



LEBALELO WATER USER
ASSOCIATION

ad in terms of Section 92(1) of the National Water Act, 1998 (Act No 36. of 1998)
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Attention: Mr Leonardo Manus

Technical clarification meeting – Lebalelo Water User Association (LWUA)

Date – 23 October 2020

LWUA recognises the difficult situation the Department and Government is in with constrained funding and competing priorities. The Department's institutional structures have also not escaped from being weakened as evidenced by the AG qualified reports, SIU investigations and Scopa findings. LWUA and its members have taken heed of the President's Economic Reconstruction and Recovery Plan announced on 15 October 2020 which set out 5 objectives, one of which being the creation of jobs primarily through aggressive infrastructure investment and a call to collaborate to have an infrastructure led socio-economic recovery. LWUA, with its existing public private structure and strong financial and operational track record, can be used as a temporary vehicle to assist the Department in the strengthening of its institutional structures. This will require changes to be made around capital allocation, financing, governance, and new ways of working.

LWUA sees this as an opportunity to assist the Department to restore its institutional standing by opening a new chapter.

To give effect to this LWUA recommends that the DG's of DWS, Treasury, ISA and the CEO of LWUA meet to discuss a way forward to accelerate the implementation of the ORWRDP and potable water solution.

Questions and answer session

	Questions	Answers
1.	What is the indicative value of the Government and LWUA assets combined?	An indicative total value of ~R3.8 billion. The indicative value of the existing Government and LWUA assets comprises: <ul style="list-style-type: none">● ORWRDP phase 1 (Raising Flag Boshielo dam wall) - R225 million● ORWRDP phase 2C – R2.2 billion (original budget was R1.7 million)● ORWRDP phase 2H (LWUA pipeline) - ~R1.4 billion● Water Treatment Works and other potable water infrastructure have not been included in this value as it still need to be defined and valued
2.	What is LWUA's intention to expand its service offering through the whole value chain?	At this stage, LWUA is at stage 1 which is the planning of construction and operations of the bulk raw water and potable water infrastructure. There is huge potential for the treatment and re-use of effluent water by the mines. Should LWUA expand its operations in future,

		it will look at the re-use of treated effluent water as mines are already exploring this option. The whole vertical integration is thus extremely important and should be considered in future.
3.	Has LWUA conducted a water reconciliation of the entire area in order to balance the demand and supply of the whole system?	This action was undertaken by the Joint Water Forum (JWF) in collaboration with DWS and LWUA. Thinus Basson indicated that the study was done in close liaison with the DWS, Mr Mabuda and his team, on assessing the water availability from the Olifants River as this was a concern more than five years ago. At the time when looking at the implementation of phase 2B (including phase 2B+) there was uncertainty about the availability of water to be taken from Flag Boshielo dam. Recent analysis has shown that sufficient water can be made available from Flag Boshielo dam to support the implementation of the phase 2B pipeline and a second pipeline to Polokwane. One of the reasons for this is that the projections for water requirements were lowered for commercial and social users since the project was conceptualised in 2004. Another major impact is the releases for environmental flows at EWR 7 downstream of Flag Boshielo. This new information may require a refinement of the LWUA proposal which should be discussed and considered by a joint technical working group.
4.	What informed the financial split between Government and commercial users?	<p>The financial split on bulk raw water between Government and commercial users was informed by the original 50:50 MoA split. National Treasury advised that if the majority funding is with the private sector party, it falls out of the ambit of the PFMA and does not constitute a normal PPP process hence the 51% proposal.</p> <p>The financial split for potable water of 75:25 was informed by discussions with commercial users as when approached they were prepared to make a contribution to the potable water Capex and Opex but not on 50:50 basis as this was unaffordable.</p>
5.	Is the LWUA proposal a departure from the existing Memorandum of Agreement (MOA) philosophy? If so, to what extent and why?	<p>The LWUA proposal is not a departure from the old MOA but it is a different arrangement which includes an integrated solution of both bulk raw and potable water to accelerate addressing social and economic expansion needs. This was not the case as per the old MOA which only addressed bulk raw water infrastructure. This coincides with the Economic Reconstruction and Recovery Plan ("the Plan") where it is stated that "our infrastructure build programme will focus on social infrastructure such as schools, water, sanitation and housing for the benefit of our people."</p> <p>Furthermore, the LWUA proposal also rephased the current ORWRDP project to be more cost effective. The key difference of the LWUA proposal is that it promotes collaboration between Government and private sector using LWUA as the funding and overarching implementation vehicle. In this regard the Plan talks of "to ensure that there is active implementation of our infrastructure-built programme, we have established Infrastructure SA and the Infrastructure Fund with the capacity to prepare and package projects. This approach is already encouraging private investors to help us build capacity for</p>

		infrastructure delivery within the state and to develop blended financing models.”
6.	What are the timelines and programmes and has the LWUA proposal considered what work has already been completed by DWS?	<p>The timelines of the LWUA proposal was based on a pre-feasibility study of six months and a feasibility study of approximately a year. LWUA could not incorporate the feasibility work completed by DWS, as the information was not made available. Hence, for parts of the project for example the raw water, there may already be significant studies done which could shorten timelines significantly. In the case of the potable portion no studies have been done and we will have to go through the full process. Making these studies available through a joint technical workgroup will provide a clearer view on the expected timelines for all projects within the proposed programme.</p> <p>It should be noted that the Plan states that “within the next six months, we will fast track the implementation of gazetted strategic infrastructure projects (which includes the ORWRDP) through the approval of credit enhancing instruments, provision of bulk infrastructure, and speedy processing of water use licenses, environmental impact assessment and township establishment and adapt the infrastructure procurement framework to enable public-private partnerships and unlock new funding.”</p>
7.	Is LWUA willing to enter into relevant agreements with existing institutional structures regarding the implementation of specific proposal elements or will LWUA only participate if they are the implementing agent?	<p>Yes. LWUA is prepared to work together and collaborate in terms of agreements with other parties regarding the implementation of specific proposal elements under the following conditions:</p> <ol style="list-style-type: none"> 1) LWUA, with its existing public-private institutional structure, is the overarching implementing agent providing overall governance (including financial, contracting and project management) over the programme and sub-contractors/existing institutional structures implementing defined project work packages. This will importantly also address external funders requirements given the adverse market perception of DWS and its institutional structures 2) There is a clear allocation of who owns the risks between parties 3) There is shared control between Government and commercial users with no one party being able to make unilateral decisions on behalf of the other such as for example where they do not own the risk 4) Appropriate arbitration/mediation mechanisms are put in place to resolve stakeholder issues
8.	What was the rationale for changing the DWS implementation programme?	<p>The rationale was as follow:</p> <ul style="list-style-type: none"> • Very little progress had been made since 2004 in implementing the ORWRDP and there is a clear need to accelerate the ORWRDP given pressing social and economic expansion needs

		<ul style="list-style-type: none"> • The current ORWRDP is no longer fit for purpose and sequenced correctly as: <ul style="list-style-type: none"> – water requirements from commercial and social users has changed since the original planning was done – Polokwane’s immediate water needs are not addressed though the current ORWRDP implementation plan – phase 2B+ was not included in the original plan which results in no social or bulk raw water for the mines and mining communities in the Northern Limb (Mogalakwena) • Ratings downgrade of South Africa resulting in it becoming increasingly difficult for Government to access funding
9.	Did LWUA obtain an understanding of the original ORWRDP objectives in terms of the original needs’ analysis performed and is the LWUA proposal aligned to these objectives?	Yes, the original ORWRDP objectives and needs analysis were considered when the proposed solution was developed. The proposed solution is aligned to these objectives as well as the National Water and Sanitation Master Plan.
10.	What is different about the LWUA proposal that would allow the mines to sign the agreement? How sure is LWUA that this will materialize?	<p>The main difference between the LWUA proposal versus the previous one is shared control and for LWUA to act as the overarching implementing agent to ensure appropriate governance over the programme. The commercial users are particularly concerned over the regulatory and reputational risk exposure to their organisations and have consequently made their participation in the programme conditional on LWUA acting as the overarching implementing agent. External funders will also see strong governance over the programme and related projects as a key pre-requisite for approval of funds by their risk committees and will likely materially influence the institutional arrangements.</p> <p>A commercial alignment session was held in May 2020 by LWUA. This alignment was evidenced through the commercial members approval of the concept study and proposal to DWS. Commitment letters have been drafted and will be signed once approval is received from DWS to appoint LWUA as the overarching implementing agent.</p>
11.	Will there be a change in the ownership of the assets when transferred to a new vehicle and will that change the nature of these assets of infrastructure that is owned by the government being a national government waterworks? What would be the implications of this?	<p>Yes. Whilst the model included leasing of assets there is likely to be a change in ownership as in order to raise funding, financiers will look at the underlying asset base of the institution raising the finance.</p> <p>The inclusion of Government’s assets is likely to be a pre-requisite that external funders will require. LWUA will similarly also be putting its assets at risk to access funding for the programme. As this is a BOOT model these assets will be transferred back to Government after 25 years once the debt has been settled.</p>

12.	How does the cost allocation in the funding model differ for bulk raw and potable water infrastructure?	<p>Funding model cost allocation for Government and commercial users:</p> <ul style="list-style-type: none"> ● Bulk raw water: <ul style="list-style-type: none"> – Capex and fixed Opex – 49% (Government):51% (Commercial users) – Variable Opex – Costs are allocated based on usage ● Potable water: <ul style="list-style-type: none"> – Capex and Opex – 75% (Government):25% (Commercial users)
13.	What will the mines’ annual contribution be in terms of potable water?	<p>The mines will contribute the following escalating contributions (Capex and Opex) per annum for potable water:</p> <ul style="list-style-type: none"> ● 2022 - R36mil (prepayments) ● 2023 - R129mil ● 2046 - R1.039bil (max payment) ● Ending in 2050 at R963mil. <p>Further detail on spend per annum is available in the Concept Study downloadable from the LWUA website www.lebalelo.co.za</p>
14.	If LWUA bought the WTW and boreholes for potable water, who would own the water services component after implementation?	<p>LWUA would be a Water Services Provider to the Water Services Authority (Municipalities). These assets would form part of LWUA’s asset base to deliver the service to the Water Services Authority which has overall accountability for the mandate of water delivery. Under current legislation the Water Services Authority can decide which Water Service Provider(s) to use to deliver the water service.</p>
15.	What is the impact of the 51% contribution by commercial users and 49% contribution by Government and which components are included?	<p>The 51% versus 49% (capital only) split should be viewed as a funding contribution model for the bulk raw water and not as a control issue. We have mentioned there needs to be shared control to ensure that no one party can unilaterally make decisions for another party. The mechanics of the shared control model can be discussed and agreed once the MoU has been signed.</p>
16.	Who is the contact person at the National Treasury that LWUA liaise with?	<p>Consultation sessions were held with the following people at National Treasury:</p> <ul style="list-style-type: none"> ● Shingirai Chimuti ● Muhammad Khan ● Ulrike Britton ● <u>Misaveni Ngobeni</u> <p>Shingirai Chimuti is the main contact at National Treasury who coordinated the discussions with LWUA.</p>
17.	What are the issues regarding the sizing of the phase 2B pipeline, if any?	<p>Since the initial sizing of phase 2B, the water requirements from both commercial and social users have been reduced. Furthermore, funding constraints will also limit the sizing of phase 2B to what is realistically affordable.</p>

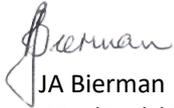
18.	Why were Lepelle Northern Water and Mogalakwena Municipality not invited to the meeting?	Bertus Bierman left this question to the Chair to answer as DWS had convened the meeting. He did however make the point that there had been engagement by LWUA with the institutions but felt that DWS had to give overall approval and direction before any further engagement took place.
19.	Has the BOOT funding model been used previously and what approach was followed?	Yes, it is a well-known international model used in public private participation projects which have similar challenges. The model was selected to de-risk the programme following an analysis of the risks attached to the programme. A key risk that will still need to be addressed is the Government's ability to pay for its share of the programme.
20.	Why did the mines not sign the offtake agreements as part of the 2008 MOA?	<p>Many participants on the call referenced the offtake agreements and it is evident that it is a sensitive matter.</p> <p>The history related to the 2008 MOA offtake agreements is that:</p> <ul style="list-style-type: none"> • The 2008 Memorandum of Agreement MOA was signed by the Minister and the Mining Companies on 26 May 2008. This MOA clearly confirmed that the party's firm intention to cooperate in the best interest of each other and to meet in good faith on an ongoing basis to negotiate the creation of legally enforceable rights and obligations between DWAF and each of the individual mines. • December 2009 DWS published a notice to all users inviting them to sign off the water off take agreement. There were three types of acceptance by the mines. Some accepted, some were supportive but could not sign at the time and others could not because of the stage of the project. As a result of this, six mines signed the issued offtake agreement, 14 mines could not accept the conditions issued offtake agreement and indicated in a letter to DWS that the risks were too high at that stage. • During 2010 various meetings took place with DWS regarding the abovementioned water use tender process, but it finally transpired that in the wisdom of the DWS and TCTA, as there were insufficient water licence applications, and without formally cancelling agreements and licence applications the whole project, for all intents and purposes, stalled • Later negotiations were restarted, and an offtake agreement was negotiated with the mines, however the mines and TCTA could not reach agreement on certain elements. In 2016 the following items were brought to the attention for the Department which primarily required mandating from the Department namely; augmentation; delivery of social water; the extent of phase 2B; certainty of commercial users water requirements; water use licence process; force majeure; smoothing of tariff; proposed operator; disestablishment of Lebalelo; representation on governance structures.

		<ul style="list-style-type: none"> • Pulling back of TCTA from agreed positions in the offtake agreement which was then issued to the mining industry in terms of the risk issues and suspensive conditions and the principles of the off take agreement namely bankability; equitability; executability; sustainability. <p>The issued offtake agreement was thus not acceptable to all the parties.</p>
21.	Through the transfer of Government assets, does LWUA want to commercialise government assets?	<p>No. LWUA has no intention to commercialise Government’s assets. Instead, the aim is for LWUA to finance, build, operate and maintain the infrastructure and then after 25 years transfer the infrastructure back to Government. The BOOT model has been built around cost recovery and there is no profit component built into this by LWUA. Members of LWUA all want a cost-efficient tariff and should any profit component be included it will in any event change the tax status of LWUA as a public benefit organisation.</p>
22.	By deferring phase 2D and 2E, will LWUA not put DWS in a worse financial situation than it is currently in?	<p>Based on the current economic conditions in South Africa, it would be irresponsible to build capital infrastructure that would not be fully utilised and could be deferred through the implementation of alternative solutions.</p> <p>It is evident from the revised water requirements from social and commercial users, that the LWUA scheme (ORWRDP phase 2H) will have spare capacity. If LWUA abstracts water from De Hoop dam instead of from the Olifants river by adding an additional pump station, the construction of phase 2D and 2E could be significantly delayed. Thus, Government could defer large capital investments for a long period of time by changing the implementation sequencing. The LWUA proposal is currently saying that by investing in a pump station and the phase 2F pipeline you will have water available at Olifantspoort for delivery to Polokwane. The money deferred on phase 2D and 2E could be better utilised on funding phase 2B or improving the infrastructure linking Olifantspoort weir to Polokwane.</p> <p>Based on Government’s financial constraints, DWS has limited options available. DWS should ensure that the remaining phases of the ORWRDP are fit for purpose by deferring sections that will not be required in the foreseeable future.</p> <p>Thinus Basson prefaced his response by declaring his interest in the project in that he was the project leader for conceptualising the ORWRDP so the original configuration of the ORWRDP was largely his responsibility together with the Department. He stated that ‘DWS now also have to look at the alternatives given the underlying situation with the Technical Analysis only shared with LWUA a few days ago’. Thinus Basson said one must understand that DWS’s ability has changed, the water requirements have changed in the sense of the timing as well as the quantum and the location of water requirements.</p>

		<p>Also, the water availability is not the same balance that we had in 2004. So, it is not changing the configuration of the ORWRDP that he has been investigating but when is each component needed, and the sequence of implementation can be different from what we had originally foreseen. By changing the sequence of the implementation, we can defer large capital investments for quite a long period of time.</p> <p>The other question considered was would DWS be in a worse position when we defer, I think we have no choice at this stage, but to look very critically at what we can defer in the capital constrained times that we are in. So, any cent that we spend today and in the next few years must absolutely provide a return and make a difference in terms of the plan that the President has put on the table.'</p>
23.	Has LWUA had interactions with Lepelle Northern Water (LNW) yet and what was their feedback?	LNW was part of the previous consultation sessions held between DWS and LWUA. In addition, LWUA was recently invited to present to the LNW Board on how collaboration between the two parties can be fostered. Further discussions on how the two entities can work together are being planned.
24.	If DWS makes available the study information, will LWUA consider this in their planned studies i.e. pre-feasibility & feasibility?	Yes. It is not the intention of LWUA to duplicate work that was already done. LWUA has previously tried to access the studies and was referred to the DWS website. The website is not user friendly and most of the information could not be found. It would be appreciated if any studies that have been completed are made available so that a joint technical working team can review and determine what still needs to be done.
25.	The notice of intention to disestablish Lebalelo was published in October 2016 which included many steps such as a due diligence asset valuation	The Association participated in the work streams to reach agreement on the incorporation of the Lebalelo infrastructure into the ORWRDP. A consultant was appointed to carry out a due diligence. To this day no final report has been published. The issue of the disestablishment of Lebalelo continues to be raised. Notwithstanding this, no mention was made of the letter issued to Irrigation Boards and Water User Associations by the Minister Human Settlements, Water and Sanitation dated 23 March 2020, reference number 24/2/1P indicating that she had approved the roadmap for the transformation process of Irrigation Board to Water User Association in line with the National Water Act. With this correspondence, the question is whether the chapter on the disestablishment of Lebalelo is closed and an alternative is being sought regarding the role of Lebalelo in the ORWRDP.
26.	It was critical that we agree on the best institutional option to manage the water resources in a water management area and of course is that what is the best options provided.	The possible clue to this best institutional option may be drawn from the Minister's letter where she writes, "You are therefore required through Provincial Operations/Catchment Management Agencies (CMAs) in your respective Water Management Area (WMA) to define the area of operation, to prepare according to section 31 of the National Water Act and submit a proposal for Minister approval to be Water User Association."

		It is submitted the Association's proposal through a Water User Association is the best institutional model, in the light of many issues not the least being the Economic Reconstruction and Recovery Plan, the National Water and Sanitation Master Plan, and the state of the country's finances.
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Regards



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[Improving Lives through Water](#)

Date: 30/10/2020