



CONFIDENTIAL

ANNEXURE

MANGAUNG METROPOLITAN MUNICIPAL COUNCIL

ITEM 39 - REPORTS OF THE SPEAKER

**3.
NATIONAL TREASURY CORRESPONDENCE
RELATING TO THE ESTABLISHMENT OF THE
MANGAUNG METRO POLICE SERVICE**

**Letters from Deputy DG: Intergovernmental
Relations dated:**

- A. 14 October 2021,**
 - B. 24 December 2021 and**
 - C. 1 February 2022**
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MANGAUNG METROPOLITAN MUNICIPALITY

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



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Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Enquiries: Jan Hattingh Tel: (012) 315 5825, Fax: (012) 395 6553

Ref No: MAN/7

Mr. Sello More
Acting City Manager
Mangaung Metropolitan Municipality
P O Box 3704
BLOEMFONTEIN
9300

Attention: Mr More

ESTABLISHMENT OF THE METRO POLICE SERVICE AT MANGAUNG METROPOLITAN MUNICIPALITY

Reference is made to the latest reports received regarding the City's unwavering decision to proceed with the establishment of the Mangaung Metro Police Service.

The National Treasury has been consistent in its advice to the City that the Metro Police Service should not be a priority, given its precarious financial and service delivery performance. This advice was shared with the City as early as when the Metro announced the creation of Chief of Police position, and the subsequent appointment thereof and then, when this explicit disapproval was ignored, it was followed with same advice in every formal annual budget benchmark assessment and the mid-year budget and performance assessments; since 2017 financial year.

The consistent cautions to the City over the years, to manage its expenditure and prioritise basic service delivery of water, sanitation, and waste management, was largely ignored and contributed largely to the City then being placed under administration for financial performance challenges. Since the start of the War Room to oversee the recovery of the City, the messages were again consistent that the City should contain expenditure and focus on delivering the basic service that residents are pleading for, all set out in the Mandatory Financial Recovery Plan.

The advice was always clear from the National Treasury, and I want to re-iterate it here again to you as the newly appointed Acting City Manager that the establishment of the Mangaung Metro Police Service will exacerbate the current financial challenges and will undermine the purpose of the approved mandatory financial recovery plan. The City is failing to control its operating expenditure, poor revenue collection and failure in corporate governance. To date, even though the Section 139 Intervention is in progress, the City has not demonstrated an improvement in the management of its operating budget. Hence the need for the City to

ESTABLISHMENT OF THE METRO POLICE SERVICE AT MANGAUNG METROPOLITAN MUNICIPALITY

dedicate efforts and time towards the implementation of the financial recovery plan before committing to new projects that will burden the City financially.

The City needs a comprehensive, rigorous, and fully costed organisational design that has been reviewed to be a best fit for a metro of its size and with its financial challenges. For the entire almost 2 years of the Intervention, the National Treasury team made a number of attempts to reach out to the City to ensure the creation of such a reviewed organisational design and was met with what can only be explained as deliberate delays by officials. In the absence of this reviewed, costed organisational design, approved by the War Room, the environment for this ad-hoc and un-strategic filing of posts will thrive.

The message is simple, National Treasury does not support the establishment of the Metro Police Service at this stage and believes it to be not in support of the implementation of the Mandatory Financial Recovery Plan. Please support your administration to focus on fully implementing the Financial Recovery Plan as is. You are reminded that, should this intervention fail to achieve the set targets, it would need to be escalated to a national intervention in line with Section 139(7) of the Constitution. This will have severe consequences for both the administrative and political arm of the institution.

Given this background and the directive from his excellency, the Deputy President of the Republic of South Africa, Mr David Mabuza, that all activities associated with the Metro Police Service must be stopped with immediate effect, you are as the Acting Accounting Officer directed to institute disciplinary procedures against everyone involved in this process including members of the Mayoral Committee in terms of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003). Secondly, no payments nor any additions to the organisational establishments must be allowed under any circumstances.

This letter serves to again employ you as the accounting officer of the metro to supply national treasury with all memorandums and reports that served at council which were the basis for the decision to establish the metro police. It is also critical that the said documents also include the decision-making process how the councillors of the metros voted on this item (all decisions). This record will assist the national Treasury to have a clear picture of who is directly responsible for this decision and who is liable for the expenditure incurred by the Metro and in the event the Auditor General finds this expenditure to have been a fruitless and wasteful that the said recovery process can be effected.

You are hereby advised to take the necessary steps to advise council to rescind this ill-advised decision as soon as practically possible and to timeously advise the National Treasury of the position of the Metro within the next 14 days.

ESTABLISHMENT OF THE METRO POLICE SERVICE AT MANGAUNG METROPOLITAN MUNICIPALITY

Lastly, this directive is not negotiable.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'MaliJeng Ngqaleni', written in a cursive style.

MALIJENG NGQALENI

DEPUTY DIRECTOR GENERAL: INTERGOVERNMENTAL RELATIONS

DATE: 14 October 2021

CC: Ms Sefora Ntombela, Free State Premier
Ms Gadija Brown, Free State MEC for Finance
Mr. Mxolisi Dukwana, Free State MEC for Cooperative Governance
Mr. Odwa Duda Office of the Auditor General



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Enquiries: Mr. J Hattingh, Tel: 012 315 5183, Email: Jan.Hattingh@treasury.gov.za

Ref No: MAN/7

Mr. Sello More
Acting City Manager
Mangaung Metropolitan Municipality
P O Box 3704
BLOEMFONTEIN
9300

Attention: Mr More

FINANCIAL IMPLICATIONS OF THE METRO POLICE DEPARTMENT

Thank you for your letter and supporting documents received on 11 November 2021 in which you were responding to the issues raised by National Treasury (NT) in our letter dated 14 October 2021 and issues raised by NT in the subsequent meetings of 26 October 2021 and 28 October 2021.

Your response is appreciated, and this letter serves as our detailed comments and guidance to the Mangaung Metropolitan Municipality (MMM) on this matter. The NT would like to reiterate that the response to the establishment of the Metro Police is posited on the financial recovery plan imposed on the City in 2020 and the fact that the municipality is approaching the second year of the implementation of this FRP and has to date shown no significant improvement in either the financial performance or position of the metro.

Below is a detailed response on the issues you have raised. We recommend that these responses be further considered by the City.

COST IMPLICATIONS

The original recommendation from the HOD of Finance to the MEC for Finance in the letter of July 2019, explicitly states that the recommended support for the Metro Police establishment should be guided by the principle that no new appointments are made in addition to the current establishment and that existing budgets must be utilised. Also, the City should not enter into new lease agreements because of the establishment of Metro Police Service over the 2019 MTEF period.

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Tshebetso ya Matlotlo a Naha • UMnyango weziMali • Isebe leNgxowa Mali yeLizwe



Therefore, by approving the organogram and starting a journey to progressively fund and implement the Metro Police, the City will be exposed to unnecessary risk as you would dilute the focus on the Financial Recovery Plan (FRP) and delay the investments the City needs to allocate on repairs and maintenance of the water, sanitation, and roads infrastructure. As such this will lead to the City's inability to fund major challenges and divert the meagre financial resources that the City is continuously indicating that the lack thereof is hampering its ability to perform in providing basic services. Whilst your proposal of a phased implementation over time seems reasonable, it is not ideal at this moment. In addition, this will open the gates for a creeping mandate and create an expanded budget for the Metro Police and specifically a Metro Police management structure, that will in the medium and long term further collapse the finances of the City.

The NT notes that the Metro will do so only when savings become available. However, the NT is of the view that given the state on the provision of basic service delivery in the metro, at this stage savings should be invested on service delivery priorities that were identified in the FRP. Most of the priority service delivery improvements set out in the FRP have to date not been substantially addressed. Lack of funding is always mentioned in many engagements with the NT and therefore our guidance is that savings that the City may accumulate should be used for basic service delivery and not for the Metro Police.

Whether the city has a reviewed, costed organizational design for it to progress with metro police.

The City submitted the draft organogram for both Macro and Micro but the only costing components that were submitted was on the Public Office Bearers (POB) and Macro (Executive Management and direct reports). The costing of the Metro Police has not been provided except the mentioning by the City that they will utilise the existing budget of the Public Safety Department.

The City has not mentioned in any of the documents shared including the Metro Police proposal that the filling of posts must be in line with the prevailing financial conditions. The documents approved by internal HODs, and ACM, state that the City must make the budget available, and that savings will be used when available. This is an indication that financially prudent approach has and/or will not be followed, and in most likelihood, funding will increasingly be moved from basic service delivery to fill the Metro Police structure leading to an ever growing operational and capital budget for this Metro Police function.

Whether the process will not exacerbate the current worsening financial position of the City.

The financial envelope you refer to was approved in October 2019, just months before the City was placed under intervention due to financial, governance, institutional and service delivery failures. It is our understanding that, since the intervention and the focus of the FRP, the City would have made substantial changes to the budgets and plans to reprioritise how



to fund the critical investments needed to put it back on a sound footing. As such it would not be prudent to rely on the October 2019 financial envelope to proceed with the establishment of the Metro Police irrespective of whether you are contemplating to phase the implementation thereof.

The NT notes that in the most recent communicate you have shared, you claim that the City will not incur additional costs, however there is no evidence presented that justifies how the City has arrived at this conclusion. This is countered by the fact that in various correspondence and documents the City mentions that there will be additional costs for minor building refurbishment, vehicles, uniforms, but all of these have cost implications. Despite mentioning that there are no additional staff costs in moving staff into new positions, the legal letter from the officials that are challenging moving back to their old positions, states that they will lose the additional benefits from their new positions. It is this evidence and contradictions that point to the NT about the dire implication of full costs which will accrue because of the implementation of this decision.

Of concern is that the City cites the potential benefits of increased traffic fines and by-law enforcement. There have always been challenges in the underlying systems and efficiencies of your traffic fine management. There is no indication how this will be improved through employing more people and increasing salaries and benefits of the same people (through increase benefits which will arise as a result of launching Metro Police department).

Whether the process will not hamper service delivery further.

Given the information presented to date, the NT is not convinced by the assertion that the investment in a Metro Police will bring service delivery efficiencies. The City could probably achieve more efficiencies through implementing by-law enforcement and traffic fines management systems as well as performance measures for the current staff.

Why the City abandoned the launch process, despite having followed the processes as detailed above?

On the appointments process the City mentioned that it has solicited a legal opinion confirming that there was a misinterpretation of the delegations by the Executive Head of Metro Police, Mr Israel Kganyane. According to the City, the latter believed that both the delegations approved by the Council and the South African Police Services Act (68 of 1995) gave him the power to appoint personnel at the Metro Police with no approval of the accounting officer. In the light of this, the NT would then wish to be updated on what steps you have taken to discipline Mr Israel Kganyane.

Consequences if we abandon Metro Police processes in the current financial year

The financial viability plan approved by the City in 2019/20 indicates that the Metro Police Department will be mainly funded through rates and taxes of about 90 per cent and 10 per cent from revenue from traffic fines. The budget for the Police Forces, Traffic and Street



Parking Control was reduced by 33 per cent from R243 million in 2019/20 audited financial year to R183 million in 2021/22, however, it gradually increases over the two outer years.

It is important to note that even though the City's budget was assessed to be funded, it was reiterated that it is a very tight budget, and the City needs to be disciplined in its implementation. Furthermore, the past years' audit outcomes have proven that the City is still struggling with overspending on its operating expenditure budget, which is a recurring challenge as it has ended years with massive operating deficits. Therefore, this indicates that further expansion of the organisational structure will exacerbate the city financial distress.

Consequence management

The NT notes your intentions to submit a report to the council and your intentions to pursue the rescinding of the appointments, mindful of the legal challenges that will ensue.

Your proposals to remedy the situation

The NT notes the steps you plan to take, and we would now like to engage with the City on the actual costs analyses review planned and the draft proposal mentioned for NT and EXCO consideration planned for December 2021.

The NT is not in agreement with your proposal to proceed with "Internal recruitment in limited positions" at this stage, given the legal challenges and the budget issues that are still unresolved. The NT advise the City to put a halt to any recruitment in the next 12 months until all legal and financial matters are resolved, and the implication are clear. The current employees are in place to fulfil the basic by-law enforcing and traffic duties and the City should continue as such. The NT advise the management to focus on performance improvement initiatives for the existing teams.

With respect to your proposal to "launch of metro police in January 2022", the NT advises that this should not proceed. At this stage, the City should put its energy on financial recovery to the extent that there are tangible results and all the set targets have been achieved. Simply put, the City management should work towards a state where there is no intervention. Therefore, it would be appreciated if management can ensure that the City recovers financially in the next years instead of entertaining additional functions and expenses which will in all likelihood plummet the City into further financial distress.

The NT has always been consistent in guiding the City regarding the establishment of the Metro Police Department by simply indicating that, whilst it may be a good idea, it is currently not affordable given that the City is in serious financial and service delivery distress.

The Metro needs to focus the budget and plans to achieve the service delivery challenges that are often reported while citing lack of funding as the main reason. Therefore, a Metro



Police Department should be something the City can consider as a future investment when the financial and basic service delivery stability progress has been achieved.

The NT is willing to work with the City towards implementing this on the basis that all financial and legal issues have been fully ratified by both the City and NT. As such, we will appreciate if you may engage NT on the actual costs analyses review the City's has commissioned.

I hope you find this guidance and our responses clear and direct. In summary, the National Treasury is of the view that the establishment of the Metro Police is not only ill-timed but will hamper the current FRP process in place and result in the further diversion of funds away from basic service delivery and the repair and maintenance of municipal infrastructure which is a priority for the metro. Furthermore, we are of the opinion based on the information provided, that there will be an increase in operating costs for the metro arising from the establishment of such a structure which will result in further financial problems for the metro and compromise the unfunded budget position which is already tenuous and dependent on a high level of fiscal prudence within the metro. We are also not convinced that the benefits to be derived from the Metro Police in the form of traffic fines and other revenues would be as substantial as indicated by the metro, as we are aware from the FRP implementation to date of the poor payment culture in the municipality. If you wish for further discussions and advice, please feel free to contact us.

Yours Sincerely,

MALIJENG NGQALENI

DEPUTY DIRECTOR-GENERAL: INTERGOVERNMENTAL RELATIONS

DATE: 24 December 2021

CC:

Ms Masechaba Sasing, Acting HOD Provincial Treasury
Mr Mokete Duma, HOD FS Cooperative Governance
Mr. Odwa Duda Office of the Auditor General



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FROM: Jan Hattingh, Email: Jan.Hattingh@treasury.gov.za

Ref No: MAN/7

Mr T Maine
Acting City Manager
Mangaung Metropolitan Municipality
P.O Box 3704
BLOEMFONTEIN
2430

Dear Mr Maine

APPOINTMENT AS THE ACTING MUNICIPAL MANAGER / ESTABLISHMENT OF THE METRO POLICY SERVICE

Our letter dated 14 October 2021 with regard to the Establishment of the Metro Police Service refers.

We have been informed that you have been appointed to act as the Municipal Manager with effect from today, 1 February 2022.

Given the recent political developments in the Metro and the number of Court proceedings that is currently unfolding, you will without doubt agree with me that the National Treasury is deeply concerned about the impact of these developments on good governance practices, the stability of the institution, prudent financial management, quality and uninterrupted service delivery and the rule of law.

As the Acting City Manager, you are reminded of your many tasks and responsibilities assigned to you in terms of the Municipal Financial Management Act, 2003 (Act No. 56 of 2003) which includes the implementation of the Mandatory Financial Recovery Plan imposed by the Free State Provincial Government in terms of Section 139 (5) (a) and (c) of the Constitution. You also have the fiduciary responsibilities in terms of section 61 of the MFMA which provides, amongst others, as follows:

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Tshebetso ya Matlotlo a Naha - UMnyango weziMali - Isebe leNgxowa Mali yeLizwe



- Act with fidelity, honesty, integrity and in the best interest of the municipality in managing its financial affairs;
- Disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and
- Seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the municipality.

Section 74 of the MFMA provides for general reporting obligations of the accounting officer as follows:

- (1) The accounting officer of a municipality must submit to the National Treasury, the provincial treasury, the department of local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required; and
- (2) If the accounting officer of a municipality is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons to the mayor and provincial treasury.

To this end, you are required to advise National and Provincial Treasury on any decisions of Council that undermine the FRP and the financial prudence of the institution and failure to do so will constitute a breach of your fiduciary and general reporting responsibilities as an accounting officer.

As you may be aware, your duties further extend to ensuring the decisions of Council are in line with the Rules and Orders of Council in that the procedure for submission of items to Council and the actual convening of Council is in line with the Rules and Orders and you have the responsibility to formally advise Council in writing or on record if their actions are offensive to the principle of legality, Rules and Orders and that any decision taken by Council outside the provisions of the Rules and Orders are procedurally illegal and stand to be reviewed in a Court of law. Failure to ensure such compliance may lead to you as an accounting officer being in breach of the law and may be held personally accountable for the full extent of such decisions.



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To this end, you are hereby politely advised that should you in your capacity as Acting City manager make any decision/s, take any action on behalf of the Mangaung Metro or table a report for decision-making by Executive Mayor and/or Council that is not consistent with the objectives and spirit of the approved and adopted Financial Recover Plan (FRP), any applicable legislative framework, set treasury norms and standards, directives from National Treasury and outside the governance structure that oversee the implementation of the Provincial Mandatory Intervention, you will be held personally liable for any unauthorised, irregular, fruitless and wasteful expenditure incurred as a result thereof.

Yours faithfully,

MALIJENG NGQALENI
DEPUTY DIRECTOR-GENERAL: INTERGOVERNMENTAL RELATIONS
DATE: 01/02/2022

CC: Mr M Duma
Head of Department: Free State Provincial Department of Cooperative Governance and Traditional Affairs

Ms M Sasing
Acting Head Official: Free State Provincial Treasury

Mr Sabata Mofokeng
Chief Financial Officer: Mangaung Metropolitan Municipality

Mr Odwa Duda
Business Executive: Auditor General of South Africa

Mr Mpho Mogale
Acting Deputy Director General, Cogta