

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

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REPORT ON A JOINT INVESTIGATION BETWEEN THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC) AND THE PUBLIC PROTECTOR SOUTH AFRICA (PPSA) INTO ALLEGATIONS OF POOR SOCIO-ECONOMIC CONDITIONS, LACK OF ESSENTIAL SERVICES, ITS POTENTIAL PREJUDICE AND IMPACT ON FUNDAMENTAL HUMAN RIGHTS IN THE TOWNSHIP OF ALEXANDRA (ALEXANDRA) BY CERTAIN ORGANS OF STATE

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EXECUTIVE SUMMARY

- (i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following a joint investigation between the South African Human Rights Commission (SAHRC) and the Public Protector South Africa (PPSA) into allegations of poor socio-economic conditions, lack of essential services, its potential prejudice and impact on fundamental human rights in the township of Alexandra (Alexandra) by certain Organs of State.
- (iii) The investigation commenced on 2 April 2019, when the SAHRC and Public Protector South Africa (PPSA) became aware of media reports of threats of a “*Total shutdown of Alexandra*”. The media reports quoted ward councillor Mr Tefo Raphadu, who indicated that the residents of Alexandra informed him and other ward councillors in the area about an impending shutdown of Alexandra, which was planned to begin on 3 April 2019.¹
- (iv) **Based on the analysis of the complaint and information obtained, the following issues were identified and investigated:**
 - (a) Whether the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality

¹<https://www.timeslive.co.za/news/south-africa/2019-04-03-marlboro-gautrain-station-hit-by-Alextotalshutdown-protest/> and <https://www.thesouthafrican.com/news/alex-total-shutdown-sandton-protest-8-april-2019>.

(CoJ) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

- (b) Whether the provision of housing in Alexandra by the Gauteng Department of Human Settlements (GDHS) and CoJ accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.
- (c) Whether the enforcement of the laws in Alexandra by the South African Police Services (SAPS) and Johannesburg Metro Police Department (JMPD) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.
- (d) Whether the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.
- (e) Whether the provision of education in Alexandra by the Gauteng Department of Education (GDE) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.
- (f) Whether the total administration of the Alexandra Renewal Project (ARP) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct. (own emphasis added)

- (v) The investigation was conducted in terms of section 182(1)(a) of the Constitution which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and

in terms of section 6(4) of the Public Protector Act, which regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

(vi) Having considered the submissions made and evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) Regarding whether the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality (CoJ) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct

(aa) The allegation that the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality (CoJ) does not accord with the duties imposed on it by the Constitution and the applicable law, is substantiated.

(bb) Evidence gathered during the investigation, including the observations made by the investigation team during an inspection *in loco* found that CoJ has not provided sufficient municipal services to the community of Alexandra in a sustainable manner. The following service delivery deficiencies were recorded:

- (a) Inadequate housing which has resulted in widespread land invasion and property encroachment;
- (b) Failure or undue delay to issue title deeds to lawful owners of existing houses;
- (c) overflowing manholes, blocked drains and an unpleasant stench in hostels;
- (d) Potholes in the streets due to a lack of maintenance;

- (e) A general lack of maintenance and degradation of buildings at Hostels which has resulted in damaged plumbing systems, poor illumination and unhygienic conditions;
- (f) Uncollected refuse or waste lies strewn along walkways and corridors within the informal settlements;
- (g) Heavily polluted surface water on the Jukskei River due to direct uncontrolled deposit of waste and raw sewer waste into the stream;
- (h) Chemical toilets shared by no less than seven families and located within a radius of about five hundred metres away from each other;
- (i) Chemical toilets only cleaned or drained once a week by Pikitup.

(cc) However, I note and fully acknowledge practical and significant steps taken by the CoJ as is evident from its **Implementation Baseline Plan** to commit and continue to endeavour to meet its obligations in terms of sections 152(1), 24,195(1)(e)(f) and 237 of the Constitution, section 4(2) of the Local Government and Municipal Systems Act, section 19(1) of National Water Act and section 2 of the National Environmental Management Act. (own emphasis)

(dd) It is further acknowledged that most of the adverse findings made in the interim report are already mitigated as most projects have been completed while others are still underway.

(ee) It is incumbent on the CoJ to ensure consistency in the delivery of the municipal services as indicated in the **Implementation Baseline Plan** provided to the Public Protector investigating team in order to meet its obligations in terms of sections 152(1), 24,195(1)(e)(f) and 237 of the Constitution, section 4(2) of the Local Government and Municipal Systems Act, section 19(1) of National Water Act and section 2 of the National Environmental Management Act with a view to addressing the municipal service concerns highlighted in this report.

(ff) The conduct of the CoJ accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in

terms of section 6(4) (a)(i) of the Public Protector Act, however it is to a large extent mitigated by projects that are already completed as per furnished Implementation Baseline Plan.

(b) Regarding whether the provision of housing in Alexandra by the Gauteng Department of Human Settlement (GDHS) and CoJ accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

(aa) The allegation that the provision of housing in Alexandra by the Gauteng Department of Human Settlements (GDHS) and the CoJ does not accord with the duties imposed on it by the Constitution and the applicable law, is substantiated.

(bb) It was noted during the investigation that significant strides have been made for the provision of housing for the community of Alexandra. However, there are still some challenges as identified by the community. In essence, the community stated that the provision of housing remains woefully inadequate and manifests itself in the following socio-economic challenges within Alexandra:

- (a) The ever mushrooming of illegal structures on every open piece of land, demolitions, illegal evictions and congestions;
- (b) Overcrowding in the hostels and lack of maintenance;
- (c) Tensions in the community and dissatisfaction by those who are on the housing list for long time but are still waiting for houses;
- (d) Rise of vigilantism and criminal groups perpetrated by alleged allocation of houses to foreign nationals and collection of rentals by councillors;

- (e) Illegal occupation of RDP houses;
 - (f) Eviction and/ or Demolition Court Orders which are not executed;
 - (g) Failure or undue delay to issue qualifying residents of Alexandra with title deed documents etc; and
 - (i) Trust deficit arising from the lack of progress on the settlement of the land claimants in Alexandra since a Court interdict was obtained in 2004. The Alexandra statement of Intent which was signed by some parties in June 2016, is still not a legally binding agreement nor has funding been committed for the settlement of land claims.
- (cc) The CoJ and GDHS have accordingly not placed sufficient measures in place to meet its obligations in terms of section 26 of Constitution, section 2 and 9 of the Housing Act; section 6(1)(2)(a), section 117 of the Local Government and Municipal Systems Act and section 16 of the Deeds Registries Amendment Act.
- (dd) The conduct of the GDHS and CoJ accordingly constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.
- (c) Regarding whether the enforcement of the law in Alexandra by the South African Police Services (SAPS) and Johannesburg Metro Police Department (JMPD) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**
- (aa) The allegation that the enforcement of the law in Alexandra by the South African Police Services (SAPS) and Johannesburg Metro Police Department (JMPD) does not accord with the duties imposed on it by the Constitution and the applicable law, is substantiated.

- (bb) The submission by SAPS indicates a marked decline in major crimes against persons such as murder, rape, assault, robberies and other contact crimes, however crimes against property as well as lack of enforcement of by-laws within Alexandra remains prevalent and can be observed in the following manifestations. This was not disputed by General Sitole or any of the parties interviewed during the investigation:
- (a) Lawlessness in the form of illegal occupation of land,
 - (b) Encroachment of pavements,
 - (c) Informal trading,
 - (d) Illegal connection of electricity,
 - (e) Illegal dumping of waste,
 - (f) Uncontrolled influx of illegal immigrants,
 - (g) Malicious damage of state property and infrastructure,
 - (h) lack of enforcement of traffic laws, etc,
- (cc) The above identified gaps in the area of law enforcement within Alexandra all fortify the allegations that both the SAPS and the JMPD/ CoJ have not taken adequate measures to prevent, combat and investigate crime or to maintain law and order in Alexandra, particularly where by-laws are concerned. It is evident that further work still needs to be done to address the issue of law enforcement in Alexandra.
- (dd) Both the SAPS and the JMPD have not placed sufficient measures in place to address the inadequacies identified in law enforcement in Alexandra.
- (ee) The conduct of the SAPS as well as the JMPD/CoJ accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.

- (d) Regarding whether the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**
- (aa) The allegation that the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) does not accord with the duties imposed by the Constitution and the applicable law, is substantiated.
- (bb) The investigation has revealed inadequate provision of social welfare services to the people of Alexandra.
- (cc) The GDSD failed to develop and implement adequate social relief programmes and a Social Welfare Centre(s) or social infrastructure within Alexandra for people who are in need of social protection, to access it with ease. It is however noted that the GDSD is in the process of procuring office space for the purpose of establishing a service point for GDSD.
- (dd) I have also noted the concerns raised by the community of Alexandra during engagements with them that there are no referral services in respect of illegal immigrants to the Department of Home Affairs (DHA); referral services in respect of housing; sufficient food relief and psycho-social support for the victims of winter shack fires and victims of flooding disasters; sufficient substance abuse and crime awareness programs or knowledge of such programmes if available and also; places of care such as Child & Youth Care Centres, Home Based Care Facilities, and Older Persons Residential Care facilities for the vulnerable members of the Alexandra community.
- (ee) Failure to provide or enable access of adequate social services to the people of Alexandra does not promote the objects of section 27 of the Constitution and the WPSD.

- (ff) However, I note and fully acknowledge practical steps taken as can be gleaned from GDSG Infrastructure Implementation Plan for Alexandra, which is an unequivocal commitment and a total endeavour to meet its obligations in terms of section 27 of the Constitution as well as in terms of other applicable legislative mandates.
- (gg) It is further acknowledged that some of the adverse findings in the interim report are to an extent mitigated as GDSG has already taken steps to address social challenges faced by people of Alexandra, while other measures are still underway, such as the GDSG Infrastructure Implementation Plan for Alexandra provided to the Public Protector.
- (hh) It is therefore incumbent on GDSG to ensure completion of the all deliverables indicated in the GDSG Infrastructure Implementation Plan for Alexandra provided to the Public Protector in order to fully meet its obligations in terms of section 27 of the Constitution, with a view to addressing the social service concerns highlighted in this investigation.
- (ii) The conduct of the GDSG accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act, however it is to a large extent mitigated by commitments made under the GDSG Infrastructure Implementation Plan for Alexandra furnished to the Public Protector investigation team on 17 May 2021.
- (e) Regarding whether the provision of education in Alexandra by the Gauteng Department of Education (GDE) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**
- (aa) The allegation that the provision of education in Alexandra by the Gauteng Department of Education (GDE) does not accord with the duties imposed by the Constitution and the applicable law, is not substantiated.

- (bb) From the evidence gathered by the investigation team during an inspection *in loco* and submissions received from GDE, it appears that the schooling infrastructure or facilities in Alexandra are reasonably in place.
- (cc) Evidence further revealed that sufficient and adequate educational programmes, additional or alternative classes were put in place to avert the negative effect of the civil protests on children's school attendance and access to basic education as required by Constitution and South African Schools Act.
- (dd) The conduct of the GDE does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.
- (f) Regarding whether the total administration of the ARP accords with the duties imposed on it by the Constitution and the applicable law, and if not whether such failure amounts to maladministration and improper conduct.**
- (aa) The allegation that the total administration of the ARP does not accord with the duties imposed by the Constitution and the applicable laws, could not be determined due to the unavailability of documents related to the ARP.
- (bb) The GDHS did not avail records in connection with financial, procurement, business plans, maps, drawings, contracts, list of service providers, and expenditure incurred or undertaken under the ARP due alleged seizure of such records by CoJ's forensic investigators.
- (cc) As a result of the lack or absence of such records, no audit could be done by the Auditor General South Africa as well as by this Joint Investigation Team, to determine the just and fairness of the procurement processes and the value for money spent under the ARP.

- (dd) However, Messrs. Madhlopa and Thenga Incorporated Attorneys has already been appointed by the CoJ to conduct a forensic investigation into the administration of the ARP. As a result, there would be little value to derive from traversing those issues again, especially from a resource perspective.
- (ee) Once the forensic report in connection with the ARP is finalized, such will be shared with all relevant law enforcement agencies.
- (ff) As a result, I could not make a determination with regards to impropriety as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.
- (vi) The appropriate remedial action which I am taking in pursuit of section 182(1)(c) of the Constitution, is the following:

The City Manager of CoJ to:

- (a) Within sixty (60) working days of the date of this report, table a copy thereof before the Municipal Council. The Municipal Council to discuss, adopt and pass a resolution thereon indicating steps/measures to be taken by CoJ to address shortcomings on municipal services in Alexandra in line with its legislative powers.
- (b) Within sixty (60) working days of the adoption of this report by the Council, submit a detailed project implementation plan to the Public Protector indicating steps/measures to be taken to act upon the following municipal service delivery issues in Alexandra:
 - i) Fencing and maintenance of the Alexandra cemetery;
 - ii) Maintenance of the Helen Joseph Women's Hostel and Madala Hostel;
 - iii) Decanting or de-densification of Alexandra;
 - iv) Refuse removal and identification and cleaning of illegal dumping areas in Alexandra;
 - v) Addressing overflowing manholes, grey surface water;

- vi) Enforcement of the By-Laws listed above by the JMPD; and the operational plan should include any collaboration with other law enforcement agencies, including SAPS;
 - vii) Dealing with illegal structures encroaching on municipal land and government structures; and
 - viii) Maintenance of roads.
- (c) Within thirty (30) working days of the date of this report, submit a Project Plan to the Public Protector for ARP forensic investigation which is being conducted by GFIS and Madhlopa and Thenga Incorporated Attorneys. The Public Protector is available to assist where necessary. Furthermore, within thirty (30) working days of this report, CoJ must submit to the Public Protector a final copy of the ARP forensic report.

The National Commissioner of SAPS:

- (d) Within sixty (60) working days of the date of this formal report, engage with JMPD/CoJ to draw up an operational plan relating to a *supportive role* by SAPS in the enforcement of By-Laws in Alexandra. The plan should include any collaboration and/or support that would be made by SAPS to JMPD in enforcing the By-Laws in Alexandra.

The HoD of GDHS to:

- (e) Within sixty (60) working days of the date of this report, submit a detailed project implementation plan relating to identified RDP housing needs in Alexandra and criteria to be used when identifying qualifying and preferential beneficiaries.

The HoD of GDSD to:

- (f) Within sixty (60) working days of the date of this report, submit a detailed GDSD Infrastructure Implementation Plan for Alexandra with clear dates,

turn-around timeframes, targets and deliverables indicating how renovation and rehabilitation of the identified current houses to accommodate the proposed social amenities and/or social service centre(s) in Alexandra would be undertaken.

The appropriate recommendation which the Public Protector is making in pursuit of section 6(4)(c)(ii) of the Public Protector Act to the Premier of Gauteng is as follows:

- (g) To request the President to issue a Proclamation in terms of section 2(1) of the Special Investigating Units and Special Tribunals Act, 1996 to investigate amongst others the following allegations in relation to ARP:
 - (a) procurement fraud and/or irregularities,
 - (b) post facto approvals, irregular awards, advance payments,
 - (c) Conflict of interests,
 - (d) unauthorised expenditure, fruitless and wasteful expenditure and any other form of maladministration and/or misappropriation of public funds, and
 - (e) recovery of public funds where appropriate.
- (h) To facilitate an overall multidisciplinary approach and collaboration between provincial and a local spheres of government for an ultimate realisation and improvement of service delivery issues in Alexandra.

The appropriate recommendation in pursuit of section 6(4)(c)(ii) of the Public Protector Act to the Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) is as follows:

- (i) The Public Protector, in terms of section 6 (4) (c) (ii) of the Public Protector Act, refers to the Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) this matter for consideration of criminal investigation where it appears crimes have been committed in relation to the ARP.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION RELATING TO POOR SOCIO-ECONOMIC CONDITIONS, LACK OF ESSENTIAL SERVICES, ITS POTENTIAL PREJUDICE AND IMPACT ON FUNDAMENTAL HUMAN RIGHTS IN THE TOWNSHIP OF ALEXANDRA BY CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY, GAUTENG DEPARTMENT OF HUMAN SETTLEMENTS, SOUTH AFRICAN POLICE SERVICES, GAUTENG DEPARTMENT OF EDUCATION AND THE GAUTENG DEPARTMENT OF SOCIAL DEVELOPMENT

1. INTRODUCTION

1.1 This report is issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of the investigation and implement remedial action:

1.2.1 The Premier of Gauteng: Mr David Makhura;

1.2.2 The Speaker of Council in the CoJ: Ms Nonceba Molwele;

1.2.3 The MEC for COGTA in Gauteng: Mr Lebogang Maile;

1.2.4 The MEC for Education in Gauteng: Mr Panyaza Lesufi;

1.2.5 The Executive Mayor in the CoJ: Mr Geoff Makhubo;

1.2.6 The City Manager in the CoJ: Dr N Lukhwareni;

1.2.7 The National Commissioner: SAPS: General Khehla Sitole;

1.2.8 The HoD for GDoHS: Ms Phindile Mbanjwa;

- 1.2.9 The HoD for GDoE: Mr Edward Mosuwe;
- 1.2.10 The HoD for GDoSD: Ms Thembeni Mhlongo; and
- 1.2.11 The Head for DPCI: Lieutenant-General Godfrey Lebeya

2. THE COMPLAINT

- 2.1 On 2 April 2019, the SAHRC and Public Protector South Africa (PPSA) became aware of media reports of threats of a “*Total shutdown of Alexandra*”. The media reports quoted ward councillor Mr Tefo Raphadu, who confirmed that the residents of Alexandra informed him and other ward councillors in the area about an impending shutdown of Alexandra, which was planned to begin on 3 April 2019.²
- 2.2 The South African Human Rights Commission (SAHRC) sent its representatives to Alexandra on 3 and 4 April 2019 respectively to assess the situation.
- 2.3 On this occasion, the SAHRC observed that the protest action was linked to the advancement of the community’s struggle for the realisation of their socio-economic rights and municipal essential services.
- 2.4 In consultation with numerous stakeholders such as former Councillor Michael Sun, who is a Member of the Mayoral Committee (MMC) for Community Safety in the City of Johannesburg (CoJ) and members of the Alexandra community, the SAHRC was able to determine as indicated in its Inspection Report that, generally, the discontent that motivated the protest arose as a result of:³

- (a) Lack of service delivery in general;

²<https://www.timeslive.co.za/news/south-africa/2019-04-03-marlboro-gautrain-station-hit-by-Alextotalshutdown-protest/><https://www.thesouthafrican.com/news/alex-total-shutdown-sandton-protest-8-april-2019/>

<https://www.thesouthafrican.com/news/alex-total-shutdown-sandton-protest-8-april-2019/>

³As per undated Inspection Report by SARHC.

- (b) Lack of refuse removal;
- (c) Illegal electricity connections;
- (d) Illegal structures being erected;
- (e) Failure by the City of Johannesburg to enforce the relevant By-Laws;
- (f) By-Laws to address illegal structures;
- (g) Lack of access to adequate housing;
- (h) Lack of police resources and high levels of crime; and
- (i) Understaffed and under-resourced local fire station.

2.5 On 18 April 2019, both the SAHRC and PPSA investigative teams met, agreed on how the joint investigation shall be conducted and further devised the scope of work and the procedure to be followed during the process of the joint and collaborative investigation.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2 Section 182(1) of the Constitution provides that: "*The Public Protector has the power as regulated by national legislation:*

- (a) *To investigate any conduct in state affairs, or in the Public Administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) *To report on that conduct; and*
- (c) *To take appropriate remedial action".*

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

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given the powers to resolve disputes through mediation, conciliation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 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.⁴ The Constitutional Court further held that:

*“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*⁵

3.5.1 In the above-mentioned constitutional matter, Mogoeng CJ, stated amongst other things the following, when confirming the powers of the Public Protector:

3.5.2 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

⁴ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

⁵ *Supra* at para [73].

- 3.5.3 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the *Constitution* cannot properly be upheld or enhanced (paragraph 67);
- 3.5.4 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);
- 3.5.5 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);
- 3.5.6 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);
- 3.5.7 The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

- 3.5.8 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a);
- 3.5.9 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d); and
- 3.5.10 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e).
- 3.6 In the matter of the *President of the Republic of South Africa vs Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)*, the court held as follows, when confirming the powers of the Public Protector:
- 3.7 The constitutional power is curtailed in the circumstances wherein there is conflict with obligations under the constitution (para 71);
- 3.8 The Public Protector has power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (para 82);
- 3.9 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):

- a) Conduct an investigation;
- b) Report on that conduct and
- c) To take remedial action;

3.10 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (para 104);

3.11 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105);

3.12 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct (para 107 and 108); and

3.13 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).

3.14 The listed institutions are organs of state and their conduct amounts to conduct in state affairs, as a result of this, the matter falls squarely within the ambit of the Public Protector's mandate.

3.15 The jurisdiction of the Public Protector was not disputed by any of the institutions in this matter.

3.16 Regarding the exercise of discretion of the Public Protector in terms of section 6(9) of the Public Protector Act to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute '*special circumstances*', some of the special circumstances that the Public Protector took into account to

exercise her discretion favourably to do this joint investigation, include the nature of the issues and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether she would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident (s); whether there are any competent alternative remedies available to remedy the situation and the overall impact of the investigation; whether the prejudice suffered by the Alexandra residents persists; whether her refusal to investigate perpetuates the violation of section 195 of the Constitution; whether her remedial action will redress the imbalances of the past. What constitute '*special circumstances*' depends on the merits of the each case.

- 3.17 In terms of section 6(9) of the Public Protector Act, the Public Protector is barred from entertaining complaints reported after two years of the date of an incident unless special circumstances exist. However, the mere fact that the incident occurred more than two years before being reported to the Public Protector does not, in itself, bar her from investigating. Instead, it is mainly the interests of justice that dictate whether she should investigate the matter or not. It is axiomatic that the Public Protector has to identify special circumstances using her discretion should she decide to entertain such a complaint. In this case, it is both in the interests of justice and the public to enquire into the administration of public affairs in Alexandra.
- 3.18 The community of Alexandra themselves would be keen to know or enquire into the just, fairness or transparency regarding the delivery of services in Alexandra and the expenditure of funds allocated for Alexandra development.
- 3.19 Realizing the importance of promoting accountability and openness which lies at the core of the founding provisions of our Constitution, and mindful of the need to strengthen constitutional democracy and

driven by an inclination towards promoting basic values and principles governing public administration as envisaged in section 195 of our Constitution, appreciating the importance of advancing Promotion of Administrative Justice Act⁶ (PAJA) and its corresponding section 33 of our Constitution, I duly decided to exercise my discretion in favour of this complaint.

4 THE INVESTIGATION

4.1 Methodology

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

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration or other improper conduct?

⁶ Act 3 of 2000.

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?

4.2.1.5 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.

4.2.1.6 The enquiry regarding what should have happened, focuses on the applicable legal prescripts that regulate the standard that should have been met by the relevant Organs of State to prevent improper conduct and/or maladministration as well as prejudice.

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

4.3 **On analysis of the complaint, the following issues were identified and investigated:**

4.3.1 Whether the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality (CoJ) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

4.3.2 Whether the provision of housing in Alexandra by the Gauteng Department of Human Settlements (GDHS) and CoJ accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

4.3.3 Whether the enforcement of the laws in Alexandra by the South African Police Services (SAPS) and Johannesburg Metro Police Department (JMPD)

accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

4.3.4 Whether the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

4.3.5 Whether the provision of education in Alexandra by the Gauteng Department of Education (GDE) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

4.3.6 Whether the total administration of the Alexandra Renewal Project (ARP) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

4.4 **The Key Sources of information**

Documents (Letters and Emails Exchanged)

4.4.1 Email dated 10 April 2019 from Ms Nthoriseng Motsitsi: Executive Manager for Customer Service Manager: PPSA indicating that an Own Initiative Investigation should be conducted into Alexandra Service Delivery protests 2019;

4.4.2 Undated Copy of the *Terms of Reference* for joint investigation to be conducted by South African Human Rights Commission and Public Protector South Africa;

4.4.3 Letter dated 12 April 2019 from Ms W Manyathela: Gauteng Provincial Representative PPSA to Mr Buang Jones: Provincial Manager of

SAHRC with the subject matter *Joint investigation between the PPSA and SAHRC into Alexandra Service Delivery complaints and protects;*

- 4.4.4 Email from Mr Vusumuzi Dlamini: Senior Investigator PPSA (Mr Dlamini) to Ms Harriette Buga: Legal Officer SAHRC dated 24 April 2019 with subject matter: *Debriefing Meeting between the PPSA and the SAHRC;*
- 4.4.1 Email dated 13 May 2020 attaching a letter from Mr Piet Moloi: Senior Investigator PPSA (Mr Moloi) to Mr Mike Maile: Former Project Manager of ARP requesting information regarding ARP;
- 4.4.2 Email dated 16 May 2020 attaching letter from Mr Moloi to Mr Neels Letter: Former Project Manager of ARP requesting information regarding ARP;
- 4.4.3 Email dated 16 May 2020 attaching letter from Mr P Moloi to Mr Aubrey Musetha: Former Project Manager ARP, requesting information regarding ARP.
- 4.4.4 Response letter dated 25 May 2020 from Mr Aubrey Masutha to Messrs Dlamini and Moloi regarding ARP;
- 4.4.5 Email dated 25 May 2020 attaching response from Mr Neels Letter to Mr Moloi responding to questions related to ARP;
- 4.4.6 Email dated 26 May 2020 from Mr Eze Raboroko to Mr Mpendulo Radebe regarding ARP;
- 4.4.7 Email dated 27 May 2020 from Mr Mike Maile to Mr Moloi responding questions related to ARP;
- 4.4.8 Email dated 29 May 2020 from Mr Aubrey Musetha to Mr Piet Moloi regarding questions of ARP;

4.4.9 Email dated 07 September 2020 from Mr Dlamini to Mr Piet Moloï attaching an email from Ms Xoliswa Mkhali: Former Communications Manager of ARP;

4.4.10 Letter from Daniel Molokomme: HoD at GDHS dated 13 June 2019 to Prof: B C Majola, Chairperson of SAHRC with subject matter : Alexandra Inquiry, submissions;

Inspection in loco conducted in Alexandra

4.4.11 An inspection *in loco* was conducted on 03 May 2019, by PPSA, SAHRC investigation in the company of organisers of Alextotalshutdown namely, Mr Sandile Mavundla and Ms Thandiwe Mthombeni. Various areas within Alexandra were inspected and residents interviewed in the process.

Oral and Written Submissions made to the Joint Investigation Team Panel (Also available on transcription records)

4.4.12 Written and oral submissions were made to a Joint Investigation Team Panel Inquiry by conveners and organisers of Alextotalshutdown on 13 May 2019 at Kopanong Hall in Alexandra;

4.4.13 Oral submission were made to a Joint Investigation Team Panel Inquiry on 13 May 2019 by residents of Alexandra at Kopanong Hall in Alexandra;

4.4.14 Written and oral submissions were made to a Joint Investigation Team Panel Inquiry by the City Manager of CoJ: Dr Ndivhoswani Lukhwareni on 18 April 2019 regarding ARP and monitoring of water quality impacting on Alexandra;

4.4.15 Written and oral submissions were made to a Joint Investigation Team Panel Inquiry on 18 April 2019 by Mr M Kgaswane: Director at JMPD;

- 4.4.16 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by the former MEC of the Gauteng Department of Housing, Paul Mashatile in connection with period 1999 to 2004;
- 4.4.17 Written and oral submissions were made to a Joint Investigation Team Panel Inquiry by former MEC of the Gauteng Department of Housing, Nomvula Paula Mokonyane in connection with period 2004 to 2009;
- 4.4.18 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by office of Auditor General South Africa: Performance audit of the effectiveness of the Urban Renewal Programme in Gauteng including ARP;
- 4.4.19 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by the Acting Head of Department: Gauteng Department of Human Settlement Mr Daniel Molokomme on 15 May 2019;
- 4.4.20 Written and oral submissions were made to Joint Investigation Team Panel Inquiry on 15 May 2019 by Mr Lebohang Maile: Member of Executive Council (MEC) for Gauteng Cooperative Government and Traditional Affairs;
- 4.4.21 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by Ms Phindi Baleni: Director-General, Office of the Gauteng Premier on 04 June 2019;
- 4.4.22 Written and oral presentation was made to Joint Investigation Team Panel Inquiry by General Shadrack Sibiyi: Executive Manager CoJ's Group Forensic (GFIS) investigation on 06 June 2019;
- 4.4.23 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by Mr Panyaza Lesufi: Gauteng MEC for Education and Mr Edward Mosuwe: Head of Department: Gauteng Department of Education on 24 July 2019;

- 4.4.24 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by Ms Thembeni Mhlongo: Head of Gauteng Department of Social Development on 25 July 2019;
- 4.4.25 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by Ms Mmabatho Sedika, Mr Siphon Ndaba and Mr(s) Kevish Lachman from Auditor-General of South Africa;
- 4.4.26 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by General Khehla Sitole on 05 August 2019;
- 4.4.27 Written and oral submissions to Joint Investigation Team Panel Inquiry by former premier of the Gauteng: Mbhazima Shilowa on 19 November 2019;
- 4.4.28 Written and oral submissions were made to Joint Investigation Team Panel Inquiry by Messrs Amos Masondo, Mpho "Parks" Tau and Trevor Fowler on 22 November 2019;
- 4.4.29 Written presentation was made to a Joint Investigation Team Panel Inquiry by General Shadrack Sibiyi of GFIS and private forensic law firm Madhlopa and Thenga Incorporated Attorneys on 11 September 2020;

4.5 **Legislation and other legal prescripts**

- 4.5.1 Constitution of the Republic of South Africa, 1996;
- 4.5.2 The Public Protector Act, 23 of 1994;
- 4.5.3 The Municipal Finance Management Act, 56 of 2003;
- 4.5.4 The Local Government Municipal Systems Act, 32 of 2000;
- 4.5.5 The National Water Act, 36 OF 1998;

- 4.5.6 National Environmental Management Act, 107 OF 1998;
- 4.5.7 The Housing Act, 107 of 1997;
- 4.5.8 The Provision of Certain Land for Settlement Act, 25 OF 1993;
- 4.5.9 The Provincial Government Act, 69 of 1986;
- 4.5.10 The Less Formal Township Establishment Act, 113 of 1991;
- 4.5.11 The Deeds Registries, 47 of 1937, (as amendment by Act 34 Of 2013);
- 4.5.12 The South African Police Service Act, 68 of 1995;
- 4.5.13 Aged Persons Act, Act 81 of 1967;
- 4.5.14 Fund-raising Act, Act 107 of 1978;
- 4.5.15 Social Service Professions Act, 110 of 1978;
- 4.5.16 Child Care Act, Act 74 of 1983;
- 4.5.17 National Development Agency Act, Act 108 of 1998;
- 4.5.18 Probation Services Act, Act 116 of 1991;
- 4.5.19 Prevention and Treatment of Drug Dependency Act, Act 20 of 1992;
- 4.5.20 Social Assistance Act, Act 13 of 2004;
- 4.5.21 Aged Persons Amendment Act, 100 of 1998;
- 4.5.22 The South African Schools Act, 84 1996;
- 4.5.23 The Public Administration Management Act, 11 of 2014;
- 4.5.24 The Public Finance Management Act, 1 of 1999;
- 4.5.25 National Archives and Records Service of South Africa Act, 43 of

1996;

- 4.5.26 The South African Social Security Agency Act, 9 of 2004)
- 4.5.27 The Treasury Regulations of 2001;
- 4.5.28 The White Paper for Social Welfare Service (1997);
- 4.5.29 GDHS's Supply Chain Management Policy;
- 4.5.30 Regulations on the Management and Care of Record issued in terms of NARSSAA, endorsed on 22 December 2004;
- 4.5.31 City of Johannesburg Municipality: Supply Chain Management Policy, Revision 002 July 2009.

4.6 **Case law**

- 4.6.1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);
- 4.6.2 Gamede MA vs The Public Protector (992646/2015) [2018] ZAGPPHC 865;2019(1) SA 491(GP);
- 4.6.3 President of the Republic of South Africa vs Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017).
- 4.6.4 Cool Ideas 1186 CC v Hubbard and Another (CCT 99/13) [2014] ZACC 16; 2014 (4) SA 474 (CC);
- 4.6.5 Airports Company South Africa SOC Ltd v Imperial Group Ltd & Others (1306/18) [2020] ZASCA.

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

4.7.1 A notice was issued to the City Manager of the City of Johannesburg Metropolitan Municipality on 24 February 2021;

4.7.2 A notice was issued to the Head of Department, Gauteng Department of Human Settlements on 25 February 2021;

4.7.3 A notice was issued to the Head of Department, Gauteng Department of Education on 23 February 2021;

4.7.4 A notice was issued to the Head of Department, Gauteng Department of Social Development on 23 February 2021;

4.7.5 A notice was issued to the National Commissioner, South African Police Services on 26 February 2021;

4.7.6 A notice was issued to the Premier of Gauteng on 25 February 2021;

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

4.7.7 A response was received from SAPS as per letter dated 23 March 2021 signed off by General KJ Sitole;

4.7.8 A response was received from GDHS as per letter dated 26 March 2021 signed off by Head of Department Ms P Mbanjwa;

4.7.9 A response was received from CoJ as per letter submission dated 21 April 2021 signed off by Acting City Manager: Mr Floyd Brink;

4.7.10 A response was received Head of Department, Gauteng Department of Social Development on 17 May 2021 signed off by Ms Thembeni Mhlongo;

4.7.11 No response was received from Gauteng Department of Education.

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

5.1 Regarding whether the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality (CoJ) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct

Common cause issues

5.1.1 The CoJ is a duly constituted municipality in terms of the Local Government: Municipal Structures Act,⁷ as amended (Municipal Structures Act).

5.1.2 Alexandra was established in 1912 and it is situated about 13 kilometres north-east of Johannesburg in close proximity to Sandton, nestled between the N3 freeway and the M1 motorway.

5.1.3 Alexandra was proclaimed as a so-called "native township". Since the township was proclaimed before the South African 1913 Land Act, it was one of the few urban areas in the country where black people could own land under a freehold title.⁸

5.1.4 Today Alexandra is located within the jurisdiction of the CoJ.

⁷ Act 117 of 1998.

⁸ <https://en.wikipedia.org/wiki/Alexandra,Gauteng>, accessed on 22 July 2020.

- 5.1.5 The infrastructure of Alexandra was originally designed for a population of about 70,000. The current population estimates vary widely and have been put at figures of up to 750,000, which makes it a largely vibrant residential area with an extremely high population density.⁹
- 5.1.6 Inevitably, Alexandra is generally characterised by congestion, overcrowding in the hostels along the banks of the Jukskei River and with informal backyard dwellers, pavement traders and squalor conditions.
- 5.1.7 On February 2001, in his State of the Nation Address (SONA), former President Thabo Mbeki launched the Urban Renewal Programme (URP) and further announced that Alexandra was to be developed after several previous efforts to develop it, were aborted. The initial estimated budget for the Alexandra Renewal Project (ARP) was R 1, 3 billion over a 7-year period.
- 5.1.8 The focus was on poverty alleviation in urban and rural areas that have substantial service backlogs, are spatially and economically marginal to the core urban economies in which social exclusion continues to limit the development of their communities. Eight urban nodes were identified throughout the country, including Alexandra in Gauteng Province.
- 5.1.9 In April 2019, Alexandra erupted with widespread civil protests which later became known as the “*Alextotalshutdown*” amongst many. The protests were related to a general lack of bulk services and unhygienic living conditions within Alexandra.
- 5.1.10 Following the *Alextotalshutdown* civil protests, Prof Bongani Majola, the Chairperson of the SA Human Rights Commission (Prof Majola) and the Public Protector held a meeting on 09 April 2019 to discuss the then ongoing service delivery protests in Alexandra Township. In this meeting, it was agreed by the Public Protector and Prof Majola that PPSA and the SAHRC should conduct a joint investigation on this matter and share

⁹ Fn 6 above.

resources, based on an existing Memorandum of Understanding (MoU) signed between PPSA and the SAHRC.

Issues in Dispute

5.1.11 On Friday 03 May 2019, the investigation team composed of investigators from both SAHRC and PPSA met with the organisers of the *Alextotalshutdown* protest group at the Sasol Garage in Alexandra, in order to do a walk about in Alexandra Township and with the primary purpose of conducting an *inspection in loco* of the area and the living conditions of its residents.

5.1.12 Organisers of the *Alextotalshutdown*, Mr Sandile Mavundla and Ms Thandiwe Mthombeni, led the investigation team during the inspection *in loco* to the following areas in Alexandra Township:

5.1.12.1 **Stwetla and Silvertown Sections**

5.1.12.1.1 The investigation team made the following observations at Stwetla and Silvertown sections during the inspection, amongst other things:

- (a) One communal tap is shared by almost one hundred families;
- (b) Communal taps are not linked to any identifiable storm water drainage. As a result, surface water from the taps runs to the nearby informal dwellings (shacks) causing damp and wet conditions in the neighbourhood;
- (c) Lack of law enforcement to curb the spread and mushrooming of illegal structures underneath the bridges, under heavy and dangerous power lines or servitudes and on the banks of the Jukskei River and other riparian zones;
- (d) Chemical toilets are shared by no less than seven (7) families and are located within a radius of about five hundred metres away from each other;
- (e) Chemical toilets are alleged to be only cleaned or drained once a week by Pikitup;

- (f) Children were roaming around and not going to school, allegedly due to parents being foreign nationals;
- (g) Unlawful connection of electricity with live wire lines crisscrossing the walkways between the shacks, where children were also playing was a common sight;
- (h) Uncollected refuse was strewn along some walkways; and
- (i) Heavily polluted surface water on the Jukskei River due to direct and uncontrolled deposit of solid waste and sewer into the stream.

5.1.12.1.2 The above observations can be supported by the following photographs taken by the investigation team during the *in loco* inspection:

5.1.12.1.3 **Photos below:** illustrates illegal connection of electricity wires and shacks built under live and high voltage pylons or power servitude which is manifestly dangerous.



EXPOSED ELECTRICITY WIRES



INFORMAL DWELLINGS BUILT UNDER POWER SERVITUDE

5.1.12.1.4 **Photos below:** illustrate communal tap water not linked to any stormwater drainage and as a result, water runs and spreads to the nearby shacks causing damp or wet conditions in the neighbourhood. Also depicted is a shack built right under the bridge.



COMMUNAL TAPS NOT LINKED TO STORMWATER DRAINAGE



INFORMAL DWELLINGS BUILT UNDER THE BRIDGE



DIRTY WATER RUNNING INTO OTHER INFORMAL DWELLINGS CAUSING A HEALTH HAZARD

5.1.12.1.5 **Photos below:** illustrate uncollected refuse waste and heavily polluted parts of the Jukskei River.



UNCOLLECTED REFUSE AT THE DUMP SITE



POLLUTED PARTS OF THE JUSKEI RIVER



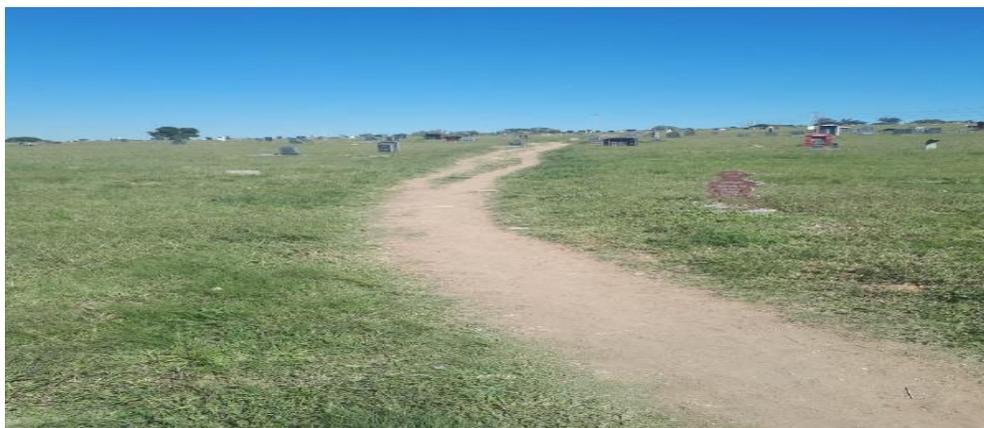
5.1.12.2 **Alexandra Cemetery**

5.1.12.2.1 Another notable observation made during the inspection was illegal dumping at the graveyard, desecration of tombstones and poor maintenance of the graveyard. The graveyard is not fenced and as a result, there are foot paths/roadways crossing the graveyard and the area is now alleged to be a crime hotspot, for robberies and rapes at night.

5.1.12.2.2 **Photos below:** bear testimony to the conditions as observed at Alexandra cemetery:



ILLEGAL DUMPING AT THE GRAVEYARD



FOOT PATH/ROADWAY CROSSING THE GRAVEYARD

5.1.12.3 **Helen Joseph Women's Hostel**

- 5.1.12.3.1 Approximately 3000 women and children reside at the Helen Joseph Hostel. The investigation team observed during the inspection, a general lack of maintenance, burst sewer pipes, overflowing manholes, poor illumination in corridors due to a lack of electricity, and the building walls are structurally dilapidated.

5.1.12.3.2 **Photos below** illustrate conditions caused by sewer blockages at Helen Joseph Women's Hostel as observed by the investigation team during site inspection:



POOR MAINTENANCE OF THE HOSTEL



STAGNANT WATER AS A RESULT OF BURST SEWER PIPES & OVERFLOWING MANHOLES

5.1.12.3.3 Sanitation is close to non-existent at Helen Joseph Hostel. The toilets are broken therefore, some toilets cannot flush out. Gas-stoves in the kitchen are mostly broken and not working. One kitchen is allegedly used by approximately forty (40) people.

5.1.12.4 **Madala Men's Hostel**

- 5.1.12.4.1 The roof on the west wing/block next to the main entrance at the Madala Men's Hostel is alleged to have burnt down in 2016 and was never repaired. The **photo below** demonstrates the state of affairs as at the day of site inspection.



- 5.1.12.4.2 The above hostel is no longer exclusively housing men but women and children are also accommodated at Madala Men's Hostel.
- 5.1.12.4.3 Burst sewer pipes show a complete lack of maintenance and as a result, manholes are overflowing across the premises of the hostel and the washing line area is completely clogged with raw sewer and grey water. Corridors are poorly illuminated and others are completely dark.

5.1.13 **SUBMISSIONS MADE BY THE CONVENERS OF THE ALEXTOTALSHUTDOWN**

- 5.1.13.1 On 13 May 2019, the investigation team held an inquiry at the East Bank Community Hall in Alexandra and received oral submissions from the conveners of *Alextotalshutdown*.
- 5.1.13.2 During this session, Mr Bobby Solomons: Spokesperson for *Alextotalshutdown* corroborated the conditions observed by the

investigation team and lamented on the following socio-economic and service delivery issues in Alexandra:

- (a) Uncontrolled land invasion and mushrooming of illegal structures;
- (b) Illegal connection of water and electricity;
- (c) Lack of housing;
- (d) Lack of waste removal and insufficient provision of dustbins;
- (e) Lack of response by JMPD and SAPS to the enforcement of by-laws;
- (f) **R 1,3 billion** allocated to the ARP not accounted for;
- (g) Potholes on the roads remained unfixed for several years and no road signs and road markings;
- (h) Water shortages and sporadic electricity cuts; and
- (i) Flurry of undocumented foreign nationals who end up invading land and settling under power servitudes, flood zones and hazardous areas not zoned for residential purposes.

5.1.13.3 Mr Sandile Mavundla (Mr Mavundla) who is also one of the conveners of *Alextotalshutdown*, submitted to the investigation team on 13 May 2019, that on 21 February 2019, they organised a march and handed over to CoJ, a residents petition/memorandum of all the above mentioned service delivery complaints.

5.1.13.4 According to Mr Mavundla, the residents of Alexandra demanded in the memorandum that CoJ should intervene and deal with service delivery issues, but CoJ never replied to their memorandum. The memorandum was allegedly handed over to CoJ's Regional Director: Mr Mokgoro.

5.1.13.5 Mr Mavundla further submitted that *Alextotalshutdown* is a service delivery issue and he further refuted all allegations that the protest was politically driven. According to Mr Mavundla, some of the African National Congress (ANC) councillors have joined the service delivery protest merely because they are affected by the same conditions in Alexandra.

5.1.14 **SUBMISSIONS MADE BY CITY MANAGER OF COJ TO THE JOINT INVESTIGATION PANEL OF SAHRC AND PPSA.**

- 5.1.14.1 On 18 April 2019, the City Manager of CoJ: Dr Ndivhoswani Lukhwareni (Dr Lukhwareni) appeared before the joint investigation team with his delegation from various departments within CoJ and outlined what the City has done, in an effort to address the complaints regarding lack of service delivery in Alexandra.
- 5.1.14.2 Dr Lukhwareni submitted that different service standards are applicable to serviced stands in the CoJ compared to informal settlements and areas such as Alexandra.
- 5.1.14.3 Dr Lukhwareni stated that residents from affluent areas usually pay for all services whilst CoJ applies rudimentary standards in informal settlements such as Alexandra and provides people residing in RDP houses with the bulk of services for free, for example, when a person's area falls under the rudimentary standard, instead of a 240 litre or 110 litre waste bin, that person will more likely receive a plastic bag. There might also be a '*Skip Waste Bin*' put in the communal area where people can put excess garbage to be collected by the CoJ from that nodal point.
- 5.1.14.4 According to Dr Lukhwareni, a person residing in an informal settlement is also likely to be given access to a standpipe, sometimes on the road instead of a house tap and CoJ will ensure that the amount of people serviced by a communal tap is within the standard set by CoJ. Alexandra is supplied water by the Zandfontein North Depot, situated in Kramerville, which is an area that can easily respond to issues of water in Alexandra.
- 5.1.14.5 Dr Lukhwareni also submitted that CoJ further provides portable chemical plastic toilets for residents at informal settlements, which are serviced not less than twice a week by the CoJ itself, using heavy equipment/machinery, instead of installing individual house connections. CoJ needs to have a walkway or a servitude where it can put a row of these toilets, usually on the streets.

- 5.1.14.6 Dr Lukhwareni contended that it is an acceptable norm that people at an informal settlement might not have electricity. However, they are provided with what is called a high mast pole to light up the entire community. He further asserted that the provision of such basic services at informal settlements is not unique to CoJ.
- 5.1.14.7 Dr Lukhwareni also indicated that in the financial year 2018/19, CoJ received 1300 sewer blockage reports and 96.5% of these blockages were attended to within 24 hours. In terms of CoJ's Service Standards, which determines how they service these particular communities, the target is 96%. Therefore, an achievement above 96% to reported sewer blockages, in an area such as Alexandra where reaching a point of service is not as easy as in Braamfontein by CoJ should be commended.
- 5.1.14.8 Dr Lukhwareni further contended that blocked pipes and sewer blockages are specific to certain areas. Some of the reported sewer blockages are as a result of vandalism and the incorrect use of the sewer system. Dr Lukhwareni gave an example of an area where people have deliberately blocked the sewer because they wanted to water their maize fields.
- 5.1.14.9 It was also submitted by Dr Lukhwareni, that there are areas where (because of the socio-economic issues) when a sewer network is built, it is assumed that toilet paper would pass through there, dissolve and go through the sewer system.
- 5.1.14.10 There are areas where a huge percentage of newspaper cause sewer blockages and these take time to dissolve, and they clog the sewer system. This can only be seen when a comparison of the blockages per kilometer in an area is made against blockages per kilometer in other areas.
- 5.1.14.11 In Alexandra, close to 16 blockages are experienced per kilometer and it results into very expensive maintenance by using very expensive

machinery; hydro jetting removal, with very specific and specialized big equipment for the sewer to function properly.

- 5.1.14.12 According to Dr Lukhwareni, in Alexandra, the CoJ has provided about 1175 chemical toilets in areas such as Stwetla, with one toilet servicing 11 households as part of rudimentary service. It was also submitted that CoJ continuously services these chemical toilets twice a week, using expensive methodology, with an aim to improve service in a very congested space.
- 5.1.14.13 It was argued by Dr Lukhwareni that in areas like Alexandra, CoJ loses a lot of water that is unmetered and it has since initiated some waste water reduction strategies. The process started in 2015 and shall continue based on the availability of funds. It is estimated that this project will cost no less than R86 million.
- 5.1.14.14 Dr Lukhwareni acknowledged that CoJ is aware that there are lower water pressure issues around Alexandra East Bank and Linbro Park. They are working on water upgrades. It was indicated further that the issue of low water pressure usually happens when there are more customers per household than what CoJ expects and the network basically cannot sustain the pressure.
- 5.1.14.15 Dr Lukhwareni further submitted that Alexandra has a fire station with up to 51 firefighters to service the area on shifts. Dr Lukhwareni acknowledged shortages of vehicles and fire engines. Dr Lukhwareni also indicated that there are about five (5) ambulances that service the area.
- 5.1.14.16 Furthermore, that CoJ handles about five-hundred calls received per month from the area for ambulance services. Only about five fire incidents occur on average per month. However, usually when fires occur, they are of very serious nature since the area is quite congested and the fire engines need wider streets to access the affected points.
- 5.1.14.17 Dr Lukhwareni submitted that Alexandra has scheduled waste removal and collection services from Monday to Friday. In a normal Skip bin area,

the truck will come and collect the Skip bins. However, Alexandra does not have the areas where CoJ would want to place these Skips and logistics just does not allow the usage of Skip bins.

5.1.14.18 There were also programs linked to the Expanded Public Works Program (EPWP) that were aimed at using EPWP people to assist with the cleaning of Alexandra. That program created more problems because the people who were temporarily employed, wanted permanent employment. CoJ could not absorb them on a permanent basis and as a result, the program is basically now not operating as initially intended.

5.1.14.19 **MEASURES EMPLOYED BY COJ TO MONITOR THE QUALITY OF SURFACE WATER IMPACTING ON ALEXANDRA AND SAMPLING METHODS WITHIN THE JUKSKEI CATCHMENT AREA.¹⁰**

DEFINITION

5.1.14.19.1 According to CoJ's submission to the investigation team, surface water refers to water that is found at a source on the surface of the earth. In Johannesburg, surface water comprises all streams, rivers, dams/impoundments and overland run-off.

5.1.14.19.2 COJ has in place a Surface Water Monitoring Programme which is coordinated by the Environment and Infrastructure Services Department (EISD), more specifically the Water and Biodiversity Directorate.

5.1.14.19.3 The programme is implemented in accordance with a water monitoring and sampling plan which seeks to ensure that the objectives of Integrated Water Resource Management and river health are informed by credible water quality data, taking into account all aspects that may influence water quality.

¹⁰ As per report submitted by the City Manager of CoJ: Dr Lukhwareni on 18 April 2020 to the Joint Investigation Team with Reference number GP/1920/0005/BJ/HB, detailing all the scientific efforts and the process of monitoring surface water by CoJ along the Jukskei River in Alexandra.

- 5.1.14.19.4 Sampling in the Jukskei catchment is done on a monthly basis which is regarded as sufficiently frequent for reasonable representivity. Results are checked and interpreted, using the sample in stream water quality guidelines that have been determined by DWS for each catchment for the interpretation.
- 5.1.14.19.5 Water Quality quarters are based on the hydrological year run from November to January; February to April; May to July and August to October each year.

OVERVIEW OF THE JUKSKEI CATCHMENT BY CoJ

- 5.1.14.19.6 CoJ's submission, indicated that, the Jukskei River and its major tributaries (Modderfontein Spruit, Klein Jukskei and Sandspruit) flows from the Inner City through densely populated and busy sections of the east and north of Edenvale, Bedfordview, Modderfontein, Randburg, Sandton, Alexandra, Diepsloot and Midrand. The river flows northwards and combines with the Crocodile River outside the borders of COJ before flowing into Hartebeespoort Dam. The catchment covers regions A, B, C, E and F of the COJ. In this catchment, there are sixty six (66) monitoring points.

Bacteriological water quality

- 5.1.14.19.7 CoJ submitted that, the bacteriological water quality status indicates pollution mainly associated with sewage effluent. Sewage pollution is prevalent throughout the catchment and is the main contributor to the high E.coli concentrations.
- 5.1.14.19.8 Water quality within the catchment is generally unacceptable with the Wynberg and Alexandra, Bruma, Diepsloot and Kaalspruit recording extremely high levels of contamination, although there are seasonal improvements at certain monitoring points from time to time.

Monitoring Points in the vicinity of Alexandra:

DWJ10	E	Lombardy East	26 06.987S	28 06 814.E
DWJ11	E	North end far east Bank Rd, Alexandra	26 06. 314S	28 06. 520E
DJW12	E	Marlboro bridge, Alexandra		
DWJ38	E	North of London Rd bridge, Alex	26 06. 582S	28 06.768E
DWJ40	E	Near Altrek centre, Alex	26 06.086S	28 06.768E
DWJ41	E	Stormwater at channel Hofmeyer Bridge, Alex	26 05.958S	28 06.196E
DWJ42	E	Opposite Stwetla, Alex	26 05.683S	28 06.407E
DWJ43	E	Below Marlboro bridge South of the two steel pipes		
DWJ44	E	Downstream of S'tswetla, next to Elec Pylons Crossing		
DWJ45	E	Blwroad bridge opp. Cemetery, downstream stormwater		
DWJ46	E	Inside park next to Old sewer pump blw stormwater		

5.1.14.19.9 In general, the bacteriological water quality generally falls within the “Unacceptable” band, whereas chemical water quality falls within the “Acceptable” band.

5.1.14.19.10 The poor results are due to persistent sewer spillages due to illegal connections, direct discharges, misuse of sewer, ingress of sediment, the superimposed sewer – stormwater network, deliberate blocking of manholes to ‘mine’ for valuable and solid waste dumped into the watercourse. The scale of the problem is enormous. Access to networks for repair remains a challenge due to the illegal dumping and encroachment of informal dwellings over servitudes and bulk lines.

INTERVENTIONS MADE BY COJ:

5.1.14.19.11 Dr Lukhwareni submitted that COJ responds to the water quality challenges through various programmes including *inter alia*:

- (a) Ongoing sewer jetting programmes;
- (b) Ongoing sewer replacement and upgrading;
- (c) Improved service delivery in respect of water services (including sanitation);
- (d) Human settlement programmes;
- (e) River Clean-up programmes;
- (f) Recycling and waste minimisation programmes;
- (g) Education and awareness programmes.

Application of the relevant law

5.1.15 Section 151 of the Constitution of the Republic of South Africa (Constitution) states *inter alia*:

(1) *“The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.*

5.1.16 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; or*

(b) *Any other functionary or institution—*

(i) *Exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*

(ii) *Exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.”*

5.1.17 Based on the foregoing constitutional provisions, it is submitted that the CoJ is an organ of state and a municipality constituted at a local sphere of government as contemplated above.

5.1.18 Section 152(1) of the Constitution stipulates that among the objects of local government is-

“(b) To ensure the provision of services to communities in a sustainable manner;

(d) To promote a safe and healthy environment”.

5.1.19 The above constitutional provisions create an obligation for CoJ as local sphere of government to ensure the provision of services to communities in a sustainable manner and to promote a safe and healthy environment.

5.1.20 Section 24 of the Constitution states amongst other things the following:

“Everyone has the right—

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

- (b) *to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -*
 - (i) *prevent pollution and ecological degradation;*
 - (ii) *promote conservation; and*
 - (iii) *secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.*

5.1.21 CoJ is further enjoined by the above take measures to prevent amongst other things pollution and ecological degradation within areas of its jurisdiction including Alexandra.

5.1.22 Section 195(1) of the Constitution provides amongst other things that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a)
- (b)
- (c)
- (d)
- (e) *People’s needs must be responded to....;*
- (f) *Public administration must be accountable;*

5.1.23 It goes without saying that CoJ’s administration of Alexandra is expected responsive to the municipal service needs of the people and to be accountable.

5.1.24 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.1.25 Section 4(2) of the Local Government Municipal Systems Act 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-

“(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. ”

5.1.26 Section 19(1) of the National Water Act¹¹ (NWA) stipulates that:

“An owner of land, a person in control of land or a person who occupies or uses the land on which-

(a) any activity or process is or was performed or undertaken or;

(b) any other situation exists; which causes, has caused or is likely to cause pollution¹² of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

¹¹ Act 36 of 1998.

¹²Section 1 of the National Water Act defines Pollution as “the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it—

(a) less fit for any beneficial purpose for which it may reasonably be expected to be used; or

(b) harmful or potentially harmful—

(aa) to the welfare, health or safety of human beings;

(bb) to any aquatic or nonaquatic organisms;

(cc) to the resource quality; or (dd) to property”.

5.1.27 Section 19(3) of NWA, states that *a Catchment Management Agency may direct any person who fails to take the measures required under subsection (1) to:*

- (a) commence taking specific measures before a given date;*
- (b) diligently continue with those measures; and*
- (c) complete them before a given date.*

5.1.28 Section 19(4) of NWA states that *should a person fail to comply, or comply inadequately with a directive given under subsection (3), the Catchment Management Agency may take the measures it considers necessary to remedy the situation.*

5.1.29 Juskei river estuary that crosses along Alexandra falls under CoJ and the latter becomes the *Catchment Management Agency* implied above.

5.1.30 Section 2(2),(3) and (4) of National Environmental Management Act ¹³

(NEMA) provides inter alia:

“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.

(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;

(iv);

¹³ Act 107 of 1998.

(v) 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”

5.1.31 As an organ of state and a Management Agency responsible for Alexandra, CoJ has a legislative obligation to meet all the environmental management standards envisaged in the above legislative provisions.

Responses to a Section 7(9) Notice

5.1.32 CoJ responded to the Notice issued in terms of section 7(9) of the Public Protector Act as per submission dated 21 April 2021, signed off by Acting City Manager: Floyd Brink.

5.1.33 Replying to the interim findings, CoJ furnished the Public Protector with a completed and proposed implementation plan indicating progress made to address adverse interim findings in respect of service delivery issues in Alexandra.

5.1.34 The Implementation Baseline Plan by CoJ highlighted the following progress in mitigation of the interim findings for seven major service delivery challenges identified by the Public Protector:

Service Delivery Challenge	Detailed Progress
<p>1. Fencing and maintenance of the Alexandra cemetery;</p>	<p>The last illegal dumping removal of household refuse was done in August 2019;</p> <p>The Region will do another assessment in March 2021 of all the affected areas and arrange a</p>

	<p>Blitz with Pikitup to have the refuse dumping removed;</p> <p>-Grass cutting maintenance cycle = 30 days. February 2021 grass cutting cycle completed;</p> <p>Maintenance for March schedule to begin on 10 March 2021;</p> <p>CoJ has already replaced the broken fence in October 2020 and the missing concrete slabs were replaced in 2019 and again in 2020. (Refer to attached images as proof below taken on 13 June 2020):</p>  
<p>2. Maintenance of Helen Joseph Women’s Hostel and Madala Men’s Hostel;</p>	<p>Helen Joseph Women’s Hostel. Installation of a water pump, installation of water tankers and upgrading of a concrete slab completed.</p> <ul style="list-style-type: none"> • Security upgrade; <p>Flooding reported</p>

	<ul style="list-style-type: none">• Leakages that resulted in flooding of several blocks in the hostel - An emergency contractor was instructed to perform emergency work in question and they detected that the leak was emanating from rusted freshwater pipes which run inside roofing;• The contractor applied a temporary solution by replacing the rusted pipe in all affected blocks; <p>Refurbishment, Repairs, and maintenance</p> <p>The conditional assessment was conducted in 2019/20 and also details maintenance works to be undertaken at the hostel;</p> <p>Progress made:</p> <p>Repairs of manholes have been completed by a previous contractor in the first quarter of the current financial year;</p> <p>Repair of gas leaks, new valves, repairs stoves, and repairs to plumbing leaks;</p>
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	<p>A quotation has been received for these repairs and progress will be provided once approval has been obtained to go ahead with these repairs;</p> <p>Reinstatement of hot water</p> <p>The major issue of the pump is currently being attended to by a contractor on site who has also ordered four new tanks that are expected to be installed before end of November 2020 together with the complete repair of the pump which will resolve the hot water issue permanently;</p> <p>Replacement of fire extinguishers</p> <p>The department is awaiting quotations on the replacement of the fire extinguishers;</p> <p>In addition to the works detailed above, the CoJ shall instruct the consultants appointed at the hostel to investigate the extent deterioration of the pipes as well the structural deterioration of the buildings;</p>
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	<p>The contractor on site is currently undertaking repairs of electricity at the hostel so that that it complies with the building control standards and considering that Block L4 had burned down and thus compromising the electricity network in that block as well lights to common areas;</p> <p>Other repairs that were added are security upgrades which specifically include the installation of a motorized gate for vehicles, conversion of the old cash office into a guard house and the installation of close circuit cameras to be monitored from the guard house;</p> <p>These have all been completed and the department has planned to reinstate the night guard security at the hostel during the month of December 2020 with the assistance of the JMPD;</p> <p>The Hostel Intervention Programme was introduced by the new administration Government of Local Unity- (GLU) with the intention to improve hygiene,</p>
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	<p>health and safety in the hostel environment;</p> <p>The CoJ shall implement this programme with two major components being the external cleaning of the hostel as well as to attend to emergency repairs and maintenance works as they are reported;</p> <p>The programme has afforded sixty (60) hostel residents and other people work at the hostel as general workers and supervisors for a period (16) of sixteen months;</p> <p>Madala Men’s Hostel:</p> <ul style="list-style-type: none"> • Replacement of Gas pipes • Project cancelled due to planned demolition. <p>Madala sports ground Construction of 832 units of modular units to be used for Covid19 projects;</p> <p>The work covers civil platform works, internal services reticulation, concrete plinths, modular container units, parking</p>
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	<p>areas, access control and perimeter security fencing;</p> <p>Progress:</p> <ul style="list-style-type: none"> • Site establishment complete • Box cutting for platforms complete • Layer works on platforms in progress • 256 containers ordered off site and manufactured offsite <ul style="list-style-type: none"> • Storm water and sewer excavation in progress (having difficulties with ground water). <p>Retaining wall in progress</p> <ul style="list-style-type: none"> • Reinforcement complete on 6 rafts • 6 rafts casted • 4 platforms busy with setting out. • Inspection of containers offsite • 4 containers onsite and 37 ready to be delivered to site. <p>Challenges:</p> <ol style="list-style-type: none"> 1. Late appointment of sub-contractors; 2. Bulk water and electricity connections not finalized;
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	<ol style="list-style-type: none">3. Planning matters not finalized, due to outstanding building plans approval;4. Low expenditure due to work that is yet to be approved;5. Construction cannot be finalized because of lack of approved building plans;6. Water from underneath affecting layer works and the excavated areas for storm water and sewer on site;7. Collapsing of the embankment due to the heavy rain causing unknown existing services to be exposed and due to no support from the embankment, the services got damaged;9. Temporary instructions have been given to the contractor to contain the collapsing embankment and reroute the damaged services;10. Containers are currently progressing with finishes and are to be inspected regularly;
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	<p>11. Site quality to be monitored and drawings to also be checked regularly;</p> <p>12. Loss of productivity and time (3 days) due to site shutdown by subcontractors;</p> <p>Progress:</p> <ul style="list-style-type: none"> • Removal of rubble and temporary fencing complete onsite; • Earthworks and platforming 97% complete. Currently left with one platform with G5 imported and onsite for layering; • 129 containers are delivered to site.
<p>3. Refuse removal and identification and cleaning of illegal dumping areas in Alexandra;</p>	<p>Refuse collection is daily in Alexandra from Monday to Sunday.(5 compactor truck with 30 loaders);</p> <ul style="list-style-type: none"> • Illegal dumping is cleared in Alexandra from Monday to Friday. (4x Bob cat, 1x TLB and 5x 10 tippers trucks;

	<ul style="list-style-type: none"> • Street Cleaning is taking place in Alexandra from Mondays to Sundays. (122 workers are working on weekends in Alex proper = 74 Cleaners and Northern Area and Marlboro Industry = 48 workers; <p>All activities are rendered from Mondays to Sundays except illegal dumping that is from Mondays to Fridays.</p>
<p>4. Addressing overflowing manholes, grey surface water;</p>	<p>Maintenance plans attend to all hot spot areas for sewer blockages and spillages;</p> <p>Hotspot areas or areas of concern are due to background illegal connection of storm water to sewer systems as well as structures built over municipal sewer services;</p> <p>On grey water, all CoJ monitored standpipes are connected to galleys that drain into the nearby sewer system;</p> <p>Sewer blockage jobs reported and attended between 01 July 2020 to 28 February 2021 = 1 294 jobs.</p>

	<p>CoJ has also initiated a pilot project to deal with grey water: Grey water will be collected from problematic areas by pipelines to a centralised on-site collection point;</p> <p>Collected grey water can be treated on site for re-use and if there is any sludge, it can be transported to/ dumped into a water treatment plant. ISO 3055 will be followed for environmental compliance;</p> <p>CoJ uses the Kleena Joburg initiative to educate residents in informal settlements, at Hostels and Old Alexandra as a means to curb the exponential abuse of municipal services and infrastructure;</p> <p>This is an ongoing monitoring exercise and Standpipes Inspections occurs 3 x times a week.</p>
<p>5. Identification of RDP housing needs within the community of Alexandra and</p>	<p>There's a Greater Alexandra Master plan which is done through Housing Development Agency as the implementing agent on behalf of National, Province and the CoJ;</p>

<p>criteria to be used when identifying qualifying beneficiaries;</p>	<p>To construct and build integrated human settlements at Frankenworld and Linksfield that would allowed for the redevelopment of the entire Alex including de-densification of informal settlements;</p>
<p>6. Enforcement of the By-Laws by the JMPD;</p>	<p>JMPD has a tri-band approach mandate comprising of Traffic Control and Management, By-Law Enforcement and Crime Prevention;</p> <p>The Region has been complimented with a total of 186 new officers from the JMPD Academy. Currently the total staff compliment of the region is about 307 officers with a fleet of 50 vehicles;</p> <p>The officers will be deployed in terms of the CoJ 10 plus strategy in all the wards of the Region;</p> <p>The intention is to ultimately have 10 officers per ward per shift at any given time, once we have reached the required numbers in the regions;</p>

	<p>The officers are currently undergoing field training until the end of March 2021 and will then be deployed in the Wards on a 24/7 basis and working a particular shift system of 4 days on duty for 12 hours and 4 days off;</p> <p>The new officer's deployment will enhance service delivery, visibility and proactive measures needed;</p> <p>The finalization of the Standard Operation Procedure (SOP) for Land Invasion from JMPD is receiving priority attention;</p> <p>Establishment of the Land Invasion Task Team. The Task Team has been established;</p> <p>The task team comprises of the following:</p> <p>JMPD By law Management Unit, Operations Specialized Services,</p> <p>Johannesburg Property Company (Verification of land),</p> <p>Provincial Housing Department and their legal team,</p>
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	<p>CoJ Regional Directors of the Citizens Relations and Urban Management (CRUM)</p> <p>Provincial Community Safety (CPF Patrollers and whistle blowers),</p> <p>Representatives from the Office of the Executive Mayor (CoJ),</p> <p>Representatives from the Office of the Premier,</p> <p>Passenger Rail Agency of South Africa (Prasa),</p> <p>City of Johannesburg Housing Department and</p> <p>City of Johannesburg Legal and Compliant.</p>
<p>7. Maintenance of roads.</p>	<p>The Johannesburg Road Agency (JRA) has the following projects in Alexandra:</p> <p>Joe Nhlanhla Rehabilitation. River Park erosion protection;</p> <p>Development of Alexandra Stormwater Master plan;</p>

	<p>Potholes repair programme (for potholes, patches, reinstatements and cleaning of kerb inlets);</p> <p>A detailed Alexandra Baseline Plan has been furnished in this regard and most of the pothole repair project deadline is 31 March 2021.</p>
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Conclusion

- 5.1.35 It is evident that the CoJ has taken significant and practical steps to address service delivery in Alexandra following the revelations of certain service delivery failures by the preliminary investigation of the Public Protector, which have a negative impact on the community of Alexandra.
- 5.1.36 Areas of concern included the exposed electricity wiring, damp conditions and grey water collecting on the pathways or running into informal dwellings, uncollected refuse at dumping sites and the graveyard as well as the lack of maintenance at Helen Joseph Women’s Hostel and Madala Hostel.
- 5.1.37 It is the legislative and constitutional responsibility of the CoJ to ensure the needs of the people of Alexandra are responded to by providing municipal services to the community in an efficient and sustainable manner and to help promote a safe and healthy environment.

5.2 **Regarding whether the provision of housing in Alexandra by the Gauteng Department of Human Settlements (GDHS) and CoJ accords with the duties imposed on it by the Constitution and the applicable law, if not whether such failure amounts to maladministration and improper conduct.**

Common cause issues

5.2.35 GDHS is a provincial government department in Gauteng province established in a terms of schedule 2 Public Service Act 103 of 1994 (PSA).

5.2.36 The provision of housing is a concurrent function in terms of which both the GDHS and CoJ have an obligation to provide adequate housing and implement projects related to human settlement and housing.

5.2.37 The core mandate of the GDHS is to build sustainable communities in the province through the provision of land, tenure, services and housing.

5.2.38 The ARP has implemented eight (8) housing projects in Alexandra. This resulted in a total of fourteen thousand (14 000) housing units being built and earmarked for allocation to qualifying beneficiaries.¹⁴

5.2.39 The following are the housing projects implemented under the ARP:

- (a) **Far East Bank Extension 7**, which yielded one thousand seven hundred (1700) units;
- (b) **Far East Bank Extension 8**, which was started in 2007 and completed in 2009. The project yielded one hundred and eighty one (181) units;
- (c) **Alexandra Extension 9**, which was started in 2009 and completed in 2011. The project yielded eight hundred and forty (840) units of double storey buildings and one thousand four hundred and twenty four (1424) double storey semi-detached housing units with two (2)

¹⁴ As confirmed in a report submitted by GDHS to the Joint Investigation team on 15 May 2019 handed over by Acting Head of Department: Mr Daniel Molokomme.

rental rooms and a shared ablution facility. Thus, the total units built for the project were two thousand two hundred and sixty four (2264);

- (d) **Alexandra Extension 10**, which yielded five hundred and twenty seven (527) single units, two hundred and twenty four (224) two room rentals and one hundred and eleven (111) one room rental units. Thus, the total units built for the project were eight hundred and sixty two (862) units;
- (e) **M2 Nobuhle Hostel** which was a redevelopment of a single sex hostel into family units. Four hundred and six units (406) have been redeveloped, invaded and reoccupied by people. The project forms part of the current development plan for Alexandra and mitigation measures taken in terms of the illegal occupation;
- (f) **Bothlabela FLISP Project** yielded one hundred and twenty seven (127) units;
- (g) **Marlboro Flats** yielded two hundred and fifty units (250) and were allocated in 2009; and
- (h) **Tsutsumani Village** was part of the All Africa Games benefit project and yielded one thousand seven hundred and ninety nine (1799) units which were allocated in and around 2001.

5.2.40 In the 2019/20 Business Plan for the GDHS, R28 million was allocated to complete four projects which are in various stages of completion because of various technical and administrative reasons. Those projects are:

- (a) Nobuhle Hostel R10 million
- (b) Extension 31 R 8 million
- (c) River Park R 5 million
- (d) Bothlabela FLISP Project R 5 million

5.2.41 The Bothlabela was projected to be completed before the end of 2019, while Nobuhle Hostel and Extension 31 were projected to be completed

before the end of 2020. The planning and redesigning for River Park and the actual building was scheduled to start in 2020.

5.2.42 The following projects are in various stages of consultation, land acquisition, planning, negotiation for planning, funding and implementation:

- (a) Alex City
- (b) Linbro Park
- (c) Linksfield, and
- (d) Frankenworld

Issues in Dispute

5.2.43 The investigation team received submissions from various residents of Alexandra on 13 May 2019 at Kopanong Community Hall. Many residents argued that the entire amount of money that was allocated under ARP for housing cannot be accounted for by the relevant spheres of government.

5.2.44 Residents of Alexandra argued that too little was delivered in the area of housing yet too much money was spent under the ARP.

5.2.45 **The following were some of the allegations made by the community of Alexandra in respect of housing:**

- (a) Shortage of housing and land;
- (b) Lack of maintenance of the hostels;
- (c) Procurement fraud and corruption in the allocation of housing and collection of rentals which has created tension in the community and dissatisfaction by those who were on the housing list but are still waiting for houses;
- (d) Conflicts of interest and involvement of politically connected persons;
- (e) Councillors are owners of RDP Houses and/ or collect rentals; Illegal evictions by criminal syndicates/ vigilante groups;
- (f) The allocation of houses to foreign nationals;

- (g) Several contractors who failed to deliver on the ARP projects; including companies which went into liquidation;
- (h) Illegal occupation of housing and other infrastructure;
- (i) Eviction and/ or Demolition Court Orders not executed;
- (j) By-laws not being enforced (Riverpark pavement construction);
- (k) Failure or undue delay to issue qualifying residents of Alexandra with title deeds was also highlighted as another conduct failure by both GDHS and the CoJ; and
- (l) Trust deficit arising from the lack of progress on the settlement of the land claimants in Alexandra since the Court interdict was obtained in 2004. The Alexandra statement of Intent which was signed by some parties in June 2016, is still not a legally binding agreement nor has funding been committed for the statement of land claims.

5.2.46 The residents of Alexandra further argued that the housing units built were not enough for the Alexandra community. Moreover, it was submitted that there are still residents who are staying on the banks of the Jukskei River, pavements, dilapidated hostels, flood and riparian zones, including other hazardous areas such as underneath power servitudes etc.

5.2.47 The residents of Alexandra further alleged corruption in the area of housing and submitted that some of the houses are owned by Municipal Councillors who rent them out to foreigners whilst others are apparently owned by foreigners and rented out to South Africans.

5.2.48 It was also lamented by the residents of Alexandra that the redevelopment of single-sex hostel units into family units did not cover all hostels and that old migrant labour hostels remain in place, unmaintained and are a stark reminder of the past regime.

5.2.49 Some residents alleged that GDHS or CoJ have not yet issued them with title deed documents in respect of properties allocated and as a result, they cannot enjoy full ownership or bequeath the houses to their beneficiaries.

- 5.2.50 On 15 May 2019, the Gauteng Department of Human Settlement (GDHS) indicated in its submission by the Acting Head of Department: Mr Daniel Molokomme that a business plan for the development of Alexandra was adopted by the Gauteng Provincial Government after consultation with the National Government as well as the then Municipal Structure in place in the CoJ, under whose jurisdiction Alexandra was placed post 1995.
- 5.2.51 The GDHS indicated that the business plan was premised on the principle that relevant National, Provincial and Municipal Sector Departments would fund required projects to realise the overall integrated socio-economic development of Alexandra.
- 5.2.52 The interventions which GDHS activated in the ARP commenced in the 2001/ 2002 financial year and was based on its Constitutional, Legal and Policy Mandate related to housing.
- 5.2.53 During 2015, the Gauteng Provincial Government commissioned a performance audit of urban renewal projects implemented in Gauteng. The audit focused on the funding provided by both the National and Provincial Departments of Housing and Human Settlements.
- 5.2.54 The Auditor General conducted the audit and post the completion of the audit, the GDHS compiled an action plan which is currently being implemented.
- 5.2.55 The GDHS argued that no allocation of funds was made either to the province or to the CoJ. The amount of R1.3 billion was a business plan projection and did not amount to an actual allocation of funds. Each sphere allocated funding in terms of the agreed business plan and then undertook required measures to implement projects, within the sphere's area of accountability and responsibility.
- 5.2.56 The GDHS and CoJ did not submit documents/ information relating to the Alexandra Renewal Project (ARP), the procurement of service providers,

the payment of service providers, handover certificates, project closing certificates etc.

GDHS's Response to a Section 7(9) Notice:

5.2.57 GDHS responded to the Notice issued in terms of section 7(9) of the Public Protector Act as per letter dated 26 March 2021, signed off by Head of Department: Ms Phindile Mbanjwa. Replying to the interim finding, GDHS insisted and further indicated that documents required by joint investigation team in respect of ARP were seized by GFIS which is an investigative arm of the CoJ for investigation purposes. Further that, it is against this background that GDHS is unable to submit the required documents.

5.2.58 With regard to proposed remedial action as per interim report, GDHS indicated that it will submit the implementation plan to the Public Protector upon issue of the final report.

5.2.59 Submissions made by various Project Managers from GDHS and CoJ relating to housing procurement and implementation under ARP:

5.2.59.1 Mr Neels Letter

5.2.59.1.1 On 16 May 2020, Public Protector Investigation team engaged Mr Neels Letter (Mr Letter) to find out about his role as the CoJ's project manager in connection with the ARP. On 25 May 2020, Mr Letter replied and indicated that he retired from the employ of CoJ on 28 February 2018 and therefore he had no access to any records/files related to the ARP.

5.2.59.1.2 Mr Letter submitted that according to his personal recollection the funding for the ARP was secured from relevant national, provincial or municipal line departments. The bulk of the funding came from the GDHS even in respect of non-housing projects. The conveners of the Projects reported to the Provincial Programme Manager.

- 5.2.59.1.3 According to Mr Letter, the CoJ established a small team of CoJ officials, headed by a Project Director to manage CoJ funded projects. This team occupied a dedicated office in Wynberg. The Provincial Programme Manager facilitated the supply chain management process within the Provincial Government in order to appoint service providers on behalf of the functional teams.
- 5.2.59.1.4 Existing supply chain structures were used. An Urban Renewal Unit was established within the GDHS and this unit also facilitated payment processes. At no stage did the ARP office have its own procurement unit or payment office.
- 5.2.59.1.5 The ARP project team was responsible for the preparation of business plans, securing the required funding through the CoJ budgeting process, managing public participation processes and monitoring progress during the implementation phase. The role of the Project Director was that of budget consolidation as well as project co-ordination.
- 5.2.59.1.6 In the period during 2005 to 2008, Mr Letter managed the housing programme which included Far East Bank Ext 7, Far East Bank Ext 9, Far East Bank Ext 10, Breaking New Ground (BNG) Housing in RCA (full name not provided), Bothlabela Rental Housing, Marlboro Flats, River Park Rental Housing, Nobuhle Hostel Re-development and Madala Hostel Re-development. Mr Letter's role also included project conceptualisation, design, costing, planning and environmental authorization, budgeting, and implementation.
- 5.2.59.1.7 The day to day management was undertaken by designated project managers as part of an appointed technical team of professionals appointed by the Gauteng Department of Housing.
- 5.2.59.1.8 This included budget preparation, preparation of business plans, monthly, quarterly and annual reports to CoJ, Provincial Government and National Departments.

- 5.2.59.1.9 According to Mr Letter, when he left the CoJ in 2018, there was a comprehensive archive related to the ARP since inception in 2001. As far as procurement processes are concerned, the records of Bid Specification Committee (BSC), Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) meetings should be available from the relevant Supply Chain Management (SCM) units at Gauteng Department of Human Settlements (GDHS), City of Johannesburg Metropolitan Municipality (CoJ) and Johannesburg Development Agency (JDA).
- 5.2.59.1.10 Contracts and Service Level Agreements (SLA) were prepared by the relevant SCM units with assistance from legal departments, and input from project managers on certain occasions but not always. On many occasions, copies of the already signed contract or SLA were received by Mr Letter. Invoices were submitted to the ARP office first. After invoices were captured and attached to payment certificates, they were referred to the project managers for verification of work done. They were then signed off by the Project Director and dispatched to the relevant financial department (GDoH or CoJ) for further processing. Payment to the service provider would then be effected as per work done.
- 5.2.59.1.11 Mr Letter submitted that in general, he believes that overall value for money was obtained under the ARP except for individual projects that went over time and budget, contractors that failed to complete their work, liquidations and community challenges. Examples given where government failed are for example, the River Park housing project and the Breaking New Ground housing (BNG) project in RCA (full name not provided). In both cases, contractors went into liquidation but government failed to finish these projects due to budgetary constraints and unnecessary bureaucracy to appoint new service providers.
- 5.2.59.1.12 Two projects that went over budget due to community intervention were the Florence Mposho Bridge, where there was community resistance for nine months to relocate to new houses, and the Nobuhle Hostel Re-development, where building structures were invaded prior to construction

commencing. This delayed construction, extended time-frames and required additional funding.

5.2.59.2 Mr Mike Maile

5.2.59.2.1 Mr Mike Maile (Mr Maile): was Deputy Director: Communications in the ARP in 2001. Mr Maile was later appointed as Director in the newly created Urban Renewal Programme in 2002. In 2003, Mr Maile was appointed as Chief Director of Urban Renewal Agency and resigned from the Agency in 2004 (which is over sixteen years ago), and stated that he will struggle to remember details of his involvement in the ARP.

5.2.59.2.2 Mr Maile indicated that he was unable to get information or records from the GDHS in order to provide the information required to respond to questions raised by the Public Protector office and he was reluctant to answer questions without access to records to refresh his memory.

5.2.59.3 Mr Aubrey Musetha

5.2.59.3.1 On 16 May 2020, the Public Protector Investigation team engaged Mr Mboniseni Aubrey Musetha (Mr Musetha) to enquire about his role as Manager in connection with the ARP.

5.2.59.3.2 On 29 May 2020, Mr Musetha replied and indicated that he was appointed as Project Manager by CoJ, assigned to the ARP from 01 April 2010 to December 2018 and that he is currently employed by the GDHS as the Project Manager for the Gauteng Urban Renewal Programme.

5.2.59.3.3 In response to a question relating to what budget was allocated to his projects, record of expenditure and service providers appointed, Mr Musetha furnished the following summarised information as per the table below:

ALEXANDRA HOUSING DEVELOPMENT EXTENSION 31:

SERVICE PROVIDER	DATE OF APPOINTMENT	APPOINTED AMOUNT	INVOICE AMOUNT
Shuma Construction: Contractors for Alexandra Ext 31 P	06 January 2011 (appointment letter attached – Annexure 1)	R20 272 263.18 (appointment letter attached – Annexure 2)	Annexure 3, Company liquidated letter and termination letter– Annexure 3 and 4 respectively. The invoices are in the files that were taken by COJ Inspectors
BVI Consulting, consultant/Engineers for Alexandra Ext 31 Project	3 August 2007 (Appointment Letter attached – Annexure 5)	R 35 020 800.00 (appointment letter attached – Annexure 6)	The invoices are in the files that were taken by COJ Inspectors

ALEXANDRA-BOTHLABELA HOUSING DEVELOPMENT PHASE 2

SERVICE PROVIDER	DATE OF APPOINTMENT	APPOINTED AMOUNT	
Motheo Construction: Contractors for Bothlabela Housing Development Phase 2	30 May 2012 (appointment letter attached – Annexure 7) 30 May 2012 (appointment letter attached – Annexure 7)	R64 278 435.02 (appointment letter attached – Annexure 8)	Completion letter attached–Annexure 9 and Occupational Certificate Annexure 10, and NHRBC Annexure 11. The invoices are in the files that were taken by COJ Inspectors
Calibre Consulting, consultant/Engineers for Bothlabela	23 August 2007 (Appointment	R 35 020 800.00	The invoices are in the files that were taken by COJ Inspectors

Housing Development Phase 2 Project	Letter attached – Annexure 12)	(appointment letter attached – Annexure 13)	
Bagale Consulting, Consultant for Bothlabela Housing Development Phase 2 – Beneficiaries	01 October 2013 (Appointment Letter attached – Annexure 14)	R2 042 301.22 (appointment letter attached – Annexure 15)	The invoices are in the files that were taken by COJ Inspectors

5.2.59.3.4 Mr Musetha stated that the record of the decision for all procurement processes are contained in the files that were taken by CoJ inspectors from the ARP offices. As a result, GDHS does not have access to those files. Mr Musetha submitted that he was not personally involved in the conclusion or signing of contracts.

5.2.59.3.5 According to Mr Musetha, all the invoices were paid after the work was completed, however the financial record for such expenditure will be in the files that were taken by CoJ inspectors from the ARP offices.

5.2.59.3.6 The Project Managers were not involved in the process of appointing the service providers but the Bid Adjudication Committee (BAC) recommended the appointment which was signed off by the Head of Department. During that process, the members of the committee must sign and declare any relationship with the service provider(s).

5.2.59.3.7 Mr Musetha averred that GDHS received value for money for the two projects he was involved in. However, the service provider for Alexandra Ext. 31 was liquidated due to South African Revenue Service's obligations.

5.2.59.3.8 Each Project Manager was responsible for his or her own project. However at some point one project manager would take over from another project

manager, and as a result one project would be managed by other project managers.

5.2.59.3.9 Under the Provincial Government, the ARP is one of the Premier's priorities to resuscitate all the Urban Renewal nodal areas in Gauteng as indicated in the Premiers State of the Province Address (SOPA).

5.2.59.4 Mr Eze Raboroko

5.2.59.4.1 On 16 May 2020, the Public Protector's investigation team engaged Mr Eze Raboroko (Mr Raboroko) to enquire about his role as manager in connection with the ARP.

5.2.59.4.2 On 29 May 2020, Mr Raboroko replied and indicated that he was appointed as Chief Director: Urban Renewal Programme (URP) of the GDHS in January 2005.

5.2.59.4.3 According to Mr Raboroko's recollection, he managed the URP from January 2005 until around August 2005 when the GDHS concluded the project to restructure its service delivery operations into Regions, hence the establishment of the five Regions, i.e. Johannesburg, Tshwane, Sedibeng, West Rand and Ekurhuleni.

5.2.59.4.4 Mr Raboroko did not recall the financial budget of the project and alleged that he was not involved in any appointment of any service providers, because the project was transferred to the CoJ. During his short tenure in the project, Mr Raboroko had neither issued any RFQ, tender, bid invitation nor was he involved in any bid evaluation or bid adjudication process, because the project had been transferred to the CoJ. A policy position had been taken by the then MEC: Housing, to transfer the ARP to the CoJ.

5.2.59.4.5 Mr Raboroko submitted that the biggest challenge in the ARP was the cooperation of other spheres of government in playing their role to support the initiative to renew Alexandra. At the inception of the project, it was resolved that all business units/departments were to top slice (take part of

a budget and allocate it to finance a specific project) their annual allocated budgets to fund their respective deliverables. However, this was not necessarily achieved as not all the departments were top slicing their budgets, however only GDHS did.

5.2.59.4.6 The GDHS budget ended up being used to implement other Department's responsibilities, hence the decision to transfer the project to the CoJ whereby the Housing budget was ring-fenced solely for the delivery of houses to the poor.

5.2.59.5 Ms Xoliswa Mkhali

5.2.59.5.1 On 16 May 2020, the Public Protector Investigation team engaged Ms Xoliswa Mkhali (Ms Mkhali) to enquire about her role as manager in connection with the ARP.

5.2.59.5.2 On 19 June 2020, Ms Mkhali replied and indicated that she was appointed as a Communications Manager for the ARP, before she was appointed as Director: Communications, in the Urban Renewal Programme in 2004. Her supervisor was Mr Maile, after that it was Mr Micha Sebesho.

5.2.59.5.3 According to Ms Mkhali, there were projects that she was responsible for, but she could not see them to conclusion. These are projects she would have taken over from other people, as they were started before she was appointed. Due to the amount of time that had elapsed, Ms Mkhali was unable to remember each project she managed.

5.2.59.5.4 Ms Mkhali submitted further that she could not recall the expenditure during her time, since she did not have records to refer to. She never concluded any contracts at the time of managing this project and she never participated in any supply chain management processes since there was a team already working on the project.

5.2.59.5.5 She handed over to the project manager appointed by the CoJ, Mr Julien Baskin, when both the CoJ and the GDHS agreed that the ARP must be managed by the CoJ and that all officials must be “*under one roof*”. Ms Mkhali tried to locate the documentation and old files related to the ARP but she was informed that they are with the CoJ and were taken by the investigators/inspectors. As a result, she did not have access to the files.

5.2.59.5.6 Ms Mkhali is of the view that government did get value for money under the ARP and she indicated that the project is being resuscitated.

5.2.59.5.7 According to Ms Mkhali, the challenges with the ARP were the following:

- (a) It was a challenge to move the Alexandra community to places that were more than a five kilometer radius from where they stayed originally. Some people would come back, because they wanted to be amongst people they knew;
- (b) The scarcity of land was a great challenge, especially next to Alexandra;
- (c) It was a challenge to convince people to move especially in areas to be developed;
- (d) Land restitution has been a huge challenge, ensuring that all government departments and all spheres of government work together.

5.2.59.5.8 Lessons learnt from the ARP as made by Ms Mkhali:

- (a) Community participation and their involvement can bring about civic pride;
- (b) That all government spheres and sector departments can plan together and work together to provide services to communities;
- (c) Always provide enough time for consultation and planning before implementation, some projects were delayed due to community consultation;
- (d) All sector departments signed off on the sector business plan, like if a school was built, education will be able to furnish and ensure

that the teachers were appointed for the school, same with clinics or health centres;

- (e) Skills transfer, especially to the youth of Alexandra.

5.2.59.6 Ms Carien Engelbrecht

5.2.59.6.1 On 16 May 2020, the Public Protector Investigation team engaged Ms Carien Engelbrecht (Ms Engelbrecht) to enquire about her role as Project Manager: Alexander/ Urban Renewal Project Gauteng Department of Human Settlements in connection with the ARP.

5.2.59.6.2 On 02 June 2020, Ms Engelbrecht sent an email to the Public Protector Investigation team and stated that she was appointed as the Programme Manager for the Alexandra Renewal Programme on 1 March 2001 and resigned on 31 March 2003. Her involvement in the Alexandra Programme accordingly took place over a 2 year period at the very beginning of the Programme and more than 17 years ago. Therefore she has very little recollection of the project. Furthermore, many of the issues either occurred after her time or were undertaken by other functionaries in and out of government. In the circumstances it is impossible for her to provide information relating to the ARP.

Application of the relevant law

5.2.60 Section 25 of the Constitution stipulates amongst other things the following:

(5) *“The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis”.*

(8) *No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is*

in accordance with the provisions of section 36(1)”.

5.2.61 The above constitutional provisions becomes immediately relevant in the light of the fact that Alexandra is characterised by a severe shortage of land or space to build in order to address housing needs. Lack of building space has resulted in some residents of Alexandra settling under power servitudes and riparian zones.

5.2.62 Section 26(1)(2) of the Constitution, 1996, provides that:

“(1) everyone has the right to have access to adequate housing”.

“(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right”.

5.2.63 The effect of the above provisions is that everyone in the community of Alexandra has the right to have access to adequate housing and that the GDHS and CoJ have a constitutional responsibility to put measures in place to progressively realise this right.

5.2.64 The protection and concomitant duty of the state in terms of section 26 of the Constitution is welfare-oriented to assist the poorest of the poor in Alexandra, firstly against homelessness and secondly in getting a space where they can live with dignity.

5.2.65 Section 2(1) of the Housing Act¹⁵, provides *inter alia*:

“(1) National, provincial and local sphere of government must-

¹⁵ Act 107 of 1997.

- (a) *Give priority to the needs of the poor in respect of housing development; and*
- (b) *Consult meaningfully with individuals and communities affected by housing development”.*

5.2.66 Section 9(1) of the Housing Act, further provides that-

“(1) Every municipality must, as part of the municipality’s process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to-

- (a) *Ensure that-*
 - (i) *The inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;*
 - (b) *.....*
 - (c) *Identify and designate land for housing development; and*
 - (d) *.....*
 - (e) *promote the resolution of conflicts arising in the housing development process”.*

5.2.67 Section 2(1) of the Provision of Certain Land for Settlement Act¹⁶ states that:

“The Administrator¹⁷ may, subject to the provisions of section 3, designate for the purposes of settlement-

- (a) *State land which is controlled by him and made available by him for those purposes;*

¹⁶ Act 25 of 1993.

¹⁷ Administrator means an Administrator as defined in section 1 of the Provincial Government Act, 1986 (Act No. 69 of 1986).

(b) State land which is controlled by the Minister, or land which is purchased or acquired by him in any other manner, and which is made available by him for those purposes;

(c) any land which has been made available for those purposes by the owner thereof”.

5.2.68 Section 3(1) of the Less Formal Township Establishment Act provides that when the Administrator (now Premier) is satisfied that in any area persons have an urgent need to obtain land on which to settle in a less formal manner, he may by notice in the Official Gazette, and on the conditions mentioned in the Notice, designate land made available by him under section 2(1) as land for less formal settlement.

5.2.69 The Premier has a mandate in terms of Less Formal Township Establishment Act to designate land made available by him under section 2(1) as land for less formal settlement for the residents of Alexandra.

5.2.70 Section 16 of the Deeds Registries, 47 of 1937, (as amendment by Act 34 Of 2013), provides as follows:

“That the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar.”

5.2.71 GDHS and CoJ have a constitutional duty to achieve the progressive realisation of everyone’s right to access adequate housing. With regard to RDP housing, this would include the necessary steps to ensure the lawful transfer and registration of title of the house to the owner once the house has been built.

5.2.72 Anyone who is the lawful owner of a house will need to have the ownership transferred into their name as proof that they own the property. The title

deed acts as proof of ownership in terms of the Deeds Registries Act 47 of 1937.

- 5.2.73 The **National Housing Code 2009**¹⁸ (**National Housing Code**) sets out the underlying policy principles, guidelines, norms and standards which apply to various governments housing assistance programmes introduced since 1994.
- 5.2.74 The purpose of the National Housing Code is to provide an easy to understand overview of the various housing subsidy instruments available to assist low income households to access adequate housing. A detailed description of the policy principles, guidelines, qualification criteria, norms and standards are available and codified in the National Housing Code.
- 5.2.75 There are five role-players within the Housing Programmes, namely the National Department, the Provincial Department, Municipalities, Traditional Council and the Land Administration Committee.
- 5.2.76 Part C of the Housing Code provides certain generic provisions which apply to the Housing Programmes that needs to be taken into account when planning housing assistance measures namely, Security of Tenure.
- 5.2.77 **Security of Tenure** remains a fundamental principle of the National Housing Programmes. All beneficiaries of a housing assistance programme must acquire secure tenure either in the form of ownership, leasehold, deed of grant or formal, rental arrangements and related non-ownership forms of tenure (Our underlining).
- 5.2.78 Acquiring of a secure tenure of house occupation in the case of residents of Alexandra is to be effected by way of issuing title deed documents which would effectively ensure that ownership of the property vest with the qualifying residents.

¹⁸ A Simplified Guide to the National Housing Code 2009 {Part 1 of the National Housing Code} 2009, Volume 1.

5.2.79 Part A of the Technical Guidelines of the National Housing Code outlines the summary of main criteria for eligibility for a housing subsidy and states inter alia:

“Where an application is made for a subsidy on the basis of a legal marriage or cohabitation arrangement, it is required that the property must be registered in the names of both spouses in the Deeds Office”.

5.2.80 Part A of the Technical Guidelines of the National Housing Code further underscores Security Tenure in the following terms:

“Generally subsidies will be made available only to beneficiaries who acquire registered title to a property either in the form of ownership, leasehold, 99-year leasehold, or deed of grant”.

5.2.81 From the above cited provisions of National Housing Code, it becomes clear that the GDHS was required to comply with some of the provisions, guidelines, norms and standards of the National Housing Code. In this case, GDHS had a legal obligation to comply with the National Housing Code, to ensure that qualifying residents of Alexandra has a secured house occupation tenure in the form of ownership and title deed is one such document which serves as proof of ownership of RDP immovable property.

5.2.82 Section 6(1) and (2) of the Local Government: Municipal Systems Act, 2000 (MSA) provides that:

“(1) A Municipality’s administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution;

(2)(a) The administration of the Municipality must be responsive to the needs of the local community”;

5.2.83 It is submitted that the CoJ has a legal obligation to respond to the needs of the Alexandra community, including housing needs to the qualifying residents.

Conclusion

5.2.84 It is noted from the evidence received during the investigation that significant strides have been taken in the provision of housing to the community of Alexandra.

5.2.85 However, challenges are still evident in the community which has a direct impact on the community's constitutional right to adequate housing. These challenges were highlighted by the affected community in engagements with them during 2019. These were the shortage of housing which remains woefully inadequate and manifests itself in a number of other socio-economic challenges such as:

- (a) The ever mushrooming of illegal structures on every open piece of land, demolitions, illegal evictions and congestions;
- (b) Overcrowding in the hostels and lack of maintenance;
- (c) Tensions in the community and dissatisfaction by those who are on the housing list for long time but are still on waiting for houses;
- (d) Rise in vigilantism and criminal groups perpetrated by alleged allocation of houses to foreign nationals and collection of rentals by councillors;
- (e) Illegal occupation of RDP houses;
- (f) Eviction and/ or Demolition Court Orders which are not executed;
- (g) Failure or undue delay to issue qualifying residents of Alexandra with title deed documents; and.
- (h) Trust deficit arising from the lack of progress on the settlement of the land claimants in Alexandra since the Court interdict was obtained in 2004. The Alexandra statement of Intent which was signed by some parties in June 2016, is still not a legally binding agreement nor has funding been committed for the statement of land claims.

- 5.2.86 The implementation of the ARP was also an area of great concern to the Public Protector as it could not be established due to the lack of documentation, how much was actually delivered on the project and what measurable successes were derived to alleviate the housing challenges in Alexandra.
- 5.2.87 Provision of Certain Land for Settlement Act grants powers to the authorities to designate for the purposes of settlement any land in control of the state, purchased or that can be made available by the owner.
- 5.3 **Whether the enforcement of the laws in Alexandra by the South African Police Services (SAPS) and Johannesburg Metro Police Department (JMPD) accords with the duties imposed on it by the Constitution and the applicable law, if not whether such failure amounts to maladministration and improper conduct.**

Common cause issues

- 5.3.35 The SAPS is a national police service of the Republic of South Africa, which is structured and constituted to function at the national, provincial and, where appropriate, local spheres of government.
- 5.3.36 JMPD is an entity of the CoJ established in March 2001 and its functions include traffic policing, policing of municipal by-laws and regulations and the prevention of crime.¹⁹
- 5.3.37 The perspective of the SAPS policing in Alexandra is contained in a report dated 05 August 2019 which was submitted by the National Commissioner: General Khehla Sitole (General Sitole) following his oral presentation to the joint investigation team on 22 July 2019. In the report, General Sitole stated the following undisputed facts:

¹⁹ www.joburg.org.za accessed on 07 February 2021.

- 5.3.38 The current work force of Alexandra SAPS is about 243 functional police members, excluding support staff. General Sitole submitted that according to the United Nations standards, the acceptable police/population ratio is 1 officer to 220 community members. The estimated population of Alexandra is 180, 000 (one hundred and eighty thousand) with a constant influx of people.
- 5.3.39 A total of 59 vehicles were allocated to the Alexandra police station and there are plans in place to purchase a further 6 vehicles. During the previous financial year budget, R 10.1 million was allocated to Alexandra for operational purposes. During the previous financial year an additional R 1.8 million was allocated to Alexandra over and above the allocated budget to cover shortfalls.
- 5.3.40 From 1 April 2018 to 31 March 2019, four hundred and thirty seven (437) operations were conducted by the station and the Provincial Office assisted with an additional 34 operations in Alexandra.
- 5.3.41 During the 2018/2019 financial year (1 April 2018 to 31 March 2019) Alexandra saw a reduction in murder, attempted murder and assault cases compared to the previous financial year. There was a 4.5% reduction in murder cases, a 23.7% reduction in attempted murder cases and a 7.7% reduction in assault with intent to do grievous bodily harm cases. Carjacking increased from 119 incidents to 132 reported incidents, which is an increase of 10.9%. Rape cases showed a reduction of 28.2% with a reduction in the number of reported cases from 174 to 125. Sexual offence cases showed a decrease of 5.6%.
- 5.3.42 Cases of Theft of motor vehicles showed a 34.4% reduction from 189 cases down to 124 reported cases. There were 31.1% fewer arrests for possession of firearm and ammunition (103 down to 71). There were 31.6% fewer arrests for drug related crimes (605 down to 414) and the number of arrests for drunken driving dropped from 504 to 434 which is a decrease of 13.9%. Crime dependent on police action decreased by 24.2% when they should have shown an increase.

5.3.43

The following conviction rate was given for the two year period between 1 April 2017 and 31 March 2019:

CRIMES	CONVICTIONS	
	2017/2018	2018/2019
Rape	44	15
Malicious Damage to Property	4	15
Arson	1	0
Business Robbery	12	10
Robbery with a weapon	3	5
Common Robbery	4	2
Assault GBH	28	23
Assault Common	15	20
Theft of Motor Vehicle	4	2
Car Jacking	4	2
House Robbery	27	11
Robbery with a firearm	22	7
Murder	12	14
Attempted Murder	13	7
Total Convictions for listed crimes	197	135

Issues in Dispute

- 5.3.44 Lack of law and order in Alexandra especially enforcement of municipal by-laws was forcefully asserted and it appeared to be a common thread which reverberated across all submissions or presentations made by residents of Alexandra.
- 5.3.45 Equally, submissions or presentations made by government officials who were interviewed by the joint investigation team, lamented and echoed in the main, a lack of law enforcement and by-laws within Alexandra.
- 5.3.46 For example, it was argued by Mr Lebohang Maile: Member of Executive Council (MEC) for Gauteng Cooperative Government and Traditional Affairs (MEC Maile) on 15 May 2019 that the situation in Alexandra is one of complete lawlessness and anarchy.
- 5.3.47 Further, that such lawlessness finds expression in various ways such as when you see people that cross the borders of our country illegally and settle and occupy land in areas where there is no enforcement of law. As a result, there is a negative impact on the infrastructure.
- 5.3.48 MEC Maile further emphasised that there has to be a general agreement for Alexandra to develop, namely, there has to be order and law and the CoJ should enforce this through law enforcement.
- 5.3.49 Similarly, Ms Nomvula Mokonyane: former MEC for the GDHS also indicated to the investigation team amongst other things in her submission dated 21 November 2019, that the ARP should be seen as a programme which set out to redevelop Alexandra. However, it cannot sustain itself without the enforcement of by-laws.
- 5.3.50 In essence, failure or inadequate enforcement of the relevant by-laws by JMPD and SAPS to address issues of illegal structures being built, illegal connection of electricity, and unlawful occupation of land and generally high levels of crimes, were all lamented by Residents of Alexandra.

- 5.3.51 In his submission dated 05 August 2019 to the investigation team, General Sitole KJ conceded that crime is being committed in Alexandra but that the SAPS members are doing their best and he denied that there is lawlessness in Alexandra.
- 5.3.52 General Sitole submitted that Alexandra poses challenges which makes policing very difficult. The environmental design of Alexandra is problematic. The roads are very narrow which makes it difficult for emergency vehicles to respond quickly to incidents. These narrow roads also affect ordinary road users and makes it difficult to comply with the National Road Traffic Act. Taxis stop in the middle of the road and block the flow of traffic and create a dilemma for law enforcement. Structures are built right up to the roadway which forces pedestrians to walk in the street and this further disrupts traffic and causes danger to pedestrians.
- 5.3.53 There is also an uncontrolled influx of people into Alexandra. The uncontrolled influx also makes the provision of shelter difficult and empty spaces are occupied quickly. It is difficult for the police station Commander of Alexandra to maintain a profile of his/her precinct as it changes daily due to influences beyond the scope and mandate of law enforcement.
- 5.3.54 The mushrooming of illegal liquor outlets creates a problem as they promote and contribute to incidents such as domestic violence, assault, rape and murder. It is difficult for the police to address these liquor outlets as new ones are opened as fast as law enforcement are closing the unlicensed premises.
- 5.3.55 Informal businesses established by locals attract criminals. Many foreign nationals run informal businesses and they do not make use of any banking system. Criminals are aware that cash is kept on the premises.
- 5.3.56 According to General Sitole, the approach to Alexandra requires the whole government from local, provincial and national level from all departments to work together in the realisation of the ARP. Blaming each other or SAPS will not take Alexandra anywhere. If a fragmented and a silo approach is

pursued, people of Alexandra will continue to suffer. Those who must provide health services must do so, those who must teach, must do so. The authorities who issue licenses to liquor outlets must take into consideration the well-being and interests of the community.

5.3.57 According to General Sitole, the socio-economic challenges in Alexandra require everyone to work together to resolve issues.

5.3.58 On 18 April 2019, Mr M Kgaswane (Mr Kgaswane): Director at JMPD indicated during CoJ's presentation to the Joint Investigation team that Alexandra is a very difficult place to police because of the limited space environment and congestion around the area.

5.3.59 Furthermore, JMPD contended that it is doing its level best to ensure that they perform their duties without infringing on the rights of the communities. Mr Kgaswane conceded that there is a problem of illegal invasion of open spaces around Alexandra and that JMPD is dealing with this challenge.

5.3.60 Mr Kgaswane submitted that JMPD has a challenge with the demolition of illegal structures built with brick and mortar because neither JMPD nor CoJ have the capacity to deal with brick and mortar demolitions.

5.3.61 However, it was said that the Office of the City Manager shall set up a special Task Team to deal with land invasion issues. JMPD is in the process of ensuring that they are getting the required resources to ensure that they can begin to deal with the brick and mortar invasions around Alexandra.

Application of the relevant law

5.3.62 Section 205(1) of the Constitution stipulates that:

(1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of

government”.²⁰

5.3.63 Section 205(3) of the Constitution outlines the SAPS’s constitutional duties.²¹ It assigns to SAPS the following duties:

“The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

5.3.64 In *Glenister II*, Moseneke DCJ and Cameron J, writing for the majority, stated:

*“It is equally clear that the national police service, amongst other security services, shoulders the duty to prevent, combat and investigate crime”.*²²

5.3.65 It is submitted therefore that the SAPS is among the primary agencies of the state responsible for the discharge of the above constitutional duty to protect the public in general.

5.3.66 Section 205(2) of the Constitution further provides:

“National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.”

5.3.67 In turn, section 13 of the South African Police Service Act²³ (SAPS Act), states that:-

“(1) Subject to the Constitution and with due regard to the fundamental rights of every person, a member may exercise such powers and shall

²⁰ Our underlining.

²¹ Section 2 of the Constitution provides for the Supremacy of the Constitution indicates that it is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

²² *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (*Glenister II*).

²³ Act 68 of 1995.

perform such duties and functions as are by law conferred on or assigned to a police official.

5.3.68 It is further submitted that, the implication of the above legal provisions can be understood to render the function of crime prevention or policing a national competency and a duty of the SAPS, which rises from the Constitution and SAPS Act. Thus one finds positive obligations on members of the SAPS to enforce the law both in the Constitution and the SAPS Act.²⁴

5.3.69 Section 64E of the SAPS Act states the functions of Municipal Police Service in the following terms:

- (a) *Traffic policing, subject to any legislation relating to road traffic;*
- (b) *Policing of municipal by-laws and regulations which are the responsibility of the municipality in question and*
- (c) *The prevention of crime.*

5.3.70 Section 64F of the SAPS Act stipulates the powers of the Municipal Police Service as follows:

- (1) *Subject to the Constitution of the Republic of South Africa, 1996 and with due regard to the fundamental rights of every person, a member of the municipal police service may exercise such powers and shall perform such duties as are by law conferred upon or assigned to a member of the municipal police service.*
- (2) *The Minister may from time to time prescribe that any power conferred upon a member of the Service by this Act or any other law, may be exercised by a member of the municipal police service: provided that where the power includes the power to seize an article, the member of the municipal police service shall forthwith deliver the article to a member.*

²⁴ Carmichele v Minister of Safety and Security (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001) at paragraph 62.

- (3) *Every member of a municipal police service is a peace officer and may exercise the powers conferred upon a peace officer by law within the area of jurisdiction of the municipality in question: Provided that a member may exercise such powers outside the area of jurisdiction if it is done:*
- (a) *In pursuit of a person whom the member reasonably suspects of having committed an offence, and if the pursuit commenced within the area of jurisdiction of the municipality or*
- (b) *.....”*

5.3.71 It is submitted that the above legislative provisions, do not derogate from the national competency/powers of the SAPS in combating, prevention and investigation of crime, including By-Laws in Alaxandra is concerned. SAPS is still expected to render a supportive role to the municipal police.

5.3.72 Section 11 of the Municipal Systems Act²⁵ regulates Executive and Legislative Authority of the Municipality and stipulate *inter alia*:

(1) *“The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality subject to section 59.*

(2).....;

(3) *A municipality exercises its legislative or executive authority by:*

(a) *developing and adopting policies, plans, strategies and programs, including setting targets for delivery;*

(b) *promoting and undertaking development:*

(c) *establishing and maintaining an administration;*

(d) *administering and regulating its internal affairs and the local government affairs of the local community;*

(e) *implementing applicable national and provincial legislation and its by-laws;*

²⁵ Act 32 of 2000.

- (f)
- (g)
- (h)
- (i)
- (j)
- (k)
- (l) *promoting a safe and healthy environment;*
- (m) *passing by-laws and taking decisions on any of the above-Mentioned matters ; and*
- (n) *doing anything else within its legislative and executive competence”.*

5.3.73 The following are amongst those BY- LAWS of the CoJ that need to be attended to by law enforcement agencies in Alexandra:

- (a) Cemeteries and Crematoria By-Laws;
- (b) Standardization of Electricity By-Laws;
- (c) Encroachment on Property By-Laws;
- (d) Encroachment on Property By-Laws;
- (e) Informal Trading By-Laws and
- (f) Waste Management By-Laws

5.3.74 Both the SAPS and the JMPD/CoJ are bound by legal prescripts to enforce all the laws including the above highlighted by-laws in Alexandra.

SAPS’s Response to a Section 7(9) Notice:

5.3.75 SAPS responded to the Notice issued in terms of section 7(9) of the Public Protector Act as per letter dated 23 March 2021, signed off by General KJ Sitole.

- 5.3.76 Replying to the interim findings, SAPS argued that enforcement of by-laws is a legislative mandate of the Metropolitan Police Service.²⁶
- 5.3.77 To this end, it is apposite to dispose of the SAPS's argument by submitting that the Constitution is the supreme law of South Africa and all other laws are subject to it.²⁷ Thus, its interpretation cannot depend on any legislation enacted under it. One can accordingly not invoke any other legal Code as a guide to the interpretation of the Constitution.²⁸ The language used in section 205 of the Constitution is clear and unambiguous.
- 5.3.78 On a simple construction, either literally or contextually, the legislative provisions of section 64E of the SAPS Act do not derogate anything from SAPS's national and constitutional competency/mandate of enforcing all public laws in the country. Thus, the much vaunted refrain and contention by SAPS that "*by-laws are a legislative mandate of municipal police*" while generally true, tends to be misconceived, peripheral and thus of no real moment. It is accordingly submitted that SAPS is still expected to support municipal police/JMPD to enforce by-laws in Alexandra.
- 5.3.79 The Constitutional Court had this to say about the correct approach to a constitutionally- inspired interpretation of a legal instrument.²⁹
- "A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:*

²⁶ As per section 64E of the SAPS Act.

²⁷ Section 2 of the Constitution provides: 'This Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled

²⁸ Airports Company South Africa SOC Ltd v Imperial Group Ltd & Others (1306/18) [2020] ZASCA at para 22.

²⁹ Cool Ideas 1186 CC v Hubbard and Another (CCT 99/13) [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) (5 June 2014) at para 28.

- (a) *that statutory provisions should always be interpreted purposively;*
- (b) *the relevant statutory provision must be properly contextualised; and*
- (c) *all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)”.*

5.3.80 The ultimate objective of the section 205 of the Constitution and section 64E-F of the SAPS Act is the prevention/combating and or investigation of crime. This can be optimally achieved through collaboration by SAPS and municipal police officers. To hold otherwise would be to defeat the primary objective of the statute and the constitution and to unduly stretch the ordinary meaning of the words read in their proper context. The purpose of the wording of section 64E-F of the SAPS Act was not to exclude the SAPS from enforcing by-laws.

5.3.81 This interpretation commends itself because it better accords with constitutional values.³⁰ A viable interpretation of *any* document which promotes constitutional values must be preferred to one that does not.

Conclusions

5.3.82 On an objective and proper consideration of the facts, the Public Protector concludes that the submission by SAPS indicates a marked decline in

³⁰ Compare *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13; 2016 (4) SA 121 (CC); 2016 (6) BCLR 709 (CC) at para 89; *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd In re: Hyundai Motor Distributors (Pty) Ltd v Smit N.O.* [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC) at para 26.

major crimes against persons such as murder, rape, assault, robberies and other contact crimes, however crimes against property as well as enforcement of by-laws within Alexandra remains prevalent and can be observed in the following manifestations and this evidence was not disputed by General Sitole or any of the parties interviewed during the investigation:

- (a) Lawlessness in the form of illegal occupation of land,
- (b) Encroachment of pavements,
- (c) Informal trading,
- (d) illegal connection of electricity,
- (e) illegal dumping of waste,
- (f) Uncontrolled influx of illegal immigrants,
- (g) Malicious damage of state property and infrastructure,
- (h) lack of enforcement of traffic laws, etc,

5.3.83 The above identified gaps in the area of law enforcement within Alexandra all fortify the allegations that the SAPS and JMPD/CoJ have not taken adequate measures to prevent, combat and investigate crime or to maintain law and order in Alexandra, particularly where applicable by-laws are concerned. It is evident that further work still needs to be done in these areas with a view to improving law enforcement in Alexandra.

5.4 **Whether the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) accords with the duties imposed on it by the Constitution and the applicable law, if not whether such failure amounts to maladministration and improper conduct.**

Common cause issues or undisputed facts

5.4.35 The GDSD is a provincial government department in Gauteng province, established in a terms of Schedule 2 of the PSA, its mandate entails amongst other things to provide social protection services and lead

government efforts to forge partnerships through which vulnerable individuals, groups and communities become capable and self-reliant participants in their own development.³¹ The principal function of GDSD is to administer social welfare in Gauteng.

5.4.36 It is further common cause that Alexandra is located in Gauteng and currently plagued by a number of socio-economic challenges such as poverty, squalor conditions, lack of quality services, crime, substance abuse, other forms of social ills and a lack of social services infrastructure.

5.4.37 These challenges have caused many residents of Alexandra to require material relief of distress such as food parcels, social services, housing and non-material forms of assistance like counselling.

5.4.38 The above desperate need for social welfare services was forcefully lamented by some residents interviewed by the investigation team at Stwetla on the day of the inspection *in loco*.

Issues in Dispute

5.4.39 Residents of Alexandra interviewed on 13 May 2019, asserted that there are houses for GDSD which are unoccupied next to the Gautrain station in Marlboro which have not been renovated in order to use them as a Social Welfare or Trauma Centre. Instead the security officials were hired to guard the empty houses for GDSD and are being paid for guarding the houses that are not in use.

5.4.40 Further, that the people of Alexandra, despite financial limitations imposed by abject poverty and unemployment are expected to travel about 21 kilometers to number 91 Commissioner Street in Johannesburg in order to access social welfare services.

³¹ <https://www.bing.com/search?q=gauteng+department+of+social+development&FORM=AWRE>, accessed on 12 Feb 2021.

- 5.4.41 The residents of Alexandra further argued that there is overcrowding in many households and that elderly people are staying with grandchildren and great grandchildren. The elderly need to be placed in old age homes, social welfare institutions and be provided with social grants.
- 5.4.42 Residents of Alexandra indicated during their interaction with the investigation team that they are in need of the following social services:
- (a) Prevention programs & services in respect of domestic violence;
 - (b) Referral services in respect of illegal immigrants to the Department of Home Affairs (DHA),
 - (c) Referral services in respect of housing;
 - (d) Food Relief and psycho-social support for the victims of winter shack fires and victims of Flooding Disasters;
 - (e) Substance abuse and crime awareness programs and
 - (f) Places of Care, Child & Youth Care Centres, Home Based Care Facilities, and Older Persons Residential Care facilities etc.
- 5.4.43 On 25 July 2019, the Head of Department of GDSD: Ms Thembeni Mhlongo (HoD), appeared before the joint investigation team and submitted that GDSD delivers on its constitutional mandate of social services and programmes through a decentralized model. Further, the GDSD has five regions which are aligned to the Municipal Demarcation, namely Sedibeng, Ekurhuleni, Tshwane, West Rand and Johannesburg. Alexandra is a service point within the Johannesburg Region and the Midrand Office is the service point nearer to Alexandra.
- 5.4.44 The HoD also argued that its service delivery model is anchored on service points, i.e. offices to access services, and funding of Non Profit Organisations (NPO) by the GDSD to render social services.

5.4.45 The GDSD services are rendered by Social Workers, Auxiliary Workers, Community Development Practitioners, Assistant Community Development Officers, Probation Officers, Assistant Probation Officers, etc.

5.4.46 The GDSD also submitted that two (Non Profit Organisations) NPO's are funded under sustainable livelihood, namely Afrika Tikkun and Bokamoso Ke Barona. Afrika Tikkun renders the following funded programmes:

- (a) Advise and referral;
- (b) Life skills development;
- (c) Information and technology training;
- (d) Barista Training;
- (e) Scooter driver training;
- (f) Network security engineers training;
- (g) Drivers licence training.

5.4.47 The total number of people who have benefitted from the skills training are 400 and the allocated budget was R 993 301.00 (the financial year of the expenditure was not mentioned in the HoD's submission).

5.4.48 Bokamoso Ke Barona is a Youth Development Centre targeting underprivileged youth. Bokamoso Ke Barona renders the following programmes:

- (a) Advise and referral;
- (b) Life Skills training;
- (c) Business skills training;
- (d) Accredited computer training;
- (e) Mechanical skills;
- (f) Optic fibre training;
- (g) Call centre training;
- (h) Cashier and customer services.

- 5.4.49 The total number of people who have benefitted from the skills training are 405 and the allocated budget was R1 005 327.00 (the financial year of the expenditure was not stated by the HoD).
- 5.4.50 About 19 schools in Alexandra were selected to benefit from the sustainable livelihood programme to receive school uniforms. The 19 schools consisted of 5 secondary schools, 12 primary schools and 2 special schools in Alexandra.
- 5.4.51 About 12 schools were the beneficiaries under the programme of dignity packs. In terms of this programme, children from underprivileged households receive sanitary towels, roll-ons, bath soaps, body lotions and tooth pastes. 4330 children benefited from this programme in Alexandra as a whole (the financial year of the expenditure was not mentioned by the HoD).
- 5.4.52 In 2018/ 2019, the GDSD rendered substance abuse and crime prevention services to the youth in the following areas:
- (a) Youth dialogue at Alexandra Stadium;
 - (b) Expo at Sankopano Hall;
 - (c) Alexandra High School; and
 - (d) Realogile Secondary School.
- 5.4.53 In the first quarter of 2019/ 2020, about 13 children and 168 adults were assessed through probation services. The GDSD is also rendering substance and crime awareness programmes in schools and in the community.
- 5.4.54 Even though the GDSD does not have offices in Alexandra as such, services are accessible at 91 Commissioner Street, Johannesburg. Two previous attempts to procure office space in Alexandra through a tender process had been unsuccessful.

5.4.55 The challenge with Alexandra is that there is no viable office space for service points. However, the Gauteng Department of Infrastructure Development (GDID) is in the process of procuring office space for the GDSD.

Responses to a Section 7(9) Notice by GDSD:

5.4.56 GDSD responded to the Notice issued in terms of section 7(9) of the Public Protector Act as per submission dated 17 May 2021, signed off by HoD: Ms Thembeni Mhlongo.

5.4.57 Replying to the interim findings, GDSD indicated to the Public Protector that the GDSD has since its engagement with the joint investigation team redirected resources to increase accessibility to social welfare services in Alexandra in addressing its myriad challenges.

5.4.58 Further that there has been significant progress in working towards securing long term Infrastructure from which to render services with a completed and proposed implementation plan indicating progress made to address adverse interim findings in respect of service delivery issues in Alexandra.

5.4.59 The HoD for GDSD further indicated that over the years GDSD has had a challenge with the securing of suitable land within the Alexandra area for the construction of Social Infrastructure. This is due to the land extent and land configuration required by the Norms & Standards of the various infrastructure, e.g. Substance Abuse Inpatient Rehab Centre require 8 hectares of land.

5.4.60 Further that GDSD has also initiated processes with the CoJ – Social Development (CoJSD) and the office of the Mayor to secure land and existing building to be repurposed for the use of social infrastructure. Discussions are still ongoing and CoJSD has indicated that all municipal

land is managed via Johannesburg Property Company (JPC) and GDSD has to put forward a request to CoJSD to secure land arrangements.

- 5.4.61 Further to this Gauteng Department of Infrastructure Development is contentiously vetting land for GDSD. As such, it is to be noted, that the GDSD does not have any new proposed construction for the Alexandra area for the 2021/22 Financial Year.
- 5.4.62 However, in targeting the surge against substance abuse in the province of Gauteng, GDSD has committed to the construction of an In-Patient Substance Abuse Rehabilitation Centre in the various municipalities (commonly referred to as corridors).
- 5.4.63 A Rehabilitation Centre is a facility established by the Minister for the reception and treatment of persons who are dependent on drugs. It entails the receipt of a comprehensive, accurate and timely assessment of physical, psychiatric and psychosocial functioning and a regular review by the multidisciplinary team.
- 5.4.64 In-patient treatment programmes range from three weeks to eight weeks depending on the type of drug used and the responsiveness of services user to treatment interventions.
- 5.4.65 The proposed centre will accommodate 120 patients consisting of a detoxification ward, outpatient treatment centre, halfway house, isolation room, administration building, maximum security and additional facilities such as pharmacy, consulting room, library, skill development centre and a range of recreational facilities.
- 5.4.66 For CoJ (Central Corridor), the GDSD has proposed the Rehabilitation Centre to be located in the Soweto area. This will provide services to the people within the entire CoJ municipal jurisdiction.

Sourcing of Premises for Social Infrastructure in Alexandra:

- 5.4.67 **Leasing of Premises for Social Infrastructure in Alexandra.** In early 2021, the GDSD has recently gone out on tender to secure office space for office premises, however, the process had to be cancelled as only one (1) bid was received and it did not comply with the tender requirements. The GDSD has re-submitted the request to Department of Infrastructure Development (acting as custodian of building) for re-advertisement.
- 5.4.68 **Repurposing of the existing building for Social Infrastructure:** The GDHS constructed four (4) houses in Tsutsumani extension in Alexandra to be used for social amenities. The ownership of the land vests with CoJ, houses were built and funded by the GDHS and GDSD is the end-user. To be noted, the assets were not transferred to the Gauteng Provincial Register to allocate use to GDSD. The current state of the houses is structurally sound (**refer to images below**), but do not meet the Norms & Standards to use as social amenities, and require renovation and rehabilitation to ensure they adhere to the required standard and are reconfigured to suit the purposes.





5.4.69 **The proposal is to repurpose the above houses to accommodate:**

- (a) One (1) Substance Abuse Outpatient Centre;
- (b) One (1) Community Facility for the Elderly person; and
- (c) Two (2) office blocks

5.4.70 The transfer of property ownership is required from the Local Municipality to Province to enable GDSD to allocate financial resources to renovate the properties, to avoid adverse findings from the Auditor General.

5.4.71 In terms of project implementation, GDSD has adopted the National Treasury Framework for Infrastructure Delivery and Procurement Management (FIDPM), which guides the planning, implementation and maintenance of the GDSD's infrastructure.

5.4.72 Thus the processes required to renovate and rehabilitate the current houses to accommodate for the proposed social amenities shall follow the process and time frames in the adopted National Treasury FIDPM.

5.4.73 The HoD has further furnished the Public Protector with and clarity which all seek to serve as the GDSD's response as well as additional details and clarity on matters raised on the interim report. The HoD highlighted how **Field & Intake Services**, such as Child Protection and Family Welfare services such as Child Care and Protection; Family preservation services; Foster Care and Adoption; Care and Support for people with disabilities

and older persons are being rolled out in Alexandra. Further that the GDSD currently has seven hundred and twelve (712) foster care cases in Alexandra alone. An additional eight staff members were deployed to Alexandra since the appearance before the Public Protector in 2019.

5.4.74 **Probation Services** are rendered by Social Workers who are specialists on Child justice and crime.³² According to the HoD, these services are accessible from the courts and in this instance there are offices within the Wynberg Court at Alexandra).

5.4.75 **Non-Profit Organisation (NPO) Partnerships & Finance:** The GDSD is currently funding forty-two registered early childhood development centres. The funding of these centres translates to 2990 children who are from poor households.

5.4.76 In Alexandra, the GDSD is currently funding one NPO that is rendering services to people with disabilities and four that are targeting older persons. These NPOs are :-

- (a) One Protective Workshop that is registered to benefit eighty people with disabilities through vocational work;
- (b) Two Residential Facilities (Old Age Homes) with the bed capacity of two hundred and thirty-five;
- (c) Three sites that are rendering active aging programmes (Service Centres) registered to service two hundred and seventy older persons with the capacity to facilitate home based care activities to eighty-nine older persons.

5.4.77 The GDSD has spent R1.2 million on disability and older persons programmes compared to R900 000 spent in 2019.

³² The focus is on issues such as assessment of cases of crimes committed by children and adults for pre-sentencing purposes; Diversion services and crime prevention and Home Based supervision as per GDSD's response letter to the Public Protector dated 17 May 2021.

Application of the relevant legal prescripts

5.4.78 Section 27 of the Constitution provides that:

“(1) Everyone has the right to have access to –

(a);

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights”.

5.4.79 The state has an obligation which in terms of section 27 of the Constitution is obliged to take reasonable measures to enhance and promote access to social welfare services.

5.4.80 In terms of the above constitutional provisions, the GDSD has a duty to provide social care services for everyone, to ensure that programmes are in place to provide these services and facilitate that everyone in Alexandra is able to access these services in a sustainable and practical manner.

5.4.81 Over and above the Constitution, the following existing laws or parts thereof, can be regarded as constituting the legislative mandate of the Department of Social Development in South Africa:³³

(a) Aged Persons Act, 1967 (Act 81 of 1967);

(b) Fund-raising Act, 1978 (Act 107 of 1978);

(c) Social Service Professions Act, 1978 (Act 110 of 1978);

(d) Child Care Act, 1983 (Act 74 of 1983);

(e) National Development Agency Act, 1998 (Act 108 of 1998);

(f) Probation Services Act, 1991 (Act 116 of 1991);

³³ Some of these legislation are administered by other department/ministries.

- (g) Prevention and Treatment of Drug Dependency Act, 1992 (Act 20 of 1992);
- (h) Social Assistance Act, 2004 (Act 13 of 2004);
- (i) Older Persons Amendment Act, 1998 (Act of 1998);
- (j) South African Social Security Agency Act, 2004 (Act 9 of 2004) and
- (k) White Paper for Social Welfare Service (1997).

5.4.82 Based on the unique nature of each person's social welfare needs, relief may be sought from any of the above stated legislations.

5.4.83 Consistent with its obligation to promote access to social welfare services, the state has developed a **White Paper for Social Welfare** (WPSD) and was adopted in August 1997.

5.4.84 WPSD is a comprehensive policy document which sets out key social welfare substantive issues in the restructuring of social welfare services,³⁴ programmes and social security.

5.4.85 WPSD further details principles, guidelines, recommendations, for the development of social welfare in South Africa and to give effect to the state's constitutional obligation to provide everyone with access to social welfare care services.

5.4.86 What is immediately relevant for present purposes is an *Agenda for Action* contained in WPSD's Paragraph 26 and 27 which entails amongst other things the following:

5.4.86.1 Universal access

26. "Policies and programmes will be developed to ensure that every member of society can realise his or her dignity, safety and creativity.

³⁴ According to WPSD social welfare refers to an integrated and comprehensive system of social services, facilities, programmes and social services to promote social development, social justice and the social functioning of people.

Every member of society who finds him or herself in need of care will have access to support. Social welfare policies and legislation will facilitate universal access to social welfare services and social services benefits in an enabling environment.

A combination of public and private financing options will be harnessed to address the needs of all South Africans”.

5.4.86.2 War on poverty

27. “Social welfare policies and programmes will be developed which will be targeted at poverty prevention, alleviation and reduction and the development of people’s capacity to take charge of their own circumstances in a meaningful way.

- (a) Individuals, families and households are particularly vulnerable to poverty in times of unemployment, ill health, maternity, child-rearing, widowhood, and old age. Disability in a family also increases the impact of poverty. Further, economic crises, political and social changes, urbanisation, disasters or social and political conflict and the displacement of people contribute to, or heighten the distress of poverty. Adequate social protection will be provided for people who are impoverished as a result of these events.*
- (b) Poverty coincides with racial, gender and geographic or spatial determinants, and these will be taken into account in the targeting of programmes. While poverty is widespread throughout South Africa, African people are most affected. Women and children (particularly in female-headed households), people with special needs, and those living in rural areas, informal settlements and on farms, are most at risk and will be assisted”.*

5.4.87 Shorn of verbiage, the implication of the above is that GDSD, in collaboration with other stakeholders and relevant spheres of government has an obligation to promote the above recommendations of WPSD.

Conclusion

5.4.88 In the context of the facts before the Public Protector, it can be concluded that many victims of all the above stated social ills in Alexandra constantly require material relief from social distress like food parcels, counselling, housing referrals and other forms of mobilisation to access social welfare protection and services.

5.4.89 Currently, Alexandra has no service centre or satellite office for its residents to go and access social services and are expected to travel about 21 kilometres to Johannesburg CBD for such services.

5.4.90 Lack of this social infrastructure does not assist the residents of Alexandra as mostly are unemployed and cannot afford transport costs to Johannesburg CBD. It is however noted that the GDID is in the process of procuring office space for the purpose of establishing a service point by the GDSD.

5.4.91 The GDSD is bound to develop and implement sufficient relief programmes and social services centres in Alexandra for the residents of Alexandra to access social welfare services for relief of distress caused by their living conditions and further perpetuated by spatial segregation and socio-economic exclusion which remain barriers to equality and social justice.

5.4.92 The Public Protector has also noted the concerns raised by the community of Alexandra during engagements with them that there are no referral services in respect of illegal immigrants to the Department of Home Affairs (DHA); referral services in respect of housing; sufficient food relief programmes and psycho-social support for the victims of winter shack fires and victims of flooding disaster; sufficient substance abuse and crime

awareness programs or knowledge of such programmes if available and also; places of care such as Child & Youth Care Centres, Home Based Care Facilities, and Older Persons Residential Care facilities for the vulnerable members of the Alexandra community.

5.4.93 However, the Public Protector notes and acknowledges with much appreciation the practical steps, implementation plans and measures put in place by GDSD to address the adverse findings highlighted in the interim report as detailed by HoD in her response dated 17 May 2021.

5.5 **Whether the provision of education in Alexandra by the Gauteng Department of Education (GDE) accords with the duties imposed on it by the Constitution and the applicable law, if not whether such failure amounts to maladministration and improper conduct.**

Common cause or undisputed facts

5.5.35 In terms of the submission handed over to the Public Protector Investigation team by the Gauteng MEC for Education: Mr P Lesufi (the MEC), there are currently nineteen (19) public schools in total in Alexandra Township.

5.5.36 The MEC submitted that eighteen (18) of these schools are public schools. The other remaining school is an independent, subsidised Primary School. The MEC further provided the investigation team with a tabulated breakdown of education outlook in Alexandra as follows:

5.5.36.1 List of all schools in Alexandra

No	Institution name	Level	Type of institution	Relation with state
1.	Alexandra Secondary School	Secondary	Ordinary	Public
2.	Bovet Primary School	Primary	Ordinary	Public

3.	Carter Primary School	Primary	Ordinary	Public
4.	Dr Knak Primary School	Primary	Ordinary	Public
5.	East Bank High School	Secondary	Ordinary	Public
6.	Ekukhanyisweni Primary School	Primary	Ordinary	Public
7.	Emfundisweni High School	Primary	Ordinary	Public
8.	Gordon Primary School	Primary	Ordinary	Public
9.	Ikage Primary school	Primary	Ordinary	Public
10	Inkanyezi Waldorf Centre	Primary	Ordinary	Independent Subsidised
11.	Iphutheng Primary School	Primary	Ordinary	Public
12	Ithute Primary School	Primary	Ordinary	Public
13.	Kwabhekilanga Secondary School	Secondary	Ordinary	Public
14.	M.C Weiler Primary School	Primary	Ordinary	Public
15.	Minerva Secondary School	Secondary	Ordinary	Public
16.	Pholoshu Primary School	Combined	Ordinary	Public
17.	Realo Secondary School	Secondary	Ordinary	Public
18.	Skeen Primary School	Primary	Ordinary	Public

19.	Zenzile Primary School	Primary	Ordinary	Public
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5.5.37 The MEC also indicated that the 18 public schools comprise of 12 Primary and 6 Secondary schools. Collectively, the 19 schools accommodate 27 857 learners in the township. The majority of these learners (27 626 or 99% of all learners in Alexandra) are currently accommodated in the 18 public schools.

5.5.38 Two-thirds of all learners in Alexandra are primary school learners with the average primary school accommodating just over 1500 learners. The remaining third are all secondary school learners, with the average number of learners being accommodated in each secondary school amounting to 1597 learners.

5.5.39 **Breakdown of the Schools in Alexandra:**

Number of institution	Public schools	Independent subsidised school	Total
Number of ordinary Schools	18	1	19
Primary Schools	12	1	13
Secondary Schools	6	0	6
Total	18	1	19

5.5.40 **Breakdown of Learners:**

Number of institutions	Public schools	Independent subsidised schools	Total
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Ordinary Schools	27 626	231	27 857
Primary Schools	18 046	231	18277
Secondary Schools	9580	0	9580
Total	27 627	231	27857

5.5.41 **Breakdown of the Educators:**

Number of Educators		Public schools	Independent subsidised schools	Total
Ordinary Schools		745	14	759
Primary Schools		450	14	464
Secondary Schools		295	0	295
Total		745	14	759

5.5.42 **Performance of Alexandra Schools: National Senior Certificate (NSC) for 2018 by High schools in Alexandra**

No	Institution name	Wrote	Passed	% Passed	Distinctions	Bachelors	% Bachelors
1.	Alexandra secondary School	163	139	85.3	25	60	36.8
2.	East Bank High School	107	96	89.7	24	37	34.6
3.	Kwabhekilanga Secondary School	134	124	92.5	25	60	44.8

4.	Minerva Secondary School	199	161	80.9	42	61	30.7
5.	Realo Secondary School	151	138	91.4	37	64	42.4
Total		754	658	87.3	153	282	37.4

Overview of NSC 2014- 2018 performance in Alexandra:

5.5.43 According to the MEC, the performance of learners from the 5 Alexandra Secondary Schools that field NSC candidates have been commendable. Over the last 5 years, the number of Alexandra learners that have written the NSC examination has declined. However, the pass rate of Alexandra Secondary School learners in the Grade 12 exit examination over the period (2014-18) has improved by over 15%. It is equally noteworthy that the number of distinctions has more than doubled over the same period from 84 distinctions in 2014 to 153 distinctions in 2018. In addition, the percentage of passes obtained for bachelors' degree admission by Alexandra learners have improved by over 16% from 21.1% in 2014 to 37.4% in 2018.

5.5.44 The Impact of Socio- Economic Conditions on Teaching and learning in Alexandra:

5.5.44.1 The submission of the MEC indicates that Alexandra Township represents a 20 square kilometre block (radius) enclave, carved out of the Johannesburg Northern suburbs. The area houses a population of more than half a million people and is characterized by deeply congested living spaces interspersed by small shops. Given its high-density nature and the lack of housing, crime features prominently amongst the grievances of the local community.

5.5.44.2 As per the submission of the MEC, given the general description of Alexandra Township, the socio- economic status of the broad bulk of the local population may be deemed dire. Left unattended, the impact of the socio-economic status of Alexandra school students on teaching and learning could prove disastrous. The Gauteng Department of Education (GDE) has therefore introduced many pro poor initiatives to alleviate the poverty experienced by learners and schools in the area.

5.5.44.3 All 18 public schools in Alexandra, according to the MEC have been declared no School Fee Paying Schools. This has had the effect of relieving all parents from the burden of paying school fees. Furthermore, by virtue of the school nutrition programme, the department is currently providing warm meals to 27 000 learners that are part of the 18 schools in the Alexandra township.

5.5.44.4 The MEC, further indicated that, given the above GDE's initiatives, combined with support from sister departments such as the departments of Social Development and Health, the worst effects of the poor socio economic conditions experienced by learners from Alexandra township have been combatted. This is largely evident in the performance of Alexandra learners in the NSC examination.

5.5.45 **Learners – Educator Ratio (L:E Ratio):**

5.5.45.1 According to the MEC's submission, the average L: E ratio across all schools in Alexandra amounts to 37:1. The ratio for the Primary Schools are consistent with the provincial norm of 40 learners to each Educator. Furthermore, the L: E ratio for Secondary Schools (33:1) is slightly more favourable than the provincial norm of 35.1. On average, it appears that the L: E ratios in Alexandra remain firmly in line with the overall norm adopted by GDE.

5.5.46 **Interventions by GDE aimed at improving schools in Alexandra during the outbreak of service delivery protests:**

5.5.46.1 The MEC indicated that in the Education Roadmap to 2024 the GDE has devised various province-wide intervention strategies to improve the quality of education in the province of Gauteng. These programmes cut across all districts in the province and target all learners, particularly those located in high priority areas.

5.5.47 **The following interventions have been designed and implemented in the Alexandra area.**

5.5.47.1 The MEC submitted that Additional Secondary School Improvement Programmes (SSIP) classes were being conducted on Saturdays and Sundays for grade 12 learners. The programme caters for learners from Realogile High School, East bank High School and Alex High School. Learners from surrounding suburban schools who reside in Alexandra are attending classes in Northview, Sandton and Sandringham are being accommodated in the programme.

5.5.47.2 For primary schools and other grades, schools will have dedicated afternoon classes. The afternoon classes were done through communication by schools with parents.

5.5.47.3 In collaboration with education partners, extra classes will be offered to Grade 12 Mathematics and Science learners from the Alexandra community by the teachers and partners (clarification of the partners not provided).

5.5.47.4 Alexandra Secondary School is currently a full Information Communication Technology (ICT) School. The strategy is an intervention which has been designed and implemented in Alexandra area aimed at improving schools in the area.

5.5.48 School Infrastructural Improvements in Alexandra:

- 5.5.48.1 The GDE had previously (date not provided in the MEC's submission) undertaken major rehabilitation and refurbishment exercises involving Kwabhekilanga and Far East Bank Secondary Schools. These projects were funded in line with the infrastructural plan of the GDE and delivered by the then Department of Public works and Transport (date of delivery of projects was not provided by the MEC in his submission).
- 5.5.48.2 As part of responding to the demand in the greater Alexandra area, the department has delivered 4 additional ordinary classrooms at Kwabhekilanga Secondary School through the alternative construction technology programme. The classrooms were delivered to address overcrowding challenges. In addition, the GDE has completed upgrades and additions of classes in Alexandra High School (The work entailed conversion of ordinary classrooms into smart classrooms (date for this work was not furnished by the MEC)).
- 5.5.48.3 The department has done an ICT conversion at all Alexandra Secondary Schools for grade 11 and 12, as well as at Kwabhekilanga Secondary School. It will be continuing with the rollout of ICT for grade 10 in the financial year 2019/2020. Furthermore, with respect to Bovet Primary School, the MEC noted that Phase 1 renovations have been completed. Phase 2 renovations involving the provision of additional classrooms, specialist rooms, nutrition centre and a sports facility will be following shortly.
- 5.5.48.4 Amongst the future infrastructural plans in Alexandra, the GDE intends supplying mobile classrooms to relieve the congestion at Ithute Primary School (Date not provided).

5.5.49 **Community involvement in schools and its work with School Governing Body (SGB) in the area.**

5.5.49.1 The Reorganization of schools (ROS) strategy will realise and implement the key goals of ensuring a non-racial education system focusing on the following:

- (a) Section 17 governance of school twinning programme;
- (b) Strengthening educator recruitment and provisioning; and
- (c) Intensifying skills development for the economy, building a bridge between formal education and the workplace.

5.5.50 **Twinning Programme**

5.5.50.1 Two schools from Alexandra, namely Alexandra High School and Bovet Primary School, have been twinned with Sandown High School and Lyndhurst Primary School, respectively. The direct benefit derived from the twinning experience involves:

- (a) The general improvement of the performance of township schools as a consequence of the improvement in the basic infrastructure at the school;
- (b) Making schools clean and safe;
- (c) Harnessing ICT to build the classroom of the future;
- (d) Optimising the effective use of resources; and
- (e) GDE line functions providing the required capacity building support on the roles and responsibilities relating to governance.

5.5.50.2 **Schools feeder zones and how it can assist learners in Alexandra**

5.5.50.2.1 There are 18 public ordinary schools in Alexandra, as per the distribution of schools map submitted by GDE to the investigation team, which are allocated in a total geographical area that consists of 6.3 square kilometres.

5.5.50.2.2 The geographical dimension of Alexandra consist of the following:

- (a) East-West Trajectory that stretches across 3.5 km from 1st Avenue in the East to the Eastern Bypass in the West;
- (b) North-South Trajectory that stretches across 1.8 kilometres from Florence Moposho Street in the North to London Road in the South;
- (c) The widest diagonal (East bank in the north east to Wynberg road in the south west) that is comprised of a total distance of 3.6 km.

5.5.50.2.3 The school feeder zones currently in place in Gauteng attempt to ensure that all learners are accommodated in a school that is within the closest proximity to a learner's home or parents' place of work.

5.5.50.2.4 In the MEC's submission to the investigation team, a list of the feeder zones of the 12 public primary and 6 public secondary schools in Alexandra was provided.

5.5.50.2.5 The MEC further noted that the feeder zones of individual schools across all the areas overlap and this increases the choice open to parents when applying to schools that accommodate the home and/or work address of the parent.

5.5.50.2.6 In terms of the above, there are 6 primary and secondary schools from outside of Alexandra whose feeder zones encompass some parts of Alexandra. The schools are namely, Lyndhurst Primary, Bramley Primary, Rembrandt Park Primary, Glenhazel Primary, Wendywood Primary, Marlboro Gardens Combined, Sandtonview Combined Sandringham High, Wendywood High, North View High and Sandown High.

Issues in Dispute

5.5.51 **Impact of service delivery protest on teaching and learning in Alexandra:**

5.5.51.1 The *Alextotalshutdown* Service Delivery protests during April 2019 was reported by MEC Panyaza Lesufi and Mr Edward Mosuwe: Head of Department: GDE, to have affected schooling in Alexandra in a sense that learners could not be provided with tuition as expected.

5.5.51.2 As a result of the protest or the total shut down in the area that took place on the 3rd of April 2019, school principals and educators could not access school premises as roads were barricaded with burning tyres.

5.5.51.3 The shutdown continued and affected schools on the 4th and 5th of April 2019. On the 8th of April, the Alexandra community marched to CoJ Regional Offices (Region E) in Sandton.

5.5.51.4 The protest of the 8th of April affected the entire schooling week as there were sporadic incidents of school disruption which were reported. By the 11th of April 2019, the learners in Alexandra had lost almost eight (8) schooling days due to the protests.

5.5.52 **Given the number of schooling days lost, GDE put the following measures in place to mitigate the protest action:**

5.5.52.1 The MEC submitted that, the district office requested extra funding from Sci-Bio to have additional Secondary School Improvement Programme (SSIP) classes which were conducted on Saturdays and Sundays for grade 12 learners.

5.5.52.2 The programme was different from the other SSIP sites in Johannesburg East (JE) District.

- 5.5.52.3 The classes were held at Minerva and Kwabhekilanga High Schools. The dates for special SSIP's were from the 4th to 26th of May 2019. Minerva catered for their own learners and learners from Realogile and Eastbank high schools, Kwabhekilanga catered for Alex high school.
- 5.5.52.4 Learners from the surrounding suburban's schools who reside in Alexandra but who attended classes at Northview, Sandtonview and Sandringham High Schools were also accommodated in the programme.
- 5.5.52.5 For all primary school learners and learners in grade 8-11, the GDE engaged with schools to provide dedicated afternoon classes. This was done following communication undertaken by schools with parents.
- 5.5.52.6 According to the MEC, the ORT-SA³⁵, which is GDE's partner, came on board and conducted extra classes for grade 12s in the afternoons. They had a programme where each day of the week a different school was visited and taken through an intensive mathematics and science programme.

Application of the relevant legal prescripts:

- 5.5.53 Section 29(1)(a) of the Constitution of South Africa states that:
“Everyone has the right to a basic education, including adult basic education”.
- 5.5.54 Section 29(1)(b) states that:
“Everyone has the right to further education, which the state, through reasonable measures, must make progressively available and accessible”.

³⁵ Non-profit developmental organisation which trains and support teachers in disadvantaged communities in South Africa.

- 5.5.55 Section 29(2) provides for the right of everyone to receive education in the official language of their choice in public educational institutions where it is reasonably practicable.
- 5.5.56 Section 29(3) and (4) states that everyone has the right to establish and maintain education institutions at their own expense and provides guidance around how this is to be carried out.
- 5.5.57 In terms of Section 3(3) of South African Schools Act,³⁶ (SASA) every Member of the Executive Council must ensure that there are enough school places so that every child who resides in his or her province can attend school as required by subsections (1) and (2).
- 5.5.58 The above creates a legal obligation for the MEC of Education in Gauteng to ensure that there are enough school places so that every child who resides in his or her province and in this Alexandra in particular.

Conclusion

- 5.5.59 Section 29(1)(a) is an unqualified socio-economic right and section 29(1)(b) is qualified. The unqualified nature of the basic right to education means that it is an immediately enforceable right and therefore the obligation is on the state to ensure the realisation thereof.
- 5.5.60 From the evidence gathered by the Public Protector investigation team during inspections *in loco* and from submissions received from GDE, it appears that the schooling infrastructure as well as education programmes in Alexandra are delivered and remains sufficiently functional so that every child who lives in Alexandra can attend school as required by the Constitution and the SASA.

³⁶ Act 84 of 1996.

5.6 Whether the total administration of the Alexandra Renewal Project (ARP) accords with the duties imposed on it by the Constitution and the applicable law, if not whether such failure amounts to maladministration and improper conduct.

Common Cause issues

5.6.35 The CoJ and the GDHS funded 83% of the ARP as confirmed in the AGSA's submission to the investigation team. The balance was funded by the Human Settlement Fund, the Municipal Infrastructure Grant, the Gauteng Department of Transport and the Gauteng Department of Economic Development.

5.6.36 Various service providers were appointed under the ARP and rendered different services, such as the building of RDP houses, roads, schools, a fire station, etc.

5.6.37 Amongst the few identified service providers appointed under the ARP were the following companies, as furnished by Mr Musetha and supplemented by Group Forensic Investigation Services (GFIS):

- (a) Shuma Construction
- (b) BVI Consulting
- (c) Motheo Construction
- (d) Bagale Consulting
- (e) Calibre Consulting
- (f) XCF Moditi Consulting
- (g) Boxani Re-matla JV
- (h) Welfare Project
- (i) Bahlodi Consultants
- (j) Marlboro South Housing
- (k) Makhene and Associates
- (l) Xaba Civils
- (m) Grinaker LTA Building inland

- (n) Bakgatla Security
- (o) Ka-Lethabo Trading 74 CC
- (p) Bongani Ka Lethabo Security Services CC
- (q) Alexandra Social Housing Company (Pty) Ltd
- (r) SEMAG Housing Corporation (Pty) Ltd
- (s) Alexandra Social Housing Trust
- (t) Nicor IT Consulting (Pty) Ltd (Payments made to them by ASHOT)
- (u) Royal Yard Investments (Pty) Ltd (Payments made to them by ASHOT in terms of an agreement signed in 2005. Molelwane, Geoff Makhubo is part of the consortium)

5.6.38 On 15 April 2020, CoJ appointed a private forensic law firm: Madhlopa Thenga Incorporated Attorneys to conduct a forensic investigation on the ARP for the period from 2001 to 2015.

5.6.39 The scope of the investigation by Madhlopa Thenga Incorporated Attorneys, as mandated by the CoJ, was highlighted to the investigation team by General Shadrack Sibiya (Gen Sibiya): The Head of the CoJ's GFIS as being the following:

- (a) Determine if the ARP was implemented in accordance with the approved business plan and budgets;
- (b) Determine if the ARP funds spent were budgeted for;
- (c) Review material ARP related procurement awards and all variations in scope to determine if these were procedurally and lawfully done;
- (d) Determine if value was received for ARP funds spent;
- (e) Determine if ARP infrastructure is being used as intended and is/ has been maintained;
- (f) Determine if the relevant legislation and policies and procedures were complied with e.g. MFMA, the CoJ and JDA's procurement policies and procedures and delegations of authority;
- (g) Determine if all reasonable steps were taken to secure ARP

- land, buildings and other related assets;
- (h) Conduct an “as is assessment” of all ARP Projects to determine existence, ownership, possession and physical condition;
 - (i) Determine if the ARP housing allocations were conducted in a manner free of political or other influence and fraud/corruption and in accordance with laws, policy and procedures, as applicable;
 - (j) Determine if funds were received where the CoJ/Province was entitled to rental or property sale proceeds, respectively;
 - (k) Conduct a high-level review of the ARP related land restitution matter to determine the extent to which the interdict obtained retarded and/or halted the implementation of ARP projects;
 - (l) Conduct full background check and relationship analysis in respect of all related parties;
 - (m) Conduct lifestyle audits of officials, suppliers and third parties suspected to be involved with any irregularities;
 - (n) Investigate allegations of nepotism, cronyism, fraud and corruption;
 - (o) Consider the necessity to forensically image and analyse computers and/or mobile devices;
 - (p) Cooperate with the law enforcement agencies and conduct surveillance and sting operations, if and when required;
 - (q) Provide a comprehensive forensic report to the CoJ which sets out findings, conclusions and recommendations; and
 - (r) Provide litigation support including testimony in any disciplinary, civil and criminal action.

Issues in Dispute

5.6.40 A submission made by the Auditor-General of South Africa (AGSA) to the investigation team on 27 July 2019, highlighted the various gaps when auditing the ARP:

5.6.40.1 In assessing the implementation of the ARP as per AGSA's report provided to the Public Protector investigation team, the following Research Questions were supposed to be addressed :

	Researchable questions
Planning	Is the planning of the urban renewal programme adequate?
Implementation	Are the urban renewal projects being implemented according to the initial scope of work?
Access to basic infrastructure	Has the urban renewal programme succeeded in ensuring that communities have sustained access to basic infrastructure such as bulk water and sanitation services, as well as housing and social amenities?
Supply chain	Were the proper supply chain processes followed?

5.6.40.2 Project budget and expenditure

5.6.40.2.1 According to AGSA's submission, the ARP budget was initially estimated at **R 1.3 billion**, intended to be over a seven (7) year period from 2001 to 2007.

5.6.40.2.2 The project was thereafter extended to 2010 and extended again indefinitely. AGSA indicated that, according to the report of the City of Johannesburg Mayoral Committee, the total expenditure for the ARP as at 2012-13 was **R 2, 2 billion** as per the table below:

5.6.40.3 Government institutions that have provided funds for the Alexandra Renewal Project:

Institution	Expenditure for 2001-02 to 2012-13
Gauteng Department of Human Settlements	R1, 381 billion
City of Johannesburg	R 444 million
Human Settlement Fund (2001-2005)	R 88 million
Municipal Infrastructure Grant CMIP	R 173 million
Gauteng Department of Transport	R 109 million
Gauteng Department of Economic Development	R 15 million
Total expenditure	R2,21 billion

5.6.40.3.1 Due to the limitation of the scope, the AGSA could not answer all the researchable questions conclusively for the ARP.

5.6.40.3.2 AGSA audit procedures were limited to electrification and some building projects. AGSA did not have sufficient information to audit water and sanitation, road and storm water projects, and the GDHS procurement processes.

5.6.40.4 Planning:

5.6.40.4.1 Due to the lack of documents for auditing, AGSA could NOT conclude on the researchable questions as set out in the above Planning.

5.6.40.4.2 AGSA indicated in its submission to the investigation team that the original and approved business plan could not be provided by the GDHS to AGSA. The auditors relied on individual business plans and other documents that were made available by the project team.

5.6.40.4.3 AGSA indicated that there was poor project planning and a lack of documentation to assess the planning of the project. In addition, the individual projects within the ARP were not effectively implemented and monitored.

5.6.40.4.4 The funding for the ARP was initially ring-fenced and separated from the regional budget. (i.e. provincial and CoJ budgets); however, as from the 2013-14 financial year, this budget also became part of the regional budget i.e. it was no longer ring-fenced. The required budget was estimated at R1.3 billion at the inception of the project in 2001.

5.6.40.4.5 Due the lack of documentation, the AGSA could not confirm that the R1, 3 billion (nor the R2, 2 billion expenditure) was exclusively used for the project.

5.6.40.5 Implementation of the ARP:

5.6.40.5.1 AGSA further highlighted in its submission to the investigation team that due to funding constraints, the ARP central urban renewal project office was disbanded in 2011. This left the regional heads, who took over the responsibility of the ARP, with limited resources. Without a central budget, the ARP had to source funding from the respective municipalities. As a result, some planned project activities were not implemented.

5.6.40.5.2 The ARP had no project implementation system and vital project documentation could not be produced for audit. This included contracts, progress reports and variation orders. Without these documents, AGSA was unable to audit the water and sanitation, roads and storm water projects. Also, this made it difficult to assess the cost of the projects.

5.6.40.6 Access to Basic Infrastructure:

5.6.40.6.1 Without appropriate documentation as mentioned above, the only area the AGSA audit could comment on were electrification and some housing

projects. With regards to the electrification projects, concerns were raised about congestion in the urban area. These conditions led to instances of up to 12 electrical connections at one source and it posed the risk of instability in the electrical supply, electrocution, high maintenance costs and challenges to the overall sustainability of the infrastructure.

- 5.6.40.6.2 With regard to the housing projects, not all project- related information was provided. This made it difficult for the audit team to evaluate the work and determine whether it was effectively managed or not. During the visits to the project, the AGSA noted quality issues, however it was unable to determine whether this resulted from poor workmanship and failure to adhere to specifications or from a lack of maintenance after the buildings were handed over to the municipality and beneficiaries.

5.6.40.7 Supply Chain Management:

- 5.6.40.7.1 Without the appropriate supporting documentation, AGSA was unable to audit procurement within the ARP. As such, AGSA could not conclude on supply chain management processes.

5.6.40.8 Budget of R 2, 2 Billion

- 5.6.40.8.1 With regards to whether the alleged **R1,3 billion budget** allocated to (or the **R 2.2 billion expenditure**) against the ARP was utilised for the purpose it was intended, the AGSA audit could not conclude due to the scope limitation as explained above.

5.6.41 Submission by Group Forensic Investigation Services of COJ

- 5.6.41.1 On 06 June 2019, the CoJ's Group Forensic and Investigation Services (GFIS) was summoned by the joint investigation team to make its submission regarding its forensic investigation into the administration of

the ARP. GFIS was represented by its Unit Head: General Shadrack Sibiya.

- 5.6.41.2 General Shadrack Sibiya submitted that during March 2019, service delivery protests occurred in Alexandra which resulted in the then CoJ Executive Mayor; Mr Herman Mashaba, requesting the CoJ GFIS to conduct a forensic investigation into the ARP in order to submit a report with findings, conclusions and recommendations.
- 5.6.41.3 It was further indicated by General Shadrack Sibiya that due to the extensive multifaceted investigation spanning 18 years, GFIS through the CoJ Group Legal and Contracts, appointed an external law firm on 15 April 2019 to conduct this forensic investigation on the entire ARP.
- 5.6.41.4 On 11 September 2020, further engagements were made with GFIS and further confirmation was made by General Shadrack Sibiya that the forensic investigation by private forensic law firm of Messrs. Madhlopa and Thenga Incorporated Attorneys was still ongoing. Gen. Shadrack Sibiya indicated that GFIS has managed to confiscate about four hundred and fifty (450) boxes³⁷ of documentary evidence related to the ARP.
- 5.6.41.5 According to Gen. Sibiya, these documents were seized from old ARP offices in Sandton strewn all over the basement parking area and that these documents are still incomplete as some are alleged to have been stolen and some burnt at the Bank of Lisbon Building situated at 37 Sauer Street in the Johannesburg, which caught fire on 05 September 2018.
- 5.6.41.6 GFIS committed to assist the joint investigation team further and to provide any documentary evidence related to the ARP in support of any relevant statements of fact made, where appropriate.
- 5.6.41.7 On 11 September 2020, GFIS as assisted by Madhlopa and Thenga Incorporated Attorneys, went further to give a high level presentation of

³⁷ These documents can be quantified to an amount of eight hundred and ninety thousand pages or scanned copies/images.

an overview of its preliminary findings on ARP forensic investigation, which highlighted amongst other things the following:

- (a) Evidence of criminality, conflicts of interest on the part of certain service providers,
- (b) That the ARP management was marked by procurement fraud, post facto approvals, irregular awards, advance payments, unauthorised expenditure, fruitless and wasteful expenditure of up to R40 million;
- (c) Projects not optimally managed thereby leading to poor work quality, late delivery of projects, project overruns; and
- (d) Tender and contractual disputes where contractors defaulted, filed for insolvency, contract terminated and court challenges, etc.

Application of the relevant legal prescripts

5.6.42 Section 217(1) of the Constitution is of relevance for public procurement regulation and as such is quoted:

“When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”

5.6.43 The Public Administration Management Act³⁸ (PAMA) seeks to promote the values and principles governing public administration referred to in section 195(1) of the Constitution to regulate conducting business with the state, amongst other things.

³⁸ Act 11 of 2014.

5.6.44 Section 8(1) of PAMA provides that an employee includes persons contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality.

5.6.45 Section 8(2) of PAMA stipulates the following:

An employee may not –

- (a) conduct business with the State; or*
- (b) be a director of a public or private company conducting business with the State.*

5.6.46 Section 9 of PAMA provides that-

- (1) “an employee must, in the prescribed manner, disclose to the relevant head of the institution all his or her financial interests and the financial interests of his or her spouse and a person living with that person as if they were married to each other, including all-*
 - (a) shares and other financial interests in an entity*
 - (b) sponsorships*
 - (c) sifts above the prescribed value, other than gifts received from a family member;*
 - (d) benefits; and*
 - (e) immovable property.*
- (2) Failure by an employee to comply with the obligation referred to in subsection (1) constitutes misconduct”*

5.6.47 Section 40(1)(a) of the Public Finance Management Act³⁹ (PFMA) states that the accounting officer for a department, trading entity or constitutional institution—:

³⁹ Act 1 of 1999.

- (a) *“Must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards”*
- (b) *must prepare financial statements for each financial year in accordance with generally recognized accounting practice;*
- (c) *must submit those financial statements within two months after the end of the financial year to—*
 - (i) *the Auditor-General for auditing; and*
 - (ii) *the relevant treasury to enable that treasury to prepare consolidated consolidated financial statements in terms of section 8 or 19”.*

5.6.48 Section 38(1) of PFMA states that:

- “The accounting officer for a department, trading entity or constitutional institution—*
- (a) *must ensure that that department, trading entity or constitutional institution has and maintains—*
 - (i) *.....;*
 - (ii) *.....;*
 - (ii) *an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective”*

5.6.49 Clause 16.6.3 of the Treasury Regulations of 2001 states that:

- “The procurement procedure must include –*
- (a) *an open and transparent pre-qualification process;*
 - (b) *a competitive bidding process in which only pre-qualified organisations may participate; and criteria for the evaluation of bids to identify the bid that represents the best value for money”.*

5.6.50 Section 111 of the MFMA calls for municipalities to develop their own SCM policies and provides that:

“Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part”.

5.6.51 In pursuance of section 111 of the MFMA, CoJ adopted its own SCM Policy for the CoJ.⁴⁰

5.6.52 Clause 4 of the COJ's SCM Policy ascribes to a procurement system which:

- (a) *“Is fair, equitable, transparent, competitive and cost effective in terms of Section 217 of the Constitution of South Africa No 108 of 1996;*
- (b) *Enhances uniformity in Supply Chain Management systems between organs of state in all spheres;*
- (c) *.....;*
- (d) *Is consistent with the enterprise development programmes as approved by the City which are not limited to EPWP, Indigency policy, job pathway and other policies and programmes that seeks to aggressively advance the empowerment of the SMMEs and previously disadvantaged communities;*
- (e) *.....;*
- (f) *Is consistent with the Broad Based Black Economic Empowerment Act 53 of 2000 and any Codes promulgated thereunder in the Government Gazette; and*
- (g) *Is consistent with the Preferential Procurement Policy Framework Act 5 of 2000 and its Regulations as promulgated”.*

⁴⁰ Revision 002 July 2009.

5.6.53 Clause 6.3.11 of the GDHS's SCM Policy⁴¹ regulates contracts and states amongst other things that:

"All original procurement contracts will be stored in a centralised and secured area within SCM".

5.6.54 Section 18 of NARSSAA provides that the Minister⁴² may make Regulations as to any matter which in terms of this Act is required or permitted to be prescribed or done by regulation, and, generally, with reference to any matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act. The following Regulation is amongst those contemplated herein:

5.6.55 Regulation 10 of the Management and Care of Record issued in terms of NARSSAA⁴³ provides as follows:

"(1) the head of a governmental body shall be responsible for ensuring that all records of such body –

*(a) Receive appropriate physical care,
(b) Are protected by appropriate security measures; and
(c) Are managed in terms of standing orders of that body and other relevant legislation.*

(2) The head of a governmental body shall supply the National Archivist with such information related to the management of records under his/her control as the National Archivist may require.

(3) The head of a governmental body shall comply with all directives and instructions issued by the National Archivist pertaining to the management and care of public records.

⁴¹ Endorsed on 22 December 2004 by Chief Director Corporate and Financial Services: Sam Jafta.

⁴² Minister of Arts and Culture.

⁴³ GNR.1458 of 20 November 2002.

(4)

(5) *The transfer to an archives repository, destruction or other disposal of such records shall be effected in terms of a disposal authority”.*

5.6.56 Section 16 (a) and (b) of NARSSAA provides for offences and penalties in connection with violations of this Act and stipulates *inter alia*:

“(1) Any person who—

(a) wilfully damages any public or non-public record in the control of a governmental body; or

(b) otherwise than in accordance with this Act or any other law, removes, destroys or erases such record, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years or both such fine and imprisonment”.

5.6.57 The GDHS and is bound to observe the provisions of the above legal prescripts, amongst other things to keep safe the records and documents related to the ARP procurement.

Conclusions

5.6.58 As can be seen, section 217(1) of the Constitution lays down the core constitutional requirements for public procurement in South Africa, neatly captured in the five principles of fairness, equity, transparency competitiveness and cost-effectiveness. These form the basis for public procurement in South Africa.

5.6.59 The procurement contracts and financial records relating to payments of service providers in this matter should have been construed as a public record with enduring value which should have been kept and preserved

by the GDHS or duly transferred to the national archive repository for future access.

5.6.60 Submissions made to the investigation team show that the GDHS did not properly keep financial records regarding original business plans, contracts, procurement, financial expenditure or payments made to construction companies or service providers appointed under the ARP.

5.6.61 As a result of the lack or loss of such important records, a full audit could not be done by AGSA, and similarly this joint investigation could not assess the fairness of the procurement processes followed.

5.6.62 However, Madhlopa and Thenga Incorporated Attorneys have already been appointed by the CoJ to conduct a forensic investigation on the entire administration of the ARP, using the available documents which GFIS has seized from the old offices of the ARP. This investigation is currently ongoing.

6 FINDINGS

Having regard to the evidence, and the regulatory framework setting the standard that should have been upheld by the CoJ and the impact on the complainant, the Public Protector makes the following findings against the relevant organs of state:

6.1 **Regarding whether the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality (CoJ) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**

6.1.35 The allegation that the management and delivery of bulk municipal services in Alexandra by the City of Johannesburg Metropolitan Municipality (CoJ) does not accord with the duties imposed on it by the Constitution and the applicable law, is substantiated.

6.1.36 Evidence gathered during the investigation, including the observations made by the investigation team during an inspection *in loco* found that CoJ has not provided sufficient municipal services to the community of Alexandra in a sustainable manner. The following service delivery deficiencies were recorded:

- (a) Inadequate housing which has resulted in widespread land invasion and property encroachment;
- (b) Failure or undue delay to issue title deeds to lawful owners of existing houses, overflowing manholes, blocked drains and unpleasant stench in hostels;
- (c) Potholes in the streets due to a lack of maintenance;
- (d) A general lack of maintenance and degradation of buildings in Hostels which has resulted in damaged plumbing systems, poor illumination and unhygienic conditions;
- (e) Uncollected refuse or waste lie strewn along walkways and corridors within the informal settlements;
- (f) Heavily polluted surface water on the Jukskei River due to direct uncontrolled deposit of waste and raw sewer waste into the stream;
- (g) Chemical toilets shared by no less than seven families and are located within a radius of about five hundred metres away from each other;
- (h) Chemical toilets are only cleaned or drained once a week by Pikitup.

6.1.37 However, it is noted and fully acknowledged the practical and significant steps taken by CoJ as is evident from its **Implementation Baseline Plan** to commit and continue to endeavour meet its obligations in terms of sections 152(1), 24,195(1)(e)(f) and 237 of the Constitution, section 4(2) of the Local Government and Municipal Systems Act, section 19(1) of

National Water Act and section 2 of the National Environmental Management Act.

6.1.38 It is further acknowledged that most of the adverse findings in the interim report are already mitigated as most projects are already completed while others are still underway.

6.1.39 It is incumbent on CoJ to ensure consistency in the delivery of the services as indicated in the **Implementation Baseline Plan** provided to the Public Protector in order to meet its obligations in terms of sections 152(1), 24,195(1)(e)(f) and 237 of the Constitution, section 4(2) of the Local Government and Municipal Systems Act, section 19(1) of National Water Act and section 2 of the National Environmental Management Act with a view to addressing the municipal service concerns highlighted in this investigation.

6.1.40 The conduct of the CoJ accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act, however it is to a large extent mitigated by projects that are already completed as per furnished Implementation Baseline Plan.

6.2 **Regarding whether the provision of housing in Alexandra by the Gauteng Department of Human Settlement (GDHS) and CoJ accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**

6.2.35 The allegation that the provision of housing in Alexandra by the Gauteng Department of Human Settlements (GDHS) and the CoJ does not accord with the duties imposed on it by the Constitution and the applicable law is substantiated.

6.2.36 Even though it was noted during the investigation that significant strides have been made for the provision of housing for the community of Alexandra. There are still some challenges as identified by the community. In essence, they stated that the provision of housing remains woefully inadequate and manifests itself in the following socio-economic challenges within Alexandra:

- (a) The ever mushrooming of illegal structures on every open piece of land, demolitions, illegal evictions and congestions;
- (b) Overcrowding in the hostels and lack of maintenance;
- (c) Tensions in the community and dissatisfaction by those who have been on the housing list for a long time but are still on waiting for houses;
- (d) Rise of vigilantism and criminal groups perpetrated by alleged allocation of houses to foreign nationals and collection of rentals by councillors;
- (e) Illegal occupation of RDP houses;
- (f) Eviction and/ or Demolition Court Orders which are not executed;
- (g) Failure or undue delay to issue qualifying residents of Alexandra with title deed documents etc; and
- (i) Trust deficit arising from the lack of progress on the settlement of the land claimants in Alexandra since the Court interdict was obtained in 2004. The Alexandra statement of Intent which was signed by some parties in June 2016, is still not a legally binding agreement nor has funding been committed for the statement of land claims

6.2.37 The GDHS has accordingly not placed sufficient measures in place to meet its obligations in terms of section 26 of Constitution, section 2 and 9 of the Housing Act; National Housing Code, section 6(1)(2)(a), section 117

of the Local Government and Municipal Systems Act and section 16 of the Deeds Registries Amendment Act.

6.2.38 The conduct of the GDHS and CoJ accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.

6.3 **Regarding whether the enforcement of the law in Alexandra by the South African Police Services (SAPS) and Johannesburg Metro Police Department (JMPD) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**

6.3.35 The allegation that the enforcement of the law in Alexandra by the South African Police Services (SAPS) and the Johannesburg Metro Police Department (JMPD) does not accord with the duties imposed on it by the Constitution and the applicable law, is substantiated.

6.3.36 The submission by SAPS indicates a marked decline in major crimes against persons such as murder, rape, assault, robberies and other contact crimes, however crimes against property as well as enforcement of by-laws within Alexandra remains prevalent and can be observed in the following manifestations and this was not disputed by General Sitole or any of the parties interviewed during the investigation:

- (i) Lawlessness in a the form of illegal occupation of land,
- (j) Encroachment of pavements,
- (k) Informal trading,
- (l) illegal connection of electricity,
- (m) illegal dumping of waste,
- (n) Uncontrolled influx of illegal immigrants,
- (o) Malicious damage of state property and infrastructure,
- (p) lack of enforcement of traffic laws, etc,

- 6.3.37 The above identified gaps in the area of law enforcement within Alexandra all fortify the allegations that the SAPS as well as the JMPD/CoJ have not taken adequate measures to prevent, combat and investigate crime or to maintain law and order in Alexandra, particularly where by-laws are concerned. It is evident that further work still needs to be done to address the issue of law enforcement in Alexandra.
- 6.3.38 Both the SAPS and the JMPD have not placed sufficient measures in place to address the inadequacies identified in law enforcement in Alexandra.
- 6.3.39 The conduct of the SAPS and JMPD/CoJ accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.
- 6.4 **Regarding whether the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) accords with the duties imposed on it by the Constitution and the applicable law, and if not whether such failure amounts to maladministration and improper conduct.**
- 6.4.35 The allegation that the provision of social services in Alexandra by the Gauteng Department of Social Development (GDSD) does not accord with the duties imposed by the Constitution and the applicable law, is substantiated.
- 6.4.36 The investigation has revealed inadequate provision of social welfare services to the people of Alexandra.
- 6.4.37 The GDSD failed to implement an adequate social relief of distress programme and a Social Welfare Centre(s) or social infrastructure within Alexandra for vulnerable people who are in need of social services. It is however noted that the GDSD is in the process of procuring office space for the purpose of establishing a service amenities for GDSD.

- 6.4.38 Further the concerns raised by the community of Alexandra during engagements with them that there are no referral services in respect of illegal immigrants to the Department of Home Affairs (DHA); referral services in respect of housing; sufficient food relief and psycho-social support for the victims of winter shack fires and victims of Flooding Disaster; sufficient substance abuse and crime awareness programs or knowledge of such programmes if available and also; places of care such as Child & Youth Care Centres, Home Based Care Facilities, and Older Persons Residential Care facilities for the vulnerable members of the Alexandra community have been noted.
- 6.4.39 Failure to provide or enable access to adequate social services by the people of Alexandra does not promote the objects of section 27 of the Constitution and the WPSD.
- 6.4.40 However, it is also noted and fully acknowledged the practical steps taken as can be gleaned from **GSDS Infrastructure Implementation Plan for Alexandra** which is an unequivocal commitment and a total endeavour to meet its obligations in terms of section 27 of the Constitution as well as in terms of other applicable legislative mandates.
- 6.4.41 It is further acknowledged that some of the adverse findings in the interim report are to an extent mitigated as GSDS has already taken steps to address social challenges faced by people of Alexandra while other measures are still underway as **GSDS Infrastructure Implementation Plan for Alexandra** supplied to the Public Protector investigating team.
- 6.4.42 It is therefore incumbent on GSDS to ensure completion of the all deliverables indicated in the **GSDS Infrastructure Implementation Plan for Alexandra** provided to the Public Protector in order to fully meet its obligations in terms of section 27 of the Constitution with a view to addressing the social service concerns highlighted in this investigation.
- 6.4.43 The conduct of the GSDS accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in

terms of section 6(4) (a)(i) of the Public Protector Act, however it is to a large extent mitigated by commitments made under **GDS D Infrastructure Implementation Plan for Alexandra** furnished to the Public Protector on 17 May 2021.

6.5 Regarding whether the provision of education in Alexandra by the Gauteng Department of Education (GDE) accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.

6.5.35 The allegation that the provision of education in Alexandra by the Gauteng Department of Education (GDE) does not accord with the duties imposed by the Constitution and the applicable law, is not substantiated.

6.5.36 From the evidence gathered by the investigation team during inspection in loco and submissions received from GDE, it appears that the schooling infrastructure or facilities in Alexandra are reasonably in place.

6.5.37 Evidence further revealed that sufficient and adequate educational programmes, additional or alternative classes were put in place to avert the negative effect of the civil protests on children's school attendance and access to basic education as required by Constitution and South African Schools Act.

6.5.38 The conduct of the GDE does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.

- 6.6 **Regarding whether the total administration of the ARP accords with the duties imposed on it by the Constitution and the applicable law, and if not, whether such failure amounts to maladministration and improper conduct.**
- 6.6.35 The allegation that the total administration of the ARP does not accord with the duties imposed by the Constitution and the applicable law, could not be determined due to the unavailability of documents related to the ARP.
- 6.6.36 The GDHS did not avail records in connection with financial, procurement, business plans, maps, drawings, contracts, list of service providers, and expenditure incurred or undertaken under the ARP due alleged seizure of such records by CoJ's forensic investigators.
- 6.6.37 As a result of the lack or absence of such records, no audit could be done by the office of the Auditor General of South Africa as well as by this Joint Investigation Team, to determine the just and fairness of the procurement processes and the value for money spent under the ARP.
- 6.6.38 However, Madhlopa and Thenga Incorporated Attorneys has already been appointed by CoJ to conduct a forensic investigation on the entire administration of ARP. As a result, there would be little value to derive from traversing those issues again, especially from a resources perspective.
- 6.6.39 Once the forensic report in connection with the ARP is finalised, such will be shared with all relevant law enforcement agencies.
- 6.6.40 As a result, a determination could not be made with regards to impropriety as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a)(i) of the Public Protector Act.

7 REMEDIAL ACTION

The appropriate remedial action which I am taking in pursuit of section 182(1)(c) of the Constitution, is the following:

The City Manager of CoJ to:

- 7.1 Within sixty (60) working days of the date of this report, table a copy thereof before the Municipal Council. The Municipal Council to discuss, adopt and pass a resolution thereon indicating steps/measures to be taken by CoJ to address shortcomings on municipal services in Alexandra in line with its legislative powers.
- 7.2 Within sixty (60) working days of the adoption of this report by the Council, submit detailed **Project Implementation Plan and/or Project Close-Out, Completion and Final Account** to the Public Protector indicating steps/measures to be taken or already taken to act upon the following municipal service delivery issues in Alexandra:
- a) Fencing and maintenance of the Alexandra cemetery;
 - b) Maintenance of Helen Joseph Women's Hostel and Madala Hostel;
 - c) Decanting or de-densification of Alexandra;
 - d) Refuse removal and identification and cleaning of illegal dumping areas in Alexandra;
 - e) Addressing overflowing manholes, grey surface water;
 - f) Enforcement of the By-Laws listed above by the JMPD; and the operational plan should include any collaboration with other law enforcement agencies, including SAPS;
 - g) Dealing with illegal structures encroaching on municipal land and government structures; and
 - h) Maintenance of roads.

- 7.3 Within thirty (30) working days of the date of this report, submit a Project Plan to the Public Protector for ARP forensic investigation which is being conducted by GFIS and Madhlopa and Thenga Incorporated Attorneys. The Public Protector can be consulted to assist where necessary. Furthermore, within thirty (30) working days of the date of this report, the CoJ submit to the Public Protector a final copy of the ARP forensic report.

The National Commissioner of SAPS:

- 7.4 Within sixty (60) working days of the date of this report, engage with JMPD/CoJ to draw up an operational plan relating to a *supportive role* by SAPS in enforcement of the By-Laws in Alexandra. The plan should include any collaboration and/or support that would be made by SAPS to JMPD in enforcing the By-Laws in Alexandra.

The HoD of GDHS to:

- 7.5 Within sixty (60) working days of the date of the final report, submit detailed project implementation plan relating to identified RDP housing needs in Alexandra and criteria to be used when identifying qualifying and preferential beneficiaries.

The HoD of GDSD to:

- 7.6 Within sixty (60) working days of the date of this report submit a detailed **GDSD Infrastructure Implementation Plan for Alexandra** with clear dates, turn around periods, targets and deliverables indicating how renovation and rehabilitation of the identified current houses to accommodate the proposed social amenities and/or social service centre(s) in Alexandra would be undertaken.

The appropriate recommendation which the Public Protector is making in pursuit of section 6(4)(c)(ii) of the Public Protector Act to the Premier of Gauteng is as follows:

7.7 Request the President to issue a Proclamation in terms of section 2(1) of the Special Investigating Units and Special Tribunals Act, 1996 to investigate amongst others the following allegations in relation to ARP:

- (a) procurement fraud and/or irregularities,
- (b) post facto approvals, irregular awards, advance payments,
- (c) Conflict of interests,
- (d) unauthorised expenditure, fruitless and wasteful expenditure and any other form of maladministration and/or misappropriation of public funds and
- (f) recovery of public funds where appropriate.

7.8 To facilitate an overall a multidisciplinary approach and collaboration between provincial and a local sphere of government for an ultimate realisation and improvement of service delivery issues in Alexandra.

The appropriate recommendation in pursuit of section 6(4)(c)(ii) of the Public Protector Act to the Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) is as follows:

7.9 The Public Protector, in terms of section 6 (4) (c) (ii) of the Public Protector Act, refer to the Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) this matter for consideration of criminal investigation where it appears crimes have been committed in relation to ARP.

8 MONITORING

The City Manager of the CoJ, HoD for GDoHS, HoD for GDoSD, National Commissioner of SAPS must all, submit an Implementation Plan to the Public Protector within thirty (30) working days from the date of receipt of

this report indicating how the remedial action referred to in paragraph 7 above will be implemented to ensure full compliance with outstanding projects.

It is brought to your attention that in line with the Constitutional Court Judgement in the matter of **Economic Freedom Fighters v Speaker of the national Assembly and other; Democratic Alliance v Speaker of the national Assembly and others [2016]ZACC 11**, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the City Manager of the CoJ, HoD for GDoHS, HoD for GDoSD and National Commissioner of SAPS, unless they obtain an *Interim Interdict* or *Court Order* directing otherwise.



ADV. BUSISIWE MKHWEBANE
THE PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 09/07/2021

*Assisted by: VX Dlamini, Provincial Representative: EC
Provincial Office and PM Moloji, Senior Investigator: Gauteng
Provincial Office.*