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**THE PREMIER OF MPUMALANGA PROVINCE  
7 GOVERNMENT BOULEVARD, BUILDING 2  
RIVERSIDE PARK X 2  
MBOMBELA**

**MEC: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS  
7 GOVERNMENT BOULEVARD, BUILDING 6  
RIVERSIDE PARK X 2  
MBOMBELA**

**CHIEF DIRECTOR MPUMALANGA DERPARTMENT: CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS  
7 GOVERNMENT BOULEVARD, BUILDING 6  
RIVERSIDE PARK X 2  
MBOMBELA**

24 November 2020

Dear Sirs

**REQUEST FOR INTERVENTION: THABA CHWEU LOCAL MUNICIPALITY**

We confirm that we act on behalf of a group of concerned residents, rates payers, property owners and business owners (hereinafter collectively referred to as “the Residents”) in the town of Lydenburg/Mashishing situated within the municipal area of Thaba Chweu Local Municipality, Mpumalanga.

## **BRIEF BACKGROUND**

The Residents of Lydenburg/Mashishing have been subjected to continuous poor service delivery and financial maladministration by the Municipality for at least the past 10 to 15 years.

The Municipal Council has been placed under Administration in terms of Section 139 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as “the Constitution”) 3 (THREE) times in the past 10 to 15 years. This Administration processes provided interim relief but having regard to the current status of the Municipality’s financial affairs and a non-existing infrastructure with respect to basic service delivery, it is clear that these Provincial interventions failed the Residents.

The Municipality is continuously defaulting on their payment obligations towards Eskom that resulted in numerous electricity supply reductions by Eskom in the past years. The Residents who pay their electricity bills are being punished for non-payment by the Municipality to Eskom.

## **OUR REQUEST AND DEMAND:**

### **PROVINCIAL INTERVENTION IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION**

The abovementioned legislation provides that “when a municipality cannot or does not fulfill an **executive obligation** in terms of the Constitution or legislation, the relevant provincial executive may intervene by **taking appropriate steps to ensure fulfillment of that obligation**, including

- (b) Assuming responsibility for the relevant obligation** in that municipality to the extent necessary to-
- i. **maintain essential national standards or meet established minimum standards for the rendering of a service;**
  - ii. prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
  - iii. maintain economic unity.”

## WHAT ARE THE CONSTITUTIONAL OBLIGATIONS OF THABA CHWEU LOCAL MUNICIPALITY TOWARDS THE RESIDENTS?

The answer is clear and is found in the highest law of South Africa – THE CONSTITUTION - as quoted below.

Current legislation provides for the **objectives, executive authorities and obligations of local government**. In this regard we refer you to the following applicable legislation:

The **Constitution provides in Section 152** thereof for the **objectives of local government** that include the following relevant and applicable objectives:

- Section 152(1)(b): To ensure the provision of services to communities in a sustainable manner;
- Section 152(1)(c): To promote social and economic development;
- Section 152(1)(d): To promote a safe and healthy environment.

The **Constitution provides in Section 155(6) and (7)** thereof:

### **Section 155(6):**

Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must –

- (a) provide for the monitoring and support of local government in the province; and
- (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

### **Section 155(7):**

The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their **functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1)**.

The **Constitution provides in Section 156** that a municipality has “**executive authority**” in respect of **matters listed in Part B of Schedule 4 and Part B of Schedule 5.**

**The Municipality is therefore in terms of the Constitution responsible for the following relevant and applicable functions as listed in Part B of Schedule 4 and Part B of Schedule 5:**

- Electricity and gas reticulation
- Municipal planning
- Storm water management systems
- Water and sanitation services limited to potable water supply systems and domestic water-waste and sewerage disposal systems
- Municipal roads
- Refuse removal, refuse dumps and solid waste disposal
- Firefighting services
- Air pollution.

The abovementioned obligations summarize the relevant and applicable basic municipal executive obligations towards the Residents.

### **FAILURE BY THE MUNICIPALITY TO FULFILL ITS EXECUTIVE OBLIGATIONS**

Service delivery by the Municipality with respect to the listed functions above is in general very poor and unsatisfactory.

With this request for provincial intervention we shall at this point in time focus on the most urgent and critical municipal responsibilities that are not being fulfilled and that violate the Residents' most basic Human Rights afforded to them by the Constitution in Chapter 2 thereof (these rights to be referred to later in this document).

## **1. Electricity supply to Residents**

The Municipality owes Eskom approximately R800 Million for electricity supplied by Eskom to the Municipality. Notwithstanding various payment arrangements being made with Eskom over a period of time, the Municipality is unable to honour its payment arrangements and admitted to representatives of the Lydenburg/Mashishing Business Chamber in November 2020 that it cannot alternatively is unable to pay the accumulated Eskom debt.

During 2017/2018 Eskom drastically interrupted electricity supply to the Municipality due to non-payment. At that time the Residents were without electricity during peak business hours. The Sabie Chamber of Commerce and Tourism, Lydenburg Chamber of Commerce and Tourism and Graskop Chamber of Commerce and Tourism obtained an urgent Court Order to compel Eskom to reinstate normal electricity supply to the Residents. This court case is currently in the Supreme Court of Appeal and the parties are awaiting the final judgment.

On 4 November 2020 Eskom published a Notice informing the public of “Interruption of bulk electricity supply to Thaba Chweu Local Municipality for Duma substation”. The said notice is attached hereto and marked “A”. This notice in essence confirms that the Municipality failed to make the agreed payments to Eskom with regards to electricity supply to the Municipality’s Duma Substation and that electricity supply to this substation shall be drastically reduced as from 21 January 2021 and continuing indefinitely. We are advised by our electrical engineers that Duma Substation provides electricity to approximately  $\frac{3}{4}$  of Mashishing Township, the whole of the Lydenburg main commercial business district, all of the schools, financial institutions, the provincial hospital, the provincial old age home known as Rusoord as well as all government institutions such as the Municipality itself together with its Traffic & Licensing Department, SASSA, the Magistrate’s Court, SAPS and the Department of Home Affairs.

It is widely recorded that our courts affords Eskom remedies to recover their outstanding debt from defaulting municipalities, unfortunately all of these remedies adversely affecting the paying Residents.

We believe that a court action brought against Eskom by the Residents to render full electricity supply to Lydenburg/Mashishing shall not succeed as the truth of the matter remains that the Municipality is unable to pay the historical debt owed to Eskom and is constantly in breach with paying current monies due to Eskom. The only result will be permanent reduction in electricity supply to the Municipality and most importantly to the Residents. There are no more remedies available to firstly, the paying Residents and secondly a delinquent Municipality. This is the end of the line with Eskom.

Should Provincial Government not intervene, the whole of the community shall be forced to implement alternative electricity such as generator electricity supply and/or solar systems, all of which are very costly to obtain, to operate and to maintain. The result of a whole community relying on generators emitting petrol/diesel fumes into the air is catastrophic having regard to air pollution and a healthy and safe environment.

The issue of the building of the Duma Substation was and still is greatly debated and notwithstanding professional advice and warnings of overspending by the community to the Municipality, the advice and financial implications were disregarded by the Municipality and it proceeded with the project. The debate now reached its full circle as the warnings and issues then foreseen now became a reality. Once again it is only the Residents who are prejudiced and left without any recourse. In this regard we attach hereto a report issued by our advising engineer setting out the concerns with the Duma substation, marked as Annexures "B" together with annexures "B-A", "B-B" and "B-C".

In addition to non-payment by the Municipality of the Eskom debt, it failed for many years to maintain the electrical infrastructure and the Residents experience daily electricity interruptions due to the infrastructure collapsing.

***It is therefore recorded that the Municipality is unable to fulfill its executive duty to provide adequate electricity supply to the community.***

## 2. Waste and sewerage disposal systems

The sewerage pump stations together with the associated waste disposal systems situated in Lydenburg/Mashishing are not being adequately and/or not at all maintained by the Municipality. The pump stations are not manned by fulltime trained operators to see to the maintenance and management thereof. Continued electricity supply interruptions complicate the proper operation of the sewerage works.

The result is that raw sewerage is flowing into the Sterkspruit River as well as leaking within residential areas that are a great health and environmental threat.

***It is therefore recorded that the Municipality is unable to fulfill its executive duty to provide safe and adequate waste and sewerage disposal systems to the community.***

***It is therefore further recorded that the Municipality is unable to provide a safe and healthy environment.***

## 3. Storm water management systems & Roads

The current storm water infrastructure is inadequate and not being maintained by the Municipality at all. The draining points are as a rule blocked. During the raining season, the roads in the town literally turn into flowing rivers. This is a main contributing factor to damage to the municipal roads, specifically with respect to potholes being formed. It is a standard practice that storm water management forms an integral part of road maintenance. Any road repair that may be undertaken by the Municipality becomes obsolete if the storm water management is not done properly.

***It is therefore recorded that the Municipality is unable to fulfill its executive duty to provide a proper working storm water management systems to the community and as a consequence unable to provide safe well-maintained roads.***

#### 4. Refuse Removal

The Municipality provides the community with a refuse removal schedule to enable residents to put out their refuse on the kerb/sidewalk for collection by the Municipality on specific days.

The Municipality continuously breaches their own schedule by failing to collect refuse on the designated days. This failure results in refuse bags accumulating, being left on the pavements for days on end, there it being ruptured and refuse being strewn about. This failure is a great concern having regard to a safe and healthy environment.

***It is therefore recorded that the Municipality is unable to fulfill its executive duty to provide a safe and healthy environment to the community by failing to provide proper and adequate refuse removal.***

#### 5. Fire Fighting Service

On date of this letter, the Municipality has no firefighting service available to the community in Lydenburg/Mashishing whatsoever. This duty was sub-contracted by the Municipality to an independent contractor, as they are entitled to do. However, the Municipality also failed to pay this contractor who consequently ended his services to the Municipality.

***It is therefore recorded that the Municipality is unable to fulfill its executive duty to provide firefighting services to the community by failing to fulfill this duty personally alternatively failing to pay for the sub-contracted services.***

From the abovementioned failures by and inabilities of the Municipality we are of the opinion that provincial intervention is just, qualified and **URGENT, especially having regard to Eskom's debt collection policies.**

## **WHAT ARE THE CONSTITUTIONAL AND LEGISLATIVE OBLIGATIONS AND RIGHTS OF THE PROVINCIAL GOVERNMENT WITH RESPECT TO THE MUNICIPALITY AND THE COMMUNITY**

The Constitution as well as other legislation applicable to local government provides for certain rights and obligations of the Provincial Government with respect to local government and the public, the relevant applicable legislation is mentioned below.

### **Section 40 & 41(1) of the Constitution**

Section 40(1) provides: “In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.”

Section 41(1) provides that all spheres of government and all organs of state within each sphere must-

- (b) secure the well-being of the people of the Republic;
- (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) be loyal to the Constitution, the Republic and its people;
- (h) co-operate with one another in mutual trust and good faith by –
  - o (i) fostering friendly relations;
  - o (ii) assisting and supporting one another;
  - o (iii) informing one another of, and consulting one another on, matters of common interest;
  - o (iv) co-coordinating their actions and legislation with one another;
  - o (v) adhering to agreed procedures; and
  - o (vi) avoiding legal proceedings against one another.

### **Section 155(6) & (7) of the Constitution**

(6) Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must –

(a) provide for the monitoring and support of local government in the province; and

(b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

- (7) The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

### **Section 139(1) of the Constitution**

When a municipality cannot or does not fulfill an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfillment of that obligation, including –

(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfill its obligations and stating any steps required to meet its obligations;

(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to

–

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

(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or

(iii) maintain economic unity; or

(c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

**Section 105(1) of the Municipal Systems Act 32 of 2000**

- (1) The MEC for local government in a province must establish mechanisms processes and procedures in terms of section 155 (6) of the Constitution to –
- (a) monitor municipalities in the province in managing their own affairs, exercising their powers and performing their functions;
  - (b) monitor the development of local government capacity in the province; and
  - (c) assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their functions.

**Section 106(1) of the Municipal Systems Act 32 of 2000**

- (1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfill a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must –
- (a) by written notice-to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; or
  - (b) if the MEC considers it necessary, designate a person or persons to investigate the matter.

**Section 34 of the Municipal Financial Management Act 56 of 2003**

34. Capacity building
- (1) The national and provincial governments must by agreement assist municipalities in building the capacity of municipalities for efficient, effective and transparent financial management.
  - (2) The national and provincial governments must support the efforts of municipalities to identify and resolve their financial problems.

(3) When performing its monitoring function in terms of section 155(6) of the Constitution, a provincial government—

(a) must share with a municipality the results of its monitoring to the extent that those results may assist the municipality in improving its financial management;

(b) must, upon detecting any emerging or impending financial problems in a municipality, alert the municipality to those problems; and

(c) may assist the municipality to avert or resolve financial problems.

Having regard to the abovementioned legislation we wish to further record that a Forensic Report on corruption in the Municipality was issued in 2018 and that this Report has never been made available to the public or dealt with by the Provincial Government, that the public is aware of, despite political parties and community forums requesting it on numerous occasions. We must assume that the Province is in possession of this Report.

We confirm that we were provided with a copy of this Report by a client who is protected by the legal principle of attorney-client privilege. We attach the Report hereto and marked as “C”.

### **SUMMARY OF REQUEST FOR INTERVENTION**

From the facts contained in this letter read together with the annexures and having regard to the relevant legislation we hereby summarize the Residents position as follows:

1. The Municipality is not fulfilling its executive and legislative obligations to the community.
2. The Municipality is unable to fulfill the said obligations due to serious financial constraints, mismanagement, possible corruption and a disregard for the community.

3. As a result of the Municipality's failures, the Residents and community at large are robbed of basic service delivery that they are afforded in the Constitution.
4. As a result of the Municipality's continued failures, the Residents and community's basic Human Rights as set out in Chapter 2 of the Constitution are seriously infringed and/or unreasonably limited in that they are being denied:
  - To practice their trade, occupation or profession
  - An environment that is not harmful to their health and well-being
  - Protection of the environment for the benefit of the present and future generations
  - Prevention of pollution and ecological degradation
  - Having access to information held by the state.
5. The Municipality will never be able to settle their debt payable to Eskom and therefore disruption or suspension of Eskom electricity bulk supply shall forever be hanging over the heads of the Residents, despite them paying the Municipality for electricity use.
6. The provincial government is afforded the right in the Constitution to assume the responsibilities of the municipality to ensure that the minimum standards of service delivery are achieved. It is therefore our urgent request that provincial government settle the Eskom historical debt owed by the Municipality and to assist the Municipality with upgrading the basic service infrastructure to a level that can be maintained.
7. The provincial government is afforded the right and the obligation in the Constitution to monitor and advise the Municipality on municipal finances and to investigate malpractices, fraud and misconduct. It is therefore the Residents request that provincial government investigate the 2018 Forensic Report and to take legal action against corrupt officials as well as to provide the Residents with its findings on its investigation into any malpractices and misconduct by municipal officials.

As a result of Eskom's pending bulk electricity supply reductions, our request for intervention by the Province is urgent and therefore we hereby **request your reply to this letter on or before 14 December 2020** failing which we shall then refer our concerns to National Government.

The Residents of Thaba Chweu Local Municipality deserves that you apply yourself and all of your recourses to ensure that their Constitutional rights are being protected and respected.

We look forward to hearing from you.

Yours truly

**BY: Y LABUSCHAGNE**

**YVETTE LABUSCHAGNE ATTORNEYS**

A copy received by:

**THE PREMIER OF MPUMALANGA PROVINCE  
7 GOVERNMENT BOULEVARD, BUILDING 2  
RIVERSIDE PARK X 2  
MBOMBELA**

\_\_\_\_\_  
**Name and date**

**MEC: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS  
7 GOVERNMENT BOULEVARD, BUILDING 6  
RIVERSIDE PARK X 2  
MBOMBELA**

\_\_\_\_\_  
**Name and date**

**CHIEF DIRECTOR MPUMALANGA DEPARTMENT: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

**7 GOVERNMENT BOULEVARD, BUILDING 6**

**RIVERSIDE PARK X 2**

**MBOMBELA**

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**Name and date**