

DATE 30 MAY 2023

Office of the Deputy City Manager Treasury
251 Anton Lembede Street
Durban
4001

ATT: DR SANDILE MNGUNI

CC: MAYOR MXOLISI KAUNDA
Vuyiswa.hadebe@durban.gov.za

CC: MUSA MBHELE

CC: Dept of Cooperative Governance and
Traditional Affairs
HODPA@kzncogta.gov.za

RE: MEMORANDUM TO THE OBJECTION OF THE PROSED
TARIFF INCREASES FOR THE ADJUSTMENT BUDGET OF
2023/2024

AND

LETTER DATED 29 MAY 2023 TO WESTVILLE RATEPAYERS'
ASSOCIATION AUTHORED BY DR SANDILE MNGUNI

For ease of reference purposes, we will refer to the headings used in Dr Mnguni's letter.

1. INTRODUCTION

We note with concern that the response to the Memorandum was only addressed and sent to the Westville Ratepayers Association and not the various other Ratepayers Associations who were signatories to the Memorandum.

The Bluff Ratepayers and Residents Association (BRRA) was one of the signatories to



the voice of the people

the memorandum and therefore exercise our rights to respond to the letter.

2. PUBLIC PARTICIPATION: BUDGET HEARINGS

- 2.1. With respect, we disagree that the budget was made available to the public timeously and cite the following reasons for our contention:
 - 2.1.1. This budget is highly complex. The average citizen would not have had the means to digest and comprehend this budget in a mere 6 weeks.
 - 2.1.2. In this regard, we would like to understand the timeframe for Ethekwini Municipality to prepare this complex budget with all the knowledge and resources at its disposal and then ask the question of how Ethekwini Municipality could possibly expect residents to process all the information in 6 weeks.
 - 2.1.3. Our conclusion is that the aforementioned is not a reflection of “effective public participation” as envisaged in the South African Constitution.
 - 2.1.4. Whilst we note the various dates in Annexure A, we disagree that these meetings afforded the public an opportunity to participate.
 - 2.1.5. In this regard we want to point out that these meetings were none other than “presentations” delivered by Ethekwini Municipality. Members of the public in attendance were afforded an opportunity to hold the mic but, in fact, no comments tabled during any of these meetings were considered.
 - 2.1.6. This conclusion is premised on the basis that there were no subsequent adjustments made to the IDP or budget after the public meetings.
 - 2.1.7. Respectfully, we cannot believe that none of the comments made by any members of the public, **out of 19 meetings**, were so insubstantial as not to give cause to Ethekwini Municipality to pause and consider adjustments to the budget.
 - 2.1.8. In addition to the discourse expressed at each and every IDP meeting, various protests and gatherings were held by the residents and Ratepayers Organisations of Ethekwini Municipality during which memorandums were handed over to reject the proposed increases, all of these events were well advertised by the media. Yet none of these events triggered any amendment to the proposed budget.
 - 2.1.9. We respectfully submit therefore that these IDP meetings were in fact a mere rubber-stamping exercise and that it was never Ethekwini Municipality’s intention to consider any comments. The true state of affairs was that Ethekwini Municipality had already adopted the budget on the date upon which it was published and that the council meeting scheduled for 31 May 2023 is merely a formality.
 - 2.1.10. We further submit that this conduct is a contravention of the community’s



Constitutional Right to **engage and contribute** to decisions made by the Municipality.

2.1.10.1. Refer:

2.1.10.1.1. Page 2 of the guide issued by Salga 'Effective Public Participation 2013'

2.1.10.1.2. Section 152 of The Constitution

2.1.10.1.3. Section 19 of the Municipal Structures Act

2.1.10.1.4. Section 2 of the Systems Act

2.1.10.1.5. Section 5 of the Systems Act

2.1.10.2. In Heather's "A Critical Examination of the Democratic Transition in South Africa: The Question of Public Participation" 2002 40 Commonwealth and Comparative Politics 43 45, the writer states "*consultation demands an engagement with the public in order to ascertain what the public's wishes and demands are so that policy can reflect those views*"

2.1.11. Furthermore, our Constitution is based on the premise of fairness and transparency. Expecting the public to digest important information in this fashion is wholly unfair and not in the spirit of our Constitution. Many residents have no financial background or education and would not have understood the complexities raised in these documents.

2.1.12. We submit further that the Constitution obliges **equality**. This means that **all members** of the community must be treated equally. In reference to the comments "*meaningful engagement and that this was indeed a two-way process*" we reject this contention. There was clearly no meaningful engagement with **all members** of Ethekewini Municipality. We respectfully submit that "meaningful" in this context is a subjective assessment of all the parties engaged in the discussion. One party (Ethekewini Municipality) cannot assume that the other party finds the engagement meaningful when there is a clear indication that the engagement was in fact not meaningful. Had this been the true state of affairs there would not be such a vast outcry by the masses. We, therefore, pose the question, with whom did the Ethekewini Municipality engage in a meaningful way? It certainly was not the ratepayers.

2.1.13. Reference was made to "sufficient notice of hearings" was given. We reject these averments for the reasons set out above but also for the following reasons:

2.1.13.1. A hearing is a meeting of two or more parties with a separate adjudicator to hear both sides of an argument and then issue a decision based on the evidence led. The Merriam-Webster dictionary defines a "hearing" as "*an*



opportunity to be heard, to present one's side of a case". This definition supports the contention that there should be a robust debate in line with the Constitutional directives of public participation. We respectfully submit that a 'hearing' was not held but rather that presentations were delivered to the community with the community having no real input to the decision being made by Ethekewini Municipality.

- 2.1.13.2. We would like to pose a question in response to the comment "we are open and willing to hear comments". What is the purpose of having the IDP meetings and listening to comments if no consideration was afforded to any of the comments? Is it protocol to waste the community's valuable time?
- 2.1.13.3. We reject the contention that one-on-one meetings with the various Ratepayers Associations. We respectfully remind Ethekewini Municipality of Section 1 of the Municipal Systems Act, Section 2 of the Municipal Systems Act, Section 5 of the Municipal Systems Act, Section 32 of the Constitution, Section 152 and Section 160(7) of the Constitution. The preamble in the Constitution as well as various sections in the Constitution explains the consult of public participation and furthermore promotes the concept of "**government through the will of the people**" not through the will of the local municipality. We therefore contend that if Ethekewini Municipality needs to meet with every ratepayer association in order to ensure "government of the will of the people" then that is what it needs to do as obliged in the Constitution. We also draw your attention to the famous case *Doctors for Life International v Speaker of the National Assembly* which supports the contentions made herein.

In conclusion, the process is flawed and unlawful. We reject any contention that there was effective public participation. Ethekewini Municipality must reconsider the budget in line with the needs of **all community members** of Ethekewini Municipality and not a select few.

3. BUDGET CONCERNS

We deal with the comments made under this heading with specific reference to what has been stated above. In addition, we note the following:

- 3.1. Ethekewini Municipality notes the prejudice that will be suffered but does not provide sufficient reasoning as to how the prejudice has been considered and addressed.
- 3.2. We note that the council must decide in terms of Section 23 of the MFMA however remind the Ethekewini Municipality of Section 23(1) of the MFMA which states that



the municipal council **must** consider any views of the local community. This condition is peremptory and not discretionary.

- 3.3. We reject Ethekewini Municipality's contention that the budget must be approved on 31 May 2023 and refer the Ethekewini Municipality to Section 25 of the MFMA which allows for a revision process until the budget is acceptable to all.
- 3.4. We also refer Ethekewini Municipality to the provision of Section 55 of the MFMA which provides that the mayor may engage with the provincial legislature if the budget cannot be approved.
- 3.5. We further contend that the content of the budget is not prescribed and therefore Ethekewini Municipality may still approve a zero tariff increase budget in responding to the concerns of the community. We submit that adoption of a zero tariff increase budget will assure the community that the Municipality does in fact have its best interest at heart.

4. BUDGET INCREASE

We reject the reasons raised under this heading for the following reasons:

- 4.1. If the infrastructure was adequately maintained in the years past, there would not be any need for such large increases to affect repairs at present.
- 4.2. Why was there no public insurance in place to accommodate disaster-related repairs?
- 4.3. How can the ratepayers be held accountable for addressing service delivery backlogs? Ethekewini Municipality is saying to its people "we are failing in our duties, and you have to pay for our failure!". This is unacceptable.
- 4.4. Cost of bulk purchases. Why do the ratepayers have to supplement those that are not paying for electricity or water usage? Policy dictates that consumers pay for their usage, yet billions are lost due to illegal connections. This is a government problem to resolve, ratepayers should not be penalized for paying for their services.
- 4.5. Ethekewini Municipality must reconsider the projects in line with what is affordable. If there is no money for a specific project and the project is not an emergency project, it needs to be tabled until there are funds in the kitty.
- 4.6. Ratepayers cannot be expected to support defaulting consumers. Those that are not paying for services must be disconnected. This suggestion is specifically directed at SOCs and provincial institutions that place great strain on resources without paying for the services it receives.
- 4.7. Employee-related costs. With many ratepayers struggling financially and having to



forego salary increases to meet monthly expenses, it is submitted that Ethekewini Municipal staff must be subjected to the same struggle. If there is no money, then there must be no increases.

5. TARIFF INCREASES

- 5.1. Ethekewini Municipality again responds insensitively to the environment that its residents find themselves in. It speaks about the difficult fiscal environment yet seems incapable of grasping that its residents are experiencing a worse environment.
- 5.2. The reasoning laid out above is reiterated under this heading save for the following addition:
 - 5.2.1. Social packages to indigents. Has the municipality considered projects aimed at the rehabilitation of abled bodies? The city is littered with filth, overgrown verges, and general maintenance issues all of which can be addressed by community service projects which aim at rehabilitating individuals rather than promoting a free ride.
 - 5.2.2. Safeguarding assets. Crime has reached epic proportions in the city. We submit, however, that the crime issue is not the obligation of the ratepayers to solve. Had adequate prevention measures been in place, the problem would not have escalated to the extent it has. The government must find a way to deal with this problem without imposing an obligation on the ratepayers.
 - 5.2.3. We submit that the implementation of these unrealistic tariff hikes will not create job opportunities, however, will exacerbate the current social distress of many residents resulting in an increased rate of unemployment.
 - 5.2.4. In reference to “*external pressures on service*”, we hereby request details of the external pressures. We are not aware of any contracts with external customers that should be causing pressure on service delivery. If Ethekewini Municipality is in fact engaged with contracts external in nature, we would like to understand how Ethekewini Municipality seeks to balance the **local** customers with that of the external customers.
 - 5.2.5. Rollout of infrastructure and provision of basic services.
 - 5.2.5.1. Again, we remind Ethekewini Municipality that we are paying customers and our service delivery cannot be compromised for any reason.
 - 5.2.5.2. The provision of basic services is a government responsibility in terms of the promises made during election time. This cost should not be passed on to

ratepayers.

5.2.5.3. We remind Ethekwini Municipality that not only do we pay rates that are supposed to cover water, electricity, sanitation and solid waste removal which has been aptly identified in the letter but we also pay income tax and vat which is supposed to be used in a reasonable manner to accommodate the social needs of the disadvantaged.

5.2.5.4. Section 74(2) aptly describes that the tariffs must be cost-reflective. This includes the cost of direct usage in relation to water, sanitation, electricity and solid waste. Our rates are not supposed to be allocated to excessive salary packages and/or whims of the officials in charge of public funds.

6. WATER TARIFF INCREASES

We reject the reasons laid out under this heading for the reasons spelt out above but in addition the following:

1. From the DWS website, the government was notified in 1998 already of the possibility of a water crisis, why is this only being addressed now resulting in excessive tariff hikes when people are suffering financially?
2. The Umkhomazi project will serve to feed parts of Ethekwini Municipality as well as PMB, what percentage of the cost has been allocated to the Msunduzi Municipality or is Ethekwini Municipality expected to carry the costs?
3. Why are these funds not secured from National and once the project is completed recovered from the beneficiaries of this project?
4. Who are the direct beneficiaries of this project? Please provide specific information relating to the areas served by this project.
5. When will this project be completed, exact time frames?
6. What additional increases can be expected for “unforeseen” project-related costs from today until the expected completion date? What assurances do ratepayers have that we will not have to foot the bill for “unforeseen” costs?
7. Where are the plans for this project?
8. Was the community consulted in terms of the public participation process?
9. Damage to infrastructure. We reiterate, what insurance is in place to address damaged infrastructure? Further, we submit that it is not the ratepayer’s responsibility to protect the infrastructure. This is a problem that Ethekwini Municipality must solve on its own without passing the financial burden to its paying customers.

7. QUALITY OF SERVICE DELIVERY

- 7.1. Municipality has a duty to ensure that it is capable of performing its obligations in terms of the service level agreement to its consumer (the ratepayers).
- 7.2. We have expressed our dissatisfaction with the service levels experienced through various channels.
- 7.3. It is disconcerting to find that Ethekwini Municipality still fails to acknowledge that this is a problem that deserves priority treatment.
- 7.4. Riots, gatherings, and protests are all indicative of the problem yet inconceivably Ethekwini Municipality maintains there is no problem, claiming there has been an improvement in the quality of life.
- 7.5. We invite Ethekwini Municipality to provide the details of those areas of residents who claim that their quality of life has improved.
- 7.6. Again, we remind Ethekwini Municipality that the Constitution provides for equal treatment. It is, therefore, our constitutional right to receive the same or better treatment that we are accustomed to whilst the Ethekwini Municipality fulfils its promise of improving the quality of life of its voting constituents to the same standards already applicable. Perhaps those with their hands in the kitty have had a significant improvement in their quality of life but as for the rest of Ethekwini Municipality, the same is not true.
- 7.7. In this regard, we reject the contention that quality of life has improved. The facts are contrary to what is being said, the quality of life has deteriorated and therefore we submit that our constitutional rights are being violated.
- 7.8. OGH, we reject that this is a sincere justification. We have viewed the checklist used in any OGH operation and submit that this is an exercise that seeks to address surface complaints. It is designed to pacify the masses (manipulatively so) to achieve short term gratification without long term benefit.
- 7.9. OSS is designed to deal with the plight of those with HIV and Aids and not to address service delivery therefore even mentioning this in this context is disingenuous.
- 7.10. Contact centres are mentioned; however, no timeframes are discussed as to when the contact centres will be fully in operation. What do residents do in the meantime? Again, there appears to be no haste in addressing service delivery issues despite proposals for tariff hikes in excess of inflation.
- 7.11. Stock shortages cause outages and losses. This problem is nothing other than mismanagement. The officials charged with the management of this department

should be held accountable. These outages exacerbate losses which now contribute to the request for increased tariffs. We submit that Ethekewini Municipality must redirect the contributions to the relevant officials who are contributing to these losses.

8. UNAUTHORISED, IRREGULAR, FRITLESS AND WASTEFULL (UIFW) EXPENDITURE

- 8.1. It is noted, with appreciation, that Ethekewini Municipality has acknowledged this problem. However, Ethekewini Municipality fails to appreciate the severity or the impact that this particular problem. Ratepayers have explained that this problem in itself is the reason for the discourse relating to the proposed tariff hikes.
- 8.2. A reasonable person in the position of Ethekewini Municipality should have realized this as a priority problem to resolve to appease the ratepayers.
- 8.3. The justifications provided in the letter and the measures being taken do not reflect the urgency of this issue.
- 8.4. We, therefore, reject these measures as insufficient justification and request Ethekewini Municipality to prioritize this issue before increasing the tariffs.

9. CONSEQUENT MANAGEMENT

- 9.1. The content raised in item 8 is repeated under this heading and in addition we want to point out to Ethekewini Municipality that we will not accept any further promises that consequent management is being addressed.
- 9.2. No timeframes have been mentioned in the letter claiming to address this problem. The same responses were provided in the past financial year, yet many transgressions were made public just in the last few months without substantial redress.
- 9.3. It is evident that officials are of the belief that there is no consequence to their action hence the blatant disregard for the protection of public funds.
- 9.4. Consequent management should be a sufficient deterrent for any official thinking of misusing public funds.
- 9.5. Without severe and harsh punishment, we will continue experiencing misuse and maladministration of public funds.
- 9.6. Ratepayers will no longer provide the funds for officials to live lavish lifestyles.
- 9.7. Accordingly, we hereby request an immediate lifestyle audit of all middle and upper officials, by an independent assessor, the results of which must be made public,

before any tariff increases are considered.

- 9.8. The officials named in this assessment must be held to account for a return of the funds misappropriated.

10. WATER LOSS

- 10.1. Ethekwini Municipality alleges that the water loss situation is being addressed, where is the plan?
- 10.2. If sufficient measures are in place to curb water loss, why have these measures not been implemented with haste?
- 10.3. It is a fact that over 56% of water is lost yet this seems to be a fact of very little importance as it is mentioned in a very casual manner.
- 10.4. Why must ratepayers' foot the bill with excessive tariff hikes when Ethekwini Municipality is not expediting the recovery of the water loss?
- 10.5. The question then begs, how serious is the concern that we will have a complete interruption of water supply if the water loss is not addressed with urgency?

11. GROWING DEBT

- 11.1. Ethekwini Municipality needs to provide sound justification why the growing debt should be a concern or a burden for those that are paying.
- 11.2. Why must the paying consumer be penalized for the non-paying consumer?
- 11.3. Has Ethekwini Municipality considered encouraging incentivized settlement as a form of collecting outstanding funds? This is a well-known debt-collecting concept to generate cash flow for a struggling business.
- 11.4. The most pressing question, however, is what steps Ethekwini Municipality has taken against SOC's and the provincial dept for their outstanding debt. How much is outstanding by the likes of Transnet, Sanral, and provincial hospitals? These organisations place a larger strain on the resources than the individual defaulting consumer.

12. GROWING INFORMAL SETTLEMENTS

- 12.1. We want to remind Ethekwini Municipality that the provision of housing to those in need is not the responsibility of ratepayers.
- 12.2. Housing is a promise made by the government of the day to its voter constituents. This burden should therefore not be passed on to the ratepayers.

12.3. We also want to invite EtheKwini Municipality to be truthful about why housing projects are not being completed. Every resident is aware of grants being withdrawn due to projects not being completed.

12.4. We therefore again reject the arguments proffered relating to funding.

13. THE ELDERLY

13.1. We strongly reject the arguments made under this heading and submit that EtheKwini Municipality has failed to do the calculations. We have contacted various members of our community (today) to gather the statistics from the pensioners directly.

13.2. Within minutes we had over 18 residents respond. See table 1 below.

13.2.1. Considering the current government grant is R1860 per month which generates an annual income of R22320.00 you can clearly see many of the residents below have almost no disposable income.

Note the table below only reflects the essential items and does not make provision for any luxury items.

Table 1

	A	B	C	D	E	F	G	H	I	J
		Property Value	Rateable Value	Monthly Rates	Water & Lights	Food	Groceries	Other (INSURANCE & MEDICAL)	TOTAL MONTHLY EXPENSES	
1										
2	1	R1,010,000.00	R890,000.00	R437.00	R1,552.00	R2,000.00	R950.00	R5,417.00	R10,356.00	
3	2	R1,560,000.00		R1,098.00	R3,500.00	R3,000.00	R2,700.00	R11,457.00	R21,755.00	
4	3	R2,650,000.00		R2,495.00	R3,500.00	R2,000.00	R1,000.00	R16,000.00	R24,995.00	
5	4	R1,500,000.00		R800.00	R3,000.00	R2,500.00	R1,500.00	R3,500.00	R11,300.00	
6	5	R980,000.00		R800.00	R3,500.00	R5,500.00	R2,000.00	R11,000.00	R22,800.00	
7	6	R1,800,000.00		R1,670.00	R3,530.00	R5,000.00	R5,000.00	R8,600.00	R23,800.00	
8	7	R1,260,000.00		R1,125.00	R3,000.00	R1,000.00	R1,500.00	R10,000.00	R16,625.00	
9	8			R1,135.00	R2,850.00	R1,000.00	R2,500.00	R2,000.00	R9,485.00	
10	9	R1,400,000.00			R3,000.00	R3,000.00	R1,000.00	R10,500.00	R17,500.00	
11	10			R1,065.00	R1,031.00	R2,000.00	R3,000.00	R12,000.00	R19,096.00	
12	11			R2,239.00	R2,365.00	R4,000.00	R4,000.00	R11,038.00	R23,642.00	
13	12	R1,200,000.00		R985.00	R5,500.00	R4,000.00	R1,000.00	R12,000.00	R23,485.00	
14	13	R2,100,000.00		R1,512.28	R4,741.00	R1,200.00		R2,500.00	R9,953.28	
15	14	R1,190,000.00		R1,180.00	R4,500.00	R3,500.00	R2,200.00	R8,000.00	R19,380.00	
16	15	R2,040,000.00		R1,941.67	R930.73	R2,338.93	R3,496.52	R1,566.32	R10,274.17	
17	16				R13,000.00		R8,000.00	R15,450.00	R36,450.00	
18	17	R1,560,000.00		R1,539.00	R3,500.00	R5,700.00		R10,757.00	R21,496.00	
19	18	R2,650,000.00		R2,495.64	R3,500.00	R2,000.00	R1,000.00	R16,000.00	R24,995.64	
20										
21										
22										

14. CONCLUSION

We note EtheKwini Municipality's zero-tolerance policy, however we submit that verbalizing a



statement such as this does not translate into action. We have heard the same speech too many times now.

Respectfully, the current situation is dire. Ethekwini Municipality must take note and must consider the rejections by all ratepayers. Failure to do so will leave the ratepayers with no option but to approach the court for relief.

We place on record that we have been afforded **one day** to compile this response which we submit as insufficient notice.

We reiterate that should the Council proceed with adopting the budget in its current form during the council meeting scheduled for 31 May 2023 we reserve our right to approach the High court for relief.

We place on record that as this is a matter of public interest and as we have given Ethekwini Municipality ample notice to engage meaningfully with Ratepayers Associations representing their community, we will ask the court to consider an adverse costs order on an attorney client scale.

Yours sincerely

Tongaat Civic Association
Chairman
Don Perumall

