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FINAL INVESTIGATION REPORT

City of Johannesburg Metropolitan Municipality

C/O: Group Forensics and Investigations Services

6th Floor, Sappi Building

48 Ameshoff Street

22 February 2022 date

FINAL INVESTIGATION REPORT INTO ALLEGATIONS OF NON-COMPLIANCE WITH APPROVAL PROCESSES BY THE CITY OF JOHANNESBURG PUBLIC SAFETY DEPARTMENT WHEN PROCURING SERVICES FROM THE METROPOLITAN TRADING COMPANY

1. INTRODUCTION

- 1.1. On the instructions of the City of Johannesburg Metropolitan Municipality (“**the City**”), ENSafrica conducted an investigation (“**the Investigation**”) concerning allegations of non-compliance with approval processes by the City’s Public Safety Department (“**Public Safety**”) when procuring the following services from the Metropolitan Trading Company (“**MTC**”):

Africa’s largest law firm

ENSafrica.com

Edward Nathan Sonnenbergs Incorporated | registration number 2006/018200/21
M.M. Katz (chairman) M. Mguolwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)
a list of directors is available on our website ENSafrica.com/letterheadSA
level 1 BBBEE rating

7.3. **Interview with Mr Brink**

7.3.1. We attempted to secure Mr Brink's availability for an interview, but did not succeed.

7.3.2. Mr Brink's interview was initially scheduled to take place on 11 January 2022. However, on 9 January 2022, we received an e-mail from [REDACTED], the Executive Assistant to Mr Brink, declining our invite for the interview. In that e-mail, [REDACTED] also informed us

that Mr Brink already had a prior commitment with the Executive Mayor at the time that his interview was scheduled to take place. [REDACTED] also requested that the interview be scheduled on another date and time.

- 7.3.3. We immediately responded to the e-mail from [REDACTED] and indicated that we would make ourselves available at any time that will suit Mr Brink on 12 January 2022.
- 7.3.4. After we noticed that no response was forthcoming, on 12 January 2022, we sent another e-mail to Mr Brink with further suggested dates and times on which we were available to meet with him for the interview. However, we never received any response from Mr Brink.
- 7.3.5. On 18 January 2022, in an attempt to ensure that we obtain Mr Brink's versions in respect of the relevant issues, we sent a letter to him setting out the basis on which we sought an interview with him. That letter also had a list of questions for him and we requested him to provide us with his answers to those questions in writing and send us the written answers. We gave Mr Brink an opportunity to provide us with written answers by no later than close of business on 20 January 2022.
- 7.3.6. On the evening of 20 January 2022, we received an e-mail from Mr Brink, informing us that we should expect a response to our questions on the afternoon of 21 January 2022.

7.3.7. On Friday, 21 January 2022 at 11h51, Mr Brink submitted a letter in response to our letter mentioned above. Prior to him providing any response to our letter, Mr Brink raised the following issues:

7.3.7.1. He is advised that since we have been appointed to investigate allegations which constitute financial misconduct in terms section 171 of the MFMA and that an investigation into these allegations can only take place upon authorisation by the Disciplinary Board in terms of sub-regulation 3 and 5 of the Municipal Regulations for Financial Misconduct Procedures and Criminal Proceedings;

7.3.7.2. Secondly, Mr Brink also stated that some of our questions suggested that we may be investigating [REDACTED] and [REDACTED] is a section 56 employee of the City. He stated further that we may be investigating acts of misconduct in Part I or Part II of Annexure A to the Disciplinary Regulations for Senior Managers and that such an investigation must be authorised by the Council upon a report that was tabled before the City Manager and/or a resolution having been passed by the Council authorising his office to appoint an independent investigator as per the Regulations.

7.3.8. Insofar as our questions in our letter are concerned, Mr Brink gave the following response in relation to the following transactions:

7.3.9. **Handheld Devices**

7.3.9.1. On 20 May 2021 to 28 May 2021 he was placed on self-isolation having contracted the coronavirus. In the circumstances, being required by policies and practices within the City, on 20 May 2021 he appointed [REDACTED] to act as the City Manager during the period of his absence. As per the letter dated 20 May 2021 [REDACTED] was delegated to exercise all powers and duties assigned to the City Manager in terms of section 59 of the MSA and authorised to sign all documents necessary to give effect to the powers and duties as required by legislation.

7.3.9.2. In light of the above, he would not have had interacted or had sight of the Report dated 17 March 2021.

7.3.10. **CCTV Equipment**

7.3.10.1. In response to our request for all relevant communication that has taken place between himself and [REDACTED] regarding this transaction, his response was that our request was too vague.

7.3.10.2. He only provided us with the following emails:

7.3.10.2.1. An e-mail from [REDACTED] to various employees of the City dated 16 August 2021, in which [REDACTED] advised the various employees that he had calculated the total amount involved in this transaction and that a Mayoral Committee

approval is required due to the total value of this transaction.

7.3.10.2.2. An e-mail from [REDACTED] dated 26 October 2021, in which [REDACTED] advised that the contract value was above the threshold of the HOD and that of the City Manager and that a Mayoral Committee ratification was thus needed.

7.3.10.2.3. An e-mail from [REDACTED] dated 26 October 2021, in which [REDACTED] stated that he was not aware whether the money had already been spent thus needing a ratification. [REDACTED] also requested that he be provided with the relevant provisions of policies and the MFMA.

7.3.10.2.4. An e-mail from [REDACTED] dated 28 October 2021, in which [REDACTED] explained the issues in relation to the full contractual value, the HOD not having the necessary authority to approve transactions above the R20 million threshold as per the DOA, the contract being signed and entered into without the consent of the Mayoral Committee and the issue of approval being required from the Group Legal and Contracts Department.

7.3.10.2.5. An e-mail from [REDACTED], copying [REDACTED] and Mr Brink, dated 30 October 2021. In that e-mail, [REDACTED] communicated issues of non-compliance with procedures, with specific reference to non-compliance with the DOA.

7.3.10.2.6. An e-mail from Mr Brink to [REDACTED] g with various employees of the City copied therein, dated 30 October 2021, where Mr Brink requested that the employees attend to the issues raised by [REDACTED]

7.3.11. Mr Brink did not provide us with any other document that his office received from Public Safety. This despite the fact that Public Safety officials stated during their interviews that already a submission had been made to the office of Mr Brink to approve the payment in respect of this transaction given that the Finance Department would not process payment.

7.3.12. Further, on 4 February 2022 Group Forensics and Investigations Services (“GFIS”) forwarded us the following e-mails regarding a Ratification Report:

7.3.12.1. an e-mail dated 21 January 2022 at 09h13, from [REDACTED] and Mr Brink, attaching the Ratification Report for Mr Brink’s signature;

7.3.12.2. an e-mail dated 21 January 2022 at 09h19, from [REDACTED] to Mr Brink in which [REDACTED] asked Mr Brink whether the Ratification Report was not the same report that we were asking about;

7.3.12.3. an e-mail from Mr Brink to [REDACTED] dated 21 January 2022 at 09h22 in which Mr Brink stated as follows:

"Yes, I see this is a revised version. You can compare to the one that yu printed yesterday." (sic)

7.3.12.4. an e-mail from [REDACTED] and Mr Brink dated 24 January at 10h36, attaching the Ratification Report with amendments;

7.3.12.5. an e-mail from [REDACTED] to Mr Brink dated 24 January 2022 at 11h13, stating as follows:

"I have gone through the report and it is similar regarding costs, etc. but it is a ratification report and not a request to procure services as the previous report."

7.3.12.6. an e-mail from Mr Brink to [REDACTED], the Group Head: Group Legal and Contracts, dated 24 January 2022 at 12h00, attaching the Ratification Report and stating as follows:

[REDACTED] I would like you to advise since this matter is currently under investigation by GFIS. It should be

noted that I've also been required to submit some responses to questions that were posed by the GFIS attorneys.

I need to be advised whether this process can be ratified."

7.3.12.7. an e-mail from [REDACTED] and Mr Brink dated 30 January 2022, stating as follows:

"My advices is that the A/CM may ratify the actions of the HOD: Public Safety insofar having acted beyond scope of delegations...

In respect of the GFIS investigation, I do not have enough information of the scope of the investigation, however insofar it relates to the authorisation, I am of the view the ratification will not be unlawful."

7.3.12.8. an e-mail dated 1 February 2022 from [REDACTED], attaching the Ratification Report signed by Mr Brink. In the Ratification Report, it was recommended that:

- *The Acting City Manager rectifies and ratifies the actions of the Head of Department (HOD) Public Safety, of signing and committing MTC to provide monthly support and maintenance of the Integrated Intelligent Operation Centre (IIOC) CCTV surveillance infrastructure,*

including CCTV, access control and alarm systems installed in various COJ buildings.

- *The Acting City Manager regularizes the service level agreement between Public Safety department and MTC.”*

The Ratification Report was authored and signed by

██████████. It was also signed on 20 January 2022 by ██████████
██

██
██As mentioned above,
Mr Brink signed the Ratification Report on 1 February 2022;

7.3.12.9. an e-mail dated 4 February 2022 from ██████████ to Mr Brink,
advising Mr Brink, *inter alia*, as follows:

- “• *I am not clear to the terms as to the mischief of the investigation. Looking at the ratification report, the matter is limited to the issue acting without necessary authority. If this is the main purpose of the investigation, my view is that the report may be signed.*
- *Your apprehension about signing the report whilst GFIS is investigating is understandable, and therefore I would advise you not to sign until the investigation is completed.”*

7.3.12.10. an e-mail from Mr Brink to ██████████ dated
4 February 2022. In that e-mail, Mr Brink stated, *inter alia*,

that he was withdrawing his approval granted on 1 February 2022 with immediate effect, in light of the above advice from [REDACTED] which differs from the advice issued on 30 January 2022.

- 7.3.13. It seems to us that Mr Brink deliberately chose not to provide us with the Ratification Report. As mentioned above, from the e-mails provided to us by GFIS, the Ratification Report was sent to Mr Brink on 21 January 2022 at 09h13. [REDACTED] thereafter enquired about the Ratification Report and he responded to [REDACTED] at 09h22. He thereafter responded to our letter dated 18 January 2022, mentioned above at paragraph 7.3.5, on 21 January 2022 at 11h51. In our letter dated 18 January 2022, we had, *inter alia*, enquired from Mr Brink whether there were any steps that he had taken in relation to the transaction for the CCTV Equipment, including any approval or enquiries and we requested him to provide us with copies thereof. However, Mr Brink did not provide us with a copy of the Ratification Report which clearly formed part of what we requested from him.

- 4.2.8. In respect of the Acting City Manager, Mr Brink, we have found, and demonstrated in the Report, that pursuant to the conclusion of the transaction, and after it being flagged by the Group Finance Department, it became clear to all role players that this transaction had been entered into in breach of the DOA.
- 4.2.9. This fact was specifically brought to Mr Brink's attention in a report, dated 17 March 2021, in which his approval, presumably of the invoices arising from that irregular transaction, was sought. Accordingly, Mr Brink, as the Accounting Officer, knew or ought to have known that possible financial misconduct was committed by the relevant officials involved in the transaction, including [REDACTED], who reported directly to him. We have found no evidence that Mr Brink took any corrective action against any of the officials involved.
- 4.2.10. In the written questions we ended up sending to Mr Brink after we could not secure an interview with him, we specifically asked Mr Brink the following questions, amongst others:

"8.1.7. In light of the fact that it had been made clear to you that there could have been a breach of the Delegation Authority by officials in the Public Safety department, was there any corrective action taken in respect of the relevant officials in Public Safety at the time?"

8.1.8. If not, why was there no any corrective action taken?"

- 4.2.11. Mr Brink did not respond to these specific questions, but simply explained that he had appointed [REDACTED] to act in his position when payment was approved. This however does not detract from the fact that Mr Brink had been apprised of the possible financial misconduct and the breach of the DOA (which had been admitted by the relevant officials) and that he simply did not act to protect the best interests of the City and, by extension, the residents who ultimately bear the consequences of financial mismanagement.
- 4.2.12. We have found that Mr Brink was specifically advised, after he sought the advice, by an official in the SCM department that for the approval of a payment in respect of this irregular transaction, Public Safety had to include the initial approval by the City Manager and that, given that there was an exceeding of the approval level, then an *"irregular / unauthorised expenditure report"* would be required. It was also made clear to him that after this process is undertaken, the submission would then have to be made to the EAC. No evidence exists that Mr Brink sought to implement this advice received from SCM.
- 4.2.13. It was also brought to Mr Brink's attention that if the Group Finance Department were to process payment as it stood, they could have audit implications as the relevant procedures for approval were not adhered to and that this would put the Group Finance Department and the Group SCM Department at unnecessary risks.
- 4.2.14. It appears that, despite all the clear alarms being raised regarding the approval for payment that was sought from Mr Brink, on 24 May 2021,

the report dated 17 March 2021 was pp-signed and approved by [REDACTED], ostensibly on behalf of Mr Brink, presumably approving payment.

- 4.2.15. When Mr Brink became aware that [REDACTED] had signed off on a payment in respect of which there was advice from [REDACTED] of the Group SCM Department not to approve payment before the relevant processes had been undertaken, it would have been expected that Mr Brink would have brought this to the attention of [REDACTED] but there is no evidence to show that he did anything about it. In the result, at that stage there was information brought to Mr Brink's attention that possible financial misconduct had been committed by officials of Public Safety and he did not take any action.
- 4.2.16. When he became aware that the person who he appointed to act in his position had approved payment in respect of an irregular transaction and in respect of which there was contrary advice from the Group SCM Department, Mr Brink also did nothing or took no remedial action. All this raises serious questions about Mr Brink's suitability for the position that he holds. As the Accounting Officer he is expected to steadfastly stand for and protect the best interests of the City.
- 4.2.17. Absent a cogent and satisfactory explanation based on the regulatory framework applicable at the City, it is difficult to understand the actions or inaction, of Mr Brink in this regard. As would appear in the body of this Report, Mr Brink sharply raised the issue of the possible failure to follow a proper process when appointing the investigators in this

Investigation. He was doing so as expected of a responsible Accounting Officer, exercising his duties in the best interest of the City.

- 4.2.18. His proactive and timely stance in raising and dealing with what appeared to him to be irregular in respect of the appointment of the investigators is however hard to reconcile with his stance in respect of this transaction, where he did not take any corrective or remedial action when it had clearly been demonstrated, without any scope for doubt, that there had been a flagrant breach of the DOA by officials who concluded the transaction for the Handheld Devices.
- 4.2.19. We have also found no evidence that any process aimed at ratifying this transaction was initiated, even after payment had been approved.
- 4.2.20. We accordingly recommend that, in order for Mr Brink to properly explain his conduct, and given his position as the Accounting Officer, the City should consider instituting formal proceedings, including such formal investigation specific to him as may be appropriate, in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. In terms of Regulation 3(1)(a) of those Regulations, Mr Brink's conduct should be reported to the municipal council of the City.
- 4.2.21. Given that the Regulations require that a municipal council must establish a disciplinary board to investigate allegations of financial misconduct in the municipality and to monitor the institution of disciplinary proceedings, we recommend that it should be brought to the attention of the Council that appropriate steps should be taken to ensure that no one who is potentially conflicted should form part of the

Disciplinary Board. In particular, in order to maintain the integrity of the process, we recommend that:

- 4.2.21.1. no person who had involvement in the transactions that we investigated should form part of the Disciplinary Board;
- 4.2.21.2. no person who in any way reports, or may be accountable, to Mr Brink should form part of the Disciplinary Board; and
- 4.2.21.3. consideration should be given to the potential impact on the integrity of the formal process if Mr Brink remains in the position he holds whilst that process takes place.

7.3.13. It seems to us that Mr Brink deliberately chose not to provide us with the Ratification Report. As mentioned above, from the e-mails provided to us by GFIS, the Ratification Report was sent to Mr Brink on 21 January 2022 at 09h13. [REDACTED] thereafter enquired about the Ratification Report and he responded to [REDACTED] at 09h22. He thereafter responded to our letter dated 18 January 2022, mentioned above at paragraph 7.3.5, on 21 January 2022 at 11h51. In our letter dated 18 January 2022, we had, *inter alia*, enquired from Mr Brink whether there were any steps that he had taken in relation to the transaction for the CCTV Equipment, including any approval or enquiries and we requested him to provide us with copies thereof. However, Mr Brink did not provide us with a copy of the Ratification Report which clearly formed part of what we requested from him.

Unfortunately on our side if we process the payment as it stands we might have audit implications as the above procedures was not adhered to regarding the City Manager's approval which will put our section and also Supply Chain Department at unnecessary risk."

- 10.1.17. The documents provided to us show that the Report, dated 17 March 2021, was pp-signed and approved presumably on behalf of Mr Brink on 24 May 2021. We have since established from Mr Brink that he had appointed [REDACTED] to act in his position during the period in which this day falls and therefore that [REDACTED] pp-signed the Report.
- 10.1.18. There is no indication of what Mr Brink did with the advice that had been requested and obtained from [REDACTED]. Despite the fact that Mr Brink would have known that [REDACTED] had signed the documents during his brief acting stint, there does not appear to be any follow up action taken by Mr Brink to deal with the fact that [REDACTED] had now signed and approved the payment despite the fact that the advice requested and received by Mr Brink from the Group SCM Department was clear that there had to be a process followed.

Analysis of the Facts and Findings

- 10.1.19. In so far as the terms of reference require us to look at whether there was compliance with processes, a significant part of the regulatory framework dealing with procurement by the City would not be applicable in this Investigation since we are not considering the procurement of services from the service providers appointed by MTC. The MFMA provisions that give rise to the constitutional imperatives to ensure a fair, transparent and competitive procurement process are

10.2.15. In the event that [REDACTED] is a senior manager reporting to the Accounting Officer, the City should consider instituting formal proceedings, including such formal investigation specific to him as may be appropriate, in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. In terms of Regulation 3(1)(a) of those Regulations, [REDACTED] conduct should be reported to the Accounting Officer, Mr Brink. In this case however, it has been demonstrated that this matter was actually brought to Mr Brink's attention but he did not take any corrective action. Accordingly, this matter should be reported to the Council of the City.

10.2.16. The Regulations require that a municipal council must establish a disciplinary board to investigate allegations of financial misconduct in the municipality and to monitor the institution of disciplinary

proceedings. The City should take appropriate and competent legal advice in respect of the implementation of this recommendation and, of course, all the recommendations in this Report

10.2.17. Finally, something needs to be said about the role of the Acting City Manager, Mr Brink and [REDACTED], who acted as the City Manager at the time that the payment for this transaction was approved.

10.2.18. We have clearly demonstrated above that pursuant to the conclusion of the transaction, and after it being flagged by the Group Finance Department, it became clear to all role players that this transaction had been entered into in breach of the DOA. This fact was specifically brought to Mr Brink's attention in the Report, dated 17 March 2021, in which his approval, presumably of the invoices arising from that irregular transaction, was sought. Accordingly, as at the time that this Report was brought to Mr Brink's attention, he, as the Accounting Officer, knew or ought to have known that possible financial misconduct was committed by the relevant officials involved in the transaction, including [REDACTED], who reported directly to him. We have found no evidence that Mr Brink took any corrective action against any of the officials involved.

10.2.19. In the written questions we ended up sending to Mr Brink after we could not secure an interview with him, we specifically asked Mr Brink, amongst others, the following questions:

"8.1.7. In light of the fact that it had been made clear to you that there could have been a breach of the Delegation Authority by officials in the Public Safety department, was there any corrective

action taken in respect of the relevant officials in Public Safety at the time?

8.1.8. If not, why was there no any corrective action taken?"

- 10.2.20. Mr Brink did not respond to these specific questions, but simply explained that he had appointed [REDACTED] to act in his position when payment was approved. This however does not detract from the fact that Mr Brink had been appraised of the possible financial misconduct and the breach of the DOA (which had been admitted by the relevant officials) and that he simply did not act to protect the best interests of the City and, by extension, the residents who ultimately bear the consequences of financial mismanagement.
- 10.2.21. We have found that Mr Brink was specifically advised, after he sought the advice, by an official in the Group SCM Department [REDACTED], that for the approval of a payment in respect of this irregular transaction, Public Safety had to include the initial approval by the City Manager and that, given that there was an exceeding of the approval level, then an "irregular / unauthorised expenditure report" would be required. It was also made clear to him that after this process is undertaken, the submission would then have to be made to the EAC. No evidence exists that Mr Brink sought to implement this advice received from the Group SCM Department.
- 10.2.22. It was also brought to Mr Brink's attention that if the Group Finance Department were to process payment as it stood, they could have audit implications as the relevant procedures for approval were not

adhered to and that this would put the Group Finance Department and the Group SCM Department at unnecessary risks.

- 10.2.23. It appears that, despite all the clear alarms being raised regarding the approval for payment that was sought from Mr Brink, on 24 May 2021, the report dated 17 March 2021 was pp-signed and approved by [REDACTED], ostensibly on behalf of Mr Brink, presumably approving payment.
- 10.2.24. When Mr Brink became aware that [REDACTED] had signed off on a payment in respect of which there was advice from [REDACTED] of the Group SCM Department not to approve payment before the relevant processes had been undertaken, it would have been expected that Mr Brink would have brought this to the attention of [REDACTED] but there is no evidence to show that he did anything about it. In the result, at that stage there was information brought to Mr Brink's attention that possible financial misconduct had been committed by officials of Public Safety and he did not take any action.
- 10.2.25. When he became aware that the person who he appointed to act in his position had approved payment in respect of an irregular transaction and in respect of which there was contrary advice from the Group SCM Department, Mr Brink also did nothing or took no remedial action. All this raises serious questions about Mr Brink's suitability for the position that he holds. As the Accounting Officer he is expected to steadfastly stand for and protect the best interests of the City.
- 10.2.26. Absent a cogent and satisfactory explanation based on the regulatory framework applicable at the City, it is difficult to understand the actions

or inaction, of Mr Brink in this regard. As we have set out in the preceding paragraphs, Mr Brink sharply raised the issue of the possible failure to follow a proper process when appointing the investigators in this Investigation. He was doing so as expected of a responsible Accounting Officer, exercising his duties in the best interest of the City.

- 10.2.27. His proactive and timely stance in raising and dealing with what appeared to him to be irregular in respect of the appointment of the investigators is however hard to reconcile with his stance in respect of this transaction, where he did not take any corrective or remedial action when it had clearly been demonstrated, without any scope for doubt, that there had been a flagrant breach of the DOA by officials who concluded the transaction for the Handheld Devices.
- 10.2.28. We have also found no evidence that any process aimed at ratifying this transaction was initiated, even after payment had been approved.
- 10.2.29. We accordingly recommend that, in order for Mr Brink to properly explain his conduct, and given his position as the Accounting Officer, the City should consider instituting formal proceedings, including such formal investigation specific to him as may be appropriate, in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. In terms of Regulation 3(1)(a) of those Regulations, Mr Brink's conduct should be reported to the municipal council of the City.
- 10.2.30. Given that the Regulations require that a municipal council must establish a disciplinary board to investigate allegations of financial

misconduct in the municipality and to monitor the institution of disciplinary proceedings, we recommend that it should be brought to the attention of the Council that appropriate steps should be taken to ensure that no one who is potentially conflicted should form part of the Disciplinary Board. In particular, in order to maintain the integrity of the process, we recommend that:

10.2.30.1. no person who had involvement in the transactions that we investigated should form part of the Disciplinary Board;

10.2.30.2. no person who in any way reports, or may be accountable, to Mr Brink should form part of the Disciplinary Board; and

10.2.30.3. consideration should be given to the potential impact on the integrity of the formal process if Mr Brink remains in the position he holds whilst that process takes place.

- 11.1.38. During his interview on 14 January 2022, ██████████ was very forthcoming on this issue and he acknowledged upfront that he approved the transaction without the appropriate authority to do so. He also stated that he took full responsibility for his actions.
- 11.1.39. On 1 February 2022 Mr Brink signed the Ratification Report with the aim of rectifying and ratifying the actions of ██████████ and regularizing the SLA between Public Safety and MTC.
- 11.1.40. As mentioned above, on 16 August 2021 ██████████ sent an e-mail to various employees of the City, including Mr Brink, advising them that he (██████████) had calculated the total amount involved in this transaction and that a Mayoral Committee approval was required due

to the total value of this transaction. Further, there was an e-mail from [REDACTED] dated 26 October 2021, in which [REDACTED] advised that the contract value was above the threshold of the HOD and that of the City Manager and that a Mayoral Committee ratification was thus needed. This e-mail from [REDACTED] came to the attention of Mr Brink. In fact he sent us a copy of this e-mail.

11.1.41. It is clear from the advice of [REDACTED] that the Mayoral Committee had the authority to approve the transaction, not Mr Brink. However, despite this and despite the advice from [REDACTED] [REDACTED] Mr Brink proceeded to sign the Ratification Report on 1 February 2022, ratifying the actions of [REDACTED] and regularizing the SLA between Public Safety and MTC. Certainly, Mr Brink could not ratify and regularize something that he has no authority to approve. This conduct by Mr Brink was irregular.

11.1.42. On 4 February 2022 Mr Brink withdrew his *“approval granted on 1 February 2022...with immediate effect”* and it is clear from the e-mail trail provided to us that he only did so pending this investigation and not because he was of the view that his conduct was irregular.

- 11.2.13. In terms of Regulation 3(1)(a) of those Regulations, [REDACTED] conduct should be reported to Mr Brink. However the facts show that the issue of possible breach of the DOA by [REDACTED] was brought to Mr Brink's attention as far back as 30 October 2021 by [REDACTED] and that, to date, Mr Brink has not taken any corrective or remedial action. In these circumstances, and to the extent that we make recommendations about Mr Brink in respect of the very same transaction in what follows, the conduct of [REDACTED] should be reported to the Council. Any such report should include the fact that [REDACTED] has accepted the breach of the DOA and that he has taken responsibility for such breach. Council will consider the impact of this acknowledgement and owning up by [REDACTED]
- 11.2.14. The Regulations require that a municipal council must establish a disciplinary board to investigate allegations of financial misconduct in the municipality and to monitor the institution of disciplinary proceedings.

- 11.2.15. With regards to Mr Brink, we have found that the fact that there had been a breach of the DOA in the conclusion of this transaction for a significant amount in excess of R300 million, had been brought to Mr Brink's attention as far back as 30 October 2021 by [REDACTED] and that, to date, Mr Brink has not taken any corrective or remedial action. This appears to constitute a dereliction of duty and a possible allowing or permitting of irregular expenditure. Instead of taking corrective or remedial action against [REDACTED], on 1 February 2022 Mr Brink signed the Ratification Report, ratifying the actions of [REDACTED] and regularizing the SLA between Public Safety and MTC. He did this in circumstances where he did not even have the authority to approve the transaction. Although he subsequently withdrew his approval on 4 February 2022, he did so on the basis that there was a pending investigation, not on the basis that his conduct was irregular. This appears to constitute gross misconduct. This is also a basis for reporting this matter to the Council to consider initiating formal processes in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.
- 11.2.16. We further recommend that any further formal investigation instituted in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, should include the obtaining of expert input and the proper examination of the CCTV camera equipment for the purposes of determining whether this procurement did not amount to fruitless and wasteful expenditure, having regard to the contract amount of more than R320 million.

