

**CLOSING 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**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR
EXTENSION OF THE LEASE AGREEMENT BY THE FORMER MEC OF THE
GAUTENG DEPARTMENT OF ECONOMIC DEVELOPMENT MR MAILE AND
CORRUPTION BY THE FORMER ACTING CHIEF FINANCIAL OFFICER, MS
KARABO NOKOANE.**

CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR EXTENSION OF THE LEASE AGREEMENT BY THE FORMER MEMBER OF EXECUTIVE COUNCIL OF THE GAUTENG DEPARTMENT OF ECONOMIC DEVELOPMENT MR MAILE AND CORRUPTION BY THE FORMER ACTING CHIEF FINANCIAL OFFICER, MS KARABO NOKOANE

1. INTRODUCTION

- 1.1 This is a closing report in terms of section 182 (1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8 (1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted to Mr Lebogang Maile: the former Member of Executive Council of the Gauteng Department of Economic Development, Ms Karabo Nokoane the former acting Chief Financial Officer the Acting Chief Executive Officer of GEP, Ms Leah Manenzhe and Mr David Makhura, the Premier of Gauteng in terms of section 8(3) of the Public Protector Act, 1994.
- 1.3 Copies of the report are also provided to Ms Mandisa Mashego in terms of section 8(3) of the Public Protector Act, 1994.
- 1.4 The report relates to an investigation into a complaint that was lodged by Ms Mandisa Mashego, the Chairperson of the Economic Freedom Fighters Party Leader in Provincial Legislature at Gauteng Provincial Legislature on 19 June 2019, regarding allegations of irregular extension of the lease agreement by the former Member of Executive Council of the Gauteng Department of Economic Development Mr Maile and corruption by the former acting Chief Financial Officer, Ms Karabo Nokoane.

2. THE COMPLAINT

2.1 In the Complaint, Ms Mashego alleged as follows:

2.1.1 Around May 2015, the former MEC of the Gauteng Department of Economic Development, Mr Maile (Mr Maile) and the former Acting Chief Executive Officer (Acting CEO) of Gauteng Enterprise Propeller (GEP), Ms Leah Manenzhe signed an irregular and unlawful lease agreement for the building situated at 124 Main Street, Marshalltown (Building 124) which accommodates the Economic Development Department Entities (EDDE), including Gauteng Enterprise Propeller (GEP), Gauteng Growth Development Agency (GGDA), the Gauteng Tourism Agency (GTA) and Gauteng Liquor Board (GLB), without following procurement processes.

2.1.2 Despite a legal opinion in place discouraging the lease, in that it was illegal and over-priced, Mr Maile signed the lease agreement.

2.1.3 Mr Maile is on record confirming voluntarily to the GEP Board members (the Board) during the Board meeting (date on which the meeting was held was not provided by the Complainant), that the lease agreement of the Building was illegal and overpriced at R1.3 million per month. Mr Maile allegedly threatened the Board not to discuss the lease agreement matter, as it was his issue despite tax payer's money being expended illegally.

2.1.4 Around June 2017, Mr Maile violated the Executive Ethics Code of the Executive Members Ethics Act 82 of 1998 (EMEA) and abused his authority as the former MEC by irregularly appointing two (2) body guards for the Acting Chief Executive Officer (CEO) of GEP, Ms Leah Manenzhe (Ms Manenzhe), without following HR processes and without valid reasons being provided. The appointment of the bodyguards was done without first conducting a security risk assessment

and without a threat analysis being conducted by the Minister of Police (Minister) around Ms Manenzhe's safety but they were hired on tax payers' money to pay their salaries and the same bodyguards are still employed to date.

2.1.5 In 2016, Mr Maile appointed a Forensic Investigation Firm, Ngubane & Company Chartered Accountants and Auditors (Ngubane & Co). The Director of Ngubane & Co is Mr Wilfred Ngubane (Mr Ngubane) and the Head of Forensics is Mr Trust Chikwiri (Mr Chikwiri). Ngubane & Co was appointed to conduct forensic investigations into manipulation, tampering and deletion of a loan book at GEP. Ngubane & Co completed their investigation around July 2017 and the investigation report apparently criminally implicated Mr Maile, Ms Manenzhe and Board members, including Executives of GEP. To date, the report was never released by Mr Maile.

2.1.6 The former Acting CFO, Ms Karabo Nokoane received a sum of R250 000.00 from a service provider as a "kickback" for an unknown contract awarded to the service provider.

3 Based on the analysis of the complaint the following issues were identified to inform and focus the investigation

3.1 Whether Mr Maile irregularly signed the lease agreement to accommodate GEP, GGDA, GTA and GLB at Building 124, without following prescribed procurement processes.

3.2 Whether Mr Maile unduly delayed to release the Ngubane Forensic Investigation Report regarding the investigation completed in July 2017, which criminally implicated the former MEC, the former Acting CEO and other Board members and executives of the GEP.

3.3 Whether Mr Maile violated the Executive Ethics Code of the Executive Members Ethics Act 82 of 1998 (EMEA) and abused his authority as the former MEC by irregularly appointing two (2) body guards for the Acting Chief Executive Officer (CEO) of GEP, Ms Leah Manenzhe (Ms Manenzhe) during June 2017, without following prescribed recruitment policies and processes

3.4 Whether Ms Karabo Nokoane irregularly received a sum of R250 000.00 as a “kickback” from a service provider who was awarded an unknown contract at the GEP.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

4.2 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”.*

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

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- 3.2 Section 6(4) of the Public Protector Act, 1994, further regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of Government at any level.

4 THE INVESTIGATION

4.1 Methodology

- 4.1.1 The investigation process commenced with a preliminary investigation in terms of section 7(1) of the Public Protector Act, which included assessment of the complaint, analysis of the relevant documentation; research conducted; the consideration and application of the relevant laws, regulatory framework and jurisprudence.

- 4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute relating to allegations of improper conduct or maladministration.

4.2 Approach to the investigation

- 4.2.1 The investigation was approached using an enquiry process that seeks to find out:

- 4.2.1.1 What happened?

- 4.2.1.2 What should have happened?

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- 4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?
- 4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct.
- 4.2.1.5 The question regarding what happened is resolved through a factual enquiry of the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether the conduct of Mr Lebogang Maile and Ms Karabo Nokoane constituted maladministration or improper conduct.
- 4.2.1.6 The enquiry regarding what should have happened, focuses on the laws or rules that regulate the standard that should have been met by Mr Lebogang Maile and Ms Karabo Nokoane to [TS(1)] prevent maladministration and/or improper conduct.
- 4.2.1.7 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where he/she would have been had the maladministration and/or improper conduct not taken place?
- 4.2.1.8 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration and/or improper conduct.

4.3 **The Investigation Process**

4.3.1 The investigation process included an exchange of correspondence and analysis of all relevant documents and application of all relevant laws, policies and related prescripts and interviews were also conducted with the Complainant and relevant officials of the Gauteng Department of Economic Development and the Gauteng Enterprise Propeller.

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

4.3.3 The Public Protector is about to conclude the investigation and based on the information and evidence obtained during the course thereof, she is in a position to make findings.

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

5.1 **Whether Mr Maile irregularly signed the lease agreement to accommodate GEP, GGDA, GTA and GLB at Building 124, without following prescribed procurement processes**

Common cause issues

5.1.1 It is common cause that the Gauteng Provincial Government, through the Department of Transport Roads and Works, entered into a lease agreement with

Subway Trading and Investment 36 (Pty) Ltd, in respect of Building 124 Main Street in 2011.

- 5.1.2 It is also not disputed that subsequent to the signing of the lease agreement, the GEP, GGDA, GTA and GLB took occupation of Building 124, and are still accommodated in that building.

Issues in dispute

- 5.1.3 The Complainant stated that Mr Maile irregularly signed a lease agreement on behalf of the Gauteng Department of Economic Development and extended same on numerous occasions in contravention of the applicable Supply Chain Management Policy.
- 5.1.4 The Complainant indicated that the lease agreement was concluded, despite a legal opinion which discouraged the signing of the lease and the then MEC confirmed on record and at the GEP Board meeting that the lease agreement for the Building situated at 124 Main Street, Marshalltown (Building) is illegal and overpriced.
- 5.1.5 Further that the Department is paying R1.3 Million per month for office space. The Board of the GEP was threatened by the former MEC not to discuss the lease agreement.
- 5.1.6 The Complainant also contended that Mr Maile extended the lease agreement for the building which accommodated GEP, GGDA, GTA and GLB (dates when the lease was signed and extended not provided by the Complainant).
- 5.1.7 A response to the allegations dated 19 August 2019, was received from Mr Lebogang Maile (Mr Maile), the erstwhile MEC of the Gauteng Department of Economic Development and currently serving as the MEC for the Gauteng Department of Human Settlements and CoGTA.

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- 5.1.8 Mr Maile denied having signed the lease agreement for Building 124 on behalf of Gauteng Enterprise Propeller (GEP), Gauteng Growth and Development Agency (GGDA), Gauteng Tourism Authority (GTA) and Gauteng Liquor Board (GLB).
- 5.1.9 Mr Maile argued that the lease agreement was signed by the Head of Department of Infrastructure Development (Name not mentioned in his response) in consultation with his predecessor at the Department of Economic Development long before his tenure. According to Mr Maile, the addendum to the lease agreement was signed in 2011, which also took place long before he was appointed MEC.
- 5.1.10 Mr Maile further argued that the procurement of office space for Gauteng Departments is the responsibility of the Department of Infrastructure Development.
- 5.1.11 Ms Funeka Njobe (Ms Njobe): Chief Director: Legal Advisory Services, Gauteng Department of Economic Development submitted in her response to the allegation dated 19 August 2019, that the lease agreement was signed by Mr Sibusiso B Buthelezi: Head of Department of Public Transport, Roads and Works (currently known as the Department of Infrastructure Development (DID). The Addenda to the lease agreement was signed by Mr. Khulu Radebe: Head of Department of Economic Development in 2009 and later by Messrs. Paul Maseko and Khulu Radebe in 2011.
- 5.1.12 The lease agreement that was submitted by Ms Njobe to the investigation team indicates that a lease agreement was entered into by Mr Sibusiso B Buthelezi: Head of Department of Public Transport, Roads and Works and signed on 16 February 2009 and certain clauses were amended as per the addendum signed

on 12 April 2011, before Mr Maile was elected as the MEC: Gauteng Department of Economic Development (GDED), in May 2014 until May 2019.

- 5.1.13 On 13 August 2021, Mr Sakile Zamxaka, the Chief Executive Officer for GEP submitted a copy of the Memorandum of Understanding (MoU) between GEP and GDED, which was signed by Ms Phindile Mbanjwa, Head of Department GDED, and Ms Leah Manenzhe, Acting CEO of GEP, on 01 April 2015. The MoU stated that the GDED and its agencies, namely GEP, GGDA, GTA and GLB have undergone a reconfiguration process which entailed the consolidation of all agencies and culminates in the moving of these agencies into a single building at 124 Main Street Marshalltown.
- 5.1.14 Mr Zamxaka submitted a report of the Audit, Risk and Governance Committee (Audit Committee) meeting wherein the Audit Committee declined to condone the lease agreement and referred the issue to the Board of Directors for decision making. The Audit Committee also referred two issues for consideration by the Board of Directors, namely the cost of the rental and the building safety hazard.
- 5.1.15 Mr Zamxaka also submitted copies of numerous Board of Directors' minutes which were held during 2015, 2016, 2017 and 2018 respectively. The investigation noted that Mr Maile's name does not appear on the list of attendees. Therefore, it remains unclear at which meeting Mr Maile allegedly advised the GEP Board members (the Board) during the Board meeting, that the lease agreement of the Building was illegal and overpriced at R1.3 million per month and threatened the Board not to discuss the lease agreement matter.
- 5.1.16 On 30 October 2018, Ms Pippa Reyburn from ENSafrica submitted a legal opinion to GEP regarding the MoU and recommended that the MoU was binding to GEP and GDED even though it contravened the Gauteng Enterprise Propeller Act 5 of 2005 (GEP Act) and Public Finance Management Act 1 of 1999 (PFMA).

Mr(s) Reyburn recommended that GEP must consult GDED for the cancellation of the MoU or approach the Court of Law.

- 5.1.17 Having perused the lease agreement that was submitted by Ms Njobe, the investigation team confirmed that on 16 February 2009, the Gauteng Provincial Government, in its Department of Transport Roads and Works and represented by Mr Sibusiso B Buthelezi: Head of Department of Public Transport, Roads and Works, entered into a lease agreement with Subway Trading and Investment 36 (Pty) Ltd, duly represented by Herbert CS Theledi, which took place prior to the appointment of Mr Maile as the MEC of the Gauteng Department of Economic Development (GDED) in May 2014.
- 5.1.18 Clause three (3) of the lease agreement which provides for the duration of the lease agreement, states that, *“The period of the lease agreement commences on the commencement date being 4 January 2010 and 3 January 2011 in respect of phases provided schedule 1 and terminates on the termination date being 30 November 2019 and 20 November 2020, respectively, as provided in Schedule 1”*.
- 5.1.19 The addendum to the lease agreement in respect of building 124 which was signed on 12 April 2011, was entered into between Subway Trading and Investment 36 (Pty) Ltd, duly represented by Mr Herbert Thebedi and by the Gauteng Provincial Government, through the Department of Infrastructure Development (formerly known as the Transport Roads and Works) duly represented by Mr Paul Maseko, in his capacity as the Acting Director General: Property Management.
- 5.1.20 The investigation further confirmed that the addendum to the lease agreement was also signed prior to Mr Maile being appointed as the MEC: Gauteng Department of Economic Development (GDED) in May 2014. During this

period, Mr Firoz Cachalia was the MEC for the Gauteng Department of Economic Development when the lease agreement was entered into and later extended.

Applicable legal framework

- 5.1.21 Section 217 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.”*
- 5.1.22 The above provision requires organs of state to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Therefore, this provision enjoins the GEP and GDED to procure office accommodation or enter into lease agreements in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
- 5.1.23 Section 36 of the Public Finance Management Act states that —
- “(1) Every department and every constitutional institution must have an accounting officer.*
- (2) Subject to subsection (3)—*
- (a); and*
- (b) the chief executive officer of a constitutional institution must be the accounting officer for that institution”.*

5.1.24 The above provision stipulates that the Accounting Officer of an organ of state, in this case, the Gauteng Department of Economic Development is responsible for the administrative function of the Department. The lease agreement for the building was signed by the Head of Department: DID (formerly known as the Department of Transport Roads and Works), in consultation with the Head of Department for the Department of Economic Development, as the Accounting Officers of the two departments.

Conclusion

5.1.25 Evidence obtained during the investigation indicates that the lease agreement for the building at 124 Main Street was signed in 2009 and the addendum extending the lease agreement was signed in 2011 by Mr Herbert Thebedi and Mr Paul Maseko, respectively.

5.1.26 Furthermore, Mr Maile was only appointed as the MEC: Gauteng Department of Economic Development (GDED) in May 2014, a position he held until May 2019 and there is no evidence that he signed the lease agreement in respect of the building.

5.1.27 Furthermore, it could not be established at which board meeting Mr Maile could have threatened the board members and commented about the financial implications of the lease agreement, as evidence obtained during the investigation indicates that Mr Maile had not assumed office as the MEC: Gauteng Department of Economic Development (GDED), when the lease agreement was concluded.

5.1.28 It must be noted that during the period in question, Mr Firoz Cachalia was the MEC Gauteng Department of Economic Development when the lease

agreement was entered into and later extended. Therefore, Mr Maile could not have signed the lease agreement.

5.1.29 Although in terms of clause 3 of the lease agreement signed on 16 February 2009, the termination date is defined as “30 November 2019 and 20 November 2020”, respectively, during the period Mr Maile would have assumed the position as the MEC of the Gauteng Department of Economic Development, no evidence could be found to substantiate the allegation that he interfered and/or influenced any decision relating to the signing of this lease agreement, which was concluded almost five (5) years prior to his appointment as the MEC.

5.2 **Whether Mr Maile unduly delayed to release the Ngubane Forensic Investigation Report regarding the investigation completed in July 2017, which criminally implicated the former MEC, the former Acting CEO and other Board members and executives of the GEP.**

Common cause issues

5.2.1 It is common cause that the Gauteng Enterprise Propeller (herein referred to as “GEP”) appointed Ngubane Chartered Accountants and Auditors (hereinafter referred to as Ngubane and Co.) during 2016, to conduct forensic Investigative accounting, including systematic analysis of transactions’ in the Finance and Debt Management Units.

Issues in dispute

5.2.2 The Complainant contended that GEP conducted an investigation into the allegations of manipulation, tampering and deletion of a loan book at GEP.

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- 5.2.3 The Complainant further contended that the investigation was completed around July 2017 and the investigation report criminally implicated the former MEC, the former Acting CEO and other Board members including executives of GEP. To date the report is still held and was never released by the former MEC.
- 5.2.4 In his response to the allegations dated 19 August 2019, Mr Maile denied that he appointed or commissioned the Ngubane Forensic Investigation. Mr Maile stated that he is not and was never in possession of any investigation report by Ngubane and CO.
- 5.2.5 Mr Maile also argued that the Department never commissioned Ngubane and CO. to conduct an investigation into the allegations of manipulation, tampering and deletion of a loan book at GEP and the Department does not have any knowledge of the criminal findings made against himself, Ms Nokoane and the Board.
- 5.2.6 Mr Maile contended that the only investigation that was initiated was commissioned by the previous Acting Chief Executive Officer, Ms Manenzhe in consultation with the GEP. The said investigation could be requested from the GEP as he does not have powers over the investigation report.
- 5.2.7 Ms Funeka Njobe, Chief Director: Legal Advisory Services, Gauteng Department of Economic Development, confirmed in a response to the allegations submitted to the Public Protector on 19 August 2019 that, Ngubane and CO was never commissioned by the Department to do an investigation into the allegations of manipulation, tampering and deletion of a loan book at GEP.
- 5.2.8 Ms Vuyo Ntshoko: Acting Chief Executive Officer at GEP stated in her response to the allegations dated 15 October 2019 that, there was no

investigation report on the issue as the internal GEP process by the Risk and Audit Division enquiring about the matter was initiated and not concluded.

5.2.9 On 13 August 2021, Mr Saki Zamxaka submitted an investigation report compiled by Ngubane Chartered Accountants and Auditors, with a covering letter dated 30 December 2016, which was addressed to Ms Leah Manenzhe, the then Acting Chief Executive Officer of GEP.

5.2.10 On analysis of the report, the investigation team established that, although the report itself is not dated and the covering letter is unsigned, it clearly indicates the subject as the **“Report into forensic investigative accounting, including systematic analysis of transactions on accounting transactions in Finance and Debt Management Units”** and it was commissioned by the then Acting CEO, Ms Leah Manenzhe.

5.2.11 According to the forensic report, the mandate and scope of the investigation includes the investigation of the following allegations:

5.2.11.1 **“Forensic Investigative Accounting**

5.2.11.1.1 *It is alleged that on the 6th of March 2015 an amount of R7 000 000 was transferred from The Gauteng Department of Economic Development herein referred to as DED for Township Economic Revitalization Project. The amount was subsequently utilized for the purpose which was not intended. The incumbent who was responsible for safeguarding all transactions’ in finance unit when asked what had transpired with the usage of money could not provide explanation of how the money was accounted for and what had transpired.*

5.2.11.2 ***Debt Management Investigation***

5.2.11.2.1 *It was also alleged that Information related to debtors was requested from the unit manager of the debt management unit and could not be provided. Furthermore the loan book was deleted from the entity server without approval granted and furthermore no evidence of back up file created.*

5.2.11.3 ***In particular, we were issued a mandate to:***

5.2.11.3.1 *Determine how R7 000 000 that was transferred by the Department of Economic Development to GEP for making projects bankable was utilised and accounted for;*

5.2.11.3.2 *Determine whether proper procedures were adhered to in the subsequent utilisation of the R7 000 000 for the purpose which it was not intended for; and*

5.2.11.3.3 *Determine the role of Ms Humbelani Tshikalange Ndou (Acting CFO currently on Special Leave) who was responsible for safeguarding transactions' in finance unit in the usage and accounting of the money.*

5.2.11.3.4 *Determine whether proper funding procedures were followed on the debtors written off;*

5.2.11.3.5 *Verify whether the debtors written off were done in line with the approved debtor's write-off process;*

5.2.12 The following findings were made in the forensic investigation report:

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- 5.2.12.1 *“That, there is no prima facie evidence to prove that Ms Humbelani Ndou was negligent in her duties nor was she solely responsible for the utilisation of R7 000 000 for the purposes it was not intended as she was not the Chief Financial Officer during the period the money was transferred by Department of Economic Development and utilised by GEP.*
- 5.2.12.2 *That, the transfer of funds from DED and the utilization of the money thereof took place in the month of March 2015 and the transactions during this period were approved by the then Chief Financial Officer, Mr Bheki Lukhele. Ms Humbelani Ndou was appointed as Acting Chief Financial Officer on the 30th of May 2015. The transactions related to the R7 000 000 took place while Mr Bheki Lukhele was the Chief Financial Officer for the entity.*
- 5.2.12.3 *That, the investigation results of whether proper procedures were adhered to in the subsequent utilisation of the R7 000 000 for the purpose which it was not intended for, are inconclusive we did not take sight of the letter from Department of Economic Development relating to the transfer of R7 000 000 to GEP and the process to be followed by GEP when a conditional grant is received from Department of Economic Development for a specific project.*
- 5.2.12.4 *That, due to inadequate evidence or missing information we could not determine the extent of involvement of Mr Edward Simphiwe Mini (the Manager of the Debt Management Unit) in the awarding of funding to applicants and debtors written off. As a result there is no prima facie evidence to prove that Mr Edward Simphiwe Mini was negligent in his duties as the Assistant Manager Debtors Control.*
- 5.2.12.5 *With regards to whether proper funding procedures were followed on the debtors written off or verify whether the debtors written off were done in line with the approved debtor’s write-off process our results are inconclusive. This*

conclusion was based on a number of documents that the investigators are said to not to have taken sight of during the course of the investigation”.

5.2.13 The investigation concluded that:

“Considering that the Board approved most of the transactions despite the missing documents or information we did not take sight off, in conclusion the Board in this case should take responsibility for the irregularities and non-compliance as they might not have acted out their fiduciary duty”.

5.2.14 The report made the following recommendations:

5.2.14.1 ***Employees on special leave***

5.2.14.1.1 *We recommend that management to reconsider the decision made regarding the employees currently on special leave due to the following:*

- a) *Ms Humbelani Ndou was not negligent in her duties nor was she solely responsible for the utilisation of R7, 000, 000 for the purposes it was not intended as she was not the Chief Financial Officer during the period the money was transferred by Department of Economic Development and utilised by GEP.*
- b) *Mr Edward Simphiwe Mini was not solely responsible for contraventions of the GEP debt management policies as highlighted above. In addition there is inadequate evidence and missing information to prove that the employees were negligent in their duties.*

5.2.14.2 **Recording Keeping**

5.2.14.2.1 *“Document management should be improved to ensure that all documents are adequately filed for easy retrieval.*

5.2.14.2.2 *We recommend that GEP take necessary disciplinary steps with regards to the employees responsible for the missing documents mentioned in the factual report findings in terms of GEP human resources policies and procedures and Code of conduct”.*

5.2.14.3 **Process improvements**

5.2.14.3.1 **Loan approval process**

8.2.13.1.1 *The Standard Operating Procedure for SMME Financing should be developed in line with the SMME Financing Policy;*

8.2.13.1.2 *Management should enforce the adherence to such Standard Operating Procedure; and*

8.2.13.1.3 *Management should ensure that all loans are presented to and approved by appropriate committee before the final approval.*

5.2.14.4 **Debt write off process**

5.2.14.4.1 *Finance should submit a motivation letter to Debt Management Committee for all the recommended debt write off;*

5.2.14.4.2 *No loans should be written off after the entity has received the repayments within the 12 month period without the recommendation from Aftercare; and*

5.2.14.4.3 *Management should ensure that the legal action is constituted against all the debtors written off.*

5.2.15 According to the response letter dated 20 September 2021, submitted to the Public Protector through email correspondence by the General Manager of Risk and Audit (GEP): Mr Lamlani Dube (Mr Dube), he stated that the correct naming of the investigation report which is alleged by the Complainant not to have been released by Mr Maile is Mkhabela and Associate Investigation Report and not Ngubane Forensic Investigation.

5.2.16 According to Mr Dube, the Ngubane Investigation report relates to an investigation into the lost loan book and misuse of the R7 million intended for due diligence for TMR deals around 2007. However, the Mkhabela report reflects on the action plans and recommendations that were not implemented, including the recommendations of the investigation report of the Gauteng Provincial Treasury.

5.2.17 Mr Dube indicated that the contents of the complaint as received from the Public Protector, seemed to be aligned to the Mkhabela Report as the Ngubane Report was cited incorrectly and its recommendations applied selectively at the time – the two reports are intertwined in that the recommendations such as fruitless and wasteful expenditure, suspension of employees are born out of the Ngubane Report and amplified in the Mkhabela Report since the former CEO was disputing the correctness of the Ngubane report.

5.2.18 However, those disputed facts were affirmed in the Mkhabela Report. The allegations as reported to the Public Protector are listed in the PSA letter in pages 1 to 10 of the Mkhabela Report submitted to the Public Protector. All the investigation reports relating to Ngubane, Sizwe Ntsaluba and Provincial Treasury on the loss loan book are found in pages 62 to 84 of the Mkhabela and Associates Report.

- 5.2.19 According to Mr Dube, the Ngubane Report was commissioned by the Head of Department of Economic Development, Ms Phindile Mbanjwa (Ms Mbanjwa) and the former Acting CEO: Ms Leah Manenzhe, but was never tabled to the Board by Ms Leah Manenzhe.
- 5.2.20 In order to clarify the circumstances that led to the commissioning of the Mkhabela and Associates Investigation Report, Mr Dube stated that the Mkhabela and Associates Investigation was as a result of a complaint by the Public Service Association (PSA) Union (majority union at GEP) addressed to the Board and Company Secretary on 12 January 2017, raising about nine (9) main allegations relating to abuse of labour relations processes, consultations on changes on the organizational structure, use of the transversal shared services, job profiling and grading, non-payment of performance bonuses, poor staff morale and dysfunctional leadership, maladministration practices and selective application of policies, suspension of employees. The allegations of maladministration and corruption were made against GEP's Executive management, GEP Board and MEC.
- 5.2.21 The Board at the time, seeing that there is no available budget to conduct this type of an investigation and time elapsed between January and June 2017, requested Mr Maile and Ms Mbanjwa to rather conduct an investigation to which a tender advert was made and won by Mkhabela and Associates Attorneys – with Advocate Pieter Holl, who was the Deputy Director General: Governance and Regulations and a GEP Shareholder (Department of Economic Development) representative in GEP Board as a Board member, leading the briefing on behalf of the Shareholder.
- 5.2.22 According to Mr Dube, the anticipated completion date for the Mkhabela investigation as per the investigation scope of work of Mkhabela and Associates was 30 September 2017. However the same Mkhabela

Investigation report is certified or stamped to have been received by the new Head of Department, Ms Pumla Ncapayi, and MEC for Gauteng Department of Economic Development during 2019.

- 5.2.23 Mr Dube stated that *“after receipt of the report by Adv Holl on November 2017, only the verbal version of the report not a physical copy or electronic copy, was tabled to Board on the 08 February 2018 by Adv Holl with an undertaking that a physical copy or electronic copy will be circulated to the Board for its perusal to affirm the position that there was no substance to the allegations”*.
- 5.2.24 The Public Protector is in possession of a task register submitted by Mr Dube emanating from the minutes of the board meeting wherein item 08/02/2018 4.0 stated that *“ Mr Holl must immediately circulate the forensic report to the Board members and the Portfolio Committee, Economic Development as the circulation was overdue, set up a meeting with Mr Maile in the next 2 weeks (28 February 2018) for the Board delegation to present recommendations to Mr Maile and attend the proposed special Board Meeting, to review the Mkhabela Investigation report, scheduled for 27 February 2018. However the said Board meeting did not take place because Mkhabela Investigation report was not circulated.”*
- 5.2.25 Mr Dube stated that Mr Maile expressed his displeasure during a Board meeting held on 22 November 2018 and argued that the Board required the forensic investigation report by Mkhabela and Associates in writing even though such report found no substance to the allegations. However, Messrs Maile, Holl and Ms Mbanjwa left the Department of Economic Development in or around May 2019, before they could submit the requisite report.
- 5.2.26 Mr Dube also stated that the Mkhabela Investigation Report was then relayed to the Board of GEP by Ms Mbanjwa and Mr Ramokgopa around 05 August 2019. The report had substantive findings and recommendations contrary to

- the views shared with the Board by both Advocate Holl and Mr Maile. However, evidence obtained during the investigation indicates that Mr Maile based his conclusion that the investigation found no substance to the allegations on the feedback from Adv Holl, and without having seen and/or read the actual forensic report, which was subsequently submitted to Ms Mbanjwa and Mr Ramakgopa.
- 5.2.27 Mr Dube reported that the recommendations in the Mkhabela Investigation Report have not been fully implemented, including recovery of fruitless and wasteful expenditure against the former CEO (Ms Leah Manenzhe appointed by MEC in terms of section 20 of the Gauteng Enterprise Propeller Act 5 of 2005) and other businesses.
- 5.2.28 Furthermore, Mr Dube stated that the GEP does not have the acknowledgement that Mr Maile received the Mkhabela Investigation Report other than the fact that Mr Maile gave the instruction to remove the investigation from GEP to the Department and Adv Holl was chosen as a shareholder representative, which is a prerogative of the MEC in terms of section 7 of the GEP Act – and for the fact that the MEC addressed the Board in the meeting of 22 November 2018. The foreword of the Mkhabela and Associate Report relates to how instructions were removed from GEP to the Department.
- 5.2.29 Mr Dube explained that the investigation by Mkhabela and Associates was initiated by the Department of Economic Development (DED) in July 2017 and the final investigation report was issued in November 2017 by Mkhabela and Associate, and the investigation report was received by Ms Mbanjwa on 22 July 2019.
- 5.2.30 The following recommendations of the Mkhabela Investigation report were implemented:

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- 5.2.30.1 GEP Management to put systems in place to speedily finalise pending disciplinary hearings against suspended employees including PSA Shop stewards.
- 5.2.30.2 The appointment of the GEP CEO and General Manager: Corporate Support and Administration must be finalised.
- 5.2.30.3 GEP Management must consider re-engaging with PSA on the new structure in line with Sections 84 and 85 of LRA. Management has re-engaged with PSA and was currently looking at a structure as part of GEP's reconfiguration process.
- 5.2.31 Upon analysis of the Mkhabela report, the Public Protector noted that all the recommendations were implemented except for the recovery of the grant from Sakhile Ezweni should they fail to demonstrate that the funds were utilised for the purposes they were intended for, the recovery of R1.5M from Nhlanhla Bakery for breach of contract and failure to conduct due diligence by Ms Manenzhe and irregular, fruitless and wasteful expenditure estimated at R7 million and R400 000, respectively.
- 5.2.32 It was noted that in the minutes of the board meeting held on 20 November 2020, that the acting Chief Executive Officer reported to the board that the recommendation that GEP management should put systems in place to speedily finalise pending disciplinary hearings against suspended employees including the PSA shop stewards were finalised and the shop stewards were reinstated in February 2020.
- 8.2.33 The board, while noting the ACEO's reports on the implementation of the recommendations in the Mkhabela report, *inter alia*, further made the following comments:

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- 8.2.33.1 *The report was old and relates to matters from 4 years ago, however, the Board must report on it and hold the CEO accountable for the implementation of the recommendations;*
- 8.2.33.2 *Not all findings have recommendations, however, they trigger certain obligations on the Board and Management in terms of the PFMA. For example, matters around wasteful expenditure must be brought into the report and Management must provide clear action plans on what needs to be done.*
- 8.2.33.3 *It was agreed that GEP needed to have a permanent CEO as part of the measures to mitigate the current situation. It was highlighted that as per Chapter 20, clause 20.1 of the Act, it was the MEC's prerogative to appoint the CEO, therefore a requested for permission to start the recruitment process must be sent to the MEC.*

Applicable legal framework

- 8.2.34 *Section 195(1) states that "the Public Administration must be governed by the democratic values and principles enshrined in the Constitution including the following principles (f) Public administration must be accountable and (g) Transparency must be fostered by providing the public with timely, accessible and accurate information".*
- 8.2.35 *The above provision requires public servants that are government employees within public administration to be accountable, transparent and provide the public with timely accessible and accurate information.*
- 8.2.36 *As Mr Maile was a public servant, it follows that he is constitutionally bound by the above provisions to be accountable, transparent and to providing accurate information regarding the Department under his control.*

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- 8.2.37 In this regard, Maile initiated the Mkhabela investigation, resulting in an investigation report which was subsequently tabled at the Board meeting held on 08 February 2018 and recommendations thereof implemented.
- 8.2.38 Section 38(1)(a) of the PFMA provides that the accounting officer for a department, constitutional institution or trading entity
“must have and maintain effective, efficient and transparent systems of financial and risk management and internal control.”
- 8.2.39 According to the above-mentioned provision, the accounting officer for a department, constitutional institution or trading entity has a responsibility to ensure that there is maintenance of effective, efficient and transparent systems of financial and risk management and internal control.
- 8.2.40 The GEP developed and adopted an SCM Policy as a guideline to management and staff of GEP about procurement of goods and services. The standards, norms or guidelines for procurement processes are clearly spelled out in this Policy for all the GEP officials.
- 8.2.41 In this regard, Mkhabela and Associates were appointed by the GEP in terms of a tender process.

Conclusion

- 8.2.42 Evidence in the Public Protector’s possession indicates that the investigation commissioned by GEP conducted by Ngubane Forensic Investigation was commissioned by Ms Manenzhe and there is no evidence that the report was tabled at a board meeting and subsequently submitted to Mr Maile. The investigation, however confirmed that the forensic investigation report was submitted to Ms Manenzhe

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- 8.2.43 The only report that was commissioned by Mr Maile was the Mkhabela report and the recommendations thereof were implemented contrary to the assertion by the Complainant that the report was swept under the carpet.
- 8.2.44 The recommendations in the Mkhabela report are silent with regards to Mr Maile and no adverse findings are made against him. However, the only executive implicated by the investigation report was Ms Manenzhe as the then CEO and the Board, on the basis that it had failed to execute its fiduciary duties.
- 8.2.45 It was noted that the disciplinary cases against the shop stewards as recommended in the Mkhabela report, were finalised and the shop stewards were reinstated in February 2020.
- 8.2.46 The appointment of the GEP CEO was prioritised by the Board and the appointment of General Manager: Corporate Support and Administration was finalised on 01 of December 2018, on a five-year contract.
- 8.3 **Whether Mr Maile violated the Executive Ethics Code of the Executive Members Ethics Act 82 of 1998 (EMEA) and abused his authority as the former MEC by irregularly appointing two (2) body guards for the Acting Chief Executive Officer (CEO) of GEP, Ms Leah Manenzhe (Ms Manenzhe) during June 2017, without following prescribed recruitment policies and processes**

Common cause issues

- 8.3.1. It is common because that two security guards were procured by GEP in 2017, as bodyguards for Ms Manenzhe, the former Acting CEO of GEP.

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- 8.3.2. It is also not disputed that Mr Maile was MEC for Gauteng Department of Economic Development at the time that two body guards were appointed for Ms Manenzhe the then acting CEO of the GEP.
- 8.3.3. Mr Maile as the responsible MEC for the GEP, appointed Ms Manenzhe as Acting CEO of GEP as per the undated appointment letter and the latter accepted the appointment.

Issues in dispute

- 8.3.4. The Complainant contended that Mr Maile abused his powers in that he appointed two security guards for Ms Manenzhe without following HR processes and obtaining the Security Risk Assessment or conducting threat analysis on Ms Manenzhe.
- 8.3.5. The Complainant also asserted that there was no advert for the post and interviews for the bodyguard positions but the bodyguards were hired on tax payers' money to pay their salaries. Since 2017, the same bodyguards are still employed to date.
- 8.3.6. Mr Maile denied the allegations in his response to dated 19 August 2019, which was submitted to the Public Protector, that he appointed two security officials for Ms Manenzhe. Mr Maile stated that the procurement was done by GEP in consultation with the Head of Department of Economic Development.
- 8.3.7. In a response letter dated 19 August 2019 submitted to the Public Protector by Ms Funeka Njobe: Chief Director: Legal Advisory Services, Gauteng Department of Economic Development, she refuted allegations that Mr Maile appointed two bodyguards without following due processes and argued that

Mr Maile never participated in any way nor authorized any appointment of the two bodyguards.

8.3.8. Ms Njobe submitted with her response a Security Assessment Report dated 26 July 2017, which was signed by Mr Thabo B Maruping (Mr Maruping): Director Security Risk Management and approved by Mr Kgomotso Mojapelo: Chief Financial Officer on 10 July 2017, to substantiate her argument. The report submitted to the Public Protector recommended the following:

8.3.8.1. *The Acting CEO to be placed under closed protection till the duration of the forensic investigation by Ngubane Forensic Investigations and Accountants is completed.*

8.3.8.2. *During the closed protection, the possible identification of individuals and vehicles be recorded for further investigations and neutralization of the threat.*

8.3.8.3. *The procurement of closed protection be sourced through the Gauteng Department of Economic Development procurement process in order not to compromise the security operation.*

8.3.9. An undated memorandum compiled by Mr Maruping to Mr Kgomotso Mojapelo (Mr Mojapelo), Chief Financial Officer, GEP, was submitted to the Public Protector by Ms Njobe on 19 August 2019. The purpose of the memorandum was to request the approval from Mr Mojapelo, for the procurement of close protection services for the Acting CEO of GEP. The memorandum was approved by Mr Mojapelo on 10 July 2017.

8.3.10. Three quotations were received by the Gauteng Department of Economic Development from the following service providers as per the document signed by Ms Nompumelelo Modisane, Deputy Director, Procurement, Gauteng Department of Economic Development:

- 8.3.10.1. Lemur Risk Solutions;
- 8.3.10.2. Dambuza Security; and
- 8.3.10.3. Laphinda Cleaning and Security.

8.3.11. Lemur Risk Solutions were the preferred service provider and were awarded a contract for close protection of the Acting CEO on the basis that their quote was the lowest.

8.3.12. Mr Dube submitted an Internal Audit report signed 02 August 2017, compiled by the General Manager: Audit and Risk: Mr Lamlani Dube wherein it was stated that based on the security intelligence, it was determined that the life of the acting CEO was at risk after the effect of employee suspensions.

8.3.13. Mr Dube indicated that although the security assessment has not been conducted yet on the rest of the Executives, the lives of the CFO, COO, Acting GM Admin and Support and General Manager Risk and Audit may be under threat due to the recent employee protest placarding unpleasant slogans and threatening phone calls.

8.3.14. The report recommended that, where possible, provide physical security, trauma counselling to the affected, and explore other modalities of ensuring continuity of GEP business by EXCO whilst their security is reasonably guarded.

Applicable legal framework

8.3.15. **The Executive Members Ethics Act, 1998**, provides for a code of ethics governing ethical conduct of Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils.

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- 8.3.16. Section 2 of the Act provides that the President must publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and Members of the Executive Council must comply in performing their official responsibilities.
- 8.3.17. In terms of the above provision Mr Maile was the MEC responsible for the Gauteng Department of Economic Development, therefore the standards and rules contained herein are applicable to him.
- 8.3.18. Section 3(1) provides that the Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint.
- 8.3.19. Section 3(4) provides that when conducting an investigation in terms of this Act, the Public Protector has all the powers vested in her in terms of the Public Protector Act.
- 8.3.20. In the investigation of this complaint of a violation of the ethics code, the Public Protector derives her powers from both the Public Protector Act and the Executive Members Ethics Act.
- 8.3.21. Section 3(2) provides that the Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint to the Premier of the Province concerned, if the complaint is against an MEC.
- 8.3.22. Section 3(3) provides that if the Public Protector reports that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.

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- 8.3.23. In a letter dated 30 July 2019, the Premier of Gauteng, Mr David Makhura was accordingly notified that there is an investigation which is being conducted against Mr Maile and was not completed within the thirty (30) day period as prescribed by section 3(2)(a) and the Public Protector would therefore submit her report as envisaged in section 3(3) of the Act.
- 8.3.24. In terms of section 4(1), the Public Protector must investigate an alleged breach of the code of ethics on receipt of a complaint by *inter alia* the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.
- 8.3.25. In this regard, the Public Protector is empowered to investigate any alleged breach of the ethics code upon receipt of a complaint by the Premier a member of the Provincial Legislature of a Province, if the complaint is against an MEC. This complaint was received from Ms Mandisa Mashego who was a Member of the Gauteng Provincial Legislature and a Member of the EFF at it was lodged with the Public Protector.
- 8.3.26. In terms of section 3(6) the Premier must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection 2 (b), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the Provincial Legislature.
- 8.3.27. Section 2(1) of the Executive Members Ethics Act (EMEA) 82 of 1998, provides that *“The President must after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECS must comply in performing their official responsibilities.*

(2) *The code of ethics must—*

(a) *include provisions requiring Cabinet members, Deputy Ministers and MECs—*

(i) *at all times to act in good faith and in the best interest of good governance: and*

(ii) *to meet all the obligations imposed on them by law; and*

8.3.28. The above provision requires Members of Executive Councils to act in good faith and in the best interest of good governance and to meet all obligations imposed on them by law at all times. In performing his duties, Mr Maile is required to do so diligently, honestly and in the manner that is consistent with the integrity of the office he holds. Mr Maile must in good faith and in the best interest of good governance meet all obligations imposed on him by law as prescribed by EMEA.

The Constitution of the Republic of South Africa, 1996

8.3.29 Section 12(1)(c) of the Constitution provides *that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources;*

8.3.29. The Constitution guarantees all citizens the right to freedom and security and to be free from all violence from either public or private threats. In this regard. The above provision places the responsibility of securing the safety of the citizens solely in the hands of the government. Similarly, the Department has a duty to provide reasonable operating policies, procedures, and practices for the physical protection of personnel, infrastructures, and assets from deliberate and unforeseen threats at all their office.

- 8.3.30. Section 205(3) of the Constitution *provides that the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.*
- 8.3.31. The above provisions enjoins the South African Police Service as mandated by the Constitution to combat and investigate crime, protect and secure the lives of South African citizens. Therefore, all physical security breaches/incidents must be reported to the South African Police Services (SAPS) for investigation, further handling and to provide guidance on the required minimum levels of physical security required whenever there is a threat on one`s life.
- 8.3.32. In this regard ,the Department through its Internal audit and risk, conducted a risk and threat assessment on the CEO, Ms Manenzhe which indicated that based on the security intelligence, it was determined that the life of the Ms Manenzhe was at risk, after the effect of employee suspensions. Therefore, once it was determined that Ms Manenzhe`s life was at risk, the Department was required to engage SAPS to conduct their own investigation and risk assessment to determine the level of risk Ms Manenzhe was exposed to and make a determination in terms of whether closed protection services was required.
- 8.3.33. There is no evidence in the Public Protector`s possession demonstrating that the Department engaged SAPS with regards to the threat that was posed to Ms Manenzhe`s life, as SAPS is empowered to prevent, combat and investigate crimes.

Conclusion

- 8.3.34. Mr Maile appointed Ms Manenzhe as the acting CEO of GEP as per the undated letter submitted to the Public Protector.
- 8.3.35. Mr Maruping conducted a risk assessment regarding the safety of Ms Manenzhe based on the security intelligence report which determined that the life of Ms Manenzhe was at risk after the effect of employee suspensions and compiled the Risk Assessment Report recommending procurement of close protection for the acting CEO.
- 8.3.36. Furthermore, based on the evidence before the Public Protector, Mr Maruping compiled a memorandum which was approved by Mr Mojapelo, the Chief Financial Officer, requesting approval of procurement of close protection for Ms Manenzhe, which was granted. There is nowhere in the memo, where Mr Maile recommended, approved and or participated in the appointment of the two body guards for Ms Manenzhe. Further, the memo also does not indicate if the threat on Ms Manenzhe was reported to SAPS to investigate.
- 8.3.37. The Gauteng Department of Economic Development received three quotes from service providers relating to the provision of close protection for Ms Manenzhe and Lemur Risk Solutions were the preferred service provider.
- 8.3.38. Consequently, evidence in possession of the Public Protector could not substantiate the contention that Mr Maile violated the Executive Ethics Code and abused his authority by appointing the two bodyguards for Ms Manenzhe.
- 8.3.39. The security guards were procured and not recruited as alleged and therefore, it was not a prerequisite that the posts should be advertised and interviews conducted as a supply management process was followed.

8.4. Whether Ms Nokoane Karabo irregularly received a sum of R250 000.00 as a “kickback” from a service provider who was awarded a tender at the GEP

Common cause issues

8.4.1. Ms Nokoane is employed by GEP and was once appointed as the Acting Chief Financial Officer (CFO): GEP.

8.4.2. It is also not disputed that Ms Nokoane purchased a Mercedes Benz vehicle in 2019.

Issues in dispute

8.4.3. The Complainant argued that Ms Nokoane received an amount of R250 000,00 from an unknown company that was awarded a tender to render unspecified services. The money was paid as a deposit for the purchase of a Mercedes Benz car from Rosebank Mercedes Benz by Ms Nokoane.

8.4.4. Ms Nokoane submitted an affidavit on 14 August 2019 to the Public Protector, wherein she raised concerns regarding the allegation letter sent to her by Ms Vuyo Ntshoko, the Acting CEO GEP, which was from the Public Protector in that it was not directly sent to her even though the investigation was against her personally. However in a meeting held on 05 November 2019 between the investigation team, Ms Nokoane and her Attorney, Mr Dumisani Rorwana, Ms Nokoane refuted the allegations that she received R250 000,00 from an unknown company that was awarded a tender to render unspecified services.

8.4.5. Ms Nokoane further disputed the allegations that the money was paid as a deposit for the purchase of a Mercedes Benz vehicle from Rosebank Mercedes

Benz. She further requested the Complainant to submit proof to substantiate the allegations.

- 8.4.6. In a response dated 14 September 2020, Mr Shannon Freese: Group Finance and Insurance Manager: Mercedes Benz, stated that there is no evidence that R250 000.00 was paid into Mercedes Benz Rosebank's account on behalf of Ms Nokoane nor was the said amount subsequently refunded to Ms Nokoane.
- 8.4.7. Mr Freese further stated that there is no financial transaction between Ms Nokoane and Mercedes Benz.
- 8.4.8. Mr Freese confirmed that Ms Nokoane did not purchase a vehicle at Mercedes Benz Rosebank branch nor at any of the dealerships registered under Sandown Motor Holdings (Pty) Ltd.
- 8.4.9. Mr Freese further confirmed that a finance application in the name of Ms VK Nokoane was submitted to the various finance institution on 30 January 2019. However the finance application was unsuccessful and an agreement was never concluded.
- 8.4.10. On 25 March 2021, subpoenas were sent to Standard Bank, ABSA, FNB, Capitec and Nedbank requesting financial records of Ms Nokoane so that the Public Protector could verify as to whether or not there was a payment of R250 000,00 into the banking account of Ms Nokoane. The Public Protector noted that Ms Nokoane does not have bank accounts with all the banks except for an account held with Standard Bank.
- 8.4.11. According to the information received on 29 March 2021 from the Senior Manager Legal Advisory Services (Standard Bank): Mr Tshepo Masipa (Mr Masipa), Ms Nokoane opened the following bank accounts numbers:
- 8.4.11.1. 10083201708,

- 8.4.11.2. 636287424,
- 8.4.11.3. 532178718,
- 8.4.11.4. 10099735057,
- 8.4.11.5. 10112921351,
- 8.4.11.6. 5221.....9706 (credit card)
- 8.4.12. Furthermore, according to the bank statements received from Mr Masipa, there is no indication of payment of R250 000.00 into any of Ms Nokoane's bank accounts.
- 8.4.13. On 29 July 2021, the Sales Manager: Maritime Motors (Pty) Ltd: Mr Grant Boscombe, stated in an email sent to the investigation team that the company records show that Ms Nokoane purchased a Mercedes Benz vehicle from their company and the full purchase price was fully financed by Wesbank. There was no deposit paid on the contract with Ms Nokoane.
- 8.4.14. On 10 August 2021, Mr Russel Mahibila, Director in the office of Head of Department of Roads and Transport, Mr Makhukhu Mampuru (Mr Mampuru), submitted a letter dated 10 August 2021, wherein it was confirmed that Ms Nokoane owns a Mercedes Benz vehicle which was owned by Maritime Motors (Pty) Ltd.
- 8.4.15. According to the eNaTIS documents submitted to the Public Protector by Mr Mahibila through email on 10 August 2021, Mr Nokoane owns a Mercedes Benz vehicle that was previously owned by Maritime Motors and with the titleholder being Wesbank.

Applicable legal framework

8.4.16. Section 9(1) of Public Administration Management Act (PAMA) 11 of 2014 states that An employee must, in the prescribed manner, disclose to the relevant head of the institution all his or her financial interests and the financial interests of his or her spouse and a person living with that person as if they were married to each other, including all—

(a)

(b)

(c) gifts above the prescribed value, other than gifts received from a family member;

(c) benefits; and

(e)

8.4.17. Section 9(2) of PAMA states that failure by an employee to comply with the obligation referred to in subsection (1) constitutes misconduct”.

8.4.18. The above provisions requires that all employees must disclose benefits and gifts received by them or their family members in order to comply with the law. Consequently, Ms Nokoane would have been expected to disclose any gifts received, including the R250 000 in terms of the prescribed legislation.

8.4.19. Section 4 of the Prevention and Combating of Corrupt Activities Act No 12 2004 provides that _

“(1) Any_

(a) *public officer who, directly or indirectly accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*

(b) *person who directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,*

in order to act, personally or by influencing another person so to act, in a manner-

(i) *that amounts to the_*

(aa) *illegal, dishonest unauthorised, incomplete, or biased: or*

(bb) *misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*

(aa) *the abuse of a position of authority;*

(bb) *a breach of trust; or*

(cc) *the violation of a legal duty or a set of rules;*

(ii) *that amounts to_*

(iii) *designed to achieve an unjustified result: or*

(iv) *that amounts to any other unauthorised or improper inducement to do or not to is guilty of the offence of corrupt activities relating to public officers.”*

8.4.20. According to the above provision public officers are prohibited from directly or indirectly accepting or agreeing or offering to accept any gratification from any other person.

8.4.21. Although the above provision also applies to Ms Nokoane, however in this instance, there was no evidence to corroborate the allegations made by the Complainant that Ms Nokoane received a kickback of R250 000 from a service provider and/or failed to declare any gifts as prescribed.

Conclusion

8.4.22. Based on the evidence obtained by the Public Protector, it follows that Ms Nokoane purchased a Mercedes Benz vehicle during 2019, which is financed by Wesbank.

8.4.23. There is no evidence in the possession of the Public Protector which indicates that Ms Nokoane received a kickback of R250 000.00 from a service provider. Therefore, the allegation that Mr Nokoane purchased a Mercedes Benz vehicle from the proceeds of a kickback received from a service provider could not be substantiated.

9 REASONS FOR CLOSURE

9.1 Having regard to the evidence obtained during the investigation, the regulatory framework determining the standard that Mr Maile should have complied with

and the impact thereof on good administration, the Public Protector intends to close this matter on the following basis:

9.1.1 Regarding whether Mr Maile irregularly signed the lease agreement to accommodate GEP, GGDA, GTA and GLB at Building 124, without following prescribed procurement processes.

9.1.1.1 The allegation that Mr Maile signed a lease agreement to accommodate GEP, GGDA and Gauteng Tourism at the Building without following procurement processes, is unsubstantiated.

9.1.1.2 There is no evidence indicating that Mr Maile signed the lease agreement on behalf of the Department and or extended the lease agreement as such agreement was concluded on 16 February 2009, and certain clauses amended as per the addendum signed on 12 April 2011, prior to Mr Maile being appointed as the MEC: Gauteng Department of Economic Development (GDED) in May 2014, a position he held until May 2019.

9.1.1.3 The lease agreement was signed and extended by Mr Sibusiso B Buthelezi: Head of Department of Public Transport, Roads and Works (currently known as Department of Infrastructure Development (DID). The Addendum amending certain clauses in the original agreement was signed by Mr. Khulu Radebe: Head of Department of Economic Development in 2011 and later by Messrs. Paul Maseko and Khulu Radebe.

9.1.1.4 There is no evidence in the possession of the Public Protector that indicates that Mr Maile contravened section 195 of the Constitution and 38(f) and (g) of the Public Finance Management Act.

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- 9.1.1.5 The conduct of Mr Maile did not violate section 217 of the Constitution and 38(f) and (g) of the Public Finance Management Act during the signing of the lease agreement relating to building situated at 124 Main Street Marshalltown.
- 9.1.1.6 Accordingly, the conduct of Mr Maile 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(4)(a)(i) of the Public Protector Act.
- 9.1.2 **Regarding whether Mr Maile unduly delayed to release the Ngubane Forensic Investigation Report regarding the investigation completed in July 2017, which criminally implicated the former MEC, the former Acting CEO and other Board members and executives of the GEP.**
- 9.1.2.1 The allegations that Mr Maile unduly delayed to release the Ngubane forensic investigation report, is unsubstantiated.
- 9.1.2.2 There is no evidence indicating that Mr Maile is in possession of a report regarding the investigation that was conducted against the former MEC or Board members of GEP. In fact, it would not have been prudent for a report with adverse findings against Mr Maile to have been submitted to him. However the available evidence indicate that the Ngubane investigation was initiated by Ms Manenzhe and not by Mr Maile.
- 9.1.2.3 Furthermore, the Public Protector could not prove that Mr Maile was ever in possession of the Ngubane report that he failed to release the investigation report. In addition, both the Ngubane and Mkhabela reports, do not contain any findings and/or recommendations that make adverse findings against the former MEC.
- 9.1.2.4 The conduct of Mr Maile in this regard did not violate section 195(1) (f) and (g) of the Constitution in respect of the commissioning and releasing of the

investigation report compiled by Ngubane Forensic Investigations and Accountants.

9.1.2.5 Accordingly, the conduct of Mr Maile 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(4)(a)(i) of the Public Protector Act.

9.1.3 **Regarding whether Mr Maile violated the Executive Ethics Code of the Executive Members Ethics Act 82 of 1998 (EMEA) and abused his authority as the former MEC by irregularly appointing two (2) body guards for the Acting Chief Executive Officer (CEO) of GEP, Ms Leah Manenzhe (Ms Manenzhe) during June 2017, without following prescribed recruitment policies and processes**

9.1.3.1 The allegation that Mr Maile violated the Executive Ethics Code of the Executive Members Ethics Act 82 of 1998 (EMEA) and abused his authority as the former MEC by irregularly appointing two (2) body guards for the acting Chief Executive Officer (CEO) of GEP, Ms Leah Manenzhe (Ms Manenzhe) during June 2017, without following prescribed recruitment policies and processes, is unsubstantiated.

9.1.3.2 There is no evidence in the possession of the Public Protector that indicates that Mr Maile was involved in the appointment of two security guards for the protection of Ms Manenzhe.

9.1.3.3 However evidence indicates that, Mr Maruping conducted risk assessment regarding the safety of Ms Manenzhe based on the security intelligence which determined that the life of the CEO was at risk after the effect of employee suspensions and compiled the Risk Assessment Report recommending

procurement of close protection for the acting CEO. Mr Maruping thereafter compiled a memorandum which was approved by Mr Mojapelo, the Chief Financial Officer, requesting approval to procure close protection for Ms Manenzhe, which was granted.

- 9.1.3.4 The Gauteng Department of Economic Development received three quotes from service providers relating to the provision of close protection to Ms Manenzhe and Lemur Risk Solutions were the preferred service provider.
- 9.1.3.5 Therefore, the security guards were procured through a supply management process and not recruited through the GEP's recruitment process, as alleged.
- 9.1.3.6 The conduct of Mr Maile does not contravene section 36(1) and 2(a) and (b) of the Public Finance Management Act and section 2(1) of Executive Members Ethics Act.
- 9.1.3.7 Accordingly, the conduct of Mr Maile in the circumstances did not contravene section 2(1) Executive Members Ethics Act.
- 9.1.3.8 Furthermore, the conduct of Mr Maile 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(4)(a)(i) of the Public Protector Act.
- 8.4.24. All employers are required to safeguard the security of their employees and the Public Protector noted that the Internal Audit report, based on the security intelligence assessment, determined that the life of the CEO was at risk after the effect of employee suspensions. The Department was nonetheless required to report this matter to SAPS, as they have the capability and the ability to investigate all forms of crimes, especially is a life is threatened.

9.1.4 Regarding whether Ms Nokoane Karabo irregularly received a sum of R250 000.00 as a “kickback” from a service provider who was awarded a tender at GEP.

9.1.4.1 The allegation that Ms Nokoane received “kickback” of R250000.00 from a service provider who was awarded a tender, is unsubstantiated.

9.1.4.2 There is no evidence in the possession of the Office of the Public Protector that indicates that Ms Nokoane received a “kickback” of R250 000.00 which was used as a deposit for the purchase of a Mercedes Benz vehicle.

9.1.4.3 Although evidence obtained during the investigation confirmed that Ms Nokoane purchased a Mercedes Benz vehicle which was owned by Maritime Motors Mr Grant Boscombe, Sales Manager: Maritime Motors (Pty) Ltd stated in an email sent to the investigation team that the company records show that Ms Nokoane purchased a Mercedes Benz vehicle from their company and the full purchase price was fully financed by Wesbank. There was no deposit paid on the contract with Ms Nokoane.

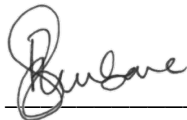
9.1.4.4 Furthermore, according to the eNaTIS documents submitted to the Public Protector by Mr Mahibila through email on 10 August 2021, the eNaTIS records corroborates Mr Grant Boscombe’s (Maritime Motors (Pty) Ltd) submission that Mr Nokoane owns a Mercedes Benz vehicle that was previously owned by Maritime Motors, with the titleholder being Wesbank.

9.1.4.5 The conduct of Ms Nokoane was not in contravention of section 9(1)(c) and (d), section 9(2) of the Public Administration Management Act and section 4 (1) of the Prevention and Combating of Corrupt Activities Act.

9.1.4.6 Accordingly, the conduct of Ms Nokoane 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(4)(a)(i) of the Public Protector Act.

- 10 Rule 42(1) of the Public Protector Rules provides that when the Public Protector intends concluding a complaint by means of a closing report provided for in rule 41(b), 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 fourteen (14) days of delivery of the notification.
- 11 A Discretionary Notice was sent to the Complainant on 20 September 2020, in terms of rule 42(1) of the Public Protector Rules as promulgated under section 7 (11) of the Public Protector Act, 1994. No response was received from the Complainant and the file will be closed accordingly.
- 12 Kindly further take note that in terms of section 7(2) of the Public Protector Act, 1994, the contents of this notice is confidential. No person may disclose the content hereof without the authorisation of the Public Protector and any person that breaches the confidentiality “... shall be guilty of an offence” which is punishable, upon conviction, with “a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment” as contemplated in section 11 of the Act.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 31/01/2022

Assisted by Gauteng Provincial Office