

PROGRESS REPORT ON THE SUNELEX (MLM) SOLAR PLANT PROJECT

PURPOSE

To present progress report on the SUNELEX (MLM) SOLAR PLANT PROJECT to Council by the Sunelex Ad-hoc Committee.

BACKGROUND

The project originated as an unsolicited bid for the establishment of a photovoltaic (PV) proposition for a 500 MW solar electric generating facility in Matjhabeng Local Municipality. The project has now been reduced to 450 MW and is registered as such with National Treasury. The project will be developed in two (2) phases:

- Phase 1: 200MW solar generated energy – located south of the town of Odendaalsrus (Kalkkuil 153 - 1157.48ha).
- Phase 2: 250MW energy – it is anticipated that 200MW will be solar generated energy and 50MW will be UCG generated energy – located west of Odendaalsrus (Paleisheuvel 323 – 26.73ha, Dolly 404 -286.58ha, Portion 2 of Kalkkuil 153 – 1157.48ha & Ophir 405 – 286.68ha).

The above mentioned sites are in possession of Municipality and have been selected on the basis of proximity to the ESKOM grid. However the suitability of the land is still subject to full due diligence analysis in order to determine the total area available for the project. This will include but not limited to the following: Mining rights, surface permits, servitudes and other areas that must be excluded from development.

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 Kalkkuil farm 153 (1157 ha) and the second one being the building of a manufacturing plant for solar electricity components.

Over a period of time, the council took a number of resolutions which are stated in this report for the purposes of providing full background taking into consideration that the proposal for the project commenced in 2015

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, bulelwam@matjhabeng.co.za, as well as to 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.*

In a Council sitting held on 1 November 2017, the following was resolved:

- 1. That the item **BE REFERRED BACK**.*
- 2. That Council **APPOINTS** a Multi-Party Ad-hoc Committee comprising of six members to look at all matters raised and ensure that the matter is dealt with according to the law.*
- 3. That the Ad-hoc Committee **MUST GIVE** feedback at the next Ordinary Council meeting.*
- 4. That the Committee **MUST TAKE** cognizance of all issues raised by Cllr A. Styger, as a guideline.*
- 5. That the Committee **MUST ALSO DISCUSS** the contract which was already signed and implications thereof.*

THE SUNELEX AD- HOC PROJECT DEVELOPMENT PROCESSES

Pursuant to the Council resolutions of 01 November 2017, a technical steering committee was convened on the 30 November 2017 and attended by three (3) members including the chairperson, and the representatives of Sunelex, in order to address all the issues that were raised by Council on 01 November 2017. The verbatim transcript of the views expressed by

our esteem Councillor Styger was solicited from council admin and was part of the Agenda of the meeting.

The committee further held several meetings and the last meeting was on 16 July 2018 where an advisor from National Treasury was in attendance. The meeting was structured in the format reflected on page 5 below and encompasses an action plan which is aligned to the National Treasury regulations.

The project has been registered as a Public-Private Partnership and will follow a PPP framework. As a result, it is advisable that the Municipality must appoint a transactional advisor in order to conduct the necessary due diligence, costs benefit analysis, determine any benefits to the Municipality and the community of Matjhabeng.

The action plan discussed below is intended to address any omissions/ concerns that were raised by council during its previous sittings.

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
1. PROJECT INCEPTION	<p>1.1 Project Identification</p> <ul style="list-style-type: none"> • Receipt of unsolicited Bid • PI should describe the nature and size of the activity; Municipal Budget; Projected Development costs; and initial lists of Risks. <p>1.2 Notify Government: NT; PT and COGTA before commencing with feasibility study-</p> <ul style="list-style-type: none"> • Notification should include Municipal Council Resolution which- • May authorize the Accounting Officer to conduct feasibility study, inclusive of determining the appropriateness of provision of municipal service by external mechanism inclusive of PPP. • Outline municipal expertise to comply with provisions of MFMA and MSA. • PPP unit to meet with the Municipality to discuss the precise function the municipality is seeking to assess. 	<p>i) Unsolicited proposal accepted</p> <p>ii) Project description was done</p> <p>iii) National Treasury, NERSA, ESKOM, DoE, Dept. of Trade & Industry, Dept. of Tourism were informed.</p> <p>iv) Council resolution to conduct feasibility study was secured in 2014.</p> <p>v) No resolution that declares the project as PPP.</p> <p>vi) Municipal expertise confirmed</p> <p>vii) Meeting was held with PPP Unit at National Treasury.</p>	<p>Provincial Treasury, COGTA as regulators and DMR as general stakeholder to be informed.</p> <p>A simplified feasibility study with details on how the Municipality will benefit from the project, costs, amount of power needed, identified land, must be prepared for Council.</p> <p>After completion of the feasibility study, a PPP agreement that replaces all other agreements would be signed.</p>	<p>Project Manager by the 27/07/2018</p> <p>To the Committee on 27/07/2018</p> <p>To Council on 30/082018</p>

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
	<ul style="list-style-type: none"> Determine if it is important to appoint the Advisor. MLM's budget to meet Financing Project needs, Project Development costs, Project leader costs, PM and Advisor costs. Accounting Officer's willingness to assign delegations; Budget and Administrative support. Has the Accounting Officer obtained Council support for the Project? 	<p>viii) A Transactional Advisor was appointed.</p> <p>ix) Project costs were considered at the beginning and risk transferred accordingly.</p> <p>x) Accounting Officer to appoint the Project leader and the Steering Committee.</p> <p>xi) The Accounting Officer has obtained Council support for the Project.</p>	<p>i) The Accounting Officer should utilize expertise available to assist in finalization of the project.</p>	Accounting Officer
2. FEASIBILITY STUDY	<p>2.1 Three possible options for process guidelines that govern feasibility study-</p> <ul style="list-style-type: none"> MSA, Sec. 78(1) & (3): feasibility study for "Municipal service" MFMA Sec. 120: feasibility study for "Municipal Support Activity" MFMA Sec. 120 (6) (b) also for "Private Sector use of Municipal Property for its commercial purposes" 	<p>i) A feasibility study would be presented to Council after all attachments indicating that all stakeholders were consulted.</p> <p>ii) Land is an investment for the Municipality and Sunelex will have to pay a premium for the land utilized.</p> <p>iii) TVR 1 was secured.</p>		

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
	<p>2.2 The feasibility study should have the following stages: a) Needs analysis; b) Technical options; c) Service delivery Options; d) SD summary & Interim recommendations; e) Project Due Diligence; f) Full value assessment; g) Simplified value assessment;h) Procurement Plan; i) Submit report to Council.</p> <p>2.3 Adhere to Public Participation requirements for a feasibility study for “MS”- as per MSA Sec.78 (1) & (3) and MFMA Sec. 120 (6) (b)</p> <ul style="list-style-type: none"> • Outline needs analysis and delivery mechanism summary • Submit feasibility report. <p>1.4 In stage 4 of the feasibility study, it is important to engage Local Community and Labour notifications;</p> <p>1.5 Stages 5 puts emphasize on Site enablement issues; BEE and Socio-Economic Issues;</p> <p>1.6 Stage 6 on Value assessment</p>	<p>Feasibility study was prepared for public comments and views and recommendations.</p> <p>The views and recommendations of National Treasury and relevant Provincial Treasury were considered and that constitutes TVR1.</p> <p>No obligation to engage labour, they could be just updated.</p>	<p>It must be ensured that Value assessment covers the following:</p> <ul style="list-style-type: none"> a) Is the Project affordable; b) Does it appropriately transfer risk from MLM to the Private Party; c) Does it provide value for money. d) Demonstration that of MLM’s capacity and budget to handle the project. e) The Municipality should ascertain whether it was done 	AO & PM

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
3. PROCUREMENT	<p>3.1 MFMA Municipality PPP regulations and SCM regulation governing Municipality PPP procurement process:</p> <ul style="list-style-type: none"> • Should secure TVR during procurement process. • Link between feasibility study and procurement doc. for PPP • Procurement of municipal PPP should include: <ul style="list-style-type: none"> - Pre-qualification - Request for proposals - Best and final offer - Negotiations - Financial closure 	<p>The relevant TVRs were obtained during procurement, as per PPP guidelines.</p> <p>Critical considerations for the procurement phase went with:</p> <ul style="list-style-type: none"> - Explicit statement of affordability; - Value for money; - Appropriate risk transfer 	<p>i) The Municipality should ascertain whether it was received from Treasury.</p>	<p>i) AO & Project Manager</p>

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
	<p>3.2 Stages of Procurement</p> <ul style="list-style-type: none"> • In complex projects only pre-qualified bidders (RFQ) will receive and RFP i.e. Bid Bond; BEE; Parties eligible to participate. • Observe all steps of RPF in preparation of RFP documents (Technical, Legal and Financial aspects) - Step 2: Request for TVR IIA (The RFP and draft PPP must be submitted to municipal Accounting Officer to request TVRIIA. - Step 3: Chose the preferred Bidder through Technical evaluation teams (technical; BEE and price) - Adjudication Committee headed by the Accounting Officer and supported by appointed Committee members. 	<p>i) To be skipped, as per guidelines related to unsolicited bid.</p>	<p>i) The Municipality should ascertain whether the public notice achieved what was intended.</p> <p>ii) Names of Bid Committees should be submitted for noting.</p>	<p>i) Project Manager</p>

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
	<ul style="list-style-type: none"> • At this stage (AC) – MLM should secure TVRIIB (secure NT & PT on Bid evaluation) – i.e. compilation of Value Assessment Report. • Present the Value Assessment report to Council for notification. • Prior to executing a PPP agreement, the Accounting Officer should secure TVRIII: (if the PPP is more than 3 years secure TVRIII and). • Following Financial closure, Advisor must produce a Confidential Close-out report (for MLM's Project Records). 	TVRIIB received for value assessment report.	As the PPP is more than three years, we need to check as to whether draft PPP agreement was published and community invited to make comments- Sec MFMA 33	AO & PM
4. CONTRACT MANAGEMENT	4.1 The process enabling both Parties to meet obligations: <ul style="list-style-type: none"> • Secure Contract Management Plan (anticipating future needs). • Conform to PPP Agreement Management Framework. 	i) Plan to manage it to be taken after the approval of the feasibility study.	i) People involved in Project preparation must be involved in Project Management.	

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
	<p>4.2 Critical Phases for PPP Framework:</p> <ul style="list-style-type: none"> • Year 1-2: Inception & feasibility study • Y2-3: Procurement • Y3-5: Development • Y5-20: Delivery • Y18-20: Exit <p>4.3 Focus on Outcome:</p> <ul style="list-style-type: none"> • Quality assurance • Performance • Monitoring • Corrective Action <p>4.4 Recommend anew Contract Monitoring Structure:</p> <ul style="list-style-type: none"> • Responsibility of the Accounting Officer. • Delegated authority to Contract Manager. • Establish Contract Management team • Contract Management team to also focus on Corporate Governance. • Establish resolution processes in PPP contract and all dispute resolution processes. • Contract Management team to ensure proper Risk Management. 	<ul style="list-style-type: none"> • Feasibility Study has been conducted, and only needs inputs of MLM. We therefore over 1-2 years' phase of inception. • Unsolicited bid proposal was accepted. Therefore there is some progress on Y3 phase stage. • Multi-Party committee is establish to enhance quality and monitoring of the project 	<ul style="list-style-type: none"> ➤ AO to establish a contract monitoring structure. ➤ AO to delegate authority to Contract Manager. • Contract Management Team to draw a schedule of meetings to ensure Corporate Governance and Risk • Establish Contract Management Plan: <ul style="list-style-type: none"> - Five year review of the PPP Project. - Establish a system of handling changes. - Exit strategy to be established Management 	AO & Project Manager

PPP STAGES	IDEAL STEPS	ACTUAL STEPS: MLM & SUNELEX	CORRECTIVE STEPS	RESPONSIBLE PERSON
5. UNSOLICITED BID	<ul style="list-style-type: none"> - Many of unsolicited bids constitute PPP: because they envisage private sector use of municipal property for commercial purposes. - The project should be registered with the PPP unit within NT. - At the end of Feasibility Study an application for TVR I should be submitted to NT - A draft PPP agreement and obtain TVR IIA. - Preparation of value assessment report and obtaining TVRIIB. - At conclusion of negotiations, the municipality must obtain TVR III, as per section 33 of MFMA for the council resolution 	<p>Unsolicited proposal is accepted, because:</p> <ul style="list-style-type: none"> - it is considered as the unique innovative concept. - The product should be exceptionally beneficial to MLM. - The person who made the bid was the sole provider at the time. <p>The project was registered with PPP unit within NT. The application was done and TVR I was secured, as per section 120(6) of MFMA. TVR IIA was obtained for a draft PPP agreement. TVR IIB was obtained that relates to value assessment report.</p>	Ensure that the current accepted unsolicited bid is implemented as per PPP Guidelines	AO & PM
6. PROJECT FINANCE	<p>Perspectives on reasons for usage of PF:</p> <ul style="list-style-type: none"> ➤ Contractual agreements: PPP agreement; Finance Direct Agreements; Finance Documents; Security 	<ul style="list-style-type: none"> ▪ PPP agreement is in place. ▪ Finance Documents assessed 	Double check Operations and Maintenance sub-contracts	

	Documents: Performance guarantees			
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	<ul style="list-style-type: none"> ➤ Participants in PF Structure Municipality (Government) BEE Participants Financial Advisors Independent experts Lawyers ➤ Municipality Perspective: <p>True Cost of Investment; Affordability should be assessed and maintained; Comprehensive Risk Transfer;</p> <ul style="list-style-type: none"> . Improved and efficient service delivery. . Economic and social impact of projects delivered efficiently <ul style="list-style-type: none"> ➤ Private Partner Perspective <p>Good returns; enough cash flow generated to service debt; Involvement in infrastructure Development and meeting social and economic goals; Predictable and reliable source of cash flow</p> <ul style="list-style-type: none"> ➤ Negative: It needs to be understood that the process takes much longer than other structured Finance activities. 		<p>Check Interface Agreements between sub Contracts Leverage Private Sector Funding.</p> <p>Ensure comprehensive risk identification</p>	
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<p>7. USE OF MUNICIPAL LAND FOR COMMERCIAL PURPOSES</p>	<p>The end goal of this move should be to target a more efficient management of a municipality's immovable property portfolio:</p> <p>a) Identify potential PPP Immovable Property:</p> <ul style="list-style-type: none"> . Town planning requirements; Zoning and Sub-division issues . Consider Environment legislation and land claims - Ensure that potential use is consistent with IDP - Check potential revenues to the municipality by such uses. - Check potential costs to the municipality in order to manage the project - Socio-economic impact of the proposed project. - Implement as per Section 120(4) of MFMA - Copy MSP of CoGTA <p>b) Feasibility study report on use on municipal land to be submitted to Council and augmented by Section 6 reflecting public comments; views and recommendations received (as per Sec 21A of MSA). This is for Council's "In Principle" decision</p>	<p>"In Principle" decision was secured from the Council.</p> <p>Feasibility Study Report submitted to Council</p>	<p>PPP agreement to be adapted in the context of managing a PPP Agreement for private sector use of municipal property.</p> <p>Continue to manage specific terms and conditions of the PPP Agreement</p> <p>Set out the process for management of PPP Agreement</p>	<p>AO & PM</p>
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8. ROLE AND RESPONSIBILITIES OF TRANSACTION ADVISOR	<p>8.1 PPP regulation also require MLM to appoint PO when it initiates PPP.</p> <p>8.2 The Advisor details Financial; Technical; BEE and Legal work, as per MSA Sec 78 (1), for internal mechanism assessment.</p> <p>8.3 Conducts the MSA Sec 78 (3) feasibility study to the standard that meets MFMA Sec 120 (4) and Municipal PPP regulation.</p> <p>8.4 Prepares Council documentation to obtain “in principle” decision where PP is recommended.</p>	<p>Transaction Advisor appointed in terms of regulation (2) (1) (b)</p>	<p>TA to ensure that detailed Technical; Financial; BEE and Legal advice is continuously received to secure project sustainability</p>	<p>AO & PM or Project Officer</p>
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THE SUNELEX (MLM) AD-HOC COMMITTEE RESOLVED: (16 JULY 2018)

1. That in terms of Council resolution SA33/2016, 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.
2. Sunelex would submit the costs of the entire development and proof of funding, at their own costs.
3. That the Steering Committee must **MEET REGULARLY** to ensure that technical work is done and deals with all outstanding matters to enable the project to commence.
4. That the Municipal Manager must ensure that a simplified detailed feasibility study **IS PREPARED** for submission to Council at the end of August 2018.
5. That the Municipal Manager and his team **MUST SUBMIT** a progress report which includes the views of National Treasury to the Ad-hoc Committee during the meeting scheduled for the 27th July 2018.
6. That all files containing the project information, from all teams, must be **MADE AVAILABLE** to the Project Manager and his team.

The minutes are attached as annexure

FINANCIAL IMPLICATIONS

The capital cost for the construction of the solar project, including the manufacturing plant will be borne by Sunelex. The transactional advisor will provide the necessary advice on any costs of the development of the project, conduct a cost benefit analysis and the necessary due diligence upon which the Municipality can make and inform decision.

LEGAL IMPLICATIONS

The project is registered as a Public-Private Partnership (PPP) and the PPP framework will be applicable for this project.

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

RECOMMENDATIONS

1. It is recommended that the council takes note of the report.
2. That council takes note that this project is registered as Public-Private Partnership.
3. That the Public-private partnership framework will be applicable in the implementation of this project.
4. That the Municipal Manager should appoint a transactional advisor to conduct the necessary due diligence of this project and advise council of its viability.