



**MANGAUNG**

METRO MUNICIPALITY  
METRO MUNISIPALITEIT  
LEKGOTLA LA MOTSE

DIRECTORATE  
CORPORATE SERVICES

*Corporate Services*

**COUNCIL ITEM**

**SPEAKER**

**REPORT ON PROGRESS ON THE FIFTH UTILITY LEGAL DILIGENCE AND FEASIBILITY STUDY**

**1. PURPOSE**

The purpose of the report is to provide Council with progress made thus far on the Fifth Utility legal diligence and feasibility study.

**2. BACKGROUND AND SUMMARY**

On the 28<sup>th</sup> of November 2019, Council approved the Fifth Utility Concept Proposal subject to the following conditions:

- a) A legal diligence and feasibility study of the fifth utility service delivery, revenue and other benefits be conducted.
- b) The legal diligence and feasibility study, including possibility of fifth Utility services in the City's Organisational structure as a Unit or possible establishment as a Utility Entity, business and sustainability models in accordance with relevant laws and other applicable Regulations per utility opportunity.
- c) The legal diligence and feasibility study report be presented to Council for consideration and acceptance.
- d) Management be authorised to enter into negotiations for the partnership with possible private partners for service delivery, revenue and other benefits for the municipality, residents and surrounding smaller municipalities. Such Agreements be subject to the review based on legal feasibility report.

- e) The municipal Operations and Leadership Academy be established and managed as part of the Municipal Human Resources Sub-directorate for the interim until a permanent structural and operational model is presented to Council for approval, and
- f) Council take note of the work done to research, design the Fifth Utility concept and initial work to secure revenue and recover damages on infrastructure and resources loss incurred by the Municipality.

### 3. CURRENT STATUS

In addition, and as part of conducting legal inquiry for fifth utility, the municipality engaged various means to establish both the interests and models it can develop to enable fifth utility a reality.

Amongst other actions for inquiry, municipality issued invites for expressions of interests. The expressions covered the following in the main

#### **Proposed Investment**

It became apparent that collaborations would include investment by private parties to collaborate with the municipality and this would include shareholding, capital and operations costs. Further engagements and negotiations need to be explored and clarified on the level of investment to enable new services by the municipality.

#### **Partnership Model**

It became apparent through the report that collaborations will include three models. However the establishment of fifth utility company involving the majority shareholding by the municipality and private partners holding minority stake representing their investment to the extent of enabling services would be preferred, taking into account the provisions of section 86C of the Municipal Systems Act of 2000. In this instance it is feasible that this municipal company with its own board will be a service provider on behalf of the municipality. Alternatively, the direct contracting by the municipality with the service provider following procurement process remains an option where necessary and applicable.



### Revenue Share

Revenue sharing remained the pillar of proposed collaborative relationship in envisaged partnership model. The extent of revenue sharing would depend on the nature and model of the preferred partnership. This aspect would primarily be one of the pillars of fifth utility. There is interest in revenue sharing and the municipality would establish the extent of the benefit through further engagements and negotiations where applicable.

### Local BBBEE Structure

The local BBBEE structure has been canvased and the potential collaborators show interest in collaborating with local BBBEE establishments to empower locals in shareholding, management, operations and revenue sharing.

### Economic and Financial Recovery delivery model

One of the primary pillars of new services would be the economic value chain that would benefit the local communities in the business and entrepreneurship. Expressions in this regard were made where local businesses would be vendors and suppliers. This would ultimately assist in job creation and expansion of the revenue base of the municipality. A serious impact would be made in the financial recovery and sustainability of the City.

Proposals, expressions and other documents were received. A summary of their presentation, expressions sought or leveraged in terms of the interim report received from a transaction advisor and indicated amongst others below

Service Partnership Opportunities	Number of expressions	Potential partners
<b>Broadband and Digital Services</b>  ICT Broadband, internet data, transactional services and handsets. Some municipal infrastructure assets are proposed to be used with rights for the furtherance of fifth utility.  Fibre that is said to have been donated to the municipality for the 2010 world cup	4	Vodacom, MTN, XTELECOM, VH Fibre Optics

will be explored.		
<b>Gas, Hydrogen and Solar Energy</b>  Some land or municipal infrastructure may be used for purposes of establishing solar farms and the wastewater in the electricity towers will be explored for hydro-gas electricity. LP Gas is proposed for warehousing and distribution to industries and households. A production facility in the Special Economic Zone or other areas would be explored to set up oxygen manufacturing and warehousing plant much needed for medical use.	5	XTELECOM, SAFEME, Nandi Energy, DAROGUARD, NRW Logistics
<b>Logistics</b>  A special Economic Zone established in terms of Section 23 and 24 of the Special Economic Zones Act of 2014 is proposed for the Tempe Airport and any other area identified for logistics hub to ensure distribution of goods within and beyond the municipality. For the time being the Special Economic Zone is being established, logistics hub is possible for operations.	2	SAFEME, Power Junction Enterprises
<b>Project Management and Feasibility Studies.</b>  Proposals were received for collaboration between the municipality and Southern African Development Bank on feasibility studies and project management for furtherance of fifth utility.	1	Southern African Development Bank



The interim report indicates that Fifth Utility is legally possible in various forms and models necessitated by new community needs and economic development opportunities that require new services and revenue streams for the benefit of Mangaung Metropolitan Municipality and its communities. It further indicates that new community needs and services are necessitated by amongst others

- (a) new normal living arising out of COVID 19 and digital age,
- (b) increasing needs for alternative household heating and industrial processing,
- (c) increasing needs for own generated energy,
- (d) economic needs of the communities and the integration of those needs and benefits to the country's economic value chain, and
- (e) Private encroachment and competition to energy and water business of the municipality.

#### **4. LEGAL IMPLICATIONS**

The interim report highlights that in terms of section 152 (1) of the Constitution of the Republic of South Africa, the municipality is entitled to provide services to communities in a sustainable manner. Services would include gas reticulation as provided for in Part B of schedule 4 of the Constitution and new services based on new needs as provided for in section 56 of the Municipal Structures Act. It should be noted that not all new services may be provided by the municipality directly. However, the municipality can provide the new services through section 78 of the Municipal Systems Act of 2000 and the collaborations with private partners who have financial, regulatory and operational capacity to enable delivery of such new services.

The report highlights that Mangaung Metropolitan Municipality should do the following amongst others

- a) Confirm that Broadband and Digital services, Gas, Hydrogen and Solar Energy and logistics hub are identified as new community needs and services as envisaged in section 56 of the Municipal Structures Act of 1998 and evaluate such new needs in order of priority,
- b) Consider including the new community needs and services in the Integrated Development Plan and undertake public participation as envisaged in Chapter 5 of the Municipal Systems Act,

- c) Consider and negotiate collaborative efforts with private partners to meet new community needs through new services,
- d) Consider granting the use, management and control of municipal infrastructure where applicable to the fifth utility municipal company or private partners where it is deemed fit subject to public participation process as envisaged in Regulations for Assets Transfer of 2008,
- e) Consider and note that at this stage the risk will be shared with the collaborative partners in respect investment and operations of fifth utility service to the communities. Should the risk be transferred substantially to the private partner due to engagements, feasibility studies and or negotiations with private partners, the Municipal Public Partnership Regulations of 2005 would be complied with, and
- f) Consider the establishment of fifth utility company in terms of section 86C of the Municipal Systems Act for the furtherance of fifth utility. Should the municipality choose, CENTLEC may provide the new energy services with shareholding, other models of collaboration or CENTLEC collaborate with the municipal fifth utility company.

## 5. RECOMMENDATIONS

It is therefore recommended that:

1. The partnership proposals where beneficial to the municipality be accepted for collaboration with the municipality subject to recommendations in this report
2. The municipality consider further proposals that seek to enhance or fill any gaps in the fifth utility
2. Where necessary and required further feasibility studies be undertaken by the municipality
3. The municipality establish a company for purposes of advancing fifth utility services
4. The municipality consider inviting private investors to take up minority shareholding through seed, capital and operations funding investment or establish investment collaborations with the fifth utility company
5. The municipality establish a Special Economic Zone in terms of the Special Economic Zones Act of 2014 and commence with necessary feasibility studies in collaboration with Southern African Development Bank. Municipality identify suitable land including Tempe Airport as land required for Special Economic Zone establishment and logistics hub




6. Fifth Utility Services be provided through external mechanism through the Company as envisaged in terms of section 86 of the Municipal Systems Act of 2000
7. In the event the fifth utility is offered by private parties directly, competitive bidding be followed
8. Public Participation be followed in respect of draft agreements and the granting of use, management and control of municipal infrastructure and or land
9. Both National and Provincial Treasury Comments be solicited
10. Terms be negotiated for collaborations on fifth utility
11. Appropriate Budget be made available during adjustment of budget for further feasibility studies, project management, establishment of fifth utility company, the special economic zone and furtherance of fifth utility
12. Council authorise the City Manager and Corporate Services HOD to implement the establishment of Fifth Utility.

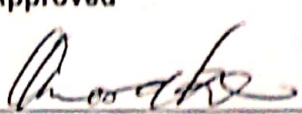
**Submitted by**

  
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**David Nkalsenti**  
**Head of Directorate Corporate Services**

**Recommended By**

  
\_\_\_\_\_  
**Sello More**  
**Acting City Manager**

**Approved**

  
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**Councillor Molefi Morake**  
**Acting Executive Mayor**



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**DIRECTORATE  
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CITY MANAGER**

*Acting City Manager*

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Your Ref:

Room 201, Bram Fischer Building

Our Ref:

Date: 08 July 2021

Mr Sello More

HOD: Waste and Fleet Management

Sir

### APPOINTMENT OF MR SELLO MORE AS ACTING CITY MANAGER

You are hereby appointed as acting City Manager from 08 July 2021 to 13 July 2021.  
You will be expected to carry out all duties and functions as per the Delegation of Powers of the post.

Please indicate your acceptance of this acting appointment below.

Yours faithfully

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Acting City Manager

### ACCEPTANCE OF ACTING APPOINTMENT

I, Sello More hereby accept the acting appointment for the period stated above.

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