

The duty of municipalities to repair and maintain infrastructure.

Potholes, power or water outages and broken streetlights are some of the problems South Africans face daily. This article will explore whether a municipality has an obligation to maintain and repair potholes, streetlights, and other infrastructure.

Section 73 of the *Local Government: Municipal Systems Act, 32 of 2000* (hereinafter “the Act”) places a duty on municipalities to ensure that members of the community have access to basic municipal services. The Act defines basic municipal services as services that are necessary to ensure an acceptable and reasonable quality of life for the community members, which, if not provided, would endanger public health, public safety, or the environment. Repairing and maintaining potholes, streetlights, or other infrastructure can therefore be included in the definition of basic municipal services.

The next question, perhaps the most pressing, is how quickly a municipality should attend to repairs. Although some municipalities have set timeframes within which they undertake to effect repairs to infrastructure, the Act does not prescribe specific timeframes. It can therefore be accepted that repairs should be done within a reasonable time, considering the municipality’s available resources. It is important to understand that it cannot be expected of a municipality to immediately repair infrastructure as they rely on community members to inform them when repairs are needed. Community members should therefore be proactive by reporting potholes, power or water outages and broken streetlights.

That being said, the obligation to maintain and repair infrastructure should be done in accordance with a municipality’s available resources. A municipality cannot be expected to repair infrastructure, such as potholes, immediately if its budget is depleted. If a municipality undertakes to effect those repairs in the next financial year, their conduct would be regarded as reasonable. On the other hand, if the infrastructure is not repaired or maintained for several years, the court would likely order them to effect such repairs and/or maintenance as their

conduct in this scenario would be unreasonable. Municipalities are expected to include the costs associated with repairs and maintenance in their yearly budget to ensure that they comply with their statutory obligations. For this reason, their conduct would be unreasonable if they fail to repair or maintain the infrastructure for years on end.

It is not uncommon to see local businesses or community members repair potholes, for example, due to the municipality's failure to effect the necessary repairs. Community members should, however, be cautious with this approach as they could open themselves up to potential damages claims. If any repairs are not done correctly and then cause injury or damage to another, the claim for damages would be against the person who did the repairs and not against the municipality.

Est-Marie McCallaghan, Van Velden-Duffey Inc