

STATEMENT BY MEC LEBOGANG MAILE ON THE OUTCOME OF THE INVESTIGATION REGARDING ALLEGATIONS OF IRREGULAR APPROVAL OF FUNDING AND LOANS BY THE GAUTENG PARTNERSHIP FUND (GPF) TO NONKWELO INVESTMENTS, 13 NOVEMBER 2023 AT 82 GRAYSTON, SANDTON (GPF OFFICES)

1. PURPOSE

The purpose of this media briefing is to provide the public with the final report on the outcome of the investigation into allegations of corruption and maladministration in the awarding of funding and loans to Nonkwelo Investments by the Gauteng Partnership Fund as alleged in a News24 article in July 2023.

2. BACKGROUND

It is imperative to provide a brief background and context on salient aspects of the investigation, as captured in the afore-mentioned report and News24 article hereunder:

2.1. Noting the absence of transformation within the sector and projects funded by the GPF, on 27 July 2010, the GPF Board approved the Entrepreneur Empowerment Property Fund Program (“EEPF Program”).

2.2. The objective of the EEPF Program was to encourage entities owned by Historically Disadvantaged Individuals (“HDI”) to participate in the affordable housing rental market, through ownership of residential rental portfolios.

2.3. The Board authorised the Investment Committee (“IC”) to approve a maximum of R7.5 million loans per project for the acquisition of land and/or building and an additional R 7.5 million for development costs. Therefore, in line with the Delegations of Authority (“DoA”) the IC had authority to approve funding of EEPF projects up to R15 million per project. Full background details of the factual matrix on the approval and awarding of loans by the GPF are contained in paragraph 2 of the final Investigation Report and need not be repeated herein.

2.4. Following the publication of a series of articles by News24 under the “Mashatile Unmasked” investigative project, alleging that the son-in-law of the Deputy President,

Nceba Nonkwelo had unduly benefited from loans and funding by the GPF, an entity of the Gauteng Provincial Government that is under the Gauteng Department of Human Settlements, the GPF Board of Trustees instituted an independent investigation to probe these allegations.

3. THE INVESTIGATION

3.1. As a result of these serious allegations by News24, we deemed it appropriate as the Gauteng Provincial Government and the Executive Authority of the GPF, in line with our constitutional obligations, to give a directive to the GPF Board of Trustees to launch an independent investigation into the veracity or otherwise of these serious allegations. On my instruction as the Executive Authority, the GPF Board of Trustees sought expert investigation services related to the GPF's approval of the Developer's funding application and subsequent loans awarded in relation thereto.

3.2. The investigation related to Nonkwelo Investments (Pty) Ltd being the Developer herein ("Nonkwelo Investments"). The GPF Board of Trustees exercised due diligence by following the procurement processes in compliance with the applicable financial prescripts for the appointment of a law firm with the requisite skills and capacity to investigate the above serious allegations. The procurement process of appointing a law firm took longer than anticipated given the required specialised skills, complexity of the issues involved and the long history of this matter. Gildenhuys Malatji Incorporated ("GMI") an incorporated firm of attorneys practicing as such was appointed to render the services in line with a Service Level Agreement concluded with the GPF. GMI was expected to investigate the approval of the loan/s provided to Nonkwelo Investments and any matter connected thereto in accordance with the approved scope of work and terms of reference as encapsulated in the introductory part of the final Investigation Report.

3.3. When we took this conscious decision to launch a full investigation, we were mindful of our inherent constitutional and legislative responsibilities as provided in section 133 of the Constitution of the Republic and section 63, 64 and 65 of the Public Finance

Management Act, 1999 (“the PFMA”) as amended to ensure the GPF Board of Trustees exercises its fiduciary duties impartially, undeterred and without any perceived interference whilst as the Executive Authority, I remained accountable and transparent to the public about the process as it unfolded.

3.4. The GMI issued the final Investigation Report on 25 October 2023 despite delays which were beyond our control, hence we are here today to release the report for public consumption and scrutiny.

4. SCOPE OF MANDATE AND TERMS OF REFERENCE FOR THE INVESTIGATION

4.1. The following scope of mandate and or terms of reference of the investigation were given to GMI by the GPF Board of Trustees:

- (a) To determine if all applicable GPF policies, procedures, other applicable laws and regulations were complied with;
- (b) To verify whether there were changes of scope and cost overruns in the Project including number of loans advanced to the developer by the GPF;
- (c) To determine whether there was compliance with terms and conditions of the loan Agreement/contract;
- (d) To determine whether there is a perceived or actual conflict of interest in accordance with the GPF policies and/or procedures including undue influence or special treatment received by the developer at any stage of the GPF processes in relation to the loan;
- (e) To determine whether the GPF accurately reported and disclosed information relating to the debt due to the Developer in its previous years’ Annual Financial Statements (“AFS”) and
- (f) To determine whether or not by commission or omission, GPF officials and trustees acted diligently and/or in the best interest of the GPF throughout their dealings with the Developer/Project or disclose any other material observations and findings in relation to the project.

5. KEY FINDINGS AND RECOMMENDATIONS

5.1. In line with the above scope of mandate and or terms of reference and analysis of available evidence what follows hereunder are the key findings:

- (a) As at the time of this Investigation Report, investigators were not in a position to make findings as to whether the approval of the Developer in the participation of the EEPF Program had been done in accordance with applicable laws or applicable procedures due to not being provided with all the relevant information and/or documentation to enable the investigation team to make a finding. However, GMI noted that if these documents never existed, the approval which was granted for participation in the EEPF Program would have been irregular. Alternatively, if the documents did exist, but were inadequate and/or or did not meet the necessary requirements, the approval would also have been irregular.
- (b) There were shortcomings on the Project Appraisal. More comprehensive due diligence and procedural steps ought to have occurred prior to the granting of the loan facility to Nonkwelo Investments.
- (c) GMI was unable to determine whether Nonkwelo Investments even requested a scope change, or whether such scope change was rather at the behest of a different entity called Nonkwelo Strategic Investments. Also, the legal basis for the scope change by restructuring the project from affordable housing project to student accommodation is uncertain.
- (d) The Trustees who took or participated in this decision may attract liability as set out in section 9 of the Trust Property Control Act. It is further unknown or uncertain that GPF approved such scope change where no such proposal was forthcoming from the Developer i.e., Nonkwelo Investments, but rather from a different entity i.e., Nonkwelo Strategic Investments.

- (e) Taking into consideration GMI's earlier findings that the GPF had no legal basis or otherwise to approve the scope change, any subsequent approvals and/or increase of the original junior loan facility was likewise flawed and/or irregular, the Trustees who took or participated in this decision may attract liability as set out in section 9 of the TPCA.
- (f) Whilst we are mindful that the Investment Committee (IC) was duly authorised in terms of the 2016 GPF Delegation of Authority (DoA) to approve funding from R5 million to R20 million, as further alluded hereunder, it was evident that the Project was not viable.
- (g) By expending further funds and/or approving a senior funding loan to Nonkwelo Investments, this was not in the best interest of the GPF. Whilst this does not form part of GMI'S scope or mandate, it is unknown to us why such a "jump" was allowed. Unless there is a reason for this, it would have otherwise been an arbitrary and possibly a reckless decision. By stepping in and approving a senior funding loan to Nonkwelo Investments, investigators expressed a view that this caused GPF to continue to assume an even greater risk.
- (h) The invoices and vouchers availed confirm the total amount of R7,246,126.83 (Seven Million Two Hundred and Fourty Six Thousand One Hundred and Twenty-Six Rand and Eighty-Three Cents) was disbursed as outlined by management. Documentation provided by management shows drawdowns wherein GPF deducted the equity for Nonkwelo Investments from its invoices rendered. Further, that in respect of invoice C0416, the GPF paid for the difference between the purchase price and Nonkwelo's Investment equity of R500 000.00 as required with the first approval. No sufficient information provided to confirm payment of equity directly to the attorneys. Agreements do not specify the manner and/or form of the equity contribution required.

- (i) Due to the material breach of the Agreement, the GPF was entitled to recover its monies through already agreed security measures. The GPF decided to enter into a Settlement Agreement with Nonkwelo Investment instead of proceeding with the other securities.
- (j) Subsequent to that, there was a Settlement Agreement that was signed by Mr. Daniel Molokomme, GPF's erstwhile Acting CEO and witnessed by Ms. Thandi Kuzwayo, GPF's current Legal and Compliance Manager. Mr. Nonkwelo signed the Settlement Agreement on behalf of Nonkwelo Investments, with Ms. Palesa Nonkwelo witnessing same. The afore-mentioned Settlement Agreement was entered into on the premise that the monies owed to the GPF by the Developer were R9,624,537.17 (Nine Million Six Hundred and Twenty-Four Thousand Five Hundred and Thirty-Seven Rand and Seventeen Cents) as per the certificate of balance dated 24 June 2020, which is attached to the Settlement Agreement marked as Annexure A in the Settlement Agreement. There was indeed a scope change in respect of the Project which was not permissible and/or valid. The cost overruns pertaining to the scope change would likely be irregular.
- (k) The disbursements made by the GPF to the Developer in the total amount of R7,246,126.83 (Seven Million Two Hundred and Forty Six Thousand One Hundred and Twenty-Six Rand and Eighty-Three Cents) were confirmed.
- (l) Further, this amount was disbursed with reference to the Annual Financial Statements (AFS) and audited by the Auditor General of South Africa (AGSA).
- (m) No bank statements to verify same documents nor to independently verify or confirm why the remaining amounts were not disbursed.
- (n) There was initial compliance with the Bridge and Term Loan Facility Agreement, however, the bulk of the conditions were not met due to senior funding being cancelled/withdrawn by the National Housing Finance Corporation (NHFC).

- (o) This cancellation led to the Term and Bridge Loan Facility being cancelled and/or restructured by the GPF as it was concluded on the basis that it would be accompanied by a senior loan as referred to in the definitions portion of the loan and the annexed Advanced Conditions.
- (p) Nonkwelo Investments failed to make a single payment at the end of the moratorium period, as such was in material breach of the second loan Agreement.

4. CONCLUSION

We have taken full cognisance of the findings in the Investigation Report, including the financial and legal implications as well as institutional integrity of the GPF as an important entity of the Gauteng Department of Human Settlements. As the Executive Authority exercising oversight over the affairs of the GPF we are now in a better position to put necessary measures in place to strengthen governance and internal systems of the GPF in compliance with the applicable laws and prescripts to avoid or mitigate against future recurrence.

Whilst the findings are clear about the governance pitfalls, we are however, of the view that the recommendations are not conclusive. Accordingly, we have asked the board to institute a process of reviewing them with an intention of strengthening the areas of weakness. We take this opportunity to thank the GMI for the diligence and professionalism displayed during the investigation, albeit under enormous pressure from the fourth estate.

We also express our sincere gratitude to the board of trustees of the GPF for responding to our call to investigate this matter expeditiously. We further express our gratitude to the senior management and staff of the GPF for being prepared and ready to cooperate with the investigation. Lastly, we express our sincere gratitude to the media and journalists in particular for the energy they put in keeping us accountable as government.

The End.

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