



**Bitou Local Municipality  
Bitou Plaaslike Munisipaliteit  
Umasipala WeBitou**

# Agenda

## **SPECIAL MUNICIPAL COUNCIL MEETING**

**Venue: Council Chambers, Municipal Offices,  
Sewell Street, Plettenberg Bay**

**DATE: 22 JANUARY 2014**

**Time: 14H00**

# **BITOU LOCAL MUNICIPALITY**

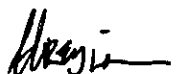
17 January 2014

**The Executive Mayor  
Councillors  
Municipal Manager and Heads of Department**

## **SPECIAL COUNCIL MEETING: WEDNESDAY, 22 JANUARY 2014**

**NOTICE** is hereby given that a Special Municipal Council Meeting will be held in the Council Chamber, Municipal Offices, Plettenberg Bay on **WEDNESDAY, 22 JANUARY 2014 AT 14H00** to discuss the business set forth in the Agenda.

Yours faithfully



1. **AR Olivier**  
Speaker

### **Constitution of the Council:**

The Speaker, Councillor AR Olivier  
The Executive Mayor, Councillor M Booysen  
The Deputy Executive Mayor, Councillor A B Van Rhyner  
Member of the Mayoral Committee, Councillor N M de Waal  
Member of the Mayoral Committee, Councillor E E Paulse

Councillor S Besana  
Councillor W R Craig  
Councillor S E Gcabayi  
Councillor M M Mbali  
Councillor H Plaatjies  
Councillor N Ndayi  
Councillor L M Seyisi  
Councillor J J N Stuurman

### **IMPORTANT NOTICE**

**PLEASE REFER TO THE SPECIAL MAYORAL COMMITTEE  
AGENDA OF EVEN DATE FOR THE ANNEXURES TO THE  
REPORTS ON THE ITEMS AS LISTED**

# **Bitou Local Municipality**

## **Special Council Agenda: 22 January 2014**

**Time: 14h00**

### **Order of Business**

**1. OPENING**

**2. ATTENDANCE**

The Attendance Registers of members of the Municipal Council, Officials and Public will be circulated for signature.

**3. APPLICATION FOR LEAVE OF ABSENCE**

Application for leave of absence, if necessary, will be considered.

**4. STATEMENTS AND COMMUNICATIONS BY:**

**4.1 The Executive Mayor**

**4.2 The Speaker**

**5. CONSIDERATION OF REPORTS**

Schedule of Items attached

**6. URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

None received

**7. CONSIDERATION OF NOTICES OF MOTION**

None received

**8. CONSIDERATION OF MOTIONS OF QUESTION**

None received

Order of business: Special Council Meeting: 22 January 2014

9. **CONSIDERATION OF MOTIONS OF EXIGENCY**

None received

10. **IN-COMMITTEE MATTERS**

None received

11. **RECORDING OF COUNCILLORS PRESENT**

12. **CLOSURE**

**PORTFOLIO INDEX****5: CONSIDERATION OF REPORTS: (OPEN)****SPECIAL COUNCIL MEETING AGENDA****22 JANUARY 2014****(The dates & page numbers of the MayCo Agendas are listed for ease of reference)****SECTION 1: OFFICE OF THE MUNICIPAL MANAGER**

ITEM NO	SUBJECT	FILE REF	MAYCO AGENDA PAGE NO	COUNCIL AGENDA PAGE NO	DATE OF MEETING
	No Items for consideration				

**SECTION 2: FINANCE**

ITEM NO	SUBJECT	FILE REF	MAYCO AGENDA PAGE NO	COUNCIL AGENDA PAGE NO	DATE OF MEETING
C/2/143/01/14	BITOU MUNICIPALITY: INCURRENCE OF FRUITLESS AND WASTEFULL EXPENDITURE: TAX PENALTIES ALTENATIVE DISPUTE RESOLUTION - SARS	1/4	1 - 8	1 - 2	22-Jan-14
C/2/144/01/14	REVISED BUDGET TIMETABLE FOR 2013/2014	5/6/1/2/5	9 - 19	3 - 4	22-Jan-14

**SECTION 3: CORPORATE SERVICES**

ITEM NO	SUBJECT	FILE REF	MAYCO AGENDA PAGE NO	COUNCIL AGENDA PAGE NO	DATE OF MEETING
	No items for consideration				

**SECTION 4: COMMUNITY SERVICES**

ITEM NO	SUBJECT	FILE REF	MAYCO AGENDA PAGE NO	COUNCIL AGENDA PAGE NO	DATE OF MEETING
	No Items for consideration				

**SECTION 5: MUNICIPAL SERVICES & INFRASTRUCTURE DEVELOPMENT**

ITEM NO	SUBJECT	FILE REF	MAYCO AGENDA PAGE NO	COUNCIL AGENDA PAGE NO	DATE OF MEETING
	No Items for consideration				

**SECTION 6: STRATEGIC SERVICES**

ITEM NO	SUBJECT	FILE REF	MAYCO AGENDA PAGE NO	COUNCIL AGENDA PAGE NO	DATE OF MEETING
C/6/215/01/14	TABLING OF THE 2013/2014 MFMA SECTION 72 (MID-YEAR BUDGET AND PERFORMANCE ASSESSMENT) REPORT	5/1/1/4	20 - 21	5 - 6	22-Jan-14
C/6/216/01/14	TABLING OF DRAFT 2012/2013 ANNUAL REPORT OF BITOU LOCAL MUNICIPALITY	5/11/1/1 & 9/1/1	22 - 24	7 - 9	22-Jan-14
C/6/217/01/14	PROPOSED PURCHASE OF A PORTION OF ALGUADA REEF DRIVE BY THE OWNER OF ERF 1523, PLETTENBERG BAY	5/11/1/1 & 9/1/1	25 - 53	10 - 12	22-Jan-14

## Section 2

**Department: Finance**

Section 2: Finance

ITEM C/2/143/01/14

**Council Meeting**

**BITOU MUNICIPALITY: INCURRENCE OF FRUITLESS AND WASTEFULL EXPENDITURE: TAX PENALTIES ALTENATIVE DISPUTE RESOLUTION - SARS**

**Department:** Financial Services                      **Demarcation:** All Wards

**File Ref:** 1/4

**Attachments:**

1. Annexure: "A" – Report by Facilitator in Alternative Dispute Resolution - SARS
2. Annexure: "B" – Settlement Agreement between Commissioner for the South African Revenue Services and Bitou Municipality

**Report from:** Manager: Expenditure Management

**Date:** 10 January 2014

**Purpose**

To inform Municipal Council of the incurrence of fruitless and wasteful expenditure and inform on the settlement agreement of R330 000.00 for the Additional Tax charges that were levied by SARS to the amount of R1 320 725.19.

**Background**

During the VAT audit that was conducted by SARS in November 2012 on the VAT claimed of Bitou Municipality, SARS had discovered that the municipality had duplicated balances on some of its VAT claims. The tax periods which were affected were March 2010, June 2010, December 2010, January 2011, June 2011 as well as from August to November 2011.

Report Number C/2/112/06/13 was tabled to the Municipal Council for that effect. The Finance Department, in an effort to have the Additional Tax to the amount of R1 320 725.19 written off, initiated the Alternative Dispute Resolution with SARS. The Alternative Dispute Resolution meeting was scheduled on 29 July 2013 as per "Annexure A" and was resolved that, the Bitou Municipality should settle a once off payment of R330 000. A formal settlement agreement was signed on 14 November 2013 by the Municipal Manager of Bitou Municipality and Commissioner of SARS where the amount of R330 000.00 was subsequently paid on 28 November 2013.

## Section 2: Finance

It needs to be emphasized that the incurrence of the fruitless and wasteful expenditure could not have been avoided in the current financial year as the origin of the occurrence dates back two financial years and was therefore not under the control of current management or staff.

The matter has been referred to the Council's Attorneys for full litigation process against Major General Trading in an attempt to recover all costs relating to the contract between the company and Bitou Municipality in execution of council resolution in this regard.

### **Legal prescripts**

MFMA Section 32  
Municipal Finance Management Act Circular 68  
Tax administration Act, 2012

### **Recommended by the Municipal Manager**

1. That the Municipal Council notes the incurrence of the fruitless and wasteful expenditure in the amount of R330 000.00 in respect of penalties imposed by means of additional tax in terms of the Tax Administration Act.
2. That the payment of the R330 000 in settlement of the additional tax imposed as a penalty in the amount of R 1 320 725.19 be noted.
3. That the matter be reported to the MEC for Local Government as well as the Auditor-General as required in terms of Section 32(4) of the MFMA.
4. That the amount be recovered from Major General Trading being the council tax consultants that submission the incorrect/unsubstantiated claims that caused the penalty to be raised.



Section 2: Finance

ITEM C/2/144/01/13

Council Meeting

REVISED BUDGET TIMETABLE FOR 2013/ 2014

**Department:** Finance **Demarcation:** All Wards  
**File Ref:** 5/6/1/2/5  
**Attachments:**  
1. Annexure A: Approved Budget/IDP time table  
2. Annexure B: Amended Budget/IDP time table  
**Report from:** Chief Financial Officer  
**Date:** 13 January 2014

**Purpose of the report**

This serves to obtain the Municipal Council's approval that the budget timetable as submitted and approved on 30 August 2013 be amended.

**Background/Discussion**

A budget timetable was approved by the Municipal Council on 30 August 2013. The revised budget was supposed to be tabled in council by 24 January 2014 (see attached Annexure A).

The approved budget/IDP time table had to be amended for the following reasons;

- Extension of the due date for submission of adjustment budget information
- The holiday and leave of personnel that affected the program
- The attendance of the MMCL training by relevant personnel
- The importance of dealing comprehensively with mid-year report
- The time needed to complete the monthly report, second quarter report, half yearly report as well as the adjustment budget.

In terms of the legislation the adjustment budget is supposed to be tabled by 28 February 2014. Council is advised to consider earlier tabling of adjustment budget as per approved and amended time table as a result of the following;

- The upcoming general elections
- Making sufficient time to fast track capital projects
- Allow for more consultation with all relevant stakeholders.
- The attendance of the MMCL training by relevant personnel

## Section 2: Finance

Attached as annexure B is the revised dates for the budget timetable.

### **Financial Implications:**

None

### **Applicable Legislation / Council Policy:**

- Municipal Systems Act
- MFMA and Municipal Budget regulations

### **Comments: Manager Legal Services**

The recommendation by the Municipal Manager is supported.

### **Comments: Head Corporate Services**

The recommendation by the Municipal Manager is supported.

### **Comments: Head Municipal Services and Infrastructure Development**

The recommendation by the Municipal Manager is supported.

### **Comments: Head Strategic Services**

The recommendation by the Municipal Manager is supported.

### **Conclusion**

That after considering the contents of the report in respect of budget timetable, the following is recommended to the council for consideration and approval

### **Recommended by the Municipal Manager**

That in respect of the revised budget timetable for 2013/14 discussed by the Municipal Council at the Council meeting held on 24 January 2014:

- a) The Municipal Council resolves to adopt and approve the budget timetable as revised.
- b) The adjustment budget for the 2013/14 financial year be tabled in Council on the 10<sup>th</sup> of February 2014.

## Section 6

**Department: Strategic Services**

ITEM C/6/215/01/14

**Council Meeting**

**TABLING OF THE 2013/2014 MFMA SECTION 72 (MID-YEAR BUDGET AND PERFORMANCE ASSESSMENT) REPORT**

**Department:** Strategic Services                      **Demarcation:** All Wards

**File Ref:** 5/1/1/4

**Attachments:** Annexure "A" (2013/ 2014 MFMA Section 72 (Mid-year budget and performance assessment) Report (to be distributed under separate cover)

**Report from:** Manager: PMS, SDBIP & Compliance

**Date:** 17 January 2014

**Purpose of the report**

The purpose of the report is to assess the Bitou Municipality's performance in the first two quarters (July – December) of the financial year, 2013/ 2014).

**Background**

Section 72 (1) (a) and 52 (d) of the Local Government: Municipal Finance Management Act, 2003, Act 56 of 2003 (MFMA) determines that the Accounting Officer must assess the performance of the municipality during the first half of the financial year and report thereon to the Mayor by 25 January of each year. The mid-year budget and performance assessment report must also be submitted to the National Treasury and provincial treasury, in terms of Section 72 (1) (b) of the MFMA.

**Discussion**

The mid-year budget and performance assessment report consists of two elements, namely the financial and non-financial performance of the municipality. The performance assessment is done on the basis of a detailed plan, the service delivery budget implementation plan (SDBIP) approved by the Mayor in terms of Section 53 (1) (c) (ii) of the MFMA.

Section 72 states that –

- (1) *"The accounting officer of a municipality must by 25 January of each year –*
- (a) *assess the performance of the municipality during the first half of the financial year, taking into account –*
    - (i) *the monthly statements referred to in section 71 for the first half of the financial year;*
    - (ii) *the municipality's service delivery performance during the first half of the year, and the service delivery targets and performance indicators set in the service delivery and budget implementation plan;*

## Section 6: Strategic Services

- (iii) the past year's annual report, and progress on resolving problems identified in the annual report; and*
- (b) Submit a report on such assessment to –*
  - (i) the mayor of the municipality;*
  - (ii) the National Treasury; and*
  - (iii) the relevant provincial treasury.*
- (2) The statement referred to in section 71 (1) for the sixth month of a financial year may be incorporated into the report referred to in subsection (1)(b) of this section.*
- (3) The accounting officer must, as part of the review –*
  - (a) Make recommendations as to whether an adjustments budget is necessary; and*
  - (b) Recommend revised projections for revenue and expenditure to the extent that this may be necessary.”*

### **Financial Implications**

The recommendations of the mid-year budget and performance assessment report will have financial implications, to be considered in the adjustments budget, IDP review document and revised SDBIP

### **Recommendation by the Municipal Manager**

1. That the Executive Mayor considers the 2013/ 2014 MFMA Section 72 (Mid-year budget and performance assessment) report.
2. That the report be tabled in Council for information.
3. That the report be submitted to National Treasury and Provincial Treasury.
4. That the report be placed on the municipal website within 5 days as contemplated by Section 75 (2) of the MFMA.

ITEM C/6/216/01/14

**Council Meeting**

**TABLING OF THE DRAFT OF THE 2012/2013 ANNUAL REPORT**

<b><u>Department:</u></b>	<b>Strategic Services</b>	<b><u>Demarcation:</u></b>	<b>All Wards</b>
<b><u>File Ref:</u></b>	<b>5/11/1/1 &amp; 9/1/1</b>		
<b><u>Attachments:</u></b>	<b>Annexure "A" – 2012/ 2013 Draft Annual Report (to be distributed under separate cover)</b>		
<b><u>Report from:</u></b>	<b>Manager: PMS, SDBIP &amp; Compliance</b>		
<b><u>Date:</u></b>	<b>22 January 2014</b>		

**Purpose of the report**

The Council must consider the Annual Report for the financial year 2012/ 2013, publish the Annual Report for comment, have it evaluated by an Oversight Committee, publish the report in keeping with the statutory requirements and submit it to the relevant provincial and national departments and other organs of state.

**Background/ Discussion**

The 2012/2013 Annual Report reflects on the performance of the Bitou Municipality for the period 01 July 2012 to 30 June 2013. It is prepared in terms of Section 121 (1) of the Local Government: Municipal Finance Management Act, 2003, Act 56 of 2003 (MFMA), in terms of which the Municipality must prepare an Annual Report for each financial year.

The Annual Report and the Annexure thereto were submitted to the Auditor General as part of the external auditing process and will also be sent to the Bitou Audit/ Performance Audit. Copies will also be sent to the National Treasury and provincial treasury.

The Annual Report contains numerous comments and recommendations that must be considered. The functional and organisational performance of the Municipality is also contained therein.

In terms of Section 127 (5) of the Local Government: Municipal Finance Management Act, 2003, the Accounting Officer must immediately after an Annual Report is tabled:

- (a) *in accordance with Section 21A of the Local Government: Municipal Systems Act, Act 32 of 2000 –*
  - (i) *make public the Annual Report; and*
  - (ii) *invite the local community to submit representations in connection with the Annual Report; and*
- (b) *submit the Annual Report to the Auditor General, the relevant provincial treasury and the provincial department responsible for local government in the province."*

## Section 6: Strategic Services

National Treasury MFMA Circular No. 32, of 15 March 2006 further provides that *“The Oversight Committee should be made up of only non-executive councillors and representatives of the community and can be formed each year to deal with the Annual Report. Municipal officials cannot be members of an Oversight Committee as this would pose a conflict of interest.”*

The Annual Report should be made available at all Municipal Offices and Libraries, published on the official website and by a public notice in the relevant regional and/ or local newspapers.

The Municipal Council must, before 22 March 2014, in accordance to Section 129 of the Local Government: Municipal Finance Management Act, 2003, adopt an Oversight Report containing the Council’s comment on the Annual Report which must include a statement whether the Council –

- (a) Has approved the Annual Report with or without reservations;*
- (b) Has rejected the Annual Report; or*
- (c) Has referred the Annual Report back for revision of those components that can be revised.”*

It is recommended that the Municipal Council establish an Oversight Committee in terms of Sections 33 and 79 of the Local Government: Municipal Structures Act, Act 117 of 1998, read with National Treasury MFMA Circular No. 32. The function of the Oversight Committee is to provide a detailed analysis and review of the Annual Report and to draft an Oversight Report, which must be submitted to the Municipal Council before 22 March 2014 and same being made public after adoption.

### **Financial Implications**

The findings of the audit report will have financial implications, to be considered in the 2014/2015 budget, subsequent budgets and the IDP.

### **Applicable and relevant legislation**

Constitution of the Republic of South Africa, 1996, Act 108 of 1996 (Constitution)  
Local Government: Municipal Finance Management Act, 2003, Act 56 of 2003 (MFMA)  
Local Government: Municipal Systems, 2000, Act 32 of 2000 (Systems Act)  
Local Government: Municipal Structures Act, 1998, Act 117 of 1998 (Structures Act)

### **Comments: Heads of Departments**

Comment to be made as required at the meeting.

### **Recommended by the Municipal Manager**

1. That cognizance be taken of the 2012/ 2013 Draft Annual Report and the timeframes related to the adoption and publication thereof.
2. That the Accounting Officer publishes the 2012/ 2013 Draft Annual Report for public comment and recommendations.

## Section 6: Strategic Services

3. That the Municipal Council appoint a three non-executive Councillors, and if required, representatives of the community, to serve on the ad-hoc Oversight Committee to provide a detailed analysis and review of the 2012/ 2013 Draft Annual Report, and to submit an Oversight Report to the Council before 22 March 2014.
4. That the Municipal Council appoint, the in terms of Section 79 (2) (c) of the Local Government: Municipal Structures Act, 1998, Act 117 of 1998 a chairperson of the Oversight Committee.
5. That the 2012/2013 Draft Annual Report be submitted to the Office of the Auditor General, Provincial Treasury and the Provincial Department responsible for Local Government.



ITEM C/6/217/01/14

**Council Meeting**

**PROPOSED PURCHASE OF A PORTION OF ALGUADA REEF DRIVE BY THE OWNER OF ERF 1523, PLETTENBERG BAY**

**Department:** Strategic Services                      **Demarcation:** Ward 2

**File Ref:** 18/1523/PB

- Attachments:**
1. Annexure "A" – Resolution M/6/112/12/10
  2. Annexure "B" – Resolution M/6/129/03/11
  3. Annexure "C" – Resolutions C/ 6/114/09/12 and C/6/114/12/12
  4. Annexure "D" – Item C/6/175/06/13 with annexures
  5. Annexure "E" – Resolution M/6/175/06/13

**Report from:** Acting Manager: Legal Services

**Date:** 15 January 2014

**Purpose of the Report**

To resubmit the application for consideration by Council following the resolution by the Mayoral Committee on 27 June 2013 to refer the Item back for an *in-loco* inspection. See attached Item M/6/175/06/13 marked Annexure "A" and resolution M/6/175/06/13 marked Annexure "B"

**Background/Discussion**

Concern was raised over whether the sanctioning of the sale of the land to the Applicant Owner would create a precedent in law which would entitle other landowners in the immediate vicinity and adjacent areas to rely on, in order to purchase similar pieces and/or tracts of land adjoining their respective properties and whether this might cause the beach and other public amenities to become inaccessible to the general public and /or cause a breach of the Constitutional mandate given to the Municipality by the Constitution in particular with regard to the supply of basic municipal services and the control and access to beaches and amusement facilities.

Two separate legal opinions were obtained by both the owner as well the Municipality and both opinions are of the view that sanctioning of the sale by Council will not create a precedent in law. However, what must be noted is that this matter was considered by the Mayoral Committee and Council in the past, to *wit*:

1. See Resolution M/6/112/12/10 of 8 December 2010 (Annexure A), was referred back for an inspection *in-loco*, which took place during December 2010.

2. See Resolution M/6/129/03/11 of 30 March 2011 (Annexure B) on which date The Mayoral Committee resolved to refuse the sale of the land with reasons.
3. See Resolution C/6/114/09/12 of 1 October 2012 on which date the item was withdrawn from the agenda before it could be considered by Council. And Resolution C/6/114/12/12 of 10 January 2013, when the application was re-submitted to Council, and it was resolved that a public participation process be followed to determine the future use of the road reserve. (Annexure C)
4. See Item C/6/175/06/13 (Annexure D) and Resolution M/6/175/06/13 of 27 June 2013 (Annexure E) on which date the item was considered and referred back for an inspection *in-loco* which was held in July 2013. What must be noted further is that the item was again considered by the Mayoral Committee despite its earlier resolution (see paragraph 2 *supra*) to refuse the sale of the land with reasons. If it is the intention of the Mayoral Committee to revisit the item it will have to, with respect, review and rescind its earlier decision. The item was however again withdrawn from the Council agenda before it could be considered by Council.

The following comments have since been received from Community Services Department and Municipal Services and Infrastructure Development:

**Comments: Head: Community Services**

An on site inspection attended by the applicant and members from Bitou Section revealed the following:

The applicant indicated a small section of the “Verge” situated on the Northern side of Alguada Reef which he intends purchasing should Council agree to such purchase.

The “verge” in question is situated in a short Cul de Sack of  $\pm$  30 – 40 metres which houses two entrances/driveways to private properties (including that of the applicant)

The Cul de Sac does not seem to be suited for additional parking due to the following reasons:

- (i) There is insufficient space to introduce a turning circle for vehicles entering or exiting the short Cul-de-Sac.
- (ii) The fact that there are two entrances/ driveways within such a short stretch of road would be problematic should Council wish to incorporate additional parking in said section of road.
- (iii) Parked vehicles would be likely to cause obstructions to the two abovementioned driveways/entrances.
- (iv) The writer was led to believe that the Natural Vegetation on the Southern verge is not permitted to be removed which makes it impossible to construct a turning circle.
- (v) The applicant made no mention of purchasing the land upon which the road surface is situated, merely a small section of the Northern Verge.

Bitou Traffic Section from a traffic perspective has no objection to the purchase of a portion of Alguada Reef Drive verge as per the application.

**Comments Head: Municipal Services and Infrastructure Development**

A site inspection/visit was conducted on this site. During the site visit, the services on the side walk in-front of erf 1523 were indicated to all who were present on site.

It would seem the land is required for parking by beach goers and therefore this should not be sold off, but converted to parking for access to the beach. The persons who have "privatised" the road verges should be forced to remove the impediments to allow for parking.

**Comments: Head: Corporate Services**

The recommendation by the Municipal Manager is supported.

**Comments: Head Strategic Services**

The recommendation by the Municipal Manager is supported

**Recommended by the Municipal Manager**

1. The Mayoral Committee review and rescind Resolution M/6/129/03/11 taken on 30 March 2011.
2. The item serve before Council for consideration.
3. The Applicant and /or its duly appointed representatives is given an opportunity to address Council and make representations giving reasons why Council should agree to the sale of the land to the Applicant land owner.
4. That Council take all previous resolutions pertaining to this matter into consideration before making its decision.