

## **A. APPOINTMENT, TERMS OF REFERENCE, TASK DESCRIPTION AND METHOD**

### **1. Notice of appointment**

Provincial Notice 26/2004 was published in Extraordinary Provincial Gazette No. 6108 of 18 February 2004 as well as in various local newspapers and reads as follows:

**“LOCAL GOVERNMENT:**

**MUNICIPAL SYSTEMS ACT, 2000**

*Section 106(1)(b):*

*Appointment of persons to conduct an investigation*

*Notice is hereby given that Mr J J Dowry, the Western Cape Minister of Local Government, in terms of section 106(1)(b) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)*

*has appointed:*

*Mr Len Daniël Dekker (Chairperson)*

*and*

*Mr Efraim Joseph Oppelt*

*on 6 February 2004 to conduct an inquiry into the following matters in terms of section 106(2) of the said Act, read with the Western Cape Provincial Commission Act, 1998 (Act No. 10 of 1998):*

*Allegations of maladministration, non-compliance with statutory obligations, or other serious malpractices committed by any person or persons in the Kannaland Municipality or any person or persons who are or were connected to the Kannaland Municipality.”*

### **2. Section 106**

Section 106 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) reads as follows:

**“Non-performance and maladministration”**

*106. (1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil 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.*

(2) *In the absence of applicable provincial legislation, the provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Wet No. 8 of 1947), and the regulations made in terms of that Act apply, with the necessary changes as the context may require, to an investigation in terms of subsection (1)(b).*

(3) *An MEC issuing a notice in terms of subsection (1)(a) or designating a person to conduct an investigation in terms of subsection (1)(b), must submit a written statement to the National Council of Provinces motivating the action.”*

### **3. Item 13 and 14 of Schedule 1, Code of Conduct for Councillors**

This Committee of Inquiry is appointed in terms of section 106 of the Systems Act and not in terms of item 14(4) of Schedule 1, Code of Conduct for Councillors. From the Supreme Court Case No. 6846/01 of *C. C. van Wyk vs Pierre Uys*, it is evident that any further action (suspension for a period of time or dismissal from office) of councillors, can only take place once the Speaker has had the *prima facie* contraventions of the Code investigated in terms of item 13 of Schedule 1.

It also does not seem to be legally possible, if similar Committees of Inquiry are appointed in future, to do this both in terms of section 106 and item 14(4), Schedule 1, of the Systems Act to eliminate unnecessary duplication of investigations. This is felt to be an unsatisfactory legal position and adjustments/amendments to the Systems Act would appear to be necessary and should be considered.

### **4. Interpretation of the terms of reference**

Mr D J Uys, the attorney who acted on behalf of the Kannaland Municipality, submitted the following argument with regard to the interpretation of the terms of reference in terms of section 106 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000):

*“The terms of reference of the honourable Committee are to investigate allegations of “maladministration, non-compliance with statutory obligations, or other serious malpractices” that were possibly committed by any person at or in association with the Kannaland Municipality. The*

*English terms describing the aim of the inquiry are “maladministration, non-compliance with statutory obligations or other serious malpractices”.*

*The “non-compliance with statutory requirements” does not present any interpretation problems. In the case of “maladministration” and “malpractices” content must be given these concepts, particularly because they are not defined in the Act. In so far as “malpractices” as mentioned here are concerned, special reference is made in section 106 to fraud and corruption, which clearly indicates what is meant by the term of in terms of the terms of reference. Therefore, only “maladministration” remains:*

*One of the rules of legal interpretation is that words must be understood according to their normal meaning. (See Steyn – Uitleg van Wette, Edition p.4.) The meaning of “administration” is obvious. The Verklarende Handwoordeboek van die Afrikaanse Taal (HAT) gives the following meaning to the prefix “wan”:*

*1. sleg, misdadig. 2. ontbrekend, missend. 3. verkeerd, gebrekkig, vals.*

*[English prefix “mal” – meaning bad, criminal, lacking, missing, wrong, flawed, false]*

*It therefore varies between the less serious “lacking” to wrongfully “criminal”. In the case of the English version of the relevant words, the prefix “mal” is used, which is derived from the word “malice” or “malicious” that can be translated with the words meaning “bad, malicious, malevolent, intentional, deliberate”. This corresponds to the Afrikaans explanatory meaning under 1.*

*The application of certain assumptions also forms an integral part of the legal interpretation. One of them (Steyn 9103), reads “that the legislator does not envisage an unjust, unfair or unreasonable result.” This gives rise to certain rules, for example, that an Act shall be construed in such a way that it will burden the persons to whom it applies, as little as possible”... as well as, “When in doubt, the most favourable interpretation shall be followed.”*

*The above is consistent with the point of view that the provision concerned is not intended to put pressure on a municipality not to make any mistakes but rather to refrain from any deliberate, malicious, reckless or intentional behaviour that can be detrimental to its administration. Furthermore, the meaning of the word “practice” should also be taken into account with the effect that we are now talking about continued and repetitive action. An isolated incident does not constitute “practice”.*

*The respectful submission follows that behaviour or events as submitted in evidence, shall have to be tested against the above-mentioned interpretation for the purposes of this enquiry.”*

Although the term “fraud” and “corruption” also appear in section 106, they do not appear in the terms of reference – probably because there was no *prima facie* evidence thereof at the time of the appointment.

As is evident from the findings, a variety of cases were submitted to the Committee of Inquiry, which varied from simply poor service delivery to malpractices and non-compliance with statutory obligations.

## 5. Method

The two members of the Committee of Inquiry met in Ladismith with representatives of the Western Cape Provincial Government on 10 February 2004 in preparation for the investigation.

Meetings with councillors, officials and trade union representatives of the Kannaland Municipality were held on the same day. The dates of the public hearings and where these hearings would take place, was also agreed on. It was furthermore agreed that the first series of hearings would be used to hear complaints and representations. The second series of hearings would give the municipality the opportunity to provide answers.

Discussions with the Eden District Municipality and with Dr C J Kapp of Zader Municipal Services were held in George on 11 February 2004. It was agreed that Dr Kapp would give a presentation on the financial position of the municipality. The Eden District Municipality agreed that the Municipal Manager, Mr M C Botha, would make a presentation on the proposed steps to assist the Kannaland Municipality.

Notices on the proposed hearings were also published on 18 February 2004 and displayed on the municipal noticeboard by the Secretary.

The hearings took place as follows:

<i>DATE AND TIME OF HEARINGS</i>		<i>PLACE</i>
<i>23 February 2004 at 09h00</i>	-	<i>Ladismith</i>
<i>24 February 2004 at 09h00</i>	-	<i>Ladismith</i>
<i>25 February 2004 at 09h00</i>	-	<i>Calitzdorp</i>

9 March 2004 at 09h00 - Ladismith  
10 March 2004 at 09h00 - Ladismith  
11 March 2004 at 09h00 - Ladismith

Evidence was heard in terms of the provisions of the Western Cape Provincial Commissions Act, 1998 (Act No.10 of 1998). All the witnesses took an oath in terms of section 3(4) before they gave evidence. Approximately 40 people gave evidence. A number of people who did not give verbal evidence under oath submitted sworn affidavits. It appears from section 3 of the Western Cape Provincial Commissions Act, 1998 (Act No. 10 of 1998) that the only way in which evidence could be given before the Committee of Inquiry would be by a witness who testifies under oath.

For the sake of completeness, sworn affidavits were accepted as part of the documents although the content cannot essentially be regarded as evidence. The affidavits deal mainly with problems regarding municipal services and specific problems experienced by members of the community. These aspects can be addressed and rectified by the municipality in the normal course of events.

Section 3(7) of the Commissions Act (Act No. 10 of 1998) stipulates that any person, who appears before a commission as a witness, shall be entitled to legal representation.

Mr D J Uys, attorney and former Town Clerk of Beaufort West represented the municipality. During the public hearings, sections of the community expressed its dissatisfaction with the fact that the municipality appointed a legal representative. It should, however, be pointed out that it was the municipality's right to do so. The legal representative helped to give structure to the inquiry and his cross-examination and written representation added value to the contents of this report.

Attorney A J Rossouw of the firm Steyn and Pretorius at Ladismith represented the Business Chamber. Advocate Tinus Lotz from George was instructed to

represent the Business Chamber during the second week of the hearing. The Committee of Inquiry owes the Business Chamber debt of gratitude for the effort and expenditure incurred. Only through cross-examination of witnesses can the truth be established.

The hearings were characterised by great public interest and prominent media coverage. The community halls were full and at times the public was cautioned to remain calm. At a certain stage the SAPS of Ladismith was asked to be present. It was clear from the reaction of the audience that various supporter groups were present in the hall. The legal representative of the municipality, attorney D J Uys, complained several times that the mostly hostile audience made it difficult for the witnesses of the municipality. However, the members of the Committee of Inquiry were satisfied that the rules of natural justice were complied with and that the witnesses were given the opportunity to give evidence on a fair basis.

The mere fact that the public hearings were held in both Ladismith and Calitzdorp where the public had access was already part of the process of transparency and public accountability to the community. This is in accordance with the basic values and principles governing public administration, as contained in section 195 of the Constitution.

The head-office of the Kannaland Municipality is seated in Ladismith and the impression given by witnesses from Calitzdorp, Zoar and Van Wyksdorp was that the communities felt neglected or marginalised in a certain sense. The complaints and representations received from these towns in most cases merely amounted to poor service delivery by the municipality. Mr Efraim Oppelt, Member of the Committee of Inquiry, analysed the representations and objections received from the communities in Part D – paragraph D6 Van Wyksdorp, D7 Calitzdorp and D8 Zoar.

After the hearings the municipality and the Business Chamber were given the opportunity by the legal representatives who represented them at the hearings, to make further written representations and recommendations.

The two members of the Committee of Inquiry held discussions on technical aspects of the inquiry with the Chief Executive Officer of WECLOGO and with the Director: Legislation and Administration of the Western Cape Provincial Government on Friday, 12 March 2004. This was very useful for the drawing up of the Report.

## **B. KANNALAND MUNICIPALITY [WCO41]**

### **1. The origin of the name “Kannaland”**

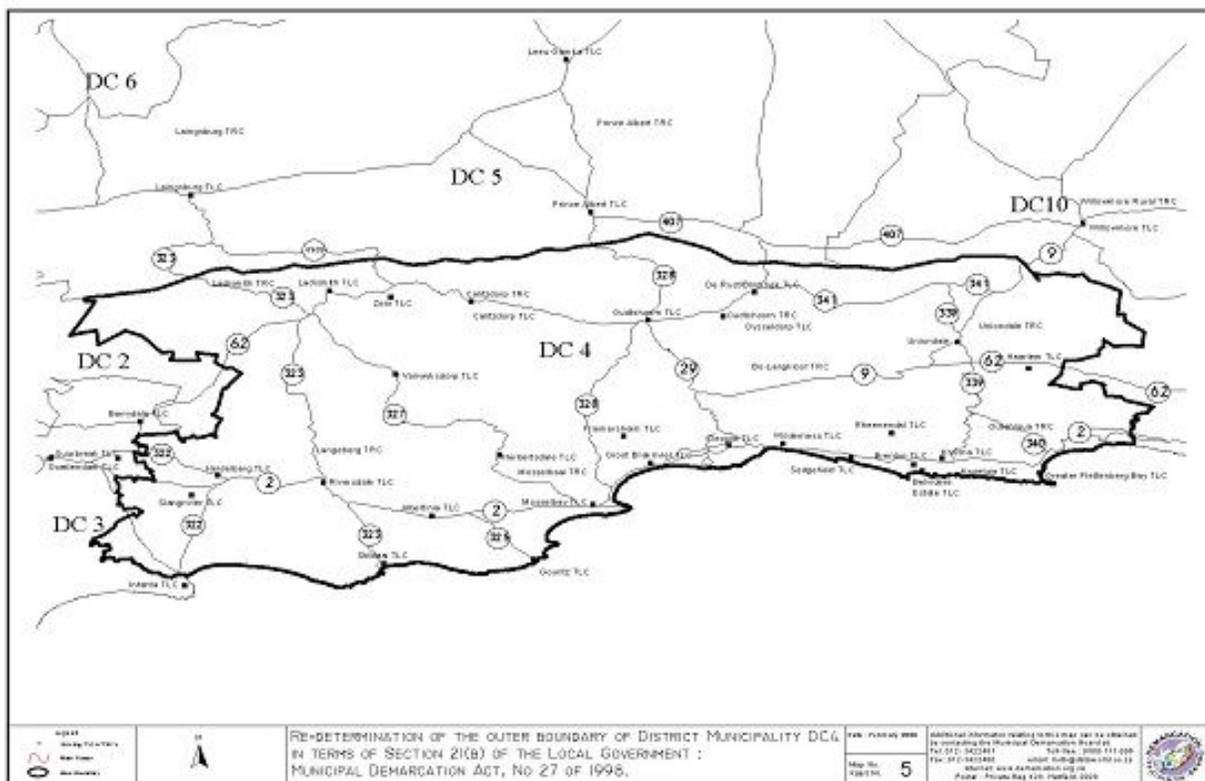
The name Kannaland comes from the ‘Kanna’ plant or ‘*Salsola aphylla*’ (River ghanna or Lagasanna) that is indigenous to this region.

### **2. Geographical context**

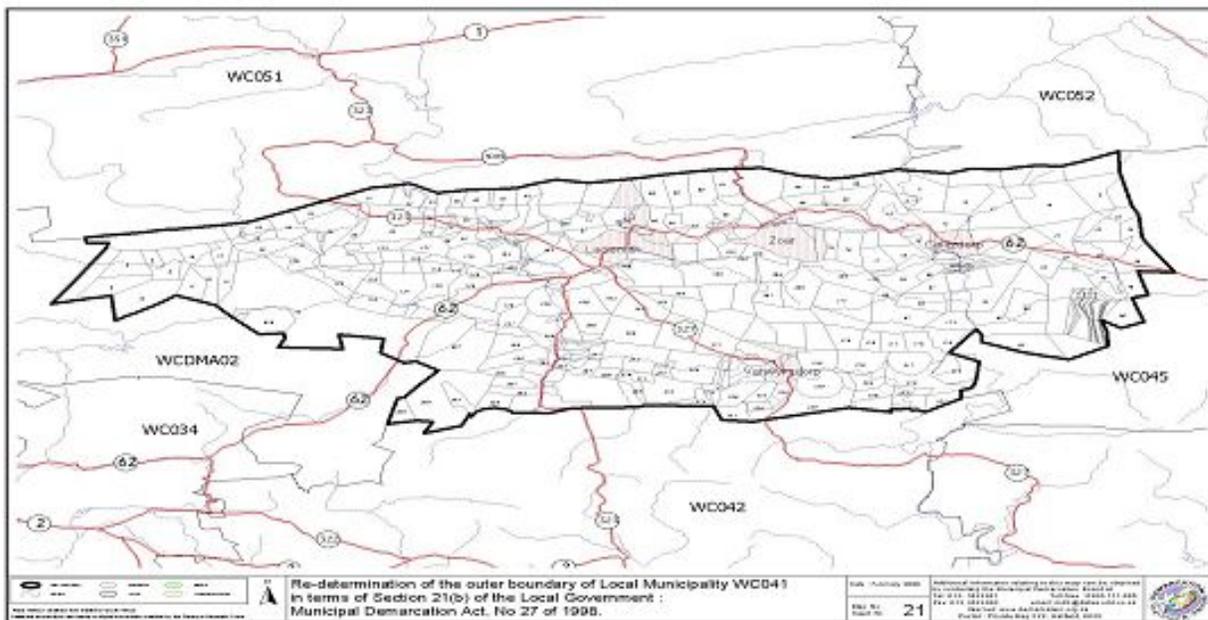
The **KANNALAND MUNICIPALITY**, a category ‘B’ municipality since 5 December 2000 is situated in the Eden district municipal area and covers an area of approximately 4750 km<sup>2</sup>. The municipal area stretches over a distance of 135 km in an east-westerly direction and 45 km in a north-southerly direction.

The Kannaland municipal area is situated between the great and small Swartberg mountain range as well as the Anysberg on the northern side and the Langeberg mountain range on the southern side. Kannaland shares a common boundary with the municipalities of Montagu and Swellendam in the west and the Oudtshoorn municipality in the east.

**Map 1: Eden District Municipality – DC4**



**Map 2: Kannaland Municipality – WCO41**



There are a number of prominent mountain ranges within this municipal area, namely the Warmwaterberg (1 345m), the Rooiberg (1 468m) and the Amalienstein range (1 021m).

Well-known landmarks in the Swartberge are Towerkop (2 189m) and the Seweweekspoortpiek (2 325m), both north of Ladismith. Famous passes through the Swartberge, connecting Kannaland with Laingsburg and the Prince Albert district, are Seweweekspoort and Gamkaskloof. There are 12 conservation areas situated partially or totally in the Kannaland municipal area. They are: six provincial reserves (Anysberg, Towerkop, Swartberg, Groenefontein, Gamkaberg, and Rooiberg), two conservancies (Groenefontein and Rooiberg), two private nature reserves (Die Poort and Taayskloof), one local government reserve (Ladismith – Little Karoo Reserve) and one known as the SA Natural History Area (Buffelspoort).

Smaller towns in the jurisdiction of the Kannaland Municipality are:

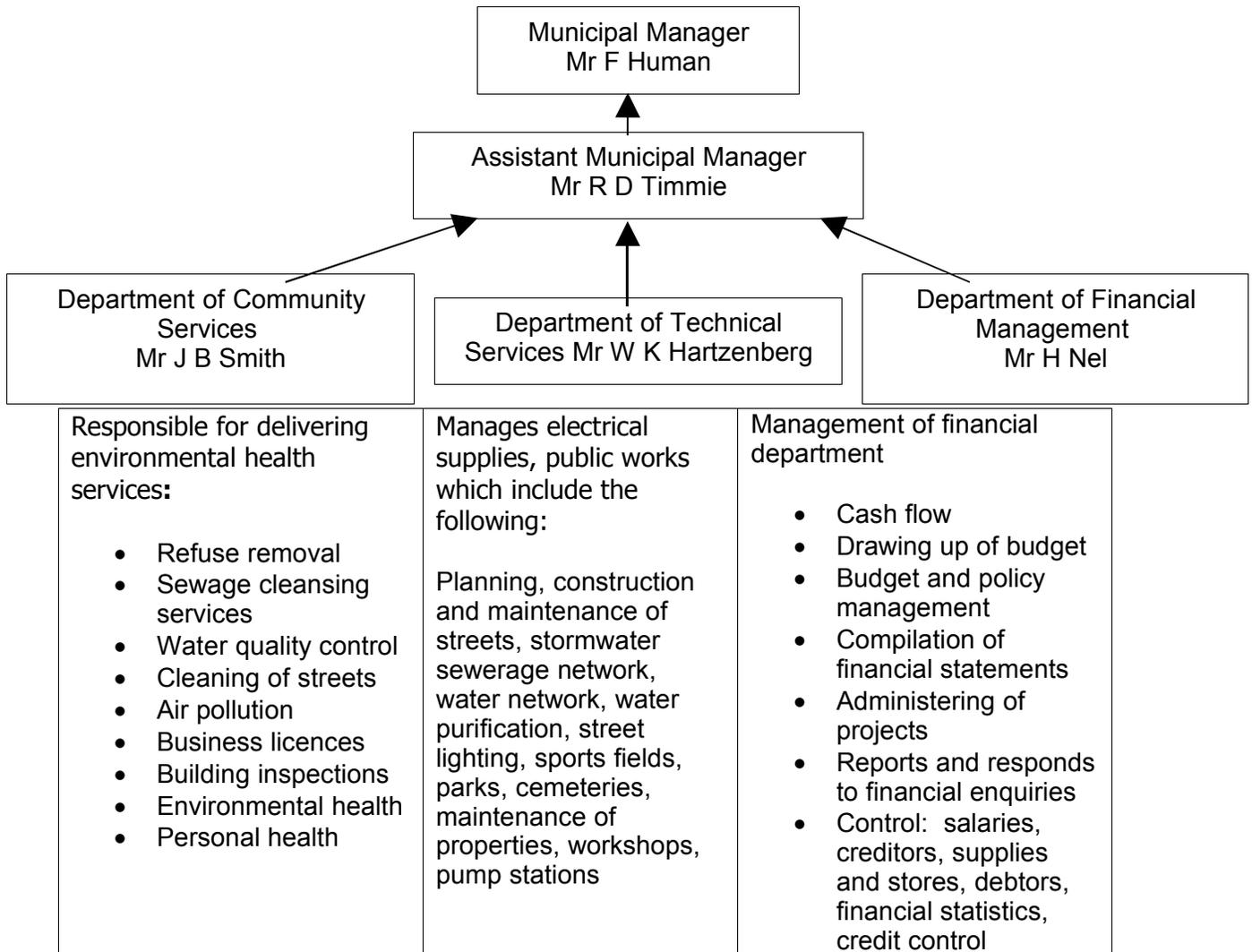
- **Ladismith** as the main town in the Kannaland municipal jurisdiction with the largest number of inhabitants;
- **Calitzdorp** as the town with the second largest number of inhabitants, followed by;
- **Zoar** with the bordering Amalienstein and a predominantly Coloured community;
- **Van Wyksdorp** with the smallest number of inhabitants; and
- **Hoeko** with the largest rural concentration.

### **Connecting routes**

The main connecting route through the area is the R62, which runs through virtually all the towns in the Kannaland municipal area except through Van Wyksdorp. Access to the N2 is via Barrydale (R324) over the Tradouw Pass, while access northwards to the N1 is fairly limited as a result of mountain ranges. The town of Barrydale is situated 78 km south on the R62 of Ladismith and with Oudtshoorn 100 km east of Ladismith on the R62.

George, which is the seat of the Eden District Municipality, is situated 170 km south-east of Ladismith (approximately two hours of travelling time).

### 3. Institutional Structure of the Kannaland Municipality



#### Administrative framework

Contact details of the Kannaland Municipality are as follows:

**Address:** PO Box 30  
Ladismith  
6620  
**E-mail:** [liza.kannaland@telkomsa.net](mailto:liza.kannaland@telkomsa.net)

**Telephone** [028] 551 1023  
**Fax** [028] 551 1766

#### 4. Present political structure

The Kannaland Municipal Council presently consists of an Executive Mayor system with 9 (nine) councillors, of which five are ward councillors and four are proportionally elected councillors. At present Alderman J Donson is the Executive Mayor and Councillor Andrew Baartman is the Deputy Executive Mayor.

##### WARD COUNCILLORS

	<b>Names</b>	<b>Ward No</b>	<b>Party</b>
<b>1</b>	ANDREW BAARTMAN	3	NNP
<b>2</b>	JEFFREY DONSON	5	ANC
<b>3</b>	NICOLAAS ADAMS	4	DA
<b>4</b>	PIETER IGNATIUS VAN RENSBURG	2	ANC
<b>5</b>	SUZETTE JILL REINECKE	1	IND

##### PROPORTIONAL COUNCILLORS

	<b>Names</b>	<b>Party</b>
<b>1</b>	ANNA SUSANNA WILLEMSE	ANC
<b>2</b>	LOUIS DESMOND KRUTH	ANC
<b>3</b>	PETRUSIA JOVALERIE ROOI	ANC
<b>4</b>	STEVEN MEYER	ANC

*Data Source: Municipal Demarcation Board 2003*

## KANNALAND [WCO41]

### 5. Demographic profile

<b>POPULATION GROUPS</b>		<b>WC041</b>	
<b>Persons</b>		<b>2001</b>	<b>1996</b>
Black		597	275
Coloured		20253	17672
Indian		21	15
White		3100	3063
<b>Total population</b>		<b>23971</b>	<b>21193</b>

The total population in the Kannaland municipal area according to the 2001 Census, amounts to 23 971 in total in comparison with 21 193 in 1996, with the coloureds forming the greatest component 85%, followed by whites 13% and .02% blacks with a small much smaller percentage of Indians. A reasonable balance between men and women is maintained with women in the majority 51, 81% against 48,19% men.

<b>GENDER COMPOSITION WC041</b>		
	<b>2001</b>	<b>1996</b>
<b>Men</b>	11551	10088
<b>Women</b>	12420	10557

<b>AGE BY GENDER WC041</b>		
<b>Persons</b>	<b>2001</b>	<b>1996</b>
Men - 0 to 4	1307	1182
Men - 5 to 14	2675	2402
Men - 15 to 34	3317	3142
Men - 35 to 64	3467	2719
Men - over 65	785	643
Women - 0 to 4	1289	1140
Women - 5 to 14	2519	2368
Women – 15 to 34	3867	3385
Women – 35 to 64	3815	2855
Women – over 65	930	809
<b>Men – Total</b>	<b>11551</b>	<b>10088</b>
<b>Women - Total</b>	<b>12420</b>	<b>10557</b>

<b>AGE WC041</b>		
<b>Persons</b>	<b>2001</b>	<b>1996</b>

0 to 4	2596	2334
5 to 14	5194	4776
15 to 34	7184	6511
35 to 64	7282	5571
Over 65	1715	1452

<b>EDUCATIONAL INSTITUTIONS ATTENDED – AGE GROUPS 5 TO 24 YEARS WCO41</b>		
<b>Persons</b>	<b>2001</b>	<b>1996</b>
None	3215	-
Pre-school	346	-
School	5335	-
College	5	-
Technikon	2	-
University	2	-
Adult Education Centre	2	-
Other	4	-

<b>HIGHEST LEVEL OF EDUCATION OBTAINED – AGE GROUP ABOVE 20 YEARS WCO41</b>		
<b>Persons</b>	<b>2001</b>	<b>1996</b>
No school education	1660	1782
Some primary school	4379	3561
Primary school completed	1634	1234
Secondary	3827	3208
Grade 12	1684	1072
Higher	772	654

<b>LABOUR FORCE WCO41</b>		
<b>Persons</b>	<b>2001</b>	<b>1996</b>
Work	6312	6341
Unemployed	1015	1044
Not economically active	7296	-
Total work force	7327	-

<b>INDUSTRY WCO41</b>		
<b>Persons</b>	<b>2001</b>	<b>1996</b>
Agriculture/Forestry/Fishing Industry	3364	3459
Community/Social/ Personal	784	717
Construction	193	236
Electricity/Gas/Water	32	28

Financial/Insurance/Properties/Business	143	117
Manufacturing	457	456
Mining/Quarry	0	3
Private Households	345	496
Transport/Store/Communication	66	105
Unknown	401	316
Wholesale	522	452

<b>OCCUPATIONS</b>		<b>WCO41</b>	
<b>Persons</b>	<b>2001</b>	<b>1996</b>	
Clerks	308	272	
Arts /Commerce	291	348	
Elementary	3664	3893	
Legislation/Senior Officials	251	162	
Unspecified/Not economically classified	0	-	
Plant/Machine operators	176	195	
Professional	157	307	
Service Works	322	353	
Agriculture/Fishing Industry	553	-	
Technicians	248	124	
Undetermined	342	-	

<b>INDIVIDUAL MONTHLY INCOME</b>		<b>WCO41</b>	
<b>Persons</b>	<b>2001</b>	<b>1996</b>	
None	13268	10376	
R1 – 400	2441	575	
R401 – 800	5300	5995	
R801 – 1600	1061	683	
R1601 – 3200	998	445	
R3201 – 6400	561	666	
R6401 – 12800	253	142	
R12801 – 25600	42	50	
R25601 – 51200	29	26	
R51201 – 102400	9	17	
R102401 – 204800	6	-	
Over R204801	3	-	

<b>LANGUAGE</b>		<b>WCO41</b>	
<b>Persons</b>	<b>2001</b>	<b>1996</b>	
Afrikaans	23499	20666	
English	323	180	
IsiNdebele	0	17	

IsiXhosa	93	37
IsiZulu	15	0
Sepedi	1	0
Sesotho	0	5
Setswana	8	2
SiSwati	0	0
Tshivenda	5	0
Xitsonga	4	0
Other	23	39

Kannaland is predominantly an Afrikaans-speaking community with approximately 98% Afrikaans-speakers according to the 2001 Census, with the black languages in the minority and only .01% English-speakers.

<b>MODE OF TRANSPORT TO SCHOOL AND/OR WORK</b>		<b>WCO41</b>	
<b>Persons</b>	<b>2001</b>	<b>1996</b>	
Bicycle	132	-	
Bus	825	-	
Motor vehicle driver	787	-	
Motor vehicle passenger	888	-	
Minibus/Taxi	437	-	
Motor cycle	24	-	
Train	8	-	
NVT	12216	-	
Foot	7946	-	
Other	709	-	

<b>HOUSING TYPES</b>		<b>WCO41</b>	
<b>Households</b>	<b>2001</b>	<b>1996</b>	
Formal	5884	4558	
Informal	83	163	
Traditional	97	44	
Other	5	26	

<b>HOUSEHOLD SIZE</b>		<b>WCO41</b>	
<b>Households</b>	<b>2001</b>	<b>1996</b>	
1	804	-	
2	1156	-	
3	1007	-	
4	1123	-	
5	811	-	
6	478	-	

7	298	-
8	151	-
9	96	-
10 and more	145	-

<b>NUMBER OF ROOMS</b>		<b>WCO41</b>	
<b>Households</b>		<b>2001</b>	<b>1996</b>
1		745	262
2		836	690
3		1303	958
4		1298	1179
5		679	655
6		536	471
7		286	248
8		171	148
9		109	118
10 and more		108	90

<b>SOURCE OF ENERGY FOR LIGHTING</b>		<b>WCO41</b>	
<b>Households</b>		<b>2001</b>	<b>1996</b>
Electricity		4928	3453
Gas		9	14
Paraffin		23	70
Candles		1047	1253
Solar		51	-
Other		12	0

81,12% of the households are provided with electricity. A reasonably high percentage (17, 25%) does, however, still only have access to candles and .04% to paraffin for lighting purposes. These sources of energy have a very negative effect on the environmental health of communities as well as on the natural resources and the environment.

<b>Refuse removal</b>			
<b>Households</b>		<b>2001</b>	<b>1996</b>
Mun. weekly		3569	2392
Mun. other		30	160
Communal dumping		111	235
Own dumping		2086	1792
No removal		274	165

<b>Sanitation</b>		
<b>Households</b>	<b>2001</b>	<b>1996</b>
Flush toilet	3236	2747
Flush septic tank	685	-
Chemical toilet	26	-
VIP	363	-
Pit privy	369	880
Buckets	369	473
None	1021	702

<b>Telephone</b>		
<b>Households</b>	<b>2001</b>	<b>1996</b>
Telephone and cellphone in house	720	-
Telephone in house	1170	1588
Cellphone	462	-
Neighbours	1185	1362
Public telephone	1650	637
Other – nearby	293	463
Other – not nearby	429	125
No access	161	604

<b>Water</b>		
<b>Households</b>	<b>2001</b>	<b>1996</b>
In house	4079	2680
On erf	1051	1261
Common pillar-tap	340	66
Common pillar-tap further than 200m	230	-
Boreholes	66	284
Fountain	23	325
Rain water tank	17	168
Dam/pool/standing water	23	-
River/stream	152	-
Water vendor	29	-
Other	61	20

<b>Annual household income</b>		
<b>Households</b>	<b>2001</b>	<b>1996</b>
None	424	151
R1 – 4800	346	75
R4801 – 9600	1450	1013
R9601 – 19200	1725	1780

R19201 – 38400	1188	759
R38401 – 76800	553	323
R76801 – 153600	296	195
R153601 – 307200	109	106
R307201 – 614400	24	22
R614401 – 1228800	9	-
R1228801 – 2457600	7	-
More than R2457600	2	-

*Data Source:  
Statistics South Africa: Census 2001*

## 6. Summary

According to the aforesaid 2001 Census, Kannaland has a total population of 23 973 of which women are in the majority with 51, 8 % with a reasonable balance between the age groups 15 to 34 years (30%) and 35 to 64 years (30%) and a fairly low percentage of 8% above 65 years. The % between 0 – 34 years amounts to 32%. The growth in population in comparison with 1996 is .13%, which does not necessarily give reason for concern. The coloured population is still in the majority (84%)

Kannaland has a total labour force of 7 327 with a 13% unemployment figure and the highest percentage being employed in the agricultural industry (53%), of which 58% pursue elementary professions with 22% earning an income of between R401 – R800 per month.

Kannaland is predominantly an Afrikaans-speaking community with more than 6 069 households with an average household size of 3.9 per household. A fairly high percentage –17, 25% still make use of candles for lighting. The vast majority of households (67%) have access to water in their houses, the refuse of 59% is removed by the municipality on a weekly basis, while 34% take responsibility for the removal of their own refuse. 55% have flush toilets, 11% have septic tanks and 17% have no sanitation facilities.

## 7. Eden District Municipality [DC: 04]

The Kannaland local municipality is situated in the Eden District Municipality.

## **7.1 Role and responsibilities**

The Eden District Municipality, a category 'C' municipality, includes the former Southern Cape and Little Karoo District Councils.

Section 84 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), as amended makes provision for the division of functions between category 'C' and category 'B' municipalities.

There are 7 (seven) 'B' municipalities and 1 (one) district management area (DMA) in the Eden District Municipality, namely: Bitau, Knysna, George, Mossel Bay, Langeberg, Kannaland and Oudtshoorn, as well the Uniondale DMA. The purpose of the district municipalities and local municipalities sharing the responsibility for local management in their areas, is to make sure that all the communities, particularly disadvantaged and rural communities, have equitable and fair access to resources and services. This helps some local "B" municipalities who do not have the ability (finances, amenities, staff or knowledge) to deliver services to their communities. By sharing resources with other councils the costs of managing a municipality are reduced. The 'wealthier' areas therefore help the 'poorer' areas in the process.

Section 84(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) spells out the functions and powers of a district municipality.

## **7.2 The functions and powers of the Eden District Municipality entail the following:**

- planning for development of the whole district municipality and a framework for integrated development plans for all municipalities in the area of the district municipality
- bulk supply of water
- bulk supply of electricity

- bulk sewage purification works and bulk sewage removal
- refuse dumping sites for the whole district council area
- municipal roads for the whole district council area
- regulation of passenger transport services
- municipal health services for the whole area (this function is presently being investigated)
- fire-fighting services for the whole area (this function is presently being investigated)
- control of fresh produce markets
- control of cemeteries
- promotion of local tourism for the whole area
- municipal public works

### **7.3 Kannaland Municipality [WC:041]**

The Kannaland Municipality includes Ladismith, Calitzdorp, Zoar and Van Wyksdorp. Section 84(2) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), spells out the functions and powers of a local municipality. A local municipality has all the functions and powers assigned in sections 156 and 229 of the Constitution except those functions and powers vested in the district municipality.

The Kannaland Municipality has the following fiscal powers:

- To approve by-laws (local acts and regulations for which they are responsible).
- To approve budgets and development plans. Each year a municipal budget has to be approved which explains how money is obtained and how it will be spent. The municipality must also approve the integrated development plan.
- To levy of erf and other taxes such as property rates.
- To collect service fees – for the use of municipal services such as water, electricity, libraries, etc.
- To impose fines – for people who contravene municipal by-laws regarding traffic regulations, littering, etc.

- To borrow money – the council may take up a loan for a development or other project and may use municipal assets as surety.
- To draw up, approve or amend integrated development plans (IDPs) and link them to a financial plan.

Kannaland as a category 'B' municipality is, among others, responsible for the following municipal functions:

- supplying electricity
- water for household consumption
- sewage and sanitation
- stormwater systems
- refuse removal
- fire-fighting services
- municipal health services
- decisions on land use
- local roads
- local public transport
- street trading
- abattoirs and fresh produce markets
- parks and recreation areas
- libraries and other community facilities
- local tourism

#### **7.4 Present support from the Eden District Municipality to the Kannaland Municipality**

Present and envisaged future support from the Eden District Municipality to the Kannaland Municipality is given in terms of sections 83 (3) and 88 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

With regard to cooperation between district municipalities and local municipalities, Section 83 (3)(c) of the Structures Act stipulates that the district municipality should strive towards: *“(c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking.”*

In a letter written in December 2003 by Minister Cobus Dowry, Minister of Local Government, Western Cape Province, the Minister requested the Eden

District Municipality to serve on a task team that would provide support with a Financial Recovery Plan to the Kannaland Municipality. The latter request was followed by a physical visit by the Minister to the area on 19 January 2004 with regard to support to the Kannaland Municipality.

The present priority fund allocation in the 2003/04 financial year from the Eden District Municipality to the Kannaland Municipality, which amounts to approximately R 3,6 m, was transferred for operating aspects to ensure normal service delivery by, among others, providing support to raw water investigations, roads and social support. The Eden District Municipality administers the funds itself.

Mr Johan Kemp, Head: Community Services of the District Municipality was sent by the Eden District Municipality in an observer's capacity to the Kannaland Municipality to, among others, offer technical support to the Kannaland Municipality in order to ensure normal service delivery in Kannaland.

A noticeable difference is already evident in the water situation in the Kannaland Municipality, particularly in respect of the addressing the problems with regard to the water situation at Zoar. Attention is currently given to the water infrastructure with regard to roads, pipelines, purification, etc. Furthermore, the canal from which Ladismith gets its drinking water was cleaned because it was a year since it had last been cleaned. During an inspection the losses on the canal concerned were physically visible at a number of places where a great deal of seepage took place. According to evidence given by the Municipal Manager of the Eden District Municipality it was not the intention to interfere with the autonomy of Kannaland, but to provide support. The Eden District Municipality only responds to requests from Kannaland and from the Minister of Local Government, Western Cape.

According to evidence given by Mr M C Botha the decision by the Eden District Municipality to give further support to the Kannaland Municipality will depend on the result of this Committee's inquiry.

It is clear from the evidence given that the active assistance and support of the Eden District Municipality is an absolute prerequisite for success in order for the Kannaland Municipality to once again function on a healthy and sustainable basis. Particularly where the disadvantaged, rural areas such as Zoar and Van Wyksdorp are concerned, the assistance of the district municipality will be necessary to ensure that services are provided to these communities.

Section 153(a) of the Constitution stipulates that a municipality must structure and manage its administration and its budget and planning processes in such a way **that priority is given to the basic needs of the community**, and that the social and economic development of the community is promoted.

Furthermore section 83(3)(d) of the Structures Act stipulates that a district municipality should seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by:

*“(d) promoting the equitable distribution of resources between the local municipalities in its area to ensure applicable levels of municipal services in its area.”*

Taking the needs in Zoar and Van Wyksdorp into consideration, these communities of the Eden District Municipality can rightfully expect that high priority will be given to them in order to relieve the pressure on the Kannaland Municipality.

The choice for the Eden District Municipality with regard to assistance to Kannaland is:

- (a) to give greater preference and greater priority to Zoar and Van Wyksdorp as part of the Kannaland Municipality;
- or alternatively

(b) to allow Zoar and Van Wyksdorp to be declared district management areas (DMAs) directly under the control of the district municipality.

### **Recommendation**

It is recommended that option (a) be followed in the short term. Should this not produce the necessary results, option (b) will have to be considered.

## **7.5 Tripartite Agreement**

In order to give substance to the concept of “Co-operative Government”, as referred to in Chapter 3 of the Constitution, Chapter 5 of the Municipal Financial Management Act, section 88 of the Structures Act and section 3 of the Systems Act, a Tripartite Agreement will be necessary between:

- (i) the Western Cape Department of Local Government;
- (ii) the Kannaland Municipality; and
- (iii) the Eden District Municipality.

The said Tripartite Agreement must make provision for the conditions under which the Western Cape Provincial Government and the Eden District Municipality would respectively be prepared to assist the Kannaland Municipality with administrative, technical and financial aid and to implement the recommendations contained in this report and other steps that appear to be necessary on a sustainable basis. Progress will have to be monitored with regular reports to the Minister of Local Government.

### **Recommendation**

It is recommended that the Minister of Local Government should take the initiative to negotiate such a Tripartite Agreement between the parties.

## **C. PREVIOUS AND OTHER RELATED INVESTIGATIONS**

### **1. Previous provincial investigations**

The Minister of Local Government of the Western Cape appointed a committee in 1997 that consisted of advocate C B Prest, SC (Chairperson) and J P Hugo to investigate alleged maladministration and irregularities at the Ladismith Local Transitional Council. The report is dated 11 August 1997 and was made available to this Committee of Inquiry.

Some of the role players that were pointed out as being part of the problem in Ladismith seven years ago, are still prominent role players in Kannaland and this will be referred to later. Some of the problems and recommendations that were made seven years ago are also still relevant and will also be referred to.

Hopefully, arising from this report, drastic and lasting steps will be taken so that it will not be necessary to conduct a similar inquiry in seven years' time in 2011.

### **2. SAPS criminal investigations**

The Committee of Inquiry is aware of the fact that the SAPS were busy with various criminal investigations into municipal councillors and officials. In some cases this has to do with the conduct of persons in their private capacity. However, should the councillors and officials be found guilty, this will have to be judged in the light of the nature of the offence to determine whether this will have an effect on the person's suitability to be a councillor or official of the municipality. In response to a letter dated 3 March 2004 from the Secretary to the SAPS, Ladismith the following reply was received from Captain Edwards, Acting Station Commissioner, Ladismith on 4 March 2004:

*"SUBJECT INVESTIGATION INTO THE KANNALAND MUNICIPALITY*

- 1. Your letter 3 March 2004, Mr G February refers.*
- 2. Organised Crime Oudtshoorn is currently examining a fraud dossier. The matter is at present "sub judice". No information can be made available at the moment since this could prejudice the case. Ladismith MAS 448/01/2004 – Fraud refers. Superintendent Kotze (Cell: 083 2948 727) is in control of the matter.*
- 3. The office will not be able to make a submission on 9, 10 and 11 March 2004."*

Mr Bob Reinecke from the Ladismith Business Chamber testified that complaints were lodged with the commercial branch of the SAPS and with the Scorpions.

After the public hearing the SAPS raided the offices of the municipality and houses of councillors and officials in the week of 15/03/04 and confiscated certain documents and computers. The Department of Local Government issued a statement in which it was pointed out that the action by the SAPS took place independently of this investigation. The action by the SAPS was apparently the result of evidence given before the Committee of Inquiry.

### **3. Public Protector**

The Public Protector's national office in Pretoria investigated various complaints of alleged irregularities at the Kannaland Municipality under Ref. 3549/03. The Chief Investigator, advocate C H Fourie visited the Municipal Manager of the Kannaland Municipality on 3 December 2003 to discuss a variety of matters and gathered information in this regard.

On Thursday, 4 March 2004 the Chairperson of the Committee of Inquiry, Mr Dekker visited advocate Fourie at his request at his office in Pretoria to discuss the investigation. Advocate Fourie was of the opinion that it would be unnecessary duplication if the Public Protector continued with his own investigation. Copies of the whole content of the Public Protector's file were handed to Mr Dekker to follow up during this investigation. In most cases there was a certain amount of duplication of complaints and allegations that had already been investigated. The documents on the expenditure from the Mayor's Fund were, however, extremely relevant and useful during the investigation.

#### **4. Special Investigation Unit**

The Special Investigation Unit, established in terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No.74 of 1996) was published by Proclamation R55 of 2002, in Regulation Gazette No. 7395 of 24 June 2002. The President instructed this unit to investigate various municipalities in the Western Cape, including the former Calitzdorp Municipality, with regard to allegations of maladministration.

The Municipal Manager of the Kannaland Municipality faxed a copy of the outcome of the investigation to members of the Committee of Inquiry on 2 April 2004. The report refers mostly to events that took place before or up to and including the 1999/2000 financial year. This is nevertheless a useful reference document and some of the matters that were identified can be addressed in the Financial Recovery Plan. The report substantiates the evidence of Mr Human, the Municipal Manager that the administration of the Calitzdorp Municipality left much to be desired when it was taken over when the Kannaland Municipality was established in December 2000.

#### **5. Auditor-General's report**

The Auditor-General annually submits a report and this report should be dealt with in terms of section 10G(1)(e) of the Local Government Transition Act, 1993 (Act No. 209 of 1993). In terms section 10G(1)(e)(iii) the municipality must indicate what steps have been taken or are envisaged with regard to any matter mentioned in the report.

According to the municipality's replies (pages 106-117) there still seem to be a number of matters pointed out by the Auditor-General in his report for the year ended 30 June 2002, where no corrective steps were taken or any indication given of which steps would be taken. This must be addressed in the Financial Recovery Plan – also see Part D.1.2.

## 6. Further investigations arising from this report

As is apparent from the recommendations, a number of further investigations and steps will have to be taken in consequence of the findings and recommendations of this report. These investigations must be followed up and implemented so that they will not merely gather dust on a shelf.

## D. PRESENT REPRESENTATIONS AND FINDINGS

As is apparent from the Annexure, a number of persons and institutions have given evidence and also submitted written representations. The Secretary sent a number of questions to the Kannaland Municipality on 1 March 2004 (Annexure Item No. 40) on aspects with regard to which evidence was given on 23, 24 and 25 February 2004 and with regard to which the Municipality had to provide answers and explanations. This list was not exhaustive. The subjects as indicated in the questionnaire are discussed individually.

### 1. Finances

The parlous financial position of the Kannaland Municipality is apparent from various documents and presentations made to the Committee of Inquiry, including:

#### 1.1 The Louw Report

Mr G J Louw, former Municipal Treasurer of Mossel Bay, who is presently working as a consultant at Zader Municipal Services, drew up the Louw Report, dated 24 April 2002. A number of recommendations were made in the report, including a number of steps for the introduction of budget **control**. The report concludes as follows in paragraph 7:

*“7. Conclusion*

*Matters reached a point where 2002/2003 has to be regarded as a watershed year. Decisions that have to be made will be unpopular and justification for them will be uncomfortable. However, what you have before you are realities and the implication of denying this would mean total collapse of the organisation.”*

These were prophetic words. The recommendations were mostly not acted on and this led to circumstances that gave rise to the present inquiry.

Since Mr Deon Louw was once again called upon to give Kannaland financial advice and expert support through Zader Municipal Services, it is accepted that the extremely relevant and practical recommendations, particularly on budget control, in the April 2002 report, will form part of the Financial Recovery Plan.

## **1.2 Auditor-General's report**

The Auditor General's report of 2001/02 mentioned a number of matters that required attention. In the reply provided by the municipality it was indicated that these matters were being addressed but that some of them have not yet been dealt with. These matters must be dealt with in terms of the applicable legal directives as part of the Financial Recovery Plan and the mistakes and shortcomings that were pointed out must be rectified.

As Langenhoven said:

*"The man I'm looking for is not the one who makes the least mistakes, but the one who rectifies the most mistakes."*

## **1.3 Zader submission**

The submission dated 23 February 2004 of Dr CJ Kapp, Executive Director of Zader Municipal Services, as supported by evidence and cross-examination before the Committee of Inquiry, was the most comprehensive recent analysis of the state of municipal finances at the Kannaland Municipality. The complete Zader submission with annexures forms part of the documents and deals with the following aspects:

### **1.3.1 Drawing up of the budget**

Part of the Financial Recovery Plan that was adopted by the Western Cape Provincial Government was to revise the 2003/2004 budgets. Zader found the following:

- Only R150 000 of operating capital was budgeted for while approximately R2, 3 m was needed. The budget policy that was

adopted by the Council on 27 February 2002 (Council Resolution No.1 of 2002), stipulates that the provision for operating capital should be at least 5% of the total operating expenditures or an amount equal to the expected increase in debtors (Annexure "A" section A 2.3.3).

- Staff, the costs of which amounted to R1 208 000, was appointed during the 2003/2004 financial year without making provision for this expenditure in the budget. (See Annexure "B".)
- Temporary staff, the costs of which amounted to R132 000, was appointed without making provision for this expenditure in the budget.
- No detailed budget schedule for staff expenditure was drawn up with the result that staff costs were further underbudgeted. A staff budget format was drawn up during the 2002/2003 financial year and handed to the financial manager during the previous support programme  
(Annexure "C".)
- Insufficient provision was made for the repayment of loan costs. The loan register is incomplete and no provision was made for the repayment of the ABSA loan. A municipality may only borrow to finance capital expenditure. Borrowing requirements must therefore already have been known when the capital budget was drawn up. (Transition Act in section 10G 8(a)(1).)
- There were many other cases of underbudgeting and overbudgeting when the budget was drawn up for 2003/2004.
- The revised budget shows a R2, 9 m deficit and a cash flow of R6, 8 m.

### **Recommendation**

It is essential that the Financial Recover Plan should not only focus on the revision of the 20003/04 budget, but should also give assistance and guidance to the municipality for the drawing up of the 2004/05 budget.

### **Recommendation**

In terms of section 16(1)(a)(iv) of the Systems Act, systems and mechanisms must be created to make it possible for the local community to participate in the affairs of the municipality and this includes **participation in the preparation of the budget**. Community participation should take place in a transparent manner when the 2004/05 budget is prepared and drawn up. Where drastic steps have to be taken and difficult choices have to be made, this should be explained to the community. The public hearings that were held by the Committee of Inquiry to listen to problems and complaints must be followed up in the next few months before the consideration of the proposed new budget. Public meetings should be held in the different towns to explain the recovery plan and other positive steps to the community and to get their inputs for consideration for the 2004/05 budget.

#### **1.3.2 Budget control**

Budget control is an essential mechanism for managing the finances of the municipality and this was already pointed out in:

- (iv) the Louw Report of 24/02/02;
- (v) the National Treasury's letter dated 20/08/03; and
- (vi) the Budget Control Policy of the municipality.

According to the Zader submission, not sufficient budget control was exercised by the Municipal Manager as accounting officer and also not by the Municipal Treasurer. The applicable section of the Zader submission reads as follows:

The budget control policy of the Kannaland Municipality stipulates as follows, among others:

- The Municipal Manager of the Council must confirm that all the statutory requirements have been complied with where capital

expenditure is financed with external loans (Annexure A section B 1.1.2). **No evidence could be found that the requirements were complied with when the ABSA loan was taken up.**

- No capital works can be commenced with before the Treasurer has confirmed to the Council that the financing source concerned has already been allocated and funds made available if this expenditure is to be financed from other sources such as donations, allocations and subsidies (Annexure A section B1.1.3 (c)). **No evidence could be found that any written report by the Treasurer with regard to capital works was submitted to the Council.**
- The Treasurer does not authorise any expenditure before he/she has satisfied himself/herself that sufficient funds are available and authorises no expenditure that was not budgeted for (Annexure A section B2.2 (a) en (b)). **No evidence could be found that the procedure was generally followed and specifically the appointment of the valuers and the firm that was appointed for the training of the auditors.**
- The Treasurer provides the Council and departmental heads with a monthly expenditure report which:
  - indicates each budget vote
  - furnishes the amount budgeted for
  - indicates the expenditure to date
  - shows the available balance.

**No evidence could be found that these requirements were complied with.**

- The Treasurer also submits a monthly income report to the Council and draws the Council's attention to income that is not realised (Annexure A section B2.5 (a) and (b)). **No evidence of such reports could be found.**

### **Finding and recommendation**

The answers received in this regard were not convincing and it was found that the Municipal Manager, his assistant and the Municipal Treasurer did not fulfil their obligations in respect of budget control. It is recommended that disciplinary steps are taken against them for this and other non-compliance with statutory obligations as further indicated in the report.

#### **1.3.3 Employment of capital funds to finance operating expenditure**

As apparent from the Zader submission it is acceptable accounting practice that capital funds are deposited in a separate account to finance the projects for which they were approved. Where Central and Provincial Government provide funds for capital works it is normally a requirement that a separate account is opened. The Kannaland Municipality deposits capital funds into the operating account and as a result of the budget deficit the funds are used to finance the operating expenditure.

The written reply from the Municipality on page 54 reads as follows:  
*"Kannaland has always deposited capital funds in its operating account over the years and this was offset separately internally."*

At a sophisticated and developed municipality with the necessary knowledge and capacity this could possibly work; in the case of Kannaland this did not happen in practice.

The National Treasurer imposed the following restrictions for expenditure in the 2003/04 financial year in a letter to the

Municipality dated 20/08/03, clearly distinguishing between capital and operating budget:

- Capital budget R 1 317 700, 00
- Operating budget R 21 499 015, 00

A municipality that does not keep separate operating and capital accounts can be compared to an attorney who does not keep a separate business and trust account. This is such an elementary and fundamental point of departure in healthy financial administration that it is unthinkable not to do so.

### **Finding**

It was found that the Municipal Manager, his assistant and the Municipal Treasurer have failed to fulfil their duties with regard to the keeping of separate operating and capital accounts for the municipality. This defective accounting system gave rise to some of the municipality's financial problems, among others, that capital funds were employed for operating expenditure.

### **Recommendation**

As part of the Financial Recovery Plan, the municipality's capital and operating accounts must be separated.

#### **1.3.4 Financial statements**

The Zader submission points out that in term of section 10G(2)(a)(i) of the Transition Act, the Municipal Manager must ensure that financial records are kept and that:

- financial statements are drawn up and audited 10G(2)(c)(i));
- answers are given to questions by the Council with regard to the statements (10G2(e)(ii)); and
- steps are indicated to rectify any deviations (10G2(c)(iii)).

No indication could be found of any proposed steps to extinguish the accrued deficit up to and including the 2003/2004 financial year, with the result that the operating capital requirements were financed from statutory funds, which were earmarked for other purposes.

### **Finding and recommendation**

It was found that the Municipal Manager, his assistant and the Municipal Treasurer did not fulfil their statutory obligations with regard to the municipality's financial statements.

It is recommended that the financial statements be drawn up and audited as part of the Financial Recovery Plan.

## **1.4 Financial maladministration**

Section 10G(1) of the Transition Act stipulates that a municipality shall manage its financial affairs in an accountable and transparent manner while 10G2(f)(ii) stipulates that any person who is or was in the employ of a council and caused loss or damages to the municipality by paying out money that is not supported by a proper voucher, the Chief Executive Officer, or where the Chief Executive Officer himself is responsible, the Council shall determine the amount of damages and take the necessary disciplinary action and where applicable, recover the loss or damages.

### **Recommendation**

The possibility of further steps in terms of section 10G(2)(f) must be considered as part of the Financial Recovery Plan.

#### **1.4.1 Upliftment funds**

During the budget meeting the municipal council approved an amount of approximately R6 000 per councillor for upliftment work. According to the Zader submission, no directives for the utilisation

of the funds could be traced. It seems that amounts without vouchers are made out to councillors and individuals (Annexures J, K, L and M serve as examples). The municipality could furnish no satisfactory answers.

### **Recommendation**

As part of the Financial Recovery Plan, directives for the utilisation of upliftment funds should be drawn up and applied.

#### **1.4.2 Mayor's Fund / Deputy Mayor's Fund**

WECLOGO'S Circular No. 48 of 2002 dated 14/08/02 was sent to all Municipal Managers and Mayors in the Western Cape. The circular, among others, states that:

- such a fund can be established for a legitimate purpose;
- that the expenditure must be related to powers and functions of municipalities as mentioned in section 156 of the Constitution;
- it may not be used for personal gain;
- it is proposed that the expenditure should be based on a programme of activities;
- it could be used for specific, deserving matters;
- the expenditure should be made public and be audited with regular reports to the Council; and
- that the remuneration that the Mayor receives in terms of the Remuneration of Public Office Bearer's Act, is intended to cover his (and his wife's) personal expenses linked to the post of Mayor, e.g. clothes, loss of normal income, etc. The Mayor's Fund may not be used to supplement any remuneration.

The Public Protector handed a number of documents to the Chairperson of the Committee of Inquiry with regard to expenditure from the Mayor's/Deputy Mayor's Fund. They are numbered 1-79 and form part of the documents. These documents were tabled at the public hearings and comments were asked from the role players concerned.

It appears from the evidence that initially R35 000, 00 was budgeted for the Mayor's Fund for 2003/04 but that this was gradually increased to R100 000, 00 by November/December 2003. If it were not for the intervention of Mr Louw from Zader Municipal Services, this amount would have been further increased for the remainder of the financial year.

**Recommendations**

**Firstly**, it should be mentioned that a **Deputy Mayor's Fund** is something totally new and that it is not even mentioned in the WECLOGO Circular about the Mayor's Fund. It seems to arise from an arrangement between the ANC and the NNP, where the Mayor is from the ANC and the Deputy Mayor from the NNP. Where this is the case it would appear to be a better arrangement if there was only one fund, namely the Mayor's Fund, with two (2) specific amounts earmarked for the Mayor and Deputy Mayor, based on approved programmes for which they are respectively responsible.

**Secondly**, the **size** of the funds that were made available as well as the systematic increase during the municipal financial year should be questioned. A **realistic limit** should be imposed on the amounts in the budget, particularly in the case of a municipality such as Kannaland, which is struggling to provide essential services to the community.

**Thirdly**, the **purposes** for which funds are used are in many cases unauthorised and no satisfactory answers were provided or the required vouchers were not available.

The following are some examples of unauthorised expenditure:

**Mayor's Fund**

Document No.	Purpose	Amount
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3.	Pay Wilfred Rothman	R1 500, 00
4.	Discotheque - Musical Instruments	R8 483, 89
5.	Mandies	R800, 00
6.	Mandies	R800, 00
9.	Pay P Rootman	R2 812, 50
11.	J Donson	R2 000, 00
20.	J Donson	R2 000, 00
22.	MG Spares – minibus of J Donson	R3 500, 00
23.	J Donson	R7 000, 00
26.	Pay J Donson’s municipal account	R2 547, 92

- Item 4, the amount of R 8 483, 89 (R 5 688, 89 + R 2 795, 00) on 07/07/03 paid into FNB Account No. 502 7001 6030 of J Donson.

#### **Deputy Mayor’s Fund**

<b>Document No.</b>	<b>Purpose</b>	<b>Amount</b>
65.	Pay A Baartman	R1 500, 00
71.	Pay A Baartman	R2 000, 00
73.	Ronnie’s Butchery	R150, 00
76.	A Baartman – Advance on salary	R1 200, 00
77.	Pay A Baartman	R3 500, 00

The above is not a complete list and merely serves as an example of seemingly irregular expenditure that justifies further investigation and action.

#### **1.4.3 Role players involved:**

##### **1.4.3.1 Municipal Treasurer: Mr H Nel**

Mr H Nel, the Municipal Treasurer gave evidence under oath and also confirmed under cross-examination:

- that he was under the impression that the purpose for which the Mayor's Fund and the Deputy Mayor's Fund could be used was at the total discretion of the Mayor/Deputy Mayor. Where approval was requested, he did not question the purpose for which it was used, he merely checked to see if there was still money available in the Fund and then approved it;
- that to his knowledge the Fund was not subject to audits.

It was found that the evidence given by the Municipal Treasurer was an indication of ignorance and gross negligence. To be merely a rubber-stamp and approve anything a political office bearer submits for payment, is not what is legally expected of a senior official such as the Municipal Treasurer and it was found that Mr H Nel did not fulfil his statutory duties in this regard.

### **Recommendation**

Disciplinary action against Mr H Nel is recommended for non-compliance with statutory duties.

#### **1.4.3.2. Municipal Manager: F J Human**

The evidence given by Mr F J Human was that he was going to submit the WECLOGO Circular to the City Council, but that the Mayor instructed him to withdraw it. He complied with the Mayor's request and withdrew the Circular from submission to the municipal council.

This indicates that the Municipal Manager as accounting officer was aware of the content of the Circular and shut his eyes to the continuing malpractice. The proper action by the Municipal Manager would have been to state his **objection** in terms of the provisions of section 10G(2)(k) of the Transition Act, to stop the expenditure and where it had already been made, to recover the expenditure from the councillor concerned.

This was not done and it was found that the Municipal Manager did not comply with his statutory obligations.

Section 55(2) of the Systems Act stipulates as follows:

*“(2) As accounting officer of the municipality, the municipal manager is responsible and accountable for –*  
*(c) all income and expenditure of the municipality;*  
*(d) all assets and the discharge of all liabilities of the municipality; and*  
*(e) proper and diligent compliance with applicable municipal finance management legislation.”*

The accounting officer of the Kannaland Municipality, apart from the Mayor’s Fund, has many other outstanding matters for which he is responsible and accountable and for which no satisfactory answer was provided in his evidence before the Committee of Inquiry, as is apparent from the remainder of this report.

### **Recommendation**

- The documents on the application of funds from the Mayor’s Fund/Deputy Mayor’s Fund must also be furnished by the Municipal Manager to the Auditor-General for auditing and report and to the SAPS for possible criminal prosecution.
- Disciplinary action against Mr F Human is recommended for non-compliance with statutory obligations.

#### **1.4.3.3. Mayor: J Donson**

It is clear from the documents, the evidence given and the written reply that was received, that Mayor Donson regarded the Mayor's Fund as his own private fund and could do with it what he liked. In evidence under oath before the Committee of Inquiry he testified he was of the opinion that he had **absolute discretion** on the purposes for which the fund could be used. When cross-examined by advocate Lotz, the Mayor defiantly wanted to know what acts prohibited him from using the Fund as he did at his sole discretion? The answers to all the questions can be found in the WECLOGO Circular No. 48 of 2002. According to the Mayor the contents of this Circular were merely "another opinion" that he did not necessarily agree with. It was clear that the content of the Circular could not be reconciled with the reckless behaviour of Mr Jef Donson and that this was the reason why he gave an illegal instruction to the Municipal Manager to withdraw the item for submission to and consideration by the Council meeting.

If this Committee of Inquiry had the powers, it would not have hesitated to recommend that Councillor Donson be discharged from office.

### **Recommendation**

Further action against Councillor J Donson in terms of Item 14(4) of the Code of Conduct for Councillors is recommended.

#### **1.4.3.4 Deputy Mayor: C Baartman**

To a lesser extent than the Mayor, it appears that the Deputy Mayor, Mr Callie Baartman, also used the Fund contrary to the directives contained in the legislation referred to in the WECLOGO Circular.

Since this Committee of Inquiry was appointed in terms of section. 106 of the Systems Act and not in terms of Schedule 1 (Code of Conduct for Councillors) Item 14(4), this Committee of

Inquiry can at best recommend that the aspects in so far as the Mayor and Deputy Mayor as councillors are concerned, should be referred by the Minister of Local Government to a person or committee as contemplated in Item 14(4) of Schedule 1 of the Systems Act.

### **Recommendation**

Further action against Councillor Baartman is recommended in terms of Item 14(4) of the Code of Conduct for Councillors.

## **1.5 Customer care, credit control and debt collection policy**

The Kannaland Municipality already adopted a Credit Control Policy some time ago but this was only published later, after this inquiry had already been announced, in Provincial Gazette 6109 on 20 February 2004. The policy is therefore not as up to date as indicated by the date of publication and should be revised and adapted after a process of community participation.

Chapter 9 of the Systems Act comprehensively deals with credit control and debt collection of municipalities. Section 95 in Chapter 9 contains directives on customer care and management. This is an important aspect, which is missing in the present policy and has to be updated. Cooperation with the community and a system of customer care and management is a prerequisite for successful credit control and debt collection. To date this has not been successfully applied in Kannaland. Page 70 of the municipality's written reply reads as follows: *"The tendency of non-payment furthermore also caused that the council's cash flow was put under tremendous pressure from day one and we could therefore never plan properly, because it was not possible to know with certainty how much cash was going to be received on a monthly basis (see attached list of debtor payment percentages). This problem increased to such an extent that outstanding debtors amounted to more than R14 m, of which ZOAR amounted to more than 50%."*

Lessons learned from conduct in the past can be added to the present policy. For example, it would appear that the Executive Mayor as the “supervisory authority” in terms of section 99 of the Systems Act and the Municipal Manager in terms of section 100 as “implementing authority” did not properly execute their respective powers and obligations.

A process of community participation in the revision, improvement and adaptation of the policy can lead to greater acceptance and “buying in” by the community.

### **Recommendation**

- The present Credit Control and Debt Collection Policy must be reviewed. Also add customer care and management, as referred to in section 95 of the Systems Act and adopt by-laws as referred to in section 98 of the Systems Act; and
- Section 5(2) of the Systems Act also contains a list of the duties of the community. In order to establish a balanced policy, this must also be pointed out in the policy.

## **1.6 Audit Committee and Internal Auditor**

### **1.6.1 Audit Committee**

Section 10G(2)(c) of the Transition Act stipulates as follows in connection with an Audit Committee:

*“(c) Every municipality shall establish and maintain a system of internal control and, as far as practicable, institute internal audit, including audit committees, as an independent appraisal function”.*

In terms of Regulation 14 of the Regulations on Municipal Planning and Performance Management, a Performance Management Audit Committee must also be appointed. The already existing Audit Committee can also be used for this purpose.

From the evidence it seems that although the municipal council already decided on establishing an Audit Committee on 23/01/03, the first meeting of this committee only took place on 05/03/04 and this committee does not yet function properly. An Audit Committee Charter does exist but the composition of the Audit Committee is still flawed.

### **Recommendation**

With regard to the Audit Committee it is recommended that:

- steps be taken to ensure that it functions properly as soon as possible;
- the composition thereof is extended to members of the community, the Business Chamber and the ratepayers' associations.

#### **1.6.2 Internal Auditor**

The Internal Auditor can play an important role in promoting healthy financial administration at a municipality.

Paragraph 9 of the Standardised Financial Policy for the Kannaland Municipality, adopted in January 2001, contains detailed directives on internal audit.

In terms of section 45 of the Systems Act the results of performance measurements in terms of section 41(1)(c) of the Act must be audited as part of the municipality's internal auditing processes.

The Internal Auditor is an important post in the establishment and the person who occupies the post must have the necessary **skills and expertise** to fulfil the duties related to the post. The evidence led before the Committee if Inquiry points out that the present incumbent, Mr P. Nt'Selungu, was appointed through improper influencing by the Executive Mayor and that he was appointed from general labourer on post level 14 to internal auditor on post level 3.

The appointment of the Internal Auditor should be specifically addressed in the re-evaluation of appointments and the post levels at which this done, as recommended in paragraph D.2.2.

As Langenhoven said:

*“Let an ignorant person prune your trees and invite a sick man to come and eat the fruit with you.”*

### **Recommendation**

The necessary steps shall have to be taken in collaboration with WECLOGO to ensure that a suitable person with the required skills and expertise occupies the post of Internal Auditor.

## **1.7 Procurement Policy**

Die municipality does not have a Preferential Procurement Policy as referred to in section 217 of the Constitution and section 2 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

In terms of such a preferential procurement policy the municipality can, among others, give preference to historically disadvantaged persons and local companies. If such a policy had been in place the situation would not have arisen, according to the testimony of Ms G Snyman of the firm Snyman & Rex of Van Wyksdorp, where her own firm was not regarded as a local firm in the awarding of tenders. Furthermore, the firm did also not get preference because she as a woman and her partner, Mr G Rex, qualified for points in terms of the preferential point system (municipal document page 388, par.5).

### **Recommendation**

It is recommended that a Preferential Procurement Policy as referred to in section 2 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) be drawn up, approved and implemented for the Kannaland Municipality.

## **1.8 Tariffs and tariff policy**

The Committee of Inquiry requested the municipality to submit a copy of its tariff policy as referred to in section 74 of the Systems Act.

The documents on Tariffs, pages 1-7 of the municipality's reply, did not constitute a tariff policy but were merely the approved, existing tariffs.

The preamble to the municipality's document reads as follows:

*"Any tariff or case, which is not directly addressed in the list, is given by delegation to the Mayor, Municipal Manager or his plenipotentiary and the Manager of Finance to decide on."*

The imposition of tariffs in terms of section 160(2) of the Constitution cannot be delegated and must be determined by the municipal council. The directive in the tariff document as quoted above is unconstitutional and not legally valid. In this regard see also the municipality's own powers in which the determination of tariffs is reserved for the Council (municipal document p. 444).

### **Recommendation**

It is recommended that as part of the Financial Recovery Plan, a tariff policy as referred to in section 74 of the Systems Act and Tariff By-laws in terms of section 75 of the Systems Act be drawn up and adopted.

## **1.9 Formal action by the Minister of Local Government**

Section 10G(2)(m) of the Transition Act gives the Provincial Minister of Local Government powers to act if he is of the opinion that the finances of a municipality are unsound or can perhaps become unsound.

Section 10G(2)(m) stipulates as follows:

*"(m) (i) The MEC may after consultation with the MEC responsible for Finance, whenever he or she is of the opinion that the finances of a municipality are or may become unsound, instruct the council concerned to take such steps as he or she may specify in writing.*

*(ii) For the purposes of subparagraph (i), the term "unsound" includes any failure to claim or to collect income or to control expenditure or to compile and approve an operating budget, or to comply with subsections (1), (2), (3), (4), (6) and (7).*

*(iii) In the event of a council failing to carry out and implement an instruction referred to in subparagraph (i), the MEC may take such steps or cause such steps to be taken as he or she may deem necessary in order to restore the finances of a council to a sound footing.”*

On the basis of evidence given before the Committee of Inquiry, there is sufficient reason to take even more drastic action and to intervene at the Kannaland Municipality in terms of section 139 of the Constitution.

There is understanding for the fact that the approach of the Minister until now was to rely on the cooperation of the municipality rather than to officially intervene in terms of legislation.

### **Recommendation**

It is recommended to the Minister of Local Government that he should exercise his statutory powers in terms of section 10G(2)(m) of the Transition Act, giving the Kannaland Municipality formal written instructions to implement a Financial Recovery Plan. Such plan must contain all the relevant elements referred to in the recommendations of this report.

**Firstly**, the **extent** of the unsound financial state of the municipality is such that a formal, written instruction from the Minister is justified. The state of affairs is serious enough to justify intervention in terms of section 139 of the Constitution.

**Secondly**, it would strengthen the hand of institutions such as the Eden District Municipality and Zader Municipal Services, who must assist the Kannaland Municipality with help and advice. Where cooperation has to be relied on, a written instruction will give **statutory driving force** to such action.

**Thirdly**, it would fit in with the transitional provision in section 178 of the Local Government: Municipal Financial Management Act, 2003 (Act No.56 of 2003). With the repeal of section 10G and the commencement of the

Municipal Financial Management Act, formal action in terms of the repealed provision shall be deemed to have been taken in terms of the new Act.

## 2. Staff matters

### 2.1 Municipal Manager's powers within approved policy

In terms of section 66 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) the **Municipal Manager**, within a **policy framework** determined by the Municipal Council must –

- a) approve a staff establishment for the municipality;
- b) provide a job description for each post on the establishment;
- c) attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and
- d) establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.

The power and function with regard to the maintenance of an administration is also delegated to the **Municipal Manager**. Schedule F, section 6 and 7 of the delegation make provision for:

*“The formation of an administration as provided for in section 55(i)(a) of the Systems Act, but subject to*

- *such administration complying with the provisions of section 51 of the Systems Act,*
    - *the approved integrated development plan, and*
    - *the approved budget of the municipality.*
- Subject to the provision in the budget and the determinations of the Bargaining Council for Local Government*
- *the determination of salary scales with regard to the posts on the permanent staff establishment,*
  - *the creation of new posts,*
  - *the abolition of existing posts, and*
  - *the provision of conditions of service for all staff.”*

### Recommendation

The adoption of the proposed policies, as recommended, is an essential prerequisite so that the Municipal Manager can give effect to his powers in terms of sections 55 and 66 within the framework of these policies.

## **2.2 Adjustment of staff establishment**

2.2.1 During the investigation into the municipal structure by Zader Municipal Services it was found that a staff establishment did exist but that -

- no post levels were allocated;
- the staff establishment was not divided according to functions;
- appointments were not done according to the staff establishment;
- the job descriptions were incomplete; and
- no core performance areas are indicated;
- post level placements were not market-related. For example - internal auditor post level 3 – debtor clerk post level 3;
- ad hoc upgrading of post levels took place without changing the content of the post or giving reasons for the change. (See Annexure G);
- officials are promoted without having the necessary experience and qualifications. For example – internal auditor from post level 14 to post level 3;
- appointments, promotions and upgradings are done by the Labour Forum and then submitted to the Executive Mayor Committee for information without taking the financial implications into account (see Annexures G, H and I);
- the City Treasurer is not part of the Labour Forum;
- no proof of qualifications could be furnished;
- a provisional evaluation indicated that 78 posts would have to be adjusted downwards.

2.2.2 The municipality responded as follows to this in writing: (pp. 55-56) regarding staff matters:

*“The municipality does have a staff establishment and:*

(i) *post levels are allocated to the staff establishment;*

(ii) *the staff establishment is divided according to functions and each staff member functions within the line function of his department. Due to the fact that four small towns amalgamated into one big authority, functions are allocated within departments on the basis of the fact that the specific head is able to handle the function. The reason why this route was followed, was a financial reason because to place all four departmental heads on contract or with people from the outside would have been far too expensive. For this very reason only the Deputy Municipal Manager reports to the Municipal Manager;*

(iii) *in certain cases it was essential from a strategic point of view that appointments were made outside the staff establishment. The reason why the Council wanted these appointments was because the Council's capital assets had deteriorated and it had become too expensive to continuously use contractors. Secondly, the outstanding debt had increased to R14, 5 million and something drastic had to be done to recover the debts since the manner in which it was presently done was not effective. The opinion that was held was that the Council's money was lying around outside and that it had to be recovered to cover this additional expenditure. Thirdly, it would be inappropriate to increase service fees and rates even further while so many people out there were not paying their accounts. Another fact that confirmed that these strategic decisions were correct, was the fact that ABSA bank (Mr Johan Theron) analysed the Council's financial statements and confirmed that there were three important things that had to be done:*

- *the capital investment of the Council with regard to infrastructure must be protected by implementing recovery and maintenance;*
- *that we should recover outstanding debts; and*
- *that the Council should preferably not take up any new loans.*

*The Council basically found itself in a position where it had to appoint people to recover the money out there, or to go under. From this point of view it was understandable why these appointments were made – it was aimed at increasing the Council's income.*

(iv) *the job description is fully indicated on the staff establishment;*

(v) *it is true that core performance areas were not indicated, but it can be mentioned that this Council only received its performance reports back from its consultant in August 2003. The process of identifying performance areas had started, but had to be stopped because of the tremendous pressure on the Council from the outside;*

- (vi) *post level placements were made in order to bring about parity and to give recognition to greater responsibility;*
- (vii) *post levels were upgraded in order to bring about parity and to give recognition to greater responsibility;*
- (viii) *officials were promoted with due allowance for the broad principle of the Employment Equity Act and the applicable labour legislation, namely that a person must be able to do the job. The Internal Auditor referred to has matric, is highly intelligent and worked in the Department for 18 months at post level 14 before this amendment took effect;*
- (ix) *the appointment, promotion and upgrading of staff goes from the Labour Forum to the Mayor's Committee for information/consideration;*
- (x) *the City Treasurer is notified of all the meetings of the Labour Forum and therefore also attends these meetings;*
- (xi) *the qualifications of all the officials was requested and is presently receiving attention; and*
- (xii) *although a provisional evaluation points to the fact that 78 post will have to be adjusted downwards, the following is not taken into account:*
- *the municipality is currently performing functions that should be performed at provincial level, i.e. library services. If these costs are taken into account the total salary expenditure will only amount to 37,81% of the budget;*
  - *the municipality does not charge its full potential income from an area of 13 500 square metres. If the absolute minimum of only R1 million in property rates from the rural area is calculated for the new financial year, the salary expenditure would only amount to 36,42% of the total budget;*
  - *it should be mentioned that the former Ladismith Municipality's staff expenditure amounted to 45% in 1998."*

### **2.2.3 Finding and recommendations**

From the evidence and submissions it seems doubtful that everything was as correct and in order as alleged in the municipality's response.

It is found and recommended that a wide range of staff establishment and staff-related matters require further attention, investigation and action, including the following:

#### **2.2.3.1 Policy framework**

It is essential that a proper policy framework for staff matters is drawn up as referred to in section 55 and 66 of the Systems Act. The one-page document that was submitted by the municipality is merely an “Employment Policy” with nine points and also needs to be improved and supplemented.

The consideration and adoption of a **policy framework** by the municipal council is the way in which **political supremacy** is exercised by the democratically elected representatives in order to give political direction to the municipal administration.

If such a framework is adopted, the Municipal Manager can properly fulfil his task and functions in terms of section 55 of the Systems Act, which includes appointing staff and maintaining staff discipline. In terms section 66 of the Systems Act, the Municipal Manager can only exercise his powers for the approval of staff establishments, job descriptions and determination of remuneration and other conditions of service if this is done within an approved **policy framework**.

#### **2.2.3.2 Affordable staff establishment**

The present staff establishment of the municipality is not affordable and will have to be revised. Difficult and penetrating decisions will have to be made to ensure that Kannaland establishes an **affordable administration**. It was

also found from the evidence that a number of officials were incorrectly appointed at service levels that were too high.

Both the revision of the staff establishment and the review of incorrect appointments at too high service levels will have to take place as soon as possible. This action is necessary to establish an effective administration and to bring the **expenditure limits to affordable levels.**

#### **2.2.3.3 Employment equity**

The existing Employment Equity Plan of January 2001 (document p. 238-259), which was revised in December 2002, will have to be further revised and amended with specific reference to section 67 of the Systems Act, together with an amended staff establishment.

#### **2.2.3.4 Labour Forum**

The local Labour Forum has a limited and defined task and function as agreed on by the Bargaining Council. From the evidence it appears that the Labour Forum has erroneously been converted into a “Local Bargaining Council” and that it considers matters and makes decisions over which it has no authority. The role of the Labour Forum must be limited to the task description as agreed on by the Bargaining Council.

### **2.3 Contravention of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), as amended**

Section 34A(2) of the Act stipulates that any amount deducted by an employer from an employee’s remuneration for payment to a Benefits Fund must be paid to the Fund within seven days of making such deduction. According to the Zader submission, payments of the Retirement Fund and Medical Aid Fund contributions were behind to such

an extent that the benefits of members' medical aid were suspended and the Retirement Fund had threatened to take legal action. (Annexure N of the Zader submission).

The municipality's written reply (p. 56) stated that all the pension and medical aid payments of the employer's contribution were brought up to date and that none of the members' benefits were currently suspended.

### **Recommendation**

Part of the Financial Recovery Plan will have to be to ensure that statutory payments take place promptly. The non-payment thereof is not only a contravention of the Act, but can also lead to great losses for the members of the Medical Aid, Pension and Retirement Funds.

## **2.4 Commutation of leave**

The Zader submission points out that leave, of which there was no record, is commuted without any consideration for the financial implications.

- No formal leave record system is in place.
- The leave record system is as far behind as 2001.
- The necessary minimum leave credits are not always saved.
- Payments take place against the salary budget, without this being budgeted for, while the Leave Gratification Fund which is not available in cash, is not used in this regard.

The municipality's reply with regard to the commutation of leave (p. 56) is that the leave system fell behind with the changing over of the computer system from Samras DB3 to Samras DB4.

### **Recommendation**

Appropriate steps will have to be taken to ensure that the defects in the leave record system are addressed and rectified.

## **2.5 Disciplinary investigations and hearings**

During the evidence heard by the Committee of Inquiry examples were mentioned of employees who were suspended some time ago. This has an adverse effect on the employer who has remuneration expenditure with regard to staff that was suspended and is not working. This places greater pressure on the rest of the staff who are still doing the work. It is also an unfair labour practice if an employee is not charged and tried at a disciplinary hearing within a reasonable period of time.

### **Recommendation**

The necessary steps must be taken to ensure that all disciplinary matters be dealt with as soon as possible with the assistance of WECLOGO and other consultants.

## **2.6 Disciplinary steps against certain employees**

Apart from steps against the Municipal Manager, Mr Human, and the Municipal Treasurer, Mr Nel, already referred to, it is also recommended that disciplinary steps be taken in the following cases:

### **2.6.1 Mr R D Timmie – Assistant Municipal Manager**

The Prest Committee of Inquiry under the chairmanship of advocate C B Prest SC, made the following findings in paragraph 8, Chapter 6 in the report dated 11 August 1997:

*“8. The Committee interviewed Mr R D Timmie on 4 August 1997. The interview was thoroughly unsatisfactory and of short duration. From the moment the interview commenced there was a manifest lack of decorum and the manner in which Mr Timmie addressed the Committee bordered on insolence. Within moments the Committee came to the unanimous opinion that the vast body of complaints that had been levelled at Mr. Timmie during the course of the evidence were well founded and not lacking in substance. Because of his manner and attitude the Committee came to the conclusion that little purpose would be served by interviewing Mr Timmie at length. In the event of Mr Timmie becoming a candidate for the post of Town Clerk or Deputy Town Clerk, the Committee has no hesitation in recommending to the Honourable the Minister as set forth in paragraph 2 of Chapter 16.”*

In Chapter 16, paragraph 2 the Prest Committee found:

*“2 More particularly, this Committee has found that Mr R D Timmie is not sufficiently experienced or competent to fulfil the task of either Town Clerk or Deputy Town Clerk. The Committee recommends that the Honourable the Minister communicates with the Municipal Council of Ladismith in order to ensure that proper appointments be made.”*

With his appointment as the then Town Clerk of Ladismith, Mr Timmie was only nineteen years old without any municipal experience. The comments made by the Prest Committee seven years ago pointed to the appointment of a person in a post for which he was by no means qualified.

Ladismith became part of the Kannaland Municipality in December 2000, Mr F Human was appointed as Municipal Manager and Mr Timmie as Assistant Municipal Manager. The behaviour of Mr Timmie before the Committee of Inquiry did not impress. He acted childishly and laughed and made jokes about serious matters.

The documents before the Committee of Inquiry point out that Mr Timmie was found guilty of assault, that he had performed community service and that the Council regarded this to be “outside the work context”.

The manager of PARMALAT at Ladismith, Mr Jan Viljoen, testified that he had a telephone conversation with Mr Timmie as Assistant Municipal Manager on 22 October 2003 during which serious problems over a long period of time were discussed regarding water and electricity services to the factory, the biggest employer in Ladismith. The conversation was concluded with Mr Timmie swearing rudely at Mr Viljoen. Complaints by the Municipal Manager have not resulted in any action at the time of the hearing by the Committee of Inquiry.

Mr and Mrs Timmie's money lending system at exorbitant interest rates to municipal officials, who are then dumped into a vicious circle of debt from which it is difficult to escape, is seriously questioned. The municipality did initially give Mr Timmie and then his wife permission to operate this system in the municipality. The desirability thereof is also questioned.

Direct deductions from salaries and wages should be limited to statutory and related matters such as housing bonds, which are to the benefit of the employees. In the municipality's response it is stated that the matter will be reconsidered. It is recommended that the permission in respect of Mrs Timmie be withdrawn.

Local Economic Development or LED is a high priority of the government to create employment. Where jobs are created, this should not only be maintained but also extended to create further welfare. A factory such as PARMALAT in Ladismith is of central importance to local economic development for a municipality. Services to PARMALAT should be the highest priority and PARMALAT should be regarded as an important client and partner. The inexcusable behaviour of Mr Timmie points to misconduct and incapacity.

As Assistant Municipal Manager, the Municipal Treasurer reports directly to Mr Timmie – see Part B3, Institutional Structure. As a link between the Treasury and the Municipal Manager, Mr Timmie cannot distance himself from his responsibility and accountability.

Similarly to the Prest Committee seven years ago, this Committee of Inquiry is also of the opinion that Mr Timmie does not possess the necessary skills and expertise for the post he occupies and that the requirements of section 56(b) of the Systems Act are not complied with.

The impression the Committee of Inquiry gained from Mr Timmie is that of a municipal employee who is in a senior position for which he is not equipped.

### **Recommendation**

Disciplinary action against Mr R Timmie on the basis of misconduct, non-compliance with statutory obligations and an incapacity investigation, should be conducted. The said steps can either lead to Mr Reginald Timmie's dismissal or him being downgraded to a lower post.

### **2.6.2 P J Roodtman – Head: IDP**

From the evidence before the Committee of Inquiry it appeared that Mr Roodtman concealed the fact of the existence of criminal contraventions with his appointment as Head: IDP (municipal reply on p. 207, par. 6.3 and p. 225).

It furthermore appeared that he made a misrepresentation about his academic qualifications (municipal reply p. 212).

### **Recommendation**

It was indicated at the hearing that Mr P Roodtman will be subjected to a disciplinary hearing. If this has not already been done, it must be proceeded with as soon as possible.

### **2.6.3 Mr W K. Hartzenberg – Head: Technical Services**

During the hearing at Calitzdorp, Mr Willie Pretorius testified that he obtained a pre-payment meter from Mr Hartzenberg for payment. The meter was defective and when Mr Pretorius wanted to exchange the meter at the municipality, there was no proof of payment of this money to the municipality.

### **Recommendation**

Mr Pretorius indicated at the hearing that he was prepared to give evidence at a disciplinary hearing.

It is understood that Mr Hartzenberg was charged and found guilty. If this is not related to this matter, he should then be charged with misconduct in this regard.

## **2.7 Protection of staff who gave evidence**

Some of the employees of the municipality specifically asked whether they would enjoy protection if they gave evidence – e.g. Mr Christoffel Jonathan who gave sensational evidence on the conduct of the Mayor, Mr Donson.

The Protective Disclosure Act, 2000 (Act No. 26 of 2000) was created for the protection of employees with regard to “protected disclosures”. Sections 186(2) and 187(1)(h) of the Labour Relations Act, 1995 was amended in 2002 to specifically refer to Act No. 26 of 2000 and to give protection to employees.

Employees must be informed that they are not only protected if malpractices are reported, but that it is their duty to do so.

### **Recommendation**

The municipality as employer must take note of the “whistle blower act”, as it is generally known and NOT act against employees merely because they testified.

## 2.8 Suspension of senior officials

The evidence that was given did not bring any element of **dishonesty** in the behaviour of the officials to the fore, except in respect of Mr Hartzenberg and Roodtman. The seriousness of non-compliance with statutory obligations and the failure to act can be deduced from the serious financial and other detrimental consequences they caused for the municipality as their employer.

Section 135(1) of the new Municipal Financial Management Act stipulates:

*“(1) The primary responsibility to avoid, identify and resolve municipal financial problems in a municipality, vest with the municipality itself” (own underlining).*

As Langenhoven said:

*“Where each one looks after himself, all are cared for.”*

It is open to doubt whether those who are presently in senior positions at the Kannaland Municipality and who have failed to avoid financial problems or to properly identify them, will be able to solve the problems that were created. The grossly negligent conduct to the detriment of the employer justifies suspension and disciplinary action.

### Recommendation

- That the Municipal Manager, Mr F J Human, the Assistant Municipal Manager, Mr R Timmie, the Municipal Treasurer, Mr H Nel, the Manager: Technical Services, Mr W Harzenberg and the Head: IDP, Mr P Roodtman, be suspended with retention of remuneration, pending the finalisation of the proposed disciplinary hearings.
- That the Eden District Municipality and consultants such as Zader Municipal Services provide continued administrative support to the Kannaland Municipality to fill the void that will be caused by the absence of the municipal top management.
- That the disciplinary matters be finalised as soon as possible with the help of WECLOGO.

## **2.9 Legal representation for employees and councillors**

In the written representations received from the Business Chamber after the hearings, the Committee of Inquiry's attention was drawn to a Special Council Meeting held at 16:00 on Tuesday, 16 March 2004 under the signature of the Municipal Manager with the aim to consider "legal representation for employees and councillors" on the basis of a recommendation which reads as follows:

*"RECOMMENDED*

*That this authority should provide legal representation to its employees or councillors in terms of section 109A(a) and 109A(b) on the condition that if such employee or councillor were to be found guilty, such employee or councillor would reimburse the authority with the legal costs concerned."*

Section 109A was added to the Systems Act by means of section 43 of Act No. 51 of 2002. The decision of the Council is considered appropriate to ensure equity and fairness if any action is taken against employees or councillors, arising from the recommendations of this report.

## **3. Water services**

"Water Services" are defined in the Water Services Act, 1997 (Act No.108 of 1997) as both the provision of water and sewage services.

In the Little Karoo where Kannaland is situated, water will always remain a scarce and essential resource.

Water is a "basic municipal service" as defined in section 1 of the Systems Act. In terms of section 27(1)(b) of the Constitution, everybody has the right of access to water. The municipality as a water services authority has a key role to play in the provision of water services in its area of jurisdiction.

Complaints on the quality of water services were received from various sources; the PARMALAT cheese factory in Ladismith, as well as members of the public in Ladismith, Van Wyksdorp, Zoar and Calitzdorp.

In a letter from the Regional Director: Western Cape Department of Water Affairs and Forestry dated 20/02/04 under reference number 16/2/7/J110K/D1 (P van Coller) a finding is reported with regard to an inspection held on 18/02/04. In brief, the following was found in respect of water:

**“SEWAGE PURIFICATION WORKS AT ZOAR**

*The sewage purification works at Zoar have been out of action for some time and the raw sewage from the emergency storage dam polluted the Nels River.*

*The Kannaland Municipality did not notify this Department of the problems that were being experienced and the Eden District Municipality brought this to the attention of the office on 17 February 2004. The exemption 1728B, dated 10 April 1997 stipulates in paragraph 4.2 and 9 that any pollution incident must be reported to the Regional Director. (See Annexure 1). By failing to do so the Kannaland Municipality is guilty of an offence in terms of section 19 and 20 of the National Water Act, 1998 (Act No. 36 of 1998).*

*The District Municipality is presently in the process of determining the impact of the pollution by means of monitoring.*

*The three electric motors were all out of order but officials of the Eden District Municipality's management, managed to get one going on 17 February 2004. The raw sewage of the emergency storage dam could then again be pumped back to the oxidation dam system, which in turn stopped the pollution of the Nels River.*

**DRINKING WATER FROM THE TIERKLOOF DAM FOR ZOAR**

*The dam is the responsibility of the Department of Water Affairs and Forestry, but the infrastructure with regard to roads, pipelines, purification and service provision is the responsibility of the local authority.*

*The Water Services Development Plan for the Kannaland Municipality is also not in place and must receive the necessary attention. As part of the plan, the water saving measures should be looked at and it would be advisable if the aspects could be addressed and implemented as soon as possible seeing that the authority is currently faced with a water crisis.*

**DRINKING WATER FOR LADISMITH**

*The canal from which Ladismith receives its drinking water was last cleaned more than a year ago or even longer. During the inspection the losses on the canal concerned were visible at a number of places where large-scale seepage was taking place. Alien plants and bushes were invading the canal, which also increased the losses in respect of the canal. (See Annexure 8 – a letter with regard to the poor quality of drinking water.)*

*The lining of the oxidation dams was damaged by reeds and vegetation with the result that there is seepage through the dam walls and this lining will have to be repaired.*

*The one anaerobic tank of the system has a back-flow valve which when opened causes the raw sewage to reach the irrigation dam. This practice of washing back must be investigated and rectified. (See Annexure 2 for the draft report as submitted by MBB).*

**SEWAGE PURIFICATION WORKS AT LADISMITH**

*The Kannaland Municipality has for some time already contravened their exemption conditions and with the taking effect of participative management between authorities this office has addressed the problem on various occasions. The Kannaland Municipality was reminded about the breakdown figures they failed to submit as set out in paragraph 6 of their exemption no. 1564B, dated 28 January 1993 (see Annexure 3). The last time figures from the municipality concerned were received by this office was on 15 September 2003 (see Annexure 4).*

*The following tables show the percentage with the information available from the works and the current performance.*

**DECEMBER 2003: BREAKDOWN FIGURES**

<b>VARIABLE</b>	<b>RESULTS (mg/l)</b>	<b>GENERAL STANDARD (mg/l)</b>
<i>Solid matter in suspension</i>	40	<b>25</b>
<i>Free ammonia and bound ammonia salts (as N)</i>	66.5	<b>10</b>
<i>Chemical oxygen need</i>	51	<b>75</b>

**SEPTEMBER 2003: BREAKDOWN FIGURES**

<b>VARIABLE</b>	<b>RESULTS (mg/l)</b>	<b>GENERAL STANDARD (mg/l)</b>
<i>Solid matter in suspension</i>	260	<b>25</b>
<i>Free ammonia and bound ammonia salts (as N)</i>	74.8.5	<b>10</b>
<i>Chemical oxygen need</i>	496	<b>75</b>

*The poor performance of the sewage purification works is attributed to the sludge in the dams and these dams have to be desludged. Negotiations will have to take place with the various cheese factories regarding the disposal of their by-products, rather than dumping them at the works.”*

The situation as set out in the above-mentioned letter causes concern, but the technical, administrative and financial assistance that the Eden District Municipality had already provided, was noted with appreciation. Mr Johan Kemp of the Eden District Municipality has already achieved a great deal since he was sent to the Kannaland Municipality to render assistance. It is not possible to address the numerous problems with regard to water services in a report such as this.

### **Recommendations**

- The best method to use to comprehensively address the water problems is to ensure that a Water Services Development Plan is drawn up for the Kannaland Municipality as referred to in sections 13-15 of the Water Services Act, 1997. High priority must be given to the drawing up of such a plan, which will then become part of the IDP. Funds will be needed and the Department of Water Affairs and Forestry (municipal document p. 338) was asked to assist. An overall comprehensive water services plan is an absolute prerequisite to address the water problem in general.
- Short-term steps will have to be taken to ensure water supply to the community of Zoar. Mr Johan Kemp of the Eden District Municipality is already giving attention to this. Help in this regard will have to be part of the tripartite agreement that is proposed between Kannaland, the Eden District Municipality and the Western Cape Provincial Government. Short-term steps will also have to be taken to supply the PARMALAT cheese factory with an acceptable quality of water. This factory must at all costs be kept and developed as the biggest job creator in Ladismith.

#### **4. Electricity supply**

Numerous complaints about power failures were submitted to the Committee of Inquiry and also by the PARMALAT cheese factory. The municipality indicated that approximately R18, 5 m was spent on the upgrading of the power network.

The return of approximately R1, 0 m obtained from the sale of the nature reserve on the farm No. 94 NAUWKLOOF was also used for the upgrading of the power network according to the municipality. The proposed alienation of the nature reserve was published in terms of section 24 of the Cape Municipal Ordinance 20 of 1974 and no objection was received. No further recommendations are made in this regard.

## **5. Tourism bureaus**

As a resident of Gauteng, the Chairperson of the Committee of Inquiry was again impressed with the tourism potential of Kannaland, which is situated on Route 62.

The complaint by Mrs Hettie Theron, vice-chairperson of the Ladismith Tourism Bureau was twofold:

**Firstly**, that the Ladismith Tourism Bureau, in contrast with the Calitzdorp Tourism Bureau, is struggling to obtain payment for expenditure incurred. The impression is gained that there is competition instead of cooperation between the tourism bureaus. The question arises whether there should not be only one Kannaland Tourism Bureau, with various branches working together to the benefit of the whole area.

**Secondly**, that the persons who are members of the tourism bureaus first have to spend the funds and then submit claims for payment. Ironically this is a financial mechanism that was instituted by the municipality and has now lead to this complaint.

### **Recommendation**

The guidelines for the transferring of funds to organisations and bodies outside any government sphere, as contained in section 67 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), should be applied with regard to the transferring of funds to tourism bureaus.

## **6. Van Wyksdorp**

Representations made by the community, businesses, organisations, etc. and answers provided by the Kannaland Municipality:

**6.1 Representation by: Ms M A Bruce: Van Wyksdorp  
Library  
Matter: Allowance as librarian of  
Van Wyksdorp**

Ms Bruce alleges that she has not received an allowance from the Kannaland Municipality since the amalgamation in December 2000. No one at the Kannaland Municipality was interested in discussing her monthly allowance as a librarian with her in spite of the numerous letters written by her over a period of three years. As is the case with Ladismith and Calitzdorp, the regional office at Oudtshoorn serves this library. Ms Bruce alleges that all the librarians at the other libraries in the Kannaland Municipality are indeed paid monthly and asks why can't she also receive an allowance. She submitted letters dated 6 February 2003 from the Oasis Community Project from Cathy Alchin in support of her request, stating that this was a fair request. These letters were sent for the attention of: Mr Human, Mr Donson, Mr Theuns Botha – provincial library in Oudtshoorn, Deputy Minister of Arts, Culture, Science & Technology, the Minister of Arts, Culture, Science & Technology and Mrs Van Zyl – provincial librarian, Mossel Bay.

#### **6.1.1 Answer provided by the Kannaland Municipality**

**Official Mr De Wet [written]  
Matter Allowance as librarian of  
Van Wyksdorp**

Mr De Wet submitted a recommendation to the Committee of Inquiry, which must still be laid before the Executive Mayor's Committee for consideration, in which it is recommended that the post of library assistant should be created and that the post should be advertised. Mention was made of a

meeting of the Executive Mayor's Committee on 25 February 2004 with regard to the librarian of the Van Wyksdorp Library.

A library assistant is post level 9, with a starting notch of R3 240 per month. Mr De Wet mentions that Ms Bruce has been waiting to receive payment for a number of years.

### **Recommendation**

After consultation with WECLOGO, the Kannaland Municipality recommended that:

- a payment of R1 000 p.a. be made to Ms Bruce in respect of the years 2001, 2002 and 2003;
- a post of library assistant be created at the Van Wyksdorp Library.
- the post be advertised;
- a temporary agreement be entered into with Ms Bruce until the post is filled;
- a monthly allowance of R200 p.m. be paid to Ms Bruce with effect from 1 January 2004; and
- the remuneration of the Library Assistant: Van Wyksdorp, be based on 7 hours per day at post level 9;
- that the Municipal Manager makes all appointments in terms of the Systems Act.

#### **6.1.2 Librarian: Van Wyksdorp**

The Committee of Inquiry regards the representation and request by the Van Wyksdorp librarian as reasonable and fair in order to maintain consistency in respect of the remuneration of all library staff in the Kannaland municipal area and supports and acknowledges the steps taken by the municipality since the previous sitting of the Committee of Inquiry.

### **Recommendation**

The Committee of Inquiry recommends that this post of Librarian: Van Wyksdorp be considered together with the staff establishment adjustments referred to in Part D.2.2.

### **6.2 Representations by: Mr A J Brits: Community Forum, Van Wyksdorp**

**Matter: Van Wyksdorp Council Chamber furniture**

Mr Brits alleges that the furniture of the Council Chamber in Van Wyksdorp and Calitzdorp was cut up and if this is not the case, he wants to know where the furniture is with substantiating proof.

#### **6.2.1 Answer provided by the Kannaland Municipality**

**Official Mr De Wet [written]**  
**Matter Van Wyksdorp Council Chamber furniture**

Mr J De Wet submits photo's showing that the furniture is still standing in the Council Chamber in Van Wyksdorp.

### **6.3 Representations: Mr Brits: Community Forum Van Wyksdorp** **Matter: Additional administrative staff**

Mr Brits testifies that before the amalgamation, only one official handled the administrative affairs in Van Wyksdorp; that a part-time employee was later appointed but that this part-time lady was dismissed after the amalgamation. Another official was subsequently appointed. Mr Brits objects to the appointment of an additional person since the actual administration is done by the Kannaland Municipality at Ladismith, thereby making the workload lighter.

#### **6.3.1 Answer provided by the Kannaland Municipality**

**Head of Treasury: Mr Nel [written]**  
**Matter: Additional administrative staff**

Mr Nel replies that owing to large sums of outstanding money the need arose to keep the office open for a whole day and that there was also a need for a person to handle collections and payments. Since the previous Town Clerk only had a half-day position, it would be too expensive to appoint him for a full day. For this reason it was decided to appoint a collection clerk at a lower post level and for less remuneration.

**6.4 Representations: Mr A J Brits: Community Forum  
Van Wyksdorp**

**Matter: One-on-one supervisor**

Mr Brits testifies that two labourers were appointed as handymen at some stage. On enquiry, one was appointed as foreman above the other.

**6.4.1 Answer provided by the Kannaland Municipality**

**Municipal Manager: Mr Human [written]**

**Matter: One-on-one supervisor**

Mr Human replies that with regard to the two outside people, both were appointed as handymen because they would be handling a variety of functions. None of them were appointed as foreman supervising the other.

**6.5 Representations: Mr A J Brits: Community Forum Van Wyksdorp**

**Matter: Progress report on R 200 000, 00 for  
(a) street-lights and (b) water upgrading**

Mr Brits testifies that the Eden District Municipality voted R 30 000, 00 for the upgrading of streetlights since Eskom distributes the network. The project was stopped immediately when ±4 lights were not installed. Mr Brits furthermore wants to know what happened to the R 100 000, 00 (upgrading of the water network) because only two filters were purchased – the September 2003

Newsletter mentions a water project of R 200 000, 00. What happened to the money/project?

**6.5.1 Answer provided by the Kannaland Municipality**

**Officials:** Mr Human, Hartzenberg [written]  
**Matter:** Progress report on R 200 000 for  
**(a) street-lights and (b) water upgrading**

*Electricity project – R 30 000, 00*

Mr Human replies that the project only entailed the installation of street lighting. The necessary poles were planted and cables were joined after which Eskom insisted on connecting the streetlights and undertook the switchover. Eskom was not prepared to connect the disadvantaged people of Kannaland to the network and the Council then voted its own funding to connect our disadvantaged community to the power network. The project was successfully completed in cooperation with Eskom.

*Upgrading of water network – R 100 000, 00*

Mr Human maintains that the above-mentioned project entails waterproofing the reservoir, installation of the sand filter, installation of valves and pipes. The project was completed successfully.

*Water project – R 200 000, 00*

Mr Human: The above-mentioned project did not commence due to the financial position of the Kannaland Municipality.

**6.6 Representations: Mr A J Brits: Community Forum Van Wyksdorp**  
**Matter: TV – relay sender out of order for more than two years**

Mr Brits testifies that that the town's TV relay aerial has been broken for the past two years and consequently the town only enjoys partial reception.

Mr F Human, the Municipal Manager, promised to address these problems.

#### **6.6.1 Answer provided by the Kannaland Municipality**

**Official: Mr Human [written]**

**Matter: TV – relay sender out of order for more than two years**

Mr Human replies that the kind of technology installed at the TV relay station at Van Wyksdorp was so outdated that no repairwork could be done. The Council would have to budget for the replacement of the whole station.

**6.7 Representations: Mr Brits: Community Forum Van Wyksdorp**  
**Matter: Progress report: Sports field project**

Mr Brits testifies that Minister Piet Meyer promised R 120 000, 00 for the development of the sports fields. The Kannaland Municipality asked for tenders for the construction of a rugby and netball field, planting of grass and sinking of a borehole. The tender was awarded locally, but the Kannaland Municipality decided to do the development itself. The tender was therefore not awarded and no motivation was given for this decision.

#### **6.7.1 Answer provided by the Kannaland Municipality**

**Official: Mr Hartzenberg [written]**

**Matter: Progress report: Sports field project**

Mr Hartzenberg's reply is as follows:

*Sports field – R 120 000, 00*

Due to the poverty situation in Van Wyksdorp the Council decided to carry out the project departmentally on a job creation basis.

The department concerned, which voted the funding, fully investigated the project and indicated verbally that it was satisfied with the way the funding was spent except where a wrong pipe was placed in the ground by mistake. Further

motivation was given for the making available of more funding and a further allocation of R 750 000, 00 was earmarked for the completion of the sports fields.

**6.8 Representations: Mr Brits: Community Forum Van Wyksdorp**  
**Matter: Temporary labourers paid R 80, 00 per day**  
**instead of R 30, 00 per day**

Mr Brits testifies that daily wages on the dry-track project amounted to R 30, 00 per person per day while the Kannaland Municipality paid R 80, 00 per person per day (where is the balance?). Mr Brits furthermore maintains that the Kannaland Municipality only responded after receiving ten letters in this regard.

**6.8.1 Answer provided by the Kannaland Municipality**

**Assistant Municipal Manager: Mr Timmie [written]**

**Matter: Temporary labourers paid R 80, 00 per day**  
**instead of R 30, 00 per day**

Mr Timmie replies that the Council has adopted a policy to remunerate temporary labourers at R 80, 00 per day, which is in accordance with the guidelines provided by the Bargaining Council.

**6.9 Representations: Mr Casper Labuschagne: Manager, Dried Fruit Project**

**Matter: Dried Fruit Project Report: Utilisation of funds**

Mr C Labuschagne gives an exposition of the funding of the project by the Provincial Department of Economic Affairs and Welfare, which in total amounts to R 445 000, 00. The project currently shows a deficit of R 325 000, 00 (which the Kannaland Municipality had budgeted for). Mr Labuschagne testifies that the continuation of the project would depend on the deficit that should be provided by the Kannaland Municipality. After a great deal of correspondence to the Kannaland Municipality there was still no reaction from the municipality. Mr

Labuschagne furthermore maintains that the Kannaland Municipality indicated that it would impose limits. Mr Labuschagne requested written invoices and statements from the Kannaland Municipality and indicates that R 230 000, 00 has been spent on the project to date.

#### **6.9.1 Answer provided by the Kannaland Municipality**

**Official: Mr Smith, Mr P Roodtman [written]**

**Matter: Dried Fruit Project Report: Utilisation of funds**

Mr Smith confirms the amounts mentioned by Mr Labuschagne. The project received two amounts, namely R 225 000, 00 from the Department of Social Services and R 200 000, 00 from the Department of Economic Affairs. The latter amount could not be verified since the department failed to include a payment advice.

The amount was later verified and credited to the project.

Total income to date	R 425 000, 00
Total expenditure to date (28/02/04)	R 216 916, 81
Amount available	R 208 083, 19

The Council budgeted for R220 000, 00 to make a contribution to the project which could not be realised due to the financial position of the Council. Until now all purchases as requested, were made by the Kannaland Municipality. In order to eliminate any anomalies the project manager was given a requisition book in which all the orders could be written.

The project manager also submitted a request to enclose a steel construction. The recovery plan committee did not approve this because no funds were received for this purpose. The available funds were exclusively earmarked for dried fruit.

Mr Labuschagne is currently busy with his own brick-making project and should therefore not be further remunerated from the dried fruit project. The contract the committee concluded illegally with the workers has already expired. The committee only has recommendation powers while the Council has executive powers. All recommendations by the committee have to be confirmed or rejected by the Council.

### **6.9.2 Dried Fruit Project**

The Committee of Inquiry finds with the Dried Fruit Project that the institution and the municipality were endeavouring to promote private-public partnerships. The Committee of Inquiry, however, finds that there is contradictory evidence concerning the administering of funds for the Dried Fruit Project with regard to the amount the municipality was supposed to have budgeted for. According to evidence given by Mr Labuschagne the municipality's contribution amounted to *R 325 000, 00* and according to the municipality the budgeted amount for the project came to *R 220 000, 00*.

#### **Recommendation**

The Committee of Inquiry recommends that:

- as part of the Financial Recovery Plan the Kannaland Council's budgeted contribution must be cleared and passed on to the project to avoid any confusion; and
- the Council and outside institutions make a concerted effort to establish and promote private-public partnerships, promote sound and responsible financial management and encourage local economic development within the broader Kannaland.

### **6.10 Representations: Ms M E G Snyman on behalf of the firm**

**Snyman and Rex**

**Matter: Awarding of contract NS159/2003:**

**Kannaland Construction of water supply pipe (phase 2)**

In her evidence Ms Snyman maintains that the correct procedures were not followed with the awarding of the above-mentioned tender to Mr J C Radyn and that the engineering company Ninham Shand discredited Snyman and Rex in their evaluation of the tenders.

With regard to the request by Snyman and Rex to Mr Human, Municipal Manager to look at the evaluation report of the engineer, she found:

- That Mr Radyn's tender price of R 346 499, 01 was much higher than that of Snyman and Rex but that Mr Radyn was awarded the tender.
- That the tender price of Snyman and Rex was R 318 139, 00, but that the tender was nevertheless awarded to Mr Radyn at a considerably higher price and this included an alternative size pipe (class 50D) at a lower cost. Since the tender specifications prescribed a class 100D pipe she voiced her unhappiness about the fact that the other tenderers were not given the opportunity to also adjust their tenders to the alternative smaller/cheaper pipe:
  - That Snyman and Rex's HDI status and previous experience were not taken into account (see also Part 1.2 on the Preferential Procurement Policy).
  - That the information provided by the municipality on Snyman and Rex was not correct.
  - That Snyman and Rex had already undertaken major projects in the past.
  - That Snyman and Rex doubted that the municipality made any bank code enquiries regarding them.
- Ms Snyman voiced her concern with regard to the availability of funds for the taxi rank contract. Snyman and Rex had already started with this in January 2004 and that R115 000 had already been spent according to the Kapp report.
- She furthermore maintains that the evaluators did not give full consideration to Snyman and Rex's tender.

### **6.10.1 Answer provided by the Kannaland Municipality**

**Municipal Manager**

**Mr F Human [written]**

**Matter:**

**Awarding of contract NS**

**159/2003: Kannaland. Construction**

**of water supply pipe (phase 2)**

During the consideration of the tenders Mr Human made enquiries as to why the tender was not awarded to the lowest tenderer. Mr Keyser from Ninham Shand mentions to Mr Human that the tenderer, G Snyman & G Rex, did not tender for supervision, company and head-office overheads and that this could become a problem if delays occurred.

A letter in support of this representation is attached hereto: documents of Executive Mayor's meeting held on 3 February 2004 at 9:00 during which councillor J Donson (Executive Mayor) and Mr F Human (Municipal Manager) were present regarding the appointment of the successful tenderer. Tender NS 159/2003 Resolution No.1 of 3/02/2004

1. that the tender for the above-mentioned contract be awarded to J C Radyn for a period of five (5) years;

Ninham Shand Consultancy Services on 2 March 2004 responded to Mr F Human with a letter regarding Ms Snyman's representations, emphasising that Ninham Shand make the best possible recommendations on the basis of the information at their disposal. Such recommendation is by no means binding and the final decision still rests with the Council.

#### **Finding**

Only one tenderer, J C Radyn, was given the opportunity to adjust his tender on the basis of a cheaper pipe. This is unfair towards the other tenderers such as Snyman and Rex – see the recent Appeal Court case of *Metro Projects CC vs Klerksdorp Municipality 2004 (1) SA 16 SCA*.

## 7. Calitzdorp

Representations made by the community, businesses, organisations, etc. and answers provided by the Kannaland Municipality:

**7.1 Representations: Mr Ebenard Botha**  
**Matter: Deafening music: public place**

Mr E Botha described the events mentioned about Calitzdorp, where no law enforcement took place, as a “tragic day” particularly for the tourism industry. He attests to people on the small market place on “All Pay Day” and refers to a man with a yellow car with loudspeakers on the roof, playing deafening music. A bus with tourists left the market plain as a result of this noise. He furthermore attests to the untidiness of the town and that the municipal cleaners walk past all the litter. This is not good for the town with its already limited tourism potential.

### 7.1.1 Answer provided by the Kannaland Municipality

**Mr S Meyer [written]**  
**Matter: Deafening music: public place**

Mr Meyer replies that he and Mr Botha have only spoken to each other telephonically about the music on one occasion. Because “All Pay Day” is the day when people from the town area as well as from the rural areas draw their pensions, there will naturally be noise and togetherness where these people congregate. He mentions further that he immediately phoned Mr Tubby George to see if there was such a bus – at their restaurant, after Mr Botha phoned him. According to Mr George there was no such bus and also no noise. He furthermore remarked that if the SAPS regarded it necessary to act, those guilty would have been fined.

Mr Meyer also states that the SAPS, as well as the Commando were at all times part of the policing on “All Pay Day”.

**7.2 Representations: Mr E B du Toit & N Currie**  
**Matter: Turn to use irrigation water**

Mr Du Toit testifies that the irrigation water issue was never openly discussed with the community as promised by the Municipal Manager. He mentions the fact that the municipality changes irrigation water turns without any consultation or prior notice to those who would be affected by any change or adjustment. This water was stopped in a very autocratic manner in August 2002. Mr Du Toit furthermore maintains that according to the municipality there are some people who do not want irrigation water, which is not really the case, and in view of this the municipality is mismanaging this commodity. He refers to the arrogant behaviour of the municipality and says they should realise that they are also only residents of the town.

Mr Du Toit further testifies that no public consultation of any kind has taken place and voices his concern that decisions were made about Calitzdorp, which were not acceptable to the majority of the residents.

The free water allocation as well as the free electricity allocation, as promised by the National Government is ignored without any explanation to anybody.

The Audit Committee, promised by the municipality to supervise the municipality's financial management, was never appointed and there were misrepresentations in the 2004 budget to mislead the communities and the Council.

Numerous letters are handed to the Committee of Inquiry by the ratepayers' association attesting to the association's concern it voiced about the municipality's water and electricity affairs.

Other evidence presented to the Committee of Inquiry that deserves further attention is as follows:

1. Outright fraud by not showing expenditure for which cheques were issued but not presented for payment, in the expenditure statements as if already paid.
2. The mismanagement of ratepayers' money by appointing an official and paying him R120 000 while ignoring all his recommendations.
3. The appointment of debt collectors (2) on the fixed staff establishment against advice that such officials should only be remunerated on a Committee of Inquiry basis.
4. Total disregard for the business community and general community's interests by municipal officials and councillors with regard to the handling of electricity installations and leasing of the town hall.

### **7.2.1 Answer provided by the Kannaland Municipality**

**Mr E Smith and Van Rensburg [written]**

**Matter: Turn to use irrigation water**

The written reply from the municipality reads as follows:

The municipality gets a turn to use water from the Calitzdorp Irrigation Board. The Council in turn distributes this water to the residents of the town for gardening and landscaping purposes. This allocation is reviewed annually.

There are two draining gates from the Irrigation Board's canal that flow into four irrigation ditches of the Council. The allocation of water to these ditches must always be balanced because the gates are opened and closed simultaneously.

The Council therefore decided to only give irrigation water to residents with big properties that can take at least thirty minutes of water. In the past, water was taken away from areas in the town where the irrigation ditches had totally collapsed and water could no longer be lead. Many residents gave their water allocation back because allocations were very irregular and also because of the tariff.

The residents do not have a “right” to this water and this was pointed out to them in the seventies. In the past, the Council’s officials used to clean the ditches and control the draining gates, but these days the Council merely opens the main draining gate and the consumers have to do the rest.

It would be in the interest of the water consumers in the town if this water could be used for domestic purposes in the future.

### **7.2.2 Water**

The Committee of Inquiry finds that the availability and management of the water source seems to be a very sensitive matter in almost all the towns in the Kannaland area. The Committee of Inquiry furthermore finds that the community as well as the local authority realise the seriousness of this matter.

#### **Recommendation**

The Committee of Inquiry recommends the development of a Water Services Development Plan in terms of sections 13-15 of the Water Services Act, 1997 (Act No.108 of 1997), see Part D.3.

**7.3 Representations by: Ms Alma Nel: ACVV**  
**Matter: ACVV lease agreement:**  
**Short-notice termination**

Ms Nel testifies that the space she used in the library was taken away from her without any consultation or notification. One morning, the library’s cupboards were moved into her workplace. Ms Nel says that she no longer trusts the municipality since this event took place.

#### **7.3.1 Answer provided by the Kannaland Municipality**

**Mr Meyer [written]**  
**Matter: ACVV lease agreement:**

## Short-notice termination

Mr Meyer replies as follows:

The Executive Mayor resolved on 25/09/03 that the Needlework Group could lease a building for R30 per month.

At that stage Mr Donson asked Ms Ron Frans whether they were experiencing any problems, to which she replied “no”. She did, however, mention that Mrs Alma Nel was not involved, because they were paying the woman what they wanted.

From the time the Needlework Project received notice, Ms Frans was in favour of the new place at the Clinic Building. Alderman Donson, Alderman Baartman, Desmond and Steven Mayer were involved. Mrs Nel was never involved in any negotiation for the building. She informed Mr Meyer that they would be closed for three months because no funds were available.

A meeting with those involved was arranged for 16/02/2004 in order to finalise the matter, but no one attended the meeting. It was assumed they were no longer interested, because no one has come forward to date.

**7.4.1 Representations by: Ms L Willemse, Cllr. Baartman,  
Mr Bob Reynecke**  
**Matter: Food parcels: Criteria applied with the  
handing out of food parcels**

Ms Willemse testifies that certain people were given preference with the handing out of food parcels and asks for the names of the people who received food parcels. She indicates that she would tell Mr Roodtman that she does not understand how he can give food parcels to people, knowing that both the husband and wife were getting a pension.

Mr Eric Opperman states that the identification of names for food parcels was done selectively. According to Mr Opperman, it was clear that not all those who were poor and needy received a food parcel. In his enquiries about the food parcels Mr Roodtman said the following to Mr Opperman: “Did you in any case take part in the processions? You are not from the ANC”. Opperman then left and saw how the municipal vehicles drove away with the remaining food parcels, while many needy residents did not receive them.

Councillor Baartman hands a list of names of approved people who qualify for food parcels to the Committee of Inquiry. It was very clear that many of the names had been tampered with – some of the names were scratched out.

#### **7.4.2 Answer provided by the Kannaland Municipality**

**Mr P Roodtman [written]**

**Matter: Food parcels: Criteria applied with the handing out of food parcels**

Mr Roodtman replies as follows:

It is my duty as an official to follow an open policy with regard to my work activities.

I take pleasure in furnishing the following information:

- ⇒ The Kannaland Municipality initiated this project.
- ⇒ Application for the food parcels was made to the Department of Social Services and Poverty Alleviation and this was approved in principal.
- ⇒ Meetings that were to be held in this regard were advertised locally.
- ⇒ There were approximately 1 600 applications and only 500 were approved for Kannaland. This had to be divided between four towns.
- ⇒ These 500 food parcels were mainly intended for the people doing seasonal work on the surrounding farms.
- ⇒ Names were sent to the department concerned.
- ⇒ It was difficult to choose 500 out of the 1 600, because they were all needy.

### **7.4.3 Food parcels: Finding and recommendation**

The Committee of Inquiry finds that the evidence given with regard to the food parcels points to certain irregularities in so far as the handing out of the food parcels is concerned, who is entitled to them and who actually receives them at the end of the day. The Committee of Inquiry has asked for criteria with regard to who is entitled to the food parcels and who is not. However, what was in fact submitted in writing to the Committee of Inquiry were more the procedures that are followed with the handing out of the food parcels.

#### **Recommendation**

The Committee of Inquiry recommends that reasons must be given as to why the names of persons on the approved list of food parcels were scratched out and that a concerted effort be made to make this initiative more transparent and further to ensure that this initiative is not driven along party-political lines. Should any criteria exist, it must be strictly applied. If criteria does not exist, it must be determined by means of a transparent, representative process with the involvement of the relevant interest groups.

**[Refer to P398 – 402 Municipal bundle]**

**7.5.1 Representations by: Mr Willie Pretorius**

**Matter: Allegation – money paid to W Hartzenberg**

Mr Pretorius testifies that with the installation of a prepaid electricity meter, he was informed by Mr Hartzenberg that no basic levies were payable on prepaid electricity. When he received the account, Mr Pretorius noticed that a basic levy was in fact charged, whereupon Mr Hartzenberg called this “a mistake”. In reaction to a letter Mr Human told Mr Pretorius that he was prepared to buy the meter provided it was still working correctly, with proof of payment, from Mr Pretorius for the purchase price for which he bought it.

Mr W Hartzenberg denied any receipt of payment, whereupon the municipality refused repayment to Mr Pretorius. As part of his evidence Mr Pretorius hands copies of payment to the Committee of Inquiry. The legal representative of the municipality then asks Mr Pretorius whether he would be prepared to testify at a disciplinary hearing with regard to this matter.

### **7.5.2 Answer provided by the Kannaland Municipality**

**Mr J de Wet [written]**

**Matter: Allegation – money paid to W Hartzenberg**

Mr De Wet replies as follows:

Regarding the complainant, Mr Pretorius: a disciplinary hearing is to be held on 12 March 2004 with regard to the payment and installation of the meter.

### **7.5.3 Electricity meters**

The Committee of Inquiry finds the conduct of the official regarding the electricity meter and payment, for which no proof can be furnished, as serious. Therefore disciplinary steps are justified.

#### **Recommendation**

The Committee of Inquiry supports the steps the municipality has already taken in this regard by ordering a disciplinary hearing – see also Part D.2.6.3.

**7.6 Representations by: Mr Bob Reynecke**  
**Matter: Sale of four houses: Refusal of surety of R1 000 per house**

Mr Reynecke testifies that four homeowners could lose their houses after being instructed to leave their homes [two houses at Calitzdorp and two houses at Ladismith] so that the houses could be sold. Mr Reynecke offered to provide surety of R4 000 (R1 000 per house) to prevent the persons concerned from losing their houses. This offer was summarily refused with the words: “We must teach these people a lesson.”

#### **7.6.1 Answer provided by the Kannaland Municipality**

**Municipal Manager**                      **Mr F Human [written]**

**Matter:**                                      **Sale of four houses: Refusal of surety of  
R1 000 per house**

Mr F Human, Municipal Manager, replies as follows:

Only three houses were sold and the joint debt of the three houses amounted to more than R 50 000, 00. The offer of R 1 000, 00 per house for two houses at Ladismith, was not accepted because no surety could be given for the remainder of the outstanding debt. It could not be established who uttered the words: “We must teach these people a lesson.” The meaning thereof is probably related to the fact that the municipality would like to see individuals paying their debt to the municipality.

**7.7 Representations by:**                      **Mr Ludolph**

**Matter:**    **The Scheepers house issue**

Mr Ludolph testifies that he offered to paint the house at 39 Bloekom Street himself if the municipality provided the paint, and that he intends to buy the house. He says the municipality gave him notice on 31 January 2004 to vacate the house.

Mr Ludolph states that Johan Scheepers came to 39 Bloekom Street on 1 February 2004 because he wanted to move in. (He would also rent because the municipality did not have money to buy houses for its people.)

The Mayor apparently instructed Mr Scheepers to call in the SAPS to help him evict Mr Ludolph.

#### **7.7.1 Answer provided by the Kannaland Municipality**

**Official**

**Mr J de Wet [written]**

**Matter:**

**The Scheepers house issue**

Mr J de Wet replies as follows:

1. Tenant (Mr Ludolph) had first option to buy the house, see letter dated 19/2/2003.
2. Tenant refuses the option, see his letter dated 10/3/2003.
3. Tenant asks the municipality on 29/12/2003 if he can stay longer in the house.
4. Request is refused because notice to vacate the house was already given two and a half months ago and the buyer (Johnny Scheepers) did not have anywhere to live, see letter dated 31/12/2003.
5. Tenant states that Mr Scheepers evicted him from the house, see letter dated 2/1/2004.
6. Letter to Ms Ludolph, that Mr Scheepers could not evict people on behalf of the municipality, see letter dated 21/1/2004.
7. Mr Scheepers gives sworn evidence on 2/1/2004 that he did not evict Mr and Mrs Ludolph from the house. Documentation in support of this statement.

**7.8 Representations by:**

**Mr Ludolph**

**Matter:**

**Burglary at municipal offices**

Mr Ludolph maintains that rumours were going around about a burglary at the municipal offices without any visible signs thereof.

**7.8.1 Answer provided by the Kannaland Municipality**

**Mr S Meyer [written]**

**Matter: Burglary at municipal offices**

Mr S Meyer replies as follows:

I wish to state the following: The municipal offices at Calitzdorp were broken into twice and various cases were made. An amount of R748, 50 was stolen during the burglary. An alarm system was installed at the offices to prevent such happenings.

Attached: Letter from the SAPS to confirm the said burglary and theft and that the case is *sub judice* at the moment.

**7.9 Representations by: Residents' Association**

**Matter: Hiring times of town hall**

Evidence is given before the Committee of Inquiry regarding the use of the hall at irregular times. A decision was made that no dances would be held over the Easter weekend, but this decision was totally ignored. It was furthermore alleged that the Council Chamber table was cut up. The residents' association voiced serious concerns about how certain people could still occupy certain positions in the light of the Auditor-General's report.

**7.9.1 Answer provided by the Kannaland Municipality**

**Official: Mr Smith and Mr J de Wet [written]**

**Matter: Hiring times of town hall**

As part of the answer regarding the hiring times of the hall, the hall policy of the Kannaland Municipality as determined on 24 June 2003, was submitted to the Committee of Inquiry.

Resolution No. 9 of 24 June 2003

That the hall policy be adopted with the following amendments:

- Item 13: Dances - Saturdays, 07:00 to 01:00 – Midnight dances, 12:00 to 06:00
- Item 14: Deleted and which reads as follows: *“No hall bookings will be made over the Lent/Easter and Christmas periods for any dances or discos.”*

That the hall policy be advertised for public comments; and that access to the halls and toilets in Calitzdorp be made accessible for the disabled.

**7.10 Representations by: Residents' Association**  
**Matter: Council Chamber table – cut up**

Allegations are made that the Council Chamber table was cut up.

#### **7.10.1 Answer provided by the Kannaland Municipality**

**Official: Mr Smith and Mr J de Wet [written]**  
**Matter: Council Chamber table – cut up**

Mr J de Wet submits a photo as evidence to the Committee of Inquiry to show that the Council Chamber has not been cut up but that it was standing in the office of the Municipal Manager at Ladismith.

### **8. Zoar**

Representations made by the community, businesses, organisations, etc. and answers provided by the Kannaland Municipality:

**8.1 Representations by: Attorney Johan Flemett for  
Mr Sanfred Klink  
Matter: Sale of Mr Klink's property, Erf 969**

Alleged illegal expropriation of land (Zoar) took place according to attorney, Johan Flemett, legal representative of Mr Klink. The allegation is made that the Mayor sold Erf 696 to a friend of the Mayor, Mr Anta, without a Council Resolution. How can expropriation take place without notification to the owner of the erf?

The legal representative furthermore submits that Mr Anta had previously spoken to Mr Klink about buying the property, but that M Klink refused. The presumption is made that the Mayor and Mr J de Wet are involved and the complainant assumes that money is involved in this matter. Money must have changed hands outside the municipality.

It is also alleged that Mr Anta knew that the land was given to him before this was confirmed at a Council meeting. The Mayor apparently replied to M Klink: "I can sell the land without a Council Resolution", and "he's foolish ... leave that land, and I will give you a liquor licence as well."

The legal representative of Mr Klink suggests that it appears as if the friends of the Mayor get preferential treatment and that this is a daily occurrence.

The legal representative of Mr Klink asks that the use of the land by Mr Anta be ceased and that damages be paid to his client. He requests that an investigation *in loco* should be done by the Department of Land Affairs, failing which, they would go to court.

### **8.1.1 Answer provided by the Kannaland Municipality**

**Official**

**Mr J de Wet**

**Matter:**

**Sale of Mr Klink's property, Erf 969**

In response Mr J de Wet provides a deed enquiry, which indicates that Erf 696 is registered in the name of the "Community of Zoar." It is recommended that the matter be referred to PAWC for a decision.

Mr De Wet furthermore replies that the Council had given the Executive Mayor legal powers, in other words, the Executive Mayor has the power to make a decision.

The decision of the Executive Mayor was taken on 26/8/2003 and therefore Mr Anta could have known of the decision on 27/8/2003. The transfer of land in Zoar concerns garden plots and not residential plots.

Mr De Wet submits letters from Mr Anta to the Committee of Inquiry, in which he applies and makes an offer for the erf concerned, notices regarding the erf concerned in the media, and a Council Resolution with regard to the erf.

### **8.1.2 Finding**

The Committee of Inquiry finds that the complainant, Mr Klink, did not submit sufficient tangible proof with regard to Erf 696 to the Committee of Inquiry to the effect that this erf is his property so as to enable the Committee of Inquiry to meaningfully address this matter.

**8.2 Representations by:**

**Mr and Mrs J W Radloff**

**Matter:**

**Money paid and owed by**

**Mr Radloff in respect of Erven 260, 268  
and 279**

Mr Radloff maintains that he does pay his accounts, but that the proof of payment is not up to date. He furthermore maintains that he pays and pays, but does not see any difference in the balance of his account.

**8.2.1 Answer provided by the Kannaland Municipality**

**Official**                      **Mr H Mitchell**  
**Matter:**                      **Money paid and owed by**  
**Mr Radloff in respect of Erven 260, 268**  
**and 279**

Mr Mitchell's reply is as follows:

When Mr Radloff paid his account at Zoar, Zoar's system was off-line. He was issued with a written receipt. The receipt book was sent to Ladismith and placed on the system later on.

When Mr Radloff visited the office at Ladismith he was given printouts of his account, which showed that the relevant payment was credited to his account.

Mr Radloff is not a needy person who would qualify for free water according to the Council's policy and therefore the basic fee in respect of water meters is also payable by him.

**8.3 Representations by:              Mr J J Jacobs**  
**Matter:                                      Deteriorating service delivery to Zoar**

In his evidence Mr Jacobs states his unhappiness about outrageous increases in the tariffs for basic services, rates and water. In his representations and letters, which he handed to the Committee of Inquiry, he motivates and also verbally maintains that there are indications that the Kannaland Municipality is on the verge of bankruptcy. The municipality is struggling to maintain its cash flow and then tries at all costs to force the residents in a very poor and disadvantaged community to pay excessively high service fees, thereby enriching the officialdom.

He furthermore mentions the irregular basis on which night-soil is removed, e.g. sometimes three weeks go by between night-soil removals and that this is an insult to the human dignity of the residents. He also refers to other examples of poor service delivery and regards this as a blatant invasion of the community's rights. He draws the Committee's attention to the fact that repeated petitions were sent to the Council, but that the Council still failed to give attention to the rural areas.

Mr Jacobs furthermore testifies that there was no control over the erection of buildings or the rezoning of dwellings and businesses such as "Gameshops" and other shops.

Mr Jacobs asks that the Kannaland Municipality be relieved of its responsibility for Zoar.

### **8.3.1 Answer provided by the Kannaland Municipality**

**Officials**

**Messrs J Smith and L Blignaut**

**Matter:**

**Deteriorating service delivery to Zoar**

Messrs J Smith and L Blignaut's reply is as follows:

After the amalgamation of the municipalities in 2000, the first instruction of the Health Department was to do the following with the help of Alie Killian (consultant):

1. Replace the sand in the sandfilters.
2. Connect the chlorine system.

3. Secure the system by means railings.

In 2001 and 2002 the water was chlorinated, treated and was then regarded as safe. The public was satisfied.

Vandalism took place in 2003 and the system was damaged.

The problem was addressed on 31 January 2004 in that Peninsula Water Treatment helped the municipality to repair the chlorine system.

### **8.3.2 Service delivery: Finding and recommendation**

The Committee of Inquiry finds that there seems to be a great deal of unhappiness with regard to the delivery of nearly all the basic services.

#### **Recommendation**

The Committee of Inquiry recommends that the Municipality must ensure that it strictly drives its Integrated Development Plan with the related sectoral planning processes, in terms of the relevant legislation, namely Act 32 of 2000 – see also Part B.7.4 on the proposed help by the Eden District Municipality.

- 8.4 Representations by: Mr T Wilfred**  
**Matter: Alleged expropriation of property without notifying the owner**

An allegation is made that land is expropriated without notice to the legal owner of the land.

#### **8.4.1 Answer provided by the Kannaland Municipality**

- Official Mr J de Wet**  
**Matter: Alleged expropriation of property without notifying the owner**

Mr J de Wet replies that:

There was no expropriation in the Kannaland Municipality.

**8.5 Representations by: Cllr N Adams**  
**Matter: Legal representative of the municipality**

Councillor Adams maintains that the appointment of the legal representative of the municipality was not confirmed by a Council Resolution.

**8.5.1 Answer provided by the Kannaland Municipality**

**Municipal Manager Mr F Human**  
**Matter: Legal representative of the municipality**

Mr Human replies as follows:

The Executive Mayor, Councillor J Donson, has the delegated powers to appoint an attorney. The Executive Mayor nevertheless consulted the majority of councillors about the appointment.

The minutes of the Executive Mayor's meeting as held on Thursday, 12 February 2004 at 09:00 in the office of the Municipal Manager at Ladismith were handed to the Committee of Inquiry.

The following were present at the said meeting: Councillor J Donson (Executive Mayor) and Mr F Human (Municipal Manager).

**Representation in the Kannaland Investigation**

Mr Human informs His Worship the Mayor that advocate Werner Zybrands is not available but that he recommends Mr Dawie Uys in Beaufort West.

His Worship the Mayor

## **Resolution No. 1 of 12/02/2004**

That D J Uys, an attorney be appointed to represent this municipal authority in the Kannaland Investigation (Section 106 – as instituted by the Minister of Local Government).

**8.6 Representations by: Cllr N Adams**  
**Matter: One-sided appointment of Pro-Konsort**

Councillor Adams testifies with regard to the Zoar transformation process that the appointment of the consultancy company Pro-Konsort, whose application to handle the process was successful, was a one-sided appointment.

### **8.6.1 Answer provided by the Kannaland Municipality**

**Official: Mr W Baartman**  
**Matter: One-sided appointment of Pro-Konsort**

Mr Baartman replies as follows:

A meeting with the community of Zoar was held on 24 February 2002 to inform them about the land transformation plan. The meeting was arranged by the Department of Land Affairs under the leadership of Mr Eric Goodwin. A follow-up meeting was held on 18 April 2002; where the different organisations were requested to each appoint a representative to launch the project. A project pilot committee (forum) was established (supporting documents attached.)

The Council appointed Pro-Konsort as coordinator on 24/4/2002 (supporting documents attached pp. 449-462 municipal bundle).

The process was advertised in the Government Gazette and the community was given the opportunity to lodge objections. The assurance is given that the whole process was transparent and representative.

### **8.6.2 Finding and recommendation**

The Committee of Inquiry finds on more than one occasion while listening to evidence from various witnesses, that it appears as if the community,

organisations and institutions were reasonably informed about development actions in the municipal area. They were, however, not always informed about the progress or development regarding the activities particularly with regard to capital expenditure on projects/activities.

### **Recommendation**

In this regard the Committee of Inquiry recommends that the municipality and Council should put mechanisms in place to ensure effective communication with the community in order to establish a more participative/open book management culture – see also Part D.9.4. of the recommendations for community participation and the promotion of participatory democracy in local government.

## **9. General administration**

### **9.1 Records en archives**

According to the Zader submission, the municipality's record handling and filing is in a very poor state. Occupation-specific training in terms of the Archive Act is compulsory while the records clerk has not yet attended any training course. The municipality replied that arrangements for training were being made.

### **9.2 Correspondence and telephone calls**

A complaint also received was that correspondence and telephone calls were not replied to. These are minor issues and even though they might seem like complaints about trifling matters, it is important in the communication with the public that letters and telephone calls should be replied to. Systems and instructions must be developed and applied to ensure that correspondence is placed on files and that at least an acknowledgement of receipt is sent when a letter or e-mail is received. Telephone calls must be recorded and answered.

### **9.3 Performance agreements and performance management**

The Municipal Manager and the managers directly responsible to the Municipal Manager must conclude performance agreements as referred to in section 57(1)(b) of the Systems Act. At the moment only the Assistant Municipal Manager, Mr Timmie, is directly responsible to the Municipal Manager. Therefore only Mr Human and Mr Timmie must conclude performance agreements with the municipality.

The Committee of Inquiry is of the opinion that with a small municipality such as Kannaland, the post of Assistant Municipal Manager is not appropriate or justified. With the restructuring of the staff establishment it must be considered to make all the departmental heads directly responsible to the Municipal Manager and performance agreements must be concluded with all of them, as referred to in section 57(1)(b), (2) and (4) of the Systems Act.

According to the written reply from the municipality (p.170), a performance management system was received in August 2003 and is in the process of being implemented at the moment. This must be done as soon as possible.

### **Recommendation**

A performance management system as referred to in Chapter 6 of the Systems Act must be implemented by the municipality as soon as possible. By means of suitable training and information, a culture of performance management must be established and promoted in the administration and among the political office bearers so that the Kannaland Municipality can administer its affairs in an economical, effective, efficient and accountable manner as intended in section 38 of the Systems Act.

### **9.4 Community participation**

The Prest Committee found and recommended as follows in 1997 in Chapter 16, paragraph 8 of their report on public participation in the local government of the then Ladismith:

*“ 8. The Committee finds that the channels of communication between the Council and bodies interested in the welfare of Ladismith were lacking. It is recommended that the Council of Ladismith be urged and encouraged to open these channels of communication and lend a listening ear to voices that have the interests of Ladismith at heart”.*

This finding is just as valid seven years later since the recommendations were mostly not implemented.

Community participation as guideline for municipal government runs like a golden thread through the provisions of the Constitution (Section 152(1)(e) and Chapter 4 of the Systems Act as well as Chapter 4, Part 4 of the Structures Act on Ward Committees.

Community participation leads to better decision-making aimed at the real needs of the community. Community participation also leads to public accountability for decision-making and actions by the municipality. It is a mechanism, which counteracts maladministration in an open and democratic society.

Both the councillors as politicians and the officials as employees must be supported to develop a culture of community participation in the municipal government of Kannaland, as referred to in section 152(1)(e) of the Constitution and Chapter 4 of the Systems Act. It must be ensured that mechanisms, processes and procedures are developed and implemented for community participation as referred to in section 17 of the Systems Act.

In terms of the definition of “information officer” in Act No. 2 of 2000, the Municipal Manager or a person appointed by him, is the information officer of the municipality.

**It is recommended that:**

- A culture of community participation in the local government of Kannaland be developed as referred to in section 152(1)(e) of the Constitution and Chapter 4 of the Systems Act. It must be ensured that mechanisms,

- processes and procedures are developed and implemented for community participation as referred to in section 17 of the Systems Act.
- The municipality must make sure of the purpose of ward committees in terms of Part 4, Chapter 4 of the Structures Act, 1998 and the implementation of such ward committee system with strong community communication structures must be ensured.
  - The municipality must be supported in its endeavours to draw up a manual as prescribed in section 14 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); and that
  - A course on the application of the Promotion of Access to Information Act No. 2 of 2000 and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), for councillors and officials of the Kannaland Municipality and members of the community, is organised and presented.

## **9.5 Demarcation**

The demarcation of the Kannaland Municipality's area of jurisdiction is questioned in the evidence of the Municipal Manager, Mr Human. He put forward arguments why Calitzdorp would fit in better with Oudtshoorn than with Kannaland.

The question was also raised whether rural areas such as Zoar and Van Wyksdorp, which needed further development aid, should not be declared District Management Areas (DMA) in terms of sections 6 and 89 of the Structures Act. Mr J J Jacobs, a leading figure in Zoar, while giving evidence requested that the Kannaland Municipality should be relieved of its administration of Zoar.

The demarcation of municipalities takes place on recommendation of the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

In Part B.6.4 and D.7 and 8 the position of Zoar and Van Wyksdorp was addressed and it was recommended that the Eden District Municipality be

requested to give high priority to the needs of these communities regarding water and sewage.

Only if this does not have the necessary results will the more drastic option be considered to place Zoar and Van Wyksdorp as district management areas directly under the authority of the Eden District Municipality.

Where Calitzdorp is concerned, the exclusion of the town from the Kannaland Municipality would lead to the latter with only Ladismith, Zoar, Van Wyksdorp and the rural areas in between. Without first doing an in-depth investigation, this does not seem to be a viable or feasible option.

In his presentation to the Committee of Inquiry, Mr Human, the Municipal Manager, attempted to highlight one of the main causes for the problems of Kannaland by placing the blame on the “faulty” demarcation of the municipality and the consequent restructuring accompanying this. In December 2000 approximately 841 municipalities were re-demarcated country-wide and decreased to about 250 municipalities.

Every municipality in South Africa was affected by the restructuring – some even more drastically and more far-reaching than Kannaland. The real question is how the restructuring was managed and how municipal support programmes that were offered by the Province were implemented?

### **Finding**

The Committee of Inquiry finds that although the re-demarcation and the restructuring after December 2000 was a factor, which made the task of the new municipality very difficult, this was not the main reason for the financial and other problems that were experienced at the moment.

**The omissions and malpractices as pointed out in the report are the main cause of the municipality’s problems.**

If the Demarcation Board was now requested to consider the possibility of including Calitzdorp with Oudtshoorn, it would:

1. place the wrong emphasis on the re-demarcation as the “solution” to Kannaland’s problems; and
2. cause further restructuring and related problems instead of taking steps to allow the present systems and structures to function properly.

## **9.6 Delegations**

The present set of delegations of the municipality appear on pages 444 - 448 of the documents submitted by the municipality. If the Executive Mayor System were to be scrapped, as recommended, and if the staff establishment is rationalised, as is also recommended, the said delegated powers would have to be reviewed and amended.

### **Recommendation**

That the delegation of powers be reviewed and amended if the political structures and the staff establishments are amended.

## **10 Speaker: Handling of complaint**

Mr S Meyer, a former councillor and presently in control of the Calitzdorp municipal office, testified that he had made a complaint about the behaviour of Councillor Jill Reyneke to the Speaker and has received no response. The essence of the complaint was that Councillor Jill Reyneke allegedly offered Councillor N Adams money to vacate his seat in the Eden District Municipality in favour of her (Jill Reyneke). According to the municipality’s reply (p. 469), the matter was referred to the new Speaker, Councillor P van Rensburg, for further investigation.

### **Recommendation**

The Speaker must give immediate attention to the complaint, as prescribed by Item 13 of Schedule 1, Code of Conduct for Councillors, of the Systems Act.

## 11 Executive Mayor

In the South African municipal set-up it was traditionally the Council or a committee of the Council, which made executive decisions. Individual councillors did not have executive powers.

Attorney D Uys made the following submission on behalf of the municipality about the Executive Mayor:

*“The executive power and role of the chief executive officer and top management in the officialdom was drastically changed and limited by the new system of involvement of politicians in the administration and specifically the position of power arising from the executive mayor system. The era of two main streams of a relatively autonomous administration by officials on the one hand and overall political power and policy determination on the other hand, is something of the past. The question whether the renewal that came about as a result is an improvement, is very relevant and it is respectfully submitted that the honourable Committee itself should comment in consequence of the investigation in this regard, at least whether it could have had an effect on the situation. The effect of party politics and the importance of political structures, as highlighted in the evidence, must also be taken into account.”*

The system of Executive Mayor is a new concept, which since December 2000 is one of the possible categories of local government. In the Western Cape Province the system was only implemented at a later stage after the ANC/NNP alliance came to power in the Provincial Government. The Kannaland Municipality initially had a full council executive system, where the nine councillors made those decisions that were not delegated. With the implementation of the Executive Mayor system the political power is vested mainly in one person, Mayor Donson, and the Council is reduced to a rubber stamp.

The evidence given by various witnesses including the Municipal Manager, Mr Human, Mr C Jonathan, presently an official and former mayor, as well as Ms J Andrews and Ms R Rothman, is that the present Executive Mayor is obsessed with power and that he directly interferes in an inappropriate manner in the administration and with the appointment of staff.

In a letter dated 3 March 2004 (pp. 197/8 of the municipality's documents) the Municipal Manager summed up the accusations made during the public hearing and to which the Mayor, Mr. Donson, had to respond, as follows:

- Instruction to Alderman Baartman to charge and dismiss staff.
- Intimidation of staff: "The carpet will be pulled out from underneath you."
- Mr Jonathan was compelled to share his salary with others (Marceline and Julian Adams).
- Approved SAMWU meeting and then convened another meeting with staff.
- Powers abused by the Executive Mayor, Mr Donson and Mr Jonathan started the ANC branch together.
- Interference in administration: Executive Mayor interferes by giving instructions to staff, e.g. Credit Control Policy.
- Executive Mayor makes decisions in the passage.
- Municipal Manager must make staff appointments and then the Executive Mayor asserts his authority on the Municipal Manager.
- 4 temporary employees @ R 8 000, 00 p.m., where Mr Jonathan previously earned R4 600, 00 p.m.
- Pays for a vehicle for his driver from Mr Freeks, from the Mayor's Fund.
- Intimidation of Ms Rothman that was discussed in your office. She should have been caught for shop lifting, because she laid a charge of sexual harassment against you.
- Clothes for the amount of R2 000, 00 for Mr Roodtman were bought from the Mayor's Fund.
- Payment for renting the hall for a disco, from the Mayor's Fund.
- Petrus Nt'Selungu was compensated with post-level adjustments because he committed perjury.
- Ms Rothman was intimidated because she apparently eavesdropped on one of your meetings.
- The men at the disco apparently got access to the hall by using force, the hall was damaged and the toilets are in a shocking state, but the deposits were nevertheless refunded, without signatures on the forms.
- Ms Rothman was told to polish the floors in your home.

These examples of interference in the administration are a repetition of the findings of the Prest Committee, which in Chapter 8, paragraphs 3 and 5 pointed to Councillor Donson's abnormal interference and he merely denied this. His evidence in this regard is rejected.

Attorney D Uys, who appeared on the instruction of the municipality, correctly summed up the evidence given by Mr Christoph Jonathan, Ms J Andrews and Ms R Rothman in his written representations as follows:

*"The evidence begins with the submission of an affidavit of councillor A Baartman (who later on testified) with regard to the instruction given by the Mayor to dismiss certain people, including the witness. He then continues his evidence with a strongly worded recouplement of intimidation by the Mayor of himself and other officials in general. The evidence then mostly deals with irregularities that were apparently perpetrated by the Mayor, such as interfering in the administration, one-sided decision-making, unnecessary appointments to benefit him, improper spending of funds, etc. He describes the Mayor as autocratic and intimidating. In comparison he praises the behaviour of the Municipal Manager and the relations he has with his staff and credits him with constructive conduct under great pressure of the Mayor. The witness is strongly motivated but it becomes clear from his evidence that he and the Mayor had once been on very good terms with each other and that things changed at some stage and then went wrong. The witness also forms part of the response to evidence by the Mayor, where general administration is concerned and also in the section where the Municipal Manager begins with an outpouring of experiences, where Jonathan largely supports and confirms what he has to say about intimidation and interference. This evidence falls into a category of its own and is in fact not part of the group of complainants as such, nor is it really an answer to any specific evidence that was given. It is in any event extremely informative and put many aspects that were unclear into perspective."*

In paragraph 4 of the submission made by attorney Uys on behalf of the municipality it is said:

*"Taking everything into account the submission is respectfully made that the Committee will have to consider the following findings:*

*4.2.1 That the Executive Mayor system is not workable for the municipality;*

*4.2.2 That there was intimidation of the officialdom as a result of the Executive Mayor system, which intimidation had a negative effect on the work performance of the officialdom."*

Attorney Uys in paragraph 5 proffers the following recommendations:

*"5.1 The immediate abolition for Kannaland of the Executive Mayor system;*

*5.2 A proper internal investigation by independent experts into the accountability of councillors and officials at management level, including an investigation into intimidation followed by appropriate disciplinary steps in terms of the codes of conduct.”*

The Business Chamber also made strong representations that the Executive Mayor system should be abolished in Kannaland and that action should be taken against the present incumbent of the post who apparently contravened the Code of Conduct for Councillors in various respects.

The fact was noted that the ANC as the political party of which councillor J Donson is a member, suspended him after the public hearings pending the outcome of this report. It is to be welcomed if political parties over and above the official action by the authorities also work against maladministration and malpractices. It sends out the right message that regardless of the person involved, such malpractices will not be tolerated.

### **Recommendation**

Two actions are recommended with regard to the Executive Mayor:

**Firstly**, that the system of Executive Mayor be reviewed and that the Minister of Local Government in terms of section 12 of the Structures Act once again declares the Kannaland Municipality a municipality with a full council executive system as it was before. Such a system does not lend itself to the concentration of power that occurred at the Kannaland Municipality with a person such as Mayor Donson and is also considered to be more suitable for a municipal council with only nine members.

**Secondly**, that the Minister of Local Government must furnish the Speaker of the Kannaland Municipality with a copy of this report and on the basis of the findings contained herein, requests him to order an investigation in terms of the Systems Act, Item 13 of Schedule 1, Code of Conduct for Councillors, into the improper interference in the administration of the municipality by Mayor Donson, contrary to Item 11 of the Code of Conduct.

As mentioned previously elsewhere, this Committee of Inquiry, if it had the legal powers to do so, would have recommend that councillor Donson be discharged as councillor from his office on the basis of the overwhelming evidence that was given.

The only honourable action for councillor J Donson would be to resign as Mayor and as councillor of the Kannaland Municipality.

*“Even if a man does not deserve it, give him credit for his position. It’s bad enough that he disgraces the position.”*

- C. J. L

## **E. RECOMMENDATIONS AS CONTAINED IN THE REPORT**

The recommendations are made, among others, with due allowance for the following considerations:

- (a) the evidence given and the findings that were made;
- (b) the fact that the Committee of Inquiry as such does not have executive powers and can only make findings and recommendations;
- (c) the distinction that must be made between:

- (i) **municipal systems** that are either not in place or do not function as they should; and
  - (ii) **persons** (councillors and officials) whose actions justify further investigations and possible disciplinary and other corrective actions;
- (d) the fact that this Committee of Inquiry was appointed in terms of section 106 of the Systems Act and not in terms of Item 14(4) of Schedule 1, Code of Conduct for Councillors. The result is that any further action (suspension for a period of time or discharge from office as councillor) can only take place after the Speaker has taken action in terms of Item 13 of Schedule 1 with regard to the *prima facie* contraventions of the Code; and
- (e) the transitional provision in section 178(1) of the Local Government: Municipal Finance Act, 2003 (Act No. 56 of 2003), which will probably come into effect in the coming months and which reads as follows:

*“178. (1) Anything done in terms of a provision repealed by section 179(1) that can be done in terms of a provision of this Act, shall be deemed to have been done in terms of this Act.”*

Section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993) is the legal provision with regard to financial matters in terms of which formal steps can be taken to, among others, issue instructions to the municipality, which provision is to be repealed. With due allowance for section 178 of Act No. 56 of 2003, the action in terms of section 10G should as far as possible be structured in such a way that the action with the repealing of section 10G shall be deemed to have been done in terms of Act 53 of 2003.

## **1. Recommendations with regard to municipal systems and structures**

- (a) That the Minister of Local Government takes the necessary steps in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), as amended, to change the category of municipality of the Kannaland Municipality from the present Executive Mayor system to a municipality with a full council executive system, as it initially was with the establishment of the municipality in December 2000;
- (b) That the implementation of a Financial Recovery Plan be continued with.

Formal instructions for the implementation of such a plan must be given to the Kannaland Municipality in terms of section 10G(2)(m) of the Transition Act so that when the Finance Act commences the plan shall be deemed to be a recovery plan in terms of the Municipal Finance Act, 2003. The recovery plan must contain all the relevant elements referred to in the recommendations of this report, including:

- Par. D.1.2, follow-up of Auditor-General's report;
- Par. D.1.3.1 and D.1.3.2, budget control of the 2003/04 budget and drawing up of the 2004/05 budget with public participation;
- Par. D.1.3.3, separates capital and operating accounts;
- Par. D.1.3.4, that the financial statements are drawn up and audited;
- Par. D.1.4, consider further steps in terms of section 10G(2)(f) to recover losses;
- Par. D.1.4.1, drawing up and application of directives for the application of upliftment funds;
- Par. D. 1.4.2, sets realistic limits for the Mayor' Fund with legitimate objectives based on approved programmes;
- Par. D.1.4.3.2, refers documents on the spending of the Mayor's Fund to the Auditor-General and the SAPS;
- Par. D.2.3, ensures that statutory payments to medical aid and pension funds are made promptly;
- Par. D.2.4, defects in the leave record system must be rectified;
- Par. D.5, application of guidelines in terms of section 67 of Act 56 of 2003 for the transferring of funds to Tourism Bureaus and other outside institutions;
- Par. D.6.9 clearance of funds available for the Dried Fruit Project;
- Par. D. 6.10, clearance of funds available for the taxi rank, Ladismith; and
- the drawing up, adoption and implementation of the plans, policies and by-laws referred to in paragraph (c).

(c) It must be ensured that the following plans, policies and by-laws are adopted or revised and implemented:

**(i) Water**

A Water Services Development Plan in terms of sections 13-15 of the Water Services Act, 1997 (Act No.108 of 1997). This is a high priority taking into account the numerous complaints and problems with regard to water and sewage services.

Part of the delivery of this basic service and plan should include an educational component that can be done in cooperation with private organisations and non-governmental organisations etc. in order to promote partnerships.

Water saving and effective water-use practices must form part of the proposed Water Services Development Plan and must be established and encouraged in the community by means of community participation initiatives, distribution of information by means of pamphlets and visits to households by health officials etc.

**(ii) Credit control**

A revision of the present Credit Control and Debt Collection Policy must take place. Also add the responsibilities of the communities as referred to in section 5(2), and customer care and management, as referred to in section 95 of the Systems Act and adopt by-laws as referred to in section 98 of the Systems Act.

**(iii) Tariff policy**

A Tariff Policy as referred to in section 74 of the Systems Act and Tariff By-laws in terms of section 75 of the Systems Act must be drawn up and adopted.

**(iv) Asset management policy**

An Asset Management Policy with regard to fixed assets and movable assets must be drawn up, adopted and implemented. Fleet management of the municipal vehicles must also be addressed in the policy.

(v) **Investments and cash management policy**

An Investment and Cash Management Policy must be drawn up, adopted and implemented.

(vi) **Debt management policy**

The debt of the Kannaland Municipality and the payment thereof must be managed in accordance with a Debt Management Policy. Such policy must be drawn up, approved and implemented.

(vii) **Procurement policy**

A Procurement Policy as referred to in section 2 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) must be drawn up, approved and implemented for the Kannaland Municipality.

(viii) **Audit committee**

The membership of the Independent Audit Committee to carry out an appraisal function as referred to in section 10G(2)(c) of the Transition Act, which was only recently established, must be extended to include representatives from ratepayers' associations, business chambers as well as other interest groups and role players.

(ix) **Staff establishments and staff matters**

- The current "Policy Framework" as referred to in sections 55 and 66 of the Systems Act, must be revised, improved and approved by the municipal council to enable the Municipal Manager to exercise his powers in terms of sections 55 and 66 within the **approved policy**.
- The present staff establishment must be appraised critically and objectively and revised in view of establishing an economical, effective, responsible and **affordable** administration.
- Any possible adjustment in service levels, where employees were appointed at too high levels and the possible dismissal of employees on the basis of operating requirements that might be considered, as referred to in sections 189 and 189A of the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended, must only be done with the help and advice of the Western Cape Local

Government Organisation (WECLOGO) at the request of the Kannaland Municipality.

- An amended and updated “Employment Equity Plan”, as referred to in section 20 of the Employment Equity Act, 1998 (Act No. 55 of 1998) must be drawn up and approved with specific emphasis on section 67(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).
- The delegation of powers must be revised and adjusted if the political structures and the staff establishments are adjusted.
- Appointment procedures of employees (except the appointment of the Municipal Manager and other section 57 appointments) must be revised to limit political involvement to the adoption of the policy frameworks referred to above, as contemplated in the relevant legislation that is being referred to.
- The role of the Labour Forum must be limited to the task description as agreed by the Local Authority Bargaining Council.

**(x) Roles and responsibilities of officials and councillors**

The respective roles and responsibilities of each political structure, political office bearer and of the Municipal Manager must be prescribed in exact terms and acknowledged and settled by means of applicable rules, procedures, instructions and other written documents, as referred to in section 53 of the Systems Act.

**(xi) Performance management system**

A performance management system as referred to in Chapter 6 of the Systems Act must be developed and established.

A culture of performance management must be promoted among the political structures, political office bearers and in the administration so that the Kannaland Municipality can administer its affairs in an economic, effective, efficient and accountable manner as referred to in section 38 of the Systems Act.

**(xii) Community participation**

A culture of community participation must be developed in the municipal government of Kannaland as referred to in section 152(1)(e) of the Constitution and Chapter 4 of the Systems Act.

It must be ensured that mechanisms, processes and procedures are developed and implemented for community participation, as referred to in section 17 of the Systems Act and also ward committees established as referred to in Part 4, Chapter 4 of the Structures Act.

**(xiv) Access to information and administrative justice**

That the municipality be supported to draw up a manual as prescribed in section 14 of the Promotion of Access to Information Act, 2000 (Act 2 of 2000); and

that a course on the application of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) is arranged and presented for councillors and officials of the Kannaland Municipality and members of the community.

**2. Recommendations with regard to action against councillors and officials**

**2.1 Councillors**

The Minister of Local Government must furnish the Speaker with a copy of the report and request him on the basis of the findings contained in the report, to order an inquiry in terms of Item 13 of the Code of Conduct for Councillors (Schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)) to investigate *prima facie* contraventions of the Code by the Executive Mayor, Mr J Donson and the Executive Deputy Mayor, Mr C Baartman, more specifically with reference to the contravention of Item 11(b) of the Code by the Executive Mayor.

**2.2 Employees**

(a) The Municipality of Kannaland, arising from the findings as contained in this report, must address a request to WECLOGO to assist them with the

formulation of charge sheets as well as the holding of disciplinary hearings with regard to the following officials:

- (i) the Municipal Manager and accounting officer, Mr F J Human (non-compliance with statutory obligations);
- (ii) the Assistant Municipal Manager, Mr R D Timmie (non-compliance with statutory obligations, misconduct and incompetence);
- (iii) the Municipal Treasurer, Mr H Nel (non-compliance with statutory obligations);
- (iv) the Head: Technical Services, Mr W K Hartzenberg (misconduct – dishonest behaviour); and
- (v) the Head: IDP, Mr PJ Roodtman (misconduct – dishonest behaviour).

(b) It is recommended that he said employees be suspended with retention of remuneration, pending the disciplinary hearings. Continued administrative support must be given by the Eden District Municipality and consultants such as Zader Municipal Services, because the above will leave a void in the top management of the municipality. These matters must be dealt with and finalised with the help of WECLOGO as soon as possible.

(c) The Municipality Kannaland must request WECLOGO to assist so that all the other pending disciplinary hearings can be dealt with as soon as possible so that stability and legal security can be established in the administration of the municipality.

(d) The necessary steps will have to be taken with the cooperation of WECLOGO to ensure that a suitable person with the required qualifications and expertise will occupy the post of Internal Auditor.

(e) The attention of the Municipality of Kannaland is once again drawn to the provisions of the Protected Disclosures Act, 2000 (Act No. 26 of 2000) and that no occupational prejudice or dismissal of an employee may take place because the employee made a protected disclosure as defined in that Act. This applies particularly to employees who testified before the Committee of Inquiry. They may not be prejudiced in any way whatsoever as a result of disclosing certain matters in the public interest.

### 3. Recommendation in respect of Van Wyksdorp, Calitzdorp and Zoar

The following recommendations are made in respect of Van Wyksdorp, Calitzdorp and Zoar:

- Par. B.7.4, that the Eden District Municipality gives higher priority to these areas;
- Par. D.6.1.2, considers the post of librarian for Van Wyksdorp;
- Par. D.7.4.3, application of criteria for the handing out of food parcels;
- Par. D.8.3.2, implementation of IDP and sectoral plans;
- Par. D.8.6.2, mechanisms for participatory democracy in local government.

### 4. Tripartite Agreement

The Minister of Local Government must take the initiative to negotiate a Tripartite Agreement between:

- (i) the Western Cape Department of Local Government;
- (ii) the Kannaland Municipality; and
- (iii) the Eden District Municipality.

The said Tripartite Agreement must make provision for the conditions under which the Western Cape Provincial Government and the Eden District Municipality would respectively be prepared to help the Kannaland Municipality with administrative, technical and financial assistance to implement on a sustainable basis the above-mentioned recommendations and other steps that appear to be necessary. Progress must be monitored and regular **public reporting** to the Minister of Local Government must take place.

## F. CONCLUSION AND THANKS

It was a privilege for the Chairperson, Mr Len Dekker and for the member of the Committee of Inquiry, Mr Efraim Oppelt, to have been part of the Inquiry.

We hope and trust that the report and recommendations will lead to a Kannaland Municipality that will be able to provide services to the community in a sustainable, economic and efficient manner according to the guidelines for public administration as contained in section 195 of the Constitution.

As is apparent from the numerous references to local government legislation in this report, South Africa probably has the best legislation available on the subject. The problem does not lie with the legislation, but rather with a lack of knowledge and the defective implementation thereof.

Both democratically elected political office bearers and appointed knowledgeable officials have a role to play in municipal government and administration. It is essential that these roles and functions be clearly spelled out, as recommended above. Where councillors interfere in the administration in an improper manner and the conduct of officials is determined by political expediency, this is a recipe for maladministration. This is one of the most important lessons to be learnt from the Kannaland Inquiry.

Officials who are politically useful to councillors and who do not fulfil their statutory duties, do not do themselves or the councillors any favours – it leads to problems for both and also for the community that they must serve.

As Langenhoven said:

*“The more a man allows himself to be used, the less usable he is.”*

We wish to express thanks to the following persons and institutions:

- the Minister of Local Government, Mr Cobus Dowry for his trust in us with the appointment;
- the Secretary, Mr Greg February and his assistant Mr Kevin Seaton for the administrative arrangements made in an exemplary manner;
- the Chief Investigator of the Public Protector, advocate C Fourie, for his cooperation to eliminate unnecessary duplication of investigations;

- the officials of the Western Cape Provincial Government under the guidance of Mr Michael Brewis, Director of Legislation and Administration for their technical support with the Inquiry;
- the councillors and officials of the Kannaland Municipality under the leadership of the Mayor J Donson and the Municipal Manager, Mr F Human, who in the midst of criticism and sometimes under difficult circumstances, still gave their full cooperation to the Committee of Inquiry;
- the various legal representatives, attorney D J Uys for the municipality, attorney A J Rossouw and advocate T Lotz for the Business Chamber;
- the members of the SAPS Ladismith and Calitzdorp for security arrangements during the public hearings;
- the witnesses who were prepared to testify under oath and be taken under cross-examination;
- the large number of members of the local community who showed their interest by attending the public hearings;
- members of the Business Chamber under the leadership of Mr Bob Reinecke, who made time and funds available to make submissions to the Committee of Inquiry;
- the expert inputs on municipal financial matters that were presented by Zader Municipal Services, Dr C J Kapp and Mr Deon Louw;
- the Chief Executive Officer of WECLOGO, Mr K Nicol and the Legal Advisor, advocate Vermaak, for their expert contributions;
- the assistance to Kannaland already provided by the Eden District Municipality under the leadership of the Municipal Manager, Mr M C Botha and the Director: Social Services, Mr Johan Kemp;
- the media who covered the Inquiry and informed the public, thereby making a contribution to public accountability;
- the Chairpersons' secretary, Yvonne Snyman, who in the midst of difficult circumstances typed the report, as well as the Member of the Committee of Inquiry, Mr Efraim Oppelt's secretary, Ancia Schröder, for her time and sacrifices; and
- the owners of the historical Albert Manor Guesthouse at Ladismith, Mysi and Hennie Louw, who made the stay of the Committee of Inquiry so pleasant that

they would like to return as tourists with full confidence in the municipal services, namely that there will not be a power failure and that the drinking water will be clean and clear.



**CHAIRPERSON:**

**L D DEKKER**



**MEMBER:**

**E J OPPELT**

**16 APRIL 2004**

# ANNEXURE

## LIST OF WITNESSES AND REPRESENTATIONS/ DOCUMENTS HANDLED IN DURING THE INQUIRY

Documentation Number	Witness	Representations
1.	Ms M A Bruce	Van Wyksdorp Library
2.	Ms A Theron	Ladismith Tourism Bureau
3.	Mr Jan Viljoen	Parmalat
4.	Dr C Kapp / Mr G Louw	Zader Municipal Services
5.	Mr Hennie Kotze	Kotze & Baard (Pty) Ltd
6.	Ms G Snyman	Snyman & Rex
7.	Sister O Willemse	Private
8.	Mr Nic Adams	Private
9.	Mr A F Kriel	Private
10.	Mr A J Britz	Community Forum Van Wyksdorp
11.	Mr Labuschagne	Van Wyksdorp Dried Fruit
12.	Mr R Reinecke	Business Forum Ladismith
13.	Mr Tieties	Private
14.	Mr Jacobs (Zoar)	Private
15.	Mr Jonathan / Ms Andrews (1)	Private
16.	Mr Jonathan / Ms Andrews (2)	Private
17.	Ms Rothman	Private
18.	Ms Koen	Private
19.	Mr Carel Nel (Messrs. E Botha, A Jacobs, J Nel)	Calitz Business Forum
20.	Messrs. B du Toit & Curry	Residents' Association
21.	Mr Sanfred Klink (Zoar)	Private
22.	Mr Gaffley (Zoar)	Private
23.	Mr & Mrs Radloff (Zoar)	Private
24.	Mr van Niekerk	Private
25.	Mr Willie Pretorius	Private
26.	Ms A Nel	A C V V
27.	Messrs. G George, A Everts S Meyer	Officials Calitzdorp
28.	Mr Kallie Baartman (Councillor)	
29.	Messrs. B Prinsloo & W Ludolf	Private
30.	Ms E Everts	Private
31.	Mr Dirk du Plessis	Statement 1
32.	B M M Pacy-Tootell	Statement 2
33.	J H Smit	Statement 3
34.	J C G Tolken	Statement 4
35.	P H J. Klink/Jean Visagie	Statement 5
36.	P H J Klink	Statement 6
37.	M E Geysler	Statement 7
38.	23, 24, 25 February 2004	Attendance register
39.	F Human	Municipal Manager's presentation

40.	Committee of Inquiry	List of questions put by the Committee of Inquiry to the Municipality for reply
41.	Municipality Kannaland	Written replies p. 1- 471
42.	D J Uys, Attorney for Kannaland Municipality	Written representations
43.	Business Chamber	Written representations