

The Member of the Executive Council
Eastern Cape Cooperative Governance and Traditional Affairs
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REQUEST FOR INTERVENTION INTO THE IDP/BUDGET OF BUFFALO CITY METROPOLITAN MUNICIPALITY WITH REGARDS TO THE IMPLEMENTATION OF COURT ORDERS

The Nahoon Estuary Management Forum requests the MEC for Eastern Cape COGTA to require the Buffalo City Metropolitan Municipality in terms of the Systems Act to amend their approved IDP/Budget for the 2023/2024 financial year to include projects and budget in their IDP/Budget to execute 3 Court Order against it with regards to sewerage spills into the Nahoon Estuary

The Nahoon Estuary Management Forum is a registered NPO that represents 70 stakeholders. Our aim is to improve the Nahoon River Estuary and to implement the Nahoon Estuary Management Plan promulgated by the MEC of DEDEA in 2016, which Plan is therefore legally binding upon the Municipality

One of the main issues identified in the Plan is the poor water quality then and which is still evident from water samples tested by the municipality on a monthly basis

The Plan provides for the following actions that the Municipality needs to implement in order to improve the water quality, namely:

- Conduct a comprehensive audit review of the state of existing sewerage infrastructure and develop a repair and maintenance plan targeting priority areas
- Develop a contingency plan to deal with accidental releases
- Provide pump stations with a back up power supply and adequate overflow/containment facilities

- Assess the feasibility of re-directing stormwater that is likely to contain sewerage to sewer or to a sump/holding facility
- Develop and implement a planned maintenance programme for sewerage infrastructure in the vicinity of the estuary

(See Annexure 1)

Not one of these actions have been implemented by the Municipality to date since the promulgation of the Plan in 2016

The Plan was adopted by the Buffalo City Metropolitan Municipality at a meeting of the Council held on 30 October 2019

According to the National Estuarine Management Protocol , promulgated by the Minister in terms of the National Environmental Management: Integrated Coastal Management Act 24 of 2008, the Council must integrate the Plan into their Integrated Development Plan and Budget

(See Annexure 2)

This has not happened to date as not one of the actions items in the Plan , was ever included in the Budget of the Municipality

The Nahoon Estuary Management Forum have exhausted all avenues to ensure compliance with the Nahoon Estuary Management Plan and the Court Orders obtained against the Municipality for continuously spilling sewerage into the Nahoon Estuary.

1. The Forum is recognised by the Municipality and are included in their Coastal Management Committee., where we are doing our best to get the Municipality to implement the Nahoon Estuary Management Plan without any success thus far
2. The Forum had meetings with the Department of Water and Sanitation of the Buffalo City Metropolitan Municipality during 2019 and 2020,(See Annexure 3)

The following items were discussed with the Department:

- Spillages from the Maldives Pump Station
- Spillages from Nompumelelo
- Spillages from the Silt Trap and manhole in Lower Ridge Road

3. The Forum reported the refusal of BCMM to implement the Nahoon Estuary Management Plan, as well as the sewerage spills into the Nahoon Estuary, to State Institutions that provide oversight in this regard:

- The Department of Water and Sanitation
- The Eastern Cape Department of Economic Development, Environment and Tourism
- The Auditor General
- The Human Rights Commission

The Forum are not privileged to Directives issued by Government, but can only assume that these Department have either issued Directives to the BCMM or have discussed it with them during officials meetings

It would seem that these oversight Institutions have not been able to obtain an outcome for these issues (See Annexure 4)

As it was clear that the Buffalo City Metropolitan Municipality has no intention to address these items, the Forum commenced with legal action, and obtained 3 court orders, namely :

- 25 January 2022: A court order against BCMM with regards to spillages from the silt trap and a manhole in Lower Ridge Road, to clear the silt trap and maintain it; to provide and alternative overflow that occurs at the manhole; to provide a back up power supply for the pump station
- 25 January 2022: A court order against the BCMM with regards to spillages from the Maldives Pump Station, to repair the sewer pump station serving the Maldives Housing Development , and to maintain it in a working condition
- 5 April 2022: A court order against the BCMM to develop and implement a contingency plan for the accidental sewerage releases at Nompumelelo and contain sewerage spills and to prevent it from entering the stormwater system at Nompumelelo; to develop and implement an inspection and maintenance plan for sewerage infrastructure in Nompumelelo

The Court orders have not been executed, to date

(See Annexure 5)

The Infrastructure Services Department of Buffalo City Metropolitan Municipality have not brought the court orders and their proposed responses to the Council's Infrastructure Services Portfolio Committee and therefore Council itself since the court orders were granted in January and April 2022, now more than a year ago

Therefore it was not possible for Council to react in any manner as they had no knowledge of the court orders

A Councillor of Buffalo City Metropolitan Municipality, Clr Bentley raised a question about the matter at a meeting of the Infrastructure Services Portfolio meeting on 13 April 2023. According to Section 24 of the Standing Rules and Orders of the meetings of the Council and Committees of the Buffalo City Metropolitan Municipality (As approved by Council on 1 December 2022 and promulgated in the Provincial Gazette of 2 June 2023) a councillor may ask a question in writing 10 days prior to a meeting , which question shall then be answered by the applicable Director , in writing at the next meeting , and shall be recorded in the minutes of the meeting.

The Director of the Infrastructure Services Department have failed to supply a written answer to the Infrastructure Services Portfolio meeting as yet, directly in contradiction of the Rules of the Council

(See Annexure 6)

The Forum submitted an input into the IDP/Budget of the municipality in terms of Section 29(1)(b)(ii) of the Municipal Systems Act , requesting BCMM to include the implementation of the three court orders against the municipality into the IDP/Budget for the 2023/2024 financial year.

(See Annexure 7)

Our submission was included in the agenda of a Workshop of Councillors and Traditional Leaders to discuss the Final Draft 2023/24 revised IDP/Budget held on 29 May 2023, two days before the Final Draft was finally approved by Council at a meeting held on 31 May 2023. We submit that this was done only to prove that Council did consider our submission. This did

not leave enough time to include it in the IDP/Budget that was approved two days later. It is submitted that this was done purely to prove “compliance”

(See Annexure 8)

The approved IDP/Budget of Buffalo City does not include a project or budget for a project to implement the three court orders. These projects will be very large projects requiring millions of rand to implement , and should appear in the Budget of the Municipality.

We hereby reiterate that it is totally irrational of the Municipality not to include the implementation of the court orders, and therefore are defying orders of the court

We would submit that the Municipality had ample time since the court order was granted in January and April of 2022 and ample time since our submission dated 8 March 2023 to complete a project proposal with timeframes and a budget to be included into the IDP/Budget for the 2023/24 financial year

The Buffalo City Metropolitan Municipality appointed an Engineering Consulting Company, Zutari, to investigate the sewer spills at Lower Ridge Road , and to compile a report to solve the orders of the court , with timeframes and budgets

On 4 July 2022 i had a meeting with Zutari to discuss all the issues around the sewerage spill at Lower Ridge Road , as well as their appointment by BCMM to compile a comprehensive report, to ensure that they address the issues that concerns the Forum, and to advise us on their appointment and what they will investigate. The report of Zutari was submitted to BCMM in September 2022, which would have given them ample time and opportunity to compile a report to Council and provide input into the IDP/Budget for 2023/24

We would therefore submit that the BCMM had ample time and opportunity to respond to our submission for the 2023/24 IDP/Budget and to include projects and a budget to implement the three court order against them, but failed to do so

We therefore formally request you to act in terms of Section 32 of the Municipal System Act , and that you request the Buffalo City Metropolitan Municipality to adjust their Integrated

Development Plan and Budget, **only with regards to the 3 court orders as per our input into the IDP/Budget** , as the Plan does not comply with the requirements of the Act as follows:

- ✓ In terms of Section 23(b)(i) of the Systems Act, the local community to be consulted on its development needs and priorities: Our submission to the BCMM with regards to the implementation of the 3 court orders were only submitted to a workshop of councillors 2 days before the council adopted the IDP/Budget for the 2023/24 financial year. It was therefore not properly considered as an input into the IDP/Budget.

The input provides information on 3 court orders against the municipality with regards to sewer spills in the Nahoon Estuary by the Municipality.

It is submitted that the municipality did not consider the gravity of the situation by ignoring court orders, and to not include projects and funding into the IDP/Budget to execute these court orders.

We must re-iterate, it will be totally irrational of the Buffalo City Metropolitan Municipality to ignore these court orders, and not to provide a budget to executed them

We submit that the Constitutional Court highlighted that organs of state have heightened duties to respect the rule of law.

- ✓ In terms of Section 24(1) of the Systems Act , the planning undertaken by a municipality must be aligned with the development plans of organs of state so as to give effect to the principles of cooperative governance as per Section 41 of the Constitution:
 - The Nahoon Estuary Management Plan was promulgated by the MEC on 19 December 2016, in terms of the National Environment Management: Integrated Coastal Management Act,. 24 of 2008, and is therefore **legally binding**.
 - In terms of the National Environmental Management: Integrated Coastal Management Act 24 of 2008: The National Estuarine Management Protocol, promulgated by the Minister on 18 June 2021, Estuary Management Plans **must be incorporated into the Integrated Development Plan and Budget of a Municipality**
 - The BCMM have never included any action in the Nahoon Estuary Development Plan into the IDP/Budget of the Municipality

We kindly therefore request that you require the Buffalo City Metropolitan Municipality to amend their IDP/Budget for the 2023/2014 financial year, as approved by the Council , and submitted to your office, to include projects and a Budget to execute the 3 court orders attached to this letter

Should you decide not to adhere to our appeal, we will consider to hand over this matter to our attorneys to seek an order against the Municipality to review their IDP/Budget for the 2023/2024 financial year to include plans and projects as well as a budget to execute the 3 court orders mentioned in this letter

Kind regards



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The Municipal Manager : Buffalo City Metropolitan Municipality
Manager: Budget : Buffalo City Metropolitan Municipality
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