



DATE:

REPORT TO: COUNCIL

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1. ITEM NUMBER **04/11/17**

2. SUBJECT

**REGULATION 5(1) OF THE DISCIPLINARY REGULATIONS FOR SENIOR MANAGERS: C KESSON**

3. DELEGATED AUTHORITY

In terms of delegation

This report is FOR DECISION BY COUNCIL

**Committee name :**

The Executive Mayor ito Delegated authority

The Executive Mayor together with the Mayoral Committee (MAYCO)

Council

4. DISCUSSION

Allegations of misconduct against the Executive Director: Directorate of the Mayor ("ED: DOM"), has been received by the City Manager, from the Executive Director: Safety and Security ("the ED: Safety and Security").

This report brings the alleged misconduct to the attention of the municipal council in compliance with regulations 5(1) of the Disciplinary Regulations for Senior Managers under the Municipal Systems Act ("the Regulations"), for Council to determine whether to investigate the allegations or to dismiss them.

The ED: Safety and Security alleges that:

**Allegation: Alleged Attempt to Intimidate**

This relates to the statements of the ED: DOM during the pre-suspension hearing ("hearing") of Ms Lindiwe Ndaba, Portfolio Manager: Probity ("Ms Ndaba"), held on 13

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November 2017. The ED: Safety and Security was duly appointed as the chairperson of such hearing. The ED: DOM represented Ms Ndaba in such hearing, wherein he indicated that he would be the main witness in her disciplinary hearing.

The ED: Safety and Security, alleges that during the submissions made by the ED: DOM during the pre-suspension hearing, he felt that statements were made in an attempt to intimidate him not to suspend Ms Ndaba. These statements are:

- *That if we do suspend Ms Ndaba we can expect to be taken to court and further*
- *That all the information on this matter and the complaints against the City Manager, Executive Mayor and a fellow Executive Director would then be made public knowledge and we would have to sit with the consequences and will be held responsible for this reaching the public*
- *That all of us would be involved in this matter and bear the consequences of our actions*

Furthermore:

*"At the end of his submissions he again reiterated that in the event of the member being suspended, we would all be part of this thing..."*

The ED: Safety and Security alleges that the aforementioned statements by the ED: DOM was an attempt at intimidation.

### **Precautionary Suspension:**

If Council proceeds to authorise an investigation, it may wish to consider whether a precautionary suspension is appropriate, in terms of regulation 6 of the Disciplinary Regulations.

The ED: DOM is employed by the City, and charged with managing all Probity functions within the City, which consists of the Forensics Services Department, Internal Audit, Risk & Ethics Governance and the Ombudsman. As such, the ED: DOM:

- a. Must display a high level of ethical conduct;
- b. Has a duty of confidentiality to the City and functional area, which includes intentional and unintentional disclosure of information;
- c. Must promote an adequate level of independence;
- d. Must possess the status required to effectively discharge his responsibilities;
- e. Must display professional behaviour.

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Based on the contents of this report, The ED: DOM may have materially breached and/or failed to uphold the above qualities.

Should Council approve the independent investigation into the actions of the ED: DOM, it is required by Regulation to consider whether precautionary suspension is required. As such, the regulation require specific consideration of inter alia, the following:

- a. *Jeopardise any investigation into the alleged misconduct; or*
- b. *Endanger the wellbeing or safety of any person or municipal property;*
- c. *Be detrimental to stability in the municipality; or*
- d. *May interfere with potential witnesses; or*
- e. *Commit further acts of misconduct.*

Based on the allegation and contents of this report, weighed against the above legislative requirements, there may be reasonable grounds for precautionary suspension in that the ED: DOM might have intimidated or in the very least attempted to intimidate a chairperson of a duly constituted hearing, who is also a fellow section 56 senior manager.

The ED: DOM has indicated that he will be the main witness in the hearing of the Portfolio Manager: Probity and there is therefore a very real risk that he may jeopardise the investigation, interfere with potential witnesses and commit further acts of misconduct; as it is known to him that some of the witnesses in the aforementioned disciplinary hearing of Ms Ndaba are subordinate staff that directly reports to him in his operational area of responsibility.

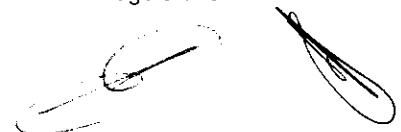
- 4.1. Financial implications  None  Opex  Capex
- Capex: New Projects
  - Capex: Existing projects requiring additional funding
  - Capex: Existing projects with no additional funding requirements

- 4.2. Legal Compliance

The Disciplinary Regulations for Senior Managers provides as follows:-

5. **Disciplinary procedures.**—(1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

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- (2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven (7) days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven (7) days to consider the said report.
- (3) If the municipal council is satisfied that—
- (a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven (7) days appoint an independent investigator to investigate the allegation(s) of misconduct; and
  - (b) there is no evidence to support the allegation(s) of misconduct against the senior manager, the municipal council must within seven (7) days dismiss the allegation(s) of misconduct.
6. **Precautionary suspension.**—(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that—
- (a) the presence of the senior manager at the workplace may—
    - (i) jeopardise any investigation into the alleged misconduct;
    - (ii) endanger the well-being or safety of any person or municipal property; or
    - (iii) be detrimental to stability in the municipality; or
  - (b) the senior manager may—
    - (i) interfere with potential witnesses; or
    - (ii) commit further acts of misconduct.
- (2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven (7) days of being notified of the council's decision to suspend him or her.
- (3) The municipal council must consider any representation submitted to it by the senior manager within seven (7) days.
- (4) After having considered the matters set out in sub-regulation (1), as well as the senior manager's representations contemplated in sub-regulation (2), the municipal council may suspend the senior manager concerned.
- (5) The municipal council must inform—
- (a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and
  - (b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven (7) days after such suspension.
- (6)(a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.

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4.3. Staff Implications     Yes     No

## 5. RECOMMENDATIONS

Not delegated for decision by Council:

In the event that the Council is satisfied that there is reasonable cause to believe that an act of misconduct has been committed, it is recommended that it be:

**RESOLVED** that the City Manager be authorised to appoint, within 7 (seven) days of Council's resolution, an independent investigator to investigate the alleged misconduct


### ALTERNATIVELY

In the event that the Council is satisfied that there is no evidence to support the allegation of misconduct, it is recommended that it be:

**RESOLVED** that the allegation be dismissed and that no further investigation is required.

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### FOR FURTHER DETAILS CONTACT

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SIGNATURE	 17.11.2017.		

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**LEGAL COMPLIANCE**

REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

NON-COMPLIANT

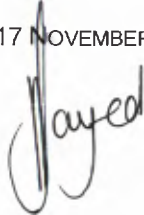
NAME      RIAANA SAYED

COMMENT:

DATE      17 NOVEMBER 2017

**Certified as legally compliant based on the content of the report**

SIGNATURE



**EXECUTIVE MAYOR**

SUPPORTED

NOT SUPPORTED

NAME

*Patricia de Lille*

COMMENT:

DATE

*17 November 2017*

SIGNATURE

*P de Lille*