

Leader of an Official Opposition

West Wing | 2nd Floor | Tshwane House | Cnr Lilian Ngoyi and Madiba Streets | Pretoria | 0002
PO Box 440 | Pretoria | 0001
Tel: 012 358 3137 | Fax: 086 225 4345
Email: MapitiM@tshwane.gov.za | www.tshwane.gov.za | www.facebook.com/CityOf Tshwane

25 October 2018

To: Speaker of Council
CITY OF TSHWANE: TSHWANE HOUSE

URGENT MOTION SUBMITTED IN TERMS OF SECTION 7(1) READ WITH SECTION 7(2) OF THE RULES AND ORDERS OF COUNCIL- SUSPENSION OF THE CITY MANAGER: FOR CONSIDERATION AT THE COUNCIL MEETING OF 25 OCTOBER 2018

1. PURPOSE

The purpose of this motion is in two facets:

- To submit an urgent motion in terms of Section 7(1) read with Section 7(2) of the Rules and Orders of Council and,
- Table a substantive motion on the suspension of the City Manager of the City of Tshwane, Dr Moeketsi Mosola

2. BACKGROUND

Section 7(2) read with Section 7(1) of the Rules and Orders of Council provides that a member may at a meeting propose that the provisions of Section 7(1) of the Rules and Orders be suspended to enable him or her to submit a motion on a matter of urgency.

3. URGENCY

A. MOTIVATION FOR URGENCY

Council at its meeting held on 10 September 2018 considered a report on the suspension of the City Manager and it was resolved as per the minutes approved at the Council meeting of 27 September 2018.

It should be noted that the City Manager lodged an urgent court application at the Labour Court of South Africa, Johannesburg on 24 October 2018, to be heard today on the 25 October 2018 at 10:00.

In the said application, attached as Annexure B, it is evident that the Council at its meeting held on 10 September 2018 did not apply its mind intensively on the reasons given by the City Manager as to why Council must or not suspend him as provided in terms of Regulation 6 “Precautionary Suspension of the Senior manager”.

Due to the fact that the above-mentioned court application was only lodged on 24 October 2018, we could not submit this motion in terms of Section 18 of the Rules and Orders of Council. It is not a self-created urgency but in the interest of public, it is extremely important for this Council to consider the suspension of the City Manager.

The court will guide the City of Tshwane on the application of the MFMA *vis-a-vis* MSA on the financial misconduct and disciplinary regulations for Senior Managers respectively.

Section 7(8) of the Rules and Orders provides as follows:

(Unaltered)

“The proposals to suspend shall be deemed to be carried if the members voting in favour thereof constitute a majority of the whole Council”.

In view of the above, I propose that the provisions of Section 7(1) read with Section 7(2) of the Rules and Orders of Council, be suspended to enable me to submit a motion on a matter of urgency (As I have done in writing and gave to the Office of the Speaker two hours before this ordinary Council meeting).

4. SUBSTANTIVE MOTION

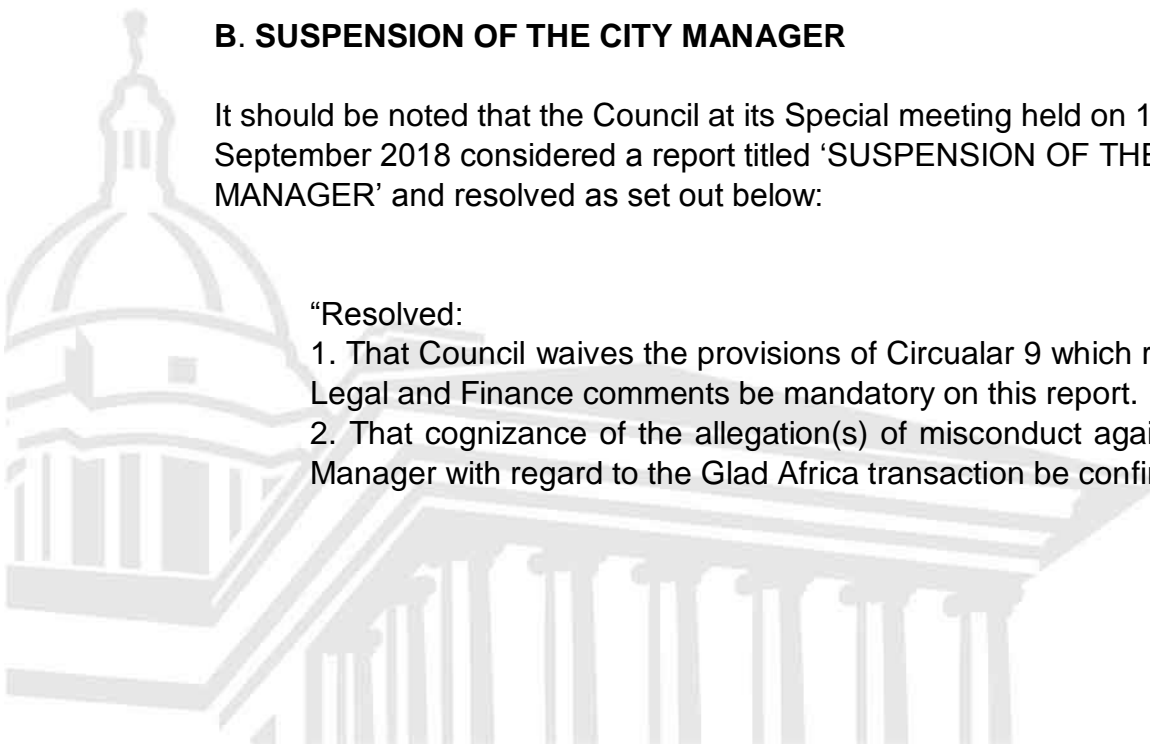
B. SUSPENSION OF THE CITY MANAGER

It should be noted that the Council at its Special meeting held on 10 September 2018 considered a report titled ‘SUSPENSION OF THE CITY MANAGER’ and resolved as set out below:

(Unaltered)

“Resolved:

1. That Council waives the provisions of Circular 9 which requires that Legal and Finance comments be mandatory on this report.
2. That cognizance of the allegation(s) of misconduct against the City Manager with regard to the Glad Africa transaction be confirmed.



3. That whereas Council is satisfied that there is reasonable cause to believe that there might be an act(s) of misconduct that has been committed, an independent investigator, as envisaged in terms of Regulation 5(3) of the Disciplinary Regulations for the Senior Managers to be appointed to investigate all the allegations of misconduct pertaining the Glad Africa transaction
4. That the Chief Operations Officer be authorised by Council to appoint an independent investigator as set out in the recommendations above.
5. That Resolution 5 of the Council Resolution of 22 August 2018 in the report titled "Report on the Proposed Suspension of the City Manager" be rescinded.
6. That Council takes cognizance of the responses from the City Manger
7. That a preliminary report on the investigation be submitted to Council in the next 30 days.

The above report including the Council resolution was submitted to Council based on the Council resolution of 22 August 2018 which approved the intention to suspend the City Manager and also authorised the Executive Mayor to inform the City Manager in writing of its decision.

At the said Council meeting of 22 August 2018, the City Manager was also granted seven days to provide reasons as to why he should not be suspended in line with regulation 6(2) of the Regulations for the discipline of senior managers and whereafter the Council will reconvene to consider the matter further.

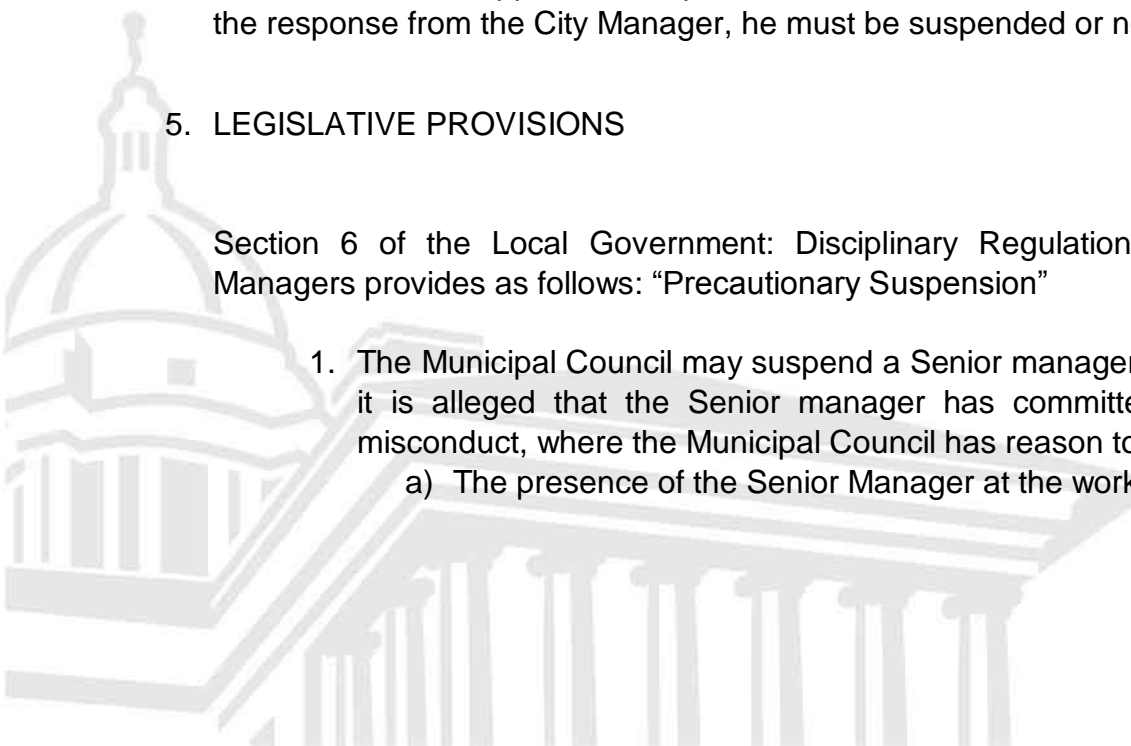
At the Council meeting of 10 September 2018, Council did not thoroughly express its position on the response provided by the City Manager on the reasons as to why he should not be suspended in line with regulation 6(2) of the Regulations for the discipline of senior managers. Instead as indicated in the above resolution, Council only took cognisance of the responses from the City Manager.

The Council was supposed to express its view as to whether or not based on the response from the City Manager, he must be suspended or not.

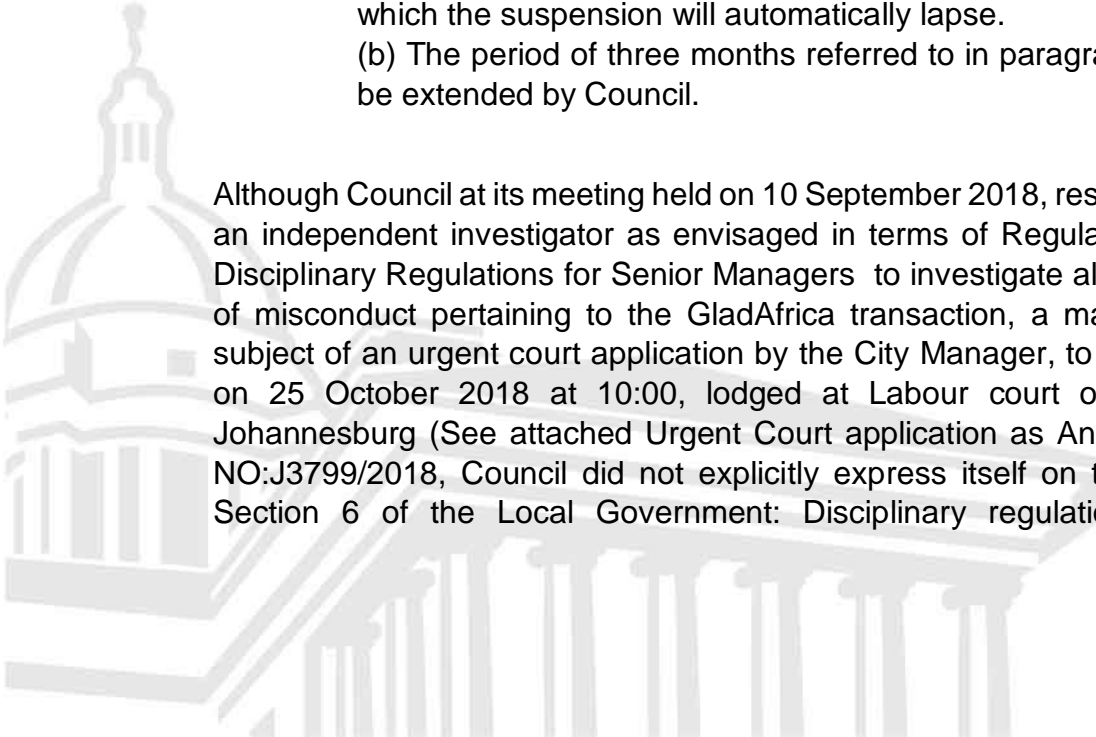
5. LEGISLATIVE PROVISIONS

Section 6 of the Local Government: Disciplinary Regulations for Senior Managers provides as follows: "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 work place 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 written representation to the Municipal Council why he or she should not be suspended, within seven 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 days.
- 4. After having considered the matters set out below in sub-regulation (1), as well as the Senior Manager's representation contemplated in sub-regulation (2), the Municipal Council may suspend the Senior Manager concerned.
- 5. The Municipal Manager must inform:
 - a. The Senior Manager in writing of the reasons for his suspension on or before the date on which the Senior Manager is suspended.
 - 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 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.
(b) The period of three months referred to in paragraph (a) may not be extended by Council.



Although Council at its meeting held on 10 September 2018, resolved to appoint an independent investigator as envisaged in terms of Regulation 5(3) of the Disciplinary Regulations for Senior Managers to investigate all the allegations of misconduct pertaining to the GladAfrica transaction, a matter which is a subject of an urgent court application by the City Manager, to be heard today on 25 October 2018 at 10:00, lodged at Labour court of South Africa, Johannesburg (See attached Urgent Court application as Annexure B) case NO:J3799/2018, Council did not explicitly express itself on the provision of Section 6 of the Local Government: Disciplinary regulations for Senior

Managers in particular , 6(1) (a) (i) (ii), (iii), 6(1) (b) (i) ,(ii) and 6(3) as quoted above .

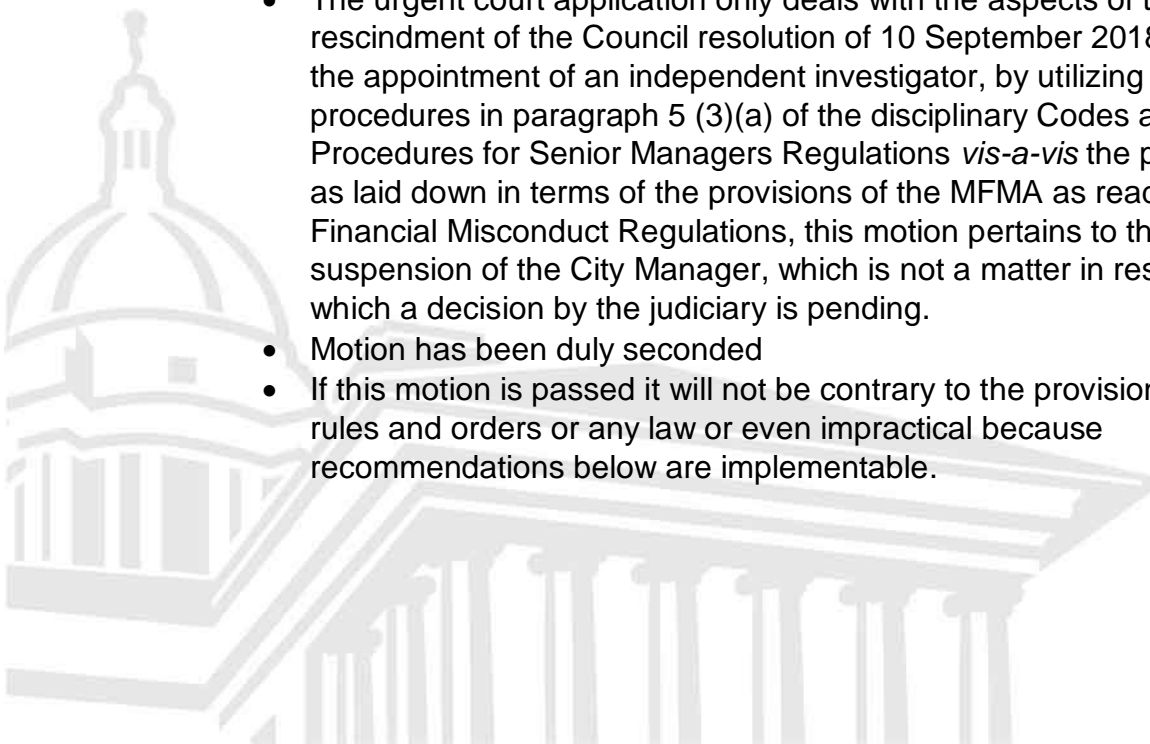
It is our strong believe that the response from the City Manager attached as Annexure A and as was attached as one of the annexures of the Council meeting of the 10 September 2018, confirms the ANC caucus's assertion that there is a reasonable cause to believe that an act of misconduct has been committed by the City Manager pertaining to the Glad Africa transaction.

It should be also the view of Council that based on the City Manager's court application, his presence at his work place might jeopardise the investigation into the alleged misconduct, might be detrimental to stability in the Municipality, (although the City Manager has the constitutional right to pursue any legal cause in case his rights are infringed, by taking the Executive Mayor and the CoT to court might be viewed within the context of a broken working relationship), might interfere with potential witnesses, bearing in mind paragraph 27. 6.3 and 48.2 of the City Manager's founding affidavit lodged in the Labour Court , where the officials mentioned might be potential witness in this regard.

6 COMPLIANCE WITH THE RULES AND ORDERS- REGULATING THE SUBMISSION OF MOTIONS.

This motion complies with the relevant provisions of the Rules and Orders and it cannot be disallowed by the Speaker in terms of section 19 of the Rules and Orders in that:

- This motion will not lead to discussion of a matter on the agenda of this Council that will be dealt with and this motion has a bearing on the administration of, or conditions of the City
- The discussions on this motion will be based on the facts as contained in the report submitted to Council at its meeting held on 10 September 2018.
- Council as the highest decision making body has a jurisdiction to deal with this motion
- The urgent court application only deals with the aspects of the rescindment of the Council resolution of 10 September 2018, regarding the appointment of an independent investigator, by utilizing the procedures in paragraph 5 (3)(a) of the disciplinary Codes and Procedures for Senior Managers Regulations *vis-a-vis* the procedure as laid down in terms of the provisions of the MFMA as read with Financial Misconduct Regulations, this motion pertains to the suspension of the City Manager, which is not a matter in respect of which a decision by the judiciary is pending.
- Motion has been duly seconded
- If this motion is passed it will not be contrary to the provisions of this rules and orders or any law or even impractical because recommendations below are implementable.

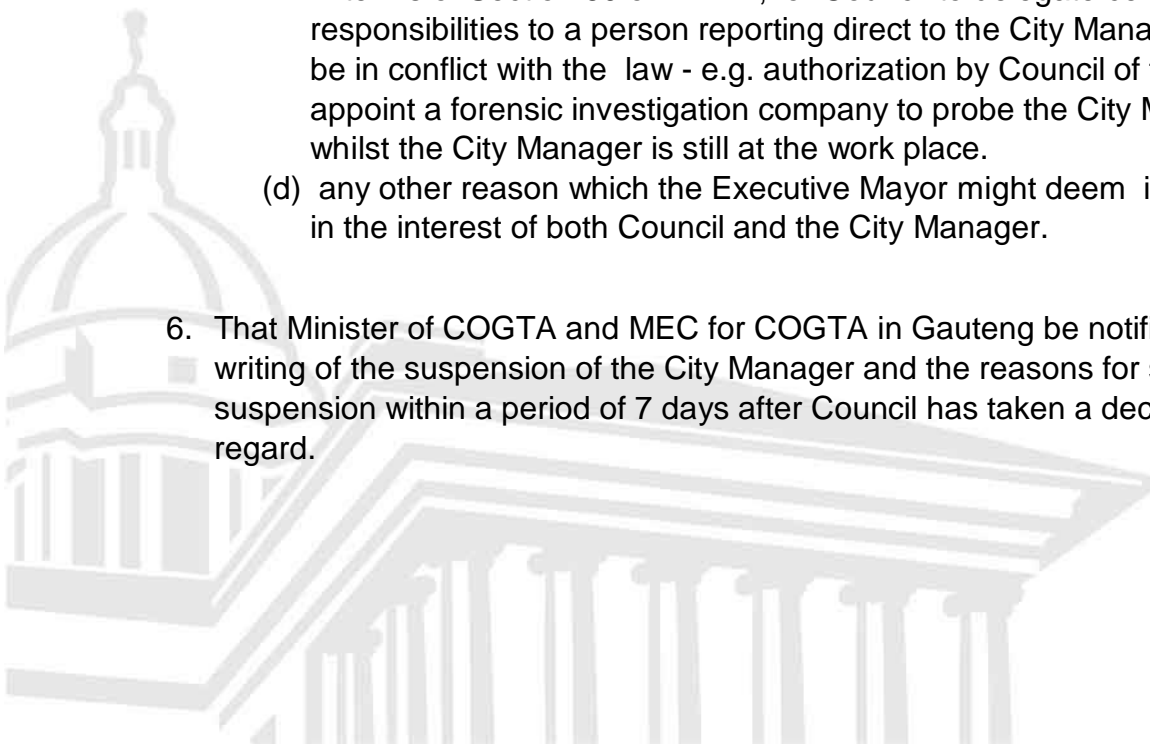


Lastly as this motion is the first time being submitted, it cannot be disallowed on the reasons based on its similar submission for previous three months.

In light of the above, the following recommendations are proposed:

RECOMMENDED:

1. That Council take cognizance of this Motion for the suspension of the City Manager, Dr Moeketsi Mosola
2. That Council take cognizance of the responses from the City Manager, outlining reasons as to why he should not be suspended (the said reasons were submitted to Council on 10 September 2018, now attached as Annexure A)
3. That in view of recommendation (2) above, Council is satisfied that there is a reasonable cause to believe that an act of misconduct has been committed by the City Manager pertaining to Glad Africa transaction.
4. That in view of recommendation (3) above, the City Manager Dr. Moeketsi Mosola be suspended with immediate effect.
5. That Council authorize the Executive Mayor to inform the City Manager in writing on his suspension including providing him with the reasons for his suspension, which includes *inter alia* the following;
 - (a) his presence at the workplace might be detrimental to stability in the Municipality (there are elements of a broken relationship with the Executive Mayor, and the City has deteriorated since the Glad Africa debacle, the sooner he is cleared the better)
 - (b) interference with potential witnesses e.g. there are certain officials who were mentioned in his founding affidavit who based on them obtaining a Legal opinion in this Glad Africa transaction might be intimidated.
 - (c) as the City Manager is an accounting officer as legislatively provided in terms of Section 60 of MFMA, for Council to delegate certain responsibilities to a person reporting direct to the City Manager might be in conflict with the law - e.g. authorization by Council of the COO to appoint a forensic investigation company to probe the City Manager whilst the City Manager is still at the work place.
 - (d) any other reason which the Executive Mayor might deem it necessary in the interest of both Council and the City Manager.
6. That Minister of COGTA and MEC for COGTA in Gauteng be notified in writing of the suspension of the City Manager and the reasons for such suspension within a period of 7 days after Council has taken a decision in this regard.



7. That _____ (Senior Official) be appointed to act as the City Manager pending the finalisation of the investigation and disciplinary process against the City Manager, Dr Moeketsi Mosola as prescribed in terms of Regulation 6(a) and (b) of the Regulations on the Disciplinary of Senior Managers..

Proposed by Cllr Dr Kgosi Maepa

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Seconded by Cllr Mapiti Matsena

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