



**OMBUDSMAN**

SINT MAARTEN

## **FINAL REPORT**

(Article 21 sub 1 National Ordinance Ombudsman)

**Complainant:** Mr. (.....)

**Date complaint filed:** 23 February 2015

**Complaint no.:** 2015/00073

**Ministry of VROMI**

**Department:**

**Department Head:**

### **Summary of Complaint:**

The Complainant claims to have complained on several occasions to the Ministry of VROMI regarding the hazardous conditions of the roads and the lack of enforcement of policy within the neighborhood of St. Peters regarding raw sewage run off on the public roads and building permits having been issued allegedly with disregard to the Spatial Development plan for St. Peters.

Furthermore, the Complainant claims to have indicated to the Ministry of VROMI that there is little to no cleanup efforts being observed by the Ministry because the streets are filled with litter.

To date of filing his complaint with the Ombudsman there has been no follow up regarding his grievances.

### **Findings:**

On 4 March 2015 a walk through was organized by the Ombudsman pursuant the complaint filed by the Complainant on 23 February 2015 regarding several infrastructure and health hazards in the neighborhood of St. Peters. Bureau Ombudsman staff visited the site and were hosted by the Complainant. The Complainant led the party through the:

- Lime Road
- Lemon Road
- St. Peters Road
- Watermelon Road
- Gennip Road
- Sugar Apple Road



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### **Sugar Apple Road**

The first hazard that was pointed out was pointed out to the representatives of the Bureau Ombudsman by the Complainant was on the Lime Road. The Complainant alleges that the Lime Road on most days is overflowing with sewage water. Furthermore, the Complainant claims that the road connecting the Lime Road and the Tangerine Road, the Sugar Apple Road, is hazardous for vehicles. According to the Complainant the holes that give access to the underground water run-off pipes are covered with grills that are too small or have corroded and rotted away. The Complainant further stated that the grills in their current state might possibly not be able to support the weight of a vehicle should a vehicle drive over them causing the vehicle or at least the tire to fall in the manhole. The Ombudsman representatives observed that on this same intersection there is a manhole that is not covered.

### **St. Peters Road intersection Sugar Apple Road**

An alleged manhole is situated under the, circle formed, sleeping police. Water and sewage should run through this manhole. Underneath the surface of the main road down to the main trench on the L.B. Scott Road. During the walk through it was observed that (sewage) water flows through the cracks of the bricks that encompass the sleeping police. This (sewage) water runs down the St. Peters Road in the direction of the L.B. Scott Road.

### **St. Peters Road intersection Watermelon Road**

running parallel to the Watermelon Road a trench is built on the surface with walls of at least 1 meter height to funnel the water from the hills. This trench opens up on the St. Peters Road. The water funneled through this trench is released on the St. Peters Road. The size of the trench leaves space for debris to be moved within the waters funneled onto the road. The Complainant claims that with heavy rains (large) rocks and tree branches get washed up on the road.

### **Gennip Road**

According to the Complainant the trench that runs the length of the Gennip Road is the main trench within the neighborhood. However, this trench is not being maintained. It was observed during the walkthrough that the sidewalls are composed of dirt. In certain parts of the trench it was observed that the water is washing away the soil from underneath dwellings. Furthermore, the trench is littered with plastic bags and debris, disrupting the free flow of water. According to the residence that approached the Ombudsman representatives during the walkthrough, when the water cannot flow freely it overflows onto the street and, floods homes.



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### **Farm Animals**

Another noticeable nuisance that was observed during the walkthrough is the existence of barn yard nature animals roaming the roads in St. Peters i.e. goats, horses and cows. The animals were observed grazing on what according to the Complainant is private property. The Complainant claimed that especially goats are a nuisance, because they enter the backyards of citizens and eat their plants and damage private property.

### **Loitering**

On various roads walked through, old car chassis and discarded garbage were observed. The Complainant claims that the contractors hired by VROMI to keep the roads clean are not doing what they are being paid for; they are barely ever in the neighborhood cleaning up. Furthermore, there were very few garbage containers noted during the walkthrough. On the corner of the Tangerine road and the Lemon road one container was observed. A second garbage container was observed on the Apricot road.

### **Water run off**

A claim made by multiple residents is that there is constant water run-off from the houses/apartment complexes in the hills of St.Peters. Residents experience water problems within their backyards of waters flowing down the hill. In certain cases the citizens cannot utilize their backyards because it is constantly filled with water. The Complainant indicated that another problem is that certain households have the water from bathrooms and washing machines flowing freely on the surface of the roads, and basically finding its way through back yards onto the public streets.

The hazards and complaints observed during the walkthrough can be subdivided in two main categories, namely: Infrastructural issues and Enforcement of Policy.

- The infrastructural issues refer to the manner in which the roads and trenches are connected.
- The Policy enforcement issues relate to the water run-off, the sewage water run-off, the barn yard animals, the loitering and upkeep of the neighborhood.

A consequence of these issues is health hazards caused by the constant presence of unhygienic situations.

On 9 April 2015 a Notification of Complaint (NOC) was sent to the Department of Inspections of VROMI and the Department of Infrastructure Management with the Ministry of VROMI. In the NOC the following questions were posed:



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- Are you familiar with the Complaint and do you see a possibility to resolve the matter on short term through intervention from the Ombudsman or otherwise;

**To Inspection:**

- Is there a zoning plan for St. Peters? If yes, kindly provide a copy. If no, why not.
- How is regulation and policy observed when inspecting compliance of such in a neighborhood?
- How is the potential zoning plan for St. Peters observed when inspecting compliance with construction, spatial, environment regulations and long-lease conditions?
- If a structure is in violation of a regulation or policy how is this matter dealt with? How does the department deal with the matter of free roaming barn yard animals in a residential area?
- Explain the cooperation between the department of Inspection and the department of Infrastructure Management.

**To Infrastructure Management**

- How are the roads being kept clean in actuality by the Department?
- Is the Department aware of the sewage run off issue in St. Peters? If yes, what has the Department been doing about it. If no, how does the department intend to address this matter.
- Explain what the Department is doing to maintain the main water run off trenches in St. Peters.
- Is there a schedule for collecting waste like car wrecks engine, blocks etc....? If yes, kindly provide the schedule. If no, why not?
- Is there a zoning plan for St. Peters? If yes, kindly provide a copy. If no, why not?
- To which extent was the potential zoning plan observed in the development of the infrastructure in St. Peters? Explain the cooperation between the Department of Infrastructure Management and Inspections.

On 8 May 2015 the Secretary General of the Ministry of VROMI responded to the NOC as follows:

*"On April 9th 2015 the Ministry of VROMI received your notification of complaint with regard to the case of Mr. (.....), submitted to the Department of Inspections (OM-OBM 2015/00073-09) and the Department of Infrastructure Management (OM-OBM 20 15/00073-10), both of the Ministry of VROMI. Mr. (.....) submitted two separate complaints containing more or less the exact same questions. You are hereby receiving one response on behalf of both departments, which covers both complaints that were filed against the Ministry of VROMI. Both lists have been combined and the questions have been renumbered. The*



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*following are the answers to your questions which you posed in the questionnaire:*

**1. Are you familiar with the above-mentioned complaint?**

*Yes, the above-mentioned complaint is known.*

**2. What is your response to the complaint? (Notwithstanding your answer to question 1.)**

*The inspection carried out on September 1st 2014 was conducted in the presence of Mr. (.....). No running water was observed during this inspection. Some GEBE manifold leaks were observed. A second complaint was submitted by Mr. (.....) on January 8th 2015 against Mr.(.....) neighbor for running waste water onto the public road. This inspection was carried out on January 16 2015. No running waste water was observed during this inspection either. Mr. (....) was not present during this inspection.*

**3. Do you see a possibility to resolve this issue on a short term by intervention of the**

**Ombudsman?** *No, this issue cannot be resolved on a short term because this issue is prevalent of the entire St. Peters district. At present, we are busy handling the public tender for the connection of the majority of homes along the northern section of the St. Peters main road onto the sewage network. The connecting of the district of St. Peters to the main sewage line shall be done in a phased manner.*

***If no, you are requested to answer the following questions.***

**4. How are the roads being kept clean in actuality by the Department?** *The roads in St. Peters have been repaired with asphalt when possible and where possible. Also some hard surfacing of roads has recently in the last 2 years taken place such as the Sugar Apple Road, Marigot Hill Road and the Guavaberry Road. Repairs have been carried out on the following on the Blue Berry road. The contract for cleaning of secondary roads takes place once every 3 months by the company Meadowlands as is stipulated in the contract. The amount of cleaning is done based on the available funds. The litter in the streets comes from the neighborhood residents themselves who do not adhere to the waste collection schedule which can be downloaded from the website:<http://www.sintmaartengov.org/government/VROMI/Infrastructure%20Management%20DepartmentPages/Garbage-Collection.-Schedule.aspx>.*

**5. Is there a schedule for collecting waste like car wrecks, engine blocks etc.? If yes kindly provide the schedule. If no, why not?** *The removal of car wrecks is the sole responsibility of the owner and not of Government. However, in accordance to the Waste Ordinance, it is forbidden to store car wrecks on a property and a removal order can be given by the*



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*Inspection Department. The Minister of VROMI is authorized to have the car wreck removed at the cost of the owner if he is not capable of removing the car wreck himself. All cost is for the transgressor.*

**6. Is the Department aware of the sewage run off issue in St. Peters? If yes, what has the Department been doing about it. If no, how does the department intend to address this matter?** *Inspection carried out on running waste water is determined by proof of waste water running onto the public road. Inspectors will trail the running waste water and advise responsible person(s) to stop immediately and pump or repair septic if broken. The illegal running of raw sewage water on various roads in St. Peters is not allowed and very difficult to catch the violators in the act as these type of practices are done after working hours or in the weekends, particularly on Sunday, when we have no staff working. The Community Police Officer is also authorized to issue fines to transgressors who are caught red handed. Once we commence with the house connections to the main sewage line, hopefully the illegal running of sewage water will be a thing of the past.*

**7. Explain what the Department is doing to maintain the main water run-off trenches in St. Peters.** *There are plans to maintain the main water trenches and guts twice per year. This however is based on available funding which is not always available considering the financial situation that Government is in at the moment. In times of emergencies, the trenches are cleaned prior to hurricanes etc. to not obstruct the free flow of water. This again is based on available funding.*

**8. How is the potential zoning plan for St. Peters observed when inspecting compliance with construction, spatial, environment regulations and long lease conditions?** *I can inform you that there is no zoning plan in place for St. Peters, because the procedure to establish a zoning plan has not been completed as yet. There is a draft zoning plan for Cul-de-Sac, which was placed on public review and is being advised upon by the relevant independent Committee of Experts, based on the objections submitted to the draft plan. There after the zoning plan can be put into the trajectory to be established as law/ordinance by Parliament. All VROMI inspections done in Dutch St. Maarten are observed/carried out by ordinances laid out in our Constitution. A copy of the present draft zoning plan of Cul-de-Sac can be downloaded from the website: <http://www.sintmaartengov.org/government/VROMI/Pages/Cul-de-Sac.aspx>.*

**9. If a structure is in violation of a regulation or policy how is this matter dealt with?** *The builder of the structure is advised to stop (via Warning letter) by the Inspection Department*



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*and an Advice letter is hand delivered to the transgressor by the Inspector. A stop order (administrative enforcement/coercion) can also be given by the Secretary-General of VROMI. Further legal action can be taken by the Minister of VROMI.*

**10. How does the department deal with the matter of free roaming barn yard animals in a residential area?** *The Ministry of VROMI does not handle cases of free roaming barn yard animals in a residential area. Enforcement is an obligation of the Police Department as is stated in the “Algemene Politiekeur” (AB 2013, GT no. 42 Articles 20, 29, 49, 50, 123 and 128. Please advise the complainant to submit a formal complaint with the Police Department or your local Community Police Officer for St. Peters.*

**11. Explain the cooperation between the Department of Inspection and the Department of Infrastructure Management.** *With regard to the working relationship between both departments, there are meetings between both departments on a case by case basis when necessary.”*

On 12 May 2015 the Complainant came by the Bureau Ombudsman to pick up the response received from the Ministry of VROMI to the NOC. The Complainant informed the Ombudsman after having read the response that he was not satisfied with the response. The Complainant inquired where the supporting documents are to the answers provided by VROMI. The Complainant was informed that no supporting documents were provided; however there were links conveyed of the waste collection schedule and a zoning plan of which the procedure for implementation has not been completed.

On 17 July 2015 the Ombudsman, together with the legal advisor and complaint officer handling the complaint, met with the complainant. The meeting was held to clarify and give follow up on the investigation procedures of the Ombudsman to the Complainant. After mentioned meeting, the Ombudsman compiled a Preliminary Findings Report (PFR) dated 24 July 2015, and requested parties to react to the PFR supported by relevant documents.

A Preliminary Findings Report (PFR) dated 24 July 2015 was drafted by the Ombudsman. VROMI was requested to provide the following additional information in order for the Ombudsman to further analyze the findings.

1. Provide a projected timeline regarding the status of the project to connect the majority of homes along the northern section of the St. Peters main road onto the sewage network;



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2. Provide a projected timeline or a plan drafted for the phased connecting of the St. Peters district to the main sewage line;
3. What are the possibilities to provide and station more garbage containers in the neighborhood. (Explain);

The following recommendations were issued:

- VROMI to draft a priority list within the budgetary constraints to tackle the most prevalent safety and hygiene challenges in St. Peters;
- Parties to establish structured cooperation with the Community Council to create and improve awareness for safety and hygiene in the St. Peters area;
- VROMI to provide consistency in effectively maintaining the trenches;
- VROMI to make arrangements for combined inspections to take place with the Community Police and the Inspection department;
- VROMI to provide a timeline to outline each phase of the procedure to establish a zoning plan for St. Peters, as well as the planned infrastructural interventions mentioned. Transparency requires that the public is informed accordingly

By letter of 21 September 2015 the Secretary General of the Ministry of VROMI provided a response to the PFR. The Secretary General informed the Ombudsman as follows:

*“As regard the additional information requested:*

1. *The project to connect the homes (total 68 properties) along the northern section of the St. Peters main road unto the sewage line was tendered and is in principle ready for execution. This project involves the connection of an already placed sewage line in the St. Peters Road unto the main transport line from Cul De Sac to the sewage treatment plant in Philipsburg, as well as the connection of the properties to the mentioned line. However, due to the pending approval of the Capital Expenditure Budget 2015 by the CFT, this project has been put on hold, as there are no capital funds presently available to execute the project. As soon as these funds are made available, the project can be executed within a period of about 4 months.*
2. *A plan for the phased connection of the remaining part of St. Peters to the sewage line is being drafted and cannot be provided at this time as yet.*
3. *The placement of additional garbage collection bins within the district is such that the mini-collection bins are provided to residents upon request. In the initial stage all residential properties were provided with the collection bins. Upon request to the garbage collection contractor for the area, pursuant to which a form has to be compelled by the applicant, replacement bins can be provided. The community councils of all neighborhoods, with whom the Ministry of VROMI has working*





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*relationships, are aware of this procedure. The Ministry will make an effort to better communicate this procedure to residents as well. As regards the larger bins for collective location for properties located in areas difficult to reach for regular garbage trucks, these are discussed with the contractors and placed at convenient locations. Often the issue is one of finding an appropriate location for these larger bins.”*

The Secretary General further informed the Ombudsman that the Ministry of VROMI agrees with the recommendations issued and proceeded to outline what the Ministry has done in the St. Peters neighborhood thusfar. The cleaning and maintenance of the trenches in Cul-De-Sac has recently been outsourced for a period of two years to a St. Peters neighborhood contractor. The pertinent contractor makes use of the services of the young adults residing in the neighborhood.

The Ministry has also been in conference with the Community Police Officers (CPO’s) to address cooperation between the two bodies regarding complaints from within the community as well as the issue of car wrecks. The Ministry is also continuously improving the cooperation with the CPO’s and the community councils to improve the performance of the Ministry within the neighborhood.

In its response the Ministry further informed the Ombudsman that through meetings with the CPO’s, the Community Council of St. Peters and the garbage collection company for the area (Meadowlands N.V.), several issues have been discussed ranging from neighborhood beautification, placement of more bins if needed, removal of car wrecks, street light issues and open lots and/or derelict buildings within the district. The Community Council submits a form to VROMI once a month wherein the complaints and defects from the neighborhood are outlined. According to the Ministry, the issues raised are dealt with to the extent that the budget and law allow. The Ministry informs the respective Ministry and or Departments/entity responsible for issues such as public safety and hygiene to take action regarding the issues reported: *“both public safety and public hygiene issues fall outside the direct responsibility of VROMI and are the responsibility of respectively the Justice Ministry and the Ministry of VSA.”*

### **Zoning plan**

*“Concerning a timeline and procedure outline for the establishment of a zoning plan for the cul-De-Sac valley, including St. Peters, we kindly refer to our correspondence dated May 8<sup>th</sup> 2015 wherein we previously elucidated on this matter. The entire procedure can be viewed on*



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our website: <http://www.sintmaartengov.org/government/VROMI/Pages/Zoning-Development-Plans.aspx>

All information specifically for the zoning plan Cul-De-Sac can be viewed at the web address:

<http://www.sintmaartengov.org/government/VROMI/Pages/Cul-de-Sac.aspx>

*The procedure to establish the zoning plan for Cul-De-Sac is still in the hands of Committee of Experts that is in the process of handling the letters of objections that were submitted during the public review process. When an advice from the Committee of Experts is submitted and further decisions are taken with respect to the zoning plan, the public will be informed accordingly.”*

On 28 September 2015 the Ministry of VROMI announced in the Daily Herald that a car wreck pick up schedule is in effect. Citizens are informed and reminded through the media which months are allocated for the various areas.

While provided extended time to response to the PFR, the Complainant did not consider it necessary or opportune to react to the findings and recommendations.

### **Legal Basis:**

Pursuant to article 19 sub 1 of the National Ordinance Ombudsman, the Ombudsman is authorized to request from government bodies, civil servants, the complainant, civil servants as experts or witnesses, all information and or documents pertaining to the investigation. The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds (“verschoningsrecht” - see article 19 sub 4).

**“Landsverordening Ruimtelijke Ontwikkelingsplan”** (AB 2013, GT no. 144);

*Artikel 2 de minister stelt ten behoeve van een goede ruimtelijke ontwikkeling van Sint Maarten en met het oog op de totstandkoming van ontwikkelingsplannen een onderzoek in naar de bestaande toestand en naar de mogelijke en wenselijke ontwikkeling.*

*Artikel 5 lid 1 Een ontwerp ontwikkelingsplan ligt gedurende dertig dagen voor een ieder op het bestuurskantoor ter inzage.*

*Artikel 5 lid 6 Omtrent de bezwaren als bedoeld in het vorige lid vraagt de minister advies aan een daartoe in te stellen commissie van deskundigen. Taak en samenstelling van deze commissie worden bij landbesluit, houdende algemene maatregelen, nader geregeld.*



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*Artikel 5 lid 8 De commissie brengt binnen zestig dagen na afloop van de in het eerste lid genoemde termijn advies uit.*

**“De Bouw en Woningverordening”** (AB 2013, GT no. 136);

*Artikel 54 lid 1 in de stadsdistricten en in de bij landsbesluit, houdende algemene maatregelen aan te wijzen andere gedeelten van Sint Maarten is de eigenaar van de grond, waarop een woning wordt opgericht en de eigenaar van de grond, waarop bij de inwerkingtreding van deze verordening een woning van ten minste 100 m<sup>2</sup> woningoppervlakte aanwezig was, verplicht zorg te dragen, dat een privaat tot kosteloos gebruik voor de bewoners beschikbaar is in of in de nabijheid van die woning.*

*Artikel 54 lid 2 Indien woningen van minder dan 100 m<sup>2</sup> oppervlakte en gebouwd voor de inwerkingtreding van deze verordening bijeen gelegen zijn, is de eigenaar verplicht zorg te dragen, dat per 100 m<sup>2</sup> woningoppervlakte in of in de nabijheid van die woningen een privaat beschikbaar is tot kosteloos gebruik van de bewoners van die woningen.*

*Artikel 56 lid 5 de privaten die niet lozen op een riool of op open water, moeten lozen op een beer- of zinkput, waarvan de inhoud door de minister wordt vastgesteld.*

Pursuant to the **Hill side policy**: *The policy defines the hillside in general as all land located above the 50 meter altitude line. The consequences of this policy are that the Island Government will strive to ensure that the guidelines are adopted in the development of the zoning plan for St. Maarten, that subdivision plans and building permit requests for land in hillsides will be judged taking the hillside policy in consideration and that domain land will be granted in accordance with the policy. The main objective of the policy is to conserve the green hillsides, protect and if needed restore their natural value for the benefit of the environment, the tourist industry and quality of life on St. Maarten. Furthermore by regulating development in the hillsides in a proper manner by setting building guidelines, the island government wishes to limit erosion and uncontrolled rain and waste water runoff which affects the ecosystem of the whole island from the hills down to the lower and coastal areas.*

**“Organisatiebesluit VROMI”** (AB 2013, GT no. 145);

Artikel 14: *de Dienst Inspectie*:



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1. *De algemene doestelling van de dienst is: het controleren van domeinen, bouw, (openbare) terreinen, milieu en bedrijfsveiligheid teneinde een milieuvriendelijke, gestructureerde en veilige woon en werkomgeving te waarborgen voor het publiek.*
2. *Ter verwezenlijking van de doelstelling is de dienst verantwoordelijk voor de volgende taken:*
  - a. *het effectief uitvoeren van een inspectiebeleid dat zich richt op de naleving van bouwbepalingen, milieuverordeningen, erfpachtvoorwaarden en bedrijfsveiligheidseisen:*
    - i. *het uitvoeren van domeininspectie;*
    - ii. *het uitvoeren van bouwinspectie;*
    - iii. *het uitvoeren van milieu-inspectie;*
    - iv. *het uitvoeren van bedrijfsveiligheid inspectie en veiligheid gedurende de bouw;*
    - v. *het uitvoeren van (marine) parken;*
  - b. *het uitvoeren van inspectietaken met betrekken tot openbare stranden, kust en binnenwateren;*
  - c. *het uitvoeren van inspectietaken met betrekking tot milieu- en natuurbeheer;*
  - d. *het uitvoeren van inspectietaken met betrekking tot objecten van monumentale en historische waarde;*
  - e. *het uitvoeren van inspectietaken op het gebied van “waste management”;*
  - f. *het uitvoeren van inspectietaken op het gebied van milieu- en natuurbescherming en het toezicht op de uitvoering hiervan;*

**“Algemene Politiekeur”** (AB 2013, GT no. 42);

*Artikel 1 Het is verboden de openbare weg op enigerlei wijze te verontreinigen. Hij, door wie of op wiens last enige werkzaamheid op of aan de openbare weg verricht wordt, is verplicht, hetgeen ten gevolge daarvan op de openbare weg achterblijft, onmiddellijk na afloop op te ruimen of te doen opruimen. (.....)*

*Artikel 20 Het is verboden in de bebouwde kom zonder schriftelijke vergunning van de minister op open of gesloten erven of ruimten vee te houden.*

The Ombudsman furthermore considered the following documents in the investigation of the complaint:

- Results Neighborhood Assessment St. Peters (2011); In the Neighborhood assessment St. Peters is ranked in the top ten of the 32 areas that need attention;



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- Draft Zoning Plan (2012); this plan was issued for public review, issues and or objections are being reviewed by independent experts.  
(<http://www.sintmaartengov.org/government/VROMI/Zoning%20Development%20Plans/Cul%20de%20Sac%20Little%20Bay%20Cay%20Hill.pdf>)
- Waste Collection Schedule  
(<http://www.sintmaartengov.org/government/VROMI/Infrastructure%20Management%20Department/Pages/Garbage-Collection-Schedule.aspx>)

### **Standard(s) of proper conduct:**

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The violated standards of proper conduct in this case are:

- The standard of *Cooperation*;
- The standard of *Promptness*.

The standard of *Cooperation* provides that government should on its own initiative cooperate with other (government) agencies and entities in the interest of the citizen without unnecessarily sending the citizen from one Department to another Department. A government body may not hide behind its limited task and competence, but take the initiative to work with other entities to provide the citizen the best service. One window shopping is preferred to provide the required information. Sharing of information between Departments and or Ministries; cooperation during decision making procedures; cooperation in the execution of policies.

The standard of *promptness* provides that a government body should act decisive and sufficiently swift. A public body is expected to be dynamic and as such be decisive and swift in its decision making. Hence, providing a response or decision within the legal timeframe or at least within a reasonable time is required. When a public body expects citizens to adhere to deadlines, based on the principle of equality the public body should strive to adhere to deadlines provided by law. Not adhering to a legal time frame will undermine the authority of the public body as well as tarnish its credibility with the citizen.

There are acceptable exceptions to the mentioned deadlines. A public body can miss a deadline in cases where more information is required to come to a decision. In such cases a public body is required to duly inform the citizen of the delay. Meeting a deadline however by no means guarantees that promptness has been observed. Promptness requires a decision to be taken in less than the legal timeframe in matters of urgency.



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### **Conclusion:**

The Complainant complained on several occasions to the Ministry of VROMI regarding the hazardous conditions of the roads and the lack of enforcement of policy within the neighborhood of St. Peters pertaining to raw sewage run off on the public roads and building permits having been issued with disregard to the Spatial Development plan for St. Peters. Furthermore, the Complainant has indicated to the Ministry of VROMI that there is little to no clean up efforts being observed by the Ministry because the streets are filled with litter. The Complainant filed a complaint with the Ombudsman claiming that no follow up was given to his grievances.

During a walkthrough of the St. Peters neighborhood on 4 March 2015 staff of the Bureau Ombudsman observed, running (sewage) water on the public road, litter, old car wrecks, free roaming barnyard animals and unkept trenches in the neighborhood. On 9 April 2015 a NOC was sent to the department of Inspection of VROMI and the department of Infrastructure Management, inquiring what the departments are doing to enforce policy and regulation to remedy the aforementioned issues.

### **Running waste water/sewage on the public road**

On 8 May 2015 the Ministry of VROMI provided the Ombudsman with a response to the NOC. In their response the Ministry explained that two inspections were carried out by the department of Inspections VROMI on 1 September 2014 and 8 January 2015 based on complaints filed by the Complainant. During the Inspection of 1 September 2014 no running water was observed by the Inspectors. The second Inspection carried out on 8 January 2015 no running waste water was observed.

The Ministry furthermore explained that Inspection carried out on waste water is established by proof of waste water running onto the public roads. The Inspectors trail the running waste water and advise the person(s) responsible to stop immediately and pump or repair their septic tank.

The Ministry states that it is difficult to catch perpetrators of running waste water onto the public roads since this tends to be done during the weekends and or after office hours, when no Inspectors are on duty.

While the Inspectors of VROMI have authority to:

- Inspect;
- Report;
- And instruct transgressors of potential sewage run off to fix or pump their septic tank,

the Community Police is authorized to issue fines to perpetrators.



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In an effort to curb the issue of running waste water onto the public roads the Ministry indicated that a phased project is being executed to connect the northern part of the St. Peters main road to the sewage network. The public tender to start this project is being handled at the moment. In the PFR of 24 July 2015 the Ombudsman requested the Ministry to provide a projected timeline regarding the status of the project above mentioned. In a response of 21 September 2015 the Ministry informed the Ombudsman that the project was tendered and is in principle ready for execution. However, there is no Capital Expenditure Budget for the year 2015, as such the project is put on hold. Once the funds are available the project can be executed within approximately a period of four months. The plan for the phased connection for the rest of St. Peters is still being drafted and could not be provided.

### **Cooperation**

By letter of 21 September 2015 the Ministry indicated that it has been in meeting with the CPO's, the Community Council and the garbage collection company for the area. Several issues regarding the day to day development of the community were discussed. A procedure is in place for the Community Council to funnel complaints from the neighborhood to the Ministry once a month. The Department of Infrastructure Management tries to handle as much complaints as possible considering their budget, legal framework and authority.

It was established that public safety and hygiene are matters for the responsibility of the Ministry of Justice and Public Health respectively.

### **Litter and old car wrecks**

There is a contract with a garbage company for the cleaning of secondary roads every 3 months. However the cleaning is actually done based on available funds. The Ministry indicated that the litter comes from the residents of the neighborhood, who do not adhere to the waste collection schedule; this is available on the Sint Maarten government website. The removal of car wrecks is the responsibility of the owner of the car. Pursuant to the Waste Ordinance it is forbidden to store cars on the road and on a property; a removal order can be given by the Inspection Department. The Ministry is authorized to have the car wreck removed at the expense of the owner, if the owner is not capable of removing the car wreck. It is established that enforcement of the law is required when it comes to safeguarding the health of the Community. Consequently, on 28 September 2015 the Ministry announced a car wreck pick up schedule throughout the island. The collection in the St. Peters neighborhood was scheduled to start on 4 November 2015.

Two garbage containers were observed during the walk through. One container was on the



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corner of the Tangerine road and the Lemon road. The second container was on the Apricot road. Mini garbage collection bins are available to the citizen upon request. The Ministry informed the Ombudsman that in cooperation with the Community Council an effort will be made to communicate the procedure to empty the bins ahead of garbage collection to the residents of the neighborhood. The larger bins require more space to place and it is an issue to find an appropriate location to place them.

### **Free roaming barnyard animals**

The Ministry ascertains that this is a matter to be resolved by the Community Police Officer. Again the cooperation between VROMI and the Police department is highlighted.

### **Unkept trenches**

The Ministry explains that there are plans to maintain the trenches and gutters twice a year. This effort is based on available funds, which is a matter on its own considering the financial situation of the government.

In times of emergency the trenches are cleaned prior to hurricanes as to not obstruct the free flow of water.

During the walkthrough it was observed that the residents had started to maintain the trenches as best they can. Possibly providing the tools to willing residents and a small compensation can be cost effective in achieving a safe environment.

There are areas where the water has washed away the trench slopes to almost undermining foundations of buildings. This situation requires the immediate attention of the Ministry since this forms a danger to residence and the possibility of losing their home in the future.

### **Zoning Plan**

According to the response of the Ministry there is no zoning plan in place for St. Peters, because the procedure to establish a zoning plan has not been completed.

The Ministry further outlines the procedure to establish a zoning plan. There is currently a draft zoning plan which was made available to the public on the government website for review, and is being advised upon by an independent Committee of Experts.

It is unclear in which timeframe the current draft zoning plan will be finalized and what the intention of the Ministry and or Minister is regarding the zoning plan. The Ombudsman observed the websites provided by the Ministry and thus established that the draft zoning plan was available for viewing from 29 September 2014 to 28 October 2014.





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Pursuant to article 5 sections 1, 6 and 8 of the “*Landsverordening Ruimtelijke Ontwikkeling*”(AB 2013, GT no. 144) the draft zoning plan is open for public for thirty days; Once this timeframe has passed the Minister will immediately provide the Committee of experts the objection notes submitted during that period. The Committee in turn has 60 days from the expiration of the thirty day public viewing period to provide an advice to the Minister. In a letter of 8 May 2015 the Ministry informed the Ombudsman that the objections were being reviewed by the Committee of experts. In a letter of 21 September 2015 the Ministry reiterated that the objections are being reviewed by the Committee of experts. To date the objection notes have been in review by the Committee for in total five months. This exceeds the legal timeframe allotted to the Committee, thus violating the standard of promptness.

**Judgment:**

- The complaint is founded and the standard of *promptness* violated and the standard of *cooperation* partially violated.
- The Ministry of VROMI acted (partially) improper with regard to the complaint.

**In addition:**

The Ombudsman concludes that availability of funds allegedly obstructs the execution of major projects in the St. Peters community. Considering the Results Assessment Neighborhood St. Peters these issues need the appropriate attention for a structural solution by Government. Though various actions have been undertaken by VROMI to address the day-to-day issues in the neighborhood, consistency and structural cooperation between entities is missing.

Considering that the complaints brought forward by the Complainant affect the entire community, the solutions need a collective and comprehensive approach, including the St. Peters Community Council.

The Ombudsman therefore recommends as follows, and reiterates the recommendations provided in the PFR.

**Recommendation(s):**

- VROMI to draft a priority list within the budgetary constraints to tackle the most prevalent safety and hygiene challenges in St. Peters;
- Parties to establish structured cooperation with the Community Council to create and improve awareness for safety and hygiene in the St. Peters area;
- VROMI to provide consistency in effectively maintaining the trenches;



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- VROMI to make arrangements for combined inspections to take place with the Community Police and the Inspection department;
  - VROMI to provide a timeline to outline each phase of the procedure to establish a zoning plan for St. Peters, as well as the planned infrastructural interventions mentioned. Transparency requires that the public is informed accordingly;
  - Review funding for the upgrading of the trenches so they no longer pose a threat to residents living close by;
  - Enforce article 5 section 6 of the Landsverordening Ruimtelijke Ontwikkeling to proceed with the zoning of the area in order to have general guidelines by which to execute VROMI's tasks in the area.
- 
- o I agree with the recommendation(s)
  - o I do not agree with the recommendations (please explain by submitting a written reaction no later than 15 December 2015 ).

**The Ombudsman requests a status report on the recommendation(s) within three (3) months from the date of this letter.**

Philipsburg, 1 December 2015

Dr. R. (Nilda) J.A. Arduin  
Ombudsman