

SA12 of 2017

**REQUEST TO APPOINT AN ADDITIONAL MEMBER TO THE MATJHABENG PLANNING TRIBUNAL (EXECUTIVE MAYOR) (1/1/40)**

**PURPOSE**

The purpose of the item is to request Council to appoint an additional member to the Matjhabeng Municipal Planning Tribunal.

**BACKGROUND**

On the 13 December 2016, the Speaker submitted an item to Council on the appointment of the members for the Municipal Planning Tribunal in terms of the Spatial Planning and Land Use Management Act, No. 16 of 2013. Pursuant to the presentation, the Council resolved as follows:

**“COUNCIL RESOLVED: (30 JUNE 2015)**

1. That Council **APPOINTS** the following members to constitute the Municipal Planning Tribunal:
  - 1.1 Mr T.J.A. Mongake : Chairperson
  - 1.2 Ms N.M. Mbhele : Deputy Chairperson
  - 1.3 Ms M.R. Nkhosi : Member
  - 1.4 Mr M. Radiopane : Member
  - 1.5 Mr K.P. van der Walt : Member
  - 1.6 Ms V.A. Mashiyane : Member
2. That the Office of the Speaker **MUST DEVELOP** Terms of Reference including their seating allowance and present it at the next Council meeting.”

**COUNCIL RESOLVED: (01 SEPTEMBER 2015)**

1. That Council **APPOINTS** the Director for LED, Mr. X Msweli, the Director for Infrastructure, Mrs. HB Tlhabani and Mr. Koos Duvenage as members of the Municipal Planning Tribunal in their capacity as officials in the full-time service of the Municipality in terms of Regulation 36(1) (a) of the Spatial Planning and Land Use Management Act.
2. That the seating allowance for members of the Municipal Planning Tribunal **BE IN LINE** with National Treasury Regulations which is applicable to members of the Audit Committee.
3. That the seating allowance **BE PAID** to only those members that are not in full-time employment of the Council.
4. That the travelling allowance for members of the Municipal Planning Tribunal **BE IN LINE** with the tariffs for the use of transport issued by the Department of Transport.

5. That Council **RESERVES THE RIGHT** to change individuals that are appointed in the said Tribunal.
6. That Budget Adjustment **BE MADE** for their remuneration.

**COUNCIL RESOLVED: (13 DECEMBER 2016)**

- 1 That Council **AUTHORISES** the Municipal Manager to advertise for the filling of vacancies on the Matjhabeng Municipal Planning Tribunal created by the resignation and withdrawal of certain members.
- 2 That Council **APPOINTS** Mr B. Molelekoa and Mr F Niewoudt as alternate member to serve on the Municipal Planning Tribunal as an official representing the Matjhabeng Municipality in the Tribunal.
3. That the total membership of the Tribunal **BE CHANGED** from nine (9) to seven (7) consisting of four (4) outside members and three (3) officials.
4. That Council **APPOINTS** Ms. M.R. Nkhasi as the Deputy Chairperson of the Matjhabeng Municipal Planning Tribunal.
5. That Council **AUTHORISES** the Speaker to constitute the panel for appointment of additional members of the Matjhabeng Municipal Planning Tribunal.

That the appointments of the Municipal Planning Tribunal should **BE FINALIZED** by the end of January 2017.

**DISCUSSION**

Subsequent to that, an advert was placed in the Matjhabeng local newspaper inviting interested persons to apply for the vacant position in the Municipal Planning Tribunal. The advert closed on the 10<sup>th</sup> of March 2017 and no applications were received as a result of the fact that this advert could not be placed in the Provincial Gazette. Later on in May 2017 an advert was placed in the Provincial Gazette and only two applications were received before the closing date, 31<sup>st</sup> May 2017.

A memorandum was then sent to the Senior Manager in the Office of the Speaker to facilitate the process of appointing an additional member on the Tribunal. However, to date the process is still not yet finalized and the applications are in the Office of the Municipal Manager.

**\*\*\* The CV of the applicant is attached on page 1 to page 7 of the Annexures.**

**FINANCIAL IMPLICATIONS**

As stipulated in the regulations under Gazette No. 38594 dated 23 March 2015 provides for norms and standards for the terms and conditions of service of the members of the Municipal Planning Tribunal under Schedule 1.

**LEGAL AND POLICY REQUIREMENTS**

Spatial Planning and Land Use Management Act, no 16 of 2013 provides a framework for Spatial Planning and Land Use Management. For the purposes of the Municipal Planning Tribunal, it provides for policies, principles, norms and standards for spatial development

planning and land use management. It is intended to address past spatial regulatory imbalances; to promote greater consistency and uniformity in the application procedures and decision making by authorities responsible for land use decisions and development application; to provide for the establishment, functions and operations of the Municipal

Training Tribunal; to provide for the facilitation and enforcement of land use and development measures.

Chapter 6 of the aforementioned Act provides under Part B, the process that must be followed in the establishment of Municipal Planning Tribunal. Part C provides for processes of Municipal Planning Tribunal and Part D regulates related land development matters such as internal appeals.

Section 54 of the Spatial Planning and Land Use Management enjoins the Minister of the Department Rural Development and Reform to promulgate in terms of the Spatial Planning and Land Use Management Act 16 of 2013. The regulations have been promulgated.

## **RECOMMENDATION**

1. That Council appoints an additional member to the Matjhabeng Municipal Planning Tribunal (MPT).

SA13 of 2017

**PROGRESS REPORT ON ESTABLISHMENT OF MATJHABENG ECONOMIC ADVISORY COUNCIL (EXECUTIVE MAYOR) (3/3/19)**

**PURPOSE**

To present a progress report on establishment of Matjhabeng Economic Advisory Council (MEAC).

**BACKGROUND**

The Municipality successfully conducted an Economic Growth Summit which was held over two days on 4<sup>th</sup> to 5<sup>th</sup> December 2013 themed “*Creating economic growth through the green economy*”

The objectives of the summit were to: -

- Chart new path by diversifying the local economic landscape to respond to economic challenges resulting from reliance on mining activities.
- To create a platform and expedite the development of a local economic strategy.
- To lay the basis for the municipality to forge strategic partnerships with primary role players in economic development.
- To enable the municipality to drive social and community development in its area of jurisdiction, and

One of the resolutions to be implemented was the establishment of Economic Advisory Council which tailored to guide economic trajectory and growth of the municipality.

The advisory council is aimed to inter alia provide the latest expert knowledge on issues related to economic development, provide input and advice on the business plan of the Matjhabeng Economic Sector.

**PROGRESS**

Council (A36/2017) on its siting resolved that: -

- Council **approves** the establishment of Matjhabeng Economic Advisory Council (MEAC) to advice on changing the economic characteristics of the area.
- That due to financial constraints, an option of getting volunteers be explored and Councilors must recommend people who are interested to serve in that committee to the Executive Mayor.
- That Council mandates the Executive Mayor to investigate how this is done in other municipalities.
- That members of the advisory Council must not exceed ten.
- That the Acting Municipal Manager must place an advertisement in newspapers for people who would be interested in serving in the MEAC.
- That in the event of getting somebody from outside Matjhabeng area who would use his/her energy, time, resources and ideas, the municipality should pay out-of-pocket-expenses.

**ADVERT**

An advert that was placed on the 12<sup>th</sup> April 2017 inviting people to serve in the Economic Advisory Council, closing date was 15 May 2017. 16 CV's were received.

**RE – ADVERT**

By the instruction of MMC to re-advertised on national newspaper so as to attract all South Africans with interest. The invitation was re-advertised on the 2<sup>nd</sup> August 2017 of which the closing date was the 25<sup>th</sup> August 2017.

- \*\*\* A copy of the advert is **attached on page 8 of the Annexures.**
- \*\*\* The list of applicants **is attached on page 9 to page 13 of the Annexures.**

**BENCHMARK WITH OTHER MUNICIPALITIES**

Benchmarking has been conducted with municipalities of similar category and most of them they don't have the structure, only few has similar but under the Development Agency which is the entity of the municipality, and they have board members.

The objective is still the same, as to cultivate an environment to grow the economy through facilitation, implementation and management of developments with a specific focus on economic development and investment.

**REMUNERATION OF MEMBERS**

- Remuneration is done in terms of Treasury Regulations 20.2.2, to pay members.
- It only covers payment or stipend for sitting of meetings and Travelling allowance
- In cases where a research is to be conducted a municipality should use its own discretion in accordance with MFMA

**LEGAL AND POLICY POSITION**

- The integrated development plan
- Spatial development framework
- Free state growth and development strategy (2005-2014)
- The new growth path
- National development plan (NDP) 2030
- Municipal finance Management Act
- Treasury Regulations for departments, trading entities, constitutional institutions and public entities

- \*\*\* A copy of Treasury Regulations is attached **on page 14 to page 16 of the Annexures.**

**FINANCIAL IMPLICATIONS**

There are financial implications involved of which payment should be sourced from relevant vote.

**RECOMMENDATION**

1. That Council endorse the establishment of Matjhabeng Economic Advisory Council.

SA14 of 2017

**PROGRESS REPORT ON THE SUNELEX SOLAR PLANT PROJECT - SEPTEMBER 2017 (EXECUTIVE MAYOR) (19/3/2/1)**

**PURPOSE**

To present to Council the current progress on the Sunelex Solar Plant Project for the month of **September 2017**.

**BACKGROUND**

Sunelex was appointed through an unsolicited bid for the establishment of a photovoltaic (PV) proposition for a 500 MW solar electric generating facility in Matjhabeng Local Municipality.

The Solar Plant project comprises of two stages, namely; the Development stage and the Construction Stage. The Development Stage of the project comprises of work such as the development of a feasibility study, Environmental Impact Study, conducting of other studies to determine the design of the plant, Sourcing of funds, completion of the MFMA section 33, 43 and 120 processes, etc. Whereas the Construction stage is the physical implementation of the project, which is divided into two phases; one being to build the 200MW at Kalkuil farm 153 (1157 ha) and the second one being the building of a manufacturing plant for solar electricity components.

The farm in which the first phase of Construction will be located belongs to the Municipality but Harmony has surface rights in favor of mining operations on it. However, the land would not have future operations and thus it has been identified as the best option for the project.

Council took a number of resolutions about the project over a period of time since 2015 as follows:

**In a Council sitting held on 31 March 2015, the following was resolved:**

- That the progress on the development of the Sunelex project be noted.

**In a Council sitting held on 01 September 2015, the following was resolved:**

- That the progress on the development of the Sunelex project be noted.
- That Council declares the Sunelex project as an emergency Economic Priority Project.
- That ESKOM be consulted if power will go through the ESKOM grid to establish the method of implementation.
- That the CFO should establish the authenticity of the Proof of Funds letter by HSBC bank which is attached in page 355 of the Annexures.

**In a Council sitting held on 26 November 2015, the following was resolved:**

- That the progress with the development of the Sunelex project be noted.
- That the CFO should establish the authenticity of the Proof of Funds letter by HSBC bank which is attached in page 268 of the Annexures.

**In a Council sitting held on 29 June 2016, the following was resolved:**

- That Council takes note of the general progress with the development of the Sunelex project.
- That Council takes note of the Feasibility Study in relation to the project as was submitted by Sunelex.
- That the Municipal Manager be authorized to engage with regard to all outstanding legal agreements pertaining to the project subject to recommendations of the Transactional Advisor and the ratification by the National Treasury including:
  - a) Tripartite Agreement
  - b) Land Lease Agreement
  - c) Power Purchase Agreement
- That the Municipal Manager be authorized to negotiate the appropriate incentives with the developer in collaboration with National Treasury, the Department of Trade and Industry and the Department of Energy to optimize the benefit for the Municipality.
- That Councilors should submit their questions, remarks and inputs at the Offices of the Executive Mayor and the Municipal Manager via the following e-mail addresses: [tumelo.makofane@matjhabeng.co.za](mailto:tumelo.makofane@matjhabeng.co.za), [bulelwam@matjhabeng.co.za](mailto:bulelwam@matjhabeng.co.za), as well as to [matshidiso.seekoei@matjhabeng.co.za](mailto:matshidiso.seekoei@matjhabeng.co.za) by Tuesday, 05 July 2016 at 12h00.
- That all inputs submitted by Councilors be included in the recommendations when the item is re-submitted to Council.

**In a Council sitting held on 20 July 2016, the following was resolved:**

- That Council takes note of the SUNELEX progress report.
- That the Municipal Manager, in his engagement with Sunelex Agreement should take into cognisance of the following:
  - a) That the Municipality will only buy the electricity from Sunelex in accordance with its needs and that the excess energy produced will be the concern of Sunelex.
  - b) That the Municipality will only purchase electricity from Sunelex if it is at a cheaper rate than Eskom's rate at that specific period of the day and less than the off-peak tariff of Eskom. It was further emphasized that averages should not be used by SUNELEX.
  - c) That no other Agreements should be signed until the Power Purchase Agreement has been agreed to by the Municipality and the Developer.
  - d) That the Municipal Manager can conclude the Power Purchase Agreement and the Land Lease Agreement.
  - e) **“That clauses relating to Insurance, Guarantee and, Buyer's Responsibilities (as indicated in paragraph 8.2 of the draft Power Purchase Agreement) be revised and/or removed where necessary.”**

Council resolved that matter in 'e' has already been resolved.

- f) **That the Maintenance of the Plant be done by Sunelex and not by the Municipality until the plant is handed over to the Municipality.”**

Council resolved that the matter in ‘f’ has already been resolved.

**In a Council sitting held on 31 May 2017, the following was resolved:**

- That Council **TAKES NOTES** of the progress on the Sunelex project.
- That all outstanding matters pertaining to the project **BE FAST TRACKED**.
- That a technical team headed by the Executive Director: Infrastructure be **ESTABLISHED** and submit quarterly reports to Council.
- That the exact contract as prescribed in Section 33 (1) (c) (ii) of the MFMA **MUST BE SERVED** before Council as soon as possible, for Council to pronounce itself on it before it authorises the Municipal Manager to sign it on behalf of the Municipality.

**DISCUSSION**

Sunelex has since concluded successful public participation hearings in various wards and the Municipality has since made section a 33 application to National Treasury, requesting the views and recommendations of National Treasury with regards to the Power Purchase Agreement, the procurement process and the affordability of the project;

National Treasury has since responded and provided its views and recommendations. The views and recommendations that were provided by National Treasury advice Council to issue a resolution authorising the construction of the plant before Sunelex can commence such construction;

\*\*\* **Attached on page 1 to page 11 of SEPARATE COVER 1** find the set of correspondence between the Municipality and the National Treasury in relation to the section 33 application.

The advice received by the Municipality, through the Municipal Manager’s office, is such that Council is required to approve certain matters incidental to the construction of the plant such as the use of training of facilities and that the Municipal Manager engage National Treasury with regards to the Neighbourhood Development Programme Grant that will be utilised by the Municipality in giving effect to some of its objectives under the umbrella of this large solar project;

Harmony Gold has made a number of its facilities available to Sunelex, for the possibility of the office space, storage facilities and as well as for training of employees. Having said that however, these buildings require renovations in order to raise the standard of safety for staff and students. Mr Lebohang Shabe, Group Manager at Harmony Gold, supported the notion that Sunelex is interested in using these facilities in that they were falling apart due to non-use and vandalism. Mr Shabe, further indicated that Harmony Gold will assist Sunelex with the renovations for the benefit of the community. He further indicated the importance of having the Municipality register this project under Harmony’s Social Community Projects to enable Sunelex to hire the facilities at no cost; and

In fact, the Sunelex team identified two buildings that can be utilized for training, namely the Old Traffic Department and Harmony Training Centre. With regard to the Old Traffic



Department situated in Welkom, it meets the team's requirements in that it is centrally located, can be used as the main contact office, and it is readily available for conducting training. This building has four offices and a lecture hall/auditorium, all situated on the first floor. The project is currently on the Developmental Stage, whereby the process in terms of section 33 of the MFMA has been completed and an application submitted to the National Treasury, which in turn they supported.

## **LEGAL IMPLICATIONS**

The Municipal Manager has already signed the power purchase agreement and the land lease agreement as authorized by Council on 20 July 2017.

## **POLICY/LEGISLATIVE POSITION**

- The Constitution of the Republic of South Africa (Act. No. 108 of 1996);
- Land Act (Act No. 68 of 1981);
- Broad Based Black Economic Empowerment Act (Act No. 53 of 2003);
- Local Government: Municipal Finance Management Act (Act No. 56 of 2003);
- Spatial Planning and Land Use Management Act 16/2013;
- National of Regulator of South Africa (NERSA) Requirements;
- Eskom Regulations;
- Occupation Health and Safety Act 85/1993;
- Electrical Distribution Regulations;
- Department of Energy (DOE) requirements and policies;
- SANS and NRS standards

## **FINANCIAL IMPLICATIONS**

The capital cost for the construction of the project, including the manufacturing plant will be borne by Sunelex with funding from the HSBC.

## **OTHER IMPLICATIONS**

The project has good socio-economic benefits;

- Local SMMEs will be empowered,
- Over 2000 jobs will be created during the construction stage of a three (3) year and necessary accredited training undertaken, and
- Recent partnership with Huawei where Five (5) Engineers will be trained in China, centre of excellence built and training facility built on site.

## **RECOMMENDATIONS**

1. That Council notes the progress of the Sunelex project.
2. That Council consider the views and recommendations of National Treasury pursuant to the provisions of 33(1)(b)(iv) of the MFMA;

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3. That a portion of the budget allocated for purchasing power, from Eskom, be redirected to purchasing power from Sunelex in terms of the Power Purchase Agreement when the plant becomes operational;
4. That Sunelex be permitted to commence the construction of the solar plant as set out in the and as more fully explained in the Power Purchase Agreement;
5. That the Municipal Manager and the technical steering committee must provide regular reports to the municipal council regarding the progress of the construction of the plant and any matter incidental thereto;
6. That the Municipality register this project under Harmony's Social Community Projects to enable Sunelex to hire the facilities at no cost;
7. That Council approve the use of the Old Traffic Department building for training purposes; and
8. That the Municipal Manager be authorised to perform relevant duties and sign all documents necessary to give effect to the resolution.

**SA15 of 2017**

**REQUEST FOR COUNTER FUNDING FOR PROVISION OF 2KM PAVED ROADS  
IN MELODING, VIRGINIA (EXECUTIVE MAYOR)**

**PURPOSE**

The purpose of this item is table to Council the request for counter funding for the Provision of 2km Paved Roads in Meloding, Virginia project that is being implemented by the Municipality and funded through the MIG grant.

**BACKGROUND**

This project entails the construction of 2km paved roads in Meloding to improve the unsurfaced roads and address storm water. Meloding has a road network consisting of 32.8km of surface roads and 64.1km of unsurfaced roads of which 16km is un-proclaimed. The cost of maintaining the un-surfaced road network places a heavy financial burden to the Municipality as the unpaved gravel roads can be lost by erosion and traffic wear.

This project was registered with MIG in 2016 for an amount of R17 375 336.00 VAT Inclusive to start with at least 2km of roads. It was then prioritized to be implemented in the 2016/17 and 2017/18 financial years. The remainder of the backlog will have to be considered in future financial years.

**DISCUSSION**

A Consultant was appointed in October 2015 to prepare technical report, apply for MIG funding and designing of the project on a turnkey basis. The project was then registered and the designs were submitted and approved by the Municipality and the Consultant was paid an amount of R1 020 741.23 and the balance of the project was R16 354 594.77. Unfortunately in November 2016 the Consulting Engineer's services was terminated by the Municipal Manager. A new Consultant was then appointed in May 2017.

The project went out on tender in January 2017 and after a public open tender process a contractor was appointed for an amount of R16 008 864.96 and there was a shortfall of R1 034 858.48 VAT Inclusive in the budget amount and the amount that the contractor was appointed for due to the money that was paid to the Consultant that was terminated.

**LEGAL IMPLICATIONS**

This item has been prepared in compliance with the provision of the Municipal Systems Act. 32 of 2000.

**FINANCIAL IMPLICATION**

<b>Costs Description</b>	<b>Total Registration (Incl Vat)</b>	<b>Current Amount</b>	<b>New registration (Incl Vat)</b>	<b>proposed amount</b>	<b>Total    Shortfall (Incl Vat)</b>
Construction Costs	R15 795 760.20		R16 008 864.96		R213 104.96
Professional fees	R1 579 576.02		<b>R2 401 329.74</b>		R821 753 72
<b>Total</b>	<b>R17 375 336.22</b>		<b>R18 410 194.70</b>		<b>R1 034 858.48</b>

\*\*\* Refer to the attached appointment letter **on page 17 to page 18 of the Annexures.**

**OTHER IMPLICATIONS**

It is very important that the Executive Committee recommends this counter funding as the available funding will not be enough to complete the project and thus the project will not serve its purpose and might result to Community unrest.

**RECOMMENDATION**

1. That the counter funding of **R1 034 858.48** (All Inclusive) be approved for the successful completion of the project.

SA16 of 2017

**PROPOSED SETTLEMENT BY MASINGITA PROPERTY DEVELOPERS  
(EXECUTIVE MAYOR) (11/3)**

**PURPOSE**

The purpose of these item is reporting to Council the implementation of Supplementary Valuation on Thabong Mall and also the proposed settlement by the Developer.

**BACKGROUND**

The municipality has an obligation to supply water and sanitation to all the residents and business across Matjhabeng Region. Prior construction of Thabong Mall the developer made several applications for installation of water and sewerage infrastructure to enable the process of construction possible. However due to financial changes the municipality had at that period, the developer had no other option except to procure all the necessary materials needed in order to connect water supply and sewerage networks from the municipal line to the mall area. The purpose of these item is reporting to Council all the expenses incurred by the developer during the process of connecting network lines and also to present the proposed offsetting of all the expenses against monthly billing by the Developer.

Market value of the Mall after completion certificate was issued in September 2016 was **R40 000 000.00** on the Municipal Valuation roll, however after the property was revalued on the 5<sup>th</sup> of September 2017 the final market value became **R 127 600 000.00**. It was agreed that these final valuation should be back dated from September 2016 due to the Mall been fully operational from that period, the property rates levied from September 2016 to date should be based on **R 127 600 000** instead of **R 40 000 000** and the Developer agreed to that principle provided that all the expenses incurred by them are offset against these new property rates.

- \*\*\* See the Valuation Report **on page 1 to page 13 of SEPARATE COVER 2.**
- \*\*\* See the amount due on Property Rates **on page 14 to page 16 of SEPARATE COVER 2.**
- \*\*\* See the Developers' expenses on network connections **on page 17 to page 19 of SEPARATE COVER 2.**
- \*\*\* See the tax invoices of Down Touch Investments **on page 20 to page 39 of SEPARATE COVER 2.**
- \*\*\* See the tax invoices of Wingwide Projects **on page 40 to page 45 of SEPARATE COVER 2.**
- \*\*\* See the invoice on Lighting Structures **on page 46 to page 49 of SEPARATE COVER 2.**
- \*\*\* See correspondence **on page 50 to page 55 of SEPARATE COVER 2.**
- \*\*\* See approval of drawings **on page 56 of SEPARATE COVER 2.**

**DISCUSSIONS**

The total amount incurred by the Developer for network connections equal to **R16 196 441.23**, reference to **annexures 3-6**. Total amount due and payable by the Developer after revaluation of **R 127 600 000** equals **R 3 340 657.63** to date, reference to **Annexure 1-2**.

## Proposals made by Developer for Council consideration:

### Proposal no: 1

Should Council consider Proposal 1, the developer won't be paying property rates for the duration of **37 months** in order to offset monthly billings against the amount owed to the Developer.

<b>Total amount due and payable by the Developer after implementation of R 127 600 000 Market value</b>	<b>3 340 657,63</b>
<b>Total expenses for network connections</b>	<b>16 196 441,23</b>
<b>Total amount owed by the municipality to the Developer</b>	<b>12 855 783,60</b>

<b>Property rates paid by the Developer on monthly basis to date</b>	<b>347 580,33</b>
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<b>Number of months required to offset the differences</b>	<b>37</b>
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### Proposal no: 2

The first payment worth **R3 000 000** will be made immediately after receiving allocation on Equitable Share and the remaining balance of **R9 855 783.60** will be payable within duration of **12 months**.

## LEGAL IMPLICATIONS

Local Government: Municipal Property Rates Act, 2004 (No. 6 of 2004)

## FINANCIAL IMPLICATIONS

R 12 855 783.60

## RECOMMENDATION

1. That the Council consider proposals made by the Developer.