

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



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**INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND
MALADMINISTRATION RELATING TO THE UNLAWFUL SUBDIVISION OF ERVEN
2169 AND 2170 SITUATED AT PETRUS UYS STREET, RIETVALE IN RITCHIE BY
THE FUNCTIONARIES OF THE SOL PLAATJE LOCAL MUNICIPALITY**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
Constitution	Constitution of the Republic of South Africa, 1996
COGHSTA	Department of Co-operative Governance, Human Settlements and Traditional Affairs
COGTA	Department of Co-operative Governance, and Traditional Affairs
GIS	Geographic Information System
HoD	Head of Department
MFMA	Municipal Finance Management Act, 2003
Public Protector	Public Protector South Africa
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules relating to investigations by the Public Protector and the matters incidental thereto, 2018, as promulgated under section 8(1) of the Public Protector Act, 1994 (as amended)

Executive Summary

- (i) This is a report of the Public Protector 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 improper conduct and maladministration relating to the unlawful subdivision of erven 2169 (Erf 2169) and 2170 (Erf 2170) situated at Petrus Uys Street, Rietvale in Ritchie by the functionaries of the Sol Plaatje Local Municipality (Municipality).
- (iii) The investigation originated from the complaint lodged by Mr Piet Parker (the Complainant) on 09 June 2022 at the Northern Cape Provincial Office of the Public Protector South Africa (Public Protector), in Kimberley.
- (iv) In the main, the Complainant alleged that:
 - (a) In 2015, the former Councillor, Mr Ivan Koopman (Mr Koopman) allocated Ms Esmeralda Mongwato (Ms Mongwato), a site to build a shack between Erf 2169 belonging to Ms Nana Lena Volkwyn (Ms Volkwyn) and Erf 2170, which belongs to the Complainant. As a result of the allocation of the site to Ms Mongwato, the square metres of erven 2169 and 2170, were reduced.
 - (b) Mr Koopman placed poles on the street to measure the square metres of Ms Mongwato's site and informed them that he was instructed to act as such by the Surveyor-General.

- (c) Ms Mongwato has a water meter in her yard but has no municipal statement of account registered in her name, whereas he does not have a water meter in his yard, but he is a registered municipal account holder; and
 - (d) He complained to the functionaries of the Municipality in 2015, but the Municipality failed to resolve the matter.
- (v) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
- (a) Whether the functionaries of the Sol Plaatje Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.
 - (vi) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Municipality, an analysis of the relevant documents and information obtained during the investigation and consideration and application of the relevant laws and prescripts.
 - (vii) On 14 November 2023, a notice in terms of section 7(9)(a) of the Public Protector Act (the Notice) was issued to the Municipality and other stakeholders to provide an opportunity for responses on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act, provides that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.

- (viii) Following the delivery of the Notice to the Municipality and COGHSTA, the Public Protector held meetings with the Municipality on 20 November 2023 and COGHSTA on 28 November 2023, respectively. During the said meetings, both the Municipality and COGHSTA requested to respond in writing to the section 7(9)(a) Notice. The Municipality distanced itself from the conduct of Mr Koopman and contended that he was not acting on behalf of the Municipality when he allegedly interfered with the boundaries of erven 2169 and 2170, Rietvale in Ritchie.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the Municipality should have complied with, the following findings are made:
- (a) **Whether the functionaries of the Sol Plaatje Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act**
- (aa) The allegation that the functionaries of the Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, is substantiated.
- (bb) Mr Koopman acted in violation of the standard required of Councillors in the execution of their duties when he reduced the sizes of Erf 2169 and Erf 2170. His conduct in this regard, was in conflict with Items 2 and 11 of the Code of Conduct for Councillors, which requires Councillors to always act in the best interests of the Municipality and prohibits unlawful interference in the management or administration.

- (cc) The functionaries of the Municipality failed to perform the functions of the Municipality in good faith, diligently, honestly and in a transparent manner as contemplated in Item 2(a) of the Code of Conduct for Municipal Staff Members. Furthermore, they failed to ensure that the cadastral boundaries in Petrus Uys Street, Rietvale in Ritchie are rectified.
- (dd) The conduct of Mr Koopman and the functionaries of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution, maladministration and caused improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.
- (x) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

The Municipal Manager

- (a) **Within sixty (60) calendar days** of the final report, take reasonable steps to engage the unlawful occupier of the property located between erven 2169 and 2170 Rietvale in Ritchie, with the intention of relocating her to an alternative erf as envisaged in section 25(1) read with section 34 of the Constitution.
- (b) The Municipality to provide the Public Protector with **quarterly progress reports** (with effect from the date of receipt of the final report) on the implementation of the cadastral boundaries rectification project to facilitate the amendment of the Surveyor-General diagrams and registration of erven until finalisation, in line with the submission of Ms Mpekula, dated 05 December 2023.
- (c) Prepare an item to be tabled before Council recommending that training is provided to new councillors **within sixty (60) calendar days** of assuming

office on their roles and responsibilities, to avoid future recurrence of interference with municipal administration and unlawful land allocations, in line with section 55(1)(j) of the Municipal Systems Act.

The Head of Department for Co-operative Governance Human Settlements and Traditional Affairs

- (d) Take cognizance of the findings and remedial actions contained in this report.

The Member of the Executive Council for Co-operative Governance Human Settlements and Traditional Affairs

- (e) Take cognizance of the findings and remedial actions contained in this report.

The Minister responsible for Co-operative Governance and Traditional Affairs

- (f) Take cognizance of the findings and remedial action contained in this report.

1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1) and 8(3) of the Public Protector Act to the following persons, to inform them of the outcome of the investigation and the remedial action taken:
- 1.2.1 Mr. SB Matlala, the Municipal Manager of the Sol Plaatje Local Municipality (Municipality);
- 1.2.2 Mr Bentley Vass, the Member of the Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
- 1.2.3 Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA;
- 1.2.4 Dr Zamani Saul, the Premier of the Northern Cape Province;
- 1.2.5 Ms Thembi Nkadimeng, the Minister of Co-Operative Governance and Traditional Affairs (COGTA);
- 1.2.6 Ms NN Maputle, the Speaker of the Municipality;
- 1.2.7 Mr Kagisho Dante Sonyoni, the Executive Mayor of the Municipality;
- 1.2.8 Mr Simon Mothelesi, Acting Senior Manager Housing of the Municipality;
- 1.2.9 Mr Nolan van der Merwe, Housing Official of the Municipality;

- 1.2.10 Mr Benneth van Wyk, Housing Official of the Municipality;
 - 1.2.11 Ms Rosalind Mdubeki, the Surveyor-General;
 - 1.2.12 Ms Vuyelwa Mpekula, Acting Chief Town Planner of the Municipality; and
 - 1.2.13 Mr Piet Parker (the Complainant).
- 1.3 The report relates to an investigation into allegations of improper conduct and maladministration relating to the unlawful subdivision of erven 2169 (Erf 2169) and 2170 (Erf 2170) situated at Petrus Uys Street, Rietvale in Ritchie by the functionaries of the Sol Plaatje Local Municipality.

2. THE COMPLAINT

- 2.1. The investigation originated from the complaint lodged by Mr Piet Parker (the Complainant) on 09 June 2022 at the Northern Cape Provincial office of the Public Protector South Africa, in Kimberley.
- 2.2. In the main, the Complainant alleged that:
 - 2.2.1. In 2015, the former Councillor, Mr Ivan Koopman (Mr Koopman) allocated Ms Esmeralda Mongwato (Ms Mongwato) a site to build a shack between Erf 2169 belonging to Ms Nana Lena Volkwyn (Ms Volkwyn) and Erf 2170, which belongs to the Complainant. As a result of the allocation of the site to Ms Mongwato, the square metres of erven 2169 and 2170, were reduced;
 - 2.2.2. Mr Koopman placed poles on the street to measure the square metres of Ms Mongwato's site and informed them that he was instructed to act as such by the Surveyor-General;

- 2.2.3. Ms Mongwato has a water meter in her yard but has no municipal statement of account registered in her name, whereas he does not have a water meter in his yard, but he is a registered municipal account holder; and
- 2.2.4. He complained to the functionaries of the Municipality in 2015, but the Municipality failed to resolve the matter.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (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 provides that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4. Section 6(9) of the Public Protector Act provides that:

“Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.”

3.5. Since the incident or matter concerned occurred more than two (02) years prior to reporting to the Public Protector, discretion was exercised in terms of section 6(9) of the Act to entertain the complaint based on the following special circumstances^[1] as envisaged in Rule 10(1) of the Rules relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 as amended, and promulgated under section 8(1) of the Public Protector Act (Public Protector Rules):

Nature of the complaint and seriousness of the allegations

3.5.1. The alleged failure by the functionaries of the Municipality to rectify the unlawful subdivision of erven 2169 and 2170 is persisting.

The information provided by the Complainant and the reasons given by the Complainant for the delay

3.5.2. In 2015, the Complainant raised the matter with the Municipality. However, despite several attempts by the Complainant to have this matter resolved, the Municipality failed to resolve same.

^[1] In *Gordhan v Public Protector and Others* [2019] JOL 45246 (GP) and *Gordhan and Others v Public Protector and Others* (36099/2098) [2020] ZAGPPHC 777 (17 December 2020), the Supreme Court of Appeal (the SCA) and the High Court in Pretoria respectively, held that, it is only where special circumstances exist, that complaints that are older than two years can be entertained, and that, the particulars of the special circumstances must be succinctly set out.

- 3.5.3. The information and evidence that may be required or sought by the Public Protector regarding the unlawful subdivision of erven 2169 and 2170 by the functionaries of the Municipality should still be available on the Deeds Web as well as the complaint form and information submitted by the Complainant.
- 3.5.4. Having reflected on the above special circumstances, it would have been improper for the Public Protector to not exercise discretion to accept the matter because it would have ignored the plight of the Complainant, who does not have the resources to resolve the issue. The Public Protector accordingly decided to exercise discretion in favour of investigating this complaint. Conscious of the aforementioned considerations, the Public Protector concluded that it is in the interest of justice to investigate and determine the merits of the matter.
- 3.6. The Sol Plaatje Local Municipality is an organ of state as envisaged in section 239(a) of the Constitution and its conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

4. THE ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1. Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
- 4.1.1. Whether the functionaries of the Sol Plaatje Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation is conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 and sections 6 and 7 of the Public Protector Act.

5.1.2. Section 7(1) of 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.

5.2. Approach to the investigation

5.2.1. The approach to the investigation included the exchange of documents, 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?

5.2.2.4. In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where he would have been, but for the maladministration or improper conduct.

- 5.2.3. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on whether the functionaries of the Sol Plaatje Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170, Rietvale in Ritchie.
- 5.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality in order to prevent improper conduct, maladministration and prejudice.
- 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 and appropriate.
- 5.3. **The Key Sources of Information**
- 5.3.1. **Documents and correspondence**
- 5.3.1.1. Deed of Transfer, dated 23 November 2012;
- 5.3.1.2. Public Notice of General Valuation Roll 2019 and Lodging of Objection Report dated 21 February 2019;
- 5.3.1.3. Letter from Mr Ngwako Modiba, the late Chief Town Planner of the Municipality to Mr Lenkoe, dated 20 October 2020;
- 5.3.1.4. Letter from the Public Protector to Mr Matlala, dated 15 July 2022;

- 5.3.1.5. Aerial Geographic Information System Viewer Image Report, dated 16 August 2022;
- 5.3.1.6. Email from the Public Protector to Mr van Wyk, dated 09 September 2022;
- 5.3.1.7. Email from Mr van Wyk to the Public Protector, dated 13 September 2022;
- 5.3.1.8. Email from Mr van Wyk to the Public Protector, dated 14 September 2022;
- 5.3.1.9. Letter from Mr Mothelesi to the Complainant, dated 29 November 2022;
- 5.3.1.10. Deeds Web Printout T3233/2012, dated 01 December 2022;
- 5.3.1.11. Deeds Web Printout T3242/2012, dated 01 December 2022;
- 5.3.1.12. Letter from Ms Mdubeki to the Municipality, dated 23 February 2023;
- 5.3.1.13. Ms Mongwato's affidavit, dated 06 March 2023;
- 5.3.1.14. Ms Volkwyn's affidavit, dated 06 March 2023;
- 5.3.1.15. Letter from Mr Modiba to Ms Mdubeki, dated 16 May 2023.
- 5.3.1.16. Report of the Surveyor-General on investigation of possible illegal demarcation of Erf 2169 and Erf 2170 Ritchie by Councillor of the Municipality leading to loss of land by the claimants, dated 13 February 2023.

5.4. Legislation and other prescripts

- 5.4.1. The Constitution of the Republic of South Africa, 1996;
- 5.4.2. The Local Government: Municipal Systems Act, 2000; and

5.4.3. The Land Survey Act, 1997.

5.5. **Notice issued in terms of section 7(9)(a) of the Public Protector Act**

5.5.1 Notices in terms of section 7(9)(a) of the Public Protector Act were served on the following persons on 14 November 2023, allowing them to respond to the evidence obtained during the investigation:

5.5.1.1 Mr Matlala, the Municipal Manager;

5.5.1.2 Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA;

5.5.1.3 Dr Zamani Saul, the Premier of the Northern Cape Province;

5.5.1.4 Ms Thembi Nkadimeng, the Minister of COGTA;

5.5.1.5 Ms NN Maputle, the Speaker of the Municipality;

5.5.1.6 Mr Kagisho Dante Sonyoni, the Executive Mayor of the Municipality;

5.5.1.7 Mr Simon Mothelesi, Acting Senior Manager Housing of the Municipality;

5.5.1.8 Mr Nolan van der Merwe, Housing Official of the Municipality;

5.5.1.9 Mr Benneth van Wyk, Housing Official of the Municipality; and

5.5.1.10 Ms Rosalind Mdubeki, the Surveyor-General.

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 the functionaries of the Sol Plaatje Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act

Common cause

6.1.1 According to the Deeds Web printouts dated 01 December 2022, erven 2169 and 2170 were registered in the names of Ms Volkwyn with Title Deed Number T3233/2012 and Mr Parker, on 23 November 2012 with Title Deed Number 3242/2012, respectively.

Issue in dispute

6.1.2 The issue for the Public Protector's determination is whether Mr Koopman and the functionaries of the Municipality, irregularly subdivided erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie and failed to rectify the irregularities when it was brought to their attention by the Complainant.

The Complainant's version

6.1.3 The Complainant contended that the functionaries of the Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170, with the sole purpose of accommodating Ms Mongwato.

The Municipality's response

- 6.1.4 The allegations were raised with the Municipal Manager, Mr Thapelo Matlala (Mr Matlala) in a letter dated 15 July 2022, however, no response was received.

Inspection in loco on 06 September 2022

- 6.1.5 On 06 September 2022, the Investigation Team conducted an *inspection in loco* at erven 2169 and 2170 with Mr Benneth van Wyk (Mr van Wyk) and Mr Nolan van der Merwe (Mr van der Merwe), the housing administration officials in the Municipality and the following observations were noted:

- 6.1.5.1 There was a shack that was erected between erven 2169 and 2170, belonging to Ms Mongwato;
- 6.1.5.2 The shack also appeared on the Aerial Geographic Information System Viewer Image of Petrus Uys Street, dated 16 August 2022, which was provided by Mr van der Merwe on-site; and
- 6.1.5.3 There was a water meter at Ms Mongwato's yard, however, there was no water meter at the Complainant's yard.

E-mail from Mr van Wyk, dated 09 September 2022

- 6.1.6 The Public Protector sent an email dated 09 September 2022, to Mr van Wyk, the housing administration official, regarding Ms Mongwato's municipal account.
- 6.1.7 In an email dated 09 September 2022, Mr van Wyk indicated that Erf 2169, which is occupied by Ms Mongwato, was still registered in the name of the

Municipality and there would be roll-out programmes that would assist residents like Ms Mongwato to register Municipal accounts in their own names.

E-mail from Mr van Wyk, dated 13 September 2022

- 6.1.8 In an e-mail dated 13 September 2022, to the Investigation Team, Mr Van Wyk stated, *inter alia*, that:
- 6.1.8.1 The system initially did not pick up Erf 2169, however, after getting assistance from the Indigent Office, it was confirmed that Ms Volkwyn is the account holder; and
- 6.1.8.2 Ms Mongwato was not registered for any of the erven i.e. Erf 2169 or Erf 2170 and the Municipality might have made a mistake by allocating Ms Mongwato Erf 2169. Ms Mongwato is residing in one of the erven where the Municipal account is still registered in the name of the Municipality.

E-mail from Mr van Wyk, dated 14 September 2022

- 6.1.9 In a further e-mail dated 14 September 2022 to the Investigation Team, Mr Van Wyk stated, *inter alia*, that the matter was flagged by the Municipality and referred to the Housing Dispute Resolution Committee of the Municipality for adjudication in order to afford all parties concerned opportunities to make representations.

Interview with Ms Mongwato on 09 September 2022

- 6.1.10 During the *inspection in loco* on 09 September 2022, Ms Mongwato was interviewed by the Investigation Team. She stated that:

- 6.1.10.1 She moved to Petrus Uys Street in 2015 and her shack was registered by the Municipality under Erf 2169, which was the same erf number as that of Ms Volkwyn; and
- 6.1.10.2 She was not paying for water because her neighbour, Ms Volkwyn is the one receiving the statement of account. She registered for an electricity meter box at Eskom using Erf number 2169.

Interview with Ms Volkwyn on 09 September 2022

- 6.1.11 During the *inspection in loco* on 09 September 2022, Ms Volkwyn was also interviewed by the Investigation Team. She stated that in 2015, Mr Koopman informed her that she should cut off the tree that was in her yard because he wanted to allocate Ms Mongwato a site between erven 2169 and 2170.

Letter from Mr Simon Mothelesi to the Complainant dated 29 November 2022

- 6.1.12 In a letter dated 29 November 2022, from Mr Simon Mothelesi (Mr Mothelesi), the Acting Senior Manager: Housing to the Complainant, he informed the Complainant of the outcome of the Dispute Resolution Committee as follows:
- 6.1.12.1 Erf 2169 is a surveyed Erf and Ms Mongwato is the lawful occupant of the Erf;
- 6.1.12.2 All erven in that township are generally the same size as Erf 2170;
- 6.1.12.3 The Geographic Information System (GIS) indicates significant encroachments onto the backyard boundaries by several occupants, including encroachment from Mr Parker onto Erf 2155;

- 6.1.12.4 Encroachments (intentionally or unintentionally) were taking place in that township; and
- 6.1.12.5 The Municipality was in the process of referring this matter to the Sol Plaatje Town Planning section for further investigation and subsequent engagement with the residents on the issue of the encroachments.

Deed of Transfer dated 23 November 2012

- 6.1.13 According to the Deed of Transfer dated 23 November 2012, the Municipality through its Attorneys, Ilse Van Der Westhuizen Attorneys, transferred Erf 2170 to the Complainant and his wife, Ms Doreen Parker.

Public Notice of General Valuation Roll 2019 and lodging of objections dated 21 February 2019

- 6.1.14 According to the Public Notice of General Valuation Roll 2019 and lodging of objections dated 21 February 2019, Ms Volkwyn is the owner of Erf 2169 with an extent of 364m² in Joe Slovo Street in Rietvale, Ritchie.

Inspection in loco by the Surveyor-General and the Investigation Team, 02 February 2023

- 6.1.15 On 02 February 2023, Ms Mdubeki, the Surveyor-General: Bloemfontein and the Investigation Team conducted an *inspection in loco* in Ritchie to determine whether the alleged illegal demarcation by Mr Koopman impacted the boundaries of erven 2169 and 2170. During the inspection, Ms Mdubeki also informed the Investigation Team that a field team from the Municipality consisting of Mr PK Monnonyane and Mr LL Mothaoleng are both survey

technicians undertook a beacon relocation exercise for Erf 2169 and 2170 on 01 February 2023.

- 6.1.16 After thorough examination and measurement of square metres of the affected erven, it was confirmed that Ms Mongwato's site interfered or encroached into the square metres of both erven 2169 and 2170.

Report on Investigation of possible illegal demarcation of Erf 2169 and 2170 Ritchie by Councillor of the Municipality leading to loss of land by the Claimants, dated 13 February 2023

- 6.1.17 According to the Surveyor-General's report titled '*Report on Investigation of possible illegal demarcation of Erf 2169 and 2170 Ritchie by Councillor of the Municipality leading to loss of land by the Claimants*' dated 13 February 2023, from Ms Mdubeki, in connection with the outcome of the beacon relocation survey, she states, *inter alia*, as follows:

- 6.1.17.1 A beacon relocation exercise for Erf 2169 and 2170 was undertaken on 01 February 2023 by a field team consisting of Mr PK Monnonyane, a Professional Land Surveyor with Registration Number: GPrL1500, Mr HP Mofokeng and Mr LL Mothaoleng, who are both survey technicians;

- 6.1.17.2 The scope of the work had to be expanded to include the entire block as there was a realisation of possible shift of boundaries for most of the properties. Fence corners on all properties on the block were surveyed and some of the properties on the western side of the block were also surveyed. Part of an adjoining block of erven was also surveyed to verify if it is in line with the approved General Plan;

- 6.1.17.3 The property owner of Erf 2162, who has a fully built house was also interviewed. Allegations of encroachment on her property were against the Erf 2163 property owner;
- 6.1.17.4 The surveyed fence corners (current boundaries) and General Property Plan boundaries were overlaid on Google Maps for the years 2012, 2017 and 2022;
- 6.1.17.5 From the desktop analysis, beacon relocation and *inspection in loco*, it could be concluded that:
- (a) The General Plan for the subdivision of Erf 2315 to create four hundred and fifty-eight (458) erven, inclusive of erven 2169 and 2170, was surveyed, submitted and approved by the Surveyor-General: Bloemfontein Office on 06 February 2006;
 - (b) The fences as observed during the *inspection in loco* appeared to be skewed, with the properties on the east, being erven 2152 to 2162, having smaller yards than those on the west side, being erven 2163 to 2172;
 - (c) The matter was further corroborated by the owner of Erf 2162, wherein a beacon relocation for her property as done by a Professional Land Surveyor showed that the neighbour's lavatory has encroached on her property with at least a five (05) metre encroachment;
 - (d) The 2012 Google Map, as overlaid, shows that a structure as built occupies both Erf 2169 and Erf 2170, which would suggest that the owner of the said structure is the owner of both erven;

- (e) Google Maps for the year 2017, was used to investigate the allegations of the placement of Ms Mongwato's shack between Erf 2169 and Erf 2170. It can be seen from the aerial photography that a structure has been placed;
- (f) The 2022 Google Map overlay is similar to that of 2017. The number of structures that can be seen suggests that the block consists of twenty (20) Properties, which tallies with the number of erven as per the GP; and
- (g) The adjoining block is in line with the approved General Plan, therefore, suggesting that it is only the block consisting of erven 2153 to 2172 that has challenges.

6.1.18 In the said report, Ms Mdubeki recommended that the Public Protector should instruct the Municipality to source services of a professional Land Surveyor to undertake a beacon relocation exercise and to verify that information on the title deeds is in sync with what is on the ground i.e., verify that stands have been allocated to persons that appear on the title deeds.

Affidavit from Ms Mongwato dated 06 March 2023

6.1.19 The Investigation Team requested Ms Mongwato to depose to an affidavit stating how she was allocated a site between Erf 2169 and Erf 2170. In her affidavit dated 06 March 2023, Ms Mongwato stated that:

6.1.19.1 In 2015, Mr Koopman informed her that he found a site for her at 2169, Petrus Uys Street, Rietvale in Ritchie;

6.1.19.2 She did not formally request to be allocated a stand by the Municipality;

- 6.1.19.3 Mr Koopman just showed her the place where she should stay and gave her the stand number as 2169. She then built a structure on the site;
- 6.1.19.4 Mr Koopman also informed her that the Council would come back to give them title deeds, but they did not come back; and
- 6.1.19.5 She went to Eskom to register the prepaid meter with Erf number 2169, but she was not paying for water because she is sharing the account with Ms Volkwyn as they both share the same stand number.

Affidavit from Ms Volkwyn dated 06 March 2023

- 6.1.20 The Investigation Team requested Ms Volkwyn to depose to an affidavit stating how Mr Koopman approached her regarding the allocation of a site between her erf and Erf 2170, to another person unknown to her. In her affidavit dated 06 March 2023, Ms Volkwyn stated that:
 - 6.1.20.1 In 2015, Mr Koopman approached her and informed her that she should cut off her tree in her yard, because he was going to allocate a site to another person (Ms Mongwato);
 - 6.1.20.2 She was with Mr Parker, her neighbour and owner of Erf 2170, when Mr Koopman forcefully demarcated her yard to allocate a site to Ms Mongwato in 2015;
 - 6.1.20.3 She received her title deed for Erf 2169 in 2012 and Mr Parker was in Erf 2170; and
 - 6.1.20.4 Ms Mongwato is using her Erf with Number 2169, that she was given illegally by Mr Koopman.

Letter from Ms Mdubeki to the Municipality dated 23 February 2023

- 6.1.21 According to the letter to the Municipality dated 23 February 2023, Ms Mdubeki stated that:
- 6.1.21.1 A request was made by the Office of the Public Protector to investigate possible maladministration by the Municipality;
 - 6.1.21.2 While undertaking the beacon relocation exercise, it was evident that there was encroachment and placement of properties which is not in compliance with the approved General Plan, S.G. No. 13/2007;
 - 6.1.21.3 Of more concern, was the placement of ablution facilities of the adjoining properties at the subsequent neighbouring properties;
 - 6.1.21.4 In terms of the Land Survey Act, 1997, the Surveyor-General is duty bound to invoke section 23(1), which states that if the figure of the diagram of a piece of land overlaps the figure of the diagram of another piece of land and the Surveyor-General deems it necessary to rectify the anomaly, he or she shall give notice of the overlap to the Registrar and in the prescribed manner to the owner of the land represented on the overlapping diagram and thereafter no further registration of that land or any portion thereof or share therein may be effected in a deeds registry until the Surveyor-General, after receipt of such data as he or she may require from the owner for that purpose, has rectified the overlapping diagram;
 - 6.1.21.5 Notify the Municipality that a caveat would be placed against registration of any property on the said General Plan;

- 6.1.21.6 The Municipality as the original owners of the underlying property are responsible for correcting such anomalies. The Surveyor-General Office would be available to advise on the matter; and
- 6.1.21.7 Should the Municipality fail to correct such anomalies within a period of three (03) months, the Surveyor-General would be duty bound to invoke section 26(1) of the Land Survey Act, 1997, which states that if the recognised boundaries of the pieces of land which compose a township do not conform with the boundaries represented on their respective separate diagrams or the general plan, the Minister may cause the township, or any part thereof to be resurveyed and a superseding general plan thereof to be prepared in accordance with the resurvey. The office will then forward a request to the Minister for intervention.

Letter from Mr Modiba to Ms Mdubeki dated 16 March 2023

- 6.1.22 In a letter to Ms Mdubeki dated 16 March 2023, Mr Modiba, the Chief Town Planner, he stated that:
- 6.1.22.1 The Municipality was aware of the problem pertaining to encroachments and due to financial constraints, the Municipality was unable to resolve the rectification of boundary encroachments in Ritchie;
- 6.1.22.2 Due to the non-availability of funds, the Municipality requested financial assistance from COGHSTA in a letter dated 20 October 2020, for cadastral rectification on erven situated within General Plan: 13/2007; and
- 6.1.22.3 The Municipality would request intergovernmental support to remedy the situation and ensure proper rectification of cadastral boundaries in Ritchie.

Virtual meeting between the Investigation Team and Mr Modiba, 14 June 2023

- 6.1.23 The Investigation Team held a virtual meeting with Mr Modiba on 14 June 2023, and in response to the complaint, he stated that:
- 6.1.23.1 The Municipality received a letter from the Office of the Surveyor-General, dated 23 February 2023, which stated that a beacon relocation exercise was undertaken at Ritchie at the request of the Public Protector;
- 6.1.23.2 There were encroachments and placement of properties in contravention of the approved General Plan: 13/2007, as well as the placement of ablution facilities of the adjoining properties on the neighbouring properties;
- 6.1.23.3 The Municipality was aware of the problem pertaining to encroachments and due to financial constraints, they were unable to resolve the rectification of boundary encroachments in Ritchie;
- 6.1.23.4 Due to the non-availability of funds, the Municipality requested financial assistance from COGHSTA, in a letter dated 20 October 2020, for cadastral rectification on erven situated within the General Plan: 13/2007 to which no formal response was received.

Documents received from Mr Modiba

- 6.1.24 Mr Modiba furnished the Investigation Team with a copy of his letter to Mr Lenkoe, the HoD: COGHSTA, dated 20 October 2020, which states, *inter alia*, as follows:
- 6.1.24.1 Mr Modiba requested financial assistance for the cadastral rectification of General Plan No 13/2007 Ritchie for Erven 2153-2172, to be registered with the Deed's Office;

- 6.1.24.2 This would lead to the rectification of encroachments and issuing of title deeds to the relevant beneficiaries for security of tenure;
- 6.1.24.3 The cadastral rectification process would necessitate an amendment of the general plan, possible closure of public road and consolidation due to the encroachment of services over the properties; and
- 6.1.24.4 There are approximately twenty (20) erven that are affected from erven 2153 to 2172, in Ritchie.

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

- 6.1.25 On 14 November 2023, a notice in terms of section 7(9)(a) of the Public Protector Act (the Notice), was issued to the Municipality and other stakeholders to provide them with an opportunity to respond on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provide that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.
- 6.1.26 The Minister of COGTA, Office of the Premier, MEC of COGHSTA, Head of Department of COGHSTA, Municipality and the Surveyor-General, responded to the section 7(9)(a) Notice as follows:

The Minister of COGTA

- 6.1.27 The Personal Assistant to the Minister, Ms Kholofelo Madisha, acknowledged receipt of correspondence in an e-mail dated 15 November 2023 and indicated that the notice would be brought to the attention of the Minister. No further communication was received.

The Premier of the Northern Cape Province

- 6.1.28 In a letter dated 28 November 2023, the Director-General, Mr Justice Bekebeke, acknowledged receipt of the Notice and noted the remedial action contained therein, particularly against the HoD and the MEC responsible for COGHSTA. He further stated that the Notice was referred to the Department to provide them with representations on the matter. No further communication was received.

The HoD of COGHSTA

- 6.1.29 Mr Lenkoe responded to the Notice in a letter dated 29 November 2023. In his response, he stated that the Municipality has appointed a service provider to rectify the cadastral data and to facilitate the amendment of SG Diagrams and registration of erven 2169 and 2170, Ritchie.

Response from the MEC of COGHSTA

- 6.1.30 The Private Secretary of the MEC, Mr J Saal, acknowledged receipt of the Notice in an e-mail dated 15 November 2023, but no further communication was received from the MEC's Office.

Response from the Surveyor-General

- 6.1.31 In a letter dated 26 November 2023, Ms Mdubeki did not object to the remedial action addressed to the Surveyor-General. She further stated that a caveat would be placed with the Deeds Registry Office in Kimberley against registration of any property affected by General Plan SG No. 13/2007.
- 6.1.32 In another letter dated 27 November 2023, Ms Mdubeki further informed the Public Protector that an interdict in terms of section 23 of the Land Survey Act,

dated 27 November 2023, was sent to the Registrar of Deeds and the Municipality as the original owner of land. A copy of the interdict was provided to the Public Protector.

Response from Mr Simon Mothelesi, on behalf of Mr van Wyk and Mr van der Merwe

- 6.1.33 According to an unsigned letter dated 29 November 2023, Mr Mothelesi (on behalf of Mr Van Wyk and Mr van der Merwe) stated, *inter alia*, that:
- 6.1.33.1 The Complainant was mistaken in his assumption that Ms Mongwato was relocated in between Erf 2169 and Erf 2170. It is their position that Ms Mongwato was not relocated to an erf/land in between 2169 and 2170, but rather to Erf 2169 itself. This was based on the approved Surveyor General plan No: 13/2007 which clearly demonstrates that Erf 2169 is a lawfully planned and surveyed site;
- 6.1.33.2 It appeared from the relevant images that neighbours in this area are encroaching on one another's property. This includes possible encroachments from Erf 2169 as well as Erf 2171 onto the property of Mr. Parker (Erf 2170). However, it is also evident from GIS images that Mr. Parker might be encroaching onto the property of his back yard neighbour;
- 6.1.33.3 Mr. Koopman, the former councillor, might have acted outside his powers when he allegedly allocated Erf 2169 to Ms. Mongwato;
- 6.1.33.4 Ms. Mongwato resides on Erf 2169;
- 6.1.33.5 Paragraph 6.1.15 of the section 7(9)(a) Notice states that the Surveyor-General found that indeed Ms. Mongwato's site interfered with the square metres of both erven 2169 and 2170. It should be noted that it is not clear whether the Surveyor-General was categorically finding that Ms. Mongwato is

placed between Erf 2169 and 2170 or just that her placement is affecting the boundaries of both erven;

6.1.33.6 Section 6.1.37 states that Mr. van Wyk conceded that Ms. Mongwato was not registered for any erven and the Municipality could have mistakenly allocated Erf 2169 to her;

6.1.33.7 It is common cause that Ms. Mongwato does not have a title deed or that her name is not registered on the municipal account;

6.1.33.8 Erf 2169 is a planned and surveyed site with no relation to either Mr. Parker or Ms. Volkwyn (apart from the incorrect registration on the title deed);

6.1.33.9 Ms. Mongwato is the occupant of Erf 2169, because she had been residing there since 2015 and no other party other than the occupants of the adjacent erven have claimed this erf to be theirs;

6.1.33.10 The title deed registrations need to be corrected to reflect the addresses where the occupants are residing;

6.1.33.11 The GIS image shows encroachments onto Mr. Parker's plot from Erf 2169, but Mr. Parker's plot is also encroaching on his backyard neighbour. There was therefore no contradiction between what Mr. van Wyk conceded to and what the finding of Mr. Mothelesi's committee was;

6.1.33.12 The Housing Unit recommended the following remedial action:

(a) The correction of the title deed for Mr. Uithaler to reflect Erf 2167 on which he is residing;

(b) The correction of the title deed for Ms. Volkwyn to reflect Erf 2168 on which she is residing;

- (c) The correction of Ms. Volkwyn's title deed would automatically result in Erf 2169 reverting to the Municipality;
- (d) To officially register a municipal account for Ms. Mongwato on Erf 2169;
- (e) The cadastral matters raised, including the encroachments and the toilets on boundary lines would be addressed by the envisaged processes of the Municipality's Town planning division;
- (f) To explore whether the toilets could be moved; and
- (g) Those remedial measures are dependent on the findings of the final report from the Public Protector, which may include a moratorium on all title deed registrations and or corrections.

Response from Ms. Vuyelwa Mpekula, Acting Chief Town Planner

- 6.1.34 In an unsigned letter dated 05 December 2023, Ms Mpekula responded to the Notice as follows:
- 6.1.34.1 The Urban Planning Division, under the Directorate Strategic, Economic, Development and Planning (SED&P) of the Sol Plaatje Municipality, acknowledged that the physical encroachment on the ground is not in line with the approved Surveyor-General's plan no 13/2007 and other areas in the suburb of Rietvale in Ritchie;
- 6.1.34.2 The subdivision of land parcels is a function that is mandated by the *Land Surveying Act, 1997* and only persons that satisfy specific requirements can execute such function, namely a land surveyor. There was technically no subdivision that took place, as the status of General Plan No. 13/2007 remained (no further amendments were effected to date);

- 6.1.34.3 The physical encroachment must now be rectified. At the time of the rectification request, the Urban Planning Division had no funds to adequately address the matter;
- 6.1.34.4 The Municipality intends to rectify the cadastral data in order to facilitate the amendment of the Surveyor-General diagrams and registration of erven located in Ritchie. A Town Planning firm, namely Global Solution Development Planners (Pty) Ltd, was appointed by Sol Plaatje Municipality to rectify the cadastral rectification as well as the conveyancing of erven 2153-2172 Ritchie, together with erven 2075-2090 Ritchie. Erven 2169 and 2170 Ritchie form part of this project;
- 6.1.34.5 The project rectification process, in the main, includes the following:
- (a) Identification of encroachments and households affected by same;
 - (b) Submission of requisite land development applications that include Rezoning, Subdivision, Closure of Public Spaces (partial or whole) and Consolidation;
 - (c) Submission of amended Surveyor-General diagrams and Closures at the Office of the Surveyor-General;
 - (d) Possible relocation of some residents based on the intensity of the cadastral encroachment(s);
 - (e) Determination and drafting of an infrastructure action plan based on the impact on infrastructure services (capacity and cost) as a result of cadastral rectifications or possible relocations; and
 - (f) Conveyancing for security of tenure, where deemed relevant.

- 6.1.34.6 The duration of the project is seven (07) months and an additional three (03) months wherein a proposed amended Surveyor-General diagram will be submitted for examination and decision-making at the Office of the Surveyor-General (Bloemfontein). Public participation would be conducted with the affected residents from inception of the project until the completion phase;
- 6.1.34.7 The municipality has appointed a service provider for rectification of the cadastral boundary in Ritchie General Plan 13/2007 Ritchie. The project is anticipated to be completed within seven (07) months (with additional 03 months for registration and conveyancing);
- 6.1.34.8 The scope of the project would include the following:
- (a) Possible cadastral encroachments and Surveyor-General amendments-Boundary encroachment;
 - (b) Possible relocation of some residents based on the intensity of the cadastral encroachment;
 - (c) Assess impact on infrastructure services (capacity and cost) as a result of cadastral rectifications or possible relocations;
 - (d) Town Planning procedures (closures, subdivision, rezoning, consolidation, road closure, etc.);
 - (e) Approval of cadastral amendments by the Office of the Chief Surveyor-General; and
 - (f) Possible Transfer and Registration.

6.1.34.9 The project for rectification and conveyancing is a priority within the Integrated Development Plan (IDP) and response to the IDP objective of spatial transformation.

Applicable law

Constitution of the Republic of South Africa, 1996

6.1.35 Section 41(1)(h)(ii) of the Constitution provides that all spheres of government and all organs of state within each sphere of government must co-operate with one another in mutual trust and good faith by assisting and supporting one another.

6.1.36 Section 195(1) of the Constitution provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution including, *inter alia*, the following principles:

- (a) A high standard of professional ethics must be promoted and maintained;
- (b) Public administration must be accountable; and
- (c) Services must be provided fairly, equitably and without bias.

Land Survey Act, 1997

6.1.37 Section 3(1) provides that *“the Chief Surveyor-General shall be in charge of such geodetic, topographical, and cadastral surveying and land information services in the Republic as the Minister may direct and subject to this Act, shall*

- (a) *Promote and control all matters connected with those surveys and services...*

- (d) *Prepare, compile amend such maps and other documents as may be required.*
- (e) *Supervise and control the survey and diagrammatic representation of land for purposes of registration in a deeds registration.”*

6.1.38 In terms of section 23(1), if the figure of the diagram of a piece of land (in this section referred to as the “*overlapping diagram*”) overlaps the figure of the diagram of another piece of land and the Surveyor-General deems it necessary to rectify the anomaly, he or she shall give notice of the overlap to the Registrar and in the prescribed manner to the owner of the land represented on the overlapping diagram and thereafter no further registration of that land or any portion thereof or share therein may be effected in a deeds registry until the Surveyor-General, after receipt of such data as he or she may require from the owner for the purpose, has rectified the overlapping diagram.

6.1.39 In terms of section 26(1), if the recognised boundaries of the pieces of land which compose a township do not conform with the boundaries represented on their respective separate diagrams or the general plan, the Minister may cause the township, or any part thereof to be resurveyed and a superseding general plan thereof to be prepared in accordance with the resurvey: provided that the resurvey of any township or part thereof falling within the area of jurisdiction of a local authority shall be carried out only after written application for the resurvey has been made to the Minister by that authority.

Local Government: Municipal Systems Act, 2000

6.1.40 Section 55(1)(j) provides that as head of administration the Municipal Manager of the Municipality is, subject to the policy directions of the Municipal Council responsible and accountable for managing communications between the

municipality's administration and its political structures and political office bearers.

Code of Conduct for Councillors, Schedule 1 of the Local Government: Municipal Systems Act, 2000

- 6.1.41 Item 2 of the Code of Conduct for Councillors provides that a councillor must-
- (a) Perform the functions of office in good faith, honestly and in a transparent manner; and
 - (b) At all times act in the best interests of the Municipality and in such a way that the credibility and integrity of the Municipality are not compromised.
- 6.1.42 In terms of Item 11(a) and (d) of the Code, a Councillor may not, except as provided by law interfere in the management or administration of any department of the Municipal Council unless mandated by Council or encourage or participate in any conduct which would cause or contribute to maladministration in the Council.

Code of Conduct for Staff Members, Schedule 2 of the Local Government: Municipal Systems Act, 2000

- 6.1.43 Item 2 of the Code of Conduct for Municipal Staff Members provides that a staff member of a municipality must at all times-
- (a) *“loyally execute the lawful policies of the municipal council;*
 - (b) *perform the functions of office in good faith, diligently, honestly and in a transparent manner;*
 - (c) *act in such a way that the spirit and objects of section 50 are promoted;*

- (d) *act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and*
- (e) *act impartially and treat all people, including other staff members, equally without favour or prejudice.”*

Analysis

- 6.1.44 The evidence before the Public Protector indicates that the Municipality failed to promote and maintain a high standard of professional ethics in dealing with the allocation of sites in Ritchie. The Municipality also failed failure to rectify the allocated sites to ensure that the deeds register reflects the rightful owners of the erven. The functionaries of the Municipality failed to perform their work diligently and without delay as required by section 195 of the Constitution.
- 6.1.45 The evidence in the Public Protector’s possession reveals that Mr Koopman unlawfully demarcated and allocated a site to Ms Mongwato, which was outside the scope of his duties as a Councillor when he unlawfully moved the pegs of erven 2169 and 2170 to allocate a site to Ms Mongwato.
- 6.1.46 The Municipality was aware of the consequences of Mr Koopman’s actions, however, no action was taken to correct the encroachments that resulted therefrom. The omission on the part of the functionaries of the Municipality, resulted in Ms Mongwato illegally allocated site encroaching on the properties of the Complainant and Ms Volkwyn. Mr Koopman’s actions were in contravention of Item 2 and 11 of the Code of Conduct for Councillors and compromised the credibility and integrity of the municipality.
- 6.1.47 Mr Van Wyk conceded in an e-mail dated 13 September 2022, that Ms Mongwato was not registered for any of the erven in Petrus Uys Street and the Municipality could have mistakenly allocated Erf 2169 to her. However, Mr

Mothelesi informed the Investigation Team that Ms Mongwato was the lawful occupant of Erf 2169 and that all erven in the Ritchie township are generally the same size as Erf 2170.

- 6.1.48 In his response to the section 7(9)(a) Notice, the Housing Administration Officials (Mr Mothelesi, Mr van der Merwe and Mr van Wyk) failed to provide the Investigation Team with evidence of how Ms Mongwato came to occupy Erf 2169 but still insist that Ms Mongwato is the lawful occupant of Erf 2169.
- 6.1.49 According to the evidence before the Public Protector, Ms Volkwyn is the lawful owner of Erf 2169 with Title Deed Number: T3233/2012. The response of the Housing Administration Officials indicates lack of understanding of the processes involved in the allocation and registration of properties.
- 6.1.50 The Public Protector takes note that Ms Mdubeki, the Surveyor-General confirmed that there were encroachments and placement of properties in contravention of the General Plan: 13/2007 at Petrus Uys Street, Rietvale in Ritchie.
- 6.1.51 According to the evidence before the Public Protector, erven 2170 and 2169 in Petrus Uys Street were registered in the names of Mr Parker and Ms Volkwyn, respectively, in 2012.
- 6.1.52 Furthermore, Mr Modiba, the Chief Town Planner also conceded that the Municipality was aware of the encroachments in Ritchie, but there were no funds for the rectification of cadastral boundaries. The Public Protector noted that the letter dated 20 October 2020 from Mr Modiba to Mr Lenkoe did not quantify the extent of financial assistance required in order to address the encroachment issues, however, Mr Lenkoe did not respond to the request.

Conclusion

- 6.1.53 The Municipality has the responsibility to correct the anomalies arising out of such disputes, however, in this case, the functionaries of the Municipality failed to do so.
- 6.1.54 Mr Koopman acted in contravention of Item 2 of the Code of Conduct for Councillors, which mandates Councillors to always act in the best interests of the Municipality and to ensure that the credibility and integrity of the Municipality is not compromised. Furthermore, his conduct was contrary to the prescripts of Item 11 which prohibits the unlawful interference in the management or administration of any department of the Municipal Council, which would cause or contribute to maladministration in the Council.
- 6.1.55 The conduct of the Municipal functionaries was in contravention of 23(1) of the Land Survey Act and Item 2 of Code of Conduct for Staff Members.

7 FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the Municipality should have complied with, the Public Protector makes the following findings:

- 7.1 Whether the functionaries of the Sol Plaatje Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act**

- 7.1.22 The allegation that the functionaries of the Municipality failed to rectify the unlawful subdivision of erven 2169 and 2170 situated at Petrus Uys Street, Rietvale in Ritchie, is substantiated.
- 7.1.23 Mr Koopman acted in violation of the standard required of the Councillors in the execution of their duties when he reduced the sizes of Erf 2169 and Erf 2170. His conduct in this regard, was in conflict with Item 2 and 11 of the Code of Conduct for Councillors, which requires Councillors to always act in the best interests of the Municipality and prohibits the unlawful interference in the management or administration.
- 7.1.24 The functionaries of the Municipality failed to perform the functions of the Municipality in good faith, diligently, honestly and in a transparent manner as contemplated in Item 2(a) of the Code of Conduct for Municipal Staff Members. Furthermore, they failed to ensure that the cadastral boundaries in Petrus Uys Street, Rietvale in Ritchie are rectified.
- 7.1.25 The conduct of Mr Koopman and the functionaries of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution, maladministration and caused improper prejudice in terms of section 6(4)(a)(i) and (v) 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 of redressing the conduct referred to in this report.
- 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. It should be noted that although the Public Protector made adverse findings against Mr Koopman, any remedial action the Public Protector might have taken against him, as envisaged by section 182(1)(c) of the Constitution would serve no judicious purpose, as he is no longer a Councillor with the Municipality.
- 8.4. Having regard to the evidence, the regulatory framework determining the standard the Municipality should have complied with, and the impact on the Complainant, the Public Protector takes the following remedial action, in terms of section 182(1)(c) of the Constitution:

The Municipal Manager

- 8.4.1. **Within sixty (60) calendar days** of the final report, take reasonable steps to engage the unlawful occupier of the property located between erven 2169 and 2170 Rietvale in Ritchie, with the intention of relocating her to an alternative erf as envisaged in section 25(1) read with section 34 of the Constitution.
- 8.4.2. The Municipality to provide the Public Protector with **quarterly progress reports** (with effect from date of receipt of the final report) on the implementation of the cadastral boundaries rectification project to facilitate the amendment of the Surveyor-General diagrams and registration of erven until finalisation, in line with the submission of Ms Mpekula, dated 05 December 2023.
- 8.4.3. Prepare an item to be tabled before Council recommending training to new councillors **within sixty (60) calendar days** of assuming office on their roles and responsibilities, to avoid future recurrence of interference with municipal

administration and unlawful land allocations, in line with section 55(1)(j) of the Municipal Systems Act.

The Head of Department for Co-operative Governance Human Settlements and Traditional Affairs

8.4.4. Take cognizance of the findings and remedial actions contained in this report.

The Member of the Executive Council for Co-operative Governance Human Settlements and Traditional Affairs

8.4.5. Take cognizance of the findings and remedial actions contained in this report.

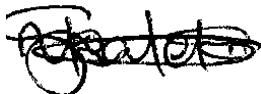
The Minister responsible for Co-operative Governance and Traditional Affairs

8.4.6. Take cognisance of the findings and remedial action contained in this report.

9. **MONITORING**

9.1. The Municipal Manager to 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.

- 9.2. The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 29 DECEMBER 2023

Assisted by: Adv. Deon Barnard
Executive Manager: PII Coastal