hammanskraal. However no desired results aimed at resolving the impasse of Hammanskraal water project has been achieved as yet.

Conclusion

6.1.121 In terms of the overall evidence presented and considered by the Public Protector, the ineluctable conclusion to be reached, is that which supports the allegations made by the Complainant against the CoT.

6.1.122 On the strength of the evidence obtained during the investigation and the application of the legal framework to the facts of the matter, the CoT has not fulfilled its constitutional and statutory obligations to supply the residents of Hammanskraal with clean potable water that is suitable for human consumption.

6.1.123 It is evident that Rooiwal WWTW is currently defective and malfunctioning due to a lack of upgrade and maintenance. As a result, Rooiwal WWTW partially treats wastewater that is discharged into both Apies River and Leeuwkraal Dam. TWTW then abstracts partially treated wastewater from Leeuwkraal Dam through its pumping system.

6.1.124 In fostering the spirit of cooperative governance as envisaged in section 154 of the Constitution, urgent intervention by the relevant national and provincial governments to assist in ensuring the substantive supplementation of the CoT's

approved 2023/24 MTREF with the USDG having been reprioritised to allocate R450 million over the next three years for the completion of Phase 1 of the Rooiwal WWTW refurbishment and upgrade project.

- 6.1.125 Accordingly, the Public Protector concludes that despite the Constitutional responsibility of the CoT to provide clean potable water and proper sanitation services to Hammanskraal, the prevailing water crisis in the area requires cooperative governance, support and intervention by all relevant spheres of government, having regard to the water challenges in Hammanskraal as identified in this report.

7 FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the CoT should have complied with and the impact thereof on good administration, the Public Protector is makes the following adverse findings against the CoT:

- 7.1 **Whether there is undue delay and/or failure by the City of Tshwane Metropolitan Municipality to supply the residents of Hammanskraal with clean water that is suitable for human consumption, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act**

- 7.1.1 The allegation that there was undue delay and/or failure by the CoT to supply residents of Hammanskraal with clean water that is suitable for human consumption, **is substantiated.**

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- 7.1.2 On the strength of the evidence placed before the Public Protector it is apparent that residents of Hammanskraal are not receiving clean water that is suitable for human consumption due to a partially functional and/or dysfunctional state and condition of Rooiwal WWTW.
- 7.1.3 The lack of access to clean and potable water poses a danger to the lives of affected community members, constitutes a continuous gross inconvenience and improper prejudice to the residents of Hammanskraal.
- 7.1.4 In terms of the evidence before the Public Protector, the Rooiwal WWTW lacks adequate and optimum functional capacity in respect of its original design to treat the inflow of wastewater. As a result, the Rooiwal WWTW has a problem of cleaning organic and solid waste as well as other water pollutants it receives from its increased catchment areas, such as households and factories.
- 7.1.5 According to the CoT's own presentation to the Parliamentary Portfolio Committee on Human Settlements, Water and Sanitation, dated 10 September 2019, the hydraulic flow or the amount of water coming into the Rooiwal WWTW plant to be treated is approximately 130 million litres per day and the plant experiences an 18% overload. The plant was designed to treat only 110 million litres per day.
- 7.1.6 As a result of this hydraulic overload and recurring mechanical breakdowns of machinery as indicated in the evidence, the final treated wastewater discharged from the Rooiwal WWTW plant into the Apies River does not comply with the set quality standards, which is a serious non-compliance issue.
- 7.1.7 Ultimately, treated wastewater from the Rooiwal WWTW pollutes the Apies River and Leeuwkraal Dam, which is a source of drinking water to the Hammanskraal and surrounding areas.

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- 7.1.8 The TWTW is not mechanically designed to treat raw sewage and sludge, since it is not a wastewater plant, but a water purification plant. As a result, the CoT has noted from its periodic water tests quality failures of the following parameters from TWTW:
- (a) Ammonia;
 - (b) Phosphate;
 - (c) Nitrites-Nitrate; and
 - (d) Colour, Taste and Odour.
- 7.1.9 The above indicated parameters are as a result of the poor raw water quality at the Leeuwkraal Dam resultant from the effluent discharges from the Rooiwal WWTW, which the CoT has failed and/or unduly delayed to address over the years. This conduct failure and/or undue delay by the CoT exposes a health risk to the community of Hammanskraal and remains incompatible with obligations imposed on CoT by sections 27(1)(b), 152(1), 153, 156 and 237 of the Constitution.
- 7.1.10 The conduct of the CoT is also at variance with the obligations imposed on the Municipality by sections 4(2), 8(2), 23(1), 73(1) and 83(3) of the Local Government Municipal Systems Act. The conduct of the CoT is further irreconcilable with the provisions of sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.
- 7.1.11 While the CoT remains the authority with direct jurisdiction on water related services in Hammanskraal, the poor quality of water in the area is a reflection of poor intergovernmental relations on all affected spheres of government. For this reason, this matter should be treated as an emergency, which requires a buy-in of other affected organs of state and a mutual recognition of the pressing need to address water problems in the area. This calls for a collective synergy, proper co-operation and the necessary support to the CoT by other spheres of

government such as DWS, COGTA and NT as contemplated in section 41(1) of the Constitution, in order to find long-term and lasting solutions to the water challenges in Hammanskraal.

- 7.1.12 Under these circumstances, the conduct of the CoT, in failing and/or unduly delaying to upgrade and maintain the Rooiwal WWTW, amounts to improper conduct as contemplated in terms of section 182(1)(a) of the Constitution, undue delay and improper prejudice as contemplated by section 6(4)(a)(ii) and (v) of the Public Protector Act.

8 REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this report upon the conclusion of an investigation where adverse findings are made.
- 8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.
- 8.3 Having regard to the evidence, the regulatory framework determining the standard the CoT should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Manager of the CoT

- 8.4 Within **sixty (60) calendar days** from the date of receipt of the final report, in line with the responsibilities of the Municipal Manager in terms of section 55 of the Local Government Municipal Systems Act, develop an Implementation Plan

setting out the measures, including prioritisation of capital funding within its available resources to be undertaken to upgrade and refurbish the Rooiwal WWTW in order to address the ongoing water quality failures at the TWTW, as highlighted in this report;

- 8.5 Submit the Implementation Plan to the Executive Mayor of the CoT for tabling before the Municipal Council of the CoT and to the Member of the Executive Council (MEC) for CoGTA in the Gauteng province for monitoring of implementation;
- 8.6 As undertaken in the response to the Notice, ensure that the approved 2023/24 Medium Term Revenue and Expenditure Framework (MTREF) with a reprioritised Urban Settlement Development Grant (USDG) allocation of R450 million over the next three years for the completion of Phase 1 of the Rooiwal WWTW refurbishment and upgrade project is effectively used for that purpose and certify to the National Treasury that the allocation is specifically and exclusively appropriated in that budget for utilisation only according to the purpose of the allocation as contemplated in section 11(2) of DoRA; and
- 8.7 As undertaken in the response to the Notice, ensure that the R60 million operational grant funding sought from the DBSA to fund the Rooiwal WWTW's Maintenance Plan is effectively and sufficiently utilised for that purpose, as and when the application for funding is approved.

The Executive Mayor of the CoT

- 8.8 Within **sixty (60) calendar days** from the date of receipt of the final report, table a copy thereof through the Speaker of the Municipal Council of the CoT for discussion in line with his/her powers and functions in terms of section 56 of the Municipal Structures Act; and

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- 8.9 Receive and consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by the CoT to address deficiencies and shortcomings at the Rooiwal WWTW, which result in water quality failures at the TWTW, as highlighted in this report.

The Minister for Water and Sanitation

- 8.10 Within **sixty (60) calendar days** from the date of this report, take appropriate steps or measures as he may deem necessary to work collaboratively with the CoT in addressing the water challenges in Hammanskraal in order to eradicate the situation that contributes to the poor quality of water at TWTW, as highlighted in this report, in line with the principles of cooperative governance envisaged in Sections 41 and 154 of the Constitution.

The MEC for COGTA in the Gauteng province

- 8.11 Within **sixty (60) calendar days** from the date of receipt of the Implementation Plan developed by the Municipal Manager, establish appropriate monitoring mechanisms in line with the powers vested to him/her under section 105(1) of Local Government Municipal Systems Act in order to oversee the CoT's progress in connection with measures to address the ongoing poor quality of water at the TWTW, as highlighted in this report.

The Director-General of the Department of Human Settlements

- 8.12 Within **sixty (60) calendar days** from the date of receipt of the final report in line with the provisions of section 9(1)(b) of DoRA develop monitoring mechanisms for the financial and non-financial performance of the CoT regarding the Hammanskraal Water Project funded by an allocation in Part B of

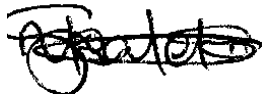
Schedule 4, in accordance with subsection (2) and the applicable framework, for the current financial year;

- 8.13 In terms of section 9(1)(e) and (f) of DoRA, provide National Treasury with monitoring information on the financial and non-financial performance by the CoT of the USDG against the capital budget and the service delivery and budget implementation plan; and
- 8.14 Urgently evaluate the performance of the Hammanskraal Water Project funded by the allocation contemplated in Part B of Schedule 4 of DoRA and submit such evaluations to the National Treasury and the Minister of Human Settlements with recommendation on action to be taken.

9 MONITORING

- 9.1 The Manager and Executive Mayor of the CoT to respectively provide report to the Public Protector on the implementation of the remedial action within **sixty (60) calendar days** from the date of this report.
- 9.2 The Minister of Water and Sanitation and the DG of DWS to respectively provide report to the Public Protector on the implementation of the remedial action within **sixty (60) calendar days** from the date of this report.
- 9.3 The DG of the DHS to provide a report to the Public Protector on the implementation of the remedial action within **sixty (60) calendar days** from the date of this report.

- 9.4 The DG of National Treasury to provide a report to the Public Protector on such financial information, returns, documents or explanations submitted to NT by the CoT in terms of sections 74(1) of MFMA, 11(2) of DoRA and by the relevant National Transferring Officer of the conditional grant in terms sections 9(1)(e) and (f) of DoRA, within **sixty (60) calendar days** from the date of this report.



ADV. KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
DATE: 31 OCTOBER 2023

Assisted by: Mr VX Dlamini

Acting Executive Manager: Investigations Branch