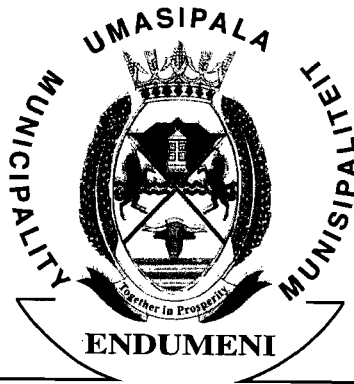


Your Ref.:

Ref.:

Department: P3/17 B

Enquiries Acting Municipal Manager



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Mr. J B Maltman

25 November 2010

Mr. S N Dubazane
P O Box 1965
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3000

- 1. COMPUTER GENERATED FINAL DEMAND FOR PAYMENT OF OUTSTANDING AMOUNT:
NOTIFICATION ON TERMS OF SECTION 41(2) OF THE INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT 13 OF 2005.
TIME FREIGHT TRACKING NO 306/1 27 OCTOBER 2010.**
- 2. FAILURE BY UMZINYATHI DISTRICT MUNICIPALITY TO FACILITATE TRANSFER OF ASSETS AND LIABILITIES FROM ENDUMENI LOCAL MUNICIPALITY**

Dear Mr. Dubazane

Your correspondence of 10 November 2010, faxed to the Endumeni Local Municipality at 14h16 on 22 November 2010 refers. Kindly be advised the Endumeni Local Municipality has formally considered the matter in question and acts under the executive authority of Council Resolution B01/16/09/10-3. Before dealing with the issues ventilated in your correspondence, I believe it essential to provide some background in order that you may glean a crisp understanding of the issues at play. At the outset I initially deal with the final demand for payment.

1. FINAL DEMAND FOR PAYMENT OF OUTSTANDING AMOUNT:

In the foregoing regard the Minister of Local Government issued a notice in the Government Gazette under Notice Number 841 dated 13 June 2003 dealing with the performance of the functions and the exercise of the powers mentioned in Section 84 1(b) and (d) of the Structures Act No 117 of 1998 being the effective date to be construed as 1 July 2003. In response to the above Notice, Umzinyathi District Municipality published a Public Notice in the Northern Kwa Zulu Natal Courier acting under the provisions of Government Notice No 841 dated 13 June 2003 thus enabling the Umzinyathi District Municipality to act as the Water Services Authority for the provision of Water Services as defined in the Water Services Act 108 of 1977.

The Umzinyathi District Municipality furthermore engaged the services of Attorney's De Jager Steyn & Maritz who completed **six** versions of a draft transfer agreement between the Endumeni Municipality and Umzinyathi District Municipality. The Endumeni Local Municipality formally resolved to accept the terms and conditions of said Transfer agreement. Furthermore, per correspondence dated 21 June 2004 the parties formally exchanged the proposed agreement to be entered into between Umzinyathi District Municipality and Endumeni Local Municipality.

In subsequent correspondence dated 16 September 2004 the Endumeni Municipality succinctly confirmed the following key issues with the then Municipal Manager of the Umzinyathi District Municipality.

'Both of the agreements were forwarded to your offices for signature during June 2004.

It would be appreciated if you could attend to the signing of the agreements within (14) fourteen days, failing which it will be accepted by this office that you concur with the contents of all clauses pertaining to these agreements and as such be binding upon your Organization."

The Endumeni Municipality has sought the opinion of Counsel who has opined that the Endumeni Local Municipality presently enjoys a very sound claim in law in respect of all operational expenditure incurred by the Endumeni Local Municipality after the effective date and therefore, Umzinyathi District Municipality shall be liable to settle any such claim.

For your convenience I enclose the following schedule of documents for ease of reference.

1. Notice 841 GG 25076 13 June 2003.
2. Umzinyathi District Municipality Public Notice Water & Sanitation
Published Northern Kwa Zulu Natal Courier.
3. Summary Schedule Debt R17 068 623.59.
4. DBSA Loan.
5. Council resolution.
6. Correspondence 21 June 2004 Endumeni local Municipality/ Umzinyathi District
Municipality.
7. Correspondence 16 September 2004 Endumeni Local Municipality / Umzinyathi
District Municipality.
8. Transfer agreement prepared by De Jager Steyn Maritz Umzinyathi District
Municipality Attorneys.
9. Time Freight Notice.
10. Notification in terms of Intergovernmental Relations Act 13 of 2005.
11. Final demand for payment notification in terms of section.
41(2) of the Intergovernmental Relations Framework Act 13 of 2005.
12. Auditor General Communication Number 1: no 7. Water assets
13. Correspondence KZN legislature.
14. Minutes of meeting KZN Provincial Treasury 19 November 2010.
15. Umzinyathi correspondence received 22 November 2010.
16. Correspondence between the parties.

Clearly on interpretation of the above documents the Minister of Local Government issued a notice in the Government Gazette under Notice Number 841 dated 13 June

2003 dealing with the performance of the functions and the exercise of the powers mentioned in Section 84 1(b) and (d) of the Structures Act No 117 of 1998 being the effective date to be construed as 1 July 2003. In response to the above Notice the Umzinyathi District Municipality published a Public Notice in the Northern Kwa Zulu Natal Courier acting under the provisions of Government Notice No 841 dated 13 June 2003 thus enabling the Umzinyathi District Municipality to act as the Water Services Authority for the provision of Water Services as defined in the Water Services Act 108 of 1977. The Umzinyathi District Municipality engaged the services of Attorney's De Jager Steyn & Maritz who completed **six** versions of a draft transfer agreement between the Endumeni Municipality and Umzinyathi District Municipality. The Endumeni Local Municipality per Resolution accepted the terms and conditions of said Transfer agreement. In subsequent correspondence dated 16 September 2004 the Endumeni Municipality succinctly confirmed the issues at hand with the then Municipal Manager of the Umzinyathi District Municipality and therefore an agreement **exists** between the parties.

The following information is provided as a time line in order to establish a sequence of events.

- a. The Endumeni local Municipality created a sundry Debtors account for the provision of Water Services as defined in the Water Services Act 108 of 1977 and rendered monthly accounts in order to reflect all costs incurred in the provision of the service post 1 July 2003.

The Umzinyathi District Municipality at the outset has made periodical payments on the above sundry debtors accounts confirming liability to Endumeni Local Municipality.

- a. During the past seven years correspondence has been exchanged between the parties in order to expedite an amicable solution to the issues and unfortunately these initiatives' have been to no avail.

- b. During the past seven years various meetings have taken place in order to expedite an amicable solution to the issues and unfortunately these initiatives have been to no avail.

- c. The CFO's have recently endeavoured to reach a resolution to the issues at hand and copies of e mails and correspondence are attached for your convenience. I confirm that your CFO would now have sufficient information to make a determination in this regard. I am instructed the CFO'S jointly acknowledge your outstanding liability in terms of the debt schedule but cannot agree on the terms and conditions for payment. The CFO's deliberations are further exacerbated by the fact that all of the information has in fact been common cause since 2004. Furthermore, similar discussions between the parties have taken place on a regular basis since 2004.

- d. A delegation of the Kwa Zulu Natal legislature visited the Umzinyathi District Municipality in August 2010. They **“Umzinyathi District Municipality”** informed the Meeting **“Kwa Zulu Natal Legislature”** that they were unaware of their indebtedness to Endumeni **“for the provision of Water Services as defined in the Water Services Act 108 of 1977”.**”(Emphasis ours).
- e. The Endumeni Local Municipality formally considered the matter in question and in terms of Council Resolution B01/16/09/10-3 and resolved to issue a Final Demand For Payment Of Outstanding Amount: Notification in Terms Of Section 41(2) of Intergovernmental Relations Framework Act 13 Of 2005.
- f. Final Demand for Payment of Outstanding Amount: Notification in Terms of Section 41(2) of Intergovernmental Relations Framework Act 13 of 2005 was communicated to MEC of Co operative Governance, National and Provincial Treasury and Auditor General as prescribed by Municipal Finance Management Act 56 of 2003.
- g. The KZN Provincial Treasury intervened in this matter and scheduled a meeting between Representatives of KZN Provincial Treasury ,Representatives of Umzinyathi District Municipality and Representatives of Endumeni Local Municipality in order to resolve the a foregoing issues. The meeting was scheduled to be held at 14h00 on 18 November 2010 at room 50 Endumeni Centre 64 Victoria Street Dundee. The Umzinyathi CFO Mr. B Mdletshe

requested Provincial Treasury that the meeting be rescheduled to be held at 10h00 on 19 November 2010 at room 50 Endumeni Centre 64 Victoria Street Dundee and said request was acceded to. The meeting with KZN Provincial Treasury did in fact take place on 19 November 2010 at room 50 Endumeni Centre 64 Victoria Street Dundee, unfortunately the Umzinyathi CFO Mr. B Mdletshe **failed** to attend the meeting rescheduled at the request of Umzinyathi District Municipality. The minutes of the meeting are appended for your convenience.

RESPONSE TO CORRESPONDENCE RECEIVED FROM DISTRICT MUNICIPALITY ON 22 NOVEMBER 2010

- a. Your correspondence of 10 November 2010, faxed to the Endumeni Local Municipality at 14h16 on 22 November 2010 refers, and I now deal with the contents thereof. Clearly by your CFO's actions of 19 November 2010 a perception is created that the issue is incapable of being resolved. The CFO's actions are further exacerbated by the fact that all of the information has been available and is in fact by implication common cause. The Umzinyathi District Municipalities actions are further amplified by the following correspondence recently received from the Kwa Zulu Natal legislature and appended for your convenience. They **"Umzinyathi District Municipality"** informed the Meeting **"Kwa Zulu Natal Legislature"** that they were unaware of their indebted

ness to Endumeni **“for the provision of Water Services as defined in the Water Services Act 108 of 1977”.**(Emphasis ours)

- b. I quote verbatim from your correspondence received on 22 November 2010. **“The matter was further discussed at the CFO’S Forum on the 27 October 2010. It was explained to the Forum that this liability will be accounted for in the books of Uthukela Water (Pty) (Ltd) as water assets and liabilities were transferred to Uthukela Water (Pty) (Ltd) in terms of the WSP agreement which was entered into between Umzinyathi District Municipality and Uthukela Water (Pty) (Ltd). It was accordingly agreed that the Chief Financial Officers of Endumeni Local Municipality, Umzinyathi District Municipality and Uthukela Water (Pty) (Ltd) will have to meet and try to resolve the matter before the end of November 2010. Your Chief Financial Officer did not inform the meeting that a letter of demand and complaint letter were issued to Umzinyathi”.**

The argument you present is with respect patently fallacious and ignores the statutory and contractual obligations that currently exist between the parties. To contend that this liability will be accounted for in the books of Uthukela Water (Pty) (Ltd) as water assets and liabilities were transferred to Uthukela Water (Pty) (Ltd) in terms of the WSP agreement which was entered into between Umzinyathi District Municipality and Uthukela Water (Pty) (Ltd) is incorrect and ignores your clear statutory and contractual obligation towards the Endumeni

Municipality as earlier disclosed. In essence the Endumeni Local Municipality balance sheet continues to be encumbered in November 2010 as a result of transactions after the effective date , resulting in ongoing payments on existing contracts entered into relating to Water Services. The quantum of the contractual claim against Umzinyati District Municipality is R17 068 623.59 and increases on a monthly basis. The issue has remained unresolved for in excess of seven years and impacts on the daily operations of the Endumeni Municipality which will lead to a public outcry when considering your statutory and contractual obligations as contained in the transfer agreement as follows..

Liabilities attaching to the water services works, the property, the staff and the movable assets

12.2 Similarly existing contracts entered into relating to Water Services are hereby ceded from the Local Municipality to the District Municipality who hereby accepts the former rights, duties and obligations of the Local Municipality therein.

Clearly an impasse exists between the parties and upon an interpretation of the facts the only course of action open to Endumeni Municipality is a claim against the Umzinyathi District Municipality as no statutory or contractual nexus exists between

Endumeni Municipality and UThukela Water. Kindly be advised of the Endumeni Municipalities intention to declare a dispute relating to the non payment of operational costs incurred after the effective date per the provisions of the Intergovernmental Framework Act 13 of 2005. The dispute in question is currently being drafted and shall be formally served upon your Municipality should a amicable resolution not be found by 15 December 2010. The Endumeni Municipality is however committed to an amicable solution to the issue and would support an immediate meeting between the Municipal Manager's in conjunction with CFO's in order to attempt a final resolution of the matter. Furthermore, the Endumeni Municipality would in principle support the joint appointment of PWC (Pty) (Ltd) a company with an intimate knowledge of the issues to act as an independent advisor to the parties in an attempt to broker a settlement.

2. FAILURE BY UMZINYATHI DISTRICT MUNICIPALITY TO FACILITATE TRANSFER OF ASSETS AND LIABILITIES FROM ENDUMENI LOCAL MUNICIPALITY

Turning to the issue of a transfer of assets and liabilities at the effective date, the matter is relatively straight forward in that the statutory provisions of Notice Number 841 dated 13 June 2003 are applicable and need to be complied with and be read in conjunction with the contractual obligations of the transfer agreement. The only parties affected are the Umzinyathi District Municipality and Endumeni Local Municipality. The Umzinyathi District Municipality in this regard has failed since 1 June 2003 to receive the assets and liabilities in terms of the aforesaid legislative processes resulting in a plethora of Audit

Queries being raised against the Endumeni Municipality by the Auditor General. Kindly find enclosed recent audit queries raised by the Auditor General. Furthermore correspondence directed to your office on 14 May 2008 has unfortunately been to no avail. (Copy enclosed for your convenience). Consequently, be advised of the Endumeni Municipalities intention to declare a further dispute relating to Transfer of assets and liabilities at the effective date per the provisions of the Intergovernmental Framework Act 13 of 2005. The dispute in question is currently being drafted and shall be formally served upon your Municipality should a amicable resolution not be found by 15 December 2010. The Endumeni Municipality is however committed to an amicable solution to this issue and would support an immediate meeting between the Municipal Manager's in conjunction with CFO's in order to attempt a final resolution of the matter. Furthermore, the Endumeni Municipality would in principle support the joint appointment of PWC (Pty) (Ltd) a company with an intimate knowledge of the issues to act as an independent advisor to the parties in an attempt to broker a settlement.

3. WAY FORWARD

In the interests of Co-Operative Governance I would urge that the parties find an amicable solution to the matter and await your urgent response. However your proposed timeframes are totally unacceptable considering the issue should have been resolved some seven years ago and it is settled that Umzinyathi District Municipality acknowledges that it has inspected the water services works, movable assets, the property and the administrative records and it takes transfer of them voetstoets as at the effective date. Furthermore, the ownership and possession of all assets shall be transferred to the district municipality on the Effective date and such transfer can be

resolved by concurrent resolutions taken by the respective Municipalities in conjunction to suitable amendments being made to the asset registers. Another copy of operational expenditure debt, which was made available to yourselves on a regular basis, is available should you so require one and the final figures could be validated within a period of no longer than 5 days.

However should such validation not take place the Endumeni Local Municipality reserves the right to recalculate the account and allocate interest at the prime overdraft rate from 1 July 2003 in order to protect the time cost of money. The matter has been outstanding since July 2003 and all attempts to resolve the matter to date have failed.

I trust the foregoing is to your satisfaction and should you have any further query please do not hesitate to make contact.

Yours faithfully



J B MALTMAN

ACTING MUNICIPAL MANAGER

/cd

cc : Mr L Pienaar
General Manager : Municipal Governance & Administration : COGTA

Ms J Krishnan
General Manager : Manager Finance : COGTA