
PUBLIC PROTECTOR SOUTH AFRICA

REPORT NO. 19 OF 2016/17

Allegations of maladministration, corruption, nepotism, fruitless and wasteful expenditure and purging of staff by the former Municipal Manager of the Ngaka Modiri Molema District Municipality

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, CORRUPTION, NEPOTISM, FRUITLESS AND WASTEFUL EXPENDITURE AND PURGING OF STAFF BY THE FORMER MUNICIPAL MANAGER, MR MOKGELE MOJAKI AT NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY (THE MUNICIPALITY)
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Executive Summary

(i) This is the 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(1) of the Public Protector Act, 1994.

(ii) The report communicates the Public Protector's findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into the alleged maladministration, corruption, nepotism, fruitless and wasteful expenditure and purging of staff by the former Municipal Manager, Mr Mokgele Mojaki (Mr Mojaki) at Ngaka Modiri Molema District Municipality (the Municipality).

(iii) The Complainants are former employees of the Municipality who at the time of lodging the complaint were either suspended, and/or dismissed from work and were engaged in labour disputes proceedings against the employer. The Complainants' main contention was that they had been suspended and/or dismissed from work by Mr Mojaki for raising dissatisfactions relating to his secondment and his subsequent appointment which was followed by alleged rampant maladministration, irregular appointment of staff and service providers under his watch.

(iv) The Complainants had challenged their suspensions and/or dismissals in the South African Local Government Bargaining Council (SALGBC). However, they were still concerned with continued issues of alleged maladministration and corruption within the Municipality which occurred under the watch of Mr Mojaki hence their request to the Public Protector to investigate the state of affairs in the Municipality. In certain instances, the labour court process culminated in some out of court settlements but 25 employees still remain unemployed after being on prolonged suspensions and adversely affected by the actions of Mr Mojaki.

(v) In the main, the Complainants specifically alleged that the Municipality:
1) failed to follow due processes in the appointment of Mr Mojaki and several senior staff members;

2) failed to follow proper procurement process in the appointment of service providers; and

3) purged several staff members for identifying and complaining about the alleged anomalies which were attributable to the alleged lack of skills, qualifications and relevant experience by Mr Mojaki, the former Municipal Manager.

(vi) The Municipality did not dispute that it had first appointed Mr Mojaki on secondment from the office of the Premier of North West then later appointed him permanently to this position in 2011. The Municipality also did not dispute that several senior staff members were later appointed by Mr Mojaki and also that the Municipality entered into agreements with several service providers under his watch.

(vii) While the Municipality did not also dispute that there were several instances of staff suspensions and/or dismissals, it submitted that Mr Mojaki had the authority to turn the Municipality around under the Central District Municipality Delegation System document of 2006. The Central District Municipality Delegation System issued on 29 January 2006 included restructuring of the Municipality by the Municipal Manager. It contended that it followed due processes in dealing with all matters pertaining to staff discipline and retention and also maintained that it was not its fault that the Complainants were engaged in labour dispute proceedings against it.

(viii) The investigation was conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution) which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, 1994, that regulates the manner in which
the power conferred by section 182 of the Constitution may be exercised in respect of
government at any level.

(ix) The investigation process commenced with a formal investigation, conducted through
correspondence, meetings and interviews with Complainants and relevant officials of
the Municipality as well as inspection of all relevant documents and analysis and
application of all relevant laws, policies and related prescripts, followed.

(x) In arriving at the findings, the Public Protector was guided by the standard approach
adopted by the Public Protector South Africa as an institution, which simply involves
asking: What happened? What should have happened? Is there a discrepancy
between what happened and what should have happened? If there is a discrepancy,
does the conduct amount to improper conduct or maladministration? If there was
indeed improper conduct or maladministration, what would the appropriate remedial
action be?

(xi) As it is customary, the “what happened” enquiry is a factual question settled on the
assessment of evidence and making a determination on a balance of probabilities. To
arrive at a finding on what happened, the investigation, like all others, relied on oral
and documentary submissions by the Complainants and the Municipality, principally
represented by the former Municipal Manager, Mr Mokgele Mojaki.
Interviews/meetings primarily to clarify evidence already gathered were also held with
the Complainants, Mr Mojaki (assisted by his lawyers) and the Municipal Council. The
question regarding what should have happened on the other hand relates to the
standard that the conduct in question should have complied with.

(xii) In determining the standard that the Municipal Manager and other functionaries at the
Municipality should have complied with, to avoid improper conduct or
maladministration, the Public Protector was guided as it is customary, by the
Constitution, national legislation, applicable policies and guidelines, including
corporate governance policies and related regulatory instruments. Key among
The SCM Policy affirms and commits to uphold section 217 of the Constitution setting the vision behind it and the standards to be upheld in state procurement or SCM processes, which vision includes ensuring a fair, equitable, transparent, competitive and cost-effective public procurement system. The SCM Policy also roots itself in Treasury Regulations governing Supply Chain Management. It further outlines the steps to be taken in pursuit of procurement of goods and services within the Municipality covering Demand Management, Contract Administration, Material Management, Disposal Management, Procurement Strategy and Acquisition Management. It also regulates permissible deviations, which include urgency and single service providers. The policy also deals with management of conflict of interest. The investigation was also guided by Human Resources policies, to the extent that some allegations involved appointment, promotion and termination of employees. In this regard section 195 of the Constitution setting the standard for all conduct in state affairs was relied to some extent. To the extent that there was an allusion to whistleblower victimisation, the Public Protector also took into account the provisions of the Protected Disclosures Act No. 26 of 2000.

At the commencement of the investigation, the allegations were brought to the attention of the Municipality management through the former Municipal Manager, Mr Mojaki, the former Speaker of Council and the former acting Executive Mayor.

All information and evidence gathered during the interactions with the Municipality management and the Complainants were taken into account in an effort to reconstruct what happened and if what happened was in line with the rules. Parties implicated in the evidence were sent notices in terms of section 7(9) of the Public Protector Act.
alerting them to evidence implicating them and the possibility of adverse findings. A discretionary notice was also sent to the Complainants alerting them to allegations not supported by evidence. In all instances, responses were solicited and affected parties given an opportunity to provide further information and to engage through meetings.

(xvi) The Public Protector noted that the investigation team had immense difficulty piecing together the truth as information had to be wrestled out of the Municipality. At some point the investigation team’s visit to the municipal offices to authenticate documents was met with resistance by the former Municipal Manager who flatly refused to cooperate. When information and documents was eventually provided, it was by means of a subpoena issued in terms of section 7(4) of the Public Protector Act.

(xvii) The Public Protector also noted that the authenticity of some of the documents submitted by the Municipality as evidence, principally relating to procurement, is doubtful. Some of memoranda for approval of tenders, letters of appointment of staff and related documents submitted by the Municipality, were undated, predated, and at least in one case, incomplete. Example, in this regard includes documents relating to the appointment and/or extension of Bokone Bophirima Properties’ property valuation contract.

(xviii) The following issues were identified in respect of each allegation with a view to focusing the investigation:

(a) Alleged Recruitment irregularities

(1) Whether the appointment of Mr Mojaki, as the Municipal Manager of the Municipality, was irregular due to him, allegedly not having the necessary qualifications and relevant experience for the position;
(2) Whether the appointments of several officials by Mr Mojaki to acting positions and permanent positions that were allegedly not approved or not provided for in the Organisational Structure and/or budgeted for by the Municipality was irregular;

(3) Whether Mr Mojaki's secondment from the Premier's Office to the Municipality as the Acting Municipal Manager in July 2011, and his alleged continued earning a double salary from both offices for approximately 5 months was irregular, and thus constituted financial mismanagement;

(4) Whether Mr Mojaki failed to follow proper recruitment procedure by failing to advertise, shortlist and interview candidates for certain positions within the Municipality;

(5) Whether the appointment of Mr Seymour Williams as the Senior Manager in the Municipal Manager's office was improper and amounts to a conflict of interest as he was a co-director of Mr Mojaki at Sikelo Consulting Worx;

(6) Whether the appointment of Mr Mahole and his wife, Mrs Mahole, to the positions of Acting Manager: Advisory Support and Senior Internal Auditor, respectively, were irregular;

(7) Whether the salary escalation of Mrs Mahole from R250 000.00 to R685 000.00 p.a. within a period of a year was irregular;

(8) Whether Mr Mahole's appointment by Mr Mojaki as the acting Manager-Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and Mr Mahole's salary
escalation from R385 000.00 to R1 080 000 p.a. within a year was irregular; and

(9) Whether Mrs Mahole’s alleged irregular appointment to the position of an Audit Executive within the Municipality would create a potential conflict of interest as her husband is employed as the Municipality’s Senior Manager: Corporate Services while Mrs Mahole’s work also involves auditing his department’s performance.

(10) Whether Mr Mojaki systematically purged about 25 employees between 2012 and 2014 for raising questions about the Municipality’s alleged maladministration.

(b) Alleged Procurement irregularities

(1) Whether the appointment of e-Markets by Mr Mojaki to brand the 35 Municipal vehicles with logos for an amount of R630 000.00 was irregular;

(2) Whether the awarding of a tender to Softline Pastel Evolution by Mr Mojaki for the installation of a new integrated financial system at the cost of R2 million was irregular; and

(3) Whether Bokone Bophirima Properties’ alleged appointment as the Municipality’s property valuation service provider by Mr Mojaki which was allegedly influenced by Mr Seymour Williams, as a result of which the latter was rewarded with a Chevrolet SS bakkie, was irregular.
Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

A. Recruitment Irregularities

(a) Regarding whether the Municipality irregularly appointed Mr Mojaki to the position of the Municipal Manager as he allegedly did not have the necessary qualifications and relevant experience for the said position, the Public Protector finds that:

(1) The allegation that the appointment of Mr Mojaki as the Municipal Manager was irregular is not substantiated as he has the required qualifications and relevant experience to be appointed to the position.

(2) Appropriate recruitment procedure was also followed in compliance with Section 30(5)(c) of the Municipal Structures Act, 1998 prior to the selection and appointment of Mr Mojaki to the position of Municipal Manager.

(3) The Public Protector therefore does not find the appointment of Mr Mojaki to the position of Municipal Manager to be irregular or improper as envisaged in section 182(1)(a) of the Constitution.

(b) Regarding whether Mr Mojaki’s alleged secondment to the Municipality from the Premier’s office in July 2011, and his continued earning a double salary from both offices for a period of five months was irregular, and thus constituted financial mismanagement, the Public Protector finds that:

(1) The allegation that Mr Mojaki’s secondment to the Municipality was irregular is not substantiated.
(2) Appropriate recruitment procedure was followed as outlined in section 24 of Regulation for the secondment as the acting Municipal Manager.

(3) Mr Mojaki, as per the secondment agreement, continued earning his salary from the Premier’s office for a period of less than five (5) months and not exactly five (5) as alleged by the Complainants. He did not receive any additional remuneration from the Municipality during this period.

(4) However, despite efforts by the Premier’s office to request for the Municipality’s reimbursement amounting to R104 347.41 for the expenditure incurred by the former towards Mr Mojaki’s salary from 01 July to 31 October 2011, the Municipality failed to avail any documentary proof that such an exchange of money took place between the two offices.

(5) The Public Protector is however less than convinced that such reimbursement did take place as no proof thereof could be provided, and thus find that the failure by the Municipality to reimburse the money due to the Premier’s office constitutes maladministration as envisaged in section 6(4) of the Public Protector Act and improper conduct as envisaged in section 182(1)(a) of the Constitution.
(c) Regarding whether Mr Mojaki irregularly appointed several officials on acting and permanent positions that were allegedly not approved or not provided for in the Organisational Structure and/or budget, the Public Protector finds that:

(1) The allegation that the following appointments: Manager: Organisational Development; Manager: Communication; Manager: Rural Development; Manager: Fleet Management; Senior Accountant: Bid Administration; Financial Practitioners; Manager: and Security Manager effected by Mr Mojaki were irregular is substantiated.

(2) Although these positions were provided for in the organogram and Municipal budget, the aforesaid appointments were filled prior to the adoption of the organogram and budget whilst also not being done in compliance with the Municipality’s Recruitment and Selection Policy which provides that in the case of targeted recruitment, deviation from policy is permissible but only after unsuccessful attempts to find suitable candidate through normal recruitment processes has been exhausted.

(3) These positions that were on the Municipality’s 2012 organisational structure and the Municipality’s strategic outcomes plan 2011-2016 had been filled irregularly through headhunting. However, the Municipality failed to provide the Public Protector with any proof that confirms that due processes had been followed before resorting to the headhunting

(4) The conduct of Mr Mojaki in the appointments of these officials through headhunting was therefore irregular and this constitutes maladministration as envisaged in section 6 of the Public Protector Act
and improper conduct as envisaged in section 182(1)(a) of the Constitution.

(d) Regarding whether Mr Mojaki allegedly failed to follow proper recruitment procedure by failing to advertise shortlist and interview candidates for the following vacant positions; the Public Protector finds that:

(1) The allegation that the appointments to the following positions were irregular is substantiated, namely;

(a) Senior Manager: Office of the Municipal Manager

(aa) The position was filled through headhunting process. The Municipal Manager claimed that there was no time to start with the correct recruitment procedures as he had to turn around the municipality in a short space of time.

(bb) Although the Municipality's Recruitment and Selection policy does provide for recruitment by headhunting, it stipulates that headhunting may be resorted to or used once due recruitment processes have been undertaken and failed to yield results.

(cc) Mr Mojaki did not follow due process prior to appointing Mr Williams through headhunting to the Senior Manager: Office of the Municipal Manager.

(dd) Mr Mojaki's conduct in effecting the appointment through headhunting was therefore irregular and this constitutes maladministration as envisaged in section 6 of the Public
Protector Act and improper conduct as envisaged in section 182(1)(a) of the Constitution.

(b) Performance Management Systems (PMS) Manager

(aa) The Municipality claims that the correct procedures were followed in recruiting a candidate for the above-mentioned position, however no suitable candidate was found and that they resorted to headhunting.

(bb) The Municipality did not provide the Public Protector with evidence relating to the above-mentioned failed process to refute the allegation.

(cc) The conduct of Mr Mojaki in effecting the said appointment was irregular and this constitutes maladministration as envisaged in section 6 of the Public Protector Act and improper conduct as envisaged in section 182(1)(a) of the Constitution.

(c) Manager: Communication

(aa) The Municipality again claims that the correct procedures were followed in recruiting a candidate for the above mentioned position, however no suitable candidate could be found and that they resorted to headhunting.

(bb) The Municipality failed to provide the Public Protector with evidence relating to the above-mentioned failed process to refute the allegation.
(cc) The conduct of Mr Mojaki in effecting the appointment of Manager: Communication was irregular and this constitutes maladministration as envisaged in section 6 of the Public Protector Act and improper conduct as envisaged in section 182(1)(a) of the Constitution.

(d) Manager: Small, Medium and Micro Enterprise (SMME)

(aa) The Municipality contended that the position was filled by way of secondment from the Provincial Department. No evidence showing that due process was followed was submitted to the Public Protector.

(bb) The conduct of Mr Mojaki in the appointment of Manager: SMME through secondment was therefore irregular and this constitutes maladministration as envisaged in section 6 of the Public Protector Act and improper conduct as envisaged in section 182(1)(a) of the Constitution.

(e) Regarding whether Mr Seymour Williams's appointment by Mr Mojaki as the Senior Manager was irregular as they are co-directors in the same company known as Sikelo Consulting Worx (2011/005663/07) creating a potential conflict of interest, the Public Protector finds that:

(1) The allegation that the appointment of Mr Williams by Mr Mojaki to the position Senior Manager: Office of the Municipal Manager was irregular, is substantiated as it is in violation of Section 57(1) of the Municipal Systems Act which provides that Council is the approving authority for
employment contracts between the Municipality and the Municipal Manager and the Municipal Manager and the manager directly accountable to the Municipal Manager. (this issue had been raised as is by the complainants, while also being made part of the positions referred to specifically on issue (d) above);

(2) The appointment of Mr Williams in the Municipal Manager's office by Mr Mojaki, through secondment from a private company was according to the Municipality, done through headhunting by Mr Mojaki and without approval of Council.

(3) The appointment of Mr Williams by Mr Mojaki was in violation of paragraph 8.2.1 of the Municipality's Personnel Recruitment and Selection Policy which provides that managers accountable to Municipal Manager shall be appointed by Council in consultation with Municipal Manager.

(4) The allegation that the appointment of Mr Williams by Mr Mojaki as they are co-directors in the same company known as Sikeio Consulting Worx (2011/005663/07) created a potential conflict of interest is substantiated.

(5) Mr Mojaki failed to declare his financial interests to the Municipality, the fact that they were co-directors in the same company with Mr Williams which is in violation of Regulation 36 of Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers issued in terms of Local Government: Municipal Systems Act No. 32 of 2000.

(6) The conduct of Mr Mojaki in the appointment of Mr Williams was therefore irregular and this constitutes and improper conduct as envisaged in
section 182(1)(a) of the Constitution and abuse of power as envisaged in section 6 of the Public Protector Act.

(7) The conduct of Mr Mojaki in failing to declare his financial interest as a co-director in Sikelo Consulting Worx (2011/005663/07) constitutes financial misconduct as envisaged in section 172(1)(b) of the Municipal Finance Management Act as well as improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.

(f) Regarding whether the alleged appointment of Mr Lekgoa Mahole as the Acting Manager Advisory Support and the appointment of his wife, Mrs Poppy Mahole as Senior Internal Auditor by the Municipality were irregular, the Public Protector finds that:

(1) The allegation that the appointments of Mr Lekgoa Mahole and his wife, Mrs Mahole to the positions of Acting Manager: Legal Services and Senior Internal Auditor, respectively, were irregular is substantiated.

(2) Despite these appointments not being refuted by Mr Mojaki, the Municipality failed to provide the Public Protector with evidence which showed that proper recruitment processes were followed as required by the Municipality’s Personnel Recruitment and Selection Policy read with Central District Municipality Delegation System 2006 (Power Number MM 11) which authorises the Municipal Manager to advertise and appoint employees from post level 1-18. However, only post levels 15 and 18 may be excluded from an obligation to advertise in a formal media.

(3) The conduct of Mr Mojaki in the appointment of Mr and Mrs Mahole to the said positions were therefore irregular and this constitutes improper
conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act.

(g) Regarding whether Mrs Mahole’s appointment by Mr Mojaki to the position of Audit Executive on March 2012 which resulted in her salary escalating from R250 000 to R685 000 p.a. within a period of one year, was irregular, the Public Protector finds that:

(1) The allegation that Mrs Mahole’s salary scale for the position Executive Auditor escalated rapidly within a period of 12 months is not substantiated.

(2) The employment contract between Mrs Mahole and Ngaka Modiri Molema municipality signed on 26 April 2012 indicates that Mrs Mahole’s salary scale for the position of Executive Auditor was fixed at R343 536 00 upon her appointment and not R685 000 as alleged.

(3) The Public Protector could not find the evidence of irregularity regarding the salary scale of Mrs Mahole.

(h) Regarding whether Mr Mahole’s appointment by Mr Mojaki as the Acting Manager- Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and whether Mr Mahole’s salary escalation from R385 000.00 to R1 080 000 p.a. within a year was irregular, the Public Protector finds that:

(1) The allegation that Mr Mahole’s appointment to the position of Senior Manager: Corporate Services was irregular is not substantiated.
Mr Mahole’s appointment to the position of Senior Manager: Corporate Services was in compliance with the Municipality’s Personnel Recruitment and Selection Policy as the position was advertised, candidates shortlisted and interviews conducted.

However, the allegation that there was a rapid escalation in Mr Mahole’s salary within a period of 12 months is substantiated because although negotiable, it escalated from R385 000.00 to R1 080 000 p.a. which is about 185% within a period of 12 months.

The conduct of Mr Mojaki in effecting the rapid escalation of Mr Mahole’s salary by almost 185% within a period of 12 months was irregular and constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and abuse of power as envisaged in section 6 of the Public Protector Act.

Regarding whether Mrs Mahole’s alleged irregular appointment by Mr Mojaki to the position of an Audit Executive within the Municipality, which would create a potential conflict of interest, since her husband is also employed as the Municipality’s Senior Manager: Corporate Services as Mrs Mahole’s work would also involve auditing his department’s performance, the Public Protector finds that:

The allegation that the appointment of Mrs Mahole to the position of Audit Executive within the Municipality where her husband worked as the Senior Manager: Corporate Services would create a potential conflict of interest is not substantiated.
(2) The fact that Mrs Mahole’s work involved conducting internal audit of the Municipality’s departments which included Mr Mahole’s unit posed as a risk for a potential conflict of interest as she would be expected to make findings where such existed, against her husband if necessary.

(3) Although circumstances do exist for a potential conflict of interest due to the nature of the positions Mr and Mrs Mahole occupy within the Municipality. However, the Municipality would have to devise the means to manage such conflict.

(3) However, such a potential conflict of interest is moot and can be managed properly by assigning audit duties to someone else besides Mrs Mahole.

B. Purging of Staff by former Municipal Manager

(i) Regarding whether Mr Mojaki was involved in the systemic purging of 25 Municipal employees between 2012 and 2014 who had raised questions and concerns about the alleged irregularities within the Municipality, the Public Protector finds that:

(1) The allegation that Mr Mojaki was involved in the systemic purging of staff is substantiated.

(2) This was confirmed by the fact that most of the purged employees were successful in their labour dispute against the Municipality as the Labour Court ruled in July 2016, that their dismissals were procedurally and substantively unfair and ordered that they should be reinstated.
(3) The Labour court had on 26 July 2016 ordered the reinstatement with full benefits of the following employees:

(a) Mr Diale Kgantsi;
(b) Mr Elias Mpinga;
(c) Mr Modise Malgas;
(d) Mr Maruping Stemmer;
(e) Ms Thandi Africa;
(f) Ms Ruth Moroka; and
(g) Ms Neo Mohamed.

C. Procurement Irregularities

(k) Regarding whether proper procurement processes were followed in the alleged appointment of E-markets by Mr Mojaki to brand 35 municipal vehicles with logos resulting in an expenditure of an amount of R630 000, the Public Protector finds that:

(1) The allegation that the contract for the branding of the 35 municipal vehicles was irregular is substantiated.

(2) Although the branding of these vehicles was sourced in compliance with the appropriate procurement procedures as required by the System of Delegations in particular MM 257 and paragraph 36 of the Municipal SCM policy, which does allow for deviation from prescribed procurement procedure due to an emergency.

(3) The procurement process followed in the awarding of the contract for the branding of 35 municipal vehicles branding to E-markets was therefore irregular and Mr Mojaki’s conduct in this regard constitutes financial
misconduct as envisaged in section 172(1)(c) of the Municipal Finance Management Act, as well as improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.

(i) Regarding whether proper procurement processes were followed by the Municipality in the alleged appointment of Softline Pastel Evolution by Mr Mojaki for the installation of a new integrated financial system at a cost of R2 million, in that the said tender was allegedly not advertised, the Public Protector finds that:

(1) The allegation that the appointment of Softline Pastel Evolution by the Municipality was irregular is not substantiated.

(2) The Municipality deviated from the normal procurement procedures in terms of Section 32 of their SCM policy.

(3) In so doing, the procurement process followed in the installation of the new Integrated Financial System was therefore in compliance with the Municipal SCM policy and procedures.

(4) The Public Protector finds that the conduct of the Municipality in the circumstances was not improper as envisaged in section 182(1)(a) of the Constitution.

(m) Regarding whether Bokone Bophirima Properties' alleged appointment as the Municipality's property valuation service provider by Mr Mojaki which was allegedly influenced by Mr Seymour Williams, as a result of which the latter was rewarded with a Chevrolet SS bakkie was irregular, the Public Protector finds that:
(1) The allegation that the appointment of Bokone Bophirima Properties as the Municipality’s property valuation service provider by the Municipal Manager was irregular is substantiated as it did not comply with section 217 of the Constitution, section 116 of the MFMA as well as section 16A64 of the National Treasury Regulations. The allegation that the appointment of Bokone Bophirima Properties as the Municipality’s property valuation service provider by the Municipal Manager was irregular is substantiated as it did not comply with section 116 of the Municipal Finance Management Act (MFMA).

(2) The Municipal Manager failed to follow a proper tender process, as well as not tabling the amendments and/or extension of the said valuation contract with Bokone Bophirima Properties before Municipal Council for approval.

(3) Mr Mojaki therefore acted improperly in the renewal of an existing property valuation contract with Bokone Bophirima Properties and in violation of section 217 of the Constitution and section 116(3)(a) of the MFMA as no tender process was followed despite the amount exceeding R500 000.

(4) Mr Mojaki’s conduct in the appointment and/or extension of Bokone Bophirima Properties’ property valuation contract was therefore irregular and this constitutes financial misconduct as envisaged in section 172(1)(c) of the Municipal Finance Management Act, as well as improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.
(xx) The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c), with the view of placing the Complainants as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing the recruitment irregularities, procurement irregularities and staff purging in the Municipality, is the following:

(a) Speaker of Council to:

(aa) Institute civil proceedings against Mr Mojaki for the recovery of all moneys lost by the Municipality as a result of his ineptitude and abuse of authority in respect of his conduct of non-disclosure of his relationship with Mr Williams as well as the subsequent improper award of the property valuation contract to Bokone Bophirima Properties and the E-markets contract for branding 35 municipal vehicles.

(bb) Investigate whether the reimbursement which was due to the North West Premier’s office by the Municipality for Mr Mojaki’s secondment salary did take place, and if not, take appropriate steps against the officials responsible for such financial misconduct.

(cc) Reinstate all the Municipal employees as ordered by the Labour court and issue a formal apology to them for the mistreatment they had suffered under Mr Mojaki’s authority.

(dd) Take urgent steps to investigate, and if warranted, review employment contracts of the following staff members irregularly appointed by Mr Mojaki: the Senior Manager: Municipal Manager’s office; PMS Manager; Manager: Communications; Manager: SMME Development; Manager:
Rural Development; Manager: Fleet Management; Manager: Organisational Development; Senior Accountant; Bid Administration Manager; Security Manager.

(ee) Take urgent steps to recover the 185% rapid escalation in salary increase within a period of 12 months to Mr Mahole which was authorised by Mr Mojaki.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, CORRUPTION, NEPOTISM, FRUITLESS AND WASTEFUL EXPENDITURE AND PURGING OF STAFF BY THE FORMER MUNICIPAL MANAGER, MR MOKGELE MOJAKI AT NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY (THE MUNICIPALITY).

1. INTRODUCTION

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

1.2. The report is submitted to the following people in terms of section 8(3) of the Public Protector Act:

1.2.1 The Executive Mayor, Councillor T J Makololakwa;

1.2.2 The Speaker, Councillor Y Sechoaro;

1.3 Copies of the report are also provided to the following people:

1.3.1 The former Municipal Manager of the Municipality, Mr Mokgele Mojaki; and

1.3. The Complainants, Messrs R Moroka and O Makoloi and Mr Diale Kgantsi.

1.4 The report relates to an investigation into the alleged maladministration corruption, nepotism, fruitless and wasteful expenditure and purging of staff by the former Municipal Manager of the Municipality, Mr Mojaki.
2. THE COMPLAINT

The complaint lodged against the former Municipal Manager, Mr Mokgele Mojaki, relates to the following allegations:

A. Recruitment Irregularities

2.1 Mr Mojaki was allegedly subsequently appointed irregularly to the position of Municipal Manager despite the lack of necessary qualifications and relevant experience as compared to other candidates who had been shortlisted for the position:

2.2 Alleged non-refund of overpayment emanating from Mr Mojaki’s receipt of a double salary from both the Municipality’s budget and the Premier’s offices respectively after his secondment in July 2011;

2.3 Alleged appointment of several officials to acting and permanent positions by Mr Mojaki prior to the approval of the Organisational Structure and without ensuring a budget has been allocated for those positions;

2.4 Alleged failure by Mr Mojaki to inform the Municipal Council regarding the vacancies that had already been filled prior to the Council’s approval and failure to inform the Municipal Council about the budgetary allocations made available for the positions;

2.5 Alleged impropriety in the recruitment process by Mr Mojaki, including failure to advertise, shortlist and interview candidates; for the following position:

(a) Senior Manager in the office of the Municipal Manager;
(b) Performance Management Systems(PMS) Manager;
(c) Manager: Communication; and
(d) Manager: Small Medium and Micro Enterprise (SMME) Development;

2.6 Alleged improper conduct by Mr Mojaki in appointing Mr Seymour Williams as both are co-directors in the same company known as Sikelo Consulting Worx (2011/005663/07);

2.7 Alleged irregular appointment of Mrs Mahole by Mr Mojaki to be the Audit Executive, which resulted in her salary being adjusted from R250 000 to R685 000.00 per annum;

2.8 Alleged irregular appointment of Mr Mahole by Mr Mojaki as the acting Manager-Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and Mr Mahole’s salary escalation from R385 000.00 to R1 080 000 p.a. within a year;

2.9 Mrs Mahole’s alleged irregular appointment by Mr Mojaki to the position of an Audit Executive within the Municipality would create a potential conflict of interest, as her husband is employed as the Municipality’s Senior Manager: Corporate Services while Mrs Mahole’s work also involves auditing his department’s performance; and

2.10 It was further alleged that Mr Mojaki was involved in a systemic purging of the below-mentioned 25 Municipal employees between 2012 and 2014 who had dared to question his alleged irregular recruitment of staff and the irregular procurement of services for the municipality.

B. Purging of Staff by former Municipal Manager

The following employees were allegedly purged by Mr Mojaki:
1. Ms Ruth Moroka – Finance;  
2. Ms Olehile Makolo – Finance;  
3. Ms Neo Mahommed – Finance;  
4. Mr Maruping Stemmer – Disaster Management;  
5. Ms Keitumetse Seadira – PMU;  
6. Mr Clifford Malimabe – PMU;  
7. Ms Masego Nthompe – PMU;  
8. Ms Irene Segapo – PMU;  
9. Ms Irene Mmeleetsi – PMU;  
10. Mr McDonald Phejana – Internal Audit;  
11. Mr Tumelo Motswenyane – Internal Audit;  
12. Ms Thandi Africa – Corporate Support;  
13. Mr Mokopane Ncapedi – Corporate Support;  
14. Mr Page Mosete – IDP;  
15. Mr Selio Molefe – Speaker’s Office;  
16. Mr Sipho Lecogo – Speaker’s Office;  
17. Mr Wiseman – Mayor’s Office;  
18. Ms Gago Mathe – Mayor’s Office;  
19. Ms Merriam Seeco – Mayor’s Office;  
20. Mr Modise Malagas – PMU;  
21. Ms Camilla Malefane – PMU;  
22. Mr Amos Hobe – Fire and Emergency;  
23. Mr Motladile;  
24. Mr Diale Kgantsi; and  
25. Mr Elias Mpinga.

C. Procurement Irregularities
2.11. Alleged irregular procurement process by Mr Mojaki in the awarding of a tender amounting to R630 000.00 to E-markets for the branding of 35 Municipal vehicles with logos;

2.12. The alleged failure by the Municipality to follow correct procurement processes in the awarding of a tender worth R2 million to Softline Pastel Evolution for the installation of an integrated New Financial System; and

2.13. Alleged irregular award of a property valuation contract to Bokone Bophirima Property by Mr Mojaki, as a result of which the service provider rewarded Mr Seymour Williams with a Chevrolet SS bakkie as a gift for having allegedly ensured that the tender was indeed given to them.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional body 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:

"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 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 or any other appropriate alternative dispute resolution mechanism.

3.5 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and accordingly falls within the ambit of the Public Protector.

3.6 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

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

4.2 Approach to the investigation

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

4.2.1.1 What happened?
4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

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

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the Municipality acted improperly in relation to the appointment of the former Municipal Manager and several senior staff members, irregular procurement of services and the subsequent purging of 25 employees by the former Municipal Manager.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality to prevent maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where the Complainants has suffered prejudice the idea is to place them as close as possible to where they would have been had the Municipality complied with the regulatory framework setting the applicable standards for good administration.

4.2.5 The investigation revealed that it involved much more than a mere case of improper conduct or failure by the Municipality to comply with legislative policies, precepts
and procedures. A number of issues relating to maladministration and good governance were uncovered during the investigation.

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

A. Recruitment Irregularities

4.3.1 Whether the Municipality irregularly appointed Mr Mojaki to the position of the Municipal Manager as he did not have the necessary qualifications and relevant experience for the said position;

4.3.2 Whether Mr Mojaki irregularly appointed several officials on acting and permanent positions that were not approved or provided for in the Organisational Structure and/or budget;

4.3.3 Whether Mr Mojaki's secondment from the Premier's office to the Municipality and his continued earning his salary from both offices as well as that for approximately 5 months was irregular; and thus constituted financial mismanagement;

4.3.4 Whether Mr Mojaki allegedly failed to follow proper recruitment procedure by failing to advertise shortlist and interview candidates for the vacant positions within the Municipality;

4.3.5 Whether Mr Seymour Williams's appointment as the Senior Manager by Mr Mojaki with whom they are co-directors in the same company known as Sikelo Consultation Worx (2011/00566/07) which was registered on 07 March 2011 was irregular;
4.3.6 Whether the appointments of Mr Mahole and his wife by Mr Mojaki to the positions of Acting Manager Advisory Support and Senior Internal Auditor on February 2011 and August 2011 respectively, were irregular;

4.3.7 Whether Mr Mojaki irregularly appointed Mrs Mahole to the position of Audit Executive in March 2011, after allegedly acting as the Senior Internal Audit, resulting in her salary being adjusted from R250 000.00 to R685 000.00 p.a. within a period of a year;

4.3.8 Whether Mr Mahole’s appointment by Mr Mojaki as the acting Manager-Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and whether Mr Mahole’s salary escalation from R385 000.00 to R1 080 000 p.a. within a year was irregular; and

4.3.9 Whether Mr Mojaki irregular appointed Mrs Mahole’s alleged to the position of an Audit Executive within the Municipality which would create a potential conflict of interest, as her husband is employed as the Municipality’s Senior Manager: Corporate Services while Mrs Mahole’s work also involves auditing his department’s performance.

B. Purging of staff

4.3.10 Whether Mr Mojaki’s alleged systemic purging of 25 employees at the Municipality who had raised questions and concerns about irregularities within the Municipality, was irregular.

C. Procurement Irregularities

4.3.11 Whether Mr Mojaki acted irregularly when he appointed E-markets to brand 35 municipal vehicles with logos at an expenditure of R630 000.00;
4.3.12 Whether the alleged failure by the Municipality to follow correct procurement processes in the awarding of a tender worth R2 million to Softline Pastel Evolution for the installation of the new integrated Financial System was irregular; and

4.3.13 Whether Mr Seymour Williams ensured that the Municipality’s property valuation tender was irregularly awarded to Bokone Bophirima Properties by Mr Mojaki, as a result of which the service provider rewarded him with a Chevrolet SS as a gift, the ownership of which was later transferred to him (Mr Williams).

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 Ngaka Modiri Molema District Municipality Strategic Plan 2011-2016.

4.4.1.2 Organisational Structure-key performance Areas (Departmental 2012).

4.4.1.3 Copies of the correspondences for various posts that were filled.

4.4.1.4 A copy of agreement between Sediesey Consulting and the Municipality.

4.4.1.5 A copy of Personnel Recruitment and Selection Policy.

4.4.1.6 A document regarding the appointment of a service provider for integrated Financial Systems.

4.4.1.7 A copy of several posts advertised internally and externally.

4.4.1.8 A copy of Ngaka Modiri Molema District Municipality reviewed Organogram.
4.4.1.9 A document relating to the cost and councillors allowances expenditure and budget for 2011-2012 financial years for employees.

4.4.1.10 Documents relating to the secondment of Mr Mokgele Mojaki.

4.4.1.11 System of Delegation of the Municipality.

4.4.1.12 Copies of several posts advertised internally and externally.

4.4.1.13 A copy of Ngaka Modiri Molema District Municipality reviewed Organogram.

4.3.1.14 A document relating to the cost and councillors allowances expenditure and budget for 2011-2012 financial years for employees.

4.3.1.15 Copies of Subpoenas to the Municipality.

4.4.2 Interviews conducted

4.4.2.1 Meeting was held by the Public Protector with the Acting Executive Mayor, Cllr. M Monnana and the Speaker of Council, Mr T Ramashilabele on the 11 June 2013.

4.4.2.2 Another meeting was held with the Municipal Manager, Mr Mojoaki Mokgele Supply Chain Manager, Mr Mmoloki Inno and Chief Financial Officer, Mr W Molokele on 23 July 2013.

4.4.3 Correspondence sent and received

4.4.3.1 Letter from Public Protector to the Municipality on 24 January 2013;

4.4.3.2 Reminder letter from Public Protector to the Municipality on 20 March 2013;

4.4.3.3 Response letter from the Municipality to Public Protector on 05 April 2013;
4.4.3.4 Subpoenas to the Executive Mayor and Speaker of Council of the Municipality on 22 May 2013;

4.4.3.5 Letter from the Municipality to Public Protector to on 10 June 2013;

4.4.3.6 Letter from Public Protector to Speaker of Council on 25 June 2013;

4.4.3.7 Letter from Public Protector to MEC – COGTA on 18 July 2013;

4.4.3.8 Letter from the Municipality to Public Protector on 31 July 2013

4.4.3.9 Letter from the Municipality’s Attorneys to Public Protector on 01 August 2013; and

4.4.3.10 Letter from Public Protector to the Municipality’s Attorneys on 06 August 2013.

4.4.4 Inspections in loco conducted

4.4.4.1 Visited the Municipality offices in Carrington Street, Mafikeng on 9-10 July 2013 to inspect documents and verify records.

4.4.5 Websites visited and Research Conducted

4.4.5.1 Google- www.the Municipality.gov.za (23.09.2014)

4.4.5.2 http://jutalaw.co.za; and

4.4.5.3 http://lexisNexis.co.za.(12.08.2014)
4.4.6 Legislation and other prescripts

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

4.4.6.2 The Public Management Finance Act, 1of 1999;

4.4.6.3 Regulations in terms of the Public Finance Management Act, 1999;

4.4.6.4 Framework for Supply Chain Management dated 5 December 2003;

4.4.6.5 The Public Protector Act, 1994;

4.4.6.6 The Municipal Structures Act 117 of 1998;

4.4.6.7 The Municipal Systems Act 32 of 2000;

4.4.6.8 Municipal Finance Management Act 56 of 2003;

4.4.6.9 Public Service Act, 1994;

4.4.6.10 Systems of Delegation the Municipality, 2006;

4.4.6.11 Treasury Regulations, 2005;

4.4.6.12 Supply Chain Management Regulations, MFMA 2005;

4.4.6.13 Recruitment and Selection Policy the Municipality, 2006;

4.4.6.14 Supply Chain Management Policy, 2006; and

4.4.6.15 Local Government: Municipal Systems Act-Regulations on appointment and conditions employment of Senior Managers.
4.4.7  Touch stones from previous Public Protector Reports


5.  EVIDENCE AND INFORMATION OBTAINED

A. Recruitment Irregularities

5.1  Regarding whether the Municipality improperly appointed Mr Mojaki to the position of the Municipal Manager as he allegedly did not have the necessary qualifications and relevant experience for the said position.

5.1.1  Issue not in dispute

5.1.1.1  It is not in dispute that the Municipality appointed Mr Mojaki to the position of Municipal Manager through secondment from the Premier's office.

5.1.2  Issue in dispute

5.1.2.1  The issue for the Public Protector's determination is whether or not the appointment was in accordance with proper recruitment process and also whether he had the necessary qualifications and relevant experience for the said position.

5.1.2.2  In its response dated 10 June 2013, the Municipality indicated that the vacancy for the position of the Municipal Manager was advertised in the local and national newspapers, namely Sunday World and Sowetan for interested candidates with relevant qualifications to apply and the closing date was on 12 August 2011.
5.1.2.3 According to the advertisement, the key requirements for the position were:

a. An appropriate B-Degree in Law, or Local Government, or Public Administration, or Public Management or equivalent qualification.

b. Senior management experience in Local Government administration.

c. Extensive and practical knowledge of Local Government legislation.


e. The ability to communicate and negotiate at all levels of government and with all the relevant role players.

f. The ability to provide strategic, visionary and innovative leadership.

g. Knowledge of Performance Management System in Local Government.

h. Experience in Labour Law matters.

5.1.2.4 Several candidates are said to have applied for the position and the selection panel conducted the shortlisting on the 12 September 2011, and shortlisted 8 candidates who were:

a. C.C Malefo;

b. T. Chanda;

c. T.Y Mojana;

d. K.S Mball;

e. M.E Mojaki;

f. I.R. Modisane;

g. E.T Motseemme; and

h. M.J Motlogelwa.

5.1.2.5 The Municipality indicated that Mr Mojaki’s qualifications included:
a. MBA current studies;
b. Hons. B.Sc in Agriculture Economics and Management;
c. B.Sc in Agriculture;
d. Diploma in Animal Health;
e. Certificate Public Office Management; and
f. Preferential Procurement Management Programme.

5.1.2.6 Mr Mojaki’s work experience included:

a. Youth Development Manager: North West Youth Commission;
b. Mafikeng Local Municipality: Councillor; and
c. Acting Municipal Manager: Ngaka Modiri Molema District Municipality.

5.1.2.7 Interviews were held on 19 September 2011. Mr Mojaki received the highest total score of 236 from the interview panel and as a result Mr Mojaki was appointed to the position of Municipal Manager of Ngaka Modiri Molema District Municipality on 30 September 2011.

5.1.2.8 The Municipality submitted a report to the office of the Premier dated 30 September 2011 in terms of Section 54A of the Municipal Systems Act by, which prescribes that the municipality must within fourteen days of appointment inform the Premier of a province of the appointment process and the outcome.

5.1.2.9 The report outlined that on 23 September 2011, Council accepted the score card as a true reflection of what transpired in the interviews and confirmed Mr Mokgele Mojaki’s appointment as the new Municipal Manager.
5.1.2.10 The Municipality contended that Mr Mojaki was well-suited to give effect to the required key result areas, given his good working relationship with all relevant stakeholders. Mr Mojaki fully comprehended the local government structure and its intricacies.

5.1.2.11 Accordingly, Mr Mojaki complied with the minimum competency levels required for higher education qualification, work related experience, core managerial and occupational competencies and he is competent in the unit standards prescribed for financial and supply chain management and competency areas of the Municipality.

5.1.2.12 In a letter from the Municipality to the Public Protector dated 10 June 2013, in response to the allegation, the Municipality responded to say that the appointment of Mr Mojaki was in terms of Municipal Systems Act, and the Recruitment and Selection policy.

5.1.2.13 Further thereto, the Municipality contended that experience and qualifications are not the only considerations that must be factored into the description of suitably qualified persons. Mr Mojaki had an advantage over other candidates in that he had a successful stint as acting Municipal Manager prior to the interviews. In the short space of time he managed to turn the fortunes of the Municipality around. Council maintained that the appointment of Mr Mojaki was the suitable candidate for the job.

5.1.2.14 Further evidence received by the Public Protector also points to the fact that Mr Mojaki had been seconded to the Municipality by Honourable Thandi Modise, the then Premier of North West Province on the request of the Municipality’s Executive Mayor, Councillor Saku on 29 June 2011.
5.1.2.15 During the secondment or acting period, the post for Municipal Manager was advertised and Mr Mojaki subsequently applied for same. Interviews were conducted and Mr Mojaki was subsequently appointed permanently to the post of Municipal Manager on 30 September 2011.

5.2 Regarding whether Mr Mojaki’s alleged secondment from the Premier’s office in July 2011 to Ngaka Modiri Molema District Municipality, and his alleged continued earning a double salary from both offices for a period of five months was irregular, and thus constitutes financial mismanagement.

5.2.1 Issue not in dispute

5.2.1.1 It is not in dispute that Mr Mojaki was seconded from the Premier’s office to the Municipality as the acting Municipal Manager.

5.2.2 Issues in dispute

5.2.2.1 The issue for the Public Protector’s determination is whether or not Mr Mojaki’s secondment was in compliance with the recruitment policies and also whether he allegedly continued earning a double salary from the two institutions and failed to refund the resultant overpayment.

5.2.2.2 In its response to the Public Protector dated 10 June 2013, the Municipality indicated that on 27 June 2011 a request to second Mr Mojaki to act in the vacant Municipal Manager’s post for a period of three (3) months was forwarded by Councillor Saku, the then Executive Mayor to the office of the Honourable Thandi Modise, the then Premier of North West province.
5.2.2.3 On 29 June 2011 the Premier, Ms Modise approved Mr Mojaki’s secondment to the position of Acting Municipal Manager and directed that all administrative procedures would be attended by the Director General from the Premier's office.

5.2.2.4 Consequently, the Municipal Council appointed Mr Mojaki on secondment from the Premier's office as acting Municipal Manager with effect from 29 June 2011.

5.2.2.5 In a letter dated 02 August 2011 to the Acting Director General in the Office of the Premier in which the Municipality outlined that as per their agreement, the Municipality would reimburse Premier's office for the total salary and benefit payments for the period of the secondment.

5.2.2.6 Additional evidence provided to the investigation team confirmed that on 30 June 2011, the Acting Director General in the Premier's office, Mr A Tlaletsi advised the Municipality of approval of Mr Mojaki's secondment to the Municipality for a period of three (3) months.

5.2.2.7 The agreement, as stated in a letter dated 02 August 2011, was that the Municipality would reimburse the Premier's office of the total salary and benefit payment to Mr Mojaki for the secondment period which was three (3) months and not five (5) months as alleged.

5.2.2.8 The evidence also confirmed that Mr Mojaki continued to earn a salary from the Premier’s office for the period of secondment but it was for much less period than the alleged five (5) months, as he was later appointed permanently to the said post on 01 October 2011.

5.2.2.9 Further evidence confirmed that indeed steps were set in motion on 02 December 2011 by the CFO in the North West Premier's office who wrote to the Executive Mayor of the Municipality for the reimbursement of the expenditure incurred by that
office to Mr Mojaki from 01 July to 31 October 2011. Attached to the letter, were claim calculations as well as salary advices for Mr Mojaki’s secondment period amounting to R104 347.41 due to the Premier’s office.

5.2.2.10 In its response to the Public Protector dated 10 June 2013, the Municipality stated that the Municipality did reimburse the Premier’s office as per the secondment agreement as part of its agreement for Mr Mojaki’s secondment.

5.2.2.11 However, except for the CFO’s letter to the Executive Mayor, no documentary proof could be availed to the Public Protector to confirm that such an exchange of money took place between the two offices.

5.3 Regarding whether Mr Mojaki irregularly appointed several officials on acting and permanent positions that were not approved or provided for in the Organisational Structure and/or budget.

5.3.1 Issue not in dispute

5.3.1.1 It is not in dispute that the Mr Mojaki appointed several staff members to acting and permanent positions within the Municipality.

5.3.2 Issues in dispute

5.3.2.1 The issue for the Public Protector’s determination is whether or not the said appointments were in accordance with the Municipality’s recruitment policies, and also whether they had been approved or provided for in Organisational structure and budget.
5.3.2.2 From the evidence obtained by the investigation team, the following positions although in the organogram which according to the Complainants were not budgeted for as well as not approved by the Municipal Council were advertised both externally and internally with a closing date of 16 March 2012:

(1) The Manager Advisory Support;
(2) Manager Project Management Unit;
(3) Senior Manager: District and Public Health and Safety Services;
(4) Senior Manager: Growth and Economic Development;
(5) Senior Manager: Planning and Development;
(6) Manager: Performance Management;
(7) Manager Income and Expenditure; and
(8) Manager Policy Development.

5.3.2.3 In its response dated 10 June 2013, the Municipality stated that Section 8.7 of the Central District Municipality Delegation 2006 confers incidental powers to the Municipal Manager by Municipal Council for the former to create temporary posts in the event of the occurrence of bottlenecks or emergency situations.

5.3.2.4 The Municipality further stated that Section 7 of the Municipality Personnel Recruitment and Selection Policy provides for targeted recruitment or headhunting whereby if suitable candidates are unavailable, then the Municipality may resort to headhunting. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

5.3.2.5 According to the Municipality, Mr Mojaki had the authority to appoint people to certain positions in terms of the System of delegations, as well as Section 66 and 67 of the Municipal Systems Act.
5.3.2.6 Further thereto sections 66 and 67 of the Municipal Systems Act states that the Municipal Manager may approve staff establishment for the administration which includes the approval of the creation of posts as required from time to time and section 67 states that the Municipal Manager may advertise and appoint employees from post level 1-18.

5.3.2.7 The Municipality also stated that it relied on the 2012 Organisational structure when it decided to advertise vacant positions in the municipality some of which were subsequently re-graded and filled.

5.3.2.8 The Municipality stated further that the Municipal Manager also has the power to appoint non section 57 managers and employees. The delegation means that the Municipal Manager is fully capacitated to review, approve and adopt organograms or staff establishments. The above mentioned powers were delegated to the Municipal Manager by Council as per section 32(1) (a) of the Municipal Structures Act.

5.3.2.9 The strategic plan 2011-2016 of the Municipality, which was approved by the Municipal Council, was inclusive of certain positions that were necessary for the Municipality to be able to fulfil their strategic objectives.

5.3.2.10 According to the response dated 10 June 2013, the Municipal Council had identified the key strategic positions which were regarded as critical and needed urgent filling. It was resolved that the positions needed to be filled as a matter of priority to turn around the Municipality. These were: Internal Messenger; Legal Secretary; Légal Officer x 2 and IT Support Technician.

5.3.2.11 The Municipality’s Organisational structure 2012, which would be in support of the Municipal Management included:
a. Business Process Support;
b. Governance Support;
c. Programme Management support;
d. Development planning;
e. Infrastructure and maintenance development;
f. Economic Development;
g. Public Health and Safety;
h. Financial Management support;
i. Senior Manager: Corporate Resource Support;
j. Audit Executive;
k. Senior Internal Auditors;
l. Executive Manager: PMU;
m. Senior Manager: Growth and Economic Development;
n. Manager: Fleet;
o. Manager Communications;
p. Manager: Advisory Support; and
q. Office Manager: CFO Office.

5.3.2.12 A copy of the Sowetan newspaper dated 16 November 2011 contained the advertisements of posts at the Municipality; these posts were for the positions of:

a. Senior Manager: Corporate Resource Support;
b. Senior Manager: Growth and Economic Development;
c. Senior Manager: Planning and Development;
d. Policy Development Coordinator;
e. Manager: Performance Management; and
f. Manager Income and Expenditure.
5.3.2.13 The following posts were also advertised internally:

a. The Manager Advisory Support;
b. Manager Project Management Unit; and

5.3.2.14 The Municipality's response to the Public Protector also stated that it had an approved System of Delegation. This system delegates to the Municipal Manager the power and authority to review and approve creation of posts, as well as the power to approve staff establishment.

5.3.2.15 The response from the Municipality further stated how the events unfolded, namely, that a motivation of filling of the posts was delivered to the office of Municipal Manager with the expectation to turn around the situation of the Municipality.

5.3.2.16 The evidence provided to the Public Protector confirmed that the Municipality had an approved system of delegations in terms of section 32 (1) (a) (iv) of the Municipal Structures Act.

5.3.2.17 In terms of the Municipality's Recruitment and Selection policy in the case of targeted recruitment, deviation from policy is permissible but only after unsuccessful attempts to find suitable candidate through normal recruitment processes. However, the Municipality failed to provide the Public Protector with any proof that shows that due process had been followed before the headhunting processes were initiated.

5.3.2.18 The Strategic plan 2011-2016 of the Municipality, which was approved by the Municipal council, was also availed to the Public Protector and it apparently
included certain positions that were necessary for the Municipality to be able to fulfil its strategic objectives.

5.3.2.19 The documents received from the Municipality outlined that the Municipal Council discussed and approved the reviewed Organogram and then adopted a five year strategic plan known as Strategic Plan 2011/2016 signed on 13 August 2011.

5.3.2.20 However, the following appointments were effected immediately after Mr Mojaki had been appointed to the position of Municipal Manager of the Municipality in 2012:

(1) Manager: Organisational Development;
(2) Manager: Communication;
(3) Manager: Rural Development;
(4) Manager: Fleet Management;
(5) Senior Accountant: Bid Administration;
(6) Financial Practitioners; and
(7) Manager: Security.

5.3.2.21 These posts were not advertised externally and internally but were filled by way of headhunting individuals as provided for by the Municipality’s Recruitment policy. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

5.3.2.22 The Municipality provided the Public Protector with a copy of the 2012 Organisational structure which included all the positions mentioned above in 5.3.2.2 which were as follows:
(1) Senior Manager: Growth and Economic Development

(a) From documentation provided to the investigation team, on 24 January 2012 applicants were shortlisted for the position of Senior Manager: Growth and Economic Development and the names of the applicants are here below:

i. Mr. T J Mbekeni;
ii. Mr. H T Mohane;
iii. Mr. I M Kgokong;
iv. Mrs. M Boihang; and

(b) The then selection panel decided on a date for the interview which was scheduled for the 30 January 2012 at the Executive Mayor’s Boardroom at 12h00.

(c) It was noted in the interview report that instead of scoring qualifications and experience the panel resolved not to score because all candidates qualified by the virtue of being short-listed and therefore it will be a duplication of short-listing process and furthermore question one was not scored. The score results was what the panel members credited the candidates according to their performance during the interview process on answering questions posed to them.

(d) The interview panel recommended that the suitable candidate for the position was Mr T J Mbekeni who would be appointed on a five year performance based contract.
(2) **Senior Manager: Municipal Manager’s Office**

(a) This issue is dealt with below under the issue regarding Mr Williams’s appointment at paragraph 5.5.

(3) **Senior Manager: Project Management Unit (PMU)**

(a) No evidence was submitted to the Public Protector with regard to the appointment of Manager: PMU. No conclusion could therefore be made as to the impropriety or otherwise of this appointment.

(4) **Senior Manager Corporate Services**

(a) This matter is dealt with below in the issue regarding Mr Mahole appointment to the position of Manager Corporate Services.

(5) **Manager Communications**

(a) This issue is dealt with below in the issue regarding the failure by Mr Mojaki to follow proper recruitment processes for, inter alia, the position of Manager Communications.

(6) **Manager: Fleet Management**

(a) The Municipality submitted a letter dated 26 April 2012, addressed to Mr S D Kole from Mr Mojaki. The letter states that Mr Kole has been appointed as Manager Fleet Management with effect from 01 May 2012. Mr Kole is expected to perform the functions of Fleet Manager.
(b) The letter further states that Mr Kole's appointment is informed by the 2011-2016 Strategic Plan outcomes.

(7) Manager: Organisational Development

(a) The Municipality submitted a letter dated 30 March 2012 addressed to Mr Molale from Mr Mojaki.

(b) The letter states that Mr Molale has been confirmed as Manager: Organisational Development with effect from 01 May 2012. The appointment is informed by the Strategic Plans Outcomes 2011-2016.

(8) Manager: Rural Development

(a) The Municipality submitted a letter dated 26 October 2011 addressed to Mr Boikanyo from Mr Mojaki.

(b) The letter states that the Municipality has resolved to offer Mr Boikanyo placement on a permanent basis as Manager: Rural Development. The appointment is in line with the Memorandum of Demands with SAMWU and Management of the Municipality.

(9) Manager: Performance Management Systems

(a) The Municipality submitted a letter dated 01 June 2012 addressed to Mr Thaganyane from Mr Mojaki.

(b) The subject: Offer of Employment as Manager: Performance Management. The letter stated that the Municipality had appointed Mr
Thaganyane to the position of Manager: Performance Manager and set out the terms of reference.

(10) Financial Practitioner X3

(a) A letter dated 20 January 2012 was addressed to Mr Ntaopane from Mr Mojaki. Subject: Offer of Employment on Six months basis: Financial Practitioner Pay roll.

(b) The letter informed Mr Ntaopane that the Municipality has resolved to offer Mr Ntaopane a position on temporary basis for the period of six months as a Financial Practitioner Pay Roll Administration.

(c) A letter dated 01 September 2011 addressed to Ms Masumpa from Mr Mojaki. Subject: Appointment Letter as Senior Financial Officer-Office of the Chief Financial Officer.

(d) The letter informed Ms Masumpa that she had been appointed to the abovementioned position. The appointment was for the period of six months.

(e) A letter dated 01 September addressed to Ms Mosiane from Mr Mojaki. Subject: Appointment letter as Financial Officer-Office of the CFO.

(f) The letter stated that Ms Mosiane had been appointed to the abovementioned position for a period of six (6) months.
(11) Senior Accountant: Bid Administration

(a) A letter dated 28 May 2012 addressed to Mrs Manyeneng from Mr Mojaki. Subject: Appointment as Senior Accountant: Bid Administration.

(b) The letter informed Mrs Manyeneng that the Municipality has appointed her to the abovementioned position subject to the Local Government: Municipal Systems Act, 2000 and the Municipal Finance Management Act, 2003.

5.3.2.23 The Municipality also submitted other documents to the Public Protector relating to positions that had been filled. These were:

(1) Security Manager

(a) Appointment of Security Manager on a letter dated 01 August 2011, addressed to Mr Mashi.

(2) Manager Advisory Support

(a) Documents in relation to the appointment of Manager Advisory Support were also submitted to the Public Protector, as well as the copy of advertisement of the said post, interview report and the appointment letter of Mr Mahole.

(b) The position of Manager Advisory Support was advertised in the City Press on 16 September 2011. 14 applications were received and 4 candidates were shortlisted. These included:
i. Adv O D Seabelo  
ii. Adv H Mahole  
iii. Adv A T Tau  
iv. Mr P Malaka

(c) Mr Mahole scored the highest in the interview and the panel found him to be the appointable candidate. An offer of employment was made to Mr Mahole on 13 October 2011 and he accepted on the same date.

(3) Manager: Intergovernmental Relations

(a) A letter dated 30 March 2012 addressed to Mr Makhoba from Mr Mojaki. Subject: Confirmation as Manager: Intergovernmental Relations.

(b) The letter confirmed Mr Makhoba as Manager: Intergovernmental Relations. The appointment was informed by 2011-2016 Strategic Plan outcomes.

(4) Internal Memoranda

(a) A Memo dated 09 April 2012 to the Municipal Manager from the Senior Manager: Business Process Support. Subject: Motivation for filling of critical position.

(b) The purpose of the memo addressed to Mr Mojaki was to request him to consider appointing the Manager responsible for Inter-governmental Relations to work on the inter-governmental relations as a matter of priority.
(c) The memo outlined that Mr S Makhoba had assisted in performing the function and had done an excellent job since the Municipality experienced serious institutional and governance challenges over the years. The memo was approved as per delegation to Mr Mojaki.

(d) Further, it was recommended that Mr Mojaki approves the placement of Manager: Inter-governmental Relations in line with the 2011-2016 strategic plan outcomes. Municipal Manager considers internal capacity in the placement and Mr S Makhoba is placed or confirmed as Manager: Inter-governmental Relations.

(e) A memo dated 20 March 2012 to the Municipal Manager from Acting: Senior Manager: Corporate Services. The purpose of the memo was to request Mr Mojaki to consider appointing the Manager responsible for Organisational Development.

(f) The memo outlined that the position and function were emphasised in a memo dated 11 January 2012 in line with 2011-2016 Strategic Plan Outcomes.

(g) The recommendations were that the Municipal Manager approves the placement of the Manager mentioned above, that the Municipal Manager considers internal capacity in the placement and that Mr O N Molale be placed or confirmed as Manager: Organisational Development. The memo was approved by Mr Mojaki as per the delegation of the Municipal Manager. Mr Mojaki also commented that placement is approved to retain internal skills and talent.
(h) A memo dated 20 March 2012 addressed to the Municipal Manager from the Acting Senior Manager: Corporate Services. The purpose of this memo was to request that Mr Mojaki consider appointment of the Manager: Fleet urgently in the endeavour to mitigate the misuse of Municipal fleet.

(i) The memo recommended that Mr Mojaki approve internal growth during placement which will address staff moral and skill retention in line with Strategic plan outcomes, that Municipal Manager approves the filling of posts through placement or confirmation and that Mr SD Kole is placed or confirmed as Manager: Fleet Management.

(j) The memo was approved by Mr Mojaki as part of delegation. Placement is granted to retain internal skills and talent.

(k) A memorandum dated 11 January 2012 from the Acting Senior Manager: Corporate Services to Mr Mojaki, the purpose of which was to request for Mr Mojaki's approval for the following positions:

i. Internal Messenger
ii. Legal Secretary
iii. Legal Officers X2
iv. IT Support Technician

(l) The memo was approved by Mr Mojaki.

(m) A memo dated 20 August 2011 from the Acting Chief Financial Officer to the Acting Municipal Manager. The purpose of the memo was to request Mr Mojaki to approve the appointment of additional financial personnel in
different levels instead of four Managers as per Strategic Plan Outcomes 2011-2016.

(n) The memo outlined that the finance department had not been fully functional and that urgent and critical positions needed to be filled, and these were:

i. Manager: Financial Reporting;
ii. Senior Financial Officer;
iii. Financial Officer X2;
iv. Financial Practitioner Payroll Administration;
v. Senior Accountant- Bid Administration; and
vi. Personal Assistant to the CFO.

(o) The memorandum’s recommendations indicated that the Acting CFO has identified non-performance of certain key finance-related tasks as a driver towards the non-compliance which is influenced by limited, if not lack of capacity within the unit, hence the identification and headhunting of individuals who shall be charged with the responsibility to perform these key duties.

(p) The memo also recommended that the officials who had been identified in the headhunting process, should be appointed on a contract basis. The memo was then approved by the former Municipal Manager.

(q) A memorandum dated 01 August 2011 to Mr Mojaki from the Acting Manager Legal Services. The purpose of this memo was to request that Mr Mojaki approve the filling of Manager: Security as the Municipality had experienced a number of cases of missing information.
(r) The memo recommended that Mr Mojaki should consider appointing a person at a managerial level who will be responsible for the minimum information standards. The memo was approved and Mr Mojaki noted that Legal Services are to start with the process of headhunting.

5.3.2.24 In a letter to my office dated 10 June 2013, the Municipality stated that their budget has at all material times complied with Treasury’s standard directives of the salary bill constituting 33% of composite expenditure. Budgetary provisions for all filled posts were made with the total salary bill not exceeding the 33% threshold.

5.3.2.25 In the same letter the Municipality contended that there was no position of Manager: office of the CFO in the Municipality.

5.3.2.26 The Municipality also submitted a memorandum dated 10 April 2013 showing employee related costs and councillors allowances expenditure vs. Budget for 2011/2012 financial year. The purpose of the memo was to communicate a report on the expenditure incurred for employee related cost and councillors allowances as per 2011/2012 approved budget and audited annual financial statement.

5.3.2.27 Most of the above-mentioned appointments were effected as a result of a memoranda from either the Acting Manager: Corporate Resources Support or Senior Manager: Business Process Support recommending such placements and approved by Mr Mojaki without following any recruitment process.

Employee related cost were as follows:

Approved Budget: R147 371 885;
Expenditure: R117 981 595; and
Savings: R29 390 290.

5.4 Regarding whether Mr Mojaki allegedly failed follow proper recruitment procedures by failing to advertise shortlist and interview candidates for the following vacant positions:

(1) Senior Manager in the office of the Municipal Manager;
(2) PMS Manager;
(3) Manager: Communication; and
(4) Manager: SMME Development.

5.4.1 Issue not in dispute

5.4.1.1 It is not in dispute that Mr Mojaki appointed people to the positions mentioned below:

(1) Senior Manager in the office of the Municipal Manager;
(2) Performance Manager Systems(PMS) Manager;
(3) Manager: Communication; and
(4) Manager: Small Medium and Micro Enterprise (SMME) Development.

5.4.2 Issues in dispute

5.4.2.1 The issue for the Public Protector's determination is whether or not the appointments of these officials were in compliance with the Municipality's recruitment policies requiring the Municipality to advertise, shortlist and interview candidates for the said positions.
5.4.2.2 In its response to the Public Protector’s office dated 10 June 2013, the Municipality stated that on 14 October 2011, a memorandum from Mr Ramoabi (Executive Manager; Office of the Executive Mayor) was addressed to the Municipal Manager, Mr Mojaki With the Subject: request to headhunt for filling of position-Manager Communications.

5.4.2.3 The memorandum noted that the position of Manager Communications had been vacant and needed to be filled. The memorandum recommended that Mr Mojaki approve the urgent headhunting of a suitable candidate for the above mentioned position. The recommendation was supported by Mr Mojaki.

5.4.2.4 On 20 October 2011 a letter addressed to Mr Abel Metswamere was signed and sent by Mr Mojaki. The contents of this letter stated that the Municipality has appointed Mr Metswamere as the Manager Communications with effect from 01 November 2011. Mr Metswamere accepted the appointment on 24 October 2011.

5.4.2.5 The Municipality responded to the Public Protector in a letter dated 10 June 2013 and stated that for the position of Manager: Small, Medium and Micro Enterprise (SMME) Development, there was no one appointed into this position. It was however being confirmed that a Local Economic Development (LED) specialist had been seconded to the Municipality. She comes from the Provincial Department of Economic Development and Tourism.

5.4.2.6 With regards to PMS Manager, the Municipality stated and provided proof that proper recruitment process was followed. The post was advertised and interviews conducted. No suitable candidate could be appointed. The head hunting process was activated and a suitably qualified candidate was appointed.
5.4.2.7 The Municipality indicated that the correct recruitment procedures were followed and that the posts were advertised and interviews conducted. No suitable candidates could be found and the Municipality resorted to headhunting and suitable candidates were found.

5.4.2.8 The issue of the Manager: Municipal Manager’s office is dealt with below (5.5) in the appointment of Mr Seymour Williams.

5.4.2.9 From the evidence provided to the Public Protector, other than internal memos approved by Mr Mojaki, the Public Protector could not find any proof of the alleged due process being followed by the Municipality that led to it exhausting the correct recruitment processes before opting for headhunting.

5.4.2.10 With regards to the position of Manager: SMME Development, the Municipality contended that the position was never filled and that no candidate was seconded to the Municipality.

5.5. Regarding whether Mr Seymour Williams’s appointment by Mr Mojaki as the Senior Manager was irregular as they are co-directors of the same company known as Sikelo Consulting Worx (2011/005663/07) thus creating a potential conflict of interest

5.5.1 Issue not in dispute

5.5.1.1 It is not in dispute that the Municipal Manager appointed through secondment, Mr Seymour Williams as Senior Manager: Municipal Manager’s office despite both being co-directors in same company known as Sikelo Consulting Worx (2011/005663/07).
5.5.2 Issues in dispute

5.5.2.1 The issue for the Public Protector’s determination is whether or not the appointment of Mr Williams was in compliance with the recruitment policies requiring the Municipality to advertise, shortlist and interview candidates Council’s approval for the appointment to the said position.

5.5.2.2 In its response to the Public Protector dated 10 June 2013, the Municipality indicated that on 30 June 2011 Mr Mojaki informed Mr Seymour Williams by letter that his Company Sediesey Consulting had agreed to second him for a period of three years whereby during such period Mr Williams was expected to perform the functions of the Senior Manager in the office of Mr Mojaki.

5.5.2.3 An outsourcing agreement was said to have subsequently being entered into between the Municipality and Sediesey Management and Consulting Services on 03 July 2011. The agreement was signed by Mr Mojaki and Mr Chabeng of Sediesey Consulting outlining that the secondment of Seymour Williams as a Consultant, had been necessitated by the secondment of the acting Municipal Manager (Mr M E Mojaki) to drive the turn around and business process at the Municipality for a period of thirty six (36) months.

5.5.2.4 With regards to the allegation that Mr Mojaki and Mr Williams were directors in the same company namely, Sikelo Consulting Worx, on 20 July 2011 Mr Seymour filled in a financial disclosure form in which he indicated, amongst other things that he was a Director in Sikelo Consulting Worx. Mr Williams disclosed this fact again in another financial disclosure form in June 2012.

5.5.2.5 Evidence was provided to the Public Protector indicated that Mr Mojaki in his recruitment of Mr Williams, just sent him an appointment letter on 30 June 2011
followed by an outsourcing agreement which was entered into between the Municipality represented by Mr Mojaki and Sediesy Consulting represented by Mr Chabeng on 3 July 2011 for Mr William’s secondment to the Municipality by Mr Mojaki as a consultant on a full time basis for a period of thirty six (36) months.

5.5.2.6 Mr Williams thereafter made a declaration of interest to the Municipality where it was known that he was a Director in the same company as Mr Mojaki. No evidence was provided to the Public Protector to confirm that Mr Mojaki made any declaration of the same sort to the Municipality, even though he admitted the fact in a letter to the Public Protector on 10 June 2013 as well as in a meeting held on 23 July 2012.

5.5.2.7 No evidence was provided to the Public Protector to confirm compliance with the proper recruitment procedure and requirements for such an appointment as required by the Municipality’s Personnel Recruitment and Selection Policy as well as the enabling legislations as mentioned above.

5.6 Regarding whether the alleged appointment of Mr Lekgoa Mahole as the Acting Manager Advisory Support and the appointment of his wife, Mrs Poppy Mahole as Senior Internal Auditor by the Municipality were irregular.

5.6.1 Issues not in dispute

5.6.1.1 It is not in dispute that Mr and Mrs Mahole were appointed by the Municipality to the positions of Acting Manager Advisory Support and Senior Internal Auditor, respectively.
5.6.2 Issues in dispute

5.6.2.1 The issue for the Public Protector’s determination is whether or not the appointments were in compliance with the recruitment policies requiring the Municipality to advertise, shortlist and interview candidates for the said positions of Acting Manager Legal Services and Senior Internal Auditor, respectively.

5.6.2.2 In its response to the Public Protector on 10 June 2013, the Municipality did not dispute Mr Mahole’s previous appointments and it was evident in Mr Mahole’s Curriculum Vitae on previous employment that he had acted in such a position as alleged by the Complainants.

5.6.2.3 However, no evidence could be found in the submitted documents to the Public Protector of the process followed by the Municipality in the filling of the abovementioned positions by Mr and Mrs Mahole.

5.6.2.4 The Municipality failed to neither explain nor refute Mrs Mahole’s appointment as the Senior Internal Auditor as well as to provide with any records pertaining thereto.

5.7 Regarding whether Mrs Mahole’s alleged appointment by Mr Mojaki to the position of Audit Executive in March 2012 which resulted in her salary escalating from R250 000 to R685 000 p.a. within a period of one year was irregular.

5.7.1 Issue not in dispute

5.7.1.1 It is not in dispute that Mrs Mahole was appointed to the position of an Audit Executive by the Municipality, which resulted in her salary being adjusted from R250 000 per annum.
5.7.2 Issues in dispute

5.7.2.1 The issue for the Public Protector's determination is whether or not the appointment was in compliance with the recruitment policies requiring the Municipality to advertise, shortlist and interview candidates for the said position, and also whether there was a rapid escalation in Mrs Mahole’s salary.

5.7.2.2 The Municipality stated in its response to the Public Protector that the position of the Audit Executive (X2) was advertised internally on 13 January 2012. The salary for the above position was R343 536, 00. A number of applications were received.

5.7.2.3 Candidates that were shortlisted were the following:

i. Mr M V Seero;
ii. Mr L J Mofekeng;
iii. Mr P C Dintoe;
iv. Mr M J Lethoko;
v. Mr S O Oostruis;
vi. Ms R T Moletsane;
vii. Mr M E Mpinga;
viii. Mrs B P Mahole; and
ix. Mrs E K Thejane.

5.7.2.4 The interviews were held on 01 March 2012. Mr S O Oostruis and Mrs B P Mahole scored the highest and were the two candidates who were recommended for appointment to the said positions.

5.7.2.5 The evidence provided to the Public Protector by the Municipality indicated that the position of Audit Executive was advertised and that proper recruitment process was followed.
5.7.2.6 Mrs Mahole had been one of the highest scoring interviewees which led to her appointment to the position of Executive Auditor on 01 March 2012.

5.7.2.7 The evidence provided to the Public Protector also confirmed that the salary scale for the abovementioned position was R343 536, 00 and not R685 000 as alleged in the complaint.

5.8 Regarding whether Mr Mahole’s appointment by Mr Mojaki as the acting Manager-Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and whether Mr Mahole’s salary escalation from R385 000.00 to R1 080 000 p.a. within a year was irregular.

5.8.1 Issues not in dispute

5.8.1.1 It is not in dispute that Mr Mahole was initially appointed as a Manager-Legal Services and subsequently appointed as a Senior Manager-Corporate Services by the Municipality.

5.8.2 Issues in dispute

5.8.2.1 In its response to the Public Protector on 10 June 2013, the Municipality failed to confirm if Mr Mahole had at some stage been appointed to the post of Manager Legal Services but only to the post of Manager: Advisory Support.

5.8.2.2 The Municipality submitted to the Public Protector documents relating to the appointment of Manager: Advisory Support as well as the copy of advertisement of the said post, interview report and the appointment letter of Mr Manhole.
5.8.2.3 From the records submitted by the Municipality to the Public Protector, the position of Manager Advisory Support was advertised in the City Press of 16 September 2011. Fourteen (14) applications were received and four (4) candidates were shortlisted. These included:

(a) Adv OD Seabelo;
(b) Adv. H Mahole;
(c) Adv AT Tau; and
(d) Mr P Malaka

5.8.2.4 Mr Mahole scored the highest in the interview and the panel found him to be the appointable candidate. An offer of employment was made to Mr Mahole on 13 October 2011 and he accepted on the same date.

5.8.2.5 From the evidence at the Public Protector's disposal it is evident that the Manager: Advisory Support performed the same functions as that of Manager: Legal Services because in the advertisement for the post of Manager: Advisory Support providing legal advice to the Council, advising management on legal matters and assisting in the drafting of by-laws were the key performance areas for the said post.

5.8.2.6 The position of Senior Manager: Corporate Resource Support was advertised in the Sowetan of the 16 November 2011.

5.8.2.7 On 24 January 2012 applicants were shortlisted for the position of Senior Manager: Corporate Resources Support and the names of the shortlisted candidates were the following:

(a) Mrs. M M Mooki;
(b) Mr M M Dimpe;
(c) Mrs M D Dambuza;
(d) Mr M P Gaobuse; and
(e) Mr H L Mahole.

5.8.2.8 The interviews took place on 30 January 2012 and like the Senior Manager: Growth and Development, candidates where scored on the way they answered the questions posed to them by the panel.

5.8.2.9 The interview panel recommended that the suitable candidate for the position was Mr H L Mahole who would be appointed on a five year performance-based contract.

5.8.2.10 A letter dated 22 February 2012 informed Mr Mahole that he had been appointed as the Senior Manager: Corporate Resources Support with effect from 01 March 2012. The letter stated further that the appointment was for a period of five years and that Mr Mahole was expected to negotiate his remuneration package with Mr Mojaki.

5.8.2.11 No evidence was submitted by the Municipality to the Public Protector which confirmed that Mr Mahole had at some stage been appointed to the post of Manager Legal Services but only to the post of Manager: Advisory Support and later Manager and Senior Manager: Corporate Resources Support

5.8.2.12 From the evidence at the Public Protector’s disposal it is evident that the Manager: Advisory Support performed the same functions as that of Manager: Legal Services because in the advertisement for the post of Manager: Advisory Support providing legal advice to the Council, advising management on legal matters and
assisting in the drafting of by-laws were the key performance areas for the said post.

5.8.2.13 Further evidence provided to the Public Protector indicated that Mr Mahole had been appointed to two (2) positions within a period of 12 months by the Municipality thereby resulting in the rapid translation in his rank and salary progression.

5.8.2.14 The evidence provided in a form of Mr Mahole’s appointment letter also indicated that his salary was negotiable with the Municipal Manager. Mr Mahole’s salary notch for Manager: Advisory Support was R343 536.00 p.a. and it was later increased to the current R1080 000.00 p.a. upon his appointment as the Senior Manager: Corporate Resources Support. It was contended that his salary package had been negotiated with Mr Mojaki.

5.9 Regarding whether Mrs Mahole’s alleged irregular appointment by Mr Mojaki to the position of an Audit Executive within the Municipality, which would create a potential conflict of interest, as her husband is also employed as the Municipality’s Senior Manager: Corporate Services as Mrs Mahole’s work would also involve auditing his department’s performance.

5.9.1 Issues not in dispute

5.9.1.1 It is not in dispute that Mrs Mahole was appointed as an Auditor within the Municipality whereas her husband is employed as Senior Manager: Corporate Support Services.
5.9.2 **Issues in dispute**

5.9.2.1 The issue for the Public Protector’s determination is whether or not Mrs Mahole’s appointment as an Audit Executive would create a conflict of interest due to her husband’s position as Senior Manager: Corporate Support Services within the Municipality.

5.9.2.2 The Municipality in a letter to the Public protector dated 10 June 2013, argued that the conflict of interest allegation was illogic as every functionary has a prescribed role and there is no rule that precludes spouses working for the same municipality.

5.9.2.3 According to the Municipality, the key performance areas for Mrs Mahole’s position are:

(a) To establish policies for the auditing activity and directing its technical and administrative functions;
(b) Manage the execution of these plans;
(c) Manage and co-ordinates the Audit Committee/Performance Audit committee activities;
(d) Perform continuous risk management assessment;
(e) Conduct special investigation at the management and council’s request; and
(f) Staff management, development and training.

5.9.2.4 The Key performance Areas for Mr Mahole are the following:

(a) Ensure shared logistical support;
(b) Ensure proper ICT support functioning;
(c) Ensure functional human resources management support;
(d) Implement Employment Equity Plan;
(e) Staff management and development; and
(f) Manage Department budget.

5.9.2.5 From the evidence provided to the Public Protector, it was confirmed that the appointment of Mrs Mahole as an Audit Executive by the Municipality was effected in March 2012 while Mr Mahole’s appointment as Manager Advisory Support was effected in October 2011 and thereafter as Senior Manager: Corporate Services Support in March 2012.

B. Purging of Staff by the former Municipal Manager

5.10 Regarding whether Mr Mojaki was involved in the alleged systemic purging of 25 Municipal employees between 2012 and 2014 who had raised questions and concerns about the alleged irregularities within the Municipality.

5.10.1 Issues not in dispute

5.10.1.1 It is not in dispute that 25 municipal employees’ services were suspended and/or terminated by the Municipality between 2012 and 2014. It was further alleged that Mr Mojaki was involved in a systematic purging of the below-mentioned 25 who had dared to question his authority.

5.10.1.2 The following employees were allegedly purged by Mr Mojaki for questioning his alleged irregular recruitment of staff and the irregular procurement of services for the Municipality:

1. Ms Ruth Moroka – Finance;
2. Ms Olehile Makoloi – Finance;
3. Ms Neo Mahommed – Finance;
4. Mr Maruping Stemmer – Disaster Management;
5. Ms Keitumetse Seadira – PMU;
6. Mr Clifford Malimabe – PMU;
7. Ms Masego Nthombe – PMU;
8. Ms Irene Segapo – PMU;
9. Ms Irene Mmeletsi – PMU;
10. Mr McDonald Phejana – Internal Audit;
11. Mr Tumelo Motswenyane – Internal Audit;
12. Ms Thandi Africa – Corporate Support;
13. Mr Mokopane Ncapedi – Corporate Support;
14. Mr Page Mosete – IDP*;
15. Mr Sello Molefe – Speaker’s Office;
16. Mr Sipho Lecogo – Speaker’s Office;
17. Mr Wiseman – Mayor’s Office;
18. Ms Gago Mathe – Mayor’s Office;
19. Ms Merriam Seeco – Mayor’s Office;
20. Mr Modise Malagas – PMU;
21. Ms Camilla Malefane – PMU;
22. Mr Amos Hobe – Fire and Emergency;
23. Mr Motladile;
24. Mr Diale Kgantsi; and
25. Mr Elias Mpinga.

5.10.2 Issues in dispute

5.10.2.1 The issue for the Public Protector’s determination is whether or not these employees’ services were terminated as a result of purging by Mr Mojaki or were based on commonplace labour disputes with the Municipality.
5.10.2.2 A letter from the Municipality to the Public Protector office dated 10 June 2013 stated that the complaint relating to victimisation and purging of staff by Mr Mojaki fell within the ambit of the South African Bargaining Council (SALGBC), and had been pursued by South African Municipal Workers’ Union (SAMWU) which had become litigious after a myriad of labour disputes within different labour forums. Therefore the Complainants’ submission of the matter was another way of trying to resuscitate their issues with the Accounting officer of the Municipality.

5.10.2.3 Furthermore, Mr Mojaki responded to the Public Protector’s investigation team during a meeting with the municipal officials on 23 July 2013, but he did not dwell much into this aspect of the complaint and was even reluctant to deliberate about it saying as it was pending in the SALGBC. He informed the team that there was a file in the Mafikeng Provincial office of the Public Protector to which he had sent an extensive response over a period of time answering the alleged unfair dismissals of staff. Mr Mojaki denied vehemently for having caused employees to lose their jobs or having subjected any of the municipal employees to victimisation.

5.10.2.4 Upon receipt and commencement of the investigation by the Public Protector, several former employees of the Municipality were said to have been dismissed and/or suspended by Mr Mojaki, and had sought legal remedies in the SALGBC as well as at the North-West Provincial office of the Public Protector.

5.10.2.5 The investigation team confirmed with the Provincial office about the progress of the investigation as well as the fact that the matter was also receiving attention in the SALGBC.

5.10.2.6 Although the scope of the Public Protector’s investigation did not focus extensively on this aspect of the complaint, Mr Mojaki’s responses during the meeting with the Public Protector’s investigation team confirmed that there had indeed been
instances where disciplinary proceedings had been brought against certain employees for various issues of misconduct. However, no supporting evidence could be provided to the team for such misconduct.

5.10.2.7 From the information availed to the investigation team by the Complainants; a total number of 25 municipal employees were subjected to suspensions and/or summary dismissals by Mr Mojaki.

5.10.2.8 This was however, contradicted by one of the Complainant’s fate, who during the course of this investigation was summarily dismissed for having allegedly been part of disgruntled municipal employees who picketed outside the municipal offices against Mr Mojaki.

5.10.2.9 At the time of finalising this report, the Public Protector contacted its North West Provincial office which was able to get the Labour Court’s judgements from the Complainants.

5.10.2.10 Although the Complainants had not disclosed the information to the Public Protector’s office, it was established that most of the purged employees were successful in their labour dispute against the Municipality as the Labour Court ruled in July 2016, that their dismissals were procedurally and substantively unfair and ordered that they should be reinstated.

5.10.2.11 The Labour court had on 26 July 2016 ordered the reinstatement with full benefits of the following employees:

(1) Mr Diale Kgantsi;
(2) Mr Elias Mpinga;
(3) Mr Modise Malgas;
(4) Mr Maruping Stemmer;
(5) Ms Thandi Africa;
(6) Ms Ruth Moroka; and
(7) Ms Neo Mohamed.

C. Procurement Irregularities

5.11. Regarding whether proper procurement processes were followed by Mr Mojaki in the alleged procurement of E-markets for the branding of 35 municipal vehicles with logos resulting in an expenditure of an amount of R630 000.

5.11.1 Issue not in dispute

5.11.1.1 It is not in dispute that Mr Mojaki awarded a contract amounting to R630 000.00 to E-markets to brand 35 Municipal vehicles. However, the issue for adjudication is whether or not proper procurement process was followed in the awarding of the said contract.

5.11.2 Issue in dispute

5.11.2.1 The issue for the Public Protector’s determination is whether or not the awarding of this contract was in compliance with section 217 of the Constitution and the Municipal Finance Management Act (MFMA) and section 16A64 of the National Treasury Regulations.

Procurement processes above the transaction value of R500 000

5.11.2.2 National Treasury Practice Note no: 8 of 2007/2008
5.11.2.2.1 The practice note is issued in terms of section 76 (4) (c) of the Public Finance Management Act and is intended to regulate the threshold values within which accounting officers / authorities may procure goods, works and services by means of petty cash, verbal / written price quotations or competitive bids.

5.11.2.2.2 Paragraph 3.4.1 of the National Treasury Practice Note deals with bids above the R500 000 thresholds. It provides that:

"Accounting officers / authorities should invite competitive bids for all procurement above R 500 000".

5.11.2.2.3 The National Treasury Practice Note further provides at paragraph 3.4.1 that:

"Competitive bids should be advertised in at least the Government Tender Bulletin and in other appropriate media should an accounting officer / authority deem it necessary to ensure greater exposure to potential bidders".

5.11.2.2.4 Paragraph 3.4.3 of the National Treasury Practice Note deals with the issue of urgency or emergency situations. It provides as follows:

"Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the accounting officer / authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer/authority or his/her delegate. Accounting
officers /authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process”.

5.11.2.2 In a response to the Public Protector on 10 June 2013, the Municipality indicated that a letter dated 26 January 2012 requesting the approval for deviation for branding of 35 municipal vehicles was sent from Manager: Communications, Mr Abe Metswamere to the Municipal Manager, Mr Mo jaki and the Municipality further requested that a Special Ad-Hoc Committee be urgently established to look at the necessary specifications and quotations sourced. It was also recommended that the committee comprise of the following relevant managers:

(a) Mr Seymour Williams (Senior Manager: Business Management);
(b) Mr Abe Metswamere (Manager: Communications);
(c) Mr Lekgowa Mahole (Acting Senior Manager: Corporate Services); and
(d) Mr Wonder Sehole (Acting Senior Manager: PMU).

5.11.2.3 The reason for deviation was necessitated by the fact that the acquired vehicles were parked on the premises and they could not be utilised before the branding processes had taken place and the space was limited and the vehicles were needed to fast track the service delivery. As the need to start utilising these vehicles was urgent, this was purported to be an emergency by the Municipality and they could not advertise the tender based on those reasons. The former Municipal Manager, Mr Mo jaki approved the deviation ratified by the Municipal Council in July 2012 in terms of MFMA.
5.11.2.4 On 06 February 2012, a meeting of special Ad-Hoc committee was held for adjudication and recommendation of the new municipal fleet. During the said meeting which was chaired by Mr Williams, as the Senior Manager: Business Process Support, quotations that were received from the service providers prior to the meeting were tabled for discussion.

5.11.2.5 According to the specifications outlined – the three service providers’ quotations were as follows:

<table>
<thead>
<tr>
<th>SERVICE PROVIDERS</th>
<th>BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-markets</td>
<td>R 662 112.00</td>
</tr>
<tr>
<td>Vital Signs</td>
<td>R 718 200.00</td>
</tr>
<tr>
<td>Thulaganyo Trading Enterprise</td>
<td>R 690 000.00</td>
</tr>
</tbody>
</table>

5.11.2.6 The Ad-hoc committee decided that considering that the cost attached to the branding of the vehicles by E-markets was considerably lower, it should be recommended for approval. The recommendation by the Ad-hoc Committee was approved by Mr Mojaki on 01 February 2012.

5.11.2.7 From the information provided to the Public Protector on this allegation, and in terms of a letter dated 26 January 2012, the Municipality had purchased 35 new Municipal vehicles to add to its fleet.

5.11.2.8 This information also indicated that the Manager: Communications requested that Mr Mojaki should approve the branding of vehicle. The branding was seen as an urgent priority to lessen the risks associated with the misuse and potential abuse of unbranded vehicles and therefore required deviation from the normal procurement procedures.
5.11.2.9 The preferred procedure recommended by Mr Metswamere: the Manager Communications on 26 January 2012 to expedite the task of urgently finalising the branding of Municipal vehicles, was the establishment of a Special Ad Hoc committee to look at the necessary specifications and quotations to be sourced while also recommending approval of deviation from procedure in the procurement for the branding of municipal vehicles.

5.11.2.10 Mr Metswamere motivated to the former Municipal Manager that the vehicles had been parked for a long time and could not be used before branding took place. It was therefore necessary to fast track the process as space was needed and service delivery needed to take place. The memo was subsequently approved by Mr Mojaki on 01 February 2012.

5.11.2.11 The Ad Hoc committee reviewed all quotations received and resolved to grant the contract/service to E-markets as they had the lowest quotation price of R662 112.00.

5.11.2.12 However, in their response to the Public Protector’s office dated 10 June 2013, they stated that their conduct was not in contravention of National Treasury Regulations.

5.11.2.13 The conduct of the Municipality was therefore contrary to the provisions of the National Treasury Regulations which clearly warns against self-created emergency through poor planning by state entities and through which the required procurement process is eventually by-passed under the guise of an emergency.
Regarding whether proper procurement processes were followed by the Municipality in the alleged appointment of Softline Pastel Evolution by Mr Mojaki for the installation of a new integrated financial system at a cost of R2 million, in that the said tender was allegedly not advertised.

5.12.1 Issue not in dispute

5.12.1.1 It is not in dispute that the Municipality awarded a R2 million contract to Softline Pastel Evolution for the installation of a new integrated Financial System.

5.12.2 Issues in dispute

5.12.2.1 The issue for the Public Protector’s determination is whether or not the awarding of this contract amounting to R2 million Softline Pastel for the installation of a new integrated Financial System was in compliance with the MFMA.

5.12.2.2 The response from the Municipality to the Public Protector dated 10 June 2013, explained that an internal memo was transmitted from the Acting CFO, Mr M W Molokele to the Acting Municipal Manager, Mr Mojaki dated 25 September 2011, requesting for approval to introduce an improved financial system at the Municipality. It was asserted that the Finance Department at the Municipality is experiencing the problems with the current financial system (Venus).

5.12.2.3 According to the memo, the system did not meet compliance requirements, such as a minimum accounting reporting requirements, treasury requirements, including the high maintenance costs and the municipality had to count on consultant and with challenges and time of financial year it would not be practical to compile and submit financial statements within the agreed time frame with the office of the AG.
5.12.2.4 The Financial Unit of the Municipality had apparently investigated several financial software packages and respective procurement processes that would be introduced so as to urgently migrate the current Financial System to an improved system. The memorandum stated that after much consideration, they recommend that the Municipality should migrate to Pastel Evolution Financial System.

5.12.2.5 It further recommended that in terms of Regulation 32 of the Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act, 2003, that Ramotshere Local Municipality should be approached by the Municipality to seek permission to participate in the bid arranged by the abovementioned former Municipality as they had recently migrated to the Pastel Evolution Financial System package, themselves.

5.12.2.6 An undated letter from Mr Mojaki was sent to the Municipal Manager of Ramotshere Local Municipality requesting for permission by the Municipality to participate in the financial management system bid arranged by Ramotsehere Moiloa Local Municipality.

5.12.2.7 The Municipality outlined in the abovementioned letter that in terms of the Municipal Supply Chain Regulation 32(1)(a) to (d) provides that a Municipality may procure goods and services through contracts entered into by other organs of the state, including other sphere of government. Bearing the above in mind, the Municipality, after careful and cautious consideration of benefits, including, but not limited to, amongst others, negotiated discounts prices, logistics, time and cost associated with advertisement of these bids as well as, the technical nature and adjudication challenges relating to bids of this nature, arrived at the decision to request that they to participate in the same bid being done by Ramotshere Local Municipality as the Municipality was of the view that Pastel Evolution System would be the best solution for the Municipality.
5.12.2.8 Subsequently, in a letter dated 14 November 2011 Ramotshere Moiloa Local Municipality's Acting Manager, Mr Crosby Maema sent a letter granting the Municipality permission to participate in the Financial System Bid arranged by the said Municipality.

5.12.2.9 The Municipality then appointed the same service provider as the Ramotshere Moiloa Local Municipality to procure and for maintenance of a new integrated Financial System.

5.12.2.10 Softline Pastel Evolution accepted the appointment of the said Municipality bid no: the Municipality 11/12/12/F amounting to the R1 843 969.00 and additional R56 955.00 VAT inclusive.

5.12.2.11 From the evidence examined by the Public Protector's office, the Acting CFO at the time addressed a request to Mr Mojaki requesting for approval of procurement of a new integrated Financial System for the Municipality's Finance Department as the current system was not in compliance with the basic requirements of a Financial System such as accounting reporting requirements and its high maintenance costs.

5.12.2.12 Further evidence confirmed that the Acting CFO had already carried out an investigation of the appropriate model that would meet the requirements of the Municipality. The Acting CFO identified and recommended the Pastel Evolution System.

5.12.2.13 The Acting CFO recommended by means of a memo that Mr Mojaki should consider his request for the installation of the above-mentioned financial system
and further approve the use of Regulation 32 of the Supply Chain Management Regulations issued in terms of MFMA.

5.12.2.14 The Public Protector has evidence at its disposal which indicates that the Municipality had made a request to Ramotshere Local Municipality to participate in the bid process that Ramotshere Local Municipality had already initiated in sourcing the same service. The Municipal Manager of Ramotshere Local Municipality agreed to the request.

5.12.2.15 Mr Mojaki subsequently appointed Softline Pastel Evolution for installation of the new integrated Financial System at an amount of R 1 842 989.00 plus additional cost of R56 955.00 VAT inclusive.

5.13. Regarding whether Bokone Bophirima Properties’ alleged appointment as the Municipality’s property valuation service provider by Mr Mojaki which was allegedly influenced by Mr Seymour Williams, as a result of which the latter was rewarded with a Chevrolet SS bakkie was irregular.

5.13.1 Issue not in dispute

5.13.1.1 It is not in dispute that the Municipality awarded a property evaluation contract to Bokone Bophirima Properties.

5.13.2 Issues in dispute

5.13.2.1 The issue for the Public Protector’s determination is whether or not the awarding of this contract for the Municipality’s property valuation by Mr Mojaki to Bokone Bophirima Properties was in compliance with the Constitution, the MFMA and SCM
Policy, and whether this was due to Williams's influence for which he was rewarded with a Chevrolet SS vehicle as gift.

5.13.2.2 In terms of section 116 of the MFMA, a contract may be amended by either the municipality or the contractor after reasons of the amendment have been tabled in the council of the municipality and the local community has been given a reasonable notice of an intention to amend. The local community may thereafter be invited to submit representation to the municipality.

5.13.2.3 According to the Municipality, Bokone Bophirima Properties had initially been appointed as the Municipality's Properties Valuation service provider prior to Mr Mojaki being appointed as the Municipal Manager of the Municipality for a three (3) year contract which was coming to an end on 23 July 2011.

5.13.2.4 From records that the Municipality provided to the Public Protector's investigation team, it was confirmed that Bokone Bophirima was first awarded the property valuation contract by the Municipality on 24 July 2008 for a three (3) year period ending on 23 July 2011.

5.13.2.5 A copy of an Addendum to the Service Level Agreement signed on 31 May 2011 by the Acting Municipal Manager; purportedly extending the contract for a further three (3) year period was also submitted to the Public Protector. This indicated the extension of the contract to be for the period 30 June 2011 to 29 June 2013. It was reasoned that this was because their services were still required for continuity purpose.

5.13.2.6 On 05 June 2012, Mr Ramotsoela who was the Manager: Administration, submitted a memo to Mr Mojaki for approval of Bokone Bophirima Properties' appointment as the Municipality's properties valuation service provider without
following any procurement process. The memo did not refer to an extension of the contract but of an appointment of the said company.

5.13.2.7 The memorandum was approved on 05 June 2012 and on 14 June 2012, the Municipality informed Bokone Bophirima Property of their appointment to conduct valuation of all the Municipality council properties.

5.13.2.8 No evidence could also be provided to the Public Protector to confirm that a deviation from the prescribed procurement process had been sought and the Municipal Council's approval thereof granted prior to the award of the contract to Bokone Bophirima Properties.

5.13.2.9 As far as the allegation of a vehicle exchange transaction between Mr Williams and Bokone Bophirima Properties, the Municipality denied any knowledge thereof and further contended that any transaction between Mr Williams and Bokone Bophirima Properties is unknown to them. They stated that the private discussion that took place between the two parties, if any, has nothing to do with the Municipality.

5.13.2.10 The Municipality also failed to submit any information and/or evidence to my office regarding the alleged gift of the Chevrolet SS bakkie as a reward to Mr Williams.

5.13.2.11 No conclusion could be made as the matter was not pursued by the investigation team after the Municipality denied any knowledge of the transaction.
5.14 Submissions in response to Section 7(9)

5.14.1 The Municipality’s response

5.14.1.1 In their response to the section 7(9) notice the Acting Municipal Manager of Ngaka Modiri Molema municipality, Mr J J Brand and the Administrator, Ms P Moipolai on 15 April 2016 collectively stated that having perused the provisional findings of the Public Protector’s report, they had not found anything that they were substantively opposed to.

5.14.1.2 They further indicated that the Municipality had already appointed PWC to conduct a forensic investigation in this matter and had also appointed Fundudzi Forensic Investigators for the same purpose. Both PWC and Fundudzi’s investigations covered the issues in the Public Protector’s report.

5.14.2 Mr Mokgele Mojaki’s response

5.14.2.1 Mr Mojaki sent his response through his attorneys, basically denying most of the findings contained in the Public Protector’s provisional report whilst also requesting a meeting with the Public Protector in order to clarify and talk to some issues contained in the report.

5.14.2.2 In his submission dated 14 March 2016, Mr Mojaki stated that having resigned from his position as the Municipal Manager; he had no access to some records but that he had kept those in which he was personally implicated in the allegations raised with the Public Protector.
5.14.2.3 Mr Mojaki further stated that his response to the allegations and findings emanate from his memory alone, which is clearly to his detriment and prejudices his rights and ability to respond to the notice.

5.14.2.4 However despite Mr Mojaki’s continued refutation of the findings the Public Protector made against him in particular those relating to irregular staff appointments and procurement of service providers, he still failed to provide documents to confirm Council resolutions which as he argues, delegated him the authority to act in the manner he did.

5.14.2.5 For instance, Mr Mojaki contends that he acted in terms of the delegated authority from the Council. However this did not absolve him from complying with due processes both in respect of him being expected to exhaust internal recruitment processes prior to him resorting to headhunting.

5.14.2.6 Mr Mojaki also argues that he is the one who appointed Bokone Bophirima Properties in terms of deviation from the normal procurement as the initial contract had lapsed. However, this is contradicted by the attachment to his recent submission, which states in black and white that the process was in fact an extension of the original contract.

5.14.2.7 Unfortunately due to tight work schedule during the last months of the tenure of the former Public Protector, the Public Protector’s office was unable to accede to Mr Mojaki’s request for a meeting prior to the issuing of the final report.

5.14.2.8 The Public Protector could not find anything in Mr Mojaki’s subsequent submission that brought any new facts or evidence to light which could influence the findings and remedial action taken in the final report.
6. THE ADMINISTRATIVE STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH BY THE MUNICIPALITY

A. Recruitment Irregularities

6.1 Regarding whether the Municipality irregularly appointed Mr Mojaki to the position of the Municipal Manager as he allegedly did not have the necessary qualifications and relevant experience for the said position.

6.1.1 It has been established in the evidence that Mr Mojaki was appointed permanently by the Municipality to the position of Municipal Manager in September 2011 after he had first been seconded to the position in July 2011 by the Premier’s Office.

6.1.2 The issue that remained to be determined is whether or not the initial secondment and the subsequent permanent appointment complied with the Municipal Personnel Recruitment and Selection Policy and the relevant legal prescripts relating to secondment.

6.1.3 Section 15(3)(a) of the Public Service Act 104 of 1994 (PSA) provides for the process to be followed by an executive authority of a department may second an employee of the department to another department, any organ of state, another government or any bother on the prescribed conditions as agreed upon between the executive authority and the relevant functionary of the body concerned.

6.1.4 To arrive at a fair conclusion the Public Protector took into account the provisions of section 15(3)(a) of the PSA as well as section 30(5)(c) of the Municipal Structures Act which provides for the appointment and conditions of service of the Municipality in particular the Municipal Manager whose appointment requires the Executive Mayor to submit a report and recommendations to the Municipal Council who has the authority to appoint the Municipal Manager.
6.1.5 The evidence obtained from the Municipality indicates that due process was followed firstly in the secondment of Mr Mojaki from the Premier’s office to act as the Municipal Manager of the Municipality, and later when he was selected as the suitable candidate for permanent appointment to the same position in September 2011.

6.1.6 The evidence also revealed that Mr Mojaki indeed had the relevant experience and qualifications for the said position as he had worked at distinguished government Departments and holds a B-Degree in Agriculture, an Honours Degree in Agriculture. At the commencement of the investigation he was also studying towards an MBA degree.

6.1.8 Mr Mojaki’s appointment as the Acting Municipal Manager at first, and later as the permanent incumbent was in compliance with Section 30(5)(c) of the Municipal Structures Act, 1998.

6.1.7 The Executive Mayor is authorised by the legislative prescripts referred to above second the Municipal Manager from any department to the Municipality provided that he is a suitably qualified recruit for the said position.

6.2 Regarding whether Mr Mojaki’s alleged secondment to Ngaka Modiri Molema District Municipality from the Premier’s office in July 2011, and his continued earning a double salary from both offices for a period of five months was irregular, and thus constituted financial mismanagement.

6.2.1 Having established that the Municipality initially appointed Mr Mojaki on secondment then later appointed him permanently to the position of the Municipal Manager in 2011 and also entered into an agreement with the Premier’s office to continue paying for his salary during his secondment for which the Municipality would reimburse the
The evidence revealed that Mr Mojaki was seconded to the Municipality in terms of Section 15(3) of the Public Service Act, 104 of 1994 which provides that an executive authority of a department may second an employee of the department to another department, any organ of state, another government or any other body on the prescribed conditions as agreed upon between the executive authority and the relevant functionary of the body concerned.

In terms of Regulation B.4 of the Public Service Regulations, 2001 relating to Conditions for Appointment on Secondment, if an employee is seconded in terms of section 15(3) or 4 of the Public Service Act, the recipient department (institution) shall bear the inclusive costs of the secondment, unless both Departments agree otherwise, or the Treasury approves another arrangement. Own emphasis.

It is apparent that Mr Mojaki was seconded by the Premier’s office to the Municipality to act as the Municipal Manager on 29 June 2011 which spanned for a period less than 3 months before he was appointed permanently to the position of Municipal Manager on 23 September 2011.

The agreement between the Premier’s office and the Municipality which was contained in a letter from the Premier’s office dated 02 August 2011 was to second Mr Mojaki to the Municipality for a period of 3 months, and stated further that the Municipality was liable to pay the Premier’s office back all salary and benefits that had been paid to Mr Mojaki by the Premier’s office for the secondment period.

It has also been confirmed that indeed steps were set in motion 02 December 2011 by the CFO in the North West Premier’s office who wrote to the Executive Mayor of
the Municipality for the reimbursement of the expenditure incurred by their office to Mr Mojaki from 01 July to 31 October 2011. Attached to the letter, were claim calculations as well as salary advices for Mr Mojaki’s secondment period amounting to R104 347.41 due to the Premier’s office.

6.2.7 However, the Public Protector is not persuaded that the Municipality reimbursed the Premier’s office as it failed to avail to the investigation team documentary proof that such an exchange of such money took place between the Municipality and the Premier’s office.

6.2.8 With the exception of the Complainants’ mention of the alleged R110 000 refund to the Premier’s office by the Municipality, there was neither evidence nor proof of overpayment in a form of double salary payment received by Mr Mojaki during his secondment period, nor proof of such a refund.

6.3 Regarding whether Mr Mojaki irregularly appointed several officials on acting and permanent positions that were not approved or provided for in the Organisational Structure and/or budget.

6.3.1 The Public Protector concluded that Mr Mojaki appointed several senior staff members for the Municipality immediately upon ascending to the Municipal Manager’s position to several positions. The issue for my adjudication is whether or not such appointments were for existing positions in the approved organogram or budgeted for.

6.3.2 In appointing these people, Mr Mojaki had to also rely on the Municipality’s 2012 Organisational structure when he decided to advertise vacant positions in the municipality some of which were subsequently re-designed and filled.
6.3.3. However, despite not yet approved and budgeted for, the following appointments were effected immediately after Mr Mojaki had been appointed to the position of Municipal Manager of the Municipality in 2012, namely: Manager: Organisational Development; Manager: Communication; Manager: Rural Development; Manager: Fleet Management; Senior Accountant: Bid Administration; Financial Practitioners; Manager: and Security Manager made. These posts were not advertised externally and internally but were filled by way of headhunting individuals as provided for by the Municipality’s Recruitment policy.

6.3.4. Information provided to the investigation team by the Municipality confirmed had an approved system of delegations in terms of section 32 (1) (a) (iv) of the Municipal Structures Act.

6.3.5. It also confirmed that in compliance with sections 66 and 67 of the Municipal Systems Act, the Municipal Manager may approve staff establishment for the administration which includes the approval of the creation of posts as required from time to time and section 67 states that the Municipal Manager may advertise and appoint employees from post level 1-18.

6.3.6. In accordance with the provisions of the Municipal Personnel Recruitment and Selection Policy, it is peremptory that any deviation from this policy is permissible in the case of targeted recruitment, but only after unsuccessful attempts to find suitable candidate through normal recruitment processes.

6.3.7. The Municipality failed to provide me with any proof that shows that due process had been followed before the headhunting processes were initiated.

6.3.8. Mr Mojaki had the authority to appoint people to certain positions in terms of the system of delegations, as well as Section 66 and 67 of the Municipal Systems Act.
and as per 2012 the Municipality Organisational Structure. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.3.9. The allegation that these appointments by Mr Mojaki were not in compliance with the Recruitment policy of the Municipality is therefore substantiated as there is no proof of initiatives to first explore the mandatory recruitment process prior to resorting to headhunting.

6.4 Regarding whether Mr Mojaki allegedly failed follow proper recruitment procedure by failing to advertise shortlist and interview candidates for the following vacant positions:

6.4.1. Having concluded that the following several senior staff members were appointed by Mr Mojaki, the issue for my determination is whether or not their appointments were in compliance with the Municipal Personnel Recruitment and Selection Policy and Section 66 and 67 of the Municipal Systems Act, 2000, which gives the Municipal Manager authority to appoint people to certain positions.

(a) Senior Manager in the office of the Municipal Manager, Mr Seymour Williams;
(b) PMS Manager, Ms Eugenia Thaganyane;
(c) Manager: Communications, Mr Abel Metswamere;
(d) Manager: SMME Development.

6.4.2. Information provided to the investigation team by THE MUNICIPALITY confirmed had an approved system of delegations in terms of section 32 (1) (a) (iv) of the Municipal Structures Act.
6.4.3. This information also confirmed that in compliance with sections 66 and 67 of the Municipal Systems Act, the Municipal Manager may approve staff establishment for the administration which includes the approval of the creation of posts as required from time to time and section 67 states that the Municipal Manager may advertise and appoint employees from post level 1-18.

6.4.4. In accordance with the provisions of the Municipal Personnel Recruitment and Selection Policy, it is peremptory that any deviation from this policy is permissible in the case of targeted recruitment, but only after unsuccessful attempts to find suitable candidate through normal recruitment processes.

6.4.5. The issue of the appointment of Senior Manager: Office of Municipal Manager is dealt with specifically in 7.6 below.

6.4.6. Section 7 of the Municipality Personnel Recruitment and Selection Policy provides for targeted recruitment or headhunting whereby if suitable candidates are unavailable then the municipality may resort to headhunting. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through an unsuccessful prescribed process of recruitment.

6.4.7. However, except the Executive Manager: Office of Executive Mayor indication in a memo that the position needed to be filled urgently, the Municipality failed to provide information to my investigation team to confirm that due process had been followed in the appointment of Manager: Communications as there was no documentary proof that the Municipality tried to advertise the post, shortlist, interview and not find a suitable candidate

6.4.8. No information was submitted to the investigation team with regard to the appointment of Manager: SMME. The Municipality claimed that there was no
appointment made to this position. They stated further that an LED specialist had been seconded to the Municipality from the Provincial Department of Economic Development and Tourism.

6.4.9. The Municipality stated that the position for PMS Manager followed normal recruitment processes and that no suitable candidate could be appointed. The headhunting process was initiated and a suitably qualified candidate was appointed.

6.4.10. However, the Municipality again failed to provide information to the investigation team to confirm that due process was followed as required by the Municipality Recruitment and Selection Policy.

6.4.11. Mr Mojaki had the authority to appoint people to certain positions in terms of the system of delegations, as well as Section 66 and 67 of the Municipal Systems Act. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.5  Regarding whether Mr Seymour Williams’s appointment by the Municipal Manager as the Senior Manager was irregular as they are co-directors in the same company known as Sikelo Consulting Worx (2011/005663/07) creating a potential conflict of interest

6.5.1 Having concluded that Mr Seymour Williams seconded from Sikelo Consulting Works (2011/005663/07) by Mr Mojaki, the issue for my determination is whether or not the appointment was in compliance with the Municipal Personnel Recruitment and Selection Policy and Section 57(1) of the Municipal Systems Act, 2000, provides that Council is the approving authority for employment contracts between the Municipality and the Municipal Manager and the Municipal Manager and the manager directly accountable to the Municipal Manager.
6.5.2. Section 7 of the Municipality's Personnel Recruitment and Selection Policy provides for targeted recruitment or headhunting whereby if suitable candidates are unavailable then the municipality may resort to headhunting. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.5.3. Section 24 of the Municipal Structures Act, 1998 which provides for the secondment of officials from national and provincial departments to a municipality but makes no reference to secondment from state-owned enterprises or private entities to public service was also taken into account.

6.5.4. Section 15(3) of the PSA also states that a person in the service of a department under any law other than this Act, or in the service of another government, or of any council, institution or body established by or under any law, or of any other body or person may be employed by another department or a department, as the case may be for a particular service or for a stated period and on such terms and conditions as may be agreed upon by the employer of the person concerned and the relevant executive authority and approved by the Treasury.

6.5.5. From the information submitted to the investigation team, Mr Williams is said to have been appointed to the Municipality through him being headhunted and seconded by Mr Mojaki from Sediesey Consulting to the Municipality as a Consultant for a period of three years.

6.5.6. However, information provided to the investigation team indicated that Mr Mojaki just sent Mr Williams an appointment letter on 30 June 2011 followed by an outsourcing agreement which was entered into between the Municipality represented by Mt Mojaki and Sediesey Consulting represented by Mr Thabeng on 3 July 2011 for Mr William's
secondment to the Municipality by Mr Mojaki as a consultant on a full time basis for a period of thirty six (36) months.

6.5.7. In so doing, Mr Mojaki failed to follow the due procedure and processes for such an appointment as required by the Municipality Personnel Recruitment and Selection Policy as well as the enabling legislations as mentioned above.

6.5.8. Mr Mojaki also failed to inform Council of his relationship with Mr Williams which had the potential to affect his objectivity in the latter’s appointment as well as in their future working relations.

6.5.9. Furthermore, Mr Mojaki failed to request for approval of Council prior to Mr Williams’s appointment despite it being peremptory in terms Section 57(1) of the Municipal Systems Act, 2000.

6.5.10. Mr Mojaki had the authority to appoint or second any person to the Municipality but only in compliance with the above-mentioned legislative prescripts and with the exclusion of headhunting from the private sector which was the case in point.

6.6 Regarding whether the alleged appointment of Mr Lekgoa Mahole as the Acting Manager Advisory Support and the appointment of his wife, Mrs Poppy Mahole as Senior Internal Auditor by the Municipality were irregular.

6.6.1 The Public Protector concluded that Mr Mojaki appointed Mr and Mrs Mahole to the positions of Acting Manager: Advisory Support and Senior Internal Auditor, respectively, the issue to be adjudicated upon was whether or not such appointments were irregular.
6.6.2. To arrive at a fair answer, the Public Protector had to consider whether Mr Mojaki's conduct was in compliance with the Municipal Personnel Recruitment and Selection Policy and Section 66 and 67 of the Municipal Systems Act, 2000, which gives the Municipal Manager authority to appoint people to certain positions but requires that Municipality positions must first be advertised, candidates shortlisted and interview before final appointment.

6.6.3. The Public Protector also had to take into account Section 8.7 of the Central District Municipality Delegation 2006 which confers incidental powers to the Municipal Manager by Municipal Council for the former to create temporary posts in the event of the occurrence of bottlenecks or emergency situations.

6.6.4. In order to give the same effect to the Municipal Manager, Section 7 of the Municipality Personnel Recruitment and Selection Policy provides for targeted recruitment or headhunting whereby if suitable candidates are unavailable then the municipality may resort to headhunting. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.6.5. Documents provided to the investigation team in relation to the appointment of Mr Mahole and from his CV without indicating how he was appointed to the position, specifically confirm that Mr Mahole at some stage occupied the position of Acting Manager Legal Services in February 2011.

6.6.6. However, the Municipality did not confirm nor provide documentary proof that they had at some stage appointed Mrs Mahole to the position of Senior Internal Auditor which according to the complainants allegedly took place in August 2011.
6.6.7. Mr Mojaki had the authority to appoint people to certain positions in terms of the system of delegations under Section 66 and 67 of the Municipal Systems Act as well as the above-mentioned legislative prescript. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.7 Regarding whether Mrs Mahole's appointment by Mr Mojaki to the position of Audit Executive on March 2012 which resulted in her salary escalating from R250 000 to R685 000 p.a. within a period of one year, was irregular.

6.7.1. Having concluded that the appointment of Mrs Mahole to the position of Audit Executive was effected by Mr Mojaki, the issue for my determination is whether or not the said appointment resulted in the escalation of her salary form R250 000 to R685 000 per annum as well as being compliant with Section 7 of the Municipal Personnel Recruitment and Selection Policy.

6.7.2. Although Mrs Mahole's appointment to the position of Audit Executive was in compliance with the Municipality's Recruitment policy it did not result in the escalation of her salary to R685 000 per annum as she was offered a salary of R343 536.00 per annum.

6.8 Regarding whether Mr Mahole's appointment by Mr Mojaki as the acting Manager-Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and whether Mr Mahole's salary escalation from R385 000.00 to R1 080 000 p.a. within a year was irregular.

6.8.1. Having concluded that the appointment of Mr Mahole to the position of Senior Manager: Corporate Support was effected by Mr Mojaki, the issue for my
determination is whether or not the said appointment resulted in the escalation of her salary form R385 000 to R1 080 000 per annum as well as being compliant with Section 7 of the Municipal Personnel Recruitment and Selection Policy.

6.8.2. Section 7 of the Municipal Personnel Recruitment and Selection Policy provides for targeted recruitment or headhunting whereby if suitable candidates are unavailable then the municipality may resort to headhunting. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.8.3 In the same context, Section 7 of the Municipality Personnel Recruitment and Selection Policy provides for targeted recruitment or headhunting whereby if suitable candidates are unavailable then the municipality may resort to headhunting. However, such recruitment should be preceded by sincere and earnest efforts to secure suitable candidates through due process of recruitment without success.

6.8.4. Mr Mahole’s CV, which was submitted to the investigation team, indicated that under his full-time employment record, it indicates that he had been employed by the Municipality as a legal Advisor-Policy Development from 01 September 2006 to no end date; and as the Acting Manager Legal Services from January 2011 to 14 October 2011; Manager Advisory Support from 14 October 2011 and Acting Senior Manager Corporate Support from 1 November 2011.

6.8.5. The Municipality has also provided the investigation team with copies of documents that showed the recruitment process which was followed in the appointment of Manager Advisory support. The position of Manager Advisory Support involved advising Council on legal matters, ensuring organisational compliance with local government legislation, handling of municipal disciplinary matters.
6.8.6. These documents tabulate duties performed by Legal Advisor-Policy Development and Manager: Advisory Support as being similar in various ways.

6.8.7. As far as the salary progression is concerned, Mr Mahole’s salary notch for Manager: Advisory Support was initially R343 536.00 p.a. and it was later increased to the current R1080 000.00 p.a. upon his appointment as the Senior Manager: Corporate Resources Support. It was stated in his appointment letter that his salary package had been negotiated with the Mr Mojaki.

6.8.8. Mr Mojaki had the authority to appoint people to certain positions in terms of the system of delegations under Section 66 and 67 of the Municipal Systems Act and above-mentioned legislative prescripts.

6.9 Regarding whether Mrs Mahole’s alleged irregular appointment by Mr Mojaki to the position of an Audit Executive within the Municipality, which would create a potential conflict of interest, as her husband is also employed as the Municipality’s Senior Manager: Corporate Services as Mrs Mahole’s work would also involve auditing his department’s performance.

6.9.1 Local Government Municipality System Act 32 of 2000

6.9.1.1 Schedule 2 of the Code of conduct for Municipal Staff Members which is derived from the Municipal Systems Act provides that if a municipal staff member, his family or business partner stands to benefit from a contract with the municipality, he must disclose the benefit to the municipal council in writing.

6.9.1.2 It further provides that a staff member of the Municipality may not influence any structure of the municipality for the benefit or advantage of his friend, family member or associate; mislead any structure of the municipal counsel in its consideration of
any matter; be involved with any business venture with a counsellor without the prior written consent from the municipal council.

6.9.1.3 A staff member may not request or ask for gifts or favours in return for persuading the council with regard to any exercise of power or performance of the council; for making any request to the council or any structure of the council; disclose privileged or confidential information.

6.9.1.4 A staff member must report to a superior any offer which he accepted which may lead to conflict of interest.

6.9.2. Having concluded that Mr and Mrs Mahole were appointed by Mr Mojaki to the positions of an Audit Executive and Senior Manager: Corporate Services, respectively by Mr Mojaki, the issue for my adjudication was whether or not such appointment did not amount to conflict of interest in terms of schedule 2 of Section 32 of Municipal Systems Act, 2000.

6.9.3. From the information provided to the investigation team, it was established that the appointment of Mrs Mahole as an Audit Executive by the Municipality was effected in March 2012 while Mr Mahole’s appointment as Manager Advisory Support was effected in October 2011 and thereafter as Senior Manager: Corporate Services Support in March 2012.

6.9.4. At this point in time, there was no substantive evidence that could prove a conflict of interest that could arise from the working relationship of Mr and Mrs Mahole in the Municipality until his subsequent appointment as the Senior Manager: Corporate Services Support.
6.9.5. The fact that Mrs Mahole’s work involved conducting internal audit of the Municipality’s departments which included Mr Mahole’s unit posed as a risk for conflict of interest as she would be expected to make findings if any, against her husband at some stage.

6.9.6. Therefore although circumstances do exist for a potential conflict of interest due to the nature of the positions Mr and Mrs Mahole occupy, respectively within the Municipality and the allegation has merit, the Municipality would have had to find means of managing such conflict of interest.

B. Purging of Staff by former Municipal Manager

6.10 Regarding whether Mr Mojaki was involved in the systemic purging of 25 Municipal employees between 2012 and 2014 who had raised questions and concerns about the alleged irregularities within the Municipality.

6.10.1. Having concluded that Mr Mojaki terminated and/or suspended several the Municipality employees, the issue for my determination is whether or not such terminations and/or suspensions were in compliance with section 55 of the Municipal Systems Act, 2000 which confers authority to among others, to the Municipal Manager to appoint and discharge employees.

6.10.2. According to section 55 of the Municipal Systems Act, the Municipal Manager has Incidental powers conferred by the Council/ Executive Mayor in terms of with the exception of the Municipal Manager, Executive Managers in compliance with the relevant legislation and to apply disciplinary measures in terms of the conditions of service and, with the exception of Executive managers to suspend and discharge officials, provided that the Executive Directorate Corporate Services is represented at the hearings or appeals of such officials.
6.10.3. Upon receipt and commencement of the investigation, it was brought to the investigation team that several former employees of the Municipality were said to have been dismissed by Mr Mojaki and had sought legal remedies in the SALGBC as well as the North-West Provincial office of the Public Protector.

6.10.4. The investigation team confirmed with the Provincial office about the progress of the investigation as well as the fact that the matter was also receiving attention in the SALGBC.

6.10.5. Although the investigation did not focus extensively on this aspect of the complaint, Mr Mojaki’s responses during the meeting with the investigation team confirmed that there had indeed been instances where disciplinary proceedings had been brought against certain employees for various issues of misconduct. Mr Mojaki argued that such disciplinary proceedings were based on a just cause and that it had been procedurally and substantively fair, but that if not, then the affected employees stood to test this in the SALGBC.

6.10.6. The fact that the disciplinary issues were being dealt with as mentioned above, was confirmed by the Complainants who nevertheless still argued that this was abuse of power by Mr Mojaki. Mr Mojaki’s denial was further contradicted by one of the Complainants’ fate, who during the course of this investigation had been summarily dismissed for having allegedly been part of disgruntled municipal employees who picketed outside the municipal offices against Mr Mojaki.

6.10.7. From the information availed to the investigation team by the Complainants; a total number of 25 municipal employees were subjected to suspensions and summary dismissals by Mr Mojaki.
6.10.8. However, some of the cases had been commenced with prior to the registration of the complaint with the Public Protector, although the Complainants contended that there was purging of staff by Mr Mojaki for having lodged a complaint with the Public Protector.

6.10.9. For instance, the complainant was suspended and later dismissed summarily by Mr Mojaki for alleged insubordination. The Complainants' matter along with other employees' cases was still subject of dispute hearings within the SALGBC at the time of issuing the provisional report.

6.10.10. This being a matter of employee/employer relationship, it was not fully dealt with in the investigation scope except being hinted in the investigation team's meetings with Mr Mojaki and the Municipality officials who both argued that this was a labour dispute currently underway in the appropriate tribunals.

6.10.11. Mr Mojaki was authorised by section 8.7 of the Central District Municipality Delegation, 2006, to appoint, discipline and discharge employees but had to do so in compliance with the prescribed due processes.

6.10.12. Consequently, the Public Protector's office was vindicated as its initial view expressed to the Complainants that this was a matter to be adjudicated upon by the labour tribunals was ratified by the court. Most of the purged employees were successful in their labour dispute against the Municipality as the Labour Court ruled in July 2016, that their dismissals were procedurally and substantively unfair and ordered that they should be reinstated.

6.10.13. The Labour court had on 26 July 2016 ordered the reinstatement with full benefits of the following employees:

(1) Mr Diale Kgantsi;
(2) Mr Elias Mpinya;
(3) Mr Modise Malgas;
(4) Mr Maruping Stemmer;
(5) Ms Thandi Africa;
(6) Ms Ruth Moroka; and
(7) Ms Neo Mohamed.

C. Procurement Irregularities

6.11 Regarding whether proper procurement processes were followed in the alleged appointment of E-markets by Mr Mojaki to brand 35 municipal vehicles with logos resulting in an expenditure of an amount of R630 000.

6.11.1. Having concluded that the Municipality had entered into an agreement with E-markets for the branding of 35 municipal vehicles, the issue to be determined was whether or not the agreement was in compliance with the procurement legislative prescripts and the Municipal SCM Policy.

6.11.2. Section 16A6.4 of the Treasury Regulations provides that if in a specific case it is impractical to invite competitive bids, the Accounting Officer or Accounting Authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting bids must be recorded and approved by the Accounting Officer.

6.11.3. Furthermore, regulation 36 of Municipal SCM Regulations provides for deviation from and ratification of minor breaches of procurement processes by the Accounting Officer in the procurement of any required goods or services through any convenient process in an emergency and in any other exceptional case where it is impractical or impossible to follow the official procurement processes.
6.11.4. Information which was provided to the investigation team confirms that the Manager: Communications requested that Mr Mojaki approve the branding of 35 municipal vehicles. The branding was seen as an urgent priority to lessen the risks associated with the misuse and potential abuse of unbranded vehicles and therefore required deviation from the prescribed procurement procedures.

6.11.5. The preferred procurement procedure had been recommended by Mr Metswamere: Manager Communications on 26 January 2012 so as to expedite the task of urgently finalising the branding of Municipal vehicles, was the establishment of a Special Ad Hoc committee to look at the necessary specifications and quotations to be sourced while also recommending approval of deviation from procedure in the procurement for the branding of municipal vehicles.

6.11.6. Mr Metswamere motivated to Mr Mojaki that the vehicles had been parked for a long time and could not be used before branding took place. It was therefore necessary to fast track the process as space was needed and service delivery needed to take place. The memo was subsequently approved by Mr Mojaki on 01 February 2012.

6.11.7. In compliance with Treasury Regulations and the Municipality’s SCM policy, the Ad Hoc committee reviewed all quotations received and resolved to grant the tender to E-markets as they had the lowest quotation price of R662 112.00.

6.11.8. Mr Mojaki had the authority to approve the deviation from prescribed procurement procedures as required in 8.2.1 of Treasury Regulation and 32 of the Municipal SCM policy due to an emergency.
6.12 Regarding whether proper procurement processes were followed by the Municipality in the alleged appointment of Softline Pastel Evolution by Mr Mojaki for the installation of a new integrated financial system at a cost of R2 million, in that the said tender was allegedly not advertised.

6.12.1. Having concluded that the Municipality had entered into procurement agreements with several service providers under the watch of Mr Mojaki, the issue to be adjudicated upon is whether or not such agreements were in compliance with Regulation 32(1)(a) to (d) of Supply Chain Management Regulations issued in terms of PFMA provides for the procurement goods and services through contracts entered into by other organs of the state, including other sphere of government.

6.12.2. According to section 32 (1) a-d of MFMA the Supply Chain policy of a municipality permits other municipalities to utilise the bidding processes of another municipality and once permission is granted it is no longer necessary for the tender to be advertised in terms of provisions of regulation 32.

6.12.3. Furthermore, regulation 36 of Municipal SCM Regulations provides for deviation from and ratification of minor breaches of procurement processes by the Accounting Officer in the procurement of any required goods or services through any convenient process in an emergency and in any other exceptional case where it is impractical or impossible to follow the official procurement processes.

6.12.4. Acting in compliance with the relevant procurement prescripts, the Acting CFO recommended that Mr Mojaki consider his request for identified the Pastel Evolution Financial System and further approve the use of Regulation 32 of the SCM policy regulations issued in terms of the PFMA.
6.12.5. The Municipality subsequently made a request to Ramotshere Local Municipality to participate in the bid process that Ramotshere Local Municipality had already initiated in sourcing the same financial services system. The Municipal Manager of Ramotshere agreed to the request.

6.12.6. The Municipality consequently appointed of Softline Pastel Evolution System for the installation of a new Integrated Financial System at an amount of R 1 842 969.00 plus additional cost of R56 955.00 VAT inclusive.

6.12.7. Mr Mojaki had the authority to approve the deviation from prescribed procurement procedures as required in 8.2.1 of Treasury Regulation and regulation 32 of the Municipal SCM policy.

6.13. Regarding whether Bokone Bophirima Properties’ alleged appointment as the Municipality’s property valuation service provider by Mr Mojaki which was allegedly influenced by Mr Seymour Williams, as a result of which the latter was rewarded with a Chevrolet SS bakkie, was irregular.

6.13.1. In terms of section 116 of the MFMA, the accounting officer must through the supply chain policy monitor the performance of the contract under the contractor on a monthly basis and establish the capacity of the municipality through the Supply Chain Policy to assist him in ensuring that the contract is properly enforced. He should also oversee the day to day running of the contract.

6.13.2 A contract may be amended by either the municipality or the contractor after reasons of the amendment have been tabled in the council of the municipality and the local community has been given a reasonable notice of an intention to amend. The local community may thereafter be invited to submit representation to the municipality.
6.13.3. From the evidence provided to my office, it is clear that the Municipality did not follow any procurement procedures in the procurement of Bokone Bophirima Properties as they used an Addendum to extend the three (3) year contract that was coming to an end in June 2011.

6.13.4. Mr Mojaki approved the extension of the contract between the Municipality and Bokone Bophirima Properties in June 2012 on the basis that the contract with Bokone Bophirima Properties was merely renewed and that there was no need to follow any procurement processes.

6.13.5. The appointment and/or extension of the property valuation contract did not follow a competitive process as prescribed by section 217 of the Constitution as well as section 116 of the MFMA.

6.13.6. Furthermore, the Municipality denied any knowledge of any vehicle exchange transaction between Mr Williams and Bokone Bophirima Properties relating to a Chevrolet SS bakkie, and further contended that any transaction between Mr Williams and Bokone Bophirima Properties is unknown to the Municipality. The private discussion that took place between the two parties, if any, has nothing to do with the Municipality.

6.13.7. Mr Mojaki proceeded with the arbitrary award and/or extension of the property valuation contract to Bokone Bophirima Properties in complete disregard of 217 of the Constitution as well as section 116 of the MFMA.
7. **FINDINGS**

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

A. Recruitment Irregularities

7.1 Regarding whether the Municipality irregularly appointed Mr Mojaki to the position of the Municipal Manager as he allegedly did not have the necessary qualifications and relevant experience for the said position, the Public Protector finds that:

7.1.1 The allegation that the appointment of Mr Mojaki as the Municipal Manager was irregular is not substantiated as he has the required qualifications and relevant experience to be appointed to the position.

7.1.2 Appropriate recruitment procedure was also followed in compliance with Section 30(5) (c) of the Municipal Structures Act, 1998 prior to the selection and appointment of Mr Mojaki to the position of Municipal Manager.

7.1.3 The Public Protector therefore does not find the appointment of Mr Mojaki to the position of Municipal Manager to be irregular or improper as envisaged in section 182(1)(a) of the Constitution.

7.2 Regarding whether Mr Mojaki’s alleged secondment to the Municipality from the Premier’s office in July 2011, and his continued earning a double salary from both offices for a period of five months was irregular, and thus constituted financial mismanagement, the Public Protector finds that:
7.2.1. The allegation that Mr Mojaki's secondment to the Municipality was irregular is not substantiated.

7.2.2. Mr Mojaki, as per the secondment agreement, continued earning his salary from the Premier's office for a period of less than five (5) months and not exactly five (5) as alleged by the Complainants. He did not receive any additional remuneration from the Municipality during this period.

7.2.3. However, despite efforts by the Premier's office to request for the Municipality's reimbursement amounting to R104 347.41 for the expenditure incurred by the former towards Mr Mojaki's salary from 01 July to 31 October 2011, the Municipality failed to avail any documentary proof that such an exchange of money took place between the two offices.

7.2.4. The Public Protector is however less than convinced that such reimbursement did take place as no proof thereof could be provided, and thus find that the failure by the Municipality to reimburse the money due to the Premier's office constitutes maladministration as envisaged in section 6 of the Public Protector Act and improper misconduct as envisaged in section 182(1) of the Constitution.

7.3. Regarding whether Mr Mojaki irregularly appointed several officials on acting and permanent positions that were not approved or provided for in the Organisational Structure and/or budget, the Public Protector finds that:

7.3.1. The allegation that the following appointments; Manager: Organisational Development; Manager: Communication; Manager: Rural Development; Manager: Fleet Management; Senior Accountant: Bid Administration; Financial Practitioners; Manager: and Security Manager effected by Mr Mojaki were irregular is substantiated. These appointments were not in compliance with the Municipality's Recruitment and Selection Policy which provides that in the case of targetted
recruitment, deviation from policy is permissible but only after unsuccessful attempts to find suitable candidate through normal recruitment processes has been exhausted.

7.3.2. These positions that were on the Municipality's 2012 organisational structure and the Municipality's strategic outcomes plan 2011-2016 had been filled irregularly through headhunting. However, the Municipality failed to provide me with any proof that confirms that due processes had been followed before resorting to the headhunting.

7.3.3. The conduct of Mr Mojaki in the appointments of these officials through headhunting was therefore irregular and this constitutes maladministration as envisaged in section 6 of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

7.4. Regarding whether Mr Mojaki allegedly failed follow proper recruitment procedure by failing to advertise shortlist and interview candidates for the following vacant positions; the Public Protector find that:

7.4.1. The allegation that the appointments to the following positions were irregular is substantiated, namely;

Senior Manager: Office of the Municipal Manager

7.4.2. The position was filled through headhunting process. The Municipal Manager claimed that there was no time to start with the correct recruitment procedures as he had to turn around the municipality in a short space of time.

7.4.3. Although the Municipality's Recruitment and Selection policy does provide for recruitment by headhunting, it stipulates that headhunting may be resorted to or used once due recruitment processes have been undertaken and failed to yield results.
7.4.4. Mr Mojaki did not follow due process prior to appointing Mr Williams through headhunting to the Senior Manager: Office Municipal Manager.

7.4.5. Mr Mojaki's conduct in effecting the appointment through headhunting was therefore irregular and this constitutes maladministration as envisaged in section 6(4) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

PMS Manager

7.4.6. The Municipality claims that the correct procedures were followed in recruiting a candidate for the above-mentioned position, however no suitable candidate was found and that they resorted to headhunting.

7.4.7. The Municipality did not provide me with evidence relating to the above-mentioned failed process to refute the allegation.

7.4.8. The conduct of Mr Mojaki in effecting the said appointment was irregular and this constitutes maladministration as envisaged in section 6(4) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

Manager: Communication

7.4.9. The Municipality again claims that the correct procedures were followed in recruiting a candidate for the above mentioned position, however no suitable candidate could be found and that they resorted to headhunting.

7.4.10. The Municipality failed to provide me with evidence relating to the above-mentioned failed process to refute the allegation.
7.4.11. The conduct of Mr Mojaki in effecting the appointment of Manager: Communication was irregular and this constitutes maladministration as envisaged in section 6(4) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

Manager: SMME

7.4.12. The Municipality contended that the position was filled by way of secondment from the Provincial Department. No evidence showing that due process was followed was submitted to my office.

7.4.13. The conduct of Mr Mojaki in the appointment of Manager: SMME through secondment was therefore irregular and this constitutes maladministration as envisaged in section 6(4) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

7.5. Regarding whether Mr Seymour Williams's appointment by Mr Mojaki as the Senior Manager was irregular as they are co-directors in the same company known as Sikelo Consulting Worx (2011/005663/07) creating a potential conflict of interest, the Public Protector finds that:

7.5.1. The allegation that the appointment of Mr Williams by Mr Mojaki to the position Senior Manager: Office of the Municipal Manager was irregular, is substantiated as it is in violation of Section 57(1) of the Municipal Systems Act which provides that Council is the approving authority for employment contracts between the Municipality and the Municipal Manager and the Municipal Manager and the manager directly accountable to the Municipal Manager.
7.5.2. The appointment of Mr Williams in the Municipal Manager’s office by Mr Mojaki, through secondment from a private company was according to the Municipality, done through headhunting by Mr Mojaki but this had not been preceded by failed prior recruitment process as provided for in the Municipal Recruitment and Selection Policy and also without approval of Council.

7.5.3. The appointment of Mr Williams by Mr Mojaki was in violation of paragraph 8.2.1 of the Municipality’s Personnel Recruitment and Selection Policy which provides that managers accountable to Municipal Manager shall be appointed by Council in consultation with Municipal Manager.

7.5.4. The allegation that the appointment of Mr Williams by Mr Mojaki as they are co-directors in the same company known as Sikelo Consulting Worx (2011/005663/07) created a potential conflict of interest is substantiated.

7.5.5. Mr Mojaki failed to declare his financial interests to the Municipality, the fact that they were co-directors in the same company with Mr Williams which is in violation of Regulation 36 of Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers issued in terms of Local Government: Municipal Systems Act No. 32 of 2000.

7.5.6. The conduct of Mr Mojaki in the appointment of Mr Williams was therefore irregular and this constitutes and improper conduct as envisaged in section 182(1)(a) of the Constitution and abuse of power as envisaged in section 6(4) of the Public Protector Act.

7.5.7. The conduct of Mr Mojaki in failing to declare his financial interest as a co-director in Sikelo Consulting Worx (2011/005663/07) constitutes financial misconduct as envisaged in section 172(1)(b) of the Municipal Finance Management Act as well as
improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act

7.6. Regarding whether the alleged appointment of Mr Lekgoa Mahole as the Acting Manager Advisory Support and the appointment of his wife, Mrs Poppy Mahole as Senior Internal Auditor by the Municipality were irregular, the Public Protector finds that:

7.6.1. The allegation that the appointments of Mr Lekgoa Mahole and his wife, Mrs Mahole to the positions of Acting Manager: Legal Services and Senior Internal Auditor, respectively, were irregular is substantiated.

7.6.2. Despite these appointments not being refuted by Mr Mojaki, the Municipality failed to provide the Public Protector’s office with evidence which showed that proper recruitment processes were followed as required by section 67 of the Municipal Systems Act which authorises the Municipal Manager to advertise and appoint employees from post level 1-18.

7.6.3. The conduct of Mr Mojaki in the appointments of Mr and Mrs Mahole to the said positions were therefore irregular and this this constitutes maladministration as envisaged in section 6(4) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.
7.7. Regarding whether Mrs Mahole’s appointment by Mr Mojaki to the position of Audit Executive on March 2012 which resulted in her salary escalating from R250 000 to R685 000 p.a. within a period of one year, was irregular, the Public Protector finds that:

7.7.1. The allegation that Mrs Mahole’s salary scale for the position Executive Auditor escalated rapidly within a period of 12 months is not substantiated as it was fixed at R343 536.00 upon her appointment and not R685 000 as alleged.

7.8. Regarding whether Mr Mahole’s appointment by Mr Mojaki as the acting Manager-Advisory Support and his subsequent permanent appointment to the position of a Senior Manager-Corporate Service and whether Mr Mahole’s salary escalation from R385 000.00 to R1 080 000 p.a. within a year was irregular, the Public Protector finds that:

7.8.1. The allegation that Mr Mahole’s appointment to the position of Senior Manager: Corporate Services was irregular is not substantiated as it was in compliance with the Municipality’s Recruitment Policy and Procedures and section 67 which authorises the Municipal Manager to advertise and appoint employees from post level 1-18.

7.8.2. Mr Mahole’s appointment to the position of Senior Manager: Corporate Services was in compliance with the Municipality’s Personnel Recruitment and Selection Policy as the position was advertised, candidates shortlisted and interviews conducted.

7.8.3. However, the allegation that there was a rapid escalation in Mr Mahole’s salary within a period of 12 months is substantiated because although negotiable, it escalated from R385 000.00 to R1 080 000 p.a. which is about 185% within a period of 12 months.
7.8.4. The conduct of Mr Mojaki in effecting the rapid escalation of Mr Mahole’s salary by almost 185% within a period of 12 months was irregular and constitutes and this constitutes and improper conduct as envisaged in section 182(1) of the Constitution and abuse of power as envisaged in section 6(4) of the Public Protector Act.

7.9. Regarding whether Mrs Mahole’s alleged irregular appointment by Mr Mojaki to the position of an Audit Executive within the Municipality, which would create a potential conflict of interest, as her husband is also employed as the Municipality’s Senior Manager: Corporate Services as Mrs Mahole’s work would also involve auditing his department’s performance, the Public Protector finds that:

7.9.1. The allegation that the appointment of Mrs Mahole to the position of Audit Executive within the Municipality where her husband worked as the Senior Manager: Corporate Services would create a potential conflict of interest is not substantiated.

7.9.2. The fact that Mrs Mahole’s work involved conducting internal audit of the Municipality’s departments which included Mr Mahole’s unit posed as a risk for conflict of interest as stated in section 27 of the Municipal Systems Act, as she would be expected to make findings where such existed, against her husband at some stage.

7.9.3. However, although circumstances do exist for a potential conflict of interest due to the nature of the positions Mr and Mrs Mahole occupy within the Municipality. However, the Municipality would have to devise the means to manage such conflict.
B. Purging of Staff by former Municipal Manager

7.10. Regarding whether Mr Mojaki was involved in the systemic purging of 25 Municipal employees between 2012 and 2014 who had raised questions and concerns about the alleged irregularities within the Municipality, the Public Protector finds that:

7.10.1. The allegation that Mr Mojaki was involved in the systemic purging of staff is substantiated.

7.10.2. This was confirmed by the fact that most of the purged employees were successful in their labour dispute against the Municipality as the Labour Court ruled in July 2016, that their dismissals were procedurally and substantively unfair and ordered that they should be reinstated.

7.10.3. The Labour court had on 26 July 2016 ordered the reinstatement with full benefits of the following employees:

(1) Mr Diale Kgantsi;
(2) Mr Elias Mpinga;
(3) Mr Modise Malgas;
(4) Mr Maruping Stemmer;
(5) Ms Thandi Africa;
(6) Ms Ruth Moroka; and
(7) Ms Neo Mohamed.
C. Procurement Irregularities

7.11 Regarding whether proper procurement processes were followed in the alleged appointment of E-markets by Mr Mojaki to brand 35 municipal vehicles with logos resulting in an expenditure of an amount of R630 000, the Public Protector finds that:

7.11.1 The allegation that the contract for the branding of the 35 municipal vehicles was irregular is substantiated.

7.11.2 Although the branding of these vehicles was sourced in compliance the appropriate procurement procedures as required by the System of Delegations and schedule 2 of Section 32 Municipal Systems Act and their SCM policy, which does allow for deviation from prescribed procurement procedure due to an emergency.

7.11.3 The procurement process followed in the awarding of the contract for the branding of 35 municipal vehicles branding to E-markets was therefore irregular and Mr Mojaki’s conduct in this regard constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act.

7.12 Regarding whether proper procurement processes were followed by the Municipality in the alleged appointment of Softline Pastel Evolution by Mr Mojaki for the installation of a new integrated financial system at a cost of R2 million, in that the said tender was allegedly not advertised, the Public Protector finds that:

7.12.1. The allegation that the appointment of Softline Pastel Evolution by the Municipality was irregular is not substantiated.
7.12.2 The Municipality deviated from the normal procurement procedures in terms of Section 32 of their SCM policy.

7.12.3 In so doing, the procurement process followed in the installation of the new Integrated Financial System was therefore in compliance with the Municipal SCM policy and procedures.

7.12.4 The Public Protector finds that the conduct of the Municipality in the circumstances was not improper as envisaged in section 182(1)(a) of the Constitution.

7.13 Regarding whether Bokone Bophirima Properties' alleged appointment as the Municipality’s property valuation service provider by Mr Mojaki which was allegedly influenced by Mr Seymour Williams, as a result of which the latter was rewarded with a Chevrolet SS bakkie was irregular, the Public Protector finds that:

7.13.1. The allegation that the appointment of Bokone Bophirima Properties as the Municipality’s property valuation service provider by the Municipal Manager was irregular is substantiated as it did not comply with section 217 of the Constitution, s116 of the MFMA as well as section 16A64 of the National Treasury Regulations.

7.13.2. The Municipal Manager failed to follow a proper tender process, as well as not tabling the amendments and/or extension of the said valuation contract with Bokone Bophirima Properties before Municipal Council for approval.

7.13.3. Mr Mojaki therefore acted improperly in the renewal of an existing property valuation contract with Bokone Bophirima Properties and in violation of section 217 of the Constitution and section 116 (3) (a) of the MFMA.
7.13.4. Mr Mojaki’s conduct in the appointment and/or extension of Bokone Bophirima Properties’ property valuation contract was therefore irregular and this constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act.

8. **REMEDIAL ACTION**

The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c), with the view of placing the Complainants as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing the recruitment irregularities, procurement irregularities and staff purging in the Municipality, is the following:

8.1. **Speaker of Council to:**

8.1.1. Institute civil proceedings against Mr Mojaki for the recovery of all moneys lost by the Municipality as a result of his ineptitude and abuse of authority in respect of his conduct of non-disclosure of his relationship with Mr Williams as well as the subsequent awards of property valuation contract to Bokone Bophirima Properties and the E-markets contract for branding 35 municipal vehicles.

8.1.2. Investigate whether the reimbursement which was due to the North West Premier’s office by the Municipality for Mr Mojaki’s secondment salary did take place, and if not, take appropriate steps against the officials responsible for such financial misconduct.

8.1.3. Reinstat[e] all the Municipal employees as ordered by the Labour court and issue a formal apology to them for the mistreatment they had suffered under Mr Mojaki’s authority.
8.1.4. Take urgent steps to investigate, and if warranted, review employment contracts of the following staff members irregularly appointed by Mr Mojaki: the Senior Manager; Municipal Manager’s office; PMS Manager; Manager: Communications; Manager: SMME Development; Manager: Rural Development; Manager: Fleet Management; Manager: Organisational Development; Senior Accountant; Bid Administration Manager; Security Manager.

8.1.5. Take urgent steps to recover the 185% rapid escalation in salary increase within a period of 12 months to Mr Mahole which was authorised by Mr Mojaki.

9. MONITORING

9.1 Speaker of Council to:

9.1.1. Submit to the Public Protector an implementation plan in respect of the remedial action referred to in paragraph 8 above, within 30 days of this report.

9.1.2. Submit to the Public Protector a report on the progress made with regard to the implementation of the remedial action taken in paragraph 8 above, within 90 days of this report.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR, SOUTH AFRICA
Date: 18 04 2017

Assisted by: Good Governance and Integrity