



LIMPOPO
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REPUBLIC OF SOUTH AFRICA

**DEPARTMENT OF
AGRICULTURE AND RURAL DEVELOPMENT**

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INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE FUNCTIONARIES OF THE LIMPOPO DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT IN THE IMPLEMENTATION OF THE COMPLAINANT'S POULTRY HOUSE PROJECT RESULTING IN THE DAMAGE TO A PORTION OF THE COMPLAINANT'S FARM

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LIST OF ACRONYMS AND ABBREVIATIONS

CASP	Comprehensive Agricultural Support Programme
Constitution	Constitution of the Republic of South Africa, 1996
CARA	Conservation of Agricultural Resources Act, 1983
Department	Limpopo Department of Agriculture and Rural Development
EIA	Environmental Impact Assessment
EPWP	Expanded Public Works Programme
HoD	Head of Department
Investigation Team	Public Protector South Africa Investigating Team
LDEDET	Limpopo Department of Economic Development and Tourism
LRAD	Land Redistribution for Agricultural Development
Lunds	D Lund Farms (Pty) Ltd
MEC	Member of the Executive Council
Mohlolo Report	Mohlolo Landscape Architects CC Report
PFMA	Public Finance Management Act, 1999
PPA	Public Protector Act, 1994
PPSA	Public Protector South Africa
SMS	Short Message Service

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, 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 in terms of section 7(11) of the Public Protector Act.
- 1.2 The report relates to an investigation under section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act (the Act), into allegations of failure by the functionaries of the Limpopo Department of Agriculture and Rural Development to implement the Complainant's poultry house project resulting in the damage to a portion of his farm.

2. THE COMPLAINT

- 2.1 The complaint was lodged with the Public Protector South Africa on 14 October 2014, by Mr ML Sadiki (the Complainant).
- 2.2 The Complainant alleged, *inter alia*, that:
- 2.2.1 He bought the farm Thorncastle 741, Portion 25, Eerstegoud, Polokwane in 2004;
- 2.2.2 In 2005, he approached the Department with a request for assistance with the erection of a fence around the farm;
- 2.2.3 Instead of assisting him with a fence, the Department proposed and offered to assist him with the construction of a "Tomcan Poultry House"

project through its Comprehensive Agricultural Support programme (CASP);

- 2.2.4 The project was abandoned in 2007, due to protests from neighbouring farmers and the unavailability of an alternative farm of a similar value for him to continue with this poultry project. This was after the Department had spent around three hundred thousand rands (R300 000.00) *“for ground works and engineering professional services on water resource development and feasibility analysis on the farm infrastructure”*.
- 2.2.5 During 2014, functionaries from the Department visited the farm with a proposal to develop a Green House on the farm as a further alternative. The said officials conducted an assessment on the feasibility of such a project; and
- 2.2.6 A report had apparently been produced from those endeavours. The functionaries concerned were Ms CM Sebola and Mr CJ Mathebula.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:

“The Public Protector has 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 the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act, 1994 which states, amongst others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs.
- 3.4 Section 6(5) of the Public Protector Act, 1994 (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.
- 3.5 The Limpopo Department of Agriculture and Rural Development (the Department) is an organ of state in terms of 239 of the Constitution. The conduct of its functionaries amounts to conduct in state affairs and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(5)(a) of the Public Protector Act, 1994.

4 ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus on the investigation:
- 4.1.1 Whether the functionaries of the Limpopo Department of Agriculture and Rural Development failed and/or neglected to rehabilitate a portion of the Complainant’s farm which was damaged because of the abandoned construction of the tomcan poultry house project, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms of section 6(4) (a) (i) of the Public Protector Act, 1994

5 THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation is conducted in accordance with section 182 of the Constitution, read with sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included an exchange of letters and emails between the parties relevant to the investigation, receipt, analysis and review of the relevant documentation and information from all relevant parties as well as independently sourced information. It also included 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 determine:

- (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 improper conduct or maladministration or abuse of power?
- (d) In the event of improper conduct or maladministration, what would it take to remedy the wrong and what 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 and evidence independently sourced during the investigation. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this case, the factual inquiry principally focused on whether the alleged conduct was inconsistent with the applicable prescripts.

5.2.4 The enquiry regarding what should have happened focuses on the law, rules and prescripts that regulate the standards that should have been met by the functionaries of Department in their attempts to rehabilitate the Complainant's farm to its original state after the abandonment of the chicken project.

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

5.2 Whether the functionaries of the Limpopo Department of Agriculture and Rural Development failed and/or neglected to rehabilitate a portion of the Complainant's farm which was damaged because of the abandoned construction of the tomcan poultry house project, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms of section 6(4) (a) (i) of the Public Protector Act, 1994

Common cause

6.1.1 The Complainant bought a small farm in 2004 while working for the African National Congress (ANC) in Limpopo Province.

6.1.2 He approached the Department with a request for the construction of a fence around the farm, as the cattle of the neighbouring farmers were trespassing on his farm.

- 6.1.3 Instead of assisting him with erecting a fence around his farm, the Department proposed to establish a tomcan poultry house project (the project) on a portion of his farm.
- 6.1.4 The construction of the poultry house was started in 2005 and was financed by the Department.
- 6.1.5 During 2007, the construction of the poultry house was halted, and the project was discontinued due to objections raised by D Lunds Farms (Lunds), an egg-production company situated about two kilometers (2km) south of the Complainant's farm and the lack of an Environmental Impact Assessment (EIA) report required for the project of that nature.-
- 6.1.6 The portion of the farm which had been dug out and compacted to form the foundation for the poultry house was left damaged and could not be used for any other purpose in the state it was in.

Issue in dispute

- 6.1.7 The issue for the Public Protector's determination is whether the functionaries of the Limpopo Department of Agriculture and Rural Development acted in terms of the applicable legal provisions when rehabilitating a portion of the Complainant's farm damaged as a consequence of the abandoned Tomcan poultry house construction project

Complainant's version

- 6.1.8 On 01 July 2009, the Complainant held a meeting with the then Head of Department (HoD), Mr MBJ Maloa and Department's General Manager for Land and Agrarian Reform, Ms MJJ Thupana to discuss the restoration of the farm to its status before the foundation of the poultry house was dug up and compacted. At the end of that meeting, the parties agreed on

certain issues with the aim of resolving the matter of the abandoned project.

Correspondence between the Complainant and the Department

6.1.9 On 02 July 2009, the Complainant wrote to the HoD and stated that he had considered the resolution reached at the meeting of 01 July 2009;

6.1.10 His considerations on the matter were as follows:

- (a) He changed his position on the matter;
- (b) The foundations on his farm should be left as they were;
- (c) If the HoD was not continuing with the project as he stated in his fax, he would find a way to resolve the matter;
- (d) Lunds was in the chicken business, and he wanted to be like him one day, so Lunds should never serve as a barrier for others to develop;
- (e) The option of the HoD was therefore rejected;
- (f) Deliberation on the matter between the Department and himself must stop;
- (g) The HoD was not willing to address his plight as a citizen of the country;
- (h) If the foundations were filled up, what would happen to his livelihood?
- (i) He thought the struggle continued and that it was not over until he won.

Correspondence between the Complainant and Ms D Letsatsi, the Member of the Executive Council

6.1.11 On 16 September 2009, the Complainant wrote a letter to the then Member of Executive Council (MEC) for the Department, Ms Dipuo Letsatsi and stated the following:

6.1.11.1 On 28 August 2009, he visited Mr Mahori, a functionary of the Department who was responsible for agrarian reform at the time. The reason for his

visit was to request to be furnished with an Impact Assessment Study Authorisation as advised by functionaries of the Limpopo Department of Economic Development and Tourism (LDEDET), when he was enquiring why the poultry house project was abandoned without being completed;

6.1.11.2 Mr Mahori treated him in a hostile manner, and he did not entertain his request to be furnished with an Impact Assessment Study Authorisation;

6.1.11.3 He requested the MEC to intervene and assist to resolve the problem as the political head of the Department.

Correspondence between the Complainant and the Member of the Executive Council, Mr Jacob Marule

6.1.12 On 18 October 2013, the Complainant wrote a letter to the then MEC for the Department, Mr Jacob Marule, for his intervention.

6.1.13 In his letter, the Complainant outlined the history of the matter leading to the abandonment of the project and he requested the MEC to intervene in the resolution of the matter as “*the project had literally destroyed his life*”.

6.1.14 He also reported about the way Mr Mahori treated him and further indicated that when he reported the conduct of Mr Mahori to the Department, nothing was done about it.

Further correspondence between the Complainant and the Department

6.1.15 On 22 January 2015, the Complainant wrote to the Department indicating that he wished to inform the Department that he was transferring the management of his farm to his son Mr T Sadiki.

- 6.1.16 He further indicated that the transfer included transfer of the rights to the “*envisaged allocation, to him, of the project by the Department of Agriculture – Limpopo.*”
- 6.1.17 The details of the envisaged project were contained in an unsigned Assessment Report compiled by Mr LJ Mathebula, a Senior Agricultural Economist of the Department, which he had attached to the letter.
- 6.1.18 The Assessment Report contained a proposal for the development of “*an intensive vegetable production infrastructure in the form of a vegetable greenhouse tunnel and its production inputs...*” at the cost estimated at R950 338.20.

Informal meeting between the Complainant and former Public Protector

- 6.1.19 During 2016, the Complainant had an informal meeting with the then Public Protector, Adv Busisiwe Mkhwebane at the Polokwane office of the Public Protector. During the meeting, the Public Protector suggested that, if he so wished, he could obtain an independent opinion on how the land could be rehabilitated. The Public Protector stressed that such an opinion could only be sourced at the cost to the Complainant as the PPSA did not have the resources to pay for such an opinion. The Investigation Team further impressed upon the Complainant that such an opinion would be at his own cost.

The Mohlolo Landscape Architects Report

- 6.1.20 Around March 2017, the Complainant, following the suggestion by the former Public Protector, commissioned Mohlolo Landscape Architects CC to prepare a report, with the following as possible outcomes:
- 6.1.20.1 How the farm could be rehabilitated by the Limpopo Department of Agriculture and Rural Development; or

- 6.1.20.2 To support his quest for compensation from the Limpopo Department of Agriculture and Rural Development for damage suffered as a result of the abandoned poultry project.
- 6.1.21 The abandonment of the project resulted in the destruction of agricultural resources in the form of grazing previously used for cattle farming and the loss of potential income from the poultry project.
- 6.1.22 The Mohlolo Report, dated 29 March 2017, documented the cost of restoration of the farm to its original condition as well as the cost of restoration of the farm to be ready for an agriculturally productive activity.
- 6.1.23 The report stated that *“unfortunately, due to unresolved environmental issues and non-compliance to environmental legislation before commencing the project, the Department abandoned the project, leaving serious damage to the environment”*.
- 6.1.24 The report further stated that the resultant damage led to possible loss of income which could have been derived from cattle farming without the intervention of the Department or broiler chicken farming on completion of the construction of the chicken houses.
- 6.1.25 According to the report, the costs of the landscape restoration to the same condition that it was before the disturbance took place, was calculated to an amount of two million and eight hundred and sixty two rands and seventeen cents (R2 000 862.17) and the alternative cost of restoration of productivity was calculated to an amount of one million, seven hundred and fifty seven thousand, one hundred and twenty six rands and eighty six cents (R1 757 126 86).
- 6.1.26 The report finally recommended an award of damages to the Complainant be made based on five (5) years of successful chicken farming on the assumption that the project was completed or the reinstatement of a

productive agricultural scenario resulting in the Complainant being put in a position where he could farm productively with both stock and instant lawn, both amounting to R1 757 126 86.

6.1.27 Mohlolo Landscape Architects CC charged the Complainant an amount of fifty five thousand six hundred and forty one rand and nine cents (R55 641.09) for the report, which he paid from his pocket.

6.1.28 The Complainant provided a copy of the report to the Investigation Team, who, in turn, forwarded it to the HoD through a letter dated 21 June 2017, for consideration of the possibility of implementation of its recommendations, at the cost of the Department.

Department's version

6.1.29 On 10 April 2007, Mr MBJ Maloa, the then Head of Department (HoD) of Agriculture and Rural Development, addressed a letter to the Complainant proposing that the project be relocated to an alternative farm where the construction of the poultry house could be continued with.

6.1.30 In the letter, the HoD indicated the following:

6.1.30.1 An application was lodged by the Department with the Limpopo Department of Economic Development, Environment and Tourism (LDEDET) for exemption from compliance with the provisions of the Environmental Conservation Act, 73 of 1989, regarding the development of a poultry project. When the exemption was granted to the farm owner (the Complainant), the Department was not informed by either LDEDET or the Complainant;

6.1.30.2 Service providers for the construction of the poultry house were appointed by the Department, the ground works were completed in June 2006, and the actual construction was commissioned in October 2006;

- 6.1.30.3 A neighbouring farmer, Mr Potgieter, lodged a verbal complaint with the Department regarding the construction of the poultry house and the Complainant was notified of the complaint and was invited to a meeting with the Department and Mr Potgieter. The substance of the complaint was that Mr Potgieter felt that an Environmental Management Plan to control the smells and general pollution should be done and when he (Mr Potgieter) tried to find out from the Complainant as the project owner, the latter was allegedly *“uncooperative and arrogant”*;
- 6.1.30.4 The Complainant excused himself from the meeting, stating that his child had been hospitalised and that he did not understand why he had to account to his neighbour;
- 6.1.30.5 The meeting went ahead in the absence of the Complainant, and it transpired during the meeting that the Complainant was also not cooperating with other neighbouring farmers even when discussing developmental issues like maintenance of farm roads that were beyond the responsibility of the Polokwane Municipality;
- 6.1.30.6 A further complaint from Lunds was lodged with the Department, opposing the construction of the poultry house for fear that the broiler production would pose bio-security threats, arising from contagious and airborne diseases to their established commercial egg-production activities in proximity to the Complainant’s farm. Lunds requested that the poultry house be relocated to another site which could be at least four (4) kilometers from their farms;
- 6.1.30.7 Following the complaint, a meeting between the functionaries of the Department and Lunds was held, again, in the Complainant’s absence. At the meeting, Lunds threatened legal action against the Complainant if the construction of the poultry house continued. Lunds went on to make a

verbal commitment to assist the Department and the Complainant in the process of relocating the Complainant's business entity;

- 6.1.30.8 The Complainant was advised to look for an alternative farm, commensurate in value to his current farm which would be purchased through the Land Redistribution for Agricultural Development (LRAD) process, an option availed by the Department to assist black farmers when acquiring land, as a way of settling the dispute out of court as Lunds threatened to take the matter to the courts;
- 6.1.30.9 The Complainant informed the Department that he had identified a farm valued at R1,9 million. The Department, in turn, advised him that the value of the said farm exceeded the value of his farm, which was below R1 million, and could therefore not be acquired through the LRAD process;
- 6.1.30.10 The Department then engaged the services of local estate agents to identify a farm which was commensurate in value to the Complainant's farm;
- 6.1.30.11 Mr Mahori contacted the Complainant on 10 April 2007, to check if he could accompany the estate agents to view the available farms which were below R1 million, but the Complainant indicated that he was not available to view the farms, as he had work commitments in Johannesburg;
- 6.1.30.12 The Department understood that the Complainant had ceded the project operation and ownership to his wife, since he was no longer qualifying to be supported by government, as he had become a public servant, but surprisingly, each time stakeholders engaged his wife, she kept on deferring all correspondences to the Complainant as the farm owner;

- 6.1.30.13 In a letter dated 07 April 2007, the HoD had advised the Complainant to cede the farm to his successor or project beneficiary for the Department to be able to assist with the acquisition of a new farm;
- 6.1.30.14 The Complainant identified his wife as his successor, however, each time the functionaries of the Department would engage the wife to consider other farms, she kept deferring all correspondence to the Complainant as the (prospective) farm owner;
- 6.1.30.15 The Department had again taken the initiative to contact LDEDET to obtain exemption for Thorncastle 741 as per the application made early in 2006, however, LDEDET could not furnish the Department with a copy as most of the officials who were dealing with the applications had left LDEDET and they could not trace the files;
- 6.1.30.16 On 10 March 2007, Ms T Kekana from LDEDET contacted the Complainant after the functionaries of LDEDET had tried to visit the farm, but she was not afforded the opportunity to inform the Complainant why they had visited the farm. Instead, the Complainant uttered unpalatable words to her and allegedly seriously threatened her for having trespassed into his property. The Complainant further threatened other stakeholders not to enter his farm;
- 6.1.30.17 The above-mentioned behaviour by the Complainant had the following challenges and consequences:
- (a) Delay in the execution of the project;
 - (b) The service provider who had been contracted by the Department for the construction of the poultry house was requested to put the construction on hold;
 - (c) Further delays could result in damages claims being instituted by the provider for breach of contract;

- (d) The Department had already spent more than R300 000.00 on the work that had already been carried out on the foundation of the poultry house, development of water resources and feasibility analysis on the farm infrastructure.

6.1.30.18 The HoD finally made the following recommendations to the Complainant:

- (a) The appointed successor or project beneficiary be capacitated fully in taking binding decisions regarding the project;
- (b) The Complainant immediately stops threatening LDEDET officials and/or the Department's officials whilst they were executing their duties;
- (c) An alternative farm be identified by 18 April 2007, failing which the Department would have no alternative but to abandon the project and relocate the material and the money allocated for the project to other needy projects.

Meeting between the Complainant and the Department

6.1.31 On 01 July 2009, the Complainant arrived unannounced at the Department's offices and demanded a meeting with the functionaries of the Department.

6.1.32 Ms MJJ Kekana, the General Manager: Land and Agrarian Reform (Ms Thupana) indicated that, in the unscheduled meeting that ensued between the Complainant, the HoD and herself following the Complainant's demand, the Complainant made it clear that he no longer wanted the poultry house and that the Department should rehabilitate his land and return it to its natural condition before the foundations were dug up for the poultry house.

- 6.1.33 On even date, after the meeting, the HoD wrote a letter to the Complainant and confirmed the following resolutions agreed to in the meeting:
- 6.1.33.1 No poultry development could be done on the Complainant's farm because of bio-security risk (wind-borne pathogens) to the adjacent layer project registered by D Lunds Farms (Pty) Ltd;
- 6.1.33.2 The land that was set aside for the poultry project would be rehabilitated to its natural condition. That implied that the area that was dug up (earthworks) towards setting up of a foundation would be filled up and planted with vegetation to stabilise the soil;
- 6.1.33.3 The rehabilitation process would be concluded by the end of August 2009, to ensure readiness of the Complainant's land for the oncoming season;
- 6.1.33.4 The Department regretted any inconvenience that would have been caused to the Complainant's family.

Correspondence between the Complainant and the Department

- 6.1.34 On 09 July 2009, the HOD wrote a further letter to the Complainant, acknowledging receipt of his letter of 02 July 2009 and confirming the Complainant's change of position from the resolutions of the meeting of 01 July 2009 and noting the fact that the foundations/earthworks on his farm should not be tempered with.
- 6.1.35 The HoD further reiterated the Department's commitment to still deliver on its undertaking, provided the Complainant dealt with the objection from Lunds and also obtain an Environmental Impact Assessment (EIA) from the LDEDET.

Internal Departmental Memorandum, 01 December 2009

- 6.1.36 On 01 December 2009, Ms Thupana, penned a memorandum addressed to the Senior Manager: MEC Support to provide the background and history to the matter between the Department and the Complainant in order to enable the MEC to respond to the letter of the Complainant of 16 September 2009.
- 6.1.37 In addition to the background and history of the matter, Ms Thupana indicated that when the Complainant was initially selected by the Department as one of the farmers to benefit from the first tom-can poultry structures, he was not a civil servant, but worked for a private organisation, the African National Congress (ANC). He, however, subsequently got appointed to work in the Limpopo Department of Economic Development, Environment and Tourism (LDEDET) as part of the MEC's support staff.
- 6.1.38 By virtue of having become a civil servant, he no longer qualified for assistance from the Department to buy an alternative plot or farm through LRAD. He was accordingly advised to transfer the project to his wife, who was not working for government.
- 6.1.39 A Notice in terms of Rule 23(1) of the Public Protector Rules as amended, dated 12 January 2016, was sent by the Investigation Team to Ms RJ Maisela, the then HoD, requesting him provided a copy of the feasibility report produced by Mr Mathebula.
- 6.1.40 In a response dated 26 May 2016, the HoD indicated as follows:
- 6.1.40.1 The Complainant applied for funding for infrastructure, and a contractor was appointed for construction of a 40000 capacity poultry house which was stopped after objections from the neighbouring farmer;
- 6.1.40.2 The dispute by the neighbouring farmer resulted in the Complainant not securing the necessary Environmental Impact Assessment which was compulsory for a project of that magnitude;

- 6.1.40.3 As a result, the project could not continue and the material which had been delivered for the infrastructure was removed by the Department and moved to other projects;
- 6.1.40.4 Two officials from Polokwane Local Agriculture Office (Municipality) visited the farm in 2014 and held discussions with the Complainant regarding alternative farming enterprises on the property;
- 6.1.40.5 In January 2016, the Polokwane Local Agriculture Office received a letter from the Complainant informing the Department that the he was transferring the management of the farm to his son, Mr T Sadiki.
- 6.1.40.6 The Department had, up until that date, not received any application from the Complainant for funding of a new farming enterprise and the HoD advised that the Complainant should consider applying for funding for an alternative farming enterprise.

Department's Response to the Mohlolo Report

- 6.1.41 On 21 June 2017, the Investigation Team wrote a letter to the HoD indicating the following:
- 6.1.41.1 There had been no action on the recommendation in the Assessment Report of 03 September 2014, which recommendation was to the effect that the platform that had been constructed for the broiler house be refilled with soil to enable vegetation recovery and that the Complainant be assisted with an intensive vegetable production infrastructure in the form of two (2) vegetable greenhouse tunnels and the required production inputs for one cycle;
- 6.1.41.2 The failed construction of a broiler house had resulted in such severe damage to the area that no livestock project could be productively implemented on the farm as per the assessment report of Mr Mathebula;

- 6.1.41.3 It was common course that the broiler house project could not be proceeded with due to the absence of an EIA as well as the objection to the project by Lunds, a neighbouring egg producer;
- 6.1.41.4 The Investigation Team further furnished a copy of the Mohlolo Report as an attachment to the letter for the Department's reference and consideration of its recommendations on rehabilitation of the damaged area on the farm and/or compensation to the Complainant;
- 6.1.41.5 The Investigation Team urged the Department to give serious consideration to the report and the implementation of its recommendations in order to put the Complainant as close as possible to the position he was in prior to the failed intervention by the Department. Alternatively, support the Complainant or his successor in title with an agricultural project that could be viable on the farm.
- 6.1.42 On 05 September 2017, the Investigation Team held a meeting with the functionaries of the Department to follow up on the response to the Investigation Team's letter of 21 June 2017. The Department made an undertaking to respond in writing.
- 6.1.43 In a letter to the Investigation Team dated 07 September 2017, Ms AN Madisha, Director: Legal Services at the Department, confirmed that the meeting was held between herself and the Investigation team on 05 September 2017.
- 6.1.44 In the letter, Ms Madisha stated as follows:
- 6.1.44.1 The matter dated back to the year 2006 when the Complainant was identified as one of the farmers to benefit from a poultry project;

- 6.1.44.2 The project did not proceed due to objections raised by his adjacent farmer, Lunds, on the basis of bio-security risk;
- 6.1.44.3 Negotiations ensued between the Complainant and the Department to try and assist the Complainant due to the failed poultry project but in vain;
- 6.1.44.4 As a last resort, the Department offered to rehabilitate the Complainant's farm with the intent of restoring it to the initial position it was in before the excavation;
- 6.1.44.5 The Complainant further refused that offer as per his letter dated 02 July 2009;
- 6.1.44.6 The farm was still standing with the excavation for the failed broiler project;
- 6.1.44.7 The Department did not have any objection to the rehabilitation of the farm, and the functionaries of the Department would brief the HoD on the meeting of 05 September 2017, with the Investigation Team and revert to the Public Protector with a way forward.
- 6.1.45 In a further letter dated 15 January 2018, Ms Madisha indicated that there was a consultation with the HoD on 21 December 2017 wherein the HoD agreed, in principle, to the rehabilitation of the excavated portion of the farm in line with the mandate of the Department in terms of the Conservation of Agricultural Resources Act, 1983 (CARA).
- 6.1.46 She further indicated that the HoD proposed that the rehabilitation should be done through their Expanded Public Works Programme (EPWP) under the Department's programme known as Land Care, which was responsible for the implementation of CARA.
- 6.1.47 It was further stated in the letter that the Public Protector should note that the chicken house project could no longer be pursued as the Complainant

was, at the time, a public servant and therefore not eligible for farmer assistance from the Department in terms of its policy.

- 6.1.48 On 16 January 2018, Ms Madisha confirmed to the Investigation Team through a short message service (SMS) that the HoD agreed to the rehabilitation of the excavated portion of the land and further indicated that the rehabilitation of the land was within the Department's mandate in terms of the CARA.

Inspection in loco

- 6.1.49 On 24 January 2018, an *inspection in loco* at the Complainant's farm was jointly conducted by the Investigation Team, functionaries of the Department and the Complainant.
- 6.1.50 The inspection entailed an assessment of the condition of the area where the construction of the foundations for the poultry house had commenced and as well as an evaluation of the options available for rehabilitating the affected area.

Meeting between the Investigation Team, the Department and the Complainant

- 6.1.51 On 29 January 2019, a meeting was held by all the parties that had attended the *inspection in loco*. At the said meeting, Ms E Kekana, the Department's Director responsible for the Capricorn District presented a report titled "*Rehabilitation Options for 1.1 Hectares (HA) of Land on the Farm Doornspruit or Thorncastle 741 LS, Por. 9, Polokwane Municipality*". The report was dated 25 January 2019.
- 6.1.52 Ms E Kekana presented the following options, contained in the report, for consideration by the Complainant:

- 6.1.52.1 Restoration of the land to its original state, using gabion structures and re-vegetation to prevent soil erosion;
- 6.1.52.2 Retaining of the flat slope but loosening of the compacted area for use of the land for instant lawn production or planted pastures; and
- 6.1.52.3 Re-sloping of the land to its original slope and re-vegetation thereof.
- 6.1.53 The above options would be implemented at the cost of the Department.
- 6.1.54 The Complainant requested time to consider the options and to seek legal advice and indicated that he would revert with his choice on 07 February 2019.
- 6.1.55 On 11 February 2019, the Complainant wrote to the Department and indicated as follows:
 - 6.1.55.1 He was not choosing any option of rehabilitation as *'requested'* by the meeting;
 - 6.1.55.2 He put it to the Department to compensate him for the possible loss of income by virtue of abandoning the chicken project and request the Department to respond within fourteen (14) days after receipt of the letter;
 - 6.1.55.3 The Complainant further stated that should the Department fail to respond accordingly, he would have no option but to escalate the matter.

Correspondence between the Department and the Investigation Team

- 6.1.56 On 18 February 2019, Ms Madisha wrote a letter to the Investigation Team and stated that:

- 6.1.56.1 The Department noted that the Complainant did not welcome nor choose any of the options presented by the Department for rehabilitation of his farm;
- 6.1.56.2 The Department was willing to rehabilitate the farm and put it back to the position it was prior to the excavation, however it should be noted that the Department was not in a position to compensate him;
- 6.1.56.3 In the opinion of the functionaries of the Department, the matter had become finalised, and the Department was proceeding to close the file.

Meeting between the Investigation Team and the Complainant

- 6.1.57 Upon receipt of the letter from Ms Madisha dated 19 February 2019, the Investigation Team held a meeting with the Complainant on 28 February 2019, to present to him the response of the Department.
- 6.1.58 At the meeting, it was indicated to the Complainant that the parties (the Department and the Complainant) were not reaching any consensus and that the Investigation Team would proceed to close the matter as unresolved.
- 6.1.59 The Complainant concurred with the decision and thanked the Investigation Team for its efforts to mediate a settlement between the parties.
- 6.1.60 The Complainant then indicated that he would refer the matter to his attorneys for the possible launching of a court action against the Department.
- 6.1.61 The Investigation Team wrote an email to the Complainant on 05 March 2019, confirming the discussion of the meeting of 28 February 2019 and that the Public Protector was proceeding to close the matter.

Review Application by the Complainant

- 6.1.62 On 04 September 2024, the Complainant launched an internal review request against the 2019 decision of Limpopo office of the Public Protector to close the matter.
- 6.1.63 In his application, the Complainant stated, amongst other things, that:
- 6.1.63.1 He only became aware that his file had been closed in July 2024;
- 6.1.63.2 The Limpopo office of the Public Protector misrepresented the facts about his complaint and ignored instruction of the former Public Protector relating to the commissioning of a report regarding the damage done to the land;
- 6.1.63.3 The Limpopo office of the Public Protector did not act on the landscaping report and instead permitted the Department to present a report which was irrelevant.
- 6.1.64 On 25 February 2025, the review application was upheld in line with Rule 44(4)(c) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 (as amended) (the Rules) which states that *“the person adjudicating the review application shall consider whether the decision was properly explained to the complainant”*.

Response to the Discretionary Notice by the Complainant

- 6.1.65 Upon receipt of the outcome of the review application, the Investigation Team wrote a letter to the Complainant containing a Notice in terms of Rule 41(1) of the Rules on 17 April 2025.
- 6.1.66 The purpose of the Notice was to comply with the provisions of Rule 44(4)(c) and Rule 41(1) of the Rules and to afford the Complainant the

opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification.

- 6.1.67 The Investigation Team indicated the following in the Rule 41(1) Notice:
- 6.1.67.1 The review application was approved on the basis that the closure of the matter in 2019 was not done in accordance with the provisions of Rule 41(1) of the Public Protector Rules in that the Complainant was not furnished with a closing report provided for in Rule 40(b) and was not afforded an opportunity to make representations in connection with the intended closure of the complaint.
- 6.1.67.2 The Complainant made representation to the Public Protector in his review application that *“he only became aware that his file had been closed in July 2024”*. However, evidence on the file indicated that the Investigation Team held a meeting with the Complainant on 28 February 2019.
- 6.1.67.3 At that meeting, the response received by the Investigation Team from the Limpopo Department of Agriculture dated 18 February 2019, following a meeting held between the Complainant, the Investigation Team and the functionaries of the Department on 29 January 2019.
- 6.1.67.4 In the aforesaid meeting of 29 January 2019, the officials of the Department made an undertaking that *“the Department was willing to rehabilitate the farm and to put it back to the position it was prior to the excavation”*. However, the Complainant had subsequently indicated that he did not welcome, nor did he choose any of the options put forward by the Department for the rehabilitation of the farm.
- 6.1.67.5 In the meeting between the Complainant and the Investigation Team held on 28 February 2019, it was indicated to the Complainant that the Department was required to adhere to putting his farm back as close as

possible to the condition it was in before the abandoned construction of the tom-can poultry house was initiated. With the aim of meeting the said legal standard, the Department presented a report detailing the various options available to restore the farm to its original condition, which restoration would be at its own cost.

- 6.1.67.6 In his review application, the Complainant had stated that the Limpopo Office of Public Protector misrepresented the facts about his complaint and ignored the instruction of the former Public Protector relating to the commissioning of a report regarding damage to the land and that the Office did not act on the landscaping report and instead permitted the Department to present a report which was irrelevant. However, the assertion that the report was not submitted to the Department is incorrect.
- 6.1.67.7 The Department duly considered the report and in response thereto, generated its own report with options on how it could rehabilitate the land and restore it to its original condition.
- 6.1.67.8 Throughout the history of the matter, the Department was, at all material times, willing to rectify mishaps that were caused by the objections raised against the implementation of the chicken house project on the Complainant's farm.
- 6.1.67.9 The following interventions were proposed and availed to the Complainant by the Department in their attempt to resolve the matter:
- (a) In 2007, the Department advised the Complainant to look for an alternative farm of equivalent value to his farm where the chicken house project could be relocated. The Department offered to finance the acquisition of such a farm through its LRAD process of assisting local emerging farmers;

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- (b) In 2009, after a meeting between the Complainant and the Department held on 01 July 2009, the Department offered to rehabilitate the land to its natural condition by filling the dug-up land and planting vegetation to stabilize the soil. The Complainant agreed to the offer, however, on 02 July 2009, he wrote to the Department and indicated that he was changing his position on the agreement and directed that the foundation on his farm should be left as it was. He further indicated that the Department should desist from engaging in any further discussions on the matter;
- (c) Despite the Complainant declaring that the Department should desist from any further discussions on the matter, on 09 July 2009, the Department further wrote to the Complainant and reiterated its commitment to deliver on its undertaking to continue with the implementation of the chicken project, provided he dealt with the objection from Lunds and obtained an Environmental Impact Assessment (EIA) from the Department of Economic Development, Environment and Tourism (DEDET);
- (d) In 2014, the Department proposed that the Complainant be assisted with an intensive vegetable production infrastructure in the form of a vegetable greenhouse tunnel and its production inputs at a cost to the Department, of approximately nine hundred and fifty thousand rands (R950 000.00);
- (e) In January 2018, following an inspection in loco and a meeting between the Investigation Team, functionaries of the Department and the Complainant, the Department further indicated its willingness to rehabilitate the excavated portion of the land;
- (f) In January 2019, in response to the proposals in the Mohlolo Landscape Architects Report, the Department produced its own report providing three rehabilitation options for the re-sloping of the

compacted land. However, the Complainant indicated that he did not welcome or choose any of the options put forward by the Department. In retort, the Department further indicated that it was not in a position to compensate him in the form of money.

- 6.1.67.10 In a meeting between the Complainant and the Investigation Team held on 28 February 2019, it was indicated to the Complainant that the standard that the Public Protector was required to hold the Department to was that of putting the land as close as possible, back to the condition it was prior to the excavation and compaction.
- 6.1.67.11 In the said meeting, it was further indicated to the Complainant that, since he was not willing to accept any of the options offered by the Department to put him back in the position he was before the implementation of the chicken house project, a standard to which the Public Protector was legally empowered to hold the Department to, the Public Protector could not take the matter any further.
- 6.1.67.12 The Public Protector was not in a position to find the conduct of the officials of the Department, in offering to rehabilitate the land and/or to avail alternative proposals to resolve the matter, to be improper.
- 6.1.67.13 To that end, the Investigation Team wrote an email to the Complainant on 05 March 2019, stating as follows:

“We refer to the above matter and to the meeting between yourself and the writer on 28 February 2019.

We hereby confirm that during the aforementioned meeting, we discussed with yourself the response furnished by the Department of Agriculture to your letter addressed to them dated 11 February 2019. The response indicated that “you do not welcome nor choose any of the options put forward by the Department for the rehabilitation of the farm Thorncastle.” The response further indicated and reiterated that “the Department was willing to rehabilitate the farm and to put it back to the

position it was prior the excavation and that the Department is not in a position to compensate you.”

During the meeting of 28 February 2019, it was indicated to you that since the parties (i.e. yourself and the Department) are not reaching any consensus, we shall proceed to close the matter. You agreed to the decision, thanked the Public Protector South Africa for its effort in attempting to mediate a settlement on the matter, and indicated that you will refer the matter to your attorneys for a possible launching of a court action against the Department.

We hereby confirm that we have closed our file herein.”

Complainant’s Response to the Discretionary Notice

- 6.1.68 On 22 April 2025, a response to the discretionary notice was received from the Complainant. In the response, he indicated the following:
- 6.1.68.1 He objected to the rehabilitation of his land because the Department of Agriculture's proposals were not based on the Mohlolo Landscape Architects Report, which he termed “the Public Protector’s Report”. He, instead, insists on an award for damage suffered based on the recommendations of the Mohlolo Report as compensation for the damage to his farm caused by the abandoned chicken house project;
 - 6.1.68.2 Even though the Department of Agriculture proposal was unnecessary and irrelevant, they did not entertain Scenario 2 - (Completion of Chicken Broiler project by the Department of Agriculture) of the Mohlolo Report;
 - 6.1.68.3 Rehabilitation was one of the options which he didn't choose and even then, he was not choosing that option. He wants monetary compensation for the damage to his land as per the recommendations of the Mohlolo Report;

- 6.1.68.4 It was not true that the Investigation Team presented the Mohlolo Report to the Department for consideration. In the meeting of 29 January 2019, he inquired about the Mohlolo Report and Ms Madisha from the Department of Agriculture said they had seen the Mohlolo Landscape Architects Report and according to them it was not important, and she brushed it aside. So, it is not correct that they considered the Mohlolo Report;
- 6.1.68.5 The Mohlolo Report was a Public Protector report, and it addressed rehabilitation of the land amongst other things and that there was no need to allow the Department of Agriculture to present their own report for the rehabilitation of the land;
- 6.1.68.6 The issue of 01 July 2009 was a misrepresentation of facts. On that day he met Mr Bigman Maloa, the then Head of Department of Agriculture and Rural Development. He met him at the Premier's Office of the Limpopo Government. Mr Maloa said he would like to rehabilitate the land and the Complainant agreed. Afterwards he realised that the manner in which Mr Maloa presented his proposal to address the *problem "didn't follow procedure."* The reason was that his proposal did not have options as it had eventually been confirmed by Mohlolo Landscape Architects Report, which addressed the loss of income and reward for the damage of the land or rehabilitation of the land;
- 6.1.68.7 On the Environmental Impact Assessment (EIA), he went to the Limpopo Department of Economic Development, Environment and Tourism (LDEDET) to inquire about the EIA Report on 16 August 2009. He was advised by an official at LDEDET to approach the Department of Agriculture and obtain a certain form so that LDEDET could have permission to embark on the process of developing an EIA. When he asked Mr Mahori, a functionary of the Department, for the form, Mr Mahori insulted him and refused to give him the form;

- 6.1.68.8 With regard to the vegetables tunnel, Mr Mathebula, a functionary of the Department at the time, visited him at his farm with the proposal and he accepted it with both hands. Instead, Mr Mathebula left, and he never heard from him again;
- 6.1.68.9 Furthermore, another functionary from the Department came up with a proposal for an egg-laying chicken project, which agreed on, but he too left and he never heard from him again; and
- 6.1.68.10 The Department was not supposed to be allowed to insist on rehabilitating the land because during the time (2019) the Mohlolo Report had already been commissioned. The Public Protector should have implemented the Mohlolo Report, accordingly, not allowing the Department to insist on rehabilitating the land.
- 6.1.69 The Complainant insisted that the Mohlolo Report was commissioned by the Public Protector and was, therefore, a Public Protector report;
- 6.1.70 He further questioned why the Public Protector allowed the Department to present an “*unnecessary and irrelevant Report*”, when there was already the Mohlolo Report, which clearly addressed the complaint;
- 6.1.71 He insisted that the standard that the Public Protector was and still is required to hold the Department to was and still is that of implementing the Mohlolo Report, together with its recommendations in full and not allowing the Department to come up with an unnecessary and irrelevant report.
- 6.1.72 He asserted that the Department had no right to offer anything to him but should have instead implemented the Mohlolo Report and that should have been the recommendation of the Public Protector. He maintained that if the Department failed or disagreed with the recommendation, it should have taken the Mohlolo Report together with the Public Protector

recommendation(s) for legal review. The Public Protector should not have allowed the Department to come up with an unnecessary and irrelevant report.

6.1.73 He insisted that the conduct of the Department, in offering to rehabilitate that land and availing alternative proposals to resolve the matter was improper, because the rehabilitation of the land was an alternative option to a damages reward for the damage to his farm.

6.1.74 He indicated that the email sent to him by the Investigation Team was unfortunate because it should not have been sent to him, instead what should have been sent to him was the report to close the file.

6.1.75 He further insisted that the file would only be closed after the Mohlolo Report had been fully implemented as it was the Public Protector 's Report and the Public Protector could not ignore her own report or manipulate it.

6.1.76 He averred that it was strange for Public Protector to order him to pay for the commissioning of the Mohlolo Report for which he paid R56 000.00 He claimed that the Public Protector ordered him to conduct her investigation.

6.1.77 He then put it to the Investigation Team to pay back his R56 000.00, because he did not commission the Mohlolo Report and instead it was the Public Protector who commissioned it. He argued that he should not pay for the Public Protector's investigation.

Further correspondence with the Complainant

6.1.78 On 21 May 2025, the Investigation Team responded to the Complainant's above submission as follows:

- 6.1.78.1 Contrary to his assertion, the Mohlolo Landscape Architects Report (Mohlolo Report) was not “the Public Protector Report”. The Mohlolo Report was commissioned and paid for by him and submitted to the Public Protector. This was after the Public Protector had suggested that an independent opinion could possibly aid the process of resolution of his complaint, and the Investigation Team had indicated to him that, should he require such an opinion, he could procure it at his own cost, and it would be presented to the Department for consideration;
- 6.1.78.2 The Public Protector, in her operation, does not require complainants to source opinions and pay for them and subsequently take ownership thereof. Any opinion procured in such a way remains the property of the person who procured it and the Public Protector is at liberty of using it if it assists in the resolution of the matter before her. At no point does the Public Protector take ownership of any opinion, especially where she has not had any hand in the commissioning or crafting thereof;
- 6.1.78.3 The proprietorship of the Mohlolo Report remained with the Mohlolo Landscape Architects CC and himself and did not carry the endorsement or approval of the Public Protector. It remained an opinion piece that could assist the Public Protector during her investigation;
- 6.1.78.4 It was therefore never mandatory for the Department to adopt and implement what the report recommended. Even when the Investigator provided a copy of the report to the Department, the covering letter clearly indicated that it was “*for their reference and consideration*” and further indicated that the report provided an opinion of what it would take to restore the farm, as close as possible, to the condition it was in before the failed chicken project;
- 6.1.78.5 Contrary to the Complainant’s contention, the proposal contained in the report by the Department was not unnecessary and irrelevant but was

important and necessary for the Department to come up with the most cost-effective way to return the farm to its original status;

- 6.1.78.6 The Department was willing to rectify the damage in the most cost-effective way possible and not to be dictated upon by the Complainant as to what his preferences were. The Investigation Team reiterated that the Mohlolo Report had no binding effect on the Department and the Public Protector;
- 6.1.78.7 Contrary to his assertion that the Investigation Team did not present the Mohlolo Report to the Department for consideration, the said report was hand-delivered by the Investigation Team to the Department on 22 June 2017;
- 6.1.78.8 Further, in his submission, the Complainant acknowledged that *“Ms Madisha from the Department of Agriculture said they had seen the Mohlolo Landscape Architects Report”*;
- 6.1.78.9 It was reiterated that the Mohlolo report was (and still is) not a report of the Public Protector and thus it did not have any binding effect on the Department as compared to a Public Protector Formal Report. The Department remained at liberty to determine the best possible way for them to restore the land to its original condition;
- 6.1.78.10 The Investigation Team indicated that the Department had provided evidence and indication that it was ready to procure, at its own cost, an alternative farm for the Complainant where the tomcan chicken project could be implemented without any impediments, on condition that the alternative land to be procured had to be of the same value or at the same market-related price as the Complainant’s farm, which, at the time was valued at below one million rands (R1 000 000.00). There was no obligation on the Department to procure a more expensive farm than what would be paid for his farm in an open market. The Department even went to the extent of identifying farms in the price range of his farm,

but he indicated that he was, for his own reasons, not interested in acquiring any of those farms.

- 6.1.78.11 All that was required at the time was for the Department to restore the land to its original condition and, in his own words, the Department indicated its readiness and commitment to do that;
- 6.1.78.12 At a meeting with the then HOD, Mr Maloa on 01 July 2009, he agreed to the rehabilitation of the land, but on 02 July 2009, he wrote to Mr Maloa and indicated that he had changed his position on the matter and directed that the foundations on his farm should be left as they were. He further emphasized that the option of rehabilitating the land was rejected by him and that the Department had to stop deliberating on the matter with him and he would find a way to resolve the matter. The Mohlolo report was not in existence at the time and the options he referred to could not have been considered at the time. No more was required of the Department than to restore the land to its original condition;
- 6.1.78.13 On 11 February 2019, the Complainant wrote to the Department and to the Public Protector and indicated that, based on the discussion in the meeting about the rehabilitation of his land held at the Public Protector's office on 29 January 2019, he was not choosing any option of rehabilitation as provided for in the report of the Department. He, instead, indicated that he put it to the Department to compensate him for the possible loss of income by virtue of abandoning the chicken project;
- 6.1.78.14 The Department has accepted responsibility for the failed poultry house project and the resultant damage to the compacted land. Under the circumstances, in law and in terms of the standards to which the Public Protector was required to hold the Department, the Department was required to restore the land as close as possible to its original condition;

- 6.1.78.15 The Department had indicated, at all material times, its readiness and commitment to live up to that standard, but the Complainant had, on numerous occasions, indicated his opposition to rehabilitation of his land as well as other alternative solutions offered by the Department;
- 6.1.78.16 The legal duty required by the Department under those circumstances was to restore the land, as close as possible, to its original condition. Any additional benefit would have been at the liberty of the Department and not mandatory. There was neither a legal requirement nor compelling reasons for the Public Protector to implement the Mohlolo report;
- 6.1.78.17 The Mohlolo report was never a Public Protector report as indicated above. It was never commissioned by the Public Protector. There was, therefore, nothing compelling the Department to implement its recommendations. What was legally required of the Department was only to rehabilitate the land;
- 6.1.78.18 The assertion by the Complainant that the standard that the Public Protector was required to hold the Department to was that of implementing the Mohlolo Report together with its recommendations in full and not allowing the Department to come up with an unnecessary and irrelevant report was his opinion and the Investigation Team held a different view regarding the standard to which the Department should be held to under the circumstances.
- 6.1.78.19 The legal duty required of the Department was to restore the land to its original condition. Compensation was secondary and could only be insisted upon under circumstances where rehabilitation of the land was not possible. It had been amply demonstrated that rehabilitation was feasible.

- 6.1.78.20 The Investigation Team reiterated that the Mohlolo report was not a Public Protector Report and there was no compelling requirement for anyone to implement its recommendations.
- 6.1.78.21 Every respondent in a Public Protector investigation is provided with the opportunity to respond to any allegations raised in the complaint and subsequent findings made following the investigation. The process also allows the respondent the opportunity to address the Public Protector on any proposed remedial action before a report is issued.
- 6.1.78.22 The Investigation Team reiterated that it was suggested to the Complainant that if he was of the opinion that it would help the investigation, he could procure an opinion that would be considered during the course of the investigation. The investigation Team had indicated to him that any costs associated with obtaining such an opinion would be for his pocket. Neither the Public Protector nor the Investigation Team had any kind of contact with Mohlolo Landscape Architects CC. There was never any undertaking given that the Public Protector would bear the costs of any opinion obtained. All dealings with Mohlolo Landscape Architects CC were with the Complainant himself.
- 6.1.78.23 The Mohlolo report was provided to the Department for consideration on the basis of the knowledge and experience of its functionaries on matters relating to the contents of the said report and that ultimately, it would be the Department which would bear the costs of putting the Complainant's land back to the condition it was in before the failed implementation of the tomcan chicken project.
- 6.1.78.24 The Investigation Team informed the Complainant that the Public Protector was in the process of interacting with the Department to find out if there still would be a possibility of rehabilitating the farm or providing any other form of assistance to his farming endeavours in

terms of their mandate to come up with programs to support farmers in the province.

Meeting with the Department

- 6.1.79 On 27 May 2025, the Investigation Team held a meeting with Ms Madisha and Ms Kekana, functionaries of the Department, with the aim of determining whether there were still any avenues available to assist the Complainant as a farmer.
- 6.1.80 At the meeting the functionaries indicated that the Complainant had, at every turn, frustrated the efforts by the Department to rectify the situation occasioned by the abandoned project. They further indicated that the Complainant had made several attempts to sue the Department for damages resulting from the damage to his farm, but none of those efforts had come to fruition as the Department was able to indicate that at all material times, it was ready and willing to rectify the situation and it was the Complainant who impeded any and all efforts to do so.
- 6.1.81 In addition, the functionaries indicated that the Department was still in a position to render assistance to the Complainant like it would do with any other farmer in the province who approached it for assistance with his or her farming endeavours. However, no special treatment or dispensation for such assistance would be afforded to the Complainant. He would be treated like any other farmer who approaches the Department for assistance.
- 6.1.82 Such assistance would be provided in line with the provisions of the Farmer Support Policy of the Department which came into effect on 12 September 2024.

Analysis

- 6.1.83 The evidence before the Public Protector indicates that though both the Department and the Complainant agreed to implement the tomcan poultry project, an Environmental Impact Assessment (EIA) Authorisation was not granted by LDEDET, this was despite the fact that the project was approved and preliminary construction having been started.
- 6.1.84 The project could not proceed for lack of EIA authorisation and flowing from such failure, the Department made various proposals to resolve the problem and continue with the implementation of the project.
- 6.1.85 Further evidence shows that the Complainant either objected to the proposals tabled by the Department or neglected and/or refused to carry out his obligations in relation to the proposed solutions. At one point in 2009, he wrote to the Department indicating that the latter should stop engaging him in further deliberations on the matter.
- 6.1.86 This shows that, despite the Department having accepted responsibility for the aborted project, the Complainant deliberately frustrated any efforts that were aimed at salvaging the said project and/or rehabilitating the portion of the farm which had been damaged as a result of the earthworks that had been carried out.
- 6.1.87 Evidence before the Public Protector shows that the Department went out of its way in an attempt to either salvage the project or rehabilitate the land but all efforts did not come to fruition because the Complainant was not cooperative or rejected the Department's proposals.
- 6.1.88 Further evidence indicates that the Mohlolo report provided various recommendations but since 2018, the Complainant has insisted on monetary compensation which the Department rejected by providing alternatives to monetary compensation.

Conclusion

- 6.1.89 Accordingly, no evidence could be found to show that the functionaries of the Limpopo Department of Agriculture and Rural Development failed and/or neglected to rehabilitate a portion of the Complainant's farm which was damaged because of the abandoned construction of the tomcan poultry house project.
- 6.1.90 The Department accepted responsibility for the abandoned project and its functionaries took several measures to have the damaged portion rehabilitated and further made alternative proposals for relocation of the project or implementation of other farming endeavours. Instead, it was the Complainant who impeded the efforts by the Department to rehabilitate the damaged portion of the farm and rejected alternative proposals made resolve the problem.

7. FINDINGS

Having regard to the evidence and the regulatory framework determining the standards that the functionaries of the Department should have complied with and the impact thereof on good administration, the Public Protector makes the following findings:

- 7.1 **Whether the functionaries of the Limpopo Department of Agriculture and Rural Development failed and/or neglected to rehabilitate a portion of the Complainant's farm which was damaged because of the abandoned construction of the tomcan poultry house project, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms of section 6(4) (a) (i) of the Public Protector Act, 1994**
- 7.1.1 The allegation that the functionaries of the Limpopo Department of Agriculture and Rural Development failed and/or neglected to rehabilitate a portion of the Complainant's farm which was damaged because of the

abandoned construction of the tomcan poultry house project, is not substantiated.

7.1.2 The Department accepted responsibility for the aborted project and demonstrated its willingness to rectify the situation, but all attempts at doing so were rejected, impeded and/or frustrated by the Complainant.

7.1.4 The conduct of functionaries of the Department, in the circumstances, does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(5)(a) of the Public Protector Act.

8. CONCLUSION

8.1 The Public Protector considers this matter finalised in terms of section 8(1) of the Public Protector Act, read with Rule 40(b) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA

DATE: 31 DECEMBER 2025

Assisted by:

Mr Bernard Mahloko: Senior Investigator, and

Mr Mashaba Matimolane: Limpopo Provincial Representative