

ITEM NUMBER: C 65/07/10

**RECOMMENDATION FROM THE EXECUTIVE MAYOR: 20 JULY 2010**

**MC 39/07/10 BUSINESS PLAN FOR PHASE 1A OF CAPE TOWN'S MyCiti INTEGRATED RAPID TRANSIT SYSTEM**

Annexure B to the report on the agenda was tabled at the meeting, a copy of which is attached to the official Mayco minutes as "Addendum C".

The Mayco Member for Transport, Roads & Major Projects, Cllr E Thompson, elucidated the Business Plan document. She said that the document sets out the current business plan for MyCiTi with a summary of the main parameters of the project.

Cllr E Thompson said that the issues raised at the joint Portfolio Committee meeting held on 15 July 2010 have been captured and categorised to allow for detailed analysis. She requested that it be ensured the additional information requested at the joint workshop forms part of the business plan document to be submitted to Council for consideration.

The Deputy Executive Mayor and Mayco Member for Finance, Ald. I Neilson, highlighted the fact that improved processes regarding funding, planning and staffing have been implemented to ensure the thorough roll-out of the project. He said that the current business plan was a significant improvement on the previous version and this could be achieved by taking into account all previous investigations, studies and analysis in order to gain a good understanding of a project of this scale and complexity, as well as to identify risks and deal with same. The only outstanding issue to deal with would be the operation of the service.

Ald. Neilson said that the business plan would be updated from time to time by constantly monitoring and reviewing the project to meet challenges, as well as to suit the needs of the public.

**RECOMMENDED that:**

- (a) the Business Plan for Phase 1A of Cape Town's MyCiTi Integrated Rapid Transit System be approved by Council for the following purposes:
  - (i) submission to National Department of Transport (NDOT) for consideration of future years of funding;

- (ii) submission to National Treasury for consideration to confirm the allocations of future years of the Public Transport Infrastructure and Systems Grant (PTISG) in terms of section 8(4) of the Division of Revenue Act, No. 1 of 2010 (DORA);
  - (iii) for public comment.
- (b) based on comment from the public, National Department of Transport and National Treasury, an amended Business Plan be submitted to Council for consideration by no later than October 2010.

**REPORT TO MAYORAL COMMITTEE**



CITY OF CAPE TOWN | ISIXEKD SASEKAPA | STAD KAAPSTAD

**1 ITEM NUMBER: MC 39/07/10**

**2 SUBJECT**

**BUSINESS PLAN FOR PHASE 1A OF CAPE TOWN'S MyCiTi INTEGRATED RAPID TRANSIT SYSTEM**

**ONDERWERP**

**SAKEPLAN VIR FASE 1A VAN KAAPSTAD SE MyCiTi-GEÏNTEGREERDE SNELVERVOERSTELSE**

**ISIHLOKO**

**ISICWANGCISO SENDLELA YOKUFEZEKISWA KOMSEBENZI SESIGABA-1A SENKQUBO YASEKAPA ENGOTHUTHO OLUHLANGENEYO LWEBHASI EZIQUQA ZIBUYELELA I-MyCiTi**

**LSUA4872**

**3 PURPOSE**

The purpose of this report is to obtain approval by Mayco and Council of the attached MyCiTi Integrated Rapid Transit System Phase 1A Business Plan for the purposes of :-

- submitting the Business Plan to the National Department of Transport (NDOT) for consideration of future years of funding;
- submitting the Business Plan to National Treasury with the aim of getting firm confirmation of future years' funding from the Public Transport Infrastructure and Systems Grant, thus enabling commitments beyond 2010/2011, needed for effective roll out of the system;
- submitting the Business Plan for public comment.

#### 4 FOR RECOMMENDATION BY THE MAYOR AND FOR INFORMATION AND DECISION BY COUNCIL

*The recommendations in paragraph 6 are for consideration and recommendation by the Executive Mayor in consultation with the Mayoral Committee, and for decision by Council.*

#### 5 EXECUTIVE SUMMARY

This report follows a number of reports already considered by Mayco and Council, and ensuing decisions. In August 2008 Council granted authority to proceed with the implementation of the City's Integrated Rapid Transit (IRT) system, recently named MyCiTi. Over the following year it became evident that costs would be considerably higher than initially anticipated. However, decisions in the second half of 2009 confirmed Council's authority to proceed, subject to the constraints of guaranteed available resources. An external due diligence investigation was commissioned and further project reviews undertaken.

During 2010 significant additional resources have been made available through national government's Public Transport Infrastructure and Systems Grant (PTISG). Furthermore, a mechanism has been made available in terms of the 2010 Division of Revenue Act 1 of 2010 (the 2010 DORA) to enable certainty to be obtained regarding funding on PTISG contained in the outer years of DORA.

This Business Plan is tabled as required in terms of PTISG funding conditions and by Council's resolutions (b)(iii) and (c)(i) of item C 71/10/09, adopted in October 2009 (referred to below as 'Council's October 2009 decision on IRT'). The latter resolutions were linked to the *IRT: Project Status and a Financial & Strategic Report* of October 2009 (referred by below as 'the IRT October 2009 report'). The Business Plan is also tabled to enable a process of public comment.

In terms of DORA and the related guidelines of the National Department of Transport (NDOT) the City must submit an approved business plan to the department by 30<sup>th</sup> July 2010 in order to secure the funding for the 2011/12 financial year as contained in the 2010 DORA (an amount of R1 600 million); to confirm the following year's allocation; and to provide a basis for securing funding in the 2013/14 year. A business plan is also needed to apply to National Treasury in terms of section 8(4) of the 2010 DORA to render the indicative funding for future years firm. This will enable commitments beyond 2010/2011, which are needed to ensure effective roll out of the system. A two month period of engagement with national government will follow the submission of this Business Plan to these departments.

Given the magnitude of this project it is also deemed appropriate to use this period to elicit public comment so that this can be taken into account along with the outcome of discussions with national government. These comments will be incorporated into an amended Business Plan to be tabled at Council by the end of October 2010 at the latest.



## 6 RECOMMENDATIONS

It is recommended that:

- (a) The MyCiTi Business Plan is approved by Council for the following purposes:
  - (i) submission to National Department of Transport (NDOT) for consideration of future years of funding;
  - (ii) submission to National Treasury for consideration to confirm the allocations of future years of the PITSG in terms of section 8(4) of the Division of Revenue Act, no 1 of 2010 (DORA);
  - (iii) for public comment.
- (b) Based on comment from the public, NDOT and National Treasury an amended Business Plan to be submitted to Council by no later than October 2010.

## 6. AANBEVELINGS

Daar word aanbeveel dat:

- (a) Die MyCiTi-sakeplan vir die volgende doeleindes deur die Raad goedgekeur word:
  - (i) voorlegging aan die nasionale departement van vervoer (NDOT) vir oorweging van toekomstige jare van finansiering;
  - (ii) voorlegging aan die nasionale tesourie vir oorweging ten einde die toekenning van toekomstige jare van die PITSG ingevolge artikel 8(4) van die Wet op Verdeling van Inkomste, no 1 van 2010 (DORA) te bevestig;
  - (iii) vir openbare kommentaar.
- (b) Op grond van kommentaar van die publiek, die NDOT en die nasionale tesourie 'n gewysigde sakeplan teen nie later nie as Oktober 2010 aan die Raad voorgelê word.

## 6. IZINDULULO

Kundululwe ukuba:

- (a) Makuphonyezwe iSicwangciso sendlela yokufezekiswa komsebenzi se-MyCiTi liBhunga, ngokwezi njongo zilandelayo:

- (i) ukuze singeniswe kwiSebe leSizwe lezoThutho (NDOT) kulungiselelwa ukuba kuthathelwe ingqalelo ukuxhaswa ngezimali kwenkqubo le kwiminyaka ezayo;
  - (ii) ukuze singeniswe kuNondyebo weSizwe ukuze aqwalasele ukuqinisekiswa kwezabelo ze-PITSG zeminyaka ezayo, ngokungqinelana necandelo-8(4) loMthetho ongoLwahlulo lweNgeniso onguNomb.1 wango-2010 (DORA);
  - (iii) ukuze silungiselelwe uvakaliso-zimvo loluntu.
- (b) Ngokubhekiselele kuvakaliso-luvo loluntu, leSebe leSizwe lezoThutho / NDOT nolukaNondyebo weSizwe, iSicwangciso sendlela yokufezekiswa komsebenzi masingeniswe kwiBhunga engadlulanga u-Oktoberha 2010.

## 7 DISCUSSION

### 7.1 The MyCiTi Business Plan

The Business Plan tabled with this report:-

- o is based on the outcome of the assessment and strategic review across the areas set out in resolution (c)(i) of Council's October 2010 decision on IRT;
- o adjusts the implementation plan in view of the additional funding received (see below), as required in terms of resolution (b)(iii) of Council above decision;
- o takes into account the findings of the due diligence investigation (concluded in April 2010); and
- o deals with the other key issues raised in Council's above decision, and other relevant matters.

### 7.2 Background

This report follows a number of reports already considered by Mayco and Council, and ensuing decisions. In August 2008 Council granted authority to proceed with the implementation of the City's Integrated Rapid Transit (IRT) system. Over the following year it became evident that costs would be considerably higher than initially anticipated. After this was reported to Council in mid-2009 a further report was submitted in October 2009, and monthly project reports submitted thereafter. On the basis of the October 2009 report Council granted authority to proceed with the project along the lines set out in the report while limiting expenditure to that already budgeted by Council together with funding received from national government through the Public Transport Infrastructure and Systems Grant (PTISG). Key immediate elements of the project to be proceeded with included meeting commitments given in respect of the public transport plan for hosting the 2010 FIFA World Cup.

It was noted that given the financial climate, even funding designated to be received in terms of the outer years of national government's Division of Revenue Act (DORA)



allocations could not be guaranteed, and the City therefore could not enter into any commitments until there was a legally binding commitment from national government to transfer the funding.

In the light of the cost escalations the City made representations to national government regarding funding as well as seeking firm guarantees relating to the predictability of funding. Council thus agreed in October 2009, in terms of resolution (b)(iii) of its October 2009 decision on IRT:

*Should additional funding be received from National Department of Transport or National Treasury, the roll-out of the IRT project [should] be reassessed and a further report in this regard [should] be submitted to Council (see also par 7.2.3 of the October 2009 report).*

Council also agreed that an external due diligence investigation be undertaken to verify the financial situation of the IRT project and that, in addition, a further assessment and strategic review be undertaken. The required content of the assessment and review was set out in resolution (c)(i) of Council's October 2009 decision on the way forward regarding IRT:

*A re-assessment of the IRT Operating / Business Model, including the proposed IRT Operating Entity, the vehicle operating company prospectus, bus ownership options, the handling of depreciation of assets, compensation to the minibus-taxi industry in the Phase 1A area for termination of licences, management of the fare revenue stream, and the capacity within the project team to undertake operating transport modeling and associated cost modelling; that appropriate staff from the Finance and Corporate Services Directorates be assigned to the IRT Project Team to assist with this task; and that this re-assessment be undertaken under the auspices of the Executive Management Team (EMT) IRT Sub-committee and on conclusion a report be submitted to the Mayoral Committee. (See also recommendation 7.3.1 of the relevant report to Council.)*

### **7.3 Developments in relation to further PTISG funding**

Representations to national government were successful both in terms of additional funding as well as a mechanism to assure firm predictability and reliability of (initially indicative) allocations in future years.

In national government's budget adopted by Parliament earlier this year, the PTISG funding for the 2010/11 financial year was increased from R647 million to R850 million. Anticipated funding for 2011/12 was increased from R800 million to R1 600 million, and an additional R900 million was provided for in the new outer year of the medium term expenditure framework (2012/13). This represents an additional R1 903 million above what was contained in the 2009 DORA, which set the context of the October 2009 Council decisions.

Furthermore, a clause specifically applying to PTISG funding was included in the 2010 Division of Revenue Act.

Section 8(4) of the Division of Revenue Act 2010 reads:

*... in respect of the Public Transport Infrastructure and Systems Grant, funding which is specifically approved by the National Treasury in relation to transport contracts for capital projects must be regarded as being firm allocations for the next*



*financial year and the 2012/13 financial year that will not be altered downwards in the Division of Revenue Acts in respect of those financial years.*

This is the only grant for which the Division of Revenue Act has made a specific provision of this nature. This clause makes it possible to advertise and award tenders before funds are actually received by the City, although the implementation will be managed in such a way that payment will not be required prior to funds being received by the City. It permits the implementation of the project to be planned and implemented in a more coherent and predictable manner. This also makes it possible to avoid disruptive breaks in implementation as the funding of future years is awaited.

#### **7.4 Key changes in IRT since the October 2009 report**

The external due diligence report together with the assessment and review confirmed most elements of the envisaged business model and plan. Perhaps the most significant change was in relation to the envisaged model of ownership of vehicles. While the model of vehicle ownership envisaged at that stage remains the most advantageous financially, it carries the risk that were the vehicle operators to go insolvent the vehicles, which are being purchased out of PTISG funds, could be lost. A new model is now proposed in terms of which the vehicles purchased by the City are sold to a financial institution and leased to the vehicle operators. The details of this, including the range of options considered, are set out in the attached Business Plan.

The expected project costs were presented to Council in a number of reports in the second half of 2009, culminating in a November 2009 report on funding and budgetary provisions for IRT, where the once-off project costs were estimated at R4 309 million, Council's ongoing internal costs at approximately R30 million per annum, and an operating deficit of R118 million per annum for the system was expected.

After substantial additional modelling and assessment, and based on further insights into other costs, the total cost estimates for the project remain almost exactly the same. However a crucial risk associated with the VAT treatment of fixed infrastructure for the MyCiTi system has emerged. This matter is discussed in Chapter 9 of the Business Plan and relates to whether the fixed infrastructure for MyCiTi is classified as 'zero-rated' for VAT purposes or 'VAT exempt'.

#### ***The VAT issue***

There are three types of VAT status – the normal VAT status, 'VAT exempt' status, and 'zero-rated' status. Under VAT exempt status a supplier may not charge VAT on outputs, but has to pay VAT on all inputs (eg regarding service providers to that supplier) and may not reclaim these from SARS. Under zero-rated status the supplier does not charge VAT on outputs, but may reclaim all VAT paid on inputs to the activity. It is thus most advantageous for the supplier if the service is 'zero-rated'.

In 2006, when Regional Services Council levies were abolished part of the compensation to municipalities was to introduce zero-rated status for rates funded services. Thus, for example, provision of roads for mixed use (mainly private vehicles) by a municipality is zero-rated. However, there is a specific section in the VAT Act dealing with public transport which classifies *public transport services* as VAT exempt.



The key dispute is whether the costs of the fixed infrastructure for the MyCiTi system are to be regarded as part of the public transport service itself and thus VAT exempt, or are classified with other road infrastructure and thus zero-rated. If the former (ie the MyCiTi infrastructure is classified as VAT exempt) the result is that where the City provides infrastructure for private motorists it can reclaim the input VAT, but where it provides infrastructure for public transport it cannot.

Initially the view taken by cities implementing Bus Rapid Transit (BRT) systems (including both Johannesburg and Cape Town) was that the BRT *operations* were VAT exempt, but the infrastructure zero-rated. However, this has been brought into doubt. The matter has not yet been resolved. After discussions with SARS officials and on their advice, it was deemed prudent provisionally to consider public transport infrastructure development as VAT exempt until confirmation to the contrary, and pay input VAT to avoid any potential penalties.

VAT has thus been calculated on this basis for past expenditure on the project and paid over to SARS, and all future payments to contractors on infrastructure required exclusively for the *MyCiTi* System will be deemed exempt for VAT return purposes until further clarity on the matter is obtained from SARS. This results in an increase of R309 million over the previous budgeted costs of the project.

The matter is now the subject of discussion between National Treasury and SARS. Both acknowledge that there are anomalies that have to be addressed, and are exploring ways that this can best be done.

### 7.5 Required process

In terms of DORA it is necessary for the City to submit a Business Plan to the national Department of Transport by 30<sup>th</sup> July 2010 in order to secure the funding for the 2011/12 financial year as contained in the 2010 DORA (an amount of R1600 million) as well as to confirm the following year's amount and provide a basis for securing funding in the 2013/14 year.

A Business Plan is also required in order to follow the process with National Treasury provided for in section 8(4) of the 2010 DORA.

A two month period of engagement with national government will follow the submission of this Business Plan to these departments.

Assuming the process is successful this will allow the City not only to secure funding over the coming three year period, but also (a) enter into multi-year contracts now for delivery in future years as soon as funds are available and (b) start services significantly earlier, due to the fact that preparatory work can be done before the next financial year starts. This will allow the City to utilise those elements of infrastructure already completed at an earlier date.

Given the magnitude of this project it is also deemed appropriate to use this period to elicit public comment so that this can be taken into account along with the outcome of discussions with national government. These will be incorporated into an amended Business Plan to be tabled at Council by the end of October 2010 at the latest.

The process of approving this Business Plan includes an earlier workshop held with the Portfolio Committees for Transport, Roads and Major Project and Finance. The comments from this workshop will be tabled at the next meeting of the Mayoral



Committee. After the Council meeting further engagement will be possible at portfolio committees concurrently with engagement with national government and the eliciting of public comment. The Business Plan will also be submitted to the Provincial Government of the Western Cape for comment. This will occur between end July and end August 2010.

A final version of the Business Plan will then be submitted to Council.

### **7.6 Alignment with Section 33 process**

In terms of section 33 of the Municipal Finance Management Act (no 56 of 2003) where municipalities enter into contracts which span more than three financial years a process is required wherein comments are elicited from the public, and provincial and national government, and the contract itself is approved by Council prior to signing.

As is indicated in the Business Plan, at least four contracts are envisaged to run for more than three financial years. These include contracts with

- The vehicle operators
- The fare system contractor
- The control centre contractor
- The station services contractor.

The contracts are explained in the accompanying Business Plan.

Thus, a separate section 33 process has been embarked upon in order to meet the legal requirements of the relevant legislation. A report that summarises the key issues relating to these contracts and project has already been made public.

Formally, the two processes remain separate in order to comply with legislation. However, in reality they will both be brought together in that the outcomes of both processes will be considered by Council around the same time.

### **7.7 Financial implications**

The financial implications of the MyCiTi project are a key element of the accompanying Business Plan and are discussed in Chapter 9 of the Business Plan.

### **7.8 Legal implications**

A number of contracts let under the MyCiTi project and various contracts being prepared need to comply with legislation such as the MFMA, NEMA and the NLTA. Professional legal services have been made available to the project team to assist with the legal process and ensure compliance were required. Where activities such as public participation and EIA's are required appropriate specialist / professional assistance has been and will be obtained.

The section 33 process described above is one example addressing such projects.



## 7.9 Staff implications

The establishment of the dedicated MyCiTi Project Team within the Directorate: Transport Roads and Major Projects has required the creation and approval of a new staffing structure and an additional staffing budget for the MyCiTi Project Team.

|   |                                     |
|---|-------------------------------------|
| Does your report impact on staff resources or result in any additional staffing resources being required? |                                     |
| No  | <input type="checkbox"/>            |
| Yes   | <input checked="" type="checkbox"/> |

These issues are covered in the Business Plan in Chapter 8.

## 7.10 Risk implications

Does this report and/or its recommendations expose the City to any risk? (i.e. does it have any adverse influence on service delivery?)

No   
Yes

The MyCiti (IRT) Project does expose the City to a number of risks including inter alia financial risks. The financial implications and hence associated risks are discussed in detail in Chapter 9 of the accompanying Business Plan.

The risks associated with not adopting the recommendations of this report relate to the National Department of Transport (NDOT) and to National Treasury's for consideration of future years of the PITSG funding allocations for the MyCiti project, which presently amounts to R2.5 billion.

As part of the ongoing project management a Risk Register for the MyCiti project is being maintained. This is regularly updated and reported at RiskCo.

**I hereby confirm that I have informed the Chief Risk Officer of the Risk Implications of this report by e-mailing this report to him ([Ludwig.Geldenhuys@capetown.gov.za](mailto:Ludwig.Geldenhuys@capetown.gov.za)) on 15-07-2010.**

## 7.11 Other Services Consulted

The assistance of officials from the Executive Management Team, other departments of the Transport Roads & Major Projects Directorate, the Finance Directorate and Corporate Services Directorate (Communications) have been obtained in preparing the appended Business Plan.



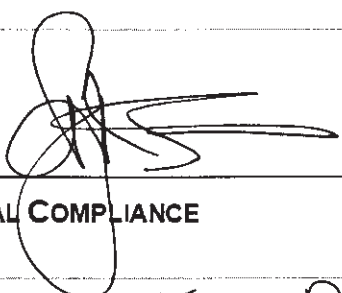
**ANNEXURES**

Annexure A: Business Plan for Phase 1A of Cape Town's MyCiTi Integrated Transit system, Version 2, July 2010

Annexure B: Comment on the draft Business Plan by the joint Portfolio Committees of Finance and Transport Roads and Major Projects

FOR FURTHER DETAILS CONTACT :

|                        |                               |
|------------------------|-------------------------------|
| <b>NAME</b>            | Mike Marsden                  |
| <b>CONTACT NUMBERS</b> | 021 4005011                   |
| <b>E-MAIL ADDRESS</b>  | Mike.marsden@capetown.gov.za, |
| <b>DIRECTORATE</b>     | TR&MP                         |
| <b>FILE REF NO</b>     | 4.6.7.                        |

|   |  |
|---|--|
| <br><b>LEGAL COMPLIANCE</b> | <input checked="" type="checkbox"/> REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION. |
|   | <input type="checkbox"/> NON-COMPLIANT   |
| <b>NAME</b> JEAN ROMAN  | <b>Comment:</b>  |
| <b>TEL</b> (021) 400 - 2123   | Compliant: Based on the contents of the report   |
| <b>DATE</b> 15/07/2010  |  |



**EXECUTIVE DIRECTOR: TRANSPORT ROADS AND MAJOR PROJECTS**

DATE 2010-07-15