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Date: 1 JUNE 2020

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Who deals with this: Nqaba Bhanga

**THE SPEAKER – NELSON MANDELA BAY MUNICIPAL COUNCIL
PER EMAIL**

MAYORAL VACANCY – NELSON MANDELA BAY MUNICIPALITY

The Democratic Alliance notes with concern the matter of the continued vacancy of the position of Executive Mayor in the Nelson Mandela Bay Council. This vacancy has caused a vacuum in leadership within the institution with the Deputy Executive Mayor acting in the capacity of Executive Mayor since the removal of the previous Executive Mayor by means of a motion of no-confidence.

This unacceptable and untenable situation has now persisted for some five months and it is our considered opinion that in the absence of an elected and accountable Executive Mayor the institution lacks accountability, legitimacy and credibility.

The continued operation of the NMBM under the leadership of the Deputy Executive Mayor, referred to as the Interim Executive Mayor in official documentation, is unacceptable as no legislation and/or precedent exists to support the existence of the position of an Interim Executive Mayor.

I am certain you are aware of the provisions of the Municipal Structures Act and in particular section 55 (2) which reads as follows:

“A vacancy in the office of executive mayor or executive deputy mayor must be filled when necessary.”

Furthermore the provisions of the Rules of Order of the Nelson Mandela Bay Municipality follow suit, as per the legislation and provides in rule 9.1 as follows:

“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.”

Despite the clear provisions of the legislation and Council Rules of Order you have failed on numerous occasions to place the election of an Executive Mayor on the agenda of the Nelson Mandela Bay Municipality, despite the peremptory provisions to do same.

In the recent judgment 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 administration of the institution. The NMBM stands exposed to similar judicial intervention should you persist in failing to undertake the peremptory legislated obligation to attend to the election of an Executive Mayor in the NMBM.

Further to same you have served notice of a Special Council Meeting to be held on Friday 5 June 2020. The meeting seeks amongst other matters to table the draft IDP and budget of the NMBM however fails to address the crucial matter of the election of an Executive Mayor.

The tabling and consideration of both the IDP and budget of the institution are crucial legislative requirements that the institution must comply with in order to remain legally operational as an institution. In this regard I refer yourself to section 16 of the Municipal

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Finance Management Act which reads as follows:

“16. Annual budgets

(1) The council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year.

(2) In order for a municipality to comply with subsection (1), the mayor of the municipality must table the annual budget at a council meeting at least 90 days before the start of the budget year.”

When one has further regard to Chapter 7 of the Municipal Finance Management Act which regulates the responsibilities of Mayors with regards to municipal finance, it is abundantly clear that the legislation prescribes the responsibilities of the budgeting process to be that of the Executive Mayor of a municipality as stated in section 53 of the MFMA as follows:

“53. Budget processes and related matters

(1) The mayor of a municipality must-

(a) provide general political guidance over the budget process and the priorities that must guide the preparation of a budget;

(b) co-ordinate the annual revision of the integrated development plan in terms of section 34 of the Municipal Systems Act and the preparation of the annual budget, and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and

In the absence of a duly elected Executive Mayor of the Nelson Mandela Bay Municipality it is our considered opinion that the attempted tabling of a draft budget will be fatally flawed and open to legal challenge of its validity should same not be attended to by a duly elected Executive Mayor.

As such we wish to seek the assistance of your office in dealing with this critical matter and especially the placing of the item of the election of the Executive Mayor of the NMBM Council on the agenda of a Special Council meeting of the Nelson Mandela Bay Municipality immediately preceding the Special meeting of 10:00 to be called for 5 June 2020 at 9:00, in order to correct this fatal legal flaw in the budgeting process of the NMBM.

It is my opinion that should the election of an Executive Mayor not be attended to prior to the tabling of the draft budget that the process thereof will be unlawful and that neither my caucus nor that of the councillors who are signatories to the petition attached hereto shall attend the Special Meeting of Council and lend legitimacy to a flawed process.

It is my concern that said procedures expose the NMBM to adverse legal and financial risks and liabilities. The possibility exists that the budget of the NMBM may be challenged after its tabling and adoption and be invalidated as a result.

The tabling of the budget is of critical importance and we are aware that the process has been severely hampered by the regulations imposed by the National State of Disaster and remains constrained in terms of timeframes remaining to attend to public participation as well as the final adoption of the annual budget. As such we implore you to attend to the legally prescribed requirements in calling for the election of the Executive Mayor in order to lawfully progress with the budgeting process of the NMBM.

Your urgent assistance and directives in regard to our queries herein would be highly appreciated by the majority of the members of the Nelson Mandel Bay Municipal Council as evidenced by the attached petition by said members numbering sixty-one of the one hundred and twenty members of Council.

Sincerely,



CLLR N BHANGA

Copy: City Manager - NMBM

Copy: CFO - NMBM

Copy: MEC of COGTA – Eastern Cape

Copy: National Treasury

Copy: Auditor General – Eastern Cape