

**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, 1994**



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**CLOSING REPORT INTO AN INVESTIGATION OF ALLEGATIONS OF IMPROPER
CONDUCT AND MALADMINISTRATION CONCERNING THE PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA, MR MATAMELA CYRIL RAMAPHOSA'S
PERSONAL INVITATION OF BALWIN PROPERTIES (PTY) LTD TO BECOME PART
OF THE MOOIKLOOF MEGA RESIDENTIAL CITY: GAUTENG IN CONTRAVENTION
OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999 AND THE SUPPLY CHAIN
MANAGEMENT PROCESSES**

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LIST OF ACRONYMS / ABBREVIATIONS

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
ATM	African Transformation Movement (ATM)
BEE	Black Economic Empowerment
BBBEE Act	Black Economic Empowerment Act, 2003
CEO	Chief Executive Officer
Constitution	Constitution of the Republic of South Africa, 1996
DPWI	Department of Public Works and Infrastructure
EXCO	Executive Committee
IDA	Infrastructure Development Act, 2014
MayCo	Mayoral Committee
Mooikloof	Mooikloof Mega Residential City: Gauteng
MP	Member of Parliament
PFMA	Public Finance Management Act, 1999
PIC	Presidential Infrastructure Commission
PICC	Presidential Infrastructure Coordinating Council
PPP	Public Private Partnership
Public Protector Act	Protector Act, 1994, as amended
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended
SCM	Supply Chain Management
SIDSSA	Sustainable Infrastructure Development Symposium South Africa
SIP	Strategic Integrated Project
SOEs	State Owned Entities
SUD	Strategic Urban Development

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, 1994 (Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations that the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa (the President), personally invited Balwin Properties (Pty) Ltd (Balwin Properties) to become part of the Mooikloof Mega Residential City: Gauteng (Mooikloof) in contravention of the Public Finance Management Act, 1999 (PFMA) and the supply chain management (SCM) processes.
- (iii) The investigation originates from a complaint lodged with the Public Protector by the Chief Whip of the African Transformation Movement (ATM), Ms Thandiswa Marawu, MP (the Complainant) on 16 February 2021.
- (iv) In the main, the Complainant alleged that:
 - (a) It is common knowledge that the President was on various roadshows, conferences and seminars calling on business to invest in South Africa and partner with the government in this regard;
 - (b) All along the ATM was under the impression that Mooikloof was part of the aforesaid general call by the President until they stumbled upon a Newzroom clip where the Chief Executive Officer (CEO) of Balwin Properties, Mr Stephen Brookes (Mr Brookes), was relating how he received a call directly from the President inviting him to become part of the project;

- (c) Following that personal call, it would appear that the government machinery, under Dr Kgosisentso Ramokgopa (Dr Ramokgopa), was then unleashed to operationalise everything including integrating Balwin Properties into the Mooikloof project;
 - (d) The ATM is very concerned about the potential maladministration relating to the flouting of the PFMA, particularly the supply chain processes when only one supplier was engaged; and
 - (e) Another concern was whether Balwin Properties complied with the Black Economic Empowerment (BEE) requirements envisaged in the Broad-Based Black Economic Empowerment Act, 2003 (BBBEE Act), that all government suppliers are supposed to comply with.
- (v) Based on the analysis of the complaint, the following issues were considered and investigated:
- (a) Whether the President of the Republic of South Africa, Mr MC Ramaphosa's, invitation of Balwin Properties (Pty) Ltd to become part of the Mooikloof Mega Residential City: Gauteng, was in contravention of the Public Finance Management Act, 1999 and the supply chain management processes, and whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.

- (vii) A notice in terms of Rule 41(1) of the Public Protector Rules was issued to the Complainant on 22 December 2023 and 16 January 2024 respectively. However, no response was received from the Complainant with regard thereto.
- (viii) Having regard to the evidence and regulatory framework determining the standards that the Municipality should have complied with, the following findings are made:
- (a) Whether the President of the Republic of South Africa, Mr MC Ramaphosa's, invitation of Balwin Properties (Pty) Ltd to become part of the Mooikloof Mega Residential City: Gauteng, was in contravention of the Public Finance Management Act, 1999 and the supply chain management processes, if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994
- (aa) The allegations that the President's invitation of Balwin Properties to become part of the Mooikloof was in contravention of the PFMA and supply chain management processes, is not substantiated.
- (bb) The Public Protector found that Mooikloof is a privately owned and privately developed residential project by Balwin Properties.
- (cc) The Public Protector found that Mooikloof was designated as a SIP and listed as part of the eighteen (18) other sub-projects under Human Settlements in terms of Gazette Number 43547 of 2020, in accordance with 7(3) of the IDA which provides that a strategic integrated project may private infrastructure, provided it is with the consent of the owner.

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- (dd) Accordingly, the conduct of the President/the Presidency did not constitute procurement as envisaged in section 217 of the Constitution and section 38 of the PFMA.
- (ee) Therefore, the conduct of the President and/or the Presidency does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994

1. INTRODUCTION

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

1.2 The Report is submitted in terms of sections 8(1), read with section 8(3) of the Public Protector Act and Rule 40(b) of Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended (the Public Protector Rules), which empowers the Public Protector to make known the findings of an investigation, to affected parties, including the Complainant, for such persons to note the outcome of the investigation.

1.3 The report is provided to the following persons:

1.3.1 The Head of Infrastructure in the Presidency, Dr Alec Moemi; and

1.3.2 The Chief Whip of the African Transformation Movement, Ms Thandiswa Marawu, MP (the Complainant).

1.4 This matter concerns an investigation into allegations that the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa (the President), personally invited Balwin Properties (Pty) Ltd (Balwin Properties) to become part of the Mooikloof Mega Residential City: Gauteng (Mooikloof) in contravention of the Public Finance Management Act, 1999 (PFMA) and the supply chain management (SCM) processes.

2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged by the Chief Whip of the African Transformation Movement (ATM), Ms Thandiswa Marawu, MP (the

Complainant) on 16 February 2021. In her complaint, the Complainant alleged *inter alia* that:

- 2.1.1 It is common knowledge that the President was on various roadshows, conferences and seminars calling on business to invest in South Africa and partner with the government in this regard;
- 2.1.2 All along the ATM was under the impression that Mooikloof was part of the aforesaid general call by the President until they stumbled upon a Newzroom clip where the Chief Executive Officer (CEO) of Balwin Properties, Mr Stephen Brookes (Mr Brookes), was relating how he received a call directly from the President inviting him to become part of the project;
- 2.1.3 Following that personal call, it would appear that the government machinery, under Dr Kgosientso Ramokgopa (Dr Ramokgopa), was then unleashed to operationalise everything including integrating Balwin Properties into the Mooikloof project;
- 2.1.4 The ATM is very concerned about the potential maladministration relating to the flouting of the PFMA, particularly the supply chain processes when only one supplier was engaged; and
- 2.1.5 Another concern was whether Balwin Properties complied with the Black Economic Empowerment (BEE) requirements envisaged in the Broad-Based Black Economic Empowerment Act, 2003 (BBBEE Act), that all government suppliers are supposed to comply with.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2 Section 182(1) of the Constitution provides that:

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

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action.”

3.3 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states amongst others that, the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 The Presidency is an organ of state in terms of section 239 of the Constitution and therefore the Public Protector is competent to investigate the affairs of the Presidency, as envisaged in section 182(1) of the Constitution, read with

section 6(4) of the Public Protector Act. The jurisdiction of the Public Protector was not contested in this instance.

4. ISSUE IDENTIFIED FOR INVESTIGATION

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

4.1.1 Whether the President of the Republic of South Africa, Mr MC Ramaphosa's, invitation of Balwin Properties (Pty) Ltd to become part of the Mooikloof Mega Residential City: Gauteng, was in contravention of the Public Finance Management Act, 1999 and the supply chain management processes, and whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation was conducted in terms of section 182 of the Constitution and 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 documentation between the Public Protector, the Complainant, the Presidency, the former Minister of Public Works and Infrastructure, Ms Patricia de Lille, MP, City of Tshwane Metropolitan Municipality and Balwin Properties.

5.2.2 All relevant documents and correspondence were obtained and analysed and relevant laws, policies and related prescripts were considered and applied throughout the investigation.

5.2.3 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 amounts to maladministration, abuse of power or other improper conduct?
- (d) In the event of a violation, what action should be taken?

5.2.4 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.

- 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 President and/or the Presidency was inconsistent with the applicable prescripts.
- 5.3 **Key sources of information**
- 5.3.1 **Correspondence and documents**
- 5.3.2 Copy of Government Gazette No.812 on Presidential Infrastructure Coordinating Commission Council: Strategic Integrated Projects, dated 24 July 2020;
- 5.3.3 Complaint letter from the Complainant, dated 15 February 2021;
- 5.3.4 Document request letter of the Public Protector to the former Head of Investment & Infrastructure, Dr Ramakgopa, dated 28 April 2021;
- 5.3.5 Letter from Dr Ramokgopa to the Public Protector, dated 21 May 2021;
- 5.3.6 Document request letter of the Public Protector to the then Acting City Manager, Ms Mmaseabata Mutlaneng, dated 25 June 2021;
- 5.3.7 Document request letter of the Public Protector to the then Minister of Public Works and Infrastructure; Ms Patricia de Lille, MP (Ms de Lille), dated 19 July 2021;
- 5.3.8 Undated letter from City of Tshwane, Mr P A Swanepoel, received through an email dated 06 August 2021;
- 5.3.9 Letter from Ms de Lille to Public Protector, dated 12 August 2021; and
- 5.3.10 Letter from Head of Legal, Balwin Properties, Mr Raaziq Ismail, dated 25 August 2021.

5.4 **Legislation and other prescripts**

- 5.4.1 Constitution of the Republic of South Africa, 1996;
- 5.4.2 Infrastructure Development Act, 2014;
- 5.4.3 Public Protector Act 1994; and
- 5.4.4 Public Finance Management Act 1999.

5.5 **Notice issued in terms of Rule 41(1) of the Public Protector Rules**

- 5.5.1 A notice in terms of Rule 41(1) of the Public Protector Rules was issued to the Complainant on 22 December 2023 and 16 January 2024 respectively.

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

- 6.1 **Whether the President of the Republic of South Africa, Mr MC Ramaphosa's, invitation of Balwin Properties (Pty) Ltd to become part of the Mooikloof Mega Residential City: Gauteng, was in contravention of the Public Finance Management Act, 1999 and the supply chain management processes, if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994**

Common cause

- 6.1.1 The President contacted Mr Brookes to establish if Balwin Properties would like to avail Mooikloof as part of the Strategic Integrated Projects (SIP), due to

his vast understanding of the residential property sector as well as Balwin Properties involvement in the Mooikloof area.

- 6.1.2 On 24 July 2020, the Presidential Infrastructure Coordinating Commission Council (Presidential Infrastructure Commission) published Government Gazette No. 43547, in which the Presidential Infrastructure Commission (PIC) designated Mooikloof as a SIP, amongst other housing projects, in accordance with section 8(1)(a) read with section 7(1) of the Infrastructure Development Act, 2014¹(IDA).

Issue in dispute

- 6.1.3 The issue for the Public Protector's determination is whether the President's invitation of Balwin Properties to become part of the Mooikloof Development was in accordance with the provisions of the PFMA and supply chain management processes.

The Complainant's version

- 6.1.4 The Complainant stated that the ATM was under the impression that Mooikloof Development was part of the general call by the President to invest in the country, until it stumbled upon a Newzroom clip, where Mr Brookes indicated that he received a call directly from the President inviting him to become part of the Mooikloof project.

- 6.1.5 The Complainant questioned, *inter alia*, whether:

- 6.1.5.1 The personal call made by the President to Mr Brookes was not in contravention of the provisions of the PFMA and the supply chain processes.

¹ Act. No. 23 of 2014, as amended.

6.1.5.2 The call by the President to Mr Brookes did not unduly disadvantage other suppliers and competitors of Balwin Properties.

6.1.6 Whether Balwin Properties complied with the BBBEE requirements.

Response from the former Head: Investment & Infrastructure Office in the Presidency, Dr K Ramokgopa

6.1.7 On 28 April 2021, the Public Protector raised the allegations with Dr K Ramokgopa (Dr Ramokgopa), the former Head of the Investment & Infrastructure Office in the Presidency.

6.1.8 Dr Ramokgopa responded to the Public Protector through a letter dated 21 May 2021, stating that:

6.1.8.1 Mooikloof is a privately owned and privately developed residential project by Balwin Properties. Furthermore, Balwin Properties was neither appointed by the government nor a service provider of government;

6.1.8.2 According to the National Treasury: “a PPP is defined as a contract between a public-sector institution and a private party, where the private party performs a function that is usually provided by the public sector and/or uses state property in terms of the PPP agreement”. To this end, Mooikloof is not a Public Private Partnership (PPP) as described and prescribed by the South African legislation;

6.1.8.3 Mooikloof was one of two hundred and seventy-six (276) projects submitted post the soft launch of the Sustainable Infrastructure Development Symposium South Africa (SIDSSA) on 18 February 2020, for consideration as part of the pipeline to be unveiled at the inaugural SIDSSA in June 2020. The projects considered ahead of the SIDSSA were from both the public and the private

sector and in post-feasibility stage. Further that, the criteria developed did not exclude participation from the private sector. The evaluation and appraisal process of the infrastructure projects were undertaken by a team referred to as the Human Settlements Technical Working Group, which included representatives from State Owned Entities (SOEs), relevant government Departments and Development Finance Institutions;

- 6.1.8.4 Several Human Settlements Projects, including Mooikloof, were subsequently gazetted under SIP 24. Mooikloof was included as a SIP in accordance with section 7(3) of the Infrastructure Development Act, 2014, which provides that: *“A strategic integrated project may include infrastructure that is not public infrastructure, provided it is with the consent of the owner”*;
- 6.1.8.5 The IDA provides for the gazetting of the SIPs with the view to unblocking some of the blockages that these projects may encounter, including mobilisation of funding, provision of technical capacity and assistance with permits and other authorisations required to progress these catalytic projects. In terms of Human Settlements, projects that are gazetted, some are severely constrained as a result of challenges in the implementation of Bulk Infrastructure by local municipalities (incl. for example, the Lufhereng Housing Development in Gauteng); and
- 6.1.8.6 He was assigned the responsibility of chairing the Strategic Integrated Projects Steering Committee as per the IDA provisions. The committee supports the work of the Presidential Infrastructure Coordinating Council (PICC) Secretariat, PICC Management Committee and PICC Council by, *inter alia*, resolving blockages and regulatory hurdles to unblock key infrastructure projects, thus increasing the rate and quality of infrastructure investments in South Africa. These efforts form part of the South African Economic Reconstruction and Recovery Plan.

- 6.1.8.7 Dr Ramokgopa shared a process flow of the workings of the Technical Working Group on Human Settlements and the gazetting of SIPs as follows:
- (a) Between December 2019 and 29 February 2020, the SIDS was launched and Stakeholder Investments discussions, conceptualisation and planning of the inaugural SIDS was underway;
 - (b) During March 2020, follow up engagements with local and international stakeholders were held, project data was collected from all relevant stakeholders including government departments and SOEs. This was followed by a larger government/SOE stakeholder forum on the submissions and the distribution of project templates to project owners;
 - (c) In April 2020, Technical Working Groups were appointed to deal with the technical, financial and legal project reviews. A steering oversight committee was established to ensure that all due processes are followed in the selection process;
 - (d) In May 2020, preparation of project pitches for presentation were prepared to test the market when project developers and owners had an opportunity to pitch their projects to potential project investors;
 - (e) Detailed screening of all projects collected and presentation of screened projects to Government Stakeholders. This was followed up with a second Workshop with all government departments and SOEs to confirm that the projects shortlisted, reflect those with the highest impact;
 - (f) Final packaging of all shortlisted projects was completed at the beginning of June 2020 leading up to the Sustainable Infrastructure Development Symposium on 23 June 2020; and

- (g) The top fifty (50) projects were eventually Gazetted by the Department of Public Works and Infrastructure (DPWI) on 24 July 2021, following the above-mentioned process.

Response from the former Minister of Public Works and Infrastructure, Ms Patricia de Lille

- 6.1.9 On 19 July 2021, the Public Protector requested Ms de Lille to provide information regarding the matter under investigation. Ms de Lille responded to the Public Protector through a letter, dated 12 August 2021 and stated that:
- 6.1.9.1 The IPA provides for the facilitation and coordination of public infrastructure development, which is of significant and economic social importance to South Africa. Further, to ensure that infrastructure development is given priority in planning, approval and implementation, SIPs are gazetted. In this instance, Mooikloof was one of the infrastructure projects gazetted by the PICC on 24 July 2020;
- 6.1.9.2 All infrastructure projects that have been gazetted as SIPs have project sponsors. In the case of Mooikloof, Balwin Properties, a private developer, was the project sponsor and was neither appointed by government nor a government service provider; and
- 6.1.9.3 Section 7(3) of the IDA makes provision for SIPs, with the consent of the owner, to include private infrastructure, as was the case with Mooikloof. However, the inclusion of Mooikloof into the SIP did not change the contractual arrangements of the project.

Response from Mr Brookes of Balwin Properties

6.1.9.4 The Public Protector, through a letter dated 30 July 2021, requested Mr Brookes of Balwin Properties to respond to the allegations made by the Complainant. On 25 August 2021, Balwin Properties, through its Head of Legal, Raaziq Ismail (Mr Ismail), responded to the Public Protector as follows:

- (a) The personal call by the President to Mr Brookes was to establish if Balwin Properties would like to avail Mooikloof as part of the SIPs due to his vast understanding of the residential property sector as well as Balwin Properties involvement in the Mooikloof area;
- (b) The designation of the Mooikloof as an SIP was sought by the PICC in an effort to boost the economy and create employment opportunities post the effects of the Covid-19 pandemic. Dr Ramokgopa approached Mr Brookes to discuss Mooikloof as well as the positive economic impact, which this development could have on the South African economy through, *inter alia*, job creation and affordable housing;
- (c) It was crucial to understand that the government was not involved in the acquisition or funding of the properties (the Remaining extent of Portion 62 of the Farm Rietfontein 375, J.R and Portion 1046 of the Farm Rietfontein 375 J.R) wherein the housing development would take place;
- (d) Government would be responsible for the costs of all external bulk services installations, including water, sewer, electricity, roads and stormwater in respect of the area in which Mooikloof is situated. Balwin Properties is only accounting for the residential component of the Mooikloof Mega City project, whereas other commercial property developers would attend to commercial developments; and

- (e) He further indicated that Balwin Properties did not conclude any PPP agreement with the government and no contractual relationship exists between the two parties regarding Mooikloof.

Response from the City of Tshwane Metropolitan Municipality Acting Group Head: Economic Development and Spatial Planning, Mr PA Swanepoel

- 6.1.10 On 25 June 2021, the Public Protector requested the City of Tshwane to explain its role, if any, in Mooikloof. On 06 August 2021, the Public Protector received a response from the then Acting Group Head: Economic Development and Spatial Planning, Mr PA Swanepoel (Mr Swanepoel) who stated that:
- 6.1.10.1 The City of Tshwane adopted Mooikloof as a Strategic Urban Development (SUD) by means of a Mayoral Committee (MayCo) Resolution of 21 April 2021 titled: “*Request for adoption of additional Strategic Urban Development*”;
- 6.1.10.2 The SUD is defined as a large-scale urban development that is of a metropolitan wide strategic nature and is of critical importance in building the City as envisaged in the Integrated Development Plan (IDP), the Metropolitan Spatial Development Framework and the Built Environment Performance Plan. Furthermore, the term SUD is adopted for purposes of land development facilitation, describing the highest level of land development projects to be facilitated by the City; and
- 6.1.10.3 The general principle with respect of the SUDs is that all relevant departments are to assist in ensuring that the SUDs projects are prioritised throughout the land development processes, i.e. in relation to the approvals of town planning, service level agreements, site development plans (SDP) and building plans.

Rule 41(1) Notice, dated 22 December 2023

- 17.1. A notice in terms of Rule 41(1) the Public Protector Rules, was issued to the complainant on 22 December 2023 and 16 January 2024 respectively.
- 17.2. Rule 41(1) provides that when the Public Protector intends concluding the complaint by means of a closing report, the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification. However, the Complainant did not respond to the Notice.
- 17.3. Furthermore, Rule 41(2) provides that the Public Protector may, if the complainant has not responded within the prescribed time frame of 14 days, proceed to close the file.

Applicable law

The Constitution of the Republic of South Africa, 1996

- 6.1.11 Section 217(1) of the Constitution provides that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

The Public Finance Management Act, 1999

- 6.1.12 The constitutional procurement requirements are also echoed in section 38(1)(a)(iii) of the PFMA which states that, the accounting officer for a department, trading entity or constitutional institution must ensure that the

particular department or trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.

Infrastructure Development Act, 2014

- 6.1.13 Section 7(3) of the IDA provides that: “*A strategic integrated project may include infrastructure that is not public infrastructure, provided it is with the consent of the owner.*”

Government Gazette No. 4354 of 24 July 2020

- 6.1.14 It is recorded in the gazette that the PICC, in terms of section 8(1)(a)² read with section 7(1) of the IDA, designated a number of projects as SIPs through Government Gazette No.812 of 24 July 2020.
- 6.1.15 In terms of the gazette, SIP No.24, listed a total of eighteen (18) sub-projects under Human Settlements, which included Mooikloof.

Analysis

- 6.1.16 Section 217 of the Constitution and section 38 of the PFMA require the Presidency to pursue any procurement through a provisioning system which is fair, equitable, transparent, competitive and cost effective. The evidence at the Public Protector’s disposal revealed that the government, including the Presidency, did not procure any services from Balwin Properties which would

² “(1) *The Commission may, by notice in the Gazette—*
(a) designate strategic integrated projects for the purposes of this Act; and
(b) amend the designation of a strategic integrated project.”

have invariably triggered the application of the PFMA and other public procurement prescripts.

- 6.1.17 In the absence of public procurement process being undertaken, the issue of BBBEE raised by the Complainant, does not arise. Furthermore, Balwin Properties did not conclude any PPP agreement with the government and no contractual obligations existed between Balwin Properties and government in relation to Mooikloof.
- 6.1.18 Mooikloof was designated as a SIP in terms of section 7(3) of the IDA which required the consent of the owner of the project, Balwin Properties, to be obtained. Therefore, the personal call of the President to Mr Brookes was consistent with section 7(3) of the IDA.
- 6.1.19 The City of Tshwane adopted Mooikloof as a SUD by the MayCo Resolution of 21 April 2021. As it was in the case of the designation of Mooikloof Residential as a SIP, the adoption of Mooikloof as a SUD did not trigger public procurement processes.
- 6.1.20 Government did not play any role in the acquisition or funding of the properties but would only be responsible for the costs of all external bulk services installations, in terms of water, sewer, electricity, roads and stormwater at Mooikloof.

Conclusion

- 6.1.21 The evidence at the Public Protector's disposal indicates that the designation of Mooikloof as a SIP did not constitute procurement as envisaged in the Constitution and the PFMA.

7. FINDINGS

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

7.1 Whether the President of the Republic of South Africa, Mr MC Ramaphosa's, invitation of Balwin Properties (Pty) Ltd to become part of the Mooikloof Mega Residential City: Gauteng, was in contravention of the Public Finance Management Act, 1999 and the supply chain management processes, if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994

7.1.1 The allegations that the President's invitation of Balwin Properties to become part of the Mooikloof was in contravention of the PFMA and supply chain management processes, is not substantiated.

7.1.2 The Public Protector found that Mooikloof is a privately owned and privately developed residential project by Balwin Properties.

7.1.3 The Public Protector found that Mooikloof was designated as a SIP and listed as part of the eighteen (18) other sub-projects under Human Settlements in terms of Gazette Number 43547 of 2020, in accordance with 7(3) of the IDA which provides that a strategic integrated project may private infrastructure, provided it is with the consent of the owner.

7.1.4 Accordingly, the conduct of the President/the Presidency did not constitute procurement as envisaged in section 217 of the Constitution and section 38 of the PFMA.

7.1.5 Therefore, the conduct of the President and/or the Presidency does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act, 1994.

8. CONCLUSION

8.1 The Public Protector considers this matter as finalised and cannot take it further.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 28 MARCH 2024

Assisted by: Ms Ponatshego Mogaladi
Executive Manager: Investigations