



DATE:

REPORT TO: COUNCIL

1. ITEM NUMBER **06/11/17**

2. SUBJECT

REGULATION 5(1) OF THE DISCIPLINARY REGULATIONS FOR SENIOR MANAGERS: M WHITEHEAD

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 Commissioner: Transport and Urban Development ("the Commissioner"), has been received from the Executive Director: Directorate of the Mayor ("ED: DOM").

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 legislative framework governing municipalities and the entrenched practice within the City of Cape Town, is that all reports destined for Council must be signed off and tabled by the Executive Mayor.

Allegations:

Allegation 1: Whether or not the Commissioner, failed to ensure that the implementation of the contracts referred to in the complaint were properly supervised; and/or failed to ensure that the losses to which the City became exposed were limited as far as was feasible.

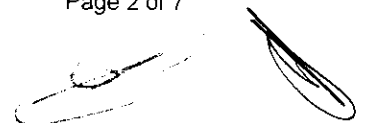
This allegation relates to forensic report with reference number FSD291/15-16 ("FSD291"), dated 06 July 2017. The ED: DOM has levelled the above allegation against the Commissioner, whilst having full knowledge that:

- a. The City Manager authorised a forensic investigation into alleged unauthorised transactions relating to the cash management and payment component of the station management contract;
- b. The City Manager actioned the recommendations resulting from such authorised forensic investigation, with reference FSD291;
- c. Flowing from a presentation done to inter alia, the City Manager and key staff, on FSD291, the City Manager directed that, a consultant be appointed to determine the quantum of any loss suffered by the City. Furthermore, the City Manager also instructed that a firm of attorneys be appointed to provide legal advice in respect of any civil remedies that the City may have and to provide legal advice in respect of evidentiary requirements related to the work performed by the consultants referred to above;
- d. The City Manager, is reliably informed that the appointed consultant, Pricewaterhouse Coopers ("PwC"), are still in the process of quantifying the alleged loss, if any, and that no final report has been submitted in this regard to the City as yet.
- e. Consequently, forensic report FSD291, remains an ongoing investigation, which can only be finalised and actioned upon receipt of the finalised PwC report and legal advice. This is clearly work in progress.
- f. It follows therefore that it is only once PwC submits its report and findings that any consideration, legal or otherwise, can be had to whether there has been any breach of the Municipal Finance Management Act and its Regulations by any municipal official.

Therefore, any investigation into the allegation is at best premature.

Allegation 2: That the conduct of the Commissioner in relation to the matters addressed in forensic report, case number FSD356/13-14 ("FSD356"), dated 24 March 2016, be investigated.

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The ED: DOM had full knowledge, that FSD356 **dated 24 March 2016**, was never issued by Forensic Services to the City Manager and was never received by the office of the City Manager for actioning. In fact, he knows full well that FSD356, **dated 30 March 2016**, was issued and delivered to the office of the City Manager and that the report dated **24 March 2016**, has no standing. Whilst having such full knowledge, there is no factual basis or truth in this allegation. In fact, the ED: DOM had evidence at his disposal, at the time of making such averment, that there was no merit to such allegation. The quoted recommendation contained in the ED: DOM's submission is therefore misleading and untruthful as no such recommendation was made by Forensic Services in its report.

For the aforementioned reasons, no reasonable cause as envisaged in the Regulations therefore exists.

Allegation 3: The conduct of the Commissioner in relation to matters referred to in forensic report, case number FSD049/14-15 ("FSD049"), be referred for investigation by an independent investigator.

A forensic report, FSD049, was submitted by the City Manager to the Executive Mayor for consideration. Flowing from a number of discussions with the Executive Mayor, which included inter alia the City Manager, Chief Financial Officer and erstwhile Executive Director: Corporate Services and Compliance ("ED: CorC"), such report could not be processed further based on the advice of the ED: CorC, who differed substantially with the interpretation of the evidence contained in the forensic report.

It is noteworthy, that this matter was dealt with in 2015.

Allegation 4: The conduct of the Commissioner referred to in the complaint, in respect of the Bid Evaluation Committee ("BEC") for Tender 7C/2016/17: Request for proposals for the development of the Cape Town Foreshore Freeway precincts ("FFP") should be investigated

The Independent Assurance Providers to the BEC, submitted a report which contained concerns on the composition and functioning of the BEC. Such report did not however contain any direct allegation of misconduct against the Commissioner. The City Manager obtained external legal advice from SC QC, who advised that the BEC must be reconstituted. The City Manager duly implemented such advices.

A full dossier including a report destined for Council was submitted to the Executive Mayor. After applying her mind and considering the report, especially as there was no

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direct allegation of misconduct made against the Commissioner, it was determined that there was no need for a submission to Council as required by the Regulations.

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 Regulations require Council to consider the following criteria when making a decision on precautionary suspension of a senior manager:

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

As is evident from the content of this report, weighed against the criteria of the above legislative requirements, there is no reasonable grounds for precautionary suspension.

- 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

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

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- (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.

4.3. Staff Implications Yes No

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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 perceived 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 is dismissed and that no further investigation is required.

FOR FURTHER DETAILS CONTACT

NAME	Achmat Ebrahim	CONTACT NUMBER	021 400 5011
E-MAIL ADDRESS	Achmat.Ebrahim@capetowngov.za		
SIGNATURE		16-11-2017	

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 16 NOVEMBER 2017

Legally compliant based on the contents of the report

SIGNATURE





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EXECUTIVE MAYOR

SUPPORTED

NOT SUPPORTED

NAME *Patricia de Lille*

COMMENT:

DATE *16 November 2017*

SIGNATURE *P de Lille*

