



## **Craniological Report: Amahlathi Residents Association**

**Updated: 20 November 2019**

## Amahlathi Local Municipality: Sequence of Events 16 October 2018 – 26 February 2019

- 1.0 On 16 October 2018 a group of youths marched to the Amahlathi Local Municipality (ALM) offices demanding the council address their demands listed in a petition.
- 2.0 The protest became violent after one of the councillors drew his firearm and shot a warning shot into the air to disperse the crowd. The protestors subsequently went ahead and torched and damaged municipal buildings used by both ALM and Amathola District Municipality (ADM) as well as one building belonging to the Provincial Department of Health (DOH).

**Table 1: Buildings Affected:**

Address	Function	Present Condition	Photo (Before)	Photo (On or After)
21 Long Street	ALM: Community Services	Completely Destroyed		
19 Long Street	ALM: Council Offices	Completely Destroyed		
Corner of Maclean and Hill Street	ALM Main I Building	Damaged Repairable	n/a	
Corner of Maclean and Hill Street	ALM Main Building	Completely Destroyed		
Corner of Dragoon and Long Street	DOH Clinic and ALM Offices	Completely Destroyed		
Corner of Louisa and Dragoon Street	ALM Engineering Department	Damaged Repairable		
Municipal Dump Site Store Rooms	ALM Waste Management Services	Damaged Repairable	n/a	n/a

**3.0** From the 17th the communities of both Mlungisi and the Kologha sporadically had protests, with them intimidating both private sector as well as municipal employees to not return to work, in addition businesses were threatened to close on days of protests. The private sector eventually decided they cannot afford to stay closed and reopened, proving the municipality would have been able to do the same.

Table 2: Sequence of Events:

Date of Protest	No Refuse Removal	Full Closure	Partial Closure	Road Bocks	Vehicles Burnt	Voluntary Partial Clean-up	Some Municipal workers not Paid	All Municipal workers not Paid
16 October 2018	X	X						
17 October 2018		X		X				
18 October 2018		X		X				
19 October 2018			X					
23 October 2018	X							
24 October 2018			X					
30 October 2018	X							
31 October 2018				X				
1 November 2018				X	X			
6 November 2018	X							
12 November 2018				X	X			
13 November 2018	X							
17 November 2018						X		
20 November 2018	X			X				
21 November 2018			X	X				
26 November 2018		X						
27 November 2018	X							
4 December 2018	X							
11 December 2018	X							
18 December 2018	X							
27 December 2018	X							
2 January 2019	X							
8 January 2019	X							
9 January 2019				X				
15 January 2019	X							
22 January 2019	X							
24 January 2019		X			X			
25 January 2019		X					X	
29 January 2019	X							
5 February 2019	X							
12 February 2019	X							
19 February 2019	X							
20 February 2019						X		
25 February 2019								X
26 February 2019	X							

**4.0** A meeting was called 1 November 2018 where it was agreed an Amahlathi Residence Association (ARA) need to be formed. On 21 November 2018 the ARA had an AGM (*Using a WhatsApp platform due to security concerns*), with the constitution signed on 28 November 2018 (**See Annexure A**).

- 5.0** On 18 December 2018 a delegation from the ARA hosted a contingent from the Municipal Management to ascertain what the strategy of restoring service delivery would be. From the meeting it became apparent that the municipality is unable to render any services until the protest action has been called off. The ARA subsequently resolved the only structure that can remedy the situation is the Municipal Council.
- 6.0** A meeting was subsequently arranged with the Speaker and an Exco member on 19 December 2018. At the meeting the Speaker committed on behalf of the Municipal Council, that a council meeting will be called before 31 December 2018, where they will attempt to resolve the situation. The meeting never materialised as promised.
- 7.0** The 20 December 2018 the ARA issued a “Communique 1: Request to Reinstate Service Delivery” to both the council and the management of the municipality confirming its expectations with a response deadline of 15 January 2019 (**See Annexure B**). No response were received. The expectations was listed as:
- 7.1** The municipality need to urgently clean up the town, and rehabilitate the refuse disposal site, which is currently a potential environmental disaster, contaminating the water system that feeds the City of East London as well the water supply of the farms and communities in between.
  - 7.2** The municipality needs to issue all residents with up-to-date account statements, and institute legal action against any person in arrears for more than 90 days. In the event where there are disputes, it is recommended an independent arbitrator be appointed to rule on all disputes.
  - 7.3** In terms of electrical supply, the municipality must confirm there are no outstanding payments to Eskom and at the same time implement a process of auditing all electrical meters and prepaid meters, to ensure there is no electricity theft. In the case of detecting theft, criminal cases must be opened against perpetrators and civil proceeding be instituted to recover cost of electricity stolen.
  - 7.4** All other services, including traffic and community services, must be restored as soon as possible, with specific dates, names and contact details of responsible officials to be provided, as well as details of the locations where these services will be offered.
- 8.0** On 15 January 2019 the ARA supported by some on the businesses in Stutterheim appointed Bate Chubb & Dickson to provide further legal advice in terms of the appropriate way forward.
- 9.0** On 17 January 2019 Bate Chubb & Dickson send a letter titled, “Amahlathi Residents Association/Various Businesses / Amahlathi Municipality – Demand for Reinstatement of Service Delivery” (**see Annexure C**). No response were received. The demands were if the Council and Municipality fail to implement the changes suggested by the ARA by no later than 25 January 2018, or our clients will be left with no other option but to:
- 9.1** Declare a dispute in terms of Section 102 (2) of the Municipal Systems Act 32 of 2000, for refuse removal with effect 1 November 2018, for all residents in the town.
  - 9.2** Appoint an environmental specialist to assess the state of the town, the refuse disposal site and levels of pollution, and apply for relief from a court to grant our clients the right to implement any recommendations, and recover all cost from the Municipality.
  - 9.3** Appoint legal counsel to make application to court for a structural interdict to compel the municipality to address the demands of our clients.
- 10.0** On 1 February 2019 Bate Chubb & Dickson send a letter titled, “Amahlathi Residents Association/Various Businesses/Amahlathi Municipality – Demand for Reinstatement of Service Delivery” (**See Annexure D**), specifically notifying the municipality:
- 10.1** Given that neither the municipality nor the council has responded to our letter, our clients hereby declare a dispute in terms of Section 102 (2) of the Municipal Systems Act 32 of 2000, for the municipality’s failure

to submit accounts to ratepayers and failure to deliver services. Our client intends to apply to court to declare the dispute and order the municipality to furnish accounts to ratepayers.

- 10.2** As the municipality has failed to appoint an environmental specialist to audit the refuse site, our client intends to appoint an environmental specialist consulting firm, at an approximate cost of R28 520.00 (Excl. VAT) to perform a waste audit of the town, the refuse disposal site and levels of pollution, and apply for relief from a court to grant our clients the right to implement any recommendations, and recover all costs from the Municipality.
- 10.3** Our client will further make application to court for a structural interdict to compel the municipality to address the demands of our clients.
- 10.4** Considering the urgency of the above, the municipality and council are hereby given until the 8th of February 2019 to respond to this demand, after which our clients intend to act upon the matters raised in points 1 to 3.
- 11.0** On 2 February 2019 the ARA appointed a consultant to conduct a waste audit on Municipality.
- 12.0** On 4 February 2019 the Municipal Manager did respond to the letter of the 1 February 2019 (**See Annexure E**), but the contents are basically an apology for not rendering services and fails to address the specific demands of the ARA.
- 13.0** On 4 February 2019 the waste audit was done on the Municipality, with a report issued on 11 February 2019 (**See Annexure F**). The report clearly confirms the waste situation in the town and more specifically the refuse site is indeed an environmental disaster, systematically contaminating the environment.
- 14.0** On 18 February 2019 it was announced the protest action has been called off.
- 15.0** On 22 February 2019 the municipality issued a communique via WhatsApp as follow:

*Attention Amahlathi Local Municipality Employees*

*It is with regret that management finds itself in a situation where salaries for February 2019 will not be paid.*

*The precarious situation that the municipality finds itself in is a result of a number of past decisions that municipality has made regarding the cost of employment. The major cost driving decision remains that of standardization of salaries which resulted in a 50% increase in salaries in one year alone being the 2016/2017 financial year. It is important to mention that due amendments by Demarcation Board, during that same year the Equitable Share continued to drop which is the main revenue source of the municipality.*

*Various reports and recommendations have been presented to Unions and Council in bid to arrive at a correct and lawful decisions / resolutions about the matter but these have been rejected by both the unions & council however management maintains that engagements should still continue.*

*Drastically shrinking/ depletion of reserves from the prior years has negatively affected the financial status of the municipality. The recent community protest that lasted for almost 5 months exacerbated this financial challenge.*

*The municipality is in a drive to intensify its revenue collection efforts in order to generate enough revenue to pay the February salaries but this is only a short term measure which will not necessarily solve the cash flow deficit caused by standardization of salaries in the long term.*

*It is currently not clear when the municipality will generate enough revenue to pay the February salaries. Management will continue updating you about any progress made.*

*It is important to mention that councillors' and senior management's salaries for January were not paid due to these financial constraints. There are still not enough funds to make the payments for January which is evident that key decisions need to be made to remedy the situation.*

*Management would like to encourage all employees to remain committed to serving the community of Amahlathi Local Municipality in these trying times.*

*Director Corporate Services on behalf of Management*

- 16.0** On 25 February 2019 it was confirmed no employees received a salary, and a deadlock was declared between the Unions and the Municipality. At that point no services were rendered by the municipality. Early March the Municipality received its final equitable share tranche for 2018/19, which allowed them to pay the salaries for February and March. It is suspected the April salaries were partially paid from equitable share and amounts due to 3<sup>rd</sup> parties.
- 17.0** In addition the Municipal Financial year that ended 30 June 2018, with the Annual Financial Statements (AFS), already released (**See Annexure G**), it is clear from the AFS the municipality were already technically insolvent by the end of June 2018, with Current Liabilities exceeding Current Assets by approximately R40m. It is clear their financial position has further deteriorated, from Technically Insolvent to Factually Insolvent, considering they are unable to pay their staff.
- 18.0** In March it was announced that the municipality has been placed under administration with the Administrator being Dr Sindisile Mclean. A meeting was held with Dr Mclean on 1 April 2019, to confirm his mandate. A letter was subsequently drafted to the municipality to reiterate the position of the ARA, relative to the state of the municipality (**See Annexure H**).
- 19.0** On 23 May 2019, the municipality announced to employees there will be no salaries paid for May and June, with payments only to be made in July when the first equitable share tranche for 2019/20 will be received (**See Annexure I**).
- 20.0** On 24 June 2019 a notice was placed in the Daily Dispatch by Eskom that the municipality is in arrears with its payment and 14 hours a day load shedding will be gradually introduced from 15 August 2019 (**See Annexure J**). This prompted the ARA to request an urgent meeting with a broad base of stakeholders on 26 June 2019. In the meeting it was agreed a meeting must be set up with the Administrator, a letter was sent to the Administrator requesting the meeting 27 June 2019 (**See Annexure K**).
- 21.0** The administrator agreed to a meeting on the 3 July 2019. After substantial discussions, it became clear the Constitution Section 139(1)b and 139(5) gives the Administrator insufficient powers to implement the necessary interventions to ensure the financial stability, of the municipality. The only course of action is that the ALM in coordination with the ARA arrange an urgent engagement with the new MEC of the Department of Co-operative Governance and Traditional Affairs (COGTA), with representatives from the ARA, Business Community, as well as the various community organisations represented. In the meeting the municipality was also requested to confirm that they will pay Eskom. The discussion was confirmed in a letter to the Administrator on 4 July 2019 (**See Annexure L**).
- 22.0** The Administrator did not manage to arrange a meeting with the MEC of COGTA and indicated COGTA requires the ARA to send written request for meeting. A letter dated 22 July 2019 was to the MEC on 23 July 2019 with an acknowledgement of receipt received the same day (**See Annexure M**). To date the Department has failed to make contact with the ARA to set up a meeting.
- 23.0** To date no response were received on the letter of 23 July 2019, and it was decided to escalate the matter to the Office of the Premier in a letter dated 8 August 2019 (**See Annexure N**). To date the Office of the Premier has failed to make contact with the ARA to set up a meeting.
- 24.0** Over the period 2 August 2019 to 12 August 2019 the staff of the Amatole District Municipality staged an illegal strike and sabotaged water and sewerage services. This combined with the poor refuse situation of the town, really posed a serious environmental risk, with a letter written to the both the National Department of Environmental Affairs (DEA) and the equivalent structure in the province (**See Annexure O**). The DEA acknowledged the complaint and assigned a reference number ENV4969.

- 25.0** Contrary to projections of the ARA the municipality managed to pay municipal salaries for the period August 2019 to October 2019, apparently they managed to achieve the payroll out of own resources in August and September and used an overdraft in October. With a number of power outages over this period, refuse was also removed over the period. However, the state of the municipal refuse site started deteriorating systematically over this period, and it became obvious they do not have the resources to maintain the site.
- 26.0** On 29 October 2019, the ARA management board resolved to establish two sub committees, called the Infrastructure Maintenance Committee (IMC) and the Legal Action Committee (LAC), with terms of reference approved for the IMC (**See Annexure P**) and LAC (**See Annexure Q**).
- 26.0** On 5 November 2019 a message was circulated on social media by Councillor Siyabulela Malawu that Eskom has given the ALM notice, that they intend interrupting the bulk electricity supply of ALM as from 7 January 2020, should the municipality fail to pay the R8 035 288.69 owed. The ARA wrote a letter the same day to the Municipality, requesting the municipality to respond by no later than 13 November 2019, indicating what is the plan of the municipality to avoid this interruption of supply (**see Annexure R**). No response to this letter were received to date.
- 27.0** On 20 November 2019 the ARA wrote a second letter requesting ALM to respond to the letter dated 5 November 2019, failing which legal action will be considered (**See Annexure S**).
- 25.0** The ARA is of a view unless the municipality reduce its staff complement and salary structure significantly it will not be able to service the 3<sup>rd</sup> party debt and the payroll, which would make it impossible for them to continue operating, with every month passing resulting in the municipality going deeper into debt, while it cannot be morally or legally expected that the rate payers pay for services they are not receiving.
- 26.0** The single biggest concerns of the ratepayers:
- 26.1** The electricity will be cut eventually due to the non-payment of Eskom or the complete collapse of the electrical network, which will result in the collapse of the economy in the area, due to businesses having to close their doors. *The root causes of this being a lack of maintenance of the electrical infrastructure, bypassed electrical meters and illegal electrical connections.*
- 26.2** The town will become uninhabitable due to the level of pollution and lack of service delivery. *The root cause of this is the lack of services public waste disposal receptacles, inconsistent refuse collection and failure to manage refuse disposal facilities.*
- 27.0** Should the municipality remain dysfunctional the relief the ARA will apply for from a court will be:
- 27.1** Order that standardisation of salaries be reversed with effect 1 February 2019
- 27.2** Order staff be retrenched on a “last-in-first-out” basis up to the point where the payroll matches the equitable share.
- 27.3** Order an audit of the electrical meters in the town to assure all electricity supplied are indeed paid for and ring fence electrical revenue to settle Eskom debt and maintaining electrical infrastructure, with surpluses only surrendered for use by the municipality at the end of a financial year, while retaining a maintenance fund.

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## **Annexures:**

- A:** ARA Constitution
- B:** Communique 1: Request to Reinstate Service Delivery – 20 December 2018
- C:** Bate Chubb & Dickson: Demand for Reinstatement of Service Delivery – 25 January 2019
- D:** Bate Chubb & Dickson: Demand for Reinstatement of Service Delivery – 1 February 2019
- E:** Response from Municipality – 11 February 2019
- G:** ALM Annual Financial Statements 2017/18
- H:** ARA Communique 2: Meeting with Administrator – 23 April 2019
- I:** Municipal Announcement Salaries – 23 May 2019
- J:** Daily Dispatch Notice by Eskom – 24 June 2019
- K:** ARA Communique 3: Request for Meeting – 17 June 2019
- L:** ARA Communique 4: Response to Meeting – 4 July 2019
- M:** ARA Request for Meeting with COGTA – 22 July 2019
- N:** ARA Request for Meeting with Office of the Premier – 8 August 2019
- O:** ARA Complaint to Department of Environmental Affairs – 8 August 2019
- P:** Terms of Reference: Infrastructure Maintenance Committee – 29 October 2019
- Q:** Terms of Reference: Legal Action Committee – 29 October 2019
- R:** ARA Communique 5: Notice from Eskom – 5 November 2019
- S:** ARA Communique 6: Notice from Eskom (Follow-Up) – 20 November 2019