

In the matter between:

JANE SITHOLE ON BEHALF OF THE DEMOCRATIC

ALLIANCE IN MPUMALANGA

COMPLAINANT

And

MSUKALIGWA LOCAL MUNICIPALITY

RESPONDENT

FINAL INVESTIGATIVE REPORT

1. INTRODUCTION

- 1.1. This is a report on an investigation conducted by the South African Human Rights Commission ("**Commission**") into water and housing access challenges at Msukaligwa Local Municipality ("**Municipality**"). The investigation follows the receipt of a complaint from Ms Jane Sithole on behalf of the Democratic Alliance in the Mpumalanga Province.
- 1.2. In the complaint, it was alleged that residents in several communities within the jurisdiction of the Municipality are without water or have inadequate access to water, whilst residents in some of those communities have been waiting for a number of years to be provided with adequate housing.

2. PARTIES

- 2.1. The Complainant in this matter is Ms Jane Sithole, a member of the Mpumalanga Provincial Legislature and the Leader of the Democratic Alliance in the Mpumalanga Province. She lodged the Complainant in her capacity as the Leader of the Democratic Alliance in Mpumalanga.
- 2.2. The Respondent in this matter is the Municipality, a public entity established in terms of the provisions of the Local Government Municipal Structures Act 117 of 1998 with its main offices situated at Corner Kerk & Taute Street, Ermelo, 2351.

3. MANDATE OF THE COMMISSION

- 3.1. The Commission is an institution established in terms of section 181 of the Constitution of the Republic of South Africa, 1996 (“**the Constitution**”).
- 3.2. The Commission is specifically required to:
 - 3.2.1. Promote respect for human rights;
 - 3.2.2. Promote the protection, development and attainment of human rights; and
 - 3.2.3. Monitor and assess the observance of human rights in the Republic.
- 3.3. Section 184(2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.
- 3.4. The South African Human Rights Commission Act 40 of 2013 (“**the SAHRC Act**”) provides the enabling framework for the powers of the Commission.
- 3.5. Section 15(6) of the SAHRC Act determines the procedure to be followed in investigating alleged violations of or threats to a fundamental right.

4. BACKGROUND

- 4.1. As indicated above, the Commission received a complaint against the Municipality on 13 February 2019 relating to access to water and housing.
- 4.2. In the complaint, the following specific allegations were made, amongst others:
 - 4.2.1. The residents of Skaapruiz have been without water and basic services for 40 years. They are forced to access water from the same water source as cattle and other animals. In addition, due to there being no allocation of RDP housing to the area since 2002, the residents of Skaapruiz live in mud houses which are not fit for human habitation despite having applied for RDP housing.
 - 4.2.2. The residents of Nyibe have also been without water and other basic services for approximately 30 to 45 years.
 - 4.2.3. Other areas affected by the lack of access to water and other basic services include Thuthukani Farm; Goodehoop Farm; Sheepmoor; Lothair; Enkanini, Wesselton Extension 10; and Chrissiesmeer.
 - 4.2.4. In the 2016/17 Integrated Development Plan (IDP), the Municipality had allocated a budget for the implementation of water projects in Sheepmoor and Skaapruiz but nothing materialised from the projects. On 28 February 2019, however, Council approved a request for condonation in respect of the implementation of the Sheepmoor bulk water treatment project amongst others.

5. PRELIMINARY ASSESSMENT

- 5.1. The Commission's preliminary assessment of the complaint was that the complaint disclosed a *prima facie* violation of the affected communities' rights to have access to adequate housing as enshrined in section 26 of the Constitution, as well as sufficient water as enshrined in section 27(1)(b) of the Constitution.

6. INVESTIGATIVE METHODOLOGY

6.1. This matter was investigated using a combination of the following investigative methodologies:

6.1.1. Corresponding with all the affected parties and in particular providing responsible authorities an opportunity to reply, and to provide the Commission with such information deemed relevant to the investigation by the Commission;

6.1.2. Conducting site inspections; and

6.1.3. Interviewing affected residents and municipal officials.

7. INVESTIGATIVE PROCESS

Initial correspondences with the parties

7.1. An allegation letter was addressed to the Municipality on 25 March 2019.

7.2. In separate responses dated 16 May 2019 and 27 June 2019 respectively, the Municipality responded as follows to the allegations levelled against it:

7.2.1. Insofar as Skaapruiz is concerned:

- a) The Municipality disputed that the residents of Skaapruiz or Jan Hendriksfontein Farm have not received water for the past 40 years.
- b) The Municipality has been providing water to the residents through water tankers on a weekly basis. Water has been provided after it was established, through the assistance of the Gert Sibande District Municipality, that the underground water the residents have historically relied on for personal use was not fit for human consumption.
- c) Jan Hendriksfontein Farm was a mining farm which was abandoned, after which, people created an informal settlement in

the area. The area is therefore privately owned. Given that there were mining activities in the area, it may also be difficult to establish a township in that area, and for the Provincial Department of Human Settlements (“DHS”) to provide houses to residents in the area.

- d) There are other areas that residents of Skaapruiz can be relocated to such as Ermelo Extension 33. Many of the residents had however refused to be relocated.

7.2.2. Insofar as Sheepmoor is concerned:

- a) The Municipality disputed that it is not providing water to the residents of Sheepmoor.
- b) Residents of Sheepmoor are currently supplied with water through a borehole system. The system is, however, not reliable due to various factors such as vandalism and theft of equipment, as well as population growth and insufficient groundwater during dry seasons. To mitigate this challenge, the Municipality supplies water to residents using water tankers on a weekly basis.
- c) As a long term measure for addressing the water challenge in the area, the Municipality has constructed a water purification plant. The purification plant is, however, not yet functional due to lack of bulk water supply, which is being addressed through a bulk water infrastructure project sponsored by the Gert Sibande District Municipality.

7.2.3. Insofar as Lothair and Chrissiesmeer are concerned:

- a) The Municipality disputed that it is not providing water to the residents of Lothair and Chrissiesmeer respectively.
- b) Residents of Lothair and Chrissiesmeer are currently supplied with water through water reticulation infrastructure. Water for the two towns is sourced from three water reservoirs which are adequate to

meet the needs of residents. In cases of emergency, water is supplied to residents using water tankers.

7.2.4. Insofar as Nyibe is concerned:

- a) Water infrastructure was installed in the area and residents are currently accessing water through the water reticulation system.
- b) The Municipality has also entered into an agreement with the owners of the farm, with the view to establishing the farm as a township but the transaction for the sale of the land is yet to be finalised.

7.2.5. Insofar as Thuthukani and Goedehoop Farms are concerned, water is supplied to the residents weekly using water tankers.

7.2.6. Insofar as Enkanini is concerned:

- a) As a township has not yet been established, it may be difficult for the Provincial Department of Human Settlements to provide houses to residents in the area.
- b) No responses were received in respect of the water issue.

7.3. The Complainant was requested to comment on the responses from the Municipality. In her response dated 23 June 2019, she made the following submissions:

7.3.1. She had once again conducted oversight visits in Skaapruiz, Nyibe and Sheepmoor, and found that the Municipality was not providing residents with tanked water services weekly as indicated in its response to the Commission.

7.3.2. The bulk water infrastructure project in Sheepmoor appeared to be progressing at a snail pace.

Site Inspection

7.4. In addition to corresponding with the parties, site inspections were conducted by the Commission on 15 August 2019 and 17 September 2019 respectively. The following sites were visited during the site inspections: Nyibe, Skaapruiz, Enkanini, Sheepmoor, Lothair, Wesselton Ext 10 and Chrissiesmeer. The farms, Thuthukani and Goedehoop could not be located and a site inspection by the Commission could therefore not take place.

7.5. The outcomes of the Commission's site inspections are summarised below:

7.5.1. In respect of Nyibe:

- a) Water standpipes with running water could be observed in each of the households.
- b) Some of the residents interviewed confirmed that water is not an issue in their area. The residents expressed concern that the area was not being formalised, as formalisation of the area would bring with it access to electricity, housing and other basic services. In this regard, they advised that an undertaking had been made in 2006 that their area would be formalised but the undertaking had to date not been fulfilled.
- c) The Commission observed that many of the houses in the area were makeshift mud structures.
- d) At a distance, the Commission observed what appears to be a newly formed informal settlement. The residents confirmed that the informal settlement was a recent development, as evidenced by the glistening corrugated iron structures.

7.5.2. In respect of Skaapruiz:

- a) Two 10 000 litre water tanks could be observed in the area. The residents interviewed advised that these water tanks service the entire community. They further advised that the water tanks are filled only once a week on Sundays and lamented the fact that water

from the water tanks is usually used up by the Tuesday of the same week.

- b) There was no water in the water tanks on the day of the site inspection and residents were observed collecting water from the borehole, which the Municipality had advised is a polluted water source.
- c) It was also noted that many of the households were more than 200 metres away from the two water tanks.
- d) The residents advised that when the borehole water ran out (which happened from time to time), they fetched water from a nearby pond.
- e) Insofar as housing is concerned, mud structures were observed throughout the community.
- f) The residents confirmed that there was once a proposal from the Municipality for them to relocate to a new area but they had refused to be relocated for various reasons. Some residents had refused to be relocated because of their connection to the land as their family is buried in the area, and others indicated that the community into which their relocation was intended by the Municipality was hostile toward them. Others advised that the Municipality had not engaged them to provide reasons why the area they lived in could not be developed into a township. Nor had evidence been provided to substantiate the claim that this area is not suitable for human settlement.

7.5.3. In respect of Wesselton Ext 10:

- a) Newly built government subsidy houses could be observed.
- b) There were also water standpipes with running water observed in various homes.

- c) At a distance, an informal settlement could be observed near a water treatment works in the area. The Commission was, however, advised that the informal settlement is not part of Wesselton Ext 10. The informal settlement also appeared to be new, with many of the corrugated iron structures still glistening. The residents interviewed confirmed this to be the case.

7.5.4. In respect of Nkanini:

- a) Three communal water standpipes with running water could be observed on one of the settlement's main roads. The officials of the Municipality advised that there are other communal standpipes but could not confirm the number or location of these standpipes.
- b) Residents interviewed confirmed that they have had running water from the communal water taps since May 2019. Prior to May 2019, however, there were challenges with water access in the area. Whilst this development is welcomed, on closer observation, it was noted that many of the households in the community were located more than 200 metres from the nearest water source.
- c) The Commission observed that housing in the area consisted of corrugated iron shacks in the main. The officials of the Municipality advised that there had been mining activities in the area and as such, it may be a challenge to formalise the area. However, no geoscience reports were provided to the Commission to substantiate this claim. Residents interviewed indicated that they would be willing to relocate but that they had been overlooked in previous relocations.

7.5.5. In respect of Sheepmoor:

- a) The Commission observed two construction sites which had been allegedly established as part of the bulk water infrastructure project in the area. There was, however, no construction work being done on the day of the site inspection.

- b) From interviews with the residents, the Commission received mixed reports regarding water access in that settlement. In this regard, whilst some residents indicated that water access had greatly improved in the area since the commencement of the water project late in 2018, others complained that they still did not have access to water. Those who indicated that access to water had improved, mentioned that they received water from their residential standpipes at least once or twice a week.
- c) On further investigation, it was discovered that those living on the north side of the settlement were more affected by water access challenges, together with those residents who have settled on the south side of rail tracks. The latter did not have residential water standpipes installed in their homes. Residents who did not have access to water in their homes fetched water from a communal tap located at the south side of the rail tracks. Whilst many of the households on the south side of the rail tracks were within the 200 metre radius from the communal tap, households on the north side of the settlement were not. According to the residents, when water from the communal tap ran out, they fetched water from the nearby stream.
- d) A van with water containers was observed with its operators collecting water from the communal standpipe on the south side of the rail tracks. The operators of the van advised that they were contracted by residents on the upper side of the settlement to collect water on their behalf at a fee.
- e) One of the local schools, BEE Maseko Secondary School (“**the School**”), was visited during the site inspection. Two water tanks could be observed in the schoolyard. An official from the School advised that the School’s only water supply was provided by the two 5000 litre water tanks, and the School did not have a functioning water reticulation system. The water tanks were meant to be filled regularly but this was not done. Water from one water tank is meant

for drinking purposes, whilst water from the second water tank is meant for sanitation purposes. The School recently migrated to a waterborne system of sanitation. When the new toilets were installed, an undertaking was made to the School that a borehole would be drilled to enable the School to have adequate water to operate its toilets. This had, however, not been done. As a result some of the newly built toilets got blocked, and that state of affairs consequently affected teaching and learning at the School negatively.

- f) On the issue of housing, the Commission noted that whilst many of the homes on the north side of the rail tracks were permanent housing structures, the houses on the south side of the rail tracks were makeshift mud structures. On inquiry, the officials from the Municipality advised that the land on the south side of the rail tracks had not been developed because it was privately owned. Residents interviewed, however, advised that the land had been abandoned by the previous owner, resulting in the occupation of the land by the residents, some of which have occupied the land for many years.

7.5.6. In respect of Lothair:

- a) On arrival, the Commission observed a water tanker with a number of residents waiting to collect water from it.
- b) Residents interviewed advised that water was cut off a few days prior due to a pump failure in the area. Other than this recent incident, however, water access had reportedly improved greatly in Sheepmoor after the water pump had been repaired during May/June 2019.
- c) Officials from the Municipality confirmed the information received from the residents. The officials, however, advised that they were not in a position to state when the water supply in the area would be restored, as the exact cause of the water supply disruption was still under investigation. They advised that as an interim measure, they

would continue providing water to residents through a water tanker. The officials, however, advised that this step will have adverse consequences on the residents from the neighbouring farms, including Thuthukani Farm, who rely on the same water tanker for water supply.

- d) The officials further advised that before the reported water supply disruption which necessitated reliance on a water tanker to provide water services to the residents of Lothair, the Municipality was already struggling with the supply of water to over 20 surrounding farms which rely on the water tanker for their water supply. As a result, the Municipality could only supply water to residents of those farms once every two weeks. The officials conceded that such a level of supply is inadequate by any measure. The plight of the farm residents would therefore be worsened for as long as the water supply disruption in Lothair persisted.

7.5.7. In respect of Chrissiesmeer:

- a) The Commission received mixed reports about the availability of water from the residents interviewed. In this regard, residents on the lower side of Chibinkulu (a location in Chrissiesmeer), including officials from the Chibinkulu Clinic, advised that they had an adequate supply of water. They advised further that they were informed timeously of disruptions in supply, and were provided with alternative water supply. Residents on the upper side of Chibinkulu, however, advised that they do not have adequate access to water as they experience regular water supply disruptions, and are always the first to be affected whenever there are constraints in the water system.
- b) Officials from the Municipality advised that the inconsistency in the water supply is due to low water pressure. They further advised that other than this challenge; and other intermittent water supply disruptions, there is adequate water supply in Chrissiesmeer.

Engagements with the parties post the site inspections

- 7.6. On 3 October 2019, the Municipality provided the Commission with a progress report on its Bulk Water Supply project in Sheepmoor. In the report, the Municipality advised as follows:
- 7.6.1. The project will be undertaken in two phases.
 - 7.6.2. The first phase was due to be implemented during the first half of the 2018/19 financial year through a co-funding arrangement with Gert Sibande District Municipality. The scope of the work for the first phase entails the construction of a new 1 MI/day Package Water Treatment Plant. This phase of the project was however stopped pending the completion of the second phase of the project (i.e. the construction of the bulk pipeline). Once the construction of the pipeline is complete, the water treatment plant will be commissioned, connected and tested.
 - 7.6.3. The second phase of the project was scheduled for completion by 29 May 2020. The scope of work for this phase of the project included the construction of a 7.1km pipeline from the Usuthu Vaal Pipeline to the Sheepmoor community; the refurbishment of the existing 2MI steel reservoir and 85Kl elevated tank; and the refurbishment/upgrading of the existing booster pump station and pipework to connect to existing reservoirs.
- 7.7. On 30 October 2019, the Commission contacted the official from the Municipality who accompanied it during the site inspections to determine if the water issue in Lothair had been resolved. The official advised that the initial challenge was partially resolved but that Lothair faced a new water supply challenge occasioned by a drastic drop in the water levels in a nearby dam, impacting on water security. He further advised that in the interim, measures were put in place to extract water from the dam, despite the drop in water levels. In his view, this situation lends itself to frequent disruptions and insecurity in access to water.
- 7.8. On 13 January 2020, the Commission received further correspondence from the Municipality advising that it had approached the Department of Human Settlements

("DHS") for assistance in acquiring the land occupied by the residents of Nyibe and in formalising the area. The Municipality further advised that DHS confirmed it is considering the request and has already commissioned the Housing Development Agency to conduct valuations, with a view to thereafter negotiating the purchase of the land with the landowner. Electricity could not be installed as the owner had reneged on a way-leave agreement he had signed with ESKOM.

Comments on the preliminary report

7.9. Based on the above information, the Commission prepared a draft preliminary report and shared it with the parties on 21 January 2020. All implicated parties, including the DHS, and the Department of Mineral Resources and Energy ("DMRE"), were invited to submit comments on the report to the Commission within 14 days of issuing the report.

7.10. The Complainant welcomed the report findings and directives in her letter of 27 January 2020 to the Commission.

7.11. The Municipality delivered its response on 17 February 2020 and stated the following amongst others:

7.11.1. In respect of Nyibe:

- a) The DHS is considering acquiring the land occupied by the residents of Nyibe, with the owner having, in principle, agreed to the acquisition of the land. A meeting was scheduled with the landowner on 7 February 2020 to discuss the acquisition offer. The acquisition process was expected to be concluded within 5 (five) months from the date of the meeting.
- b) The Municipality could not have taken any further steps to advance the matter further, as the process was being handled by the DHS.
- c) The informal settlement had already been assessed and categorized for upgrading and plans are already in place for its development. The implementation agent for the project had already been appointed by the DHS.

7.11.2. In respect of Skaapruiz:

- a) Insofar as the water issue is concerned, a survey conducted in September 2019 showed that there were approximately 595 residents and 124 households in the area. The Municipality supplied 7500 litres of water once a week through water tanks. With effect from 1 March 2020, however, it would progressively increase the water supply to a maximum of five times a week by July 2020. This level of supply would, according to the Municipality, meet the minimum levels of supply prescribed.
- b) Insofar as the housing issue is concerned, an assessment by Gudlhuza Development Solutions concluded that the area could not be developed. An analysis of the technical report itself, however, shows that the area has been allocated a B1 development category, which means the informal settlement can be developed in the long term, with the installation of services commencing in the interim.

7.11.3. In respect of Nkanini:

- a) Insofar as the water issue is concerned, 2 additional communal taps will be installed in the area in the 2020/2021 financial year commencing in July 2020. According to the Municipality, this increase in the number of taps would meet the prescribed minimum levels of supply required.
- b) Insofar as the housing issue is concerned, the area has been allocated a B1 development category, which means that the area can be developed in the long term, with the installation of services commencing in the interim.

7.11.4. In respect of Sheepmoor:

- a) Insofar as the water issue is concerned, the Municipality will continue to supply water to residents through the boreholes, pending the completion of the bulk water supply and water treatment work project. The project was due for completion in May 2020.

7.11.5. In respect of Lothair:

- a) A Resuscitate Regional Bulk Infrastructure Grant (“**RRBIG**”) project is to be implemented. The project will involve construction of a bulk pipeline from Bryten to Lothair to address the challenges relating to water levels in the area.

7.11.6. In respect of Chrissiesmeer:

- a) the Municipality will maintain its reservoir levels at 50% and above to maintain consistent pressure levels. This will ensure water supply to residents in upper lying areas.

7.11.7. In respect of Thuthukani Farm:

- a) The Municipality will increase water supply from once a week to twice a week through a 7500 litre water tank.
- b) The Municipality will also continue engaging with DMRE on the rehabilitation of abandoned and un-rehabilitated undermined land, although there is a recognition that not all abandoned land may be suitable for development. The Municipality has, in the interim, identified land which is suitable for human settlement and has made a request for the acquisition of that land.

Further request for information

7.12. On 23 July 2020, the Commission requested a further update report from the Municipality on the commitments made in its response of 17 February 2020.

7.13. An update was provided only in respect of Nyibe and Sheepmoor.

7.14. In respect of Nyibe, the Municipality advised that the meeting with the land-owner took place on 7 February 2020 as scheduled and that the negotiations were concluded on the said day. A sale agreement was subsequently concluded between the Municipality, DHS and the landowners on 24 March 2020.

7.15. In respect of Sheepmoor, the project had not been completed in May 2020 as per the undertaking initially given. No date was provided for the completion of the project in its further response to the Commission.

8. LEGAL FRAMEWORK

- 8.1. The Constitution provides that everyone has the right to have access to *adequate* housing¹, as well as *sufficient* water.² The state, in turn, has a concomitant obligation to take “reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of these rights.³
- 8.2. According to the Constitution, local government is primarily responsible for the fulfilment of the right of access to water to residents,⁴ whilst the fulfilment of the right to adequate housing is the concurrent function of the National, Provincial and Local spheres of government.⁵
- 8.3. Various pieces of legislation have been enacted to give effect to the rights of access to water and housing. The most relevant for purposes of this matter is the Housing Act 107 of 1997 (“**the Housing Act**”), as well as the Water Services Act 108 of 1997 (“**the Water Services Act**”), together with their attendant regulations.
- 8.4. In terms of the Housing Act, the right to adequate housing in section 26 of the Constitution envisages the establishment of housing developments. In section 1 of the Housing Act, a “housing development” is defined as the “establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing

¹ Section 26(1) of the Constitution.

² See section 27(1)(b) of the Constitution.

³ See section 26(2) and section 27(2) of the Constitution.

⁴ See Schedule 4B of the Constitution.

⁵ Whilst in terms of Schedule 4A, Housing is identified as the concurrent function of National and Provincial Government, it is acknowledged that Local Government has a role in terms of making land available in most instances and also insofar as building and town planning, as well as the provision of services, is concerned as envisaged in Schedule 4B of the Constitution. The role of municipalities in human settlements is also recognised in the Housing Act 107 of 1997.

convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and (b) potable water, adequate sanitary facilities and domestic energy supply.”

8.5. Section 26(1) of the Constitution is given effect where the human settlement in question:

8.5.1. Is located in a habitable, stable and sustainable environment;

8.5.2. Is located in an area that has convenient access to amenities;

8.5.3. Is a permanent residential structure with secure tenure;

8.5.4. provides internal and external privacy;

8.5.5. provides adequate protection from the elements; and

8.5.6. provides basic services connected to it such as water, sanitation and electricity.

8.6. On the other hand, in giving effect to section 27(1)(b) of the Constitution, the Water Services Act provides for the right to basic water supply and sanitation.⁶ In terms of the Regulations relating to compulsory national standards and measures to conserve water, GNR.509 of 8 June 2001 (“**the National Water Standards**”), basic water supply is defined as the “minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month; at a minimum flow rate of not less than 10 litres per minute; within 200 metres of a household; and with an effectiveness such that no consumer is without a supply for more than 7 full days in any year.”⁷ The

⁶ See section 3(1) of the Act.

⁷ Regulation 3 of the Regulations relating to compulsory national standards and measures to conserve water, GNR.509 of 8 June 2001. These requirements appear to be informed by the comments in the General Comment on the right of access to water of the Committee on Economic, Social and Cultural Rights (“CESCR”), in which it was established that for states to meet their obligations set out in articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which South Africa ratified in January 2015, the water

National Water Standards further provide that where there are water interruptions for more than 24 hours, other than in cases where water was discontinued for nonpayment of services for example⁸, consumers must be given access to alternative water services comprising of at least 10 litres of potable water per person per day, as well as sanitation services sufficient to protect health.⁹

8.7. Accordingly, for water supply to meet the constitutional imperative of sufficiency set out in section 27(1)(b) of the Constitution, it must according to the regulatory environment be:

8.7.1. Of a minimum quantity of 25 litres per person per day, or 6 kiloliters per household per month;

8.7.2. At a minimum flow rate of not less than 10 litres per minute;

8.7.3. within 200 meters of a household; and

8.7.4. Such that no consumer is without a supply for more than 7 full days in any year.

8.8. In cases of emergencies and unintended water disruptions of longer than 24 hours, there is a duty to provide consumers alternative access to water in the amount of at least 10 litres of water per person per day.

8.9. Having established the minimum prescribed standards in law to give some effect to the section 26(1) and section 27(1)(b) rights in the Constitution, the obligations of the state in fulfilling those rights are considered below.

supplied must be of such quality and quantity to enable the users to meet their personal and domestic water needs which would ordinarily include the use of water for “drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.” (See Paragraph 12 of General Comment No. 15 on the right to water (Art.'s 11 and 12): 11/2000 (<https://www.escr-net.org/resources/general-comment-no-15-right-water>)).

⁸ Regulation 4 of the Regulations relating to compulsory national standards and measures to conserve water, GNR.509 of 8 June 2001.

⁹ Regulation 4 of the Regulations relating to compulsory national standards and measures to conserve water, GNR.509 of 8 June 2001.

- 8.10. As indicated above, there is an obligation on the state to take “reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” the rights in sections 26(1) and 27(1)(b) of the Constitution.
- 8.11. Insofar as the right of access to housing is concerned, the Constitutional Court in ***Government of the Republic of South Africa v Grootboom***¹⁰ held that “[t]he term ‘progressive realisation’ shows that it was contemplated that the right could not be realised immediately. But the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the State must take steps to achieve this goal. It means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and where possible, lowered over time.”¹¹
- 8.12. Whilst recognising that resource constraints may limit the fulfilment of this right,¹² the court essentially found that there must be an earnest effort towards the realisation of the right. This effort should demonstrate that hurdles which impede access are **lowered over time** and positive actions to achieve full enjoyment of the right including legislative and practical measures are taken to this end. [own emphasis]¹³
- 8.13. The Court also found that to be regarded as reasonable, the measures in question should:¹⁴
- 8.13.1. have appropriate financial and human resources allocated to them;
 - 8.13.2. be capable of facilitating the realisation of the right;
 - 8.13.3. be reasonable in both conception and implementation;
 - 8.13.4. be flexible;
 - 8.13.5. be able to attend to crises;

¹⁰ 2001 (1) SA 46 (CC).

¹¹ *Grootboom*, at 45.

¹² *Grootboom*, at para 46.

¹³ *Grootboom*, at para 42.

¹⁴ *Grootboom*, at paras 39, 41, 42 and 43.

- 8.13.6. not exclude a significant segment of the affected population; and
 - 8.13.7. balance short, medium and long-term needs.
- 8.14. The Housing Act sets out the specific measures to be undertaken by each level of government in fulfilling the obligation of the state in section 26(2) of the Constitution. The importance of inter-governmental cooperation in the fulfilment of the right to adequate housing was underscored by the Constitutional Court in the **Grootboom** case. In this regard, all spheres of government are required to, *inter alia*:¹⁵
- 8.14.1. give priority to the needs of the poor and other vulnerable groups such as persons with disabilities in any housing development;
 - 8.14.2. consult meaningfully with individuals and communities affected by housing development [own emphasis];
 - 8.14.3. ensure that housing development is economically viable, based on integrated development planning and administered in a transparent, accountable and equitable manner;
 - 8.14.4. encourage and support individuals and communities in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to, and empowerment of the community; and
 - 8.14.5. facilitate the active participation of all relevant stakeholders in housing development [own emphasis].
- 8.15. The specific roles of the different spheres of government in fulfilling the right to housing are also set out in the Housing Act.
- 8.16. In terms of the Housing Act, the role of National Government is primarily to establish the national regulatory and policy framework for the fulfilment of the right in section

¹⁵ Section 2 of the Housing Act.

26(2) of the Constitution and to provide support to Provincial and Local Government, as well as to allocate funding for housing projects.¹⁶

8.17. The role of the Provincial Government, on the other hand, is to establish the provincial regulatory and policy framework for the fulfilment of the right in section 26(2) of the Constitution, to provide support to Local Government, to coordinate housing development in the province, to approve housing projects in line with policy, as well as to approve disbursements of funds for housing projects.¹⁷

8.18. In turn, the role of Local Government is to, *inter alia* ensure, through its integrated development planning processes:

8.18.1. that its residents have access to adequate housing on a progressive basis;

8.18.2. the availability of basic services such as water, sanitation, electricity, roads and transport;

8.18.3. the identification and designation of land for housing development;

8.18.4. the creation and maintenance of a public environment conducive to housing development which is financially and socially viable;

8.18.5. the initiation, planning, facilitation and promotion of housing development in its area of jurisdiction;

8.18.6. the proper management of land use and development.¹⁸

8.19. From the above, it is apparent that municipalities are the main drivers of housing development within their areas of jurisdiction. To fulfil this function, Municipalities are specifically mandated to expropriate land required for housing development in terms of any national housing programme, if they are unable to purchase the land on reasonable terms through negotiation with the owners thereof and have obtained the permission of the MEC for Human Settlements to do so.¹⁹

¹⁶ See Section 4 of the Housing Act.

¹⁷ See Section 7 of the Housing Act.

¹⁸ Section 9 of the Housing Act.

¹⁹ Section 9(3)(a) of the Housing Act.

8.20. The National Housing Code was adopted in terms of the Housing Act. In terms of section 4(6) of the Housing Act, the provisions of the National Housing Code are binding on all three spheres of government. Included in the National Housing Code is the Upgrading of Informal Settlements Programme (“the UISP”), which is the mechanism through which municipalities and provinces can implement upgrading programmes in informal settlements. The UISP provides that informal settlements are to be upgraded in *situ* in partnership with their residents. The intent of the policy is to provide tenure security and a healthy environment to people living in informal settlements. The UISP intends “a holistic development approach with minimum disruption or distortion of existing fragile community networks and support structures and encourages engagement between local authorities and residents living within informal settlements”.²⁰ The UISP expressly states that “relocation of informal settlements should be the exception and not the rule.”²¹ The UISP makes provision for the installation of both interim services and permanent municipal engineering services. The UISP states that, “where interim services are to be provided it must always be undertaken on the basis that such interim services constitute the first phase of the provision of permanent services”.

8.21. Insofar as the right of access to water is concerned, in ***Mazibuko v City of Johannesburg 2010 (4) SA 1 (CC)***,²² the Constitutional Court equally found that the obligation of the state to take reasonable legislative and other measures to progressively realise the right of access to sufficient water within available resources does not establish a claim for sufficient water on demand. The court went on to state that “[t]he fact that the State must take steps progressively to realise the right implicitly recognises that the right of access to sufficient water cannot be achieved immediately.”²³

8.22. This does not, however, mean that government can evade its responsibility towards its citizens on the ground of the progressive nature of the right. In this regard, in its

²⁰ See *Melani and Others v City of Johannesburg and Others* 2016 (5) SA 67 (GJ), Paragraph 34).

²¹ See *Melani*, Paragraph 35.

²² See *Mazibuko*, Paragraph 57.

²³ See *Mazibuko*, Paragraph 28.

General Comment on the nature of States Parties' obligations (art 2(1)), the Committee on Economic, Social and Cultural Rights stated the following:

“... the fact that the realisation over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States Parties in respect of the full realisation of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” (own emphasis)

8.23. As indicated in paragraphs 8.11 to 8.13 above, therefore, to comply with its obligations in section 27(2) of the Constitution, a municipality must show that the measures taken to ensure the realisation of the right in section 27(1)(b) of the Constitution are reasonable and aimed at the progressive realisation of the right.

8.24. Some of the steps municipalities are enjoined to take by legislation include:

8.24.1. Giving preference to the provision of basic water supply and basic sanitation to residents if the water services providers are unable to meet the requirements of all its existing consumers (i.e. rationing of water services);²⁴

8.24.2. Prescribing the conditions for the provision of water, including the establishment of a tariff structure where applicable;²⁵ and

²⁴ Section 5 of the Water Services Act.

²⁵ Section 4 of the Water Services Act.

- 8.24.3. The preparation of a water services development plan, which should indicate the strides made in providing water services to residents, as well as the gaps that exist insofar as water services are concerned,²⁶
- 8.25. In section 11(3) of the Water Services Act, Water Services Authorities are also enjoined to take the following factors into account in ensuring access to water services to its residents:
- 8.25.1. alternative ways of providing access to water services;
 - 8.25.2. the need for regional efficiency;
 - 8.25.3. the need to achieve the benefit of scale;
 - 8.25.4. the need for low costs;
 - 8.25.5. the requirements of equity; and
 - 8.25.6. the availability of resources from neighbouring water services authorities.
- 8.26. Against this backdrop, the analysis below seeks to establish whether the residents' rights to have access to housing and water within the contemplation of section 26(1) and section 27(1)(b) of the Constitution respectively have been violated by the Municipality.

9. LEGAL ANALYSIS

- 9.1. In respect of Nyibe and Wesselton Ext 10:
- 9.1.1. On the evidence currently before the Commission, it would appear that the complaints relating to water access challenges in Nyibe and Wesselton Ext 10 are unfounded. This is because, as indicated above, water standpipes with running water could be observed in these communities, with residents from these communities also confirming that water access was not a challenge in their respective communities.

²⁶ Sections 12 to 15 of the Water Services Act.

- 9.1.2. There was also no housing issue observed in Wesselton Ext 10, with RDP houses in the area having been newly built. This is, however, not the case in Nyibe, with many of the residents interviewed lamenting the long wait they have had to endure for their area to be formalized, and for them to be provided with adequate housing. Indeed, the makeshift mud structures observed in the area fall woefully below the prescribed standards for housing intended to meet legal standards of adequacy. The structures appear to be constructed without the assurance of any building standards having been applied to them, and do not provide adequate protection from the elements, and are not connected to basic services such as electricity. Moreover, as long as the area is not formalised, the residents' tenure on the land remains insecure. There is, therefore, a need for appropriate housing to be made available to residents in Nyibe bearing in mind the dignity and safety of people.
- 9.1.3. Although the progress now being made in respect of the acquisition of the land required for the Nyibe human settlement project is welcomed and even commendable, it is regrettable that it has taken this long to make this kind of progress. Even if the Commission were to accept that the owner of the land is responsible for the delays, given the powers accorded to municipalities in terms of the Housing Act (including the powers of expropriation), it was possible for the Municipality and DHS to expedite the matter through those means, if a negotiated settlement was elusive. No evidence to this effect was, in any event, provided to the Commission in the course of its investigation. Whilst the Municipality now seeks to escape culpability for the delays in the finalization of this matter by pointing to the fact that the acquisition process is being handled by DHS, there is no indication that the Municipality approached DHS at the earliest opportunity for assistance with the land acquisition process, which is the primary responsibility of the Municipality in terms of the Housing Act. From the Municipality's letter of 13 January 2020, it can be inferred that the approach to DHS for assistance is a more recent development, with the communication between DHS and the Municipality relating to the purchase

of the farm dating 08 October 2019, when the formalization of the area was promised to the residents as early as 2006.

9.1.4. In the Commission's view, it is unreasonable for the land acquisition process to have taken 13 years to be finalised when clearly such acquisition was within the realm of possibility for a long period of time; and there were legal tools available to enable the expeditious finalisation of this matter. In view thereof, the Commission finds that the Municipality, as the primary bearer of the responsibility for acquiring land required for human settlement, has not acted reasonably to ensure the realisation of the Nyibe residents' right to housing within the contemplation of section 26(2) of the Constitution. The Commission, however, notes the progress made in recent times to bring the matter to finality.

9.2. In respect of Skaapruiz:

9.2.1. On the evidence before the Commission, it would appear that the complaint relating to water and housing access challenges is substantiated.

9.2.2. In respect of access to water, it is apparent that even if the frequency of water supply to the community is increased to five times a week, if the quantity of the water supplied, the Municipality will still not meet the prescribed standards of provisions. As indicated above, the prescribed minimum quantity of water supply is 25 litres per person per day or 6 kiloliters per household per month. When the complaint was lodged, the Municipality was only supplying 7500 litres of water to residents a week. An increase in the frequency of water supply to five times a week will translate to 37500 litres of water to residents a week. If the Commission accepts the population figure of 695 residents provided by the Municipality, this translates to 53.96 litres per person per week or 7.7 litres per person per day, which falls far below the prescribed minimum standards of water supply. Moreover, if the water points are not increased, residents will still be required to walk more than 200 meters to access the nearest water tank.

- 9.2.3. No reason has been given for inability to meet the prescribed standard of water supply to the area, other than the Municipality's misconstrual of its obligations. As indicated above, the Municipality is of the view that merely increasing the frequency of water supply, without also increasing the quantity of the water supplied, would meet the prescribed minimum standards of supply. In view thereof, the Commission is of the view that the Municipality has not complied with its obligations in terms of section 27(2) in respect of Skaapruiz.
- 9.2.4. In respect of housing, the housing infrastructure (which is in the form of makeshift mud houses) observed in the area can hardly be said to meet the standard of adequacy prescribed in the Constitution for the same reasons advanced in paragraph 9.1.2 above. The Municipality advised that the reason the area cannot be developed is that it belongs to a private owner and because there were mining activities in the area, which render the area unsuitable for human development. The Municipality further advised that having anticipated challenges with the development of the area, it offered to relocate the residents to other areas but they had refused this offer.
- 9.2.5. The Commission was not provided reasons why steps to secure the transfer of the land privately owned either through a negotiated settlement or expropriation by the Municipality.
- 9.2.6. With regard to the unsuitability of the land for human settlement, it is apparent from the technical report provided to the Commission that the land can be developed in the long term and with the provision of basic services commencing in the interim. In any event, even if there was evidence that the area in its current state was unsuitable for human settlement, the Municipality ought to have engaged the DMRE regarding the rehabilitation of the area before concluding that the area cannot be developed. Moreover, in such circumstances, there ought to have been more meaningful engagement with the affected residents on suitable alternatives in the interests of the community.

9.2.7. In the Commission's view, the Municipality's stance of ignoring the residents' cultural and historic connection to the land, in the absence of any objective evidence that the area is not suitable for human settlement and cannot be rehabilitated, and singularly proposing to relocate the residents to an area they have no connection to was short-sighted and unreasonable, as well as not keeping with its obligations in section 26(2) of the Constitution.

9.3. In respect of Nkanini:

9.3.1. Insofar as the water issue is concerned, it would appear that the complaint relating to water and housing access challenges is substantiated.

9.3.2. As indicated above, whilst 3 communal water taps with running water were observed in the area during the site inspection, many of the households were more than 200 metres away from the nearest water source. Increasing the number of communal taps by 2 taps will not sufficiently address this issue, given the vastness of the area. Again no reasons, other than the Municipality's misconstrual of its obligations, were provided to explain the distance from taps being in excess of 200 meters from many households. In view thereof, the Municipality has not complied with its legal obligations in respect of Nkanini.

9.3.3. Insofar as the housing issue is concerned, the housing infrastructure in the form of corrugated iron shacks observed in the area does not meet the standard of adequacy advanced in paragraph 9.1.2 above. In addition, the dimensions in some of the shacks observed were so small and can hardly be said to provide for internal privacy of the occupants.

9.3.4. With the Municipality having conceded that the area is capable of development in the long term, with the installation of basic services commencing in the interim, it is apparent that the initial claim that the area is not suitable for human development is without merit. Notwithstanding, there were no plans presented to the Commission for the long term development of the area and as such, the Municipality has failed to take steps to ensure the progressive realisation of the right to housing for the

residents of Nkanini. The Commission is therefore of the view that the Municipality has not complied with its obligations in terms of section 26(2) of the Constitution in respect of Nkanini.

9.4. In respect of Sheepmoor:

9.4.1. Whilst the residents on the north side of the rail tracks appear to have adequate access to housing, this is not the case for the residents on the south side of the rail tracks, who live in mud houses. For the same reasons advanced in paragraph 9.1.2 above, the mud house structures observed in the area do not meet the constitutionally prescribed standard of adequacy.

9.4.2. Insofar as access to water is concerned, whilst some of the residents interviewed advised that access to water had improved in the area since the start of the Bulk Water Project, with water being provided through the available water reticulation system at least once or twice a week, other residents, particularly those on the upper side of the settlement as well as those on the south side of the rail tracks, advised that water access remained a challenge to them. It is apparent from these testimonies that the residents of Sheepmoor, even those who aver improved access to water, do not currently enjoy sufficient access to water as prescribed in the Constitution and the water legislation in that they are often without the prescribed minimum quantity of 25 litres per person per day, or 6 kilolitres per household per month; and are often without water supply for more than 7 full days in a year.

9.4.3. The Commission does however, welcome the plans currently being implemented by the Municipality to ensure water security for residents in the medium to long term. This notwithstanding, there does not appear to be any measures in place to address the water supply challenges in a meaningful way in the short term. The Commission accepts the evidence provided to it by residents regarding payments to contractors to obtain water; and through its own observations at the BEE Maseko Secondary

School that water supply by the Municipality is inadequate despite weekly supply by tankers when the borehole water levels are low.

- 9.4.4. As indicated above, one of the hallmarks of the reasonableness of measures is that the measures balance short term and long term needs. Insofar as the current municipal plans do not address the short term needs of the residents, particularly the needs of schools and other vulnerable groups, the Municipality's plans do not meet the prescribed standard of reasonableness.
- 9.4.5. The Commission is also concerned that although an undertaking was given that the bulk water supply project will be completed in May 2020, this has not been done. No explanation has been given for the delay in the completion of the project, and there is also no indication of when the project will now be completed. The delay in the finalization of the project only exacerbates existing water access challenges in the area.
- 9.4.6. In view of the above, the Municipality has also not complied with its obligations in terms of section 27(2) of the Constitution in respect of Sheepmoor.
- 9.4.7. The Municipality's reason for not initiating a housing development on the land on the south side of the rail tracks is that the land is privately owned. Again, it is unclear why the Municipality has not taken any steps or at least put plans in place to secure the land for its development purposes, when the land appears for all intents and purposes to have been abandoned. In the absence of persuasive evidence of efforts by the Municipality to explore the options available to it, and noting the passage of time, it would appear that that Municipality has not acted in a reasonable manner in realizing the right to housing for the affected residents.
- 9.5. In respect of Lothair:
- 9.5.1. There were no housing challenges identified during the investigation, as most of houses in the area were permanent housing structures.

- 9.5.2. Access to adequate water was however raised as a concern in Lothair. The Commission accepted that access to water improved from May 2019. However access had been adversely impacted since September 2019, with the drop in the dam levels, resulting in the residents no longer enjoying adequate access to water as prescribed. The progress achieved was thus eroded and conditions therefore deteriorated. This amounts to a retrogressive step and is a violation of the obligation placed on the Municipality to respect the right of access to adequate water.
- 9.5.3. The current state of affairs is curious as the report received from the Municipality in its response of May 2019, and during the site inspections of September 2019, painted a picture of a stable and secured water system, bar a few technical challenges that were being experienced at the time of the inspection. In the Commission's view, the current situation paints a different picture and lends itself to two possibilities, the first being that the Commission was misled about the true state of the water system in Lothair, and the second being that the Municipality does not have effective water management systems to enable it to anticipate, monitor and preempt changes in its water supply environment. Neither scenario bodes well for the Municipality and requires accountability at the highest level.
- 9.5.4. In its response to the preliminary report, the Municipality advised that an RRBIG project for the construction of a bulk pipeline from Breyten to Lothair to augment the water supply is in progress. There was, however, no project plan or time frames provided for the implementation of the project. Very little or no information has therefore been provided to support this claim save for the reference to the RRBIG by the Municipality. The Commission is of the view, given the current conditions, that the Municipality is in breach of its obligations in terms of section 27(2) of the Constitution in respect of Lothair.
- 9.6. In respect of Chrissiesmeer:
- 9.6.1. Challenges in respect of access to housing in Chrissiesmeer were not identified during the investigation, as most of the houses in the area

comprised of permanent housing structures. The challenge identified relates to access to adequate water.

- 9.6.2. In this regard, whilst residents in the lower side of the settlement advised that they had adequate access to water, but experienced intermittent disruptions of water supply, residents on the upper side of the settlement advised that they are often without water and were therefore not enjoying adequate access to water as prescribed.²⁷
- 9.6.3. In response to the inspection findings, officials of the Municipality advised that the challenge on the upper side is known, but no indication was given as to when such challenges would be eradicated or mitigated.
- 9.6.4. In its response to the preliminary report, the Municipality merely advised that it would maintain the reservoir levels at 50% and above, to maintain consistent pressure levels. In July 2020, the Commission enquired and sought confirmation from the Municipality that this had indeed been achieved. To date, the Municipality has not responded to the Commission's follow up inquiry.
- 9.6.5. In the absence of a response by the Municipality on this matter, the Commission confirms its provisional recommendation to the Municipality that steps be taken to mitigate challenges which have the effect of limiting access to water beyond permissible limits in the upper side of the settlement.
- 9.7. In respect of Thuthukani Farm:
- 9.7.1. Although the Commission could not visit the farm to verify the allegations made in respect of the Farm. It is however, apparent from the information received from the Municipality that there are challenges with water supply to the Farm, as the Farm, together with other Farms in the area, is supplied with water only once in two weeks by water tanker. This standard of

²⁷ The residents are often without water for more than 7 days in any given year.

provision, on the Municipality's own admission, falls woefully below the prescribed standard of water provision as already stated above.

- 9.7.2. The reason given for the inadequacy of the water provision was that the Municipality has one water tanker which must supply water to over 20 farms in the area, in addition to providing water to the residents of Lothair during crises.
- 9.7.3. Whilst, as indicated above, the issue of resource constraints is a relevant factor in determining whether the Municipality has complied with its obligations in terms of section 27(2) of the Constitution. It is however, not clear in this case whether other alternative means of water provision which would not require reliance on the one water tanker were considered as required by section 11(3) of the Water Services Act, and if so, why those alternatives were not pursued over a long period of time.
- 9.7.4. In response to the Commission's preliminary report, the Municipality has in any event undertaken to increase water supply to Thuthukani Farm to twice a week through a tanker with a 7500 litre capacity.
- 9.7.5. Again, in July 2020, the Commission enquired and sought confirmation from the Municipality as to whether this had in fact been done. To date, the Municipality has not responded to the Commission's follow up inquiry.

In the absence of a response by the Municipality on this matter, the Commission confirms its provisional recommendation to the Municipality that steps be taken to mitigate challenges which have the effect of limiting access to water beyond permissible limits at the farm.

10.FINDINGS

10.1. In light of the above, the Commission makes the following findings:

- 10.1.1. The Municipality has failed to ensure sufficient access to water to the residents of Skaapruiz, Nkanini, Sheepmoor and Lothair.

- 10.1.2. The Municipality has failed to ensure access to adequate housing to the residents of Nyibe, Skaapruiz, Nkanini and identified parts of Sheepmoor in the following manner:
- a) Failing to act reasonably in acquiring land for the purposes of development of a human settlement to ensure the realisation of the Nyibe residents' right to housing within the contemplation of section 26(2) of the Constitution.
 - b) Failing to provide adequate housing, ignoring residents' cultural and historical connection with the land and neglecting to meaningfully engage with residents of Skaapruiz within the contemplation of section 26(2) of the Constitution.
 - c) Failing to provide adequate housing and neglecting to comply with its constitutional and statutory obligations of providing interim basic services and embarking on long term development of the area of Nkanini as envisaged by the UISP.
- 10.1.3. In respect of the complaint regarding the alleged violation to the right to access to adequate water at Nyibe and Wesselton Ext 10, no violation has been established.
- 10.1.4. Due to lack of information as to the status of the undertakings by the Municipality in respect of adequacy of access to water at Chrissiesmeer and Thuthukani Farm following the preliminary investigative finding of the Commission, a conclusive finding is not made here in this regard. However, the Commission addresses this matter later in this report.
- 10.1.5. The Commission is also unable to make determinative findings in respect of Goedehoop farm due to the insufficiency of the information before the Commission.

11. DIRECTIVES

- 11.1. In light of the findings set out in paragraph 10 above, the Commission makes the following directives:

11.1.1. In respect of Nyibe:

- a) Within 14 days of this report, DHS and the Municipality to provide a report on the status of the land acquisition process.
- b) Within 14 days of this report, DHS and the Municipality to provide a time-bound plan for the installation of electricity for the residents of Nyibe.
- c) Within 90 days of this report, DHS and the Municipality to provide a time-bound project plan for the development of Nyibe as a human settlement.

11.1.2. In respect of Skaapruiz:

- a) Within 14 days of this report, the Municipality to confirm whether the proposed increase in the frequency of water supply to five times a week was effected in July 2020 as undertaken.
- b) Within 90 days of this report, the Municipality to provide a time-bound plan for the progressive increasing of water supply to the residents of Skaapruiz in the short to long term, to ensure that each resident receives at least 25 litres of water a day and that each household is within a 200 metres radius from the nearest water point, in line with the provisions of Regulation 3 of the National Water Standards. In devising the time-bound plan, consideration should be given to alternative means of water provision in the area, should the Municipality be unable to scale the current water provision method.
- c) Within 90 days of this report, the Municipality to provide a time-bound plan for the development of the area and the introduction of other basic services, in line with the assessment report of Gudlhuza Development Solutions.
- d) The Municipality to immediately commence a process of consultation with the residents of Skaapruiz on the development of their community and the findings of this report. For the consultations

to be of value, residents should be provided with all the information at the disposal of the Municipality, including the assessment reports of Gudlhuza Development Solutions, to enable the residents to meaningfully engage with the Municipality. The process of consultation should be ongoing and minuted for purposes of accountability. The Municipality to report to the Commission quarterly on the progress of the consultations.

11.1.3. In respect of Nkanini:

- a) Within 14 days of this report, the Municipality to confirm whether the two additional communal taps have been installed in the area as undertaken.
- b) Within 90 days of this report, the Municipality to provide a time-bound plan for the monitoring of demand, and installation of further additional communal taps in the area on a progressive basis, to ensure that each household is within a 200 metres radius from the nearest water source, in line with the compulsory national standards and measures to conserve water, GNR.509 of 8 June 2001.
- c) Within 90 days of this report, the Municipality to provide a time-bound plan for the development of the area and the introduction of other basic services, in line with the assessment report of Gudlhuza Development Solutions.
- d) The Municipality to immediately commence a process of consultation with the residents of Nkanini on the development of their community. For the consultations to be meaningful, residents should be provided with all the information at the disposal of the Municipality, including the assessment reports of Gudlhuza Development Solutions, to enable the residents to meaningfully engage with the Municipality. The process of consultation should be ongoing and minuted for purposes of accountability. The Municipality to report to the Commission quarterly on the progress of the

consultations and include in such report, a minute of the consultations.

11.1.4. In respect of Sheepmoor:

- a) Within 90 days of this report, the Municipality to provide a time-bound plan for increasing water provision to the residents of Sheepmoor in the short term, with emphasis on ensuring basic water supply to schools in the area and other vulnerable groups within the contemplation of Regulation 3 of the National Water Standards.
- b) Within 14 days of the report, the Municipality to provide reasons why the bulk water infrastructure project was not completed in May 2020 as undertaken and to indicate when the project will now be completed.
- c) The Municipality to immediately commence a process of consultation with the residents of Sheepmoor who are facing housing challenges. Residents should be provided with all the information at the disposal of the Municipality, to enable the residents to meaningfully engage with the Municipality. The process of consultation should also be ongoing and minuted for purposes of accountability. The Municipality to report to the Commission quarterly on the progress of the consultations, and to include in the report, minutes of consultations with the residents.

11.1.5. In respect of Lothair:

- a) Within 14 days of this report, the Municipality is to provide a comprehensive report on the status of water provision to its residents; causes of the drop in the dam water levels; whether the challenge posed by the drop could be mitigated and reasons such steps were not taken; together with a time-bound plan for dealing with the prevailing water challenges in that area.

- b) Within 90 days of this report, the Municipality to provide a time-bound plan for the implementation of the RRBIG project, and to provide information about the plan to affected residents on a quarterly basis.

11.1.6. In respect of Chrissiesmeer:

- a) Within 14 days of this report, the Municipality is to confirm that water pressure to upper areas, has been increased by maintaining water levels at a minimum of 50% since 17 February 2020 and to provide monitoring reports to this effect.
- b) To the extent that the Municipality has not complied with its undertaking, the Municipality to provide detailed reasons for such non-compliance and the plans to address the water pressure challenge in that area.

11.1.7. In respect of Thuthukani Farm:

- a) Within 14 days of this report, the Municipality to confirm whether the proposed increase in the frequency of water supply to twice a week was effected as undertaken.
- b) To the extent that the increase in the frequency of water supply still does not sufficiently address the water challenges in the area, within 90 days of this report, the Municipality to provide a time-bound plan for the progressive increasing of water supply to the residents of Thuthukani Farm, with emphasis on ensuring basic water supply within the contemplation of Regulation 3 of the National Water Standards. In devising the time-bound plan, consideration should be given to alternative means of water provision in the area, should the Municipality be unable to scale the current water provision method. As a vulnerable group, it is imperative that farming communities within the jurisdiction of the Municipality are not made to disproportionately bear the brunt of water access challenges. The Municipality should therefore ensure equity in its water supply framework.

11.1.8. More generally:

- a) The Municipality to continue engaging with DMRE on the rehabilitation of under-mined land within the jurisdiction of the Municipality. The consultations should be minuted for purposes of accountability.
- b) Within 90 days of this report, the DMRE to provide the Commission with a diagnosis and preliminary plan for the rehabilitation of under-mined land.
- c) Within 30 days of the rehabilitation plan, the Municipality to ensure residents are made aware of the rehabilitation plan.
- d) The reports, plans and reasons referred to in the directives above must be submitted to the Commission within the stipulated timeframes, and must include steps taken by the Municipality to mitigate challenges which have the effect of limiting access to water beyond permissible limits in all areas under its jurisdiction.

SIGNED AT JOHANNESBURG ON THE 12TH DAY OF MAY 2021.

A handwritten signature in black ink, appearing to be 'JB Sibanyoni', written over a horizontal line.

Mr JB Sibanyoni

Commissioner

South African Human Rights Commission