

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



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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OR SUSPICION OF
POLITICAL INVOLVEMENT IN THE ESTINA VREDE DAIRY FARM PROJECT BY
THE FREE STATE PROVINCIAL GOVERNMENT, AND POSSIBLE PREJUDICE
SUFFERED BY THE INTENDED BENEFICIARIES OF THE PROJECT**

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List of Acronyms

The following abbreviations and acronyms are used throughout this report:

“The Project”	Vrede Dairy Project
“Estina”	Estina Pty (Ltd)
“Paras”	Paras India
“DARD”	Free State Department of Agriculture and Rural Development
“FSPG”	The Free State Provincial Government
“Constitution”	Constitution of the Republic of South Africa, 1996.
“Public Protector Act”	The Public Protector Act no. 23, 1994
“PFMA”	The Public Finance Management Act, 1999
“PRECCA”	The Prevention and Combating of Corrupt Activities Act, 12 of 2004
“ Premier”	Mr Magashule, former Premier of the Free State Province
“EXCO”.	Free State Provincial Executive Council
“MEC”	Member of the Executive Council
“Mr Magashule”	Mr Enoch Ace Magashule, Former Premier of the Free State Province
“Mr Zwane”	Mr Mosebenzi Zwane, Former MEC of DARD
“Ms Qabathe”	Ms Mamiki Qabathe, Former MEC of DARD after Mr Zwane
“Ms Rockman”	Ms Elizabeth Rockman, Former DG in the Premiers Office and former MEC of Finance in the Free State Province
“Mr Venter”	Mr Brutus Venter, Deputy Director General in the Office of the Premier
“Mr Thabethe”	Mr Peter Mbana Thabethe, Former HOD of DARD
“HOD”	Head of Department
“Mr Monai”	Mr Monai, Former MEC of Finance in the Free State Province

“Mr Motaung”	Mr Tlokotsi John Motaung, the Executive Mayor of Phumelela Local Municipality
“The Municipality”	Phumelela Local Municipality
“Mr Moremi”	Mr Moses Moremi, the former Municipal Manager of the Municipality
“ Mr Narayan”	Mr Ashok Narayan, Former Special Advisor to Mr Magashule
“ Mr Vasram”	Mr Kamal Vasram, Director of Estina
“the AG Report”	National Treasury Report on an Investigation into the Vrede Project by the Accountant General
“FSDC”	The Free State Development Corporation
“PPP”	Public-Private Partnership
“DA”	Democratic Alliance
“FF Plus”	Freedom Front Plus
“COPE”	Congress of the People
“Council”	Municipal Council
“CASP grant”	Comprehensive Agriculture Support Program Grant
“DAFF”	National Department of Agriculture, Forestry and Fisheries
“Beneficiaries”	Vrede Farm Project Beneficiaries
“Subsequent MEC’s of DARD”	Mr Mlamleli (MEC DARD 2015/2016), Ms MD Khoabane (2016/2017)

Executive Summary

- (i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and hereby published in terms of section 8 of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into allegations or suspicion of political involvement in the Vrede Dairy Project (the Project) by the Free State Provincial Government (FSPG), and possible prejudice suffered by the intended beneficiaries (the beneficiaries) of the Project.
- (iii) On 6 March 2018 the Portfolio Committee on Justice and Correctional Services (the Portfolio Committee), raised concerns relating to political involvement in the Vrede Dairy Project implemented by the FSPG and possible impact on the intended beneficiaries of the Project. It is on the basis of the concerns raised by the Committee that I was requested to conduct an investigation focusing on these issues.
- (iv) Whilst finalising this current investigation, I received a request from Dr Roy Jankielsohn (Dr Jankielsohn), on 17 June 2020, requesting that I include in the scope of my investigation the issue of the contravention by politicians of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 (PRECCA). He stated as follows:

"It would appear that the former Premier of the Free State, Mr Ace Magashule, and the then MEC for the Department of Agriculture and Rural Development in the Free State, Ms Mamiki Qabathe, and the former MEC for Finance, Ms Elzabe Rockman not only contravened section 34 of Chapter 7 of the PACCA, but aided and abetted what had already been identified as possible corrupt activities by making additional payments to the project after receiving the Accountant General's report and after the termination of the contract.

We therefore kindly request the Office of the Public Protector to include in her final report a determination of the interpretation of section 34 of Chapter 7, as to whether the aforementioned individuals are complicit in terms of the PACCA".

- (v) In a subsequent letter of acknowledgement to Dr Jankielsohn's new complaint, I informed him that the issues contained in his complaint relating to PRECCA, will be taken into consideration in line with the relevant prescripts of the Public Protector Act 23 of 1994.
- (vi) In terms of section (1) (a) of the Public Protector Act, the Public Protector shall have the power, 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.
- (vii) A preliminary assessment of Dr Jankielsohn's complaint established the following :
 - a. Section 34 of PRECCA places a reporting obligation on "*any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed*" an offence mentioned in section 34(1)(a) and (b);
 - b. The reporting obligation is limited to section 34(4) which states that for the purposes of section 34(1) "*the following persons hold a position of authority namely -*
 - (a) *the Director-General or head, or equivalent officer, of a national or provincial department;*
 - (b) *in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);*
 - (c) *any public officer in the Senior Management Service of a public body;*
 - (d) *any head, rector or principal of a tertiary institution;*
 - (e) *the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);*
 - (f) *the executive manager of any bank or other financial institution;*
 - (g) *any partner in a partnership;*

- (h) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;*
 - (i) any other person who is responsible for the overall management and control of the business of an employer; or*
 - (j) any person contemplated in paragraphs mentioned above, who has been appointed in an acting or temporary capacity”;*
 - c. Based on section 34(4) of PRECCA the Executive Council of the Provincial Government (EXCO), in particular the former Premier of the Free State, Mr Ace Magashule (Mr Magashule), Member of the Executive Council (MEC) responsible for the Free State Provincial Department of Agriculture and Rural Development (DARD), Ms Mamiki Qabathe (Ms Qabathe), and the former MEC for Finance, Ms Elizabeth Rockman (Ms Rockman) are not listed as persons who have a reporting obligation in terms of PRECCA.
- (viii) However acting on the basis of the legal precedence enunciated in the Mail and Guardian judgement, in the seminal case of ***Public Protector vs Mail and Guardian Ltd (422/10) (2011) ZASCA 108 (1 June 2011)***, the court held that the Public Protector is not a passive adjudicator between the citizens and the state, relying only upon evidence which is placed before her by the parties. The Supreme Court of Appeal (SCA) held further that the Public Protector should not be bound or be limited to the issues raised for consideration and determination by the parties but should, investigate further and discover the truth and also inspire confidence that the truth has been discovered.
- (ix) The court further made it clear that the mandate of the Public Protector 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. The court emphasized 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.

- (x) Although section 34 (4) of PRECCA places no reporting obligations on EXCO, I have taken a decision to consider the conduct of Mr Magashule, Meds Qabathe and Rockman, in exercising their responsibilities entrusted to them in terms of the section 125, 133, 136 and 195 of the Constitution¹.
- (xi) Whilst about to complete my investigation the appeal relating to Report 31 of 2018 on an investigation into complaints of maladministration against the Free State Department of Agriculture in respect of non-adherence to Treasury Prescripts and lack of financial control in the administration of the Vrede Dairy Project, was dismissed by the Constitutional Court on 28 August 2020.
- (xii) On analysis of the complaint, the following issues were identified to inform and focus the investigation:-
 - a. Whether there was any political involvement in the Vrede Dairy Project by the Free State Provincial Government EXCO, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994; and
 - b. Whether there was possible prejudice suffered by the intended beneficiaries of the Vrede Dairy Project, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994.
- (xiii) The investigation process commenced with a preliminary investigation, followed by a formal investigation which was conducted through the exchange of correspondence with the FSPG, interviews with Messrs Magashule, Zwane, Thabethe and Ms Motaung and Mesd. Ms Qabathe and Rockman, as well as the beneficiaries of the Vrede Dairy Project. Information was also sought from the State Capture Commission of Inquiry (the

¹ Constitution of the Republic of South Africa Act No. 108 of 1996

Commission), Banks and affidavits obtained from former officials of the Department as well former EXCO members of the FSPG.

- (xiv) Section 7(9) (a) Notices were issued in terms of the Public Protector Act, 1994 to Messrs Magashule, Zwane, Thabethe and Ms Motaung and Mesd. Ms Qabathe and Rockman. Responses thereto were received and have been considered in this report. I further issued letters in terms of Section 6(4) of the Public Protector Act to former EXCO members of the FSPG that participated in decision taken at EXCO meetings relating to the Vrede Dairy Project.
- (xv) Perusal of the relevant documents and correspondence received as well as the analysis and application of the relevant laws, policies and related prescripts was also conducted.
- (xvi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:-
 - a. **Regarding whether there was any political involvement in the Vrede Dairy Project by the Free State Provincial Government EXCO, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994**

PART A

- (aa) The allegation that there was political involvement in the Vrede Dairy Project by the Free State Provincial Government, is substantiated.
- (bb) The process followed by the then EXCO of FSPG in approving the Vrede Dairy Project after it was presented for consideration by the erstwhile MEC of the DARD, and thereafter through concluding the agreement with Estina, provides credence to the allegation of political involvement in the Project. This was also confirmed by the former Premier's specific reference to the Vrede Dairy Project in his State of the Province address as the flagship Project of the Province.

- (cc) The evidence that I considered to arrive at my conclusion confirms the presence of outside involvement and undue influence by persons linked to the Gupta Family on politicians in how the Project was conceptualised and implemented.
- (dd) I therefore find that Messrs Magashule and Zwane, failed to execute their oversight responsibilities entrusted to them in terms of section 125,133, 136 and 195 of the Constitution.
- (ee) The Constitution as highlighted in my analysis of evidence, places a great responsibility on Members of the Provincial EXCO to provide leadership, guidance and oversight to the provincial administration whilst also holding such state functionaries accountable, which they failed to do.
- (ff) The conduct of Messrs Magashule and Zwane in this regard therefore amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act.

PART B

- (gg) The allegation that EXCO improperly appropriated funds to ensure the payment of Estina is substantiated.
- (hh) The continued approval by EXCO of the appropriation of funds to Mohoma Mobung Project in order to ensure payments towards Estina, long after the contract had been terminated, is improper.
- (ii) I therefore find that Messrs Magashule and Zwane, Mesd Qabathe and Rockman and the subsequent appointed MEC's of DARD failed to execute their oversight responsibilities entrusted to them in terms of section 125,133, 136 and 195 of the Constitution by approving the appropriation of additional funding for the Project after receiving the NTAG's report and even after termination of the Estina contract.

- (aa) The conduct of the erstwhile EXCO members which included Mr Magashule, Mesd Qabathe and Rockman and the subsequently appointed MECs of DARD, in respect of the additional funds appropriated for the payment to Estina, amounts to maladministration as envisaged in section 182(1) of the Constitution and improper conduct as envisaged in the section 6(4) of the Public Protector Act, 1994.
- b. **Regarding whether there was possible prejudice suffered by the intended beneficiaries of the Vrede Dairy Project, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994**
- (aa) The allegation that there was possible prejudice suffered by the intended beneficiaries of the Vrede Dairy Project is substantiated.
- (bb) The conduct of Messrs Zwane and Thabethe and Ms Qabathe in failing to ensure proper oversight, accountability, management and implementation of the Project by Estina resulted in the beneficiaries being prejudiced by termination of the contract, thereby causing them a loss of the benefit of development and their 51% shareholding in the Project as undertaken in all subsequent interactions with the community members.
- (cc) Messrs Zwane and Thabethe and Ms Qabathe failed to uphold sections 195 of the Constitution and the Batho Pele principles in that they failed to prioritise and put the interest and welfare of the Project and beneficiaries first.
- (dd) The conduct of Messrs Zwane and Thabethe, and Ms Qabathe as referred to above therefore amounts to improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4) of the Public Protector Act, 1994.
- (xvii) In the Constitutional court, in the matter of ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15)***

[2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the Public Protector:

"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences";

(xviii) In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017)***. The court denoted that:

(xix) Taking remedial action is not contingent upon a finding of impropriety or prejudice.

"There is nothing in the wording of the section that links the remedial action to a finding of improper conduct. It is clear from the wording of the section that the Public Protector is afforded three separate powers: (1) to investigate conduct that is alleged or suspected to be improper; (2) to report on that conduct, and (3) to take appropriate remedial action."

"The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct".

(xx) I have taken cognizance of several factors which impact on the remedial I am intent on taking in this report, such as the lapse of time since the occurrence of the matter I have investigated, as well as the fact that most of the respondents have already left government employment and therefore any remedial action against them may be impractical to implement.

(xxi) Therefore, in light of the above, the appropriate remedial action that I am taking as contemplated in section 182(1)(c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this report, is the following:

The Premier of the Free State Province

- a. To take note of the report in so far as the findings and remedial action contained herein are concerned and as the Executive Council, assist in ensuring that the remedial action as provided for hereunder is expedited.
- b. Within 30 working days of receipt of this Report, ensure that the Speaker of the Provincial Legislature tables the Report before the House, for deliberations and consideration of issues relating to my findings under paragraphs 6.1 to 6.5 of this Report, by members.
- c. Within 30 working days of receipt of this Report ensure that measures are put in place for the members of EXCO to be inducted and sufficiently trained on their accountability and oversight responsibilities as provided for in the relevant sections of the Constitution cited in this Report.

The MEC for Agriculture in the Free State Province to:

- a. Within 30 working days of this Report issue an official apology to the beneficiaries of the Project for the prejudice they have suffered emanating from the Department's failure to treat them as required by Batho Pele Principles, as well as failing to involve them in the Project at all thereby not preserving and protecting their welfare and interest.
- b. Within 30 working days of this Report ensure that an audit is conducted of all the beneficiaries of the Project for purposes of having a database of all of them and their heirs for those who are unfortunately deceased.
- c. Within 60 working of this Report ensure that the Project is revived and the beneficiaries as 51% shareholders, are full participants in the Project along the same vision of the Mohoma Mobung as was envisaged by the FSPG EXCO when it launched the Vrede Dairy Project as its "*flagship project*".

The Directorate of Priority Crime Investigation

- a. Consider this report and establish if any acts of impropriety identified herein amount to acts of a criminal conduct in terms of the Prevention and Combating of Corrupt Activities Act, 2004 and if so, pursue criminal investigations against the perpetrators.

(xxii) **MONITORING**

- a. The Premier of the Free State Province must, within **thirty (30)** working days from the date of the issuing of this Report submit the implementation plan to the Public Protector indicating how the remedial action referred to in paragraph 7.2.1 of this Report will be implemented.
- b. The MEC for Free State DARD must, within **thirty (30)** working days from the date of the issuing of this Report submit the implementation plan to the Public Protector indicating how the remedial action referred to in paragraph 7.2.2 of this Report will be implemented.

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1 INTRODUCTION

- 1.1 This is my report in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 8 (1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 This report, specifically the findings therein, are submitted, in terms of section 8 of the Public Protector Act, to the following people:
 - 1.2.1 Hon. Gratitude Magwanishe, the Chairperson of the Portfolio Committee on Justice and Correctional Services;
 - 1.2.2 Hon Honourable Sefora Hixsonia Ntombela, Premier of the Free State Provincial Legislature;
 - 1.2.3 Mr Elias Sekgobelo Magashule, the Secretary General of the African National Congress;
 - 1.2.4 Hon. Mosebenzi Joseph Zwane, the Chairperson of the Portfolio Committee on Transport;
 - 1.2.5 Hon. Motlagomang Grazy Qabathe, the MEC of Social Development, FSPG;
 - 1.2.6 Mr Peter Mbana Thabethe, the former HOD of DARD;
 - 1.2.7 Ms Elizabeth C Rockman, former MEC of Finance, FSPG;
 - 1.2.8 Dr Roy Jankielsohn, the Complainant.

- 1.3 The report relates to an investigation into allegations or suspicion of political involvement in the Vrede Dairy Project by the FSPG, and possible prejudice suffered by the intended beneficiaries of the Project.

2 THE COMPLAINT

- 2.1 On 6 March 2018 the Portfolio Committee on Justice and Correctional Services (the Portfolio Committee), raised concerns relating to political involvement in the Vrede Dairy Project implemented by the FSPG and possible impact on the intended beneficiaries of the Project. It is on the basis of the concerns raised by the Portfolio Committee that I was requested to conduct an investigation focusing on these issues.

- 2.2 Whilst finalising this current investigation, I received a request from Dr Jankielsohn, on 17 June 2020, requesting that I include in the scope of my investigation the issue of the contravention by politicians of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 (PRECCA). He stated as follows:

"It would appear that the former Premier of the Free State, Mr Ace Magashule, and the then MEC for the Department of Agriculture and Rural Development in the Free State, Ms Mamiki Qabathe, and the former MEC for Finance, Ms Elzabe Rockman not only contravened section 34 of Chapter 7 of the PACCA, but aided and abetted what had already been identified as possible corrupt activities by making additional payments to the project after receiving the Accountant General's report and after the termination of the contract.

We therefore kindly request the Office of the Public Protector to include in her final report a determination of the interpretation of section 34 of Chapter 7, as to whether the aforementioned individuals are complicit in terms of the PACCA".

- 2.3 In a subsequent letter of acknowledgement to Dr Jankielsohn's new complaint, I informed him that the issues contained in his complaint relating to PRECCA,

will be taken into consideration in line with the relevant prescripts of the Public Protector Act 23 of 1994.

2.4 In terms of section (1) (a) of the Public Protector Act, the Public Protector shall have the power, 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.

2.5 A preliminary assessment of Dr Jankielsohn's complaint established the following :

2.5.1 Section 34 of PRECCA places a reporting obligation on *"any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed"* an offence mentioned in section 34(1)(a) and (b).

2.5.2 The reporting obligation is limited to section 34(4) which states that for the purposes of section 34(1) *"the following persons hold a position of authority namely -*

(k) the Director-General or head, or equivalent officer, of a national or provincial department;

(l) in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

(m) any public officer in the Senior Management Service of a public body;

(n) any head, rector or principal of a tertiary institution;

(o) the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);

- (p) the executive manager of any bank or other financial institution;*
- (q) any partner in a partnership;*
- (r) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;*
- (s) any other person who is responsible for the overall management and control of the business of an employer; or*
- (t) any person contemplated in paragraphs mentioned above, who has been appointed in an acting or temporary capacity”;*

2.5.3 Based on section 34(4) of PRECCA the Executive Council of the Provincial Government, namely Mr Magashule, Ms Qabathe, and Ms Rockman are not listed as persons who have a reporting obligation in terms of PRECCA.

2.5.4 However acting on the basis of the legal precedence enunciated in the *Mail and Guardian* judgment in the seminal case of ***Public Protector v Mail and Guardian Ltd***², the court held that the Public Protector is not a passive adjudicator between the citizens and the state, relying only upon evidence which is placed before her by the parties. The Supreme Court of Appeal (SCA) held further that the Public Protector should not be bound or be limited to the issues raised for consideration and determination by the parties but should, investigate further and discover the truth and also inspire confidence that the truth has been discovered.

2.5.5 The court further made it clear that the mandate of the Public Protector 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

² (422/10) (2011) ZASCA 108 (1 June 2011).

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. The court emphasized 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.

2.5.6 Although section 34 (4) of PRECCA places no reporting obligations on the Executive Council of the Provincial Government, I have taken a decision to consider the conduct of Mr Magashule, Ms Qabathe and Ms Rockman, in executing their responsibilities entrusted to them in terms of the section 125, 133, 136 and 195 of the Constitution³.

2.6 Whilst about to complete my investigation, the appeal relating to Report 31 of 2018, on an investigation into complaints of maladministration against the Free State Department of Agriculture in respect of non-adherence to Treasury Prescripts and lack of financial control in the administration of the Vrede Integrated Dairy Project, was dismissed by the Constitutional Court on 28 August 2020.

3 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

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

"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;

³

Constitution of the Republic of South Africa

- (b) to report on that conduct; and
- (c) to take appropriate remedial action.”

- 3.3 Section 182(2) of the Constitution further directs that the Public Protector has additional powers and functions prescribed by legislation.
- 3.4 In *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. The Constitutional Court further held that: “*When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences*”.
- 3.5 In the above-mentioned matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others*, the Chief Justice Mogoeng stated the following, when confirming the powers of the Public Protector:
- 3.5.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.5.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (para 67);
- 3.5.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she

is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

- 3.5.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their **nature, context and language**, to determine what course to follow. (para 69);
- 3.5.5 Every complaint requires **a practical or effective remedy** that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);
- 3.5.6 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the **subject-matter of investigation** and the **type of findings made**. (para 71);
- 3.5.7 Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "*action*" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that **she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence**; (para 71(a);
- 3.5.8 **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d));
- 3.5.9 "Appropriate" means nothing less than effective, suitable, proper or **fitting to redress or undo the prejudice, impropriety, unlawful enrichment** or corruption, in a particular case (para 71(e));

- 3.6 In the matter of the ***President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP) ; [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)***, the court held as follows, when confirming the powers of the Public Protector:
- 3.6.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 71 of the judgment);
- 3.6.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the Constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);
- 3.6.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers(paragraph 100 and 101 of the judgment):
- a) Conduct an investigation;
 - b) Report on that conduct; and
 - c) To take remedial action.
- 3.6.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (paragraph 104 of the judgment);
- 3.6.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the report);
- 3.6.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's

observations constitute *prima facie* findings that point to serious misconduct (paragraph 107 and 108 of the Judgment);

3.6.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment);

3.7 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs or an improper or dishonest act by any person in the employ of government at any level;

3.8 The Free State Provincial Government (FSPG) is a provincial department and its conduct falls within the Public Protector's mandate to investigate; and

3.9 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by the Department or any other officials. However, Mr Magashule in his response to the section 7(9) notice issued to him, raised issues pertaining to my jurisdiction to investigate the complaint, in its original form, and as amplified by Dr Jankielsohn, as addressed above, including making any findings against him.

3.10 Mr Magashule argues, amongst others, that this is due to the fact that the events complained of, the complaint itself, and my findings all do or will exceed the statutory two-year limitation on the Public Protector's remit. He stated that this is contrary to section 6(9) of the Public Protector Act, and further that my approach in this matter did not disclose a single reason why his case qualifies as an "*exceptional circumstance*" that may allow me to extend the temporal limitation on my jurisdiction.

3.11 Mr Magashule's argument in this regard is noted and although the exceptional circumstances that would allow me to exercise my discretion to investigate the matter was not detailed in the section 7(9) notice, it should be noted that in applying my discretion to investigate the matter, I considered that the

allegations made, relating to the involvement of politicians in the misuse of public funds, and the prejudice suffered by the beneficiaries which was ostensibly still continuing, and therefore needed to be addressed to finality.

- 3.12 It should further be noted that the exceptional circumstances relating to this investigation were addressed in statements issued by both the Portfolio Committee on Justice and myself, the importance of investigating the serious issues raised by the Portfolio Committee on Justice. I could also not ignore the continued prejudice suffered by the impoverished Vrede community, for benefit the Project intended.
- 3.13 Mr Magashule, in his interview with me on 18 October 2018 did not raise any objections to my jurisdiction in the investigation of this matter.

4 THE INVESTIGATION

4.1 The Investigation Process

- 4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.
- 4.1.3 The investigation process included public hearings, interviews, analysis of relevant documentation, research, and the consideration and application of relevant laws, regulatory framework and jurisprudence.
- 4.1.4 During the investigation process, notices in terms of section 7(9)(a) of the Public Protector Act, dated 9 September 2020, were issued to Messrs Magashule, Zwane and Thabethe as well as Mesd Qabathe and Rockman.

- 4.1.5 Responses to the section 7(9) notice both written as well oral submissions from the meeting held with Mr Zwane on 25 November 2020, were considered in this report.

4.2 Approach to the investigation

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?

4.2.1.4 In the event of maladministration or impropriety, what would it take to remedy the wrong or to place the Complainant as close as possible to where he/she would have been but for the maladministration or improper conduct?

4.2.1.5 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. In this particular case, the factual enquiry principally focused on the issues raised in the complaint.

4.2.1.6 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been complied with by the Department, to prevent any irregularities, maladministration and improper conduct.

4.2.1.7 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct or maladministration.

4.3 On analysis of the complaint, the following issues were identified to inform and focus the investigation:

- 4.3.1 Whether there was any political involvement in the Vrede Dairy Project by the Free State Provincial Government EXCO, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994; and
- 4.3.2 Whether there was possible prejudice suffered by the intended beneficiaries of the Vrede Dairy Project, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994.

4.4 The key sources of information

4.4.1 Documents received and considered:-

- 4.4.1.1 Complaint received from Dr Jankielsohn on 17 June 2020;
- 4.4.1.2 National Treasury Accountant General Report Titled "*National Treasury Report on an investigation into the Vrede Project*";
- 4.4.1.3 An unsigned memorandum submitted by Mr Zwane to EXCO dated 13 June 2012;
- 4.4.1.4 An copy of the EXCO Resolution 62/2012 signed on 13 June 2012;
- 4.4.1.5 Response from Mr Magashule to the Public Protector on 11 October 2018;
- 4.4.1.6 Copy of the approval for the trip to India which was taken by Mr Thabethe and Mr Narayan signed on the 28 February 2012 by Mr Magashule;
- 4.4.1.7 Information obtained from Organisation Undoing Tax Abuse (OUTA) relating to the #GuptaLeaks;

- 4.4.1.8 Information obtained from the Department of Home Affairs relating to Mr Zwane's movement control;
- 4.4.1.9 Copy of the appointment letter addressed to Mr Narayan's signed by Mr Magashule on 29 February 2012 ;
- 4.4.1.10 Unsigned copy of the lease agreement entered into between the commercial farmers and Phumelela Municipality received from Mr Motaung;
- 4.4.1.11 Unsigned copy of minutes of the Special Council Meeting of the Phumelela Municipality held on 12 June 2012 wherein Vrede Dairy Project was presented to the Municipal Council;
- 4.4.1.12 Unsigned copy of minutes of the Council meeting held on 03 July 2012 wherein Council adopted the Resolution relating to the Vrede Dairy Project;
- 4.4.1.13 Unsigned copy of the minutes of the Council meetings held on 30 August 2012 and copy of the minutes of the meeting held on 02 October 2012 signed by the Speaker of Council, Councilor TR Zwane on 06 November 2012;
- 4.4.1.14 Quotation for trip to India from Astra Travel submitted by Mr Thabethe dated 24 February 2012;
- 4.4.1.15 Delegation of authority assigned to Mr Thabethe by Mr Zwane dated 12 September 2012;
- 4.4.1.16 Delegation of authority assigned to Mr Zwane by Mr Magashule dated 12 September 2012;
- 4.4.1.17 Ms. Rockman's affidavit and supporting documentation submitted to the Commission of Inquiry into State Capture;
- 4.4.1.18 Ms Rockman's transcript from her interview held at the Commission of Inquiry into State Capture;
- 4.4.1.19 Email correspondence between Mr Venter and Ms Rockman on the 18 June 2012;

- 4.4.1.20 Letter dated 19 June 2012 sent by Adv. KJC Ditira making reference to a consultation between Provincial Treasury and Legal Services that took place on 18 June 2012 wherein he raised concerns on the procurement process;
- 4.4.1.21 Correspondence dated 25 October 2012 from the Director-General (DG) of National Treasury outlining various concerns regarding "*Legislative compliance in respect of the Vrede Integrated Dairy*";
- 4.4.1.22 Response from Chief Executive Officer (CEO) of Provincial Treasury to the DG National Treasury dated 14 November 2012 outlining the recommendations of the Treasury Committee;
- 4.4.1.23 A copy of the letter dated 21 August 2013 titled "*RE: WITHHOLDING OF 2ND TRANCHE OF CASP OF THE FREE STATE PROVINCE*" from DAFF addressed to Mr Thabethe;
- 4.4.1.24 Correspondence from the CEO Provincial Treasury to the DG of Department of Agriculture, Forestry and Fisheries (DAFF) dated 26 November 2013 relating to the status of the forensic investigation and continued funding possibilities;
- 4.4.1.25 Response from the DG of DAFF to CEO Provincial Treasury;
- 4.4.1.26 Open source search for CIPC information relating to: Linkway Trading Registration Number 2007/009012/07, Oakbay Investments Registration Number 2006/017915/07, Sunbay Trading Enterprise Number 2011/000591/07 and Siyabuselela Trading Enterprise Registration Number 2822011/087871/23;
- 4.4.1.27 Independent information obtained regarding the flow of funds from Estina to other entities including Oakbay Investments and Linkway Trading;
- 4.4.1.28 Affidavit obtained from Mr Gugile Ernest Nkwinti, former Minister DAFF dated 08 October 2019;

4.4.1.29 Affidavit obtained from Ms Aletta Catharina Meyer, Project Coordinator DARD signed 19 July 2019;

4.4.1.30 Affidavit obtained from Ms Tina Joemat-Pettersson, former Minister DAFF dated 18 November 2019;

4.4.1.31 Correspondence from Malatji & co representing Minister Pravin Gordhan dated 13 September 2019;

4.4.1.32 *"CANCELLATION OF AGREEMENT DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT AND YOURSELVES"* to Estina dated 24 April 2014;

4.4.1.33 Letter from Estina's Managing Director to DARD dated 25 April 2014;

4.4.1.34 Undated and unsigned memo from DARD was submitted to EXCO to consider the cancellation and transfer the Vrede Dairy Project to FDC;

4.4.1.35 The agreement concluded between DARD and Estina on 05 July 2012;

4.4.1.36 Annual Performance Plan 2012/2013, 2013/2014, 2014/2015, 2015/2016, 2016/2017, 2017/2018 and 2018/2019 respectively;

4.4.1.37 Budget process, priorities and allocations for 2015/2016 and 2016/17 financial years respectively;

4.4.1.38 Auditor-General's summary of the audit concerns at DARD on 23 July 2016;

4.4.1.39 Basic Criteria for the Vrede Dairy Beneficiaries document;

4.4.1.40 Undated Affidavit submitted by Mr Jun David Mahlaba to the State Capture Commission of Inquiry;

4.4.1.41 Undated Beneficiary agreement entered into between DARD and Mr Jun David Mahlaba on behalf of the beneficiaries;

4.4.2 Correspondence sent and received:

- 4.4.2.1 Letter of acknowledgement sent from the Public Protector to Dr Jankielsohn;
- 4.4.2.2 Letter sent on 02 July 2019 to Hon Sefora Hixsonia Ntombela, the Premier of the Free State Provincial Legislature following the interview with Mr Motaung;
- 4.4.2.3 Response from the Director General, Office of the Premier on 16 June 2019;
- 4.4.2.4 Letters to the former EXCO members of the Free State Provincial Government;
- 4.4.2.5 Letter from the Premier of the Free State Province, Ms SH Ntombela, MPL dated 10 December 2020; and
- 4.4.2.6 Letter from Ms LP Mahasa, MPL dated 09 December 2020.

4.4.3 Subpoenas issued:

4.4.4 Notices issued and responses received:

- 4.4.4.1 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Mr Elias Magashule the former Premier of the FSPG, dated 9 September 2020;
- 4.4.4.2 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Ms Elizabeth Rockman former MEC Finance in the FSPG, dated 9 September 2020;
- 4.4.4.3 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Hon. Qabathe, the former MEC Agriculture in the FSPG, dated 9 September 2020;
- 4.4.4.4 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Mr Mosebenzi Zwane the former MEC Agriculture and Rural Development, FSPG dated 9 September 2020;
- 4.4.4.5 Notice issued in terms of section 7(9)(a) of the Public Protector Act to Mr Peter Thabethe the former HOD, DARD dated 9 September 2020;

- 4.4.4.6 Response to the section 7(9) notice from Mr Elias Magashule the former Premier of the FSPG, dated 03 November 2020;
- 4.4.4.7 Response to the section 7(9) notice from Ms Elizabeth Rockman former MEC for Finance in the FSPG, dated 17 November 2020;
- 4.4.4.8 Response to the section 7(9) notice from Hon. Qabathe, the former MEC Agriculture in the FSPG, dated 09 November 2020;
- 4.4.4.9 Responses to the section 7(9) notice from Mr Mosebenzi Zwane the former MEC Agriculture and Rural Development, FSPG dated 25 November 2020 and 01 December 2020;
- 4.4.4.10 Response to the section 7(9) notice from Mr Peter Thabethe the former HOD, DARD dated 23 September 2020;

Interviews Conducted:

- 4.4.4.11 Interview with the Former Premier of the Free State Provincial Government, Mr Magashule on 18 October 2018;
- 4.4.4.12 Interviews with the beneficiaries on 25 April 2019 in Vrede;
- 4.4.4.13 Interview with Tlokotsi John Motaung, the Executive Mayor of Phumelela Local Municipality on 24 June 2019;
- 4.4.4.14 Interview with Mr Zwane, the former MEC, Agriculture and Rural Development, FSPG, on 28 June 2019;
- 4.4.4.15 Interview with Ms Mamiki Qabathe, erstwhile MEC, Agriculture and Rural Development, FSPG on 01 July 2019;
- 4.4.4.16 Interview with Mr Peter Thabethe, the former HOD, DARD, on 02 August 2019;
- 4.4.4.17 Interview with Ms Rockman former MEC, Finance, FSPG on 28 November 2019; and

4.4.4.18 Interview conducted with Mr Zwane on 25 November 2020 regarding his response to the section 7(9) notice.

4.4.5 Legislation and other prescripts:

4.4.5.1 Prevention and Combating of Corrupt Activities Act, 12 of 2004;

4.4.5.2 Public Protector Act, 23 of 1994;

4.4.5.3 The Constitution of the Republic of South Africa, 1996;

4.4.5.4 The Public Finance Management Act, 1 of 1999;

4.4.5.5 <https://www.nda.agric.za/docs/CASP/casp.htm> relating to the Comprehensive Agricultural Support Programme;

4.4.5.6 The White Paper on Transforming Public Service Delivery issued by the Government in 1997.

4.4.6 Case law:

4.4.6.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618;

4.4.6.2 *President of the Republic of South Africa v Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All S A 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017);

4.4.6.3 *Public Protector v Mail and Guardian Ltd* (422/10) (2011) ZASCA 108 (1 June 2011).

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

5.1 Whether there was any political involvement in the Vrede Dairy Project by the Free State Provincial Government EXCO, and if so whether such conduct amounts to maladministration and improper conduct in terms of section 6(4) of the Public Protector Act, 1994

Common cause issues

- 5.1.1 It is common cause that Estina (Pty) Ltd (Estina) was appointed by the DARD in the Free State Province as the implementing agent for the Vrede Dairy Project.
- 5.1.2 It is also common cause that the National Treasury Accountant-General (NTAG) conducted an investigation into the Vrede Dairy Farm Project.
- 5.1.3 According to the “*National Treasury Report on an Investigation into the Vrede Project*” (the NTAG Report), in August 2013, National Treasury Chief Procurement Officer requested the National Treasury’s Specialised Audit Services to investigate allegation of procurement irregularities in the appointment of Estina by the DARD. This investigation was prompted by an article published by the Mail and Guardian newspaper on 10 June 2013.
- 5.1.4 The NTAG Report was submitted to Mr Magashule in February 2014 as the then Premier of the FSPG for consideration.
- 5.1.5 It is further common cause that the Executive Council in the FSPG proceeded to approve the appropriation of further funds for payments to Estina even after the receipt of the NTAG Report by Mr Magashule and cancellation of the contract between DARD and Estina.

Issues in dispute

5.1.6 The issues for my determination are:

5.1.6.1 Whether or not there was any political involvement in conception and implementation of the Vrede Dairy Project by the Executive Council in the FSPG.

(Part A)

5.1.6.2 Whether or not the Executive Council in the FSPG improperly approved the appropriation of further funds for payments to Estina even after the receipt of the NTAG Report by Mr Magashule and cancellation of the contract between DARD and Estina. **(Part B)**

PART A

5.1.7 In order to make a determination on the issue relating to alleged political involvement, I interviewed former officials from the FSPG regarding their role in the Vrede Dairy Project as well as the intended beneficiaries of the Project. I further obtained information and evidence from the former officials, evidence of the NTAG investigation as well as information and evidence from the testimony led by various witnesses in the Commission of Inquiry into State Capture (the Commission), which are detailed below.

Interview with the former Premier of the Free State Provincial Government, Mr Enoch Ace Magashule

5.1.8 On 18 October 2018 I interviewed Mr Magashule the former Premier of the FSPG regarding the above matter.

5.1.9 During the interview I questioned Mr Magashule as to whether he was involved in the planning and implementation of the Vrede Dairy Project, to which he replied that he was “*not at all*” involved.

- 5.1.10 He indicated that the Vrede Dairy Project was brought and presented to the EXCO by the DARD and the Department of Finance in the Province, during which time Mr Zwane was the MEC for DARD and Mr Seiso Mohai (Mr Mohai) who was the MEC for Finance. He stated that the MEC for DARD supported by the MEC for Finance made a presentation to EXCO and after discussions EXCO adopted the Vrede Dairy Project as they were that *"it's gonna be people who also put money and we will put money and they were also going to work with the Department of Agriculture National."*
- 5.1.11 He stated that, at EXCO meetings, in the main they would have the MECs supported by their relevant HODs.
- 5.1.12 An unsigned copy of the memorandum submitted by Mr Zwane to EXCO and the Resolutions adopted is shown below:



agriculture & rural development
Department of
Agriculture and Rural Development
FREE STATE PROVINCE

Cabinet Reference No:

00001556

FREE STATE EXECUTIVE COUNCIL MEMORANDUM:

VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT

**SUBJECT: VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT:
PROPOSED INTEGRATION OF DAIRY AND OTHER ELEMENTS
OF PRODUCTION AND PROCESSING WITH EMPHASIS ON
VALUE-ADDITION AND BENEFICIATION.**

1. PURPOSE

To request for allocation of additional funds to create a large scale integrated self-sustainable Dairy Project in the Eastern Free State for the benefit black farmers and to build a self-sustainable business model that will open up employment opportunities for farmers at grass-root level and fuel economic growth in the Province.

2. BACKGROUND

2.2. The Department of Agriculture and Rural Development, in line with the vision of the "Mohoma Mobung" initiative, has identified the implementation of a Dairy Project in Vrede as its flagship Project. To this end DoA had recently commissioned a detailed study which validates the implementation of such a project. The DoA subsequently commissioned a high-level team to visit India, the largest milk-producer in the world, to explore the possibilities of attracting investments in this area. The department met with PARAS Dairy, the largest private milk producer in India and have agreed in principle to work with them on this prestigious project.

Dairying is an important source of subsidiary income to small/marginal farmers and agricultural labourers. Since agriculture is mostly seasonal, there is a possibility of finding employment throughout the year for many persons through dairy farming. The dairy will also provide employment throughout the year. The main beneficiaries of dairy programme are small/marginal farmers and landless labourers

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3. DISCUSSION

The department of Agriculture and Rural Development is setting up of an Integrated Dairy Project at Vrede in the Eastern Free State under the Mohoma Mobung initiative as outlined the concept document.

A phased investment by partners in the project is based on a total projected investment of R570m (five hundred and seventy million rand). The phased implementation of the above Dairy Project is based on an Initial Grant of R30m (thirty million rand) by the Department whereby a total of R114 million is required per year. The department has a shortfall of R84 million per year over the next three years to implement this high level project. This will add up to a total committed Grant of R340m (three hundred million rand) over a period of three years.

The following high-level outcomes will be produced and delivered by the end of the project:

DAIRY INFRASTRUCTURE

The Department have identified 4,400 Hectares of Municipal Land in Phumelela Local Municipality in Vrede where the project will be established. Procure and setup a Dairy farm infrastructure for 500 Cows in-Dairy at the location identified by the Department in Vrede. the dairy construction will include amongst others the Dairy Parlour, Feed Storage, Feed-Lots and Land cultivation for Feed.

COMMUNITY DAIRY

Procure and facilitate the distribution of 500 Cows to members of the Community who will be identified by the Department. Identification of 100 members of the Community who will receive 5 Cows each as donation from the project. Community Milking Centres to be setup with easy access to members and will members will have access to Feed, Vet Services and Training. The scheme Members will be paid for milk from the cows donated to them which will be collected by the milk processing plant at the milking centres.

PROCESSING PLANT

State of the Art ISO 9001-2000 and HACCP Certified Facility to be set up at the identified site. The initial processing capacity of 100,000 litres per day will be constructed initial targeted milk intake of 40,000 litres per day. Products to include Liquid Milk, UHT Milk, Cheese and other products

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PRODUCT MARKETING & SALES

Products will be branded "Mahoma Mobung" and aggressive marketing campaigns using celebrities and Sports icons as brand ambassadors. Supply of Bulk Milk to Hospitals and UHT Milk to Schools will form part of the marketing strategy.

MANAGEMENT

The shareholding Company will be structured according to the Agri-BEE norms stipulated by Government and Estina/Paras will be responsible for Project implementation and will also be responsible for the operational management of the Project during its life cycle.

DEPLOYMENT MODEL

It is envisaged that the Project will be split into two phases. Phase 1 will involve the deployment of the Dairy and Community Dairy Projects and is expected to be complete within 1 year of commencement. Phase 2 will involve the deployment of the Processing Plant and is expected to be complete within 2 years of commencement.

FINANCIAL MODEL

The total cost of the Project is estimated at R570 million. The initial investment for the establishment of the Dairy will be through Government funding of R114 million per year and the investment for the establishment of the Processing plant will be funded by Estina/Paras.

The department is requested to commit financially on the operations of the Dairy over a period of three years. Detailed technical Plan is being prepared and will be submitted to the Department.

OVERARCHING BENEFITS FOR THE PROVINCE AND THE NATION

- In line with the Agri-BEE business norms stipulated by Government, Estina proposes that a new Special Purpose vehicle (SPV) be created in which ESTINA will hold a 49% share while the remaining 51% shares will be distributed to selected Grant recipients.
- Estina will provide the required capital injection as well as the technical know-how, which will be provided by Paras.
- It is envisaged that this integrated agri-business project will become a centre of excellence for the entire Free State and even the neighbouring Provinces.

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- Eventually this Project will provide On-site, in-service practical agricultural training for aspirant farmers to equip them for the profitable operation and management of their own DARD projects, albeit:
 - Primary production of livestock and agricultural produce, or
 - Value-adding and beneficiation to livestock and agricultural produce
- Basic business, financial and management skills training and in-service application
- Cooperative processing, value-adding and beneficiation of livestock and agricultural produce for all DARD projects in the Free State
- Cooperative marketing facilities into the major consumer markets of South and Southern Africa for all milk projects in the Free State thus creating the necessary critical mass and economies of scale which will unlock additional financial benefit for project participants

DETAILED PROJECT COSTING FOR A DAIRY UNIT:

FIXED & WORKING CAPITAL	UNITS	BUDGET VALUE
Irrigation & mechanisation	1,000 ha	R45,000,000
Rain fed mechanisation	1,350 ha @ R20,000	R32,000,000
Dairy cattle – "Cows in Milk" (CIM)	500 ea @ R25,000	R12,500,000
Dairy cattle – Rest of herd (Followers)	500 ea @ R25,000	R12,500,000
Dairy bulls/A.I.		R500,000
Milking parlour – 1,000 CIM unit	1,000 ea @ R5,000	R5,000,000
Bulk cooling tanks		R25,500,000
Dairy products manufacturing		R60,000,000
Pasteurizer		R60,000,000
UHT Long Life Milk PLant		R149,000,000
Other dairy equipment		R15,000,000
Feedlot		R14,000,000

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Grain & oilseed mill		R19,000,000
Animal feed plant		R10,000,000
IP/Working Capital Requirement		R40,000,000
Total Funding Required	Excluding VAT	R69,000,000
Total Funding Required	Including VAT	R870,000,000
Proposed Source of funding:		
Capital Injection/IP/Equipment etc	ESTINA / PARAS	R228,000,000
Grants of R114m/yr for 3 Years	DoARD	R342,000,000

5. ADDITIONAL FUNDING REQUIRED FOR CURRENT FINANCIAL YEAR

ADDITIONAL FUNDING REQUIRED CURRENT FINANCIAL YEAR		
Total Funding Required	Source	R442,000,000
Current F/Y Capital Injection	DARD	R30,000,000
Requested funding	Treasury	R84,000,000

6. CONCLUSION

The development of customised solutions is depended on the ability, to plan and design, associated costs, which support efficiently, delivery of projects timeously, that understanding puts Paras/ ESTINA PTY LTD/DARD partnership to be at the forefront of providing that solution.

7. RECOMMENDATIONS

It is recommended that the Executive Council;

- a) Considers and approves the implementation of the proposed Integrated Vrede Dairy agri-business Project.

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- b) Supports the sourcing of additional funding of R84 million for this current FY from the province.

SUBMITTED BY

Mr M Zwane
MEC for AGRICULTURE AND RURAL DEVELOPMENT

DATE: _____

NOTED AND APPROVED by EXCO:

EXECUTIVE COUNCIL

DATE: _____

TO: The Secretary: Free State Executive Council

Please place an appropriate item on the agenda of the Executive Council and distribute copies of this Memorandum to the respective Members of the Executive Council for consideration.

Mr. E.S. Magashule
Free State Premier

Date _____

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Exco Resolution:

DRAFT PROPOSED EXCO RESOLUTION

CABINET MEETING _____ RESOLUTION NO. _____ /2012

SUBJECT:

SUBJECT:
**VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT: PROPOSED
INTEGRATION OF DAIRY AND OTHER ELEMENTS OF PRODUCTION AND
PROCESSING WITH EMPHASIS ON VALUE-ADDITION AND BENEFICIATION.**

(File No. /2012)

(Department of Agriculture)

1. **RESOLVED** that approval be granted for additional funding to be allocated for the Vrede Integrated dairy agri-business project.

SECRETARY: EXECUTIVE COUNCIL

DATE _____

PREMIER: FREE STATE PROVINCE

DATE _____

**FREE STATE PROVINCE
EXECUTIVE COUNCIL
RESOLUTION**



PROVINSIE VRYSTAAT
UITVOERENDE RAAD
RESLUIT

CABINET MEETING: 13.08.2012

RESOLUTION NO. 62/2012

**SUBJECT: VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT; PROPOSED
INTEGRATION OF DAIRY AND OTHER ELEMENTS OF PRODUCTION AND
PROCESSING WITH EMPHASIS ON VALUE-ADDITION AND BENEFICIATION**

(Department of Agriculture and Rural Development)

- a) The Executive Council approved the following recommendations;
- i) The Implementation of the proposed Integrated Vrede Dairy agri-business project.
- ii) Supports the Sourcing of additional funding of R84 million for this current FY from the province.
- b) The Executive Council further agreed that:
- i) Where possible the department should meet the costs and will be later refunded and engage other relevant departments.
- ii) The matter be further discussed in the Treasury Committee as a matter of urgency.
- iii) FDC should also play a role, especially from the business point of view.
- iv) For the next 3 years Department of Agriculture will have to pay R113 000.

SECRETARY, EXECUTIVE COUNCIL

DATE: 13/06/2012

MEETING: URBAN & RURAL DEVELOPMENT

DATE: 6/6/2012

SECRETARY

DATE: 13/6/2012



5.1.13 In terms of Mohoma Mobung Project, Mr Magashule indicated that the Vrede Dairy Project was intended to be a big farm where Black farmers (small and emerging) were going to participate and become beneficiaries, and at that stage they had received the concept and they approved the concept as it

made sense and was going to compete with Nestle which was around Harrissmith. It was going to be massive and will still be massive if it continues. It was a good project.

5.1.14 I questioned Mr Magashule on the high level team that visited India and he indicated that he could not remember who had undertaken the trip, but he knew that if the MEC or Head of Department (HOD) had gone and it was an international trip, the approval would have had to have come to him.

5.1.15 He stated that as the Premier, he chaired the EXCO meetings and listened to the debates and engagements. He also directs the meetings and participates, clarifies and make inputs. All of them as members collectively approved the decision to support the Vrede Dairy Project. He stated that after EXCO he would announce the Vrede Dairy Project at the State of the Province Address after discussing with different Departments. Mr Magashule further stated that he had no knowledge of Mr Kamal Vasram (Mr Vasram).

5.1.16 I questioned Mr Magashule on the relationship between Estina and Paras and if the relationship was genuine. He stated that they were told about Paras and Estina and they accepted the Vrede Dairy Project concept and people said they would visit and then they were told that Paras was the biggest milk producing company in India, so the project will be successful. He stated that he had no knowledge if the company was Indian or South African. He further stated that at a very late stage, when the Vrede Dairy Project was already running, he became aware, through the report of National Treasury, that the Project was only funded by the DARD and was not a Public-Private Partnership (PPP), as they were told that both parties would invest.

5.1.17 Regarding the role played by the Legal Division of Director General, in the Premier's office, Mr Magashule stated that the Legal Division would interact with the DARD directly, once an approval was received from EXCO.

5.1.18 He further stated that the report from Accountant General (NTAG Report) stating that the Project was not a PPP, was "*only when it was exposed as such, Treasury never came to them*". Mr Magashule stated that after receiving

the report from NTAG, the Director General and Legal Division in the Premier's office, dealt with the report. He stated that the report stated that it is not conclusive, and they were still busy dealing with some things. As such they could not take any steps because that report was very contradictory. They could therefore not suspend anybody on an inconclusive report and legally they were advised that you can't suspend anybody on an inconclusive report.

- 5.1.19 He further stated that once he received the report that was inconclusive and the matter was already with the Public Protector and therefore could not act until there was a report from the Public Protector.
- 5.1.20 I questioned Mr Magashule on the media reports that Estina belonged to the Gupta family, and if he took any steps to verify the accuracy of such reports, to which he stated that he consulted the MECs and the Department and for him *"they couldn't link the Guptas into the project"*. No further investigations were done.
- 5.1.21 With regards to the beneficiaries Mr Magashule stated that they knew that the Project was aimed at developing small emerging farmers of that area. Mr Magashule further stated that he never met with the beneficiaries and was not aware as to how they were invited to participate in the Vrede Dairy Project. He indicated that he visited the Vrede Dairy Project once at its initial stage and found people who were working there and they were told that they (the workers) are locals. He re-iterated that he never met the farmers and/or beneficiaries or addressed them in the community.
- 5.1.22 When questioned about the person that went to India who was not a government employee, he stated that in the State of the Province address he appointed an Advisory Council and Mr Ashok Narayan (Mr Narayan) was appointed on the Advisory Council although majority of the members abandoned the idea, he retained his special advisors.
- 5.1.23 Mr Magashule further submitted a written response on 11 October 2018 and documents in respect of the matter as follows:

5.1.23.1 In his response dated 11 October 2018, Mr Magashule stated that the members of the “*high-level team*” that visited India were not identified in the memorandum submitted to EXCO on 13 June 2012, and that although he did not have personal knowledge of who the members of this team were, he accepted that it referred to a visit to India by Mr Thabethe and Mr Narayan. Mr Narayan was a member of the Premier’s Advisory Council who he appointed on 29 February 2012 and subsequently so announced in the Budget Vote Speech of the Office of the Premier on 29 March 2012.

5.1.23.2 He stated that Mr Narayan did not accompany the then HOD on his insistence and that he might have been invited to be part of the delegation as a result of his knowledge of India.

5.1.23.3 He further stated that he received a submission requesting approval for the Mr Thabethe and Mr Narayan to attend a strategic meeting in India in support of the expansion of dairy farming in the Free State, and that he approved this submission on the recommendation of the then MEC of DARD. He indicated in his response that the Premier approves all trips outside the country and that delegations are determined by the relevant MECs.

5.1.23.4 Below is a copy of the approval for the trip:



TO : **THE PREMIER**
HON. E.S MAGASHULE
FREE STATE PROVINCIAL GOVERNMENT

FROM : **Mr. M.P THABETHE**
HEAD OF DEPARTMENT FOR AGRICULTURE
DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT

SUBJECT: **REQUEST FOR APPROVAL FOR HEAD OF DEPARTMENT FOR AGRICULTURE MR. P.M THABETHE AND ASHOK NARAYANA TO ATTEND A STRATEGIC MEETING WITH A STRATEGIC PARTNER IN INDIA FROM THE 29 FEBRUARY TO THE 04TH OF MARCH 2012 IN SUPPORT OF THE EXPANSION OF DAIRY FARMING IN THE FREE STATE.**

1. PURPOSE

- 1.1. To request approval from the Honourable Premier to allow HOD for Agriculture **Mr. P.M THABETHE** and Advisor to the Premier **Mr. ASHOK NARAYANA** to undertake a trip to visit a dairy farm and attend a meeting with a strategic partner in India from the 29 - 04th of March 2012 in support of the expansion of dairy farming in the Free State.

2. MOTIVATION

- 2.1. Provincial Treasury received the final preliminary allocation letter from National Treasury on the 12th of December 2011. An amount of R1.000 million in 2012/13, R0.873 million in 2013/14 and R0.873 million in 2014/15 has been allocated additional to your baseline to cover carry-through costs on improvement in conditions of services.
- 2.2. The Department of Agriculture and Rural Development in response to the State of the Province address by the Free State Premier has identified dairy farming and infrastructure development for Agriculture support and Rural Development. Linked to the SOPA the Department will develop a dairy parlour and milk processing plants in Vrede, Setsoto Integrated Project and QwaQwa those projects are expected to create additional jobs for the people of the Free State.
- 2.3. The allocated budget of R17 million for the completion of three dairy plans would only be sufficient to cover the initiation phases of the project hence there is a need for a strategic partner to partner the Department for the completion of the projects within the specified period to comprehensively cover the value chain in terms of markets, further inputs and other unintended occurrences.

3. FINANCIAL IMPLICATIONS

3.1. The department will carry the travelling costs (See Annexure A)

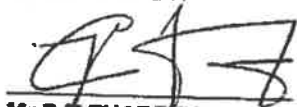
Names	Cost	Total
HOD: Mr PM Thabethe	R 51,060.00 return trip *	R 105,1900
Mr Ashok Narayan	R 54,130.00 return trip *	
S&T and other expenses	Will be calculated upon return	R 00.00

* Including travel insurance, transfers, and accommodation

4. RECOMMENDATIONS

4.1. It is recommended that approval be granted by the Honourable Premier for Mr. P.M Thabethe and Mr. Ashok Narayana to undertake a trip to New Delhi, India on the 29th February to the 04th March 2012.

SUBMITTED BY:



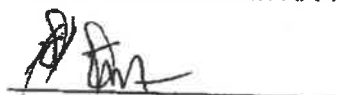
Mr P.M THABETHE
 HEAD OF AGRICULTURE
 DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT
 DATE: 24/02/2012

RECOMMENDED/NOT RECOMMENDED BY:

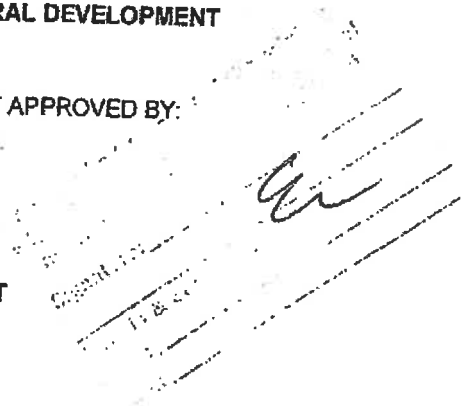


Mr M. ZWANE
 MEMBER OF EXECUTIVE COUNCIL
 DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT
 DATE: ____/____/2012

RECOMMENDATION 4.1 APPROVED/NOT APPROVED BY:



HON. E.S MAGASHULE
 THE PREMIER
 FREE STATE PROVINCIAL GOVERNMENT
 DATE: 28/02/2012




5.1.24 Mr Magashule provided me with a copy of a letter dated 29 February 2012 that he issued to Mr Narayan, wherein Mr Narayan was informed of his

appointment on Mr Magashule's Advisory Council. The letter is indicated below:



Mr Ashok Narayan
34A Kings Road
BEDFORDVIEW
2007

Per E Mail

Dear Mr Narayan

RE: PREMIER'S ADVISORY COUNCIL

Our previous discussions with regard to the appointment of my Advisory Council refers. On 29th March 2012, at my Budget Vote Speech, I will be announcing the names of the members of my Advisory Council.

I have decided to appoint an Advisory Council as it is important that government listens to a variety of views in order to develop the best policies that would take the Free State Province forward in terms of policy development and improved service delivery.

This Advisory Council will be structured such that it is able to make the necessary inputs into government planning processes while at the same time assisting with monitoring and evaluating of government interventions. Skilled and/or knowledgeable individuals from the Province and across the country are being invited to serve on the Advisory Council.

It is therefore my pleasure, on behalf of the Free State Provincial Government, to formally appoint you as a member of my Advisory Council with effect 1st March 2012.

I look forward to working with you in your capacity as an ICT and Project Management expert on my Advisory Council.

Sincerely

E.S. MAGASHULE MP
PREMIER: FREE STATE

DATE: 29th February 2012
PREMIER (2012) 600 0000000000

The Premier of the Free State
Private Bag 200000, Bloemfontein 9600
* Floor, City Square and Margaret Street 10
0512 403 0700 Fax: 0512 403 0701
E mail

Interview with Mr Zwane, the former MEC for Agriculture and Rural Development.

- 5.1.25 On 28 June 2019 I interviewed Mr Zwane the former MEC for DARD, wherein he was subpoenaed to appear before me in respect of the matter under investigation. Mr Zwane's submissions during the interview were made under oath.
- 5.1.26 I questioned Mr Zwane regarding his role in the Vrede Dairy Project as the former MEC for DARD in the FSPG. Mr Zwane stated that the tabling of the budget in 2012 was preceded by a number of consultations with parties, including a number of opposition parties including DA, Freedom Front Plus (FFP) and Congress of the People (Cope) about the initiative.
- 5.1.27 The initiative came after a meeting with the EXCO, where agricultural programs like Ilima /Letsema would assist Black farmers from developing sustainable agricultural skills with amounts between R50k and R200k.
- 5.1.28 He indicated that he was previously the MEC for Human Settlements in the Province and during February/ March 2011 he was transferred and appointed the MEC for DARD. He stated that during that time they were involved in discussions on how to empower Africans, in particular to try and place them at the level with other races and that finally they came with up with the Mohoma Mobung Project which was part of his budget speech as one of the full value chain projects, presented to EXCO and approved by EXCO and the Provincial Legislature.
- 5.1.29 He stated that when the project was approved it was not approved for a particular area, and they had to look for an area and a Municipality that could help them and cooperate by availing land and what was needed.
- 5.1.30 In terms of the research that was conducted for the Vrede Dairy Project, Mr Zwane stated that, one of the areas that had dairies that were collapsing was an area called Phumelela in the Thabo Mofutsanyana Municipality. He indicated that according to his recollection it had 54 small dairies. He stated

that they engaged with Phumelela Municipality (The Municipality) earnestly around June to December 2012 and it was finally agreed that the project will go to Vrede, as they acquired the land there.

- 5.1.31 Mr Zwane stated that the Department (DARD) was given a mandate to seek suitable places and the Department therefore agreed with the Municipality on the implementation of the project in Vrede. Engagements commenced with the Municipal Council (Council), which also consisted of different political parties and it was approved at the level of Municipal EXCO. Mr Thabethe was part of one meeting with Council wherein he introduced the idea of the Vrede Dairy Project. The Department officials thereafter commenced with the project.
- 5.1.32 I questioned Mr Zwane on the whether a feasibility study was done for the Project, to which he indicated that according to his knowledge some research was done but a thorough feasibility study was not conducted.
- 5.1.33 In respect of the beneficiaries, Mr Zwane stated that the Department had to identify beneficiaries as the idea was to find small farmers, already in the area, not only Vrede but also Memel, Warden and Roadside as part of the areas of Phumelela. He further stated that the idea was to tell farmers, *"you have these cows, you are using to milk, here is a project, this project as it starts we will share will you 5 cows and during the process from the money you earn can purchase your own cows for milking.* The beneficiaries were to earn 51 % of the Vrede Dairy Project.
- 5.1.34 He stated that with the help of the Municipality it was announced that the Department was looking for beneficiaries and meetings were held with beneficiaries to explain such. Mr Zwane explained further that he was part of one meeting in Vrede to introduce the Project to the potential beneficiaries. Other meetings were held by the Department who continued engagements with the farmers that were willing to be part of the Project, and take the Project forward. He indicated that according to his recollection the engagements continued up to December 2012 and that the Project started in earnest in

2013. He further stated that in March 2013 he moved from the DARD to the Department of Economic Development in the Province.

- 5.1.35 On the issue of the land and how it was acquired, Mr Zwane stated that he was not directly involved, but had knowledge of some facts thereto. He stated that he knew that the land belonged to a Trust called Krynauswslust Trust under the Municipality. The trust was engaged to avail part of the land for this Project that was beneficial to the Municipality and the farmers around the area. He stated that he was not in the Department when the land was transferred.
- 5.1.36 Regarding the amount that was allocated for the Project, Mr Zwane stated that the total amount was to be around R500 million. It was budgeted from grant funding from National Treasury which was consolidated from the other smaller projects that were to take place over a multi financial year project.
- 5.1.37 Regarding the benefits that the intended beneficiaries were to derive from the Project, Mr Zwane stated that the beneficiaries were going to benefit from the sale of the milk to the local businesses and community. He further stated that the Project was not only about the milk that was to be sold, but if the Project realised its full circle, by-products such as yoghurt, cheese would be manufactured on site. The Project was to realise the milking of about 1000 cows. He stated that he never told farmers to sell their cows, as the engagement was to introduce the Project to them and that he did not remember anyone being told to sell the cows. He stated that he was told in 2013 or early 2014 that National Treasury directed that the DARD should stop receiving the grants.
- 5.1.38 Regarding the launch of the Project, he stated that he attended one meeting with the Council and one meeting with the intended beneficiaries. He further stated that when he was no longer in the Department, there was a program by the Provincial EXCO when the building was opened that he went to visit the Vrede Dairy Project, and beneficiaries of the Vrede Dairy Project were there.

- 5.1.39 He stated that the Vrede Dairy itself had a section where milk-producing cows are kept, a small farm where cows that were not milk-producing are kept, the milking parlour for about 70 cows and that the Project was to realise the milking of about 1000 cows at its full running. He indicated that the five cows were to be allocated for five (5) years to an individual beneficiary and when they are milked, the quantities of milk from these cows will benefit the individual beneficiaries.
- 5.1.40 I questioned Mr Zwane regarding programmes that were in place for politicians to engage with the beneficiaries and keep them informed on the progress of the Project. Mr Zwane replied that prior to the complaint from the community there was the issue in 2014 that the government grants had been stopped. This came with challenges in seeing the Project to its full cycle.
- 5.1.41 He stated that when one is reshuffled to another Department, it becomes difficult to continue interacting with the Department that one came from. He stated when he is reshuffled he would have a meeting with the community to inform them that he is reshuffled and that they should contact the respective Mayor if there were issues. He stated that he was aware of meetings with the Municipality and his successor, which necessitated a meeting with the Provincial EXCO wherein they all went to visit the Vrede Dairy Project.
- 5.1.42 Mr Zwane stated that the Vrede Dairy Project was to be completed for the beneficiaries to realise their benefit and since the project did not realise its finality, beneficiaries started to complain. The project ended at the phase where cows were milked and milk was the only product sold. He indicated that he also heard that the fifty one (51%) percent that was to be given to the beneficiaries and the four percent (4%) that was supposed to be given to the Municipality for the loss of income was not realised.
- 5.1.43 I questioned Mr Zwane on how Estina was identified as a partner for the Vrede Dairy Project to which he stated that he was not aware of the precise details that entailed the procurement of the service provider. He stated that, the function fell within the ambit of the officials in the Department and not

politicians. He stated that based on his knowledge and what he was told, India was one of the countries that produced large quantities of milk as compared to other countries. He was told that the company was the third largest in terms of quantities and that it would assist the Vrede Dairy Project through marketing as it had a market throughout Africa. He stated that to him it was satisfactory that if there was a market, they would be able to sell the products and by-products.

5.1.44 With regards to the trip to India that Mr Zwane approved for Mr Thabethe to travel with Mr Narayan, I questioned Mr Zwane as to when he became associated with Mr Narayan. He stated the trips undertaken by HODs of Departments are normally approved by the MEC and finally the Premier. That the HOD, Mr Thabethe, approached him to approve the India trip and indicated to him that Mr Narayan had information concerning quantities and companies that can help propel the project forward. He stated that it was on that basis that he approved the trip as it was a positive step in completing what they had started.

5.1.45 When I asked Mr Zwane if Mr Thabethe approached him regarding Mr Narayan or if he had told Mr Thabethe to go with Mr Narayana , Mr Zwane stated *" As an Accounting Officer, normally we do not have the right to indicate to them what to do in their work, the project was to complete the Vrede Dairy, so I normally approve the suggestion by the officials"*

5.1.46 I again informed Mr Zwane that according to information, Mr Thabethe stated that Mr Zwane had recommended Mr Narayan. Mr Zwane replied that Mr Narayana was from the Office of the Premier and not his office, and that he did not have a problem with Mr Thabethe travelling with anybody, including Mr Narayan.

5.1.47 Again I asked Mr Zwane if Mr Thabethe was the one who made the proposal and not him, he stated that he can't recommend and approve the request for the trip, and that he did not recall doing such. I questioned Mr Zwane as to whether he had travelled to India and he stated *"not on this project"*. I asked Mr Zwane if he knew what the involvement of the South African Embassy in

India was, when Mr Thabethe and Mr Narayan travelled to India, to which he replied that that he did not know.

5.1.48 From the transcripts of the interview of Ms Rockman at the Commission of Inquiry into State Capture on 16 October 2019, Advocate Gabashe, the evidence leader, stated during the interview on page 92 “..*The second fact is that Mr Zwane has submitted an affidavit to the Commission in which he takes responsibility for suggesting that Mr Narayan, in particular accompany Mr Thabethe, reason being, says Mr Zwane they were to deal with protocol issues, foreign culture issues etcetera, etcetera so it was as a convenience to Mr Thabethe...*”

5.1.49 I have requested the affidavit referred to above from the State Capture Commission and did not receive a response thereto. However, Mr Zwane provided the relevant paragraphs to his affidavit in his response to the section 7(9) notice which I have accordingly addressed.

5.1.50 I asked Mr Zwane if he knew the company Linkway Trading to which he replied that he did not know of it. Mr Zwane further indicated that he did not participate in any meetings where Estina was involved.

5.1.51 With regards to the role of the FSPG Executive Council and his role as the MEC of DARD Mr Zwane stated “*normally as Executive what we will do, is say here is the project this is an idea, these are the time frames, these are the indicators in terms of development of the project, then you start monitoring, whether the project is taking place. If the project is taking place according to the indicators , then we are doing our job as Executive, unless there is a complaint at that particular point , that we have to sit down and get an explanation , we will normally not get to the point of details , like I have said , initially there was 51%, 49 % which then became Estina , when the land was outsourced , there had to be some compensation for loss of income, but in terms of the exact calculations , it was done by officials*”.

5.1.52 Regarding the land that was leased from the Municipality that was in the hands of the FSPG and that the Municipality is now trying to acquire it back. Mr

Zwane stated that based on what he was told, the Department had leased more land than what was to be utilised by it, which needed to be corrected. He stated that as he was talking to the Mayor and the Municipal Manager and they are in the process of dealing with the issue, and that as far as he is aware the issue was being handled.

Information Obtained from the Organisation Undoing Tax Abuse (OUTA)

5.1.53 I have obtained information from OUTA relating to the #GuptaLeaks that indicates the possibility that Mr Zwane travelled with Mr Narayan to India during October 2012, and that Mr Zwane had communicated details of the accommodation arrangements for the trip as shown below :

From: Ashu<ashu@sahara.co.za>
Sent on: Saturday, October 13, 2012 4:38:05 PM
To: naresh.khosla@sesindia.com; khosla_naresh@hotmail.com; smriti.hinduja@oberoigroup.com
Subject: Fwd: Room Sharing details

Sent from my iPhone
Begin forwarded message:
From: Ashok Narayan <ashok@saharasystems.co.za [mailto:ashok@saharasystems.co.za] >
Date: 13 October 2012 4:36:21 PM SAST
To: Ashu <ashu@sahara.co.za [mailto:ashu@sahara.co.za] >
Subject: Room Sharing details
Sent from my iPhone
Begin forwarded message:
From: M Zwane <zwane@mail@gmail.com [mailto:zwane@mail@gmail.com] >
Date: October 13, 2012 2:46:56 PM GMT+02:00
To: Ashok Narayan <waltemsa@gmail.com [mailto:waltemsa@gmail.com] >
Subject: Re: Detailed Itinerary

Hi
Herewith rooming list as expected

- Non-sharing
1. MJ Zwane
 2. TI Motaung
 3. A Narayan
 4. CN Hadebe
 5. ME Mokoena
 6. MP Mabe
 7. MM Motaung
- Sharing
1. NG Zwane / TB Tshabalala
 2. NP Zwane / NL Radebe
 3. KF Maleke/ MS Nkutha
 4. TP Sondesi / TM Shabalala
 5. DM Nkomo/ NA Mvundle
 6. NA Mabe / DA Rantsho
 7. KJ Boot / TA Sibisi
 8. FL Thoro / MC Mosia
 9. TJ Majele / MP Tshabalala
 10. TP Dlamini / ST Msimanga

Regards

Inno

Sent from my iPad

- PLEASE NOTE -

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Sahara Holdings (PTY) Ltd
89 Gazette Avenue, Corporate Park, Midrand, South Africa
Private Bag X180, Halfway House, 1685, South Africa

From: Ashu<ashu@sahara.co.za>
Sent on: Wednesday, October 10, 2012 7:35:36 AM
To: Sandeep <SandeepD@sahara.co.za>
Subject: FW: Iti India 27 pcssenger details
Attachments: Iti India 27 pcssenger details.docx (18.12 KB)

From: Naresh Khosla [mailto:naresh.khosla@sesindia.com]
 Sent: Wednesday, October 10, 2012 7:34 AM

To: Ashu

Subject: Iti India 27 pcssenger details

Dear Sir,

Pls find attached the confirmation im giving to mann travels.

Pls check the prices once.

Ill try to negotiate if he agrees to conduct the Kindom of dreams within 8-10 K to avoid any hassles.

Pls revert to confirm.

I will confirm for –

a. Drop from T3 to New delhi Rly station vehicle required at 4:30Am on 16th Oct for rs 7500+tax +parking charges.

b. 2 days Agra tour bus required at 8AM on 18th and drop back to Obrois Gurgaon at 3PM on 19th Oct. Rs 45000+Tax+parking charges.

Delhi tour on the 20th Oct bus required at 8AM till 9PM. –

Up to 12 hours and 120kms.- Rs.18000/-

Extra per km. Rs.75/-

Extra per hour Rs.800/- (garage to garage)

c. Luxury Volvo required to drop the group from Obrois Gurgaon to T3 terminal airport at 10:30AM to depart at 11:00AM on 21st Oct.- Rs 7500+Tax+Parking.

d. Luxury Volvo required at Mumbai at Intercontinental The lalit at 8:00AM for a whole day city tour and drop at airport at 10:30PM on 22nd oct.

Up to 12 hours and 120kms.- Rs.18000/-

Extra per km. Rs.75/-

Extra per hour Rs.800/-

Regards,

Naresh

Itinerary for India trip for 24 guests

16th Oct : : 04h25 AM Arrival at Delhi and proceed to railway station

Luxury bus to take everyone to drop off at station

- Luxury Volvo required at 4:20Am at T3 terminal airport to drop to New Delhi Rly station. –16th October

16th Oct : 06h55 AM Departure for Dehradun by Shatabdi Express

:

16th Oct : 12h30 Noon Arrival at Dehradun station and check in hotel

Madhuban

: 14h00 Lunch at Mr Gupta house

15h00 Depart to Shivpuri for river rafting

:

17th Oct : 12h30 Depart from rishikesh to rly station

:

17th Oct : 22h30 From railway station (HOTEL PICKUP) proceed for Oberoi Hotel

18th Oct : 08h00 Breakfast at Hotel

: 09h00 Departure from hotel for Agra by Luxury bus

18th Oct : 13h00 Arrival at Amar Vilas check in and after that proceed for

Local tour to Taj Mahal

18th Oct : 19h00 Dinner at restaurant near Hotel

19th Oct : 09h00 Departures from Agra for Delhi after breakfast

Luxury Volvo bus required for the Agra trip at 8AM at Obrois Gurgaon and drop back to Obrois Gurgaon.- 18th and 19th October. –Rs 45000

5.1.54 Although I do not intend to use the above-mentioned information as evidence, I could not just ignore the widespread mention of the e-mails in the media and public space. However, in order to establish the veracity and therefore authenticity thereof, I requested the Department of Home Affairs (DHA) to assist me, in providing information with regards to Mr Zwane's movement control during October 2012.

- 5.1.55 The information received from the DHA confirms that Mr Zwane together with the individuals referred to in the above email did travel between South Africa and India on 15 to 23 October 2012. I have further noted that Mr Rajesh Gupta was listed as a passenger on the same outgoing flight as Messrs Zwane and Narayan.
- 5.1.56 Mr Zwane, in his response to the section 7(9) did not deny that he travelled to India with Mr Narayan, however, he indicated that the trip was an official trip paid for the FSPG.
- 5.1.57 On 10 September 2020 I requested OUTA to provide me with an affidavit relating to the authentication of the "*GuptaEmails Leaks*". *On 06 October 2020, OUTA responded and stated that "the Gupta E-mails leaks is contained on a hard drive of the Sahara server. This leaked hard drive was submitted to the Commission of Inquiry into State Capture by Mr Brian Currin on 2 September 2018. The hard drive was accepted as evidence by the Chairperson of the Commission, Deputy Chief Justice Raymond Zondo. We are of the opinion that you should obtain the original contents of the hard drive/ documents from the Commission of Inquiry into State Capture. OUTA was handed a copy of the said hard drive in May 2017.*

OUTA developed a data mining tool to enable us to mine the data effectively and to extract information from the hard drive to substantiate our investigations."

- 5.1.58 OUTA submitted that it is confident that the contents of the hard drive are authentic as many of the e-mails and other information obtained from this specific hard drive have been confirmed by the authors thereof in the public domain.

Interview with Mr Tlokotsi John Motaung the Executive Mayor of Phumelela Local Municipality

- 5.1.59 On 24 June 2019 I interviewed, Mr Tlokotsi John Motaung (Mr Motaung) the Executive Mayor (the Mayor) of Phumelela Local Municipality, after he was subpoenaed to appear before me in respect of the matter under investigation. Mr Motaung's submissions during the interview were made under oath.
- 5.1.60 Mr Motaung informed me that he was involved with the Vrede Dairy Project from its inception. He stated that Mr Zwane approached him as the Mayor of the Municipality and informed him that he had a project for Vrede. He stated Mr Zwane identified the Vrede Dairy Project when he was the District Mayor and now that he was the MEC for DARD he was in a position to implement the project.
- 5.1.61 He stated that due to his knowledge/understanding of the land that belonged to the Municipality he met with Mr Zwane to take him through the layout of the land. He explained that previously about 5000 hectares of the land was leased to the Krynauswslust Trust (the Trust) which was disbanded in 2010. The Municipality received about R1, 5 million per annum for the lease of the land to the Trust.
- 5.1.62 He explained further that between 2010 and 2013 about 3500 hectares of the land was then leased to five (5) commercial farmers to replace the income that the Municipality previously received from the Trust. As the town developed part of the land had to be released for development of human settlements and other projects and about 2000 hectares of the land was available to emerging black farmers.
- 5.1.63 He stated that when the Vrede Dairy Project was conceived, the Municipality saw it as a way to generate an income for the Municipality. Negotiations with the commercial farmers started in about 2012 so as to prepare for termination of the contract the Municipality had with them earlier than envisaged. It was agreed that the contract with the commercial farmers would be terminated to make way for the Vrede Dairy Project. He stated that the commercial farmers agreed with the concept of the Vrede Dairy Project as they saw it as an opportunity. Consultations about the project were also held with various stakeholders, including emerging Black farmers.

5.1.64 In this regard Mr Motaung submitted an unsigned copy of the lease agreement that was entered into between the commercial farmers and the Phumelela Municipality. Paragraph 3.3 and 4 of the agreement stipulated the rental amount that was to be collected by the Municipality from the commercial farmers and the duration of the contract as shown below:

3.3. The Lessee shall pay over to the Lessor the rent collected from the farmers or an equal amount being the following:

Mr Leonard Neuman	R253 365 pa
Mr Matthys Johannes Glutz	R199 500 pa
Charfontein Boerdery Trust	R246 810 pa
H P Nel Boerdery BK	R260 205 pa

4. DURATION OF THE LEASE:

4.1. The lease period shall commence on 1 September 2012 and terminate on 30 September 2013.

5.1.65 The matter was finally taken to Council as the Municipality needed to follow due process. After the presentation was made by Mr Zwane, Mr Thabethe and the team from the MEC's office as well as a number of stakeholders that were participating, all Councillors agreed on the project up to a stage where Estina was introduced to the Municipality as a South African company that would partner with the DARD to implement the project.

5.1.66 During the presentations it was outlined that the project would initially start with one thousand (1 000) cattle and one hundred (100) beneficiaries would be recruited from the areas of Vrede, Warden and Memel. Those who are already emerging Black farmers will be identified as possible beneficiary. Each beneficiary will be allocated five (5) cattle, and after five (5) years the beneficiary would bring back calves and keep initial cattle that was allocated. The Municipality will have four percent (4%) shares in the project.

5.1.67 He stated that he together with the MEC and their teams, the HOD and the Municipal Manager called an open meeting with all people that were involved

in the farming of beef and milk. According to their records ninety four (94) people attended the meeting and all those that had attended were taken as possible beneficiaries.

- 5.1.68 He stated that a subsequent process was to be conducted to verify the ninety four (94) beneficiaries. A criteria was developed to be used for the verification of the beneficiaries that attended the meeting but that process was never undertaken. He stated that up until today everyone who attended the meeting regarded himself/herself as a beneficiary. He stated that he was unable to say as to why as that verification process was never undertaken as it was handled by Ms Alter Meyer from DARD. He stated further that the verification process was necessary as the beneficiary list included people who are employed by the Municipality and by Government, so they would not have qualified.
- 5.1.69 In terms of his extent of his involvement with beneficiaries, he stated that the Municipalities involvement was merely to co-ordinate the meetings, arrange the venue and communicate with beneficiaries the agreements reached during the Council meetings between DARD and the Municipality on the project. The Municipality involvement included the facilitation of the transfer of land. Public participation processes were also undertaken by the Municipality during the process of alienating the land.
- 5.1.70 He stated that after the construction of the Dairy was completed the Municipality did receive complaints from beneficiaries regarding the allocation of the cows. In response to the complaints he stated that the Municipality requested Ms Qabethe the then MEC for DARD, to address the beneficiaries. He stated that she attended one meeting with the HOD and other officials and responded to questions on the project indicating that the project was on track. Subsequently the beneficiaries elected a committee to represent them which resulted in an agreement being signed by the Department and the beneficiaries.
- 5.1.71 He stated immediately after the construction of the dairy there was a formal launch of the project, where all the beneficiaries were brought on site. The launch was attended by the Premier, and all the MECs. The Dairy was

operating with about 500 cattle on site, but no cattle had been allocated to the beneficiaries. He stated that at no stage were the beneficiaries told to sell their meat cows.

- 5.1.72 In terms of the land that was transferred from the Municipality to the FSPG he stated that in one meeting had Estina produced a contract that suggested that the land must be transferred to Estina but the Municipality disagreed with the proposal and suggested that the land should be transferred to the Province.
- 5.1.73 He stated that in the interim, whilst negotiations were proceeding on the land, DARD agreed to take over the contract with commercial farmers. Province had a separate agreement with the commercial farmers to pay them off for the outstanding terms of the agreement when the contract was terminated.
- 5.1.74 I questioned Mr Motaung on the Council Resolution that was taken to alienate the land to the Province, Mr Motaung stated that there was no resolution that served before the Council for the alienation of the land, and it would only be a resolution taken for the lease of the land. He stated that he did not know how the transfer of the land had taken place as it did not serve before the Council.
- 5.1.75 He further indicated that no resolution was taken to investigate the process that was followed that led to 5000 hectares of land being transferred instead of 3500 hectares, but only a resolution to recover the portion of land back was taken at Council. He stated for almost two and half years the Municipality had difficulties in recovering the portion of the leased land. This created problems for the Municipality as the land was allocated for housing and other municipal projects. People were unable to receive title deeds as the land did not belong to the Municipality. The Municipality was also unable to implement MIC funded projects. He stated that Mr Venter, a lawyer in the Office of the Premier was used to facilitate the process of the transfer of the land.
- 5.1.76 Mr Motaung submitted an unsigned copy of the minutes of the Special Council Meeting of the Phumelela Municipality held on 12 June 2012 wherein the Vrede Dairy Project was presented to the Council. An unsigned copy of the minutes of the Council meeting held on 03 July 2012 wherein Council adopted

the resolution relating to the Vrede Dairy Project. The extracts of those minutes are shown below as follows:

PHUMELELA LOCAL MUNICIPALITY

**MINUTES OF THE NINTH SPECIAL COUNCIL MEETING OF PHUMELELA LOCAL MUNICIPALITY
HELD ON THE TUESDAY THE 12TH JUNE 2012 AT 09H00 IN THE COUNCIL'S CHAMBER, VREDE**

A. OPENING

The meeting was opened by Cllr D.A Wessels with a prayer.

The Speaker welcomed members of Council and delegations from Department of Agriculture and Rural Development present in the meeting

PRESENT

1. CLLR T.J. MOTAUNG(MAYOR)
2. CLLR M.I. KOBENI
3. CLLR D.M. NKABINDE
4. CLLR J.M. MOFOKENG
5. CLLR T.N. MASITENG
6. CLLR S.E. TSHABALALA
7. CLLR O.S. TSHABALALA
8. CLLR S.M. ZWANE
9. CLLR D.A. WESSLES
10. CLLR O.A. MOKOENA
11. CLLR T.E. RADEBE
12. CLLR J.M. SITHEBE-NGWENYA
13. CLLR T.R. ZWANE
14. CLLR A.D. RADEBE

OFFICIALS

1. MR T.M. MOREMI(MUNICIPAL MANAGER)
2. MR L.J. RALEBENYA(DIRECTOR COOPERATE SERVICES)
3. MR. L.H. MTHEMBU(DIRECTOR TECHNICAL SERVICES)
4. MR. A.S. NYEMBE(ACTING CFO)

B. ATTENDANCE REGISTER AND LEAVE OF ABSENCE

That application for leave of absence received from Cllr L.M. Msimanga that he is booked off-sick be approved

C. OFFICIAL ANNOUNCEMENTS

NONE

E. DEPUTATIONS AND INTERVIEWS

The Speaker gave the Mayor the platform whilst waiting the MEC to arrive. The Mayor welcomed the delegation and appreciated the implementation of the project as announced by the Premier. Mr Thabethe the (HOD) for Rural Development will be making the presentation regarding the project. The project is called Vrede Integrated Dairy project and the name might change if the need be. The Department is thinking of doing something in Warden in celebration of its centenary. The project is a result of collaboration between the Department, Estina a South African company and PARAS an Indian Company. The objectives of the project is job creation and improve economic growth. India is the highest milk producer in the world. PARAS is one of the leading milk processing plants in India. 1000 cows will be milked for the dairy (500 in Dairy and 500 cows will be donated to the community. 100 community members to receive 5 cows each. Milk suppliers to be paid for their milk. Then after five years every beneficiary will be asked to give back five calves. Initial processing capacity of the factory to be 100 000 litres per day. The products to be branded Mohoma Mobung. Celebrities and soccer icons to be used as brand ambassadors. Milk will be supplied to Hospitals and Schools. A dairy will be the first phase of the project and the factory will follow. Phumelela will have 4% shareholding, beneficiaries 49% and 47% to Estina and PARAS. The total estimated costs of project will R500 million (R517 million including VAT). The Government will fund the establishment of dairy. PARAS/Estina will fund the processing plant.

RESOLVED

1. That Council note the content of the report on this item.
2. That the project be accepted and supported.
3. That the administration and the HOD (Agric. And Rural Development) draft resolutions that will be adopted by Council before the end of next week.

The meeting was concluded at 11H15

PHUMELELA LOCAL MUNICIPALITY

MINUTES OF THE 1ST ORDINARY COUNCIL MEETING OF PHUMELELA MUNICIPALITY HELD ON THE 03RD JULY 2012 AT 14H00 IN THE COUNCIL'S CHAMBER, VREDE

A. OPENING

The meeting was opened by Cllr D.A. Wessels with a prayer. The Chairperson welcomed all members of Council, officials and community members present in a meeting.

PRESENT

1. CLLR T.R. ZWANE (SPEAKER)
2. CLLR T.J. MOTAUNG (MAYOR)
3. CLLR M.D. KOBENI
4. CLLR D.M. NKABINDE
5. CLLR J.M. MOFOKENG
6. CLLR S.M. ZWANE
7. CLLR T.E. RADEBE
8. CLLR J.M. SITHEBE-NGWENYA
9. CLLR O.A. MOKOENA
10. CLLR A.D. RADEBE
11. CLLR O.S. TSHABALALA
12. CLLR T.N. MASITENG
13. CLLR D.A. WESSSELS

OFFICIALS

1. MR. T.M. MOREMI (MUNICIPAL MANAGER)
2. MR. L.J. RALEBENYA (DIRECTOR CORPORATE SERVICES)
3. MR. L.H. MTHEMBU (DIRECTOR TECHNICAL SERVICES)
4. MR. M.S. MAHLANGU (IDP/PMS MANAGER)

B. ATTENDANCE REGISTER AND LEAVE ABSENCE

Both Cllrs L.M. Msimanga and S.E. Tshabalala were absent without and apology

ITEM 327/2012

RE: VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT

RESOLUTION NO. 01- of 19 June-2012

RESOLUTION ALLOWING THE DEPARTMENT OF AGRICULTURE AND ESTINA PTY LTD / PARAS DAIRY COMPANY TO USE MUNICIPALITY LAND TO DEVELOP A DAIRY PRODUCTION FACILITIES IN PHUMELELA LOCAL MUNICIPALITY, FREE STATE PROVINCE

The Department of Agriculture has requested that the PHUMELELA LOCAL MUNICIPALITY adopt a resolution allowing for the ownership and operation of a dairy production facility by **ESTINA PTY LTD / PARAS DAIRY COMPANY** within the municipality owned agricultural land, because doing so would promote and stimulate economic growth and development within the Municipality; and

WHEREAS, the Council believe it is in the best interests of Municipality and its citizens that dairy production facilities be allowed to be developed in Phumelela, by **ESTINA PTY LTD / PARAS DAIRY COMPANY**, and

WHEREAS, the Council take note that the Municipality will hold a stake of four percent (4%) shareholding in the business for the use of the Municipal Land which will be used for the development of infrastructure of different forms in the municipality.

NOW, THEREFORE, BE IT RESOLVED that for purposes of this Resolution, the term "Dairy Production Facility" shall be defined as follows: 'Dairy Production Facility' means the land, structures and related equipment used for housing & breeding & raising & feeding or milking dairy cows. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid waste and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

BE IT FURTHER RESOLVED that for the purpose of this Resolution, the term "agricultural land" shall be defined as follows: 'Agricultural land' means land suitable for use in farming.

BE IT FURTHER RESOLVED, that **ESTINA PTY LTD / PARAS DAIRY COMPANY** are hereby permitted to USE the 4,400ha of agricultural land located in Phumelela Local Municipality, for use in conjunction with a dairy production facility.

BE IT FURTHER RESOLVED, that the Municipal Manager is directed and empowered to publish this Resolution and this Resolution shall take effect thirty (30) days after final publication, unless a valid petition in opposition to the same is filed in accordance with Municipal by laws.

IN WITNES WHEREOF, the above and foregoing Resolution was unanimously adopted on this 19TH day of June, 2012.

- 5.1.77 Mr Motaung further submitted an unsigned copy of the minutes of the Council meetings held on 30 August 2012 and a copy of the minutes of the meeting held on 2 October 2012 signed by the Speaker of Council, Councillor TR Zwane on 6 November 2012, wherein resolutions relating to the signing of the lease agreement between the Phumelela Municipality and the Free State Provincial Government were taken, the extracts of which depicting the officials in attendance and resolution taken are shown below:

PHUMELELA LOCAL MUNICIPALITY

MINUTES OF THE FOURTH SPECIAL COUNCIL MEETING OF PHUMELELA LOCAL MUNICIPALITY HELD ON TUESDAY THE 30TH AUGUST 2012 AT 14H00 IN THE COUNCIL'S CHAMBER, WARDEN

A. OPENING

The meeting was officially opened with a prayer by Cllr J.M. Sithebe – Ngwenya. The acting Speaker welcomed all members of Council and officials present in a meeting. The pass a motion that each Councillor will speak once per item.

PRESENT

1. **CLLR M.D. KOBENI(Acting Speaker)**
2. **Cllr T.J. Motaung(Mayor)**
3. **Cllr M.D. Nkabinde**
4. **Cllr J.M. Sithebe- Ngwenya**
5. **Cllr O.S. Tshabalala**
6. **Cllr S.E. Tshabalala**
7. **Cllr S.M. Zwane**
8. **Cllr L.M. Msimanga**
9. **Cllr T.N. Masiteng**
10. **Cllr A.D. Radebe**
11. **Cllr O.A. Mokoena**
12. **Cllr D.A. Wessels**

OFFICIALS

1. **Mr T.M. Moremi(Municipal Manager)**
2. **Mr L.J. Ralebenya(Director Cooperate Services)**
3. **Mr L.H. Mthembu(Director Technical Services)**
4. **Mr N. Thobela(PMU Manager)**
5. **Mr M.S. Mahlangu(DIP/PMS Manager)**

ITEM 14/2012

RE: ASSIGNMENT/LEASE AGREEMENT BETWEEN PHUMELELA MUNICIPALITY AND FREE STATE PROVINCIAL GOVERNMENT

RESOLVED

1. That Council notes the content of the report on this item.
2. That Council authorizes the Mayor to sign the assignment/lease agreement on behalf of the municipality with the Premier of Free State Government.
3. That Council rescinds resolution number 3 of the Third Special Council minutes held on the 10th August 2012, item 12/2012.
4. That the other resolutions as per item 12/2012 to remain unchanged.

PHUMELELA LOCAL MUNICIPALITY**MINUTS OF THE SECOND COUNCIL MEETING OF PHUMELELA LOCAL MUNICIPALITY HELD ON THE 2ND OCTOBER 2012 AT 14H00 IN THE COUNCIL'S CHAMBER, VREDE**

A. OPENING

The meeting was opened by Cllr Wessels with a prayer. The Speaker welcomed all members of Council and official present in the meeting.

PRESENT

1. **CLLR T.R. ZWANE(SPEAKER)**
2. **CLLR T.J. MQYAUNG(MAYOR)**
3. **CLLR M.I. KOBENI**
4. **CLLR D.M. NKABINDE**
5. **CLLR J.M. MOFOKENG**
6. **CLLR A.D. RADEBE**
7. **CLLR O.S. TSHABALALA**
8. **CLLR S.E. TSHABALALA**
9. **CLLR T.N. MASITENG**
10. **CLLR O.A MOKOENA**
11. **CLLR D.A WESSELS**

OFFICIALS

1. **MR T.M. MOREMI(MUNICIPAL MANAGER)**
 2. **MR. L.H. MTHEMBU(DIRECTOR TECHNICAL SERVICES)**
 3. **MR. S. NYAPHOLI(ACTING CFO)**
 4. **MR. M.S. MAHLANGU(IDP/PMS MANAGER)**
-

ITEM 64/2012**RE: PROGRESS REPORT ON THE INTERGRATED DAIRY FARM PROJECT**

RESOLVED

1. That Council note the content of the report on this item.
 2. That the signing of the assignment of the municipality's rights and obligations with regard to the leasing of certain portions of the farm by both the HOD and the Municipal Manager be approved.
 3. That the resolution passed previously for the signing of the agreement by the Premier and the Mayor be rescinded.
 4. That the Chairperson of the Agriculture committee must convene regular sittings and provide a status report in future on the implementation of the dairy project to Exco/Council meetings.
-

Interview with Ms Mamiki Qabathe, the erstwhile MEC of Agriculture, on 01 July 2019

- 5.1.78 Ms Qabathe, stated that she was appointed in March 2013 and was not the MEC for DARD when the project started in 2012. She stated that the project had already been adopted for implementation as part of the bigger Mohoma Mobung Project Strategy.
- 5.1.79 She stated that she supported the project in terms of the decisions taken by the EXCO, as she believed in its intended purpose.
- 5.1.80 She stated that following concerns raised by National Treasury, she tried to establish the cause of the problem and invited the Mayor and other Councillors in the area, to visit the project. They found that work was in progress, infrastructure was being built, and there was about 250 cows. A silo was being built for the feed for the cows. She stated that she realised that there were people at the meeting that she had not invited and was told that one person was a beneficiary and a member of the DA. She stated that from a layman's eye it was a good project as she saw good work in progress as per the report. She stated that thereafter, some of the decisions were taken at EXCO level were agreeing on further funding of the project, whilst she sat in such deliberations as part thereof.
- 5.1.81 She enquired as to whether the beneficiaries had ever visited the project and was told that they had not visited the project. She agreed with the Mayor that they would revisit the project and ensure that they meet with the beneficiaries and take them to the facility, but it never transpired until she left the Department.
- 5.1.82 She stated that when investigations started and issues raised by National Treasury, she did not interact with the project anymore in that she "*took a back seat*". She indicated that the beneficiaries did not approach her to complain about their dissatisfaction of the project.
- 5.1.83 Regarding the National Treasury report exposing financial irregularities, and that she continued to appropriate funds for the project, Ms Qabathe stated that

there was a dispute between the Province and National Treasury, negotiations led by the Provincial HOD and HOD Treasury, wherein National Treasury was aware of the project. There was nothing legally informing them to stop funding the project.

- 5.1.84 She stated that as part of the broader concept of the project, the beneficiaries would own cows and they would supply the milk to the Dairy and generate income out of that and also get shares. She stated that the project never reached this stage because when all the investigations started *"this is a hot potatoes"*, and everyone wanted to shy away from the project.
- 5.1.85 She stated that the spin offs of the project, was not in terms of rands and cents but was in terms of promoting Black business to prosper and transforming the industry.
- 5.1.86 Regarding the allegation that monies for the project went to the Gupta wedding she stated *"I don't know about that , I don't want to believe that' In don't believe in any person's good mind, a sane person would take money of government and give it to other people and say go and hold a wedding. I don't want to believe that"*

Request to the Premier of the Free State Provincial Legislature on the current status of the land

- 5.1.87 On the 2 July 2019 I forwarded a letter to Hon. Sefora Hixsonia Ntombela, the Premier of the Free State Provincial Legislature (Hon. Ntombela), bringing to her attention that during my interview with the Mr Motaung, on 24 June 2019, she indicated that the Municipality has been experiencing difficulties in re-acquiring the +- 2000ha of land that was erroneously alienated to the FSPG.
- 5.1.88 Further that Mr Motaung indicated that this was hampering several municipal projects that have been funded for that particular piece of land, including housing development, cemeteries etc.

- 5.1.89 I requested that Hon. Ntombela table the matter at the next FSPG EXCO meeting, for further discussion, in order to expedite the re-acquiring of the +- 2000ha of land by the Municipality and also requested that the issue relating to the project being taken by the Free State Development Corporation (FSDC) be considered in terms of its original objective of developing and empowering the intended beneficiaries.
- 5.1.90 On 16 July 2019 the Director General, in the Office of the Premier responded to my letter as indicated in the undermentioned letter:



Your ref. 7/2 – 004397/17
E-mail: RodneyM@pprotect.org /
VanessaM@pprotect.org

TO: Adv B MKHWEBANE
Public Protector of the RSA
Private Bag X677
Pretoria 0001

Dear Adv Mkhwebane

**INVESTIGATION INTO ALLEGATIONS OR SUSPICION OF
POLITICAL INTERFERENCE IN THE ESTINA VREDE DAIRY
FARM PROJECT BY THE FREE STATE PROVINCIAL
GOVERNMENT AND POSSIBLE PREJUDICE SUFFERED BY
THE INTENDED BENEFICIARIES OF THE PROJECT**

Your letter, dated 02 July 2019, addressed to the Premier, has reference. I was tasked by the Premier to respond to your letter.

Although I am aware of the fact that farmland, known as Krynaauwslust, was at the inception of the Project transferred from the Municipality to the Free State Provincial Government, I have no information on what was initially agreed between the Municipality and, I assume, Mr P Thabethe, the former Head of the Department of Agriculture & Rural Development.

You may be aware that the farm was subject to a Preservation Order, issued by the Free State High Court on 18 January 2018. Subsequently on 17 January 2019 the High Court of the Free State declared the farm forfeited to the State. In terms of the Order Mr Eugene Nel from Bereng Incorporated, Pietermaritzburg, who was previously appointed in the Preservation Order to take care of the property, was directed to continue acting as such for the purpose of this Order. The property was to remain in the custody of the appointed Curator, pending further engagements with me and the Free State Department of Agriculture & Rural Development as well as the Phumelela Municipality, subject to an agreed process, which will be put in place for the ultimate utilization of the property.

The Department of Agriculture & Rural Development was also ordered to appoint a Mentor to oversee the feasibility of the farm as a dairy farm or any type of farming that will benefit the community on a sustainable basis. The appointed Mentor is to hand over a Feasibility Report with financial projections within 6 months of his/her appointment and the Department of Agriculture & Rural Development is to liaise and co-operate with the appointed Mentor regarding the operational- and financial needs of the farm for a period not more than 6 months from the date of the Order.

The Department of Agriculture & Rural Development is currently in the process to finalise the appointment of the Mentor as directed by the Court.

Apart from this, a meeting took place on 14 February 2019 between the Municipal Manager of Phumelela Municipality, Mr Eugene Nel, the appointed Curator, Dr TJ Masiteng, the Acting Head of the Department of Agriculture & Rural Development, as well as Mr AJ Venter from my office. During this meeting it was agreed that certain portions of land should be transferred to the Municipality as soon as possible. Such portions included, *inter alia*, the land on which RDP housing was constructed, the land, known as the Vrede Marina, the refuse

dumps site as well as other pieces of land on which Municipal assets were already constructed. The process is currently underway to ensure that these pieces of land are transferred to the Municipality. During the above-mentioned meeting it was also agreed that, once the report from the Mentor is received, the remainder of the farm, which may not be required for the sustainable farming of operations to the benefit of the community, as ordered by the Court, will be returned to the Municipality.

The 1999-year Lease Agreement with Estina was duly cancelled on the 24th of April 2014. I am, unfortunately, not privy to the processes followed by the Department of Agriculture & Rural Development to acquire the land from the Municipality, but I enclose herewith copies of documents, obtained from the Registrar of Deeds, from which you will note that the cancellation has been endorsed on the Title Deed of the property. You will be advised of further progress in this matter.

I wish to apologise for not being able to meet with your deadline of 12 July 2019, but it is unfortunately due to circumstances beyond my control.

Yours faithfully


.....
KOPUNG RALIKONTSANE
Director General

16/07/2019
Date

Interview with Mr Peter Thabethe, the HOD Free State Department of Agriculture and Rural Development on 2 August 2019

- 5.1.91 On 02 August 2019 I interviewed Mr Thabethe the former HOD, Free State DARD. Mr Thabethe's evidence was made under oath.
- 5.1.92 I requested Mr Thabethe to provide an explanation relating to; the Comprehensive Agriculture Support Program (CASP) grants; how CASP projects are handled between his Department, the National Department of Agriculture, Forestry and Fisheries (DAFF), National Treasury and his role as the HOD and that of the EXCO in respect of the CASP grant.
- 5.1.93 Mr Thabethe explained that the CASP falls under the Division of Revenue Act, released by National Treasury and that the money is gazetted under the DAFF, which disperses the money to the provinces. Prior to the province's receipt of the money, the province must submit a comprehensive business plan to DAFF that describes the projects that will be funded from the budget allocation. The province then makes a presentation to the National assessment panel, coordinated by the DAFF, which then looks at all presentations from the provinces. That panel is formed by representatives from all the provinces, DAFF and its entities, including the provincial and National Treasury and any other person invited. The panel assesses the presentation and questions are asked. Once the projects are agreed upon, each provincial department gets a response from the DAFF regarding which projects have been approved.
- 5.1.94 Thereafter the provincial department responds to the national department if they accept the conditions that came with the grants. For example, money that was approved as per the presented project that was agreed upon, and any changes by the province must get the approval of DAFF. Further, the CASP program is approved for the benefit of the farmers, not for infrastructure that will benefit the province. The province thereafter includes that budget in its gazette, when the MEC presents his budget speech in the Legislature.

- 5.1.95 Mr Thabethe stated that Vrede Dairy Project was one of those projects that were presented in a similar manner, but the difference with the Vrede Dairy Project was that it was funded both nationally and provincially. The budget allocation had a share with CASP and the province also budgeted from the Mohoma Mobung Project which was also earmarked for agricultural development in the province. This meant that when National department approves the budget, a list of beneficiaries was required to be supplied, as that part is earmarked for farmers and the funds cannot be released if there is no list of beneficiaries that will receive benefit from the project.
- 5.1.96 Mr Thabethe also provided an explanation regarding how the Vrede Dairy Project was initiated. He stated that the province had allocated R30 million for the Mohoma Mobung Project for the development of a dairy, which was the initial allocation that had been set aside. Further, that the province had developed a strategy that focusses on processing of agricultural products, because it realised that in the provinces many projects focused on agricultural production but there was limitation on agro-processing in the Free State Province.
- 5.1.97 He stated that in doing so they categorised all the districts, where each district was allocated certain commodity that was viable in that particular district, for instance the Eastern Free State , which is the Thabo Mofutsanyana district, where Vrede is located, is a high rainfall area doing well in dairy, fruits, maize production and soya production. They further looked at the survey of milk production in the area and it was ranked very high in terms such production, that is transported out of the Free state for processing, but came back to be pasteurised and packaged.
- 5.1.98 He stated that they realised that in the Free State Province a lot of small dairy farmers were closing down, as the transportation costs were becoming too high for the small farmers, and it was not commercially viable, hence they thought of putting up a facility in the Free State.

- 5.1.99 He stated that they conducted a number of consultations, including consultation with the farmers, political parties and a presentation was made to the Legislature, marketing the idea of establishing a milk processing plant in the Eastern Free State.
- 5.1.100 He stated that they all agreed that it was necessary, but further agreed that when establishing the processing plant, they would establish a bigger one that would assist the farmers, collecting the milk, bringing it into the processing plant and then decide what product is made there for distribution.
- 5.1.101 He stated that they looked at the Schools Feeding Scheme as one of the markets, where the Department of Education is buying milk for the School Feeding Schemes but was very expensive and also the hospitals as a further market that buys milk in bulk for the hospital feeding program.
- 5.1.102 Mr Thabethe stated that they had consulted a number of milk producers but did not get interest in terms of partnering with them. He stated that their intention was that once the project was completed, it would be transferred to the farmers to be run with whoever was partnered with them.
- 5.1.103 Mr Thabethe stated that they then looked at different countries and found that the system that is being used in Germany for commercial milk production was not incorporating people who were small-holder farmers, in that they were producing all the milk in the dairy itself. He stated that they looked at the option of Switzerland as well as India as one of the options of high producers of milk.
- 5.1.104 He stated that when they looked at their desk top studies, they realised that the version of India looked more or less similar to their version, wherein there was a dairy and lot of small farmers, where the milk was collected and placed centrally for distribution and processing purpose. Hence he decided that he should visit India, specifically to a company in the Northern Part of India in Delhi called Paras.
- 5.1.105 Mr Thabethe stated that he initiated the trip to India, and a request was made to the Premier for approval. He stated that, the MEC then recommended to him that he should travel with Mr Narayan as he was the Economic Advisor to

the Premier. This was so that Mr Narayan could assist him when he got to India as he was very familiar with India. He stated that an Advisor is not a government employee and if you are accompanied by the Advisor, the Department must carry the cost, therefore Mr Narayan's name was included in the submission to the Premier for approval. He stated that he and Mr Narayan travelled to India on 29 February 2012 and returned on 4 March 2012.

5.1.106 Mr Thabethe indicated that no meeting was held with the Minister of Agriculture, but that in terms of administrative process meetings with the Acting Director General of the DAFF would take place.

5.1.107 He explained further on his interactions with the MEC and the Premier and stated that if any project was going to be implemented, it needed to be presented to the EXCO for approval, even prior to budgeting. He then prepared an Executive Memorandum to be presented via the MEC to EXCO. EXCO approved the project and also approved that they should meet with the Budget Council to request the additional funding, as they were happy with the way they presented the project.

5.1.108 The quotation for the trip to India, as submitted by Mr Thabethe to the Commission of Inquiry into State Capture is indicated below. The quotation was made on 24 February 2012 by Astra Travel for Mr Thabethe and Mr Narayan inclusive of flights and accommodation costs.


 MPT-313
 ANNEXURE A

 Tel. 051- 447 63 52; Fax. 051- 444 0415
 E mail: maria@astratravel.co.za

 Exceeding
 Excellence

24 February 12

To: LERATO

Dear Lerato

Herewith the quotes for New Delhi
 NB Please note that there are only first class seats available on the
 Johannesburg/Dubai/New Delhi flights and I have quoted first class
 going and business class returning.

MR THABETHE/Mbana Peter

SA1012	29FEB	BLOEMFONTEIN/JOHANNESBURG	1630-1735
EK766	29FEB	JOHANNESBURG/DUBAI	2220-0820
EK516	01MAR	DUBAI/NEW DELHI	1010-1445
EK511	03MAR	NEW DELHI/DUBAI	1050-1315
EK765	03MAR	DUBAI/JOHANNESBURG	1440-2050
SA1003	04MAR	JOHANNESBURG/BLOEMFONTEIN	0800-0905

Nb: The flight from Dubai arrives too late in Johannesburg to
 still connect to Bloemfontein and Mr Thabethe will have to
 Overnight in Johannesburg

COST:

Air ticket	R41990.00
Airport taxes	R 1750.00
Professional fees	R 4000.00
Total air ticket	R47740.00

Insurance

R 270.00

Radisson Blue Suites New Delhi single room
 Bed and breakfast only – they cannot supply the other meals as well
 In on 01 March out on 03 March

R 4800.00

Transfers airport/hotel/airport

R 1320.00

GRAND TOTAL**R54130.00**

NARAYAN/Ashok Mr

EK766	29FEB	JOHANNESBURG/DUBAI	2220-0820
EK516	01MAR	DUBAI/NEW DELHI	1010-1445
EK511	03MAR	NEW DELHI/DUBAI	1050-1315
EK765	03MAE	DUBAI/JOHANNESBURG	1440-2050

COSTS:

Air ticket

Airport taxes

Professional fee

Total air ticket

R39850.00

R 820.00

R 4000.00

R44670.00

Insurance

R 270.00

Radisson Blue Suites – single room

Bed and breakfast only – they cannot supply the other meals as well

In on 01 March out on 03 March

R 4800.00

Transfers Airport/hotel/airport

R 1320.00

GRAND TOTAL:**R51060.00**

Please let me have a copy of your passport.

Assuring you of our best services at all times

With best wishes



Maria Hanton

BRANCH MANAGER

5.1.109 Mr Thabethe stated that he was impressed with system that was being used in India. He stated that when he visited there he saw the factory and also interacted the CEO of their company. He stated that DAFF had already signed an existing Agriculture Trade Agreement with India which made it very easy to go there and talk to them about investment opportunities that exist in South Africa in terms of dairy.

5.1.110 In terms of the lease agreement that was signed with Estina for the land in Vrede, Mr Thabethe stated that the farm that they had earmarked for the dairy project was in Vrede and on municipal land. As such they then presented the

project to the Municipal Council. It was finally agreed that the Municipality will be paid a lease amount so that the Municipality did not lose the benefits that it was generating from the land.

5.1.111 He stated that initially a lease agreement was signed between the Municipality and the Department to utilize the land, but then moved onto a process where, in terms of the Free State Land Act of the power to lease or to cede land lies with the Premier. In this instance it was Municipal land and the delegation of power was given to the MEC for DARD by the Premier, who then further delegated that power to the HOD, as per the Free State Land Act. The Municipal Manager and the Department then entered into the lease agreement. The following letters are related to the assignment of powers to Mr Thabethe, to sign the lease agreement between the DARD and the Municipality and was obtained from the investigation conducted by the Accountant General



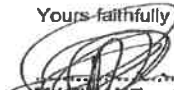
TO: **Mr MP THABETHE**
Head: Agriculture
Free State Provincial Government
Bloemfontein

Dear Mr Thabethe

**DELEGATION OF AUTHORITY: FREE STATE LAND ADMINISTRATION ACT:
PHUMELELA LAND RENTAL AGREEMENTS**

1. Kindly be advised that you are hereby assigned the authority, in terms of Section 5 of the Free State Land Administration Act, 1998, to consider and sign the proposed Agreement between the Department of Agriculture and the Phumelela Municipality relating to the assignment of the Municipality's rights and obligations in terms of various rental agreements relating to communal land, to the Department of Agriculture.
2. This decision should be taken in consultation with the MEC for Public Works, duly delegated by the Executive Council.
3. I trust that you will find it in order.

Yours faithfully


M. L. Z. V. L. A. N. E.
MEC: Agriculture


Date

U"001680



TO: Mr MJ ZWANE
 MEC: Agriculture
 Free State Provincial Government
 Bloemfontein

Dear Mr Zwane

**DELEGATION OF AUTHORITY:
 FREE STATE LAND ADMINISTRATION ACT:
 PHUMELELA LAND RENTAL AGREEMENTS**

1. Following advice from the State Law Advisors, you are hereby assigned the authority, in terms of Section 5 of the Free State Land Administration Act, 1998, to consider and sign the proposed Agreement between the Department of Agriculture and the Phumelela Municipality relating to the assignment of the Municipality's rights and obligations in terms of various rental agreements relating to communal land, to the Department of Agriculture.
2. This decision should be taken in consultation with the MEC for Public Works, duly delegated by the Executive Council.
3. I trust that you will find it in order.

Yours faithfully



ES MAGASHULE
 Premier: Free State Province

12/09/2012
 Date

The Premier of the Free State
 Private Bag X20538, Bloemfontein, 9300
 Lebong Building, 4th Floor, Cnr St Andrews and Markgraaff Streets, Bloemfontein
 Tel: (051) 405 5799 Fax: (051) 405 4803

5.1.112 He stated that initially Municipality terminated the lease that it had with the farmers for the land and the amount that the Municipality had received was paid to them for a short while but only up until the land was ceded to the Department. Once the land was ceded to the Department they no longer paid the Municipality anything.

5.1.113 Regarding the selection of beneficiaries, Mr Thabethe stated that they had initially spoken to the Municipality about the project and agreed that they would call the people in the community that were interested in farming and classify them into groups. He stated that the initial list was recorded on the letterhead

of the Municipality. Some people were mere cattle owners who had an interest in dairy farming and how the project intended to operate.

5.1.114 He further indicated that they agreed that the cost of the project will be R570 million in total cost, R300 million was for the construction of a dairy facility as Paras did not agree with investing in the processing phase as they did not have any guarantee for the processing. They then agreed that the dairy farm will guarantee a minimum quantity of about 45 000 litres per day be supplied.

5.1.115 He stated that they explained to the farmers that the facility that was being established belonged to them and it was their share contribution into the partnership with Estina. Once government has completed the contract, the shell company Mohoma Mobung would hold their share contribution. He stated the beneficiaries were informed that this would only happen once construction was completed and the dairy is operating.

5.1.116 He stated that once it was agreed that Paras would conduct business in South Africa they informed Paras that it must be registered in South Africa as a company before they can trade with it, or that they identify an existing partner in South Africa that represents them. Paras stated that Estina was willing to represent them and as such Paras and Estina entered into a Memorandum of Understanding in terms of the above.

5.1.117 As far as addressing the beneficiaries is concerned, Mr Thabethe said that the first time he met them was the meeting to categories them, the second time was when he explained the concept to them, how it would operate and that they would have majority shareholding. He said that they did not want a situation where milk is produced and sold to Estina, because the money is made on the processing plant unit not in the production unit. Estina and the beneficiaries must run the dairy and the processing plant together and share the profits, hence they said the farmers must be the majority shareholders.

5.1.118 Mr Thabethe stated that over and above that, the agreement was that the dairy would be constructed by government and the processing plant would be

constructed by Paras, and the project would be run together. He explained that in phase one (1), the dairy was to guarantee minimum supply of milk, phase two (2) was the processing plant and phase three (3) they would then go to the farmers to develop their own dairy on their farms, where they would then supply dairy cattle to the farmers and assist them with facilities on their farms to produce milk. This milk would be collected from the farmers. He stated that the farmers were also informed that they could increase their shares into the dairy by acquiring their own additional cows over and above the ones the project would donate to them.

5.1.119 I questioned Mr Thabethe as to whether he ever informed the farmers to their sell cattle. He replied that he did not do so, as there was no decision to for farmers to sell their cows. He stated that they explained to the farmers that if government gave them five (5) dairy cattle and they had ten (10) beef cattle, it would benefit them to convert five (5) of their beef cattle to dairy cattle as they would have more milk to deliver, indicating that the more milk delivered the more benefits the farmer would derive. He likened the methodology to the Afrikaans term "*Agterskoot*", wherein he stated that *farmers "still get money after processing including the money that comes from the dairy, the money will be shared not equally but on equity basis*. The company Mohoma Mobung would own the shares on behalf of the farmers.

5.1.120 I questioned Mr Thabethe as to whether he had promised the farmers training in India. He stated that they did inform the farmers that they would provide them with capacity, training in dairy farming and also indicated to them that they might select farmers that would be taken to India, so that they also go and observe the system used in India.

5.1.121 In respect of the R30 million payment and what it was used for he stated that invoices came together with each and every claim which they received, work would happen on the ground an invoice would be sent, verification would be done by the responsible Chief Director and if they are happy with what is in the invoice payment would be effected.

5.1.122 Regarding the reason why DAFF withdrew the CASP grant, Mr Thabethe stated that DAFF received a letter from National Treasury informing them not to release money to DARD, as it was engaging in an illegal PPP. He stated that DARD had already spent about R30 million of the R53 million CASP allocation when it was informed that funds would no longer be allocated to the project. DARD was informed that it was permitted to spend the money in the province except on the Vrede Dairy Project.

Interview with Ms Elizabeth Rockman the former MEC Finance in the Free State Provincial Government

5.1.123 On 28 November 2019 I interviewed Ms Rockman the former Director General in the office of the Premier and former MEC for Finance in the FSPG, wherein she approved the use of the affidavit that she had submitted to the Commission of Inquiry into State Capture regarding her role in the matter under investigation.

5.1.124 Evidence submitted by Ms Rockman during her interview with me, her affidavit and transcripts from the Commission were considered and utilised as submissions to the investigation.

5.1.125 Ms Rockman stated that she was the Director General in the Office of the Premier from September 2010 until 1 March 2013 when she was appointed as the MEC responsible for Finance and held that position until the 2014 general elections. Further, that following the 2014 general elections, she was elected as a Member of the Free State Legislature and appointed as the MEC responsible for Finance and held that office until the election of the Premier following the 2019 general elections which she left on 22 May 2019.

5.1.126 She further stated the DARD presented the "*Mohoma Mobung Framework 2012-2016*" during the Executive Council Lekgotla held from 28 to 30 September 2011 and that the EXCO approved a memorandum tabled by the DARD on 13 June 2012 relating to the Vrede Dairy Farm Project.

5.1.127 She stated that on 18 June 2012, she was informed by the Deputy Director General in the Office of the Premier, Mr. Bertus Venter (Mr Venter), who was on leave at the time, that he had been contacted by Adv Kuni Ditira in his office regarding contracts pertaining to the Vrede Dairy Project which had been presented at the EXCO meeting of 13 June 2012.

5.1.128 During the evening of the same day Mr. Venter forwarded an email from Adv Kuni Ditira with an attachment to her (in her capacity as Director General). The attachment containing the submission of the DARD with the subject; *"To accept the proposal from Estina with regard to the Vrede Integrated Dairy Project and to entered into a partnership with Estina"* and the *"Partnership Agreement between the Department of Agriculture, Free State Province, South Africa and Estina (Pty) Ltd [Reg. No. 2008/015033/07] in relation to the implementation of a Dairy Project at Vrede through a Special Purpose Vehicle (SPV) created to fulfil the stipulated Agri-BEE business norms called Zayna Investments (Pty) Ltd [Reg No 2012/037526/07] trading as Mohoma Mobung Dairy Project [MMDP]"*

5.1.129 She stated that she responded to Mr. Venter that she had been informed that a meeting of the Treasury Committee was scheduled for 19 June 2012 on the matter of the Vrede Dairy Project.

5.1.130 She further stated that Adv. Ditira issued correspondence to the Chief Executive Officer of Provincial Treasury (addressed to Mrs Anna Fourie) on 19 June 2012 making reference to a consultation between Provincial Treasury and Legal Services (Office of the Premier) that took place on 18 June 2012 wherein he raised concerns on the procurement process and the validity of the contract, as shown below :



the premier
Department of
the Premier
FREE STATE PROVINCE

LEGALLY PRIVILEGED

OUR REF.: LS/C/12/33

The CEO
Provincial Treasury

Att: Ms A Founie

AGREEMENT BETWEEN DEPARTMENT OF AGRICULTURE AND ESTINA

1. We refer to our consultation with you on 18 June 2012 with regard to the abovementioned agreement.
2. You requested us to peruse and advise on the contract which the Department of Agriculture has entered into with Estina.
3. It appears that the procurement process was not followed. The contract may be invalid due to a number of reasons.
4. We suggest that you propose to the Treasury Committee that the agreement and the procurement documents be sent to us for review.
5. For any further clarity please contact Adv Ditira.

KOJL

ADV KJC DITIRA
DDG: Legal Services
19 June 2012

5.1.131 She also submitted that the Senior Manager; Public Finance of Provincial Treasury registered various issues with regards to submissions relating to the advance payment request that was made by the Department of Agriculture to Provincial Treasury for such an advance payment to Estina that stated:

- (i) "That approval for an advance payment must be obtained before a contract is officially signed, which in this case was not done";
- (ii) The submission to amend projects was referred back to the Department to correct certain issues raised; and

(iii) *Drawing attention to the National Treasury Instruction Note of 31 May 2011 (Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management)".*

5.1.132 She indicated that a meeting of the Treasury Committee was convened on 19 June 2012 and it was resolved that an *ad hoc* Technical Committee led by the Director-General in the Office of the Premier (herself at the time) be established to ensure, amongst others, that all relevant documentation is provided by the DARD to the Provincial Treasury to enable the Provincial Treasury to consider the application for the advance payment, to review the contractual agreement entered into between the DARD and Estina and to consider further funding requirements for the project.

5.1.133 She stated that subsequent to this meeting, the consideration of the application for the advance payment was dealt with between the DARD and Provincial Treasury as set out below. The review of the contractual agreement was concluded between the State Law Advisors and the DARD. There were no further engagements on future funding for the project as the DARD had indicated that it will explore the utilisation of conditional grant funding and subject to whether that was possible, the matter would be reviewed at a later stage.

5.1.134 According to Ms Rockman the DARD made a further submission to Provincial Treasury entitled "*Request for Approval from Free State Provincial Treasury (FSPT) for the shift of budget between projects implemented from equitable share and conditional grants by the Free State Department of Agriculture for the 2012/13 financial year*" signed by the HOD of the DARD (Mr Thabethe) on 19 June 2012 and the MEC responsible for Agriculture (Mr Zwane) (without a date).

5.1.135 The evidence indicates that the purpose of the submission was to seek approval from Provincial Treasury to amend and revise certain of the allocated budget for projects to be implemented during the 2012/13 financial year from the Comprehensive Agricultural Support (CASP) and Illima/Letsema

conditional grants. The submission was recommended by the HOD (H. Kgomongwe) of Provincial Treasury on 22 June 2012 with the notation that; *"Recommended that approval be granted subject to the revision of the contract as agreed to by the Technical Committee on 21 June 2012 led by the DG as established by the Treasury Committee"*. The submission was then approved by the MEC responsible for Finance (S.J. Mohai) on 26 June 2012 with the notation; *"Subject to meeting all conditionals stipulated by CEO."*

5.1.136 She stated that a further process of engagement unfolded between the Office of the Premier (Legal Services) and the DARD that culminated in the reviewed Agreement signed on 5 July 2012 by both the HOD of DARD and Estina as well as the supplementary submission to Provincial Treasury.

5.1.137 She stated that during late June 2012, she received a request for assistance from the Municipal Manager of the Phumelela Local Municipality (Mr. Moses Moremi) regarding the proposal from the DARD to utilise municipal-owned land to establish the Vrede Integrated Dairy project. She referred the Municipal Manager to the Legal Services component in the Office of the Premier and also requested the Legal Services component in the Office of the Premier to assist the Phumelela Local Municipality with this matter. The Legal Services component provided an opinion dated 23 July 2012 to the Municipal Manager.

5.1.138 Ms Rockman stated that on 25 October 2012, the Director General of National Treasury (Mr L. Fuzile) issued correspondence to the CEO of Provincial Treasury outlining various concerns regarding *"legislative compliance in respect of the Vrede Integrated Dairy"* and that the CEO of Provincial Treasury (Mr. H. Kgomongwe) responded to this in November 2012, outlining the recommendations of the Treasury Committee. The letters are shown below :



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X116, Pretoria, 0001 Tel: +27 12 318 5111, Fax: +27 12 316 6234
Enquiries: Tel (012) 315 5177 Fax: (012) 315 5045 e-mail: phy@adnet@treasury.gov.za

Mr H L Kgomongwe
The Head Official
Free State Provincial Treasury
Private Bag X20537
BLOEMFONTEIN
9300

Dear Mr Kgomongwe

LEGISLATIVE COMPLIANCE IN RESPECT OF THE VREDE INTEGRATED DAIRY

The Free State Department of Agriculture established the Vrede Integrated Dairy in collaboration with an international dairy company, Estina/Paras, at a cost of R570 million, to which the Department of Agriculture will contribute R342 million and Paras R228 million. It is understood that Estina/Paras will be responsible for project implementation and operational management during the life cycle of the project.

The Department has entered into this agreement without sufficient funds being secured in the budget. According to the signed agreement, on average the Department would have to make R114 million available annually, but has only set aside R30 million in the current financial year for this purpose and R40 million and R22 million in the outer years respectively. In fact, the R114 million represents more than a third of the Department's 2012/13 equitable share allocation. The Department has only budgeted R12 million under the Farmer Support and Development programme (Conditional Grant funding) towards the Vrede Dairy Project and proposes to consolidate funding from smaller projects to offset the balance of the R30 million in the first year. However, there is no reference to the project in the Annual Performance Plans of the Department.

National Treasury is concerned that legislative prescripts may not have been appropriately observed and wishes to obtain a detailed breakdown of the legal parameters applied to justify the implementation of this project. In this respect, it would be necessary to demonstrate how consideration was given to effective financial management and budget process requirements, and whether the private public partnership (PPP) route or other alternatives were considered to balance the risk sharing between government and Estina/Paras.

It is important to have a clear understanding of how the project will unfold and whether all potential obstacles have been adequately addressed. Therefore the National Treasury wishes to acquaint itself with the facts well in advance and accordingly proposes that feedback be provided by close of business on Friday, 9 November 2012.

Kind regards,

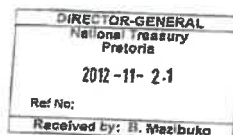
LUNGISA FUZILE
DIRECTOR-GENERAL
DATE: 26 October 2012

Cc: Mr P.M Thabathe



treasury
Department of
FREE STATE PROVINCE

Mr. Lungisa Fuzile
Director-General
National Treasury
Private Bag X116
PRETORIA
0001

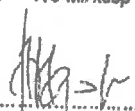


Dear Mr. Fuzile

LEGISLATIVE COMPLIANCE IN RESPECT OF THE VREDE INTEGRATED DAIRY

1. Your letter dated 25 October 2012 in relation to the above-mentioned matter has reference.
2. It is imperative to mention that this project forms part of the bigger Mphahlele programme of the Department of Agriculture. This programme basically entails the establishment of various industries in the province which would contribute towards Agri-processing and value adding to agricultural produce in the province. The programme also has the potential to become a major contributor towards job creation in the province and more specifically in the Thabo Mofutsanyana District.
3. Even though the Vrede project was initially planned as a smaller project which was to be funded through a combination of earmarked provincial funding, CASP and the Ilma Letsema Conditional Grants.
4. However, according to the Department of Agriculture, an opportunity presented itself when a private sector company by the name of Estina expressed interest to partner with the Department in providing additional funding, expertise and management skills to the project.
5. Subsequently, the Provincial Executive Council resolved to elevate the project to a Mega Project.
6. Provincial Treasury then advised the Executive Council as well as the Treasury Committee on shortcomings related to the project, including but not limited to legal implications of the then contract, adherence to budget process and principles, budgetary implications on the provincial fiscus, risks associated with the agreement.

7. Arising from this advice, the Treasury Committee, a sub-structure of the Executive Council, made the following key recommendations:
 - A technical committee under the leadership of the DG be established in order to look into issues of funding, planning and the revision of the initial contract which was entered into between the Department of Agriculture and Estina;
 - A comprehensive review of the contract be done with the assistance of the state law advisors in the Office of the Premier;
 - The Free State Development Corporation (FDC) be involved in the project in order to assist the Department of Agriculture to secure alternative funding for the project as well as to provide certain technical skills needed to get the project up and running.
8. Over and above the R30 million that the Department reprioritized in order to make an initial payment, no funding has been available as yet for the shortfall of R84 million in 2012/13, R114 million in 2013/14 and R114 million in 2014/15.
9. We will keep you informed of any new developments in this regard.



 MR. H. L. KGOMONGWE
 CEO: Provincial Treasury
 Date: 14/11/2012

5.1.139 She further stated that she led a delegation of the Provincial Treasury to conduct a site visit to the Vrede Dairy Project on 23 May 2013 accompanied by the Mayor of the Phumelela Local Municipality (Mr Motaung).

5.1.140 Ms Rockman stated that the pressures on the provincial fiscal environment escalated towards the end of the first quarter of the 2013/2014 financial year. On 26 June 2013, the EXCO approved a submission of the MEC Finance to suspend and shift funds amounting to R80.438 million in line with section 31(2)(e) of the PFMA and further endorsed that the MEC Finance authorise the use of the R80.438 million for the payment of bursaries in line with section 25 of the PFMA.

5.1.141 Ms Rockman stated that on 25 July 2013 the Delegated Transferring National Officer (Ms Elder Mtshiza) of the Department of Agriculture, Forestry and Fisheries (DAFF) informed the HOD of the DARD of the national Department's "Intentions to Withhold Quarter Two Allocations of CASP and Ilima/Letsema for 2013/14" based on communication received from National Treasury.

5.1.142 On 2 August 2013 the HOD of the DARD made a written representation to the Acting Director General (Mr KCM Mannya) of the DAFF - for the attention of

Ms Elder Mtshiza that in essence requested the DAFF not to withhold the Quarter Two CASP allocation towards the implementation of the project.

5.1.143 The acting CEO of Provincial Treasury (G.M. Mahlatsi) received a copy of the 2 August 2013 correspondence from the HOD of DARD and made a notation that; *"We need to follow up during the bilaterals and determine what would be the implications in the event the Q2 CASP allocation is withheld"*.

5.1.144 The DAFF (Delegated Transferring National Officer - Ms Elder Mtshiza) responded to the written representation of the DARD on 21 August 2013 indicating, amongst others, that:

- (a) The process issues that National Treasury had raised had not been satisfactorily responded to;
- (b) Proposed that National Treasury, DAFF, DARD and Provincial Treasury meet to resolve the process issues; and
- (c) DAFF had conducted a technical visit to the Vrede dairy on 13 August 2013 and upon finalisation of the technical evaluation report, feedback would be provided to the province.

5.1.145 A copy of the letter dated 21 August 2013 from DAFF addressed to Mr Thabethe as shown below:


**agriculture,
forestry & fisheries**

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Private Bag X250, Pretoria, 0001; Tel: (012) 319 7300; Fax: (012) 319 7847
Email: ElderM@gasf.gov.za

Mr. Peter Thabethe
Head of Department of Agriculture and Rural Development
Private bag X02
Bloemfontein
9300

Dear Mr. Thabethe

RE: WITHOLDING OF 2ND TRANCHE OF CASP TO THE FREE STATE PROVINCE.

The Department of Agriculture, Forestry and Fisheries (DAFF) wishes to inform you of its decision to implement section 17 (6) (a) (i) of the Division of Revenue Act, Act 2 of 2013 and withhold the second quarter allocation of CASP (R39,4 million) for 2013/14 to the Free State Department of Agriculture and Rural Development (FSDARD) for a period longer than 30 days but not exceeding 120 days.

DAFF has received representation from FSDARD on a letter dated 2 August 2013 which was handed over on 13 August 2013. While notice was taken of the approval of the project by the Free State Executive Council as well as the DAFF National Assessment Panel, the process issues that National Treasury has raised are not satisfactorily responded to. A written supporting documentation from the Provincial Treasury stating their satisfaction with how the project is implemented would form an acceptable supporting motivation for the funds to be released for the project.

WITHOLDING OF CASP Q2 OF 2013/14 TO FREE STATE

1

DAFF hereby request that National Treasury and DAFF meet with the FSDARD and Provincial Treasury to resolve the process issues as raised by National Treasury during this period. DAFF has also conducted a technical visit to the Vrede dairy on 13 August 2013 and upon finalization of the technical evaluation report, feedback will be provided to the province.

Yours faithfully

DIRECTOR GENERAL

SIGNED BY: Ms. Elder Mtshiza

DAFF: DELEGATED TRANSFERING NATIONAL OFFICER

Date: 21/08/2013.

Cc: Acting DG - Mr. KCM Mannya (DAFF)
DDG:FSAR - Dr. Sizwe Mkhize (DAFF)
CFO - Mr. Jacob Hlatshwayo (DAFF)
DIRECTOR BUDGET - Mr. Johan Venter (DAFF)
Acting DDG: Intergovernmental Relations - Ms. Mafjeng Ngqaleni (National Treasury)
CHIEF DIRECTOR: PBA - Mr. Edgar Sishi (National Treasury)
HOD - Free State Treasury - Mr. H. Kgomongwe

5.1.146 Ms Rockman indicated that Provincial Treasury did not provide the written confirmation requested by DAFF in its letter dated 21 August 2013.

5.1.147 At the time DAFF decided to withhold further transfers of the conditional grant funding in respect of the Vrede Dairy Project, the DARD had already spent R24 million of the initial conditional grant allocation of R53 950 million. This left the DARD with a shortfall of R29 950 million for the Vrede Dairy Project for the 2013/2014 financial year.

5.1.148 The preparation of the 2013 Adjustment Appropriation process took place whilst the withholding of the conditional grant funding towards the Vrede Dairy Project and the National Treasury investigation had not been concluded. The EXCO approved the 2013/2014 adjustment budget on 13 November 2013, noting that a further adjustment budget may be considered during the last quarter of the current financial year. Ms Rockman was not able to provide a copy of the document relating to the EXCO approval of the adjustment budget of 2013/2014 financial year.

5.1.149 The CEO of Provincial Treasury (Mr MNG Mahlatsi) issued correspondence to the DG of DAFF dated 26 November 2013 seeking clarity on, amongst others, the status of the forensic investigation and continued funding possibilities in preparation for the 2014 MTEF budget allocations.

5.1.150 The DG of DAFF responded to the 26 November 2013 correspondence and indicated, amongst others that:

- It had received an instruction from National Treasury to withhold the funds from the Vrede Dairy project;
- Confirmed the Vrede dairy project was approved by the national Assessment Panel (NAP) and set out the basis of such approval and that the support was based on what the province had presented to the NAP;

- Confirmed that a technical visit was conducted and certain concerns had been identified and additional information had to be made available by the DARD on or before 1 November 2013 to DAFF which had not been done;
- Reference was made to the forensic investigation commissioned by National Treasury which was expected to be concluded by 31 October 2013, though the results of the forensic audit had not been communicated to DAFF
- Confirmed that no funds will be committed to the project at this stage from the CASP and/or Ilima/Letsema conditional grants; and
- A 10 x 10 meeting between the DAFF, National Treasury, provincial departments of agriculture and Provincial Treasuries was rescheduled from December 2013 to February 2014.

5.1.151 The DAFF did not release further funding in respect of the Vrede Dairy Project. This necessitated the DARD to request additional funding from Provincial Treasury through an adjustment budget on 20 December 2013.

5.1.152 On 3 March 2014, the EXCO approved the Special Adjustment Appropriation Bill, 2014. The Memorandum to the 2014 Special Adjustment Appropriation Act (No 1 of 2014) provides for an additional allocation to the DARD of R25 million and an internal reprioritization of R4.950 million. The R25 million was made available through identified savings amounting to R33.417 million under Compensation of Employees (all departments). In total, this allocation funded the payment that had already been made to Estina by DARD in December 2013 and addressed the operational expenditure pressures that resulted from that payment.

5.1.153 The extracts of the 2014 State of the Province address by Mr Magashule on 21 February 2014 and the budget vote delivered by Ms Qabathe on 09 July 2014 confirmed the Provincial Government's commitment and continued support of the Project.

- 5.1.154 During her interview with the investigation team, Ms Rockman stated that in respect of the Department's engagement with the Gupta Family started in July 2010 when the New Age made a presentation to the EXCO to get support for advertisements. In her interview at the Commission of Inquiry to State Capture, on 16 October 2019, she stated further that between 2010 to almost 2013 her engagements was mostly with Mr Narayan and Mr Nazeem Howa.
- 5.1.155 She further stated that around August 2011, whilst on her way to an EXCO meeting in Bethlehem, she was called by the Premier who informed her that the people from New Age wanted to meet before the EXCO meeting scheduled in Bethlehem. She stated that at the meeting the Premier left her with the New Age people and she had to listen to their proposal to enter into a subscription agreement that was being presented. She stated that one of the Gupta brothers was at the meeting but she could not remember which one of the brothers it was.
- 5.1.156 She stated that she further met the Gupta brothers in May 2012 during the New Age business breakfast in Bloemfontein and at the ANC National Conference in December 2012. She stated during her evidence at the State Capture Commission that: *"..they were in the environment. It was not like they were not known and not – no one ever engaged with them. They were there."*
- 5.1.157 Ms Rockman further stated that she met with Rajesh "Tony" Gupta at their Saxonwold residence around April 2013. It was after she had left as Director General and when she was appointed as MEC for Finance. The purpose of that meeting was to discuss the arrangements since she was now no longer there as Director General and also the R84 million of the outstanding payment to Vrede Dairy for the 2012/2013 financial year.
- 5.1.158 A further meeting was held in September 2013, wherein discussions were held regarding the media reports of the dead cows. She stated that some of the meetings held with the Guptas that would have been related to Estina were at Sahara Computers, some at Saxonwold and others were in Bloemfontein which would have not related to Estina. She stated that she tried to mostly

have the meetings if she was already in the Gauteng Province for any other business and it would not have been for a specific trip.

5.1.159 I have requested information from Cell phone Network Provider in order for me to confirm Ms Rockman's statements with the regards to her meeting with the Gupta Family. However, I was informed by the Cell phone Network Provider that due to the timeline GPS information to confirm location was not available.

5.1.160 In respect of Mr Narayan she stated that she had met him in 2010 and had associated him with New Age and that his association with Estina was inferred from his dealings the Mohoma Mobung Project strategy.

MR ASHOK NARAYAN'S ROLE IN THE VREDE DAIRY FARM PROJECT AND LINKS WITH THE GUPTA FAMILY.

5.1.161 Mr Narayan was appointed as a member of the Premier's Advisory Council on 29 February 2012 effective on 1 March 2012. It is common cause that Mr Narayan accompanied Mr Thabethe to India on 29 February 2012. The trip was approved by Mr Magashule in his capacity as Premier.

5.1.162 According to the CIPC records:

5.1.162.1 Mr Narayan served as a Director of Linkway Trading Registration Number 2007/009012/07. The current directors are listed as Ms Ronica Ragavan and Mr Kevin Wentworth Eugene Thyse. Ms Ragavan is further sited as a Director of Oakbay Investments Registration Number 2006/017975/07 together with Mr Ashu Chalwa. Mr Varun Gupta and Mr Nazeen Howa were further listed as Directors of Oakbay Investments.

5.1.162.2 I have since obtained independent evidence relating to the alleged channeling of funds from Estina to other entities including Oakbay Investments and Linkway Trading. The information reveals several cross border transactions between Estina and amongst others bank accounts held in the UAE.

- 5.1.162.3 I have been made aware by the Head of the DPCI that the investigation relating to Vrede Dairy Project was handed over to the Investigative Directorate of the National Prosecuting Authority (NPA), for further investigation. I therefore deem it appropriate that all issues relating to the possible criminal charges, including offences under the Prevention of Organised Crime Act (POCA), be referred to the DPCI accordingly, to deal with.
- 5.1.162.4 Mr Vasram, the sole Director of Estina is also listed as the Director of Sunbay Trading Enterprise Number 2011/000591/07 and a Director of Siyabuselela Trading Enterprise Registration Number 2822011/087871/23 in which Mr Narayan was also listed as a Director. Sunbay Trading was awarded a contract for the supply of laptops by the FSPG.
- 5.1.162.5 According to evidence led during the Commission of Inquiry into State Capture by Mr Moremi, the former Municipal Manager for Phumelela Municipality, Mr Narayan accompanied Mr Johann Schalkwyk a lawyer from Van der Merwe Associates to a meeting in Vryheid , where Mr Moremi was presented with a draft lease agreement between Phumelela Municipality and Zayna Investments. Mr Frans Mokoena and the Mr Motaung were also present at the meeting. Mr Moremi stated that he perused the agreement and requested that he be given an opportunity to seek a legal opinion on it.
- 5.1.162.6 He further stated that on the 18 July 2012, Mr Narayan wrote an email to him clarifying that that the intended lease agreement would be for 99 years and on a rent-free basis. Mr Narayan further suggested that rates and taxes *"should be paid for the Municipality as the owner of the property. The Municipality is getting a 4% stake in the business in lieu of rentals"*

Information obtained from subpoenaed Affidavits

5.1.163 In addition to the interviews conducted, I subpoenaed affidavits from the undermentioned persons, to provide me with information regarding their role in the Vrede Dairy Project. Their responses thereto are provided below

MR GUGILE ERNEST NKWINTI THE FORMER MINISTER DAFF

AFFIDAVIT IN RESPECT OF SUBPOENA

I, the undersigned,

GUGILE ERNEST NKWINTI

do hereby make oath and state that :

1.

1.1. I am an adult male and I was duly appointed as the Minister for the Department of Rural Development and Land Reform since 2009 and subsequently the Minister of the Department of Water and Sanitation in 2018 until May 2019. I am now retired and I am presently resident at 24 Northwood Road, Kenton On Sea, Eastern Cape.

1.2. The facts and/or circumstances set out hereunder fall within my personal knowledge, unless the contrary is explicitly stated or where it appears from the context hereof, and are true and correct.

2.

PUBLIC PROTECTOR SUBPOENA

I received a subpoena on the 19th of September 2019 from the office of the Public Protector in terms of which I am required to submit an affidavit with supporting evidence and documentation under my control explaining and producing evidence, reports, minutes of meetings and/or correspondence in relation to the Public Protector's investigation of the allegations or suspicion of political interference in the EstinaVrede Dairy Farm Project.

3.

DEPOSITION

I hereby confirm the following in as far as the Public Protector's investigation is concerned:

- 3.1. I have no information and/or documentation within my control and/or knowledge that could be helpful or relevant to the investigation;
- 3.2. I played no role in the EstinaVrede Dairy Farm Project in my capacity as a member of Cabinet or any other capacity;
- 3.3. I have never engaged with any of the persons and/or functionaries detailed in paragraph 8.1.2 of the subpoena in respect of the EstinaVrede Dairy Farm Project;



GUGILE ERNEST NKWINTI
DEPONENT

MS ALETTA CATHARINA MEYER PROJECT CORDINATOR DARD

AFFIDAVIT

I Aletta Catharina Meyer state under oath in English that:

1.

I am an adult female aged 60 years, ID number: 5810190026085, residing at 31 Boys Street Harrismith, Free State Province. I am a pensioner since 1 February 2019. I worked for the Free State Department of Agriculture and Rural Development until my retirement as a project coordinator of all funded Agriculture projects in the Thabo Mofutsanyana District.

2

I am not in possession of any documents regarding the Vrede Dairy Project. Some documents were handed over to the Hawks during their 2018 investigation. There are still Vrede Dairy documents in the offices of the Department of Agriculture and Rural Development in Phuthadithaba where I previously worked. As far as my memory serves me Vrede Dairy Beneficiaries were listed by officials of the Phumelela Municipality after a meeting where the then MEC of Agriculture and Rural Development, Mr. Mosebenzi Zwane had a meeting with community members at Vrede. I was not present at the meeting because I was not aware about the meeting and it was held over a weekend. The involvement of the beneficiaries was not clarified at that time.

3

My first meeting with the intended beneficiaries was after I received an instruction from my supervisor, Dr. TJ Masiteng, Chief Director at Glen to get the name lists and ID numbers as listed by municipality officials over the past weekend. The meeting was in 2012. It was a challenging meeting because I could not clearly explain to the beneficiaries how they would benefit in the Vrede Dairy Project. During the first meeting, a beneficiary committee was selected. I can also recall a meeting when Ms Mamiki Qabathe, MEC visited the project and confirmed to the intended beneficiaries that they are beneficiaries. The extend of benefits for beneficiaries was not clear.

At another occasion, Dr. Masiteng instructed me to get a beneficiary agreement signed by the chairperson of the Vrede Dairy Beneficiaries. The agreement was a standard document used by the Department to obtain project funding from the National Department of Agriculture, Forestry and Fisheries.

4

I can remember some of the following selection criteria for the Vrede Dairy Beneficiaries:

- Beneficiaries should have South African Identification Documents
- All beneficiaries should be residents of the Phumelela Local Municipality
- Beneficiaries should not benefit in other projects
- Beneficiaries should not have criminal records

5

I do not have information related to the dissatisfaction of the intended beneficiaries.

6

Mr. Peter Thabethe informed all senior officials about the Vrede Dairy Project during 2012. This was done at a project meeting at Glen. A presentation was given about the partnership between Estina and the Free State Department of Agriculture. It was explained by Mr. Thabethe that the Vrede Dairy project will require more money and that all districts should reprioritize projects to save funds. Savings should be used at the Vrede Dairy Project. Another engagement I had with Mr. Thabethe was during a meeting with the lessees of the land which belonged to the Phumelela Local Municipality where the Vrede Dairy was established. The lessees had long term contracts with the Phumemela Municipality, but the contracts were terminated to make the land available for the Vrede Dairy project.

I did not have close contact with Mr. Mosebenzi Zwane and Ms Mamiki Qabathe about the implementation of the Vrede Dairy

7

My involvement in the implementation of the Vrede Dairy Project was different compared to my involvement in the implementation of the other Agriculture Projects I implemented. Estina was the project implementer. Mr. Prasad was the project manager of the Vrede Dairy Project. I supported him with technical matters like certification of arable land, water rights and cultivar choices.

The project cycle which were used for other projects were not applicable at Vrede Dairy. I struggled to obtain progress reports from Estina. Mr. Prasad response was that he was instructed to report to Dr. Masiteng and not to me. I was not involved with signing off invoices or any finance related matters concerning the Vrede Dairy Project. Implementation of other projects required me to do

inspections with engineers and beneficiaries, advise on the project budget, give expenditure reports.

At the Vrede dairy project I was not involved in the mentioned processes. It was handled from the Provincial Offices at Glen.

I Aletta Catharina Meyer state further that

I know and understand the content of the statement

I have no objections in undertaking the prescribed oath to be binding on my conscience

I swear that the contents of the statement are true

Signed at Harrismith on 19 July 2019

Aletta Meyer

Aletta Catharina Meyer

MS TINA JOEMAT-PETTERSSON FORMER MINISTER DAFF

PUBLIC PROTECTOR SOUTH AFRICA

FILE REF NO: 7/2-004397/17

In the complaint of:-

THE PUBLIC PROTECTOR

Complainant

and

THE FREE STATE PROVINCIAL GOVERNMENT

Respondent

AFFIDAVIT


I, the undersigned,

Tina Joemat - Pettersson

do hereby make oath and state:

1. I am an adult female Member of Parliament and the Chairperson of the Portfolio Committee on Police.
2. I was subpoenaed to submit an affidavit to the Public Protector on 11 October 2019 by 10h00.

3. I was to provide an explanation, and/or produce any relevant documentation which may be in my possession and/or under my control such as minutes of meetings, reports, and/ or correspondence which may have a bearing on the investigation, including but not limited to the extent of my engagement relating to the matter under investigation.
4. I attended the offices of the Public Protector on the abovementioned date with my attorney of record, Mr. Martin du Plessis.
5. I wish to record that I am not in possession of any documents or information that may assist the Public Protector in the investigations in the Estina Vrede Dairy Farm Project.
6. I recall that I ordered an investigation into the project and that no payments should be made to the Estina Vrede Dairy Farm Project when the news broke that irregularities were committed



TINA JOEMAT - PETTERSSON