

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 5

1 April 2021

PROCLAMATION
by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as “the Act”), have been made in respect of the affairs of the eThekweni Metropolitan Municipality situated in the Kwazulu-Natal Province (hereinafter referred to as “the Municipality”);

AND WHEREAS the Municipality or the State may have suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule, in respect of the Municipality, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

(a) serious maladministration in connection with the affairs of the Municipality;

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- (b) improper or unlawful conduct by officials or employees of the Municipality;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Municipality; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 12 October 2012 and the date of publication of this Proclamation or which took place prior to 12 October 2012 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the Municipality or the State, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this 10th day of March Two thousand and twenty one.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

RO Lamola
Minister of the Cabinet

SCHEDULE

1. Maladministration in the affairs of the Municipality in respect of the—
 - (a) alienation by, or on behalf of the Municipality, of immovable property of the Municipality or the State, for the provision of housing through the Municipality's Human Settlements Infill Housing Programme, which alienation was contrary to manuals, policies, procedures, prescripts, instructions or practices of, or applicable to, the Municipality; and
 - (b) transfer or sale of vacant properties by developers appointed by the Municipality for purposes of the Municipality's Human Settlements Infill Housing Programme—
 - (i) in breach of the developers' contractual obligations; and
 - (ii) contrary to the objectives of the Municipality's Human Settlements Infill Housing Programme.

2. Payments made in respect of the allegations set out in paragraph 1 of this Schedule in a manner that was—
 - (a) not fair, competitive, transparent, equitable or cost-effective;
 - (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Municipality; or
 - (c) conducted by or facilitated through the improper or unlawful conduct of—
 - (i) employees or officials of the Municipality; or
 - (ii) the developers in question; or
 - (iii) any other person or entity,
to corruptly or unduly benefit themselves or any other person or entity; or
 - (d) fraudulent,
and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality or the State.

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3. Any unlawful or improper conduct by—

- (a) officials or employees of the Municipality;
- (b) the developers in question; or
- (c) any other person or entity,

in relation to the allegations set out in paragraphs 1 and 2 of this Schedule.

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. 5

1 April 2021

PROKLAMASIE
van die
PRESIDENT van die REPUBLIEK van SUID AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996
(WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA
BESTAANDE SPESIALE ONDERSOEKEENHEID

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die eThekweni Metropolitaanse Munisipaliteit, geleë in die KwaZulu-Natal Provinsie (hierna na verwys as "die Munisipaliteit");

EN AANGESIEN die Munisipaliteit of die Staat verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld ten opsigte van die Munisipaliteit, vir ondersoek na die Spesiale Ondersoekeenhede ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Munisipaliteit;

- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die Munisipaliteit;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die Munisipaliteit; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 12 Oktober 2012 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 12 Oktober 2012 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Munisipaliteit of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 10de dag van Maart Twee duisend-en-een-en-twintig.

CM Ramaphosa
President

Op las van die President-in-Kabinet

RO Lamola
Minister van die Kabinet

BYLAE

1. Wanadministrasie in die sake van die Munisipaliteit ten opsigte van die—
 - (a) vervreemding deur, of namens die Munisipaliteit, van onroerende eiendom van die Munisipaliteit of die Staat, vir die voorsiening van behuising deur die Munisipaliteit se “Human Settlements Infill Housing Programme”, welke vervreemding strydig was met handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is; en
 - (b) oordrag of verkoop van vakante eiendomme deur ontwikkelaars wat deur die Munisipaliteit aangestel is vir doeleindes van die Munisipaliteit se “Human Settlements Infill Housing Programme”—
 - (i) strydig met die ontwikkelaars se kontraktuele verpligtinge teenoor die Munisipaliteit; en
 - (ii) strydig met die doelstellings van die Munisipaliteit se “Human Settlements Infill Housing Programme”.
2. Betalings wat ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae gemaak is op ‘n wyse wat—
 - (a) nie billik, mededingend, deursigtig, billik of koste-effektief was nie;
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of die plaaslike Provinsiale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van of wat op die Munisipaliteit van toepassing is; of
 - (c) gedoen of gefasiliteer was deur die onbehoorlike of onwettige optrede van—
 - (i) beamptes of werknemers van die Munisipaliteit;
 - (ii) die betrokke ontwikkelaars; of
 - (iii) enige ander persoon of entiteit,om hulself of enige ander persoon of entiteit op ‘n korrupte of onbehoorlike wyse te bevoordeel; of
 - (d) bedrieglik was,en enige onregmatigde, onreëlmatige of vrugtelose en verspilte uitgawes wat deur die Munisipaliteit of die Staat aangegaan is.

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3. Enige onwettige of onbehoorlike gedrag deur—

(a) beamptes of werknemers van die Munisipaliteit;

(b) die betrokke ontwikkelaars; of

(c) enige ander persoon of entiteit,

ten opsigte van die bewerings uiteengesit in paragrawe 1 en 2 van hierdie Bylae.