

20 June 2019

To : The Speaker
Cllr M. Siyonzana

SETTLEMENT OFFER AND DEBT WRITE-OFF: FREE STATE DEPARTMENT OF PUBLIC WORKS

1 PURPOSE

To obtain approval for prescribed debt and interest write-off for Free State Department of Public Works

2 STRATEGIC INTENT

To ensure that only recoverable debts are accounted and received to improve financial viability.

3 FOR DECISION / CONSIDERATION BY

Finance Portfolio Committee/ MAYCO/ Council

4 EXECUTIVE SUMMARY

Section 64 (2) (a) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) requires that, in managing the revenue of the municipality, the municipal manager should take all reasonable steps to ensure that the municipality has effective revenue collection systems consistent with the Municipal Systems Act, 2000 (Act No. 32 of 2000) and the municipality's credit control and debt collection policy.

Section 96 (a) of the Municipal Systems Act, 2000 (Act No. 32 of 2000) requires that a municipality must collect all money that is due and payable to it subject to the Act and any other applicable legislation.

Despite strict enforcement of the Credit Control and Debt Collection Policy, Council will continuously be confronted by circumstances requiring the possible write-off of irrecoverable debts.

Debt is collected regularly and different processes are utilised to recover debt or control credit, including, but not limited to:

- telephone calls and notices issued to debtors by the Municipality's Debt Collection Division;
- termination or restriction of services;
- letters of demand issued by attorneys (Debt Collector) in service of the Municipality ;
- legal action being instituted.

5 DISCUSSION

Time value of money is very important because the older the debt becomes, the more difficult and costly it becomes to collect and due to ineffective implementation of credit control measures in the past, consumers have accumulated significant arrear amounts and these consumers are not in a position to pay off these arrear amounts in full together with their current monthly accounts. In order to improve the current payment levels from consumers the Municipality needs to consider incentives to address the arrear debt.

5.1. CONSIDERATION OF IRRECOVERABILITY

The Council may resolve to write off irrecoverable debt. The first question to consider would be what "*irrecoverable*" means. It is proposed that debt should be considered as irrecoverable if the Municipality decides in its discretion to write off the debt of certain categories of debtors, from time to time, due to the specific nature, function or business of such a debtor.

Free State Department of Public Works became indebted to the Municipality after implementation of the valuation roll in 2017 due to unexpected increase in the market values of government properties. Some

In terms of the Prescription Act, 1969 (Act No. 68 of 1969), a debt prescribes when payment thereof has not been demanded within certain periods of prescription. The municipality cannot legally enforce payment of a debt once the prescribed period has elapsed.

Section 11 of the Prescription Act, 1969 (Act 68 of 1969) specifies the periods of prescription of debts as follows:

(a) **Thirty years** in respect of-

- (i) any debt secured by a mortgage bond;
- (ii) any judgement debt;
- (iii) any debt in respect of any taxation imposed or levied by or under any law; and

(iv) any debt owed to the State in respect of any share of profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances.

(b) **Fifteen years** in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a) above.

(c) **Six years** in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) and (b) above.

(d) **Three years** in respect of all other debts, save where an Act of Parliament provides otherwise.

5.2. PROPOSED WRITE OFF

The current outstanding debt owed by Free State Department of Public Works amounts to **R 546 496 154.04**. This balance is made up of the following services:

Service Group	Less than 1 Year	Year 2	Year 3	Year 4	Year 5 and more	Account Total
Interest	30'211'973,25	24'599'546,00	15'257'625,68	7'486'609,97	7'040'482,29	84'596'237,19
Rates	122'083'947,68	40'981'113,06	28'867'813,51	29'430'145,50	5'610'239,31	226'973'259,06
Solid Waste	1'669'004,45	1'206'893,20	783'978,92	482'706,34	444'317,41	4'586'900,32
Sundries	1'159'765,30	1'107'928,09	319'872,62	314'498,48	1'297'256,73	4'199'321,22
Unallocated Credit	-87'213'372,96	0,00	0,00	0,00	0,00	-87'213'372,96
Waste Water	25'847'870,44	21'968'827,28	19'782'999,52	11'322'212,23	7'968'710,29	86'890'619,76

Service Group	Less than 1 Year	Year 2	Year 3	Year 4	Year 5 and more	Account Total
Water	79'712'705,61	54'290'438,89	32'246'415,90	8'494'585,60	16'406'334,29	191'150'480,29
Water Availability	78'649,29	57'579,48	36'516,24	62'240,78	77'723,37	312'709,16
Grand Total	173'550'543,06	144'212'326,00	97'295'222,39	57'592'998,90	38'845'063,69	511'496'154,04

Prescribed Debt

The following was considered when assessing a potential settlement offer:

- These balances are before considering any payments made in June 2019;
- Services including Solid Waste, Sundries, Water (Including Water Availability) has balances that is older than 3 years of R 27 579 663 which would exceed the normal prescription period as per the Prescription Act;
- Waste water of R 19 290 922.52 has balances of older than 3 years which would also exceed the normal period of the prescription act. Waste water (Sanitation) was however considered to be a tax by the courts and the normal prescription of 3 years would not be applicable. This could be taken into consideration if considered a normal service and therefore the three-year prescription applies.

The above would total up to an amount of **R 46 870 585.52** to be considered as part of a write off in terms of a settlement offer. This amount makes up about **9%** of the total balance outstanding. Total remaining balance would be **R 464 625 568** (before taking into account interest charged on arrears).

Interest Charged

The following additional considerations were made on interest charged:

- Total interest LEVIED on Provincial Public Works Accounts (As Balances may be reduced by payments made) of **R 108 690 871.13**;

Thus, total interest on arrears amounts to **R 108 690 871.13** and was considered for write off. This amount makes up about **20%** of the total balance outstanding. Total remaining balance would then be **R 355 934 697.39** (after taking both prescribed debt and interest into account).

2019/20 Budget and Future Plans on Government Properties

The budget for the current MTREF period of 2019/20 has already been approved by Council. A full assessment will be done in the 2019/20 financial year which will include assessment on the following items:

- The next valuation roll will commence from 1 July 2021. The municipality will assess the whole new general valuation roll and determine the appropriateness of all tariffs and categories involved based on the needs and requirements of the city, budgetary requirements and benchmarking with other metros;
- An investigation will be done on all tariffs of all taxes and services to determine if there needs to be a restructuring on those tariffs and the way each of the tariffs cross-subsidise one another and considering the cost-recovery of those services;
- As the City is in the process of compiling a Long-term financial plan, that will give guidance as to the way forward to ensure financial sustainability for the City and its community and may therefore impact tariffs and charges going forward.

With regards to any future levies, the following considerations can be made:

- A lower increase (reduced increase) in future periods for government rates as well as potentially sanitation charges;
- Consideration of a separate tariff (category) splitting between government properties of a government nature and those of a residential nature leading to reduced tariffs on certain government properties;

6 LEGAL IMPLICATIONS

- Municipal Finance Management Act 56 of 2003
- Local Government Municipal Systems Act 32 of 2000
- Prescription Act, 1969 (Act 68 of 1969)

The Municipal Finance Management Act, 2003, (hereinafter referred to as “the MFMA”) stipulates in section 64 that an accounting officer of a Municipality is responsible

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for the management of the revenue of the municipality and must take all reasonable steps to ensure-

“

(a) that the municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the municipality's credit control and debt collection policy; “

The Municipality has an approved Debt collection and Credit control policy. and is legislated by the stipulation of section of the Local Government Ordinance, No. 8 of 1962, which reads as follows:

The amounts that cannot be written off, except with the approval of the Administrator (read Member of the Executive Committee as delegated by the Premier) refers to :

(a) money (which) has been improperly paid or a charge has been improperly incurred or a payment or charge is not duly vouched by a council; or

(b) a deficiency has occurred in collecting, accounting for, receiving, issuing or preserving of money or other property of or under the control of a council, or for which a council is responsible.

7 FINANCIAL IMPLICATIONS

Debt to be written off from debtors book is as follows:

Description	Total amount to be written off
Prescribed Debt	R 46 870 585.52
Interest	R 108 690 871.13
Total	155 561 456,65

8 RECOMMENDATIONS

1. That all prescribed debt and interest charged on arrears for Free State Department of Public Works amounting to R155 561 456,65 as mentioned on paragraph 7 above, be written-off.
2. That the remaining amount of R 355 934 697,39 of be settled in two equal instalments of R177 967 348,50 (first instalment due before 30 June 2019 and second instalment by 31 December 2019).

Submitted by:

Recommended by:

Approved by:



Mr S.E. Mofokeng
Chief Financial Officer



Adv T.B. Mea
City Manager



Cllr S.M. Mlamleli
Executive Mayor