REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF A FAILURE BY THE CITY OF CAPE TOWN TO ENFORCE REGULATIONS AGAINST ILLEGALLY OPERATING UBER METERED TAXIS IN THE WESTERN CAPE.
1. INTRODUCTION

1.1 This is my closing report 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 This report relates to allegations of failure by the City of Cape Town to properly regulate the operation of Uber metered taxi services in the Western Cape and to enforce the conditions of an agreement between the City of Cape Town (the City) and Uber, Western Cape.

1.3 The complaint was lodged with the Western Cape Provincial Office of the Public Protector by Mr Joseph Munzvenga (Complainant) on 14 June 2016.

1.4 In summary, the Complainant alleged the following:

1.4.1 Uber was allowed to operate in the City of Cape Town with approximately three thousand (3000) vehicles, even though the City agreed to accommodate only one thousand and thirty five vehicles (1035). He stated that of the 1035 vehicles, only three hundred and forty one (341) had permits.

1.4.2 Further, that City officials resorted to impounding Uber vehicles instead of properly regulating the service, thereby making about R10 000 profit for themselves per impound.

1.4.3 Uber violated the regulations of the Provincial Regulating Entity by operating with a large contingent of illegal Uber vehicles and the City was reluctant to properly regulate the industry because of the revenue collected on impounds.

1.4.4 Mr Lee Van Der Berg, Transport Regulator at the Municipal Regulating Entity, showed no interest when the Complainant approached him to complain about the matter.
1.4.5 Mr Brett Herron, a City Councillor, was seen officially launching Uber Green, which was an “illegally operating entity” as the vehicles had no permits.

1.4.6 In his complaint, Mr. Munzvenga also provided a video clip of what appears to be an advertisement depicting the former Minister of Tourism, Mr. Derek Hanekom, making travel arrangements using the Uber mobile application and organising the pickup from Parliament.

1.4.7 According to the Complainant, Uber metered Taxis are not regulated in Cape Town and therefore operating illegally. He argued that Minister Hanekom was endorsing an illegally operating taxi service.

2. ISSUES TO BE CONSIDERED

2.1 On analysis of the allegations and the information and documentation received during preliminary enquiries, the following issues were considered and investigated:

2.1.1 Whether the City of Cape Town Metropolitan Municipality (the City) failed to properly regulate the Uber Metered Taxi Services Industry in the Western Cape resulting in Uber operators functioning illegally,

2.1.2 Whether the former Minister of Tourism, Mr. Derek Hanekom endorsed an illegally operating Uber Services Industry through an advertisement which ostensibly promoted the use of the service.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector was established in terms of section 181 (b) 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 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, to report on that conduct and to take appropriate remedial action. Section 182 (2) directs that the Public Protector has additional powers as prescribed in legislation.

3.3 Additional powers of the Public Protector to investigate improper conduct in state affairs are provided for in national legislation, amongst others, section 6 and 7 of the Public Protector Act, 1994 (Public Protector Act).

3.4 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 constitutes as ‘special circumstances’ depends on the merits of each case.

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.
4.2 Approach to the investigation

4.2.1 The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

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

4.2.2.1 What happened?

4.2.2.2 What should have happened?

4.2.2.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to a maladministration and improper conduct?

4.2.2.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong occasioned by the said improper conduct or maladministration?

4.2.3 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 alleged failure by the City to properly regulate the Uber Metered Taxi Industry constitutes maladministration and whether or not the alleged conduct of former Minister Hanekom was improper.

4.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the City and the former Minister Hanekom to prevent maladministration and conduct failure.

5. KEY SOURCES OF INFORMATION

5.1 APPLICABLE LEGISLATION

5.1.2 The Public Protector Act, 23 of 1994;

5.1.3 National Land Transport Act 5 of 2009 (NLTA).

5.1.4 National Road Traffic Act 93 of 1996

5.1.5 City of Cape Town: Constitution of Transport for Cape Town Bylaw, 2013

5.2 CORRESPONDENCE EXCHANGED

5.2.1 Email from, Mr. Lee Van den Berg, Manager: Municipal Regulatory Entity to the Complainant, Mr. Munzvenga, dated 30 May 2016;

5.2.2 Letter sent to the Office of the Premier by the Western Cape Provincial Office of the Public Protector, dated 28 July 2016;

5.2.3 Correspondence received from the Office of the Premier dated 28 July 2016;

5.2.4 Email to Mr. Munzvenga from the Cape Town Provincial Office of the Public Protector, Ms. Sune Griessel, dated 1 August 2016;

5.2.5 Letter to the former Minister of Tourism, Mr. Derek Hanekom from the Public Protector, dated 29 June 2017;

5.2.6 Letter to the former Minister of Tourism, Mr. Derek Hanekom from the Public Protector, dated 21 September 2017

5.2.7 Letter to Mr Lee Van Den Berg, Manager: Municipal Regulatory Entity from the Public Protector, dated 24 October 2017;

5.2.8 Correspondence received from the Acting City Manager, Mr. Lungelo Mbandazayo, dated 9 February 2018;
5.2.8.1 Correspondence received from the Acting City Manager, Mr. Lungelo Mbandazayo, dated 2 May 2018;

5.2.8.2 Correspondence received from Minister Derek Hanekom, dated 21 November 2018; and

5.2.8.3 Correspondence received from Mr Lee Van Den Berg, dated 15 February 2019.

**DOCUMENTATION**

5.2.8.4 Provincial Regulatory Entity (PRE) Hearing Presentation by Uber, dated 13 May 2015;

5.2.8.5 Letter of objection to the application for *Metered Taxi Type Service* by Western Cape Metered Taxi Council, dated 22 April 2015;

5.2.8.6 Application for the granting of a new operating license, Application reference number 8306910, 8306911, dated 29 April 2015

5.2.8.7 Directive provided to the Western Cape Provincial Regulatory Entity (PRE) by Mr. Mark Skriker, Director: Operating License Adjudication, dated 27 May 2015;

5.2.8.8 Request for additional information required by the PRE to Uber by Mr Mark Skriker, Director: Operating License Adjudication, dated 27 May 2015;

5.2.8.9 Planning authority directive : operating license application: Metered Taxi Service, dated 3 June 2015;

5.2.8.10 Appeal: Western Cape Metered Taxi Council against the decision of Western Cape Provincial Regulatory Entity to grant the application for operating license No. 8306910 to R Seedat, dated 2 September 2015;
5.2.8.11 Order by Transport Appeal Tribunal in the matter between the Western Cape Metered Taxi Council and Western Cape Provincial Regulatory Entity, dated 16 December 2015.

5.2.8.12 Comprehensive Integrated Transport Plan 2013-2018


5.2.8.14 Comprehensive Integrated Transport Plan 2013-2018

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

6.1 Whether the City of Cape Town Metropolitan Municipality (the City) failed to properly regulate the Uber Metered Taxi? Services Industry in the Western Cape resulting in Uber operators functioning illegally

Issues that are Common Cause

It is not disputed that:

6.1.1 E-hailing is a process of ordering a car, taxi, limousine, or any other form of transportation pick up via virtual devices, such as computers and/or mobile devices. Uber is an e-hailing service which by way of a smartphone application (app) enables consumers to request a trip, pinpoints the consumer’s location, and refers the consumer to the nearest available Uber partner driver.

6.1.2 In addition, consumers have an option to choose a class of vehicle that they prefer to travel in, whether an UberX, UberBlack or an UberVan. Once the driver accepts the request notification, the app displays the name of the driver, the type of car and the registration number plate. Conveniently, the software gives users the driver’s
whereabouts, estimated time of arrival and progression to the pick-up site, which can be tracked through the software’s built-in GPS system.

6.1.3 Upon completion of the trip, users can either pay in cash (which was recently introduced) or use the cashless payment method by loading credit/debit card details upon activating one’s Uber account.

6.1.4 Uber partner drivers must undergo a thorough screening process prior to gaining access to the Uber software. They require a vehicle, license, permit, and background-checks to become driver partners. In addition, drivers are also required to have a comprehensive vehicle and third-party insurance, a minimum of R50,000 personal accident cover per passenger, and passenger liability cover of R5 million per annum. If a driver has a criminal record which cannot be expunged, they cannot become an Uber driver.

6.1.5 Uber’s entrance into the metered taxi market environment has sparked violence between Uber and drivers of metered taxis, putting the former’s lives and livelihood at acute risk.

**Issues that are in dispute**

6.1.6 The issues for my determination is to establish whether the City of Cape Town failed to properly regulate the Uber Metered Taxi Services Industry in the Western Cape, resulting in an increase in the number of illegal Uber operators.

6.1.7 According to the Complainant, the City agreed to support 1035 e-hailing licenses of which only 341 have been granted and the larger contingent of Uber drivers were operating without the required license. He stated that the Department of Transport and Public Works and the City implemented a joint enforcement plan to impound illegally operating Uber partner drivers at R10 000 per unlicensed vehicle.
6.1.8 It is his contention that the City is receiving a high revenue on these impounds, hence delaying the enforcement of regulations against Uber.

6.1.9 According to the Complainant, the Uber's e-hailing services are unregulated because it does not fall in any of the categories of the National Land Transport Act of 2009, nor is it provided for in the Comprehensive Integrated Transport Plan and that it is illegal since most Uber metered taxis are operating without permits. Despite Government's efforts to create a legal framework in order to regularise the industry, it remains unregulated and in most instances, illegal.

6.1.10 Furthermore, that Uber violated the agreement with the City by implementing cash and surge pricing and that the City was not taking action because of the collusion with Uber.

6.1.11 The City was informed of the foregoing allegations in a letter to the Manager: Municipal Regulatory Entity, Mr Lee Van Den Berg, dated 24 October 2017.

6.1.12 In a response dated 5 February 2018, the City Manager, Mr Lungelo Mbandazayo, stated that in February 2015, the City, as a Planning Authority (PA) designated in terms of the National Land Transport Act 5 of 2009 (the NLTA), verbally agreed with Uber, as the technology partner of Uber operators, to support the granting of 1035 e-hailing licences to Uber operators within the Western Cape.

6.1.13 Further, that the verbal agreement between the City and Uber as technology partner essentially entailed that the City as Planning Authority, in respect of an application for the granting of an operating license, in the directions that it must provide to the Provincial Regulatory Entity (PRE) in terms of section 55(2)(a) of the NLTA regarding the application, would support the issuing of an operating license to a prospective Uber metered taxi service operator up to a maximum of 1035 operating licenses. He stated that this determination was based on the business plan submitted by Uber (for over 3000 licenses).
6.1.14 The business plan enables the City as the Planning Authority not only to assess the ability of the applicant to deliver the relevant transport service, but it also guides the City in respect of the directions that it is called upon to furnish to the PRE in respect of each application.

6.1.15 Mr Mbandazayo explained that in the event that Uber has contracted more than the number of licenced operators that was verbally agreed on, the additional operators run the risk of having their vehicles impounded or being fined for operating without the necessary operating licence.

6.1.16 Regrettably, he stated that the City has no control over this process and can at the most take these drivers to task by impounding their vehicles. He stated that impounding vehicles is one of the measures of enforcement available to the City against operators operating illegally or contrary to operating licence conditions. However, he stated that the primary purpose of impoundment is not to generate revenue, but to regulate the industry.

6.1.17 In a newspaper article published by Eyewitness News in 2015, it was held that more than two hundred (200) vehicles belonging to Uber drivers have been impounded by the City for not having the required operating licenses. On 18 July 2016, Fin24 reported that, “Data provided to Fin24 by the City of Cape Town reveals that 302 Uber cars were impounded between January and June 2016 because drivers did not have metered taxi permits. Fin24 further understands that at least another 13 Uber cars have been impounded this month, according to City of Cape Town traffic inspector data.” Times Live reported on 23 April 2018 that 57 Uber vehicles were impounded over a weekend in April 2018 and as many as 140 over two weeks in May 2018.

6.1.18 These are but a few media articles published by media houses to depict the efforts by the City to control the spread of unlicensed Uber operators in the Western Cape.
6.1.19 Mr. Mbandazayo stated further in his response to the Public Protector, dated 5 February 2018 that Uber as technology partner of Uber operators applying for operating licenses, initially indicated that hailing and fare collection would be conducted electronically only. However, stated that this aspect was never included as an operating license condition.

6.1.20 Mr. Mbandazayo deemed it prudent to point out that, since verbally agreeing with Uber in respect of the operator licences, the City has been approached by several other e-hailing technology providers as well as the traditional metered taxi industry to apply the same conditions of operation of e-hailing to all metered taxi industries in the City. The motivation behind this request was that the traditional metered taxi industries in Cape Town have since adapted to technology and have either developed their own e-hailing platforms or have adopted technological platforms already in existence. All other e-hailing technology providers, other than the initial Uber and traditional metered taxi industry operators, require both cash and electronic fare collection options.

6.1.21 He stated further that even though Uber has changed its fare collection model, it was important to bear in mind that such change was not inconsistent with the direction the City intended to move insofar as e-hailing and the requirements thereof is concerned. It is for this reason that the City has proposed significant amendments to its Operating Licence Plan (a statutory document that is part of a review that is currently underway) so as to accommodate the requests for similar conditions of operation as e-hailing.

6.1.22 The Minister of Transport and Public Works in the Western Cape, Mr. Donald Grant, stated in a media briefing on 9 July 2015 that e-hailing services like Uber do not fall easily into the categories of a public transport service as prescribed by the National Land Transport Act, nor are they specifically provided for in the City of Cape Town’s Integral Transport Plan (ITP) and that the situation can only be rectified through a change in legislation, whether that be an amendment to the NLTA, or the
promulgation of a municipal by-law by the City of Cape Town. He indicated that both processes were under way.

6.1.23 In terms of the Operating Licence Strategy 2013-2018, the Regulatory Entity must issue an operating licence for each vehicle and consider *inter alia* whether the application is supported in light of the City's transport plans and any other recommendations or representations the City may have in relation to the application.

6.1.24 In the interim, various engagements have taken place between the Western Cape Government, the City, Uber, and driver partners in which they agreed that Uber driver partners will apply for metered taxi operating licenses while amendments are effected to the National Land Transport Act to accommodate this new mode of transportation.

6.1.25 The City Manager, Mr Mbandazayo, confirmed in a letter dated 25 April 2018 that provision for e-hailing has been made in the NLTA Amendment Bill and that the City was anticipating Parliament to pass the bill between 2018 and 2020.

6.1.26 In a newspaper article published by the Mail and Guardian on 2 November 2018, it was reported that the amendments to the NLTA were referred to the Gauteng Legislature in May 2018 for consideration by the National Council of Provinces (NCOP). Based on the final voting mandates received from the provinces, the NCOP will either pass the Bill, or pass an amended version of the Bill or reject it.

6.1.27 In terms of the Transport for Cape Town (TCT), Planning Department application for a new operating licence for a metered taxi service, dated 10 March 2015, deposing an application for an operating license, the PRE must act in accordance with the relevant Integrated Transport Plan (ITP) and direction of the Planning Authority and cannot grant an operating license contrary to the direction of the ITP and the City of Cape Town as Planning Authority.
6.1.28 In a Planning Authority Direction for a new operating license application from the Planning Department to the PRE, dated 3 June 2015, it was stated that during the second half of 2013 and the first half of 2014, the PA developed a Metered Taxi Rationalisation Strategy (MTRS) in close co-operation with the Western Cape Metered Taxi Council (WCMT). The team working on the MTRS revisited the metered taxi operations in the Cape Town, compared it to International best practises and emerging technologies and trends worldwide, discussed it with WCMT and then endeavoured to find common ground in the form of specific objectives the PA would pursue in achieving a better regulatory environment in which metered taxi operators and technology providers can function harmoniously in the City.

6.1.29 The aforesaid strategy informed the drafting of the Metered Taxi by-law, the E-hailing by-law and the fare policy.

6.1.30 In the matter before the Transport Appeal Tribunal (TAT) between the Western Cape Metered Taxi Council (Appellant) and the Western Cape Provincial Regulatory Entity (1st Respondent), Mr Riaz Seedat (2nd Respondent), the City of Cape Town (3rd Respondent) and Uber (4th Respondent), reference no. TAT 18/3/03-07/2015, the issues considered by the tribunal was whether the 1st Respondent correctly considered an application for a new operating license for the 2nd Respondent and whether the operating license so granted was in accordance with the NTLA.

6.1.31 The Western Cape Metered Taxi Council (Appellant) lodged an appeal with the Transport Appeal Tribunal against the decision of the Provincial Regulatory Entity (PRE) for granting of an application for a new operating license to Mr Riaz Seedat (Uber Partner Driver).

6.1.32 The Western Cape Metered Taxi Council (WCMT) contended inter alia that the PRE's conduct in granting the operating license to Mr Seedat was illegal as the operating license granted was not provided for in the NLTA, in that there is no sealed
meter in the taxi and that the fee is not agreed upon as it is required in the Act. (own emphasis added)

6.1.33 In its judgement, the TAT ruled *inter alia* that section 66(1)(d) of the NTLA provides that if a fare is not determined by the meter, then the fare for that journey must be agreed upon. Further, that the operation of a metered taxi must be a sealed meter which can be calibrated, however, such a meter is not defined. The meter is therefore used for information purposes in instances where the fare is agreed upon or the fare is determined through the meter. "So, as part of the conditions for the operating license, tariff information is provided; in addition the device fitted in the taxi is used to determine the fare, taking into account the distance and time." In terms of the Uber ‘app’ (software) information is also communicated to the passenger in advance before the passenger can accept the trip. The final tariff is then communicated to the passenger at the end of the trip. TAT ruled that the aforesaid process followed in terms of the Uber software, serves the purpose of a sealed meter and could therefore qualify to be a sealed meter.

6.1.34 The TAT ruled that in the definition of a metered taxi service, it is provided that the metered taxi can be hailed by various means including hailing while roaming, by telephone or otherwise. The word ‘otherwise’ was used to refer to any other means by which the metered taxi may be hailed including the use of software, fax, email or any other means. TAT ruled that the service provided by Uber in this regard is not in contravention of the NTLA in that it is provided for.

6.1.35 The appeal was henceforth dismissed and the granting of the operating license confirmed.

6.1.36 In an undated article by Mr Ndumiso Ndlovu, Case Manager with the Competition Tribunal of the Republic of South Africa, entitled *Uber vs Metered Taxis: A Competition Issue Or A Regulatory Nightmare*, Mr. Ndlovu held that in 2016, the Competition Commission of South Africa (the Commission) received a complaint
filed by the Meter Taxi Industry against Uber, alleging, *inter alia*, that the latter operates unfairly as it does not comply with the mandatory licensing public transport regulations. The allegations eluded to the idea that Uber also engages in predatory pricing (charging prices below costs). Upon concluding its investigation, the Commission took the view that the allegations advanced by the complainant did not contravene the Competition Act.

6.1.37 In terms of the CITP 2013-2018 section 36 (1) of the National Land Transport Act (No 5, 2009) (NLTA) provided that all Planning Authorities must prepare and submit to the Provincial Member of the Executive Council (MEC) an Integrated Transport Plan, or "CITP", for their respective area for a five year period and must update the CITP as frequently as prescribed.

6.1.38 Further, that the Constitution of Transport for Cape Town (TCT) By-law, 2013, provides that TCT, under the Planning Authority functions shall prepare a CITP, for each five year period, and shall ensure that the CITP is aligned to the corresponding Integrated Development Plan (IDP) for the City. One of the first tasks allocated to TCT, in terms of its Constitution By-law and as a Type 1 Planning Authority in terms of the NLTA, is to prepare a Comprehensive Integrated Transport Plan (CITP) for the planning horizon of 2013 to 2018. TCT was mandated by the City to plan and implement integrated, inter-operable and intermodal transport in Cape Town that aims to use the new functions entrusted to it, to provide better transport in an innovative and sustainable manner for the benefit of the citizens of and visitors to the City of Cape Town.

6.1.39 In terms of the Public Transport Plan of CITP 2018 – 2023, "All modes will be bolstered by the new e-hailing and related technologies that are set to revolutionise public transport in the coming decades and will result in a "new generation" of service offerings, especially on-demand unscheduled services particularly well-suited to e-hailing (new generation services)."
6.1.40 Further, that, “These technologies will offer new options for minibus-taxi services and other providers to meet demand more efficiently, especially when demand is low. This will reduce the extent to which minibus-taxis wait to fill up at ranks, increase the ease of boarding along the route, and increase the scope for direct routings between origin and destination. e-hailing has transformed the quality, reliability and safety of metered taxi services and that the City will explore a wider version of smartphone technological innovation and introduce this in the minibus-taxi environment.”

**Application of the relevant legal prescripts**

**National Land Transport Act 5 of 2009 (NLTA)**

6.1.41 The NLTA was enacted to provide the process of transformation and restructuring to the national land transport system.

6.1.42 The NLTA contains the following definition of a public transport service:

> “
> "public transport service" means a scheduled or unscheduled service for the carriage of passengers by road or rail, whether subject to a contract or not, and where the service is provided for a fare or any other consideration or reward, including cabotage in respect of passenger transport as defined in the Cross-Border Act, and except where clearly inappropriate, the term "public transport" must be interpreted accordingly;"

6.1.43 The NTNA defines a metered taxi service as: “a public transport service operated by means of a motor vehicle contemplated in section 66 which –
(a) is available for hire by hailing while roaming, by telephone or otherwise;
(b) may stand for hire at a rank; and
(c) is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable, that is calibrated for such fare or complies with any other requirements applicable to such meters.”
6.1.44 In terms of section 36 (1) of the National Land Transport Act (No 5, 2009) (NLTA) all Planning Authorities must prepare and submit to the Provincial Member of the Executive Council (MEC) an Integrated Transport Plan, or “CITP”, for their respective area for a five year period and must update the CITP as frequently as prescribed.

6.1.45 In terms of section 50(1), no person may operate a road-based public transport service, unless he or she is the holder of an operating license or a permit.

6.1.46 Section 51 states that an operating license must only be issued on application made in terms of the NLTA by the National Public Transport Regulator, a Provincial Regulatory Entity or a municipality to which the operating license function has been assigned.

6.1.47 In terms of section 54(3) a person wishing to undertake a service other than one contemplated in subsection (1) or (2), must apply to the Provincial Regulatory Entity of the relevant province for the necessary operating license.

6.1.48 Section 55 (1) states that, before the National Public Transport Regulator or a Provincial Regulatory Entity considers any application for the granting, renewal, amendment or transfer of an operating license, it must by notice in the prescribed manner inform all planning authorities in whose areas the services will be operated of the application with the request to give directions with regard to the application based on its Integrated Transport Plan within the period stated in the notice.

6.1.49 Sub-section (2) states that the planning authority must indicate whether there is a need for the service on the route or routes or in the area or areas in terms of its Integrated Transport Plan or not, and, if there is a need for such service, direct the National Public Transport Regulator or a Provincial Regulatory Entity to grant the operating license. and make any recommendations it considers fit regarding conditions to be attached to the operating license, having due regard of its Integrated Transport Plan, and if its Integrated Transport Plan is not yet finalised or is
inadequate, it must take the decision based on due inquiries and investigations carried out by it. (own emphasis added)

6.1.50 However, in terms of sub-section (3), where the public transport requirements for the particular route or routes are adequately served by an existing public transport service, the planning authority must direct the National Public Transport Regulator or a Provincial Regulatory Entity to refuse the application.

6.1.51 In terms of section 87(1), an authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating license or permit or contrary to the conditions thereof, may impound the vehicle. An impoundment fee is payable and determined by the MEC of the Province. (own emphasis added)

6.1.52 The only offences that warrant impoundment as listed in Section 90(1)(a) or (b) of the NLTA, is operating without a valid operating licence or operating contrary to the conditions stipulated in an operating licence.

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

6.1.53 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:

6.1.54 The National Land Transport Act is clear in what is required when public transport operators are operating a service for monetary gain, and that is a valid operating licence. The City and Uber have agreed that Uber partners will apply for metered taxi operating licenses and normal applications for an operating licence would be made as prescribed by the law, for operators looking to provide a public transport service.

6.1.55 E-hailing services like Uber are not provided for in the categories of a public transport service as prescribed by the National Land Transport Act. However, the City has started the process of compiling a by-law to create a legal framework for
the e-hailing industry and the National Government has started the process of amending Section 66 of the National Land Transport Act, to make e-hailing taxis a sub-category of metered taxis.

6.1.56 In terms of section 36 (1) of the National Land Transport Act (No 5, 2009) (NLTA) all Planning Authorities must prepare and submit to the Provincial Member of the Executive Council (MEC) an Integrated Transport Plan. In terms of the Public Transport Plan of CITP 2018 – 2023, it is stated *inter alia* that all modes of public transport, will be strengthened by the new e-hailing and related technologies that are revolutionizing the public transport industry.

6.1.57 It is clear that the City of Cape Town supports this technology development and keen to transform and modernise the industry and improve the integration public transport services in the Western Cape.

6.1.58 In the appeal lodged with the Transport Appeal Tribunal (TAT) by the Western Cape Metered Taxi Council against the decision of the Provincial Regulatory Entity (PRE) for granting of an application for a new operating license to Mr Riaz Seedat (Uber Partner Driver), the TAT, in their judgement, managed to incorporate the e-hailing service provided by Uber into section 66 of the NLTA. The TAT dismissed the appeal of the WCMTT and ruled that the service provided by Uber is not in contravention of the NTLA in that it is provided for in the Act.

6.1.59 Furthermore, that the City regularizes illegal Uber metered taxi operators by impounding their vehicles when they are found not to have operating licences. In terms of the NTNA, a motor vehicle used for the operation of public transport may be impounded by an authorised officer if that motor vehicle is being used without the necessary operating licence or permit or contrary to the conditions as stipulated in the operating licence.

6.1.60 Thus, we can reasonably infer that in all probability that some Uber operators were operating illegally, because they either did not possess valid operating licence or
were operating in contravention of the conditions as stipulated in their operating licences. Impoundment of those vehicles was therefore used as an enforcement mechanism to regulate the industry.

6.2 Whether the former Minister of Tourism, Mr Derek Hanekom endorsed an illegally operating Uber services industry, in an advertisement that ostensibly promoted the use of Uber services.

Issues that are Common Cause

It is not disputed that

6.2.1 The former Minister of Tourism, Mr Derek Hanekom, appeared on a video clip making travelling arrangements using the Uber mobile application and arranging the pickup from Parliament.

6.2.2 The Uber metered Taxis are not regulated in Cape Town where the Parliament of South Africa is situated.

6.2.3 The City of Cape Town as Planning Authority agreed with Uber to support the granting of 1035 e-hailing operating licenses to Uber operators and that the City has not increased the number.

Issues that are in dispute

6.2.4 The issue for my determination is whether by appearing in the video clip the former Minister of Tourism was advertising or endorsing the 'illegal' Uber services industry.

6.2.5 In his complaint, Mr. Munzvenga, provided a video clip of an advertisement depicting the former Minister Hanekom making travelling arrangements using the Uber mobile application and arranging the pickup from Parliament to the International Convention Centre in Cape Town. According to the Complainant, a substantial number of Uber
metered Taxis in the Western Cape are operating without operating licenses, therefore operating illegally.

6.2.6 It was his contention that the video clip endorses the unregulated mode of transportation and creating the impression that the industry is operating legally.

6.2.7 Mr Hanekom was informed of the allegations raised against him in a letter dated 29 June 2017. In his response dated 21 November 2018, he stated that the use of Uber is neither banned nor illegal in South Africa. (own emphasis added) Further, that, he finds the assumption that the use of an Uber Taxi in the video clip creates an impression that Uber is operating illegally in South Africa to be erroneous and at best without any valid basis.

6.2.8 Mr Hanekom asserted that his participation in the video as Minister responsible for Tourism during the E-Tourism Summit Africa was not to promote commercial interest but to showcase how technology and innovation in the tourism sector can contribute to fully unleashing the potential of a destination such as South Africa.

**Applicable legal prescripts**

**National Land Transport Act 5 of 2009 (NLTA)**

6.2.9 The NLTA was enacted to provide the process of transformation and restructuring to the national land transport system.

6.2.10 In terms of section 50 (1), no person may operate a road-based public transport service, unless he or she is the holder of an operating license or a permit.

6.2.11 Section 51 states that an operating license must only be issued on application made in terms of the NLTA by the National Public Transport Regulator, a Provincial Regulatory Entity or a municipality to which the operating license function has been assigned.
6.2.12 In terms of section 54(3) a person wishing to undertake a service other than one contemplated in subsection (1) or (2), must apply to the Provincial Regulatory Entity of the relevant province for the necessary operating license.

6.2.13 Section 55 (1) states that, before the National Public Transport Regulator or a Provincial Regulatory Entity considers any application for the granting, renewal, amendment or transfer of an operating license, it must by notice in the prescribed manner inform all planning authorities in whose areas the services will be operated of the application with the request to give directions with regard to the application based on its Integrated Transport Plan within the period stated in the notice.

6.2.14 Sub-section (2) states that the planning authority must indicate whether there is a need for the service on the route or routes or in the area or areas in terms of its Integrated Transport Plan or not, and, if there is a need for such service, direct the National Public Transport Regulator or a Provincial Regulatory Entity to grant the operating license, and make any recommendations it considers fit regarding conditions to be attached to the operating license, having due regard of its Integrated Transport Plan, and if its Integrated Transport Plan is not yet finalised or is inadequate, it must take the decision based on due inquiries and investigations carried out by it.

6.2.15 However, in terms of sub-section (3), where the public transport requirements for the particular route or routes are adequately served by an existing public transport service, the planning authority must direct the National Public Transport Regulator or a Provincial Regulatory Entity to refuse the application.

6.2.16 In terms of section 87(1), an authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating license or permit or contrary to the conditions thereof, may impound the vehicle. An impoundment fee is payable and determined by the MEC of the Province. (own emphasis added)
6.2.17 The only offences that warrant impoundment as listed in Section 90(1)(a) or (b) of the NLTA, is operating without a valid operating licence or operating contrary to the conditions stipulated in an operating licence.

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

6.2.18 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:

6.2.18.1 The City as PA only provides direction on the supply and demand of any particular transport service and makes recommendations regarding tariffs that are being considered. The granting of an application for an operating license and tariff regulation vests with the National Public Transport Regulator and the PRE.

6.2.18.2 The City as PA has acceded to the need for the Uber service in terms of section 55(2) of the NLTA and given direction to the PRE to grant operating licenses to Uber operators.

6.2.18.3 The City as a PA has agreed to support 1035 e-hailing operating licenses and in the event where Uber has contracted more than the number of licensed operators than agreed upon, those additional operators run the risk of having their vehicles impounded and/or being fined. Indeed, the City has no control over this process and can at most take these drivers to task by impounding their vehicles.

6.2.18.4 The service provided by Uber can therefore not be regarded as illegal because of operators that are operating without operating licenses. Uber is unregulated because it is not provided for in the categories of a public transport service as prescribed by the National Land Transport Act, but the City supports the technology and innovation and started the process of compiling a by-law to create a legal framework for the e-hailing industry and the National Government has started the process of amending Section 66 of the National Land Transport Act, to make e-
hailing taxis a sub-category of metered taxis. An unregulated service does not necessarily mean the service is illegal.

6.2.18.5 E-hailing services is also now provided for in the Public Transport Plan of the CITP 2018-2023, which stated *inter alia* that all modes of public transport, will be strengthened by the new e-hailing and related technologies that are revolutionizing the public transport industry.

7. **FINDINGS**

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

7.1 **With regard to whether the City of Cape Town Metropolitan Municipality failed to properly regulate the Uber Services Industry in the Western Cape resulting in Uber operators functioning illegally**

7.1.1 The allegation that the City of Cape Town has failed to properly regulate the Uber Services Industry in the Western Cape, resulting in an increase in the number illegal Uber operators, is not substantiated.

7.1.2 The City of Cape Town as a PA has agreed to support 1035 e-hailing operating licenses and in the event where Uber has contracted more than the number of licensed operators than agreed upon, those additional operators run the risk of having their vehicles impounded and/or being fined. The City has no control over this process and can at most take these drivers to task by impounding their vehicles. Another regulatory mechanism is to withdraw, amend or suspend operating licenses, subject to the provisions of section 79 of the NLTA.
7.1.3 E-hailing services is included in the Public Transport Plan of CITP 2018-2023 and considered the way forward for the metered taxi industry.

7.2 With regard to whether the former Minister of Tourism, Mr Derek Hanekom endorsed an illegally operating Uber services industry, in an advertisement that ostensibly promoted the use of Uber services.

7.3 The allegation that the former Minister of Tourism, Mr. Derek Hanekom endorsed an illegally operating Uber services industry, in an advertisement that ostensibly promoted the use of Uber services, is unfounded.

7.4 Uber’s e-hailing services is not illegal in South Africa and as such the former Minister’s participation in a video clip depicting him making use of Uber’s electronic hailing software as part of his presentation during the E-Tourism Summit, is in no way an endorsement of illegal Uber operators, but more of a platform to showcase how advancements in digital technology in transport can contribute to progressions in the tourism sector.

8. REASON FOR CLOSURE

8.1 Based on the information and evidence obtained during the investigation, I could not make a finding on the allegation that the City of Cape Town Metropolitan Municipality failed to properly regulate the Uber Services Industry in the Western Cape resulting in Uber operators functioning illegally, nor could I make findings on the allegation that the former Minister of Tourism, Mr. Derek Hanekom endorsed illegal Uber operators, in an advertisement that was meant to showcase digital technology and innovation in the tourism sector.
8.2 Any information contradicting the contents of this closing report may be submitted to the Public Protector’s office on or before **Wednesday, 10 July 2019**. Should the Public Protector not receive any contradictory information by the return date, the matter will be considered as finalised.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 26/06/2019