

**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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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY TO
RESOLVE A COMPLAINT REGARDING ILLEGAL ROOMS AND SPILLAGE FROM
AN ILLEGAL STRUCTURE FROM THE COMPLAINANT'S NEIGHBOUR AT PLOT
163, RANDFONTEIN BY THE RAND WEST CITY LOCAL MUNICIPALITY**

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LIST OF ACRONYMS

MEC	MEMBER OF EXECUTIVE COMMITTEE
PPSA	PUBLIC PROTECTOR SOUTH AFRICA
SAPS	SOUTH AFRICAN POLICE SERVICES
SPLUMA	SPATIAL PLANNING AND LAND USE MANAGEMENT ACT
THE DEPARTMENT	THE DEPARTMENT OF HEALTH
THE MUNICIPALITY	RAND WEST CITY LOCAL MUNICIPALITY
THE CONSTITUTION	CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT 108 OF 1996
THE PUBLIC PROTECTOR ACT	PUBLIC PROTECTOR ACT 23 OF 1994

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the 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, 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 of undue delay to resolve a complaint regarding illegal rooms and spillage from an illegal structure of two drop toilets and a shower from the Complainant's neighbour at plot 163, corner of Villiers & Roads, Hillside, Randfontein by the Rand West City Local Municipality (the Municipality).
- (iii) The complaint was lodged with the Public Protector by Mr Thinangwa Makhani on behalf of Mr Peter Garay (the Complainant) on 29 September 2020.
- (iv) The Complainant, in the main, alleged that:
 - (a) In February 2011, he noticed raw sewerage emanating from an ablution block where his neighbour constructed two (2) drop toilets and a shower less than a meter from the boundary fence between the two properties;
 - (b) He tried to get the owner of the property to address the complaint, without success. After four (4) months of his neighbour's failure to address his complaint, he decided to report the health hazard to the Department of Health (Department). Officials, who came and inspected the area as per his complaint found the complaint to be valid;

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- (c) The Department was able to get the owner to explain himself, however, the issue of the contravention was not addressed. The neighbour contravened the Agriculture Holdings Regulations, in that he built rooms for rental whereas only one (1) residential dwelling is allowed on the property;
- (d) After the complaint was not fully addressed, the Complainant was advised by Ms Lireen Human (Ms Human), the former Legal Advisor of the Rand West City Local Municipality to approach the Municipality's Human Settlements, Legal and Building Control Department, however, his complaint remained unresolved;
- (e) He then lodged his complaint verbally in June 2011, with Ms Gladys Ngwana (Ms Ngwana) and Mr Charles Abrahams (Mr Abrahams), both former employees of the erstwhile Randfontein Local Municipality Department of Health;
- (f) He then consulted *Legalwise* to assist as he could not get a response or resolution to his complaint. *Legalwise* escalated the complaint to Mr Themba Goba (Mr Goba), the former Municipal Manager of the Municipality on 01 July 2020 – who also did not respond. As a result, the complaint was escalated to the Public Protector to investigate; and
- (g) The Complainant further submitted that a Tribunal was to be set up in January 2020, whereby the Complainant and the property owner were to be called in to resolve the matter.
- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
- (a) **Whether there is undue delay by the Rand West City Local Municipality to resolve a complaint regarding illegal rooms and spillage from an illegal structure of two drop toilets and a shower from the Complainant's neighbour at plot 163, Corner Villiers & Roads,**

Hillside in Randfontein, as contemplated in section 6(4)(a)(ii) 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) On 01 September 2022, a notice in terms of section 7(9) of the Public Protector Act was issued to the Municipal Manager (Rand West City Local Municipality): Mr Thabo Ndlovu (Mr Ndlovu), the Executive Mayor (Rand West City Local Municipality), Ms Gladys Khoza, the MEC for Human Settlements, Urban Planning and Corporative Governance and Traditional Affairs, Mr Lebogang Maile and to the Speaker of the Rand West City Local Municipality, Mr Dumile Sithole, to provide an opportunity for responses on the likely adverse findings and intended remedial action. Sections 7(9)(a) and (b) of the Public Protector Act provide that persons implicated in an investigation by the Public Protector, are to be allowed an opportunity to make representations regarding same.
- (viii) A response to the section 7(9) notice was received on 13 September 2022. The response and information/ evidence submitted in response to the notice in terms of section 7(9) of the Public Protector Act, was duly considered by the Public Protector in relation to the allegations against the person(s) concerned or the grounds for adverse comments or findings against or remedial action involving them.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the Rand West City Local Municipality should have complied with, the following findings are made:
- (a) **Regarding whether there is undue delay by the Rand West City Local Municipality to resolve a complaint regarding illegal rooms and spillage from an illegal structure from the Complainant's neighbour at**

plot 163, Corner Villiers & Roads, Hillside in Randfontein by the Municipality, as contemplated in section 6(4)(a)(ii) of the Public Protector Act, 1994.

- (aa) The allegation that there is an undue delay by the Municipality to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure of two drop toilets and a shower from the Complainant's neighbour at plot 163, Cnr Villiers & Roads, Hillside in Randfontein, **is substantiated**.
- (bb) The evidence in the Public Protector's possession indicates that the Municipality continued issuing building control compliance notices to Mr Watkins to cease all building works and to submit plans for approval, even though the non-compliance persisted for a period of more than nine (9) years since the receipt of the complaint from the Complainant in 2011. The complaint, as of the date of the conclusion of the investigation, remains unresolved.
- (cc) The investigation further revealed that the Municipality failed to effectively enforce the National Building Regulations and Building Standards Act, the Spatial Planning and Land Use Management Act and to exhaust all legal remedies available to it to address the constant prejudice suffered by the Complainant in this matter.
- (dd) The conduct of the Municipality violated Sections 4(1) and 21 of the National Building Regulations and Building Standards Act, Section 32 of the Spatial Planning and Land Use Management Act (SPLUMA), and Regulation A25(7) of the Regulations Under The National Building Regulations and Building Standards Act, in dealing with the complaint of construction of illegal structures at plot 163, Corner Villiers & Roads, Hillside in Randfontein.

- (ee) Accordingly, the conduct of the Municipality in the circumstances constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act.
- (x) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, is the following:

The Municipal Manager of the Rand West City Local Municipality is to ensure that:-

- (aa) Within **ninety (90) working days** of receipt of this report, the Municipality brings an application for a demolition order to the appropriate Court in terms of section 32 of the SPLUMA read with sections 4(1), A25(7) and 21 of the National Building Regulations and Building Standards Act;
- (bb) Within **ninety (90) working days** of this report and in line with section 195(h) of the Constitution and section 55(1)(f) of the Local Government: Municipal Systems Act, training is conducted for all Managers and officials of the Economic Development, Human Settlement & Planning Department of the Municipality on the building control legal prescripts; and
- (cc) Within **thirty (30) working days** of receipt of this report, a written apology to the Complainant is provided for the undue delay to finalise his complaint in line with section 237 of the Constitution.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY TO RESOLVE A COMPLAINT REGARDING ILLEGAL ROOMS AND SPILLAGE FROM AN ILLEGAL STRUCTURE FROM THE COMPLAINANT'S NEIGHBOUR AT PLOT 163, CORNER VILLIERS & ROADS, HILLSIDE, RANDFONTEIN BY THE RAND WEST CITY LOCAL MUNICIPALITY

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, 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 and to implement the remedial action, where applicable.
- 1.3 Copies of the report are provided to the following individuals in terms of section 8(3) of the Public Protector Act, 1994:
- 1.3.1 The Municipal Manager of the Rand West City Local Municipality, Mr Thabo Ndlovu;
- 1.3.2 The Executive Mayor of the Rand West City Local Municipality, Ms Gladys Khoza;
- 1.3.3 The MEC for Human Settlements, Urban Planning and Corporative Governance and Traditional Affairs, Mr Lebogang Maile; and
- 1.3.4 The Speaker of the Rand West City Local Municipality, Mr Dumile Sithole; and

1.4 The report relates to an investigation into allegations of undue delay to resolve a complaint regarding illegal rooms and spillage from an illegal structure of two drop toilets and a shower from the Complainant's neighbour at plot 163, corner Villiers & Roads, Hillside in Randfontein by the Rand West City Local Municipality (the Municipality).

2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector by Mr Thinangwa Makhani on behalf of Mr Peter Garay (the Complainant), on 29 September 2020.

2.2 The Complainant, in the main, alleged that:

2.2.1 In February 2011, he noticed raw sewerage emanating from an ablution block where his neighbour (Mr Watkins) constructed two (2) drop toilets and a shower, less than a meter from the boundary fence between the two properties;

2.2.2 He tried to get the owner of the property to address the complaint, without success. After four (4) months of his neighbour's failure to address his complaint, he decided to report the health hazard to the Department of Health. Officials who came and inspected the area found his complaint to be valid;

2.2.3 The Department was able to get the owner to explain himself, however, the issue of the contravention was not addressed. The neighbour contravened the Agriculture Holdings Regulations in that he built rooms for rental whilst only one (1) residential dwelling is allowed on the property;

2.2.4 After the complaint was not fully addressed, the Complainant was advised by Ms Lireen Human (Ms Human), the former Legal Advisor of the Rand

West City Local Municipality to approach the Municipality's Human Settlements, Legal and Building Control Department, but his complaint remained unresolved;

2.2.5 He then lodged his complaint verbally in June 2011, with Ms Gladys Ngwana (Ms Ngwana) and Mr Charles Abrahams (Mr Abrahams), both former employees of the erstwhile Randfontein Local Municipality Health Department;

2.2.6 He subsequently consulted *Legalwise* to assist as he could not get a response or resolution to his complaint. *Legalwise* escalated the complaint to Mr Themba Goba (Mr Goba), the former Municipal Manager of the Municipality, on 01 July 2020, who also did not respond. As a result, the complaint was escalated to the Public Protector to investigate; and

2.2.7 The Complainant further alleged that the Tribunal was to be set up in January 2020, whereby the Complainant and the property owner were to be called in, to resolve the matter.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The investigation was conducted in terms of section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) which gives the Public Protector the powers to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, 23 of 1994 (Public Protector Act), which regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.

3.2 Since the incident or matter concerned occurred more than two years prior to the reporting of the matter to the Public Protector, the Public Protector has

exercised its discretion in terms of section 6(9) of the Act to entertain the complaint based on the following special circumstances as envisaged in Rule 10(1) of the Rules –

- a) *The Complainant provided sufficient and compelling information with prima facie evidence of alleged or suspected improper or prejudicial conduct;*
- b) *The nature of the complaint and grievance reveals the possibility of un-remedied prejudice or injustice;*
- c) *The Complainant provided a reasonable explanation for the delay in reporting the matter to the Public Protector/ has been engaged in continuous efforts to resolve the matter since the date of occurrence;*
- d) *The investigation of the matter would be in the public interest as it could potentially identify and address systemic deficiencies in the administration of the institution concerned;*
- e) *The information/evidence that may be required or sought by the Public Protector should still be readily available and reliable.*

3.3 What constitutes “special circumstances” will depend on the merits of each case.¹

3.4 Under the circumstances the Complainant provided sufficient information with *prima facie* evidence of alleged or suspected improper or prejudicial conduct by the Municipality. It also follows that the nature of the complaint and grievance reveals the possibility of un-remedied prejudice or injustice suffered by the Complainant as a result of the conduct of the Municipality.

3.5 In this instance, the special circumstances that the Public Protector took into account was the fact that the Complainant lodged this complaint with the Municipality in 2011 and the prejudice suffered by the Complainant persists

¹ *Gordhan v Public Protector and Others [2020] ZAGPPHC 777*

as the complaint is not yet resolved. The Complainant has also endeavoured to get the matter resolved for several years, but with limited or no success. The situation also clearly causes an environmental and health hazard that cannot be left unresolved.

- 3.6 The Rand West City Local Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and sections 6(4) and (5) of the Act.

4. ISSUE IDENTIFIED FOR INVESTIGATION

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

4.1.1 Whether or not there is undue delay by the Municipality to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure from the Complainant's neighbour at plot 163, Corner Villiers & Roads, Hillside in Randfontein by the Municipality, as contemplated in section 6(4)(a)(ii) of the Public Protector Act, 1994.

4.2 The investigation has been concluded and based on the information and evidence obtained during the course thereof, the Public Protector is now in a position to make findings and take appropriate remedial action.

4.3 Evidence indicating that the Rand West City Local Municipality unduly delayed to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure of two drop toilets and a shower from the Complainant's neighbour at plot 163, Corner Villiers & Roads, Hillside, was found and since the Public Protector did not receive further information that refutes the evidence in its possession, the Public Protector has made

adverse findings against the Municipality and has taken appropriate remedial action to place the Complainant as close as possible to where he is likely to have been had the Municipality acted properly.

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 the exchange of documents, analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

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

- a) What happened?
- b) What should have happened?
- c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to amounts to maladministration, abuse of power or other improper conduct?
- d) In the event of a violation, what action should be taken?

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- 5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.
- 5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Rand West City Local Municipality.
- 5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration; what it would take to remedy the wrong or, where appropriate, to place the Complainant as close as possible to where she/he would have been, but for the improper conduct or maladministration.

5.3 The Investigation Process

- 5.3.1 A preliminary investigation was conducted in terms of section 7(1) of the Act which seeks to determine the merits of the complaint, allegation or information, and the manner in which the matter should be dealt with, including whether or not a full-scale investigation was justified. Subsequent to the initial responses received from the Municipality, a full-scale investigation was embarked on.
- 5.3.1 The investigation process commenced with correspondence to the Rand West City Local Municipality on 29 October 2020 wherein the Municipality was informed of the investigation, the legislation in terms of which the investigation was conducted, as well as what information was required and the format thereof.

- 5.3.2 The format and the procedure followed in conducting the investigation included:
- a) An allegations and information request letter dated 29 October 2020 that was sent to the Rand West City Local Municipality;
 - b) On 03 May 2021 the Public Protector obtained documents relevant to the investigation which were in the possession or under the control of Rand West City Local Municipality; and
 - c) On 06 January 2022 the Public Protector issued a subpoena directing the appearance of a person before the Public Protector for purposes of obtaining or clarifying information, producing any document or giving evidence in terms of section 7(4)(a) of the Act.

5.4 Key sources of information

5.4.1 Documents and e-mail correspondence

- 5.4.1.1 A copy of the property enquiry results dated 29 August 2013 for Hillside in the Deeds Registry of Pretoria;
- 5.4.1.2 A copy of the complaint form, dated 21 September 2020 from the Complainant;
- 5.4.1.3 A copy of an acknowledgement of complaint to the Complainant dated 12 October 2020;
- 5.4.1.4 A copy of the letter dated 22 October 2020 confirming issues for investigation from the PPSA to the Complainant;
- 5.4.1.5 A copy of an email confirming issues for investigation from the Complainant to the PPSA dated 23 October 2020;

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- 5.4.1.6 A copy of the request of information (allegations) letter dated 29 October 2020 from the PPSA to the Rand West City Local Municipality;
 - 5.4.1.7 A copy of an email update from the PPSA to the Complainant dated 9 December 2020;
 - 5.4.1.8 A copy of the letter of intention to issue a Subpoena dated 26 January 2021 from the PPSA to the Rand West City Local Municipality;
 - 5.4.1.9 A copy of an email reminder dated 18 March 2021 from the PPSA to the Rand West City Local Municipality;
 - 5.4.1.10 A copy of the response letter dated 30 March 2021 from Mr Temba Goba, the former Municipal Manager of the Rand West City Local Municipality received by the PPSA on 12 May 2021;
 - 5.4.1.11 A copy of the response affidavit, dated 19 January 2022 from Mr McDonald Gregory Makhubo, the Executive Manager, Economic Development Human Settlement and Planning of the Rand West City Local Municipality;
 - 5.4.1.12 A notice in terms of section 7(9) of the Public Protector Act, 1994, dated 26 August 2022 and
 - 5.4.1.13 A response letter dated 09 September 2022 from Rand West City Local Municipality to the PPSA.

5.4.2 Legislation and other prescripts

- 5.4.2.1 The Constitution of the Republic of South Africa, 1996;
- 5.4.2.2 The Public Protector Act, No 23 of 1994;
- 5.4.2.3 The National Building Regulations and Building Standards Act, No 103 of 1977;

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- 5.4.2.4 The Regulations under the National Building Regulations and Building Standards Act, No 103 of 1977; and
- 5.4.2.5 The Spatial Planning and Land Use Management Act, No 16 of 2013.
- 5.4.3 **Case Law**
- 5.4.3.1 *Gordhan v Public Protector and Others [2020] ZAGPPHC 777; and*
- 5.4.3.2 *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR (CC).*
- 5.4.4 **Notice issued in terms of section 7(9) of the Public Protector Act.**
- 5.4.4.1 On 26 August 2022, a notice in terms of section 7(9) of the Public Protector Act was issued to the Municipal Manager of the Rand West City Local Municipality, Mr Thabo Ndlovu, the Executive Mayor of the Rand West City Local Municipality, Ms Gladys Khoza, the MEC for Human Settlements, Urban Planning and Corporative Governance and Traditional Affairs, Mr Lebogang Maile and the Speaker of the Rand West City Local Municipality, Mr Dumile Sithole, to provide them with an opportunity to respond to the likely adverse findings and proposed remedial action. Sections 7(9)(a) and (b) of the Public Protector Act provide that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.
- 5.4.4.2 A response to the Section 7(9) notice of the Public Protector Act was received from the Municipality on 13 September 2022. The information/evidence submitted in response to the notice in terms of section

7(9), was duly considered by the Public Protector in relation to the substance of the allegation against the Rand West City Local Municipality.

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. Regarding whether there is undue delay by the Rand West City Local Municipality to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure from the Complainant's neighbour at plot 163, Corner Villiers & Roads, Hillside in Randfontein, as contemplated in section 6(4)(a)(ii) of the Public Protector Act, 1994:

Common cause issues

- 6.1.1. Plot 163 at Corner Villiers & Roads, Hillside in Randfontein is designated as an agricultural holding.
- 6.1.2. The agricultural holding is a portion of land not less than 8565 square meters, used solely or mainly for agriculture, horticulture, breeding or keeping of domestic animals, poultry or bees.
- 6.1.3. The owner of plot 163, Corner Villiers & Roads, Hillside in Randfontein is Mr Pietros Watkins (Mr Watkins), with diagram deed number **26898/952** and title deed number **T69083/2008**.
- 6.1.4. Plot 163 is adjacent to the immovable property of the Complainant.

Issue in dispute

- 6.1.5. The issue for the Public Protector's determination is whether there is an undue delay by the Rand West City Local Municipality to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure on plot 163, Corner Villiers & Roads, Hillside, Randfontein onto the property of the Complainant.

Complainant's version

- 6.1.6. The Complainant contended that in February 2011, he noticed raw sewerage emanating from an ablution block where his neighbour constructed two (2) drop toilets and a shower at less than a meter from the boundary fence from his property.
- 6.1.7. The Complainant also stated that he tried to get the owner of the property to address the complaint without success. After four (4) months of his neighbour's failure to address his complaint, he reported the issue of the health hazard to the Department of Health. Officials who inspected the area found the complaint to be valid.
- 6.1.8. According to the Complainant, the Department of Health was able to get the owner to explain himself, however, the contravention was not addressed. The neighbour contravened the Agricultural Holdings Regulations in that he built rooms for rental whereas only one (1) residential dwelling is allowed.
- 6.1.9. The Complainant submitted that after the complaint was not addressed, he was advised by a certain Ms Human, the former Legal Advisor of the Rand West City Local Municipality to approach the Municipality's Human Settlements, Legal and Building Control Department, but his complaint was

still not addressed. He then lodged his complaint verbally in June 2011 to Ms Ngwana and Mr Abrahams, two former employees of the Municipality.

- 6.1.10. He thereafter consulted *Legalwise* to assist as he could not get a response or assistance from the Municipality regarding his complaint. *Legalwise* escalated the complaint to Mr Themba Goba (Mr Goba), the former Municipal Manager of the Municipality, on 01 July 2020, who also did not respond. As a result, the complaint was escalated to the Public Protector to investigate.
- 6.1.11. The Complainant further submitted that a Tribunal was to be set up in January 2020, whereby he and the property owner were to be called in, in an effort to resolve the matter.

Response from Mr Goba, the former MM

- 6.1.12. On 03 May 2021, the Public Protector Investigation team received a response to the allegations letter dated 30 March 2021 from Mr Goba, the former Municipal Manager, wherein he submitted that the former Randfontein Local Municipality and now the successor-in-title, Rand West City Local Municipality, had been monitoring the matter and issued written notices to the owner of plot 163 Hillside since 2011.
- 6.1.13. Mr Goba further submitted that the Municipality held discussions with the caretaker of the property regarding the illegal structures, land use violations and health hazards on the said property on many occasions.
- 6.1.14. Below is the table submitted by Mr Goba depicting the inspections and actions carried out by the Municipality in respect of plot 163 Hillside:

DATE	ACTIVITY
30-06-2011	First inspection of Plot 163: The caretaker on the property was verbally notified to cease any building work.
07-07-2011	Second inspection, accompanied by South African Police Services (SAPS), a written notice was given to stop all building work.
08-07-2011	The property owner submitted building plans. The submitted plans did not reflect what was on the property and what was being built, however, the Municipality contacted a draughts person to rectify the plans.
28-07-2011	Another notice was sent to inform the property owner to collect the plans for corrections and to be returned for approval.
24-10-2011	Another site inspection was conducted and a letter to cease building work was issued.
08-02-2012	Another contravention notice was sent, but the owner did not adhere to the instruction.
20-03-2012	The owner came to collect the plans.
15-04-2013	A notice was sent to the owner to remind him to return the plans for finalisation as the expiring date was getting closer.
26-08-2013	A meeting was held with the Municipality's Legal Department to discuss the concerns regarding the said property.
17-04-2014	A final letter was sent to the owner.
04-03-2015	Another site inspection was conducted with Building Control where the owner and son indicated that they would submit plans when they were ready. A tentative date of September was agreed upon.

31-09-2015	By the end of September, there was no response from the property owner.
04-04-2016	A response letter to Mr P Garay was sent.
06-04-2016	Another response letter to Mr P Garay was sent.
06-04-2016	Another letter was sent to Mr Watkins, at his formal residential address.
18-07-2016	A formal letter “request for assistance” was sent to Legal Department.
13-10-2016	A response email to Mr P Garay was sent
28-02-2018	A joint inspection with South African Revenue Services (SARS), Credit Control, and West Rand District Municipality (WRDM) was conducted and a contravention notice was issued.
20-01-2020	Another joint inspection with Environmental Health was conducted.
20-01-2020	The last letter was issued during a site inspection with Land Use Inspector and Town Planner.

6.1.15. The Public Protector is in possession of the above-mentioned Notices and correspondence issued to Mr Watkins by the Building Control Inspectors of the Municipality, instructing him to cease all building works with immediate effect and to submit plans in respect of the illegal building work for the Municipality’s approval.

6.1.16. The former Municipal Manager, Mr Goba, alluded in the above-mentioned response letter dated 30 March 2021, that Mr Watkins and his son had failed to comply, despite many attempts by the Municipality to persuade them to do so. The plan of action was to approach the courts to apply for a demolition order of the illegal structures. Mr Goba further stated that once the court has pronounced on the matter, the order will be executed accordingly.

Response from Mr Makhubo

- 6.1.17. The Public Protector Investigation team received a response affidavit dated 19 January 2022, from Mr M G Makhubo (Mr Makhubo), the Municipality's Executive Manager: Economic Development Human Settlement and Planning, wherein he indicated that the Municipality did everything in its power to resolve the matter as per the above-mentioned list of actions.
- 6.1.18. Mr Makhubo stated that since 07 July 2011, the Building Control Unit Building Inspector, Town Planners and Health Units monitored and wrote many notices and held discussions with the caretaker, as well as with the owner, Mr Watkins and his son concerning the illegal structures, land use violations and health hazards on the property. He reported that an extension was granted by the Municipality to achieve an amicable and active response from Mr Watkins, to which Mr Watkins, unfortunately, failed to respond.
- 6.1.19. Mr Makhubo indicated that no Tribunal was set up by the Municipality. Only meetings were held and notices were sent to the owner since 2011 to resolve this matter and that the owner failed to comply.
- 6.1.20. He further indicated that a demolition order was not obtained and an application will be submitted at the Magistrates' Court by the end of June 2022.
- 6.1.21. Mr Makhubo further contended that the Municipality shall make an application to the Magistrate Court for a demolition order, however, the court proceedings are subject to financial costs that might be borne by the Complainant.

Response from Mr Watkins

- 6.1.22. On 12 April 2022, the Public Protector Investigation team received an affidavit dated 09 April 2022 from Mr Watkins, (the neighbour) wherein he argued that the allegation of an ablution facility next to his neighbour was not true. He hired West Rand Plan's Architects and the building plan is being processed by the Municipality.
- 6.1.23. Mr Watkins further submitted that the approval of his building plan was placed on hold, subject to the establishment of the Municipal Planning Tribunal by the Municipality.

Response to the Notice in terms of the provisions of Section 7(9)(a) of the Public Protector Act, 1994

- 6.1.24. On 13 September 2022, the Public Protector received a response letter dated 09 September 2022 from the new Municipal Manager, Mr Ndlovu, wherein he submitted that he had read and understood the contents of Section 7(9) Notice and that he accepts the Public Protector's findings and intended remedial action in the resolution of Mr Peter Garay's complaint. Mr Ndlovu further confirmed that he will ensure the implementation of the remedial action by the Municipality, in his capacity as the Accounting Officer.

Application of the relevant law and prescripts

- 6.1.25. Section 195 of the Constitution² provides that:

"Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

² Constitution of the Republic of South Africa, 1996.

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h) *Good human resource management and career development practices, to maximize human potential, must be cultivated.”*

6.1.26. In terms of the above provision, the Municipality is required to train and develop their employees to improve work performance. In this instance, the Municipality should ensure that all its officials are trained on building control legal prescripts, to avoid undue delays in the enforcement of the relevant municipal bylaws.

6.1.27. It appears that the Municipality continued to serve building compliance notices to Mr Watkins, despite his constant non-compliance rather than approaching a relevant court of law for prompt relief.

6.1.28. Section 237 of the Constitution provides that:

“All constitutional obligations must be performed diligently and without delay”.

6.1.29. It was expected of the Municipality to resolve the Complainant’s complaint conscientiously and without undue delay in fulfilling its constitutional obligation to provide an accountable government for local communities, which was not the case in this instance.

6.1.30. Section 4(1) of the National Building Regulations and Building Standards Act 103 of 1977, provides that:

“No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act”.

6.1.31. In this instance, Mr Watkins should have drawn up and submitted building plans and specifications to the Municipality for approval before he erected any building on his property. His conduct was not in line with the spirit and purpose of the National Building Regulations and Building Standards provisions.

6.1.32. Regulation A25(7) of the Regulations Under The National Building Regulations And Building Standards Act 103 of 1977, provides that:

“Whether or not a notice contemplated in sub-regulation (6) has been served, the local authority may serve a notice on the owner of any building contemplated in sub-regulation (4) or (5), ordering such owner to rectify or demolish the building in question by a date specified in such notice”.

6.1.33. According to the above provisions, the Municipality has an obligation to serve a notice on the owner of any building as contemplated in sub-regulation (4) or (5), ordering the owner to rectify or demolish the building in question by a date specified in such notice.

6.1.34. In this instance, the Municipality served a notice dated 24 October 2011 on Mr Watkins, ordering him to rectify or demolish the buildings in question and he did not comply with the orders as required by the above provision.

6.1.35. Section 21 of the National Building Regulations and Building Standards Act 103 of 1977, provides that:

“Notwithstanding anything to the contrary contained in any law relating to magistrates' courts, a magistrate shall have jurisdiction, on the application

of any local authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorizing such local authority to demolish such building if such magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this Act or any approval or authorization granted thereunder”.

6.1.36. In terms of the above provision, a Magistrate has jurisdiction, on the application by any local authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorizing such local authority to demolish such building if the Magistrate is satisfied that the erection is contrary to or does not comply with the provisions of the Act or any approval or authorisation granted thereunder.

6.1.37. Section 32 of the Spatial Planning and Land Use Management Act 16 of 2013, provides amongst others that:

(1) “A municipality may pass by-laws aimed at enforcing its land use scheme.

(2) A municipality may apply to a court for an order-

(a) interdicting any person from using land in contravention of its land use scheme;

(b) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or

(c) directing any other appropriate preventative or remedial measure”.

6.1.38. The above provision states that a municipality may pass by-laws aimed at enforcing its land use scheme and may apply to a court for an order interdicting any person from using land in contravention of its land use

scheme, also authorising the demolition of any structure erected on land in contravention of its land use scheme without any obligation on the municipality or the person carrying out the demolition to pay compensation or directing any other appropriate preventative or remedial measures.

- 6.1.39. Based on the above cited provisions of the Spatial Planning and Land Use Management Act and of the National Building Regulations and Building Standards Act, it is clear that the Municipality was required to lodge an application with the appropriate court for a demolition order after experiencing constant non-cooperation from Mr Watkins with the various notices issued by the Municipality; and recover the costs of such legal proceedings from him.

Conclusion

- 6.1.40. The evidence in the Public Protector's possession, clearly indicates that the steps taken by the Municipality over the years in resolving the complaint were not sufficient and/or effective enough to ensure that Mr Watkins rectified or demolished the illegal buildings on his property as per the relief sought by the Complainant in this matter. The Municipality has also delayed approaching the relevant courts for relief after several attempts to persuade Mr Watkins to comply with the provisions of the above legal prescripts proved to be futile.

7 FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that should have been complied with by the Municipality and the impact on the Complainant, the Public Protector makes the following adverse findings against the Municipality:

7.1 Regarding whether there is undue delay by the Rand West City Local Municipality to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure from the Complainant's neighbour at plot 163, Corner Villiers & Roads, Hillside in Randfontein, as contemplated in section 6(4)(a)(ii) of the Public Protector Act, 1994:

7.1.1 The allegation that there is an undue delay by the Municipality to resolve a complaint regarding the construction of illegal rooms and spillage from an illegal structure of two drop toilets and a shower from the Complainant's neighbour at plot 163, Corner Villiers & Roads, Hillside in Randfontein, **is substantiated**.

7.1.2 The evidence in the Public Protector's possession indicates that the Municipality continued issuing building control non-compliance notices to Mr Watkins for him to cease with all building works and to submit plans for approval, even though the non-compliance persisted for a period of more than nine (9) years since receipt of the complaint from the Complainant in 2011.

7.1.3 The investigation further revealed that the Municipality failed to effectively enforce the National Building Regulations and Building Standards Act, the Spatial Planning and Land Use Management Act and to exhaust all legal remedies available to it to address the constant prejudice suffered by the Complainant in this matter, as the non-compliance persists and remains unresolved.

7.1.4 The conduct of the Municipality violated Sections 4(1) and 21 of the National Building Regulations and Building Standards Act, Section 32 of the Spatial Planning and Land Use Management Act and Regulation A25(7) of the Regulations Under The National Building Regulations and Building

Standards Act, in dealing with the complaint of construction of illegal structures at plot 163, Corner Villiers & Roads, Hillside in Randfontein.

- 7.1.5 Accordingly, the conduct of the Municipality in the circumstances constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and undue delay as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

8 REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action to redress the conduct referred to in this report upon the conclusion of an investigation where adverse findings are made.

- 8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.

- 8.3 Having regard to the evidence, the regulatory framework determining the standard the Rand West City Local Municipality should have complied with and the impact on the Complainant, the Public Protector takes the following remedial action:

The Municipal Manager of the Rand West City Local Municipality is to ensure that:-

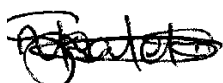
- 8.3.1 Within **ninety (90) working days** of receipt of this report, the Municipality brings an application for a demolition order at the appropriate Court in terms

of section 32 of the SPLUMA read with sections 4(1), A25(7) and 21 of the National Building Regulations and Building Standards Act;

- 8.3.2 Within **ninety (90) working days** of this report and in line with section 195(h) of the Constitution and section 55(1)(f) of the Local Government: Municipal Systems Act, training is conducted for all Managers and officials of the Economic Development, Human Settlement & Planning Department of the Municipality on the building control legal prescripts; and
- 8.3.3 Within **thirty (30) working days** of receipt of this report, a written apology to the Complainant is provided for the undue delay to finalise his complaint in line with section 237 of the Constitution.

9 MONITORING

- 9.1 The Municipal Manager of the Rand West City Local Municipality is to provide a report to the Public Protector on the implementation of the remedial action within thirty (30) days from the date of this report.



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

Assisted by: Ms M Manyathela
The Gauteng Provincial Representative