

URGENT SPECIAL COUNCIL MEETING
AGENDA
31 AUGUST 2026



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Notice is hereby given, in terms of Section 19(b) of the Local Government: Municipal Systems Act, 32 of 2000 as amended, that a **URGENT SPECIAL MEETING** of the **MUNICIPAL COUNCIL** of Knysna Municipality will be held on Microsoft Teams on **MONDAY, 31 AUGUST 2026** at **16:00** to consider the business set forth in the attached agenda.

Kennis geskied hiermee as gevolg van Artikel 19(b) van die Plaaslike Regering : Munisipale Stelsels Wet, 32 van 2000, dat 'n **DRINGENDE SPESIALE VERGADERING** van die **MUNISIPALE RAAD** van Knysna Munisipaliteit op Microsoft Teams op **MAANDAG, 31 AUGUSTUS 2026** om **16:00** gehou sal word ten einde sake soos uiteengesit in die aangehegte agenda te oorweeg.

Ibhunga lika**MASIPALA** waseKnysna lazisa ngomthetho okwisolotya 19(b) wenkqubo mgaqo olawula oMasipala, 32 of 2000, njengoko utshintshiwe, **NGENTLANGANISO EKHETHEKILEYO** ye**BHUNGA** lika**MASIPALA** waseKnysna eyakubanjelwa ku Microsoft Teams - **NGOMVULO, NGOMHLA WE 31 EYETHUPHA 2026** ngentsimbi ye **16:00** umba iyakuba lushishino oluchazwe kwi-agenda.

CLLR M WILLEMSE

The Speaker
Die Speaker
Usomlomo

MR J DOUGLAS

Acting Municipal Manager
Waarnemende Munisipale Bestuurder
Mphathi kaMasipala

Date : 31 August 2026

URGENT SPECIAL COUNCIL MEETING
AGENDA
31 AUGUST 2026

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6. **NEW MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

6.1

SC01/08/26 REPORT ON THE NOTICE OF MOTION: URGENT APPLICATION AND REVIEW OF THE MEC's DECISION PERTAINING TO CONCURRENCY

REPORT FROM THE ACTING DIRECTOR CORPORATE SERVICES

PURPOSE OF THE REPORT

The inform Council of the Notice of Motion: In Support of the Urgent Application and Review brought by Mr B Ngubo in respect of the decision to refuse concurrency by the MEC for Local Government, Environmental Affairs and Development Planning.

BACKGROUND

The MEC for Local Government, Environmental Affairs and Development Planning (MEC) communicated his decision wherein he refused to grant concurrency for the extension of the acting appointment of Mr Boy Ngubo as acting municipal manager on 27 August 2026. This communication was tabled before a Special Council meeting that was held on 31 August 2026, which meeting commenced at 10h00 on TEAMS.

After consideration of the report and the letter of decision from MEC Bredell, Council resolved by majority as follows:

RESOLVED BY MAJORITY

- [a] *That Council notes the decision of the MEC for Local Government dated 27 August 2026 refusing concurrence for the extension of Mr Boy Ngubo's terms as Acting Municipal Manager in terms of Section 54A(2A)(b) of the Local Government : Municipal Systems Act 32 of 2000, as well as the legal effect of the order of the Western Cape High court dated 20 August 2026;*
- [b] *That Council records that its consent to the order of 20 August 2026 preceded the subsequent introduction into the concurrence process of substantial adverse material, including the BCHC Investigation Report and the internal Bitou Municipality Memorandum, which had not at that stage been made available to or considered by Council, and that the present decision arises from the materially different circumstances which subsequently developed in the concurrence process contemplated by that order;*
- [c] *That Council records its concern that the aforesaid material was only furnished to the Municipality on 25 August 2026, after the Court-imposed deadline for further representations, with the Municipality being afforded until 12h00 on 26 August 2026 to respond, which did not provide Council, as a collective decision-making body, with a*

reasonable opportunity to properly consider a comprehensive response from Mr Ngubo, obtain any necessary advice and formulate an informed response to the newly introduced material;

- [d] *That Council further records its concern that the MEC thereafter relied, as reasons for refusing concurrence, upon Council's failure to investigate and consider the newly introduced material and the absence of a comprehensive response from Mr Ngubo, being steps which Council had not been afforded a reasonable opportunity to undertake within the time permitted;*
- [e] *That Council resolved that the MEC's decision dated 27 August 2026 refusing concurrence be taken on review, and that the Municipality be authorised, through its delegated officials in terms of Council's System of Delegations, to take all necessary steps to institute such proceedings and to seek urgent interim and/or ancillary relief as may be legally necessary, including, to the extent required as a consequence of the subsequent developments recorded above, appropriate relief concerning the operation and effect of the order of the Western Cape High Court dated 20 August 2026;*
- [f] *That the Municipality be authorised, through its delegated officials in terms of Council's System of Delegations, to appoint suitably qualified legal representatives for purposes of the proceedings contemplated in paragraph [e], and that such legal representatives obtain the complete record relevant to the MEC's decision, including but not limited to when the MEC obtained the BCHC Investigation Report, the internal Bitou Municipality memorandum, and the circumstances surrounding the disclosure of the Report and any waiver of privilege attaching thereto;*
- [g] *That Council records that its decision to institute review proceedings does not constitute an acceptance or rejection of the allegations or conclusions contained in the BCHC Investigation Report and the internal Bitou Municipality internal memorandum, and that Mr Ngubo be afforded seven (7) days to submit a comprehensive written response thereto, together with such supporting documentation as may be relevant, whereafter the Report and his response shall be placed before Council for proper consideration.*

After the Resolution taken at the 10h00 Special Council meeting held on 31 August 2026, the Municipality received a Notice of Motion: Urgent Application and Review from the attorneys representing Mr Ngubo. It must be noted that this Urgent Application was received electronically. A copy of the Notice of Motion is hereby attached, marked Annexure A.

The essence of the Notice of Motion in summary is as follows:

- That the Applicant intends to make an application to the Western Cape High Court for an order in the following terms:
 - 1. The operation and effect of paragraphs 1 and 2 of the order granted by the High Court on 20 August 2026 under case number 2026-196-199 are hereby

- suspended and stayed in terms of Rule 45A of the Uniform Rules of Court, read with section 173 of the Constitution of South Africa.
2. The operation, implementation and effect of the decision taken by the First Respondent (MEC Bredell) on 27 August 2026, refusing or declining to provide concurrence in terms of Section 54A(2A)(b) of the Municipal Systems Act to the Second Respondent's (Council) to appoint the Applicant (Ngubo) as Acting Municipal Manager for a further and final period of three months, are hereby suspended pending the final determination of Part B.
 3. The First, Second and Third Respondents are interdicted and restrained from taking any step to implement or give effect to the MEC's decision pending the final determination of Part B.
 4. That the status quo prevailing immediately prior to 27 August 2026 in relation to the Applicant's appointment and performance of the functions of Acting Municipal Manager including his employment contract, shall be preserved pending the final determination of Part B.
 5. Any Respondent opposing Part A is ordered to pay the costs thereof, jointly and severally with any other Respondent opposing Part A, the one paying the others to be absolved, including the costs consequent upon the employment of two counsel, where so employed.
- Part B of the Application deals primarily with the review of the decision of the MEC in refusing to grant concurrence of the extension of the acting appointment of Mr Ngubo for a further three months and the BCHC report commissioned by Bitou Municipality.

For present purposes, Council needs to take a decision whether or not to oppose the urgent application instituted by Mr Ngubo in view of the earlier Council Resolution where Council resolved to take the MEC's decision not to grant concurrence on review on an urgent basis. Both the urgent application brought by Mr Ngubo and Council's resolution referred to above target the identical administrative decision. The Council must therefore decide which route it will follow that is cost effective and whether it will abide by the Court's decision in the urgent application brought by Mr Ngubo or whether it will pursue the legal review route as contained in the above-mentioned Council resolution of 31 August 2026.

RECOMMENDATION

- [a] That Council notes the Notice of Motion: Urgent Application and Review launched by Mr B Ngubo, in his personal capacity to interdict the implementation of MEC Bredell's decision not to grant concurrence.
- [b] That Council confirms that Mr Ngubo's interdict application directly intersects with and supports Council's earlier decision to launch an urgent review application against the MEC'S decision under the Promotion of Administrative Justice Act (PAJA).
- [c] That Council abides by the decision of the Court in the urgent application of Mr B Ngubo.

APPENDIX / ADDENDUM

Annexure A:

File Number: 9/1/2/14

Execution: Acting Director: Corporate Services

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2026 _____

In the matter between:

BOY MANQOBA NGUBO

Applicant

And

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS
AND DEVELOPMENT PLANNING, WESTERN CAPE**

First Respondent

KNYSNA LOCAL MUNICIPALITY

Second Respondent

BITOU LOCAL MUNICIPALITY

Third Respondent

**BRADLEY CONRADIE HALTON CHEADLE
ATTORNEYS (BCHC)**

Fourth Respondent

**NOTICE OF MOTION:
IN SUPPORT OF THE URGENT APPLICATION AND REVIEW**

BE PLEASED TO TAKE NOTICE THAT, subject to allocation by the Registrar and Judge's directions the Applicant intends to make an application to the above Honourable Court at **10h00 on Tuesday 2 September 2026** or so soon as the matter may be heard for an order in the following terms: -

1. Dispensing with the forms, service and time periods prescribed by the Uniform Rules of Court and directing that Part A be heard as one of urgency in terms of Rule 6(12).
2. The operation and effect of paragraphs 1 and 2 of the order granted by this Honourable Court on 20 August 2026 under **case number 2026-196199** are hereby suspended and stayed in terms of Rule 45A of the Uniform Rules of Court, read with section 173 of the Constitution of the Republic of South Africa, 1996.
3. The operation, implementation and effect of the decision taken by the First Respondent on or about 27 August 2026, refusing and/or declining to provide concurrence in terms of section 54A(2A)(b) of the Local Government: Municipal Systems Act 32 of 2000 to the Second Respondent's decision to appoint the Applicant as Acting Municipal Manager for a further and final period of three months ("the MEC decision"), are hereby suspended pending the final determination of Part B.
4. The First, Second and Third Respondents, and any person acting through or under their authority or direction, are interdicted and restrained from taking any step to implement or give effect to the MEC decision pending the final determination of Part B.
5. The status quo prevailing immediately prior to 27 August 2026 in relation to the Applicant's appointment and performance of the functions of Acting Municipal

Manager of the Second Respondent, including his employment contract concluded with the Second Respondent on 7 August 2026 dated shall be preserved pending the final determination of Part B.

6. Any Respondent opposing Part A is ordered to pay the costs thereof, jointly and severally with any other Respondent opposing Part A, the one paying the others to be absolved, including the costs consequent upon the employment of two counsel, where so employed.

7. Alternatively, to paragraph 6 above, the costs of Part A shall be costs in Part B.

BE PLEASED TO TAKE NOTICE FURTHER THAT the affidavit (together with annexures thereto) of **BOY MANQOBA NGUBO** will be used in support of this application.

BE PLEASED TO TAKE NOTICE FURTHER THAT in terms of uniform rule 6 (5)(b) the Applicant has appointed **HDRS ATTORNEYS INC**, situated at the address set out below (including the email addresses), as an address at which he will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER THAT the Applicant is amenable to receive service of process by electronic mail at the email address provided herein below.

TAKE NOTICE FURTHER that if you wish to oppose the relief sought above:

- (a) In accordance with uniform rule 6(5)(d)(i) you are required to notify the Applicant's attorney of record of your intention to oppose by not later than **08h00 on 1 SEPTEMBER 2026**, and to appoint in such notification an address (including an email address/es), referred to in Rule 6(5)(b) of the rules of this Court, at which you will accept service of all notices and process in these proceedings; and
- (b) In accordance with uniform rule 6(5)(d)(ii) you are required to file your answering affidavit (if any) on or before **08H00 on 1 SEPTEMBER 2026**, if any, and further that such respondent is required.

TAKE NOTICE FURTHER that the applicants will, if so advised, thereafter file their replying affidavit(s).

KINDLY place the matter on the roll accordingly for hearing on **2 SEPTEMBER 2026**

PART B - REVIEW AND SETTING ASIDE

8. In terms of rule 53 of the Uniform Rules of Court, the First and Fourth Respondents are hereby called upon to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and
9. The First Respondent's decision taken on or about 27 August 2026 refusing to provide concurrence to the Second Respondent's decision appointing the Applicant as the Acting Municipal Manager of the Second Respondent for the period commencing 7 August 2026 until 6 November 2026 is hereby declared

unlawful and constitutionally invalid in terms of section 172(1)(a) of the Constitution.

10. The First Respondent's decision taken on or about 27 August 2026 refusing to provide concurrence to the Second Respondent's decision appointing the Applicant as the Municipal Manager of the First Respondent for the period commencing 7 August 2026 until 6 November 2026 is hereby reviewed and set aside in terms of section 172(1)(b) of the Constitution.
11. The preparation, finalisation, adoption and/or issuing of the BCHC report, together with the adverse findings, conclusions and recommendations contained therein concerning the Applicant, are hereby declared unlawful, constitutionally invalid, and accordingly reviewed and set aside in terms of sections 6 and 8 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").
12. In the alternative to paragraph 11 above, and only in the event that this Honourable Court finds that the preparation, finalisation and/or issuing of the BCHC report does not constitute administrative action as contemplated in PAJA, the adverse findings, conclusions and recommendations contained therein concerning the Applicant are declared unlawful, constitutionally invalid, and therefore reviewed and set aside in terms of the constitutional principle of legality.

13. Consequent upon the setting aside of the First Respondent's impugned decision, the application for concurrence is remitted to the First Respondent for reconsideration and determination afresh, within such period as this Honourable Court may direct.
14. Alternatively, to paragraphs 13, and in the event that this Honourable Court finds that exceptional circumstances exist rendering substitution appropriate, the First Respondent's decision is substituted with an order that the First Respondent's concurrence contemplated in section 54A(2A)(b) of the Local Government: Municipal Systems Act 32 of 2000 is granted in respect of the Second Respondent's decision of 7 August 2026 appointing the Applicant as Acting Municipal Manager.
15. That notwithstanding the outcome of the review application, It is declared that the written contract of employment concluded between the Applicant and the Second Respondent pursuant to the Applicant's appointment as Acting Municipal Manager on 7 August 2026 was not itself reviewed and set aside by the order granted by this Honourable Court on 20 August 2026 under case number 2026-196199 and remains intact and binding upon the contracting parties.
16. Any Respondent opposing Part B is ordered to pay the costs of the application, jointly and severally with any other opposing Respondent, the one paying the others to be absolved, including the costs consequent upon the employment of two counsel, where so employed.

17. Further and/or alternative relief is granted.

Rule 53 record

TAKE NOTICE FURTHER that, in terms of Uniform Rule 53(1)(b), the First and Fourth Respondents are called upon, within fifteen (15) days after receipt of this notice of motion, to:

- (I) Dispatch to the Registrar of this Honourable Court the complete record of the proceedings, decisions and administrative conduct sought to be reviewed and set aside, together with such reasons as the respondents are required or desire to give.
- (II) The record shall include all documents, correspondence, electronic records, internal referrals, memoranda, reports, notices, recommendations and decisions relating to:
 - (aa) the First Respondent's impugned decision taken on or about 27 August 2026;
 - (bb) the Fourth Respondent's investigation and dated 15 November 2024 titled "Investigation Report on Alleged Misconduct: Mr. Boy Ngubo";
- (III) Once the record and reasons have been dispatched to the Registrar, to notify the applicant in writing that they have done so.

Supplementation after receipt of the record

- (l) The applicant shall, within ten days after the record has been made available to it by the Registrar, be entitled, by delivery of a notice and supplementary affidavit, to amend, add to or vary the terms of this notice of motion and to supplement its founding affidavit.

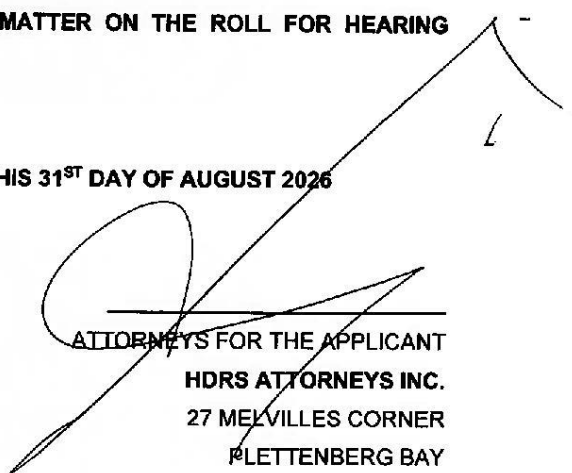
Opposition to Part B

- (l) **TAKE NOTICE FURTHER** that any respondent intending to oppose the relief sought in Part B shall:
 - (aa) Within fifteen days after receipt of this notice of motion, deliver a notice of intention to oppose and appoint an address contemplated in Uniform Rule 6(5)(b) at which such respondent will accept service of all notices and process in these proceedings.
 - (bb) Within thirty days after receipt of the supplementary affidavit and or amended notice of motion, deliver an answering affidavit.
 - (cc) The applicant shall thereafter deliver its replying affidavit within the period prescribed by the Uniform Rules of Court.

TAKE NOTICE FURTHER that the grounds, facts and circumstances upon which the Applicant relies for the relief sought in Part B are contained in the founding affidavit of **BOY MANQOBA NGUBO**, together with its annexures, and may be supplemented after receipt of the Rule 53 record.

**KINDLY THEREFORE PLACE THE MATTER ON THE ROLL FOR HEARING
ACCORDINGLY.**

DATED IN PLETTENBERG BAY ON THIS 31ST DAY OF AUGUST 2026



ATTORNEYS FOR THE APPLICANT

HDRS ATTORNEYS INC.

27 MELVILLES CORNER

PLETTENBERG BAY

REF:W07700

EMAIL: fdp@hdrs.law.za

c/o REBELLO KARSTEN INC.

2ND FLOOR, 107 BREE STREET

CAPE TOWN

EMAIL: ryan@rkinc.co.za

TO: THE REGISTRAR
High Court
Western Cape Division
CAPE TOWN

**AND TO: THE MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS
AND DEVELOPMENT PLANNING, WESTERN CAPE
THE FIRST RESPONDENT
STATE ATTORNEY
4TH FLOOR, 22 LONG STREET
CAPE TOWN**

EMAIL: mmotsilenyana@justice.gov.za
kbrinkhuys@justice.gov.za
cnewman@justice.gov.za
Anton.Bredell@westerncape.gov.za

AND TO: **KNYSNA LOCAL MUNICIPALITY**
SECOND RESPONDENT
c/o **THE EXECUTIVE MAYOR**
5 CLYDE STREET
KNYSNA
EMAIL: tmatika@knysna.gov.za
mm@knysna.gov.za

AND TO: **BITOU LOCAL MUNICIPALITY**
THIRD RESPONDENT
c/o **ACTING MUNICIPAL MANAGER**
2 SEWELL STREET
PLETTENBERG BAY
EMAIL: fwilliams@plett.gov.za
acroutz@plett.gov.za

AND TO: **BRADLEY CONRADIE HALTON CHEADLE**
ATTORNEYS
FOURTH RESPONDENT
G04, THE GATEHOUSE
CENTURTY WAY
CENTURY CITY
CAPE TOWN
EMAIL: info@bchc.co.za

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2026 _____

In the matter between:

BOY MANQOBA NGUBO

Applicant

And

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS
AND DEVELOPMENT PLANNING, WESTERN CAPE**

First Respondent

KNYSNA LOCAL MUNICIPALITY

Second Respondent

BITOU LOCAL MUNICIPALITY

Third Respondent

**BRADLEY CONRADIE HALTON CHEADLE
ATTORNEYS (BCYC)**

Fourth Respondent

FOUNDING AFFIDAVIT:

IN SUPPORT OF THE URGENT AND REVIEW APPLICATION

A. OATH AND AFFIRMATION

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Handwritten signature
Handwritten signature

I, the undersigned,

BOY MANQOBA NGUBO

do hereby make oath and state that:

1. I am an adult male and presently serve, alternatively served until the events giving rise to these proceedings, as the Acting Municipal Manager of the Second Respondent, Knysna Local Municipality ("Knysna Municipality"). I am the Applicant in these proceedings.
2. The facts contained herein are, unless the context indicates otherwise, within my personal knowledge and are true and correct.
3. Where I deal with matters of law, I do so on the advice of my legal representatives, which advice I respectfully accept as correct. I approach this Honourable Court for urgent interim relief in Part A, pending the determination of the review and declaratory relief sought in Part B. At the centre of this application are three interconnected matters:
 - 3.1. the order granted by this Honourable Court on 20 August 2026 under case number 2026-196199;
 - 3.2. the subsequent decision of the First Respondent, on or about 27 August 2026, refusing to provide his concurrence in terms of section 54A(2A)(b) of the Local Government: Municipal Systems Act 32 of 2000 ("the Systems Act"); and
 - 3.3. an investigative report prepared by the Fourth Respondent on 15 November 2024, containing serious adverse findings and recommendations concerning

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BMN

me, notwithstanding that I was never interviewed or afforded any opportunity to answer the allegations before those findings were made.

4. I was cited as the Third Respondent in the earlier proceedings which culminated in the order of 20 August 2026. I elected to abide the decision of this Honourable Court in those proceedings. I disclose that fact at the outset because I do not seek to disguise the procedural history or to reopen the dispute which I elected not to oppose.
5. The present proceedings are founded materially upon what happened after my election to abide and, more particularly, upon the fresh concurrence process expressly contemplated by the Court order itself.
6. During that fresh process, highly prejudicial material which had never previously been disclosed to me was brought into consideration.
7. The material included a completed investigative report containing findings of serious misconduct and recommendations that disciplinary and criminal steps be taken against me.
8. I had never been interviewed during the investigation. I had never been given the allegations to answer. I had never been furnished with the evidential material upon which the investigators intended to rely.
9. I had never been afforded an opportunity to make representations before the findings were made. The material thereafter became relevant to a statutory

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decision directly determining whether I could continue serving as Acting Municipal Manager.

10. I contend that neither the original investigative process nor the subsequent concurrence process afforded me the procedural protection which the Constitution and law require.
11. In Part A I consequently seek a temporary stay under Rule 45A, read with section 173 of the Constitution, together with related preservatory relief.
12. In Part B I seek:
 - 12.1. the review and setting aside, under the principle of legality, of the First Respondent's refusal of concurrence;
 - 12.2. primarily under PAJA, the review and setting aside of the adverse BCHC process, findings and recommendations;
 - 12.3. alternatively, review thereof under legality;
 - 12.4. consequential remittal or, in appropriate circumstances, substitution; and
 - 12.5. a declarator concerning my written employment contract.
13. The Notice of Motion is incorporated herein by reference.

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B. THE PARTIES

14. I have already identified myself and affirm that as the Applicant I am instituting this application pursuant to my contractual and constitutional rights which have been violated by the First and Fourth respondents.
15. The First Respondent is the Member of the Executive Council responsible for Local Government, Environmental Affairs and Development Planning in the Western Cape Province, cited in his official capacity.
16. He is the statutory functionary whose concurrence is contemplated by section 54A(2A)(b) of the Systems Act. The Second Respondent is Knysna Local Municipality, a municipality established in accordance with the Constitution and applicable local-government legislation.
17. Knysna Municipality appointed and employed me as Acting Municipal Manager. The Third Respondent is Bitou Local Municipality. I was previously employed by Bitou Municipality.
18. The Fourth Respondent is Bradley Conradie Halton Cheadle Attorneys ("BCHC"), the firm instructed to conduct the investigation which culminated in the report dated 15 November 2024.
19. Bitou Municipality and BCHC are cited because the investigation, the resultant report and the public-law consequences which subsequently flowed from it are directly implicated in Part B.

D. JURISDICTION

20. This Honourable Court has jurisdiction. Knysna Municipality and Bitou Municipality fall within the territorial jurisdiction of this Division. The First Respondent exercises the material statutory powers within the Western Cape Province.
21. The impugned concurrence decision relates directly to the administration of Knysna Municipality and produces its consequences within this Division. Furthermore, the order which is sought temporarily to be stayed was granted by this Court.

E. THE STATUTORY FRAMEWORK

22. Section 54A of the Systems Act regulates the appointment of municipal managers and acting municipal managers.
23. Section 54A(2A)(a) permits a municipal council to appoint an acting municipal manager for a period not exceeding three months.
24. In terms of section 54A(2A)(b), where special circumstances and good cause exist, a council may apply in writing to the MEC for local government to extend the acting appointment for a further period not exceeding three months. The distinction is important.
25. My initial acting appointment did not require the concurrence of the First Respondent. My continued appointment beyond the initial three-month period required the statutory concurrence contemplated by section 54A(2A)(b).

26. The First Respondent's determination of that issue constitutes the exercise of public power. That power is constrained by the Constitution and the principle of legality and must, amongst other things, be exercised lawfully and rationally.

E1. MY INITIAL APPOINTMENT

27. On 30 April 2026, the Municipal Council of Knysna Municipality resolved to appoint me as Acting Municipal Manager.
28. The appointment took effect on 6 May 2026 and was to endure for a period of three months, alternatively until the finalisation of the matter concerning the substantive Municipal Manager, Dr LH Mapholoba, whichever occurred first.
29. A copy of the relevant Council resolution and supporting appointment documentation is annexed hereto marked "BMN1".
30. The fact and terms of the appointment are also reflected in Council's subsequent records, which record that Council resolved on 30 April 2026 to appoint me with effect from 6 May 2026.
31. At that time Dr Mapholoba was suspended and the Municipality accordingly required an Acting Municipal Manager. Knysna Municipality notified the First Respondent of my appointment.

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E2. THE MEC'S LETTER OF 21 MAY 2026

32. On 21 May 2026, the First Respondent responded to notification of my appointment. A copy of that correspondence is annexed hereto marked **"BMN2"**. The letter is important for two reasons.
33. First, the First Respondent expressly accepted that I met the prescribed educational qualifications, competencies and work-related experience required for appointment as Acting Municipal Manager.
34. Secondly, the First Respondent referred to circumstances concerning my previous employment at Bitou Municipality, namely my previous suspension, my resignation before disciplinary proceedings and the existence of criminal proceedings under CAS 148/11/2024 said to remain under investigation by the HAWKS.
35. These two features of the letter are recorded in the subsequent municipal documentation. I draw attention to this because my case is not that Council or I were unaware that concerns had been raised arising from my previous employment at Bitou. The existence of those allegations was known.
36. What was not known to me was that BCHC had completed an investigative process and had already purported to make substantive adverse findings and recommendations against me. Those are very different things.
37. I must also point out that the CAS number by the Hawks referred to in the MEC's letter refers only to the laying of a complaint, and no decision has been taken

by the Hawks that I have any case to answer. It would therefore be unfair that I must be judged based on a case opened against me by my accuser and not based on any independent decision on whether I have a case to answer by the Hawks or on my guilt by a court of law.

38. I further submit that to the extent that the First respondent's decision is based on information that he was privy to when he did not object to my initial appointment, such a decision is surely irrational.
39. I say so because, if I was competent to act in the position then and nothing has changed, surely I am still fit and competent to act on the renewed basis.

E3 COUNCIL'S DECISION OF 14 JULY 2026

40. As the expiry of my initial acting period approached, Council considered the continuing need for an Acting Municipal Manager. Dr Mapholoba remained suspended and the underlying proceedings concerning him had not been finalised.
41. On 14 July 2026, Council resolved to extend my acting appointment for a further period of three months and to seek the concurrence of the First Respondent under section 54A(2A)(b).
42. The relevant resolution and application are annexed hereto marked "BMN3". Council's later records expressly confirm that on 14 July 2026 it resolved to extend my acting appointment and seek concurrence.

E4. THE MEC'S LETTER OF 29 JULY 2026

43. On 29 July 2026, the First Respondent acknowledged the application for concurrence. A copy of that correspondence is annexed hereto marked **"BMN4"**.
44. The First Respondent requested further information before completing his assessment. In particular, he requested:
- 44.1. the report which had served before Council;
 - 44.2. confirmation that Council had considered his correspondence of 21 May 2026; and
 - 44.3. confirmation of enquiries made with Bitou Municipality and/or the investigating officer concerning CAS 148/11/2024.
45. Those requests are expressly recorded in the Council material. The importance of BMN4 is that it establishes the issue which the First Respondent regarded as outstanding at that stage.
46. The subject was the existence and status of a criminal investigation. There was still no disclosure to me of the BCHC report. As explained above, both the First and Second respondents were aware of the criminal complaint at the time of my initial appointment.

E5. THE COUNCIL PROCEEDINGS OF 4 AUGUST 2026

47. Council considered the First Respondent's request at a Special Council Meeting on 4 August 2026. The relevant minutes are annexed hereto marked **"BMN5"**.
48. Council expressly noted the criminal proceedings under CAS 148/11/2024 and authorised the Executive Mayor to make enquiries with Bitou Municipality and the investigating officer regarding their status.
49. Council further confirmed that it had considered the First Respondent's 21 May letter before adopting its 14 July decision. It is therefore important that this Court appreciate that neither Council nor I attempted to conceal the allegations concerning Bitou.
50. Council actively resolved to obtain further information concerning them. Council was also concerned with continuity in the municipal administration, including the ongoing CFO recruitment process. Those considerations appear expressly from BMN5.

E6. THE MEC'S LETTER OF 5 AUGUST 2026

51. On 5 August 2026, the First Respondent addressed further correspondence to Knysna Municipality. A copy is annexed marked **"BMN6"**.
52. In that letter the First Respondent expressed the view that, absent concurrence under section 54A(2A)(b), it might not be legally permissible for me to continue acting after expiry of the initial period.

53. The First Respondent nevertheless indicated that he awaited Council's informed decision following the further enquiries and deliberations.
54. That correspondence therefore did not finally determine the concurrence application.

E7. THE 7 AUGUST 2026 DECISION

55. Council thereafter again considered the position. At a Special Council Meeting on 7 August 2026, Council resolved:
- 55.1. to ratify an interim acting arrangement for 6 and 7 August;
- 55.2. to appoint me as Acting Municipal Manager for a period of three months;
and
- 55.3. to authorise the Municipality to oppose or defend proceedings arising from the First Respondent's failure to determine the appointment.
56. A copy of the relevant Council resolution is annexed marked "BMN7". The resolution is also reproduced in Council's subsequent litigation report.

E8. THE WRITTEN EMPLOYMENT CONTRACT

57. Following Council's decision, Knysna Municipality and I concluded a written contract of employment on 7 August 2026. A copy of the signed contract is annexed hereto marked "BMN8".

58. In terms of the contract I was appointed as Acting Municipal Manager for the fixed period terminating on 6 November 2026. BMN8 assumes particular importance because it constitutes a separate written juristic act concluded between Knysna Municipality and me.

59. As developed later, the earlier litigation challenged Council's appointment decision but did not seek an order specifically reviewing and setting aside BMN8.

E9. THE EARLIER URGENT PROCEEDINGS

60. On or about 17 August 2026, the First Respondent instituted urgent proceedings in this Court under case number 2026-196199. A copy of the Notice of Motion instituting those proceedings is annexed hereto marked "BMN9".

61. I expressly annex BMN9 because it demonstrates the relief which the First Respondent elected to seek from this Court. BMN9 did not seek an order reviewing and setting aside my written employment contract, BMN8. Knysna Municipality opposed the application.

62. The contemporaneous Council documentation records that attorneys had been appointed, a notice of opposition filed, consultations held and answering affidavits and a counter-application prepared.

E9. MY NOTICE TO ABIDE

63. I was cited as the Third Respondent in those proceedings. Having obtained legal advice, I elected not to oppose the relief and filed a Notice to Abide dated 19 August 2026. I annex that notice myself, openly and without reservation, marked "BMN10".
64. I do so because I anticipate that the Respondents may seek to rely upon my election to abide as an answer to the present proceedings. BMN10 records my election to abide the decision of the Court.
65. It did not constitute an undertaking that I would never challenge future exercises of public power concerning me. It could not amount to acquiescence in a decision which had not yet been taken. It equally could not constitute acquiescence in reliance upon evidence and an investigative report which had not yet been disclosed to me.
66. Furthermore, my notice was filed on the express basis recorded therein concerning indemnification of my legal costs by Knysna Municipality.
67. Most importantly, my position was one of non-opposition, not of affirmatively joining in or consenting to every aspect of the agreement subsequently reached between the actively litigating parties.

E10. THE ORDER OF 20 AUGUST 2026

68. On 20 August 2026, this Honourable Court granted an order under case number 2026-196199. A copy of the order is annexed hereto marked "BMN11".
69. BMN11 expressly records that the order was made:

"By agreement between the parties (third respondent not opposing)".

70. That formulation accurately reflects my position. Paragraph 1 of BMN11 declared Council's decision of 7 August 2026 unlawful and invalid with effect from 27 August 2026. The invalidity was therefore expressly prospective.
71. Paragraph 2 protected the validity of decisions I had taken as Acting Municipal Manager before 27 August 2026, subject to challenges based upon grounds other than the validity of my appointment.
72. Importantly, the order then regulated what was to happen between 20 and 27 August 2026. The First Respondent was to decide, by close of business on 27 August 2026, whether or not to provide concurrence.
73. The Respondents were permitted to place further motivation or information before him by close of business on 24 August 2026. The First Respondent was required to provide reasons with his ultimate decision. BMN11 accordingly created a fresh decision-making process.
74. It is that process, and what occurred during it, which generated the principal cause of action in the present proceedings. That being the irrational and unconstitutional decision ultimately taken by the First respondent on 27 August 2026.

E11. THE POST-ORDER CONCURRENCE MOTIVATION

75. Pursuant to BMN11, Knysna Municipality prepared and submitted a detailed motivation to the First Respondent. A copy is annexed hereto marked **"BMN12"**.

76. BMN12 expressly records that it was submitted pursuant to paragraphs 4 and 5 of the Court order and sought concurrence in Council's 7 August decision. BMN12 identified the special circumstances and good cause relied upon by Council. These included:

76.1. the continuing suspension of the substantive Municipal Manager;

76.2. administrative stability and continuity;

76.3. the progress achieved during my initial acting period;

76.4. ongoing financial and governance processes; 76.5. continuity in the Municipality's engagement with the SIU and HAWKS;

76.5. the CFO recruitment process; and

76.6. the need to avoid disruption in the municipal administration.

77. Council regarded administrative continuity as particularly important while Dr Mapholoba remained suspended. The earlier Council material similarly records the need to maintain uninterrupted executive leadership and avoid unnecessary administrative disruption.

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78. BMN12 furthermore recorded that the First Respondent had already confirmed that I satisfied the prescribed educational, competency and experience requirements.

E12. THE INTRODUCTION OF THE BCHC MATERIAL ON 25 AUGUST 2026

79. After the time provided in BMN11 for the submission of the Respondents' further motivation had expired, a materially different development occurred.
80. On 25 August 2026, the First Respondent addressed correspondence referring to and introducing material from Bitou Municipality, including the BCHC report and an internal Bitou memorandum.
81. A copy of that communication, together with the material transmitted therewith insofar as appropriate, is annexed marked "BMN13".
82. The First Respondent required an extraordinarily expedited response to material bearing directly upon my alleged misconduct and integrity. The importance of BMN13 cannot be overstated. Until then, the known concern had principally been the existence and status of the complaint filed with the HAWKS.
83. BMN13 introduced into the statutory decision-making process a completed private investigative report containing substantive findings against me. The difference between those two things is fundamental.
84. The existence of an investigation represents an unresolved allegation. The BCHC report purported to make findings and recommendations of wrongdoing.

E13. THE BCHC REPORT

85. The report to which the First Respondent referred had been prepared by BCHC on 15 November 2024. I annex the complete report marked "BMN14". BMN14 is titled "Investigation Report on Alleged Misconduct: Mr Boy Ngubo". It arose from an investigation undertaken on behalf of Bitou Municipality.
86. BMN14 contains extremely serious findings concerning my alleged conduct in transactions involving, amongst others, GG&G Consulting Engineers and ZWH Projects. The report concludes or recommends, amongst other matters, that:
- 86.1. procurement requirements were not properly observed in certain transactions;
- 86.2. expenditure was irregular, unauthorised and/or fruitless and wasteful;
- 86.3. I should face disciplinary action for serious misconduct;
- 86.4. I should be reported to the HAWKS; and
- 86.5. criminal and civil action should be pursued in respect of certain matters.
87. Those conclusions were self-evidently capable of profoundly prejudicing my career, reputation and suitability for senior municipal office. Yet I was never interviewed by BCHC.
88. BMN14 identifies other officials who were interviewed. I am not among them. I was never invited to attend an interview. The allegations were never put to me.

I was never furnished with the underlying evidence for comment. I was never afforded a right to make written representations. I was never furnished with a provisional or draft report. I was never afforded any opportunity to correct factual errors, explain relevant documents or contextualise any of the decisions attributed to me.

89. BCHC therefore made serious adverse findings about me without hearing me at all.

E14. THE FELIX LOTTER MEMORANDUM

90. Part of the Bitou material relevant to the investigation is a memorandum authored by Mr Felix Lotter dated 9 September 2024. A copy is annexed marked "BMN15".
91. BMN15 concerns alleged irregular or unauthorised expenditure and possible fraudulent transactions involving GG&G Consulting Engineers. It is relevant because it appears amongst the source material which ultimately fed into the BCHC investigation and its conclusions.
92. BMN15 must, however, be distinguished from BMN14. BMN15 is an internal memorandum. BMN14 is the later investigative report which purported to draw conclusions concerning me.
93. I make this distinction because both documents subsequently became relevant to the material relied upon against me, but their provenance and evidential character are different.

E15. MY ATTORNEYS' IMMEDIATE RESPONSE

94. My attorneys, HDRS Attorneys Incorporated, responded to the First Respondent on 26 August 2026. Their letter is annexed hereto marked **"BMN16"**.
95. BMN16 is of considerable evidential importance because it predates the impugned decision and records my complaint contemporaneously. My attorneys expressly recorded that I had never seen the documents or the allegations contained therein at any prior time.
96. They further recorded that during the investigation I had not been contacted by BCHC, nor approached for interview or comment. The objection to the procedure is therefore not a complaint manufactured after the adverse concurrence decision was received.
97. It was expressly raised with the First Respondent before he made his decision. My attorneys also made clear that the material carried serious implications for my professional character and reputation. They reserved my rights.
98. I cannot fathom the reason why the First Respondent would could independently make the decision made on 27 August 2026 after being notified by that the information and reports relied upon to impugn my appointment were conducted in a clandestine manner whereby I was not notified of the existence of the investigation and outcome thereof.

99. Unless the First respondent provides a record of his decision it cannot be known whether same was taken for an ulterior purpose either than that for which the statutory power was conferred on him by section 54 of the Municipal Systems Act.

100. Unless, and until the full record underlying the First respondent's decision, same will forever remain suspicious and can never be freed from being tainted with unfairness, unlawfulness and bias.

E16. THE CRIMINAL-CHECK AND REFUTATION MATERIAL

101. The position concerning the alleged criminal investigation was itself the subject of further enquiries. Knysna Municipality addressed correspondence on 14 August 2026, refuting the suggestion that I was facing an active criminal case in the manner previously suggested. A copy of the relevant correspondence and supporting criminal-check material is annexed marked "BMN17".

102. The material before Council recorded that a Priority Criminal Check conducted on 11 August 2026 reflected an outcome of "Clear", with no previous convictions or case awaiting trial identified.

103. I do not rely on BMN17 to contend that the mere absence of a pending trial conclusively determines every allegation which Bitou or BCHC might make. I rely upon it for a more limited but important proposition.

104. By the time of the post-order concurrence process there was materially conflicting information concerning my alleged criminal exposure. That made it

all the more important that I be afforded a proper opportunity to answer the substantive BCHC allegations before they were treated adversely against me.

105. This is a simple act of complying with the rules of natural justice and could have removed any grey areas behind the First respondent's decision.

106. To be clear. As averred above, I have not been charged as an accused in any criminal proceedings pending before any competent court in South Africa.

E17. MY FIRST KNOWLEDGE OF THE BCHC FINDINGS

107. I reiterate that I did not know of BMN14 and its substantive contents when I filed BMN10 and elected to abide the earlier proceedings. I knew that allegations and an investigation relating to Bitou had been mentioned.

108. I had brought the above to the attention of the Second respondent even before a decision to appoint me for the first time in April 2026 and was thereafter brought to the First respondent's attention, who did not register any objection to my appointment during my first acting appointment.

109. That is not the same as knowing that an investigator had already produced a report which purported to find serious misconduct on my part. I only became aware of those findings in the compressed process following the order of 20 August 2026.

110. The chronology is therefore decisive:

110.1. on 20 August, BMN11 created a fresh concurrence process;

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- 110.2. by 24 August, BMN12 was submitted;
- 110.3. on 25 August, BMN13 introduced or referred to the BCHC and Bitou material;
- 110.4. on 26 August, my attorneys immediately protested in BMN16; and
- 110.5. on or about 27 August, the First Respondent made the impugned decision.

E18. THE FAILURE TO AFFORD A MEANINGFUL HEARING

- 111. I do not contend that I remained wholly unaware of BMN14 at the exact moment when the First Respondent ultimately decided the concurrence application. Such a contention would be inaccurate in light of BMN16.
- 112. My complaint is that I had never been heard when BMN14 was produced and that, once it was subsequently brought into the concurrence process, I was afforded no reasonable and meaningful opportunity to meet it before the decision was taken. The distinction is important.
- 113. Procedural fairness is not satisfied by merely alerting a person at the eleventh hour that serious findings exist. The right to be heard must be real. The subject matter was factually complex. It concerned transactions dating from my previous employment.
- 114. A proper response reasonably required:

- 114.1. access to the complete report;
 - 114.2. access to or knowledge of the underlying evidential material;
 - 114.3. an opportunity to consult properly;
 - 114.4. an opportunity to recover and consider relevant documentary records;
 - 114.5. an opportunity to answer the accounts attributed to other municipal officials; and
 - 114.6. sufficient time to formulate meaningful representations.
115. None of these requirements was afforded in any proper sense. The First Respondent knew from BMN16, before making his decision, that I disputed the fairness and reliability of the report precisely because I had never been heard.
116. Nevertheless, the concurrence decision followed immediately thereafter.

E18. THE DECISION OF 27 AUGUST 2026

117. On 27 August 2026, the First Respondent furnished his decision and reasons refusing the request for concurrence in respect of the extension of my appointment as Acting Municipal Manager. A copy of the First Respondent's decision and reasons, dated 27 August 2026, is annexed hereto marked **"BMN18"**.
118. BMN18 is a detailed document extending over some 22 pages. I do not propose to reproduce every allegation or contention contained therein. I deal with those

portions which are material to the relief sought in these proceedings. I respectfully submit that BMN18 itself demonstrates material reviewable defects in both the process adopted by the First Respondent and the reasoning which informed his decision.

119. At the outset, the First Respondent records that the order of 20 August 2026 required him to decide whether to approve Council's request of 14 July 2026 to extend my appointment with effect from 8 August 2026 for a further and final period of three months. He further records that Knysna Municipality, its Council and I were entitled to place further motivation and information before him and that he was obliged to decide the matter by 27 August 2026.

120. The First Respondent records that he received three sets of representations: the Executive Mayor's letter of 24 August 2026; further representations received on 26 August 2026; and the letter from my attorneys, HDRS Attorneys, submitted on my behalf. He ultimately states that after considering those representations, the original request of 14 July 2026, subsequent exchanges and the affidavits in the earlier proceedings, he decided to decline concurrence.

E19. THE CENTRAL REASON FOR THE REFUSAL

121. The central consideration which emerges from BMN18 is not any deficiency in my qualifications, competencies or experience. Nor is it any identified failure by me in the performance of my duties as Acting Municipal Manager of Knysna Municipality.

122. Rather, the First Respondent states that the integrity of a municipal manager must be "beyond reproach" and that such a person cannot have serious allegations hanging over him. He concludes that, because of the Bitou allegations, he was not satisfied that I possessed the integrity required to continue performing the functions of Acting Municipal Manager.
123. The First Respondent then relies extensively upon BMN14 and BMN15 and reproduces numerous allegations and findings contained in those documents concerning events during my previous employment at Bitou Municipality.
124. Indeed, the overwhelming substantive focus of BMN18 is upon those allegations. The First Respondent ultimately records that concurrence is refused because there are serious allegations of contraventions of the MFMA which, in his view, have not been satisfactorily explained.
125. It follows that BMN14 and BMN15 were not peripheral considerations. They were central, if not decisive, to the First Respondent's decision.

F. THE FIRST RESPONDENT'S TREATMENT OF MY RIGHT TO BE HEARD

126. This makes the procedural complaint which I raised through BMN16 particularly important.
127. As already stated, my attorneys expressly informed the First Respondent before he made BMN18 that I had never previously seen BMN14 or BMN15, that BCHC had not contacted me during its investigation, that I had not been

interviewed, and that the allegations subsequently recorded as findings had not been put to me for comment.

128. The First Respondent expressly acknowledges this complaint in BMN18. He records that my attorneys contended that I had never seen the Report and Memorandum and had not been contacted by the author, approached for interview, or afforded an opportunity to comment.
129. The First Respondent therefore cannot contend that he was unaware of the audi complaint when he made the impugned decision. His answer to it is revealing.
130. When dealing with the Municipality's 26 August representations, the First Respondent states that page 6 of BMN14 demonstrates that I had been given an opportunity to make submissions and had made use of it. He further states that disciplinary proceedings were still to follow, during which I would have had "another opportunity" to address the allegations, but that I thereafter resigned from Bitou Municipality. I respectfully submit that this does not answer the complaint.
131. The representations referred to at page 6 of BMN14 were representations made by me in relation to my proposed suspension from Bitou Municipality. They were not representations made in response to a completed BCHC investigation or to the evidential case which BCHC subsequently assembled.
132. I had not at that stage been furnished with BMN14. Indeed, BMN14 had not yet been finalized. I was not interviewed by the investigators whose findings

subsequently became the basis upon which the First Respondent questioned my integrity. The statements of the officials upon whom BCHC relied were not put to me.

133. The conclusions which BCHC proposed to draw from the GG&G and ZWH transactions were not put to me.

134. I was not afforded an opportunity to respond to those conclusions before they were converted into findings of serious misconduct and recommendations for disciplinary and criminal action.

135. The fact that disciplinary proceedings might subsequently have afforded me a hearing does not answer whether the investigative process which had already produced adverse findings was fair.

136. Nor does it answer the more immediate question confronting the First Respondent on 25 to 27 August 2026: whether it was fair and rational for him to rely materially upon those untested findings when deciding whether I remained suitable to serve as Acting Municipal Manager.

137. The First Respondent himself confirms that he did precisely that. He describes BMN14 and BMN15 as relevant factors which "strongly militate against an extension".

138. Moreover, the First Respondent states that he was not required to establish a sufficiently reliable factual basis demonstrating why the extension would be

inappropriate. He regarded himself as entitled to exercise his discretion adversely upon the strength of the Report and Memorandum.

139. I am advised that this approach is legally problematic. Once the First Respondent elected to rely upon serious allegations of misconduct as the principal basis upon which to question my integrity and suitability for public office, the reliability and fairness of the material upon which he relied could not simply be disregarded.
140. The First Respondent could not, on the one hand, rely upon BMN14 as "objective evidence" justifying an adverse conclusion as to my suitability, while, on the other hand, disregard the fact that the conclusions contained therein had been reached without the investigator ever hearing me. That is precisely the approach reflected in BMN18.
141. Nor, with respect, was the procedural defect cured by furnishing a lengthy investigative report and memorandum at the eleventh hour and requiring a response effectively overnight.
142. The First Respondent records that he furnished the Report and Memorandum on 25 August 2026 and required comment by 12h00 on 26 August 2026.
143. The subject matter concerned complex procurement transactions, multiple witnesses, forensic computer analysis, municipal financial records and events extending over a considerable period.

144. It is difficult to understand how a few hours could constitute a reasonable opportunity to obtain the relevant records, consult meaningfully, investigate the allegations and prepare a proper response to findings serious enough, in the First Respondent's own view, to disqualify me from continued senior municipal office.

145. Significantly, the First Respondent characterises my attorneys' response as "too little and too late", while simultaneously relying upon the incompleteness of that response against me.

146. I respectfully contend that this reasoning illustrates the very procedural unfairness of which I complain. I was criticised for failing comprehensively to answer within hours allegations which the investigator itself had never afforded me an opportunity to answer during the investigation.

F. THE FIRST RESPONDENT'S PRIOR KNOWLEDGE OF THE BITOU INVESTIGATION

147. There is a further feature of BMN18 which requires emphasis. The First Respondent did not first become aware in August 2026 that there were allegations or an investigation concerning my previous employment at Bitou Municipality. He expressly acknowledges this.

148. In answering BMN16, the First Respondent states: ***"I already drew the attention of the Executive Mayor to the allegations regarding Mr Ngubo in my letter dated 21 May 2026."***

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149. That statement appears expressly in BMN18. BMN2 confirms the position.
150. Thus, from at least May 2026, and arising from the process initiated when my original appointment was communicated to him, the First Respondent knew that allegations arising from my previous employment at Bitou Municipality existed and that a HAWKS investigation had been referred to.
151. Notwithstanding that knowledge, the First Respondent confirmed in BMN2 that I satisfied the prescribed educational qualifications, competencies and work-related experience for appointment. I thereafter performed the functions of Acting Municipal Manager from May 2026.
152. The importance of this chronology is not that the First Respondent was forever precluded from subsequently considering further information concerning Bitou. Plainly, he was entitled to consider genuinely relevant new information.
153. The importance lies elsewhere. The First Respondent had known of the existence of the Bitou allegations for months. Yet the detailed BCHC report was introduced into the concurrence process only on 25 August 2026, two days before the deadline imposed by BMN11.
154. The First Respondent himself records that he was "privy" to BMN14 and BMN15 and that he obtained a waiver of privilege from Bitou Municipality before providing the documents to the Municipality. BMN18 does not explain when the First Respondent first obtained BMN14.

155. It does not explain why, if the Bitou allegations had concerned him since at least May 2026, the underlying report was not obtained and disclosed earlier.
156. It does not explain why a report which ultimately became central to the adverse decision was furnished only on 25 August 2026 with a deadline of noon the following day.
157. These matters are particularly appropriate for interrogation through the Rule 53 record.

G. FAILURE TO ASSESS MY ACTUAL PERFORMANCE AT KNYSNA MUNICIPALITY

158. BMN18 contains a further material omission. By 27 August 2026, I had actually served as Acting Municipal Manager of Knysna Municipality for approximately three months.
159. One would accordingly have expected an assessment of my suitability for a further acting period to take account not only of historical allegations arising from another municipality, but also of the best contemporaneous evidence available concerning my suitability: how I had actually performed the office during the preceding acting period.
160. BMN18 contains no meaningful assessment of my performance as Acting Municipal Manager. The First Respondent does not identify any act of misconduct committed by me while Acting Municipal Manager of Knysna Municipality.

161. He identifies no instance of maladministration by me at Knysna. He identifies no financial misconduct committed by me at Knysna. He identifies no failure of governance attributable to me during my acting tenure. He does not suggest that I failed to perform the functions entrusted to me. He does not refer to any adverse performance assessment by Council.
162. Nor does he identify any complaint by Knysna Municipality concerning my competence, integrity or performance during that period.
163. Instead, when confronted with the Municipality's reliance upon the stabilising work which I had performed, the First Respondent dismisses it because the representations supposedly contained insufficient detail and because, in his view, I had not been Acting Municipal Manager for sufficiently long to acquire "unique knowledge or unique institutional knowledge".
164. With respect, that does not amount to an assessment of my performance. Whether my knowledge was "unique" was not the issue.
165. The relevant consideration was whether I had competently and effectively performed the functions of Acting Municipal Manager during the initial statutory period and whether continuity in that office constituted good cause for the limited extension sought by Council.
166. Indeed, the First Respondent recognised that the office of Municipal Manager is pivotal and that suitability for that office was fundamental to his decision.

167. Having adopted suitability as a central consideration, it was incumbent upon him, I respectfully submit, rationally to consider the evidence bearing both for and against my suitability.

168. Instead, BMN18 is overwhelmingly concerned with historical allegations arising from Bitou Municipality and contains no comparable assessment of the actual evidence generated by my subsequent performance at Knysna Municipality.

169. I submit that this is a material failure to consider a relevant consideration.

H. FAILURE TO CONSIDER THE CONSEQUENCES OF THE DECISION FOR ME

170. There is another dimension which BMN18 does not meaningfully address. The First Respondent knew that his decision would have immediate consequences for me personally.

171. I had concluded BMN8 with Knysna Municipality for a fixed term ending on 6 November 2026. I had no alternative employment to which I could return if concurrence was refused.

172. The effect of the decision was therefore not simply an abstract refusal of an administrative request between two organs of State. It deprived me, with immediate practical effect, of the position in which I was employed and from which I derived my livelihood for the remainder of the contractual period. BMN18 does not reveal any consideration of that consequence.

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173. The closest the First Respondent comes to considering prejudice to me is his treatment of BMN16's warning that the BCHC report was capable of seriously damaging my career, reputation and future.
174. His response is merely to state that he cannot prevent me from instituting proceedings, including a defamation action for damages against him. That does not address the relevant prejudice.
175. A future damages claim cannot restore the balance of the fixed-term acting appointment. It cannot restore employment lost during the currency of BMN8. Nor does it answer the consequences of relying upon untested findings of misconduct to determine my present suitability for employment.
176. I respectfully submit that where a statutory discretion directly affects an individual's existing employment and livelihood, those consequences are at least relevant to a rational and proportionate exercise of that discretion, particularly where the adverse material upon which the decision rests remains disputed and untested.

H. THE FIRST RESPONDENT'S APPROACH TO THE ALLEGATIONS

177. Finally, BMN18 reveals an internal tension in the First Respondent's reasoning. The First Respondent repeatedly states that he does not purport to determine my guilt or innocence and that he is not sitting as a civil or criminal court.

178. He similarly states that he need not find me guilty before exercising his discretion adversely and describes his decision as one concerning "suitability and risk".
179. Yet the balance of BMN18 goes considerably further than merely recognising the existence of unresolved allegations. The First Respondent repeatedly adopts and relies upon substantive findings contained in BMN14.
180. He records, amongst other things, allegations that I circumvented procurement processes, expedited an irregular payment, improperly continued to control transactions, shifted blame to another official and participated in irregular, unauthorised, fruitless and wasteful expenditure.
181. Later portions of BMN18 reproduce extensive further conclusions from BMN14, including the proposition that the transactions demonstrated "a pattern of misconduct" in which I allegedly abused my position to circumvent established procedures.
182. Those are not neutral observations that allegations exist. They are substantive adverse propositions concerning my conduct.
183. The First Respondent could not rationally rely upon those propositions as sufficiently reliable to disqualify me from continued appointment while simultaneously treating the fairness of the process by which they were reached as immaterial.

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184. The question is not whether the First Respondent was required himself to conduct a disciplinary hearing or criminal trial. He plainly was not.

185. The question is whether, once he elected to make disputed findings emanating from BMN14 decisive to the exercise of his statutory discretion, he could rationally and fairly do so without ensuring that I had been afforded a meaningful opportunity to answer them. I respectfully submit that he could not.

I. THE REVIEW CONSEQUENCES OF BMN18

186. BMN18 accordingly crystallises the grounds upon which I challenge the First Respondent's decision. In summary:

186.1. the First Respondent relied materially, and indeed centrally, upon BMN14 and BMN15;

186.2. he knew before deciding the matter that I complained that BCHC had never interviewed me or afforded me an opportunity to respond to the material upon which its adverse findings were based;

186.3. he incorrectly treated earlier representations concerning my suspension as equivalent to an opportunity to answer the completed investigative case against me;

186.4. he sought to cure the absence of audi by furnishing complex adverse material on 25 August and requiring comment by noon on 26 August;

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- 186.5. he thereafter criticised my response as insufficient notwithstanding the extraordinarily compressed period afforded to me;
- 186.6. he had known of the existence of the Bitou/Hawks allegations since at least May 2026 but does not explain why the underlying material upon which he ultimately relied was introduced only at the eleventh hour;
- 186.7. he treated historical and disputed allegations arising from Bitou as decisive to my present suitability without undertaking any meaningful assessment of my actual performance during approximately three months as Acting Municipal Manager of Knysna Municipality;
- 186.8. he identified no misconduct, maladministration or performance failure committed by me during my tenure at Knysna;
- 186.9. he failed materially to consider the consequences of refusal for my existing employment and livelihood under BMN8; and
- 186.10. although professing not to determine guilt, he substantively adopted and relied upon adverse conclusions in BMN14 as the factual foundation for finding me unsuitable.
187. I respectfully submit that these matters establish substantial grounds upon which BMN18 falls to be reviewed and set aside under the constitutional principle of legality.
188. They also demonstrate why production of the complete Rule 53 record is indispensable.

189. The record will reveal, amongst other things, when and how the First Respondent obtained BMN14 and BMN15; what communications occurred with Bitou Municipality and BCHC; what consideration was given to the audi complaint; what information concerning my actual performance at Knysna was considered; and precisely how the competing considerations were weighed.
190. I reserve my right to supplement these grounds and amend my notice of motion in terms of Rule 53(4) once that record has been produced.

K. PART A: RULE 45A

191. I seek the stay of paragraphs 1 and 2 of BMN11 pending determination of Part B. The application is brought under Rule 45A read with section 173 of the Constitution.
192. I am advised that Rule 45A confers a discretion upon the Court directed ultimately at real and substantial justice. In the circumstances, real and substantial justice requires preservation of the position pending review.
193. BMN11 deliberately postponed the prospective invalidity of Council's decision until 27 August so that a concurrence process could occur in the interim. The lawfulness of the outcome of that very process is now challenged. If BMN11 is permitted to operate irrespective of the review:
- 193.1. I immediately cease exercising the functions of Acting Municipal Manager;
- 193.2. another person may have to assume the office;

193.3. the administrative status quo will be altered;

193.4. the fixed contractual period continues running; and

193.5. Part B risks becoming practically academic before it can be determined.

194. That consequence would substantially undermine effective judicial review.

K1. PROSPECTS OF SUCCESS

195. I respectfully submit that the review raises substantial questions. BMN2 records that the First Respondent accepted my qualifications, competencies and experience and did not object to my first appointment although he was aware of the information that he now uses to refuse to concur.

196. BMN12 demonstrates detailed special circumstances and good cause advanced by Council. BMN17 demonstrates that materially different information existed concerning the alleged criminal position.

197. Against that background, the First Respondent received BMN14. BMN14 contains serious findings. Those findings were reached without BCHC ever hearing me.

198. BMN16 alerted the First Respondent expressly to that defect before he made BMN18. Despite that, no reasonable opportunity was created to enable me properly to cure the procedural deficit.

199. These matters establish, at minimum, a substantial and bona fide review deserving adjudication on a proper Rule 53 record.

K2. IRREPARABLE HARM

200. Absent interim relief, the prejudice is immediate and incapable of proper subsequent reversal. BMN8 provides for a fixed period ending 6 November 2026.
201. Time lost during a fixed acting appointment cannot later be restored. Even if the review ultimately succeeds, a judgment delivered after the fixed period has substantially or entirely expired cannot restore the opportunity to perform the office during the lost period.
202. There is also reputational prejudice arising from the effective use of findings of serious misconduct which were made without hearing me.

K3. BALANCE OF CONVENIENCE

203. Interim relief preserves rather than creates a state of affairs. I have already served as Acting Municipal Manager. Council has identified continuity and stability as material governance considerations.
204. The Council papers expressly refer to the need for uninterrupted executive leadership and avoidance of unnecessary disruption. On the other hand, immediate implementation of BMN18 would require the Municipality to reorganise senior administrative leadership while the lawfulness of that very decision is under challenge.

205. If the review succeeds, such disruption would have been unnecessary. The balance accordingly favours preservation.

K4. ABSENCE OF AN ALTERNATIVE REMEDY

206. There is no adequate alternative remedy. A damages action cannot restore time in public office. It cannot ensure continuity of municipal administration. Nor can it preserve the subject matter of the pending review.
207. Most importantly, by the time Part B is concluded, and my contract or 3-month period having expired a damages claim can never serve as alternative remedy but as further irregular, fruitless and wasteful expenditure which will be caused by the payment of salaries for 2 or 3 acting municipal managers if I am also to include the salaries paid to the suspended full time incumbent.
208. Only interim relief can constitute a constitutional and lawful remedy in these circumstances. There is also another issue that Part B will surely become moot should my or a 3-month period expire.

K5. THE EMPLOYMENT CONTRACT AND CLEAR RIGHT

209. BMN8 is separately relevant to the declaratory relief sought. BMN9 demonstrates what relief the First Respondent originally sought. BMN11 demonstrates what relief this Court actually granted. Neither document contains an order expressly reviewing and setting aside BMN8.

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210. I am advised that a distinction must be maintained between the Council's public-law decision appointing me; and the written contract subsequently concluded between the Municipality and me.
211. I recognise that the invalidity of an antecedent public act may have consequences for contractual rights.
212. That is not, however, equivalent to saying that a contract which was never itself challenged or set aside must be treated as though a Court expressly declared it void.
213. BMN8 remains an extant juristic act unless lawfully terminated or set aside. I accordingly seek the declarator formulated in the Notice of Motion.
214. In light of my employment contract which has not been impugned, cancelled or set aside, I have a clear right to occupy my position in terms of the binding employment contract.
215. I am advised that since I have demonstrated the clear right contemplated above, the remaining considerations for a stay contemplated above become surplus to requirements. This right is not only a right to remuneration, but also a right to the invaluable employment experience that comes with acting on the position.
216. For the above reasons I buttress the point that there exist justifiable grounds for the stay of the court order pending the determination of part B.

L. LEGALITY REVIEW OF THE MEC DECISION

217. BMN18 constitutes an exercise of public power and is subject at least to the constitutional principle of legality. The decision must be lawful and rational. The process adopted in reaching it must itself bear a rational relationship to the purpose for which the statutory power was conferred.
218. I submit that the decision is reviewable upon, amongst others, the grounds which follow. Procedural irrationality.
219. Material findings concerning my integrity and suitability were placed before the First Respondent. Those findings were generated through a process in which I had never been heard.
220. BMN16 placed the First Respondent squarely on notice of that fact. Despite this, no adequate process was created to permit a meaningful response.
221. A process which treats untested findings as significant adverse material but denies the affected person a practical opportunity to answer them is not rationally adapted to producing a reliable decision. Relevant and irrelevant considerations.
222. Relevant considerations included:
- 222.1. BMN2 and the First Respondent's own acceptance of my qualifications;
- 222.2. the continuing suspension of the substantive Municipal Manager;

222.3. the detailed circumstances in BMN12;

222.4. the information contained in BMN17;

222.5. the fact that BMN14 was produced without hearing me; and

222.6. the representations in BMN16.

223. Whether these considerations were properly considered will be illuminated by the Rule 53 record. Conversely, if BMN14 was treated as though its allegations constituted finally established facts, this constituted a material mischaracterisation of the evidence.

224. An allegation, an investigative opinion, a recommendation, a criminal investigation and an adjudicated fact are juridically and evidentially different. A rational decision-maker is required to distinguish between them.

225. I reserve the right to supplement this review after production of the record.

M. REVIEW OF THE BCHC REPORT UNDER PAJA

226. BMN14 itself is challenged. BCHC was appointed by a municipality to investigate alleged misconduct concerning municipal transactions and municipal officials.

227. Its work was undertaken for public institutional purposes. It produced findings intended to inform official municipal action. Its recommendations expressly contemplated disciplinary, criminal and recovery measures.

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228. Those findings subsequently migrated beyond Bitou Municipality and were relied upon in the statutory concurrence process concerning my appointment at Knysna Municipality.
229. I am advised that, in these circumstances, the process is susceptible to review under PAJA if the statutory definition of administrative action is satisfied. The question whether BCHC itself exercised public power or performed a public function, and whether BMN14 had direct external legal effect, may be disputed.
230. I therefore plead legality in the alternative. Procedural unfairness. If PAJA applies, the fundamental procedural defect is stark. I was the subject of the investigation.
231. Serious misconduct was attributed to me. Yet no adequate notice was given to me; no allegations were put to me; no evidence was presented to me; I was not interviewed; I was not permitted to make representations; I was not afforded an opportunity to address the accounts of persons who were interviewed; and no draft findings were furnished for comment.
232. The effect was to condemn me unheard. I accordingly rely upon section 6(2)(c) of PAJA and such additional grounds under sections 6(2)(a), (b), (e), (f) and (h) as may be established upon receipt of the record.
233. I do not presently have the complete investigation record. I cannot therefore reasonably be expected to identify every evidential or legal defect in BMN14 before production thereof.

234. That is the purpose of Rule 53.

M1. ALTERNATIVE LEGALITY REVIEW

235. If this Honourable Court concludes that BMN14 does not constitute administrative action under PAJA, I challenge its adverse findings and recommendations under the constitutional principle of legality to the extent that they constitute or form an integral part of the exercise of public power.

236. The fact that Bitou Municipality outsourced the investigation to private attorneys cannot, by itself, insulate the exercise of public governmental functions from constitutional scrutiny. BMN14 concerned municipal administration.

237. It investigated the conduct of municipal officials. It recommended the exercise of disciplinary, civil and criminal powers. It subsequently became instrumental in another statutory public decision.

238. I submit that a process of that character cannot lawfully produce serious adverse findings against a person without affording him any opportunity to be heard.

N. REMITTAL AND SUBSTITUTION

239. Upon the setting aside of BMN18 I principally seek remittal to the First Respondent. The concurrence power is entrusted by statute to him. Any reconsideration must, however, take place upon a procedurally lawful footing.

240. I must be furnished with all material adverse information and afforded sufficient time and opportunity properly to answer it. I seek substitution only in the alternative.

241. The Rule 53 record will assist in determining whether exceptional circumstances exist. In particular, substitution may become appropriate if:

241.1. all material facts are ultimately before Court;

241.2. the lawful outcome is effectively foreordained;

241.3. further remittal would generate unjustifiable delay;

241.4. the short remaining duration of BMN8 makes remittal ineffective; or

241.5. other circumstances disclosed by the record render substitution just and equitable.

O. URGENCY

242. Part A is urgent. The urgency did not arise merely from the order granted on 20 August 2026. That order contemplated that the First Respondent might still provide concurrence and thereby permit the continuation of my acting appointment. Had concurrence been granted, the present urgent application would not have arisen.

243. The event which crystallised the urgency was the First Respondent's decision of 27 August 2026 refusing concurrence. That decision was communicated to,

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alternatively received by me, only late on Friday, 28 August 2026. I thereafter instructed my legal representatives to act with expedition.

244. The matter therefore did not become ripe for urgent judicial intervention until the adverse decision itself had been communicated to me. The present application follows immediately upon that event and cannot properly be characterised as self-created urgency.
245. The consequences of the decision are immediate. In terms of BMN11, the prospective invalidity of Council's decision became operative upon the refusal of concurrence. At the same time, BMN8, my written contract of employment, continues to subsist and has not itself been reviewed, set aside or cancelled.
246. This creates an untenable position. Unless interim relief is granted, the office of Municipal Manager will be left without a lawful incumbent for so long as my contract subsists and another person is appointed or employed to perform the very functions which I remain contractually engaged to perform.
247. That consequence has implications beyond my personal interests. The office of Municipal Manager is the principal administrative office of the Municipality and decisions taken by the person occupying that office have direct legal and administrative consequences for the Municipality, its employees, service providers, creditors and residents.
248. The previous proceedings themselves demonstrate the danger. BMN11 expressly preserved the validity of decisions taken by me before 27 August 2026 because the validity of the appointment bears directly upon the lawfulness

of decisions taken by the incumbent of the office. The same risk arises if another person is appointed or placed in the office while the lawfulness of the First Respondent's refusal, and the effect of my subsisting contract, remain unresolved.

249. In those circumstances, any person appointed to perform the functions of Municipal Manager during the currency of BMN8 may face the same form of legal challenge which gave rise to the earlier proceedings. Decisions taken by that person may become vulnerable to challenge on the basis of the lawfulness of his or her appointment or authority.
250. That would create precisely the administrative uncertainty which interim relief is designed to avoid. It may also expose the Municipality to duplicated employment costs and further litigation while the substantive Municipal Manager remains suspended and my own contract continues to run.
251. The prejudice is compounded by the limited duration of BMN8. My fixed-term appointment terminates on 6 November 2026. Every day during which the decision operates diminishes the practical value of the review.
252. Time lost during a fixed acting appointment cannot subsequently be restored. Even if I ultimately succeed in Part B, a judgment delivered after, or close to, expiry of BMN8 cannot restore the period during which I was prevented from performing the office.

253. The same applies to the experience and professional benefit associated with occupying the office of Acting Municipal Manager. Those are not capable of adequate retrospective compensation.
254. I am advised that the ultimate enquiry under Rule 6(12) is whether I will be able to obtain substantial redress in due course if the matter is not heard urgently. On the facts set out above, the answer is plainly no.
255. If I am required to await the ordinary opposed motion process:
- 255.1. a substantial portion, if not the whole, of BMN8 is likely to expire before effective relief can be obtained;
 - 255.2. another person may meanwhile be appointed or employed to occupy the office;
 - 255.3. the lawfulness of decisions taken by such person may itself become vulnerable to challenge;
 - 255.4. the Municipality may incur duplicative remuneration and associated costs;
 - 255.5. the administrative status quo will have been materially altered before the legality of the impugned decision is determined; and
 - 255.6. Part B risks becoming academic or practically ineffectual.

256. These consequences cannot adequately be cured by a later damages claim. A damages award cannot restore time in office, cure institutional uncertainty, validate decisions taken by another disputed incumbent or recreate the administrative continuity which Council sought to preserve.
257. The urgency is therefore both personal and institutional. It concerns my contractual and constitutional interests, but also the lawful and stable administration of Knysna Municipality.
258. This is why the considerations set out under Rule 45A are inseparable from urgency. The stay sought does not determine Part B finally. It merely preserves the position long enough to permit the Court to determine the legality of the impugned decision before the dispute is overtaken by events.
259. I respectfully submit that this is a paradigm case in which substantial redress will not be available in due course unless Part A is determined urgently. I accordingly seek that the ordinary forms, service and time periods be dispensed with and that Part A be heard as one of urgency in terms of Rule 6(12).

O. CONCLUSION AND COSTS

260. I do not seek an adverse costs order against a Respondent who reasonably abides the decision of the Court.
261. Where opposition is persisted in unsuccessfully, I seek the costs provided for in the Notice of Motion, including the costs of two counsel where so employed.

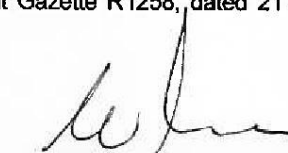
269. That is why I seek a judicial stay rather than resort to self-help. Unless a stay is granted, however, the review is liable to be overtaken by the short duration of my appointment.

270. I respectfully submit that real and substantial justice requires that the position be preserved until Part B is determined. I accordingly pray for an order in accordance with the Notice of Motion.

P. DECLARATION AND OATH


BOY MANQOBA NGUBO

Thus done and signed before me at **KNYSNA** on this 31st day of **AUGUST 2026**, the deponent having acknowledged that he knows and understands the contents of this declaration, and that he considers the prescribed oath binding on his conscience and has no objection against the taking of the said oath. There has been compliance with the requirements of regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).


COMMISSIONER OF OATHS
FULL NAMES: CAPACITY /RANK: STREET ADDRESS:

WAYNE MALCOLM TURNER
12 Upper Deck Building
Plettenberg Bay
Commissioner of Oaths
Tax Practitioner
SAIT Member #58513367

7 IN COMMITTEE (None)

8. ADJOURNMENT

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