REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, IMPROPER CONDUCT AND IRREGULAR APPOINTMENT OF SENIOR EXECUTIVES IN THE OFFICES OF THE EXECUTIVE MAYOR AND COUNCIL SPEAKER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY
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Executive Summary

(i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

(ii) The report is in connection with an investigation into allegations of maladministration, improper conduct and irregular appointment of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality.

(iii) The investigation was conducted in accordance with the provisions of section 182 of the Constitution, which confers upon the Public Protector, the power to investigate any alleged or suspected improper and/or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action, read with sections 6 and 7 of the Public Protector Act which regulates the reporting of matters as well as the additional powers and the investigation by the Public Protector.

(iv) The complaint was lodged by the Caucus Leader of the opposition party in the Municipal Council, Cllr. Mapiti Matsena of the African National Congress (ANC).

(v) In his complaint, Cllr. Matsena alleges that following the Local Government Elections held in August 2016, and subsequent to the Democratic Alliance (DA) taking over the reigns in the City of Tshwane Metropolitan Municipality, various officials who were in the offices of the Executive Mayor, Council Speaker and the City Manager were arbitrarily removed from these offices and replaced by officials who were irregularly appointed in violation of the Staffing Policy of the City of Tshwane Metropolitan Municipality (the Staffing Policy).

(vi) The officials who are alleged to have been irregularly appointed are the following;

a) Ms Marietha Aucamp – Chief of Staff in the Office of the Executive Mayor;
b) **Mr Samkelo Mgbozi** – Executive Head and Mayoral Spokesperson: Mayoral Public Affairs Department, Office of the Executive Mayor;

c) **Mr Stefan de Villiers** - Executive Head: Office of the Executive Mayor;

d) **Mr Mathew Gerstner** - Acting Mayoral Spokesperson, Office of the Executive Mayor;

e) **Mr Tiyiselani Babane** - Strategic Executive Head: Office of the Speaker;

(vii) The specific allegations against the Executive Mayor, Cllr. Tshepiso Solly Msimanga were *inter alia* that:

a) He issued a public announcement banning the use of blue lights with sirens in and around the jurisdictional area of the City of Tshwane despite the fact that he had no authority in law to issue such a directive and thus acted *ultra vires*;

b) He deliberately and willfully misled the public regarding the constitution and the subsequent reconstitution of the Mayoral Committee;

c) He misled the public by stating that the previous Mayoral Committee had taken a decision to purchase a new fleet of BMW’s for its members; and;

d) He announced that he will acquire a cheaper official vehicle than that of the former Executive Mayor and failed to acknowledge that the vehicle he used was a donation from BMW South Africa.

(viii) Based on the analysis of the complaints including the allegations contained in the media reports as well as information that came to my attention from various sources, the following issues were identified to inform and focus the investigation:

(a) **Issue 1**- Whether there were any irregularities in the appointments of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality.
(b) **Issue 2**: Whether the Executive Mayor acted improperly and misled the public regarding the usage of blue lights in the City, constitution of the Mayoral Committee and the procurement of the official Mayoral vehicle.

(ix) The investigation included an exchange of documentation between the Public Protector and the former and current City Manager of the City of Tshwane Metropolitan Municipality, Ms Lindiwe Kwele and Dr Mosketsi Mosola respectively, the Executive Mayor, Cllr. Solly Tshepiso Msimanga the Council Speaker, Cllr. Katlego Rachel Mathebe, Councillors Cilliers Brink as well as Frans Boshielo.

(x) Interviews were also held with the complainants in particular the ANC Caucus Leadership in the City of Tshwane Metropolitan Council, the former Executive Mayor, the Council Speaker, the former Acting City Manager and the current City Manager, Leaders of Political Parties in the Council: Cllrs. Benjamin Disoloane of the Economic Freedom Fighters (EFF), and Selata Wa' Nkwane of the Congress of the People (COPE).

(xi) The following former and current officials of the City of Tshwane were also interviewed; **Ms Marietha Aucamp**, the former Chief of Staff in the Office of the Executive Mayor, **Mr Samkelo Mgobozi**, the former Executive Head and Mayoral Spokesperson, Mayoral Public Affairs Department in the Office of the Executive Mayor, **Mr Stefan de Villiers**, the former Executive Head in the Office of the Executive Mayor, **Mr Tiyiselani Babane**, the Strategic Executive Head in the Office of the Speaker.

(xii) Other municipal officials who were interviewed are the following: **Ms Thea Louw**, the Senior Strategic Executive Support Specialist in the Human Resources Department, **Dr Daphney Mokhele**, the Acting Divisional Head responsible for Governance and Administration, **Ms Cynthia Ramulifho**, the Strategic Executive Director responsible for Corporate and Shared Services, **Mr Gerald Shingange**, the Group Head of Human Capital, **Mr Msizi Myeza**, the Acting Group Head in the Office of the City Manager, **Ms**
Riana Zaayman, the Group Audit and Risk Department Team of Messrs. Aluwani Themeli and Moeketsi Tsimane; Mr Blessing Manale and Mr Bruno Seabela.

(xiii) Key laws, policies, regulations and prescripts were considered in order to determine whether there had been maladministration, improper conduct and irregular appointment of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality.

(xiv) Having considered the evidence and information obtained during the investigation as well as the applicable regulatory framework determining the standard that the City of Tshwane should have complied with, I make the following findings.

1. **Issue 1- Regarding whether there were any irregularities in the appointments of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality:**

   (aa) The allegation that there were irregularities in the temporary and fixed term contract appointments of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality is substantiated;

   (bb) The appointments of Marietha Aucamp, Samkelo Mgobozi, Stephane Adriaan de Villiers were irregular as they did not meet the minimum requirements for the positions in which they were appointed and the CoT also failed to conduct security vetting on them as required;

   (cc) Although Mr Tiyiselani Babane is suitably qualified and met the minimum requirements for the position, the CoT failed to conduct security vetting on him before his appointment;

   (dd) The Staffing Policy makes no provision for the appointment of staff at senior management level on a six months (six months) temporary appointment;
(ee) The CoT failed to implement an adequate record management controls as some recruitment documents went missing from the personnel files of the interviewed candidates;

(ff) The former acting City Manager, Ms Lindiwe Kwele as the Accounting officer failed to act in the best interest of the CoT in appointing of Ms Marietha Aucamp, Mr Samkelo Mgobozi, Mr Stefan de Villiers as they did not meet the minimum requirements for the positions and further failed to provide guidance and advice on compliance with the Staffing Policy.

(gg) Mr Shingange, the Group Head: Human Resources Management failed to provide proper guidance and advice to the CoT, regarding the suitability and appointment of Ms Marietha Aucamp, Mr Samkelo Mgobozi, Mr Stefan de Villiers who were appointed on six months (6 months) short temporary contracts and later five (5) year fixed term contracts.

(hh) All members of the interview and selection panels who participated in the recruitment of Executive Head and Mayoral Spokesperson, Mayoral Public Affairs Department in the Office of the Executive Mayor, Executive Head in the Office of the Executive Mayor, failed to act in the best interest of the CoT by not applying their minds to the suitability of candidates regarding their qualifications and experience for the respective positions.

(ii) The former Executive Mayor did not apply his mind in the appointment of Ms Aucamp because he should have reasonably known that she does not have a post matric qualification. He should have obtained legal advice from his officials on the appropriate way to appoint staff in his office. Instead he allowed the officials to follow the normal recruitment and selection process including placing educational requirements and experience that Ms Aucamp did not possess, therefore prejudicing other candidates who were best qualified for the position.
(jj) The Public Protector notes that the CoT has taken steps to reverse the irregular appointments of the Executive Head and Mayoral Spokesperson, Mayoral Public Affairs Department in the Office of the Executive Mayor as well as the Executive Head in the Office of the Executive Mayor.

2. **Issue 2**- With regard to whether the former Executive Mayor misled the public by making pronouncements banning the use of blue lights in the City, the reconstitution of the Mayoral Committee and the utilization of the fleet of BMWs by the Members of Mayoral Committee.

(aa) The allegation that the former Executive Mayor misled the public by making pronouncements banning the use of blue lights in the City, the reconstitution of the Mayoral Committee and the utilization of the fleet of BMWs by the Members of Mayoral Committee is unsubstantiated in that though public statements were made regarding the use of blue lights in the City, no legislative process was undertaken to amend the by-laws to officially prohibit the use of blue lights.

(bb) The allegation that the former Executive Mayor misled the public on the reconstitution of the Mayoral Committee is unsubstantiated, the Executive Mayor is empowered by the provisions of section 60 of the Municipal Structures Act to appoint and dismiss members of the Mayoral Committee as he deems fit.

(cc) As regards misleading members of the public regarding the fleet of BMW vehicles, I have noted the various media statements that were made by the various parties on this matter but did not come across any evidence that in the discharge of his duties as the former Executive Mayor, Cllr Solly Msimanga violated the law and misled members of the public about the affairs of the City of Tshwane Metropolitan Municipality.
(xv) The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

(a) The City Manager of Tshwane:

(aa) Within sixty (60) working days of the issuing of this report, ensure that a policy is developed to regulate the appointment of staff in the private offices of the Executive Mayor and Speaker which will make provision for urgent and/or short term appointments should a need arise. The said policy should also address the job profiles including requirements for these positions, deviation procedures and delegations of authority;

(bb) Within sixty (60) working days of the issuing of this report, ensure that disciplinary steps are taken against implicated officials of CoT who flouted, subverted or violated the CoT’s Staffing Policy in this matter; and

(cc) Within sixty (60) working days of the issuing of this report, develop a document management system that will introduce controls and systems to safeguard the security of documents.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, IMPROPER CONDUCT AND IRREGULAR APPOINTMENT OF SENIOR EXECUTIVES IN THE OFFICES OF THE EXECUTIVE MAYOR AND COUNCIL SPEAKER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1. INTRODUCTION

1.1. This is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8 of the Public Protector Act to:

1.2.1. The Executive Mayor of the City of Tshwane, Cllr Stevens Mokgalapa;

1.2.2. The former Executive Mayor of the City of Tshwane, Mr Solly Msimanga;

1.2.3. The Council Speaker of the City of Tshwane, Ms Katlego Rachel Mathebe;

1.2.4. The Municipal Manager of the City of Tshwane, Mr Moeketsi Mosola;

1.2.5. The former Acting Municipal Manager of the City of Tshwane, Ms Lindiwe Kwele;

1.2.6. The Complainants and other persons implicated in this report

1.3. The report is in connection with an investigation into allegations of maladministration, improper conduct and irregular appointment of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality. The complaint was lodged by the Caucus Leader of the opposition party in the Municipal Council, Cllr. Mapiti Matsena of the African National Congress (ANC).
2. THE COMPLAINTS

2.1. The complaint was lodged by the Caucus Leader of the opposition party in the Municipal Council, Cllr. Mapiti Matsena of the African National Congress (ANC).

2.2. In his complaint, Cllr. Matsena requested the Public Protector to conduct an investigation into allegations of "mal-administration, abuse of power, fraud, irregular appointment and corruption by the DA led Municipality and Executive Mayor Msimang". He stated that in a brief period of two months, the City lied to the residents and committed various acts mal-administration, the consequence of which is fraud and corruption. The complainant also alleged that some officials were irregularly appointed in violation of the Staffing Policy of the City of Tshwane Metropolitan Municipality (the Staffing Policy).

2.3. The officials who are alleged to have been irregularly appointed are the following:

2.3.1. Ms Marietha Aucamp – Chief of Staff in the Office of the Executive Mayor;

2.3.2. Mr Samkelo Mgobozi – Executive Head and Mayoral Spokesperson: Mayoral Public Affairs Department, Office of the Executive Mayor;

2.3.3. Mr Stefan de Villiers - Executive Head: Office of the Executive Mayor;

2.3.4. Mr Mathew Gerstner - Acting Mayoral Spokesperson, Office of the Executive Mayor, and;

2.3.5. Mr Tiyiselani Babane - Strategic Executive Head: Office of the Speaker.

2.4. The specific allegations against the Executive Mayor, Cllr. Tshepiso Solly Msimanga were inter alia that:

2.4.1. He issued a public announcement banning the use of blue lights with sirens in and around the jurisdictional area of the City of Tshwane despite the fact that he had no authority in law to issue such a directive and thus acted ultra vires;
2.4.2. He deliberately and willfully misled the public regarding the constitution and the subsequent reconstitution of the Mayoral Committee;

2.4.3. He misled the public by stating that the previous Mayoral Committee had taken a decision to purchase a new fleet of BMW’s for its members; and;

2.4.4. He announced that he will acquire a cheaper official vehicle than that of the former Executive Mayor and failed to acknowledge that the vehicle he used was a donation from BMW South Africa.

2.5. Preliminary investigations were conducted on the above specific allegations levelled against the Executive Mayor and it was established the allegations had no merit and were dismissed.

3. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established in terms of section 181(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that:

"The Public Protector has the power, as regulated by national legislation: -

(a) to 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;

(b) to report on that conduct; and

(c) to take appropriate remedial action".
3.3. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.4. The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.5. The Public Protector Act is also bestowed with power to resolve disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purpose of an investigation.

3.6. In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that: “When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.

3.7. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.8. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (paragraph 67);

3.9. Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action

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1 [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at paragraph [76].
that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.10. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow; (paragraph 69);

3.11. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to; (paragraph 70);

3.12. The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made; (paragraph 71);

3.13. Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (paragraph 71(a));

3.14. She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

3.15. “Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case” (paragraph 71(e)).

3.16. The Constitutional Court further held that the remedial action taken by the Public Protector has binding effect, “When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness,
appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”

3.17. The jurisdiction of the Public Protector was not disputed by any of the parties.

4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of an alleged improper conduct or maladministration. Section 6 of the Public Protector Act recognises the Public Protector’s authority to investigate and report her/his findings regarding any complaint lodged.

4.2. Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1. What happened?

4.2.1.2. What should have happened?

4.2.1.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?

4.2.1.4. In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?
4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. The evidence was evaluated and a determination made on what happened based on a balance of probabilities. In the *Public Protector versus Mail and Guardian*, 2011(4) SA 420 (SCA), the Supreme Court of Appeal (SCA) made it clear that it is the Public Protector’s duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met or complied with by the government institutions that were under investigation to prevent maladministration and prejudice. In this case, key reliance was placed on the institutions’ comprehensive Staffing Policy of the City of Tshwane in addition to national laws, policies and guidelines.

4.2.4. The substantive scope of the investigation focused on compliance with the law and prescripts regarding the complaint and allegations.

4.3. Based on the analysis of the complaints including the allegations contained in the media reports as well as information that came to my attention from various sources, the following issue were identified to inform and focus the investigation:

4.3.1 **Issue 1:** Whether there were any irregularities in the appointments of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality and;

4.3.2 **Issue 2:** Whether the former Executive Mayor misled the public by making pronouncements banning the use of blue lights in the City, the reconstitution of the Mayoral Committee and the utilization of the fleet of BMWs by the Members of Mayoral Committee.
4.4. The Key Sources of information

4.4.1. Documentation

Copies of documents listed below were obtained and perused during the investigation:

4.4.1.1. Report for Mr Mbabane’s temporary contract;
4.4.1.2. Shortlisting report for Group Head: Office of the Speaker;
4.4.1.3. Summary of CV’s for Group: Head: Office of the Speaker;
4.4.1.4. Interview report for Group Head: Office of the Speaker;
4.4.1.5. Offer of employment and contract for Group Head: Office of the Speaker;
4.4.1.6. Report for Mr Mgobozil’s temporary contract;
4.4.1.7. E-mail correspondence between Mr Mgobozil and Ms Aucamp;
4.4.1.8. Advertisement for Executive Head: Mayoral Public Affairs and Media Relations (Job forum 8/2016);
4.4.1.9. Summary of applications for Executive Head: Mayoral Public Affairs and Media Relations;
4.4.1.10. Shortlisting report for Executive Head: Mayoral Public Affairs and Media Relations;
4.4.1.11. Summary of CVs for Executive Head: Mayoral Public Affairs and Media Relations;
4.4.1.12. Offer of employment for Executive Head: Mayoral Public Affairs and Media Relations;
4.4.1.13. A report for Mr de Villiers’s temporary contract;
4.4.1.14. Summary of applications for Executive Head: Private Office of the Executive Mayor;
4.4.1.15. Shortlisting report for Executive Head: Private Office of the Executive Mayor;
4.4.1.16. Mr Shingange about temporary appointment of Ms Aucamp;
4.4.1.17. A list of all applicants for the position of Chief of Staff;
4.4.1.18. Interview scoring sheets of all candidates;
4.4.1.19. Personal information sheet of Ms Aucamp;
4.4.1.20. Employment offer of Ms Aucamp approved on 24 October 2016, and;
4.4.1.21. Employment offer of Ms Aucamp approved on 31 October 2016.
4.4.2. Meetings and Interviews conducted

4.4.2.1. Meeting held with Ms Lindiwe Kwele, the former City Manager on 10 September 2018;

4.4.2.2. Meeting held with Ms Thea Louw, the Senior Strategic Executive Support Specialist: HR: Office of the Executive Mayor on 10 September 2018;

4.4.2.3. Meeting held with Ms Cynthia Ramulifho, the former Group Head: Human Resources Management on 11 September 2018;

4.4.2.4. Meeting held with Mr Gerald Shingange, the former Group Head: Human Resources Management on 11 September 2018;

4.4.2.5. Meeting held with Mr Msizi Myeza, the Acting Group Head: Office of the City Manager on 12 September 2018;

4.4.2.6. Meeting held with Mr Sam Mgobozi, the Executive Head and Spokesperson: Office of the Mayor on 12 September 2018;

4.4.2.7. Meeting held with Stephen de Villiers the Executive Head: Office of the Mayor on 12 September 2018;

4.4.2.8. Meeting held with Mr Babane the Executive Head: Office of the Speaker on 13 September 2018;

4.4.2.9. Meeting held with Dr Moeketsi Mosola, the City Manager on 19 September 2018;

4.4.2.10. Meeting held with former Cllr Solly Msimanga, the former Executive Mayor on 9 October 2018;

4.4.2.11. Meeting held with Mr Aluwani Themili, the Senior Forensic Audit Specialist on 15 October 2018;

4.4.2.12. Meeting held with Mr Moeketsi Tsimane, the Senior Forensic Audit Specialist on 15 October 2018;
4.4.2.13. Meeting held with Cllr Benjamin Disoloane, the Chief Whip and Leader of the Economic Freedom Fighters on 16 October 2018;

4.4.2.14. Meeting held with Cllr Selata Wa'Kwane, the Chief Whip and leader of the Congress of the People on 16 October 2018;

4.4.2.15. Meeting held with Mr Blessing Manale, the former Mayoral Spokesperson People on 16 October 2018;

4.4.2.16. Meeting held with Mr Stefan de Villiers, the former Executive Head: Private Office of the Executive Mayor on 17 October 2018;

4.4.2.17. Meeting held with Ms Sendra Burmeister, the Chief Executive Officer: Landelani: on 17 October 2018;

4.4.2.18. Meeting held with Mr Frans Boschielo, the former Deputy City Manager: Governance and Support: on 18 October 2018;

4.4.2.19. Meeting held with Cllr Katlego Rachel Mathebe, the Council Speaker on 18 October 2018;

4.4.2.20. Meeting held with Cllr Cilliers Brink, the Council Speaker on 19 October 2018;

4.4.2.21. Meeting held with Ms Marieta Aucamp, the former Chief of Staff on 19 October 2018;

4.4.2.22. Meeting held with Ms Riana Zaayman, the Deputy Director: Human Resource Specialist on 23 October 2018;

4.4.2.23. Meeting held with Mr Bruno S Seabela the former SED: Group Legal Services on 24 September 2018

4.4.3. Correspondence exchanged with the Public Protector:

4.4.3.1. A letter of the complainant lodged on 13 October 2016;

4.4.3.2. Correspondence sent to the City Manager, Dr Moeketsi Mosola dated 21 and 30 May 2018; 6 June 2018 and 23 July 2018;

4.4.3.3. Correspondence from the City Manager, Dr Moeketsi Mosola dated 22 May 2018; 4, 25 and 28 June 2018;
4.4.3.4. Subpoenas dated 28 August 2018 sent to Cllr Solly Msimanga, Dr Moeketsi Mosola, the City Manager, Ms Lindiwe Kwele the former Acting City Manager, Ms Thea Louw the Senior Strategic Executive Support Specialist: HR: Office of the Executive Mayor; Ms Cynthia Ramulifho, the former Group Head: Human Resources Management, Mr Gerald Shingange the former Group Head: Human Resources Management, Mr Msizi Myeza, the Acting Group Head: Office of the City Manager, Mr Sam Mgobozi, the Executive Head and Spokesperson- Office of the Mayor, Stephen de Villiers, the Executive Head: Office of the Mayor and Mr Babane, the Executive Head: Office of the Speaker;

4.4.3.5. Subpoenas dated 8 October 2018 sent to Mr Aluwani Themili, the Senior Forensic Audit Specialist; Mr Moeketsi Tsimane the Senior Forensic Audit Specialist; Cllr Benjamin Disoloane the Chief Whip and leader of the Economic Freedom Fighters, Cllr Selata Wa’Kwane, the Chief Whip and leader of the Congress of the People; Mr Blessing Manale, the former Mayoral Spokesperson; Mr Stefan de Villiers, the former Executive Head: Private Office of the Executive Mayor; Ms Sendra Burmeister, the Chief Executive Officer, Landelanhi; Mr Frans Boshielo, the former Deputy City Manager: Governance and Support; Cllr Katlego Rachel Mathebe, the Council Speaker; Cllr Cilliers Brink, the Member of the Mayoral Committee; Ms Marieta Aucamp, the former Chief of Staff; Ms Riana Zaayman, the Deputy Director: Human Resource Specialist; Mr Bruno S Seabela the former SED: Group Legal Services;

4.4.3.6. Notices in terms of Section 7(9)(a) of the Public Protector Act were served on the former Executive Mayor Mr Msimanga; former Acting Municipal Manager Ms Kwele and on the Group Head: Human Resources Management, Mr Shingange. The section 7(9) provides that if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond therewith, in any manner that may be expedient under the circumstances.
4.4.3.7. I have received written submissions in response to the notices the content of which was taken into account in the final report.

4.4.4. Legislation and other prescripts


4.4.4.2. The Public Protector Act 23 of 1994;

4.4.4.3. The Municipal Finance Management Act, No 56 of 2003 (MFMA);

4.4.4.4. Municipal Regulations on Minimum Competency Levels, 2007;

4.4.4.5. Guidelines for Municipal Competency Levels: Other Senior Managers, 2007;


4.4.4.7. Municipal Systems Act - Regulations on Appointment and Conditions of Employment of Senior Managers, 2014;

4.4.4.8. The Labour Relations Act, 66 of 1995; and


4.4.5. Codes

4.4.5.1. The Code of Conduct, Municipal Systems Act;

4.4.6. Policies

4.4.6.1. The Staffing Policy of the City of Tshwane Metropolitan Municipality, 2008 and;

4.4.6.2. Top Management Staffing Policy of the City of Tshwane Metropolitan Municipality policy number CoT- P09 /2012.
5. THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAWS AND PRESCRIPTS:

5.1. With regard to whether there were any irregularities in the appointments of Senior Executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality;

Issues that are Common Cause
It is not disputed that;

5.1.1. Subsequent to the Democratic Alliance (DA) taking over the administration of the City of Tshwane Metropolitan Municipality following the Local Government elections held in August 2016, some officials were appointed in the offices of the Executive Mayor and the Council Speaker on a temporary basis and later on five year fixed term contracts.

5.1.2. The Staffing Policy was the instrument used to effect these appointments.

Issues that are in dispute

5.1.3. The issue for my determination is whether the City of Tshwane complied with the provisions of the Staffing Policy in appointing officials in the offices of the Executive Mayor and Council Speaker,

5.1.4. I also have to determine whether the successful candidates met the necessary requirements for the positions that they were appointed to and whether the Staffing Policy of the City of Tshwane Metropolitan Municipality made any provision for staff to be appointed on a temporary basis or fixed term performance based contracts.
5.1.5. Subsequent to the Local Government elections held in August 2016, the Democratic Alliance took over the administration of the City of Tshwane. Mr Solly Msimanga was elected as the Executive Mayor and Ms Katlego Mathebe was elected as a Council Speaker.

5.1.6. Thereafter it appears that during or about August/September 2016, a need was determined and/or identified for filling these positions on a temporary (six months) basis. Subsequently, five year fixed term performance based appointments in both offices of the Executive Mayor and Council Speaker were made.

5.1.7. In this regard, it was alleged that certain officials were appointed irregularly on both types of appointments (temporary and fixed term contract). Below, I deal with the processes followed in the appointment of these officials.

The appointment of Ms Marietha Aucamp as the Chief of Staff in the Office of the Executive Mayor

5.1.8. Following the inauguration of Cllr. Msimanga as the Executive Mayor of the City of Tshwane Metropolitan Municipality, it appears that a need was identified for an appointment of a Chief of Staff in the Office of the Executive Mayor. This was necessitated by the fact that the position became vacant from February 2016 subsequent to the termination of the services of the previous incumbent, on account of expiry of his contract.

5.1.9. Subsequent to the departure of the previous incumbent, Ms Dora Nteu was appointed to act in the position of Chief of Staff. She then left to go on maternity leave. In his submission of 30 August 2016, the Acting Strategic Executive Director responsible for Corporate and Shared Services in the Municipality, Mr Gerald Shingange made a request for approval for the contract appointment of Ms Marietha Aucamp (Ms Aucamp) for a period of six (6) months in the capacity of a Chief of Staff in the Office of the Executive Mayor.
5.1.10. In his submission, Mr Shingange stated that it was critical for the position of a Chief of Staff to be filled so as to oversee the overall functioning of the Office of the Executive Mayor. He requested that Ms Marietha Aucamp be appointed to the position for a contract period of six (6) months. This was to allow for the recruitment processes to be adhered to after which, the position would be filled on a fixed-term contract as advertised.

5.1.11. The Chief Financial Officer (CFO) of the Municipality did not object to the appointment. Further, in his comments to the submission, the Group Legal Counsel confirmed that the City Manager had the authority to approve the staff establishment within a policy framework in particular, the approved Staffing Policy determined by the Municipal Council and subject to any applicable legislation as envisaged in section 66 of the Municipal Systems Act, 2000.

5.1.12. The Group Legal Counsel supported the appointment of Ms Aucamp on a six (6) months contract position as the Chief of Staff on condition that such an appointment complies with the labour prescripts as well as other applicable legal instruments.

5.1.13. The submission thus recommended the appointment of Ms Aucamp on a contract basis with effect from 1 September 2016 in the capacity of a Chief of Staff in the Office of the Executive Mayor. The Acting City Manager Ms Lindiwe Kwele approved the appointment on 31 August 2016.

5.1.14. On 7 July 2016, the position of Chief of Staff in the Office of the Executive Mayor of the City of Tshwane Metropolitan Municipality was advertised for a performance based fixed term five (5) year contract and the closing date for submission of applications was 21 July 2016. The closing date was later extended to 31 August 2016. Ms Aucamp applied for this position on 30 August 2016. The critical requirements for the position were inter alia the following;

(a) A relevant Bachelor's Degree or equivalent qualification;
(b) Twelve (12) years' experience of which five (5) years must be at senior management level;
(c) Good knowledge and interpretation of policy and legislation;
(d) Good knowledge of performance management;
(e) Good governance;
(f) Good knowledge of Supply Chain Management, Regulations and Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
(g) Ability in making high risk decisions of a long term and strategic nature;
(h) Comply with the MFMA unit standards as prescribed by Regulation 493 of 15 June 2007 as published in the Government Gazette 29967 of 15 June 2007;
(i) No criminal record (excluding previous conviction relating to political activities in the previous dispensation) and such a person shall undergo security vetting; and;
(j) Computer literate.

5.1.15. Seventeen (17) applications were received for the position of Chief of Staff and one of the applicants was Ms Aucamp. In her CV, Ms Aucamp did not indicate her academic qualifications. However in the "Application for Employment at City of Tshwane" form she listed her highest qualification as Std 10, obtained from the Hoerskool Verwoerdburg in 1995. Her inscription in the application form appeared as follows;

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<thead>
<tr>
<th>If yes, indicate the expiry date of the PDP.</th>
<th>n/a</th>
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<tbody>
<tr>
<td>E. QUALIFICATIONS (Additional information may be provided on your CV.)</td>
<td></td>
</tr>
<tr>
<td>Highest school qualification (grade) completed</td>
<td>Name of school/training institution</td>
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<tr>
<td>ST 10</td>
<td>Hoerskool Verwoerdburg</td>
</tr>
<tr>
<td>Highest tertiary/technical qualification obtained</td>
<td>Name of institution</td>
</tr>
</tbody>
</table>
5.1.16. During the investigation, it was noted that Ms Aucamp had undergone a competency assessment conducted by HCM Consulting and Assessment. It was noted in the assessment form that the Educational Qualifications are listed as a B-Tech. The form was completed longhand (hand written).

5.1.17. According to Mr Shingange, the shortlisting for candidates who would be interviewed for the position was held and attended by the Executive Mayor, Mr Gerald Shingange and Ms Thea Louw. However, when the Investigation team interviewed the Executive Mayor on 9 October 2018, he stated that he only got involved in the recruitment process for the appointment of the Chief of Staff in his office when he had to preside over the interviews. At that stage the shortlisting was already completed under the guidance of Mr Shingange.

5.1.18. The City of Tshwane was requested to provide me with the shortlisting matrix however it was indicated that the document had gone missing from the file of Ms Aucamp and could not be found.
5.1.19. The shortlisted candidates were invited to attend the interviews which were held on 24 October 2016 in the Office of the Executive Mayor. The interview panel consisted of the Executive Mayor who was the Chairperson of the interview panel, the Acting City Manager, Ms Lindiwe Kwele, Mayoral Committee member, Cllr. Cilliars Brink and Mr Gerald Shingange, the Acting Strategic Executive Director responsible for Corporate and Shared Services. The interview panel scored Ms Aucamp as follows;

<table>
<thead>
<tr>
<th>NAMES OF PANEL MEMBERS</th>
<th>NAMES OF CANDIDATES</th>
<th>CLR S MSIMANGA</th>
<th>MMC BRINK</th>
<th>L KWELE</th>
<th>TOTAL</th>
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<tr>
<td>Race</td>
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<td>A</td>
<td>M</td>
<td>10</td>
<td>18</td>
<td>15</td>
<td>43</td>
</tr>
<tr>
<td>Ms M Aucamp</td>
<td>W</td>
<td>23</td>
<td>24</td>
<td>17</td>
<td>64</td>
</tr>
</tbody>
</table>

5.1.20. It was noted from the interview questionnaire issued to the members of the interview/selection panel that, Ms Aucamp was never questioned about her academic qualifications. Despite Ms Aucamp not meeting some of the important requirements for the position, she was nevertheless recommended for appointment and was ultimately appointed on 24 October 2016. She accepted the appointment on 28 October 2016 at a salary notch of R1 219 663.00 per annum.

5.1.21. During the investigation, the information and documentation received from Ms Aucamp and the City of Tshwane were examined. No evidence could be found indicating that Ms Aucamp had a Bachelor’s degree or any equivalent qualification. In addition, nothing was submitted which served as proof or evidence that she met some of the requirements for appointment to the position.

5.1.22. For example, no evidence was submitted to prove that she had any knowledge about performance management, Supply Chain Management processes and procedures of
the Municipality nor was she aware of the MFMA unit standards prescribed by Regulation 493 of 15 June 2007 as published in the Government Gazette 29967 of 15 June 2007.

5.1.23. Ms Aucamp was interviewed by the investigation team on 19 October 2018. During the interview, she denied having claimed that she had a Bachelor’s degree. She stated that she was well aware that she did not possess the relevant qualifications for the position but was told that there was a waiver clause which will serve as a deviation from the normal recruitment processes in as far as her qualification was concerned. She confirmed that her highest qualification was matric and that is what she stated in her application for appointment into the position.

5.1.24. Regarding the fact that it appeared in the hand written Assessment Centre Personal Information Sheet form that her highest qualification was B.Tech, she denied having filled in the information and stated that she suspects that the document was tempered with.

5.1.25. With regard to leaving her position as a Ward Councillor and Member of the Mayoral Committee (MMC) for Roads and Transport to become a Chief of Staff in the Office of the Mayor, she stated that Cllr. Solly Msimanga requested her to assist him in managing his Mayoral Office as there were staff shortages in that office. Following the request by the Executive Mayor, she resigned as a Councillor.

5.1.26. She concluded her testimony by stating that in May 2018, she had to resign because the EFF members stormed in a Mayoral Committee meeting demanding that she be dismissed for not being in possession of the necessary qualifications for the position of the Chief of Staff in the Office of the Executive Mayor.

5.1.27. The former Acting City Manager, Ms Lindiwe Kwele was interviewed by the investigation team on 10 September 2018. During the interview she confirmed that she knew about the temporary and fixed term contract appointment of Ms Aucamp.
She stated that Ms Aucamp was the preferred candidate of the Executive Mayor as he felt she was an official that he could work with in his Mayoral Office. She further confirmed that she approved the appointment of Ms Aucamp on the advice from the City’s Legal Services and Human Resources departments.

**The appointment of Mr Samkelo Mgoboz as the Executive Head responsible for the Mayoral Public Affairs and Spokesperson**

5.1.28. On 2 September 2016, the Executive Director responsible for Human Resource Management in the City of Tshwane, Mr Gerald Shingange made a submission requesting approval for the contract appointment of Mr Samkelo Mgoboz (Mr Mogoboz) as the Mayoral Spokesperson and the Executive Head responsible for Mayoral Public Affairs for a period not exceeding six (6) months.

5.1.29. This position became vacant due to the previous incumbent to the position having been transferred to the division, Strategic Interest Group Development. This resulted in a need to fill the vacancy.

5.1.30. According to Mr Shingange, it was necessary that the vacancy be filled on a temporary basis and for a period not exceeding six (6) months whilst processes were underway to recruit an official that would fill the position on a five year fixed term contract in accordance with the Staffing Policy. Mr Shingange therefore made a submission for the appointment of Mr Mgoboz and recommended his appointment at a salary notch of R1 024 634.00

5.1.31. The Legal Services Department of the City of Tshwane did not support the request. In his comments, the Legal Counsel stated that the appointment of Senior Management Officials in the City of Tshwane is regulated in the Staffing Policy and should be in accordance with the provisions of the policy. According to the Legal Counsel, the staffing policy makes no provision for the appointment of senior staff members on temporary and/or interim basis. The Legal Counsel thus advised that the
Staffing Policy provides for appointment on fixed term contracts after the recruitment process has been followed. He stated that appointments that are not provided for in the policy would be irregular and did not support the appointment of Mr Mgobozi on a temporary basis.

5.1.32. The signatories to the request were the Executive Director: Human Resources Management, Mr Gerald Shingange in his capacity as the author and requestor of the submission; the Strategic Executive Director: Corporate and Shared Services, Ms C Ramulifho who was expected to recommend or not recommend the request for the appointment of Mr Samkelo Mgobozi; and the Executive Head Mayoral Public Affairs.

5.1.33. Ms Marietha Aucamp, the Chief of Staff in the Office of the Executive Mayor who was also expected to recommend or not recommend the appointment also signed the submission. The other signatory was the Deputy City Manager Governance and Support Services: Mr F Boshielo who was also expected to recommend or not recommend the request for the appointment. Lastly, the final signatory to the submission was Ms Lindiwe Kwele, the Acting City Manager who was expected to approve or not approve the submission. It should be noted that Ms Ramulifho did not sign the submission.

5.1.34. Ms Aucamp signed the submission on 15 September 2016 recommending the appointment. Mr F Boshielo signed it on 16 September 2016 and recommended the appointment as amended but made a comment before signing the submission which read,

“(1) Legal comments are not favourable.
(2) Subject to candidate meeting minimum requirements of the position”.

5.1.35. The submission requesting such an appointment was "ostensibly" signed by Ms Lindiwe Kwele in her official capacity as the Acting City Manager of Tshwane Metropolitan Municipality.
5.1.36. However, there is no date written or affixed which indicates when the submission was signed approving the appointment. Below the signature, there is an inscription and/or comment which reads thus;

"APPROVED ON CONDITION THAT THE EMPLOYMENT CONTRACT SPECIFICALLY PROVIDES THAT THE INCUMBENT DOES NOT HAVE AN EXPECTATION OF A RENEWAL OF THIS CONTRACT OR AN EXTENSION."

The picture below depicts the signature section of the submission;

5.1.37. On 10 September 2018, Ms Kwele was interviewed and questioned by the investigation team about the submission and was also requested to explain the anomalies in as far as her signature on approval of the appointment was concerned.

5.1.38. She denied that the signature as well as the comment below the signature were hers. She denied having signed such a document and suggested that the signature and the written comments were a forgery.
5.1.39. In total disregard of the advice from the Group Legal Services of the Municipality, Mr Mgobozi was appointed at a salary notch of R1 024 634.00 per annum for a period of six (6) months whilst awaiting the recruitment processes to unfold so that the position could be filled on a fixed-term contract.

5.1.40. On 12 September 2016 at 11h22, Ms Marietha Aucamp forwarded an e-mail correspondence to Ms Thea Louw of the City of Tshwane. In her e-mail Ms Aucamp wrote as follows;

"Please replace [redacted] with Sam Ngobozi (sic) as the Spokesperson to the Executive Mayor. His CV and application to follow asap". (own emphasis)

5.1.41. On the same date at 14h16, Mr Samkelo Mgobozi forwarded an e-mail correspondence to Ms Marietha Aucamp under the subject, “CV and Degree.” In his e-mail correspondence, Mr Mgobozi wrote as follows:

"Pursuant to our telephonic conversation this morning, please find attached the CV and copy of Degree Certificate...."

5.1.42. On 13 September 2016 at 08h44, Ms Marietha Aucamp forwarded an e-mail correspondence to Ms Thea Louw in which she corresponded as follows;

"Hiermee die inligting soos besprek van Sam Mgobozi. Ek vra dat Denise die nodige docs vir hom aanstuur vir voltooiing.

Hy sal Donderdag in Pretoria wees as sy docs moontlik teen dan gereed kan wees asb”.

5.1.43. On 2 October 2016 the position of the Executive Head responsible for Mayoral Public Affairs and Media Relations for the Office of the Executive Mayor of the City of Tshwane Metropolitan Municipality was advertised for a five year performance based
contract at a salary notch of R1 024 634.00 – R1 536 951.00. The closing date for submission of applications was 14 October 2016.

5.1.44. The necessary appointment requirements for the position were *inter alia* the following:

(a) A relevant Bachelor’s Degree or equivalent qualification;
(b) Twelve years’ experience of which at least five years must be at senior management level;
(c) Good knowledge and interpretation of policy and legislation;
(d) Good knowledge of performance management;
(e) Good governance;
(f) Good knowledge of Supply Chain Management, Regulations and Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
(g) Ability in making high risk decisions of a long term and strategic nature;
(h) Comply with the MFMA unit standards as prescribed by Regulation 493 of 15 June 2007 as published in the Government Gazette 29967 of 15 June 2007;
(i) No criminal record (excluding previous conviction relating to political activities in the previous dispensation) and such a person shall undergo security vetting; and
(j) Computer literacy.

5.1.45. The successful candidate was expected to be in possession of the following core competencies for the position;

(a) Strategic direction and leadership;
(b) People management; programme and project as well as financial management;
(c) Change management and leadership; as well as governance leadership.

5.1.46. Mr Mgobozi applied for the position on 7 October 2016. In his application he attached his CV, copy of Identity document, a statement of his matric results but not a matric certificate; confirmation of his matric pass marks from Westville Boys High School.
signed by the Headmaster, Mr T W Hall together with a testimonial from the Westville Boys High School and a copy of a University of Cape Town’s Bachelor of Arts Degree Certificate majoring in English Language & Literature and Political Studies conferred on him on 12 December 2012.

5.1.47. He was shortlisted and interviewed for the position. The interview panel consisted of Ms Marietha Aucamp who was the Chairperson of the interviews, Mr Gerald Shingange of HR, Cllr. Cilliers Brink and the Acting City Manager, Ms Lindiwe Kwele.

5.1.48. The interviews were held on 28 October 2016 and Mr Mgobozi was recommended as the successful candidate despite the fact that he did not meet the essential requirements and competencies for the position. The picture below depicts the score sheet in respect of each member of the panel.

<table>
<thead>
<tr>
<th>NAMES OF PANELMEMBERS</th>
<th>L KWELE</th>
<th>MMC BRINK</th>
<th>M AUCAMP</th>
<th>G SHINGANGE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAMES OF CANDIDATES</td>
<td>Race</td>
<td>Gender</td>
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<tr>
<td>Mr S Mgobozi</td>
<td>A</td>
<td>M</td>
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<td>17</td>
<td>23</td>
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<tr>
<td>Mr SE XXXX</td>
<td>A</td>
<td>M</td>
<td>16</td>
<td>17</td>
<td>11</td>
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<tr>
<td>Ms LPA XXXX</td>
<td>A</td>
<td>F</td>
<td>15</td>
<td>26</td>
<td>11</td>
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5.1.49. During the investigation, it was noted that in the declaration of interest forms issued to members of the panel before the interviews, Ms Aucamp stated that she did not know Mr Mgobozi despite the fact that she is the first person who communicated with him telephonically about the position and received a copy of his CV and degree certificate which she forwarded to Ms Thea Louw.

5.1.50. On 12 September 2018, Mr Mgobozi was interviewed by the Public Protector as part of the investigation. During the interview, he stated that he received a call from Ms Marietha Aucamp for him to submit his CV and copies of academic qualifications for the position of a Spokesperson for the Executive Mayor of the City of Tshwane.
5.1.51. He confirmed that subsequent to the telephonic conversation with Ms Aucamp about the position, he forwarded his CV to her. Regarding his lack of experience, he was of the view that he had the necessary experience for the position. He stated that prior to taking up this position he was working for the Democratic Alliance in Cape Town.

5.1.52. He stated that he did not know why he was selected for the position as he did not appoint himself. He admitted that he did not possess some of the requirements and core competencies for the position as advertised. He was however of the view that he was working very well with staff in the Office of the Executive Mayor.

**The appointment of Mr Stefan de Villiers as Executive Head responsible for the Office of the Executive Mayor**

5.1.53. On 6 September 2016, Mr Gerald Shingange prepared a submission for the Acting City Manager to approve the contract appointment of Mr Stephan de Villiers (Mr De Villiers) as an Executive Head who would be responsible for the Private Office of the Executive Mayor for a period not exceeding six (6) months.

5.1.54. According to Mr Shingange, the appointment was necessitated by the transfer of the previous incumbent to another department within the Municipality. In the submission, Mr Shingange stated that the position was going to be advertised as part of preparatory measures put in place for the beginning of the new political term of office.

5.1.55. He therefore felt it necessary that in the interim, the position be filled on a temporary basis whilst awaiting the recruitment processes to take place. He proposed that Mr de Villiers be appointed on a temporary basis to enable the Office of the Executive Mayor to perform its duties and render services to the people of Tshwane.

5.1.56. The CFO of the Municipality allocated a budget for this appointment. However, the Group Legal Services Department did not support the appointment of Mr de Villiers citing failure to comply with the requirements entailed in the Staffing Policy of the
Municipality. In this regard, reference was made to paragraphs 8.5.7, 5.4 and 6.1 of the Staffing Policy. In addition, reference were made to sections 11(3) (a) & (n), 51, 67(1) and 72(1) (c) of the Local Government Municipal Systems Act 32 of 2000.

5.1.57. Despite the advice and/or opinion from the Group Legal Services Department, Mr Shingange went ahead with his request for the appointment of Mr de Villiers and he was indeed appointed.

5.1.58. The signatories to the request were the Executive Director: Human Resource Management, Mr Gerald Shingange in his capacity as the author and requestor of the submission, the Strategic Executive Director Corporate and Shared Services: Ms C Ramulifho who was expected to recommend or not recommend the request for the appointment.

5.1.59. Ms Marietha Aucamp, the Chief of Staff in the Office of the Executive Mayor who was also expected to recommend or not recommend the appointment also signed the submission. The other signatory was the Deputy City Manager: Governance and Support Services, Mr F Boshielo who was also expected to recommend or not recommend the request for the appointment.

5.1.60. Lastly, the final signatory to the submission was Ms Lindiwe Kwele, the Acting City Manager who was expected to approve or not approve the submission for the contract appointment of Mr Stefan de Villiers for a period not exceeding six (6) months.

5.1.61. On 14 September 2016, Ms Ramulifho signed the submission and recommended the appointment and inscribed the following comments,

“(1) Subject to favourable legal comment and staffing policy compliance”. 
5.1.62. On 15 September 2016, Ms Aucamp signed the submission with no comments. However, Mr Boshielo signed the submission without putting a date when he signed. He recommended the appointment subject to the following conditions and comments:

"(1) Legal comments are not favourable.
(2) Subject to candidate meeting minimum qualification and requirements of the position."

5.1.63. The Acting City Manager, Ms L Kwele did not sign the submission approving this appointment. However, Mr de Villiers was appointed.

5.1.64. On 2 October 2016, the position of an Executive Head responsible for the Private Office of the Executive Mayor of the City of Tshwane Metropolitan Municipality was advertised for a five-year fixed term performance based contract at a salary notch of R1 024 634.00 – R1 536 951.00. The closing date for submission of applications was 14 October 2016.

5.1.65. The critical appointment requirements for the position were *inter alia* the following:

(a) A relevant Bachelor’s Degree or equivalent qualification;
(b) Twelve years’ experience of which at least five years must be at senior management level;
(c) Good knowledge and interpretation of policy and legislation;
(d) Good knowledge of performance management;
(e) Good governance;
(f) Good knowledge of Supply Chain Management, Regulations and Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
(g) Ability in making high risk decisions of a long term and strategic nature;
(h) Comply with the MFMA unit standards as prescribed by Regulation 493 of 15 June 2007 as published in the Government Gazette 29967 of 15 June 2007;
(i) No criminal record (excluding previous conviction relating to political activities in the previous dispensation) and such a person shall undergo security vetting; and;  
(j) Computer literate.

5.1.66. The successful candidate was expected to be in possession of the following core competencies for the position;

(a) Strategic direction and leadership;  
(b) People management;  
(c) Program and project management;  
(d) Financial management;  
(e) Change management and leadership; as well as; Governance leadership.

5.1.67. The successful candidate’s primary functions were to be the following;

(a) To exercise control over the Private Office of the Executive Mayor functions subject to legislated responsibilities, national standards and the directives of the Strategic Executive Head with the aim to maintain an impartial, accountable, transparent and efficient Private Office of the Executive Mayor service within the City of Tshwane.

5.1.68. The incumbent was to be responsible and accountable for the following key performance areas;

(a) Manage and oversee the establishment, stabilisation, consolidation and sustainability of support to initiatives by the Office of the Executive Mayor;  
(b) Manage and oversee the establishment, stabilisation, consolidation and sustainability of initiatives by Protocol and Ceremonial Services;  
(c) Manage and oversee the establishment, stabilisation, consolidation and sustainability of initiatives by Donor Program Management;
(d) Manage and oversee the establishment, stabilisation, consolidation and sustainability of initiatives by Mayoral Spokespersons Operations;

(e) Manage and oversee the establishment, stabilisation, consolidation and sustainability of initiatives by Mayoral Executive Assistance; and;

(f) Provide Private Office of the Executive Mayor, responsibilities in relation to legislated responsibilities.

5.1.69. On 6 October 2016 Mr de Villiers applied for the position. In his application he attached copies of his CV, Identity Document, Senior Certificate, "Personal Fitness Trainer" certificate issued by the Exercise Teachers Academy as well as a "Basic Life Support for Healthcare (sic) Providers Course" issued by Messrs. Claassen & Claassen Training on 1 September 2014. In his application form for employment, Mr de Villiers stated that he has nine (9) years previous work experience having worked with the Democratic Alliance and he stated his highest qualification as grade 12 (matric) with highest tertiary and/or technical qualification obtained being the Personal Fitness Trainer Certificate and the Basic Life Support for Healthcare Providers Course referred to above.

5.1.70. Mr de Villiers was shortlisted and interviewed for the position on 28 October 2016. The score summary following the interviews were as follows;

<table>
<thead>
<tr>
<th>NAMES OF PANEL MEMBERS</th>
<th>OF CANDIDATES</th>
<th>L KWELE BRINK</th>
<th>MMC BRINK</th>
<th>M AUCAMP</th>
<th>G SHINGANGE</th>
<th>TOTAL</th>
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<tr>
<td>Mr AS de Villiers</td>
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<td>55</td>
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</table>
5.1.71. Despite the fact that Mr de Villiers was neither in possession of the requisite qualifications for the position nor the necessary experience, he was appointed on 31 October 2016 at a salary notch of R1 024 634.00 per annum.

The appointment of Mr Mathew Gerstner as Acting Mayoral Spokesperson responsible for the Office of the Executive Mayor

5.1.72. Amongst the allegations made by the Caucus Leader of the opposition in the Municipal Council, Cllr. Mapiti Matsena of the African National Congress (ANC) in his complaint, alleged that Mr Mathew Gerstner has been extensively quoted in the media purporting to be an “Acting Mayoral Spokesperson”. The allegation was investigated and it transpired that, Mr Gerstner was never officially appointed as an employee of the City of Tshwane. According to the information and evidence obtained during the investigation, Mr Gerstner was appointed at the time of the transition in the Municipality from the previous administration to assist the Executive Mayor during the time of his election and inauguration otherwise he was not an employee of the Municipality but a member of the DA.

5.1.73. This was confirmed by some of the municipal employees who were interviewed during the investigation. During the investigation, allegations were that, the DA flew Mr Gerstner from Cape Town to Pretoria at municipal expense to assist Cllr. Solly Msimanga in his election and inauguration as the Executive Mayor.

5.1.74. Mr Gerstner thus acted as the Executive Mayor’s Spokesperson for that period until Mr Samkelo Mgozozi was appointed to be the Mayoral Spokesperson.

5.1.75. During the investigation, it was confirmed with the Municipality that Mr Gerstner was never an official employee of the Municipality. It was also confirmed that, indeed, at some stage after the 2016 Local Government elections, Mr Gerstner acted as a Spokesperson for the Mayor. On 3 October 2016, he issued the following media statement about the affairs of the City of Tshwane Municipal Council;
TSHWANE SPEAKER AND CHIEF WHIP TO BRIEF MEDIA ON ANC DISRUPTIONS TO COUNCIL, CRIMINAL CHARGES & ETHICS INVESTIGATIONS

03 October 2016
Release: Immediate

Today, 03 October 2016, Tshwane Speaker Katlego Mathebe and Chief Whip of Council Christo van den Heever will brief the media on events following disruptions to the council meeting of last Tuesday.

During the council meeting the ANC caucus, and certain ANC councillors, violently disrupted the meeting, breached the rules of order and repeatedly disobeyed the Speaker’s rulings.

Out of this conduct the City of Tshwane has taken steps to bring order to the ANC caucus, through both criminal processes and internal Ethics investigations to ensure that the business of governing Tshwane continues smoothly.

The media is invited to attend as follows:

DATE: 03 October 2016
TIME: 14:00 for 14:15
VENUE: Centurion Council Chamber, Corner Basden Avenue & Rable Street, Centurion

Media enquiries:
Matthew Gerstner
Acting Spokesperson to the Mayor
082 96 96 041

The appointment of Mr Tiyiselani Babane as Strategic Executive Head responsible for the Office of the Municipal Council Speaker

5.1.76. Subsequent to the appointment of the Chief of Staff in the Office of the Mayor on a temporary basis, a need was identified for an appointment of a Strategic Head who would be responsible for the Office of the Council Speaker, Cllr Katlego Rachel Mathebe.

5.1.77. On 30 August 2016, Mr G M Shingange made a submission requesting an approval for the contract appointment of a Strategic Executive Head who would be responsible
for the Office of the Council Speaker. The request was for an approval for the contract appointment for a period not exceeding six (6) months.

5.1.78. It appeared from the documents obtained during the investigation that the position became vacant on 10 August 2016 due to the termination of services of the previous incumbent as a result of the expiry of his employment contract with the City. According to Mr Shingange’s submission, the filling of the vacancy was necessitated by a need to urgently provide support services to the incumbent Council Speaker to enable her to perform her statutory duties.

5.1.79. Mr Shingange stated in his submission that the position had been advertised for a five year fixed term performance based contract. However, he felt that in the interim and whilst awaiting the recruitment processes to unfold, a temporary placement in the Council Speaker’s office should be made.

5.1.80. The CFO of the Municipality allocated a budget for this temporary appointment. However the Group Legal Services Department did not support the appointment due to the fact that the legal framework did not provide for temporary appointments especially for Top Management positions.

5.1.81. However Mr Shingange went ahead with the request as encapsulated in his submission and signed it on 14 September 2016. Ms Ramulifho did not sign and Mr Boshielo signed on 16 September 2016 and recommended the appointment subject to amendments and he made the following inscription and comments;

“(1) Legal comments are not favourable
(2) Subject to candidate meeting minimum qualifications and requirements of the position”

5.1.82. On page 7 (last page) of the submission there appears to be a signature of the Acting City Manager, Ms Lindiwe Kwele. There is no date next to the signature which
indicates when the document was signed. There is also no indication whether she approved or not approved the request in her official capacity as the Acting City Manager and as an Accounting Officer of the Municipality. The signature of the Acting City Manager had an inscription which reads as follows;

“APPROVED ON CONDITION THAT THE EMPLOYMENT CONTRACT SPECIFICALLY PROVIDES THAT THE INCUMBENT DOES NOT HAVE AN EXPECTATION OF A RENEWAL OF THIS CONTRACT OR AN EXTENSION.”

5.1.83. Ms Lindiwe Kwele was interviewed to explain her approval for the appointment of Mr Babane as the Executive Head in the Office of the Council Speaker, Cllr. Katlego Mathebe. In her response, she denied that the signature and the comment below the signature were hers. She denied having signed such a document and suggested that her signature and the comments made thereof were forged.

5.1.84. In total disregard of the advice from the Group Legal Services that the appointment of Mr Babane on a temporary basis was not supported, he was nevertheless appointed at a salary notch of R1 219 663.00 per annum for a period of six (6) months whilst awaiting the recruitment processes to unfold so that the position could be filled on a five year fixed-term contract.

5.1.85. During the investigation it transpired that Mr Babane was appointed despite the Acting City Manager not supporting same because she viewed it as a non-emergency appointment. This displeased the Speaker and on 20 October 2016, she forwarded an e-mail correspondence to Acting Municipal Manager and stated that:

“...I have been in regular communication with DCM Mr Boshielo and Mr Shingange from HR and was made to believe that the report that authorised the appointment of the SEH in the Office of the Speaker was signed; and the contract can therefore be signed within 60 days. DCM Boshielo advised me on Friday the 14 October that you
have not yet signed the contract. Mr Babane have been reporting for duty from the date he signed the contract until today. I therefore request that you assist to solve the matter going forward.”

5.1.86. On the same day at 15h00, the Ms Kwele responded to the Council Speaker, Cllr Katlego Mathebe and informed her that she did sign the report approving the recruitment of the three (3) incumbents in the political offices on a six month contract. However she retracted her approval of all non-emergency appointments and the said officials were removed from the Municipality’s SAP system (which is the HR system containing databases of all City of Tshwane employees as well as payroll) According to the Acting City Manager the only emergency appointment which was justifiable was that of the Chief of Staff otherwise, due diligence was required for any other appointment.

5.1.87. Ms Kwele further stated that, to assist the political offices of the Executive Mayor and the Council Speaker, she requested HR to expedite the recruitment process so as to ensure that these offices function effectively and capacitated. According to her, there were no contracts nor appointment letters issued to any of the officials affected.

5.1.88. On Friday 21 October 2016 Cllr. Mathebe responded to Ms Kwele complaining that she could not understand the rationale for a Strategic Executive Head (SEH) in the office of the Council Speaker not be classified as an “emergency appointment”. According to Cllr. Mathebe, the Office of the Council Speaker cannot function without a Secretariat of Council. With regard to the issue pertaining to Mr Babane reporting for duty, Cllr. Mathebe stated that she was never advised of the retraction of his appointment. What she knew was that he reported for duty as he was advised and signed the Human Resources Commencement of Duty forms, submitted banking documentation and signed the employment contract on 27 September 2016 witnessed by Ms Thea Louw.
5.1.89. She concluded her correspondence by stating that the matter remains unresolved and requested Ms Kwele to find an amicable resolution of same urgently.

5.1.90. On 2 October 2016, the position of a Strategic Executive Head responsible for the Secretariat of the Council of the City of Tshwane Metropolitan Municipality was advertised for a five-year fixed-term performance-based contract at a salary notch of R1 219 663.00 – R1 829 495.00. The closing date for submission of applications was 14 October 2016.

5.1.91. The critical appointment requirements for the position were inter alia the following;

(a) A relevant Bachelor’s Degree or equivalent qualification;

(b) Twelve years’ experience of which at least five years must be at senior management level;

(c) Good knowledge and interpretation of policy and legislation;

(d) Good knowledge of performance management;

(e) Good governance;

(f) Good knowledge of Supply Chain Management, Regulations and Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000)

(g) Ability in making high risk decisions of a long term and strategic nature;

(h) Comply with the MFMA unit standards as prescribed by Regulation 493 of 15 June 2007 as published in the Government Gazette 29967 of 15 June 2007.

(i) No criminal record (excluding previous conviction relating to political activities in the previous dispensation) and such a person shall undergo security vetting; and;

(j) Computer literate.

5.1.92. The successful candidate was expected to be in possession of the following core competencies for the position;

(a) Strategic direction and leadership;

(b) People management;
(c) Programme and project management;
(d) Financial management;
(e) Change management and leadership; and
(f) Governance leadership.

5.1.93. The successful candidate’s primary functions were to be the following:

(a) To prepare for and Chair the Council, subject to legislated responsibilities, national standards of the directives of the Speaker, to coordinate the section 79 Committees, including oversight committees as well as strengthen the public participation role, especially the support to Ward Committees to ensure the overall efficiency in the administration of Council meetings.

5.1.94. The incumbent will be responsible and accountable for the following key performance areas:

(a) Management of strategic administrative support functions to all Councillors and to assist them in the execution of their tasks;

(b) Facilitate public participation to enhance the involvement of communities;

(c) Strategically manage Secretariat service with regards to Council meetings and the Committees of Council;

(d) Ensure effective decision-taking and execution, as well as adherence to national legislation;

(e) Render a financial management service for the Office of the Speaker to ensure sound financial practices;
(f) Render human resources management and performance management functions to enhance the utilisation of personnel; and;

(g) Render liaison services to ensure effective communication to all stakeholders.

5.1.95. On 13 October 2016, Mr Babane applied for the position. In his application he attached copies of his CV, Identity Document, Senior Certificate, Driver’s License, Certificates confirming membership of Professional bodies and Academic Certificates.

5.1.96. Mr Babane was shortlisted for an interview which was held on 28 October 2016. The members of the interview panel were the Council Speaker, Cllr. Mathebe, Cllrs Kissoonduth and C Brink who are Mayoral Committee Members responsible for Community Safety as well as Corporate and Shared Services respectively, the Acting City Manager, Ms Kwele and Mr G Shingange.

5.1.97. Mr Babane was the successful candidate and was appointed to the position on 28 October 2016 and he accepted his appointment on 31 October 2016. At the interviews, Mr Babane was scored by the interview panel as follows:

<table>
<thead>
<tr>
<th>NAMES OF PANEL MEMBERS</th>
<th>Race</th>
<th>Gender</th>
<th>CLR RK MATHEBE</th>
<th>MMC DA KISSOONDUTH</th>
<th>MMC BRINK</th>
<th>L KWELE</th>
<th>TOTAL</th>
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<td>Mr XXXXXX</td>
<td>W</td>
<td>M</td>
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<td>M</td>
<td>14</td>
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<td>17</td>
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</tr>
<tr>
<td>Mr JT Babane</td>
<td>A</td>
<td>M</td>
<td>21</td>
<td>20</td>
<td>21</td>
<td>22</td>
<td>84</td>
</tr>
</tbody>
</table>
Response to section 7(9) notice from the office of the Executive Mayor: Cllr Stevens Mokgalapa:

5.1.98. On 15 March 2019, the Public Protector received a written submission from the current Executive Mayor Mokgalapa in response to possible adverse findings that may result in this matter. In essence, he argued that the former Executive Mayor did not at all participate in the shortlisting and other administrative processes which were followed in the temporary appointment of Ms Aucamp, Mr Babane, Mr Mgobozi and Mr de Villiers because it is not his function to do so. According to him, the appointments were approved by officials in the City including the former Acting City Manager, Ms Kwele.

5.1.99. He stated that upon receipt of allegations of irregular appointments, the former Executive Mayor requested the Municipal Manager to undertake a comprehensive investigation into recruitment processes of all senior personnel in the City. In support of this assertion, he provided a copy of a letter dated 21 March 2018 written to the City Manager to that effect.

5.1.100. The Executive Mayor further advised that prior to the release of the “preliminary report” of the Public Protector, the City had begun a process that culminated in the termination of employment contracts of Messrs Mgobozi and de Villiers on the basis that due process was not followed in their appointment. He further indicated that his office has developed a separate draft staffing policy which will be applicable in political offices and that it is due to be tabled before Council.

Response to Section 7(9) notice from the former Acting Municipal Manager: Ms Lindiwe Kwele

5.1.101. In her written submission dated 18 March 2019, Ms Kwele clarified me on the City’s Human Resources procedures. She indicated that the recruitment of employees is largely driven by and supported by the strategic Human Resources Department. She
pointed out that for senior management positions, Members of the Mayoral Committee would form part of the Panel together with the City Manager, the Deputy City Manager in whose cluster the Department falls as well Strategic Human Resources.

5.1.102. According to her, MMC’s also play a role in signing off recruitment requests and shortlisting documents and the City Manager is the last one to sign. As the Acting City Manager, her involvement was at the tail end and huge reliance was placed on the Head of the Strategic Human Resources Department.

5.1.103. Regarding the appointment of Ms Aucamp, she stated that the temporal and fixed term appointments, the reports, advertising processes as well as shortlisting processes were handled by Strategic Human Resources as the quality assurer. Reliance was also placed on comments received from Finance and Legal departments. Strategic Human Resources with its internal levels of assurance would result in signing off by the MMC before the City Manager approves the process. Further, she contended that the verification of qualifications is the duty of Strategic Human Resources and that as an Accounting Officer, she could not be held accountable for misrepresentations by incumbents.

5.1.104. She pointed out that the Auditor General and the City of Tshwane Group and Risk Department stated in their reports that it was clear that Strategic Human Resources failed the City and its leadership with regard to Ms Aucamp’s appointment. According to her, Mr Shingange failed to ensure compliance with the Staffing Policy and Regulation 10 of the appointment of Senior Management when he allowed the appointment of Ms Aucamp to go through even though her qualifications were not verified.
5.1.105. Regarding the appointment of Mr Mgobozi and Mr de Villiers on a short term basis, she stated that Ms Aucamp was in charge of the office of the former Executive Mayor and that she initiated their appointments with the support of Strategic Human Resources. She re-iterated that she did not approve the report from Ms Aucamp nor did she insert the inscriptions in the report.

5.1.106. She further stated that upon realising that the temporary appointments were not compliant, she retracted them on 27 September 2016. Regarding the appointments on fixed term contracts, she stated that she did not participate in the shortlisting process but did take part in the interviews which recommended them for appointment.

5.1.107. Ms Kwele argued that although the "preliminary report" stated that she signed off on all fixed term contracts, it must be noted that the offers were preceded by a clear recruitment process which was supported by Strategic Human Resources Department therefore she cannot be held responsible for their incompetence as well as misrepresentations made by incumbents.

Response to Section 7(9) notice from the former Chief of Staff: Ms Marietha Aucamp

5.1.108. In her response dated 14 March 2019 the former Chief of Staff: Ms Marietha Aucamp regarding her appointment in the Office of the Executive Mayor, she confirmed that shortly after the inauguration of the Executive Mayor, she was asked to resign from the position as MMC Roads and Transport and as a Councillor in order to assist on a short term basis in the Office of the Executive Mayor until such time that the position was advertised and filled. Subsequently she was appointed on a short term contract basis for six (6) months and her main role and function during this time was to ensure stability and functioning of the office to compliment the newly elected Mayor’s vision and messaging.
5.1.109. She further stated that during this six (6) month period, she applied for the position of a Chief of Staff and she was aware that she did not have the necessary qualifications. According to Ms Aucamp, upon enquiry about this, she was informed that should she be the successful candidate, an application for a waiver can be made.

5.1.110. Ms Aucamp further stated that, it was clearly indicated in her CV and application form that she only had a Standard 10 as the highest qualification and during her interview she was never asked about her highest qualification. She further stated that after the interview she was requested to attend a competency assessment.

5.1.111. Ms Aucamp further stated that it is alleged that she completed a form that indicated that she has a B Tech degree, she emphasised that she would like to place again on record that she denies having stated such.

5.1.112. According to Ms Aucamp, it was after the rigorous interview that she was recommended as a suitable candidate for the position of Chief of Staff and she received an appointment letter with waiver conditions which were signed and upon her request to the Human Resource Department to obtain a copy after 16 May 2018, she was informed that critical documents disappeared from her personal file. She believes that her personal documents were leaked to individuals and the media with the ill intention to discredit her and place her under suspicion for foul play.

5.1.113. With regard to the appointment of Mr Samkelo Mgobozi as the Executive Head responsible for Mayoral Public Affairs and Spokesperson, she placed on record that she did not know Mr Mgobozi personally and never had dealings before. She acted on behalf of the Executive Mayor and conversations were strictly of a professional nature and therefore did not misrepresent her relationship with Mr Mgobozi.

5.1.114. According to Ms Aucamp, Mr Mgobozi did meet the minimum requirements for the position, which was a Bachelor’s degree and as a result a waiver was unnecessary.
5.1.115. With regard to the appointment of Mr Stefan De Villiers as Executive Head: Private Office of the Executive Mayor, Ms Aucamp stated that Mr De Villiers appointment followed a similar process of appointment applicable to Mr Mgobozi.

5.1.116. According to Ms Aucamp, Mr Stefan De Villier’s appointment for a period not exceeding six months was initially approved and was later retracted on instruction of the Acting City Manager.

5.1.117. Ms Aucamp stated that the report flow in the CoT prescribe that should the superior office bearer not support the report, it will be returned to the initiator and can therefore not be implemented. Ms Aucamp further stated that she had signed the report, without knowing that the Deputy City Manager at the time, did not approve it, the City Manager would have referred the report back to the Department and OEM for amendments but this was not the case.

5.1.118. According to Ms Aucamp in terms of the recruitment process, a shortlist was compiled, where a waiver for qualifications were included on Mr De Villiers’ recruitment file for the attention of the panelists and he was recommended as a suitable candidate for the position and thereafter an offer of employment and qualifications waivers were signed.

5.1.119. Ms Aucamp further stated that she believed that the advice that was given to her and the Executive Mayor by the Executive Head: Human Resources, Mr Gerald Shingange, were in line with the City’s policies and procedures and previous practices. According to her understanding at the time, and because Mr Shingange was a respected member of staff who knows the City policies and procedures and at no time, was she under the impression that in processing these appointments, anyone acted in an unlawful manner.

5.1.120. With regards to her own appointment she stated that at no time did she misrepresent herself in any City document and on procedure she believes that all the necessary steps were taken to adhere to CoT policies and procedures and the quality of work
she rendered to the CoT subsequent to her appointment was always done with the strife for excellence. According to Ms Aucamp this is evident in the clean audit outcome in the Office of the Executive Mayor received for the period 2017/2018.

Response to Section 7(9) notice from Mr Gerald Shingange the Group Head Strategic Human Resources Department

5.1.121. Mr Gerald Shingange submitted to the Public Protector a report dated 13 March 2019 in response to possible adverse findings that could be made against him from the investigation.

5.1.122. Regarding the appointment of Ms Aucamp, Messrs Mgobozi, de Villiers and Babane on short term contracts, he explained that the reports were generated to create stability and to ensure proper functioning of the offices of the Executive Mayor and the Speaker.

5.1.123. He further argued that the temporary appointments were supported by relevant departments because the use of temporary contracts for period not exceeding six (6) months has been a practice in the City of Tshwane. The temporary appointments were later retracted by the then Acting Municipal Manager on realising that the process was not compliant with the policies.

5.1.124. To support this assertion, he provided a copy of a report dated 25 May 2018 relating to the temporary appointment of Ms Landela Mathi at the Department of Roads and Transport Development from the Department of Housing and Human Settlement Department.

5.1.125. In the report, the Group Head: Roads and Transport requested approval for the temporary placement of Ms Mahlathi at the Department for a period of three (3) months with effect from 1 June 2018, to ensure continuity and stability in the management of the Department and also because of her institutional memory. At
the time, Ms Mahlathi’s contract with Human Settlement was coming to an end on 31 May 2018.

5.1.126. The Acting Executive Director: Corporate Legal Compliance as well as Group Head: Group Legal and Secretariat Services did not support the request on the basis that the Staffing Policy indicates that all posts must be advertised before they are filled. The Acting Executive Director: Human Capital then proposed to the City Manager to consider an extension of Ms Mahlathi’s contract for three months and then second her to Roads and Transport until the position is filled permanently.

5.1.127. Regarding the process followed in the appointment of Ms Aucamp and Mr de Villiers on five year fixed term contracts, he stated that the Accounting Officer approved a waiver because they did not meet the minimum requirements. According to him, the waiver documents formed part of the recruitment documents which were given to the Panel and were kept in their personal file after they signed appointment letters respectively.

5.1.128. Mr Shingange stated that the waiver documents disappeared when the Municipal Manager asked for the personal files of Ms Aucamp and Ms de Villiers. He believes this was done to orchestrate his downfall.

**The Application of the relevant laws and prescripts**

5.1.129. With regard to the appointments made, the issue for determination by the Public Protector is whether applicable laws and prescripts were complied with as well as whether in fact the appointed candidates qualified for the positions in which they were appointed. The applicable legislations and prescripts with regard hereto are the following:

5.1.130. Section 23 of the Constitution is the basis upon which all labour and/or employment relations are developed and regulated. It provides that everyone has a right to fair labour practices.

5.1.131. Section 195 of the Constitution regulates the notion of accountability in public administration and provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution, including a high standard of professional ethics which must be promoted and maintained; efficient, economic and effective use of resources which must be promoted as well as a public administration which must be accountable. The principles as enshrined in section 195 are applicable to administration in all spheres of government including state organs and public enterprises.

Local Government: Municipal Finance Management Act No. 56 of 2003

5.1.132. Section 60 provides that:

The municipal manager of a municipality is the Accounting Officer of the municipality for the purposes of this Act, and, as an Accounting Officer, must:

(a) exercise the functions and powers assigned to an Accounting Officer in terms of this Act; and

(b) provide guidance and advice on compliance with this Act to:

(i) the political structures, political office-bearers and officials of the municipality; and

(ii) any municipal entity under the sole or shared control of the municipality.

5.1.133. Section 61 which deals with Fiduciary responsibilities of Accounting Officers provides that:

(1) The Accounting Officer of a municipality must:
(a) act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs;

(b) disclose to the municipal council and the mayor all material facts which are available to the Accounting Officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and

(c) seek, within the sphere of influence of the Accounting Officer, to prevent any prejudice to the financial interests of the municipality.

(2) An Accounting Officer may not:

(a) act in a way that is inconsistent with the duties assigned to accounting officers of municipalities in terms of this Act; or

(b) use the position or privileges of, or confidential information obtained as, accounting officer for personal gain or to improperly benefit another person.

The Labour Relations Act, 1995

5.1.134. The Labour Relations Act is the law that governs labour relations in the Republic and, for that purpose it serves to give effect to section 23 of the Constitution. Section 198A of the Labour Relations Amendment Act No. 12 of 2002 provides that a fixed term contract is defined in the Act as a contract of employment that terminates on an occurrence of a specified event, completion of a specified task or project and/or a fixed date other than an employee’s normal or agreed retirement age.

The Local Government Municipal Systems Act 32 of 2000

5.1.135. The Municipal Systems Act is a piece of legislation that seeks to provide for the core principles, mechanisms and processes that are necessary to enable Municipalities to move progressively towards the social and economic upliftment of local
communities, and ensure universal access to essential services that are affordable to all.

5.1.136. It also defines the legal nature of a Municipality as including the local community within the municipal area, working in partnership with the Municipality’s political and administrative structures.

5.1.137. It also provides for the manner in which municipal powers and functions are exercised and performed to provide for community participation as well as establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpins the notion of developmental local government.

5.1.138. The Act also provides for a framework for local public administration and human resource development. Section 56 of the Municipal Systems Act regulates the appointment of managers directly accountable to the Municipal Manager and provides in subsection 1 that; "

(a) A municipal council, after consultation with the municipal manager, must appoint

(i) a manager directly accountable to the municipal manager; or
(ii) an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed.

(b) A person appointed in terms of paragraph (a) (i) must at least have the skills, expertise, competencies and qualifications as prescribed.”

5.1.139. Section 66 of the Act regulates staff establishments and provides that, “

(1) A municipal manager, within a policy framework determined by the municipal council and subject to any applicable legislation, must:
(a) develop a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;
(b) provide a job description for each post on the staff 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.

(2) Subsection (1) (c) and (d) do not apply to remuneration and conditions of service regulated by employment contracts referred to in section 57.

(3) No person may be employed in a municipality unless the post to which he or she is appointed, is provided for in the staff establishment of that municipality.

(4) A decision to employ a person in a municipality, and any contract concluded between the municipality and that person in consequence of the decision, is null and void if the appointment was made in contravention of subsection (3).

(5) Any person who takes a decision contemplated in subsection (4), knowing that the decision is in contravention of subsection (3), may be held personally liable for any irregular or fruitless and wasteful expenditure that the municipality may incur as a result of the invalid decision.”

5.1.140. Section 67 regulates Human Resource development and provides that, “

(1) A municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of section 72 (1) (c), to ensure fair, efficient, effective and transparent personnel administration, including—

(a) the recruitment, selection and appointment of persons as staff members;
(b) service conditions of staff;
(c) the supervision and management of staff;
(d) the monitoring, measuring and evaluating of performance of staff;
(e) the promotion and demotion of staff;
(f) the transfer of staff;
(g) grievance procedures;
(h) disciplinary procedures;
(i) the investigation of allegations of misconduct and complaints against staff;
(j) the dismissal and retrenchment of staff; and
(k) any other matter prescribed by regulation in terms of section 72.

(2) Systems and procedures adopted in terms of subsection (1), to the extent that
they deal with matters falling under applicable labour legislation and affecting
the rights and interests of staff members, must be consistent with such
legislation.

(3) Systems and procedures adopted in terms of subsection (1), apply also to a
person referred to in section 57."

Local Government Regulations on Appointment and Conditions of
Employment of Senior Managers

5.1.141. The Local Government Regulations on Appointment and Conditions of Employment
of Senior Managers are guidelines that provide for the appointment, duration of
employment and termination of services of senior managers in the local government
sphere of governance. They give effect to the provisions of section 72 of the Local

5.1.142. Regulation 6, sets the principles of recruitment and provides that:

(1) The recruitment, selection and appointment of senior managers must take
place in accordance with the municipal systems and procedures contemplated
in section 67 of the Municipal Systems Act that are consistent with sections
54A, 56, 57A and 72 of the Act.
(2) A senior manager post must be filled through public advertising, in accordance with the procedures contemplated in regulation 10.

(3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

5.1.143. Regulation 8, sets the General requirements for appointment of Senior Managers and provides that, "

(1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she:

(a) is a South African citizen or permanent resident; and
(b) possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these Regulations.

5.1.144. Regulation 9 provides for the competency requirements for Senior Managers and stipulates that;

"(1) A person appointed as a senior manager in terms of these Regulations must have the competencies as set out in Annexure A of these regulations which provides for a competency framework for Senior Managers.

(2) A person appointed as a senior manager in terms of these Regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B to these regulations which provides for the minimum competency requirements for Senior Managers."

The Municipal Regulations on Minimum Competency Levels: GNR.493 of 15 June 2007
5.1.145. The Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government (now Cooperative Governance and Traditional Affairs) issued regulations which sets out general and competency levels for Senior Managers of Municipalities and Municipal Entities. Paragraph 6 of the Regulations sets out general competency levels for senior managers and states in subparagraph (1) that, “a senior manager of a municipality must generally have the skills, experience and capacity to assume and fulfil the responsibilities and exercise the functions and powers assigned in terms of the Municipal Finance Management Act, to that senior manager.”

5.1.146. Paragraph 7 of the Regulations sets out minimum competency levels for senior managers and provides that, “a senior manager of a municipality or municipal entity must comply with the minimum competency levels required for higher education qualification, work related experience, core managerial and occupational competencies and be competent in the unit standards prescribed for financial and supply chain management competency areas...”

Staffing Policy of the City of Tshwane Metropolitan Municipality

5.1.147. The Staffing Policy of the City of Tshwane Metropolitan Municipality is a policy that gives guidelines for the processes and procedures for recruitment, selection, duration and termination of services of employees in the municipality. It gives effect to the provisions of section 67 of the Municipal Systems Act.

5.1.148. It also seeks to ensure that employment practices are jointly monitored by the municipality and its recognised trade unions to ensure consistent employment practices that comply with staffing principles and a code of good practice.

5.1.149. Paragraph 8.5 of the Staffing Policy of the City of Tshwane Metropolitan Municipality which regulates the appointment of employees on a fixed term basis provides that, “
8.5.1 A candidate who has been appointed as a fixed-term/part time employee will be considered as an internal candidate and can apply for any vacant position.

8.5.2 The recruitment and selection of fixed-term contract employees must take place in accordance with the approved Staffing, Policy and procedures (Except Heads of Departments and Divisional Head posts);

8.5.3 The Executive Director: Strategic Human Resources or his/her nominee receives, considers and approves/declines a reasoned request from a Departmental Divisional Head that a fixed-term contract employee be appointed below the level of Deputy Manager;

8.5.4 A written contract must be concluded between the candidate and the CoT before appointment;

8.5.5 Fixed-term contract employees below the position of Divisional Head do not have the right to accept the renewal of their contracts of employment or permanent employment in the position without the post being advertised internally and externally and the recruitment and selection process taking place.

8.5.6 Temporary employment service agency/personnel agency appointments are no contract employees of the CoT and cannot be considered for internally advertised positions. They are regarded as external candidates and are referred to as temporary employees or temps. These temps have contract with applicable temporary employment service agency/personnel agency.

8.5.7 The appointment of contract employees in highly specialized posts that require scarce skills or competencies cannot be approved unless the positions have been advertised internally and externally. All positions must
be advertised to enable the CoT to choose the best candidates with scarce skills or competencies in all fields. All fixed-term contract employees reporting to the City Manager or the Chief Operating Officer are therefore excluded from appointment.

8.5.8 The appointment of managers reporting to the City Manager are not considered in this Staffing Policy. Their appointments will be handled according to the Local Government: Municipal Systems Act 2000.”

**Top Management Staffing Policy of the City of Tshwane Metropolitan Municipality**

5.1.150. The Top Management Staffing Policy of the City of Tshwane is a strategic document which provides guidelines for the recruitment and selection of senior managers in the Municipality. Its purpose is to ensure that skills are acquired to sustain the business of the municipality and also to become competitive in the provision of services to the people of Tshwane.

5.1.151. Paragraph 5.9 It also seeks to ensure the suitability of candidates that are appointed to senior management positions in the City of Tshwane and sets out processes and procedures to be followed in the recruitment and selection of these managers. It is applicable to section 56 and 57 employees as defined in the Local Government Municipal Systems Act, 2000.

5.1.152. Paragraph 5.4 of the policy provides that “all recruitment and selection practises should be consistent, equitable, transparent and in line with the requirements of procedural and substantive fairness.”

5.1.153. provides that, “A person should be suitably qualified for a job as a result of the following criteria;
- Relevant formal qualifications;
- Relevant experience;
- Any other requirement in terms of the job specifications and as specified in the advertisement e.g. applicable driver’s licence
- Professional Registrations where applicable”.

5.1.154. Paragraph 6 of the policy regulates the recruitment process and stipulates that “Potential incumbents are recruited through advertising that complies with the principle of fairness and representivity.”

5.1.155. It further provides that a vacancy on the staff establishment will be advertised both internally and externally in consultation with the Office of the City Manager who must first authorise the advertisement.

5.1.156. Paragraph 15 regulates security screening and/or vetting and provides that this process must be carried out before the appointment of candidates and at the discretion of the City Manager or Strategic Executive Director responsible for Corporate and Shared Services or their nominees and in accordance with legislation.

5.1.157. Paragraph 17 of the policy regulates the approval of the appointment of successful candidates and provides that such approvals are granted by the City Manager or Executive Mayor as the case may be. Paragraph 17.3 regulates the appointment of employees on a fixed-term basis and provides that all Strategic Executive Directors, Strategic Executive Heads and Executive Directors or Executive Heads on Levels 2 and 3 respectively are appointed on fixed term performance based posts for a period of three to five years by the City Manager or Executive Mayor or Mayoral Committee of the Council or their nominees.

The Final Forensic Report on an investigation into the irregular appointments of officials in the Offices of the Executive Mayor and the
Council Speaker: Compiled by - The Group Audit and Risk Department of the City of Tshwane Metropolitan Municipality

5.1.158. On 18 May and 12 June 2018 respectively, the City Manager, Mr Moeketsi Mosola commissioned an investigation by the City's Group Audit and Risk Department into allegations of irregular appointments of officials in the offices of the Executive Mayor and Council Speaker respectively.

5.1.159. The 18 May 2018 request was in respect of Ms Marietha Aucamp's appointment as the Chief of Staff in the Office of the Executive Mayor and the 12 June 2018 request was in respect of the appointments of Messrs. Tiyiselani Joseph Babane as Group Head responsible for the Office of the Council Speaker, Samkelo Mgobozi as the Spokesperson and Executive Head responsible for Mayoral Public Affairs in the Office of the Executive Mayor, Stefan Adriaan de Villiers in the capacity of Executive Head responsible for the Private Office of the Executive Mayor and Mr Mathew Gerstner in the capacity of Acting Mayoral Spokesperson.

5.1.160. After the investigations, the City's Group Audit and Risk Department made the following findings;

The temporal and subsequent fixed term contract appointment of Ms Marietha Aucamp

5.1.161. The temporal and subsequent appointment of Ms Aucamp to the position of Chief of Staff in the Office of the Executive Mayor was irregular. She did not qualify for the position. The decision by the shortlisting panel to even consider her suitable for interviews raises serious questions as the problem with her qualifications should have been identified there and would not even be eligible to proceed for interviews.
5.1.162. Mr Shingange was at the centre of these machinations. Ms Aucamp does not possess a B-Tech Bachelor’s degree as claimed in the assessment form. There was non-compliance with HR processes and procedures of the Municipality and this happened under Mr Shingange’s watch.

5.1.163. There was no verification of qualifications prior to Ms Aucamp’s appointment to the position. In this regard, the Executive Mayor and his interview panel did not apply their minds to these transgressions and they appear to have relied more on Mr Shingange who is a senior HR official in the City and who was directly involved in these processes. There was therefore non-compliance with the City’s Staffing Policy and Mr Shingange was the key senior HR official who was responsible for these processes.

The temporal and subsequent fixed term contract appointment of Mr Tiyiselani Joseph Babane

5.1.164. Mr Babane’s temporal appointment was irregular. However, he was a successful candidate for the appointment on a fixed term contract and was duly appointed.

The temporal and subsequent fixed term contract appointment of Mr Samkelo Mgobozi

5.1.165. The appointment of Mr Mgobozi was irregular. However, it was noted that this appointment was retracted on 27 September 2016 by the Acting City Manager at the time, Ms Lindiwe Kwele.

5.1.166. He met the minimum academic qualifications for the position but did not meet the requirement of twelve (12) years’ experience of which five (5) years should be at senior management level. He had two (2) years overall experience of which most of that was spent as the Democratic Alliance Campaign Director. It is inconceivable
that Mr Mgobozi was even shortlisted for interviews as he did not have the requisite experience for the position.

The temporal and subsequent fixed term contract appointment of Mr Stefan Adriaan de Villiers

5.1.167. The temporal appointment of Mr de Villiers was irregular. However, it was noted that his appointment was subsequently retracted by Ms Kwele on 27 September 2016. He however was paid salaries for September and October 2016 respectively. He did not meet the minimum requirements to be shortlisted as he was not in possession of a Bachelor's Degree and did not have twelve (12) years previous work experience with five years at senior management level.

The temporal Acting appointment of Mr Mathew Gerstner

5.1.168. It was established that Mr Matthew Gerstner was not an employee of the City of Tshwane Metropolitan Municipality. However he was conferred by the Executive Mayor in his capacity as a politician with a responsibility of Acting Spokesperson.

5.1.169. Following the investigation, the City of Tshwane Metropolitan Municipality's Group Audit and Risk Department made the following recommendations:

(a) That Mr Shingange should be subjected to a disciplinary process for failing to advise on the suitability of Ms Aucamp for the position;

(b) He should also be charged for compromising the process from the temporary appointments to the fixed term performance based contracts;

(c) The shortlisting and interview processes of all positions at the City of Tshwane must be audio recorded and records of the proceedings kept;
(d) A framework for recruiting candidates to fill positions in political offices should be developed and be distinct from the normal Staffing policy for the administration of the municipality;

(e) HR should develop a file registry system for recording of the movement and access to files; and;

(f) Access to employee files at HR should be restricted to authorised users.

The Conclusions that could be made based on the application of the law to the facts

5.1.170. Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter it can be concluded that there were irregularities in the manner in which the officials in the offices of the Executive Mayor and Council Speaker were appointed, both on a temporal and fixed term contract basis.

5.1.171. Their appointments were not in accordance with the laws and prescripts regulating the appointment of Senior Managers in Local Government and the City of Tshwane in particular.

5.1.172. It should be noted that all the offers of employment on fixed term contracts were signed by Ms Lindiwe Kwele who was the Acting City Manager at the time on the advice by Mr Shingange, the Group Head: Human Resources Management.

5.1.173. There is no provision in the Staffing Policy which accommodates the appointment of staff for a period of six months (temporal appointments). Further thereto, all the candidates in the offices of the former Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality did not meet the requirements for the positions that they were appointed to.
5.1.174. The Executive Mayor and his panel did not apply their minds to these transgressions as they solely relied on the advice and information provided by Mr Shingange, the senior HR official. Ms Kwele, the Acting City Manager cannot abdicate her roles and responsibilities by blaming Mr Shingange for all the transgressions because as an Accounting Officer, she is ultimately the administrator of affairs in the City of Tshwane.

5.2. With regard to whether the former Executive Mayor misled the public by making pronouncements banning the use of blue lights in the City, the reconstitution of the Mayoral Committee and the utilization of the fleet of BMWs by the Members of Mayoral Committee.

Issues that are Common Cause

It is not disputed that:

5.2.1 Following the municipal elections held in August 2016, Cllr Solly Msimanga was elected and inaugurated as the Executive Mayor of the City of Tshwane Metropolitan Municipality.

5.2.2 In his capacity as the Executive Mayor, Cllr Msimanga has powers and prerogatives as prescribed by the constitution and other legislations and prescripts in particular the Municipal Structures, Systems and Finance Management Acts as well as other applicable laws.

Issues in Dispute:

5.2.3 The issue for my determination is whether in the discharge of his duties as the former Executive Mayor, Cllr Solly Msimanga violated the law and misled members of the public about the affairs of the City of Tshwane Metropolitan Municipality.
5.2.4 Other than the allegations of irregular appointments of senior staff members in the offices of the former Executive Mayor and Council Speaker, there were specific allegations of transgressions which were particularly levelled against the Executive Mayor.

5.2.5 With regard to allegations that the former Executive Mayor issued a public announcement banning the use of blue lights with sirens in and around the jurisdictional area of the City of Tshwane despite the fact that he had no authority in law to issue such a directive and thus acted *ultra vires*, during the investigation, the allegation was put to the former Executive Mayor with a request for him to explain his directives.

5.2.6 He confirmed having made such directives but stated that they were in relation to officials and politicians, Councillors and Members of the Mayoral Council who used to be eligible to use blue lamps in their official municipal vehicles. Further that since he took over the reigns of the municipality, only the Metropolitan Police and Traffic Departments are allowed to use blue lamps.

5.2.7 According to the former Executive Mayor, his directives were taken out of context. He explained that he had no authority to issue such a directive to the National and Provincial sphere of government but, exercising his Mayoral prerogatives, he had the authority to issue such a directive in the City of Tshwane.

5.2.8 I have noted in my investigation a statement that was published in the News 24 report dated 19 August 2016 attributing the following statement to the former Executive Mayor:

"Blue lights will be a thing of the past in the city. The only person who will have blue lights will be the president of the country," Msimanga told reporters on Friday.

"Gone are the days where publicly-elected officials will think they are VIPs. The only VIPs will be the people of the city."
Msimanga said that was to ensure that leaders never get to think they are more important than the people who put them in office.

"The moment people feel like they are more important that's when they start serving themselves instead of serving the communities. Our officials will also need to be engaging with our communities more instead of only when there are service delivery protests," he said.

"That is saying to our people that we value you, you are more important and we will come listen to you and we will act on what you are saying."

5.2.9 I have also accessed a video clip of the interview that was conducted by the former Executive Mayor that is available on the News 24 website confirming the above statement that the former Executive Mayor said "Blue lights will be a thing of the past in the City. The only person who will have blue lights will be the President of the country and nobody else".

5.2.10 With regard to allegations that he deliberately and wilfully misled the public regarding the constitution and the subsequent reconstitution of the Mayoral Committee, the former Executive Mayor stated that it is his prerogative to select Councillors who would constitute his Mayoral Committee. Similarly it is his prerogative to reshuffle the Committee to ensure its efficiency and effectiveness.

5.2.11 He admitted that he had an initial Mayoral Committee which he appointed earlier but had to reconstitute it so as to strengthen it. He made an example about Councillors who were members of the Committee and had to be shifted to administration and such instances would necessitate a reconstitution of the Mayoral Committee.

5.2.12 In connection with the allegation that he misled the public by stating that the former Mayoral Committee had taken a decision to purchase a new fleet of BMW's for its members, the former Executive Mayor stated that, when he was appointed, he found the vehicles at the Municipality but decided that for them to be used optimally, they should be donated to the City of Tshwane Metropolitan Department for use as highway patrol as they were high performance vehicles.
5.2.13 He concluded his testimony on this allegation by stating that members of his Mayoral Committee are using Ford vehicles which are far cheaper and less expensive in maintenance than the BMW vehicles.

5.2.14 With regard to the allegation that he announced that he will acquire a cheaper official vehicle than that of the former Executive Mayor and failed to acknowledge that the vehicle he used was a donation from BMW South Africa, the former Executive Mayor denied this allegation. He denied that he acquired himself a new official vehicle when he took over the administration of the City of Tshwane Municipality.

5.2.15 According to him, he was still using an official vehicle that he inherited from the previous administration of the City of Tshwane which was used by the then Executive Mayor and which is a BMW 5 series GT.

**The Application of the relevant laws and prescripts**

**The Municipal Structures Act 117 of 1998**

5.2.16 The purpose of the Municipal Structures Act is to provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality as well as to establish criteria for determining the category of municipality to be established in an area.

5.2.17 It also seeks to define the types of municipalities that may be established within each category and to provide for an appropriate division of functions and powers between categories of municipality as well as regulate the internal systems, structures and office-bearers of municipalities.

5.2.18 **Section 56** of the Act sets out the powers and functions of Executive Mayors and provides that:

1. An Executive Mayor is entitled to receive reports from committees of the Municipal Council and to forward these reports together with a recommendation to the Council
when the matter cannot be disposed of by the Executive Mayor in terms of the Executive Mayor’s delegated powers.

(2) The Executive Mayor must—

(a) identify the needs of the Municipality;

(b) review and evaluate those needs in order of priority;

(c) recommend to the Municipal Council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and

(d) recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.

(3) The Executive Mayor in performing the duties of office, must—

(a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general;

(b) evaluate progress against the key performance indicators;

(c) review the performance of the municipality in order to improve—

(i). the economy, efficiency and effectiveness of the municipality;

(ii). the efficiency of credit control and revenue and debt collection services; and

(iii). the implementation of the municipality’s by-laws;

(d) monitor the management of the municipality’s administration in accordance with the directions of the municipal council;
(e) oversee the provision of services to communities in the municipality in a sustainable manner;

(f) perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

(g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and

(h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.

(4) An Executive Mayor must perform a ceremonial role as the Municipal Council may determine.

(5) An Executive Mayor must report to the Municipal Council on all decisions taken by the Executive Mayor.

(6) The Deputy Executive Mayor of a municipality exercises the powers and performs the duties of the Executive Mayor if the Executive Mayor is absent or not available or if the office of the Executive Mayor is vacant.

(7) If the Executive Mayor is absent or not available and the municipality does not have a Deputy Executive Mayor, or the Deputy Executive Mayor is also absent or not available, the Council must designate a Councillor to act as Executive Mayor.

5.2.19 Section 60 provides that the Executive Mayor must appoint a mayoral committee from among the councillors to assist the executive mayor and may delegate specific responsibilities to each member of the committee. Furthermore the Executive Mayor may dismiss a member of the mayoral committee.

The Conclusions that could be made based on the application of the law to the facts
5.2.20 Based on the information and evidence obtained during the investigation and following an application of the relevant legal framework regulating the conduct of Executive Mayor, it can be concluded as follows:

5.2.20.1 As regards the allegation that the former Executive Mayor issued a public announcement banning the use of blue lights with sirens in and around the City of Tshwane despite the fact that he had no authority in law to issue such a directive and thus acted ultra vires, the evidence indicates that the former Executive Mayor made public statement expressing his intention to prohibit the use of blue lights with sirens in the City of Tshwane except for the President of the Republic. However there is no evidence that he took legal steps to change the by-laws to officially prohibit the use of blue lights in the City.

5.2.20.2 As regards the allegation that the former Executive Mayor deliberately and willfully misled the public regarding the constitution and the subsequent reconstitution of the Mayoral Committee, the Executive Mayor is empowered by the provisions of section 60 of the Municipal Structures Act to appoint and dismiss members of the Mayoral Committee as he deems fit. Inherent in these powers, is the prerogative to constitute and reconstitute the Committee.

5.2.20.3 As regards the allegation that the former Executive Mayor misled the public by stating that the former Mayoral Committee had taken a decision to purchase a new fleet of BMW's for its members and the use of the BMW used by the then Executive Mayor, the specific allegations levelled against the former Executive Mayor are not substantiated. The former Executive Mayor has confirmed that he uncovered a fleet of BMWs purchased by the former administration and that these vehicles were assigned to the anti-hijacking unit.

5.2.20.4 I have noted the various media statements that were made by the various parties on this matter but did not come across any evidence that in the discharge of his
duties as the former Executive Mayor, Cllr Solly Msimanga violated the law and misled members of the public about the affairs of the City of Tshwane Metropolitan Municipality.
6. FINDINGS

6.1. With regard to whether there were any irregularities in the appointments of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality;

6.1.1. The allegation that there were irregularities in the temporal and fixed term contract appointments of senior executives in the offices of the Executive Mayor and Council Speaker of the City of Tshwane Metropolitan Municipality is substantiated;

6.1.2. The appointments of Marietha Aucamp, Samkelo Mgobozi, Stephane Adriaan de Villiers were irregular as they did not meet the minimum requirements for the positions in which they were appointed and the CoT also failed to conduct security vetting on them as required;

6.1.3. Although Mr Tiyiselani Babane is suitably qualified and met the minimum requirements for the position, the CoT failed to conduct security vetting on him before his appointment;

6.1.4. The Staffing Policy makes no provision for the appointment of staff at senior management level on a six (6) months temporary appointment;

6.1.5. The CoT failed to implement an adequate record keeping controls as some recruitment documents went missing from the personnel files of the interviewed candidates;

6.1.6. The former acting City Manager, Ms Lindiwe Kwele as the Accounting officer failed to act in the best interest of the CoT in appointing of Ms Marietha Aucamp, Mr Samkelo Mgobozi, Mr Stefan de Villiers as they did not meet the minimum requirements for the positions and further failed to provide guidance and advice on compliance with the staffing policy. She further failed to heed the advice of legal services in all these appointments.
6.1.7. Mr Shingange the Group Head: Human Resources Management failed to provide proper guidance and advise to the CoT, regarding the suitability and appointment of Ms Marietha Aucamp, Mr Samkelo Mgobozi, Mr Stefan de Villiers who were appointed on six months (6 months) short temporal contracts and later five (5) year fixed term contracts.

6.1.8. All members of interview and selection panels who participated in the recruitment of Executive Head and Mayoral Spokesperson, Mayoral Public Affairs Department in the Office of the Executive Mayor, Executive Head in the Office of the Executive Mayor, failed to act in the best interest of the CoT by not applying their minds to the suitability of candidates regarding their qualifications and experience for the respective positions.

6.1.9. The former Executive Mayor did not apply his mind in the appointment of Ms Aucamp because he should have reasonably known that she does not have a post matric qualification. He should have obtained legal advice from his officials on the appropriate way to appoint staff in his office. Instead he allowed the officials to follow the normal recruitment and selection process including placing educational requirements and experience that Ms Aucamp did not possess, therefore prejudicing other candidates who were best qualified for the position.

6.1.10. I have taken note that the CoT has taken steps to reverse the irregular appointment of the Executive Head and Mayoral Spokesperson, Mayoral Public Affairs Department in the Office of the Executive Mayor as well as the Executive Head in the Office of the Executive Mayor.

6.2 With regard to whether the former Executive Mayor misled the public by making pronouncements banning the use of blue lights in the City, the reconstitution of the Mayoral Committee and the utilization of the fleet of BMWs by the Members of Mayoral Committee.
6.2.1 The allegation that the former Executive Mayor misled the public by making pronouncements banning the use of blue lights in the City, the reconstitution of the Mayoral Committee and the utilization of the fleet of BMWs by the Members of Mayoral Committee is unsubstantiated in that though public statements were made regarding the use of blue lights in the City, no legislative process was undertaken to amend the by-laws to officially prohibit the use of blue lights.

6.2.2 The allegation that the former Executive Mayor misled the public on the reconstitution of the Mayoral Committee is unsubstantiated, the Executive Mayor is empowered by the provisions of section 60 of the Municipal Structures Act to appoint and dismiss members of the Mayoral Committee as he deems fit.

6.2.3 As regards misleading members of the public regarding the fleet of BMW vehicles, I have noted the various media statements that were made by the various parties on this matter but did not come across any evidence that in the discharge of his duties as the former Executive Mayor, Cllr Solly Msimanga violated the law and misled members of the public about the affairs of the City of Tshwane Metropolitan Municipality.

7. REMEDIAL ACTION

The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is that:

7.1 The City Manager of Tshwane to:

7.1.1 Within sixty (60) working days of the issuing of this report, ensure that a policy is developed to regulate the appointment of staff in the private offices of the Executive Mayor and Speaker which will make provision for urgent and/or short term appointments should a need arise. The said policy should also address the job profiles including requirements for these positions, deviation procedures and delegations of authority;
7.1.2 Within sixty (60) working days of the issuing of this report, ensure that disciplinary steps are taken against implicated officials of CoT who flouted, subverted or violated the CoT's Staffing Policy in this matter; and

7.1.3 Within sixty (60) working days of the issuing of this report, develop a document management system that will introduce controls and systems to safeguard the security of documents.

8 MONITORING

8.1 The City Manager to submit an Implementation Plan to the Public Protector indicating how the remedial action referred to in paragraph 7 above will be implemented within sixty (60) working days from the date of receipt of this report.

8.2 Each remedial action listed in paragraph 7 above is legally binding on the person directed to implement, unless it has been reviewed and set aside by a Court or an appropriate Interim Court Order to stay the implementation of the remedial action is obtained within the compliant period stated therein.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 18/04/2019