



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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Ref No: NMA/29

Mr M Mapu
The Acting City Manager
Nelson Mandela Bay Municipality
P. O. Box 116
PORT ELIZABETH
6000

Dear Mr Mapu

WITHHOLDING OF THE REMAINING 2019/20 LOCAL GOVERNMENT EQUITABLE SHARE AND CONDITIONAL GRANTS IN TERMS OF SECTION 216(2) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 READ WITH SECTION 38 OF THE MFMA

The above subject-matter refers.

This letter seeks to inform the Nelson Mandela Bay Metropolitan Municipality (NMBMM) about the National Treasury's intention to invoke section 216(2) of the Constitution of the Republic of South Africa, 1996 (the Constitution) due to the reasons outlined herein-below.

Firstly, National Treasury has learned that NMBMM failed to table and adopt the 2020/21 MTREF budget and the draft IDP in line with sections 16(2) and 24(1) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (the MFMA), of which the municipality was informed in the letter dated 3 June 2020 regarding the significance of public participation required by section 23(1)(a) and (b) of the MFMA and section 152(1)(a) of Local Government: Municipal Systems Act, 2000.

Following a correspondence dated 26 May 2020 addressed to the Provincial GoGTA regarding the postponement of the 2020/21 draft IDP and budget, the municipality failed to table and approve the annual budget for the financial year 2020/21 in the Council meeting which was scheduled for 5 June 2020.

Failure to adhere to the budget processes and failure to adhere to the Metro's internal plans in compliance with the approved schedule of key deadlines constitutes non-compliance with statutory prescripts and is a serious and persistent breach of prescribed measures as contained in section 216(1) of the Constitution, and a reflection of weak and poor governance on the part of the municipality.

In addition to non-tabling of the 2020/21 MTREF budget, the following points confirm that the municipality is still faced with governance and institutional challenges and that warrants National Treasury to exercise its oversight role and concomitantly implement remedies provided for in line with the Constitution and any applicable legislation:

- The political and administrative instability within the municipality is reflected in the consistent failure by Council to meet which inevitably leads to material governance failures with major negative effect to sound and financial sustainability of the financial affairs of the municipality. For example, a Council meeting which was accordingly scheduled for 5 June 2020 to amongst others consider the annual budget for the financial year 2021 failed to proceed for want of required quorum;
- The Municipality has been operating under the leadership of an interim Executive Mayor for a period of six months since the departure of then Executive Mayor in December 2019. Although the Local Government: Municipal Structures Act, 1998 provides for the Deputy Executive Mayor to act in the position of an Executive Mayor in the absence of the latter, this was never intended to be perpetual. If challenged, a competent Court may interpret this as irregular. This constitutes poor governance which might be irregular action by the Municipality when one applies contextual and purposive approach to the interpretation of the relevant statutory provisions. The vacancy in the position of the Executive Mayor also compromises accountability and service delivery to the community particularly the budget processes;
- National Treasury in the absence of a Council resolution considers the recent appointment of Mr Mvuleni Mapu as Acting City Manager as irregular and therefore unlawful due to non-compliance with section 82 of the Municipal Structures Act. This will probably have far reaching and potentially devastating consequences with regard to a myriad administrative and financial decisions taken and decisions still to be taken by an irregularly appointed Accounting Officer (Municipal Manager) unless a competent Court decides otherwise;
- Regarding the implementation of Deloitte and Touche recommendations, we have not yet seen any concrete action from the municipality on how to deal with the issues of unauthorized, irregular, fruitless and wasteful expenditure as a result of non-compliance to PTNG conditions; and
- The municipality has not implemented any of the recommendations made by the National Treasury to give effect to *m*SCOA regulations. The recommendations include the testing of the in-house financial system, appointment of the project manager to oversee the project. The municipality was advised to embark on a new tender to procure a new financial system which is *m*SCOA compliant. To date, the section 71 report of the Municipal Finance Management Act for the third quarter of the 2019/20 financial year was published with errors and the municipality could not verify credibility of that information.

Given the above challenges, National Treasury considers it necessary to protect public funds by invoking section 216(2) of the Constitution, read together with section 38 of the MFMA, by withholding the transfer of funds which entails equitable shares and the conditional grants to NMBMM, envisaged in section 38(1)(a) and (b) of the MFMA.

To this end, the Nelson Mandela Bay Metropolitan Municipality is hereby in terms of section 38(2)(a) of the Local Government: Municipal Finance Management Act, 2003 given an opportunity to make written representations with regard to the intended stopping of funds due to the municipality.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Malijeng Ngqaleni', written in a cursive style.

MALIJENG NGQALENI
DEPUTY DIRECTOR GENERAL: INTERGOVERNMENTAL RELATIONS
DATE: 29 June 2020

CC: CFO, Nelson Mandela Bay Metropolitan Municipality: Mr Selwyn Thys
COO, Nelson Mandela Bay Metropolitan Municipality: Mandla George