REPORT ON AN INVESTIGATION RELATING TO ALLEGED FAILURE BY THE SOL PLAATJE MUNICIPALITY TO RECTIFY AN ALLEGED IMPROPER CLOSURE OF PHAKEDI AND PALWENI STREETS IN GALESHEWE, KIMBERLY.
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EXECUTIVE SUMMARY

The Public Protector received a complaint from the representatives of the street committee of the Phakedi and Palweni streets who alleged amongst others, that the municipality of Sol Plaatje failed to rectify an improper site allocation, which resulted in the closure of the streets referred to above.

It was further alleged that the closure resulted in disrupted access to the street by emergency vehicles, SAPS, mail delivery and the Municipal service vehicles and further that the closure has resulted in confusion of physical addresses.

The committee representatives explained that they had raised the matter with the Sol Plaatje Municipality (the Municipality), the local Councillor and the former Premier in 2002, but up to the date of approaching the Office Public Protector (the OPP), nothing had been done.

It was also indicated that since 2002 the Municipality has been promising to attend to the matter, but has always raised budgetary constraints as an excuse.

The investigation found the following:

1. With regard to the issue of the irregular site allocation it was found that there was indeed an improper site allocation that resulted in the closure of the said streets and that the Municipality failed to attend to the matter as required by section 73(1)(a) to (c) of Chapter 8, of the Local Government: Municipal Systems Act, 2000, read with section 21(1) and Section 153(a) of the Constitution.

2. The OPP further discovered that the Municipality was aware of the matter since it was listed in the Infrastructure and Development Programme (IDP) list - it was nonetheless noted that the matter had been retained on the IDP list for a long time without it been given first preference.

3. After the intervention by the OPP, the Infrastructure and Development Committee tabled the matter before Council and the latter resolved, on the 2 August 2006, that the matter should be rectified by amongst
others, negotiating a purchase price of the portions of the sites with the concerned owners and thereafter to re-open the streets.

4. The OPP was subsequently informed by the Municipality that the negotiations were completed and a payment of R285.00 to Mr. Smith and R519.00 to Mr. Wesi was effected in December 2006. After the said payments, Mr. Smith allegedly withdrew his offer to sell on condition that the Municipality must purchase the entire site. However, the Infrastructure Development Committee undertook to further negotiate with the latter owner or occupant.

5. The Development Committee had indicated to the OPP that, due to the ensuing end of the 2006/2007 financial year at the time, they (the Committee) would table the matter before the Council for inclusion in the next financial year and for the matter to be given first preference in the IDP list.

It is recommended that:

1. The reopening of the Phakedi and Palweni streets be completed as soon as possible, that is with a reasonable period, to avoid further prejudice to residents.

2. In the event of lack of cooperation from the site occupants, the Municipality should consider taking all reasonable steps, including expropriation as regulated in terms of section 25(2)(a) of the Constitution, to speed up progress on the matter.

3. The Municipality consider improving the current condition of the streets in question, for instance tarring the streets as an option.

4. The Municipality take note of and give effect to the provisions of Section 5(1)(c) of Chapter 2, Act 23, 2000, which requires the Council to inform the community of its decision, in as far as Council Resolution C227 of 2 August 2006 is concerned.

In conclusion:

1. The Public Protector will follow up on the recommendations stated above.
1. BACKGROUND

1.1 Introduction

1.1.1 This report is submitted to the MEC responsible for Local Government in the Northern Cape Provincial Government, the Municipal Manager and to the Executive Mayor of the Sol Plaatje Municipality, by virtue of the provisions of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution) read together with section 8(1) of the Public Protector Act, 1994. This report deals with an investigation into allegations of improper closure of Phakedi and Palweni streets in Galeshewe extension 1, Kimberley and the alleged failure by the Sol Plaatje Municipality (hereinafter referred to as the Municipality) to address the situation.

1.2 The Complaint

1.2.1 The complaint was received from five community representatives of the Phakedi and Palweni Street Committee members who alleged amongst others, that the Municipality had failed to rectify an irregular closure of the above-cited streets.

1.2.2 The complainants said that the closure emanated from the municipality’s allocation of sites to two individuals, who subsequently enclosed their properties by erecting walls. The erection of walls eventually resulted in the closure of the streets.

1.2.3 The complainants further alleged that the closure of the streets in question hampered the community’s free movement in and out of the streets and also disrupted the delivery of essential emergency and municipal services, such as Ambulance (Emergency) Services, the mail delivery, the Fire Brigade and the Police Service. Apparently these services could no longer easily access the closed streets or easily identify houses, since the closure resulted in confusion of residential addresses and at times led to the return of intended emergency and other services.
1.2.4 The complainants said that due the prejudice caused by the closure of the streets in question, they accordingly reported the matter in 2002 to the Municipality and to the then Premier, but in vain.

1.2.5 The complainants further said that the respective site owners had erected walls over Municipal property i.e. over sewerage pipes and electrical cables.

1.2.6 It was also alleged that despite the continued prejudice suffered by the residents in and around the streets in question and calls to the municipality to reopen the streets, the Municipality perpetually raised financial resources as a constraint.

2 THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

2.1 Section 182 (1) of the Constitution, 1996 provides that:

“The Public Protector has the powers 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 result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action”.

2.2 Section 6 (4)(a) of the Public Protector Act, 1994 provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged-
“(i) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;

….  

(v) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.”

2.3 In terms of section 6(4)(c)(ii) of the Public Protector Act, 1994, the Public Protector can, on the conclusion of an investigation make any appropriate recommendation in a report to the organ of state affected by it.

2.4 The allegations of failure by the Municipality to rectify the irregular site allocation which resulted in the improper closure of Pakedi and Phalweni streets in Galeshewe, fall within the mandate and jurisdiction of the Public Protector to investigate.

2.5 Ultimately the Public Protector’s role is to foster accountability, transparency and fairness in the public administration, thus ensuring good governance and the strengthening of constitutional democracy.

3. THE INVESTIGATION

3.1 The investigation was conducted as follows:

3.1.1 Correspondence;

3.1.2 Personal interviews with Municipal officials;

3.1.3 Inspection and site view; and

3.1.4 Study of the area map.

3.2 Correspondence
3.2.1 Letters of enquiry were sent to the municipal manager who was requested to furnish the OPP with information pertaining to a possible budget consideration regarding the matter.

3.2.2 A letter for urgent attention was sent to the Executive Mayor for his intervention in order to reprioritise the IDP priority list in favour of the matter in question.

3.1.3 Letters were sent to the town planning sections for their comment on the issue such as whether the structures were built over municipal infrastructure, i.e. sewerage pipes etc.

3.1.4 Letters were sent to the town planning section for their cost estimate of the matter.

3.1.5 A letter was received from the Municipality indicating that on the 2 August 2006 the council had resolved in favour of the reopening of the streets in question. The Office was accordingly provided with a copy of the resolution i.e. Resolution C227 which stated that:

"Portions of erven 5973 and 6063 approximately 19m$^2$ and 35m$^2$ be subdivided, rezoned and purchased from the owners subject to the following conditions:

1. that a portion of erf 5973 (about 19m$^2$) be purchased for an amount of R285.00 (VAT exclusive)
2. that a portion of erf 6063 (about 35m$^2$) be purchased for an amount of R519.00 (VAT exclusive)
3. that the portions be rezoned from single residential to street.
4. that all costs in this regard be for the account of the Sol Plaatje Municipality
5. that a servitude be registered in favor of Council over a portion of erf 5973 to protect the electrical cable."
3.3 **Personal interviews**

3.3.1 A consultative meeting was held with the Municipal Manager and another with the representatives of the town planning division.

3.4 **Site Inspection**

3.4.1 A site inspection was conducted by representatives of the OPP together with a representative from the town planning division.

3.5 **Study of area map**

3.5.1 The OPP scrutinised the area map through the assistance of the Water and Electricity Municipal Section.

3.6 **Current Status Regarding the Project**

3.6.1 The Development and Planning Committee indicated that since it was close to the end of the 2006/2007 financial year they would have to recommend to council that the project in question be given first priority in the IDP list for the following financial year.

4 **LEGISLATIVE FRAMEWORK PERTAINING TO THIS MATTER**

4.1 **Introduction**

4.1.1 For the purpose of this investigation certain laws are applicable and attention is directed to the following relevant legislation

4.2 **The Constitution**

4.2.1 Section 21(1) of Chapter 2 of the Constitution, (Bill of Rights) provides that:

(1) Everyone has the right to freedom of movement.
4.2.2 Furthermore Chapter 7 of the Constitution provides, in terms of Section 152(1)(e) that:

(1) The objects of local government are-

(a) to encourage the involvement of community organizations in the matters of local government.

4.2.3 Section 153(a) of the Constitution provides that:

(1) A municipality must-

(a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community.

4.2.4 In terms of Section 25(2)(a) of Chapter 2 of the Constitution:

(1) Property may be expropriated only in terms of law of general application-

(a) for a public purpose or in the public interest

4.3 Local Government Municipal Systems Act, 2000

4.3.1 Section 5(1)(c) of Chapter 2 of the Local Government Municipal Systems Act provides that:

(1) Members of the local community have the right-

(c) to be informed of decisions of the municipal council, or another political structure or any political office bearer of the municipality, affecting their rights, property and reasonable expectations.
4.3.2 Section 73(1)(a) to (c) provides that:

(1) A municipality must give effect to the provisions of the Constitution and-

(a) give priority to the basic needs of the local community;
(b) promote the development of the local community and
(c) ensure that all members of the local community have access to at least the minimum level of basic services.

5 OBSERVATIONS AND FINDINGS

5.1 Observations

5.1.1 Correspondence

5.1.1.1 The Council had acknowledged the irregularity and resolved, during its Council meeting to rectify the irregularity.

5.1.2 Interviews with Municipal officials

5.1.2.1 From the onset it became clear that most, if not all of the officials interviewed, were aware of the matter. None of them, however, wanted to reveal names or records of the individuals who improperly authorised the site allocations.

5.1.2.2 It also became clear that, most of the officials supported the intervention by the OPP in what appeared, in their view, to be a clear improper site allocations that was long overdue for rectification.

5.1.3 Site Inspection
5.1.3.1 It was observed that the streets/roadway in question were separated by the erected walls of ervens 5973 and 6063 respectively.

5.1.3.2 The condition of the streets was also noted as not fit for use, in particular by motorists.

5.1.3.3 Material serving as evidence of the closed streets was obtained in a form of a photograph (see photograph clips below).

5.1.4 Study of Area Map

5.1.4.1 It was confirmed that certain portions of the erected structures were as alleged, erected over portions of municipal service property.

5.1.4.2 It was further confirmed that Palweni and Phakedi Streets were separated by erven 5973 and 6063 as alleged.

5.2 Findings

5.2.1 The OPP found that despite numerous complaints from the community regarding the prejudice and inconvenience that the current state of affairs brought about, the municipality had failed for a long time to address the problem. This resulted in the provisions of Section 73(1)(a) to (c) of Chapter 8 of the Local Government Municipal Systems Act, 2000, read with section 21(1) and Section 153 (a) of the Constitution, being ignored.

5.2.2 The municipality retained the matter in its Infrastructure and Development Plan (IDP) list of priorities for a long time without attending to it or prioritising/fast-tracking it.

5.2.3 The municipality acknowledged the impropriety at its Council meeting held on 2 August 2006 and furnished confirmation to the OPP that the matter had been budgeted for and would be rectified by amongst others negotiating the purchase of the encroaching
structures from the respective owners and subsequently reopening the streets in question.

5.2.4 The municipality negotiated the purchase price with both owners and they both accepted the offers and the municipality effected payment of R285.00 to Mr. Smith and R519.00 to Mr. Wesi in December 2006. After the said payments, Mr. Smith apparently withdrew his offer to sell on condition that the Municipality should purchase the entire site.

5.2.5 The matter was subsequently put first on the IDP list of the Municipality, i.e. it was given first preference.

6. RECOMMENDATIONS

In terms of section 182(1)(b) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, the Public Protector recommends that:

6.1 The Municipality should ensure that the reopening of Phakedi and Palweni streets is completed as soon as possible to avoid further prejudice to the residents.

6.2 In the event of lack of cooperation from the site occupants, the Municipality should consider taking all reasonable steps, including expropriation as regulated in terms of section 25(2)(a) of the Constitution, to speed up progress on the matter.

6.3 The Municipality consider improving the current condition of the streets in question by, for instance, tarring the streets as an option.

6.4 The Municipality take note of and give effect to the provisions of section 5(1)(c) of Chapter 2, Act 23 of 2000, which require the Council to inform the community of its decision, in as far as council resolution C227 of 2 August 2006 is concerned.
7. CONCLUSION

7.1 The Public Protector will follow up on the recommendations stated above.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: _______________

Assisted by

B G Sithole, Provincial Representative: Northern Cape
and
T C Moroka, Investigator Assistant, Northern Cape