

REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 3 OF THE EXECUTIVE MEMBERS' ETHICS ACT, 1998



**PUBLIC PROTECTOR
SOUTH AFRICA**

DISTURBING RUMOURS

REPORT NO. 15 OF 2012/13

REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF A BREACH OF THE EXECUTIVE ETHICS CODE BY THE MEMBER RESPONSIBLE FOR FINANCE, ECONOMIC AFFAIRS AND TOURISM OF THE EXECUTIVE COUNCIL OF THE NORTHERN CAPE PROVINCIAL GOVERNMENT, MR J BLOCK, RELATING TO THE SALE OF MUNICIPAL LAND BY THE SOL PLAATJE MUNICIPALITY IN KIMBERLEY

INDEX

1. INTRODUCTION	7
2 THE COMPLAINTS	7
3. THE ISSUES INVESTIGATED BY THE PUBLIC PROTECTOR.....	10
4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT LODGED AGAINST THE MEC	11
5. THE INVESTIGATION.....	12
5.1 Scope of the investigation	12
5.2 Methods of gathering evidence	12
5.3 Approach to the investigation.....	14
5.4 The obligation of the Public Protector to follow due process	15
6 THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION..	15
6.1 The evidence of the witnesses	15
6.2 The records of the CIPC	23
6.3 The records of the Municipality	23
7 EVALUATION OF THE INFORMATION AND EVIDENCE OBTAINED DURING THE INVESTIGATION	24
7.1 Common cause.....	24
7.2 The evidence of Ms Makker	25
7.3 The records of the CIPC and the Municipality	26
8 THE LEGAL AND POLICY FRAMEWORK REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE.....	27
8.1 The Constitution.....	27
8.2 The Executive Ethics Code	27
9 ANALYSIS OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION	28
10 FINDING.....	28

Executive summary

- (i) *DISTURBING RUMOURS* is a Report of the Public Protector on an investigation into the alleged breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Legislature, Mr J Block (the MEC).
- (ii) The investigation was the result of an integrated complaint lodged by Mr F Wyngaard, a Member of the Northern Cape Provincial Legislature, inter alia, in terms of section 4 of the Executive Members' Ethics Act, 1998. The complaint was based on an article published by *Noseweek* on 1 April 2010.
- (iii) According to the article:
 - (a) The Sol Plaatje Municipality in Kimberley (the Municipality) sold municipal land to a property developer, Mr T Crawford, for R2,11 million (in 2004). Mr Crawford apparently intended to develop the property for low cost housing.
 - (b) Subsequent to the sale, the Sol Plaatje Municipal Council (the Municipal Council) resolved to place a moratorium on the sale of all municipal land.
 - (c) On 5 February 2009, the Municipal Council cancelled the sale, after Mr Crawford failed to pay the purchase price.
 - (d) Messrs George Mtshiza and Mr Philip Mahau (who allegedly were involved with the MEC) subsequently offered to purchase the land from Mr Crawford for R8 million. He refused the offer.
 - (e) Early in June 2009, Mr Crawford informed Ms M Bakker, a property broker who was also interested in the land on behalf of a client, that he had a meeting with the Premier of the Northern Cape Province, Ms H Jenkins, Mr J Block and the Provincial Secretary of the African National Congress (ANC) in the Northern Cape Province, Mr Zamani Saul. At the meeting, Mr Saul undertook to instruct the former Municipal Manager, Mr F Mashilo, to reinstate Mr Crawford's deal.

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- (f) Ms Bakker made further enquiries from the legal department of the Municipality and was informed that the sale of the land to Mr Crawford had indeed been cancelled.
- (g) As her client was still interested in investing in property development in Kimberley, she approached another property developer, Mr L Du Plessis, who indicated that he had what she was looking for, i.e. land that could be developed with some services already installed. An offer of R28,5 million was agreed upon. Ms Bakker signed the offer on behalf of her client on 22 July 2009. She noted that the seller, as represented by Mr Du Plessis, was Silver Lake Trading 652 (Pty) Ltd (Silver Lake Trading).
- (h) When she shortly thereafter received the township layout of the property concerned, she discovered that it was exactly the same land she tried to purchase from Mr Crawford, on behalf of her clients.
- (i) Ms Bakker approached the then Acting Municipal Manager and was informed that the land in question was resold to a company called Fastpulse Trading 534 (Pty) Ltd (Fastpulse) after the sale to Mr Crawford was cancelled and that the Municipality was not aware of the involvement of Silver Lake Trading. The Acting Municipal Manager also hinted that Mr J Block was connected to Fastpulse and that he was also very close to Mr Mashilo, the former Municipal Manager of the Municipality.
- (j) The “CIPRO” records showed that Messrs Mtshiza and Mahau were directors of Fastpulse, but not Mr Block.
- (k) When Ms Bakker informed Mr Crawford that the Municipality had resold the land concerned to Fastpulse, he approached the High Court and obtained an interdict stopping the Municipality from alienating the land, on 31 July 2009.
- (iv) In his complaint, Mr Wyngaard requested the Public Protector to investigate the alleged improper and unethical involvement of Premier Jenkins and the MEC in the land transaction, and the improper conduct of the Municipality. The allegations against the Premier and the Municipality are the subject of separate investigations and reports by the Public Protector, due to the provisions of the Executive Members’

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

- Ethics Act, in terms of which a report on an investigation of a complaint against a Premier must be submitted to the President and in the case of a MEC to the Premier.
- (v) As far as the MEC is concerned Mr Wyngaard specifically requested an investigation into his alleged improper involvement in the land transaction between Fastpulse and the Municipality and whether or not his involvement constituted conduct in violation of the Executive Ethics Code.
- (vi) Based on analysis of Mr Wyngaard's complaint and the reference to the MEC in the newspaper article, it was decided to investigate the following issues:
- (a) Was the MEC involved in or connected in any manner to a land transaction between Fastpulse and the Municipality, and if so, what was the extent of his involvement?
- (b) Did the involvement of the MEC in the land transaction constitute conduct in violation of the Executive Ethics Code?
- (vii) The investigation included interviews conducted with the MEC, the Premier of the Northern Cape, the former and current Municipal Managers of the Municipality, Messrs Crawford and Van Wyk who were involved in the original land transaction with the Municipality, the Manager: Property Services of the Municipality, and Ms L Fouche, who acted as Municipal Manager at the relevant time. The Public Protector also corresponded with relevant role players, obtained the relevant documentation from the Municipality and the provisions of the legal framework regulating ethical conduct of Members of the Executive and the records of the Companies and Intellectual Property Commission relating to Fastpulse were also considered.
- (viii) During the course of the investigation, Mr Crawford met with the Public Protector and provided her with a recording, which according to him backed the allegation that he was threatened by persons associated with the MEC. He also undertook to ensure that Ms Bakker availed herself to be interviewed. However, Mr Crawford could not be traced during the latter part of the investigation and the information that he provided

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

could therefore not be verified. The recording only provided support for the allegation that a meeting took place between him, Premier Jenkins and Mr Van Wyk.

(ix) From an analysis of the evidence and information obtained during the investigation, the Public Protector concluded that:

(a) The land transaction between Fastpulse and the Municipality followed the cancellation of a contract for the sale of the same land to Mr Crawford, due to the fact that he defaulted on paying the purchase price in time.

(b) No verifiable and reliable evidence was presented or could be found during the investigation indicating that the MEC was in any manner involved in the transaction, as was alleged by the article published by *Noseweek* on 1 April 2010.

(x) The finding of the Public Protector is that:

Was the MEC involved in or connected in any manner to a land transaction between Fastpulse) and the Municipality, and if so, what was the extent of his involvement?

(a) According to the evidence and information obtained during the investigation, the MEC was not involved in the transaction between Fastpulse and the Municipality.

(b) There is also no evidence that the MEC was connected to Fastpulse.

(c) Due to these findings, there was no conduct of the MEC that warranted consideration in respect of compliance with the Executive Ethics Code.

1. INTRODUCTION

1.1 *DISTURBING RUMOURS* is a Report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), sections 3(2)(b) and 3(3) of the Executive Members' Ethics Act, 1998 (Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), on an investigation into the alleged breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block (the MEC)

1.2 The Report is submitted to the Acting Premier of the Northern Cape Province.

1.3 Copies of the Report are presented to:

1.3.1 The MEC; and

1.3.2 Mr F Wyngaard, a Member of the Northern Cape Provincial Legislature and the Chairperson of the Congress of the People in the Northern Cape, who lodged the complaint.

2 THE COMPLAINTS

2.1 Mr Wyngaard (the Complainant) approached the Public Protector on 13 April 2010 in connection with an article that was published by *Noseweek* on 1 April 2010.

2.2 According to the article:

2.2.1 The Sol Plaatje Municipality in Kimberley (the Municipality) sold municipal land to a property developer, Mr T Crawford, for R2,11 million (in 2004). Mr Crawford apparently intended to develop the property for low cost housing.

2.2.2 Subsequent to the sale, the Sol Plaatje Municipal Council (the Municipal Council) resolved to place a moratorium on the sale of all municipal land.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

- 2.2.3 On 5 February 2009, the Municipal Council cancelled the sale, after Mr Crawford failed to pay the purchase price.
- 2.2.4 Messrs George Mtshiza and Mr Philip Mahau (who allegedly were involved with the MEC) subsequently offered to purchase the land from Mr Crawford for R8 million. He refused the offer.
- 2.2.5 Early in June 2009, Mr Crawford informed Ms M Bakker, a property broker who was also interested in the land on behalf of a client, that he had a meeting with the Premier of the Northern Cape Province, Ms H Jenkins, Mr J Block and the Provincial Secretary of the African National Congress (ANC) in the Northern Cape Province, Mr Zamani Saul. At the meeting, Mr Saul undertook to instruct the former Municipal Manager, Mr F Mashilo, to reinstate Mr Crawford's deal.
- 2.2.6 Ms Bakker made further enquiries from the legal department of the Municipality and was informed that the sale of the land to Mr Crawford had indeed been cancelled.
- 2.2.7 As her client was still interested in investing in property development in Kimberley, she approached another property developer, Mr L Du Plessis, who indicated that he had what she was looking for, i.e. land that could be developed with some services already installed. An offer of R28,5 million was agreed upon. Ms Bakker signed the offer on behalf of her client on 22 July 2009. She noted that the seller, as represented by Mr Du Plessis, was Silver Lake Trading 652 (Pty) Ltd (Silver Lake Trading).
- 2.2.8 When she shortly thereafter received the township layout of the property concerned, she discovered that it was exactly the same land she tried to purchase from Mr Crawford, on behalf of her clients.
- 2.2.9 Ms Bakker approached the then Acting Municipal Manager and was informed that the land in question was resold to a company called Fastpulse Trading 534 (Pty) Ltd (Fastpulse) after the sale to Mr Crawford was cancelled and that the Municipality was not aware of the involvement of Silver Lake Trading. The Acting Municipal Manager also hinted that Mr J Block was connected to Fastpulse and that he was also very close to Mr Mashilo, the former Municipal Manager of the Municipality.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

2.2.10 The “CIPRO” records showed that Messrs Mtshiza and Mahau were directors of Fastpulse, but not Mr Block.

2.2.11 When Ms Bakker informed Mr Crawford that the Municipality had resold the land concerned to Fastpulse, he approached the High Court and obtained an interdict stopping the Municipality from alienating the land, on 31 July 2009.

2.2.12 Ms Bakker lodged criminal charges against Mr Du Plessis *“and everybody else she thought was part of the scheme to defraud her.”*

2.3 In his letter of complaint, Mr Wyngaard requested the Public Protector to investigate the events described in the said article published by *Noseweek*. He further stated that:

“In accordance with sections three and four of the Executive Members’ Ethics Act No 82 of 1998, we also request that the Public Protector consider in the investigation allegations concerning the conduct of Premier Hazel Jenkins and MEC John Block as far as it pertains to the possible violation of the Executive Members’ Ethics Code prescribed by the Act.

It is requested that your institution investigate the following allegations:

- *that municipal land was sold by the Sol Plaatje municipality during a period when a moratorium on all municipal property sales was meant to be enforced*
- *that Sol Plaatje officials were requested to transfer the land to Fastpulse Trading S34 (Pty) Ltd by MEC John Block*
- *that John Block is in any way linked with the above-mentioned entity, be it financially or otherwise;*
- *that Premier Hazel Jenkins was involved in negotiations surrounding this transaction or had any knowledge of the transaction without taking the proper course of action befitting of her office*
- *the exact nature of the alleged involvement of the former Municipal Manager Mr Frank Mashilo, MEC John Block, Premier Hazel Jenkins and Mayor Patrick Everyday*

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- *that the leadership of the African National Congress in the Northern Cape improperly interfered in the administrative matters of the Sol Plaatje municipality*

The Congress of the People wishes this transaction to be investigated in its entirety including all events surrounding it (those that have been made public and those your institution may yet discover). In addition, we request the Public Protector to investigate whether any other municipal land has been sold during the moratorium period including the possibility of the back-dating of “permission to purchase” notions to a date prior to the commencement of the moratorium in order to facilitate these transactions.”

3. THE ISSUES INVESTIGATED BY THE PUBLIC PROTECTOR

- 3.1 Mr Wyngaard requested an investigation against both the Premier of the Northern Cape and the MEC, in terms of sections 3 and 4 of the Executive Members’ Ethics Act. He also requested an investigation into the conduct of the Municipality and the former Municipal Manager, Mr F Mashilo.
- 3.2 The report of the Public Protector on an investigation into an alleged breach of the Executive Ethics Code by a Premier has, in terms of sections 3(2)(a) and 3(3) of the Executive Members’ Ethics Act to be submitted to the President.
- 3.3 However, in terms of section 3(2)(b) of the Act, the report of the Public Protector on an investigation into the alleged breach of the Executive Ethics Code by Member of the Executive Council, has to be submitted to the relevant Premier.
- 3.4 Under the circumstances, it was decided to divide the investigation requested by Mr Wyngaard into three parts, each to be covered by a separate report.
- 3.5 This report only deals with the request to investigate whether the conduct of the MEC, as alleged and reported by the article published by *Noseweek* on 1 April 2010, violated any of the provisions of the Executive Ethics Code.
- 3.6 Based on analysis of Mr Wyngaard’s complaint and the reference to the MEC in the newspaper article, it was decided to investigate the following issues:

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

- 3.6.1 Was the MEC involved in or connected in any manner to a land transaction between Fastpulse Trading 534 (Pty) (Fastpulse) and the Municipality, and if so, what was the extent of his involvement?
- 3.6.2 Did the involvement of the MEC in the land transaction constitute conduct in violation of the Executive Ethics Code?

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT LODGED AGAINST THE MEC

4.1 Mandate of the Public Protector

4.1.1 The Public Protector is an independent institution, established under section 181 of the Constitution. Section 182(1) of the Constitution provides that the Public Protector has the power to:

4.1.1.1 Investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

4.1.1.2 Report on that conduct; and

4.1.1.3 Take appropriate remedial action.

4.1.2 In terms of section 182(2) of the Constitution, the Public Protector has the additional powers and functions prescribed by national legislation. Such legislation includes the Public Protector Act and the Executive Members' Ethics Act.

4.1.3 The complaint against the MEC was lodged in terms of sections 3 and 4 of the Executive Members' Ethics Act, read with the Executive Ethics Code, by a member of the Northern Cape Provincial Legislature.

4.1.4 The jurisdiction of the Public Protector in this regard is spelt out in sections 3(1) and 4(1)(b) of the Executive Members' Ethics Act, which provide that the Public Protector must investigate any alleged breach of Executive Ethics Code by a Member of the

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

Executive Council of a Provincial Legislature on receipt of a complaint by a Member of the Provincial Legislature. If the complaint is against a MEC, the Public Protector must submit the report on the investigation to the Premier.

4.1.5 Section 3(4) of the Executive Members' Ethics Act states that when conducting an investigation, the Public Protector has all the powers vested in her/him under the Public Protector Act.

5. THE INVESTIGATION

The investigation was conducted in terms of section 182 of the Constitution, sections 3 and 4 of the Executive Members' Ethics Act and sections 6 and 7 of the Public Protector Act.

5.1 Scope of the investigation

The scope of the investigation was limited to the period from July 2009 to May 2010.

5.2 Methods of gathering evidence

The following methods of gathering and analysing evidence and information were employed:

5.2.1 Interviews conducted

Interviews (including telephonic interviews) were conducted with

5.2.1.1 Mr B A Van Wyk;

5.2.1.2 Mr T Crawford

5.2.1.3 Premier Jenkins;

5.2.1.4 Mr J Block, the MEC;

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

5.2.1.5 Mr Mashilo, the former Municipal Manager of the Municipality;

5.2.1.6 The Complainant;

5.2.1.7 The Municipal Manager of the Municipality, Mr G Akarwaray;

5.2.1.8 The Executive Director: Corporate Services of the Municipality, Ms L Fouche (her evidence was also confirmed by means of a written affidavit); and

5.2.1.9 The Manager: Property Services of the Municipality, Mr M Steyn

5.2.2 Correspondence

Correspondence between the Public Protector and:

5.2.2.1 Ms M Bakker, who was referred to in the *Noseweek* article;

5.2.2.2 Mr B A Van Wyk, who also provided the Public Protector with statements regarding the matters investigated; and

5.2.2.3 The Municipal Manager.

5.2.3 Documentation

The following documentation was obtained from the Municipality and perused during the investigation:

5.2.3.1 The records, memoranda correspondence; minutes of meetings and deeds of sale relating to:

(a) The sale of the land concerned; and

(b) The moratorium placed on the sale of land by the Municipal Council on 7 June 2004.

5.2.4 Legislation and other prescripts and precedents

Relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

5.2.4.1 The Constitution of the Republic of South Africa, 1996;

5.2.4.2 The Public Protector Act, 1994;

5.2.4.3 The Executive Members Ethics Act, 1998 and

5.2.4.4 The Executive Ethics Code;

5.2.5 Records of the Companies and Intellectual Property Commission (CIPC)

The records of Fastpulse Trading 534 (Pty) Ltd were perused.

5.3 Approach to the investigation.

5.3.1 In terms of the mandate given to the Public Protector, the Public Protector's investigations and findings transcend lawfulness. The focus is on good administration and proper conduct. Such enquiry has three components:

5.3.1.1 What happened?

5.3.1.2 What should have happened? and

5.3.1.3 Is there a discrepancy between the two and does this constitute improper conduct as envisaged in section 182(1) of the Constitution, maladministration, abuse of power, improper enrichment or conduct resulting in unlawful or improper prejudice to any person, as envisaged in the Public Protector Act, and/or, as in this case, a violation of the Executive Ethics Code?

5.3.2 In determining whether conduct was improper or constituted maladministration or any of the violations envisaged in the Public Protector Act and the Executive Ethics Code, the Public Protector compares the conduct of government entities and officials complained of against the relevant legislation and other prescripts, to ascertain whether such conduct complied with the constitutional requirements of fairness,

reasonableness, transparency, ethical standards and local and international best practices. .

5.3.3 The complaints lodged with the Public Protector and the allegations made against Premier Jenkins, referred to in this report, accordingly fall within the jurisdiction and powers of the Public Protector as envisaged under the Executive Members' Ethics Act, read with the Executive Ethics Code.

5.4 The obligation of the Public Protector to follow due process

5.4.1 Due process was complied with during the course of the investigation referred to in this report. Interested and affected parties were also afforded an opportunity to respond to the contents of the Provisional Report of the Public Protector pertaining to the matters investigated to ensure fairness and transparency.

6 THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION.

6.1 The evidence of the witnesses

6.1.1 **Mr F Wyngaard** is the Chairperson of the Congress of the People (COPE) in the Northern Cape and a member of the Northern Cape Provincial Legislature. He is the complainant in the matter concerned.

6.1.1.1 He could not provide any substantive evidence on the alleged involvement of the MEC in the land transactions of the Municipality referred to in this report.

6.1.2 **Mr B A Van Wyk** is a self-employed and resident in Kimberley. He is a former business partner of Mr T Crawford and became involved in the development of the land sold to Mr Crawford by the Municipality, referred to in this report (erf 36926)

6.1.2.1 He explained in this regard that:

“At the time Crawford nominated Tremaine Crawford Property Portfolio CC as the purchaser of erf 36926 (he did this to allow him to trade with the asset without it

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

having to go through the deeds office). On the 13th of March the sale agreement was duly concluded between the nominated CC and Sol Plaatjie. After the sale agreement was signed we immediately requested the Municipality for the Surveyor General's diagram so to enable us to take transfer of this land. For the following year the municipality could not provide the diagram; hence we could not pay the purchase amount. Early in the year 2009 the Municipality instituted legal action against Tremaine Crawford Property Portfolio CC to declare the contract and the preceding council resolutions null and void.

...

Around March/April/May we tried to avoid getting involved with Sol Plaatjie Municipality in a protracted legal battle (around the sale of erf 36926) especially since we knew that we were not at fault. Crawford wanted to use the general elections to pressurize the ANC (African National Congress) to intervene on our behalf by making public statements against prominent ANC politicians. Amongst others Crawford claimed that a high ranking official of the Provincial ANC sent individuals to him to threaten his life if he does not pay a bribe. Other than Crawford's word I could not corroborate this allegation. He however told me that at the right time he would reveal the evidence. At that stage I also had no reason not to believe him either.

... *I personally arranged a meeting with the Premier since we were acquaintances from my time working in De Aar. We met with the Premier around June 2009. She indicated to us that she feels those issues would be better resolved by the Provincial ANC office bearers since accusations were levelled against a prominent member."*

6.1.2.2 According to him, a subsequent meeting was arranged at the ANC Provincial Office. At this meeting: *"...Crawford could not present a convincing argument in the presence of the person he accused of threatening him, in fact Crawford almost did not say a word. Crawford also could not claim that he was intimidated during the meeting because the meeting was chaired by the Provincial Secretary and (not) the person he accused of extortion. After the meeting I reprimanded him for*

compromising our development by making allegations that he could not prove or defend. I realised that this stunt of Crawford might also have diminished my standing in the community as well as my professional status. I told Crawford that I did not want to hear and speak about these allegations again since it was clouding the real matter of transferring erf 36926 into Tremaine Crawford Property Portfolio CC. Crawford did not agree with me on that issue. This was the start of the end of our business relationship.”

6.1.2.3 As far as the involvement of the MEC in the land transaction between Fastpulse and the Municipality is concerned, Mr Crawford stated that:

“Under a tree in Pescodia, Crawford started to tell me a tale of entrapment, revenge and extortion. Crawford told me that he found out that Louis du Plessis (a former project manager of Crawford’s) was involved with Fastpulse Trading 534 (Pty) Ltd (the company who had the disputed sale agreement for 36926). He explained that he instructed Bakker to contact Du Plessis and tell him that she had secured a buyer and that she understands that he was in possession of suitable land for residential development. He explained that Du Plessis took the bait and they set up this whole fake deal to entrap Du Plessis, his attorney Deon Russouw and a former business associate of Crawford’s, Attie Nel. All three these men were present at the meeting with Bakker earlier that day and they had no idea that Bakker and Crawford were associates.

...

He continued to explain to me that, because he was in possession of a valid council resolution for erf 36926, it would be illegal for any other party to sell that land. Crawford went on to boast that he got these men where he wanted them and that if they do not come up with the R28.5 million (the purchase price on the sale agreement they signed with Bakker) then Bakker would lay a criminal charge against them. Crawford explained that after all the documents (sale agreement) were signed, he instructed Bakker to put pressure on these men to come up with the R28.5 million or else she would lay criminal charges. He explained that the meetings earlier that day with Luanne Fouche at the municipality and the attorney Oban Cronje were set up to establish a link between Fastpulse Trading 534 (Pty)Ltd and John Block (Provincial ANC chairperson) He explained that Bakker would use

her record of these meetings to falsely accuse Fouche and Cronje of implicating Block in the property transaction with Fastpulse Trading. Crawford explained that he wanted to draw John Block into this matter because he wanted to firstly give credence to his story (a story Crawford made up months earlier) that Block sent Mohau Shuping and George Mtshiza (directors of Fastpulse Trading) to extort R8 million from him and to threaten his life if he fails to do so. And he secondly wanted to put pressure on John Block, as chairperson of the ANC, to instruct the municipality to terminate its contract with Fastpulse Trading and reinstate its contract with Crawford.

At the time Crawford did not have the money to resolve this issue in court with Sol Plaatje and this greatly contributed to the fact that he had to drag prominent political figures into this dispute.”

6.1.3 **Mr T Crawford** is a property developer who was at the time when the investigation commenced, resident in Kimberley.

6.1.3.1 When he was interviewed telephonically on 16 July 2010, Mr Crawford confirmed that he met with Mr Saul of the ANC in connection with his dispute with the Municipality relating to the land transaction. However, he could not recall the date of the meeting.

6.1.3.2 He further stated that Messrs Arendse, Block Mtshiza and Shuping were present at the meeting. Mr Saul listened to all the parties concerned and promised to look into the matter. During the meeting, Mr Block denied that he instructed Mr Mashilo to sell the land to Fastpulse.

6.1.3.3 Later during the investigation, several attempts (including the issuing of a subpoena) were made to contact him to obtain more information and to verify the evidence of other witnesses, but he could not be traced. He also never responded to telephonic messages left for him on numerous occasions, despite the fact that he was fully aware of the investigation.

6.1.3.4 During the course of the investigation, Mr Crawford met with the Public Protector and provided her with a recording, which according to him backed the allegation that he

was threatened by persons associated with the MEC. He also undertook to ensure that Ms Bakker availed herself to be interviewed. However, as indicated above Mr Crawford could not be traced during the latter part of the investigation and the information that he provided could therefore not be verified. The recording only provided support for the allegation that a meeting took place between him, Premier Jenkins and Mr Van Wyk.

6.1.4 **Ms H Jenkins** became the Premier of the Northern Cape on 11 May 2009. She confirmed that she met with Messrs Crawford and Van Wyk in connection with the sale of the land concerned to Mr Crawford by the Municipality, early in July 2009.

6.1.4.1 Messrs Crawford and Van Wyk explained to her they were business partners in property development and requested her intervention in their dispute with the Municipality about the cancellation of the sale agreement.

6.1.4.2 She advised them to take the matter up with the Municipality and make their own arrangements, should they wish to meet with Mr Zamani Saul of the ANC Provincial Leadership in connection with the matter.

6.1.4.3 She denied attending a subsequent meeting with Mr Saul, Mr Crawford and Mr Van Wyk and did not enquire as to what was the outcome of the meeting.

6.1.4.4 After the *Noseweek* publication, she discussed the matter with Mr Block. He denied any involvement in the matter.

6.1.5 **Mr J Block** is the Northern Cape MEC for Finance, Economic Affairs and Tourism.

6.1.5.1 He explained that he was called to a meeting by the Provincial Secretary of the ANC, Mr Saul, a few months before the article appeared in *Noseweek*. In attendance was also Messrs Crawford, Mtshiza and Mahau.

6.1.5.2 Mr Saul requested him to explain his involvement in the land transaction between the Municipality and Fastpulse.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

6.1.5.3 In his response he denied any involvement and that he had any relations with Messrs Mtshiza and Mahau. He also denied any knowledge of Fastpulse, that he was involved in any business developing properties and that he had any relations with the former Municipal Manager, Mr Mashilo.

6.1.5.4 During the investigation, Mr Block indicated that he does not believe that there had been any political interference in the land transactions with the Municipality.

6.1.5.5 He recalled that Premier Jenkins discussed the matter concerned with him informally after the article relating to his involvement was published by *Noseweek*. He again denied any involvement and referred the matter to his attorneys to deal with. He was not aware of the meeting between Premier Jenkins and Messrs Van Wyk and Crawford.

6.1.6 **Mr F Mashilo** was the Municipal Manager of the Municipality from 1 January 2005 to 17 July 2009.

6.1.6.1 He explained that the land in question was sold to Mr Crawford by the Municipality after a tender process. It was industrial land and therefore not subject to the subsequent moratorium of the Municipal Council on the sale of land, which only related to residential properties.

6.1.6.2 Mr Crawford failed to pay the full purchase price for the land in terms of the Deed of Sale and he (Mashilo) cancelled the contract. He not was aware of the meeting between Premier Jenkins and Messrs Crawford and Van Wyk.

6.1.6.3 After the cancellation of the agreement with Mr Crawford, Mr M Steyn, the Manager: Property Services of the Municipality, informed him that Fastpulse was interested in purchasing the land in question. He instructed Mr Steyn to raise the matter with the Municipality's attorneys and to instruct them to prepare a deed of sale if they were satisfied with the offer, which was similar to the amount it was sold for to Mr Crawford, i.e. R2,11 million.

6.1.6.4 He was of the view that there was nothing prohibiting the Municipality from selling the land to Fastpulse, as the Council Resolution to sell it was still in force and did not state that it should be sold to Mr Crawford specifically.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

6.1.6.5 Mr Mashilo denied that Mr Block had anything to do with the transaction between Fastpulse and the Municipality.

6.1.7 **Mr M Steyn** is the Manager: Property Services of the Municipality.

6.1.7.1 He explained that Mr Crawford approached the Municipality in 2004, requesting to purchase the land concerned, with a view of developing it for low cost housing. The Unit: Property and Town Planning advised the Development and Planning Committee of the Municipal Council not to approve Mr Crawford's request, as the land was zoned for industrial and not residential purposes.

6.1.7.2 However, the said Committee resolved on 7 June 2004 that the land should be sold to Mr Crawford at a market related price.

6.1.7.3 As Mr Crawford failed to pay the purchase price, the contract was cancelled in January 2009.

6.1.7.4 In March or April of 2009, Mr Mashilo came to his office accompanied by Messrs Mtshiza and Mahau of Fastpulse, and told him that they were interested in buying the land. He was instructed to do the necessary to effect the sale to Fastpulse at the same price and under the same conditions as were applicable to the sale of the land to Mr Crawford. Mr Steyn complied with Mr Mashilo's request, which he did not regard as improper.

6.1.7.5 Mr Steyn had no knowledge of any involvement of Mr Block in the land transaction between the Municipality and Fastpulse.

6.1.8 **Ms L A M Genade-Fouche** (Ms Fouche) was the Acting Municipal Manger of the Municipality in July 2009.

6.1.8.1 Ms M Bakker approached her on 23 July 2009 to discuss the issue of the land that was sold by the Municipality to Mr Crawford and later to Fastpulse. She stated in this regard that:

"At this stage I had no knowledge of any such transactions as the previous Municipal Manager handled all this and by the time I was acting, everything was already in

motion. The claims made in the Noseweek that I said that Mr J Block was part of Fastpulse, is (sic) not true, as I did not even know about the existence of Fastpulse, nor who the Directors of such a company would be.”

6.1.9 **Mr G Akarwaray** was appointed as the Municipal Manager of the Municipality in September 2009. By that time, the agreement of sale between the Municipality and Fastpulse had been concluded.

6.1.9.1 He denied any political interference in the administration of the Municipality. After the article appeared in *Noseweek*, he enquired from officials of the Municipality into the allegations and no-one could confirm any link between Fastpulse and the MEC.

6.1.10 **Ms M Bakker** was the Managing Director of Care Financial Management Services (Pty) Ltd at the times relevant to the investigation. She approached Mr Crawford in April 2009 in connection with investment in the development of the land that he bought from the Municipality, referred to in this report.

6.1.10.1 Mr Crawford was interested in her proposal, but informed her that he was involved in a legal dispute with the Municipality in connection with the land, as a result of which he was not able to continue with the development, but that he hoped to resolve the issue soon.

6.1.10.2 As far as the alleged involvement of the MEC in the land transaction between the Municipality and Fastpulse is concerned, Ms Bakker could provide no direct evidence. She only suspected the MEC's involvement because:

6.1.10.3 She was told by Mr Crawford that he was threatened by two men that worked for the MEC;

6.1.10.4 She spoke to Mr Saul telephonically when he was having a meeting with Mr Crawford, the MEC and Premier Jenkins

6.1.10.5 She was told by Ms Fouche of the Municipality that Mr Block was involved; and

6.1.10.6 She was informed that Mr M Steyn of the Municipality told an (unidentified) source that Mr Mashilo and two “members” of Fastpulse “walked into his office one day &

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

instructed him to cancel the deal with Crawford immediately and draw up deed of sale (sic) for the 2 members. When he further enquired about it, Mashilo told him it was a decision of Block, Everyday and himself and Steyn must just do it.”

6.2 The records of the CIPC

6.2.1 Fastpulse Trading was registered as a company on 20 January 2003. The description of its business was *“Retail trade, except of motorvehicles (sic) and motor cycles; Repair of personal and household goods.”*

6.2.2 At the time of its registration, the Directors were:

6.2.2.1 Mr C Gouws;

6.2.2.2 Mr A Hlophe;

6.2.2.3 Mr M P Shuping;

6.2.2.4 Mr M A B Kies; and

6.2.2.5 Mr L G Mtshiza

6.2.3 Ms C F Maleka was appointed a Director on 14 September 2004

6.3 The records of the Municipality

6.3.1 The Minutes of a meeting held by the Development, Planning and Infrastructure Committee on 7 June 2004 indicate that it was resolved to sell the land referred to in this report to Mr Crawford at a market related price.

6.3.2 The Deed of Sale in respect of the property was only entered into by the Municipality and Mr Crawford on 13 March 2008.

6.3.3 In terms of the Deed of Sale, the purchase price was payable on the date of signature thereof, i.e. 13 March 2008.

6.3.4 Van De Wall and Partners, attorneys acting on behalf of the Municipality, informed Mr Crawford on 13 January 2009 that in lieu of the provisions of the Deed of Sale relating to the purchase price, he had to provide guarantees for the payment thereof within 14 days, failing which the contract would be cancelled.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

- 6.3.5 On 5 February 2009, Mr Crawford was informed by the same attorneys that due to his failure to pay the purchase price, the contract was cancelled.
- 6.3.6 The former Municipal Manager, Mr T Mashilo (on behalf of the Municipality) and Fastpulse entered into a Deed of Sale in respect of the property concerned, on 6 April 2009.
- 6.3.7 Mr Crawford obtained an interim interdict in the Northern Cape High Court against the Municipality alienating the property to Fastpulse, on 31 July 2009.
- 6.3.8 The dispute between the Municipality and Mr Crawford was eventually settled on 14 May 2010, in terms of which Mr Crawford was afforded an opportunity to purchase the property on basically the same terms and conditions as contained in the original Deed of Sale.

7 EVALUATION OF THE INFORMATION AND EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1 Common cause

From the investigation it was established that it is not in dispute that:

- 7.1.1 The Municipality sold the land referred to in this report to Mr Crawford, representing Tremaine Crawford Property Portfolios CC, on 13 March 2008.
- 7.1.2 Due the failure on the part of Mr Crawford to pay the purchase price in accordance with the Deed of Sale, the contract was cancelled by the Municipality on 5 February 2009.
- 7.1.3 Fastpulse approached the Municipality offering to purchase the land in March or April 2009. A deed of Sale was entered into between the Municipality and Fastpulse on 6 April 2009.
- 7.1.4 Mr Crawford succeeded with an application for an interim interdict prohibiting the Municipality to continue with transfer of the property to Fastpulse, on 31 July 2009.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

7.1.5 The dispute between Mr Crawford and the Municipality was settled on the basis that he was afforded an opportunity to purchase the land for the same price and subject to the same conditions, on 14 May 2010.

7.1.6 The MEC was not a Director of Fastpulse.

7.2 The evidence of Ms Makker

7.2.1 It is obvious from contents of the article published by *Noseweek* on 1 April 2010 that it was based on information provided to the newspaper by Ms Bakker.

7.2.2 Ms Bakker could not provide any direct evidence during the investigation linking the MEC to the land transaction between the Municipality and Fastpulse. Her references to his alleged involvement were based on what she was allegedly told by Mr Crawford, Ms Fouche and an unidentified source.

7.2.3 The information provided by Ms Bakker in connection with the cancellation of the contract and the purchase of the land by Fastpulse is inconsistent with the evidence of Messrs Steyn and Mashilo. According to Ms Bakker, the cancellation of the contract with Mr Crawford and the selling of the land to Fastpulse happened at the same time in Mr Steyn's office

7.2.4 However, according to the records of the Municipality, the contract with Mr Crawford was cancelled by attorneys acting on behalf of the Municipality, on 5 February 2009. The evidence also does not indicate any involvement of Mr Steyn in the cancellation.

7.2.5 Fastpulse only approached the Municipality in March or April 2009 and the Deed of Sale in respect of selling the land to it was only signed on 6 April 2009.

7.2.6 Messrs Steyn and Mashilo furthermore denied that there was anything improper in selling the land to Fastpulse under the circumstances.

7.2.7 Ms Fouche also denied the statements made by Ms Bakker that she indicated to her that the MEC was involved in the Fastpulse transaction. She furthermore denied having had any knowledge of the transaction, as she was not involved.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

- 7.2.8 The MEC furthermore denied any involvement with Fastpulse and its Directors.
- 7.2.9 Mr Steyn denied any knowledge of the alleged involvement of the MEC.
- 7.2.10 The evidence of Ms Bakker that she was telephonically contacted by Mr Saul during a meeting that was held with Premier Jenkins, Mr Block and Mr Crawford is inconsistent with the evidence obtained from the other witnesses in this regard.
- 7.2.11 Messrs Crawford and Van Wyk denied any involvement of Ms Bakker in the meeting that they had with Premier Jenkins. They also denied that Mr Block was present at the meeting, as did Premier Jenkins and Mr Block.
- 7.2.12 Ms Bakker's evidence that she was told by Mr Crawford that he was threatened by two persons working for Mr Block, should he not sell the land to Fastpulse could be true. However, according to Mr Van Wyk, Mr Crawford confessed to him that it did not happen and that he made up the story to implicate the MEC and to put pressure on him so that he could ensure that the sale of the land to Fastpulse was cancelled.
- 7.2.13 Under the circumstances, Ms Bakker's evidence does not constitute substance and support for the allegations that Mr Block was involved in the land transaction between Fastpulse and the Municipality.

7.3 The records of the CIPC and the Municipality

- 7.3.1 There is no indication in the records of the CIPC that Mr Block was involved in Fastpulse.
- 7.3.2 The records of the Municipality also do not reflect any involvement of the MEC. The current Municipal Manager could not find any indication of any such involvement when he made internal enquiries at the Municipality after *Noseweek's* article was published.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

8 THE LEGAL AND POLICY FRAMEWORK REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE

8.1 The Constitution

8.1.1. Section 136(1) provides that members of the Executive Council of a province (which include the Premier) must act in accordance with a code of ethics prescribed by national legislation.

8.1.2. In terms of section 136(2), members may not:

8.1.1.1 Act in a way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or

8.1.1.2 Use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

8.2 The Executive Ethics Code

8.2.1 The Executive Ethics Code, issued by virtue of the provisions of the Executive Members' Ethics Act, prescribes the standard of ethical conduct of members of the executive.

8.2.2 In terms of paragraph 2.1, members must:

8.2.2.1 Perform their duties and exercise their powers diligently and honestly;

8.2.2.2 Act in good faith and in the best interests of good governance and

8.2.2.3 Act in all respects in a manner that is consistent with the integrity of their office or the government.

DISTURBING RUMOURS: A report on an investigation into an allegation of a Breach of the Executive Ethics Code by the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Government, Mr J Block, relating to the sale of municipal land by the Sol Plaatje Municipality in Kimberley

9 ANALYSIS OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION


- 9.1 The land transaction between Fastpulse and the Municipality followed the cancellation of a contract for the sale of the same land to Mr Crawford, due to the fact that he defaulted on paying the purchase price in time.
- 9.2 No verifiable and reliable evidence was presented or could be found during the investigation indicating that the MEC was in any manner involved in the transaction, as was alleged by the article published by *Noseweek* on 1 April 2010.

10 FINDING

The finding of the Public Protector is that:

Was the MEC involved in or connected in any manner to a land transaction between Fastpulse) and the Municipality, and if so, what was the extent of his involvement?

- 10.1 According to the evidence and information obtained during the investigation, the MEC was not involved in the transaction between Fastpulse and the Municipality.
- 10.2 There is also no evidence that the MEC was connected to Fastpulse.
- 10.2 Due to these findings, there was no conduct of the MEC that warranted consideration in respect of compliance with the Executive Ethics Code.



ADV. N. MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

Date: 26 November 2012