

**REPORT OF THE PUBLIC PROTECTOR 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, 23 OF 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE
INDEPENDENT DEVELOPMENT CORPORATION (IDC) TO GRANT FUNDING TO
NOCKS OIL (PTY) LTD**

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
BIFF	Black Industrialists Financing Forum
BIS	Black Industrialist Scheme
CEO	Chief Executive Officer
Constitution	Constitution of the Republic of South Africa No. 108 of 1996
COO	Chief Operations Officer
DD	Due Diligence
DDG	Deputy Director General
DTI	Department of Trade and Industry
DTIC	Department of Trade, Industry and Competition
DEF	Diesel Exhaust Fluid
EDD	Economic Development Department
IDC	Industrial Development Corporation
IPAP	Industrial Policy Action Plan
NDP	National Development Plan
Nocks	Nocks Oil (Pty) Ltd
Northam	Northam Platinum
NOx	Nitrogen Oxides
Minister	Minister of Trade and Industry
OEMs	Original Equipment Manufacturers
PAJA	Promotion of Administrative Justice Act No. 3 of 2000
Public Protector Act	Public Protector Act No. 23 of 1994
PPSA	Public Protector South Africa
PP Rules	Rules relating to investigations by the Public Protector and Matters Incidental thereto, 2018, (as amended)
PFMA	Public Finance Management Act No. 1 of 1999

1. INTRODUCTION

1.1 This is a Closing Report of the Public Protector 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 No. 23 of 1994 (the Public Protector Act) and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*, as amended (the Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act.

1.2 The report relates to an investigation in connection with the alleged failure by the Industrial Development Corporation (IDC) to grant funding to Nocks Oil Pty Ltd (Nocks).

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

1.3.1 The Chief Executive Officer of the IDC, Mr TP Nchocho, and

1.3.2 The Complainant, Mr Angus Norkie.

2. THE COMPLAINT

2.1. The complaint was lodged with the Public Protector on 21 September 2020, by Mr Angus Norkie (the Complainant), relating to the failure by the IDC to grant funding to Nocks.

2.2. In essence, the complaint is that the IDC failed to grant funding to Nocks whilst it had provided the IDC with all documentation and information that met all requirements for the funding to be approved. The Complainant further alleged that the decision made by the IDC was either unlawful or in violation of various government policies, which include the Black Industrialist Policy.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Mandate of the Public Protector:

3.1.1. The Public Protector is an independent constitutional institutions established under section 181(1) (a) of the Constitution of the Republic of South Africa, 1996 (the Constitution) to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

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

“The Public Protector has the power, as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,*
- (b) to report on that conduct ; and*
- (c) to take appropriate remedial action”.*

3.1.3. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.1.4. Section 6(4) of the Public Protector Act regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.

3.1.5. Section 6(4)(a) of the Public Protector Act states that the Public Protector shall, be competent to investigate on his or her own initiative, or on receipt of a complaint, any alleged maladministration, abuse or unjustifiable exercise of

power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.

- 3.1.6. The IDC is an organ of state and its conduct amounts to conduct in state affairs, and, as a result, the matter falls within the Public Protector's mandate to investigate.
- 3.1.7. The Public Protector's powers and jurisdiction to investigate, report and take appropriate remedial action was not disputed by any of the parties.
- 3.1.8. The IDC is a schedule 2 Public Entity, in terms of the Public Finance Management Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

- 4.1 Whether the IDC failed to grant funding to Nocks, and if so whether this conduct is improper in terms of section 182(1)(a) of the Constitution and constitutes maladministration as envisaged in section 6(5) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

- 5.1.1. The investigation into the complaint is conducted in accordance with section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act.

5.2. Approach to the investigation

- 5.2.1. The approach to the investigation included an analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.
- 5.2.2. The investigation was approached using an enquiry process that seeks to find out:
- (a) What happened?
 - (b) What should have happened?
 - (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration and/or improper conduct?
 - (d) In the event of a violation of any prescript, what remedial action should be taken?
- 5.2.3. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties involved and, independently sourced during the investigation.
- 5.2.4. In this particular case, the factual enquiry principally focused on whether the IDC failed to grant funding to Nocks and if so, whether this conduct is improper in terms of section 182(1)(a) of the Constitution and constitutes maladministration as envisaged in section 6(5) of the Public Protector Act.
- 5.2.5. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the IDC to prevent violation of its applicable prescripts.

5.2.6. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of the improper conduct.

5.3. **The Investigation Process**

5.3.1. The approach to the investigation included the exchange of documentation between the Public Protector, the Complainant and officials of the IDC. The Public Protector also elected to hold an Alternative Dispute Resolution (the ADR) session in terms of section 6(4)(b)(i) of the Public Protector Act, with a view of concluding a settlement agreement between the Complainant and the IDC on 16 March 2022.

5.4. **The key sources of information**

Documents or correspondence exchanged

5.4.1. Copy of the original complaint dated 21 September 2020;

5.4.2. Allegations' letter dated 12 August 2021 from the Public Protector to Ms Joanne Bates, the Chief Operations Officer of the IDC;

5.4.3. Response to the allegations' letter by Ms Joanne Bates, the Chief Operations Officer of the IDC dated 12 August 2021;

5.4.4. Closing letter dated 3 September 2021 from the Public Protector to Mr Angus Norkie;

5.4.5. Notice in terms of section 6(4)(b)(i) of the Public Protector Act dated 2 March 2022;

5.4.6. Response to the Notice in terms of section 6(4)(b)(i) of the Public Protector Act from the IDC dated 9 March 2022;

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- 5.4.7. Letter dated 31 July 2018 from AK Le Grange of the Department of Trade and Industry (DTI) to Mr Angus Norkie;
 - 5.4.8. Rejection letter dated 13 May 2019 regarding Mr Norkie's Application for Finance from Mr Hilton Lazarus: SBU Head Chemical and Industrial Mineral Products, of the IDC;
 - 5.4.9. Letter dated 27 August 2019 from the CEO of the IDC, Mr TP Nchocho to Minister Ebrahim Patel (Minister Patel) regarding the complaint lodged by Mr Norkie;
 - 5.4.10. Letter dated 25 July 2019 from the CEO of the IDC, Mr TP Nchocho to Minister Patel regarding the complaint lodged by Mr Norkie;
 - 5.4.11. Letter dated 5 March 2020 from the CEO of the IDC, Mr TP Nchocho to the Chairperson of the Portfolio Committee on Trade and Industry, Mr Duma Moses Nkosi, regarding the complaint lodged by Mr Norkie;
 - 5.4.12. Rejection letter dated 22 June 2020 regarding Mr Norkie's Application for Finance from Mr Hilton Lazarus: SBU Head Chemical and Industrial Mineral Products: IDC to Mr Norkie;
 - 5.4.13. Rejection letter dated 17 July 2020, regarding Mr Norkie's Application for Finance from Mr Hilton Lazarus: SBU Head Chemical and Industrial Mineral Products: IDC to Mr Norkie;
 - 5.4.14. Review outcome letter dated 22 August 2020 to Mr Angus Norkie, from the Director General of the DTIC;
 - 5.4.15. Rejection letter dated 26 October 2020 regarding Mr Norkie's Application for Finance from Ms Joanne Bates, the COO of the IDC to Mr Norkie;

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- 5.4.16. Undated letter from the IDC sent to Mr Lionel October, the Director General of DTIC, regarding the complaint lodged by Mr Norkie;
 - 5.4.17. Letter dated 5 February 2021 from the IDC to Ms Plane Kola of the Presidency regarding the complaint lodged with the Presidency by Mr Norkie;
 - 5.4.18. Memorandum dated 5 July 2021 from Ms Joanne Bate, the COO of IDC to the DTIC;
 - 5.4.19. Notice in terms of rule 41(1) from the Public Protector dated 20 September 2022 directed to Mr Norkie; and
 - 5.4.20. A response letter to the notice in terms of Rule 41(1) dated 22 September 2022 from Mr Norkie.

5.5. **Meetings/Interviews held**

- 5.5.1. A Virtual Alternative Dispute Resolution (the ADR) session was held on 16 March 2022 in terms of section 6(4)(b)(i) of the Public Protector Act, between the Public Protector, IDC and the Complainant.

5.6. **Legislation and other prescripts**

- 5.6.1. The Constitution of the Republic of South Africa, 1996;
- 5.6.2. The Public Protector Act No. 23 of 1994;
- 5.6.3. The Public Finance Management Act No.1 of 1999;
- 5.6.4. The Industrial Development Corporation Act No. 22 of 1940;

- 5.6.5. The IDC Business Guidelines of 2018;
- 5.6.6. The Incentive Scheme of the Black Industrialists Policy, 2015; and
- 5.6.7. Operations - Due Diligence and Submission process Internal Controls, Systems and Procedures-12 March 2013.

5.7. **Case Law**

- 5.7.1 *Ouderkraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 SCA;
- 5.7.2 *The MEC for Health, Eastern Cape v Kirkland Investments* 2014 (3) SA 481 (CC) and,
- 5.7.3 *Merafong City Local Municipality v AngloGold Ashanti Limited* 2017 (2) SA 211 (CC).

- 5.8. The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, is now in a position to make findings.

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

- 6.1. **Whether the IDC failed to grant funding to Nocks, and if so, whether this conduct is improper in terms of section 182(1)(a) of the Constitution and constitutes maladministration as envisaged in section 6(5) of the Public Protector Act**

Common cause issues

- 6.1.1. Nocks was established in 2015, and the Complainant was the founder. Nocks has two shareholders, which is the Complainant and Mr Zuzumuzi Maponya holding seventy five percent (75%) and twenty five percent (25%) shares respectively.
- 6.1.2. An application for finance was subsequently received by the IDC on 22 August 2018 and Nocks applied for the following facilities: Forty eight million rands (R48 000 000.00) for the purchase and installation of plant and equipment, sixteen million three hundred thousand rands (R16 300 000.00) for working capital and seven million rands (R7 000 000.00) VAT loan; which funding was ultimately rejected by IDC.
- 6.1.3. Nocks applied for funding for the establishment of a manufacturing plant for AdBlue and other lubricants. AdBlue converts harmful nitrogen oxides (NO_x) from diesel vehicle exhaust into harmless nitrogen and steam, thereby considerably reducing the emissions of NO_x, a chief source of atmospheric pollution leading to smog in urban centers. Nocks intended to establish a manufacturing plant in Coega, Port Elizabeth, to manufacture a branded diesel exhaust fluid (DEF) and lubricants which are used in the motor vehicle industry.

Issue in dispute

- 6.1.4. The issue for determination by the Public Protector, is whether the IDC was justified in disapproving Nocks' application for funding whilst Nocks had provided IDC with all documentation and information that met all the requirements for the funding to be approved.

The Complainant's version

- 6.1.5. The Complainant contends that the decision made by the IDC was either unlawful or in violation of various government policies, which include the Black Industrialist Policy.

IDC's version regarding the first funding application

- 6.1.6. A response was received from the IDC on 9 March 2022 and according to the IDC, Nocks submitted its **first funding application** on 22 August 2018 and applied for the following facilities: R48 million for the purchase and installation of plant and equipment, R16.3 million for working capital and R7 million VAT loan; which funding was ultimately rejected by IDC:
- 6.1.7. The IDC further stated that the DTI conditionally approved a Black Industrialist Scheme (BIS) grant in favour of Mr Norkie on 3 April 2019 for thirty eight million nine hundred Rands (R38 900 000.00) subject to the other funding being secured by the Complainant. A Basic Assessment was conducted and submitted for consideration by the Basic and Speciality Chemicals Unit on 11 October 2018. The market was identified as a high risk and needed to be focused on, during the due diligence process.
- 6.1.8. The IDC further informed the Public Protector's Investigating team (Investigation Team) that the due diligence process commenced on 28 November 2018 and additional market information was requested from Nocks and potential customers were engaged and the due diligence of the IDC team could not support Nocks' sales budgets, based on the feedback received as the products were at that time supplied by major and branded multinationals.
- 6.1.9. The IDC also informed the Investigation Team that the Original Equipment Manufacturers (OEMs) typically have stringent quality requirements and long

existing supply relationships, and Nocks did not accept the IDC team's view. Mr Hilton Lazarus: SBU Head Chemical and Industrial Mineral Products of IDC, engaged with the companies directly and he was informed that the market enquiries did not support the plan and that the application would be rejected on that basis.

- 6.1.10. According to the IDC, Nocks was however given an opportunity to identify further potential customers and obtain letters of interest. This was to allow Nocks to motivate their case further and gauge interest from potential customers given that the market is highly competitive. It was also proposed that Nocks consider downscaling their plan to focus on one product, Adblue, which seemed to have the best prospect of success, and to consider lubricants at a later stage once they have developed the market.
- 6.1.11. The recommended due diligence process confirmed the market challenge after additional engagements with potential clients and in line with the due diligence process, environmental issues were explored and the need for an Environmental Impact Assessment was identified for the volume of lubricants proposed.
- 6.1.12. According to the IDC, the outcome of the due diligence process was discussed with Nocks and official communication was sent on 9 January 2019 and Nocks continued to contest the results of the due diligence process that was conducted, with particular reference to the level of sales they believed could be achieved.
- 6.1.13. The IDC further submitted that on 28 March 2019, they again proposed to Nocks to look into a phased funding approach for AdBlue first, thus providing the client with time to develop the lubricants' market. Nocks ultimately rejected this approach as it was its view that it would compromise the provisional approval by the DTI because the first phase project costs would be less than the DTI's thirty million Rand (R30 000 000.00) minimum project cost requirement.

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- 6.1.14. Further thereto, the IDC submitted that when the application's rejection was confirmed, Nocks raised complaints with the IDC Divisional Executive for Chemicals and Textiles, the CEO, Economic Development Department (EDD), the Minister, the IDC Board Chair and the Office of the Presidency.
- 6.1.15. IDC stated that it consistently indicated that as a lender, it can only support businesses which demonstrate economic merit and could not support the business case as presented by Nocks, and that IDC is required to follow due process and to independently confirm the business potential, risks and viability.
- 6.1.16. It further stated that the presence of a market does not guarantee success and as such it is important for potential clients to demonstrate how they will access markets, especially when these markets are highly competitive. The IDC also submitted that they have left the door open to allow Nocks to submit a revised business plan that is downscaled for one of the products identified as having the best chance of success. However, the revised business plan would still need to be assessed for viability.
- 6.1.17. The IDC further stated that Nocks did not agree with the downscaling approach but insisted on a letter of approval for the whole project, as proposed, to share with the DTI to meet the condition of the BIS grant approval. The IDC also submitted that at the meeting held with Nocks on 29 April 2019, Nocks indicated that they were exploring other sources of funding and would revert to IDC in three (3) weeks, as to whether a scaled down business plan for one product should be considered.

Second funding application

- 6.1.18. According to the IDC, Nocks submitted its second application with a revised, scaled down business plan in April 2020, and the assigned due diligence team commenced with the due diligence process on 5 June 2020, with an initial due

diligence scope limited to the Marketing aspects of the transaction. They further stated that this approach was informed by the fact that the IDC's basic assessment report had highlighted some material issues in relation to the identified market risks of the application.

- 6.1.19. The IDC also submitted that it was therefore decided, that in order to expedite the decision-making process and to avoid creating undue delays to the application for funding, the most pertinent issues should be addressed first (in this case, the Marketing issues). The IDC also informed the Investigation Team that the outcome of the Marketing due diligence would then inform whether the IDC continues with further processing of the application or not. They submitted that this was communicated to the Complainant at a meeting held on 9 June 2021.
- 6.1.20. According to the IDC, their due diligence team noted that during discussions held with the Complainant on the first contact meeting on 9 June 2020, he expanded his business plan to include an additional Adblue plant in KwaZulu Natal and a lubricant bottling facility in Coega.
- 6.1.21. The IDC further stated that, this was not in line with Nocks' business plan and the initial assessment, which only pertained to the establishment of a single Adblue plant in Coega. The Complainant confirmed that they wanted to include the additional Adblue and lubricant bottling plant. The IDC team thus commenced to assess the transaction based on the extended scope of business operations as advised by the Complainant.
- 6.1.22. According to the IDC, its due diligence team made the following findings with regards to the Marketing due diligence undertaken which are considered as material risks:

(a) Nocks' letters of intent from potential customers

- 6.1.22.1 The documents furnished to the due diligence team confirmed the engagements that Nocks had with some of its potential customers; with the exception of Northam Platinum. These letters were devoid of indicative volumes and prices from which estimated demand from these potential customers could be gauged. Thus, the due diligence team could not establish the basis of the projected sales budgets presented by Nocks in the absence of indicative uptake quantities and prices from potential customers;
- 6.1.22.2 It was also noted that the letters of engagement were issued during 2018 and early 2019. The due diligence team indicated that these letters would need to be updated in order to establish whether there is still appetite from the clients. Furthermore, the detail discussed on indicative volumes and prices would also have to be incorporated in the updated letters. In a conference call on 9 June 2020, and a follow up email, Nocks indicated that they were not going to be able to get updated letters from potential customers, as they were of the view that it is not good practise to continuously go back to clients as it will create a bad impression;
- 6.1.22.3 The due diligence team also noted contacts made by Nocks with Toyota and Northam Platinum which confirmed prior engagements with them, as well as a new engagement with Mercedes Benz South Africa. The content of such discussions with these potential customers remained the same, wherein they merely confirmed engagements without detail on indicative volumes and prices;
- 6.1.22.4 The IDC also submitted that, it was communicated to Nocks that the IDC, as part of its due diligence processes, requires IDC to directly contact potential clients to verify the authenticity and contents of the letters of intent, to which Nocks advised that, an IDC staff member had previously contacted its potential

clients during the initial assessment. Despite this communication, Nocks did not grant the IDC permission to contact its clients directly and therefore, the IDC could not verify the information in the letters of engagements.

6.1.22.5 According to the IDC, it should be noted that, initial contact during the screening phase is high level and is largely focused on confirming the existence of the potential customer. At due diligence stage, detailed discussions are held to understand: the history of the relationship with the customer, current and planned demand from the customer, market dynamics and how these influence the customer's demand and decisions; prospects and opportunities of future business.

6.1.22.6 The IDC further stated that all the OEMs engaged by Nocks stated that they would need to test Nocks' product(s) as a prerequisite to any further discussions about potential procurement. No evidence was presented to the due diligence team that samples of Nocks' products were sent to the OEMs for testing, thus enabling the IDC to determine acceptability (and thus off-take risk) of product to end-client. Furthermore, it was noted that UK manufacturer Tetrosyl's AdBlue samples were sent to Volkswagen for testing, but the business plan indicated that Nocks will be manufacturing their own AdBlue after the plant is set up. No evidence was provided that the AdBlue to be manufactured by Nocks was tested and accepted by OEMs.

(b) AdBlue market research

6.1.22.7 According to the IDC, the due diligence team noted that Nocks relied on market research that was provided by "SCR", the company that will be supplying Nocks' plant and equipment for the AdBlue manufacturing plant. The due diligence team highlighted the conflict of interest that exists with the market opportunity being validated by the supplier of the plant and equipment.

(c) Security of supply risk

6.1.22.8 With regard to the Security of supply risk, the IDC informed the Investigation Team that, the business plan alluded to the fact that the company has entered into a strategic partnership agreement with Tetrosyl, a UK based company that manufactures lubricants. The business plan stated that Tetrosyl will be Nocks' supplier for lubricants. In line with due diligence practices, the IDC's Investigation Team requested a copy of the agreement with Tetrosyl to validate the trade terms with Nocks. Nocks subsequently confirmed that they do not have any agreements with Tetrosyl but that Tetrosyl would supply Nocks on an upfront cash basis;

6.1.22.9 The IDC further stated that, on 17 July 2021, another communication was sent to Nocks confirming that the due diligence process cannot proceed until marketing risks are addressed.

(d) Complaints management process

6.1.22.10 The IDC further submitted that they endeavour to respond to clients' feedback or complaints, and to resolve these in a timely and fair manner. In the event that a client is not satisfied, they provide them the opportunity to obtain an objective view from an independent party. According to the IDC, to ensure that the complaint resolution process is fair and transparent, the IDC offered Nocks the option to consider the services of an independent complaint assessor to evaluate their complaint, as per the IDC's Complaints Management Policy. The offer was declined by Nocks.

6.1.22.11 In conclusion the IDC informed the Investigation Team that they remain committed to supporting emerging black industrialists through its funding mandate, policies and processes, however, as a development financier,

economic merit remains an over-arching factor as support of financially viable business opportunities will ensure the attainment of sustained development outcomes.

6.1.23 It was also noted that the Complainant raised this matter with Mr Duma Nkosi, the Presidency and DTIC.

6.1.24 The IDC had addressed the complaint on multiple occasions with the Complainant during various meetings and telecommunications. The Complainant also briefed the law firm *Webber Wentzel* during November 2019 to demand reasons for the IDC's decision to not fund Nocks.

6.1.25 In a letter dated 22 August 2020 from the Director General of the DTIC, Mr Lionel October, to the Complainant wherein the following parties were copied: Mr Duma Nkosi, the Chairperson:Portfolio Committee Trade & Industry; Mr TP Nchocho, the IDC CEO; Ms. Joanne Bate, the IDC COO; and Ms. Thandi Phele the Acting DDG ICG Branch, he informed the Complainant that:

“After having carefully reviewed the correspondence between yourself, the IDC, the Chair of the Portfolio Committee of Trade and Industry, and the IDC’s due diligence team’s findings, I am satisfied that the IDC has followed due and proper process with respect to this matter. Should the details of your project change, I trust that you would consider the IDC as a potential funder and/or partner at that stage.”

6.1.26 In trying to assist the complainant the Investigation Team also held an Alternative Dispute Resolution (the ADR) session in terms of section 6(4)(b)(i) of the Public Protector Act, on 16 March 2022 with a view to amicably resolving the matter between the Complainant and the IDC. The IDC offered Nocks the option to consider the services of an independent complaint assessor to evaluate its

complaint, as per the IDC's Complaints Management Policy. The Complainant declined this offer.

Response to a Discretionary Notice issued in terms of Rule 41(1) of the Public Protector Rules as amended:

- 6.1.27 Rule 41(1) of the Public Protector Rules provides that when the Public Protector intends concluding a complaint by means of a closing report the Complainant shall accordingly be informed in writing and be given an opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification.
- 6.1.28 On 20 September 2022, the Public Protector served Mr Angus Norkie with a Discretionary Notice issued in terms of Rule 41(1) of the Public Protector Rules as amended, to afford him an opportunity to reply thereto. Between 22 to 26 September 2022, he responded to the Discretionary Notice and indicated that:
- 6.1.28.1 The amount they applied for was forty eight million Rand (R48 000 000.00) and NOx is extremely harmful to humans. It causes respiratory illnesses, which lead to renal and organ failure. He also stated that it is not simply a solution to get rid of smog and they are in the process of lobbying the government to sign off much-needed legislation, as South Africa is one of the few countries which have not met the agreed Kyoto Protocol and vehicle emissions are a critical part thereof. Furthermore, the lubricants they intend to manufacture lead to the reduction of the carbon footprint of any vehicle;
- 6.1.28.2 The IDC's submission is factually incorrect as it makes no mention of the extended processes they followed to ensure that they submitted all the relevant documents and that they had a senior person review their submission. He also

stated that, Mr Deon Cloete, submitted their application on 22 August 2018, and not in November 2018;

6.1.28.3 Regarding the DTIC process and the IDC process, he stated that it must be said that the conditional approval was based on the IDC providing them with the loan, he also stated that the Black Industrialist Grant Policy, stipulates that if the IDC should reject the application, they should help the applicant to first identify the errors and help fix said errors;

6.1.28.4 The due diligence did not commence on 28 November 2018, he had a meeting with the due diligence team on 27 November 2018 and they had never highlighted any issues regarding the market analysis. The IDC simply requested a site visit and many documents, which he submitted;

6.1.28.5 Getting lubricants or any chemical product (*including AdBlue*) approved by an OEM is a long process and you can only provide them with samples from an existing manufacturing plant and it should be the same plant from which you intend manufacturing, i.e. if you should relocate the plant you would need to restart the standards and quality process. According to the complainant, it is thus “*mind-boggling*” that the second assessment speaks to samples that were not provided;

6.1.28.6 During a meeting on 23 January 2019, Mr Hilton Lazarus indicated that he would require at least one more potential client. His response to this was that he provided IDC with three (3) additional clients of which Northam Platinum was one. According to Mr Norkie, Northam Platinum required 158 000 L (litres) of lubricants per month, which was sufficient to validate the project and they did not require the stringent quality checks of the OEMs. He further stated that ignoring these material facts speaks to the bias of the report;

6.1.28.7 He further stated that they required IDC to explain to them why the lubricants portion had to be left out of the project, especially considering that Northam

required 158 000 litres per month and, according to Mr Norkie this alone made the project financially viable and the IDC request for them to reduce the project was thus baseless. He stated that this was the offer they put on the table during the ADR, but they could not explain why the project had to be reduced;

- 6.1.28.8 The IDC claims that the project was not viable and yet the IDC refused to consider Northam Platinum as a client that would render the project viable and feasible. He stated that on 26 March 2019, Mr. Temogo Mkhabela, a senior business analyst from the IDC, sent him a model they use to evaluate the project. This model never considered the lubricants portion and was designed to reduce the viability of the project. According to Mr Norkie it is important to note that at this stage Northam was not contacted;
- 6.1.28.9 Contrary to what the IDC submitted, the business plan submitted was not altered during the due diligence process. The business plan which was submitted included an *AdBlue* and Lubricants plant in Coega and an *AdBlue* plant and *Lubs* Bottling in KZN;
- 6.1.28.10 The rejection letter he received on 22 June 2020 was baseless and simply misleading. More importantly, the IDC claim that the IDC performed a second due diligence, but none of the clients were contacted. The IDC findings did not follow due process and were thus corrupt. According to the Complainant, a material error the IDC made during the second assessment was the fact that he asked IDC whether the information he provided them will suffice, in an email directed to the due diligence team. This email was sent to the due diligence team on 15 June 2020, but the IDC ignored this and thus show the IDC's prejudice against the application of Nocks. But what is astonishing is that the IDC accept the Northam analysis and submission but refuse to acknowledge the fact that by accepting these figures the business plan is rendered viable.

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- 6.1.28.11 He addressed all the excuses in the rejection letter of 22 June 2020 and the IDC changed their reason to “*market risk*” and not marketing risk, as they now state. He expressly asked the IDC to help him understand what they meant, and they could not explain. Again, on the strength of the Northam figures, the project was viable and thus had no risk;
- 6.1.28.12 The Complainant stated that they never refused any help from anyone. They simply asked for the IDC to objectively advise them as to what material errors the business plan had, and to give them an opportunity to fix these errors before that said analysis is done;
- 6.1.28.13 The Complainant further stated that “*The rejection letters they received on 5 and 13 March 2019 were unlawful, but simply put, were corrupt. On 17 March 2019, during a meeting, they challenged the rejection letter and found that the reasons given were corrupt. Again, they found that their clients were simply not contacted;*”
- 6.1.28.14 When they presented the business plan to the IDC in 2018, the products they aim to manufacture were imported and a small percentage of all products, around 3% were manufactured locally. From a pricing perspective, their analysis found that the South African consumers pay up to three hundred percent (300%) more for these products. Considering that the IDC should ensure industrial growth and considering that the aim of the IDC is to grow the economy, by not providing Nocks with the loan, they failed in their mandate; and
- 6.1.28.15 It is important to note that Nocks received a full grant because they satisfied all the requirements of the Black Industrialist Scheme, including job creation.
- 6.1.29 In replying to the Complainant’s issues highlighted above, the Investigation Team have noted that the Complainant did submit a complaint to Minister Patel about

his application to IDC for funding. IDC responded to the Minister and the Minister accepted the IDC's reasons for not granting funding to the Complainant.

6.1.30 The Investigation Team was also provided with the correspondence, dated 25 July 2019, where the IDC wrote to Minister Patel regarding the allegations of maladministration by IDC staff, levelled by Nocks.

6.1.31 In responding to the specific complaints levelled against some of its staff members by Mr Norkie, the IDC stated the following:

Allegation 1

“On 18 March, we (my business partner and I) had a meeting with the IDC (DD Team, and client services), we were advised that the team discovered that the 3 clients we provided did not provide favourable feedback to the team.

While the meeting was in progress, we asked a representative of the client (via social media) whether anyone from the IDC was in contact with him, he advised us that no one spoke to him regarding the letter he submitted on our behalf. We realized that serious maladministration was taking place.

When we advised the team that the client was not contacted, the story suddenly changed to the fact that the team struggled to contact the representative and we were asked to give them another opportunity to contact the client. This can be verified by my business partner.”

IDC's response to allegation 1

6.1.31.1 The IDC team did receive letters from Barloworld, Southern African Shipyards, Toyota South Africa and e-mails from Northam Platinum (Northam) and

Volkswagen South Africa. The team also had a telephonic conversation with Mercedes Benz as per the client's request;

6.1.31.2 The client in question is Northam, perhaps the representative from Northam might not have been aware that the IDC team was trying to contact him telephonically. This was pointed out to the client in the meeting and it was resolved that the IDC team would persist in trying to contact the Northam representative;

6.1.31.3 The IDC team subsequently did get a hold of the representative from Northam and had a telephonic conversation with him where he confirmed that Nocks could be given an opportunity to compete fairly, through a tender process, with their current supplier, however there were no guarantees because the decision would be made based on the price, quality and capacity to deliver. Hence Northam could not commit any volumes to Nocks at that stage;

Allegation 2

“After this meeting we were advised that the client was contacted and that the feedback was not favourable.”

IDC's response to allegation 2

6.1.31.4 The outcome of the outside enquiry with Northam was that they were contracted to a current supplier for lubricants;

6.1.31.5 They were open to consider a new supplier, but would have to go through a tender process;

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- 6.1.31.6 They were sensitive to pricing and had adopted a tender approach to bring in a new supplier, however, the existing suppliers offered very competitive pricing;
- 6.1.31.7 In addition, the volumes budgeted for by Northam were significant with respect to the business case for Nocks and since Northam could not give comfort around Nocks securing their volumes, this impacted on the viability of the business case;
- 6.1.31.8 The response from Northam was that they could not guarantee volumes to Nocks and that the company must participate in a fair tender process to be eligible to get their business. This is what was communicated to Nocks and has been construed as not being a favourable outcome for Nocks;
- 6.1.31.9 The concern around the market does not arise from engagements with Northam only, but with a number of industry players;

Allegation 3

“During a meeting with the due diligence team and their senior manager (Shakeel Meer), held on 29 April 2019, we were advised that our business was not viable and that the IDC can only support a portion of the Business Plan. The reason given, the lubes portion was not price competitive and this was as per the feedback provided by the client.

During said meeting I debated the competitiveness of our product range and advised the parties that the info submitted to the team proves the contrary, i.e. that we are price competitive and that the entire plan is viable. After the meeting we contacted the client and was advised that contact was made, but no one discussed pricing.

More importantly, no one presented the fact that Nocks can present a price of R22 plus 70% (profit), no one informed the client of our competitiveness. In short, once again the team lied and manipulated the information to impact the business plan negatively.”

IDC’s response to allegation 3

6.1.31.10 Pricing was never a point of discussion but the Northam situation was discussed where the pricing competitiveness as per Northam was a key factor for them to give the business to a new supplier;

6.1.31.11 Northam did not disclose the price their current supplier quoted them, but they did mention that they went on a tender process to allow a new potential supplier to bid for volume, but the new potential supplier was not able to secure volume from Northam;

6.1.31.12 All the discussions with Mr Norkie centred around market entry to the targeted market (First fill for OEM’s) and the process to be followed for them to accept a new supplier;

Allegation 4

“I am sure that you will agree that misrepresentation of the truth is tantamount to fraud and maladministration. I informed the senior management and CEO of my experience and asked for his intervention, but for the last three months no one responded to my calls or emails.”

IDC's response to allegation 4

6.1.31.13 The IDC office of the CEO makes use of various channels within the Corporation to address customer complaints;

6.1.31.14 With all customer complaints that the CEO's office receives, the first step that the CEO's office takes, is to ask the responsible Executive in partnership with the Client Relations Management Office to resolve the matter; the same was done for Nocks on 28 February 2019;

6.1.31.15 IDC has been engaged in various interactions with Nocks, including formal letters sent on 9 February 2019, 26 April 2019, 13 May 2019, 3 and 10 June 2019, outlining the Corporation's position; and

6.1.31.16 In a recent attempt to facilitate a discussion, the CEO's office set up a teleconference with Mr Norkie. He subsequently put forward preconditions to him attending the meeting with the IDC which the IDC did not accede to and therefore he did not honour the meeting.

6.1.32 The Investigation Team was also provided with evidence of an email dated 9 April 2019 from Ms Gwyneth Ndashe of the IDC, to the IDC team, with regard to the clients that they engaged with and the responses they received regarding Nocks' funding which states the following:

6.1.32.1 They had a conversation with Mr. Dali Duma from Northam, and were informed that Engen is the sole supplier of lubricants for Northam and when probed if Northam would consider Nocks as a potential supplier – his response was:

“Yes, there can be an opportunity to compete fairly with Engen, however there are no guarantees. It will be based on price, quality and capacity to deliver. Northam Plat does take into consideration BBB-EE level and Engen meets

those but the challenge with Engen is that they own most of the infrastructure in the mining industry which gives them an added advantage during the tender process;”

6.1.32.2 When Mr. Dali Duma was asked if Northam would consider a “split volume basis” whereby Engen supplies the bulk of volumes required (approx. 80%) and smaller suppliers (i.e. Nocks) are given a chance to supply 10-20% of the volume requirements, his response was:

“Yes we do that, definitely, where we see the potential. Let me give you an example – we engaged with Total who came with their BBB-EE partner and we gave them that chance to participate in the tender process but unfortunately Engen beat them with pricing, Engen is aggressive in pricing and we unfortunately couldn’t give the Total BBB-EE partner any volumes;”

6.1.32.3 Ms Gwyneth Ndashe of the IDC further stated that Northam does not require a supplier to have OEM approval, the duration of contract is 3-years with annual price reviews and a possible contract renewal at the end of the 3-year period, given that there was a good relationship with the supplier and they are still competitive in pricing and quality;

6.1.32.4 With regard to Toyota, Ms Gwyneth Ndashe provided that they were contacted in November 2018 and she spoke to a lady by the name of “Kim”, who said she didn’t understand why Mr Norkie gave IDC her number because she had told Mr Norkie previously that she is not the correct person to speak to, and Toyota suppliers remain for the model life (approximately 7 years), their current suppliers meet their requirements and while they do not turn away new suppliers, they are happy and satisfied with their current suppliers;

- 6.1.32.5 “Kim” further stated that the only product Toyota might be interested in purchasing was *AdBlue* but the product needed to meet their specification and design criteria, before it could be “trialled”. The letter of intent from Toyota states, *“While we are unable to commit to sourcing any products with you currently, we would like to discuss the possibility of doing some testing on some testing on some of the products as a conduit to further discussions. It is specifically recorded that any discussions, meetings, correspondence or testing are explanatory in nature and in no way creates any obligations from TSAM to source from Nocks Oil or for Nocks Oil to supply the products/services to TSAM”*;
- 6.1.32.6 With regard to Mercedes/Daimler, Ms Gwyneth Ndashe stated that they were contacted in November 2018, and a certain person called *“Feliciano”* advised that he is not the correct person to speak to as he is not in the technical or purchasing department(s) of Mercedes Benz, hence he isn’t in a position to provide the feedback required. Furthermore, Feliciano provided the Procurement Manager’s contact details – Nicole De Kock, he advised that it would be in Nocks’ best interest to schedule/request a meeting with the purchasing team to introduce his company, discuss his product offering and also gain insight into their requirements;
- 6.1.32.7 With regard to Southern African Shipyards (Shipyards), Ms Gwyneth Ndashe stated that they provided a letter of intent which is a confirmation of a meeting held with Nocks. Shipyards was contacted in February 2019 and an email was sent to Charles (of Shipyards) requesting information, a follow up email was sent on 11 February 2019, and no response was received;
- 6.1.32.8 With regard to Barloworld, Ms Gwyneth Ndashe stated that she contacted them in February 2019 and *“Mart-Mari”* from Barloworld stated that she was not the correct person to speak to, however, what Mart-Mari does know is that suppliers have to be accredited by Mercedes SA and MAN SA, and is not in a

position to provide the additional information requested. She stated that she had previously referred Nocks to their fleet department because she gets their instructions from them. Mart-Mari also mentioned that their current suppliers meet their requirements and while they do not turn away new suppliers they are happy and satisfied with their current suppliers;

6.1.32.9 According to Mart-Mari of Barloworld, “Patrick” who is in the motor retail and service side, their procurement criteria requires a supplier to be endorsed by the OEMs because they get their product specifications from the OEMs. He mentioned that they have agreements with oil companies namely Shell, Castrol etc. and also purchase “private label oil” which is supplied directly by the OEMs, who in turn source it from the likes of Shell, Castrol etc; and

6.1.32.10 According to Mart-Mari, Patrick said the letter of intent supplied to the IDC by Nocks is not actually a letter of intent, but rather a “confirmation of meeting held”. He said he is not in a position to provide a letter of intent and said that he advised Nocks to engage with Barloworld Fleet because the fleet department have their own fleet and Nocks might want to propose AdBlue to them. She further stated that Patrick indicated that Barloworld purchases approximately 1.27 million litres of lubricants through the various OEM’s.

Application of the relevant legislation and prescripts

Industrial Development Corporation Act, 22 of 1940

6.1.33 The Industrial Development Corporation is a national development finance institution whose primary objectives are to contribute to the generation of balanced, sustainable economic growth in Africa, and to the economic empowerment of the South African population, thereby promoting the economic prosperity of all citizens. The IDC achieves this by promoting

entrepreneurship through the building of competitive industries and enterprises based on sound business principles.

- 6.1.34 The IDC of South Africa Limited was established in 1940 through an Act of Parliament (Industrial Development Corporation Act, 22 of 1940) and is fully owned by the South African Government.
- 6.1.35 The IDC priorities are aligned with the national policy direction as set out in the National Development Plan (NDP), Industrial Policy Action Plan (IPAP) and Industry Master Plans. Their mandate is to maximise the development impact through job-rich industrialisation, while contributing to an inclusive economy by, among others, funding black-owned and empowered companies, black industrialists, women, and youth-owned and empowered enterprises.
- 6.1.36 Simultaneously, the IDC must ensure its long-term sustainability through prudent financial and human resource management, safeguard the natural environment, and increasingly position itself as a Centre of Excellence for development finance.
- 6.1.37 The IDC supports industrial capacity development through proactively identifying and funding high-impact projects, creating viable new industries, and using diverse industry expertise to drive growth in priority sectors. This is done to facilitate sustainable direct and indirect jobs; promoting entrepreneurial development and growing the SME sector; and transform communities and growing black industrialists. They fund industrial development projects, play a catalytic role in promoting partnerships across industries within and outside our borders, and promote regional economic growth.

IDC Business Guidelines of 2018

- 6.1.38 According to the guideline, a business plan is a working document that reflects the business strategy of a company, its operating structure, and most importantly, its financial plan. It needs to show the company's strategy going forward, to ensure sustainability and growth of the business. The document should be maintained by all businesses and updated continuously to reflect any changes which may potentially affect the business. A business plan should also be drafted for a start-up business and then updated when necessary thereafter. When submitting a business plan to a financier as part of the funding application process (either for an existing or start-up business), the business plan should provide sufficient information to convince a financier or potential investor of the prospective success of the business venture.
- 6.1.39 It is crucial that the foundations of the business plan be based predominantly on verifiable facts and market research including changes in market forces affecting the business, key risks and mitigating factors, as opposed to opinion and belief. The more facts in the business plan, the easier it is for a potential financier to decide on whether to invest in a business. The business plan should demonstrate that the business venture is commercially viable and that all those involved in the project, from management to employees and consultants, have the skills, knowledge and/or qualifications, to deliver on the plan.

The Incentive Scheme of the Black Industrialists Policy 2015

- 6.1.40 The purpose of this document is to provide guidelines for the Black Industrialists Scheme (BIS), a grant programme of the Black Industrialists Policy that aims to unlock the potential within black industrialists that operate

in the South African economy through deliberate, targeted and well-defined financial and non-financial interventions.

- 6.1.41 The guidelines set out are intended to enable black industrialists to present their applications to the DTIC and provide a framework for the Black Industrialists Financing Forum (BIFF) to evaluate such applications. The granting of the incentive will only be for those projects that meet the strategic objectives of the Black Industrialists Policy, as advanced by these guidelines.
- 6.1.42 The Complainant informed the Investigation Team that his complaint stems from the fact that DTIC provided his company with funding but the funding was short and that after that they approached IDC of which they refused to fund the shortfall. The Complainant also informed the Investigation Team that the IDC is required to fund the shortfall because of the Black Industrialist Policy.
- 6.1.43 It is apparent that the DTIC and the IDC are separate Public Entities with their own budgets and their own policies and procedures. It is also clear on the correspondence that when the Complainant receives funding from DTIC it does not guarantee that the IDC should fund them with the shortfall automatically. The IDC must follow their due processes as they have done as per the above correspondence.
- 6.1.44 It is also important to understand the difference between a policy and a law. A policy outlines what a government ministry hopes to achieve and the methods and principles it will use to achieve them. It states the goals of the Ministry. A policy document is not a law but it will often identify new laws needed to achieve its goals.
- 6.1.45 There is therefore no legal basis to compel the IDC to fund the shortfall as these separate bodies do not share a budget and the IDC due diligence regarding funding cannot be conducted by the DTIC.

- 6.1.46 The Complainant alleges that by not awarding him funding the IDC conducted themselves in an unlawful manner and therefore their administrative decision to not award the funding should be set aside and the Public Protector should assist him to be awarded funding.
- 6.1.47 In the case of *Ouderkraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 SCA, the Supreme Court of Appeal authoritatively ruled that until an administrative decision is set aside by a Court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot simply be overlooked. The principle enunciated in the *Ouderkraal* case was confirmed by the Constitutional Court in the case of *The MEC for Health, Eastern Cape v Kirkland Investments* 2014 (3) SA 481 (CC) and *Merafong City Local Municipality v AngloGold Ashanti Limited* 2017 (2) SA 211 (CC).
- 6.1.48 The decision emphasised the principle that unlawful decisions by organs of state have a legal effect until they are declared invalid and set aside by a court. A party wishing to challenge the award of a tender, which constitutes administrative action, or any other administrative action, must take active steps to have the decision set aside, failing which it will remain valid despite its unlawfulness.
- 6.1.49 It was emphasised that parties should take care to ensure that any challenges to unlawful administrative acts are correctly brought, in the appropriate forum and according to the correct proceedings.
- 6.1.50 In terms of section 7(2)(a) of the Promotion of Administrative Justice Act 03 of 2000 (PAJA), before someone can ask a court to review an administrative action, there is an important rule in the PAJA that must be complied with - the rule of exhaustion of internal remedies. This means that, where the law sets out procedures allowing someone to review or appeal a decision of the administration, these must be used up before an affected person can approach

a court. A person can therefore only ask for judicial review as a last resort. Internal remedies are ways of correcting, reviewing or appealing administrative decisions using the administration itself. The difference between internal remedies and the remedy of judicial review is that the judicial review is review by a court, which is independent from the administration.

- 6.1.51 The IDC offered Nocks the option to consider the services of an independent complaint assessor to evaluate its complaint, as per the IDC's Complaints Management Policy, which the Complainant declined.
- 6.1.52 As a constitutional body the Public Protector is modelled on an institution of an ombudsman, ours is to restore or promote good governance, integrity and assist all organs of state to administer their affairs in a fair, rational and a lawful manner. It follows therefore that every complaint requires a practical or effective and a unique remedy that is in sync with its own peculiarities and merits.
- 6.1.53 In the case of the Complainant, the Public Protector is satisfied that the decision taken by the IDC, on the strength of the information available to them at the time was reasonable and just, and complied with the IDC's policies on grant funding.

Operations- Due Diligence and Submission process Internal Controls, Systems and Procedures- 12 March 2013

- 6.1.54 The IDC due diligence and submission process, Internal Controls, Systems and Procedures in paragraph 5.4 allow for the rejection of applications for funding and it is up to the IDC to accept or reject any funding should it find it just and appropriate using their own internal controls or policies.

Conclusion made with regard application of the law

- 6.1.55 Having considered the information and evidence gathered, the Public Protector cannot take the matter any further as the IDC followed due process in line with their prescripts.
- 6.1.56 It can also be concluded that the IDC has taken an administrative decision on the Complainant's application. The Public Protector does not have the powers to overturn a decision taken by the IDC, if it acted within its own policy and procedures. Furthermore, the IDC has provided the Complainant with the reasons why their application was unsuccessful.
- 6.1.57 The Complainant was further advised of the availability of an independent complaint assessor to address any concerns that he may have regarding the outcome of evaluation of the funding application. There is no evidence that demonstrates that he used this independent complaint assessor provided as per the policy of the IDC in order for him to ascertain that the process was fair and transparent. This then means that the Complainant has not exhausted all the remedies available within IDC.
- 6.1.58 The IDC further informed the Complainant that, all the OEMs engaged by Nocks stated that they would need to test Nocks' product(s) as a prerequisite to any further discussions about potential procurement.
- 6.1.59 There is also no evidence that was presented to the IDC's due diligence team that samples of Nocks' products were sent to the OEMs for testing, thus enabling the IDC to determine acceptability (and thus off-take risk) of product to end clients. Furthermore, it was through the IDC that the UK manufacturer Tetrosyl's *AdBlue* samples were sent to VW for testing, but the business plan indicated that Nocks will be manufacturing their own AdBlue after the plant is

set up. There was no evidence that was provided that the AdBlue to be manufactured by Nocks was tested and accepted by OEMs.

- 6.1.60 According to the IDC Business Plan Guideline applicants should use their own preferred sources of information to compile business plans, based on the nature of their businesses. Submissions of an application in line with the guidelines do not guarantee that the IDC will approve a funding application. The Guideline document is neither an agreement nor an offer. It is to provide the applicant(s) with information to assist them to formulate the business plan.
- 6.1.61 Each applicant should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in the Business Plan Guidelines document and where necessary obtain independent advice.

7 FINDINGS

- 7.1. In view of the foregoing, the Public Protector concludes this investigation based on the following findings:**

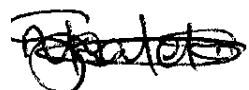
Regarding whether the IDC failed to grant funding to Nocks and if so whether this conduct is improper in terms of section 182(1)(a) of the Constitution and constitutes maladministration as envisaged in section 6(5) of the Public Protector Act

- 7.1.1. The allegation that there were any improprieties by the IDC to not grant Nocks funding is **not substantiated**.
- 7.1.2. The IDC advised the Complainant on several occasions of the reasons why his application was unsuccessful. There were consultations throughout the process. The evaluation was done in terms of the IDC mandate and policies. There was

communication of the outcome, though the Complainant may not have been satisfied with that outcome.

- 7.1.3. The Complainant was further advised of the availability of an independent complaint assessor to address any concerns that he may have regarding the outcome of the evaluation of the funding application. There is no evidence that demonstrates that he used this independent complaint assessor provided as per the policy of the IDC in order for the Complainant to ascertain that the process was fair and transparent. This then means that the Complainant has not exhausted all the remedies available within IDC.
- 7.1.4. The IDC also proposed that Nocks consider downscaling its plan to focus on one product, Adblue, which seemed to have the best prospect of success, and to consider lubricants at a later stage once they have developed the market. Nocks rejected this idea.
- 7.1.5. The IDC further informed the Complainant that, all the OEMs engaged by Nocks stated that they would need to test Nocks product(s) as a prerequisite to any further discussions about potential procurement.
- 7.1.6. There is also no evidence that was presented to the due diligence team that samples of Nocks' products were sent to the OEMs for testing, thus enabling the IDC to determine acceptability (and thus offtake risk) of product to end clients.
- 7.1.7. Further, it was by the IDC that the UK manufacturer Tetrosyl's AdBlue samples were sent to VW for testing, but the business plan indicated that Nocks will be manufacturing their own AdBlue after the plant is set up. There was no evidence that was provided that the AdBlue to be manufactured by Nocks was tested and accepted by OEMs.

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- 7.1.8. The conduct of the IDC therefore does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(5) of the Public Protector Act.
8. The Complainant may explore other legal remedies available to him should he not be in agreement with the contents of this report.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 SEPTEMBER 2022

Assisted by: Ms P. Mogaladi

Executive Manager: Investigations Branch