



**PUBLIC PROTECTOR
SOUTH AFRICA**

Accountability. Integrity. Responsiveness. Justice. Good Governance

SETTLEMENT AGREEMENT

(In accordance with section 6(4)(b)(i) of the Public Protector Act, 1994)

Entered into between

MR TSHEPO MOLETSANE

Representing the Masiphumelele Informal Settlement Community

{Hereinafter referred to as the “Complainant”}

And

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY

Herein represented by **Cllr Patricia de Lille** in her capacity as the **Executive Mayor**
and duly authorized hereto

{Hereinafter referred to as “City of Cape Town”}

PREAMBLE

WHEREAS sections 181(1)(b) and 182 of the Constitution of the Republic of South Africa, Act 108 of 1996, provides for the establishment of the office of Public Protector and that the Public Protector has the power, as regulated by national legislation, 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 have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action, in order to strengthen and support constitutional democracy in the Republic;

WHEREAS the vision of the Public Protector South Africa is to be a trusted, effective and accessible Public Protector that corrects administrative wrongs and consistently acts with integrity to ensure fair, accountable and responsive decision making, service and good governance in all state affairs and public administration in any sphere of government;

WHEREAS the mission of the Public Protector South Africa is to strengthen constitutional democracy in pursuit of our constitutional mandate by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public sector decision-making and service delivery;

WHEREAS the Public Protector is empowered, in terms of section 6(4)(b)(i) of the Public Protector Act, to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation;

WHEREAS any finding, point of view or recommendation and any report issued by the Public Protector shall be open to the public, unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential;

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WHEREAS the City of Cape Town, is a Metropolitan Municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) read with Provincial Gazette 5588 dated 22 September 2000 (as amended);

WHEREAS the constitutional objective of the City of Cape Town, in terms of section 152 of the constitution, is to: -

- a) provide democratic and accountable government for local communities;
- b) ensure the provision of services to communities in a sustainable manner;
- c) promote social and economic development;
- d) promote a safe and healthy environment; and
- e) to encourage the involvement of communities and community organisations in the matters of local government.

WHEREAS the City of Cape Town, in giving effect to the aforementioned Constitutional objectives, is limited to doing so within the confines of its Constitutional mandate as provided for in Schedules 4B and 5B of the Constitution, where it is empowered to do so, due process and its available resources;

AND WHEREAS, the parties, after due considerations, have determined to resolve any dispute or rectify any act or omission relating to or arising out of, or concerning the allegations of improper or prejudicial conduct by the City of Cape Town, pursuant to the terms and conditions enumerated hereafter;

1. THE COMPLAINT

1.1 The Public Protector received a complaint from the Complainant, who alleged the following: -

- 1.1.1** The area is plagued by overcrowding which has led to frequent and devastating fires which leave thousands of persons including children and elderly, homeless;

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- 1.1.2 Sanitation provision is inadequate and on average, taking into consideration population density there is one toilet per 100 users which is below the acceptable standard and the official statistics presented by the City of Cape Town Sanitation Provision in Informal Settlements;
 - 1.1.3 Unsanitary and dangerous storm water canals contain stagnant water which, due to inadequate sanitation provision, have become widespread mechanism of the disposal of night soil resulting in the stagnant water having unacceptably high level of untreated human waste which presents a significant risk to the wellbeing of especially children and the elderly;
 - 1.1.4 The overcrowding leaves little space for children to play and this results in danger to the children since their play areas, of necessity, are centred around the unhygienic canals;
 - 1.1.5 Sewage of contaminated water from the canals affect the informal structures in which the people live and the constant damp poses a further risk to health of the inhabitants of the land closest to the canals;
 - 1.1.6 Due to the limited access to the available sanitation technologies, community members are obliged to use the surrounding reed beds for their personal needs. This contributes to the pollution of the reed beds and poses a further health and environmental risk;
 - 1.1.7 Limited access to clean running water for hygiene and other purposes since the communal taps are widely spaced out and lengthy queues make accessing water difficult.
- 1.2 In response the Complaint set out in paragraph 1.1 above, the City wishes to place on record that:

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- 1.2.1 The City strives to provide facilities that are in accordance with national norms and standards, are easily accessible, safe, reliable, private, ventilated, hygienic, easily maintained and cleaned, and at a ratio of 1 toilet to 5 households;
- 1.2.2 The City has installed 143 full flush toilets (FFT's), at a ratio of 1 toilet to 16.9 households and has handed out 62 portable flush toilets (PFT's) in total, 13 of which have been returned by members of the community;
- 1.2.3 Notwithstanding the density and topographic challenges associated with providing additional FFT's, efforts have been made to introduce more PFT's;
- 1.3 Having considered the evidence uncovered during the preliminary investigation of the aforesaid complaint and after consultation with the Executive Mayor, Cllr Patricia de Lille, on 3rd August 2017 and further consultation with the Masiphumelele Community on 24 August 2017, the Public Protector has decided to resolve or rectify an act or omission under the above-mentioned matter being investigated through mediation and conciliation, in accordance with section 6(4) (b) (i) of the Public Protector Act.
- 2.1 **NOW THEREFORE**, the parties have agreed to resolve the above-mentioned dispute or rectify any act or omission in relation of the matter under investigation. In order to ensure compliance with its constitutional and statutory obligation (in terms of section 152 of the constitution and section 73 (1) of the Municipal Systems Act, 2000 (Act No. 32 of 2000), the City of Cape Town shall ensure that each member of Masiphumelele Informal Settlement Community has access to at least a minimum level of basic service, as follows: -

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- 2.1.1 The City of Cape Town will ensure that there is daily supply of Water and Sanitation services at Masiphumelele Informal settlement subject to budget approval;
- 2.1.2 The City of Cape Town shall, within 80 working days of signing this agreement, and subject to budget approval, upgrade the supply system for Water and Sanitation services, at Masiphumelele Informal settlement;
- 2.1.3 The City of Cape Town shall, within 180 days of signing this agreement, provide the Public Protector with the Masiphumelele Spatial Development Framework (MSDF), pertaining to the Community of Masiphumelele. The MSDF shall identify the land in which the housing project for Masiphumelele community will be implemented and shall provide access to basic services within the City's Constitutional mandate, and financial and administrative capacity as stated in section 152(2) of the Constitution;
- 2.1.4 The Public Protector or his/her delegated official be the Mediator between the City of Cape Town and Masiphumelele Informal Settlement Community, with regard to delivery of basic services in the Masiphumelele Informal settlement as well as the new housing development for Masiphumelele Community;
- 2.1.5 In order to ensure thorough and proper consultation between the City of Cape Town and Masiphumelele Informal Settlement Community, the Public Protector will facilitate the election of community leaders, which leadership will be incorporated into the Masiphumelele Basic Service Delivery Task Team (MBSDTK). The BSDTK shall consist of the representatives from:
 - 2.1.5.1 The City of Cape Town;
 - 2.1.5.2 Local Councilor; and

2.1.5.3 Masiphumelele Community Leaders.

- 3 The parties agree that this Settlement Agreement shall constitute the findings and remedial actions of the Public Protector, in terms of section 182(1) of the Constitution.

THUS SIGNED and DATED at CAPE TOWN on this theday of AUGUST 2017

Facilitated by **Adv Busisiwe Mkhwebane**
THE PUBLIC PROTECTOR

AS WITNESSES:

1. _____

2. _____

Mr Tshepo Moletsane

For and on behalf of Masiphumelele Informal Settlement Community.

For and on behalf of the City of Cape Town: **Cllr Patricia de Lille** in her capacity as the
Executive Mayor.