



# Mosdell, Pama & Cox

Attorneys • Notaries • Conveyancers

6 High Street Plettenberg Bay | P O Box 2180 Plettenberg Bay 6600 | Docex 2 Knysna  
www.mpc.law.za | mpcplett@mpc.law.za | **Tel:** (044) 533 1101 | **Fax:** (044) 533 1115

Your ref: Mr Peter Gaylard  
Our ref: PP3924

19 February 2020

## EMAIL TRANSMISSION

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**TO:** **The Chairman of the Plettenberg Bay Ratepayers Association**

**EMAIL ADDRESS:** [info@plettratepayers.co.za](mailto:info@plettratepayers.co.za) and [mwmpgg@mweb.co.za](mailto:mwmpgg@mweb.co.za)

**NUMBER OF PAGES:** 5 (Including this one)

Dear Sir

**RE: PROVINCIAL INVESTIGATION REPORT DATED 17<sup>TH</sup> MARCH 2019 RELATING TO SERIOUS ALLEGATIONS AT BITOU MUNICIPALITY PURSUANT TO SECTION 7(4) (g) OF THE WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES ACT 2014 PREPARED AND ISSUED BY PETER ALLWRIGHT AND JOSIAS STRYDOM DATED 17<sup>TH</sup> MARCH 2019.**

(Hereinafter referred to as "the report").

1. We represent the Bitou Municipality.
2. We refer to the writer's telephone conversation with your Mr Peter Gaylard on Friday 14<sup>th</sup> February 2020.

**Mosdell Pama and Cox Plettenberg Bay Inc** (Registration Number: 2010/016500/21)

**Directors:** Perino Pama, BA LLB LLM • Andrew Cox, BA LLB • Douglas Henney, B.Proc (Non-Executive Director)

**Associates:** Celeste van Wyk LLB • Julie Maynard B Com LLB (cum laude) H.Dip (Tax) • Werner Smif LLB

**Consultants:** Clifford Mosdell • Yogesh Pama, B Juris • Cindy Allan, LLB • Ed Harris, BA LLB

Louis Nel B Juris P.D.L • Erasmus "Rassie" Theron B Juris

Roy Monk B Juris, LLB, PG Dip. Industrial Relations, PG Dip (Maritime law)

**Candidate Attorneys:** • Sonja Oelofse LLB • Migael Loubser LLB

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3. We have also been instructed to respond to your letter to the Municipal Manager of the Bitou Municipality dated 16<sup>th</sup> February 2020, in which you ask that the Process Implementation Plan be published on our client's website.
4. The report was delivered to the Bitou Municipality by the Minister of Local Government, Environmental Affairs and Development Planning MEC of the Western Cape on 6<sup>th</sup> December 2019.
5. It was dated 17<sup>th</sup> March 2019 and relates to serious allegations at Bitou Municipality pursuant to section 7(4) (g) of the Western Cape Monitoring and Support of Municipalities Act 2014. It was prepared and issued by Peter Allwright and Josias Strydom.
6. On the 12<sup>th</sup> December 2019, the Bitou Municipality appointed attorneys being Boqwana Burns and us to act in this matter. We were asked to assess the report and provide recommendations on the way forward, in line with the process set out in legislation. It is paramount that the rule of law be followed in all respects.
7. Our mandate consisted of the following:
  - 7.1 To develop a process plan to respond to the report;
  - 7.2 To attend to the findings and recommendations recorded in the report, in consultation with the office of the Municipal Manager of the Bitou Municipality;
  - 7.3 To develop the report, aligned to/with the process plan, to be tabled to Council in January/ February 2020; and
  - 7.4 To advise the Municipal Manager of the Bitou Municipality of any pending legal matters as a result of the abovementioned report.
8. A "Process Plan" was prepared by us and the Bitou Municipal Council dealt with the forensic report and our Process Plan in an Ordinary Council meeting on 3<sup>rd</sup> February 2020.
9. The Council Resolution reads as follows:

"Resolved:

  1. *That Council takes note of the Section 106 Report, dated 17 March 2019, received from the MEC Local Government, Environmental Affairs and Development Planning.*



2. *That Council accepts and approves the "Process Plan" developed by Mosdell Pama and Cox and Boqwana Burns.*
3. *That the report in question be dealt with in terms of the process plan and bi-monthly progress reports be submitted to the MEC Local Government, Environmental Affairs and Development Planning."*
10. Due to the content of the report, the Bitou Municipality is required to keep the report and our advice on how to deal with each matter confidential until such time as the allegations contained in the report have been tested and confirmed. This is in line with the Municipal Finance Management Act 2003, read with its regulations and labour law.
11. It would be incorrect for the Bitou Municipality to release to the general public the Process Plan dealing with our specific recommendations on the way forward in relation to each individual implicated in the report. One needs to first follow due process and confirm the correctness thereof, as there could be severe ramifications for persons mentioned therein who have not yet been subjected to our recommended standard legal procedures.
12. We note with concern that you have released the forensic report and placed same on your website. We have no doubt that this will have ramifications as all person mentioned therein have the right to fair treatment in accordance with prescribed legal procedures.
13. However, we have instructions to release the attachments to the report prepared by us, setting out the standard legal procedures that should be followed by a Municipality when presented with allegations of this nature.
14. We have therefore attached to this letter the Annexures to the report which included the following:

**Annexures to our report:**

- **Annexure A: Our comment regarding the Prevention and Combating of Corrupt Activities Act (Act 12 of 2004), to which is attached:**
  - **Annexure A1:** The National Head of the DPCI approved guidelines in respect of reporting matters in respect of Section 34 of the Act: attached marked annexure/schedule "**CPI**";



- **Annexure A2:** the circular from National Treasury dated 6 September 2011: attached marked annexure/schedule “CP2”
  - **Annexure B: Our comment regarding the Code of Conduct for Municipal Councillors; Schedule 1 (Code of Conduct for Councillors) of the Municipal Systems Act 32 of 2000, to which is attached:**
    - **Annexure B1:** the printed version of the Code of Conduct for Municipal Councillors; Schedule 1 (Code of Conduct for Councillors) of the Municipal Systems Act 32 of 2000,
  - **Annexure C: Our comment regarding the Code of Conduct for Municipal Officials; Schedule 2 (Code of Conduct for Municipal Staff Members) of the Municipal Systems Act 32 of 2000 (the Systems Act); to which is attached:**
    - **Annexure C1:** the printed version of the Code of Conduct for Municipal Officials; Schedule 2 (Code of Conduct for Municipal Staff Members) of the Municipal Systems Act 32 of 2000 (the Systems Act);
  - **Annexure D: Our comment regarding The Local Government Municipal Finance Act, 2003 and the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings 2014, to which is attached:**
    - **Annexure D1:** the printed version of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings 2014;
    - **Annexure D2:** MMFA Circular No. 68;
    - **Annexure D3:** MMFA Circular No. 76; and
    - **Annexure D4:** Annexure A to MMFA Circular No. 76;
  - **Annexure E: The Bitou Municipality Supply Chain Management Policy;**
  - **Annexure F: Local Government: Disciplinary Regulations for Senior Managers: 2011; and**
  - **Annexure G: Bitou Municipality Financial Disciplinary Board Terms of Reference and Reporting Procedures.**
15. Our instructions are you have permission to place this letter and the annexures thereto on your website and we will request our client to do the same.



16. Bitou Municipality is an organ of state which is bound by various pieces of legislation, including the Constitution.
17. Our client has instructed us to record that they wish to assure the ratepayers that the Municipality takes the allegations contained in the report seriously and will investigate each matter properly. Any person found to have contravened the law and/or policies will be taken to task based on the recommendations provided by our legal team.
18. The Municipal Manager is also willing to meet with the Plettenberg Bay Ratepayers Association to discuss the implementation of the advice given.
19. The Bitou Municipality has a zero-tolerance policy for fraud and corruption, but it must take reasonable steps within the bounds of the laws that control it.
20. We request that the ratepayers remain patient with the Bitou Municipality as it takes the necessary steps to properly assess the issues in compliance with legislation and policy.
21. Kindly acknowledge receipt.

Yours faithfully,

**MOSDELL PAMA AND COX**

**PERINO PAMA**

and

**SHANE DE BEER**

**BOQWANA BURNS**

(Sent electronically so not signed)