



ADDENDUM (2)

SECTION F		
ITEMS FROM THE COMMUNITY SERVICES DEPARTMENT / ITEMS VANAF DIE GEMEENSKAPSDIENSTE DEPARTEMENT / IMIBA YESEBE LENKONZO ZOLUNTU		
F.3	<p>GARDEN ROUTE REGIONAL WASTE MANAGEMENT FACILITY PUBLIC, PRIVATE PARTNERSHIP PROCESS PROGRESS REPORT/ GARDEN ROUTE STREEK AFVAL BESTUUR FASILITEIT PUBLIEKE, PRIVATE VENNOOTSKAP PROSES VORDERINGSVERSLAG</p> <p><i>Refer: Report dated 30 September 2020 from the executive manager: community services: (C Africa) / manager: district waste management (ME Hubbe)</i></p>	2 - 10

COUNCIL

30 September 2020

MAYORAL COMMITTEE

30 September 2020

**GARDEN ROUTE REGIONAL WASTE MANAGEMENT FACILITY PUBLIC, PRIVATE
PARTNERSHIP PROCESS PROGRESS REPORT/ GARDEN ROUTE STREEK AFVAL BESTUUR
FASILITEIT PUBLIEKE, PRIVATE VENNOOTSKAP PROSES VORDERINGSVERSLAG**

(17/5/1/1)

30 September 2020

**REPORT FROM THE EXECUTIVE MANAGER: COMMUNITY SERVICES: (C AFRICA) /
MANAGER: DISTRICT WASTE MANAGEMENT (M E HUBBE)**

PURPOSE OF THE REPORT

To inform Council of the progress made to date regarding the Garden Route Regional Waste Management Facility Public, Private Partnership Process.

BACKGROUND / DISCUSSION

The previous progress report dated 14 April 2020 informed Council that the CEO of Eden Waste Management Proprietary Limited (Private Party), Mr. Jason McNeil, had requested that the project construction commencement date needed to be delayed by three (3) to four (4) months subject to how the national lockdown situation unfolds.

On 15 May 2020 a letter was received from Mr. McNeil indicating that all project and financial agreements were in final form and that all material suspensive conditions had been satisfied, with the exception of the final servitude agreements with PetroSA and Eskom, to proceed with the construction phase of the project. (Eskom has already signed the agreement and PetroSA is in process to finalise the signature of the agreement.)

Mr. McNeil further indicated that with the announcement of the COVID-19 pandemic as a national disaster, Interwaste has found themselves with unprecedented challenges and constraints and that their business has suffered, and will continue to suffer, material loss under these tough economic circumstances and their main priority now is the preservation of their existing business. On the basis of their current position and the lack of certainty regarding their future position as a result of the pandemic, it is difficult to determine how it would be possible to proceed with the project as currently envisaged. The Interwaste board was, at that stage, assessing the situation in order to make a determination on the way forward and would be in contact with the district municipality (GRDM) in the following two weeks with the necessary feedback.

A follow-up letter dated 22 May 2020 was received from Interwaste indicating that their board has had the opportunity to consider all relevant considerations and in light of the COVID-19 pandemic and the unprecedented challenges and constraints it has had on their business their board has determined that;

1. It is paramount to preserve their existing business and not to jeopardise the jobs and livelihoods that are supported by their business;
2. In light of the economic constraints and the ongoing uncertainty as to the future outlook, it is impossible for them to provide the proposed equity investment to ensure the funding of the concomitant debt obligations required in respect of the Public, Private Partnership project as currently envisaged; and
3. To proceed with the project as currently envisaged may compromise their financial position in the future, and consequently, having regard to their fiduciary duties and their obligations as directors in the company, the only reasonable decision for Interwaste Proprietary Limited is to withdraw its participation as a shareholder in the Private Party, Eden Waste Management Proprietary Limited, in respect of the Garden Route Regional Waste

Management Facility and Alternative Technology Public Private Partnership Project.

The letter further indicated that should the GRDM, with the remaining shareholders in the Private Party, be in a position to restructure the Private Party and /or source alternative equity funding and sponsors to support the debt funding, Interwaste would continue to act as the Development, Construction and Operations Subcontractor.

The participating municipalities were informed in writing of the new developments and that the necessary solutions will be found to ensure that the facility will be finalised. Similar letters were sent to National and Provincial Treasury to inform them of the situation and to request their assistance to solve the imminent disaster.

A response letter dated 28 May 2020 was sent to Interwaste indicating that GRDM is of the opinion that they cannot simply withdraw as the public partner from the Public Private Partnership and that GRDM will obtain legal advice on the matter and reserve their rights accordingly. The letter also referred to the commitments made during the meeting held between Interwaste Chief Executive Officer and the Municipal Manager, to explore alternatives to the current project to make it possible to successfully complete and manage the Regional Waste Management Facility for the next ten (10) years.

Meetings were held with Interwaste, Department of Environmental Affairs and Development Planning, Provincial Department of Local Government and National and Provincial Treasury to seek possible solutions and or funding to ensure the finalization of the Regional Waste Management Facility Public Private Partnership between Garden Route District Municipality and Eden Waste Management Proprietary Limited. The office of the MEC for Local Government and Environmental Affairs and Development Planning has in collaboration with the GRDM established a Western Cape Special Task Team representing Provincial Department of Local Government, Treasury, Environmental Affairs and Development Planning and Garden Route District Municipality. Further, during a meeting held between the different National Treasury sectors and the GRDM, the decision was made that representatives of National Treasury and the Department of Cooperative Governance and Traditional

Affairs will be included in the Special Task Team. The Municipal Manager of GRDM will be the chairperson and convener of the Special Task Team. The first meeting of the Special Task Team will be held as soon as the requested legal and financial opinions have been received. The Special Task Team had their first meeting on 11 June 2020 where possible solutions to still save the Regional Waste Management Facility Public, Private Partnership Project was discussed. During the meeting the Development Bank of Southern Africa suggested that they will investigate possible methods to that could be implemented to save the project.

The DBSA informed the Municipal Manager that they suggest the implementation of the Warehousing Option Model to be implemented to mitigate the risk that Interwaste had identified and subsequently not go ahead with the project in its existing form.

The suggested Warehousing Option was discussed with the Chief Executive Officer and Legal Advisor of Interwaste that was followed with a letter on 23 June 2020 from the Municipal Manager regarding the Warehousing Option suggestion and background on the formulation of the option. Interwaste responded on the 13 July 2020 with an e-mail indicating that they will consider the Warehousing Option and request the opinion of their external auditors on the suggested option and revert back to the GRDM.

The attorney's Brown, Braude and Vlok Inc. were requested to draft a legal opinion for the GRDM on the rights of the district municipality on the way forward regarding the decision of Interwaste to withdraw as the lead shareholder in the Special Purpose Vehicle, Eden Waste Management Proprietary Limited. Mr. Nico de Villiers, director at Brown, Braude and Vlok Inc. also requested the legal advice of Senior Council in order to compile a comprehensive legal opinion that was sent to the Municipal Manager on 11 June 2020. The legal opinion indicated that the PPP Agreement accepted and approved by Council on 13 December 2019 between GRDM and Eden Waste Management Proprietary Limited is binding and in full force and effect. The opinion also suggests that GRDM call upon Interwaste to reconsider its position and to undertake to perform their duties in terms of the Agreement. Their response to such letter of demand would, in itself, be of considerable assistance in determining the appropriate way forward for the District Municipality. The legal opinion also

indicated that having considered the urgent need to establish a regional waste management facility and having regards to the fact that the private partner is a special purpose vehicle, claim for damages, would not only be difficult to quantify, but in any event the prospect of substantial recovery is limited. In this case the district municipality must require performance from the private partner rather than a claim for damages.

Taking the legal opinion received into consideration, a final response letter was sent to Interwaste informing them that GRDM does not accept their repudiation and intends to hold them to the agreement reached. Should they wish to adjust their position within the terms of the underlying Agreement, they are to do so in line with the terms and conditions of the PPP Agreement.

The onus to present any suggested changes is on Interwaste. On receipt thereof the GRDM will, in line with the agreed terms and conditions, consider their position and revert back to Interwaste on their decision.

Interwaste has responded on the letter from the Municipal Manager dated 29 September 2020 indicating that their external auditors Deloitte and Touche South Africa has evaluated the proposed structure to confirm whether it will not result in the consolidation of the Private Party's balance sheet into the interwaste Group. Their external auditors indicated that there is no certainty from an accounting perspective that the proposed structure will not result in the consolidation of the private Party's balance sheet into the Interwaste Group.

The Interwaste Board indicated that they therefore withdraw from the project and advises, on a without prejudice basis, that Interwaste will not continue to consider alternative options for the project as the primary requirement for Interwaste's potential further involvement (i.e. the non-consolidation) has not been met for the reasons set out above.

FINANCIAL IMPLICATIONS

R 214 000 000.00 (Capital cost).

RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003: Section 33 and Section 120.

Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as Amended: Sections 11, 12, 74, 75, 78 & 81.

Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998: Section 84 (1)(e) & (p)(iii).

Municipal Public Private Partnership Regulations, Issued in GG 27432 of 1 April 2005: Regulation 4, 5, 6(1) & 6(2).

COMMENTS: EXECUTIVE MANAGER FINANCIAL SERVICES**COMMENTS: EXECUTIVE MANAGER CORPORATE SERVICES****COMMENTS: EXECUTIVE MANAGER PLANNING & ECONOMIC DEVELOPMENT SERVICES****COMMENTS: EXECUTIVE MANAGER ROADS & TRANSPORT PLANNING SERVICES****COMMENTS: MANAGER LEGAL SERVICES****UITVOERENDE OPSOMMING**

Die Raad was tydens hulle vergadering gehou op 14 April 2020 ingelig dat Eden Waste Management Proprietary Limited, HUB, Mr. Jason McNiel n versoek gerig het dat die finalisering van die streek landvul fasiliteit uitgestel sal moet word vir 'n tydperk van drie (3) tot vier (4) maande as gevolg van die nasionale grendel tyd.

Opvolg skrywes is egter ontvang van die Interwaste wat aandui dat hulle hul hoof aandeelhouerskap van die "Special Purpose Vehicle" Eden Waste Management Proprietary Limited sal moet ontrek as gevolg van die invloed wat die Covid-19 nasionale pandemie grendel tyd op die besigheid gehad het. Interwaste het ook aangedui dat hulle nie kan voortgaan met die Publieke Private Venootskap soos in sy

huidige formaat nie maar dat hulle indien 'n ander vorm van die aandeelhouderskap bewerkstellig kan word of addisionele befondsing verkry kan word hulle nog bereid sal wees om die konstruksie en bedryf van die streek landvul fasiliteit sal behartig oor die tien (10) jaar kontrak tydperk.

Die Munisipale Bestuurders van Bitou, Knysna, George, Mosselbaai en Hessequa deelnemende munisipaliteite is in kennis gestel van die situasie en dat GRDM die nodige sal doen om die afhandeling van die fasiliteit te verseker. Nasionale en Provisiale Tesourie is ook ingelig en versoek vir hulp verlening om die voorsetting van die streek fasiliteit te verseker.

Interwaste is ingelig dat die GRDM nie net eenvoudig hulle ontrekking kan aanvaar nie en dat 'n regsopinie ingewin sal word ten opsigte van die GRDM se optrede vorentoe.

Brown, Braude & Vlok Inc. Prokureurs is versoek om 'n regsopinie op te stel wat dan op 11 Junie 2020 aan die Munisipale Bestuurder gestuur is.

Na aanleiding van die regsopinie inhoud het die Munisipale Bestuurder Interwaste nie eenvoudig kan ontrek uit die proses nie en dat die afgehandelde Publieke, Private Vennootskap Ooreenkoms (PPP) as aanvaar en ten volle in werking beskou word. Interwaste moet voortgaan met die proses en indien nie moet ander voorstelle gemaak word ten einde die voortsetting van die projek te verseker in lyn met die terme soos uiteengesit in die PPP Ooreenkoms.

Interwaste het aangedui dat hulle nou finaal ontrek en nie verdere wysigings en voorstelle gaan aanvaar nie.

RECOMMENDATION

1. That Council considers possible legal action against the Board of Interwaste due to their non-compliance to the terms and conditions of the Public, Private Partnership Agreement.
2. That alternative financing options regarding the construction and operation of the Regional Waste Management Facility is urgently investigated.

3. That an urgent special District Council Forum and Municipal Managers Forum be held to discuss the existing matter.
4. That an urgent meeting is held with PetroSA Management to discuss the matter and the subsequent impact on the municipal waste disposal contracts.
5. That the decision of Interwaste Propriety Limited is brought under the attention of National Treasury and the Development Bank of Southern Africa for discussion and to obtain possible solutions.

AANBEVELING

1. *Dat die Raad oorweging gee aan die moontlikheid om geregtelike stappe te neem teen die Raad van Interwaste Propriety Limited aangesien hulle nie hulle voorwaarde ten opsigte van die Publieke Private Ooreenkoms na gekom het nie.*
2. *Dat ander opsies, ten einde die oprigting en bestuur van die streek afvalbestuur fasiliteit te finansier, dringend ondersoek moet word.*
3. *Dat 'n dringende spesiale Distriksraadsforum en Munisipale Bestuudersforum georganiseer word om die nuutste verwikkeling ten opsigte van die afhandeling van die fasiliteit te bespreek*
4. *Dat 'n dringende vergadering met PetroSA bestuur gehou word om die aangeleentheid te bespreek asook die impak daarvan.*
5. *Dat die besluit van Interwaste Propriety Limited onder die aandag van Nasionale Tesourie en die Ontwikkelingsbank van Suider Afrika gebring word vir bespreking en die moontlike verkryging van oplossings.*

ISINDULULO

APPENDIX

Appendix A: Letter from Interwaste dated 15 May 2020.

Appendix B: Letter from Interwaste dated 22 May 2020.

Appendix C: Information letters to Municipalities of Bitou, Knysna, George, Mossel Bay and Hessequa.

Appendix D: Information letter to Nasional and Provincial Treasury.

Appendix E: Response letter to Interwaste.

Appendix F: E-mail from HOD Department of Environmental Affairs and Development Planning.

Appendix G: Legal Opinion Brown, Braude & Vlok Inc.

Appendix H: Final response letter to Interwaste.

Appendix I: Letter on Warehousing Option to Interwaste dated 18 August 2020.

Appendix J: Letter from Interwaste dated 29 September 2020.