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Date: 4 JUNE 2020

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Who deals with this: Nqaba Bhanga

EASTERN CAPE MEC FOR COGTA

HON XE NQATA

PER EMAIL

Dear Hon MEC,

RE: ELECTION OF EXECUTIVE MAYOR – NELSON MANDELA BAY

I refer to the aforementioned matter as well as correspondence addressed to the Speaker of Nelson Mandela Bay (NMB), Cllr Buyelwa Mafaya, dated 1st of June 2020, which I have attached hereto.

Kindly note that I wish to place the following on record:

1. The position of Executive Mayor in Nelson Mandela has been vacant for some five months already;
2. Notwithstanding various requests and petitions to the Speaker, she has failed to table an item and/or preside over the process of electing an Executive Mayor in order to fill the vacancy;
3. In this regard I refer you to Section 55 (2) of the Municipal Structures Act which states:
“a vacancy in the office of executive mayor executive deputy mayor must be filled when necessary”;
4. In addition, I refer you to Rule 9.1 of the Council Rules of Order of the Nelson Mandela Bay Municipality which states as per the legislation:
“At its first meeting after its election, or after the vacation of the Office of the Executive Mayor, the Council must elect the Executive Mayor”;
5. Despite the clear provisions of the legislation and the Council Rules of Order, the position of Executive Mayor remains vacant and for a period of five months the Deputy Mayor, Cllr Thsonono Buyeye, has taken executive decisions in his capacity as “Interim Mayor”;
6. In a recent judgement by the Honourable Justice Stretch in the Makhanda High Court, the court held that the failure of a Municipality to undertake its legislated responsibilities may lead to mandatory judicial intervention in the institution. It is my contention that NMBM stands exposed to similar judicial intervention given its failure to undertake peremptory legislated obligations to attend to the election of an Executive Mayor;
7. It is my further contention that you hold an obligation to ensure that the NMBM fulfills its executive obligations in order to avoid unlawful processes and indeed Provincial intervention in the affairs of the municipality through the application of either Sections 139 or 154 of the Conctitution.

8. NMBM Council is planning on tabling its 2020/21 Budget and IDP tomorrow, the 5th of June 2020. Given the requirements of Sections 16 and 53 of the Municipal Finance Management Act, it is clear that only a duly elected mayor can table a municipal budget in council as well as preside over budgeting processes. There is no legal requirement that makes provision for an 'Interim Mayor' to attend to these processes. It is also my contention that a Deputy Mayor may only ever preside over budgeting processes should the position of Executive Mayor not be vacant and such authority has been delegated.
9. Having further regard to the correspondence from National Treasury dated 3 June 2020 that threatens the imposition of section 216 (2) of the Constitution which would result in the withholding of the equitable share payable to the NMBM, the importance of the legitimacy of the tabling of the budget cannot be overstated.
10. As such, the tabling of the Draft Budget in Council by the 'Interim Mayor' will be unlawful and will no doubt expose the municipality to adverse risk in this regard and must be regularised with immediate effect;
11. It is clear that the current political leadership in NMBM is trying to circumvent legislation by endeavouring to administer the administration of the metro without filling the vacancy of Executive Mayor. This is a wholly unacceptable situation that could have far reaching consequences for the administration insofar as executive decisions are concerned.

Given the aforesaid, I now call upon you to intervene by cautioning the Acting City Manager as well as the political leadership in NMB as to the possible legal implications for the metro should they fail to attend to the filling of the vacancy for Executive Mayor.

I trust you will find my correspondence favourably.

Sincerely,



CLLR N BHANGA

Copy: Minister of Cogta