



DATE:

REPORT TO: COUNCIL

1. ITEM NUMBER **07/11/17**

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 from the Commissioner: Transport and Urban Development ("the Commissioner") by the City Manager.

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 Commissioner alleges that:

Allegation 1: In that the ED: DOM made untrue statements, as the Chairperson of the Risk Committee of 23 June 2017, in respect of the Commissioner.

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This relates to the statement allegedly made by the ED: DOM in the aforementioned Risk Committee, that the Commissioner had failed in her governance duties by not presenting the Transport and Urban Development Authority ("TDA") Risk Register. This notwithstanding that she had prearranged with him that she would not be able to attend such Risk Committee meeting as it clashed with the TDA Portfolio Committee meeting on the same date and time. More so, as it was agreed that such TDA Risk Register would be presented at the subsequent meeting of 06 July 2017.

This is compounded by the fact that the Executive Director: Informal Settlements, Water and Waste Services ("ED: ISWW"), also attended the meeting merely to tender an apology, where after she left. According to the Commissioner, the minutes of such Risk Committee meeting, do not reflect that ED: DOM raised any concern in this regard, notwithstanding that the ED: ISWW, covers City risk areas such as water and informal settlements.

It would appear that the Commissioner is raising an allegation of being treated differently and potentially unfairly by the ED: DOM.

In addition, the Commissioner also states that:

"Lastly, with regards to risk matters, Mr Kesson then began to insist that I place the Station Management Contract (refer to Complaint 3) on the Corporate Risk Register. I have never seen a specific forensic investigation on a Risk Register (e.g. The Athlone Power Station Forensic). I tried to deal with this administratively to no avail and then eventually had to remove it off at the Risk Committee at its September meeting. This again exposing me and TDA to questions from the Chairperson of the Audit Committee."

The Commissioner advised the City Manager that she feels singled out, victimised and treated differently by the Chairperson of the Risk Committee, ED: DOM.

Allegation 2: ED: DOM made serious and untrue allegations against the Commissioner in that she discussed the contents, merits and demerits of the Foreshore Freeway Precinct ("FFP") bid with her political principals

This relates to a meeting that took place on the 05 September 2017, with the Executive Mayor, Deputy Mayor, Councillor Herron, Councillor van der Merwe, the City Manager, the Chief Financial Officer, the ED: DOM and the Commissioner in attendance.

The ED: DOM made serious untrue allegations against the Commissioner in that he stated that she had discussed the contents, merits and demerits of the FFP bid with her political principals. The Commissioner alleges further that the ED: DOM named

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the Executive Mayor, the Deputy Mayor and the Mayoral Committee member for TDA as having interfered with and influenced the Bid Evaluation Committee process ("BEC") through her.

She alleges further that a very similar statement to that made by the ED: DOM, at the aforesaid meeting, then appeared in the Sunday Times newspaper, which stated that they had been informed of this from a source in the City.

The Commissioner further denies that she ever discussed the contents, merits or demerits of any of the bids related to the FFP Request for Proposals with any of the aforesaid politicians.

Allegation 3: That the Commissioner had not done enough in the Station Management contract process to stop the theft, that the Commissioner was failing in contractual management duties and even that the Commissioner could be responsible for the theft.

The ED: DOM alleged the above, despite being informed of various technical and systematic interventions implemented by TDA to try to stop the theft. In addition, the Commissioner was advised by the Portfolio Manager: Probity, who reports to the ED: DOM, that she was not permitted to implement a long term sustainable solution until such time as the now External Forensic Investigation has been concluded, which is scheduled for completion in the third week in November.

It is for the aforesaid reasons that the Commissioner states that the allegations by the ED: DOM are untrue and misleading.

Allegation 4: Investigation by the ED: DOM of the Commissioner, a section 56 employee

The Commissioner alleges that it has come to her attention, from various sources, that the ED: DOM, has been investigating her. The Commissioner complains that this is a serious breach by the ED: DOM, as it is only Council that is able to launch an investigation into a section 56 employee.

Furthermore, the Commissioner alleges that the aforementioned actions by the ED: DOM against her is motivated by an ulterior motive and/or ulterior purpose and that this is defamatory of her and constitutes misconduct on the part of the ED: DOM.

4.1. Financial implications None Opex Capex
 Capex: New Projects

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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.
- (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.

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- (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

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:

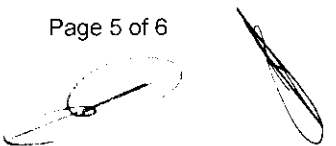
RESOLVED that the City Manager be authorised to appoint, within 7 (seven) days of Council's resolution, an independent investigator to investigate the alleged misconduct

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		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
 DATE 15 NOVEMBER 2017
 SIGNATURE 

COMMENT:
Certified as legally compliant based on the content of the report



EXECUTIVE MAYOR

- SUPPORTED NOT SUPPORTED

NAME Patricia de Lille
 DATE 17 November 2017
 SIGNATURE 

COMMENT: