

## **CHARGE SHEET**

**In the matter between:**

**THE DEMOCRATIC ALLIANCE (THE PARTY)**

**And**

**PATRICIA DE LILLE (THE CHARGED MEMBER)**

**At all times relevant to the charges:**

1. Ms De Lille was a paid up member in good standing of the Party;
2. Ms De Lille served at the City of Cape Town Metropolitan Municipality (CoCT) as a councilor of the Party and as the Executive Mayor (EM) and until her resignation effective 1 February 2017 was also the Provincial Leader of the Democratic Alliance in the Western Cape Province. Until that date, she was *ex-officio* a member of the Democratic Alliance Federal Executive and Federal Council;

3. Ms De Lille, prior to the interviews, evaluation and scoring of the shortlisted candidates to be interviewed for the appointment of a City Manager, after the Local Government Elections of 2016 sent a text message via sms reading "*I want to keep Achmat so score him highest. Thanks.*" to at least one member of the selection panel.
4. Ms De Lille, despite a selection panel having been tasked with the shortlisting of candidates to be interviewed for appointment to the board of the Cape Town Stadium Municipal Entity, and such panel having performed its functions, ensured amendment of the shortlist in order to include Ms Limia Essop as a candidate.
5. Ms De Lille had friendly relations with the father and or family of Ms Essop.
6. Ms De Lille, after Cllr Ian Neilson, in his capacity as acting executive mayor finalised the appointment of members to the Cape Town Stadium Municipal Entity Board, and upon her reassumption of duties as executive mayor reviewed and amended the resolution taken by Neilson, with the effect that Ms Essop was appointed as a member of the Board.

7. This was done despite Neilson officially informing Ms De Lille that he, in making the initial decision, viewed Essop, based on her interview, to be unsuitable for appointment to the Board.
8. A forensic report dated 17 March 2015 was generated under report number FSD049/14-15 resulting from a forensic investigation into alleged irregularities involving payments to Volvo for bus chassis;
9. The abovementioned report contained serious allegations of misconduct on the part of the Commissioner : Transport and Urban Development Authority (TDA);
10. The report was supplied to, *inter alia*, the City Manager (CM), who failed to report on same to the Council as required by Regulation 5(1) of the Regulations – that the allegations against the Commissioner must be reported to Council;
11. The CM did not dispute that the allegations against the Commissioner were serious and should have been reported to Council;
12. The CM contended that he took all reasonable steps to comply with the obligations placed upon him, but was precluded from complying with the Regulations by the instructions to the contrary from the EM;

13. Despite overwhelming evidence that the matter should be reported to the Council, and despite advice to do so, the EM prevented the report being tabled and the matter reported to Council as required;
  
14. The City received reports on the financial losses caused by the weaknesses in the MyCiTi fare collection system, being:
  - a report from PwC dated 18 December 2014 entitled "*Forensic Investigation related to alleged irregularities ALLEGED IRREGULATIES in respect of TENDER 24G/2009/10*".
  - A report from CoCT's Forensics, Ethics and Integrity Department dated 24 March 2016, and entitled "*Forensic Investigation into irregular and or wasteful expenditure*".
  - A report from the CoCT's Forensics Services Department dated 6 July 2017 and entitled "*Forensic Investigation into alleged unauthorized transactions relating to cash management and payment component of the Station Management Contract*".
  - A letter dated 27 May 2016 from ICT Works System (Pty) Ltd estimating the loss incurred between 1 July 2015 and 13 May 2016 to be R16 801 000.00.
  - A letter dated 27 May 2017 from ICT Works System (Pty) Ltd estimating the loss incurred between 3 August 2013 and 31 January 2017 to be R33 068 000.00.
  - Auditor General Management Report dated 30 June 2015.
  - Auditor General management Report dated 30 June 2016.

15. As Executive Mayor Ms De Lille was aware of the contents of all of the documents mentioned *supra*.
16. Further allegations relate to the conduct of the Commissioner (TDA) with regard to the Foreshore Freeway Project (FFP) pertaining to the activities of the Bid Evaluation Committee (BEC) with specific reference to Tender 7C/2016/17;
17. Various reports were generated pertaining to this particular matter. One such report was the Moore Stephens Report (MSR), that raised serious concerns regarding the conduct of the Commissioner in regard to the BEC;
18. The CM compiled a dossier dated 13 October 2017 that he gave to the EM, informing her of the issues identified against the Commissioner. The dossier contained, *inter alia*, the MSR, a legal opinion from Senior Council regarding the reconstitution of the BEC and grievances related thereto;
19. The CM identified the Commissioner as a Section 57 employee, and the requirement of the Regulations that the issues must be tabled before Council and an investigation instituted. The EM took a different view, declining to table the matter before Council;

20. The EM expressed a view that Regulation 5(1) did not apply;
21. This view was held despite compelling evidence that the EM was obliged to present the dossier to Council for its considerations.
22. On 21 November 2017 the CoCT, at a Special Council in Committee (SPCIC) resolved to instruct the Audit and Performance Audit Committee (APAC) to appoint an independent investigator, as required by Regulation 5(3)(a) of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (the Regulations), to investigate allegations of misconduct made against senior officials named in various reports considered by Council at said meeting;
23. As a result, APAC appointed a firm of attorneys, Bowman Gilfillan Inc. (Bowmans) on 30 November 2017 to conduct the said investigation;
24. A variety of documentary and oral evidence was gathered and analysed during abovementioned investigation, forming the basis of a plethora of findings reached. The findings of this investigation were contained in a report entitled "*Investigation into allegations of misconduct at the City of Cape Town*" dated 29 December 2017;

25. The Commissioner TDA was re-appointed to this position after the local government elections of 2016. This despite the fact that the EM was in possession of the information and documentation mention *infra* and *supra* in which Whitehead's role and dereliction of duty prior to the expiry of her pervious appointment was set out.
26. Ms De Lille reconvened the Caucus of the City of Cape Town shortly after the Caucus elected its office bearers after the local government elections of 2016. During the reconvened meeting she expressed not only her dismay with the election of the Caucus leadership, but more specifically indicated to the Caucus that she refused to work with the newly elected deputy leader, Ald J P Smith.
27. Ms De Lille, in her capacity as Leader of the Caucus of the Party in the City of Cape Town at various instances, has belittled, humiliated and insulted fellow members of the Caucus, especially if and when they expressed an opinion which contradicted her own stance on any item or issue.
28. During about December 2012 the EM attended a meeting (along with Ald JP Smit) with one Mr Anthony Faul, a director of AFO South Africa (Pty) Ltd;
29. At this meeting a presentation and demonstration was done of a product known as the AFO Fireball. The product is an automatic fire extinguisher, putting out fires upon contact with an open flame;

30. The presentation and demonstration was principally intended as a sales pitch for the product to be used in informal settlements to curb runaway fires;
31. Thereafter and on 20 December 2012 the EM sent a letter to Mr Faul, the contents of which are self explanatory. The letter is dated 13 December 2102;
32. On or about 8 January 2013 the EM called Mr Faul on his cellphone. The conversation went as follows:

*“The mayor alleged that I would be making a lot of money on this transaction. She mentioned that according to her offices’ research, I would be making approximately R20M. I told her that I would definitely not be making R20M out of this transaction, as I have to pay agents commission and tax and that I would clear approximately R10M.*

*She said that I would be a rich man and as she procured the transaction for me, what is in it for her. I replied that I don’t understand, as I would be delivering a product and service to the City of Cape Town. She then replied that for the deal to proceed, she would need a payment in the amount of R5M from me, otherwise she would withdraw the letter.*

*I advised her that I do not have that kind of money available.*

*She then said that based upon the letter and as it is signed by her, it would be easy to procure the funds from a financial institution. I told her that this amounts to bribery and corruption.*



*She said that I must decide what the deal is worth to me and that I must think carefully. She even said that she would not be implicated as she would arrange for a procurement agreement with a family member and as soon as I have procured the funding, she will advise me of the account details where the money must be paid in, as well as the agreement.*

*I then advised her that I don't see my way open to pay any amount to her. She then said that the deal is off and that I would get a letter from her to that effect."*

33. On 10 January 2013 Mr Faul received an email, indicating that the deal had been terminated.
34. During the 2016/16 financial year the CoCT paid R451 000 in respect of safety upgrades to the private residence of Ms De Lille. Ms De Lille insisted that the upgrades were done in a proper manner, based on the legally prescribed procedure including *inter alia* a risk analysis report and recommendations from a special police unit.
35. The Auditor-General in its report on the financial statements and legal compliance by the CoCT for the 2016/17 financial year however found that payment of the amount of R140 000.00 was an irregular expenditure.

36. All Party members are subject to the discipline of the Party and submit to the provisions of the Federal Constitution in regard to rules of conduct and to the disciplinary procedures set out in Chapter 11 of the Federal Constitution of the Party;
37. All Party members, including public representatives, submit to the right of the Party to terminate their membership, to remove them from office in any executive or legislative sphere of government or office within the Party, or to be moved to a position deemed to be suitable by the Party, on the grounds of incapacity owing to poor performance and/or ill health, which includes but is not limited to incompetence and/or inefficiency and/or incapability, but only in terms of processes and procedures prescribed by the Federal Council.
38. The EM is a high profile and senior leader of the Democratic Alliance. She heads up a Council controlled by the Democratic Alliance, and with which the Democratic Alliance is inextricably linked, and all her actions and or failures to act (both positive and negative) are inextricably bound to the brand of the Democratic Alliance;
39. While the EM undeniably has a duty to act in the best interests of the Council and the City of Cape Town, and while the Democratic Alliance fully acknowledges and supports the doctrine of Separation

of Powers and the Rule of Law, when the EM failed to act as set out above, alternatively actively obstructed the natural course of events and preventing Council from exercising its proper functions, these actions or failures to act of necessity impact negatively on the Party, and the public perceptions of the Party.

40. On 17 February 2018 the EM was interviewed on the morning show on SAFM, and referred to the Provincial Leader of the Western Cape (Mr Bonginkosi Madikizela) as “arrogant” and “stupid”.

**NOW THEREFORE THE CHARGED MEMBER IS CHARGED AS FOLLOWS:**

That she is guilty of misconduct in terms of the following sections of the Federal Constitution:

**2.5.4.2 deliberately acts in a way which impacts negatively on the image or performance of the Party;**

**2.5.4.4 fails to carry out his or her duties and/or responsibilities according to standards set by the Federal Council of the Party or of the relevant Provincial or Regional Council, or to standards required by any**

**statutory rules of conduct required by the public office he or she holds;**

**2.5.4.5 brings the good name of the Party into disrepute or harms the interests of the Party;**

**2.5.4.6 acts in a manner that is unreasonable and detrimental to internal co-operation within the Party;**

**2.5.4.7 unreasonably fails to comply with or rejects decisions of the official formations of the Party;**

**IN THAT SHE:**

- a. acted in an improper and unlawful manner in respect of the re-appointment of the City Manager of the City of Cape Town by unduly influencing, alternatively attempting to unduly influence members / a member of the Selection Panel responsible for the evaluation and scoring of those candidates shortlisted and interviewed by sending members / a member of the Panel a text message reading “***I want to keep Achmat so score him highest. Thanks***”
- b. acted in an improper and unlawful manner in respect of the appointment of Limia Essop to the Stadium Management Board by *inter alia* improperly exercising her authority in respect of appointment of Members of the Board by reviewing and amending the shortlist of

candidates to be interviewed in such a manner as to unduly benefit Ms Essop, and or improperly and unlawfully involving herself with the decision in respect of the appointment of members of the Board, ostensibly to ensure the appointment of Ms Essop.

- c. failed to perform her duties and/or responsibilities according to the Municipal Finance Management Act and the Municipal Systems Act in that she failed and or refused to report and properly account to the Council of the City of Cape Town regarding irregularities in respect of the payment with regard to the so-called Volvo Chassis matter.
  
- d. failed to perform her duties and/or responsibilities according to the Municipal Finance Management Act and the Municipal Systems Act in that she failed and or refused to report and properly account to the Council of the City of Cape Town regarding irregularities and financial losses reported to her in respect of the contract the City entered into regarding the operation of the MyCiTi bus project.
  
- e. failed to perform her duties and/or responsibilities according to standards set by the Federal Council of the Party and or the Municipal Finance Management Act and the Municipal Systems Act in that she failed and or refused to report and properly account to the Council of the City of Cape Town called Foreshore Housing Project.

- f. acted in an improper and unlawful manner, and or failed to exercise her duties as an Executive Mayor displaying sound judgement, by refusing or neglecting to ensure that the performance of the incumbent Commissioner for the Transport Development Authority of the City of Cape Town, Ms Melissa Whitehead, and more specifically allegations of poor performance be properly investigated and or reported to Council and or be taken into account during the appointment process that lead to the re-appointment of Ms Whitehead.
- g. failed to perform her duties and/or responsibilities according to standards set by the Federal Council of the Party and or the Municipal Finance Management Act and the Municipal Systems Act in that she failed and or refused to take all reasonable remedial and corrective steps to mitigate and or prevent the proliferation of the losses and or financial and governance irregularities in respect of the MyCiTi bus project, the Volvo Chassis matter and the Foreshore Housing Project.
- h. acted in an improper or abusive manner in providing leadership to the Caucus of the Party in the City of Cape Town by, through her words and actions, intimidating and belittling caucus members who did not agree with her.
- i. refused to accept an official decision of the Party by informing the Caucus of the City of Cape Town, upon the election of Ald

JP Smith as deputy leader of the Caucus, that she refused to work with him.

- j. Acted in an improper and unlawful manner by requiring a payment of R5 million to herself or a proxy of herself from Mr Faul in order to facilitate the transaction regarding the AFO Fireballs. This action is not only a contravention of her duties as the EM, it also lays the basis for criminal charges if proved to be true.
- k. Acted in a dishonest, alternatively improper manner, by publicly declaring that the payment of R140 000 in respect of the safety upgrades at her private residence was done in a legally compliant manner.
- l. Acted in a manner that brings the good name of the Party into disrepute or harms the interests of the Party or acted in a manner that is unreasonable and detrimental to internal co-operation within the Party by referring to the Provincial Leader (Mr Bonginkosi Madikizela) as “arrogant” and “stupid” on a public platform on SAFM.

GLYNNIS BREYTENBACH  
COMMITTEE ASSISTANT

WERNER HORN  
COMMITTEE ASSISTANT