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Allegations of improper conduct and maladministration against the Inxuba Yethemba Local Municipality

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE INXUBA YETHEMBA LOCAL MUNICIPALITY IN THE EASTERN CAPE PROVINCE RELATING TO THE MISAPPROPRIATION OF PUBLIC FUNDS
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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, and section 8(2A) of the Public Protector Act, 1994.

(ii) The report relates to an investigation into allegations of improper conduct and maladministration by the Inxuba Yethemba Local Municipality (the Municipality) pertaining to the misappropriation of public funds.

(iii) The complaint was lodged on 23 February 2017 by Mr Monde Desha, a Councillor of the Democratic Alliance of the Inxuba Yethemba Municipal Council (the Complainant).

(iv) Based on an analysis of the complaint lodged, the following issues were identified to inform and focus the investigation:

(a) Whether the procurement of the transportation of sixty (60) persons on 7 and 8 January 2017 from Cradock to Johannesburg and back at a cost of R45 000 by the Municipality complied with the Supply Chain Management Policy (SCM Policy) of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

(b) Whether the hiring by the Municipality of a luxury vehicle for the same trip from Cradock to Johannesburg and back on 7 and 8 January 2017 at cost of R8 200 complied with its SCM Policy, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

(c) Whether the procurement by the Municipality for transportation of 180 persons to Mthatha on 15 January 2017 at a cost to the Municipality of R72 000 complied
with the SCM Policy of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

(v) The investigation was conducted in terms of section 182 (1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Municipality, analysis of the relevant documentation and information obtained during the investigation and application of the relevant legislation, policy and jurisprudence.

(vi) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:

(a) Regarding whether the procurement of the transportation of 60 persons on 7 and 8 January 2017 from Cradock to Johannesburg and back at a cost of R45 000-00 by the Municipality complied with its SCM Policy, and if not, whether the non-compliance with the SCM Policy was improper, constituted maladministration and resulted in the misappropriation of public funds

(aa) The allegation that the request for the procurement of transportation for a trip by 60 persons on 7 and 8 January 2017 by the Executive Mayor from Cradock to Johannesburg and back resulted in non-compliance with the Municipality’s SCM Policy and the misappropriation of public funds in the amount of R45 000, is substantiated.

(bb) The procurement of the transportation by the Municipality constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and resulted in irregular and fruitless and wasteful expenditure.
(b) Regarding whether the hiring by the Municipality of a luxury vehicle for the same trip from Cradock to Johannesburg and back on 7 and 8 January 2017 at a cost of R8 200 complied with the SCM Policy of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

(aa) The allegation that the request for the hiring of a luxury vehicle for the same trip by from Cradock to Johannesburg and back on 7 and 8 January 2017 by the Executive Mayor, resulted in non-compliance with the Municipality's SCM Policy and the misappropriation of public funds in the amount of R8 200, is substantiated.

(bb) The hiring of the luxury vehicle by the Municipality constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and resulted in irregular, fruitless and wasteful expenditure.

(c) Regarding whether the procurement of transportation for 180 ANC supporters to Mthatha by the Municipality on 15 January 2017 at a cost of R72 000-00 complied with its SCM Policy, and if not, whether the non-compliance with the SCM Policy was improper, constituted maladministration which resulted in the misappropriation of public funds.

(aa) The allegation that the request from the Executive Mayor for the procurement of transportation of 180 number persons on 15 January 2017 from Cradock to Mthatha and back resulted in non-compliance with the Municipality's SCM Policy and the misappropriation of public funds in the amount of R 72 000, is substantiated.
(bb) The procurement of transportation by the Municipality constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and resulted in irregular and fruitless and wasteful expenditure.

(vii) The appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution is the following:

(a) The Speaker of the Municipal Council:

(aa) To take appropriate steps to ensure that the Municipal Council establishes a special committee to investigate whether the conduct of the Executive Mayor referred to in this report relating to the procurement of transportation constitutes a breach of the Code of Conduct for Municipal Councillors in terms of item 14(1)(b) of Schedule 5 to the Local Government: Municipal Structures Act, within thirty (30) business days, from the date of this report and to take the appropriate action.

(b) The Municipal Manager:

(aa) To take the appropriate action against the officials of the Municipality that were involved in the procurement of transportation, referred to in this report, in terms of section 171(4) of the Local Government: Municipal Finance Management Act, 2003 (MFMA) with a view to taking disciplinary action against them, within thirty (30) business days from the date of this report.

(bb) To take the appropriate action against the former Municipal Manager who approved the procurement of the transportation in terms of section 173(1)(a)(i) of the MFMA;
(cc) To take the appropriate action in terms of the MFMA to recover the irregular, fruitless and wasteful expenditure referred to in this report, within thirty (30) business days from the date of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE INXUBA YETHEMBA LOCAL MUNICIPALITY IN THE EASTERN CAPE PROVINCE RELATING TO THE MISAPPROPRIATION OF PUBLIC FUNDS

1. INTRODUCTION

1.1. This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(2A) of the Public Protector Act, 1994 (Public Protector Act).

1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to:

1.2.1 The Speaker of the Municipal Council of the Inxuba Yethemba Local Municipality (Municipality), Mrs Maria Nortje; and

1.2.2 The Municipal Manager of the Municipality, Mr X Msweli.

1.2.3 Copies of the report are also provided to Mr Xolile Nqatha, the Member of the Executive Council of the Eastern Cape Provincial Government responsible for Cooperative Governance and Traditional Affairs, Ms G Gumbi-Masilela, the Head of the Eastern Cape Department of Cooperative Governance and Traditional Affairs (Department), Mr R Shweni, the Executive Mayor of Municipality, and Mr M Desha, the Complainant, to inform them of the outcome of my investigation.

1.3. The report relates to an investigation into allegations of improper conduct and maladministration by the Municipality pertaining to the misappropriation of public funds.
2. **THE COMPLAINT**

2.1 The complaint was lodged on 23 February 2017 by Mr Monde Desha, a Councillor of the Democratic Alliance of the Inxuba Yethemba Municipal Council (the Complainant).

2.2 In the main, the Complainant alleged that the Executive Mayor, Mr R Shweni improperly requested the procurement of transportation services by the Municipality, resulting in the misappropriation of public funds, as follows:

2.2.1 The transportation of 60 African National Congress (ANC) supporters to attend the *January 8 statement* of the President of the ANC at the Orlando Stadium in Johannesburg, at a cost of R45 000 paid for by the Municipality.

2.2.2 The hiring of a luxury vehicle at a cost of R8 200 for the same trip to Johannesburg.

2.2.3 The transportation of 180 ANC supporters to attend the ANC Eastern Cape Provincial Roadshow in Mthatha, on 15 January 2017 at a cost of R72 000.

2.3 According to the Complainant: "the trips were, ironically, motivated by the Executive Mayor Ray Shweni on behalf of the ANC executive as study trips for councillors and ward committee members to learn good governance and stake holder engagement, while the Municipality is currently experiencing financial distress owing creditors R52.9 million as at 30 June 2016".

2.4 The Complainant in essence contended that the expenditure incurred for the procurement of transportation services, as referred to above, was improper and irregular, constitutes maladministration and resulted in the misappropriation of public funds by the Municipality.
3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1 The Public Protector is an independent constitutional institution, established under section 181(1) (a) of the Constitution to 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 and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Moogoeng CJ held that the remedial action taken by the Public Protector has a binding effect¹. The Constitutional Court further held that:

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¹ [2016]ZACC 11;2016(3) SA 580(CC) and 2016 (5) BCLR 618 (cc) at para[76].
"When the 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."²

3.6. In the above-mentioned matter of the Economic Freedom Fighters v Speaker of the National Assembly and Others, the Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:

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

3.6.2 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 (para 67);

3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints. It is 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 that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

3.6.4 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 (para 69);

3.6.5 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

² Supra at para[73]
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 (para 70);

3.6.6 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 (para 71);

3.6.7 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 (para 71(a));

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));

3.6.9 “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 (para 71(e));

3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:

3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 71 of the judgment);
3.7.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (paragraph 82 of the judgment);

3.7.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraph 100 and 101 of the judgment):

a) Conduct an investigation;
b) Report on that conduct; and
c) To take remedial action.

3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (paragraph 104 of the judgment);

3.7.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (Paragraph 105 of the report);

3.7.6 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute *prima facie* findings that point to serious misconduct (paragraph 107 and 108 of the Judgment); and

3.7.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112 of the judgment).

3.8 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances
that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute 'special circumstances' depends on the merits of each case.

3.9 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

3.10 The jurisdiction of the Public Protector to investigate this matter was not disputed by the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 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 alleged improper conduct or maladministration.

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 amounts to maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where he/she would have been, but for the improper conduct or maladministration?

4.2.1.5 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. In this particular case, the factual enquiry principally focused on whether or not the Municipality acted improperly in procuring the transportation complained of and whether it constituted maladministration and resulted in the misappropriation of public funds.

4.2.1.6 The enquiry regarding what should have happened focuses on the law or rules that regulate the standard that should have been met by the Municipality to prevent improper conduct, maladministration or the misappropriation of public funds.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration.

4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether the procurement of the transportation of 60 persons on 7 and 8 January 2017 from Cradock to Johannesburg and back at a cost of R45 000 by the Municipality complied with the SCM Policy of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.
4.3.2 Whether the hiring of a luxury vehicle for the same trip from Cradock to Johannesburg and back on 7 and 8 January 2017 at cost of R8 200 by the Municipality complied with the SCM Policy of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

4.3.3 Whether the procurement of transportation of one hundred and eighty (180) persons to Mthatha on 15 January 2017 at a cost of R72 000 by the Municipality complied with the SCM Policy of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

4.4 KEY SOURCES OF INFORMATION

4.4.1 Documents

4.4.1.1 A copy of the Supply Chain Management Policy of the Municipality, dated July 2013.

4.4.1.2 Copies of the following procurement documents relating to all three transactions, received from the Municipal Manager, Mr X Msweli:

4.4.1.2.1 Payment voucher no. 265 for the amount of R72 000 dated 03 February 2017.

4.4.1.2.2 SCM Document Control Checklist C/576.

4.4.1.2.3 Official Purchase Order No. C/576, dated 2 February 2017 in the amount of R72 000.

4.4.1.2.4 Confirmation of a vote number form, dated 13 January 2017.

4.4.1.2.5 Demand/Request form, signed on 2 February 2017.

4.4.1.2.6 Inxuba Yetemba Municipality Invoice No. 26022 dated 13 January 2017 for the amount of R72 000.

4.4.1.2.7 M M Mlanga Transport Services Invoice No. 2401 dated 16 January 2017 in the amount of R72 000.

4.4.1.2.8 Lee and Spar General Trading Invoice No. 366 dated 13 January 2017 in the amount of R75 600.
4.4.1.2.9 S Mlanga Transport Services Invoice No. 26 dated 13 January 2017 in the amount of R77 400.

4.4.1.2.10 Central Database Registration Report for M M Mlanga, dated 2 February 2017.


4.4.1.2.12 Tax Clearance Certificate for MM Mlanga with ID no. 6502145512082 from SARS.

4.4.1.2.13 Payment voucher no. 266 for the amount of R45 000, dated 03 February 2017. SCM Document Control Checklist C/575.

4.4.1.2.14 Official Purchase Order No. C/575, dated 2 February 2017 in the amount of R45 000.

4.4.1.2.15 Confirmation of a vote number form, dated 19 January 2017.

4.4.1.2.16 Demand/Request form, signed on 24 January 2017.

4.4.1.2.17 Inxuba Yetemba Municipality Invoice No. 21366, dated 19 January 2017 for the amount of R45 000.

4.4.1.2.18 M M Mlanga Transport Services Invoice No. 307, dated 11 January 2017 in the amount of R45 000.

4.4.1.2.19 Lee and Spar General Trading Invoice No. 362 dated 05 January 2017 in the amount of R48 000.

4.4.1.3 Affidavits of Ms H Vorster, Ms R Lottering, Mr Monde Desha and Ms C Ada-Sammy Municipal Councillors, taken on 28 August 2018.

4.4.1.4 Copies of the following procurement documents relating to all three alleged irregular transactions, received from the Complainant:

4.4.1.4.1 A letter from the Office of the Caucus Whip of the Democratic Alliance in the Inxuba Yethemba Municipality, Mrs M Featherstonehaugh with subject heading: Enquiry Regarding Study Trips, addressed to the Municipal Manager, dated 8 March 2017.

4.4.1.4.2 A response letter from the Acting Municipal Manager, Mrs N T Majiba with subject, dated 9 March 2017.

4.4.1.4.3 Purchase order no B-1120 to Mr S Mlanga, dated 31 January 2017 in the amount of R8 200.
4.4.1.4.4 Purchase order no B-1120 to Mr S Mlanga, dated 31 January 2017 in the amount of R8 200.

4.4.1.4.5 Inxuba Yethemba Municipality Invoice No 21265, dated 19 January 2017, in the amount of R8200 to M M Mlanga.

4.4.1.4.6 FNB Proof of payment report from Zanele Lie to M M Mlanga for the amount of R72 000, M M Mlanga for the amount of R45 000 and Siphamandla Mlanga for the amount of R8 200 dated 3 February 2017.

4.4.2 Correspondence between the Public Protector and:

4.4.2.1 Mr X W Msweli, the Municipal Manager of the Municipality, dated 28 June 2018; and

4.4.2.2 Mr A Mlanga (the service provider) dated 28 June 2019 and 1 July 2019.

4.4.3 Legislation and other prescripts


4.4.3.2 The Public Protector Act 23 of 1994.

4.4.3.3 Local Government: Municipal Finance Management Act 56 of 2003 (MFMA).

4.4.3.4 Local Government: Municipal Structures Act 117 of 1998 (Municipal Structures Act)

4.4.3.5 The Municipal Supply Chain Management Regulations made in terms of the MFMA

4.4.3.6 The Supply Chain Management Policy of the Municipality, dated July 2013.
4.4.4 Jurisprudence considered

4.4.4.1 Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016(3) SA 580(CC).

4.4.4.2 President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP).

4.4.5 Notices issued in terms of section 7(9) of the Public Protector Act

4.4.5.1 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the Executive Mayor of Inxuba Yethemba Local Municipality, Mr R Shweni, dated 5 November 2018. No response was received.

4.4.5.2 Notice issued in terms of section 7(9)(a) of the Public Protector Act to the former Municipal Manager of Inxuba Yethemba Local Municipality, Mr L Jojiyasi, dated 5 November 2018.

4.4.5.3 Responses to the section 7(9)(a) Notice from the former Municipal Manager of Inxuba Yethemba Local Municipality, Mr L Jojiyasi, dated 3 and 7 December 2018, respectively.

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the procurement of the transportation of 60 persons on 7 and 8 January 2017 from Cradock to Johannesburg and back at a cost of R45 000-00 by the Municipality complied with its SCM Policy, and if not, whether the
non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds

*Common cause or undisputed facts*

5.1.1 On 3 January 2017, the Executive Mayor, Mr R Shweni, submitted an internal memorandum to Mr L Jojiyasi, the Acting Municipal Manager at the time, requesting funding for “a study tour/trip of CLLRS and Ward Committees Members to learn good practices on good Governance and Stakeholder engagement. The study trip/tour is to be in the Gauteng Province to compare a type A and B Municipality.”

5.1.2 On 7 January 2017, sixty (60) persons travelled to Johannesburg from Cradock and returned on 8 January 2017 at the expense of the Municipality. The identity of the passengers do not appear on the records of the Municipality and could not be established during the investigation.

5.1.3 The request form for the necessary funds for the trip was signed by Mr Jojiyasi on 9 January 2017 (after the trip had already been undertaken) and received by Ms N Gampi at the Supply Chain Management Office of the Municipality, on 24 January 2017.

5.1.4 The Municipality received two quotations from service providers for the transportation.

5.1.5 The quotation of *M M Mlango Transport Services* for R45 000 is dated 11 January 2017 and of *Lee and Spar General Trading*, 5 January 2017 for R48 000, respectively.

5.1.6 A request (not dated) for deviation from the normal procurement process in terms of paragraph 36 of the Municipality’s SCM Policy was submitted to the Acting Municipal Manager on the basis that the trip was an emergency, which he approved.
5.1.7 No reasons were provided in the documentation for the trip to be undertaken and as to why the trip constituted an emergency.

5.1.8 *M M Mlanga Transport Services* was recommended as the service provider by the Supply Chain Management Office on 24 January 2017, approximately two weeks after the trip was undertaken.

5.1.9 The Official Purchase Order (C/575) was authorised by the Supply Chain Management Office on 2 February 2017.

5.1.10 The Payment voucher was authorised by the Financial Manager and payment of the amount of R45 000-00 was made to *M M Mlanga Transport Services* on 3 February 2017.

*Issues or Facts in Dispute*

5.1.11 According to the Complainant, 60 persons were transported at the expense of the Municipality from Cradock to Johannesburg on 7 and 8 January 2017 for the purpose of attending the *January 8 statement* of the President of the ANC at the Orlando Stadium in Johannesburg. He claims that this was not a study trip, as indicated by the Executive Mayor.

5.1.12 On 2 February 2017, Mr Shweni, the Executive Mayor, sent a Memorandum to the then Acting Municipal Manager, Mr L Jojiyasi, stating that the motivation for funding the transportation was based on invitations he received in his capacity as Executive Mayor of the Municipality when he attended the SALGA National and Provincial Conferences. The Executive Mayor did not provide the dates on which he received the invitations and no copies of the invitations could be found in the records of the Municipality.
5.1.13 Mrs M Featherstonehaugh, the Democratic Alliance (DA) Caucus Whip in the Inxuba Yethemba Municipal Council sent a letter to the Acting Municipal Manager, Mrs N T Majiba, on 8 March 2017, requesting an investigation into the “study trips” undertaken.

5.1.14 Mrs N T Majiba replied in a letter dated 9 March 2017. According to her, she was not in a position to respond, as Mr Jojiyasi had authorised the trips.

5.1.15 During the investigation, four affidavits of Councillors who were part of the Municipal Council when the trips were undertaken were obtained on 28 August 2018. According to them, they were not part of the trip to Johannesburg.

5.1.16 In his response to the section 7 (9) Notice, Mr L Jojiyasi stated in an affidavit, dated 7 December 2018, that the Memorandum submitted by the Executive Mayor was used to motivate the funding for trips to Gauteng and Mthatha.

5.1.17 Mr Jojiyasi further stated that he completed the request form on behalf of the Mayor's Office as there was no official other than the Secretary who could perform that responsibility.

5.1.18 He stated that the official purchase order was authorised on 2 February 2017 and the documentation was submitted by the Mayor’s Office on that date.

5.1.19 According to Mr Jojiyasi, the Municipality ordinarily only pay for services after it was rendered.

5.1.20 He authorised the trips requested by the Executive Mayor because he had no reason to doubt the authenticity of the Executive Mayor’s requests.

5.1.21 According to Mr Jojiyasi, his “administrative actions” in respect of approval of the expenditure was delayed, because he awaited an official Memorandum from the Mayor’s Office, which he only received on 2 February 2017, after the trip had been undertaken.
5.1.22 He stated in this regard that: “The Executive Mayor approached us, myself as Acting MM and Mr Ludwe Hanana as Acting CFO to approve the trip. I initially refused to authorise the trip because the request was verbal from the Acting CFO, but I insisted that if the Mayor was saying he had problems producing the original invitations or he had misplaced them then I needed something in writing confirming what he was saying.’

5.1.23 Mr Jojiyasi in his conclusion stated that: “I submit that my actions, together with that of the other officials of the finance department, do constitute spending that is characterised as irregular. I did not act dishonestly or with any intentions to commit maladministration”.

5.1.24 No evidence could be found in the records of the Municipality to verify that the service procured was delivered and that the persons were transported in terms of the request of the Executive Mayor.

5.1.25 The service provider from which the transport was procured, Mr A Mlanga, confirmed during the investigation that he transported persons for the municipality on 7 and 8 January 2017 from Cradock to the Orlando Stadium in Johannesburg.

5.1.26 The Executive Mayor did not respond to the section 7(9) notice issued to him during the investigation affording him an opportunity to respond to the allegations.

5.1.27 Mr Jojiyasi has since left the Municipality and is not currently employed by an organ of state.

Application of the relevant law

5.1.28 Section 217 of the Constitution provides that when an organ of state contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
5.1.29 Section 1 of the MFMA defines *fruitless and wasteful expenditure* as: "expenditure that was made in vain and would have been avoided had reasonable care been exercised."

5.1.30 Irregular expenditure is defined by section 1, *inter alia*, as: *expenditure incurred by a municipality in contravention of or that is not in accordance with a requirement of the MFMA or the supply chain management policy of the municipality and which has not been condoned.*

5.1.31 Section 60 (a) of the MFMA provides that the Municipal Manager of a municipality is the accounting officer of the municipality and, as accounting officer, must exercise the functions and powers assigned to an accounting officer in terms of the Act.

5.1.32 In terms of section 62(1)(d) of the MFMA, the accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that unauthorised, irregular and wasteful expenditure and other losses are prevented.

5.1.33 A municipality must, in terms of section 171(4) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality and in terms of section 171(4)(b), if the investigations warrants such a step institute disciplinary proceedings.

5.1.34 Section 171(1)(c) of the MFMA provides that the accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently makes or permits, or instructs another official of the municipal entity to make, an irregular or fruitless and wasteful expenditure.

5.1.35 Section 173(1)(a)(i) of the MFMA provides that the accounting officer of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way contravenes or fails to comply with a provision of 62(1).
5.1.36 Each municipality must, in terms of Section 111 of the MFMA have and implement a supply chain management policy which gives effect to the provisions of the Act.

5.1.37 Regulation 17 of the Municipal Supply Chain Management Regulations, made in terms of the MFMA, provides that a supply chain management policy must stipulate the conditions for the procurement of goods and services through formal written price quotations. These conditions should include that quotations must be obtained in writing from at least three different service providers whose names appear on the list of accredited prospective providers of the municipality.

5.1.38 It is further provided that should it not be possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer.

5.1.39 In terms of paragraph 12 of the Municipality's SCM Policy, the procurement of goods and services of a transaction value exceeding R30 000 and up to R200 000, is provided by way of formal written quotations.

5.1.40 Paragraph 16 of the SCM Policy provides that the Accounting Officer must establish the conditions for the procurement of goods or services through written quotations, which must include that quotations must be obtained from at least three different providers, preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the Municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria.

5.1.41 Further, that if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the Accounting Officer or another official designated by the Accounting Officer.

5.1.42 Paragraph 36 (1) of the SCM Policy provides that the Accounting Officer or a senior official of the Municipality to whom the Accounting Officer has delegated the authority in writing may dispense with the official procurement processes established by the
SCM Policy and procure any required goods or services through any convenient process, which may include direct negotiations in an emergency.

5.1.43 An “Emergency” is defined by paragraph 1 of the SCM Policy as: “a serious, unexpected, unforeseen and potentially dangerous situation requiring immediate action and which is not due to a lack of planning” (Emphasis added).

5.1.44 Paragraph 36 (2) of the SCM Policy provides that the Accounting Officer must record the reasons for any deviations in terms of paragraph 36 and report them to the next meeting of the Council and include it as a note to the annual financial statements.

5.1.45 In terms of paragraph 36(4) of the SCM Policy, telephonic approval should be obtained from the SCM unit as well as the Manager of the Department requiring the goods and services in case of an emergency. Written recommendations must be obtained within 3 (three) working days from SCM as the relevant Manager; and final approval has to be obtained from the Accounting Officer, before an order is issued for the service to be rendered.


5.1.47 Item 2 of Schedule 5 provides that a councillor must (a) perform the functions of office in good faith, honestly and in a transparent manner; and (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality is not compromised.

5.1.48 Item 14(1) of Schedule 5 provides that a municipal council may (a) investigate and make a finding on any alleged breach of a provision of this code; or (b) establish a special committee to (i) investigate and make a finding on any alleged breach of this Code; and (ii) to make appropriate recommendations to the council.

5.1.49 If the council or a special committee finds that a councillor has breached a provision of this Code, the council may, in terms of Item 14(2) of Schedule 5 - (a) issue a formal
warning to the councillor; (b) reprimand the councillor; (c) request the MEC for local government in the province to suspend the councillor for a period; (d) fine the councillor; and (e) request the MEC to remove the councillor from office.

Conclusion

5.1.50 The transportation of the 60 persons at a cost of R45 000 from Cradock to Johannesburg and back on 7 and 8 January 2017 was only approved by the Acting Municipal Manager and the purchase order was issued on 2 February 2017, after the trip had already been undertaken. The quotation that was accepted by the Municipality, was also issued by the service provider three days after the trip has been undertaken.

5.1.51 Deviation from the procurement process was requested for the trip on the basis of an emergency.

5.1.52 The motivation for the deviation did not comply with the definition of an emergency as contemplated by the SCM Policy.

5.1.53 The procurement of the transportation therefore was not in compliance with the SCM Policy of the Municipality, as it was only approved after the service had already been rendered.

5.1.54 The expenditure of R45 000 incurred was therefore regarded/classified as irregular, and fruitless and wasteful.

5.2 Regarding whether the hiring of a luxury vehicle for the same trip from Cradock to Johannesburg and back on 7 and 8 January 2017 at cost of R8 200 by the Municipality complied with its SCM Policy, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.
Common cause or undisputed facts

5.2.1 On 3 January 2017, the Executive Mayor, Mr R Shweni, submitted an internal memorandum to Mr L Jojiyasi, the Acting Municipal Manager at the time, requesting funding for “a study tour/trip of CLLRS and Ward Committees Members to learn good practices on good Governance and Stakeholder engagement. The study trip/tour is to be in the Gauteng Province to compare a type A and B Municipality.”

5.2.2 The request was for the hiring of a luxury vehicle, in addition to the transportation of the 60 persons referred to above, to travel from Cradock to Johannesburg and back on 7 and 8 January 2017. The identities of the persons who used the vehicle do not appear on the records of the Municipality.

5.2.3 The request form for the necessary funding for this trip was signed by the Acting Municipal Manager, Mr L Jojiyasi on 19 January 2017 and received by Ms N Gampi at the Supply Chain Office on 24 January 2017 i.e. after the trip was undertaken.

5.2.4 The Municipality received three quotations from service providers for the transportation.

5.2.5 The quotation of M M Mlanga Transport Services for R8 550-00 is dated 06 January 2017, S Mlanga Transport Services for R8 200-00 11 January 2017 and that of Lee and Spar General Trading for R8 700-00, 6 January 2017, respectively.

5.2.6 The quotation of S Mlanga Transport Services was approved, although the Invoice (No. 21365) is addressed to M M Mlanga Transport Services, dated 19 January 2017, after the trip was undertaken.

5.2.7 The Official Purchase Order (B/1120) for R8 200-00 was authorised by the Supply Chain Management Office on 31 January 2017 and addressed to S Mlanga.
5.2.8 The documentation relating to this trip obtained during the investigation does not include any request for a deviation from the prescribed SCM process.

*Issues or Facts in Dispute*

5.2.9 The Complainant contended that the hiring of a luxury vehicle for the trip from Cradock to Johannesburg and back on 7 and 8 January 2017 (in addition to the transportation of the 60 persons referred to above) was improper and a misappropriation of public funds. He claims that this was not a study trip, as indicated by the Executive Mayor.

5.2.10 On 2 February 2017, the Executive Mayor, Mr Shweni sent a memorandum to the then Acting Municipal Manager, Mr L Jojiyasi, stating that the motivation for funding the transportation was based on invitations he received in his capacity as Executive Mayor of the Municipality when he attended the SALGA National and Provincial Conferences. The Executive Mayor did not provide the dates on which he received the invitations and no copies were found in the records of the Municipality.

5.2.11 Mrs M Featherstonehaugh, the Democratic Alliance (DA) Caucus Whip in Inxuba Yethemba Municipal Council sent a letter to the Acting Municipal Manager, Mrs N T Majiba, on 8 March 2017, requesting an investigation into the "study trips" undertaken.

5.2.12 Mrs N T Majiba replied in a letter dated 9 March 2017. According to her, she was not in a position to respond as Mr Jojiyasi had authorised the trips.

5.2.13 During the investigation, four affidavits of Councillors who were part of the Municipal Council when the trips were undertaken were obtained on 28 August 2018. According to them, they were not part of the trips to Johannesburg.
5.2.14 In his response to the section 7 (9) Notice, Mr L Jojiyasi, stated in an affidavit, dated 7 December 2018, that the memorandum submitted by the Executive Mayor was used to motivate for both trips to Gauteng and Mthatha.

5.2.15 Mr Jojiyasi further stated that he completed the request form on behalf of the Mayor’s Office, because there was no official, other than the Secretary who could perform that responsibility.

5.2.16 He further stated that the official purchase order was authorised on 2 February 2017 and the documentation was submitted by the Mayor’s Office on the same date.

5.2.17 He authorised the trips requested by the Executive Mayor because he had no reason to doubt the authenticity of the invitations and the Municipality never go out of their way to investigate such requests.

5.2.18 According to Mr Jojiyasi, his “administrative actions” in respect of approval of the expenditure were delayed because he awaited an official Memorandum from the Mayor’s Office, which he only received on 2 February 2017 after the trip had already been undertaken.

5.2.19 He stated in this regard that: “The Executive Mayor approached us, myself as Acting MM and Mr Ludwe Hanana as acting CFO to approve the trip. I initially refused to authorize the trip because the request was verbal from the acting CFO, but I insisted that if the Mayor was saying he had problems producing the original invitations or he had misplaced them then I needed something in writing confirming what he was saying.”

5.2.20 Concluding his affidavit, Mr Jojiyasi stated that: “I submit that my actions, together with that of the other officials of the finance department, do constitute spending that is characterized as irregular. I did not at dishonestly or with any intentions to commit maladministration”.

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5.2.21 No evidence could be found in the records of the Municipality of verification that the
service procured was delivered and that the persons were transported in terms of the
request of the Executive Mayor.

5.2.22 The service provider from which the luxury vehicle was hired, Mr A Mlanga, confirmed
the transaction during the investigation.

5.2.23 The Executive Mayor did not respond to the section 7(9) notice issued to him during
the investigation affording him an opportunity to respond to the allegations.

*Application of the relevant law*

5.2.24 The relevant legislation regulations and policy prescripts referred to in paragraphs
5.1.28 to 5.1.49 above apply to the consideration of this issue.

*Conclusion*

5.2.25 The hiring of a luxury vehicle at a cost of R8 200 for the trip from Cradock to
Johannesburg and back on 7 and 8 January 2017 was only approved and the
purchase order issued on 31 January 2017, after the trip had already been
undertaken.

5.2.26 The procurement of the transportation therefore was not in compliance with the SCM
Policy of the Municipality as it was only approved after the service had already been
rendered.

5.2.27 There is no indication that a deviation from the procurement process was requested
and approved for the trip.

5.2.28 No verification that service was rendered was obtained.

5.2.29 The expenditure of R8 200 incurred was therefore irregular, and fruitless and
wasteful.
5.3 Regarding whether the procurement by the Municipality of transportation of 180 persons to Mthatha on 15 January 2017 at a cost to the Municipality of R72 000 complied with its SCM Policy, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds

*Common cause or undisputed facts*

5.3.1 On 3 January 2017 the Executive Mayor, Mr R Shweni, submitted an internal memorandum to Mr L Jojiyasi, the Acting Municipal Manager at the time, requesting funding for “a study tour/trip of CLLRS and Ward Committees Members to learn good practices on good Governance and Stakeholder engagement. The study trip/tour is to be in the Gauteng Province to compare a type A and B Municipality”.

5.3.2 Transportation of one hundred and eighty (180) people from Cradock to Mthatha on 15 January 2017 was procured by the Municipality at a cost of R72 000.

5.3.3 The request form for the necessary funding for the trip was signed by the Acting Municipal Manager on 19 January 2017 (four days after the trip was undertaken) and received at the Supply Chain Management Office by A Khanyisile, on 2 February 2017.

5.3.4 The Municipality received three quotations from service providers for the transportation.

5.3.5 The quotation of *M M Mlanga Transport Services* for R72 000-00 is dated 13 January 2017, *S Mlanga Transport Services* for R77 400-00, dated 13 January 2017 and of *Lee and Spar General Trading* for R75 600-00, dated 13 January 2017.

5.3.6 A request for deviation in terms of paragraph 36 of the Municipality’s SCM Policy was submitted by V Singeni of the Financial Division on 2 February 2017, on the basis that the trip was an emergency. The motivation provided for the deviation was that
the Finance Division received the Demand/Request Form late from the Executive Mayor's office.

5.3.7 The Acting Municipal Manager, Mr L Jojiyasi approved the deviation, on 2 February 2017, after the trip had already been undertaken.

5.3.8 The quotation of M M Mlanga Transport Services dated 13 January 2017, was approved (Invoice No. 26022).

5.3.9 The Official Purchase Order (C/576) was authorised by the Supply Chain Management Office on 2 February 2017, after the trip was undertaken.

5.3.10 The payment voucher was authorised by the Financial Manager and payment of the amount of R72 000-00 was made to M M Mlanga Transport Services on 3 February 2017.

*Issues or Facts in Dispute*

5.3.11 According to the Complainant, the trip of 15 January 2017 was undertaken to attend the ANC Eastern Cape Provincial Roadshow in Mthatha. He claimed that this was not a study trip as indicated by the Executive Mayor.

5.3.12 On 2 February 2017, the Executive Mayor, Mr Shweni sent a letter to the then Acting Municipal Manager, Mr L Jojiyasi, stating the reason for the motivation for funding was based on invitations he received in his capacity as Executive Mayor of the Municipality when he attended the SALGA National and Provincial Conferences. The Executive Mayor did not provide the dates on which he received the invitations.

5.3.13 Mrs M Featherstonehaugh, the Democratic Alliance (DA) Caucus Whip in Inxuba Yethemba Municipal Council sent a letter to the Acting Municipal Manager, Mrs N T Majiba, on 8 March 2017, requesting an investigation into the "study trips" undertaken.
5.3.14 Mrs N T Majiba replied in a letter dated 9 March 2017. According to her, she was not in a position to respond as Mr Jojiyasi had authorised the trips.

5.3.15 The evidence and information obtained during the investigation indicate that the Municipality procured transportation for 180 people to travel from Cradock to Mthatha and back on 15 January 2017 at a cost of R 72 000. The identity of the passengers do not appear from the records of the Municipality.

5.3.16 In his response to the section 7 (9) Notice, Mr L Jojiyasi, stated in an affidavit, dated 7 December 2018, that the memorandum submitted by the Executive Mayor was used to motivate for both trips to Gauteng and Mthatha.

5.3.17 Mr Jojiyasi further stated that he completed the request form on behalf of the Mayor's Office because there is was no official other than the Secretary who could perform that responsibility.

5.3.18 Mr Jojiyasi further confirmed that the official purchase order was authorised on 2 February 2017 and the documentation was submitted by the Mayor’s Office on the same date.

5.3.19 He authorised the trips requested by the Executive Mayor because he had no reason to doubt the authenticity of the Executive Mayor’s requests.

5.3.20 According to Mr Jojiyasi, his “administrative actions” in respect of approval of the expenditure was delayed, because he awaited an official Memorandum from the Mayor’s Office, which he only received on 2 February 2017, after the trip had been undertaken.

5.3.21 He stated in this regard that: “The Executive Mayor approached us, myself as Acting MM and Mr Ludwe Hanana as Acting CFO to approve the trip. I initially refused to authorize the trip because the request was verbal from the Acting CFO, but I insisted that if the Mayor was saying he had problems producing the original invitations or he
had misplaced them then I needed something in writing confirming what he was saying”.

5.3.22 Mr Jojyasi in his conclusion stated that: “I submit that my actions, together with that of the other officials of the finance department, do constitute spending that is characterized as irregular. I did not act dishonestly or with any intentions to commit maladministration”.

5.3.23 The Executive Mayor did not respond to the section 7(9) notice issued to him during the investigationaffording him an opportunity to respond to the allegations.

5.3.24 No evidence could be found in the records of the Municipality of verifying that the service procured was delivered and that the persons were transported in terms of the request of the Executive Mayor.

5.3.25 The service provider from which the transportation was procured, Mr A Mlanga confirmed that he transported passengers from Cradock to a stadium in Mthatha for the Municipality, as alleged.

Application of the relevant law

5.3.26 The relevant legislation regulations and policy prescripts referred to in paragraphs 5.1.28 to 5.1.49 above apply to the consideration of this issue.

Conclusion

5.3.27 The transport of a 180 persons at a cost to the Municipality of R72 000 on 15 January 2017 from Cradock to Mthatha and back was approved on 13 January 2017, but the purchase order was only issued on 2 February 2017. The request for deviation from the normal procurement process was approved on 2 February 2017, i.e. long after the trip was undertaken.
5.3.28 Deviation from the procurement process was requested for the trip on the basis of an emergency.

5.3.29 The motivation for the deviation in respect of the trip undertaken from Cradock to Johannesburg on 7 and 8 January 2017 referred to above, was also used for trip undertaken from Cradock to Mthatha on 15 January 2017. No evidence of any invitations or training could be found in the records of the Municipality.

5.3.30 The motivation for the deviation did not comply with the definition of an emergency, as contemplated by the SCM Policy.

5.3.31 The expenditure of R 72 000 incurred was therefore irregular, and fruitless and wasteful.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the provisions of the relevant legal prescripts and the obligations the Municipality should have complied with, I make the following findings:

6.1 Regarding whether the procurement of the transportation of 60 persons on 7 and 8 January 2017 from Cradock to Johannesburg and back at a cost of R45 000-00 by the Municipality complied with its Supply Chain Management Policy, and if not, whether the non-compliance with the Supply Chain Management Policy was improper, constituted maladministration which resulted in the misappropriation of public funds

6.1.1 The allegation that the request from the Executive Mayor for the procurement of transportation for a trip by 60 persons on 7 and 8 January 2017 from Cradock to Johannesburg and back resulted in non-compliance with the Municipality’s SCM Policy and the misappropriation of public funds in the amount of R45 000, is substantiated.
6.1.2 The procurement of the transportation by the Municipality constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and resulted in irregular, fruitless and wasteful expenditure.

6.2 Regarding whether the hiring by the Municipality of a luxury vehicle for the same trip from Cradock to Johannesburg and back on 7 and 8 January 2017 at cost of R8 200 complied with the SCM Policy of the Municipality, and if not, whether the non-compliance with the SCM Policy was improper, constitutes maladministration, which resulted in the misappropriation of public funds.

6.2.1 The allegation that the request for the hiring of a luxury vehicle for the same trip by from Cradock to Johannesburg on 7 and 8 January 2017 and back from the Executive Mayor resulted in non-compliance with the Municipality’s SCM Policy and the misappropriation of public funds in the amount of R8 200, is substantiated.

6.2.2 The hiring of the luxury vehicle by the Municipality constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act an resulted in irregular and fruitless and wasteful expenditure.

6.3 Regarding whether the procurement of transportation of 180 ANC supporters to Mthatha, on 15 January 2017 at a cost of R72 000-00 by the Municipality complied with its Supply Chain Management Policy, and if not, whether the non-compliance with the Supply Chain Management Policy was improper, constituted maladministration which resulted in the misappropriation of public funds.
6.3.1 The allegation that the request from the Executive Mayor for the procurement of transportation for a trip by 180 number persons on 15 January 2017 from Cradock to Mthatha and back resulted in non-compliance with the Municipality’s SCM Policy and the misappropriation of public funds in the amount of R 72 000, is substantiated.

6.3.2 The procurement of the transportation by the Municipality constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act and resulted in irregular and fruitless and wasteful expenditure.

7 REMEDIAL ACTION

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

7.1 The Speaker of the Municipal Council:

7.1.1 To take the appropriate steps to ensure that the Municipal Council establishes a special committee to investigate whether the conduct of the Executive Mayor referred to in this report relating to the procurement of transport constitutes a breach of the Code of Conduct for Municipal Councillors in terms of item 14(1)(b) of Schedule 5 to Municipal Structures Act, within 30 business days, from the date of this report and to take the appropriate action.

7.2 The Municipal Manager:

7.2.1 To take the appropriate action against the officials of the Municipality who were involved in the procurement of transportation, referred to in this report, in terms of section 171(4) of the MFMA within 30 business days from the date of my report.
7.2.2 To take the appropriate action against the former Municipal Manager who approved the procurement of the transportation in terms of section 173(1)(a)(i) of the MFMA.

7.2.3 To take the appropriate action in terms of the MFMA to recover the irregular, fruitless and wasteful expenditure referred to in this report, within 30 business days from the date of my report.

8. MONITORING

8.1 The Speaker of the Municipal Council to submit an implementation plan to me, indicating how the remedial action referred to in paragraph 7.1 is implemented, within 15 business days from the date of my report.

8.2 The Municipal Manager of the Municipality to submit an implementation plan to me on how the remedial action referred to in paragraph 7.2 is implemented, within 15 business days from the date of my report.

ADV BUSISIWE MKWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 09/09/2019