PUBLIC PROTECTOR
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INVESTIGATION INTO ALLEGATIONS OF THE VIOLATION OF THE EXECUTIVE ETHICS CODE BY MR TERTUIS SIMMERS, MEMBER OF THE EXECUTIVE COUNCIL FOR INFRASTRUCTURE OF THE WESTERN CAPE PROVINCIAL GOVERNMENT IN CONNECTION WITH HIS ALLEGED INTERFERENCE IN THE APPOINTMENT OF AN ACTING MUNICIPAL MANAGER FOR KANNALAND MUNICIPALITY

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS / ABBREVIATIONS	DESCRIPTION
ANC	African National Congress
Appointment Regulations	Local Government Regulations: On appointment and Conditions of Employment of Senior Managers, Government Notice No. 21 of 17 January 2014
Cogta	Cooperative Governance and Traditional Affairs
Constitution	Constitution of the Republic of South Africa, 1996
CFO	Chief Financial Officer
Executive Ethics Code	Executive Ethics Code 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853
DA	Democratic Alliance
EMEA	Executive Members Ethics Act, 1998
ICOSA	Independent Civic Organisation of South Africa
KIP	Karoo Independent Party
KLM	Kannaland Local Municipality
MEC	Member of the Executive Council
MSA	Local Government: Municipal Systems Act, 2000
PR	Proportional Representative
Public Protector Act	Public Protector Act,1994
Public Protector	Public Protector of the Republic of South Africa
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended and promulgated in terms of section 7(11) of the Public Protector Act
SALGBC	South African Local Government Bargaining Council

EXECUTIVE SUMMARY

(i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (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, 1994 (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 breach of the Executive Ethics Code (Proc R41 GG 21399 of 28 July 2000), by the Western Cape Member of the Executive Council for Infrastructure, Mr Tertuis Simmers (Mr Simmers), for his alleged interference and influence in the appointment of an Acting Municipal Manager for the Kannaland Local Municipality (KLM), which allegedly resulted in him acting in breach of the respective duties and obligations imposed on him by the provisions of the Executive Ethics Code.

(iii) The investigation originates from a complaint lodged with the Public Protector on 17 October 2022 in terms of section 4(1) of the Executive Members Ethics Act, 1998 (EMEA) by Mr Cameron Dugmore (the Complainant) in his capacity as the African National Congress (ANC) member of the Western Cape Provincial Legislature (now a member of the Parliament of South Africa), against Mr Simmers for the alleged breach of the Executive Ethics Code.

(iv) The Complainant alleged, *inter alia*, that Mr Simmers, in his capacity as Democratic Alliance (DA) Provincial Chairperson, interfered in the affairs of the Municipality by attempting to influence certain KLM councillors and office bearers to appoint Mr Jordaan, the former dismissed Chief Financial

Officer (CFO) of the George Local Municipality as Acting Municipal Manager of KLM;

(v) Mr Simmers' conduct constitutes a breach of paragraphs 2.1(c) and (d) and 2.3 (c) and (f) of the Executive Ethics Code.

(vi) The particulars of the alleged breaches of the Executive Ethics Code related to Mr Simmers' alleged failure to act in good faith and in the best interest of good governance as well as to act in all respects in a manner that is consistent with the integrity of his office or the government and acting in a way that is inconsistent with his position or exposing himself to any situation involving the risk of a conflict between his official responsibilities and private interests.

(vii) In the course of the investigation, the investigation was expanded to include the process followed by the KLM to appoint Mr Jordaan as Acting Municipal Manager, as the evidence gathered during the investigation strongly indicated that the recruitment and selection process followed by the KLM Council was flawed and had material irregularities.

(viii) Based on analysis of the complaint, the following issues were considered and investigated:

(a) Whether Mr Simmers allegedly interfered and attempted to influence the process of appointing an acting Municipal Manager for the Kannaland Local Municipality by allegedly instructing certain Councillors to appoint the dismissed former Chief Financial Officer (CFO) of the George Local Municipality, Mr Keith Jordaan, in that position, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to breaching Clauses 2.3(c) and (f) of the Executive Ethics Code.

(b) **Whether the Municipal Council of the Kannaland Local Municipality irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for the Kannaland Local Municipality without a verification process and, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.**

(ix) The investigation was conducted in terms of section 182(1)(a) of the Constitution, read with section 4(1) of the EMEA and section 6(4)(a)(i) of the Public Protector Act. It included an analysis of all the relevant documents and the application of relevant laws, case law, and related prescripts.

(x) On 10 March 2025 a Notice in terms of section 7(9)(a) of the Public Protector Act read with *Rule 42(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018,* as amended (the Public Protector Rules) was issued to the following implicated and/or affected individuals to provide them with an opportunity to make representations in connection with the intended findings and likely remedial action of the Public Protector:

(a) The Minister of Cooperative Governance and Traditional Affairs (Cogta), Mr Velenkosini Hlabisa;

(b) The Premier of the Western Cape Government, Mr Alan Winde;

(c) The Western Cape Member of the Executive Council for Infrastructure, Mr Tertuis Simmers;

(d) The Western Cape Member of the Executive Council for Local Government, Environmental Affairs and Development Planning, Mr Anton Bredell;

(e) The Member of the Parliament of South Africa (Complainant), Mr Cameron Dugmore;

(f) The Executive Mayor of Kannaland Local Municipality, Mr Jeffrey Donson;

(g) The Municipal Manager of Kannaland Local Municipality, Adv Dillo Sereo;

(h) The member of the DA and Councillor of the Kannaland Municipal Council, Ms Alletha Steenkamp;

(i) The member of the ANC and former Deputy Mayor of the Kannaland Municipal Council, Ms Leoni Stuurman;

(j) The member of the ANC and former Mayor of the Kannaland Municipal Council, Mr Nicky Valentyn;

(k) The former member of the KIP and former Speaker of the Kannaland Municipal Council, Mr Rodge Albertus;

(l) The member of the ANC and former Acting Municipal Manager of Kannaland Municipality, Mr Ian Avontuur, and

(m) The former Acting Municipal Manager of Kannaland Municipality, Mr Keith Jordaan.

(xi) Written responses to the Notice were received from Mr Jordaan on 09 March 2025, Mr Donson and Adv Sereo of the Kannaland Municipality on 21 March 2025, Mr Simmers and Mr Bredell of the Western Cape Government on 25 March 2025 and Mr Rodge Albertus on 15 September 2025 and Ms Alletha Steenkamp on 17 September 2025 respectively and were noted and considered by the Public Protector. No responses were received from the

Minister of Cogta, Mr Velenkosini Hlabisa, the Premier of the Western Cape Government, Mr Alan Winde. The Complainant noted the contents of the section 7(9) Notice and made no further comments.

(xii) The jurisdiction of the Public Protector was in the main challenged by Mr Simmers who, *inter alia*, in his response to the section 7(9)(a) Notice objected to the complaint and one of the Public Protector's key findings to the effect that "*Rule 2.1 of the Code*" requires members of the executive to act *'to the satisfaction of the President or the Premier'* and that the Public Protector is not empowered to make a judgement on whether a member of the executive has complied with the requirement of that provision of the Executive Ethics Code. Mr Simmers therefore contends that in doing so the Public Protector's *'judgement'* on a member of the executive would amount to a material error in law and would subject the Public Protector's conduct to judicial review.

(xiii) The Public Protector has the power to investigate a violation of the Code, but this power appears to be limited in connection with breaches in terms of Clauses 2.1 and 2.2 of the Code, which provisions suggest that it is the President or Premier who determines whether the relevant obligations have been properly discharged and for them to make that determination, they should take into account "*the promotion of an open, democratic and accountable government".*

(xiv) The merits of Mr Simmers objection that, *"the Public Protector is not empowered to make a judgement on whether a Member of the Executive has complied with the requirement of that provision of the Code"* were noted and were duly considered in making the findings hereunder. Considering the aforesaid the Public Protector has not made any findings against Mr Simmers in terms Clauses 2.1(c) and 2.1(d) of the Executive Ethics Code.

(xv) The Executive Ethics Code does, however, not restrict the Public Protector from making findings in relation to breaches of Clauses 2.3(c) and (f) of the

Executive Ethics Code and the evidence hereunder have been analysed with reference to the foregoing clauses.

(xvi) On 15 February 2026 a Notice in terms of *Rule 41(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018,* as amended (the Public Protector Rules) was issued to the Complainant to provide him with an opportunity to make representations in connection with the intended change in the findings in relation to the first issue by the Public Protector.

(xvii) A written response was received from the Complainant via email on 09 March 2026, by the Public Protector.

(xviii) The Complainant's submission was considered. It is concluded that the Complainant has provided no factual or legal basis for challenging the conclusions and findings of the Public Protector in regard to the conduct of Mr Simmers. In his submission, the Complainant merely repeats evidence and grounds already traversed by the Public Protector in the Rule 41(1) notice without adding anything substantial and persuasive which can form the basis for an alternative finding. Considering that, the Public Protector's finding remains unchanged.

(xix) Having regard to the evidence, the regulatory framework determining the standards that Mr Simmers and the functionaries of the Municipality should have complied with and the impact thereof on good governance and accountability the Public Protector makes the following findings:

(a) The allegation that Mr Simmers breached clause 2.3(c) and 2.3(f) of the Executive Ethics Code by allegedly interfering and attempting to influence the process of appointing an Acting Municipal Manager for the Kannaland Local Municipality (KLM) by allegedly instructing certain KLM Councillors to appoint the dismissed former Chief Financial Officer (CFO) of the George Local Municipality, Mr Keith Jordaan (Mr Jordaan, in that position, **is not substantiated.**

(aa) The evidence obtained during the investigation indicated that the meeting on 02 August 2022 was arranged and hosted by Ms Steenkamp, the only DA member on the KLM Municipal Council and the purpose of the meeting was to discuss the proposed appointment of an acting Municipal Manager for KLM and matters related thereto.

(bb) The meeting was attended by representatives of the ANC and KIP political parties, who were also members of the KLM Council at the time and it was an informal private inter-political party meeting for the caucus members of the relevant political parties who, in that meeting, did not represent the Municipal Council of the KLM.

(cc) The alleged pressure placed on Ms Steenkamp by Mr Simmers should be considered with reference to paragraph 9.3.5 of the DA Federal Constitution, as she was the only DA member on the KLM Council and together with Mr Simmers, they constituted the DA Caucus of the KLM, and it is not an issue that falls within the mandate of the Public Protector to investigate.

(dd) Mr Simmers admitted that at the meeting he set the record straight regarding Mr Jordaan's track record at other municipalities and his concerns regarding the ANC's alleged efforts to manipulate and mislead Ms Steenkamp and the KLM into forming an adverse view of Mr Jordaan based on falsehoods.

(ee) In that regard Mr Simmers spoke directly to the members of the other political parties and not only his DA Caucus.

(ff) Considering the aforesaid admissions of Mr Simmers it is concluded that he did attempt to influence the members of the other political parties to view Mr Jordaan more favourably as a suitable candidate for appointment as Acting Municipal Manager for KLM.

(gg) Mr Jordaan's dismissal for financial misconduct and negligence by the George Local Municipality was, however, public knowledge as the issue had been reported in the news media several times. A credible source of confirmation of Mr Jordaan's dismissal is also the Arbitration Award, WCP071921, issued by a Senior Arbitrator of the South African Local Bargaining Council on 29 April 2021. The members of the other political parties were therefore well informed about the circumstances surrounding Mr Jordaan's dismissal as indicated in the meeting transcript and their affidavits.

(hh) The Complainant's comments to the Public Protector's Rule 41(1) Notice were considered with reference to his allegations in his complaint, the evidence of the other parties and the relevant legal prescripts. In his complaint the Complainant alleged that Mr Simmers, **in his capacity as the Democratic Alliance (DA) Provincial Chairperson**, interfered and attempted to influence certain KLM councillors and office bearers to appoint Mr Jordaan. (emphasis added). It is clear that the Complainant knew that Mr Simmers attended the meeting in his political capacity and not as MEC and that what he said during his telephone conversation with Ms Steenkamp was said in his political capacity. However, in his comments to the Rule 41 Notice, the Complainant remarked that Mr Simmers' political role cannot be separated from his role as MEC.

(ii) Mr Simmers' conduct was examined with reference to the relevant legal prescripts, and in the matter of *Public Protector and Others v President of the Republic of South Africa and Other* [2021] ZACC [19] the court stated regarding the distinction between a political party and the state and the conduct in state affairs, that a vital factor to determine whether a particular conduct amounts to a state affairs, is the exercise of a public power or the performance of a public function which turns a private entity into an organ of state. According to the court, "There can be no state affair without the exercise of public power or the performance of a public function. This is the dividing line between state affairs and private affairs." (emphasis added)

(jj) The Complainant confirmed that Mr Simmers addressed the meeting on 02 August 2022 in his capacity as Provincial Chairperson of the DA but maintained that his position as MEC cannot be separated from his political role. In the matter of *Public Protector and Others v* President *of the Republic of South Africa and Other* [2021] ZACC [19] the court stated the dividing line between state affairs and private affairs is that there can be no state affair without the exercise of public power or the performance of a public function. In this instance, it is undisputed that Mr Simmers acted in his political capacity, and as such he did not exercise a public power or perform a public function. His conduct denoted a clear separation between state affairs and private affairs, and hence 'the *bright line separating the party from the state"* remained intact.

(kk) Considering the aforesaid, it therefore cannot be said that Mr Simmers acted in a way that was inconsistent with his position as MEC or exposed himself to a situation involving the risk of a conflict between his official responsibilities and his private interests.

(ll) Furthermore, the decision to appoint Mr Jordaan as Acting Municipal Manager was taken by the KLM Municipal Council on 21 October 2022. Mr Simmers did not attend the council meeting when that decision was taken. In addition, both Ms Steenkamp and Mr Albertus (former KIP representative), did not vote during the council meeting and the appointment was made based on the votes of the ICOSA and KIP representatives on the KLM Council. The evidence, therefore, does not support a conclusion that Mr Simmers interfered with the KLM Council's process to appoint Mr Jordaan as Acting Municipal Manager.

(mm) By expressing his views in favour of the appointment of Mr Jordaan as Acting Municipal Manager, in a private meeting, as the Provincial Leader of the DA, and not as a Member of the Provincial Executive, Mr Simmers did not breach clause 2.3(c) and clause 2.3(f) of the Executive Ethics Code, as he did not address the members of the KLM Municipal Council in their official capacities at a KLM Council meeting. Mr Simmers therefore did not act in a way that was inconsistent with his position (clause 2.3(c)) or expose himself to a situation involving the risk of a conflict between his official responsibilities and private interests (clause 2.3(f)).

(nn) Based on the above, the investigation could not establish that Mr Simmers had breached clauses 2.3(c) and 2.3(f) of the Executive Ethics Code by allegedly interfering and attempting to influence the process of appointing an Acting Municipal Manager for the Kannaland Local Municipality (KLM).

(oo) Accordingly, it is the finding of the Public Protector that the conduct of Mr Simmers in the circumstances does not constitute improper conduct as envisaged in section 182(1)(a) of the

Constitution and did not amount to the breach of clauses 2.3(c) and (f) of the Executive Ethics Code by him.

(b) Whether the Municipal Council of the KLM irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for KLM without following a verification process and, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(aa) The allegation that the functionaries and the Municipal Council of the KLM irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for KLM, **is substantiated.**

(bb) The investigation established that Mr Jordaan's appointment as Acting Municipal Manager was not subjected to a due diligence process as provided for in regard to the appointment of a Municipal Manager in the 2014 Appointment Regulations, but rather an informal recruitment and selection process.

(cc) The KLM Executive Mayor explained that acting appointments are commonly made directly by the Council without a formal process.

(dd) Although an acting appointment cannot be subjected to the same recruitment and selection process as a permanent appointment there must be a due diligence process to ensure that a suitable candidate is appointed.

(ee) The KLM Municipal Council failed or neglected to screen and perform due diligence checks in regard to Mr Jordaan's employment history prior to appointing him as their Acting Municipal Manager.

(ff) It was established that the KLM has neither an official Council approved and adopted policy nor procedure which regulates such appointments. In addition, no documentation, such as advertisements, applications or memoranda was provided to demonstrate procedural compliance or verification of his qualifications and suitability or how Mr Jordaan was recruited by the KLM Council.

(gg) The fact that it is an acting appointment does not absolve the KLM Council from complying with statutory and constitutional requirements. The Constitutional Court in *Member of the Executive Council for Local Government, Environmental Affairs and Development Planning, Western Cape Province v Kannaland Municipality and Others; Clayton v Kannaland Municipality and Others (1330/2021; 1345/2021) [2024] ZAWCHC 90 (18 June 2024),* affirmed that both procedural and substantive compliance with the Municipal Systems Act and regulations is mandatory and that non-compliant appointments are constitutionally invalid**.**

(hh) Consequently, the basis upon which Mr Jordaan was appointed was unclear, was constitutionally defective and the Council had no lawful authority to proceed without a transparent, merit-based and lawful process.

(ii) Mr Jordaan was dismissed by the George Local Municipality in 2019 for committing financial misconduct and negligence in terms of section 171(2) of the MFMA and for non-compliance with its Municipal Investment Policy and Supply Chain Management Policy.

(jj) The KLM Municipal Council's decision to appoint Mr Jordaan as Acting Municipal Manager therefore contravenes section 237 of the Constitution, which requires that all constitutional obligations be performed diligently and Regulation 14 of the Appointment Regulations, which specifically requires screening of shortlisted candidates by for instance verifying a candidate's qualifications and whether a candidate was dismissed previously for misconduct or poor performance by another employer.

(kk) Consequently, the KLM Council failed to comply with the constitutional principle in section 195(1)(a) of the Constitution, which requires that a high standard of professional ethics be promoted and maintained in the public administration and section 195(1)(b) that they promote the efficient, economic and effective use of resources.

(ll) The municipality's failure to adhere to constitutional and statutory requirements amounts to maladministration as contemplated in section 182(1)(a) of the Constitution and may also constitute irregular administrative action under the Promotion of Administrative Justice Act, 2000.

(mm) Accordingly, the decision of the KLM Council to appoint Mr Jordaan as Acting Municipal Manager constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.

(xx) REMEDIAL ACTION

(a) The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view to

redressing the conduct referred to in this report upon conclusion of an investigation where adverse findings are made.

(b) 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.

(c) The Public Protector takes cognisance of the fact that Mr Jordaan's acting contract was subsequently terminated by the KLM Municipal Council following the provision of the legal opinion to it by Mr Bredell.

(d) While this action brought the appointment to an end, it did not cure the initial irregularity or the constitutional invalidity of the process that led to Mr Jordaan's appointment. The termination merely prevents the continuation of the unlawful arrangement but does not extinguish potential governance or accountability consequences.

(e) The Public Protector is, therefore, of the view that the systemic deficiencies need to be addressed to prevent the potential recurrence of similar irregular and invalid appointments at the KLM and other municipalities in the Western Cape.

(f) Accordingly, having regard to the evidence, the regulatory framework determining the standard that KLM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Speaker of the Municipal Council

(aa) Within **thirty (30) calendar days** from the date of this report, in accordance with sections 36 and 37 of the Municipal Structures Act table the report before Council for deliberation.

The Municipal Manager

(bb) Within **sixty (60) calendar days** from the date of this report, in accordance with section 3 and section 67(1) of the Municipal Systems Act, 2000 (as amended in 2022):

(aaa) In consultation with the Head of the WC Department of Local Government, develop and/or review the KLM Acting Policy to provide for measures and processes to regulate the appointment of Acting Municipal Managers and Seniors Managers at the KLM Municipality.

(bbb) Table the new or reviewed Acting Policy before the KLM Council for deliberation and adoption.

(ccc) Within **ninety (90) calendar days** from the date of receipt of this report implement controls and standard operating procedures governing acting appointments, including, verification of qualifications, competency levels and fit-and-proper status before recommendation to the KLM Council, including a documented selection council resolution process.

(ddd) Within **sixty (60) calendar days** from the date of receipt of this report, report to the Auditor General of South Africa the possible irregular expenditure incurred as a result of the

appointment of Mr Jordaan in contravention of Regulation 18 of the Local Government Regulations: On Appointment and Conditions of Employment of Senior Managers, 2014 (Government Notice No. 21 of 17 January 2014) and payment of remuneration to Mr Jordaan, who should not have been appointed for consideration in terms of its mandate

The Minister of Local Government in the Western Cape

(cc) Should, in relation to the exercise of his powers in terms of section 155(6) of the Constitution, read with section 54A(8), discuss the development or review of their Acting Policies with all Municipalities in the Western Cape to prevent or reduce irregular acting appointments of municipal managers and senior managers.

The Minister of Cooperative Government and Traditional Affairs

(dd) Should subject to section 57A(9) of the Municipal Systems Act, update the record of staff members who were dismissed for misconduct, with reference to Mr Jordaan's dismissal and make the record available to the municipalities as prescribed.

The Auditor General of South Africa

(ee) Take cognisance of the findings and remedial action contained in this report particularly the possible irregular expenditure incurred as a result of the irregular appointment of Mr Jordaan.

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 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 The report relates to an investigation into allegations of breach of the Executive Ethics Code (Proc R41 GG 21399 of 28 July 2000), by the Western Cape Member of the Executive Council for Infrastructure, Mr Tertuis Simmers (Mr Simmers), for his alleged interference and influence in the appointment of an Acting Municipal Manager for the Kannaland Local Municipality (KLM), which allegedly resulted in him acting in breach of the respective duties and obligations imposed on him by the provisions of the Executive Ethics Code.

1.3 Although it was not part of the original complaint, the evidence gathered during the investigation caused the Public Protector to expand the investigation, findings, and remedial action in relation to the appointment of Mr Jordaan by the KLM as Acting Municipal Manager.

1.4 The report is submitted in terms of section 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 the following affected persons, for such persons to note the outcome of the investigation:

1.4.1 Mr Velenkosini Hlabisa, Minister of Cooperative Governance and Traditional Affairs;

1.4.2 Mr Alan Winde, Premier of the Western Cape Provincial Government;

1.4.3 The Western Cape Member of the Executive Council for Local Government; Environmental Affairs and Development Planning, Mr Anton Bredell;

1.4.4 Mr Tertuis Simmers: Western Cape Member of the Executive Council for Infrastructure;

1.4.5 Mr Cameron Dugmore: Member of the Parliament of South Africa (Complainant);

1.4.6 Mr Jeffrey Donson, Executive Mayor of Kannaland Municipality;

1.4.7 Adv Dillo Sereo, Municipal Manager of Kannaland Municipality;

1.4.8 Ms Alletha Steenkamp, member of the DA political party and member of the Kannaland Municipal Council;

1.4.9 Ms Leoni Stuurman, member of the ANC political party and the former Deputy Mayor of the Kannaland Municipal Council;

1.4.10 Mr Nicky Valentyn, member of the ANC political party and former Executive Mayor of the Kannaland Municipal Council;

1.4.11 Mr Rodge Albertus, member of the KIP political party and the former Speaker of the Kannaland Municipal Council;

1.4.12 Mr Ian Avontuur, member of the ANC and the former Acting Municipal Manager of Kannaland Municipality; and

1.4.13 Mr Keith Jordaan, the former Acting Municipal Manager of Kannaland Municipality and the dismissed former Chief Financial Officer of the George Local Municipality; and

1.4.14 Ms. Tsakani Maluleke is the Auditor-General of South Africa.

2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged with the Public Protector on 17 October 2022 in terms of section 4(1) of the Executive Members Ethics Act, 1998 (EMEA) by Mr Cameron Dugmore (the Complainant) in his capacity as the African National Congress (ANC) member of the Western Cape Provincial Legislature (now a member of the Parliament of South Africa) against Mr Simmers for the alleged breach of the Executive Ethics Code.

2.2 In the main, the Complainant alleged, that:

2.2.1 There is evidence implicating Mr Simmers for breaching the EMEA and the Executive Ethics Code;

2.2.2 Mr Simmers, in his capacity as the Democratic Alliance (DA) Provincial Chairperson, interfered and attempted to influence certain KLM councillors and office bearers to appoint Mr Jordaan, the former dismissed Chief Financial Officer (CFO) of the George Local Municipality to the role of Acting Municipal Manager of KLM;

2.2.3 Mr Simmers was directly involved when he tried to force the appointment of Mr Jordaan, his preferred candidate by issuing an instruction to the Councillors and office bearers of the KLM to appoint Mr Jordaan;

2.2.4 It is not only grossly inappropriate for a functionary of a political party to interfere in the appointment process of a senior official at municipal level, but it is clearly against the Executive Ethics Code; and

2.2.5 Mr Simmers' conduct constitutes a breach of paragraphs 2.1(c) and (d) and 2.3(c) and (f) of the Executive Ethics Code and he therefore requests the Public Protector to investigate the matter.

2.2.6 The particulars of the alleged breaches of the Executive Ethics Code related to Mr Simmers' alleged failure to act in good faith and in the best interest of good governance as well as acting in all respects in a manner that is consistent with the integrity of his office or the government, and acting in a way that is inconsistent with his position or exposing himself to any situation involving the risk of a conflict between his official responsibilities and private interests.

3 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

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

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

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

3.3 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation, *inter alia*, the Public Protector Act and the Executive Members' Ethics Act, 1998 (EMEA).

3.4 The Public Protector's powers are regulated and amplified by the Public Protector Act, which states in section 6(4)(a)(i), amongst others, that the Public Protector has the powers to investigate maladministration and related improprieties in the conduct of state affairs.

3.5 Section 6(4)(b) and (c) specifically provide that the Public Protector may,

"endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by-

(i) mediation, conciliation, or negotiation;
(ii) advising, where necessary, any complainant regarding appropriate remedies; or
(iii) any other means that may be expedient in the circumstances;

(c) at a time prior to, during or after an investigation-

(i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or
(ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority; and….
[Sub-para. (ii) amended s. 91 (a) of Act 2 of 2000.]"

3.6 Section 7(1) of the Public Protector Act also provides that:

"(a) The Public Protector shall have the power, on his or her own initiative or on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 6(4) or (5) of this Act, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

(b)(i) The format and the procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case…."

3.7 Section 8(1) of the Public Protector Act also states that the Public Protector may make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.

3.8 Section 3(1) of the EMEA directs that *"the Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4".*

3.9 In paragraph 11 of the *Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19]* the court denoted that:

"*Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector's power to investigate is subject to a formal complaint. This suggests that the scope of an investigation is determined by the breach of the code contained in the complaint. It is important to note that section 3 does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.*"

3.10 Section 3(2) of the EMEA 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—*

(a) to the President. if the complaint is against a Cabinet member. Premier or Deputy Minister; and

(b) *to the Premier of the province concerned if the complaint is against an MEC."*

3.11 Section 3(3) of the EMEA provides that, *"If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed".*

3.12 Section 3(4) of the EMEA provides that, *"When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994".*

3.13 Section 4 of the EMEA provides that:

"(1) The Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by—

(a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister, or

(b) the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.

(2) The complaint must be in writing and must contain—

(a) the name and address of the complainant:

(b) full particulars of the alleged conduct of the Cabinet member, Deputy Minister, or MEC; and

(c) such other information as may be required by the Public Protector or prescribed in the code of ethics."

3.14 It is also important to note that the investigation, as envisaged in section 4(1) of EMEA must relate to a breach of the Code by Cabinet members, Deputy Ministers and members of Executive Councils.

3.15 Clause 2.1 of the Code encapsulates the general standards which the members of the executive must comply with, to the satisfaction of the President or the Premier, whichever is applicable.

3.16 The complaint was lodged in terms of the EMEA by Mr Dugmore in his capacity as the African National Congress (ANC) member of the Western Cape Provincial Legislature (now a member of the Parliament of South Africa) against Mr Simmers, who at the time of lodging the complaint, was the Provincial Chairperson of the Democratic Alliance (DA) and member of the Western Cape Provincial Legislature. Therefore, the complaint falls within the purview and jurisdiction of matters that should be investigated by the Public Protector. The alleged breach of the Executive Ethics Code is contained in the complaint and specifically determines the scope of the investigation in relation to Clauses 2.1 and 2.3 of the Executive Ethics Code.

Mr Simmers' challenge to the Public Protector's jurisdiction in relation to Clause 2.1 of the Executive Ethics Code

3.17 Further thereto, the jurisdiction of the Public Protector to investigate the complaint was not disputed by the parties up until the stage the Notice in terms of section 7(9)(a) of the Public Protector Act was issued.

3.18 The jurisdiction of the Public Protector was in the main challenged by Mr Simmers who, *inter alia*, in his response to the section 7(9)(a) Notice objected to the complaint and one of the Public Protector's key findings to the effect that "*Rule 2.1 of the Code*" requires members of the executive to act *'to the satisfaction of the President or the Premier'* and that the Public Protector is not empowered to make a judgement on whether a member of the executive has complied with the requirement of that provision of the Executive Ethics Code. Mr Simmers therefore contends that in doing so the Public Protector's *'judgement'* on a member of the executive would amount to a material error in law and would subject the Public Protector's conduct to judicial review.

3.19 It is therefore prudent to deal with the objection, *inter alia*, raised by Mr Simmers in connection with "*Rule 2.1 of the Code*", as it deals with the

question whether the Public Protector's scope includes the power to investigate the complaint lodged by the Complainant in connection with Clauses 2.1(c) and (d) of the Executive Ethics Code.

3.20 The EMEA came into force on 28 October 1998 and its purpose is to provide for a code of ethics governing the conduct of members of Cabinet, Deputy Ministers, and Members of Executive Councils at a provincial level. The scope of the Act is limited to regulating ethical conduct of members of the Executive at both National and Provincial spheres of Government.

3.21 Section 2 of the EMEA empowers the President of the Republic of South Africa to prepare a code of ethics which prescribes standards and rules aimed at promoting open, democratic, and accountable Government. Members of Cabinet, Deputy Ministers and MEC's (Members of the Executive) must comply with this Code when performing their official functions.

3.22 Section 2 of the EMEA further prescribes what the Executive Ethics Code should contain. Apart from requiring that Members of the Executive should at all times act in good faith and in the best interests of Government, the Executive Ethics Code must, *inter alia*, forbid them from undertaking paid work, using their positions to enrich themselves and others, acting in a way that is inconsistent with their office and exposing themselves to a conflict of interest between their official responsibilities and their private interest.

3.23 Section 3 of EMEA empowers the Public Protector to investigate any breach of the Executive Ethics Code. The Public Protector's power to investigate is subject to a formal complaint. This suggests that the scope of an investigation is determined by the breach of the Executive Ethics Code contained in the complaint. Section 3 of the EMEA does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the Executive Ethics Code. It is implicit that the Public Protector therefore does have jurisdiction to investigate any

breach of the Executive Ethics Code, albeit in connection with Clauses 2.1 and 2.2, with a limited scope.

3.24 In terms of section 3(5) and (6) the EMEA it is implicit that the action to be taken against a transgressor is left to the discretion of the President or the Premier as the case may be. In the matter of *Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19]* the Constitutional Court at paragraph 134, pronounced as follows:

"*Having proper regard to the scheme of the Members Act, it is doubtful that the Public Protector can herself take remedial action for the violations of the Code. In terms of section 3 of that Act, it is the President who may take action if the culprit was a Member of Cabinet or a Deputy Minister. With regard to MECs, the power vests in the Premier. But if the Premier herself had violated the Code, action may be taken by the NCOP. The Members Act is silent on violations by the President. It may well be that breaches by the President should be referred to the National Assembly for it to decide on action to be taken within its powers*."

3.25 In summary Clause 2 of the Executive Ethics Code requires all Members of the Executive, including the President and the Premier, to act in good faith and in the best interests of good governance and to meet all obligations imposed on them by law.

3.26 The Executive Ethics Code, on face value, exempts the President and Premiers from these obligations and requires other Members to discharge these obligations to the satisfaction of the President or the relevant Premier. Clause 2.1 states that, "*Members of the Executive must, to the satisfaction of the President or the Premier, as the case may be…,"* discharge the obligations.

3.27 Clauses 2.1 and 2.2 of the Executive Ethics Code suggest that it is the President or Premier who determines whether the relevant obligations have

been properly discharged and for them to make that determination, they should take into account "*the promotion of an open, democratic and accountable government."*

3.28 Taking the above into account, there is merit in the objection of Mr Simmers in connection with the fact that *"the Public Protector is not empowered to make a judgement"* on whether a Member of the Executive has complied with the requirement of that provision of the Executive Ethics Code.

3.29 In the matter of *Public Protector and Others v President of the Republic of South Africa and Others* the Constitutional Court at paragraph 21 of the judgment pronounced as follows:

"*Paragraphs 2.1 and 2.2 of the Code suggest that it is the President or Premier who determines whether the relevant obligations have been properly discharged and, for them to make that determination, they should take into account 'the promotion of an open, democratic and accountable government.' But it is not clear whether in relation to obligations under paragraph 2.3 of the Code, the President and Premier play the role given to them by paragraph 2.1. However, this ambiguity has no bearing on the issues that arise because the entire case, here and before the High Court, was prosecuted on the footing that paragraph 2.3 of the Code applies to the President. Consequently, it is not necessary for present purposes to decide definitely whether it applies. The matter must be approached on the same understanding*."

3.30 Considering the Constitutional Court judgement in the *Public Protector and Others v President of the Republic of South Africa and Others*, the Public Protector's power to investigate a violation of the Code appears to be limited in connection with breaches in terms of Clauses 2.1 and 2.2 of the Code which provisions suggest that it is the President or Premier who determines whether the relevant obligations have been properly discharged

and for them to make that determination, they should take into account "*the promotion of an open, democratic and accountable government".*

3.31 The merits of Mr Simmers objection that *"the Public Protector is not empowered to make a judgement on whether a Member of the Executive has complied with the requirement of that provision of the Code"* were noted and were duly considered in making the findings hereunder. Considering the aforesaid the Public Protector has not made any findings against Mr Simmers in terms Clauses 2.1(c) and 2.1(d) of the Executive Ethics Code.

3.32 It is, however, suggested that in relation to Clause 2.3 of the Executive Ethics Code the position is different from clauses 2.1 and 2.2. The wording of clause 2.3 has not limited the scope of the powers of the Public Protector to investigate a complaint in terms of the said clause. The wording of clause 2.3 of the Executive Ethics Code does not include the provision of the "*Members of the Executive must, to the satisfaction of the President or the Premier, as the case may be…."* This suggest that the President and the Premier have no role to play in connection with this clause.

3.33 It is suggested that the following further facts support the assertion that the powers of the Public Protector to investigate in relation to Clause 2.3 has not been limited in scope:

3.33.1 Clause 2.1 of the Executive Ethics Code deals with "General Standards" Members of the Executive should act in accordance with, whereas Clause 2.3 deals with acts which the Members of the Executive must not do;

3.33.2 Section 3 of EMEA specifically provides that the Public Protector must investigate any alleged breach of the Executive Ethics Code on receipt of a complaint in terms of section 4 of EMEA, which vests the Public Protector with the jurisdiction to investigate any breach of the Executive Ethics Code;

3.33.3 Section 4 of EMEA provides that the Public Protector must investigate, in accordance with section 3, an alleged breach of the Executive Ethics Code, which is prescriptive in nature;

3.33.4 It must be noted that nothing in this section may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act; and

3.33.5 When conducting an investigation in terms of section 3 of the EMEA, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act.

3.34 In light of the fact that the Public Protector may not make any findings against Mr Simmers in terms Clauses 2.1(c) and 2.1(d) of the Executive Ethics Code, the discussion surrounding Clauses 2.1(c) and (d) falls moot. However, as the Executive Ethics Code does not restrict the Public Protector from making findings in relation to breaches of Clauses 2.3(c) and (f) of the Executive Ethics Code, the evidence hereunder has been analysed with reference to the foregoing clauses.

3.35 Furthermore, in the matter of *Public Protector and Others v President of the Republic of South Africa and Others* the Constitutional Court at paragraph 76, with reference to the Mail & Guardian case, pronounced as follows:

"That decision affirms that the objective of investigations by the Public Protector is to discover the truth. Where the investigation yields disparate pieces of evidence which do not fit into place, the Public Protector must continue digging until the true picture emerges. As Nugent AJ observed in that case:

'The Public Protector has no place summarily dismissing any information. His or her function is to weigh the importance or otherwise of the information

and if appropriate to take steps that are necessary to determine its truth.'…."

4. ISSUES IDENTIFIED FOR INVESTIGATION

4.1 Based on the analysis and evaluation of the complaint, the following issues were identified to inform and focus the investigation:

4.1.1 **Whether Mr Simmers allegedly interfered and attempted to influence the process of appointing an acting Municipal Manager for the Kannaland Local Municipality by allegedly instructing certain Councillors to appoint the dismissed former Chief Financial Officer (CFO) of the George Local Municipality, Mr Keith Jordaan, in that position, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to breaching Clauses 2.3(c) and (f) of the Executive Ethics Code.**

4.1.2 Whether the Municipal Council of the KLM irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for KLM without a verification process and, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation was conducted in terms of section 182(1)(a) of the Constitution, read with sections 3 and 4 of the EMEA and 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 the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.1.3 The investigation process was informed by the provisions of sections 6 and 7 of the Public Protector Act, which on its own carries no inherent risk of delays. The scope of this investigation initially primarily focused on the potential breach of Clauses 2.3(c) and 2.3(f) of the Executive Ethics Code and due to internal capacity constraints and the scope of investigations of this nature, challenges were faced in trying to comply with the statutory requirement to finalise and report on the EMEA investigation within a period of thirty (30) days.

5.1.4 This challenge is, however, mitigated by section 3(3) of the EMEA, which allow the Public Protector to report to the President or the Premier in circumstances where an investigation will not be completed in thirty (30) days. Section 3(3) of the EMEA provides as follows, *"If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed".*

5.1.5 On 07 June 2023, the Public Protector addressed a letter to the Premier of the Western Cape Province Mr Alan Winde (Mr Winde), in terms of section 3(2)(a) of EMEA, to note the allegations raised against Mr Simmers and to advise him that the investigation could not be finalised within the prescribed thirty (30) days period.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included the exchange of documents, an analysis of the relevant documentation and a consideration and application of the relevant laws, regulatory framework, and prescripts.

5.2.2 The investigation was approached using an enquiry process that seeks to determine:

5.2.2.1 What happened?

5.2.2.2 What should have happened?

5.2.2.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration or a breach of the Executive Ethics Code?

5.2.2.4 In the event of a violation of the Executive Ethics Code and/or maladministration and improper conduct, what remedial action should be taken?

5.2.2.5 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities to determine whether Mr Jordaan’s appointment as acting Municipal Manager of the KLM was improper as a result of the alleged improper interference and undue influence by Mr Simmers in the appointment process of Mr Jordaan and whether Mr Simmers allegedly acted inconsistently with his office as Member of the Executive Council and used his position to improperly benefit himself or Mr Jordaan, thereby breaching the Executive Ethics Code. The Public Protector needs to analyse the specific actions Mr Simmers took in allegedly promoting Mr Jordaan's appointment and whether these actions

violated the ethical standards and legal duties expected of a Member of the Executive Council.

5.2.3 The specific duties and obligations contained or implied by the alleged breaches of the Executive Ethics Code *(discussed under the legal framework in this report),* relate to:

5.2.3.1 Clause 2.3(c) relating to not using their position to improperly benefit themselves or others.

5.2.3.2 Clause 2.3(f) concerns avoiding conflicts of interest or actions that could compromise their office.

5.2.4 The process also included the consideration and application of the relevant law and prescripts relating to the appointment of an Acting Municipal Manager.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible.

5.2.6 During the investigation it was deemed necessary to expand the investigation to investigate the process followed by the KLM to appoint Mr Jordaan as Acting Municipal Manager, because the evidence gathered during the investigation strongly indicated that the recruitment and selection process implemented by the KLM Council was flawed and that Mr Jordaan was not a suitable candidate for such an important position.

5.2.7 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is now able to make findings and take appropriate remedial action to address the improper conduct and maladministration discovered during the investigation

5.3 Key Sources of Information

5.3.1 Correspondence sent and received

5.3.1.1 Letter of complaint, dated 17 October 2022;

5.3.1.2 Email to Complainant, dated 25 October 2022, with clarity seeking questions;

5.3.1.3 Email from Complainant, dated 01 November 2022, responding to the Public Protector's questions;

5.3.1.4 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector*, addressed to Mr Simmers, dated 07 June 2023;

5.3.1.5 Letter from Adv Nico Boshoff, dated 15 June 2023 requesting a copy of the transcript of the meeting;

5.3.1.6 Letter from Mr Simmers, dated 31 July 2023;

5.3.1.7 Affidavit from Mr Simmers dated 13 October 2023;

5.3.1.8 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector*, addressed to Councillor Steenkamp, dated 07 June 2023;

5.3.1.9 Affidavits from Councillor Steenkamp, dated 12 September 2023 and 16 September 2025;

5.3.1.10 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector,* addressed to Mr Avontuur, dated 07 June 2023;

5.3.1.11 Affidavit from Mr Avontuur, dated 14 December 2023;

5.3.1.12 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector*, addressed to Councillor Stuurman, dated 03 November 2023;

5.3.1.13 Affidavit from Councillor Stuurman, dated 05 December 2023;

5.3.1.14 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector,* addressed to Councillor Albertus, dated 24 November 2023;

5.3.1.15 Affidavits from Councillor Albertus dated 18 December 2023 and 15 September 2025;

5.3.1.16 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector*, addressed to Councillor Valentyn, dated 03 November 2023;

5.3.1.17 Affidavit from Councillor Valentyn, dated 20 June 2024;

5.3.1.18 A Notice in terms of *Rule 23(1) of the Public Protector Rules from the Public Protector,* addressed to Mr Jordaan, dated 26 June 2024;

5.3.1.19 Letter from Mr Jordaan, dated 28 June 2024;

5.3.1.20 A letter from the KLM Municipal Manager to the Public Protector, dated 10 October 2024;

5.3.1.21 A letter from the Public Protector to KLM, dated 13 December 2024;

5.3.1.22 A letter from KLM to the Public Protector, dated 14 January 2025; and

5.3.1.23 A letter to Mr Bredell requesting information and documents, dated 24 October 2024.

5.4 Documents received

5.4.1 Transcript of meeting held on 02 August 2022, received from the Complainant;

5.4.2 Copy of transcript of meeting held on 02 August 2022, edited on 26 October 2022;

5.4.3 News 24 news report titled: *'ANC, DA at each other's throats over Kannaland Municipal Manager post'*, dated 10 August 2022;

5.4.4 George Herald news report titled, *'No evidence of fraud against Cronje and Jordaan,'* dated 26 April 2021;

5.4.5 A copy of the extract of the minutes of the Special Council meeting of the KLM held on Friday, 21 October 2022;

5.4.6 A copy of the letter of appointment from KLM to Mr Jordaan, dated 25 October 2022;

5.4.7 A copy of the letter from Mr A Bredell, dated 11 November 2022, to KLM;

5.4.8 A copy of the extract of the minutes of the Special Council meeting of the KLM, held on 12 January 2023;

5.4.5 A copy of the legal opinion, dated 23 January 2023, by Adv Mukesh Vassen, furnished by Mr Bredell to the Public Protector;

5.4.6 A copy of the letter from Mr Bredell to KLM, dated 14 February 2023;

5.4.7 Arbitration Award regarding Mr Keith Jordaan, dated 29 April 2021; and

5.4.8 DA Federal Constitution.

5.5 Applicable law

5.5.1 Constitution of the Republic of South Africa, 1996;

5.5.2 Executive Members' Ethics Act, 1998;

5.5.3 Executive Members' Ethics Code, 2000;

5.5.4 Local Government: Municipal Systems Act, 2000 as amended (Systems Act);

5.5.5 Local Government: Municipal Systems Amendment Act, 2011 (2011 Amendment Act) (declared invalid);

5.5.6 Local Government: Municipal Amendment Act, 2022 (2022 Amendment Act);

5.5.7 Local Government Regulations: On appointment and Conditions of Employment of Senior Managers, Government Notice No. 21 of 17 January 2014 (Appointment Regulations);

5.5.8 Local Government: Municipal Structures Act, 1998 (Structures Act);

5.5.9 Municipal Finance Management Act, 2003 (MFMA);

5.5.10 Regulations of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA); and

5.5.10 Public Protector Act, 1994.

5.6 Case Law

5.6.1 *Notyawa v Makana Municipality and Others* [2019] ZACC 43;

5.6.2 *South African Municipal Workers Union (SAMWU) v Minister of Cooperative Governance and Traditional Affairs and Others* [2017] ZACC;

5.6.3 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11;*

5.6.4 *Public Protector v Mail & Guardian Ltd (422/10) [2011] ZASCA 108 (1 JUNE 2011): and*

5.6.5 *Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC [19].*

5.6.6 *Member of the Executive Council Local Government Environmental Affairs and Development Planning, Western Cape v Prince Albert Municipality and Another (A231/2020) [2021] ZAWCHC 278 (21 September 2021)*

5.7 Notice issued in terms of section 7(9)(a) of the Public Protector Act

5.7.1 On 10 March 2025, a Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the following implicated and/or affected parties to provide them with an opportunity to respond to the proposed provisional findings and remedial action:

5.7.1.1 Mr Velenkosini Hlabisa, Minister of Cooperative Governance and Traditional Affairs;

5.7.1.2 Mr Alan Winde, Premier of the Western Cape Government;

5.7.1.3 The Western Cape Member of the Executive Council for Local Government, Environmental Affairs and Development Planning, Mr Anton Bredell;

5.7.1.4 Mr Tertuis Simmers: Western Cape Member of the Executive Council for Infrastructure;

5.7.1.5 Mr Cameron Dugmore: Member of the Parliament of South Africa (Complainant);

5.7.1.6 Mr Jeffrey Donson, Executive Mayor of Kannaland Municipality;

5.7.1.7 Adv Dillo Sereo, Municipal Manager of Kannaland Municipality;

5.7.1.8 Ms Alletha Steenkamp DA member and KLM Councillor;

5.7.1.9 Ms Leoni Stuurman ANC member and KLM Councillor;

5.7.1.10 Mr Nicky Valentyn ANC member and KLM Councillor;

5.7.1.11 Mr Rodge Albertus, former KIP member, and former Speaker of KLM;

5.7.1.12 Mr Ian Avontuur, ANC member and former Acting Municipal Manager of Kannaland Municipality, and

5.7.1.13 Mr Keith Jordaan, former Acting Municipal Manager of Kannaland Municipality.

5.8 Response received to the Notice issued in terms of section 7(9)(a) of the Public Protector Act

5.8.1 Written responses to the Notice were received from Mr Jordaan on 09 March 2025, Mr Donson and Adv Sereo of the Kannaland Municipality on 21 March 2025, Mr Simmers and Mr Bredell of the Western Cape Government on 25 March 2025.

5.8.1 Responses were subsequently received from Ms Alletha Steenkamp (DA Councillor) on 15 September 2025 and Mr Rodge Albertus, the former Speaker of the Kannaland Municipal Council and former member of KIP on 17 September 2025.

5.8.2 No responses were received from the Minister of Cogta, Mr Velenkosini Hlabisa, the Premier of the Western Cape Government, Mr Alan Winde, the Member of the Kannaland Municipal Council), the former Deputy Mayor of the Kannaland Municipal Council, Ms Leoni Stuurman (ANC), the former Mayor of the Kannaland Municipal Council, Mr Nicky Valentyn (ANC), and the former Acting Municipal Manager of Kannaland Municipality, Mr Ian Avontuur. The Complainant noted the contents of the section 7(9) and made no further comments.

5.8.3 All the responses were noted and considered by the Public Protector.

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

5.9.1 On 15 February 2026, a Notice in terms of Rule 41(1) of the Public Protector Rules was issued to the Complainant to provide him with a, opportunity to respond to the new proposed provisional findings.

5.10 Response received to the Notice issued in terms of Rule 41(1) of the Public Protector Rules

5.10.1 A written response to the Notice was received from the Complainant by email on 09 March 2026 and was considered by the Public Protector.

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

6.1 Whether Mr Simmers interfered with and attempted to influence the process of appointing an acting Municipal Manager for the Kannaland Local Municipality by allegedly instructing certain Councillors to appoint the dismissed former Chief Financial Officer (CFO) of the George Local Municipality, Mr Keith Jordaan in that position, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to breaching Clauses and 2.3(c) and (f) of the Executive Ethics Code

Common cause

6.1.1 On 02 August 2022, Ms Steenkamp, a DA Councillor on the KLM Council, hosted a meeting at the farmhouse, Algerynskraal in Ladismith. In attendance were Mr Rodge Albertus (Mr Albertus), at the time the Speaker of KLM and member of the KIP political party, Ms Leonie Stuurman (Ms Stuurman), member of the ANC and Deputy Mayor of KLM a the time, Mr Nicky Valentyn (Mr Valentyn), member of the ANC and the then Mayor of KLM and Mr Ian Avontuur (Mr Avontuur), ANC member and the then Acting Municipal Manager of KLM. At the time of holding the meeting, these political party representatives, excluding Mr Avontuur, also constituted the

majority (four out of seven) of the members of the Kannaland Municipal Council (Council).

6.1.2 The purpose of the meeting was to discuss the proposed appointment of an acting Municipal Manager for KLM and matters related thereto.

6.1.3 Mr Simmers did not attend the meeting in person but was dialled in telephonically by Ms Steenkamp to the meeting that was already in progress.

6.1.4 Mr Jordaan was subsequently appointed as Acting Municipal Manager of the KLM from 21 October 2022 until 31 January 2023, a period of three (03) months, during a Special Meeting of the KLM Municipal Council, held on 21 October 2022. Mr Simmers was not present at the Council meeting.

6.1.5 On 12 January 2023, at a Special Council meeting of the KLM the KLM Council resolved to terminate Mr Jordaan's contract immediately, to pay him out for the rest of his term and that he should leave the premises immediately.

6.1.6 Before the Special Council Meeting at which Mr Jordaan was appointed as Acting Municipal Manager took place Mr Albertus was removed as Speaker and Ms Steenkamp abstained from voting during the meeting.

Issues in dispute

6.1.7 The primary issues for the Public Protector's determination are:

6.1.7.1 The nature of the engagement with the members of the other political parties;

6.1.7.2 Whether Mr Simmers exerted undue pressure or simply provided guidance in a party-political context to the members of the other political parties;

6.1.7.3 By advocating for the appointment of Mr Jordaan, given his history of financial misconduct, whether Mr Simmers' actions could be construed as acting in a way that is inconsistent with his position or exposing himself to any situation involving the risk of a conflict between his official responsibilities and his private interests.

6.1.7.4 Whether Mr Simmer's actions resulted in the improper appointment of Mr Jordaan as Acting Municipal Manager of the KLM and thereby resulting in his conduct amounting to a breach of clauses 2.3(c) and (f) of the Executive Ethics Code.

The Complainant's version

6.1.8 The Complainant contended that Mr Simmers, in his capacity as DA Provincial Chairperson issued an instruction to certain Councillors and Office bearers of the KLM to appoint the former CFO of the George Local Municipality, Mr Jordaan as Acting Municipal Manager for KLM.

6.1.9 It is also the Complainant's submission that Mr Simmers exerted tremendous pressure on Ms Steenkamp to appoint Mr Jordaan as Acting Municipal Manager at KLM and concealed the facts surrounding Mr Jordaan's dismissal by the George Local Municipality from Ms Steenkamp and other councillors.

6.1.10 The Complainant further submitted that in terms of recent amendments to the local government legislation, Mr Jordaan was prohibited from being employed in any municipality until a certain time had lapsed after his dismissal. He therefore asserted that Mr Simmers' conduct constituted a breach of 'paragraphs' 2.1 (c) and 2.1(d) and 2.3 (c) and (f) of the Executive Ethics Code.

Evidence submitted by the Complainant

6.1.11 By way of substantiating his complaint, the Complainant also submitted an undated and unsigned transcript of the purported meeting held at Ms Steenkamp's farmhouse on 02 August 2022, when he lodged the complaint with the Public Protector on 17 October 2022. On 25 October 2022, a communique seeking clarity on the undated transcript that accompanied the complaint was sent to the Complainant. On 01 November 2022, the Complainant submitted another transcript of the purported meeting, dated 26 October 2022, which is purportedly the date on which the transcript was edited and saved and not the date of the meeting.

6.1.12 The Complainant also furnished to the Public Protector Investigation Team, (Investigation Team) the following information in an email on 01 November 2022, stating *inter alia*, that:

6.1.12.1 On 02 August 2022, a meeting took place at Ms Steenkamp's farmhouse, Algerynskraal, Ladismith;

6.1.12.2 The purpose of the meeting was to discuss the proposed appointment of Mr Jordaan as Acting Municipal Manager of KLM and matters related thereto;

6.1.12.3 There is clear evidence, from the transcript that Mr Simmers exerted tremendous pressure on Ms Steenkamp to appoint Mr Jordaan as Acting Municipal Manager at KLM. The Complainant added that, *"Steenkamp goes as far to clearly state that she will be fired as Cllr if she does not follow Mr Simmers instructions to appoint Jordaan. Cllr Steenkamp confirms the central role played by Mr Simmers in forcing her hand to get Mr Jordaan appointed at Kannaland Municipality;"*

6.1.12.4 Mr Jordaan was dismissed as CFO of George Local Municipality in July 2019 after he was found guilty of financial maladministration following an internal disciplinary hearing;

6.1.12.5 It is his understanding that recent amendments to the local government legislation meant that Mr Jordaan may not be employed in any municipality until a certain time has lapsed since his dismissal;

6.1.12.6 Mr Simmers was fully aware of Mr Jordaan's dismissal, but concealed the facts surrounding his dismissal from Ms Steenkamp and insisted on the appointment of Mr Jordaan; and

6.1.12.7 Mr Simmers acted in a way that compromised the credibility and integrity of his office and his actions compromised the proper functioning of the KLM. Furthermore, Mr Jordaan was appointed as Acting Municipal Manager on 21 October 2022.

6.1.13 From the perusal of the transcript, the following came to light:

6.1.13.1 Ms Steenkamp informed those in attendance at the meeting that she was on the telephone the whole morning with Mr Simmers and Mr Bredell[1], her senior structures, because they wanted to bring in Mr Jordaan as Acting Municipal Manager of KLM. She stated that she was being forced by her senior structures to submit a motion to Council for a meeting to remove Mr Avontuur as Acting Municipal Manager, but was reluctant to do so;

6.1.13.2 She stated that her senior structures told her that she must declare the motion for a meeting the next day or Mr Simmers will force her hand and that if she refused, she will be expelled;

[1] Member of the Executive for the Department of Local Government in the Western Cape.

6.1.13.3 She proposed to her guests that they convene a council meeting to discuss the appointment of Acting Municipal Manager, because that was what she was being pushed to do by her senior structures;

6.1.13.4 Ms Steenkamp further stated that she, amongst other things, told her senior structures that if they wanted to bring in Mr Jordaan, they could bring him in, but she has certain conditions. One of the conditions was that immediately after Mr Jordaan's appointment, a meeting should be convened between those present in the meeting, including Mr Jordaan and Mr Bredell, that no vacancy is declared before KIP's issues were resolved and that Mr Avontuur stays on in the Directorate, because there were vacant positions and he will be placed in one of those positions;

6.1.13.5 Ms Steenkamp stated further that her senior structures responded by saying that Mr Jordaan would be too scared, because he would not want to cause ructions, as he would be held accountable;

6.1.13.6 During the meeting, Ms Steenkamp telephoned Mr Simmers and informed him that she was putting the phone in speaker mode. Thereafter she informed him of who were in attendance;

6.1.13.7 Ms Steenkamp, amongst other things, told Mr Simmers that they wanted to ascertain something regarding the appointment of Mr Jordaan. She stated that there were fears that Mr Jordaan would declare the vacancy for the Speaker position the moment he commenced duty as Acting Municipal Manager as that was the key to ICOSA gaining control of the KLM again;

6.1.13.8 Ms Steenkamp informed Mr Simmers that she told the attendees that the declaration of a vacancy would not happen, but they asked for a zoom meeting with her, Mr Bredell and Mr Jordaan before the Council meeting was convened. Ms Steenkamp indicated that once these fears were addressed, a motion for a Council meeting would not be necessary and thereafter the Council and the DA will remain in charge of KLM;

6.1.13.9 In response, Mr Simmers advised that he cannot place his colleague, Mr Bredell in a situation proposed by Ms Steenkamp, because he has oversight over all local governments (municipalities) and that it would be unfair to do so;

6.1.13.10 Mr Simmers also stated that Mr Jordaan's function as the substitute Acting Municipal Manager will be to ensure clean governance, but it will not be his function to sort out internal party-political issues of other political parties;

6.1.13.11 Mr Simmers advised and emphasised that there is a distinction between the state and the party (political) and that there is a distinction between party processes and political processes. However, in terms of what was happening in KLM, from an external perspective as the leader of the DA in the Western Cape, if drastic action is not taken, then the financial recovery of KLM will be non-existent over the next six (06) to nine (09) months;

6.1.13.12 Ms Steenkamp then stated that he told her that if Mr Jordaan were appointed then he will come to KLM to have a meeting with them so that they could sort out the specific position. Mr Simmers confirmed that he had spoken to Mr Bredell and that he would come from a political perspective and Mr Bredell would come from a government perspective and that they would be in Kannaland within a day or two. He pointed out that Mr Bredell has his oversight role over local government and he has a political role over their councillor in KLM and they also had a role concerning a stable government from the DA's component;

6.1.13.13 Mr Simmers repeatedly told Ms Steenkamp that she should know the DA's stance and that he had previously reminded her of what her mandate is as a DA member and that she represented the DA;

6.1.13.14 He addressed what he referred to as the ANC's continuous misinformation regarding Mr Jordaan. He stated that Mr Jordaan was one of the best CFOs

that George Local Municipality ever had and that he is one of the most capable individuals to get KLM back on track; and

6.1.13.15 Shortly thereafter the call was terminated, Ms Steenkamp advised the attendees that the oblique words used by Mr Simmers was to remind her of her position.

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Mr Simmers

6.1.14 On 07 June 2023, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was issued to Mr Simmers raising the allegations and soliciting a response.

6.1.15 In a response dated 31 July 2023, Mr Simmers denied having issued instructions to Ms Steenkamp or threatened to remove her from the KLM and *inter alia*, stated that:

6.1.15.1 Ms Steenkamp was the sole DA representative on the Kannaland Council and accordingly constituted the DA Caucus for the KLM;

6.1.15.2 In his capacity as provincial party leader for the DA, he is entitled to consult with his caucus on matters that impact on the party's interests in the Western Cape. Such consultations were held with Ms Steenkamp throughout her tenure as a member of the Municipal Council on various matters relevant to the DA, including the matter of the Acting Municipal Manager's appointment;

6.1.15.3 These consultations were used to convey to Ms Steenkamp the party's position on the matter and to provide her with advice, counselling and guidance on how best to navigate the incredibly complex and sensitive political landscape at KLM;

6.1.15.4 He did not issue an instruction to or threatened Ms Steenkamp that she must appoint Mr Jordaan as Acting Municipal Manager. She was a minority representative on the Council and did not possess the power to single-handedly appoint Mr Jordaan;

6.1.15.5 As per the affidavits of Mr Rooi and Mr Jordaan, enclosed with his response, Mr Jordaan was the preferred candidate of the Independent Civic Organisation of South Africa (ICOSA) and Karoo Independent Party (KIP) coalition, in Kannaland, and not that of the DA;

6.1.15.6 As the Acting Municipal Manager at the time, Mr Avontuur, was seen as being instrumental in the decline in good governance and stability in the Municipality, there were frequent internal DA discussions regarding whether the Municipal Council should not consider a vote on the substitution of a more suitable candidate for Mr Avontuur as Acting Municipal Manager. Mr Jordaan's appointment as the possible substitute was not central to these discussions, as per the affidavits of Messrs Rooi and Jordaan;

6.1.15.7 It was known that Mr Jordaan was being touted by other parties in the KLM Council as a possible replacement for Mr Avontuur. The DA, and by extension himself, never took a view on who the possible substitute must be. It was his party's position that the Municipal Council should deliberate on the question and put it to a vote. For this reason, he counselled and encouraged Ms Steenkamp, in her capacity as DA representative on the Municipal Council, on strategic aspects including tabling a motion at a Municipal Council sitting for the removal of Mr Avontuur as Acting Municipal Manager;

6.1.15.8 It would be entirely unreasonable and naive to suggest that, despite his role as provincial leader of the DA and the DA's interests in ensuring stability and good governance at all municipalities where it enjoys representation, he is barred from discussing matters of political and strategic importance to

the DA, with members of the various DA caucuses, purely because he is also a provincial executive office bearer in his capacity as MEC. At no point did his conduct compromise, interfere with, or undermine the independence and integrity of the work of the Kannaland Municipal Council;

6.1.15.9 He finds it highly improbable that Ms Steenkamp was unaware of Mr Jordaan's dismissal from the George Local Municipality as CFO, as the matter was reported in the mainstream media and was the subject of extensive litigation between Mr Jordaan and his erstwhile employer;

6.1.15.10 He shared the press statements made by the Complainant with Ms Steenkamp via WhatsApp on 25 August 2022, regarding Mr Jordaan's alleged wrongdoing during his tenure at the George Local Municipality; and

6.1.15.11 He therefore finds it incredible to allege that he tried to hide Mr Jordaan's history at the George Municipality from Ms Steenkamp. His engagements with Ms Steenkamp at no point constituted a breach of the Executive Ethics Code as alleged by the Complainant.

Supplementary response received from Mr Simmers

6.1.16 Following his request for a copy of the transcript and after it was furnished to him on 04 September 2023, Mr Simmers provided a supplementary affidavit to the Public Protector, dated 13 October 2023 wherein he, amongst others, stated that:

6.1.16.1 Most of the transcript reflects an in-person meeting to which he was neither invited nor a party in attendance;

6.1.16.2 His participation in the meeting is limited to pages 8 to 10 of the transcript, which reflect his contribution to a conversation that started long before he joined, without the benefit of a full briefing on what was discussed in his absence and which continued after he disconnected the phone call;

6.1.16.3 He denied that the transcript indicates his, *"direct involvement in trying to enforce the appointment of Mr Jordaan";*

6.1.16.4 It appears that Ms Steenkamp and other parties in the meeting built a narrative amongst themselves relating to their preference for KLM, which they then, under the pretence of seeking his advice on good governance issues regarding KLM, sought to confirm by dialling him to "confess" to Ms Steenkamp's misguided perceptions of pressure and threats from him to appoint Mr Jordaan;

6.1.16.5 He denied having telephonically instructed or threatened the office bearers of KLM to appoint Mr Jordaan, rather he was briefly dialled into a meeting where various office bearers of KLM were in attendance. It is his submission that:

"If the transcript is considered as a whole, it is clear that Ms Steenkamp did not agree with the DA's strategy and position around supporting the appointment of Mr Jordaan as acting municipal manager for KLM (bearing in mind that Mr Jordaan was put forward by other parties in KLM as a possible candidate…I cannot speculate as to why, but this disagreement clearly led to her interpreting my guidance and communication of the DA's position as an instruction and even a threat. Unfortunately, she then took my reference to the DA's position during the telephonic conversation as confirmation of this imagined or veiled threat, as evidenced by her words after I had disconnected from the call:

Ja wel, daar het julle dit nou. Die bedekte woorde waarvan hy gepraat het, ek het reeds u posisie van u mandaat vroeer vandag verduidelik. Dit is my posisie. So hy het my nou net herinner." [Loosely translating to: There you have it. The veiled words he is referring to, I have already explained your position regarding your mandate earlier today. That is my position. He has now reminded me thereof];

6.1.16.6 The “bedekte woorde” [Loosely translated as veiled/oblique words] Ms Steenkamp referred to, appears to be a reference to him stating that:

“Ek moet benadruk raadslid u ken die DA standpunt u is ‘n DA raadslid in daai verband.” [Loosely translated as: I must emphasize you know the DA’s stance, you are a DA member in that regard]. *“I cannot conceive how me reminding Ms Steenkamp that she is a DA representative and therefore that she should be familiar with the DA position on the issue being discussed constitutes an instruction or a threat. Rather, it is politically most naïve to think that she is entirely isolated from her party’s policies and strategies on issues that are clearly relevant to her party’s interests where they govern;”*

6.1.16.7 As a provincial leader of the DA, he is obligated to ensure that good governance is promoted and protected at all municipalities where the DA governs. He therefore had every right to ensure that his caucus in KLM was acting on the correct information and assumptions. He set the record straight in respect of Mr Jordaan’s track record at other municipalities and his concerns regarding the ANC’s efforts to manipulate and mislead Ms Steenkamp and the KLM into forming an adverse view of Mr Jordaan, based on falsehoods, cannot amount to issuing an instruction;

6.1.16.8 The KLM was undergoing a governance crisis and Mr Avontuur, the then incumbent Acting Municipal Manager, was generally seen, by the DA as a key reason for the crisis. He indicated that it was the KIP-ICOSA coalition that proposed that a new Acting Municipal Manager be appointed urgently to restore good governance and stability and it put forward Mr Jordaan as a possible candidate. Mr Simmers indicated that, *“Given his track record at other municipalities, the DA found this to be an acceptable interim approach and proposal.”* He indicated that as the provincial party leader he consulted with Ms Steenkamp as his caucus member for KLM and provided guidance and all relevant information pertaining to the issue;

6.1.16.9 Ms Steenkamp's imagined pressure is of her own making and that in his capacity as provincial party leader for the DA, he is entitled to consult with his caucuses on matters that impact on the party's interests in the Western Cape. He continues to state that Ms Steenkamp seems to have unfortunately construed his guidance and support as a threat or instruction;

6.1.16.10 He remarked that, *"…it is quite curious that Ms Steenkamp maintained that she was under pressure from me to ensure the appointment of Mr Jordaan as acting municipal manager, when ultimately, she never even voted on the motion regarding the appointment of an acting municipal manager. On 21 October 2022, the motion carried without Ms Steenkamp's participation. It begs the question – what purpose would it have served me to "threaten" and "intimidate" Ms Steenkamp and other KLM officials with the aim of ensuring the appointment of Mr Jordaan when; Mr Jordaan was the nominee for the position put forward by the KIP-ICOSA coalition; and Mr Jordaan's appointment was confirmed without a supporting vote from Ms Steenkamp or any other council members not affiliated with KIP or ICOSA";* and

6.1.16.11 Nothing in the transcript constituted a breach of the Executive Ethics Code as alleged by the Complainant.

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Ms Steenkamp

6.1.17 On 07 June 2023, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was issued to Ms Steenkamp soliciting a response to the allegations. Ms Steenkamp responded through an affidavit dated 12 September 2023, stating amongst others, that:

6.1.17.1 The KLM has for the past fifteen (15) years, been in a state of dysfunctionality and political instability and that there were constant power

struggles within the Municipal Council, with frequent shifts in coalitions and resultant administrative upheaval;

6.1.17.2 After an initial coalition between ICOSA and the ANC, the political landscape shifted in March 2022 to a coalition between the ANC and KIP, with the DA councillor as the swing vote, which left the Council compiled as follows:

(a) ICOSA: 3 Ward Councillors;
(b) DA: 1 Ward Councillor;
(c) ANC: 2 Proportional Representative (PR) Councillors; and
(d) KIP: 1 Proportional Representative (PR) Councillor.

6.1.17.3 To keep ICOSA at bay, a working relationship was formed between the other three (03) political parties to start filling crucial posts in the administration. ICOSA started an onslaught in the courts to regain power and started to influence the executive of KIP to dismiss their PR Councillor, Mr Albertus;

6.1.17.4 KIP had dismissed Mr Albertus before the meeting and a declaration of the vacancy of the Speaker position was imminent if Mr Albertus failed to obtain an interdict against his own party. The pressure was felt from all corners to try and govern, stay stable and focus on the task at hand of appointing the Acting Municipal Manager;

6.1.17.5 The ANC Councillors and Mr Avontuur, together with Mr Albertus from KIP investigated the alleged corruption of the ICOSA Councillors during their previous term(s) in Council and this led to the suspension of the ICOSA Councillors during a Special Council meeting shortly before the meeting on 02 August 2022;

6.1.17.6 Ms Steenkamp stated that ICOSA's next strategy was to dismiss Mr Avontuur as Acting Municipal Manager, replace him with Mr Jordaan and

then have Mr Jordaan declare a vacancy of the Speaker position so that Mr Albertus could be replaced by Mr Pieter George Rooi as Speaker;

6.1.17.7 She organised the meeting on 02 August 2022 at the unused restaurant venue of Algerynskraal Farm, Ladismith District. The five (05) attendees were: Ms Leoni Stuurman (ANC), Mr Nicky Valentyn (ANC), Mr Rodge Albertus (KIP), Mr Ian Avontuur (Acting Municipal Manager), and herself. The main topic at the meeting was the appointment of Mr Jordaan as Acting Municipal Manager;

6.1.17.8 It was an informal meeting, an exploratory discussion to try and convince the ANC Councillors, the KIP Councillor and Mr Avontuur to support the appointment of Mr Jordaan as Acting Municipal Manager, because Mr Avontuur's contract was close to expiry;

6.1.17.9 A few days before the meeting she had a very brief discussion with Mr Avontuur during which they explored his options to try and retain his services in the Municipality until the vacancies were filled. She needed Mr Avontuur to "*cooperate in order to find a political solution that could also assure the status quo in the power balance in Council."* Mr Avontuur was initially co-operative but retracted everything during the follow-up meeting on 02 August 2022. Subsequently the ANC Councillors opted to consult their caucus first and she did not explore the option of Mr Jordaan as Acting Municipal Manager any further;

6.1.17.10 She put pressure on Mr Avontuur in various ways to try and convince him of the proposal. Some of her tactics were to play on their feelings of loyalty to the working relationship and empathy for the stressful situation;

6.1.17.11 Mr Simmers did not attend the meeting of 02 August 2022 in person and he was not part of the meeting, except for a short telephonic conversation in speaker mode, initiated by herself;

6.1.17.12 During the telephone call she sketched the background situation to Mr Simmers, informed him of the identities of the attendees and described their concerns and communicated a request for a meeting with him. She also enquired about possible next steps if Mr Jordaan was appointed by Council as Acting Municipal Manager;

6.1.17.13 Mr Simmers in his capacity as provincial leader of the DA gave the attendees an oversight of the processes that were on course at KLM and provided some insight as to possible consequences if prudent decisions were not made;

6.1.17.14 Mr Simmers did not instruct any KLM official to appoint Mr Jordaan as Acting Municipal Manager. She attempted to negotiate the appointment of Mr Jordaan as Acting Municipal Manager with other Councillors during the meeting;

6.1.17.15 The provincial leader of ICOSA applied tremendous pressure on Mr Simmers to appoint Mr Jordaan as Acting Municipal Manager and that was part of ICOSA's strategy against the ANC and Mr Avontuur;

6.1.17.16 At that stage she and Mr Simmers debated in their caucus on the issue, as they had to explore the possibility, understand the need to find an Acting Municipal Manager amidst a crucial shortage of candidates and they needed to keep the financial and political instability at bay;

6.1.17.17 As a single DA Councillor on the Kannaland Municipal Council, she had the full right to consult with her provincial leader in matters of importance for the constituency;

6.1.17.18 During all the discussions with Mr Simmers regarding the possibility of appointing Mr Jordaan as Acting Municipal Manager, she was neither instructed by Mr Simmers to appoint him, nor was she threatened with dismissal or disciplinary action by the DA. References to such formed part

of her strategy to exert pressure on the others to try and convince them to agree with the appointment of Mr Jordaan. She remained free to explore all options and was not prevented by Mr Simmers to do so;

6.1.17.19 Mr Simmers' guidance in his capacity as provincial leader of the DA and as member of her caucus was advisory, transparent and democratic;

6.1.17.20 No official audio recording was made at the meeting and copies of these privileged caucus discussions were obtained by the Complainant without her knowledge and consent;

6.1.17.21 The meeting and the matter of the possible appointment of Mr Jordaan as Acting Municipal Manager should be seen in the context of ICOSA's onslaught to regain political power during 2022. She refused to co-sign any of their memoranda, but she did try to convince the other Councillors to appoint Mr Jordaan, via a political route in which they retained power as he was the only candidate at the time who even remotely agreed to fill the position after months of searching for a candidate; and

6.1.17.22 She disagrees with the allegation regarding the concealment of the employment history of Mr Jordaan. During the telephonic conversation with Mr Simmers during the meeting, he referred to the allegations concerning Mr Jordaan and refuted them by placing it into context.

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Mr Avontuur

6.1.18 On 07 June 2023, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was issued to Mr Avontuur requesting a response to the allegations. Mr Avontuur responded through an affidavit dated 14 December 2023 stating, amongst others, that:

6.1.18.1 He was employed at KLM as Acting Municipal Manager during 2022 and he attended the meeting on 02 August 2022, at the house of Ms Steenkamp in his capacity as Acting Municipal Manager;

6.1.18.2 The meeting was called at the request of Ms Steenkamp and was attended by Mr Valentyn, Ms Stuurman, and Mr Albertus. During the meeting Ms Steenkamp made a phone call to Mr Simmers and put him on speaker phone and he addressed the meeting;

6.1.18.3 Mr Simmers instructed the attendees of the meeting to appoint Mr Jordaan as Acting Municipal Manager. According to Mr Avontuur, Mr Simmers indicated that he already spoke to Ms Steenkamp about the appointment of Mr Jordaan as Acting Municipal Manager. Mr Simmers was very determined to have Mr Jordaan appointed as Acting Municipal Manager and he even outlined what Mr Jordaan's mandate would be in terms of good governance. Mr Simmers left them under no illusion that Mr Jordaan must be appointed at all costs;

6.1.18.4 Mr Simmers failed to inform the meeting that Mr Jordaan was totally ineligible to be appointed to a senior management position at any municipality in terms of legislation, because he was previously found guilty of financial misconduct at the George Local Municipality and hence, he was ineligible to be appointed as Acting Municipal Manager at KLM;

6.1.18.5 Mr Simmers previously served as a Councillor at the George Local Municipality and deliberately kept them in the dark about these facts. Mr Simmers was obliged to disclose Mr Jordaan's dismissal by the George Local Municipality and by not exposing these facts, he exposed himself to the risk of a conflict of interest between his official responsibilities and his private interests and therefore Mr Simmers wilfully misled the Councillors to get an old colleague illegally appointed;

6.1.18.6 Mr Simmers exerted tremendous pressure on Ms Steenkamp to have Mr Jordaan appointed and referred to the remarks of Ms Steenkamp that she, *"spent the whole day on the phone with Simmers and Mr Bredell and could no longer postpone the motion to get Jordaan appointed."* He repeated Ms Steenkamp's remark that if she did not get Mr Jordaan appointed, she will face expulsion as a Councillor;

6.1.18.7 Undue pressure was exerted on Ms Steenkamp and the threat of expulsion compromised the independence of the Municipal Council. The EMEA prescribes standards and rules that members of the executive must comply with and that it forbids conduct that is inconsistent with their office. It also forbids them from using their positions to enrich others and that it is clear from the evidence that Mr Simmers' actions were to unlawfully enrich Mr Jordaan, who received a salary of ninety thousand Rand (R90 000) per month for the three (03) months that he was employed at the KLM as Acting Municipal Manager; and

6.1.18.8 The Councillors that were present at the meeting constituted the majority of Municipal Council as the Municipal Council consists of seven (07) Councillors and they had the power to appoint an Acting Municipal Manager.

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Ms Stuurman

6.1.19 On 03 November 2023, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was forwarded to Ms Stuurman, who responded through an affidavit dated 05 December 2023 stating, amongst others, that:

6.1.19.1 She is a Councillor at KLM representing the ANC and she was elected to office in 2021. The meeting of 02 August 2022 was convened by Ms Steenkamp at her farm and in attendance was Ms Steenkamp, Mr Valentyn, Mr Albertus, Mr Avontuur and herself;

6.1.19.2 During the meeting Ms Steenkamp telephoned Mr Simmers and put him on speaker phone. She listened to a taped recording of the meeting and confirms that the audio recording is a true version of Mr Simmers' input during the meeting;

6.1.19.3 Ms Steenkamp stated that she was under tremendous pressure from Mr Simmers to follow his instructions pertaining to the appointment of Mr Jordaan as Acting Municipal Manager and she got the impression that Mr Simmers wanted to have Mr Jordaan appointed at all cost;

6.1.19.4 Mr Jordaan was appointed as Acting Municipal Manager on 21 October 2022, but shortly thereafter his appointment, *"blew up in the media for the blatant illegality attached to it.";*

6.1.19.5 Mr Jordaan was ineligible to be appointed to a senior management position in local government, because he was previously found guilty of financial misconduct at his previous place of employment, being the George Local Municipality; and

6.1.19.6 Mr Simmers knew that Mr Jordaan was subjected to an internal disciplinary hearing and found guilty of financial misconduct and she remarked that:

"This is clearly a case where the opinion of a politician (Simmers) was allowed to subvert the basic procedures of public administration. It is clear from the facts that the conduct of MEC Simmers was not consistent with the high standards required from a person in his position. MEC Simmers' conduct in this matter amounts to a politician taking operational control over the functioning of Kannaland Municipality. MEC Simmers' actions eroded the quality of governance at Kannaland."

Response to the Notice in terms of Rule 23(1) of the Public Protector by Mr Albertus

6.1.20 On 24 November 2023, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was forwarded to Mr Albertus, who responded through an affidavit, dated 18 December 2023 stating, amongst others, that:

6.1.20.1 He was elected Councillor at KLM between 2021 and 2022, representing the KIP and he was also the Speaker of the Council when he attended the meeting at Ms Steenkamp's farmhouse with Ms Stuurman, Mr Valentyn, as well as Mr Avontuur, on 02 August 2022. He confirmed that the meeting was called at the request of Ms Steenkamp;

6.1.20.2 He listened to an audio recording of the meeting and can confirm its authenticity;

6.1.20.3 Mr Albertus advised that Ms Steenkamp continuously stated that she was under pressure from Mr Simmers to have Mr Jordaan appointed as Acting Municipal Manager KLM. He further submitted that Ms Steenkamp stated that she received telephone calls and WhatsApp messages from Mr Simmers daily, imploring her to appoint Mr Jordaan;

6.1.20.4 Mr Albertus remarked that, *"Taken together, the Whatsapp messages and taped telephone conversations show the improper interference from Simmers regarding the appointment of Jordaan"*;

6.1.20.5 He confirmed that Ms Steenkamp put the phone on speaker and Mr Simmers addressed the meeting;

6.1.20.6 What stood out from the telephone conversation between Mr Simmers and the other attendees at the meeting was that Mr Simmers dismissed the ineligibility of Mr Jordaan being appointed as Acting Municipal Manager as mere disinformation from the ANC. Mr Simmers stated that Mr Jordaan was

one of the best CFOs the George Local Municipality ever had and that Mr Simmers, *"seemed determined to illegally resuscitate the career of a discredited senior municipal official. The inference is inescapable that Simmers knew about the fact that Jordaan was found guilty of financial misconduct during Jordaan's tenure as CFO"*;

6.1.20.7 Mr Albertus remarked that, *"Mr Simmers treated the prohibition on the appointment of Jordaan as non-existent and therefore violated the high standards that are set for Members of the Executive";*

6.1.20.8 Mr Albertus then contextualised the conduct of Mr Simmers in terms of section 54A of the Systems Act and observed that, "*the section obliges every council to appoint a suitably qualified candidate in terms of skills, expertise, competencies and qualifications"*;

6.1.20.9 He remarked that, *"…section 54A of the MSA is fundamentally about our national quest for ethical leadership and the institutionalisation of good governance. The law now directs that any staff member of any municipality who has been dismissed for misconduct, may only be reemployed in any municipality after the expiry of a prescribed period."* He noted that,"… *the rationale is clear – the law seeks to stamp out the sheltering of officials who move from municipality to municipality following wrongdoing"*; *and*

6.1.20.10 Mr Albertus added that, *"Simmers wilfully misled the Councillors by not disclosing Jordaan's ineligibility to be appointed as acting MM. This conduct of Simmers was inconsistent with his office as a Member of the Executive and therefore violated the prescription that he should at all times act in good faith and in the best interests of government."*

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Mr Valentyn

6.1.21 On 03 November 2023, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was forwarded to Mr Valentyn, who responded through an affidavit dated 20 June 2024 stating, amongst others, that:

6.1.21.1 He is a Councillor at KLM representing the ANC and was elected to office in 2021. He confirmed that the meeting of 02 August 2022, was convened by Ms Steenkamp at her farm and that the meeting was attended by Mr Albertus, Ms Stuurman, Mr Avontuur and himself;

6.1.21.2 During the meeting Ms Steenkamp telephoned Mr Simmers and put him on speaker phone. He listened to an audio recording of the meeting and confirmed that the recording is a true version of Mr Simmers' input during the meeting;

6.1.21.3 Ms Steenkamp said that she was under tremendous pressure from Mr Simmers to follow his instructions regarding the appointment of Mr Jordaan as Acting Municipal Manager of KLM and that there was a determined effort by Mr Simmers to have Mr Jordaan appointed as Acting Municipal Manager of KLM; and

6.1.21.4 Mr Jordaan was ineligible to be appointed to senior management in local government because he was found guilty of financial misconduct by his former employer, the George Local Municipality. Mr Simmers knew that Mr Jordaan had been subjected to an internal disciplinary hearing and that he was found guilty of financial maladministration. It is his submission that, *"…the conduct of MEC Simmers was not consistent with the high standards required from a person in his position. Simmers' conduct in this matter amounts to a politician taking operational control of governance at Kannaland Municipality. His action of forcing the appointment of Jordaan has serious negative implications for Kannaland."*

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Mr Jordaan

6.1.22 On 26 June 2024, a Notice in terms of *Rule 23(1) of the Public Protector Rules* was forwarded to Mr Jordaan, who responded through a letter dated 28 June 2024 stating, amongst others, that:

6.1.22.1 He neither contacted nor held discussions with either Mr Simmers or the Complainant concerning his appointment as the Acting Municipal Manager for the KLM;

6.1.22.2 He was charged with financial misconduct and found guilty of the charges at the George Local Municipality and he unsuccessfully appealed the sanction on the grounds of unfair dismissal. Due to the cost of litigation against the Municipality, he did not pursue the matter further;

6.1.22.3 He does not agree with the contention that the outcome of the disciplinary hearing prohibits him from being employed in local government for a period of ten (10) years. He maintains that there was no such legal determination by any competent body or Court in South Africa to that effect;

6.1.22.4 He deposed to the affidavit in support of Mr Simmers that was provided to the Investigation Team, which reads in part as follows:

"I, the undersigned Keith Jordaan …, had never been approached by DA MPL Tertuis Simmers, or any official or member of the DA to make myself available to be appointed as acting municipal manager of the Kannaland Municipality. As far as the contrary is alleged, and stated as fact, by ANC MPL Cameron Dugmore, I deny any assertion that I had been recruited by the DA or had been offered the position of acting municipal manager of the Kannaland Municipality by the DA or a representative of the DA."

Documentary information from Mr Bredell

6.1.23 On 04 November 2024, the Investigation Team received the following documents, which were requested from Mr Bredell on 24 October 2024:

A copy of the legal opinion, dated 23 January 2023, obtained from Adv Mukesh Vassen (Adv Vassen) on the validity of regulation 18 of the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers

6.1.23.1 According to the legal opinion, the issues to be determined were whether, as at 21 October 2022:

"(a) Regulation 18 remained validly enacted in terms of section 120, as read with section 72 of the Systems Act; and

(b) Regulation 18 prohibited the Kannaland Municipality from appointing Mr Jordaan as its Acting Municipal Manager."

6.1.23.2 The legal opinion also referred to section 54A and section 57A of the 2011 Amendment Act as being especially important to the matter. Section 54A provided for the appointment of Municipal Managers and Acting Municipal Managers and stipulated that incumbents may not be appointed contrary to the provisions of the Systems Act, including section 57A thereof. Section 57A provided that any municipal staff member dismissed for misconduct may only be re-employed by a municipality after the expiry of a prescribed period.

6.1.23.3 The legal opinion also advised that:

"17. Sections 57A(4) to (6) sought to ensure that a unitary system was developed across all three spheres of government to detect dismissals for misconduct and thereby prevent appointments by

municipalities which are made contrary to the prohibition contained in 57A(1). As such the Court in SAMWU noted that the purpose of the Amendment Act was to:

'address… an alarming increase in the instances of maladministration within municipalities… [and] introduced measures to ensure that professional qualifications, experience and competence were the overarching criteria governing the appointment of municipal managers or managers directly accountable to municipal managers…

18. *When the National Minister published the Regulations on 17 January 2014, he did so in terms of "section 120, read with section 72 of the Systems Act".*

6.1.23.4 Regarding the law as of 21 October 2022, it is stated in the legal opinion that:

"26.3 While sub section 2A of section 72 was rendered invalid and effectively deleted from this section, the remainder of section 72 still provided that:

(1) The Minister may… make regulations or issue guidelines in accordance with section 120 to regulate or provide for the following matters:

…

(c) the setting of uniform standards for—

(iii) any… matter concerning municipal personnel administration;

…

(g) the regulation of… conditions of service of staff members of municipalities, subject to applicable labour legislation; and

(l) any other matter that may facilitate the implementation by a municipality of an efficient and effective system of personnel administration.

27. Notwithstanding the removal of the reference to section 54A, and subsection 2A of section 72, it is patent that the National Minister was still empowered to make Regulation 18 in terms of subsections (c)(iii), (g) and (l) of section 72(1), as well as in terms of section 120(1)(b) and (c) of the Systems Act. It is trite that when making the Regulations, the National Minister did so in terms of the above subsections of section 120 and section 72".

6.1.23.5 The legal opinion indicated that the only judicial matter to specifically consider whether the Regulations remained valid and in force after the provisions of the Amendment Act had lapsed, was the *Member of the Executive Council: Local Government, Environmental Affair and Development Planning v Prince Albert Municipality and Van der Westhuizen (Prince Albert).* However, it was also pointed out in the legal opinion that the *Prince Albert* judgement was handed down by the full bench of the Western Cape High Court Division, which held that *"the general power of the Minister in section 120 read with section … 72(1)(c)(iii)… empowered the Minister to make [the] regulations"*, and it therefore opined that *"… other courts in this Division are bound to follow this precedent".*

6.1.23.6 The legal opinion added that, *"…The view that Regulation 18 remains valid, is supported by the dicta of the Constitutional Court in Member of the Executive Council for Health, Eastern Cape and another v Kirland Investments which upheld the principle in Oudekraal which stipulates that an administrative action (which includes the making of delegated legislation) remains valid and effectual and continues to have legal consequences unless and until it is set aside".*

6.1.23.7 In the legal opinion it was accordingly maintained, *"…that Regulation 18 remains valid given that the Regulations were not specifically made in terms of provisions of the Amendment Act"*.

6.1.23.8 In relation to the process to appoint an Acting Municipal Manager, the legal opinion stated that:

"36. To give effect to Regulation 18:

36.1 Regulation 11, provides that when making application for a senior manager post, an applicant is obliged to disclose:

"(d) full details of any dismissal for misconduct; and

(e) any disciplinary actions whether pending of finalised, instituted against such applicant in his or her current or previous employment.

36.2 Regulation 14(1)(c) requires that during any recruitment exercise, the municipality concerned must conduct a shortlisting process which must verify whether or not an applicant was "dismissed previously for misconduct… by another employer"; and

36.3 Regulation 17(1)(c) states that before making a decision on an appointment, a municipal council must satisfy itself that "the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations".

6.1.23.9 Regarding whether the prohibition in Regulation 18(1) applied to the appointment of Acting Municipal Managers as at 21 October 2022, given that Regulation 1 defines a *'senior manager' as "a municipal manager or acting municipal manager, appointed in terms of section 54…"*, the legal opinion expressed the view that:

> *"41. While it is trite law that the references to section 54A (which read together with the Amendment Act), specifically provided for the appointment of municipal managers and acting municipal managers, must be accepted to have lapsed and are of no force and effect, for the reasons set out hereunder, this does not mean that the prohibition in Regulation 18(1) is not of application to the appointment of an acting municipal manager."*

6.1.23.10 In the legal opinion the following reasons are provided for this view, namely:

> *(a) Before the insertion of section 54A into the Systems Act, municipalities can and did appoint both municipal managers and acting municipal managers;*
>
> *(b) This was previously done in terms of:*
>
> *(i) section 160(1)(d) of the Constitution which provides that a municipal council "may employ personnel that are necessary for the effective performance of its functions"; read with*
>
> *(ii) section 82(1) of the Local Government: Municipal Structures Act 117 of 1998 ("the Structures Act") which provides that:*
>
> *"A municipal council must appoint… a municipal manager who is the head of administration and also the accounting officer for the municipality; and…when necessary, an acting municipal manager.*

(iii) Regulation 1 of the Local Government: Disciplinary Regulations for Senior Managers, 2010 ("the Disciplinary Regulations") (prior to amendment by the Amendment Act) furthermore defines a senior manager as "a municipal manager referred to in section 82(1) of the … structures Act … [or] a manager referred to in section 56 of the Act".

6.1.23.11 The reasoning in the legal opinion was therefore that, *"Given that an acting municipal manager is also appointed in terms of section 82(1) of the Structures Act, a municipal manager is a senior manager for the purposes of the Disciplinary Regulations and thus also Regulation 18".*

6.1.23.12 As a further basis in support of this view, the legal opinion states that in terms of the interpretation of statutes, the Constitutional Court held that it is a, *"[a] fundamental tenet of statutory interpretation… that the words in a statute must be given their ordinary grammatical meaning"* and that *"… statutory provisions should always be interpreted purposively…"* and *"…the relevant statutory provision must be properly contextualised".*

6.1.23.13 It is therefore contended in the legal opinion that:

"46. Thus, any interpretation which seeks to exclude an acting municipal manager from the remit of Regulation 18 would not only result in an absurdity, but it would also be unbusinesslike and frustrate the general purpose of this important provision.

47. Similarly, when one considers the purpose of the provision, regard must be had to the fact that an acting municipal manager becomes the de facto the accounting officer of a municipality and will be required to manage vast sums of public money on its behalf. As such, it would frustrate the purpose of the Regulations should Regulation 18 not be interpreted to be applicable to acting municipal managers. This is especially so given that the prohibition in Regulation 18 seeks to, inter alia, prevent someone who has previously been dismissed for a

financial misconduct in terms of section 171(2) of the MFMA, from being immediately re-appointed to a senior position in the municipal administration.

48. Under these circumstances and in light of section 54A becoming invalid, Regulation 1 must be read to mean that a 'senior manager', inter alia, means "a municipal manager or acting municipal manager…". As such Regulation 18 applies to the appointment of acting municipal managers".

6.1.23.14 The Legal opinion concluded that:

"59.1 Regulation 18 was valid and enforceable as at 21 October 2022, when Mr Jordaan was appointed by the Kannaland Municipality;

59.2 Regulation 18 was applicable to the appointment of acting municipal managers;

59.3 the Kannaland Municipality was prohibited from appointing Mr Jordaan as its Acting Municipal Manager on 21 October 2022 and; as such

59.4 the Western Cape Minister is obliged to take the requisite remedial action to remedy the unlawful appointment".

Evidence independently sourced

6.1.24 Copy of the *Arbitration Award* dated 29 April 2021 (Case no. WCP071921)[2], regarding Mr Jordaan's dismissal by the George Local Municipality on 15 July 2019 reflect amongst others that:

[2] Obtained during the investigation conducted by the Public Protector under Report 94 of 2021_22

6.1.24.1 Mr Jordaan was found guilty of the main charge of contravening section 171(2) of the Local Government: Municipal Finance Management Act (MFMA) of 2003 and the Municipal Investment Regulations due to him investing municipal funds in Old Mutual Bank, which is not a registered commercial bank;

6.1.24.2 Mr Jordaan was also found guilty of contravening the George Local Municipality's Supply Chain Management Policy by appointing Old Mutual Bank as an investment manager for George Local Municipality without following any supply chain management process; and

6.1.24.3 The dismissal of Mr Jordaan as CFO of George Local Municipality was both substantively and procedurally fair and dismissed Mr Jordaan's (the Applicant) claim of an alleged unfair dismissal.

Responses to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.1.25 On 10 March 2025, the Public Protector issued a Notice in terms of section 7(9)(a) of the Public Protector Act to implicated and/or affected individuals to provide them with an opportunity to make representations in connection with the provisional findings and remedial action to be taken by the Public Protector. The notice was served on them via email on the same date. Responses to the notices were received as reflected below.

Response received from Mr Simmers to the section 7(9) Notice

6.1.26 On 25 March 2025, the Public Protector received a letter from Mr Simmers advising that the letter addresses the Public Protector's proposed findings in so far as it relates to his alleged conduct and that he was also responding to the remedial action directed at the office of MEC Bredell with his knowledge and approval.

6.1.27 In his response he stated that he disagrees with the Public Protector's findings regarding his utterances about Mr Jordaan's competency to manage the KLM, that he withheld information about Mr Jordaan's previous dismissal from the KLM councillors, that he contravened sections (Clauses) 2.3(c) and (f) of the Executive Ethics Code and that his conduct constitutes improper conduct in terms of section 182(1) of the Constitution, erroneously referred to as section 182(2) in the Notice.

6.1.28 His objection to the complaints and the Public Protector's key findings is grounded in the following:

6.1.28.1 Rule (Clause) 2.1 of the Code requires members of the executive to act *'to the satisfaction of the President or the Premier'* and that the Public Protector is not empowered to make a judgement on whether a Member of the Executive has complied with the requirement of that provision of the Code. Mr Simmers therefore contends that in doing so the Public Protector's *'judgement'* on a Member of the Executive would amount to a material error in law and would subject the Public Protector's conduct to judicial review;

6.1.28.2 A finding that discussions between provincial party leaders and their various caucuses within Municipal Councils constitute a conflict of interest or offend Rule 2.3 of the Code constitutes a material error of law and would subject the finding to judicial review;

6.1.29 Mr Simmers contended that at the time of the meeting with the KLM councillors the legal position pertaining to Regulation 18 was unclear and he should therefore be excused for not raising it at the time of engaging with the KLM councillors. He does not follow how the Public Protector can maintain that he should have, *"ascertained the reason and basis for Mr Jordaan's dismissal by the George Local Municipality*…" and how it relates to Regulation 18 and the *ex lege* unlawfulness of Mr Jordaan's appointment as Acting Municipal Manager of KLM;

6.1.30 Mr Simmers admitted that he did refer to Mr Jordaan as one of the best CFOs that George Local Municipality has ever had and that he was one of the most capable individuals to get KLM back on track, but maintained that that was his personal opinion which he expressed in his capacity as regional leader of the DA, to a fellow DA member, although he also acknowledges there were representatives of other political parties present;

6.1.31 He added that the other councillors were not bound by the DA's constitution and his views or opinions were just the opinion of the opposition party's leader expressed during an informal political discussion. He reiterated that everyone knew the full story about Mr Jordaan's employment history, he reinforces the opinion-nature of his utterances and that the legal position regarding Regulation 18 was only clarified months after Mr Jordaan's appointment;

6.1.32 The Public Protector's conclusion that his engagement with Ms Steenkamp during the 02 August 2022 call was not a DA Caucus meeting, completely ignores the fact that the call was limited to Ms Steenkamp, the DA councillor who called him with no warning or context and asked for assistance with an issue regarding Mr Jordaan's possible nomination to the position as Acting Municipal Manager. The engagement was not relevant to his capacity as MEC for Infrastructure and he also did not address or engage any of the other participants, but his efforts to set the record straight was addressed to and limited to Ms Steenkamp;

6.1.33 The meeting and his role therein should be seen and assessed against the background of Ms Steenkamp's attempted manipulation of the other councillors to get them to agree to the proposed appointment of Mr Jordaan;

6.1.34 Mr Simmers maintains that he was doing his job as leadership in the DA and not promoting a personal campaign and that his opinion on the matter has no bearing on what is ultimately communicated at caucus member level; and

6.1.35 Mr Simmers asserts that him not being allowed to convey his party's position on matters of governance under his leadership simply because of his other role as member of the executive, is untenable. He adds that all Members of the Executive are clad with political responsibilities outside their executive offices and to maintain the Public Protector's rationale would snuff out any political activity by Members of the Executive. Furthermore, barring him, from offering personal opinions on political matters would be an unreasonable curtailment of his freedom of speech.

6.1.36 Mr Simmers accordingly maintains that:

6.1.36.1 He did not contravene any of the provisions of his sworn oath as contemplated in section 135 of the Constitution;

6.1.36.2 Section 195 of the Constitution does not apply to Members of the Executive and is limited to the Public Administration and that this finding should be withdrawn from the final report;

6.1.36.3 His conduct on 02 August 2022 did not constitute improper conduct as contemplated in section 182(1) of the Constitution and the Public Protector's finding in this regard must be withdrawn from the final report;

6.1.36.4 He did not breach Rules 2.1(c) or (d) of the Executive Ethics Code and that the Public Protector has failed to show that his conduct was not to the satisfaction of the Premier and that this finding should also be withdrawn from the final report; and

6.1.36.5 He did not breach Rules 2.3(c) or (f) of the Executive Ethics Code, for reasons set out in his response and these findings to the contrary must be withdrawn from the final report.

6.1.36.6 Having considered the objections raised by Mr Simmers in his section 7(9) response, the Public Protector finds as follows: (a) the objection that the Public Protector has no jurisdiction to assess compliance with Clauses 2.1(c) and (d) is not a jurisdictional issue. Section 3 of the EMEA does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the Executive Ethics Code. It is implicit that the Public Protector therefore does have jurisdiction to investigate any breach of the Executive Ethics Code, albeit in connection with Clauses 2.1 and 2.2, with a limited scope. In the matter at hand (a) no finding is made against Mr Simmers under Clauses 2.1(c) and (d); (b) the objection that party-caucus engagement cannot per se constitute an inconsistency with position or a conflict of interest is accepted as a general proposition, but it does not preclude the analysis of whether specific conduct in a particular context crossed that line; and (c) all other objections are addressed in the analysis and conclusion below and are not accepted to the extent they would require withdrawal of the finding.

Response received from Mr Keith Jordaan to the Section 7(9) Notice

6.1.37 Mr Jordaan's response to the notice stated as follows:

6.1.37.1 He confirmed having served as Acting Municipal Manager of Kannaland Municipality for a three-month term as appointed by the Municipal Council. His service to the municipality concluded years ago and it was only recently that he became aware of the Public Protector's report, which has emerged long after his tenure ended;

6.1.37.2 During his time as Acting Municipal Manager, he had no knowledge of any alleged political interference by Mr Simmers in his appointment or in municipal operations, nor did he witness any evidence to substantiate such claims;

6.1.37.3 Both then and now, he considers these matters to be indicative of the political gamesmanship that detracts from the core mission of public service. In 2024, after he left the service of the municipality, he provided his full support to the Office of the Public Protector in its investigation, reflecting his commitment to transparency and accountability. Currently, as a private individual, he is disheartened by the delayed release of the report and the persistent political tiff it has revived. This drawn-out affair offers little value to the public and only reinforces his frustration with such distractions; and

6.1.37.4 He puts on record his disapproval of the prolonged political manoeuvring surrounding the investigation and urge those involved to redirect their efforts toward the public good rather than sustaining these partisan disputes.

Response received from Ms A Steenkamp to the section 7(9) Notice

6.1.38 On 17 September 2025, the Public Protector received an affidavit from Ms Steenkamp, dated 16 September 2025, in which she addressed the contents of the Public Protector's section 7(9) Notice. In her response she states, amongst others, the following:

6.1.38.1 The meeting held on 02 August 2022 at the unused Algerynskraal Farm was an informal meeting, structured and arranged as a caucus meeting between the three political parties in power of the Kannaland Municipal Council at the time;

6.1.38.2 The farm does not belong to her. They had permission from the director of the owning company to use it as a private venue for caucus meetings, because her husband worked at the farm at the time and they resided in one of the farmhouses;

6.1.38.3 The same unused restaurant building was used as the venue for inter-political party caucus meetings on at least four previous occasions before the meeting of 02 August 2022 by the DA, ANC and KIP. It was chosen specifically for its location outside Ladismith and its perceived confidentiality;

6.1.38.4 The purpose of the meeting from the onset was inter-party (informal) caucus discussions between senior caucus members of the relevant political parties and the councillors thereof to find a way forward on the possible appointment of Mr Jordaan as the Acting Municipal Manager of KLM;

6.1.38.5 Mr Simmers was dialled into the in-person meeting as Provincial Leader and senior caucus member of the DA for herself because she was the only DA Councillor on the KLM Council and opted to have his guidance as caucus representative for the meeting;

6.1.38.6 Mr Albertus attended the meeting in a caucus capacity, as the most senior caucus member and founding president of KIP and not as Speaker of the Kannaland Municipal Council;

6.1.38.7 The ANC Councillors and herself attended the meeting in their capacities as members of the caucus of their respective political parties and not as members of the Council;

6.1.38.8 Mr Avontuur attended the meeting as the senior caucus leader of the local ANC division and not in his capacity as the Acting Municipal Manager. During an informal discussion held a few days before the meeting of 02 August 2022, he demanded that he wants the position of Director: Community Services should Mr Jordaan be appointed as Acting Municipal Manager; and

6.1.38.9 He instituted this with the other political party members as a conditional matter. He obtained the position of Acting Municipal Manager in the same way earlier in the year during caucus meetings with KIP, where the DA caucus was present. As Councillor she is in no position to offer such an employment.

Response received from Mr Albertus to the section 7(9) Notice

6.1.39 On 15 September 2025, the Public Protector received an affidavit from Mr Albertus, dated 15 September 2025, in which he addresses the contents of the Public Protector's section 7(9) Notice. In his response he, amongst others, states the following:

6.1.39.1 He served as an elected Councillor of KLM between 2021 to 2022 representing the KIP and he was also the Speaker of the KLM Municipal Council when he attended the meeting held at the farmhouse of Ms Steenkamp;

6.1.39.2 On 04 July 2022 he received a letter signed by the Secretary-General of KIP, Mr Gershwin Breda (Mr Breda) and a few co-opted Executive Members of KIP instructing him to convene a Council meeting on 06 July 2022, to appoint Mr Jordaan as the new Acting Municipal Manager for KLM by voting with ICOSA and that failure to comply would result in the immediate termination of his membership of KIP;

6.1.39.3 He did not comply and was subsequently removed as member of KIP and Speaker of the KLM Municipal Council pending a disciplinary hearing presided over by Mr Hans Malgas, who was later appointed in the KLM Human Resource Department; and

6.1.39.4 At the time Mr Breda, was also on contract as legal manager of KLM and was placed on temporary suspension by Mr Avontuur, the then Acting Municipal Manager, because he was an employee of the KLM at the time

and he was also mentioned in a section 106 investigation into maladministration at KLM.

Responses to the Notice in terms of Rule 41(1) of the Public Protector Rules

6.1.40 On 15 February 2026 the Public Protector issued a Notice in terms of rule 41(1) of the Public Protector Rules to the Complainant to provide him with an opportunity to make representations in connection with the provisional findings of the Public Protector. The notice was served on him on 16 February 2026 via email. A response to the notice was received from the Complainant on 09 March 2026 by email message and is reflected below.

Response received from the Complainant to the rule 41(1) Notice

6.1.41 The Complainant's stated in his email message that:

"Members of the Executive Council are required to perform duties diligently and in the interests of good governance.

There is no dispute of facts that MEC Simmers spoke in favour of the appointment of Mr Jordaan.

Mr Jordaan had been dismissed from his position as CFO for George after a disciplinary process.

For an MEC to then lobby for the appointment of a dismissed official cannot by any stretch of the imagination be described as conduct in the interests of good governance. If Mr Simmers was lobbying in his party-political role for another candidate who had not been dismissed for unlawful conduct, and met the criteria, that is an entirely different matter.

Should this finding contained in the Rule 41 notice be confirmed, it would set an extremely dangerous precedent.

Local Government is affected by serious service delivery failures, corruption and malfeasance. To exonerate an MEC who was actively lobbying for the appointment of an official who had been dismissed, would be a massive setback to all efforts to build ethical conduct in governance. It would send a message that senior political leaders who are members of the executive could freely lobby for the appointment of local government officials who were dismissed for fraudulent and wrongful conduct.

Surely that is not the intention of the Code of Conduct for Members of the Executive Council?

It is true that MEC Simmers is the leader of the DA in the Western Cape. He has a party-political role. However, he remains an MEC. His conduct should thus be judged in terms of the Code. Any other finding would be a massive setback for ethical governance. It would open the door for MEC's who hold political office to use their offices to lobby for the appointment of corrupt municipal officials at a time when our President has called on all of us to help fix local government and build a capable state.

I thus request that the Public Protector is informed of my request that independent counsel is appointed to review the original report and this report contained in the section 41 notice sent to me."

Applicable law

Constitution of the Republic of South Africa, 1996

6.1.42 Section 135 of the Constitution provides that before Members of the Executive Council of a province begin to perform their functions, they must be sworn in or affirm faithfulness to the Republic and obedience to the Constitution in accordance with Schedule 2, as follows:

*"**I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other laws of the Republic;** and I undertake to hold my office as Premier/Acting Premier/member of the Executive Council of the province of C.D. with honour and dignity; to be a true and faithful counsellor(sic); not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability". (emphasis added)*

6.1.43 Regarding the "Conduct of Members of Executive Councils," Section 136 stipulates, amongst others, that:

(1) "Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.

(2) Members of the Executive Council of a province may not-

(a) undertake any other paid work;
(b) act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests."

6.1.44 Section 151(4) of the Constitution provides that the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

6.1.41 Section 155(6) of the Constitution provides that:

"Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must-

(a) provide for the monitoring and support of local government in the province;."

6.1.45 Section 160(1) of the Constitution regarding "internal procedures", provides that:

"A Municipal Council-

(a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;

(b) …;

(c) ….;

(d) may employ personnel that are necessary for the effective performance of its functions."

6.1.46 Section 195 of the Constitution relating to the *"Basic values and principles governing public administration*" provides, amongst others, that:

"(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained."

6.1.47 Section 237 regarding, *"Diligent performance of obligations*", provides that:

"All constitutional obligations must be performed diligently and without delay."

Executive Members' Ethics Act, 1998

6.1.48 Section 2(1) of the EMEA makes provision for the publication of a code of ethics by the President after consultation with Parliament, by proclamation in the Government Gazette, which prescribes the standards and rules aimed at promoting open, democratic and accountable government, with which Cabinet members, Deputy Ministers and MEC's must comply, in performing their official responsibilities.

6.1.49 Section 2(2) provides that 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;
(ii) to meet all the obligations imposed on them by law; and

(b) include provisions prohibiting Cabinet members, Deputy Ministers and MEC's from—

(i) undertaking any other paid work:
(ii) acting in a way that is inconsistent with their office
(iii) exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
(iv) using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person: and
(v) acting in a way that may compromise the credibility or integrity of their office or of the government."

Executive Ethics Code, 2000

6.1.50 Clause 2.1 of the Executive Ethics Code, provides that:

"2.1 Members of the Executive must, to the satisfaction of the President or the Premier, as the case may be-

(a) perform their duties and exercise their powers diligently and honestly.

(b) fulfil all the obligations imposed upon them by the Constitution and law;

(c) act in good faith and in the best interest of good governance;

(d) act in all respects in a manner that is consistent with the integrity of their office or the government.

2.2 In deciding whether members of the Executive complied with the provisions of clause 2. 1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic, and accountable government.

2.3 Members of the Executive may not:

(a) wilfully mislead the legislature to which they are accountable;

(b) wilfully mislead the President or Premier, as the case may be;

(c) act in a way that is inconsistent with their position;

(d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;

(e) use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;

(f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;

(g) receive remuneration for any work or service other than for the performance of their functions as members of the Executive; or

(h) make improper use of any allowance or payment properly made to them or disregard the administrative rules which apply to such allowance or payments." (emphasis added).

Local Government: Municipal Systems Amendment Act, 7 of 2011 (Amendment Act) (declared invalid)

6.1.51 Section 54A regarding the appointment of Municipal Managers and Acting Municipal Managers, amongst others, provided that:

"(7) (a) The municipal council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(c) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC for local government must, within 14 days of receiving the information provided for in subsection (7), take appropriate steps to enforce compliance by the municipal council with this section, which may include an application to a court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council.

(9) Where an MEC for local government fails to take appropriate steps referred to in subsection (8), the Minister may take the steps contemplated in that subsection".

6.1.52 Section 57A regarding the employment of dismissed staff provided, amongst others, that:

"(1) Any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period".

Local Government: Municipal Systems Act, 2000, updated to 01 November 2022)

6.1.53 Section 57A(9) provides that:

"The Minister must maintain a record of all staff members that have—

(a) been dismissed for misconduct; or

(b) resigned prior to the finalisation of the disciplinary proceedings,

which record must be made available to municipalities as prescribed."

Local Government Regulations: On appointment and Conditions of Employment of Senior Managers, Government Notice No. 21 of 17 January 2014

6.1.54 Regulation 18 stipulates that:

"(1) A person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period, as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2". (emphasis added)

6.1.55 According to column 3 of Schedule 2 in relation to categories of misconduct and time periods that must expire before a person may be re-employed in a Municipality, a person dismissed for financial misconduct contemplated in section 171 of the MFMA, corruption or fraud, may only be re-employed in a Municipality after the expiry of a period of ten (10) years.

Local Government: Municipal Structures Act, 1998 (as amended)

6.1.56 Section 29(1) regarding Meetings of municipal councils'' provides that:

"The speaker of a municipal council decides when and where the council meets subject to section 18(2), but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request."

6.1.57 Section 30(5) of the Municipal Structures Act provides that:

"(5) Before a municipal council takes a decision on any of the following matters it must first require its executive committee or executive mayor, if it has such a committee or mayor, to submit to it a report and recommendation on the matter—

(a) any matter mentioned in section 160(2) of the Constitution;

(b) the approval of an integrated development plan for the municipality, and any amendment to that plan; and

*(c) the appointment and conditions of service of the municipal manager and a head of a department of the municipality." (*emphasis added)

6.1.58 Section 37 regarding the Functions of speakers'' states that:

"The speaker of a municipal council—

(a) presides at meetings of the council;

…

(e) must ensure that council meetings are conducted in accordance with the rules and orders of the council;".

6.1.59 Section 82[3], regarding the appointment of a Municipal Manager and Acting Municipal Manager, provided that:

"A municipal council must appoint—

(a) a municipal manager who is the head of administration and also the accounting officer for the municipality; and

(b) when necessary, an acting municipal manager."

Municipal Finance Management Act, 2003

6.1.60 Section 171 of the Municipal Finance Management Act (MFMA), relates to financial misconduct by municipal officials and stipulates in section 171(2) that the Chief Financial Officer of a municipality commits an act of financial misconduct if that officer deliberately or negligently- (a) fails to carry out a duty delegated to that officer in terms of section 79 or 81(1)(e); (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81(1)(e); (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless or wasteful expenditure; or (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection 1(d).

Labour Relations Act, 1995

6.1.61 Section 186(1)(a) of the LRA provides that:

"Dismissal" means that-

[3] Repealed by s 15 of Act 7 of 2011 with effect from 5 July 2011, s 15(b) of Act 3 of 2022 with effect from 1 November 2022.

(a) an employer has terminated a contract of employment with or without notice;"

Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (RICA)

6.1.62 Section 4(1) of the RICA provides that, "*Any person, other than a law enforcement officer, may intercept any communication if he or she is a party to the communication, unless such communication is intercepted by such person for the purposes of committing an offence".*

Democratic Alliance Federal Constitution

6.1.63 To understand the context of some of the information contained in Mr Simmers' response to the Public Protector, the Public Protector considered the provisions of the DA Federal Constitution. The following provisions outline the expected ethical behaviour and responsibilities of party members, particularly those in leadership positions and provide context for assessing whether Mr Simmers' actions over-stepped party-political lines, given his position and the allegations of undue influence.

6.1.64 Paragraph 7.6 provides, regarding the authority of "SENIOR OFFICE BEARERS AND MEETINGS," that:

"7.6.1 The Federal Leader, the Federal Chairperson and the Chairperson of the Federal Council are members of <u>any</u> Congress, Council, Committee, caucus, or sub-committee established in terms of this Constitution and are entitled to attend meetings of all or any of them as full members.

7.6.2 Provincial Leaders and Deputy Leaders and Provincial Chairpersons have the same rights in their Provinces".

6.1.65 Paragraph 9.1. relates to the establishment of caucuses and states at paragraph 9.1.1, that all Members of the National Parliament, who are members of the Party are members of the Parliamentary Caucus of the Party;

6.1.66 Paragraph 9.1.3 states all Councillors in Local Government councils, who are members of the Party are members of the Municipal Caucuses of the Party in the councils in which they serve;

6.1.67 Paragraph 9.2 regarding the establishment of joint caucuses, provides that the members of the Party and any other party or parties with which the Party is in coalition for the purposes of forming a government in any sphere, must establish a joint caucus for the purposes of ensuring a coordinated response to issues that will serve before that legislative body;

6.1.68 Paragraph 9.3.4 provides that each caucus functions and takes decisions in terms of a policy approved by the Federal Council and Paragraph 9.3.5 provides that members must at all times adhere to and support decisions of the relevant caucus and must not differ publicly from any decision once it has been taken except when it has been decided by the caucus that a member may on a question of conscience exercise a free vote; and

6.1.69 Paragraph 9.4.1 provides that caucuses are responsible for the proper functioning of the Party in the relevant forum. Caucuses are also responsible for ensuring that the Party's policies are implemented in the policies of the government in the sphere of government in which the relevant caucus operates.

6.1.70 According to Napier and Labuscagne*, "In parliamentary politics and at all levels of government a caucus forms an essential structure in the functioning of a political party within a legislature, being an integral part of the strategic make-up of parties from central parliament down to the local level. In the various caucuses, general strategy, policies, and the*

candidates to be voted for, or to be elected into office are decided and agreed upon – this, to ensure that the party demonstrates solidarity within the respective legislatures and to the outside world."[4]

6.1.71 A caucus is also defined as a closed meeting of a group of persons belonging to the same political party or faction usually to select candidates or to decide on policy.[5]

Case law

6.1.72 The Constitutional Court's emphasis in *Notyawa v Makana Municipality and Others* [2019] ZACC 43 on appointing suitably qualified municipal managers reflects the critical importance of competent local government leadership. Executive members who influence appointment processes carry corresponding responsibilities to ensure their interventions support, rather than undermine, constitutional governance principles.

6.1.73 The Court noted that "*candidates who are best qualified for the job must be recruited*" and that the "*role played by the managers is crucial to the delivery of services to local communities".*

6.1.74 In the matter of the *South African Municipal Workers Union (SAMWU) v Minister of Cooperative Governance and Traditional Affairs and Others* [2017] ZACC, the Court held that:

"[86] A great host of decisions and actions have been taken across all nine provinces under the Amendment Act. To allow the invalidity to operate retrospectively would plainly cause disruption to the orderly and effective administration of municipalities. This would be

[4] Labuscagne P and Napier C, POLITICAL PARTY CAUCUSES AND DEMOCRACY: *CONTRADICTIO IN TERMINIS,* DOI: https://dx.doi. org/10.18820/24150509/ JCH42.v2.10 ISSN 0258-2422 (Print) ISSN 2415-0509 (Online) Journal for Contemporary History, p208 2017 42(2):208-226 © UV/UFS

[5] Available at: https://www.merriam-webster.com/dictionary/caucus

untenable. For these reasons the declaration of invalidity must operate prospectively.

[104] The following order is made:

1. The declaration of invalidity of the Local Government: Municipal Systems Amendment Act 7 of 2011, made by the High Court of South Africa, Gauteng Division, Pretoria, is confirmed.

2. *The declaration of invalidity is suspended for a period of 24 months to allow the Legislature an opportunity to correct the defect*".

Analysis

6.1.75 Ms Steenkamp claimed that the recording and transcript constitute copies of privileged caucus discussions, which were obtained by the Complainant without her knowledge and consent.

6.1.76 The Public Protector obtained a copy of the audio recording of the meeting from an attendee of the meeting which confirms that the meeting transcript provided by the Complainant to the Public Protector is an accurate and reliable replication of the meeting.

6.1.77 Section 1 of RICA provides that a "*party to the communication*" includes a person who might be listening but not actively participating in the communication. It is evident from section 4 of RICA that parties to a communication may record such communication, with or without the consent of the other parties, provided that the recording is not intended to be used in the commission of an offence.

6.1.78 Furthermore, in terms of section 4 of RICA the recording of meetings and the like is permitted, where one is a party to the meeting or conversation, irrespective of whether one has informed the other parties of such recording and whether one is actively participating in the communication. The Public Protector verified that the recording was made by a party to the meeting, who wished to remain anonymous for the purposes of this report.

6.1.79 In addition, the authenticity or contents of the recording and transcript as a true reflection of the meeting and telephone communication with Mr Simmers, is not in dispute. Mr Albertus, Ms Stuurman and Mr Valentyn have stated in their affidavits, in response to the Public Protector's Rule 23(1) Notice, that they have listened to the audio recording of the meeting and confirm the authenticity of the transcript.

6.1.80 Furthermore, although Ms Steenkamp stated that the audio recording was made without her knowledge and consent, in none of her submissions to the Public Protector did she reject the contents of the transcript as being false or fabricated. Her summary of Mr Simmers' participation in the meeting as stated in paragraph 5.2 of her affidavit, dated 12 September 2023, corresponds with the contents of the transcript. Mr Simmers also did not dispute the parts of the transcripts where he was telephoned to participate in the meeting, in either his written submissions to the Rule 23(1) Notice or the section 7(9) Notice of the Public Protector.

6.1.81 Based on the information reflected in the affidavits furnished to the Public Protector, the attendees of the meeting were: ANC members and KLM Councillors, Ms Stuurman and Mr Valentyn, Mr Albertus of KIP, Ms Steenkamp of the DA, both also KLM Councillors and Mr Avontuur, an ANC member and the then Acting Municipal Manager of KLM.

6.1.82 Ms Steenkamp clarified in her affidavit of 16 September 2025, that the farmhouse, Algerynskraal, Ladismith district where she hosted the meeting on 02 August 2022 does not belong to her, but that they had permission

from the director of the owning company to use it as a private venue for caucus meetings. She indicated that the same venue had been used previously by the DA, KIP and the ANC for inter-party-political caucus meetings.

6.1.83 The attendees confirmed that the meeting was arranged by Ms Steenkamp. This also indicates that the meeting was not a Kannaland Municipal Council meeting, because such meetings are convened by the Speaker in terms of section 29(1) of the Structures Act and the Speaker also decides when and where the council meets.

6.1.84 According to the transcript and the affidavits of the attendees, Ms Steenkamp was the one who informed those in attendance at the meeting that it was her senior structures (Mr Simmers and Mr Bredell) in the DA who wanted to bring in Mr Jordaan as Acting Municipal Manager of KLM. She was also the one who informed the attendees that she was being forced by her senior structures to submit a motion to Council for a meeting to remove Mr Avontuur as Acting Municipal Manager, and that if she did not, she would be expelled from the DA.

6.1.85 Mr Simmers confirmed that he was dialled-in briefly into an in-person meeting at which various office bearers of KLM were in attendance.

6.1.86 The meeting transcript shows that it was Ms Steenkamp who called Mr Simmers and placed the telephone in speaker mode and informed him of the presence of the other attendees and what the purpose of the call was, namely that they were seeking clarity from Mr Simmers in regard to the DA's proposition to appoint Mr Jordaan as Acting Municipal Manager of KLM.

6.1.87 Notwithstanding the aforesaid, Mr Simmers willingly and out of his own volition participated in the discussion that ensued between him and Ms

Steenkamp, relating to the affairs of the KLM and critically the appointment of an Acting Municipal Manager for the KLM.

6.1.88 Both Mr Simmers and Ms Steenkamp initially claimed, *inter alia*, that the engagement constituted the DA Caucus for the Municipality, that Mr Simmers was entitled to consult with his Caucus on matters that impact on the DA's interests and matters of political and strategic importance to the DA and that Mr Simmers provided guidance in his capacity as provincial leader of the DA and as member of her caucus.

6.1.89 Paragraphs 7.6.1. and 7.6.2 of the DA Federal Constitution provide that Mr Simmers as the DA Provincial Leader is a member of any DA Caucus in his province and is entitled to attend caucus meetings at municipal level. Therefore, in line with paragraphs 7.6.1 and 7.6.2 of the DA Constitution nothing prevented Mr Simmers and Ms Steenkamp from having discussions relating to the candidature and the DA's strategy for appointment of an Acting Municipal Manager for KLM and for Mr Simmers to provide Ms Steenkamp with counselling and encouragement on the possibility and strategic aspects of such an appointment. It is therefore not in dispute that Mr Simmers was entitled to consult and advise Ms Steenkamp as the sole DA councillor of the KLM Council and that the discussions between them can be construed as caucusing.

6.1.90 However, the Public Protector is not convinced that the meeting held on 02 August 2022, can be classified as a DA Caucus meeting. The DA's own rules and structures as outlined in the DA Federal Constitution contradict Mr Simmers' claim that it was a DA Caucus meeting. The composition of the meeting, which included members from other coalition political parties, further supports this position.

6.1.91 The lack of evidence proving it was a DA Caucus meeting, or a joint caucus meeting as mentioned in paragraph 9.2 of the DA Federal Constitution, suggests that the meeting did not take place within the defined party-

political structures or DA Caucus. It is noted that Ms Steenkamp stated previously in her affidavit of 12 September 2023, that the Councillors attending the meeting formed the majority of the Councillors of the KLM at the time and that the focus was exclusively on the appointment of an Acting Municipal Manager for the KLM.

6.1.92 Subsequently, in her additional submissions contained in her affidavit dated 16 September 2025, in response to the Public Protector's section 7(9) Notice, Ms Steenkamp indicated that the meeting that took place at the farmhouse on 02 August 2022 was an informal caucus meeting between three political parties in power of the KLM Municipal Council at the time. Ms Steenkamp added that the participants of the meeting attended it in their capacity as members of their respective political party's caucuses and not as councillors of the KLM, and that Mr Avontuur attended the meeting as the senior Caucus leader of the local ANC division and not in his capacity as the Acting Municipal Manager of KLM.

6.1.93 Ms Steenkamp stated further in her affidavit of 16 September 2025 that the purpose of the meeting was an *"inter-party (informal) caucus discussion between senior caucus members of the relevant political parties and the councillors thereof to find a way forward on the possible appointment of Mr Keith Jordaan as AMM."* The subsequent affidavits submitted by Ms Steenkamp and Mr Albertus also show that this issue was also of great political interest and opportunity to the political parties represented at the KLM, namely, the ANC, DA, ICOSA and KIP.

6.1.94 Mr Simmers claimed that his statements merely constituted party-political directives to Ms Steenkamp *"as his caucus member"* which he conveyed to her telephonically while the meeting was underway and he confirmed being aware of the presence of the members of other political parties besides "*his caucus member*" and proceeded to address the meeting at large, as reflected in the transcript, his affidavit and the affidavits of the other attendees.

6.1.95 Mr Simmers may therefore have had no prior notice or knowledge of the meeting and what was being discussed as he claims in his response to the section 7(9) Notice, but he knew that other people were present and he knew who they were having been informed by Ms Steenkamp at the start of the telephone call of exactly who was present in the meeting. It is therefore improbable for Mr Simmers to claim in his response to the section 7(9) Notice that he was exclusively engaging Ms Steenkamp in a DA Caucus, whilst knowing that members of the other political parties were present and listening attentively to their discussion.

6.1.96 Considering this context, it cannot be concluded that Mr Simmers was addressing a meeting of only members of a DA Caucus. It is more accurate to conclude, taking into consideration Ms Steenkamp's supplementary remarks in her affidavit of 16 September 2025, that it was an informal inter-political party meeting between the caucus members of rival political parties who were also Councillors of the Kannaland Municipal Council.

6.1.97 Mr Simmers submitted that Ms Steenkamp seemed to have construed his guidance and support as a threat or instruction and that the imagined pressure is of her own making. On the other hand, Ms Steenkamp does an about face in her affidavit and denies that she was either instructed by Mr Simmers to appoint Mr Jordaan or was threatened with dismissal or disciplinary action by the DA. She explains this by indicating that "*references to such*" in the transcript, *"…was one of her strategies to manipulate the other office bearers to get them to agree on the issue."*

6.1.98 Although Mr Simmers denied that he instructed any Councillor and/or official of the KLM to appoint Mr Jordaan as Acting Municipal Manager, he did not deny Ms Steenkamp's assertion to the members of the other political parties that she was on the telephone the whole morning with Mr Simmers and Mr Bredell[6], her senior structures, because they wanted to bring in Mr

[6] Member of the Executive for the Department of Local Government in the Western Cape.

Jordaan as Acting Municipal Manager for KLM. Mr Simmers also pointed out in his affidavit that, *"…it is clear that Ms Steenkamp did not agree with the DA's strategy and position around supporting the appointment of Mr Jordaan as acting Municipal Manager for KLM ….*"

6.1.99 The other attendees at the meeting agreed that Mr Simmers' remarks to Ms Steenkamp were directive in nature, suggesting that she was not permitted to exercise an independent or "free vote" regarding the appointment of Mr Jordaan as the Acting Municipal Manager. There was consensus among the other attendees of the meeting that significant pressure was placed on Ms Steenkamp to propose a motion for appointing Mr Jordaan as Acting Municipal Manager at KLM. The unanimous acknowledgment of this pressure by the meeting attendees adds weight to the impression that the actions of Mr Simmers and Ms Steenkamp were representative of the expectations of senior political or administrative bodies within the DA regarding local governance matters within the KLM.

6.1.100 The deduction is that the DA "senior structures" alluded to by Ms Steenkamp in the transcript, were actively taking steps to ensure the appointment of Mr Jordaan as Acting Municipal Manager and that they were not just passively supporting his appointment.

6.1.101 The alleged pressure placed on Ms Steenkamp by Mr Simmers should, however, be considered with reference to paragraph 9.3.5 of the DA Federal Constitution, which provides that caucus members, *"must at all times adhere to and support decisions of the relevant caucus and must not differ publicly from any decision once it has been taken*". Ms Steenkamp was the only DA member of the KLM Council and together with Mr Simmers they constituted the DA Caucus of the KLM and hence paragraph 9.3.5 dictates what the DA expected from Ms Steenkamp, i.e. that she had to, *"adhere to and support"* the decisions of the DA caucus.

6.1.102 The evidence gathered during the investigation showed that Mr Simmers addressed the members of rival political parties who were also the majority of KLM councillors during an informal political meeting on 02 August 2022. His intent was to convince them that Mr Jordaan was a very competent candidate to be appointed as Acting Municipal Manager.

6.1.103 In his written response to the section 7(9) Notice, received on 25 March 2025, Mr Simmers contends that he was expressing a (personal) opinion, in his capacity as regional leader of the DA at the time.

6.1.104 In his response to the Rule 41(1) Notice, the Complainant declares that:

6.1.105 "*Members of the Executive Council are required to perform duties diligently and in the interests of good governance"* He thus maintains that although Mr Simmers is the leader of the DA in the Western Cape and has a party-political role, he remains an MEC and his conduct should thus be judged in terms of the Code. The impugned conduct referred to by the Complainant being that Mr Simmers as MEC lobbied for the appointment of a dismissed official and that such conduct was not in the interests of good governance.

6.1.106 The Complainant advanced no legal arguments to reinforce his comments and these therefore had to considered with reference to his allegations in his complaint, the evidence of the other parties and the relevant legal prescripts. In the first instance, it is noted that in his complaint the Complainant alleged that Mr Simmers, **in his capacity as the Democratic Alliance (DA) Provincial Chairperson**, interfered and attempted to influence certain KLM councillors and office bearers to appoint Mr Jordaan. (emphasis added). It is clear that the Complainant knew that Mr Simmers attended the meeting in his political capacity and not as MEC and that what he said during his telephone conversation with Ms Steenkamp was said in his political capacity.

6.1.107 If Mr Simmers' conduct is examined with reference to the relevant legal prescripts, it is noted that in the matter of *Public Protector and Others v President of the Republic of South Africa and Other* [2021] ZACC [19] the court stated about the distinction between a political party and the state that:

"[103] … There can be no doubt that the CR17 campaign was engaged in the affairs of the ANC, which is a political party. The fact that it was the ruling party at the relevant time did not make it a part of the public administration. But in this Court the EFF argued that as a ruling political party, the ANC "undoubtedly influences the direction of the State". While this is true, it does not mean that the ruling party and the state become one entity. Ordinarily, political parties win elections on the basis of their policies and manifestos. This occurs worldwide. And once they assume power, they promote the policies that won them the elections. But the bright line separating the party from the state remains intact. This is clear from the provisions of the Constitution which establishes three branches of the state. In our system, political parties are represented in the legislative and executive arms of the state. It is a multi-party system. That is why various parties have members representing them in Parliament."

…

[107] What turns an otherwise private entity into an organ of state is the exercise of a public power or the performance of a public function. This is vital in determining whether a particular conduct amounts to a state affair. There can be no state affair without the exercise of public power or the performance of a public function. This is the dividing line between state affairs and private affairs. When a political party holds internal elections, it does not exercise a public power. Nor does it perform a public function in terms of the Constitution or legislation. Instead, it acts in terms of its constitution which constitutes a contract between it and its members. Therefore, its affairs do not fall within the scope of matters to be investigated by the Public Protector under section 182(1) of the Constitution."

6.1.108 Considering the aforesaid, although Mr Simmer was an MEC in the WC Provincial Government *and* he was also the DA Provincial Chairperson at the same time, this does not mean that these two roles become one entity. As DA Provincial Chairman Mr Simmers has the right, in terms of the Constitution, to be engaged in the affairs of the DA political party and as such to lobby for the candidate the DA favoured to be appointed as Acting Municipal Manager of the KLM, whilst also being an MEC. Hence, it is concluded that his conduct, in the meeting on 02 August 2022, did not amount to the exercise of public power or the performance of a public function.

6.1.109 The complainant's concern that the finding on Issue 1 sets a dangerous precedent is noted and taken seriously. The Public Protector's finding that Mr Simmers did not breach clauses 2.3(c) and (f) of the Executive Ethics Code is, however, fact-specific and turns on the particular circumstances of his engagement on 02 August 2022: he acted in a private political capacity, the meeting was not a formal council forum, and the ultimate decision to appoint Mr Jordaan was taken by the KLM Municipal Council (by a different coalition majority) without Mr Simmers' presence. This finding does not immunise Members of the Executive from accountability for conduct that crosses the line from political engagement into the exercise of public power or the performance of a public function. The bright-line principle in *Public Protector and Others v President of the Republic of South Africa and Others [2021] ZACC 19* is precisely the tool for making that distinction case by case.

6.1.110 Looking at the context in which his utterances were made, it is clear that Mr Simmers was participating in the meeting in his private-political capacity as the DA Provincial Chairperson, and not in his official capacity, as MEC.

6.1.111 Furthermore, it is clear from the transcript that the members of the other political parties who attended the meeting on 02 August 2022, were aware of Mr Jordaan's dismissal by the George Local Municipality. Thus, Mr

Simmers' (personal) opinion could therefore not have had any effect on the other political party members as they would not have been bound by such and they also knew about Mr Jordaan's dismissal and could therefore decide for themselves whether he was a suitable candidate to be appointed as Acting Municipal Manager for KLM.

6.1.112 Furthermore, regarding the allegation that in terms of recent amendments to the local government legislation, Mr Jordaan was prohibited from being employed in any municipality until a certain time had lapsed after his dismissal, it is noted that Mr Bredell obtained a legal opinion, dated 23 January 2023, to determine if Regulation 18 remained validly enacted in terms of section 120, as read with section 72 of the Systems Act and if it prohibited the KLM from appointing Mr Jordaan as its Acting Municipal Manager.

6.1.113 At the time there was legal uncertainty regarding the validity if Regulation 18, and hence it is reasonable to conclude that Mr Simmers may not have known that Mr Jordaan was prohibited from being employed at a municipality for a period of time and hence his remarks in this instance were not deliberately misleading.

6.1.114 Only the KLM Municipal Council has the statutory power in terms of the Constitution, read with section 30(5) of the Structures Act (the empowering provision at the time) and the Appointment Regulations, to appoint Acting Municipal Managers.

6.1.115 In his letter dated 14 January 2025, Mr Donson confirmed that the appointment of a Municipal Manager rests with the Municipal Council and not individual councillors and/or officials. He stated further that the Municipal Council did not have any interaction with Mr Simmers

6.1.116 The extract of the minutes of the Special Council Resolution, dated 21 October 2022, obtained from the KLM, confirms that the appointment of Mr

Jordaan as Acting Municipal Manager was approved by the KLM Council with effect from 21 October 2022.

6.1.117 The evidence therefore shows that Mr Jordaan was appointed by the KLM Council during a Special Council meeting held on 21 October 2022 in accordance with the Municipal Structures Act. Mr Simmers was not present during that Council meeting and could not have influenced the councillors to vote for Mr Jordaan. Furthermore, the councillors who voted for Mr Jordaan were the KIP and ICOSA councillors, and none of them attended the meeting at the farmhouse on 02 August 2022 and could not have been influenced by Mr Simmers' opinions regarding Mr Jordaan. Ms Steenkamp abstained from voting at the special council meeting and Mr Albertyn also did not vote because he was no longer the Speaker of the KLM Council because his membership had been terminated by the KIP and he was therefore no longer KIP's councillor on the KLM Council.

No responses

6.1.118 The Public Protector notes that no responses were received from the Minister of Cooperative Governance and Traditional Affairs, the Premier of the Western Cape, Ms Stuurman, Mr Valentyn, or Mr Avontuur, to whom section 7(9) Notices were also issued. In terms of section 7(9)(b) of the Public Protector Act, the Public Protector may proceed to finalise findings notwithstanding the absence of responses. The findings below are based on the evidence on record and are not affected by the absence of these responses.

Conclusion

6.1.119 The complaint was reported to the Public Protector in terms of section 4(1) of the Executive Members Ethics Act, 1998 and investigated in terms of the Executive Ethics Code and the Public Protector Act.

6.1.120 The meeting of 02 August 2022 was an informal political meeting of members of different political parties and not a DA Caucus. Neither the Constitution nor any statute or policy prohibits such meetings between representatives of different political parties.

6.1.121 Neither Mr Simmers nor Ms Steenkamp disputed the contents of the transcript, and it is therefore concluded that the transcript provided by the Complainant to the Public Protector is an accurate reflection of what transpired at the meeting held on 02 August 2022.

6.1.122 According to the meeting transcript and views of the other attendees at the meeting, Mr Simmers' remarks to Ms Steenkamp were directive in nature and significant pressure was placed on Ms Steenkamp to propose a motion for appointing Mr Jordaan as Acting Municipal Manager at KLM.

6.1.123 On the other hand, Mr Simmers describes his remarks to Ms Steenkamp as party-political directives to her *"as his caucus member*", which purpose was to guide and support her and that the alleged threat or pressure was of her own making.

6.1.124 Ms Steenkamp did an about face in her affidavit and denies that she was either instructed by Mr Simmers to appoint Mr Jordaan or was threatened with dismissal or disciplinary action by the DA and now maintains that it was one of her strategies to manipulate the other office bearers to get them to agree on the issue.

6.1.125 However, in light of paragraph 9.3.5 of the DA Federal Constitution, Ms Steenkamp was the only DA member of the KLM Council and hence Ms Steenkamp, had to *"adhere to and support"* the decisions of the DA Caucus, namely that of the Mr Simmers, the Provincial Leader of the DA.

6.1.126 It is concluded that the allegation that Mr Simmers exerted tremendous pressure on Ms Steenkamp to appoint Mr Jordaan as Acting Municipal

Manager at KLM, stems from the remarks of Ms Steenkamp at the meeting about what Mr Simmers had told her, and the alleged impugned conduct of Mr Simmers was not witnessed by the other attendees themselves.

6.1.127 It is also clear that Ms Steenkamp did not agree with the DA's proposal or support for the appointment of Mr Jordaan as Acting Municipal Manager of KLM. It can be concluded that her attitude towards the proposal was not objective and unbiased and that it could have influenced how she reacted to Mr Simmers utterances or advice. Ms Steenkamp's change of tune regarding the alleged pressure by Mr Simmers is surprising and it is therefore concluded that her remarks, as a whole, should be viewed with caution.

6.1.128 Mr Simmers, however, did not deny that the DA "senior structures" alluded to by Ms Steenkamp in the transcript, were actively taking steps to ensure the appointment of Mr Jordaan as Acting Municipal Manager and were not just passively supporting his appointment.

6.1.129 It is concluded that Mr Simmers utterances praising Mr Jordaan's competence was made in **his capacity as the Democratic Alliance (DA) Provincial Chairperson and not in his official capacity as MEC.** (emphasis added)

6.1.130 It is clear that Mr Simmer's personal opinion was driven by private interests as Provincial leader of the DA, however, there is no evidence that this conflicted with his official role. Consequently, the claim that Mr Simmers wilfully misled the Councillors to facilitate the illegal appointment of a former colleague lacks credibility.

6.1.131 The evidence also does not support a conclusion that Mr Simmers interfered with the KLM Council's process to appoint Mr Jordaan as Acting Municipal Manager, as the actual deliberations and decision to appoint him

took place during the KLM's Special Council Meeting held on 21 October 2022.

6.1.132 The evidence indicates that Mr Simmers did not attend the council meeting and Mr Jordaan's appointment was confirmed without a supporting vote from Ms Steenkamp or any other council members not affiliated with KIP or ICOSA, including Mr Albertus who had been dismissed by KIP and removed as the Speaker of the KLM Municipal Council.

6.1.133 Mr Simmers utterances in praise of Mr Jordaan at the informal meeting on 02 August 2022 therefore did not influence the KLM Municipal Council to appoint him as Acting Municipal Manager of KLM.

6.1.134 It is concluded that Mr Simmers' conduct denoted a clear separation between state affairs and private affairs, and that 'the *bright line separating the party from the state"* remained intact. It therefore cannot be said that Mr Simmers acted in a way that that was inconsistent with his position as MEC or exposed himself to a situation involving the risk of a conflict between his official responsibilities and his private interests.

6.2 Whether the Municipal Council of the KLM irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for KLM without following a verification process, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

Common cause

6.2.1 On 21 October 2022, Mr Jordaan was appointed as the Acting Municipal Manager of the KLM during a Special Council meeting of the KLM Municipal Council. Mr Simmers was not present at the meeting.

6.2.2 On 12 January 2023, Mr Jordaan's contract as Acting Municipal Manager of KLM was terminated during a Special Council meeting of the KLM Municipal Council.

Issue in dispute

6.2.3 During the investigation, the Public Protector identified potential maladministration in the appointment of Mr Jordaan as the Acting Municipal Manager. Consequently, it was deemed necessary to examine the process and procedures followed by the KLM in that appointment. This decision was based on evidence suggesting that the recruitment and selection process conducted by the KLM may have been flawed and marked by significant irregularities, prompting the Public Protector to exercise her discretion in pursuing the investigation.

6.2.4 This view is supported in the matter of the *Public Protector v Mail & Guardian* wherein the Supreme Court of Appeal noted, amongst others, that the Public Protector "… *may act upon complaints that are made, he or she may also take the initiative to commence an enquiry, and on no more than 'information that has come to his or her knowledge' of maladministration, malfeasance or impropriety in public life."*

6.2.5 The issue for the Public Protector's determination is whether the functionaries of the KLM followed proper recruitment processes in the appointment of Mr Jordaan as the Acting Municipal Manager of KLM.

6.2.6 On 13 December 2024, the Investigation Team issued a Notice in terms of *Rule 23(1) of the Public Protector Rules* to Mr Jeffrey Donson (Mr Donson), the Executive Mayor of the KLM, raising the allegations relating to the appointment of Mr Jordaan as Acting Municipal Manager of the KLM and soliciting a response from him on behalf of the KLM.

6.2.7 On 14 January 2025, a response was received from Mr Donson, stating, *inter alia*, that:

6.2.7.1 No formal recruitment process was followed in the appointment of Mr Jordaan because it is a norm in Western Cape Municipalities not to follow a formal recruitment process for acting appointments. It is the norm for the Municipal Council to appoint a candidate as acting municipal manager and for the MEC of Local Government to either confirm or reject the acting appointment of a candidate; and

6.2.7.2 No supporting documents, such as copies of the job advertisement, the job applications, memoranda and council resolutions relating to the recruitment and selection process were furnished as requested in the Public Protector`s Rule 23(1) Notice.

Response to the Notice in terms of Rule 23(1) of the Public Protector Rules by Mr Sereo

6.2.8 Mr Sereo, Acting Municipal Manager of KLM, referred the Investigation Team to the correspondence and copies of documents previously sent on 11 October 2024, which included the following:

Minutes of the Special Council meeting

6.2.8.1 A copy of the extract of the minutes of the Special Council meeting of the KLM held on Friday, 21 October 2022, titled: *"REMOVAL OF MUNICIPAL MANAGER* (COUNCIL 08/10/22), which indicated that the Council, amongst others, resolved as follows:

"1. THAT council approve the filling of the post of Municipal Manager in an acting capacity for a period of three months from 21 October 2022 until 31 January 2023.

2. *THAT Mr Keith Jordaan be appointed as Acting Municipal Manager for a period of three months from 21 October 2022 until 31 January 2023.*

3. *THAT council delegate the Executive Mayor to sign all employee related documentation with the Acting Municipal Manager.*

4. *THAT a written report be submitted to the MEC for Local Government within 14 days of the decision on the appointment of the Acting Municipal Manager.*

5. *THAT the MEC for Local Government be requested to extend the period from 21 January 2023 until 31 January 2023 for the post of acting Municipal Manager.*

6. *THAT the matter of the Acting Municipal Manager be resubmitted to Council one month before the three-month period lapses."*

Letter of appointment of Mr Jordaan

6.2.8.2 The letter of appointment to Mr Jordaan indicates that he was notified on 25 October 2022, by the Executive Mayor of KLM following a Special Meeting of the Kannaland Municipal Council, held on 21 October 2022, that Council resolved to appoint him as Acting Municipal Manager with effect from 21 October 2022.[7]

Letter from Mr Bredell to Mr Jordaan

6.2.8.3 A copy of the letter from Mr Bredell, dated 11 November 2022, in response to the correspondence received from KLM's Acting Municipal Manager (Mr Jordaan) dated 07 November 2022, in which Mr Bredell advised that:

(a) In terms of the Appointment Regulations, read with the Municipal Regulations on Minimum Competency Levels (MMC Regulations), a

[7] Copy of letter of appointment of Mr K Jordaan as Acting Municipal Manager of KLM dated 25 October 2022, received from KLM on 9 October 2024.

Municipal Manager must possess at least a Bachelor's Degree in Public Administration/Political Studies/Social Studies/Law or equivalent as well as five (05) years senior management experience and that Mr Jordaan did possess the required qualification and senior management level experience for appointment as Acting Municipal Manager;

(b) Mr Jordaan had been dismissed by the George Local Municipality for financial misconduct in 2019 and that he '*might therefore be prohibited from being re-appointed in a Municipality for a period of 10 years'*; and

(c) He was at the time, *"seeking a legal opinion from Senior Council pertaining to whether Regulation 18 of the Appointment Regulations is still valid and enforceable in light of the South African Mine Workers Union v Minister of Cooperative Governance and Traditional Affairs & others (SAMWU Case)"*.

(d) Mr Bredell further indicated that he would address further correspondence to the Municipality to advise on the appointment of Mr Jordaan as Acting Municipal Manager.

Letter from Mr Bredell, the MEC to Mr *Jeffrey Donson, the Executive Mayor*

6.2.8.4 In a letter, dated 14 February 2023, Mr Bredell indicates that he advised the Executive Mayor of KLM, that according to Counsel's legal opinion, Regulation 18 of the Appointment Regulations remains valid and enforceable, and *that "…the Kannaland Municipality is required to ensure, going forward, that all senior manager (including acting senior manager) appointments comply with the prescripts of Regulation 18 of the Appointment Regulations".*

Further response from Mr Donson

6.2.9 In his letter dated 10 October 2024, in response to the Public Protector's letter dated 09 October 2024, requesting the council resolution and appointment letter, Mr Donson advised that:

6.2.9.1 After receiving the legal opinion from Mr Bredell regarding the validity and enforceability of Regulation 18, the Council rescinded its decision to appoint Mr Jordaan and terminated his employment contract;

6.2.9.2 In relation to whether the Municipality conducted a background investigation with regard to Mr Jordaan's suitability to be appointed as Acting Municipal Manager, Mr Donson reiterated that it is not the norm to follow a formal recruitment process for acting appointments; and

6.2.9.3 Regarding the reason/s for the Municipal Council's decision to rescind the appointment of Mr Jordaan, Mr Donson merely referred to the extract of the Council meeting of 12 January 2023, which only contained the decision to terminate the contract of Mr Jordaan as the Acting Municipal Manager of the KLM.

6.2.10 In support of his response dated 10 October 2024, Mr Donson submitted a copy of the extract of the minutes of the Special Council meeting of the KLM held on 12 January 2023, titled: *"MOTION OF EXIGENCY REGARDING ACTING MUNICIPAL MANAGER (COUNCIL 14/01/23),* indicated that the Council, amongst others, resolved that:

(a) The Acting Municipal Manager's contract should be terminated immediately;
(b) He should be paid out for the rest of his term; and
(c) He should leave the premises immediately.

Evidence independently sourced

6.2.11 The transcript of questions regarding the dismissal of Mr Jordaan by the George Local Municipality and his appointment as Acting Municipal Manager of the KLM, which were raised in Provincial Parliament of the Western Cape Legislature. Mr Bredell responded as follows to the questions:

6.2.11.1 He was aware that Mr Jordaan was dismissed at the George Local Municipality in 2019, where he held the position of CFO;

6.2.11.2 At the time of the appointment of Mr Jordaan as Acting Municipal Manager at KLM, the 2011 Amendment Act was constitutionally invalid with effect of 09 March 2019. Municipal Managers were therefore not appointed in terms of section 54A of the Municipal Systems Act, 2000, as introduced by the Amendment Act and were instead appointed in terms of section 82 of the Municipal Structures Act, 1998. Section 82 of the Municipal Structures Act provided as follows:

"(1) A municipal council must appoint-

(a) a Municipal Manager who is the head of the administration and also the accounting officer for the municipality; and
(b) when necessary, an acting municipal manager."

6.2.11.3 The Kannaland Municipal Council tabled an Item at a Special Council Meeting on 21 October 2022, to appoint Mr Jordaan as Acting Municipal Manager. The majority of councillors voted in favour of the appointment of Mr Jordaan for a period of three (03) months;

6.2.11.4 He did not know whether Kannaland Municipal Council considered Mr Jordaan's dismissal before appointing him as Acting Municipal Manager on 21 October 2022. He did, however, address correspondence to the

Municipality dated 11 November 2022, whereby he informed the Municipality that considering Mr Jordaan's dismissal at the George Local Municipality, he may be prohibited from being re-appointed in a Municipality for a period of 10 years; and

6.2.11.5 As the applicable provisions, as contained in section 57A, was introduced by the Municipal Systems Amendment Act, 2011, which was declared Constitutionally invalid by the Constitutional Court in the case of *South African Mine Workers Union v Minister of Cooperative Governance and Traditional Affairs & Others 2017 ZACC* and the possible implications thereof on Regulation 18 of the Appointment Regulations, his Department would seek legal advice on the enforcement of Regulation 18 of the Appointment Regulations.

Response to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.2.12 On 10 March 2025, the Public Protector issued a Notice in terms of section 7(9)(a) of the Public Protector Act to Mr Donson, the Executive Mayor, and Adv Sereo, the Acting Municipal Manager of the KLM to provide them with an opportunity to make representations in connection with the provisional findings and remedial action of the Public Protector.

Response received from Kganare and Khumalo Incorporated Attorneys to the section 7(9) Notice

6.2.13 On 21 March 2025, the Public Protector received a letter from Kganare and Khumalo Incorporated Attorneys, the lawyers acting on behalf of the Mr Donson and Adv Sereo of the KLM stating, *inter alia*, as follows:

6.2.13.1 The findings and remedial actions proposed in the notice were vague, ambiguous, overbroad, poorly worded, that leaves the person implicated not

being able to meaningfully respond thereto and defeat the entire purpose of the notice;

6.2.13.2 The implicated persons would not be able to meaningfully participate in the process as it violates the *audi* principle and there was no legal connection between the findings, remedial actions and the scope of the investigation. The focal point of the investigation shifted from being an enquiry about Mr Simmers' conduct to the conduct of the Municipality and Councillors;

6.2.13.3 The scope of the investigation was never about the irregularity of the appointment, if any, of Mr Jordaan, but Mr Simmers' conduct and therefore the Notice went astray and dealt with the issues that are outside the scope of the investigation as clearly outlined in the Notice itself and the findings and remedial actions are not connected to the complaint and/or purpose of the investigation would be irrational;

6.2.13.4 It would be a futile exercise to include findings and/or remedial actions in the final report for it only to be set aside on review. It would not only hamstring the public purse but would also burden our Courts;

6.2.13.5 The Public Protector does not have the powers to order other constitutional institutions and/or entities to report to her. The Constitutional Court has previously questioned such powers with serious reservations; and

6.2.13.6 The proposed remedial actions purport to ordering the Minister of Local Government of the Western Cape Provincial Government to report to the Public Protector. In terms of section 92 of the Constitution of the Republic of South Africa, 1996, cabinet ministers are accountable to Parliament and not the Public Protector. Ordering the Speaker of the Municipal Council to report to the Public Protector when the Speaker of the Municipality is accountable to the Municipal Council.

6.2.13.7 In conclusion it is stated that the proposed findings and remedial actions should not find any expression in the final report.

Response received from Mr Simmers to the Section 7(9) Notice

6.2.14 A letter dated 25 March 2025 was received from Mr Simmers in which he stated, *inter alia*, that it also addresses with the knowledge and approval of Mr Bredell, the Public Protector's proposed remedial action directed at the office of Mr Bredell.

6.2.15 In the letter, Mr Simmers states as follows:

6.2.15.1 The response confirms that the legislation imposes a mandatory duty on the Municipal Council to appoint an Acting Municipal Manager for a period not exceeding three (03) months;

6.2.15.2 The purpose of appointing an incumbent in an acting post is to act as a stop gap measure which is an interim and temporary solution while the Municipality is in the process of recruiting, selecting, and appointing a Municipal Manager to fill the vacant position;

6.2.15.3 Upon good cause shown and special circumstances, a Municipal Council may apply to the MEC for an extension of the acting appointment for a period not exceeding an additional three (03) months, provided the Municipal Council complies with the requirements set forth in section 54A(2A)(b) of the Systems Act;

6.2.15.4 Upon receipt of the request by a Municipal Council in terms of section 54A(2A)(b) of the Systems Act to extend the acting appointment for a further three (03) months, the Department of Local Government then assesses the qualifications, work-related experience and provisions of section 57A of the Systems Act in relation to the acting incumbent;

6.2.15.5 After this process has been followed, the MEC writes to the Municipality informing it of the outcome and decision reached. If it is found that the acting incumbent does not possess the prescribed qualifications and work-related experience and his or her name appears on the database of Department of

Cooperative Governance and Traditional Affairs (COGTA), then the Municipality is obliged to remedy the situation, failing which the MEC will take appropriate steps as he is empowered by law. However, if it is found that the acting incumbent meets the requirements as outlined, then the appointment or second acting stint is approved for a further period of three (03) months, or until the vacant post is filled, whichever period comes first;

6.2.15.6 Between November 2021 and February 2025, the Department of Local Government assessed a total of thirty eight (38), Acting Municipal Manager appointments. The latter figure includes acting appointments for the initial three (03) months based on affirmations from the MEC for Local Government that the acting incumbents met the minimum requirements of qualifications and years of work-related experience;

6.2.15.7 The argument proffered by the Public Protector that an Acting Municipal Manager appointment must follow the full recruitment and selection procedure as per Chapter 3 of the Appointment Regulations is untenable and would result in absurd outcomes in instances where a Municipal Manager is suspended, temporarily incapacitated or their employment terminated with immediate effect and an urgent acting appointment is required;

6.2.15.8 Furthermore, following a recruitment process in an Acting Municipal Manager appointment parallel to the filling of a vacant post of Municipal Manager, would render the recruitment process for an Acting Municipal Manager moot and redundant as there is a likelihood that the vacant post of Municipal Manager may be permanently filled. Such a scenario blatantly leads to fruitless and wasteful expenditure as there are significant costs associated with the advertisement of posts;

6.2.15.9 It is trite law that statutes must be interpreted in a manner that does not lead to absurd or unbusinesslike outcomes. The interpretation attached to Chapter 3 of the Appointment Regulations by the Public Protector in the Notice is unsustainable as it will undoubtedly lead to absurd and

unbusinesslike outcomes that undermine the very purpose of the Regulations; and

6.2.15.10 Accordingly, it is submitted that the remedial action directed at Mr Bredell in his capacity as MEC for Local Government, should be withdrawn from the final report.

Applicable law

Constitution of the Republic of South Africa, 1996

6.2.16 Section 151(4) of the Constitution provides that the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

6.2.17 Section 155(6) of the Constitution provides that:

"Each provincial government must establish municipalities in its province in a manner consistent with the legislation enacted in terms of subsections (2) and (3) and, by legislative or other measures, must-

(a) provide for the monitoring and support of local government in the province;."

6.2.18 Section 160(1) of the Constitution regarding provides that:

"A Municipal Council-

(a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;

(b) …;

(c) …;

(d) may employ personnel that are necessary for the effective performance of its functions."

6.2.19 Section 195 of the Constitution relating to the basic values and principles governing public administration provides, amongst others, that:

"(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

(b) Efficient, economic, and effective use of resources must be promoted."

6.2.20 Section 237 regarding, diligent performance of obligations, provides that:

"All constitutional obligations must be performed diligently and without delay."

Local Government: Municipal Systems Amendment Act, 7 of 2011 (Amendment Act) (declared invalid)

6.2.21 Section 54A regarding the appointment of Municipal Managers and Acting Municipal Managers, amongst others, provided that:

"(7) (a) The municipal council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

…

(i) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC for local government must, within 14 days of receiving the information provided for in subsection (7), take appropriate steps to enforce compliance by the municipal council with this section, which may include an application to a court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council.

(9) Where an MEC for local government fails to take appropriate steps referred to in subsection (8), the Minister may take the steps contemplated in that subsection".

6.2.22 Section 57A regarding the employment of dismissed staff provided, amongst others, that:

"(1) Any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period".

Local Government: Municipal Systems Act, 2000 as amended by Act 3 of 2022

6.2.23 In terms of section 3 relating to '**Co-operative government'** the Systems Act requires that:

"(1) Municipalities must exercise their executive and legislative authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.

(2) The national and provincial spheres of government must, within the constitutional system of co-operative government envisaged in section 41 of the Constitution, exercise their executive and legislative authority in a manner that does not compromise or impede a municipality's ability or right to exercise its executive and legislative authority.

(3) For the purpose of effective co-operative government, organised local government must seek to—

(a) develop common approaches for local government as a distinct sphere of government;

(b) enhance co-operation, mutual assistance and sharing of resources among municipalities;

(c) find solutions for problems relating to local government generally; and

(d) facilitate compliance with the principles of co-operative government and intergovernmental relations."

6.2.24 Section 54A regarding the appointment of municipal managers and acting municipal managers provides that:

"(1) The municipal council must appoint—

(a) a municipal manager as head of the administration of the municipal council; or

(b) an acting municipal manager under circumstances and for a period as prescribed.

(2) A person appointed as municipal manager or acting municipal manager in terms of subsection (1) must at least have the skills, expertise, competencies, and qualifications as prescribed."

6.2.25 Section 54(2A) provides that:

"(a)A person appointed in terms of subsection (1)(b) may not be appointed to act for a period that exceeds three months.

(b)A municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months."

(3)A decision to appoint a person as municipal manager, and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if—

(a) the person appointed does not have the prescribed skills, expertise, competencies, or qualifications; or

(c) the appointment was otherwise made in contravention of this Act.

(6) (a) The municipal council may request the MEC for local government to second a suitable person, on such conditions as prescribed, to act in the advertised position until such time as a suitable candidate has been appointed."

6.2.26 Section 67 regarding human resource development, provides that:

"(1) A municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate

systems and procedures, consistent with any uniform standards prescribed in terms of section 72(1)(c), to ensure fair, efficient, effective, and transparent personnel administration, including—

(a) the recruitment, selection, and appointment of persons as staff members;

….

(h) disciplinary procedures;

(i) the investigation of allegations of misconduct and complaints against staff;

(j) the dismissal and retrenchment of staff;

…

(3) Systems and procedures adopted in terms of subsection (1), apply also to a person referred to in section 57."

6.2.27 Section 72 provides, amongst others, that:

"(1) The Minister may, subject to applicable labour legislation and after consultation with the bargaining council established for municipalities and the Minister for the Public Service and Administration, for the purposes of this Chapter make regulations or issue guidelines in accordance with section 120 to regulate or provide for the following matters—

…

(c) the setting of uniform standards for—

(i) municipal staff establishments;

(ii) municipal staff systems and procedures referred to in section 67(1) and the matters that must be dealt with in such systems and procedures…".

Local Government Regulations: On appointment and Conditions of Employment of Senior Managers, Government Notice No. 21 of 17 January 2014 (Appointment Regulations)

6.2.28 Regulation 8 in relation to general requirements for appointment of senior managers, provides that:

"(1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she—

(a) …

(b) possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these Regulations".

6.2.29 Regulation 14 in connection with screening of candidates, provides that:

"(1) Screening of the shortlisted candidates must take place within 21 days of the finalisation of the shortlisting by—

(a) conducting the necessary reference checks;
(b) contacting a candidate's current or previous employer;
(c) determining the validity of a candidate's qualifications; and
(d) verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.

(2) A written report on the outcome of the screening process must be compiled by the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, before the interviews take place."

6.2.30 Regulation 17 in relation to a resolution of Municipal Council on appointment of senior managers and reporting, provides that:

"(1) Before making a decision on an appointment, a municipal council must satisfy itself that—

(a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to these Regulations;

(b) screening of the candidates has been conducted in terms of regulation 14; and (c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these Regulations; and

(c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations."

6.2.31 Regulation 18 stipulates that:

"(1) A person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period, as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2". (emphasis added)

6.2.32 According to column 3 of Schedule 2 in relation to categories of misconduct and time periods that must expire before a person may be re-employed in a Municipality, a person dismissed for financial misconduct contemplated in section 171 of the MFMA, corruption or fraud, may only be re-employed in a Municipality after the expiry of a period of ten (10) years.

Local Government: Municipal Structures Act, 1998 (the Municipal Structures Act)

6.2.33 Section 30(5) provides that:

> *"(5) Before a municipal council takes a decision on any of the following matters it must first require its executive committee or executive mayor, if it has such a committee or mayor, to submit to it a report and recommendation on the matter—*
>
> *(a) any matter mentioned in section 160(2) of the Constitution;*
>
> *(b) the approval of an integrated development plan for the municipality, and any amendment to that plan; and*
>
> *(c) the appointment and conditions of service of the municipal manager and a head of a department of the municipality." (*emphasis added)

6.2.34 Section 36(1) of the Municipal Structures Act provides that, ***"Each** municipal council must have a chairperson who will be called the speaker".*

6.2.35 Section 37(a) and (b) of the Municipal Structures Act provide that the Speaker presides at meetings of the Council and must ensure compliance in the Council and Council committees with the Code of Conduct set out in Schedule 5.

6.2.36 Section 82, regarding the appointment of a Municipal Manager and Acting Municipal Manager, provides that:

> *"A municipal council must appoint—*
>
> *(a) a municipal manager who is the head of administration and also the accounting officer for the municipality; and*
>
> *(b) when necessary, an acting municipal manager."*

Municipal Finance Management Act, 2003

6.2.37 In terms of section 1 **"irregular expenditure",** in relation to a municipality or municipal entities), *inter alia*, means:

"(b) expenditure incurred by a municipality or municipal entity in Contravention of or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;".

6.2.38 Section 171 of the MFMA, relates to financial misconduct by municipal officials and stipulates in section 171(2) that the Chief Financial Officer of a municipality commits an act of financial misconduct if that officer deliberately or negligently;

(a) fails to carry out a duty delegated to that officer in terms of section 79 or 81(1)(e);
(b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81(1)(e);
(c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular, or fruitless or wasteful expenditure; or
(d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection 1(d).

Labour Relations Act, 1995

6.2.39 Section 186(1)(a) of the Labour Relations Act provides that:

"Dismissal" means that-

(a) an employer has terminated a contract of employment with or without notice;"

Case law

6.2.40 In the matter of *Public Protector v Mail & Guardian Ltd* (422/10) [2011] ZASCA 108 (1 June 2011) the Supreme Court of Appeal noted that the:

"[9]...The Public Protector is not a passive adjudicator between citizens and the state, relying upon evidence that is placed before him or her before acting. His or her mandate is an investigatory one, requiring pro-action in appropriate circumstances. Although the Public Protector may act upon complaints that are made, he or she may also take the initiative to commence an enquiry, and on no more than 'information that has come to his or her knowledge' of maladministration, malfeasance or impropriety in public life.

[10] In broad terms, the Public Protector may investigate, amongst other things, any alleged improper or dishonest conduct with respect to public money,[5] any alleged offence created by specified sections of the Prevention and Combating of Corrupt Activities Act 12 of 2004 with respect to public money,[6] and any alleged improper or unlawful receipt of improper advantage by a person as a result of conduct by various public entities or functionaries.

[11]Those powers emphasise once again that the Public Protector has a pro-active function. He or she is expected not to sit back and wait for proof where there are allegations of malfeasance but is enjoined to actively discover the truth". (emphasis added)

6.2.41 In the matter of *Notyawa v Makana Municipality and Others* [2019] ZACC 43, the Constitutional Court emphasised the appointment of suitably qualified Municipal Managers owing to the position they hold in the administration of a municipality. The Court noted that the "*role played by the managers is crucial to the delivery of services to local communities and*

the proper functioning of municipalities whose main function is to provide services to local communities" and that "*candidates who are best qualified for the job must be recruited*."

6.2.42 In the matter of the *South African Municipal Workers Union (SAMWU) v Minister of Cooperative Governance and Traditional Affairs and Others* [2017] ZACC, the Court held that:

> *"[86] A great host of decisions and actions have been taken across all nine provinces under the Amendment Act. To allow the invalidity to operate retrospectively would plainly cause disruption to the orderly and effective administration of municipalities. This would be untenable. For these reasons the declaration of invalidity must operate prospectively".*

Analysis

6.2.43 The evidence before the Public Protector indicates that on 21 October 2022, following the KLM Council's resolution to remove the previous municipal manager, it convened a Special Council meeting and resolved to appoint Mr Jordaan as Acting Municipal Manager for a period of three (03) months. The extract of the minutes of the Special Council Resolution, dated 21 October 2022, obtained from the KLM, confirms that the appointment of Mr Jordaan as Acting Municipal Manager was approved by the KLM Council with effect from 21 October 2022.

6.2.44 Mr Jordaan was formally notified of his appointment on 25 October 2022, by the Executive Mayor, Mr Donson.

6.2.45 The Constitutional Court'[8] in *Notyawa v Makana Municipality* emphasised that appointing suitably qualified Municipal Managers underscores the

[8] *Notyawa v Makana Municipality and Others [2019] ZACC 43*

pivotal role these individuals play in municipal administration. Their responsibilities are critical to ensuring the effective delivery of services to local communities and maintaining the proper functioning of municipalities. Recognising the significance of these positions, the Court highlighted the necessity of recruiting candidates who are best qualified for the job. This not only ensures efficient service delivery but also upholds the integrity and accountability of municipal governance.

6.2.46 Such a stance provides a general benchmark against which the appointment of Acting Municipal Manager should be measured because such an incumbent has the same powers and responsibilities as a Municipal Manager albeit on a temporary basis. An abuse of power or improper conduct during an acting period will have the same consequences as similar conduct by a Municipal Manager.

6.2.47 In his letter dated 14 January 2025, Mr Donson confirmed that the appointment of a Municipal Manager rests with the Municipal Council and not individual councillors and/or officials. He further stated that the Municipal Council did not have any interaction with Mr Simmers, nor was the matter raised by any councillor in any meeting.

6.2.48 In response to the Public Protector's request for information and documents relating to the appointment of Mr Jordaan, the Executive Mayor, Mr Donson advised that it is the norm in Western Cape municipalities, to not follow the formal recruitment and selection process for the appointment of Acting Municipal Managers and that the Municipal Council appoints a candidate as Acting Municipal Manager and the Minister of Local Government either confirms or rejects the appointment as part of his functional duty.

6.2.49 However, no supporting documentation, including advertisements, applications, council resolutions, or memoranda relating to the recruitment were furnished to the Public Protector contrary to the provisions of sections 54A of the Municipal Systems Act, as amended in 2022**,** and the Appointment Regulations which require that acting and permanent

municipal manager appointments must comply with statutory requirements, including verification of qualifications, competencies, and a "fit and proper" status.

6.2.50 Whilst the Municipal Council is the only lawful authority empowered to appoint or confirm an Acting Municipal Manager, it must do so in a transparent, documented and a legally compliant manner consistent with the Constitution, Municipal Systems Act and MFMA.

6.2.51 In the letter dated 13 December 2024, the Public Protector specifically requested that the KLM advise which applicable legal prescripts and provisions were adhered to by the Municipal Council for the appointment of Mr Jordaan, but the relevant information was not furnished to the Public Protector. KLM only stated in its letter dated 14 January 2025, that it followed an informal recruitment and appointment process.

6.2.52 When making or confirming an acting appointment, the council must, *inter alia***,** ensure the need exists, verify statutory compliance such as confirming that the candidate meets minimum qualifications, experience, and competency standards in line with the 2014 Appointment Regulations, *a*ssess the candidate's suitability and confirm that the person is *'fit and proper' and not disqualified under the* Municipal System's Act or the MFMA *(*prior dismissal due to financial misconduct). These statutory requirements must be met prior to adopting a formal resolution.

6.2.53 In the case of *MEC v Prince Albert* Municipality the WC High Court dealt with whether the 2011 System's Amendment Act was valid and whether the related regulations (notably the 2014 Appointment Regulations) remained valid. The court held that while the Amendment Act was declared unconstitutional in the earlier judgment of *South African Municipal Workers' Union v Minister of Co-operative Governance & Traditional Affairs* (2017), the regulations promulgated under the minister's general powers through

section 72 and section 120 of the principal Local Government: Municipal Systems Act 32 of 2000, could still be valid.

6.2.54 Specifically, the court found that the Minister had authority under sections 72 (1)(c)(iii) and 120 of the Systems Act to make regulations for municipal personnel administration, independent of the Amendment Act. Thus the 2014 senior-manager regulations survived, in part the invalidity of the Amendment Act.

6.2.55 Based on the provisions of the Municipal Systems Act, as amended in 2022 **(**Sections 54A and 56), the Public Protector Act, 1994 and the principles of administrative law under PAJA, read with Regulation 18 of the Appointment Regulations, it is clear that an individual previously dismissed by another municipality for financial misconduct is not "fit and proper" to hold the position of municipal manager or acting municipal manager**.** The 2014 Appointment Regulations, reaffirmed by the Constitutional Court in *MEC v Prince Albert Municipality* stipulate that all senior manager appointments, permanent or acting, must comply with both procedural and substantive integrity requirements and must follow fair and transparent selection procedures. The Appointment Regulations specify that candidates must disclose previous dismissals or disciplinary findings, particularly for misconduct.

6.2.56 The decision clarifies that, although the 2011 Amendment Act was declared invalid, the regulations made under the general regulation-making powers of the Systems Act remain valid and can be relied upon. This means municipalities must treat those regulations as operative unless and until they are themselves declared invalid.

6.2.57 Due to legal uncertainty relating to the validity and enforceability of Regulation 18, an urgent legal opinion was sought by Mr Bredell on 19 January 2023.

6.2.58 As indicated in the legal opinion, the Regulations were promulgated by the Minister in terms of section 72(1)(c)(iii), (g) and (l) and section 120(1)(b) and (c) of the Systems Act. The legal opinion concluded that Regulation 18 was valid and enforceable at the time of Mr Jordaan's dismissal in 2019 by the George Local Municipality and that his appointment as Acting Municipal Manager by KLM was unlawful.

6.2.59 In accordance with the reasoning and contents of the legal opinion regarding the validity and enforceability of the Regulation, it is accepted that the regulations relating to the recruitment and selection of senior managers include the recruitment and selection of an Acting Municipal Manager. Consequently, based on the legal opinion, the Appointment Regulations were valid and therefore recruitment and appointment of Mr Jordaan as Acting Municipal Manager by the KLM Council was invalid because it did not comply with Regulation 18.

6.2.60 Section 82 of the Structures Act was repealed by the Systems Amendment Act and could therefore not have been the empowering provision regulating the appointment of an Acting Municipal Manager. The Municipal Council's authority to appoint an Acting Municipal Manager in October 2022 therefore derived from section 30(5)(c) of the Municipal Structures Act, read with the Appointment Regulations, rather than from section 82.[9]

6.2.61 Accordingly, even if a province has a "common practice" of councils making direct acting appointments**,** the Council must still comply with the Municipal Systems Act and regulations. Therefore, informal practices cannot override statutory requirements. The *Western Cape High Court in MEC for Local Government, Environmental Affairs and Development Planning v Prince Albert Municipality* reaffirmed that municipal councils must exercise their appointment powers lawfully, rationally and in accordance with statutory prescripts**.**

[9] *Johnson Mathenjwa* - A critique of the law regarding employment of municipal managers and the managers accountable to the municipal manager *(2013) 28 SAPL*

6.2.62 The Public Protector's investigation into the appointment of Mr Jordaan as Acting Municipal Manager revealed a *lacuna* in the informal recruitment and selection process followed by the KLM Municipal Council and possibly other Municipalities, to appoint Acting Municipal Managers.

6.2.63 The Municipal Manager, Mr Sereo, provided extracts from the council minutes which outlined the terms of the acting appointment, including the delegation of authority to the Executive Mayor and the requirement to report to the MEC for Local Government. Legal advice obtained from Mr Bredell confirmed that Mr Jordaan met the minimum competency requirements in terms of qualifications and senior management experience. However, Mr Jordaan had previously been dismissed by the George Local Municipality for financial misconduct in 2019. Regulation 18 of the Local Government: Appointment Regulations prohibits the reappointment of individuals dismissed for serious misconduct within a ten (10) year period. This raised a critical legal issue regarding his suitability.

6.2.64 The response received from the KLM shows that they did not conduct background checks regarding Mr Jordaan's employment history to determine if he was a suitable candidate for appointment as Acting Municipal Manager. Given the long-standing public controversy regarding Mr Jordaan's dismissal by the George Local Municipality, as alluded to in the news reports referred to by Mr Simmers, it is concerning that the KLM Municipal Council may have known Mr Jordaan's employment history and that they still appointed him without conducting any due diligence to determine the facts relating to his employment dismissal.

6.2.65 Furthermore, at the time Mr Jordaan was the CFO of the George Local Municipality, he reported directly to the Municipal Manager, who discovered his misconduct and as a result he was stopped from committing further acts of misconduct. As Acting Municipal Manager of the KLM, Mr Jordaan reported only to the KLM Municipal Council and it is deeply concerning to

consider what prejudice someone with his track record could have caused to the KLM given the governance crisis that it was in at the time.

6.2.66 In terms of common law, municipalities owe a duty to act lawfully, reasonably and in good faith when appointing staff. According to the Appointment Regulations, candidates must disclose previous dismissals or disciplinary findings, particularly for misconduct. Therefore, appointing someone dismissed for financial misconduct violates the "fit and proper" requirement, which implicitly includes a clean record regarding financial integrity and misconduct.

6.2.67 Sections 83 and 83A of the MFMA places fiduciary obligations on senior managers over municipal finances. Therefore, someone with a record of financial misconduct may not legally be considered competent to perform these duties. The municipality could be seen as recklessly exposing itself to financial risk and breaches the substantive "fit and proper" requirements of the regulations and could invalidate decisions made during the appointment. Any decisions taken by the improperly appointed manager could also be subject to judicial review.

6.2.68 Municipal appointments are administrative actions that must be lawful, reasonable and procedurally fair. Appointing a disqualified individual could constitute unlawful administrative action, making the appointment reviewable by the courts.

6.2.69 The KLM's response to the section 7(9) Notice was very broad and primarily focused on the perceived lack of correlation between the findings, remedial actions and scope of the investigation and/or issues. The KLM also took issue with the powers of the Public Protector and the remedial action proposed by the Public Protector. The KLM contended, in summary, that: (a) the expanded investigation into Issue 2 exceeded the Public Protector's mandate; (b) the proposed remedial action was disproportionate; and (c)

the KLM had already taken corrective action by terminating Mr Jordaan's contract.

6.2.70 The KLM's response, however, did not constructively engage with the findings and remedial action proposed in the section 7(9)(a) Notice that would enable the Public Protector to address any factual or legal substantive issues in the Notice. The Public Protector has considered these objections. Regarding (a), the Public Protector's mandate to investigate on own initiative is addressed at paragraphs 6.2.63–68. Regarding (b) and (c), while the termination of the appointment prevented the continuation of the unlawful arrangement, it did not cure the initial constitutional invalidity nor address the systemic lacuna in the KLM's appointment processes. The remedial action is accordingly proportionate to the findings.

6.2.71 The KLM appeared to have misunderstood the extent of the powers and jurisdiction of the Public Protector. In the matter of *Public Protector v Mail & Guardian Ltd* the Supreme Court of Appeal noted that the Public Protector is required to be pro-active and may also"... *take the initiative to commence an enquiry, and on no more than 'information that has come to his or her knowledge' of maladministration, malfeasance or impropriety in public life*." *(emphasis added)* Hence, when the Public Protector found evidence that Mr Jordaan's appointment as Acting Municipal Manager of the KLM may have been improper, the Public Protector, on own initiative deliberately commenced an investigation into the matter, whilst investigating the EMEA complaint against Mr Simmers. The Public Protector's investigation therefore did not go astray, but was a deliberate action taken to deal with an issue that fell within her mandate to investigate.

6.2.72 Furthermore, as stated in the *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*:

"[53] Hers are indeed very wide powers that leave no lever of government power above scrutiny, coincidental "embarrassment" and censure.

[54] In the execution of her investigative, reporting, or remedial powers, she is not to be inhibited, undermined or sabotaged. When all other essential requirements for the proper exercise of her power are met, she is to take appropriate remedial action.

…

[64] The power to take remedial action is primarily sourced from the supreme law itself. And the powers and functions conferred on the Public Protector by the Act owe their very existence or significance to the Constitution. Just as roots do not owe their life to branches, so are the powers provided by national legislation incapable of eviscerating their constitutional forebears into operational obscurity. The contention that regard must only be had to the remedial powers of the Public Protector in the Act and that her powers in the Constitution have somehow been mortified or are subsumed under the Public Protector Act, lacks merit. To uphold it would have the same effect as 'the tail wagging the dog'."

6.2.73 As confirmed in the EFF judgement, section 182(1)(c) of the Constitution, read with sections 6(4)(b) and (c) of the Public Protector Act, amongst others, prescribe the extent of the powers and jurisdiction of the Public Protector and dictate that the Public Protector has the power to take appropriate remedial action.

6.2.74 To ensure the implementation of the remedial action it is only appropriate that the Public Protector should relay directives for the implementation thereof to those individuals, such as the Ministers, Heads of Department, Mayors, Speakers and Municipal Managers, who by operation of the Constitution and the law, have the necessary executive and administrative powers over the organs of state, to ensure the effective implementation of the remedial action.

6.2.75 In the case of municipalities, the appropriate official to whom the implementation of the remedial action should be entrusted is the Speaker of the Municipal Council, who is in terms of section 36(1) and 37 of the Municipal Structures Act the Chairperson of the Municipal Council and presides over meetings of the Municipal Council and must in terms of section 37(e) of the Municipal Structures Act ensure compliance in the Council and Council committees with the Code of Conduct set out in Schedule 5.

6.2.76 Representations were also received from Mr Simmers which highlighted the tension between procedural compliance and the practical necessity of acting appointments. Acting appointments are, by nature, intended as temporary solutions to ensure continuity of municipal administration, especially where urgent action is required. Requiring full recruitment processes for such appointments could render them redundant and result in wasteful expenditure.

6.2.77 The investigation further examined relevant legislation, including the Constitution, Municipal Systems Act, Municipal Structures Act, MFMA, and the Local Government Regulations on the appointment of senior managers. Case law emphasizes the importance of appointing suitably qualified municipal managers to ensure effective service delivery. While council discretion is constitutionally protected, appointments must still comply with competency and regulatory requirements, particularly where previous misconduct may preclude appointment.

6.2.78 Regulations 17(1)(b) and (c), in relation to a resolution of a Municipal Council regarding an appointment, mandate that the Council must ensure thorough screening of potential candidates to confirm they are not listed among staff members dismissed for misconduct prior to making any appointment decisions. However, there is no evidence suggesting that the Council complied with this provision by undertaking any due diligence to

verify whether Mr Jordaan had been dismissed for misconduct. Had such due diligence been performed, his appointment could have been prevented.

6.2.79 Regulation 18(1) states that individuals dismissed for misconduct from a municipality is barred from holding senior management positions in any municipality for a designated period. As outlined in column 3 of Schedule 2, which details various misconduct categories and their respective waiting periods for re-employment, those dismissed for financial misconduct, as defined in section 171 of the MFMA, as well as for corruption or fraud, must wait ten (10) years before being eligible for re-employment. In the case of Mr Jordaan, who was dismissed from the George Local Municipality for financial misconduct in 2019, his subsequent appointment to KLM in 2022, occurred well before the ten-year waiting period had lapsed, rendering him ineligible for the position of Acting Municipal Manager.

6.2.80 In summary, the narrative demonstrates a conflict between operational necessity and regulatory compliance. The council acted within its perceived discretionary authority to make an urgent acting appointment, but procedural lapses, particularly the failure to consider Regulation 18 and the prior misconduct of Mr Jordaan, introduced potential irregularities. The eventual termination of Mr Jordaan's contract reflects the recognition of this legal risk and an attempt to align council actions with statutory and regulatory requirements.

6.2.81 The case highlights the complexities inherent in acting municipal manager appointments, where practical governance needs, statutory obligations, and oversight by provincial authorities intersect. It underscores the importance of ensuring that even temporary appointments are both procedurally sound and legally defensible, especially when past misconduct could compromise the integrity of municipal administration.

6.2.82 This case underlines the importance of municipalities treating acting appointments with the same procedural rigour as permanent appointments,

insofar as the regulations are applicable. The *Western Cape High Court in MEC for Local Government, Environmental Affairs and Development Planning v Prince Albert Municipality* makes it clear that procedural compliance cannot be skipped, even for acting municipal managers. Acting appointments must be properly qualified, vetted and processed under the valid regulations.

6.2.83 In the context of South African municipal governance, the appointment of senior management, including municipal managers and acting municipal managers, is tightly regulated to ensure competence, integrity and accountability. The appointment of an individual who has previously been dismissed from another municipality for financial misconduct raises serious legal and governance concerns.

Conclusion

6.2.84 Having considered the information and evidence obtained during the investigation and evaluated it against the applicable legal framework, the Public Protector concludes that the appointment of an individual previously dismissed by another municipality for financial misconduct fails to meet the statutory “fit and proper” requirements under the 2014 Appointment Regulations and contravenes sections 83 and 83A of the MFMA regarding fiduciary duties.

6.2.85 In accordance with the dictum in the *Mail and Guardian case* the Public Protector, on own initiative, investigated the matter.

6.2.86 In terms of Regulation 18(1) of the Appointment Regulations, read with column 3 of Schedule 2 of the Systems Act, Mr Jordaan having been dismissed for Financial Misconduct in 2019 may only be re-employed in a senior position at a Municipality after the elapse of ten (10) years, that is, in 2029. Mr Jordaan was therefore barred from being appointed as Acting Municipal Manager at any municipality.

6.2.87 While municipal councils do have delegated authority**,** compliance with statutory requirements remains mandatory. Reliance on local “common practice” does not override statutory and regulatory obligations. In addition, the lack of documentation constitutes a material irregularity and exposes the appointment to review or nullification.

6.2.88 As reaffirmed by the *Western Cape High Court in MEC for Local Government, Environmental Affairs and Development Planning v Prince Albert Municipality*, all senior manager appointments, permanent or acting, must comply with both procedural and substantive integrity requirements. Therefore, appointing a person previously dismissed for financial misconduct is legally and administratively indefensible. Such an action contravenes multiple legislative provisions, undermines accountability and exposes the municipality to legal challenges and oversight interventions. Even acting appointments must satisfy statutory “fit and proper” requirements and failure to do so constitutes maladministration and unlawful conduct**.**

6.2.89 While it is correct that an acting appointment is a temporary measure to ensure continuity in the municipal administration and that to follow the full recruitment and selection process stipulated in Chapter 3 of the Appointment Regulations, would be counterproductive. The informal recruitment and selection process followed by the KLM Municipal Council, without conducting any due diligence to determine the suitability of Mr Jordaan for the position, lent itself to the KLM committing improper conduct such as maladministration and contravention of the law when it appointment Mr Jordaan as Acting Municipal Manager.

6.2.90 Accordingly, the appointment of Mr Jordaan was irregular and unlawful.

7. FINDINGS

7.1 Having regard to the evidence, the regulatory framework determining the standard that the Mr Simmers and the Kannaland Municipal Council should have complied with and the impact thereof on good governance and accountability the Public Protector makes the following findings and adverse findings:

7.1.1 Whether Mr Simmers allegedly interfered and attempted to influence the process of appointing an acting Municipal Manager for the Kannaland Local Municipality by allegedly instructing certain Councillors to appoint the dismissed former Chief Financial Officer (CFO) of the George Local Municipality, Mr Keith Jordaan, in that position, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to breaching Clauses 2.3(c) and (f) of the Executive Ethics Code.

7.1.1.1 The allegation that Mr Simmers breached Clauses 2.3(c) and 2.3(f) of the Executive Ethics Code by allegedly interfering and attempting to influence the process of appointing an Acting Municipal Manager for the Kannaland Local Municipality (KLM) by allegedly instructing certain KLM Councillors to appoint the dismissed former Chief Financial Officer (CFO) of the George Local Municipality, Mr Keith Jordaan (Mr Jordaan, in that position, **is not substantiated.**

7.1.1.2 The evidence obtained during the investigation indicated that the meeting on 02 August 2022 was arranged and hosted by Ms Steenkamp, the only DA member on the KLM Municipal Council and the purpose of the meeting was to discuss the proposed appointment of an acting Municipal Manager for KLM and matters related thereto.

7.1.1.3 The meeting was attended by representatives of the ANC and KIP political parties, who were also members of the KLM Council at the time and it was

an informal private inter-political party meeting for the caucus members of the relevant political parties who, in that meeting, did not represent the Municipal Council of the KLM.

7.1.1.4 The alleged pressure placed on Ms Steenkamp by Mr Simmers should be considered with reference to paragraph 9.3.5 of the DA Federal Constitution, as she was the only DA member on the KLM Council and together with Mr Simmers, they constituted the DA Caucus of the KLM, and it is not an issue that falls within the mandate of the Public Protector to investigate.

7.1.1.5 Mr Simmers admitted that at the meeting he set the record straight regarding Mr Jordaan's track record at other municipalities and his concerns regarding the ANC's alleged efforts to manipulate and mislead Ms Steenkamp and the KLM into forming an adverse view of Mr Jordaan based on falsehoods.

7.1.1.6 In that regard Mr Simmers spoke directly to the members of the other political parties and not only his DA Caucus.

7.1.1.7 Considering the aforesaid admissions of Mr Simmers it is concluded that he did attempt to influence the members of the other political parties to view Mr Jordaan more favourably as a suitable candidate for appointment as Acting Municipal Manager for KLM.

7.1.1.8 Mr Jordaan's dismissal for financial misconduct and negligence by the George Local Municipality was, however, public knowledge as the issue had been reported in the news media several times. A credible source of confirmation of Mr Jordaan's dismissal is also the Arbitration Award, WCP071921, issued by a Senior Arbitrator of the South African Local Bargaining Council on 29 April 2021. The members of the other political parties were therefore well informed about the circumstances surrounding

Mr Jordaan's dismissal as indicated in the meeting transcript and their affidavits.

7.1.1.9 The Complainant's comments to the Public Protector's Rule 41(1) Notice were considered with reference to his allegations in his complaint, the evidence of the other parties and the relevant legal prescripts. In his complaint the Complainant alleged that Mr Simmers, **in his capacity as the Democratic Alliance (DA) Provincial Chairperson**, interfered and attempted to influence certain KLM councillors and office bearers to appoint Mr Jordaan. (emphasis added). It is clear that the Complainant knew that Mr Simmers attended the meeting in his political capacity and not as MEC and that what he said during his telephone conversation with Ms Steenkamp was said in his political capacity. However, in his comments to the Rule 41 notice, the Complainant remarked that Mr Simmers political role cannot be separated from his role as MEC.

7.1.1.10 Mr Simmers' conduct was examined with reference to the relevant legal prescripts and in the matter of *Public Protector and Others v President of the Republic of South Africa and Other* [2021] ZACC [19] the court stated regarding the distinction between a political party and the state and the and conduct in state affairs, that a vital factor to determine whether a particular conduct amounts to a state affairs, is the exercise of a public power or the performance of a public function which turns a private entity into an organ of state. According to the court, "<u>There can be no state affair without the exercise of public power or the performance of a public function. This is the dividing line between state affairs and private affairs.</u>" (emphasis added)

7.1.1.11 The Complainant confirmed that Mr Simmers addressed the meeting on 02 August 2022 in his capacity as Provincial Chairperson of the DA, but maintained that his position as MEC cannot be separated from his political role. In the matter of *Public Protector and Others v* President *of the Republic of South Africa and Other* [2021] ZACC [19] the court stated the dividing line between state affairs and private affairs is that there can be no state

affair without the exercise of public power or the performance of a public function. In this instance, it undisputed that Mr Simmers acted in his political capacity, and as such he did not exercise a public power or perform a public function. His conduct denoted a clear separation between state affairs and private affairs, and hence 'the ***bright line separating the party from the state"*** remained intact.

7.1.1.12 Considering the aforesaid, it therefore cannot be said that Mr Simmers acted in a way that that was inconsistent with his position as MEC or exposed himself to a situation involving the risk of a conflict between his official responsibilities and his private interests.

7.1.1.13 Furthermore, the decision to appoint Mr Jordaan as Acting Municipal Manager was taken by the KLM Municipal Council on 21 October 2022. Mr Simmers did not attend the council meeting when that decision was taken. In addition, both Ms Steenkamp and Mr Albertus (former KIP representative), did not vote during the council meeting and the appointment was made based on the votes of the ICOSA and KIP representatives on the KLM Council. The evidence, therefore, does not support a conclusion that Mr Simmers interfered with the KLM Council's process to appoint Mr Jordaan as Acting Municipal Manager.

7.1.1.14 By expressing his views in favour of the appointment of Mr Jordaan as Acting Municipal Manager, in a private meeting, as the Provincial Leader of the DA, and not as a Member of the Provincial Executive, Mr Simmers did not breach Clause 2.3(c) and Clause 2.3(f) of the Executive Ethics Code, as he did not address the members of the KLM Municipal Council in their official capacities at a KLM Council meeting. Mr Simmers therefore did not act in a way that was inconsistent with his position (Clause 2.3(c)) or expose himself to a situation involving the risk of a conflict between his official responsibilities and private interests (Clause 2.3(f)).

7.1.1.15 Based on the above, the investigation could not establish that Mr Simmers had breached Clauses 2.3(c) and 2.3(f) of the Executive Ethics Code by allegedly interfering and attempting to influence the process of appointing an Acting Municipal Manager for the Kannaland Local Municipality (KLM).

7.1.1.16 Accordingly, it is the finding of the Public Protector that the conduct of Mr Simmers in the circumstances does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and did not amount to the breach of Clauses 2.3(c) and (f) of the Executive Ethics Code by him.

7.2 **Whether the Municipal Council of the Kannaland Local Municipality irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for Kannaland Local Municipality without following a verification process and, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.**

7.2.1 The allegation that the Municipal Council of the KLM irregularly appointed Mr Keith Jordaan as Acting Municipal Manager for KLM, **is substantiated.**

7.2.2 The investigation established that Mr Jordaan's appointment as Acting Municipal Manager was not subjected to a due diligence process as provided for in regard to the appointment of a Municipal Manager in the 2014 Appointment Regulations, but rather an informal recruitment and selection process.

7.2.3 The KLM Executive Mayor explained that acting appointments are commonly made directly by the Council without a formal process.

7.2.4 Although an acting appointment cannot be subjected to the same recruitment and selection process as a permanent appointment there must be a due diligence process.

7.2.5 The KLM Municipal Council failed or neglected to screen and perform due diligence checks in regard to Mr Jordaan's employment history prior to appointing him as their Acting Municipal Manager. It was established that the KLM has neither an official Council approved and adopted policy nor procedure which regulates such appointments.

7.2.6 In addition, no documentation, such as advertisements, applications or memoranda was provided to demonstrate procedural compliance or verification of his qualifications and suitability or how Mr Jordaan was recruited by the KLM Council or what steps were taken to recruit him.

7.2.7 The fact that it is an acting appointment does not absolve the KLM Council from complying with statutory and constitutional requirements. The *Western Cape High Court in MEC for Local Government, Environmental Affairs and Development Planning v Prince Albert Municipality* affirmed that both procedural and substantive compliance with the Municipal Systems Act and regulations is mandatory and that non-compliant appointments are constitutionally invalid.

7.2.8 Consequently, the basis upon which Mr Jordaan was appointed was unclear and was constitutionally defective and the Council had no lawful authority to proceed without a transparent, merit-based and lawful process.

7.2.9 Mr Jordaan was dismissed by the George Local Municipality in 2019 for committing financial misconduct and negligence in terms of section 171(2) of the MFMA and for non-compliance with its Municipal Investment Policy and Supply Chain Management Policy.

7.2.10 The KLM Municipal Council's decision to appoint Mr Jordaan as Acting Municipal Manager therefore contravened section 237 of the Constitution, which requires that all constitutional obligations must be performed diligently and Regulation 14 of the Appointment Regulations, which

specifically requires screening of shortlisted candidates by for instance verifying a candidate's qualifications and whether a candidate was dismissed previously for misconduct or poor performance by another employer.

7.2.11 Consequently, the KLM Council failed to comply with the constitutional principle in section 195(1)(a) of the Constitution, which requires that a high standard of professional ethics must be promoted and maintained in the public administration and section 195(1)(b) that they promote the efficient, economic and effective use of resources.

7.2.12 The municipality's failure to adhere to constitutional and statutory requirements amounts to maladministration as contemplated in section 182(1)(a) of the Constitution and may also constitute irregular administrative action under the Promotion of Administrative Justice Act, 2000.

7.2.13 Accordingly, the decision of the KLM Council to appoint Mr Jordaan as Acting Municipal Manager constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and amounts to maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.

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 with a view to redressing the conduct referred to in this report upon 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 The Public Protector takes cognisance of the fact that Mr Jordaan's acting contract was subsequently terminated by the KLM Municipal Council following the provision of the legal opinion to it by Mr Bredell.

8.4 While this action brought the appointment to an end, it did not cure the initial irregularity or the constitutional invalidity of the process that led to Mr Jordaan's appointment. The termination merely prevents the continuation of the unlawful arrangement but does not extinguish potential governance or accountability consequences.

8.5 The Public Protector is, therefore, of the view that the systemic deficiencies need to be addressed to prevent the potential recurrence of similar irregular and invalid appointments at the KLM and other municipalities in the Western Cape.

8.6 Accordingly, having regard to the evidence, the regulatory framework determining the standard that KLM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Speaker of the Municipal Council

8.6.1 Within **thirty (30) calendar days** from the date of this report, in accordance with sections 36 and 37 of the Municipal Structures Act table the report before Council for deliberation.

The Municipal Manager

8.6.2 Within **sixty (60) calendar days** from the date of this report, in accordance with section 3 and section 67(1) of the Municipal Systems Act, 2000 (as amended in 2022).

8.6.2.1 In consultation with the Head of the WC Department of Local Government, develop and/or review the KLM Acting Policy to provide for measures and processes to regulate the appointment of Acting Municipal Managers and Seniors Managers at the KLM Municipality.

8.6.2.2 Table the new or reviewed Acting Policy before the KLM Council for deliberation and adoption.

8.6.2.3 Within **ninety (90) calendar days** from the date of receipt of this report implement controls and standard operating procedures governing acting appointments, including, verification of qualifications, competency levels and fit-and-proper status before recommendation to the KLM Council, including a documented selection council resolution process.

8.6.2.4 Within **sixty (60) calendar days** from the date of receipt of this report, report to the Auditor General of South Africa the possible irregular expenditure incurred as a result of the appointment of Mr Jordaan in contravention of Regulation 18 of the Local Government Regulations: On Appointment and Conditions of Employment of Senior Managers, 2014 (Government Notice No. 21 of 17 January 2014) and payment of remuneration to Mr Jordaan, who should not have been appointed for consideration in terms of its mandate

The Minister of Local Government in the Western Cape

8.6.3 Should, in relation to the exercise of his powers in terms of section 155(6) of the Constitution, read with section 54A(8), discuss the development or review of their Acting Policies with all Municipalities in the Western Cape to prevent or reduce irregular acting appointments of municipal managers and senior managers.

The Minister of Cooperative Government and Traditional Affairs

8.6.4 Should subject to section 57A(9) of the Municipal Systems Act, update the record of staff members who were dismissed for misconduct, with reference to Mr Jordaan's dismissal and make the record available to the municipalities as prescribed.

The Auditor General of South Africa

8.6.5 Take cognisance of the findings and remedial action contained in this report particularly the possible irregular expenditure incurred as a result of the irregular appointment of Mr Jordaan.

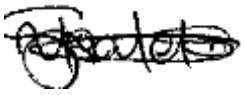
9. MONITORING

9.1 The investigation into allegations of a breach of the Executive Ethics Code by Mr Simmers has not established that his conduct on 02 August 2022 constituted a breach of Clauses 2.3(c) and (f) of the Executive Ethics Code. While Mr Simmers did attempt to influence the views of the members of other political parties regarding Mr Jordaan's candidacy, his conduct was undertaken in his private capacity as Provincial Leader of the DA and did not constitute the exercise of public power or the performance of a public function. The bright line separating party from state remained intact.

9.2 Nevertheless, the investigation uncovered a separate and significant maladministration concern: the KLM Municipal Council appointed Mr Jordaan as Acting Municipal Manager without conducting any due diligence into his fitness for the role, including his dismissal for financial misconduct by the George Local Municipality in 2019, in violation of Regulation 18 of the Appointment Regulations. The Public Protector's remedial action is directed at ensuring that this systemic lacuna is addressed at the KLM and

that the risk of similar irregular appointments is reduced across Western Cape municipalities.

9.3 The Municipal Manager must submit an action plan to the Public Protector within thirty (30) calendar days from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2026

Assisted by: Adv D Barnard
Executive Manager: PII Coastal