



CONFIDENTIAL

ANNEXURE

MANGAUNG METROPOLITAN MUNICIPAL COUNCIL

94.14
HAUWENG BUS SERVICE –
REQUEST TO FORMALLY
NEGOTIATE COMPENSATION
PAYMENTS WITH AFFECTED TAXI
OPERATIONS

FRIDAY
SEPTEMBER 25, 2020
at 11:00

MANGAUNG METROPOLITAN MUNICIPALITY

Members are kindly requested
to retain this annexure for use
with the minutes

Bram Fischer Building
BLOEMFONTEIN
SEPTEMBER 22 2020

17 September 2020

THE SPEAKER

CLLR MXOLISI SIYONZANA

**COUNCIL ITEM: HAUWENG BUS SERVICE – REQUEST TO FORMALLY NEGOTIATE
COMPENSATION PAYMENTS WITH AFFECTED TAXI OPERATORS**

1. PURPOSE OF THE REPORT

The purpose of this report is to obtain a mandate from Council to commence with the process of preparing for negotiations with the taxi operators affected by the implementation of the Mangaung Metropolitan Municipality's (MMM/the City) Integrated Public Transport Network (IPTN) service, *Hauweng* (Affected Operators), as part of the process of transferring their respective business rights to MMM in respect to the *Hauweng* system in terms of provisions contained the National Land Transport Act, Act No. 5 of 2009 (NLTA). The requested mandate refers in particular to:

- commence with the process of preparing for the negotiations for compensation to acquire the business rights of the Affected Operators and who, by necessity, will have their services removed from the routes where the *Hauweng* system will be operating.

2. DELIBERATIONS

- 2.1** MMM has been identified amongst the 12 municipalities or cities that will implement IPTN systems in South Africa. The IPTN system in MMM (*Hauweng*) aims to provide a high-quality and affordable public transport system in line with national policy, with the main objective being to provide a new and attractive road-based public transport service serving the people of Mangaung as a whole.
- 2.2** The operation of the first phase of the *Hauweng* system, Phase 1, was supposed to be introduced during the last quarter of 2019/20 financial year with a starter service, which

include providing a scheduled bus service along the Brandwag routes of the inner-city, subsequent corridors of Phase 1 to be implemented in stages during 2020 and 2021.

2.3 The NLTA requires that negotiations be conducted with the current public transport operators affected by the implementation of the *Hauweng* system (section 41(1)(a)) with the aim of integrating their services into the *Hauweng* system. The negotiations aim at acquiring the business rights of the Affected Operators and that a once off negotiated contract (Vehicle Operating Company Agreement (VOCA)) be concluded with the Affected Operators for a period not exceeding 12 years (section 41(3)) for the provision of the *Hauweng* services. It is envisaged that a compensation amount will be negotiated and paid to the Affected Operators in exchange for the acquisition of their respective business rights along the affected routes.

2.4 It is further envisaged that, as a condition of the compensation payments, and in line with the aim of integrating the public transport services, that the Affected Operators will conclude restraint of trade agreements, whilst retaining the right of becoming shareholders in a vehicle operating company (VOC).

2.5 The Greater Bloemfontein Taxi Association (GBTA) has been identified as the taxi association to whom the Affected Operators are all affiliated to.

2.6 The process leading up to the compensation of the Affected Operators includes the following:

2.6.1 the identification of the Affected Operators;

2.6.2 the verification of the Affected Operators; and

2.6.3 the valuation of their respective businesses which will inform the compensation amounts payable to these Affected Operators,

the further details of this process is included in a report annexed hereto as Annexure A.

3. LEGAL BACKGROUND

3.1 The purpose of the negotiation process with the Affected Operators is to enter into a VOCA with them that would enable them to provide the required *Hauweng* services.

The enabling legislative provisions that allow for negotiated vehicle operating contracts are contained in sections 39 and 41(1) of the NLTA.

3.2 In essence, Section 39(1)(a) of the NLTA provides that when a municipality, in rationalising public transport services in its area concludes, based on its integrated transport plan, that there is a surplus of legally operated services by operators on a particular route as a result of

which an existing non-contracted public transport service (which would specifically apply to the minibus taxi industry) is no longer required, the planning authority must, where possible offer the operator an alternative service.

Section 41(1)(a) of the NLTA then goes further to provide a mechanism through which the principle contained in section 39(1)(a) supra could be achieved, by enabling municipalities to enter into negotiated contracts with public transport operators in their areas.

3.3 Section 41 provides as follows: -

41. (1) Contracting authorities may enter into negotiated contracts with operators in their areas, once only, with a view to—

*(a) **integrating services forming part of integrated public transport networks in terms of their integrated transport plans;***

*(b) **promoting the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination; or***

*(c) **facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies.***

(2) The negotiations envisaged by subsections (1) and (2) must where appropriate include operators in the area subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services.

(3) A negotiated contract contemplated in subsection (1) or (2) shall be for a period of no longer than 12 years.

3.4 By virtue of section 41(2) of the NLTA, the negotiations envisaged by subsection 41(1) must where appropriate include operators in the area which are subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services, which thus make provision for other classes of operators in addition to those contemplated in section 39(1). The words “where appropriate” have been interpreted as to mean those (other) operators likewise affected by the implementation of a particular IPTN.

3.5 From the wording of section 41(1) above, it is apparent that that section empowers the MMM to enter into negotiated contracts with Affected Operators in order to provide the required *Hauweng* services for MMM’s IPTN project. This, by necessity, includes the negotiations for compensation with the Affected Operators for the acquisition of their business rights along the *Hauweng* routes.

The intention is to enter into the proposed negotiated contract on the strength of the authority contained in section 41(1)(a) above, namely for the purpose of integrating services forming part of MMM's IPTN.

4. RECOMMENDATIONS

It is recommended that:

- 4.1 Council approves the mandate to commence with the process of preparing for the negotiations of compensation to acquire the business rights of the operators affected by the implementation of MMM's *Hauweng* system and who, by necessity, will have their services removed from the routes where the *Hauweng* system will be operating.

Submitted



Mr. Kolisang Rapulungoane
Head: IPTN Unit

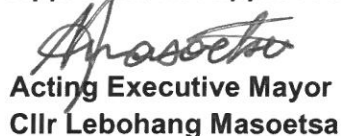
Recommended / ~~not recommended~~



City Manager
Adv. Tankiso Mea

21/09/2020

Approved/ ~~not approved~~



Acting Executive Mayor
Cllr Lebohang Masoetsa



INTEGRATED PUBLIC TRANSPORT NETWORK

Compensation Negotiations Process

**Summarising the Compensation Negotiation Process for the
Affected Operators of the *Hauweng* Service**

15 April 2019

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1 PURPOSE

There are two main outcomes that will underpin the industry transition process for Phase 1 of the Mangaung Metropolitan Municipality (MMM/City) IPTN (*Hauweng*): the identification of operators affected by the implementation of *Hauweng* (Affected Operators), and the compensation model which will be applicable to the buy-out of these Affected Operators. The purpose of this document is to outline the process leading up to and the compensation which would be payable to the Affected Operators in return for their removal from the *Hauweng* routes and the relinquishing of or amending of their operating licenses (OL's) in respect to the *Hauweng* routes.

The process includes the Affected Operator identification, Affected Operator verification, the valuation of the business of the Affected Operators which informs the compensation payable to the Affected Operators and the process which culminates in the compensation payments to the Affected Operators.

2 AFFECTED OPERATOR IDENTIFICATION

To qualify to be considered as a potentially Affected Operator in terms of Section 41(1)(a) of the National Land Transport Act No.5 of 2009, the following criteria apply:

- An operator is considered to be a potentially Affected Operator when such operator operates within a public transport route that is affected by *Hauweng's* route network, regardless of whether the route is fully affected or partly affected and provided that the operator's market share (passenger numbers) is potentially affected by MMM's *Hauweng* service.
 - An operator must have been operating public transport services on any route that will be affected by *Hauweng's* Phase 1 route network before the opening date for registration;
 - The operator must have valid permits or operating licenses (OL's) registered in his/her name for each of the potentially affected public transport vehicles authorising operations on the said routes, or receipts/letters from the Free State Operating Licensing Board (FSOLB) or Provincial Regulatory Entity (PRE), indicating that the operator is still awaiting the issuance of an OL by the FSOLB or PRE, as the case may be; and
 - The operator must be a registered bus operator or a member of a registered taxi association (in the case of Phase 1, the operator must be registered with the Greater Bloemfontein Taxi Association (GBTA)) whose members are registered on the affected routes.
- (i) The above criteria will be published when operators were invited to register as potentially Affected Operators, and the implication of the above qualifications is also that for an association to be recognized as an affected association, the association must be registered in terms of the NLTA.

With reference to the legal definition of an Affected Operator as set out above, an operator is considered to be a potentially Affected Operator when such operator operates within a public transport route that is affected by MMM's *Hauweng* route network, regardless of whether the route is fully affected or partly affected and provided the operator's market share (passenger numbers) is potentially affected by MMM's *Hauweng* service.

3 AFFECTED OPERATOR VERIFICATION

The processes and surveys that is conducted to determine the Affected Operators include the following:

- screen line and cordon surveys;
- compilation of a preliminary route register to assist with survey processes;
- facility surveys;
- Affected Operator registration process;
- the verification of registered operators through the RAS/OLAS data base;
- the verification of registered operators through workshops with the industry and linking results regarding routes operated and to determine which routes are affected and which are not. The results are captured in an updated route register; and
- the establishment of the MMM IPTN database management system that will also be incorporated into the more comprehensive MMM IPTN database.

Progress on the above processes are as follows:

- all the surveys have been completed including the processing of the data, data editing and cleaning processes;
- the Compensation Sub-committee has been constituted, with the inception meeting being held in March 2019 where the terms of reference and process were adopted; and
- a detailed methodology and process has been developed and accepted by GBTA for the verification of Affected Operators.

The outcome of this process will be an Affected Operator Framework Agreement and an Affected Operator database, signed-off by both MMM and the representatives of the Affected Operators.

4 BUSINESS VALUATION

The process that has been followed and the surveys that have been conducted during 2017 (from February to August), in preparation for the calculation of the compensation amounts include the following:

- on-board surveys by means of full electronic equipment (no on-board personnel), 10 consecutive day surveys;
- the verification of the on-board survey data processing methodology completed during a site visit to the independent on-board survey service provider in Cape Town during November 2017; and
- a vehicle operating costing exercise.

In addition, a compensation formula discussion document will be prepared for distribution to the taxi industry, as part of the preliminary technical level negotiations.

5 COMPENSATION

The data collected from the surveys, including the on-board surveys, will form the basis for the compensation model. Compensation will be calculated based on an average of all affected routes operated by GBTA.

The compensation amount applies to a once-off permanent payment when the affected vehicles are removed permanently from the market place and the OL's are terminated or vehicles removed from the affected routes and the OL's amended to exclude the *Hauweng* route corridors. With regards to the vehicles removed from the *Hauweng* routes, the owners will retain their vehicles and are allowed to sell them on the open market or utilise for any other purpose as they may wish.

Further mandates will be sought from Council for the negotiations of specific compensation values once the above process are complete.

The outcome of the compensation negotiations include the conclusion of a Compensation Agreement, which will include the following principles, amongst others:

- the removal of vehicles and relinquishing of or amendments of OL's in compliance with the 'route clearance' principle;
- restraint of trade undertakings being provided by the Affected Operators; and
- the payment of the negotiated compensation in accordance with the terms as negotiated.