



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/1/5

2017-04-21

NOTICE OF THE 8TH MEETING OF THE COUNCIL OF STELLENBOSCH MUNICIPALITY WEDNESDAY, 2017-04-26 AT 10:00

TO The Speaker, Cllr DD Joubert [Chairperson]
The Executive Mayor, Ald G Van Deventer (Ms)
The Deputy Executive Mayor, Cllr N Jindela

COUNCILLORS	F Adams	MC Johnson
	DS Arends	NS Louw
	FJ Badenhorst	N Mananga-Gugushe (Ms)
	GN Bakubaku-Vos (Ms)	C Manuel
	FT Bangani-Menziwa (Ms)	LM Maqeba
	PW Biscombe	NE McOmbring (Ms)
	PR Crawley (Ms)	XL Mdemka (Ms)
	A Crombie (Ms)	RS Nalumango (Ms)
	JN De Villiers	N Olayi
	MB De Wet	MD Oliphant
	R Du Toit (Ms)	SA Peters
	A Florence	WC Petersen (Ms)
	AR Frazenburg	MM Pietersen
	E Fredericks (Ms)	WF Pietersen
	E Groenewald (Ms)	SR Schäfer
	JG Hamilton	Ald JP Serdyn (Ms)
AJ Hanekom	N Sinkinya (Ms)	
DA Hendrickse	P Sitshoti (Ms)	
JK Hendriks	Q Smit	
LK Horsband (Ms)	E Vermeulen (Ms)	

Notice is hereby given in terms of Section 29, read with Section 18(2) of the *Local Government: Municipal Structures Act, 117 of 1998*, as amended, that the **8TH MEETING** of the **COUNCIL** of **STELLENBOSCH MUNICIPALITY** will be held in the **COUNCIL CHAMBER, TOWN HOUSE, PLEIN STREET, STELLENBOSCH** on **WEDNESDAY, 2017-04-26** at **10:00** to consider the items on the Agenda.

SPEAKER
DD JOUBERT

A G E N D A
8TH MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY
2017-04-26
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The report by the Acting Municipal Manager re outstanding resolutions taken at previous meetings of Council is attached as **APPENDIX 1**.

FOR INFORMATION

Council Meeting		Resolution	Resolution Date	Date Closed	Task Status	Allocated To	% Feedback	Feedback Comment
352092	ELECTRICITY SUPPLY TO THE MUNICIPAL AREAS OF STELLENBOSCH	25TH COUNCIL MEETING: 2014-11-26: ITEM 7.5 RESOLVED (nem con) (a)that a preliminary investigation be conducted by the Directorate: Engineering Services (Electrical Services) into the possibility and feasibility of taking over the electricity supply from Drakenstein Municipality; (b)that billing cooperation be implemented between Drakenstein and Stellenbosch Municipality to implement more effective debt collection; and (c)that SALGA be requested to expedite the Eskom process through political intervention. (DIRECTOR: ENGINEERING SERVICES TO ACTION)	2014-11-26		IN PROGRESS	JOHANNESC	95.00	The takeover was approved. The two municipalities must still agree on tariffs and NERSA must also approve.
367234	WRITING-OFF OF IRRECOVERABLE DEBT: MERITORIOUS CASE	7.3 WRITING-OFF OF IRRECOVERABLE DEBT: MERITORIOUS CASE 29TH COUNCIL MEETING: 2015-04-30: ITEM 7.3 RESOLVED (nem con) that this matter be referred back to the Administration for further investigation. (CHIEF FINANCIAL OFFICER TO ACTION)	2015-04-30		IN PROGRESS	ANDRET	98.00	Comments received from Snr Legal Advisor report for council being prepared. Item will be submitted to Council during May 2017
383887	PROGRESS REPORT – POLICY FOR SELF GENERATION OF ELECTRICITY	7.9 PROGRESS REPORT : POLICY FOR SELF- GENERATION OF ELECTRICITY 33RD COUNCIL MEETING: 2015-08-25: ITEM 7.9 RESOLVED (nem con) that this matter be referred back to allow the Administration to submit a Progress Report to Council as mentioned in the item. (ACTING DIRECTOR: ENGINEERING SERVICES TO ACTION)	2015-08-25		IN PROGRESS	JOHANNESC	88.00	Presentation made by Greencape to Informal Mayco on 13/03/2017. Item to be re-submitted to Mayco – 88% completed. To be submitted to Mayco of 17 May 2017
394114	Investigation with regards to the various	7.6 INVESTIGATION WITH REGARD TO THE VARIOUS RESIDENTIAL PROPERTIES IN MONT ROCHELLE NATURE RESERVE	2015-10-28		IN PROGRESS	DUPREL	85.00	Summary of responses being

	<p>residential properties in Mont Rochelle Nature Reserve</p>	<p>35TH COUNCIL MEETING: 2015-10-28: ITEM 7.6</p> <p>RESOLVED (majority vote)</p> <p>(a) that Council rescind its resolution taken at the meeting dated, 2014-01-16, with regard to Item 7.2;</p> <p>(b) that the funds allocated to be spent on conducting the proposed investigation rather be spent on consolidating the 46 unsold erven with Mont Rochelle Nature Reserve and negotiating with the owners of the 14 sold (but undeveloped) erven (the priority being erven 342, 307, 314, 322, 355, 336, located in a visually sensitive area north-eastern slope of "Du Toits Kop" facing the Franschoek valley) regarding the possibility to exchange current erven within Mont Rochelle Nature Reserve with erven in a more suitable area (suitable in terms of environmental, visual and service delivery perspective); and</p> <p>(c) that any other feasible alternative that can limit the impact on the nature reserve that might be identified in the process be considered.</p> <p>The following Councillors requested that their votes of dissent be minuted: Councillors F Adams; JA Davids; DA Hendrickse; S Jooste (Ms); C Moses (Ms); P Mntumi (Ms); RS Nalumango (Ms); P Sitshoti (Ms); AT van der Walt and M Wanana.</p> <p>(DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT TO ACTION)</p>						<p>prepared with a view to inform Council of status quo plus to get further instructions. Ongoing.</p>
<p>413640</p>	<p>9.1 MOTION BY COUNCILLOR JK HENDRIKS: SUPPORT FOR INDIGENT PEOPLE IN RURAL AREAS</p>	<p>9.1 MOTION BY COUNCILLOR JK HENDRIKS: SUPPORT FOR INDIGENT PEOPLE IN RURAL AREAS</p> <p>38TH COUNCIL MEETING: 2016-02-24: ITEM 9.1</p> <p>The Speaker allowed Councillor JK Hendriks to put his Motion, duly seconded. After the Motion was motivated, the Speaker allowed debate on the matter. The matter was put to the vote yielding a result of all in favour.</p> <p>RESOLVED (nem con)</p> <p>(a) that the Administration be tasked to investigate to what extent rural indigent residents, especially those residing on farms, can be assisted with electricity, health and social services by the local-, provincial- and national spheres of government;</p> <p>(b) that any further recommendations and findings that could improve the quality of life of indigent residents be considered for implementation and support to rural indigent residents;</p> <p>(c) that a report with recommendations for implementation pertaining to the above be tabled for consideration at the next Council meeting scheduled for 2016-03-30; and</p> <p>(d) that Council nominate a multi-party delegation to engage organised agriculture</p>	<p>2016-02-24</p>		<p>IN PROGRESS</p>	<p>ANNELIER</p>	<p>30.00</p>	<p>Amended item finalised and to be included in May Council meeting.</p>

		<p>to investigate what the municipality can do to address the situation of the farm workers, in co-operation with the farmers; (e) that the multi-party delegation comprise of the following Councillors:</p> <p>DA = Cllr JP Serdyn (Ms) ANC = Cllr JA Davids SCA = Cllr DA Hendrickse SPA = Cllr F Adams SCA = Cllr DA Hendrickse ACDP = Cllr DS Arends COPE = Cllr HC Bergstedt (Ms); and NPP = Cllr LL Stander</p> <p>(DIRECTOR: STRAT & CORP TO ACTION)</p>						
466263	<p>Amendment of 2013 approved Municipal Spatial Development Framework and Commencement of a Municipal Spatial Development Framework in terms of the Local Government: Municipal Systems Act (Act 32 of 2000) for Stellenbosch Municipality WCO24 in line with the</p>	<p>7.4.4 AMENDMENT OF 2013 APPROVED MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK AND COMMENCEMENT OF A MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK IN TERMS OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT (ACT 32 OF 2000) FOR STELLENBOSCH MUNICIPALITY WC024 IN LINE WITH THE NEW PLANNING DISPENSATION WHICH INCLUDE THE LAND USE PLANNING BY-LAW (2015), THE WESTERN CAPE LAND USE PLANNING ACT (ACT 3 OF 2014) AND THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (ACT 16 OF 2013)</p> <p>2ND COUNCIL MEETING: 2016-10-05: ITEM 7.4.4</p> <p>RESOLVED (majority vote)</p> <p>that Council authorises the Municipal Manager to:</p> <p>(a) proceed with the development of a Municipal Spatial Development Framework for Stellenbosch Municipality (WC024) (MSDF);</p> <p>(b) establish an intergovernmental steering committee (IGSC) to compile or amend its municipal spatial development framework in terms of Section 11 of the Land Use Planning Act;</p> <p>(c) establish a project committee;</p> <p>(d) proceed with all administrative functions to oversee the compilation of a first draft of the Municipal Spatial Development Framework for Council approval in terms of the Municipal Systems Act (2000); the Land Use Planning By-law (2015), Land Use Planning Act (2014) and the Spatial Planning Land Use Management Act (2013); and</p> <p>(e) use the MSDF as a platform to consider and align the following: (i) Strategic Environmental Management Framework (SEMF)</p>	2016-10-05		IN PROGRESS	BERNABYB	40.00	<p>Next IGSC meeting scheduled for 5 May 2017. Public participation as part of IDP process taking place during April 2017. Process ongoing.</p>

		<p>(ii) Rural Area Plan (RAP) (iii) Urban Development Strategy leading to a Stellenbosch WCO24 SDF (iv) Heritage Resources Inventory (v) Integrated Human Settlement Plan (vi) Klapmuts Local Spatial Development Framework (LSDF) (vii) Stellenbosch LSDF amendment to be compliant with SPLUMA (viii) Jonkershoek LSDF amendment to be compliant with SPLUMA</p> <p>(f) proceed with the amendment of the current approved MSDF to be aligned with the 2017/18 IDP; and (g) both the amendment of the existing MSDF and the compilation of the new MSDF run concurrently with the Integrated Development Planning cycle.</p> <p>The following Councillors requested that their votes of dissent be minuted: Councillors F Adams; GN Bakubaku-Vos (Ms); DA Hendrickse; LK Horsband (Ms); FT Bangani-Menziwa (Ms); N Mananga-Gugushe (Ms); LM Maqeba; RS Nalumango (Ms); MD Oliphant; N Sinkinya (Ms) and P Sitshoti (Ms).</p>						
478900	WATER SERVICES BY-LAW	<p>7.6.5 WATER SERVICES BY-LAW</p> <p>4TH COUNCIL MEETING: 2016-11-23: ITEM 7.6.5</p> <p>RESOLVED (nem con)</p> <p>(a) that the attached Draft Water Services By-law be supported by Council in principle;</p> <p>(b) that the proposed Draft By-law be duly advertised for public comment until the end of February 2017, and be re-submitted together with any comments/ objections by the public, for final approval and adoption by the Council; and</p> <p>(c) that the Draft By-Law, once approved and adopted by Council, be promulgated by the Directorate: Strategic and Corporate Services' legal team in the Provincial Gazette.</p>	2016-11-23		IN PROGRESS	DRIESVT	60.00	Call for comments has been published on 19/1/2017 Notice 1/2017 closing date 21/2017 Item with incorporated comments from public to serve at Mayco of 17 May 2017
478901	THE THIRD GENERATION INTEGRATED WASTE MANAGEMENT PLAN (IWMP) FOR STELLENBOSCH MUNICIPALITY	<p>7.6.4 THE THIRD GENERATION INTEGRATED WASTE MANAGEMENT PLAN (IWMP) FOR STELLENBOSCH MUNICIPALITY</p> <p>4TH COUNCIL MEETING: 2016-11-23: ITEM 7.6.4</p> <p>RESOLVED (nem con)</p> <p>(a) that the attached Draft 3rd Generation IWMP be supported by Council for approval in principle; and</p>	2016-11-23		IN PROGRESS	SALIEMH	10.00	Additional input obtained from GreenCape. Busy with Public Participation process

		(b) that the proposed Draft 3rd Generation IWMP be duly advertised for public comment until the end of February 2017, and be re-submitted together with any comments / objections by D:EA&DP and the public, for final approval and adoption by Council.						
478903	SECTION 78 PROCESS FOR AN EXTERNAL SERVICE DELIVERY MECHANISM WITH REGARDS TO PUBLIC	7.6.2 SECTION 78 PROCESS FOR AN EXTERNAL SERVICE DELIVERY MECHANISM WITH REGARD TO PUBLIC TRANSPORT 4TH COUNCIL MEETING: 2016-11-23: ITEM 7.6.2 RESOLVED (majority vote) (a) that Council approves the proposal that an assessment of the municipality's capacity be done to determine its ability to provide the proposed public transport service through an internal mechanism and that the recommendation of the assessment be submitted to Council for consideration and decision; and (b) that, should the above assessment recommend the use of an external mechanism for the provision of the public transport service, a feasibility study be conducted for the provision of the service through an external mechanism. The following Councillors requested that their votes of dissent be minuted: Councillors F Adams; DA Hendrickse and LK Horsband (Ms).	2016-11-23		IN PROGRESS	NIGELW	20.00	A service provider is busy with the IPTN which will require further input from Province. A steering committee meeting was established
478910	EVENTS POLICY	7.7.3 EVENTS POLICY 4TH COUNCIL MEETING: 2016-11-23: ITEM 7.7.3 RESOLVED (nem con) (a) that Council considers the adoption and approval of the Draft Events Policy in principle; and (b) that the Draft Events Policy be advertised for public comment until the end of February 2017 and be re-submitted for final approval and adoption by Council.	2016-11-23		IN PROGRESS	GERALDE	50.00	Legal Services is still busy incorporating the comments from the public. A workshop will be arranged before the final submission to Council.
478911	BY-LAW ON THE PREVENTION OF PUBLIC NUISANCES AND THE KEEPING OF ANIMALS	7.7.2 BY-LAW ON THE PREVENTION OF PUBLIC NUISANCES AND THE KEEPING OF ANIMALS 4TH COUNCIL MEETING: 2016-11-23: ITEM 7.7.2 RESOLVED (nem con) (a) that Council approves the amended Draft By-Law on the Prevention of Public Nuisances and the Keeping of Animals, in principle; and	2016-11-23		IN PROGRESS	GERALDE	50.00	Legal Services is still busy incorporating the comments from the public. A workshop will be arranged before the final submission to Council.

		(b) that the Administration be mandated to advertise said By-Law for public comment until the end of February 2017, whereafter same be re-submitted to Council for approval.						
478913	IMPOUNDMENT OF ANIMALS BY-LAW	7.7.1 IMPOUNDMENT OF ANIMALS BY-LAW 4TH COUNCIL MEETING: 2016-11-23: ITEM 7.7.1 RESOLVED (nem con) (a) that Council considers the adoption and approval of the Draft Impoundment of Animals By- Law; and (b) that the proposed By-Law be duly advertised for public comment until the end of February 2017 and be re-submitted together with any comment/objections by the public, for final approval and adoption by Council.	2016-11-23		IN PROGRESS	GERALDE	50.00	The item was prepared and submitted to be included in the Council Agenda but the Speaker requested that the department have a workshop on the By-law with all Councillors.
489365	AMENDMENT TO TARIFF STRUCTURE WITH REGARDS TO RENTAL CATEGORY	7.4.3 AMENDMENT TO TARIFF STRUCTURE WITH REGARDS TO RENTAL CATEGORY 5TH COUNCIL MEETING: 2017-01-25: ITEM 7.4.3 RESOLVED (majority vote with abstentions) (a) that the Sundry Tariffs with regards to the Kayamandi Economic Tourism Corridor as stipulated on page 40 of the 2016/17 Tariff book be amended by the insertion of the following sentence under paragraph (g): "In meritorious cases, the Accounting Officer may grant discounts larger than 30% as indicated above". (b) that the amendment be advertised for comments and objections for consideration before actual implementation. (CHIEF FINANCIAL OFFICER TO ACTION)	2017-01-25		IN PROGRESS	MARIUSW	60.00	Awaiting comments if any.
489388	IDENTIFICATION OF POSSIBLE TRUST LAND IN PNIEL: STATUS REPORT	7.5.1 IDENTIFICATION OF POSSIBLE TRUST LAND IN PNIEL: STATUS REPORT 5TH COUNCIL MEETING: 2017-01-25: ITEM 7.5.1 RESOLVED (nem con) (a) that the content of the notice of the Minister, be noted; (b) that the process plan as set out in par. 3.1.5, submitted to the Minister, be endorsed;	2017-01-25		IN PROGRESS	PSMIT	70.00	A notice was placed in the Eikestad Nuus on 2017.03.02 calling for inputs from the general public. The closing date for inputs was 2017.04.07.

		<p>(c) that the Municipal Manager be authorised to attend to the public participation process as set out in paragraph 3.1.5;</p> <p>(d) that the proposed allocations, as set out in paragraph 3.1.4, be supported in principle; and</p> <p>(e) that, following the public participation process, a progress report be submitted to Council to deal with the submissions received as a consequence of the public participation process, whereupon final recommendations will be made to the Minister regarding the allocation/transfer of so-called Section 3 Trust land.</p> <p>(DIR: HUMAN SETTLEMENTS TO ACTION)</p>						<p>Meetings were held with:-</p> <p>a) Priel Transformation Committee (2017.04.06); and</p> <p>b) Congregation Church (2017.04.10).</p> <p>Their formal comments/inputs are still outstanding.</p> <p>To date we were unable to meet with the Cyster Family Trust.</p>
497159	<p>CONDONATION FOR ACTING APPOINTMENT AND ALLOWANCES FOR MANAGERS DIRECTLY ACCOUNTABLE TO THE MUNICIPAL MANAGER</p>	<p>7.2.1 CONDONATION FOR ACTING APPOINTMENT AND ALLOWANCES FOR MANAGERS DIRECTLY ACCOUNTABLE TO THE MUNICIPAL MANAGER</p> <p>6TH COUNCIL MEETING: 2017-02-22: ITEM 7.2.1</p> <p>The Speaker requested that the Acting Director: Strategic and Corporate Services, Mr Vernon Bowers (as an affected and interested party) recuse himself for the duration of the item.</p> <p>In response to specific concerns raised, the Municipal Manager explained that an administrative oversight has led to non-compliance, and that the purpose of this item is to rectify the matter. It was also pointed out that, once the response from the MEC for local government has been received, this matter ? with all relevant and salient information ? will be tabled to Council.</p> <p>RESOLVED (majority vote)</p> <p>that the MEC for Local Government in the Western Cape condone the acting appointment of the current incumbents in the respective positions of Acting Director Strategic & Corporate Services as well as Acting Director Engineering Services.</p> <p>The following Councillors requested that their votes of dissent be minuted:</p>	2017-02-22		IN PROGRESS	ANDRER	80.00	<p>Letter received from MEC stating that an item be submitted to MPAC. Same was submitted to MPAC on 20 April 2017 regarding the possible irregular expenditure.</p>

		F Adams; FT Bangani-Menziwa (Ms); LK Horsband (Ms); LM Mqeba; N Mananga-Gugushe (Ms); RS Nalumango (Ms); MD Oliphant; N Sinkinya (Ms) and P Sitshoti (Ms). (ACTING DIR: STRAT & CORP TO ACTION)						
497164	Stellenbosch Municipality: Invasive Alien Plant Management Plan	7.3.1 STELLENBOSCH MUNICIPALITY: INVASIVE ALIEN PLANTS MANAGEMENT PLAN 6TH COUNCIL MEETING: 2017-02-22: ITEM 7.3.1 RESOLVED (nem con) (a) that Council approves the Stellenbosch Municipality: Alien Invasive Plants Management Plan (dated September 2016), attached as APPENDIX 1, as Stellenbosch Municipality's invasive alien plants monitoring, control and eradication plan prepared in terms of the National Environmental Management Biodiversity Act (NEMBA), the plan be advertised for public input and additional inputs be incorporated for final adoption of Council; and (b) that the Stellenbosch Municipality: Alien Invasive Plants Management Plan be included as a project in the IDP 2016/17 as well as the 4th generation IDP. Councillor F Adams requested that it be noted that he supports the item, but with reservations.	2017-02-22		IN PROGRESS	BERNABYB	50.00	The plan was advertised in the Eikestadnuus and Paarl Post on 9 March 2017 for comments to be submitted by 13 April 2017. A Comments and Response Document, Amended Management Plan and Item are being prepared to serve before Council in May 2017.
497158	DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND BENEFITS OF COUNCILLORS FOR THE 2016/2017 FINANCIAL YEAR	8.1 DETERMINATION OF UPPER LIMITS OF SALARIES, ALLOWANCES AND BENEFITS OF COUNCILLORS FOR THE 2016/2017 FINANCIAL YEAR 6TH COUNCIL MEETING: 2017-02-22: ITEM 8.1 RESOLVED (nem con) (a) that the upper limits pertaining to Councillors' remuneration as determined by the National Minister for Cooperative Governance and Traditional Affairs, be adopted and approved by Council; (b) that the Administration effect implementation after due process has been followed, which includes: Notifying the MEC for Local Government of the Council resolution, the availability of funds in terms of affordability and the schedule containing the	2017-02-22		IN PROGRESS	VERNONB	90.00	Item to be rescinded and replaced with new item at April Council meeting.

		<p>increased salaries, allowances and benefits;</p> <p>(c) that the following specific adjustments to the upper limits are approved by Council for implementation by the Administration effective from 1 July 2016, subject to approval by the MEC for Local Government; and</p> <p>(d) that the MEC for Local Government be informed of the following challenges:</p> <ul style="list-style-type: none"> • Implementation date for the Pension fund for Councillors; • The administrative burden regarding the cell phone allowances and data bundles. • Compulsory pension fund membership • Retrospective nature of compulsory pension fund membership • Retrospective nature of data bundles reimbursement • Non-increase in remuneration packages for some Councillors <p>(MUNICIPAL MANAGER TO ACTION)</p>						
506222	<p>INNOVATION CAPITAL PROGRAMS: LOCAL ECONOMIC DEVELOPMENT HUBS FOR SMALL BUSINESS</p>	<p>7.3.2 INNOVATION CAPITAL PROGRAMS: LOCAL ECONOMIC DEVELOPMENT HUBS FOR SMALL BUSINESSES</p> <p>7th COUNCIL: 2017-03-29: ITEM 7.3.2</p> <p>RESOLVED (majority vote)</p> <p>(a) that approval be granted for the establishment of Local Economic Development hubs / incubators on the following properties as identified in APPENDIX 1:</p> <p>RANK PROPERTY LOCATION PURPOSE MANAGEMENT PROCESS</p> <p>1 Erf 2235 Groendal (Mooiwater homestead / old youth house) Business support Services incubator Preferred service provider Building/site maintenance; lease agreements; contractor relocation.</p> <p>2</p> <p>Public Place / POS north of Groendal Community Hall Vacant office on play park land Business Sector Offices Preferred service provider Lease agreement.</p> <p>3 Erven 2751 and 6314 (Old Agricultural Hall) Stellenbosch Incubator and affordable rentals for Arts, crafts and tourism sector, including parking area Preferred service provider Building / site maintenance; lease agreements; illegal occupants' relocation; rezoning.</p> <p>4 Erven 228, 229 and 230 Franschoek (Triangle site) Affordable rental space for shops and tourism activities Preferred service provider Building / site maintenance; lease agreements; staff relocation (Erven 228 and 229); site improvement; further lease agreements.</p> <p>5 Re Erf 342 Klappmuts Trading hub Preferred service provider Rezoning; services connections; lease agreements; container acquisition.</p>	2017-03-29		IN PROGRESS	DUPREL	50.00	<p>The Directorate is in the process of preparing TOR for the respective sites in order to follow the prescribe process for leasing.. It is furthermore in the process to renovate the different sites before leasing</p>

		<p>6 Erf 1538 Franschoek (old tennis courts) Parking/ business opportunity for a co-operative Preferred service provider Site improvement; lease/ management agreement.</p> <p>7 Erven 1956, 1957, 6487, 6488 and 6490 Stellenbosch (Old clinic site and LED office) Business Development Incubator and rental space (Arts, crafts, shops, offices, tourism activities) Preferred service provider Building / site maintenance; lease agreements; occupants' relocation.</p> <p>8 Die Boord POS Intersection Van Rheeede Rd and R44 Community market Preferred service provider Site improvement; lease/ management agreement.</p> <p>9 Erf 721 Pniel (municipal office site) Affordable rental space (Shops and tourism activities) Preferred service provider Rezoning; services connections; lease agreements; container acquisition.</p> <p>(b) that Council agrees to the approved tariff structure for the local economic development incubator hubs as applies to the Kayamandi Economic and Tourism Corridor (KETC);</p> <p>(c) that Council confirms that the properties are not required for the provision of the minimum level of basic municipal services in terms of Section 14 of the Local Government: Municipal Finance Management Act, 2003, Act 56 of 2003; and</p> <p>(d) that the Municipal Manager be authorised to follow the prescribed process for the leasing of the relevant properties in keeping with the Stellenbosch Tariff Structure as amended, through requesting proposals in line with the objectives of Local Economic Development.</p> <p>Councillors DA Hendrickse and LK Horsband requested that their votes of dissent be minuted.</p> <p>(DIR: PLANNING & ECON DEVELOPMENT TO ACTION)</p>						
497811	<p>QUESTIONS: CLLR F ADAMS: EMPOWERMENT AND WEALTH CREATION OPPORTUNITIES FOR BLACK PEOPLE</p>	<p>10.1 QUESTION 1 BY COUNCILLOR F ADAMS: EMPOWERMENT AND WEALTH CREATION OPPORTUNITIES FOR BLACK PEOPLE</p> <p>6TH COUNCIL MEETING: 2017-02-22: ITEM 10.1</p> <p>It was noted that Councillor F Adams was not satisfied with the response provided in respect of the question posed, and posed a follow-up question to the Executive Mayor, namely:</p> <p>“What is your view on the BBBEE Act, No 53 of 2003 in relation to our responsibilities as local government?”</p> <p>The Speaker RULED</p>	2017-02-22		IN PROGRESS	DONOVANM	80.00	Meeting is scheduled for Wednesday, 26 April 2017 at 14:00.

		that the Executive Mayor provide Cllr F Adams with an answer off line. (OFFICE OF THE EXECUTIVE MAYOR TO ACTION)						
506451	PROPOSED AMENDMENT OF SUPPLY CHAIN MANAGEMENT CONTRACT: GARY WHITE AND ASSOCIATED	7.5.1 PROPOSED AMENDMENT OF SUPPLY CHAIN MANAGEMENT CONTRACT: GARY WHITE AND ASSOCIATES 7TH COUNCIL MEETING: 2017-03-29: ITEM 7.5.1 RESOLVED (majority vote) (a) that it be noted that the Municipal Manager has approved the amendment of the contract with Gary White and Associates, now trading as Tim Ziehl Architects, to allow for an all-inclusive cost of R457 236.90; subject to the prescribed Section 116 process; (b) that Council, in principle, approve the intention to amend the contract/agreement as listed under (a) above; and (c) that should any comment/input be received, same should first be considered by Council before a final decision in this regard is made. The following Councillors requested that their votes of dissent be minuted: Cllrs F Adams; DA Hendrickse and LK Horsband (Ms). (DIR: HUMAN SETTLEMENTS TO ACTION)	2017-03-29		IN PROGRESS	PSMIT	5.00	Following the above decision, it came to light that the amount mentioned in the notice is not the same as the amount approved by Council. Following further investigation it was established that the amount approved by Council is indeed the wrong amount (based on a previous draft). The amount mentioned in the notice is correct. An agenda item will be submitted to correct the above.
506454	MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK (MTREF) FOR THE FINANCIAL PERIODS 2017/2018 – 2019/2020	7.4.1 MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK (MTREF) FOR THE FINANCIAL PERIODS 2017/2018 – 2019/2020 7TH COUNCIL MEETING: 2017-03-29: ITEM 7.4.1 + 7.4.2 The Executive Mayor's budget speech is attached as an appendix. It was agreed to incorporate item 7.4.2 (ADDENDUM TO THE TARIFFS AND BUDGET AND RELATED POLICIES) into item 7.4.1 (MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK (MTREF) FOR THE FINANCIAL PERIODS 2017/2018 – 2019/2020). RESOLVED (majority vote) (a) that the Draft High Level Budget Summary, as set out in APPENDIX 1 – PART 1 – SECTION C, be approved for public release; (b) that the Draft Annual Budget Tables as prescribed by the Budgeting and Reporting Regulations, as set out in APPENDIX 1 – PART 1 – SECTION D, be approved for public release; (c) that the proposed Grants-In-Aid allocations as set out in APPENDIX 1 – PART 2 – SECTION J, be approved for public release; (d) that the three year Capital Budget for 2017/2018, 2018/2019 and 2019/2020, as	2017-03-29		IN PROGRESS	ANDRET	30.00	Budget and related policies and documentation has been released for comments/input. Closing date 30 April 2017.

		<p>set out in APPENDIX 1 – PART 2 – SECTION N, be approved for public release; (e) that the proposed draft rates on properties in WCO24, tariffs, tariff structures and service charges for water, electricity, refuse, sewerage and other municipal services, as set out in APPENDIX 3, be approved for public release; (f) that the proposed amendments to existing budget related policies and other policies as set out in APPENDICES 6 - 27, be approved for public release; (g) that Council specifically notes and considers the need to take up an external loan needed for investment in income generating infrastructure to the tune of R240 million of which R160 million will be required in year 1, and R80 million in year 2 (refer to Section G: High Level Budget Overview and Table A1 Budget Summary), and confirms draft approval of same; (h) that Council specifically takes note of the fact that the proposed electricity charges and tariff structure is subject to NERSA approval that could change materially; (i) that Council takes note of MFMA circulars 85 and 86 that were published to guide the MTREF for 2017/2018 to 2019/2020 as set out in APPENDICES 29 – 30. (j) that the Electricity Tariff be amended from 1.88% to 2.22%; and (k) that Annexure A to Appendix 16: Development Charges, be included.</p> <p>Councillors DA Hendrickse and LK Horsband (Ms) requested that their votes of dissent be minuted.</p>						
	<p>FOURTH GENERATION INTEGRATED DEVELOPMENT PLAN FOR 2017/18 – 2021/2022</p>	<p>7.2.2 FOURTH GENERATION INTEGRATED DEVELOPMENT PLAN FOR 2017/18 – 2021/2022</p> <p>7th COUNCIL: 2017-03-29: ITEM 7.2.2 + 7.2.4 During deliberations on the matter, the Speaker called a body break.</p> <p>When the meeting resumed, it was agreed to incorporate item 7.2.4 (ADDENDUM TO DRAFT INTEGRATED DEVELOPMENT PLAN (2017-2022) into item 7.2.2 (FOURTH GENERATION INTEGRATED DEVELOPMENT PLAN FOR 2017/18 – 2021/2022).</p> <p>RESOLVED (majority vote)</p> <p>(a) that the draft Fourth Generation IDP (2017/18 – 2021/2022) for Stellenbosch Municipality be approved in terms of section 25(1) of the Municipal Systems Act No 32 of 2000 for the purposes of obtaining public inputs and comments;</p> <p>(b) that the final draft IDP be updated as per additional item 7.2.4 before it is advertised for public inputs and comments during April 2017;</p> <p>(c) that the draft Fourth Generation IDP (2017/18 – 2021/2022) be submitted to the Western Cape Provincial Department of Local Government, the Western</p>	<p>2017-03-29</p>		<p>IN PROGRESS</p>	<p>VBOWERS</p>	<p>50.00</p>	<p>Updated draft IDP published on website and distributed to Municipal Offices and Libraries for public participation. Draft IDP submitted to WC Provincial Department of LG and relevant departments. Public participation process underway.</p>

		<p>Cape Provincial Treasury, National Treasury and the Cape Winelands District Municipality;</p> <p>(d) that the SDF proposed amendments in the IDP be taken through an intensive public participation process; and</p> <p>(e) that the IDP be submitted to the Mayoral Committee in May 2017 and to Council before the end of May 2017 for final approval.</p> <p><i>Councillors DA Hendrickse and LK Horsband (Ms) requested that their votes of dissent be minuted.</i></p>						
<p>STELLENBOSCH MUNICIPALITY'S PROCESS PLAN AND ADJUSTED TIME SCHEDULE INDICATING THE KEY DEADLINES AND TIME FRAMES FOR THE INTEGRATED DEVELOPMENT PLANNING (IDP), BUDGET AND SPATIAL DEVELOPMENT FRAMEWORK (SDF) PROCESSES TO GUIDE THE PLANNING, DRAFTING, ADOPTION AND REVIEW OF THE FOURTH GENERATION INTEGRATED DEVELOPMENT PLAN FOR 2017/18 – 2021/22</p>	<p>7.2.3 STELLENBOSCH MUNICIPALITY'S PROCESS PLAN AND ADJUSTED TIME SCHEDULE INDICATING THE KEY DEADLINES AND TIME FRAMES FOR THE INTEGRATED DEVELOPMENT PLANNING (IDP), BUDGET AND SPATIAL DEVELOPMENT FRAMEWORK (SDF) PROCESSES TO GUIDE THE PLANNING, DRAFTING, ADOPTION AND REVIEW OF THE FOURTH GENERATION INTEGRATED DEVELOPMENT PLAN FOR 2017/18 – 2021/22</p> <p>7th COUNCIL: 2017-03-29: ITEM 7.2.3</p> <p>RESOLVED (majority vote)</p> <p>(a) that Council notes the adjustments made to the IDP, Budget and SDF Time Schedule of key deadlines to guide the planning, drafting, adoption and review of the Stellenbosch Fourth generation Integrated Development Plan (2017/18 – 2021/22) which has been approved by the Executive Mayor; and</p> <p>(b) that the previous item as approved by the Special Council meeting on the 25 August 2016 be amended to read: Process Plan 2017/2018-2021/2022.</p> <p><i>Councillors DA Hendrickse and LK Horsband (Ms) requested that their votes of dissent be minuted.</i></p>	2017-03-29		IN PROGRESS	VBOWERS	100.00	Noted	
<p>APPLICATION FOR STREET NAMING AND NUMBERING: JAMESTOWN HOUSING PROJECT FARM NO. 527/9, STELLENBOSCH</p>	<p>7.3.1 APPLICATION FOR STREET NAMING AND NUMBERING: JAMESTOWN HOUSING PROJECT FARM NO. 527/9, STELLENBOSCH (NOW ERF 967, JAMESTOWN)</p> <p>7th COUNCIL: 2017-03-29: ITEM 7.3.1</p> <p>During deliberations on the matter, Councillors requested additional information on the matter. The Speaker RULED that the Administration obtain the necessary information requested and that the item be placed on hold until the Administration</p>	2017-03-29		IN PROGRESS	DUPREL	50.00	In progress.	

	(NOW ERF 967, JAMESTOWN)	<p>return with the information. The meeting moved on to the next item on the Agenda</p> <p>After the Administration returned to the Chambers with the additional information, the meeting reverted back to this matter, where it was</p> <p>RESOLVED (nem con)</p> <p>that the matter be referred back to the Administration for the public participation process.</p>						
	<p>PROPOSED AMENDMENT TO SUPPLY CHAIN MANAGEMENT CONTRACT: EIKESTAD MALL</p>	<p>7.5.2 PROPOSED AMENDMENT TO SUPPLY CHAIN MANAGEMENT CONTRACT: EIKESTAD MALL</p> <p>RESOLVED (majority vote)</p> <p>(a) that it be noted that a deviation was approved by the Municipal Manager allowing for the additional fit-out cost of R318 106.14 (Exclusive of VAT); subject to a section 116 process;</p> <p>(b) that Council, in principle, approve the intention to amend the contract/agreement as listed under (a) above;</p> <p>(c) that the intention to amend the contract/agreement go out for public participation and public input; and</p> <p>(d) that, should any comment/input be received, same should first be considered by Council before a final decision in this regard is made.</p> <p><i>The following Councillors requested that their votes of dissent be minuted:</i></p> <p><i>F Adams; GN Bakubaku-Vos (Ms); DA Hendrickse; LK Horsband; LM Maqeba; DD Oliphant; N Sinkinya (Ms) and P Sitshoti (Ms).</i></p>	<p>2017-03-29</p>		<p>IN PROGRESS</p>	<p>PSMIT</p>	<p>50.00</p>	<p>Following the Council resolution, a section 116 Notice was published in the Eikestad News of 2017-04-13. Due date for submissions is 27 April 2017. To date no submissions were received.</p>
	<p>PROPOSED DISPOSAL OF A PORTION OF REMAINDER FARM 1653, LA MOTTE FOR EDUCATIONAL</p>	<p>7.5.3 PROPOSED DISPOSAL OF A PORTION OF REMAINDER FARM 1653, LA MOTTE FOR EDUCATIONAL PURPOSE</p> <p>7TH COUNCIL MEETING: 2017-03-29: ITEM 7.5.3</p> <p>RESOLVED (majority vote)</p> <p>that, subject to the transfer of Remainder Farm 1653, Paarl to Stellenbosch</p>	<p>2017-03-29</p>		<p>IN PROGRESS</p>	<p>PSMIT</p>	<p>50.00</p>	<p>The Provincial Department of Public Works has been informed of the outcome.</p>

	PURPOSE	<p>Municipality:-</p> <p>(a) the portion of Remainder Farm 1653, measuring ±2.14ha in extent, as shown in Fig 3 above, be identified as land not needed to provide the minimum level of basic municipal services;</p> <p>(b) that Council, in principle, support the <i>gratis transfer</i> of the said portion of land to the Provincial Government of the Western Cape (Department Transport and Public Works) for the purpose of a new school, to enable the Provincial Government to do the necessary feasibility studies; and</p> <p>(c) that, following the transfer of Remainder Farm 1653 to Stellenbosch Municipality, and after compilation of the feasibility studies conducted by the Provincial Government, a further report be submitted to Council to make a final decision regarding the possible disposal of the portion of land referred to above.</p> <p><i>Councillors DA Hendrickse and LK Horsband (Ms) requested that their votes of dissent be minuted.</i></p>						
	MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) OVERSIGHT REPORT ON THE ANNUAL REPORT 2015/16	<p>8.1 MUNICIPAL PUBLIC ACCOUNTS COMMITTEE (MPAC) OVERSIGHT REPORT ON THE ANNUAL REPORT 2015/16</p> <p>RESOLVED (majority vote)</p> <p>(a) that Council, having fully considered the Annual Report of the Municipality and representations thereon, adopts the Oversight Report;</p> <p>(b) that Council approves the Annual Report 2015/16 without reservations; and</p> <p>(c) that Council requests the Executive Mayor to report to Council on a quarterly basis on the implementation of the recommended actions in addressing the recommendations in the Oversight Report.</p>	2017-03-29		IN PROGRESS	ROZANNEP	20.00	Communicated with the Office of the Executive Mayor. Reporting on progress will be made quarterly.
	IDAS VALLEY HOUSING PROJECT	<p>8.5 IDAS VALLEY HOUSING PROJECT</p> <p>7TH COUNCIL: 2017-03-29: ITEM 8.5</p> <p>RESOLVED (majority vote)</p>	2017-03-29		IN PROGRESS	TABISOM	50.00	Advertisement was placed in Die Burger 6 April 2017; closing date was 20 April for comments. Item will be submitted at the 26 April 2017

		that Council approve that the tender be amended by following the Section 116(3)(a) and (b) of the Municipal Finance Management Act, 56 of 2003.						
REPORT ON THE ESTABLISHMENT OF WARD COMMITTEES	13.1.1 REPORT ON THE ESTABLISHMENT OF WARD COMMITTEES 7 TH COUNCIL MEETING: 2017-03-29: ITEM 13.1.1 RESOLVED (majority vote) (a) that the completion of the ward committee elections, be noted; (b) that the current Policy and Procedures for Ward Committees be revised taking into consideration, amongst other, the geographical model implemented whereafter same be submitted to Council for consideration; (c) that a deviation from the Policy be allowed only in respect of the co-option of members as stipulated in clause 15(2) and clause 15(3) of the Policy and as stipulated in recommendations (d)i, ii, iii and iv. (d) that the Administration be commissioned to perform the following activities in respect of co-opting members within a ward where vacancies do exist: (i) Advertisements and/or pamphlets must be prepared inviting nominations for members to be co-opted to serve on the ward committee representing the applicable geographical area/s. (ii) invitations for nominations per geographical area should also be placed on the municipal website; (iii) that elections be held in those wards where more than one nomination for a vacancy/ies within the ward was received; and (iv) that this process of co-option be finalised by end of May 2017 whereafter a report in this regard be submitted to Council.	2017-03-29		IN PROGRESS	NICKYC	20.00	In progress	
QUESTION BY COUNCILLOR LK HORSBAND (MS): FIRE STATION AT KLAPMUTS	10.1 QUESTION BY COUNCILLOR LK HORSBAND (MS): FIRE STATION AT KLAPMUTS 7 TH COUNCIL MEETING: 2017-03-29: ITEM 10.1 It was noted that Councillor LK Horsband was not satisfied with the response. She	2017-03-29		IN PROGRESS	GERALDE	100.00	(i) Site visit was held with Property Management and the Sport Council to discuss various concerns. ii) Ablution facilities	

		<p>raised the following concerns:</p> <ul style="list-style-type: none"> (i) The Sports Forum is still awaiting a response from the Director: Community and Protection Services regarding concerns raised at the meeting on 13 February 2017. (ii) Only 2 toilets are in a working condition, and with the rugby league starting soon, how will 1500 spectators be accommodated in this regard? <p>The Speaker RULED that the Municipal Manager look into the matter and submit feedback to Councillor LK Horsband (Ms).</p>						<p>installed and connected by Property Management.</p>
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7.	CONSIDERATION OF ITEMS BY THE EXECUTIVE MAYOR: (ALD G VAN DEVENTER (MS))
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7.1	COMMUNITY DEVELOPMENT AND COMMUNITY SERVICES: CLLR AR FRAZENBURG
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NONE

7.2	CORPORATE AND STRATEGIC SERVICES: (CLLR E GROENEWALD (MS))
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NONE

7.3	ECONOMIC DEVELOPMENT AND PLANNING: [ALD JP SERDYN (MS)]
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7.3.1	THE FUTURE USE AND MAINTENANCE OF COUNCIL HERITAGE BUILDINGS
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1. PURPOSE OF REPORT

- (a) To sensitise Council of the municipality's responsibility as title holder of significant historical buildings;
- (b) To ensure the sustainable, appropriate and continuous maintenance of existing historical buildings and spaces;
- (c) To highlight the opportunities available to improve the utilization of and access to strategically located municipal heritage buildings;
- (d) To identify the various categories of heritage buildings;
- (e) To consider authorising the Municipal Manager to start the prescribed public participation process, with the view of following a tender/call for proposal process in awarding long term rights for management of specific properties; and
- (f) To unlock the development potential of the Rhenish complex in a manner that contributes to the municipal objective of building the local economy, while enabling further cultural development and social integration in Stellenbosch.

2. BACKGROUND

Some of the oldest settlements in the country can be found in the Stellenbosch municipal area. The local municipality is blessed with an extensive portfolio of assets that includes various heritage resources such as buildings of exceptional cultural and historical significance. Many of these council owned buildings are utilized to a greater or lesser extent by the municipality. Most of the buildings of heritage significance are not maintained properly and are in various states of disrepair.

Due to the cultural significance of heritage resources and in particular heritage buildings that enjoy international recognition heritage resources play a major role in economic development and supporting tourism in the municipal area. The local historic environment has a key role in making a place distinct, making it a place in which people wish to live, work and spend time. Many case studies demonstrate how this distinctiveness can be harnessed to provide a boost to local economic activity. Therefore it is not only a responsibility that rests with the municipality born from the need to maintain buildings in its ownership but also important from an economic point of view to do so.

The National Heritage Resources Act, 1999 (Act no 25 of 1999) controls and manages the affairs of heritage resources in South Africa. Section 34 of the Act provides protection to all structures and buildings older than 60 years and stipulates that no building or structure may be altered without a permit from the relevant heritage authority. In terms of the Act there rests a responsibility on any owner of a heritage resource to maintain it and through

Section 4. A heritage resources agency (Heritage Western Cape or the South African Heritage Resource Agency) can issue a compulsory repair order for the repair of a heritage resource in disrepair.

From the perspective of a property owner it is common cause that the proper maintenance of all property is an operational requirement with financial implications. This is all the more relevant with historical buildings as they were not constructed with modern building techniques and require constant and specialist maintenance with the obvious financial implications. The proper maintenance of all municipal owned buildings but particularly heritage buildings is therefor in the best interest of Council.

There are many definitions for heritage assets or heritage resources. The Department for Communities and Local Government, UK (2010) define heritage assets as buildings, monuments, sites, places, areas or landscapes positively identified as having a degree of significance in meriting consideration in planning decisions. Blöndal (2003) defines heritage assets as any monuments, buildings and archaeological sites with historical significance together with documents collection and other contents from the museum and gallery. It is normally old, very valuable, and the value would not reduce over time.

Closer to home heritage resources could be defined as objects of cultural significance; places, buildings, structures and equipment of cultural significance; places to which oral traditions were attached or associated with the living heritage included intangible heritage such as rain making; historical settlements such as District Six, landscapes, sacred sites and natural features of cultural significance etc.

Further, according to the GRAP Guidelines 103 on Heritage Assets issued by the National Treasury, heritage assets are assets that have cultural, environmental, historical, natural, scientific, technological or artistic significance and are held indefinitely for the benefit of present and future generations. One of the key features of heritage assets is that they are held indefinitely for the purposes of preserving such assets for the benefit of present and future generations. This means that entities often incur expenditure to preserve and extend the life of an asset so that it can be enjoyed by future generations. As a result of the preservation of heritage assets, their value often increase over time, making the effect of depreciation negligible.

It could therefore be argued that this characteristic places heritage assets in general and heritage buildings in particular in a distinct category that requires a different approach to managing and maintaining. It is therefore suggested that Council develops a “heritage portfolio” that can be managed independently from other assets, and the recommendations below seek to ensure this.

3. DISCUSSION

3.1 Identification of Heritage Assets

The Municipality owns large tracts of land and numerous properties that qualify as heritage resources. However not all can be included in this item, which is a pilot project proposal.

The heritage properties that are listed include the following:

- The Rhenish Complex;
- Bergzicht and the Libertas Theatre
- Transvalia, Tinetta, Alma and Bosmanhuis (Dorp Street)
- The Agricultural Hall (The Avenue)
- Victoria Street Clinic (remediation by Province);
- Victorian buildings in Andringa Street (Community Development offices and LED);
- Voorgelegen (Dorp Street);
- 37 Market Street (Municipal Court);
- De Wit Huis (Plein Street);
- Neethlinghuis (Ryneveld Street); etc.
- Burgerhuis (Alexander Street)

The 2017 valuation role indicates the value of the properties as follows:

PROPERTIES	ERF NO	ADDRESS	VALUE TOTAL PROPERTY (2017-07-01)	COMMENTS
Rhenish Complex	9672	Mark Street	R12 536 000	Tourism Bureau, Toy Museum; Ward Offices
Bergzicht and Libertas Theatre	235	Merriman Ave	R 94 430 000	Includes Van der Stel Complex
Transvalia, Tinetta, Bosman, Alma	1123, 1128, 1123, 1133	Dorp Street	R16 661 000	Municipal apartments
Victoria Street Clinic	6488	7 Victoria Street	R 696 000	Vacant (Ex-clinic)
Victoria Buildings in Andringa Street	1977 (6490)	58 – 60 Andringa Street	R 2 371 000	Offices space of Community Development and LED
Voorgelegen (Dorp Street)	661 (658)	116 – 118 Dorp Street	R 8 918 000	Toy Museum
37 Mark Street	528	Mark Street	R 4 312 000	Municipal Court
De Witt Huis	1962 (1965)		R 95 296 000	Office Space: Valued as part of Plein Street office complex
Neethlinghuis (Rhyneveld Street)				Valued as part of Plein Street office complex
Agricultural Hall	2751 (6314)	Die Laan	R 9 543 000	Unoccupied (Legal dispute over rights)
Burgerhuis	3389	Alexander Street	R 3 429 000	Leased to Historical Holmes

Table 1. Municipal valuation of buildings July 2017

Most of the above municipal buildings are in various states of disrepair, under or over utilized, unused or standing empty or are used in conflict with the zoning. Where some of the buildings were converted or equipped to meet the requirements of a modern day office, it was often done without the necessary heritage approvals and mostly not in accordance with good heritage principles and design thereby potentially damaging the heritage value of such buildings.

Even in the unlikely event that the municipality does not have the appetite, financial means or management ability to repair, maintain and utilize these assets appropriately and beneficially, it still has the responsibility to act within the law and ensure that the properties are maintained properly.

Due to the historical building methods and use of raw material the repairing and maintaining of heritage buildings is notably more expensive than for modern buildings. Annual maintenance of all historic structures is also required to limit or prevent damage. Funding to repair and maintain buildings appropriately and properly proved inadequate over the past. The budget for the last 3 financial years allocated for structural maintenance of historical buildings only is indicated in Table 2 below.

VOTE NO	FINACIAL PERIOD	ORIGINAL BUDGET	AMENDED BUDGET
5/6220/0221	2016	R 2 098 121,00	R 2 098 121,00
5/6220/0221	2015	R 500 000,00	R 1 632 000,00
5/6220/0221	2014	R 300 000,00	R 360 590,00

Table 2. Budget for Structural Maintenance of Historical Buildings

Many of the municipal heritage properties are of particular interest and value to the local authority as they represent opportunities for development, urban renewal or the stimulation of the tourism economy. In this regard the Rhenish Complex, Voorgelegen and possibly the Transvalia complex or apartments in Dorp Street serve as good examples of opportunities to stimulate the economic and public use of the property.

Properties such as these can, due to their historic significance and strategic location in the historical core of Stellenbosch town, contribute significantly to improving the accessibility and functionality of this precinct of the town. Similarly, the proper and legal restoration and use of some of the historical properties can act as catalyst for economic development and upgrading of the historic core.

Over the years various studies were undertaken as to the historical value of some of the properties and as to the role such buildings and open land can play in an urban renewal program for the historical centre located around the Braak. These include:

- Stellenbosch Conservation Strategy; Kruger Roos; 1997;

- Die Braak, Voorlopige Ontwikkelingsraamwerk & Rekonstruksie; Kruger Roos, 1997;
- Stellenbosch Historical Centre, Mill Square and Surrounds; Kruger Roos, 1998;
- Heritage Study, Binnetuin Park, Stellenbosch; Pistorius and Harris, 2005;
- Het Erfgoedbeleid van Stellenbosch. Het opstellen van ondersteunende richtlijnen om tot een duurzame planning van de stad en haar erfgoed te komen – Die Braak en het Rijnse Complex als katalysator; Carton & Ryckeboer, 2012.

In 2014, during the 14th International Winelands Conference 2014 “Innovation for the Urban Age” – which included the first conference of the Urban Design Institute of South Africa – the Rhenish complex and the Braak was the focus of a special design charrette, attended by a number of international and local built environment thinkers and practitioners. The workshop, curated by the Stellenbosch Heritage foundation, highlighted the exceptional potential of the precinct to contribute in many ways to the regeneration and further development of Stellenbosch town.

In December 2014, Heritage Western Cape approved the heritage survey for central Stellenbosch. The Rhenish complex, the Braak, and other adjacent buildings were graded as a “Grade 1 National Heritage Landscape”, the only of its kind in the Stellenbosch region.

As part of its grading, Heritage Western Cape specifically recommended that the Braak and the Rhenish complex, inclusive of the Kruithuis and the two churches on the Braak “should be documented and managed a cohesive landscape, over and above the grading of specific buildings in that landscape.”

Despite this considerable focus, the Rhenish complex and its surrounds possibly remains the most neglected and underutilised heritage asset in Stellenbosch. Notwithstanding its central location, and varied spaces, large and small, public and more secluded, few citizens have reason – or are encouraged – to go there. This situation can and should be turned around.

3.2 Management Options

Some of the options available for the municipality to deal with the heritage resources include the following:

- Utilize the properties primarily for municipal use (with resulting maintenance responsibilities);
- Lease the properties to the private sector for private use subject to specific and appropriate conditions. This may include a call for proposals and with transfer of maintenance responsibilities.
- Alienate the properties to obtain a once-off financial benefit and use the proceeds to fund the acquisition/upgrading of functional office space; or

-
- Transfer properties to a public entity to manage and maintain it in a sustainable manner on behalf of the municipality.

Preferably the utilization of valuable assets such as these (see table 1) should provide income to the owner of the property, in this case the municipality. The income gained from managing property should ideally enable the owner to repair and maintain the property to an acceptable standard whilst also serving the needs and requirements of the owner. It thus requires financially sustainable uses of the properties to provide for proper care of repairs and maintenance as well as any running costs such as utilities, security, insurance etc.

Due to the social and historical value of historical assets and in line with international practice, the buildings should also be utilized to upgrade the immediate area, ensure better access to and improve the public space. Buildings such as these and in particular buildings located in the historical centre of Stellenbosch are strategically placed to stimulate urban renewal programs.

Many of the historical properties such as those at the Rhenish Complex, Voorgelegen, the Agricultural Hall and the Transvalia complex have the potential to play a role as catalyst to revitalize public buildings and public space around them as economic active, lively and enjoyable space that will boost local economic development, cultural development and social integration. In order to unlock this enormous positive potential it is imperative that the buildings and public space around the buildings be maintained and managed properly and diligently. Should the municipality attempt to achieve this in-house the budgetary implication for the municipality will be enormous whilst the proper and sustainable management of such properties will be severely challenging.

Serious consideration should therefore be given for the outsourcing of the maintenance and management function in line with clear and focussed guidelines and required outcomes such as local economic development, tourism development, cultural and heritage development and the optimization of accessibility, etc.

From general interest shown it is known that there is appetite amongst the business community to ensure the long term conservation of the heritage assets, amongst others through lease agreements, acquisition of the property or whatever other possible arrangements.

3.3. Legal Requirements

One of the questions that need to be considered when deciding on a preferred option is whether to dispose of the property, to transfer the maintenance and management responsibility or whether to award long term rights (lease). This decision will have to be taken on a property by property basis, seeing that the circumstances of each property differ. Depending on the decision whether to dispose or award rights, the legal regime will differ.

3.3.1 Municipal Finance Management Act (No 65/2003) (MFMA)

In terms of Section 14 of the MFMA:

- (1) ***A municipality may not transfer ownership*** as a result of a ***sale*** or other transaction or otherwise permanently ***dispose*** of a capital asset ***needed to provide the minimum level of basic municipal services.***
- (2) *A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public -*
 - (a) *has decided on **reasonable grounds** that the asset is **not needed** to provide the minimum level of basic municipal services; and*
 - (b) *has considered the **fair market value** of the asset and the **economic and community value** to be received in exchange for the asset.*
- (3) *Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.*

3.3.2 Asset Transfer Regulations (ATR)

3.3.2.1 Disposal (Chapter 2)

In terms of Regulation 5(1)(b) of the ATR a municipal Council may transfer or dispose of a non-exempted capital asset only after-

- a) the municipal council -
 - i) has made the determination required by Section 14(2)(a) and (b) of the MFMA; and
 - ii) has, as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

In terms of Regulation 11, an approval in principle may be given subject to any condition, including conditions specifying a floor price or minimum compensation for the capital asset.

3.3.2.2 Awarding of rights (Chapter 4)

In terms of Regulation 34(2) of the ATR a municipality may grant a right to use, control or manage a capital asset, but only after:

- a) The accounting offices has in terms of regulation 35 conducted a **public participation process** regarding the proposed granting of the right; and
- b) The municipal council has approved **in principle** that the right may be granted.

Sub regulation (1)(a) (public participation process) must be complied with only if -

- a) the capital asset in respect of which the proposed right is to be granted has a value in **excess of R10 million**; and

- b) a **long term right** is proposed to be granted in respect of the capital asset.

The municipal council must, when considering the in principle approval take into account -

- (a) whether the capital asset may be required for the municipality's **own use** during the period for which the right is to be granted;
- (b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or **enhancements** to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
- (c) the **risks and rewards** associated with the use, control or management of the capital asset in relation to the municipality's interests;
- (d) any comments or representations on the proposed granting of the right received from the local community and other interested persons (not applicable);
- (e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury (not applicable);
- (f) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (g) compliance with the legislative regime applicable to the proposed granting of the right.

In terms of Regulation 40 an approval **in principle** in terms of regulation 34(1)(b) or 37(1)(b) that a right to use, control or manage a capital asset may be granted, may be given subject to any conditions, including conditions specifying -

- (a) the **type of right** that may be granted, **the period** for which it is to be granted and the way in which it is to be granted;
- (b) the **minimum compensation** to be paid for the right; and
- (c) a framework within which direct negotiations for the granting of the right must be conducted, if granting of the right is subject to direct negotiations.

Further, in terms of Regulation 41, If approval in principle has been given in terms of regulation 34(1)(b) that a right to use, control or manage a capital asset may be granted, the relevant municipality may grant the right only in accordance with the **disposal management system** of the municipality, irrespective of -

- (a) the value of the asset;

- (b) the period for which the right is to be granted; or
- (c) whether the right is to be granted to a private sector party or organ of state.

3.3.3 Supply Chain Management Policy (SCM Policy)

In terms the SCM Policy, immovable property may only be sold or lease out at **market-related prices, except when the public interest or plight of the poor demands otherwise.** "*Public interest*" is described as, *inter alia*, the promotion of welfare and charitable as the needs of the people that are vulnerable and unable to meet their socio-economic needs independently.

Further, in terms of the policy, assets may only be disposed of/leased out by way of -

- (a) a tender process;
- (b) a call for development proposal; or
- (c) a two-stage Bidding process

3.4 Categorizing

Although the municipality owns various historical properties as listed above, circumstances regarding current use, lease agreements and development potential differ e.g. some are utilized as offices at present and others, are under lease agreement for the foreseeable future. It is therefore suggested that the properties be categorised according to the table below:

CATEGORY	PROPERTY DISCRIPTION	COMMENT
A Available for disposal	Rhenish complex	Available, subject to certain conditions regarding the toy museum
	Voorgelegen	Available
	Transvalia, Tinetta, Bosmanhuis & Alma	Available, subject to existing rental agreement being terminated
B Potentially available for disposal	Victoria Street Clinic	Vacant in state of disrepair
	Andringa Street Buildings	Municipal Offices
	Agricultural Hall	Tender to be cancelled
	Burgerhuis	Leased
	Bergzicht and Libertas Theatre	Training Centre occupied but no lease
C Not available in foreseeable future	Neethlinghuis	Municipal Offices
	De Witt Huis	Municipal Offices
	Municipal Court	Municipal Court

Table 2. Categories of historical buildings

Through its Integrated Development Plan, the Stellenbosch Municipality has committed itself to contribute to national and provincial goals of economic and human development, thoughtful and sustainable resource

use, and increasing the efficiency of and opportunity presented by existing settlements.

The municipality contributes to these goals – often in partnership with other government and non-government agencies – through direct delivery on the traditional menu of municipal services (for example, infrastructure, affordable housing, health services, and so on) as well in less direct ways, through enabling partnerships, investment, supporting special interest groups, and so on.

Building on and maintaining unique local assets are important strategies in the municipality's approach to service delivery. Stellenbosch's natural and built resources, its history, and its university, are critical building blocks in maintaining and further development of the community. More recently, the municipality – recognising its university and a significant number of resident enterprises focused on innovation – have adopted a vision and special focus as the "innovation capital" of South Africa.

Few towns have as fine a record of achievement as Stellenbosch in conserving and maintaining its historic built fabric. Private individuals, organisations (including "Historiese Huise van Suid Afrika Beperk"), and the municipality – at times as land owner – has stepped in to protect valuable assets for present and future generations. Today, this commitment has resulted in numerous benefits beyond the conservation-specific, including a thriving tourism industry of global reach.

Although much has been achieved, it is believed that more can be done to sweat Stellenbosch's historic assets. Specifically, there are linkages between historic conservation and innovation – the municipality's new focus. Also, through practice, many extra-municipal organisations have learnt much about the creative and sustainable re-use of historic buildings. This knowledge and experience can be brought to bear on the municipal service delivery challenge.

Specifically, rethinking the management and use of the Rhenish complex presents a unique opportunity for Stellenbosch to merge older and new development agendas and to bring available competency and energy to bear on remaining historic assets belonging to the municipality.

As indicated in the municipality's 2014 Local Economic Development Strategy and 2016/ 17 IDP, the productive use of Rhenish complex and the Braak can meet a number of strategic objectives, including strengthening the municipal and regional competitive advantage for sustained growth, broadening citizen participation in the economy, and learning towards a more enabling and responsive municipality.

At the same time, the municipality will ensure sustainable, appropriate maintenance of existing historic buildings and spaces, increase public access to these places, enable further cultural development, and achieve municipal savings to be re-directed to growing needs of its residents.

As a first step it is proposed that:

- it is agreed in principle that the Rhenish complex be employed to launch an initiative to establish a cultural precinct – managed and developed as a cohesive landscape – comprising the Braak and the Rhenish complex, inclusive of the Kruithuis and the two churches on the Braak;
- it is agreed in principle that a public tender be issued seeking a development and management partner for the precinct; and
- The Director Economic Development and Planning is to prepare, in consultation with relevant service departments and the Stellenbosch Heritage Foundation, a detailed approach paper, process plan and the necessary tender documentation to support the initiative. The approach paper should *inter alia* include the public outcomes sought through the initiative, the tenure arrangements favoured by the municipality, the institutional arrangements, roles and responsibilities envisaged to sustain the initiative, and the competency criteria to be met by prospective tenderers.

4. COMMENTS FROM OTHER DEPARTMENTS

4.1 Integrated Human Settlements & Property Management

Recommendation contained in the report is supported.

4.2 Financial Services

Recommendation contained in the report is supported.

4.3 Legal Comment

An external preliminary legal opinion was obtained and is attached as **APPENDIX 1**. The legal advice dealt with:

- a) Management of municipal assets;
- b) The '*investigation*' to be authorised by Council and the statutory mechanisms available to Council;
- c) The authorisation of Council for the compilation of a Heritage Asset Portfolio;
- d) The mandate of Council to the Director: Economic Development and Planning to advise Council on the preferred use of the Heritage properties of Council; and

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RECOMMENDED

- (a) that Council supports the establishment of a "heritage portfolio" that can be managed independently from other assets and that the Municipal Manager be mandated to identify all council owned properties to be placed in the heritage portfolio;

-
- (b) that the Rhenish complex including Voorgelegen and the Transvalia complex of apartments (Transvalia, Tinetta, Bosmanhuis en Alma) be agreed to be categorised as category A assets;
- (c) that in terms of Section 14(2)(a) of the MFMA, the properties listed in paragraph 3.4 (table 2) marked as Category A properties, be identified as properties not needed to provide the minimum level of basic municipal services;
- (d) that, in terms of Regulation 34(3) of the ATR, the Municipal Manager be authorized to conduct the prescribed public participation process, as envisaged in Regulation 35 of the ATR, with the view of awarding long term rights in relation to the Category A properties;
- (e) that, for the purpose of disposal, two independent valuers be appointed to determine the fair market value and fair market rental of the properties listed in Categories A and B;
- (f) that, following the public participation process, a report be tabled before Council to consider **in principle**, the awarding of long term rights in the relevant properties, whereafter a public competitive disposal process be followed; and
- (g) that, with regard to the properties listed as Category B and C, the Municipal Manager be mandated to investigate the best way of disposing of or managing these assets, including feasibility studies on the possible disposal/awarding of long term rights and/or outsourcing of the maintenance function and that a progress report be tabled before Council within 6 months from the date of approval of the recommendation.

Meeting: Ref no:	8 TH COUNCIL: 2017-04-26 7/2/1/1	Submitted by Directorate: Author Referred from:	Planning and Economic Dev. D Lombaard Mayoral Committee: 2017-03-22
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APPENDIX 1

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**DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT**Stellenbosch Municipality
STELLENBOSCH**Your Ref:****Our Ref:** AHS/CV DL**Date:** 26 January 2017

Dear Sirs,

RE: FUTURE USE AND MAINTENANCE OF COUNCIL HERITAGE BUILDING

1. The Stellenbosch Municipality (the Municipality) has requested us to provide external legal comments on a draft report compiled by the Manager: Spatial Planning, Heritage and Environment.
2. In view of the very restricted time afforded to us to prepare these external comments, we will identify the key issues to be considered by Council in this matter and the briefly advise on how Council should deal with the relevant issues.
3. Below we will deal with:
 - 3.1 Management of municipal assets.
 - 3.2 The 'investigation' to be authorised by Council and the statutory mechanisms available to Council.
 - 3.3 The authorisation of Council for the compilation of a Heritage Asset Portfolio.
 - 3.4 The mandate of Council to the Director: Economic Development and Planning to advise Council on the preferred use of the Heritage properties of Council.
 - 3.5 The outsourcing of functions relevant to Heritage resources.
4. In view of the urgency of the matter, we will not repeat the factual background to our instructions and in this regard refer to the Director's report.

Management of Municipal Assets

5. The Municipal Manager is responsible for the management of all municipal assets, including their safeguarding and maintenance. To this end the Municipal Manager must take all reasonable steps to ensure that the Municipality has and maintains a management, accounting and information system that accounts for all the assets and liabilities of the Municipality. Reference is made to Section 63 of the Local Government: Municipal Finance Management Act No. 56 of 2000 (MFMA), which provides as follows:

'63(1) The accounting officer of a municipality is responsible for the management of—

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Registration No: 1992/003316/21

VAT Reg No: 4670133877

- (a) *the assets of the municipality, including the safeguarding and the maintenance of those assets; and*
 - (b) *the liabilities of the municipality.*
- (2) *The accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure—*
- (a) *that the municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the municipality;*
 - (b) *that the municipality's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and*
 - (c) *that the municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.'*
6. As part of its fiduciary duty towards the community, the Municipality must exercise its property rights to the benefit of the community.
7. Although not explicitly described in the Constitution, a Municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to the effective performance of its functions. In our view such powers would entail the management of Heritage assets and the exercise of the common law rights of ownership.

Investigation

8. Paragraph 9(a) in the Director's report contains the recommendations to Council and states as follows:
- '9(a) That an investigation be undertaken with the following outcomes in mind:*
- i. to identify, list and grade all heritage buildings in the ownership of the municipality;*
 - ii. the determination of the current use, formal leases, income derived from such leases and contribution to the local economy and in particular the tourism and tourism related economy, be evaluated; and*
 - iii. the current capital value of the assets.'*
9. As far as the conducting of an investigation is concerned, Council will have to decide whether such investigation will be undertaken by means of an internal mechanism or whether such services will be procured in terms of the Supply Chain Management System of the Municipality.
10. The procurement of an external service provider will have to be done in terms of Chapter 11 of the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA).
11. Section 110(1)(a) and 111 of the MFMA provides as follows:
- '110(1) This Part, subject to subsection (2), applies to—*
- (a) the procurement by a municipality or municipal entity of goods and services;*
- ...*
- 111 Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part.'*
12. The procurement of services in this context must be undertaken in terms of the Supply Chain Management Policy (SCM) of the Municipality.

13. Item 4.3.1 of the SCM Policy provides as follows:

'4.3.1 The procurement and letting of goods and services between the value R0 and R200 000 falls within the scope of the Manager: Supply Chain Management. That all awards from R200 001.00 be subject to the Supply Chain committee system as per the delegations. The Preferential Procurement Regulation will be followed by the responsible Supply Chain Official to ensure the alignment with the empowerment goals set out in Chapter 3.'

14. The value of the services will therefore determine the process and the decision maker to appoint the required investigator.

Heritage Asset Portfolio

15. From the Director's report it appears that the investigation will inform the compilation of a Heritage Asset Portfolio. It therefore follows that such portfolio can only be compiled by the Director once the outcome of the investigation is made known. In our view, Council can now resolve that such portfolio be compiled once the investigation has been completed.

Mandate To Director

16. The purpose of the Council's meeting, as far as this Item is concerned, is to instruct or mandate the Director, in conjunction with the Municipal Manager, the Chief Financial Officer and the Director: Human Settlements and Property Management, to advise Council on the preferred utilisation of the Properties.

17. One of the objectives of the investigation is to identify, list and grade all Heritage buildings belonging to the Municipality. The advice of the Director will therefore be most appropriate after conclusion of the investigation.

Outsourcing

18. Specific reference is made to recommendation 9(d) of the Director's report, which recommendation reads as follows:

'9(d) That Council express support in principle for the notion to advertise the function to repair, maintain, lease and manage council owned heritage buildings in the public domain for a suitable, experienced and appropriate service provider subject to the approval of the properties implicated, parameters for its use that has to be approved by Council and the principle that the business model must be at least self-sustaining.'

19. From Recommendation 9(d), it appears that the in principle approval of Council is sought to advertise various functions of the Municipality in respect of its Heritage buildings, including the repair, maintenance, lease and management of heritage buildings by an experience and appropriate service provider.

20. From the wording of Recommendation 9(d), it appears that the Municipality intends to outsource its municipal function of managing its heritage properties to an external service provider. Such outsourcing must be done in terms of Chapter 8 of the Local Government Municipal Systems Act No. 32 of 2000 (the Systems Act).

21. Section 76 of the Systems Act provides as following:

'76 A municipality may provide a municipal service in its area or a part of its area through—

(a) an internal mechanism, which may be—

(i) a department or other administrative unit within its administration;

(ii) any business unit devised by the municipality, provided it operates within the municipality's administration and under the control of the council in

accordance with operational and performance criteria determined by the council; or

(iii) any other component of its administration; or

(b) an external mechanism by entering into a service delivery agreement with—

(i) a municipal entity;

(ii) another municipality;

(iii) an organ of state, including—

(aa) a water services committee established in terms of the Water Services Act, 1997 (Act No. 108 of 1997);

(bb) a licensed service provider registered or recognised in terms of national legislation; and

(cc) a traditional authority;

(iv) a community based organisation or other nongovernmental organisation legally competent to enter into such an agreement; or

(v) any other institution, entity or person legally competent to operate a business activity.'

22. Sections 78, 80, 81, 83 and 84 of the Systems Act prescribes the requirements for the outsourcing of a municipal function.
23. Should the Municipality intend to dispose of any of its Heritage buildings or grant any right to use, control or manage its Heritage buildings, the following statutory provisions will have to be complied with, namely Section 14 of the MFMA and Chapter 2 and 4 of the Municipal Asset Transfer Regulations published under GNR 878 of 22 August 2008.

We advise accordingly.

Yours faithfully

ANDRE SWART
STBB | Smith Tabata Buchanan Boyes

7.3.2	STELLENBOSCH MUNICIPALITY: EXTENSION OF BURIAL SPACE
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1. PURPOSE OF THE REPORT

To inform Council of the status of the above project, the result of the feasibility study conducted in the process of identifying new cemetery sites, and to obtain Council's approval to commence with the process of developing the proposed sites as cemeteries.

2. BACKGROUND

The provision and maintenance of cemeteries, funeral parlours and crematoria is a function vested in local government in terms of Schedule 5 (Part B) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

The Greater Stellenbosch Municipality's (the municipality) burial space in cemeteries is under pressure. The development of suitable cemetery sites to provide capacity in this regard has become critical.

An Item that served before Council on the 27th Meeting of the Council of Stellenbosch (25 February 2015) (**APPENDIX 1**) reported the status of burial space within the municipality and the need to provide for additional burial space mainly due to the increase in population growth within the municipality, cultural beliefs as it pertains to dealing with the deceased and the fact that neighbouring municipality's, the City of Cape Town, Drakenstein and Overstrand, cemeteries have also reached capacity.

The above Council Meeting resolved that the situation pertaining to burial space in the municipality is acknowledged and that various possible sites be investigated as a solution to the burial space needed.

The Department Planning & Economic Development subsequently initiated a tender process in terms of which the following call for proposals was issued:

- a) *the establishment of a professional team for the identification of suitable sites for the establishment of one or more regional cemetery sites of 30 ha and more within Stellenbosch Municipality;*
- b) *the preparation and the submission of applications for authorisation of a municipal cemetery, including all specialist assessments related to the activities;*
- c) *the planning and design of all related services infrastructure for the cemetery; and*
- d) *the planning and design of the cemetery and establishing a cemetery register in accordance with the layout.*

Bidders were requested to evaluate those cemetery sites as per the above Council resolution as well as alternative sites that might be identified as being feasible.

CK Rumboll & Partners were appointed during June 2016 in the above regard after the tender process was successfully concluded and commenced with the identification and feasibility study of the various sites. This study has since been concluded with the recommendations as included below.

3. REPORT: IDENTIFICATION AND ACQUISITION OF AUTHORISATIONS AND APPROVALS FOR THE ESTABLISHMENT OF ONE OR MORE REGIONAL CEMETERIES FOR STELLENBOSCH MUNICIPALITY (OCTOBER 2016)

The report, along with a document motivation to obtain Stellenbosch Council's Endorsement of Regional Cemetery Sites in fulfillment of tender B/SM No 17/16 is attached as **Annexures 3 and 4**. The following is drawn from the above report:

3.1 Site Identification

54 Sites formed part of the above study, the selection of which was informed by:

- a) Cemetery Feasibility Study (2006) conducted by Dennis Moss Partnership (19 sites).
- b) Sites identified during site visits by CK Rumboll and Partners in May and June 2016 (21 sites).
- c) Sites identified by the Property Management Department of Stellenbosch Municipality (24 sites).
- d) Existing cemetery sites in the Stellenbosch Municipal Area (24 sites).

3.2 Site Assessment Criteria

The site assessments were conducted in terms of the following criteria:

- a) Ownership and proximity

Ownership	Stellenbosch Municipality, State Department or private?
Extent/ Size	Can the property accommodate a 30ha site? Can engineering, geological & geotechnical investigation be justified?
Zoning	Current zoning of the property?
Land Use	What is the property currently used for?
Lease	Is the property leased? If yes, for how long is the duration of the lease?
Transfer	If the property is not owned by Stellenbosch Municipality, it has to be transferred?
Location	Is the proposed development an extension of the existing cemetery or is it a new cemetery?
Proximity	Is the cemetery accessible for the region or only for the settlement in which it is located?

- b) Environmental and Policy assessment (are there any policies or natural aspects that may prohibit the expansion or development of cemeteries?)

Intrinsic Value	What is good for the property? (Use & Heritage Value)
Instrumental Value	What is the property good for? (SDF alignment)
Systemic Value	Does the property contribute to the health of any eco-system and/or habitat? Is the property important for conservation purposes (does it form part of a sensitive ecological corridor which may include part of stream, drainage systems & wetlands and may be subject to ground water pollution?)
Current status	Are there any indigenous fauna and flora habitats on the property and are there occurrence high or are there stands of rare endemic plants?
Ecological Rehabilitation	What should the property look like if restored to its pristine form? How did it look like? What are the likelihood/ potential

	of the property being rehabilitated?
Geology	What are the solid features of earth?
Pedology	Status of soils in their natural environment?
Hydrology	Are there any drainage lines?
Accessibility	Is there physical access to the site? How easily can the site be accessed? What modes of transport can be used to reach the site? What modes of transport are available?
Land Availability	What are the competing uses in the area?

- c) Soil Scan (will the site be functionally appropriate to dig graves and bury people?)

Soil excavability	Is the soil medium dense and firm?
Soil permeability	Distance from domestic water sources. Soil type. Safe distance to drainage features and water sources
Drainage features	Present, partial or absent?
Topography	Gradient 2° - 6°.
Basal Buffer Zone	2.5m Between grave & water table.
Grave Stability	Verges & Sides to stand up.
Soil Workability	Ability of soil to compact on return to grave.

3.3 Conclusion and Recommendations

The sites fitting the applicable criteria best, most centrally located, environmentally least sensitive, most compliant with policy and having the best soil characteristics to dig graves, were identified as being:

Property	Ownership	Use (Current)	Size (±)
Farm Culcatta No 29	Stellenbosch Municipality	Woodlot	40ha
RE Farm Louw's Bos No 502	Stellenbosch Municipality	Agriculture	240ha
Farm De Novo 727/10	Department of Transport and Public Works	Agriculture (& existing cemetery)	190ha
Portion 1 of 'Farm Meer Lust No 1006	Department of Transport and Public Works	Village & Conservation	67ha
Remainder of Farm Keyersdrift No 1158 & Portion 1 of Farm No 1158	Department of Transport and Public Works	Conservation	77ha 55ha

These sites were regarded as being the most suited for the development as regional cemeteries in terms of the criteria applied.

From the above sites Culcatta, Louw's Bos, De Novo and Meer Lust are seen as the preferred options, the reason being that Culcatta and Louw's Bos are property of Stellenbosch Municipality. In the case of De Novo and Meer Lust, given the sites' current use, size, location accessibility and environmental characteristics, it is regarded ideal as potential regional cemetery sites.

4. FINANCIAL IMPLICATIONS

The current project (tender B/SM No 17/16) includes the preparation and the submission of applications for authorisation of a municipal cemetery, including all specialist assessments related to the activities, the planning and

design of all related services infrastructure for the cemetery and the planning and design of the cemetery and establishing a cemetery register in accordance with the layout. Until such time as the identified and approved site/s is developed as a cemetery/ies the financial implications of this project has already been provided for.

5. COMMENT FROM RELEVANT DEPARTMENTS

5.1 Human Settlements & Property Management

The recommendation contained in the report is supported. This department, however do wish to raise the following concerns regarding the Louw's Bos and Culcatta: Although the site is ideally located, it has to be noted that the property is covered with blue gum trees (*Eucalyptus Saligna*) and will therefore be expensive to clear/prepare the site for a burial site. The sites at Meerlust (1006) and De Novo are supported.

5.2 Engineering Services

A cemetery normally generates trips during off-peak periods when the roads are quiet. The traffic impact and subsequent required upgrading to the adjacent street network can be considered as negligible. The access to the cemetery is however a critical consideration and it should be attempted to allow access from at least a collector road, but ideally an arterial road.

The access to the cemeteries should be properly planned and designed to ensure operational efficiency and road safety.

ANNEXURES

Annexure 1: Minutes - 27th Meeting of the Council of Stellenbosch (25 February 2015)

Annexure 2: Call for proposals - B/SM No 17/16

Annexure 3: Identification and Acquisition of Authorisations and Approvals for the Establishment of One or more Regional Cemeteries for Stellenbosch Municipality (October 2016)

Annexure 4: Motivation to obtain Stellenbosch Council's Endorsement of Regional Cemetery Sites in fulfillment of tender B/SM No 17/16

MAYORAL COMMITTEE MEETING: 2017-04-19: ITEM 5.3.1

RECOMMENDED

- (a) that Council amends its 27th Meeting of the Council of Stellenbosch (25 February 2015) resolution by adding (b)(x) to include any alternative land in the same area which could feasibly be used as a site to be investigated as a solution to the critical need for burial space within Stellenbosch Municipality;
- (b) that Council supports the acquisition of the required authorization for the proposed establishment of regional cemeteries (for burial need within WC024) at Farm Culcatta No. 29 and the Remainder of Farm Louw's Bos No. 502 as well as the proposed establishment of a regional cemetery at

Farm De Novo No. 727/10 and Portion 1 of 'Farm Meer Lust No 1006 should the process of acquiring the necessary approval from the Department of Transport and Public Works be acquired;

- (c) that the possible creation of a garden of remembrance as alternative to a traditional land site also be investigated; and
- (d) that Council authorises the Municipal Manager to proceed with acquiring the necessary approvals for the establishment of the above cemeteries.

<i>Meeting:</i>	8 TH COUNCIL: 2017-04-26	<i>Submitted by Directorate:</i>	<i>Planning & Econ Dev</i>
<i>Ref no</i>	7/2/1/1	<i>Author</i>	<i>D Lombaard</i>
<i>Collab:</i>		<i>Referred from:</i>	<i>Mayco: 2017-04-19</i>



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ANNEXURE 1

Minutes - 27th Meeting of the Council of Stellenbosch (25 February 2015)

7.4 EXTENTION OF BURIAL SPACE*File number* : 16/6/1*Compiled by* : *Manager: Community Services & Acting Head:
Parks, Rivers & Area Cleaning**Report by* : *Director Community & Protection Services**Delegated Authority* : *Council****Strategic intent of item***

Preferred investment destination	<input type="checkbox"/>
Greenest municipality	<input checked="" type="checkbox"/>
Safest valley	<input type="checkbox"/>
Dignified Living	<input checked="" type="checkbox"/>
Good Governance	<input type="checkbox"/>

1. PURPOSE OF REPORT

To inform Council of:

- (a) the critical need for burial space in the Greater Stellenbosch;
and
- (b) the outcome of the workshop held on 30 October 2014.

2. BACKGROUND

Due to the increase of population growth in the Greater Stellenbosch, the existing burial space in cemeteries is under severe pressure and will soon reach full capacity. Contributing factors are the conventional burial methods, which is still preferred above other burial methods which include cremation and liquid burials. This phenomenon is further enhanced by the capacity of cemeteries reached by the neighboring towns such as City of Cape Town, Drakenstein and Overstrand Municipality.

The Municipality started with its first investigation to extend burial space in 2006. Dennis Moss Partnership was appointed to identify areas for possible development.

The finding of the report was considered by Council and five areas were recommended where the need was most urgent, subject to the condition to utilize Council owned land to avoid cost of purchasing land.

The areas identified were Onder-Papegaaiberg, Klapmuts, Pniel/Kylemore, La Motte and Jamestown.

FINDINGS OF DENNIS MOSS SURVEY 2006

Name of cemetery	Investigation outcomes	Alternative burial space to be used
Onder-Papegaaiberg	Existing cemetery	Continue to bury in informal plantation area used for children grave blocks
Klapmuts	No Municipal owned land for burial space	Existing cemetery on private property
Pniel	No Municipal land	Cemetery belongs to Congregational Church
Kylemore	Cemetery belongs to the Old Apostolic Church and Municipal public open space	Both cemeteries are in operation
La Motte	Municipal owned land	Cemeteries are in operation
Jamestown	Municipal owned land with available space earmarked for housing development	Cemeteries are in operation

The Department of Public Works granted permission to proceed with the study (Environmental Impact Assessment) for La Motte.

As a first phase for the extension of burial space, a consultant was appointed in 2008 to conduct the prescribed studies to meet the legal requirements for Onder-Papegaaiberg, Kylemore and La Motte.

Subsequent to these applications submitted to the Department of Environment Affairs and Development Planning (DEADP), the application for Kylemore Village was approved. The Property Manager has applied for consolidation of the different erven contained in the approval. The relevant ervens are 9, 21, 22, 34, 35, 36 and 71 Kylemore. **(APPENDICES 1 and 2)**

The La Motte application was rejected by the Department of Water Affairs and due to this rejection the Department decided not to proceed with the process. **(APPENDIX 3)**

Onder-Papegaaiberg's application has not been finalized yet, pending a final decision on the land use by Council. Two applications were submitted to DEADP, one being for the extension of burial space on a portion of the land and the other for the declaration of the entire area as a Nature Reserve.

3. DISCUSSION

In October 2014 a Cemetery workshop was conducted with an aim of finding possible solutions to the shortage of burial space. The attendees included Councilors, Municipal officials and External experts in cemetery management. The discussions were overwhelmed with finding sufficient space which should at least be 30 hectares or more for the development of proper burial space. The development should include various alternative burial methods such as:

- Landscaped grid areas: grassed surface with a plague
- Sculpture and tombstone areas: high cost area
- Medium costs areas: landscape with flower areas
- Low costs areas: general accepted grave sites
- Pauper burial sites

3.1 Current capacity

The Department Community Services conducted a base line assessment of the available space and projected the operations in terms of number of grave sites.

CEMETERY SITE	% OF LAND USE AS GRAVE SITES	REMAINING GRAVE SITES (ESTIMATED)
Onder-Papegaaiberg	98%	150 pre-booked graves
Jamestown	98%	300 graves
Pniel	98%	30 graves
Franschhoek	10% of 2ha	1000 graves
Wemmershoek	98%	20 graves
Groendal	98%	38 graves
Kylemore	95%	20 graves
Klapmuts	Reached capacity	-

3.2 Possible land identified during the workshop

The Department Community Services proceeded beyond the call by Council to investigate only the five identified areas in the Dennis Moss report for alternative burial sites.

In collaboration with the Congregational Church of Pniel, the Municipality and Boschendal Treasury Trust (BTT), Boschendal subsequently donated land adjacent to the existing cemetery as additional space.

The Boschendal Estate donated additional burial space on portion 13 of their farm Boschendal 1674. This offer was accepted and the application for rezoning was submitted.

- Erf 619/1: Municipal owned land zoned for agricultural use. This land is approximately 29 ha not in leased currently. (**APPENDIX 4**)
- "Louw's Bos" plantation: The plantation operation has been stopped and the area is currently Fynbos area. (**APPENDIX 5**)
- De Novo existing cemetery is owned by The Department of Transport and Public Works.

4. **LEGAL IMPLICATION**

Regulatory context

Constitution of the Republic of South Africa 1996 Part B of Schedule 5 of the Constitution provides that cemeteries, crematoria and funeral parlours are local government matters. Local government has a Constitutional and statutory duty to regulate Cemeteries, crematoria and funeral parlours, to provide for the internment of human remains in a dignified manner.

5. **FINANCIAL IMPLICATION**

Budget requirements must be dealt with through the budget process.

6. **COMMENTS FROM OTHER RELEVANT DEPARTMENTS**

6.1 **Planning Department**

The Boschendal Estate application for rezoning must, like any other sites, be preceded by a full environmental authorization application. There is no sense in incurring costs and considering rezonings if the site does not meet the strict cemetery specifications.

The Directorate must make available the required budget, estimated at roughly R2,4 million over two financial years to the Planning and Economic Development Directorate, to proceed with the gaining of the required approvals and authorisations for the establishment of one or more regional or sub-regional cemeteries. P&ED will then manage the process and ensure that suitable cemetery space is identified and planned by commencement of the 2017/18 financial year.

6.2 **Property Management**

As is mentioned in the report, we are in the process of acquiring various portions of land in the Dwarsrivier area, being Pniel, Lanquedoc and Kylemore.

This Department is not in support of the two (2) options mentioned in par. 3.2, i.e Erf 619/1 (Portion 1 of Farm 619) and Louw's Bos (Portion of Farm 502). Farm 619/1 is situated 2km from the Annandale road with limited access (gravel road), whilst Louw's Bos, next to the Airfield, have other, more option potential.

This department would suggest the following sites based on the principle of "*building on whilst is already in place*", rather than developing new burial sites:

Franschhoek Valley:	La Motte:	Farm 1339/1:	Public Works
	Wemmershoek:	Farm 1024/1:	Stellenbosch Municipality
Dennegeur:	Erf 3666:	Private	
Klapmuts:	Next to existing site:	Farm 748/40:	Private
Stellenbosch:	Onder Papegaaiberg:	Rem Farm 183:	Stellenbosch Municipality
Jamestown:	Next to existing site:	Farm 1166:	Private

The areas are shown on **APPENDICES 6 - 8**.

RECOMMENDED

- (a) that the current situation pertaining to burial space in WCO24, be noted by Council; and
- (b) that the sites which were identified, be investigated as a solution to the critical burial space needed.

(DIRECTOR: COMMUNITY AND PROTECTION SERVICES TO ACTION)

COMMUNITY AND PROTECTION SERVICES COMMITTEE: 2015-02-11: ITEM 5.1.1

RECOMMENDED

- (a) that the current situation pertaining to burial space in WCO24, be noted by Council; and
- (b) that the following sites which were identified, be investigated as a solution to the critical burial space needed:

Franschhoek Valley:	La Motte:	Farm 1339/1:	Public Works
	Wemmershoek:	Farm 1024/1:	Stellenbosch Municipality
Dennegeur:	Erf 3666:	Private	
Klapmuts:	Next to existing site:	Farm 748/40:	Private

Stellenbosch:	Onder Papegaaiberg:	Rem Farm 183:	Stellenbosch Municipality
Jamestown:	Next to existing site:	Farm 1166:	Private

**(DIRECTOR: COMMUNITY AND PROTECTION
SERVICES TO ACTION)**

MAYORAL COMMITTEE MEETING: 2015-02-18: ITEM 5.1.4

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the current situation pertaining to burial space in WCO24, be noted by Council; and
- (b) that the following sites which were identified, be investigated as a solution to the critical burial space needed:
 - (i) Erf 619/1: Municipal owned land zoned for agricultural use. This land is approximately 29 ha not in leased currently.
 - (ii) "Louw's Bos" plantation: The plantation operation has been stopped and the area is currently Fynbos area.
 - (iii) De Novo existing cemetery is owned by Department of Transport and Public Works.
 - (iv) Franschhoek Valley: La Motte: Farm 1339/1: Public Works
 - (v) Wemmershoek: Farm 1024/1: Stellenbosch Municipality
 - (vi) Dennegeur: Erf 3666: Private
 - (vii) Klapmuts: Next to existing site: Farm 748/40: Private
 - (viii) Stellenbosch: Onder Papegaaiberg: Rem Farm 183: Stellenbosch Municipality
 - (ix) Jamestown: Next to existing site: Farm 1166: Private

**(DIRECTOR: COMMUNITY AND PROTECTION
SERVICES TO ACTION)**

27TH COUNCIL MEETING: 2015-02-25: ITEM 7.4**RESOLVED** (nem con)

- (a) that the current situation pertaining to burial space in WCO24, be noted by Council; and
- (b) that the following sites which were identified, be investigated as a solution to the critical burial space needed:
 - (i) Erf 619/1: Municipal owned land zoned for agricultural use. This land is approximately 29 ha not in leased currently.
 - (ii) "Louw's Bos" plantation: The plantation operation has been stopped and the area is currently Fynbos area.
 - (iii) De Novo existing cemetery is owned by Department of Transport and Public Works.
 - (iv) Franschhoek Valley; La Motte: Farm 1339/1: Public Works
 - (v) Wemmershoek: Farm 1024/1: Stellenbosch Municipality
 - (vi) Dennegeur: Erf 3666: Private
 - (vii) Klapmuts: Next to existing site: Farm 748/40: Private
 - (viii) Stellenbosch: Onder Papegaaiberg: Rem Farm 183: Stellenbosch Municipality
 - (ix) Jamestown: Next to existing site: Farm 1166: Private

**(DIRECTOR: COMMUNITY AND PROTECTION
SERVICES TO ACTION)**

ITEM 7.4

APPENDICES 1-8

EXTENTION OF BURIAL SPACE

**27TH COUNCIL MEETING:
2015-02-25**

APPENDIX 1

APPENDIX 1



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2012-09-14

The Manager: Property Management
Department of Transport & Public Works
Provincial Government of the Western Cape
9 Dorp Street
Cape Town
8001

Dear Mrs Koeries

PROPOSED ACQUISITION OF A NUMBER OF ERVEN IN KYLEMORE FOR THE PURPOSE OF A CEMETERY

1. Background

On 22 January 1987 the then Regional Director of the Administration: House of Representatives, wrote to the Secretary of the Divisional Council, indicating that they are willing to sell a portion of Remainder Farm 124/33 (Now erf 9, Kylemore) to the Divisional Council for the purchase price of R2.00, for the purposes of a cemetery. Hereto attached as **APPENDIX 1**, a copy of the said letter. I have no records whether this proposal was indeed considered by the Divisional Council.

During 1994 Stellenbosch Municipality took over the Management of the Kylemore area. During 1999 an agenda item served at the Executive Committee meeting, where it was decided to inform the Department of Planning, Local Government and Housing that "*the matter is under investigation*" (the management of the cemetery). A copy of the agenda item, setting out the history of the cemetery, is attached as **APPENDIX 2**. Again, I can find no record that the matter was indeed taken up with the Department.

Since then the area is managed on an informal basis by the various churches in the community.

2. Environmental Authorisation

During 2011 a consultant was appointed to do a basic assessment with the view of extending the existing cemetery in Kylemore. On 2011-06-22 an Environmental Authorisation was issued by the Provincial Department of Environmental Affairs & Development a copy of which is attached as **APPENDIX 3**. The area (property) identified in this authorisation consist of erven 9,21,22,34,35,36 and 71, Kylemore, as shown on General Plan No 12164, a copy of which is attached as **APPENDIX 4**.

3. De Facto situation

The de facto situation is that the area referred to above, and not only erf 9, is effectively used as an informal cemetery, as can be seen on Fig 1, below.



Fig 1: Aerial photo of area

Hereunder a list of the erven mentioned above, with an indication of ownership:

Erf number	Size	Ownership*
9	9271m ²	Provincial Housing Development Board
21	13115 ha	Stellenbosch Municipality
22	2771m ²	Provincial Housing Development Board
34	356m ²	National Housing Board
35	350m ²	National Housing Board
36	4190m ²	National Housing Board
71	1834m ²	Old Apostolic Church of Africa

*See Deeds Search results attached as APPENDIX 5.

From the above it is clear that there are three (3) owners involved, i.e.:-

Stellenbosch Municipality : Erf 21, measuring 13115m²

Provincial Housing Development Board : Erven 9, 22, 34, 35 and 36
measuring 16938m² and
Old Apostolic Church of Africa : Erf 71, measuring 1834m²

4. **Request to acquire land**

We hereby request that erven 9, 22, 34, 35 and 36 be made available/transferred to Stellenbosch Municipality for the purpose of using/managing it as a cemetery. Please note that Stellenbosch Municipality, for all practical purposes, is already managing the entire area as a cemetery.

We await your urgent feedback in this regard.

Yours faithfully

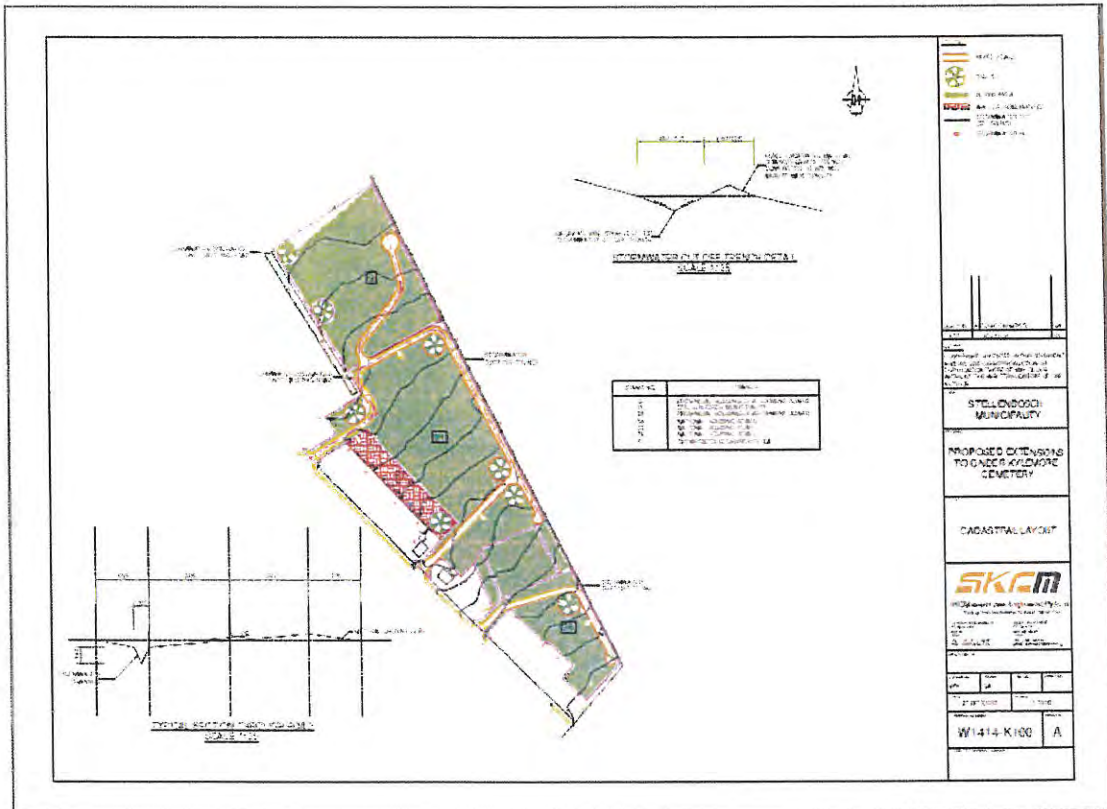


.....
PIET SMIT
MANAGER: PROPERTY MANAGER

cc: Johan Le Roux

APPENDIX 2

APPENDIX 2



APPENDIX 3

APPENDIX 3



water affairs

Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X16, Santlamihof, 7532 / 52 Voortrekker Road, Bellville, 7530
Tel. (021) 941 6143 Fax (021) 950 7224

Enquires: Blantina Masela
Cell: 082 3292 736
E Mail: masela@dwaf.gov.za
☎ 1827/1610A/A11

Attention: NZ Loebenberg

Cape Lowlands Environmental Services
P.O. Box 70
DARLING
7345

Dear Sir/Madam

FINAL BASIC ASSESSMENT REPORT: PROPOSED CONSTRUCTION OF LA MOTTE VILLAGE CEMETERY ON FARM NO. 1339/1, STELLENBOSCH

Your report dated 13 January 2012 with DEA&DP Ref No. E 12/2/4/11-B4/37-1015/11 refers.

This Department has reviewed your report and wishes to inform you on the following conditions concerning the proposed development:

1. The requirements of the Department of Water Affairs are that graveyards should not be:
 - located below the 1 in 50 year floodline of a river;
 - in close proximity to water bodies such as wetlands, vleis, pans, estuaries and floodplains;
 - situated on unstable areas, like fault zones, seismic zones, dolomitic or karst areas where sinkholes and subsidence are likely;
 - situated in or near sensitive ecological areas;
 - situated in or on areas characterised by flat gradients, shallow or emergent groundwater;
 - situated in areas characterised by steep gradients, or shallow bedrock with little soil cover, where stability of slopes could be a problem;
 - situated in areas of ground water recharge on account of topography and/or highly permeable soils; and
 - situated on areas overlaying or adjacent to important or potentially important aquifers (Parsons aquifer classification), where such aquifers are to be used for water supply purposes
2. It has been noted that the site is characterised by a high water table and might be affected by the proposed development. Please refer to the Geohydrological comments attached. This office does not support the proposed activity
3. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use must be adhered to.

Should there be any queries, please do not hesitate to contact this office.

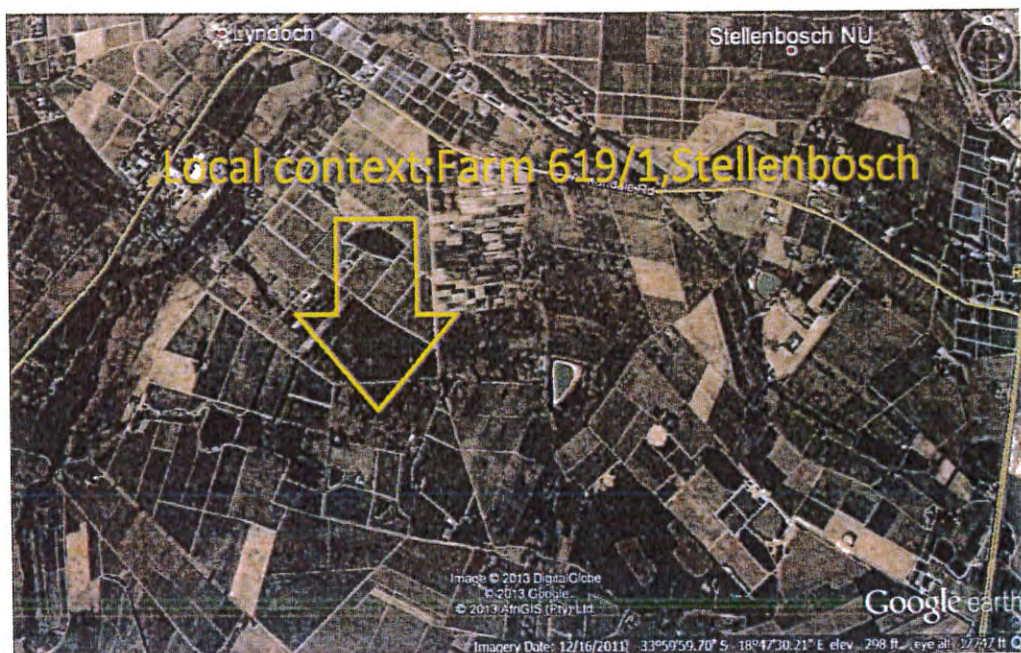
Yours faithfully

AM Schneider
CHIEF DIRECTOR: WESTERN CAPE

DATE: 23 April 2012

APPENDIX 4

APPENDIX 4



APPENDIX 5

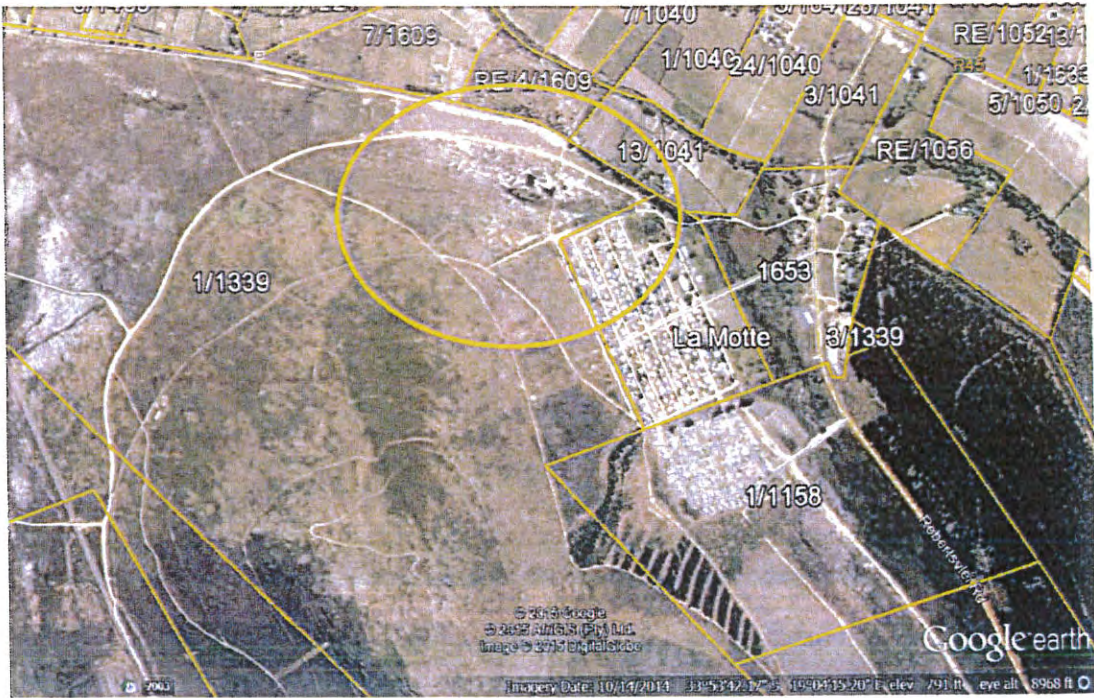
APPENDIX 5

LOUWS BOS PLANTATION

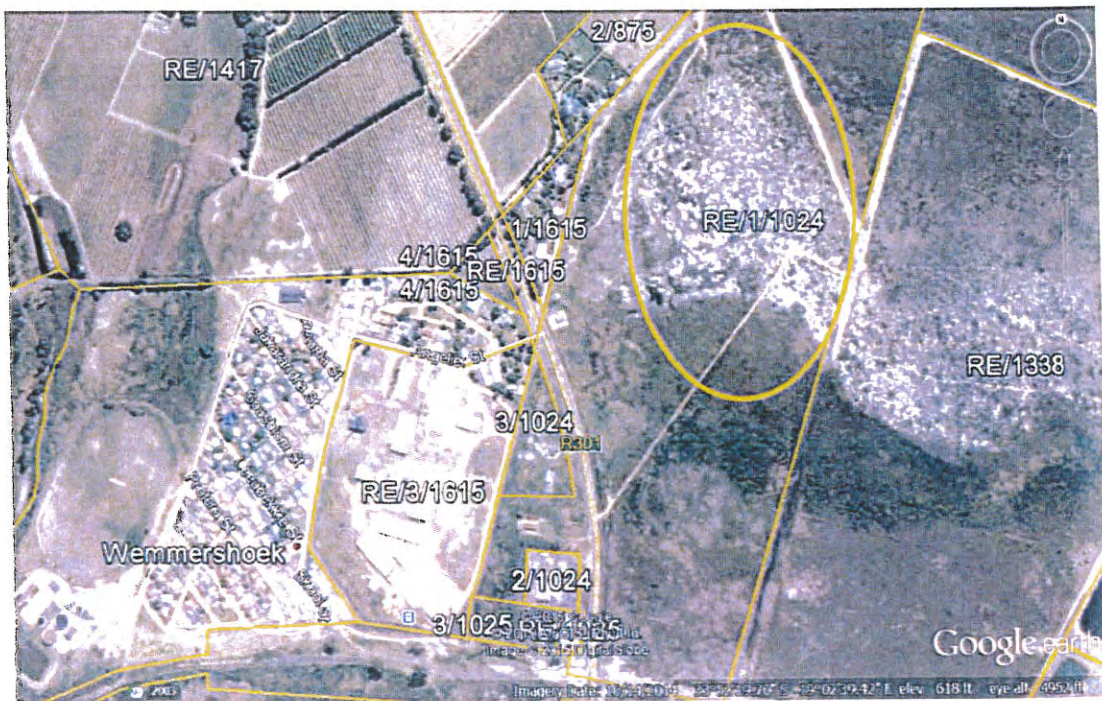


ERF Number	Farm 502 (portion of) with agricultural zoning.
Size	42.8 ha

APPENDIX 6



La Motte



Wemmershoek

APPENDIX 7

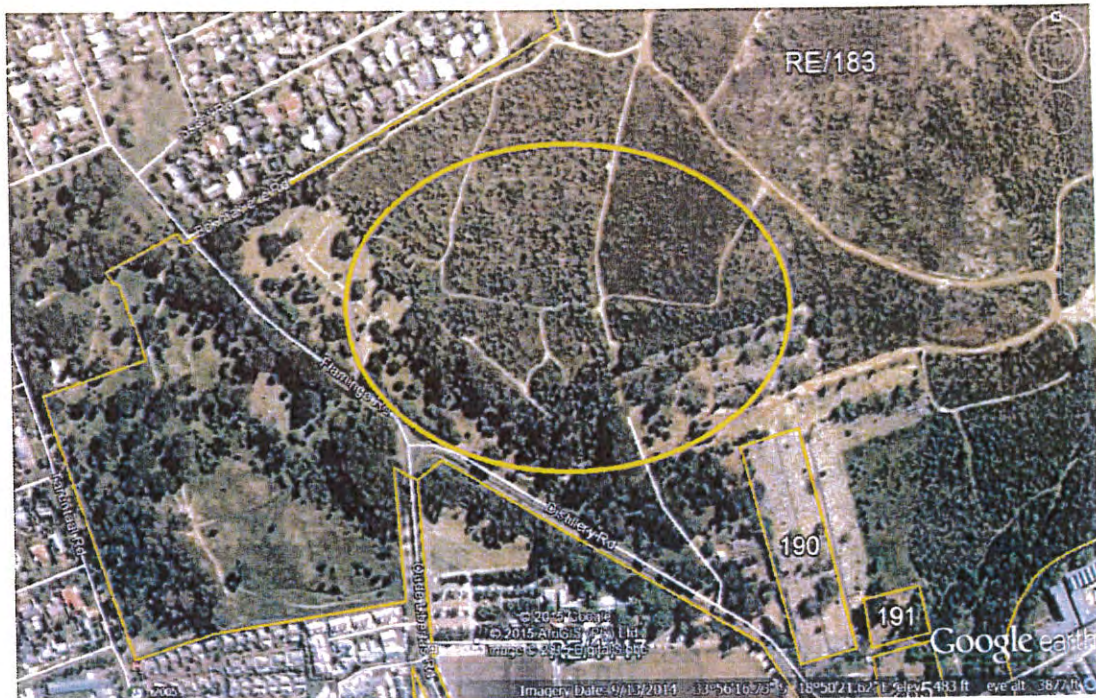


Dennegeur

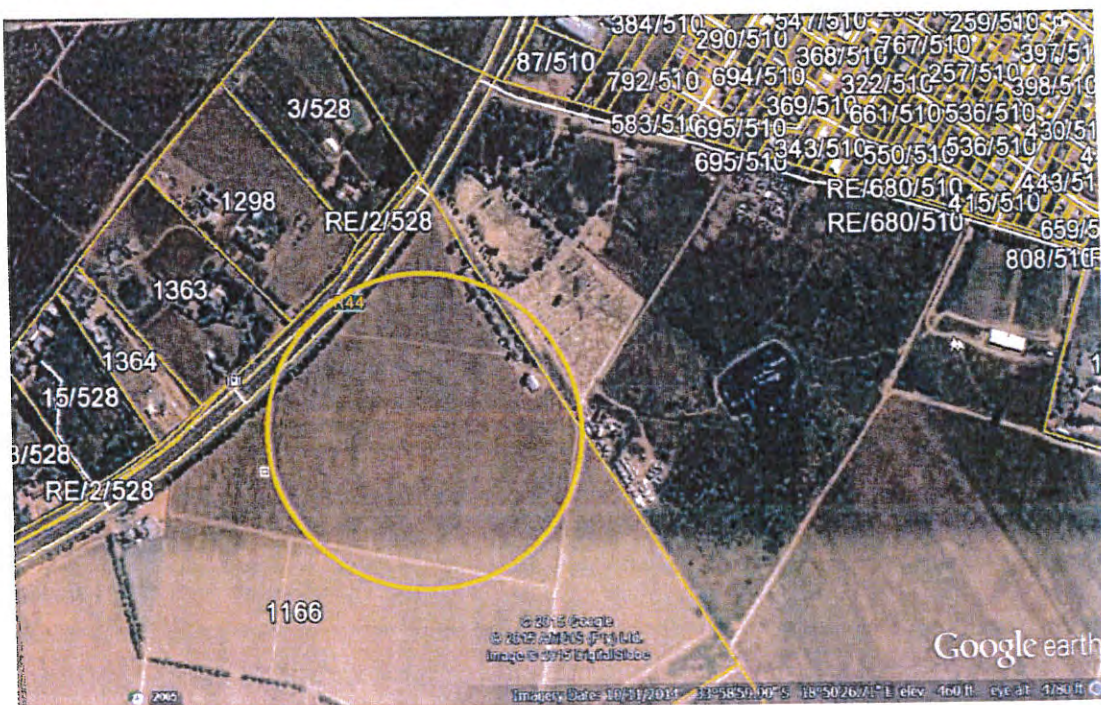


Klapmuts

APPENDIX 8



Papegaaiberg



Jamestown



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ANNEXURE 2

Call for proposals - B/SM No 17/16



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Directorate: Planning and Economic Development

TERMS OF REFERENCE:

THE APPOINTMENT OF A PROFESSIONAL TEAM FOR THE IDENTIFICATION AND ACQUISITION OF AUTHORISATIONS AND APPROVALS, FOR THE ESTABLISHMENT OF ONE OR MORE REGIONAL CEMETERIES FOR STELLENBOSCH MUNICIPALITY

1. PROJECT NAME

Stellenbosch Municipality (WC024) Cemetery Study

2. ISSUE STATEMENT

The demand for burial space within the greater Stellenbosch Municipality (WC024) area has necessitated the identification of suitable areas for the establishment of one or more regional cemeteries.

3. BACKGROUND

The provision and maintenance of cemeteries, funeral parlours and crematoria is a function vested in local government in terms of Schedule 5 (Part B) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996). Currently there are an estimated 1 600 gravesites available in the existing cemeteries of Onder-Papegaaiberg, Jamestown, Franschhoek, Klapmuts, Pniel, Wemmershoek, Kylemore and Groendal. In order to prevent a future shortage of burial space the Municipality is appointing a service provider to identify suitable options for the establishment of one or more regional cemeteries for Stellenbosch Municipality and to acquire the necessary authorisations and approvals for the establishment thereof.

4. CALL FOR PROPOSALS

This Call for Proposals is for

- a) the establishment of a professional team for the identification of suitable sites for the establishment of one or more regional cemetery sites of 30 ha and more within Stellenbosch Municipality;
- b) the preparation and the submission of applications for authorisation of a municipal cemetery, including all specialist assessments related to the activities;
- c) the planning and design of all related services infrastructure for the cemetery; and
- d) the planning and design of the cemetery and establishing a cemetery register in accordance with the layout.

Potential cemetery sites have been listed in Table 1 below as per Council resolution dating 25 February 2015. A bidder will have to evaluate these as well as or alternative sites that might be identified as being feasible. A bidder must submit a quote for:

- i. conducting a desktop feasibility study on the range of possible cemetery sites taking into account factors such as the locations of the particular sites, surrounding land uses, its accessibility and capacity;
- ii. conducting a full investigation, against the criteria listed in # 6 below, to determine the most suitable sites, taking cognisance of the envisaged environmental and social impact;
- iii. the planning and design of all related services infrastructure for the cemetery;
- iv. the planning and design of the cemetery and establishing a cemetery register in accordance with the layout and;
- v. the acquisition of the authorisation of the development of the site (including all related infrastructure) in accordance with the following six statutory requirements as required:
 - The zoning of the site, the Bidder (professional team) will be responsible for the preparation of a concept development plan that indicates zonings, land use, site specific land use parameters, detailed layout, access roads, major services and infrastructure networks.
 - Environmental authorisation in terms of the National Environmental Management Act, 107 of 1998, for all activities that might apply to the land, the proposed uses and the servicing of the proposed uses.
 - National Environmental Management: Waste Act, 59 of 2008, for all activities that might apply to the land, the proposed uses and the servicing of the proposed uses.
 - Compliance with the National Water Act, 36 of 1998, in as much as the Act defines certain environmental elements, such as water courses and riparian habitats and any water use licences.
 - The National Heritage Resources, Act, 25 of 1999, with specific reference to requirements for assessment of impacts on the cultural and heritage assets.
 - The Subdivision of Agricultural Land Act, 70 of 1970, for approval of the rezoning and subdivision of the property.

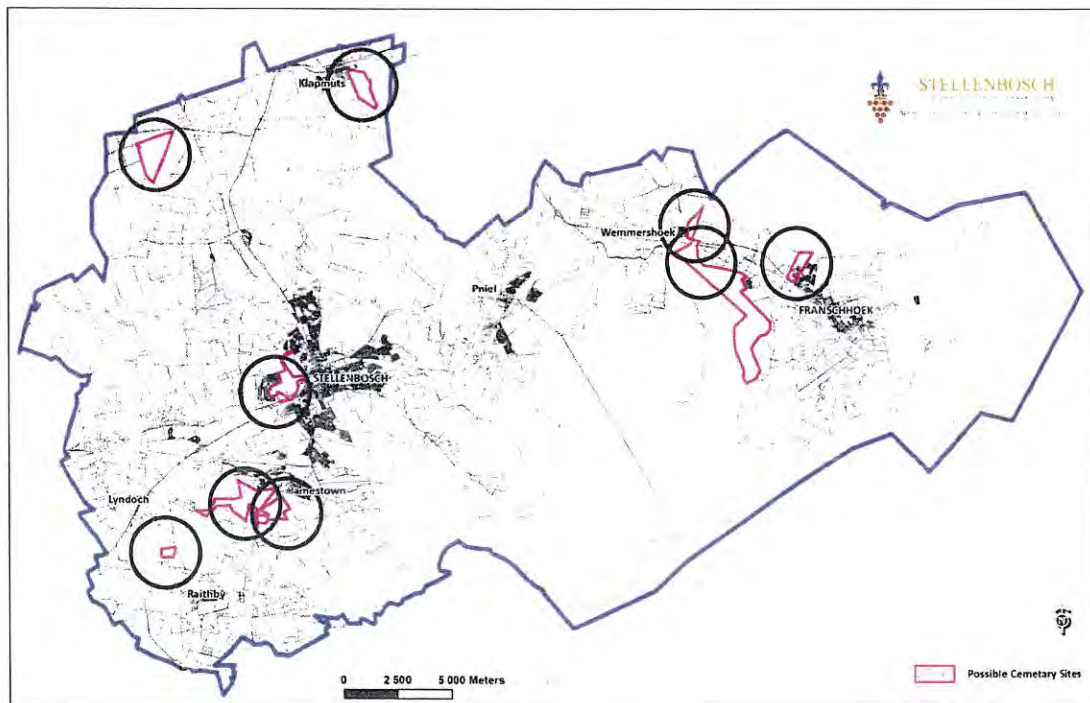
5. POTENTIAL SITES

The Council of Stellenbosch Municipality resolved, during a Council meeting of 25 February 2015, that the following sites be investigated as a solution to the burial space needed:

Table 1: Possible cemetery sites

Property	Ownership	Use	Property Size (ha)
Erf 619/1 [Lyndoch]	Municipality	Agriculture	±25
Louw's Bos [Stellenbosch]	Municipality	Agriculture	±240
De Novo	Department of Transport and Public Works	Agriculture (Existing Cemetery)	±190
Farm 1339/1 [La Motte]	Department of Transport and Public Works	Agriculture	±660
Farm 1024/1 [Wemmershoek]	Municipality	Agriculture	±40
Erf 3666 [Dennegeur]	Private	Vacant / Residential	±70

Farm 748/40 [Klapmuts]	Private	Agriculture (adjacent to existing cemetery site)	±110
Re/Farm 183 - Onder Papegaaiberg [Stellenbosch]	Municipality	Agriculture (Existing Cemetery)	±126
Farm 1166 [Jamestown]	Private	Agriculture (adjacent to existing cemetery site)	±81



Map 1: Possible cemetery sites

Bids submitted must focus on, but not be limited to, the above list. The establishment of a cemetery on sites included above might not be feasible and not further investigated or an alternative site elsewhere in the municipality might warrant investigation, inclusive of sites on privately owned land.

6. CRITERIA FOR THE EVALUATION OF CEMETERY SITES

Recognition of a cemetery as a potential health hazard calls for comprehensive site investigation. A full and proper site investigation includes the examination of all the following aspects pertaining to geology, pedology, hydrology and environmental conditions:

Factors relating to soil conditions:

- Soil type (including pedogenic material).
- Soil structure (both residual and transported soil).
- Soil density (incorporates soil grading).
- Soil permeability.
- Soil moisture content.

Factors relating to underlying bedrock conditions:

- Geology (bedrock lithology).
- Frequency of joints and other discontinuities in the rock.
- Joint condition.
- Nature of joint fill material.
- Degree of bedrock weathering (related to the N-value).

Factors relating to ground water conditions:

- Depth of the permanent water table.
- Frequency of perched water tables during the wet season.
- Prevailing hydraulic gradient.
- Relationships between the slope and ground water table.

Factors relating to surface water occurring in drainage features:

- Perennial or non-perennial.
- Frequency of flow in non-perennial drainage channels.
- Stream order.
- Location of storage dams in drainage systems.

Topographical and climatic influences:

- Slope shape and gradient (influences hydraulic gradient).
- Incised nature of the landscape.
- Located above 1 in 50 year flood level.
- Annual precipitation.
- Evaporation factor.
- Seasonal temperature ranges.

6.1 Soil excavatability

Soil excavatability refers to the ease of grave excavation without mechanical aids. A minimum excavatable depth of at least 1.8 metres is essential for cemetery purposes.

Table 2: Excavatability assessment

SOIL CONSISTENCY (after Jennings et al 1973)	EXCAVATION METHOD	CEMETERY SUITABILITY
Very loose and loose. Very soft and soft.	Spade.	Suitable, but grave stability may be problematic.
Medium dense and firm.	Pick and spade.	Ideal.
Dense and stiff. Very soft rock.	Backactor.	Suitable, although weathered rock should be avoided where possible.
Very dense and very stiff. Soft and hard rock.	Jackhammer.	Not suitable, but allowable only if alternative site options do not exist.
Very hard rock and extremely hard rock.	Blasting.	Not recommended.

6.2 Soil permeability

Soil permeability is a major factor determining the rate of fluid movement through the soil. For cemetery purposes, soil permeability must fall within a predetermined permeability range. A measure of flexibility is again permitted to accommodate variable conditions.

Table 3: Safe distances to domestic water sources

SOIL PERMEABILITY	SAFE
1×10^{-4} cm/s	465 metres
5×10^{-5} cm/s	308 metres
1×10^{-5} cm/s	182 metres
5×10^{-6} cm/s	166 metres
1×10^{-6} cm/s	153 metres
5×10^{-7} cm/s	152 metres
1×10^{-7} cm/s	150 metres

Table 4: soil type and predicted permeability ranges.

SYMBOL (ASTM) ¹²	SOIL TYPE (ASTM) ¹²	PERMEABILITY ¹³ (cm per sec)	CEMETERY SUITABILITY
GW	Well-graded gravel	1×10^{-1} to 1×10^{-3}	Totally unsuitable
GP	Poorly graded gravel	5×10^0 to 1×10^{-3}	Totally unsuitable
GM	Silty gravel	1×10^{-4} to 1×10^{-7}	Partially suitable
GC	Clayey gravel	1×10^{-5} to 1×10^{-8}	Suitable
SW	Well-graded sand	5×10^{-2} to 5×10^{-4}	Unsuitable
SP	Poorly graded sand	5×10^{-1} to 5×10^{-5}	Unsuitable
SM	Silty sand	5×10^{-4} to 1×10^{-7}	Ideal
SC	Clayey sand	5×10^{-5} to 1×10^{-8}	Ideal
CL	Lean clay	1×10^{-6} to 1×10^{-8}	Partially suitable
ML	Silt	5×10^{-5} to 1×10^{-8}	Suitable
OL/OH	Organic silt / clay	1×10^{-5} to 1×10^{-8}	Partially suitable
CH	Fat clay	1×10^{-8} to 1×10^{-10}	Totally unsuitable
MH	Elastic silt	1×10^{-7} to 1×10^{-9}	Unsuitable

Table 5: Safe distances to drainage features

SOIL PERMEABILITY	SAFE DISTANCE	SAFE DISTANCE (Arid Regions)
1×10^{-4} cm/s	415 metres	365 metres
5×10^{-5} cm/s	258 metres	208 metres
1×10^{-5} cm/s	132 metres	82 metres
5×10^{-6} cm/s	116 metres	66 metres
1×10^{-6} cm/s	103 metres	53 metres
5×10^{-7} cm/s	102 metres	52 metres
1×10^{-7} cm/s	100 metres	50 metres

6.3 Site drainage

The ingress of surface water into graves must be minimised and storm water run-off controlled as far as possible. The following reasons are cited:

- a. High velocity run-off after a typical South African thunder storm would lead to erosion of a site, especially when taking into consideration that a cemetery site's surface soil horizon is in the process of being disturbed.
- b. The presence of surface water and excessive ponding would enhance the ingress of water into the soil, especially at recently closed graves, and the subsequent saturation of the soil would increase the risk of ground water contamination.
- c. Poor site drainage could lead to the flooding of recently excavated graves and subsequent destabilisation of grave verges.
- d. Poor drainage resulting in marshy conditions would have a detrimental effect on human and mechanical mobility around the graves.
- e. Poor drainage would also lead to the degradation of cemetery appearance. This is an important factor concerning the marketability of a cemetery site.

6.4 Site topography

A gradient of between 2° and 6° is considered as ideal for cemetery purposes. This slope range would ensure adequate site drainage, minimum erosion and promote human and mechanical mobility on site.

6.5 Basal buffer zone

A basal buffer zone refers to the vertical soil succession which occurs between the base of the deepest grave and the water table (permanent or perched). This buffer zone (aeration zone or attenuation zone), essentially forms a barrier between the source of pollution and the water table. Through processes of filtration and adsorption, microbiological pollutants are prevented by the soil from reaching the water table. The soil, however, tends to lose its filtration and absorption capacity with time, and because a cemetery is a long term source of pollution, a substantial buffer zone is proposed. The effective depth of this attenuation zone depends largely on the prevailing soil permeability conditions and a few of the other factors mentioned earlier in this document. A minimum buffer zone of 2.5 m will adequately cater for most conditions if the recommended permeability limits are complied with.

6.6 Grave stability

Grave stability refers to the competence of the sides and verges of excavated graves. Soil with characteristics to support stable graves is desired for the following reasons:

- a. A few days usually elapse between excavation of a grave and the funeral. During this time the grave has to stand open, unsupported, hence the term "stand up" time. The soil should therefore have a consistency allowing for at least a few days of "stand up" time.
- b. During the funeral, many people move around the grave. If located in an area comprising unstable soil, this disturbance could result in the grave collapsing.
- c. Excessive crumbling of the excavation verge may hinder the smooth lowering of a coffin into the grave.

Table 6: Grave stability assessment

SOIL CONSISTENCY	CEMETERY SUITABILITY
Very loose and very soft.	Not recommended.
Loose and soft.	Not suitable, but allowable if alternative site options do not exist.
Medium dense and dense. Firm and stiff.	Ideal.
Very dense and very stiff.	Suitable, although excavability may be problematic.

6.7 Soil workability

Soil workability refers to the ease at which the soil can be manipulated in and out of the grave.

Source: GEOSCIENCE

7. STAKEHOLDER ENGAGEMENT

Stakeholder engagement is deemed to be an essential part of the investigation. All costs pertaining to the process of the involvement of the public will be to the account of the successful bidder. The bid must include a clear stakeholder engagement strategy and proposed program to qualify. The successful bidder will be responsible for all stakeholder engagement.

8. CONSIDERATION OF BIDS & PROPOSED PROJECT MANAGEMENT APPROACH

The professional qualification and registration and proof of experience in dealing with related matters must be submitted along with all bids.

Bidder's project description must include a proposed program in the form of a workflow schedule for the project with clear actions and milestones.

9. BID SUBMISSION FOR EVALUATION

		100 POINTS
Project team composition		50 points
• Range of expertise	Multi-disciplinary team	25 max
• Professional qualifications	Professional registration / affiliation	5 max /discipline
	Non-professional registration	3 max /discipline
	No registration	0 max /discipline
• Experience		
<i>Submit maximum 10 page CV per team component / member with appropriate references, which the Municipality can check to serve as evidence of this aspect,</i>	Team principal > 10 years in related field	20 max
	Team principal 5 – 10 years in related field	10 max

<i>together with a brief team composition statement.</i>	Team principal < 5 years in related field	5 max
Experience		25 points
<i>Submit list of similar projects undertaken and finalized by the bidder team.</i>	> 10 projects undertaken 5 - 10 projects undertaken < 5 projects undertaken	25 max 15 max 5 max
Work program method and statement of understanding of project scope		25 points
<i>Submit maximum three page summary of project and program envisaged for process, listing team member responsibilities for each action.</i>	Good understanding and project program with achievable timelines	25 max
	Project understanding / timing average	15 max
	Project understanding / timing weak	5 max

Bids will be considered by way of a functionality assessment and financial assessment. Bidders scoring 70% or more will be evaluated on price / financial proposals. Financial assessment will be evaluated on the 90/10 basis as set out in the relevant statutory provisions.

All bids must be substantiated by:

- CV's of every team member;
- Copies of professional registration certificates of consultants wishing to claim appropriate points as set out above, and
- Relevant list of projects and contactable references as proof of experience.

10. BID PRICING

For purposes of the bid pricing, the following must be assumed:

- a) Cost of external services: R1 500 000,00 for civil and electrical services;
- b) Trial holes for testing specified above: 200 holes with digger-loader on sites 15km apart;
- c) Buildings to be erected on cemetery: 220m² chapel and 120m² security, ablution and stores facility with standard finishes and pitched roofs;
- d) Cemetery to be fenced with high quality security fence with appropriate access control: R1 250 000,00; and
- e) Cemetery register linked to GIS (Arc GIS).

The Bid must indicate a total sum, based on the above assumptions and a full breakdown of all components:

- Paragraph 4 (a) – (e) above separately; and
- Paragraph 10 assumptions (a) – (e) above separately.



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ADDENDUM

THE APPOINTMENT OF A PROFESSIONAL TEAM FOR THE IDENTIFICATION AND ACQUISITION OF AUTHORISATIONS AND APPROVALS, FOR THE ESTABLISHMENT OF ONE OR MORE REGIONAL CEMETERIES FOR STELLENBOSCH MUNICIPALITY

1. INTRODUCTION

This document serves as an addendum to the above terms of reference. The aim of this addendum is to simplify the above tender in order for prospective service providers who attended the compulsory meeting held on 02 July 2015 to finalise their bids.

2. CALL FOR PROPOSALS

As per the above terms of reference a bidder must submit quotes for undertaking a feasibility study to identify suitable sites for the establishment of one or more regional cemeteries of 30 ha and more within Stellenbosch Municipality, the planning and design of the proposed cemeteries and acquiring the necessary authorisation for the establishment of the cemeteries (refer to the table below).

Table: Aspects to be quoted for.

	Reference to the Terms of reference
Feasibility	<p>4 CALL FOR PROPOSALS</p> <p><i>i. conducting a desktop feasibility study on the range of possible cemetery sites taking into account factors such as the locations of the particular sites, surrounding land uses, its accessibility and capacity;</i></p> <p><i>ii. conducting a full investigation, against the criteria listed in # 6 below, to determine the most suitable sites, taking cognisance of the envisaged environmental and social impact.</i></p>
Note	<p>The feasibility study extends to the whole of the municipal area taking into account all the relevant factors that would qualify a site to be suitable for the establishment of a cemetery.</p> <p>Bids for the full investigation (# ii. above) must be prepared taking cognisance of the Terms of Reference #7-Bid pricing.</p>
Planning & design	<p>4 CALL FOR PROPOSALS</p> <p><i>iii. the planning and design of all related services infrastructure for the cemetery;</i></p> <p><i>iv. the planning and design of the cemetery and establishing a cemetery register in accordance with the layout and;</i></p>

<u>Note</u>	Bids must be prepared on the assumption that two (2) of the identified (feasible) sites, not previously used for such purpose, will be developed.
Approvals	<p>4 <i>CALL FOR PROPOSALS</i></p> <p>v. <i>the acquisition of the authorisation of the development of the site (including all related infrastructure) in accordance with the following six statutory requirements as required:</i></p> <ul style="list-style-type: none"> • <i>The zoning of the site, the Bidder (professional team) will be responsible for the preparation of a concept development plan that indicates zonings, land use, site specific land use parameters, detailed layout, access roads, major services and infrastructure networks.</i> • <i>Environmental authorisation in terms of the National Environmental Management Act, 107 of 1998, for all activities that might apply to the land, the proposed uses and the servicing of the proposed uses.</i> • <i>National Environmental Management: Waste Act, 59 of 2008, for all activities that might apply to the land, the proposed uses and the servicing of the proposed uses.</i> • <i>Compliance with the National Water Act, 36 of 1998, in as much as the Act defines certain environmental elements, such as water courses and riparian habitats and any water use licences.</i> • <i>The National Heritage Resources, Act, 25 of 1999, with specific reference to requirements for assessment of impacts on the cultural and heritage assets.</i> • <i>The Subdivision of Agricultural Land Act, 70 of 1970, for approval of the rezoning and subdivision of the property.</i>
<u>Note</u>	<p>Bids must be prepared on the assumption that two (2) of the identified (feasible) sites will be developed and that the proposed development, in both instances, will require a Full Scoping and Environmental Impact Assessment, rezoning and a Water Use Licence. Specialist fields to be provided for may include:</p> <ul style="list-style-type: none"> • Town Planning • Land Surveying • Ecological • Heritage • Archaeological • Soil • Geotechnical • Geohydrological • Engineering Services • Transport • Social • Visual <p>Bids must be prepared taking cognisance of the Terms of Reference #7-Bid pricing.</p>



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ANNEXURE 3

Identification and Acquisition of Authorisations and Approvals for the Establishment of One or more Regional Cemeteries for Stellenbosch Municipality (October 2016)

Identification and Acquisition of Authorisations and Approvals for the establishment of One or More Regional cemeteries for Stellenbosch Municipality (Project duration 2016 – 2018).

October 2016



By CK Rumboll and Partners



Identification and Acquisition of Authorisations and Approvals for the establishment of One or More Regional cemeteries for Stellenbosch Municipality (Project duration 2016 – 2018).

First Report, Final October 2016:

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First Report, October 2016:**Identification and Acquisition of Authorisations and Approvals for the establishment of One or More Regional cemeteries for Stellenbosch Municipality (Project duration 2016 – 2018).****1. Purpose of Report**

This report constitutes the first report in a series of reports that identify and obtain the necessary land use rights and environmental authorizations to expand exiting cemeteries and establish local and regional cemeteries in Stellenbosch Municipal Area.

The first report dealt with a preliminary scan of all sites identified in terms of

- a) Ownership, Use, Zoning and Proximity
- b) Value (intrinsic, instrumental, systemic), Environment (Fauna & Flora, Ecological Rehabilitation, Geology, Pedology, Hydrology) and Policy Assessment (Access, Competing uses, SDF & IDP aligned)
- c) Digging graves: Soil excavability, permeability (distance from domestic water sources, drainage features and soil type), drainage features, gradient, basal buffer, grave stability, soil workability and cemetery size

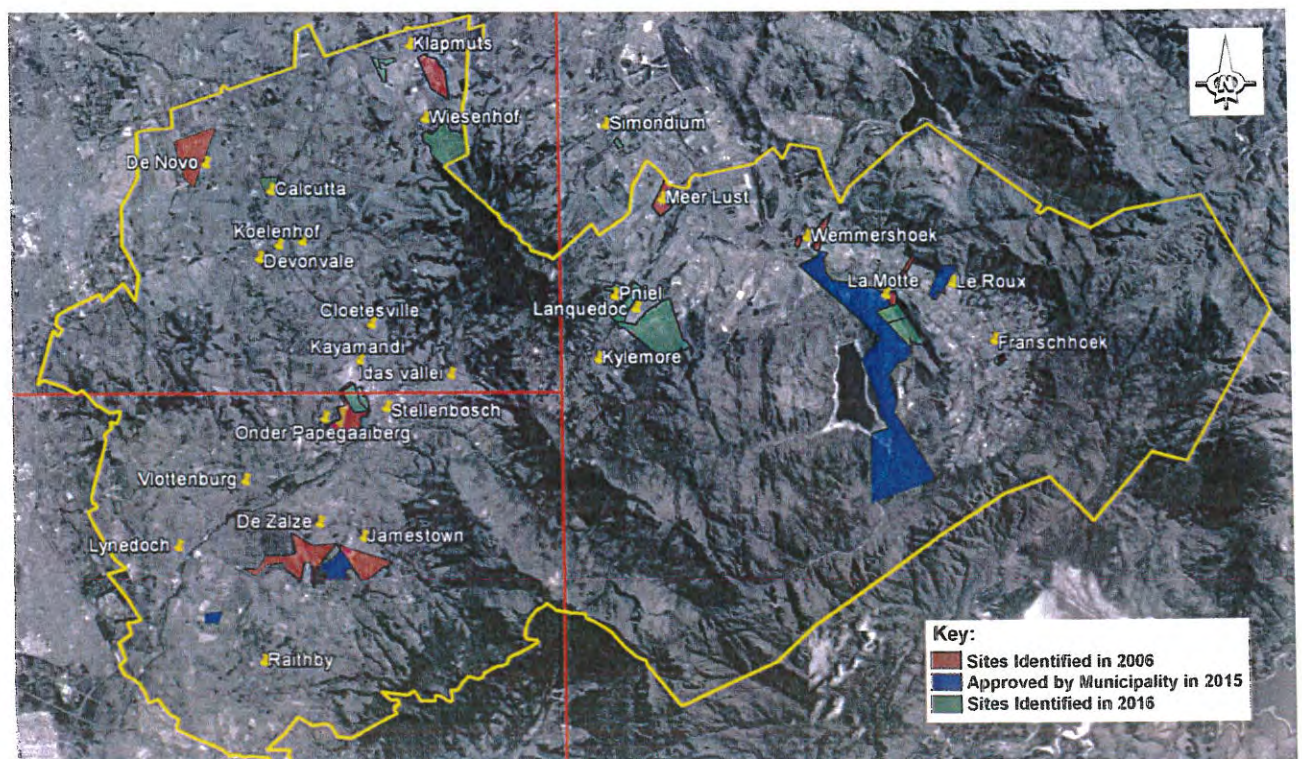
2. Site Identification

Selection was informed by the following studies and activities:

- a) Sites selected in the 2006 Cemetery Feasibility Study conducted by Dennis Moss Partnership.
- b) Sites identified during site visits by CK Rumboll and Partners in May and June 2016.
- c) Sites identified by the Property Management Department of Stellenbosch Municipality.
- d) Sites approved on a Stellenbosch Council meeting, 25 February 2015.

No	Property Number & Settlement (Alphabetic)	Existing Cemeteries	Identified			Approved by Municipality (February 2015)
			Feasibility Study 2006 (Dennis Moss)	Site Visits & Scan, 2016 (CK Rumboll)	Relevant Departments: Stellenbosch Municipality 2016	
1	RE 10/727 De Novo					
2	RE/3666 Franschoek, DenneG					
3	Erf 1219 Franschoek, Le Roux					
4	Erf 516 Franschoek					
5	Erf 423 Franschoek					
6	Erf 41 Franschoek					
7	Erf 428 Franschoek					
8	Erf 42 Franschoek					
9	Erf 16 Franschoek					
10	Erf 739 Franschoek					
11	Erf 2885 Franschoek					
12	Erf 2886 Franschoek					
13	RE/502 Jamestown					
14	1166 Jamestown					
15	RE/527 Jamestown					
	Farm 2/81 Kayamandi					
18	Farm 342 Klapmuts					
19	8/744 Klapmuts					
20	RE/2/744 Klapmuts					

21	7/748 Klapmuts					
22	3/748 Klapmuts					
23	40/748 Klapmuts					
24	Farm 29 Koelenhof (Calcutta)					
25	Erf 9 Kylemore					
26	Erf 21 Kylemore					
27	Erf 71 Kylemore					
28	Erf 35 Kylemore					
29	Erf 36 Kylemore					
30	RE1/1339 La Motte					
31	1653 La Motte					
32	1/1158 La Motte					
33	RE/1158 La Motte					
16	RE 13/1674 Languedoc					
17	RE 1/619 Lyndoch					
34	Farm 7/1041 Maasdorp					
35	Farm 28/1041 Maasdorp					
36	1/1006 Meer Lust					
37	RE/1 Pniel					
38	9/1173 Pniel					
39	2/1647 Pniel					
40	1357 Pniel					
41	RE1/1176 & 6/1176 Pniel					
42	17/1685 Pniel					
43	4/941 Simondium					
44	Farm 2/81 Kayamandi, Stellenbosch					
45	181 Stellenbosch					
46	RE/33/175 Stellenbosch					
47	RE/183 Stellenbosch					
48	Farm 190 Stellenbosch					
49	Farm 191 Stellenbosch					
50	Farm 285 Stellenbosch					
51	RE/1/1024 Wemmershoek					
52	202 Wemmershoek					
53	1338 Wemmershoek					
54	23/747 Wiesenhof					



3. Selection Criteria

These sites were subjected to a set of selection criteria:

3.1 Initial (Ownership and Proximity) Assessment

The purpose of this assessment is to determine which identified portions of land can be utilized as a local or regional cemetery and to determine the time frames involved in obtaining the appropriate rights and authorizations.

1. Ownership: Does the property belong to Stellenbosch Municipality, a State Department or a private person.
2. Zoning: What is the official zoning of the property?
3. Current Land Use: What is the property used for?
4. Lease: Is the property leased. If yes, for how long is the duration of the lease.
5. Transfer: If the property is not owned by Stellenbosch Municipality, it has to be transferred.
6. Location: Is the proposed development an extension of the existing cemetery or is it a completely new cemetery.
7. Proximity: Is the cemetery accessible for the region or only for the settlement in which it is located?

This assessment was done according to information as per the following documentation and site visits: ownership records, zoning certificates and diagrams.

3.2 Environmental and Policy Assessment

The purpose of this assessment is to determine if there are any policies or natural aspects that may prohibit the expansion or development of cemeteries.

8. Intrinsic Value: What is good for the property? (Use & Heritage Value)
- 9.
10. Instrumental Value: What is the property good for? (SDF alignment)
11. Systemic Value: Does the property contribute to the health of any eco system and or habitat? Is the property important for conservation purposes (does it form part of a sensitive ecological corridor which may include part of stream, drainage systems & wetlands and may be subject to ground water pollution.
12. Current status: Is there any indigenous Fauna and Flora habitats on the property and are there occurrence high or are there stands of rare endemic plants.
13. Ecological Rehabilitation: What should the property look like if restored to its pristine form? How did it look like? What are the likelihood/ potential of the property being rehabilitated?
14. Geology: What are the Solid features of Earth
15. Pedology: Status of soils in their natural environment
16. Hydrology: Are there any drainage lines
17. Accessibility: Is there physical access to the site? How easily can the site be accessed? What modes of transport can be used to reach the site? What modes of transport are available?
18. Land Availability: What are the competing uses in the area?

This information was gathered as per data available, site visits, previous studies conducted (see Reference List) and a meeting with municipal officials representing different departments; Data available included zoning maps, ecological and hydrological data, geological data, roads network data, programmes & projects from other municipal departments.

The following departments participated during a meeting held on 4 August 2016 and outlined their concerns:

Planning and Economic Development	Competing conservation uses at Pappagaaiberg
Engineering	Access in general
Property	Farm 29, Culcatta, Koelenhof should be added
IDP	Proposals should form part of Spatial Development Framework.
Human Settlements	Competing residential uses at James Town and La Motte
Informal Settlements	None
Community Services	The existing cemeteries should be considered for re-burials

3.3 Soil Scan

The purpose of this assessment is to determine if the site will be functionally appropriate to dig graves and bury people.

19. Soil excavability: Is the soil medium dense and firm
20. Soil permeability: Safe distance from domestic water sources (No – too close; Conditional - Certain forms of burials only i.e. walls of remembrance; Developable)
21. Soil permeability: Soil type (Clay Gravel, Silty Sand, Clay Sand, Silt) and permeability ranges. Poor subsurface conditions, either high water table or clay layers - grave surface flooding or perched water tables
22. Soil permeability: Safe distance to drainage features and sources (No – too close; Conditional - Certain forms of burials only i.e. walls of remembrance; No - Adequate surface drainage difficult - flat topographical features)
23. Drainage features: Present, Partial or Absent
24. Topography: Gradient 2° - 6°. No when slope exceeds 9°.
25. Basal Buffer Zone: 2.5m between grave & water table. No when basal buffer is absent.
26. Grave Stability: Verges & Sides to stand up.
27. Soil Workability: Ability of soil to compact on return to grave
28. Cemetery Size: Justify engineering geological & geotechnical investigation

This information was gathered as per data available, site visits and previous studies conducted and a meeting with the Directorate Community Services on 21 September 2016; Data available included hydrological data, geological data, a full assessment of Wemmershoek as a housing development was proposed on the site.

4. Initial Assessment

4.1 Cemeteries that can expand and new cemeteries smaller than 30ha

Extensions on **land belonging to Stellenbosch Municipality**, have been identified in Franschoek and Stellenbosch (Onder-Pappagaaiberg) (expand graveyard sites on erven), Kylemore, Pniel (develop new cemeteries on erven adjacent to existing cemetery).

New cemeteries on **land belonging to Stellenbosch Municipality** have been identified at Pniel (open space across existing cemetery).

No	Cemetery Extensions	Ownership	Zoning	Current Land Use	Location	Proximity
		SM, State, Private	As per SM	Used as	Extension or New	
1	Erf 739 Franschoek	Mun Gebied van Franschoek	Local Authority	Cemetery & Vacant Land	Extension:	Within Settlement
2	Erf 36 Kylemore	Mun Stellenbosch	Subdivisional Area for Residential Zone 1 and Transport Zone II (public road)	Cemetery & vacant land	Extension, adjacent property	Within Settlement
3	RE 9/1173 Pniel	Mun Stellenbosch (donated by BTT)	Agriculture Zone 1	Vacant land	Extension	Within Settlement
4	RE1/1176 & 6/1176 Pniel	Mun Stellenbosch	Agriculture Zone 1	Open Space	New	Within Settlement
5	RE/183 Stellenbosch	Mun Stellenbosch	Local Authority (Cemetery)	Cemetery & Vacant land	Extension	Within Settlement

Extensions on **state land** within the jurisdiction of Stellenbosch Municipality have been identified in De Novo.

A new cemetery on **state land** within the jurisdiction of Stellenbosch Municipality has been identified in La Motte (existing cemetery does not have the appropriate zoning).

	Cemetery Extensions	Ownership	Zoning	Current Land Use	Location	Proximity
		SM, State, Private	As per SM	Used as	Extension or New	Regional or Settlement; Within Settlement
6	RE 10/727 De Novo	RSA, Prov. Gov. W.Cape	Agriculture Zone 1	Vacant	Extension	Within Settlement
7	RE/1339 La Motte	National Government RSA	Agriculture Zone 1	Housing & Vacant land	Formalization (New) & Extension	Within Settlement

Extensions on **private land** within the jurisdiction of Stellenbosch Municipality, have been identified in Le Roux (Dennegeur), Franschoek, Languedoc, Klappmuts and Pniel.

New cemeteries on **private land** within the jurisdiction of Stellenbosch Municipality have been identified in Klappmuts and Pniel.

	Cemetery Extensions	Ownership	Zoning	Current Land Use	Location	Proximity
		SM, State, Private	As per SM	Used as	Extension or New	Regional or Settlement; Within Settlement
8	RE/3666 Dennegeur, Franschoek	L'ormarins Pty Ltd/ Rupert & Rothschild Vignerons/ Dennegeur Bemagtigingsvennootsk ap La Motte Wynlandgoed Pty Ltd	Subdivisional Area	Vacant – Housing	New, adjacent existing cemetery on Erf 1219	Within Settlement

9	Erf 516 Franschoek	Hugenote Stigting	Institutional	Monument & Gardens	New, adjacent existing cemetery on erf 423	Within Settlement
10	RE 13/1674 Languedoc	Boschendam Pty Ltd	Agriculture Zone 1	Cemetery/Vacant	Extension	Within Settlement
11	8/744 Klappmuts	Private	Agriculture Zone 1	Vacant	New	Within Settlement
12	40/748 Klappmuts	R44 Farm Pty (Ltd)	Agriculture Zone 1	Vacant, Farming	New, adjacent existing cemetery Farm 3/748 & 7/748	Within Settlement/ Regional
13	17/1685 Priel (both sides of R45)	Boschendam Founders Estate 17 Pty Ltd	Agriculture Zone 1	Agriculture & Vacant land	New	Within Settlement

4.2 Regional cemeteries

Regional cemeteries are proposed in Jamestown, Lyndoch, Klappmuts, La Motte, Maasdorp (on R45 to Franschoek), Meerlust (T junction of R45 (Paarl to Franschoek) and R310 (to Stellenbosch)), Wemmershoek (R301) & Wiesenhof (R44).

Regional cemeteries on **land belonging to Stellenbosch Municipality** have been identified in James Town, Koelenhof and Wemmershoek.

	Regional Cemeteries	Ownership	Zoning	Current Land Use	Location	Proximity
		SM, State, Private	As per SM	Used as	Extension or New	Regional or Settlement;
14	RE/502 Jamestown	Mun Stellenbosch	Agricultural Zone 1	Vacant/ Agriculture	New	Regional
15	Farm 29 Calcutta, Koelenhof	Mun Stellenbosch	Agriculture Zone 1	Vacant land	New	
16	RE/1/1024 Wemmershoek	Mun Stellenbosch	Agriculture Zone 1	Vacant land	New	Regional

Regional cemeteries on **state land** within the jurisdiction of Stellenbosch Municipality have been identified mainly in Eastern Stellenbosch or the Franschoek Valley in La Motte, Maasdorp, Meerlust and De Novo.

	Regional Cemeteries	Ownership	Zoning	Current Land Use	Location	Proximity
		SM, State, Private	As per SM	Used as	Extension or New	Regional or Settlement;
17	RE 10/727 De Novo	RSA, Prov. Gov. W.Cape	Agriculture Zone 1	Vacant	New	Regional
18	Farm 7/1041 Maasdorp	RSA	Agriculture Zone 1	Plantation	New	Regional
19	Farm 28/1041 Maasdorp	RSA	Agriculture Zone 1	Settlement	New	Regional
20	1/1006 Meer Lust	RSA, Mun Drakenstein	Agriculture Zone 1	Vacant Land & Village	New	Regional

Regional cemeteries on **private land** within the jurisdiction of Stellenbosch Municipality have been identified in Jamestown, Klappmuts, Lyndoch, and Jamestown.

	Regional Cemeteries	Ownership	Zoning	Current Land Use	Location	Proximity
		SM, State, Private	As per SM	Used as	Extension or New	Regional or Settlement;
21	1166 Jamestown	Mountain Breeze Farms Pty (Ltd)	Agriculture Zone 1	Vineyards	Extension, adjacent property	Regional
22	RE 1/619 Lyndoch	Charles Back Vineyards Pty Ltd	Agricultural Zone 1	Vacant/ Small Holdings	New	Regional
23	40/748 Klampmuts	R44 Farm Pty (Ltd)	Agriculture Zone 1	Vacant, Farming	Extension, adjacent property	Within Settlement/ Regional

4.3 Full cemeteries

Cemeteries that are **fully occupied** and need cleaning, remarking of graves, fencing and upkeep are listed below:

	Property	Owner	Zoning
24	Erf 1219 Franschoek, Le Roux	Mun Gebied van Farnschoek	Local Authority Zone
25	Erf 41 Franschoek	Ned Ger Sendingkerk Franschoek	Local Authority Zone
26	Erf 42 Franschoek	Ned Ger Kerk Franschoek	Local Authority Zone
27	Erf 423 Franschoek	Roux David Marais	Local Authority Zone
28	Erf 428 Franschoek	Congregational Church Franschoek	Local Authority Zone
29	Erf 16 Franschoek	Ned Ger Franschoek	Local Authority Zone
30	RE/527 Jamestown (Unregistered Portion 6/527)	Mun Stellenbosch	Agriculture Zone 1 (Local Authority (Cemetery))
31	7/748 Klampmuts	Volle Evangelie Kerk van God in Suidelike Afrika Klampmuts	Agriculture Zone 1
32	3/748 Klampmuts	Volle Evangelie Kerk van God in Suidelike Afrika Klampmuts	Agriculture Zone 1
33	Erf 9 Kylemore (re use western side)	Mun Stellenbosch	Open Space II
32	Erf 21 Kylemore	Mun Stellenbosch	Subdivisional Area for Residential Zone 1 and Transport Zone II (public road)
33	Erf 71 Kylemore	Old Apostolic Church of Africa	Open Space II
34	Erf 35 Kylemore	Mun Stellenbosch	Open Space I
35	RE/1 Pniel	Gemeenskap van Pniel	Open Space for Pniel Cemetery Authority Use for rest of property
36	Farm 190, Stellenbosch	Mun Stellenbosch	Local Authority (Cemetery)
37	Farm 191, Stellenbosch	Mun Stellenbosch	Local Authority (Cemetery)
38	Farm 285, Stellenbosch	Mun Stellenbosch	Local Authority (Cemetery)

5. Environmental and Policy Assessment

5.1 Sites not considered

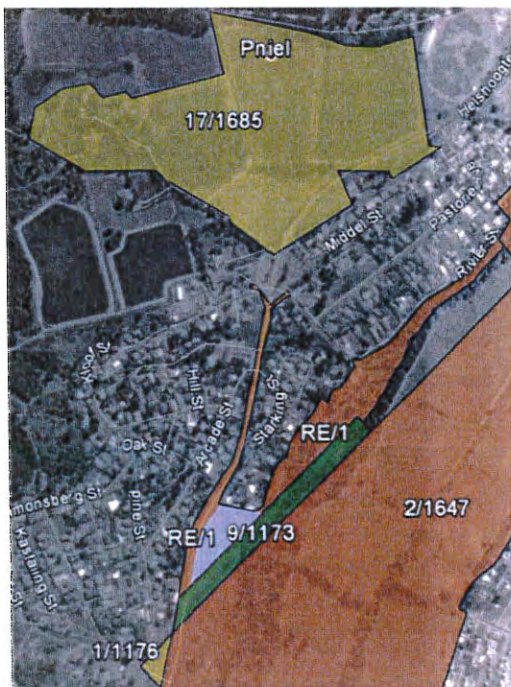
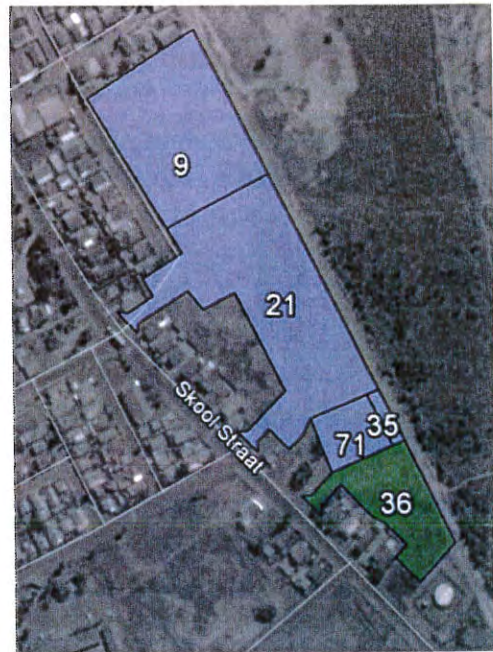
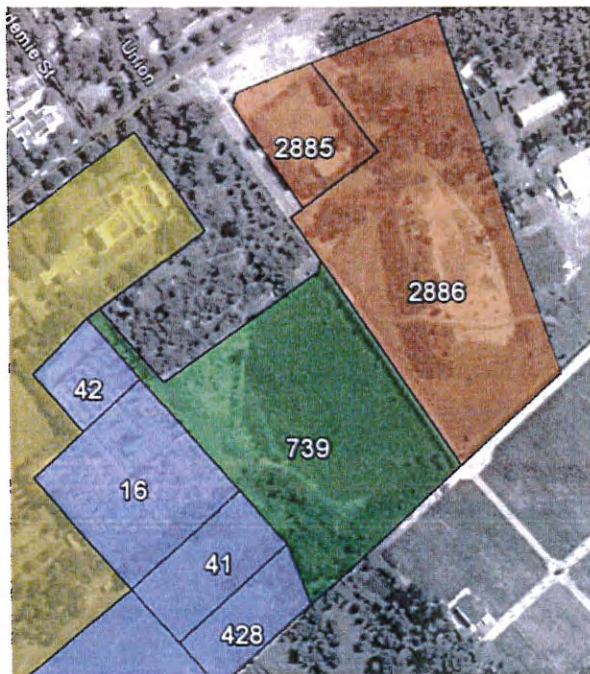
The following **sites are not considered** further for investigation and the reasons there are provided in the table below:

	Property	Use & Ownership	Zoning	Reason
39	Farm 342 Klapmuts	Vacant & Clinic (Ownership: Mun Stellenbosch)	Agriculture Zone 1	Proximity to settlement
40	RE/2/744 Klapmuts	Vacant, Farm Yard (SAFAMCO enterprises Pty Ltd)	Agriculture Zone 1	Proximity to settlement
41	1653 La Motte	Housing & Vacant land (Ownership: District Mun Cape Winelands)	Agriculture Zone 1	Earmarked for housing
42	1/1158 La Motte	Housing & Vacant land (Ownership: National Government of the RSA)	Agriculture Zone 1	Earmarked for housing
43	RE/1158 La Motte	Housing & Vacant land (Ownership: RSA)	Agriculture Zone 1	Earmarked for housing
44	Erf 2885 Franschoek	This site is home to short term accommodation facilities used for youth development	Local Authority	Used for recreation and youth development
45	Erf 2886 Franschoek	The is site is used for recreation and conservation	Undetermined	Used for recreation and conservation
46	2/1647 Pniel	Vacant	Agriculture Zone 1	Slope gradient (16 – 20°) too steep for proposed development. Extension will not go as far as portion 2.
47	4/941 Simondium	Cemetery & Housing (Ownership: Mun Drakenstein)		Existing Cemetery competing with Squatters. In neighbouring municipality but well located.
48	Farm 2/81, Stellenbosch Kayamandi	Vacant (Ownership: Mun Stellenbosch)	Local Authority	Earmarked for development of road network.
49	Farm 181 Stellenbosch, Kayamandi	Housing & Vacant land (Ownership: Mun Stellenbosch)	Agricultural Zone 1	Slope and proximity to housing.
50	Farm RE/33/175 Stellenbosch, Plankenburg	Housing & Vacant land (Ownership: Mun Stellenbosch)		Proximity to housing and development.
51	202 Wemmershoek (check topo)	Cemetery & Vacant	Open Space Zone II	Water course forms western boundary of property and the area is reflected as home to a critical biodiversity area. This cemetery can expand eastwards, but as a site opposite Wemmershoek is identified for a regional cemetery, the expansion is not required.
52	23/747 Wiesenhof	Tourism Facility & Cemetery (Ownership: Sieghard Gustav Kulenkampff)	Agriculture 1 & Open Space II (2530m ²)	The use of the land and the ownership differ. The only way forward would be to purchase the land.

5.2 Sites for investigation that has been approved by Council

Proceed with applications for extension of cemeteries or new smaller sites on sites owned and approved by Municipality of Stellenbosch.

Extension	Town/ Settlement	Property owned by SM	Approved by Council
	Franschoek	Erf 739	No
	Kylemore	Erf 36	No
	Pniel	RE 9/1173 & RE1/1176	No
	Stellenbosch	Farms 183	Approved;

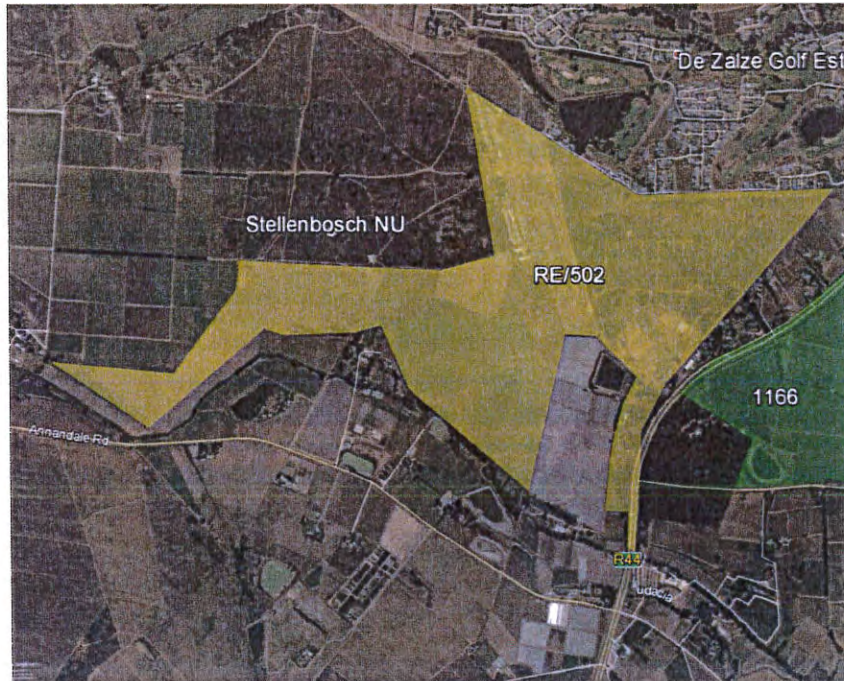


LEGEND

- fully occupied sites
- sites not considered
- cemetery extensions
- new cemetery sites

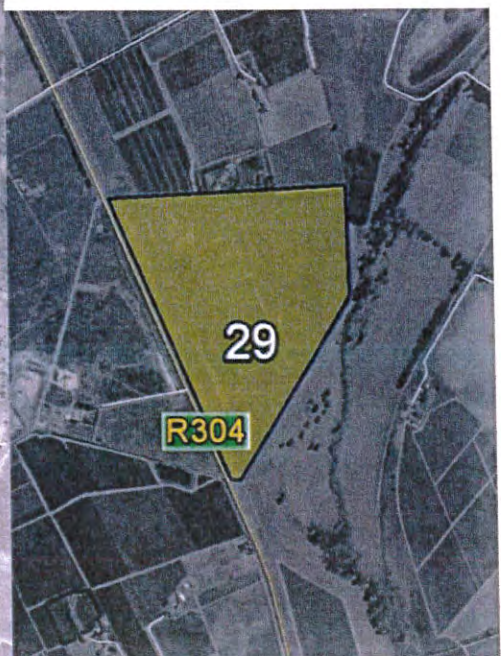
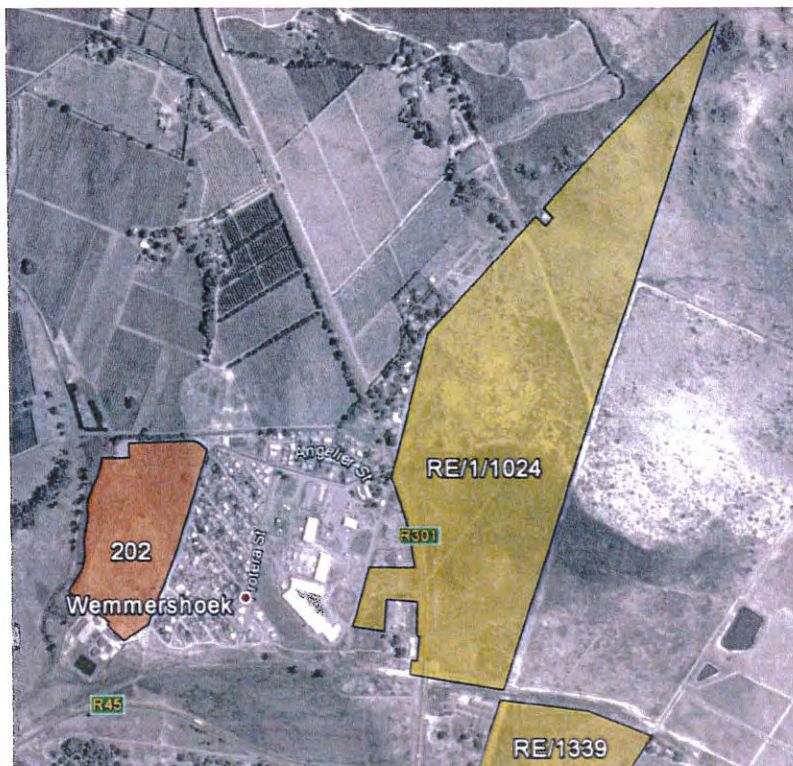
Proceed with applications for regional cemeteries on sites owned and approved by Municipality of Stellenbosch.

Regional Cemetery. Municipal Land	Town/ Settlement	Property owned by SM	Approved by Council
	Jamestown	RE/502	Approved
	Koelenhof	Farm 29	Not approved
	Wemmershoek	RE/1/1024	Approved



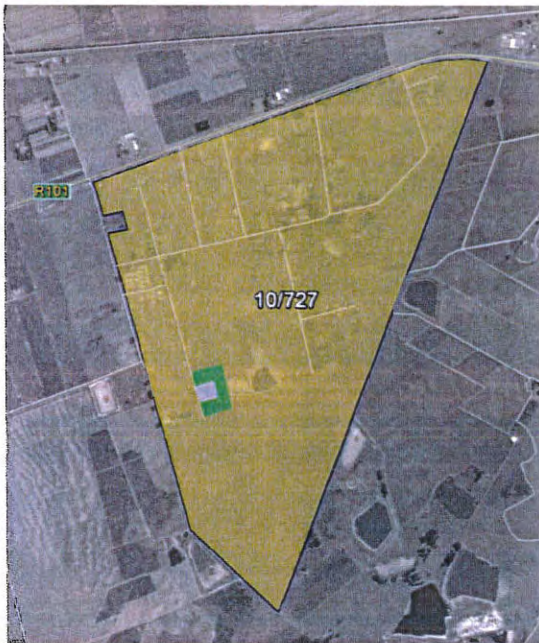
LEGEND

- fully occupied sites
- sites not considered
- cemetery extensions
- new cemetery sites



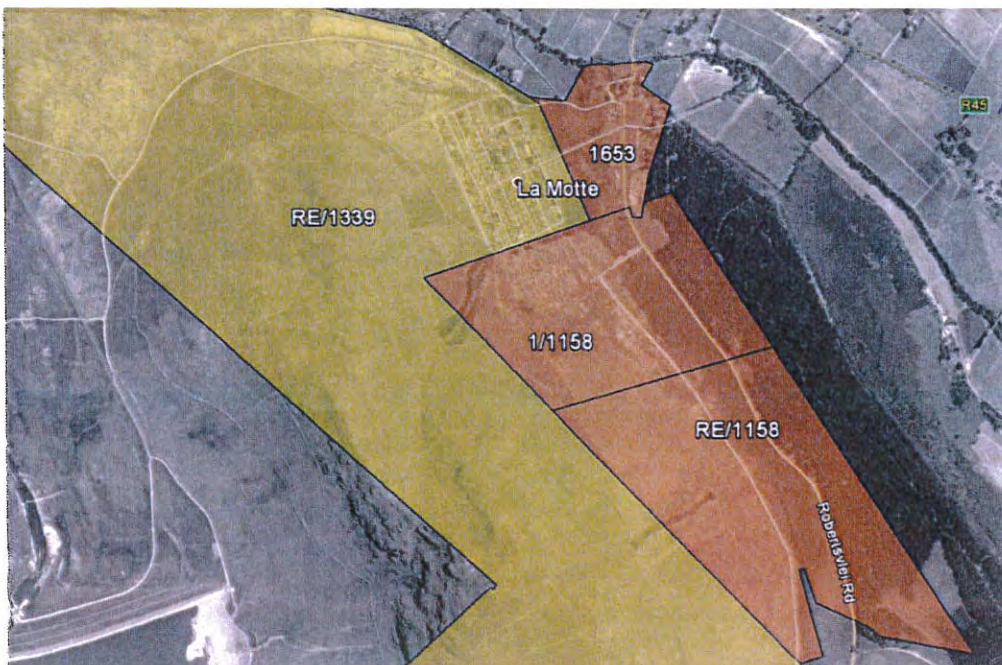
Agree to proceed with application for extension of cemeteries or new smaller sites owned by the state and approved by Stellenbosch Municipality.

Extension	Town/ Settlement	Property owned by State	Approved by Council
	De Novo	RE 10/727	Approved
	La Motte	RE/1339	Approved RE1/1339



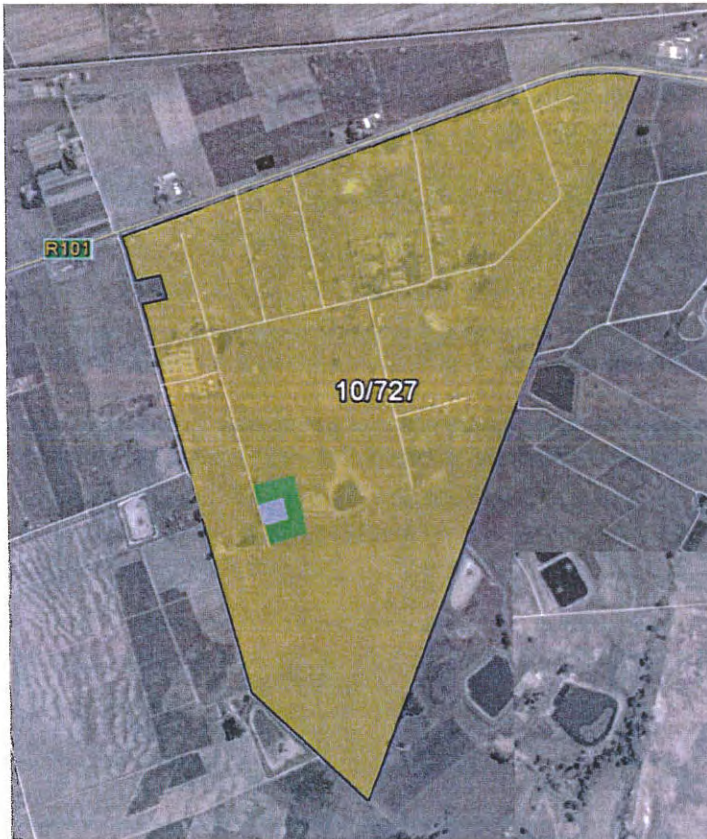
LEGEND

- fully occupied sites
- sites not considered
- cemetery extensions
- new cemetery sites



Agree to proceed with application for regional cemeteries owned by the state and approved by Stellenbosch Municipality.

Regional on land owned by the State	Town/ Settlement	Property owned by State	Approved by Council
	De Novo	RE 10/727	Approved
	Meerlust	'Farm 1/1006	No

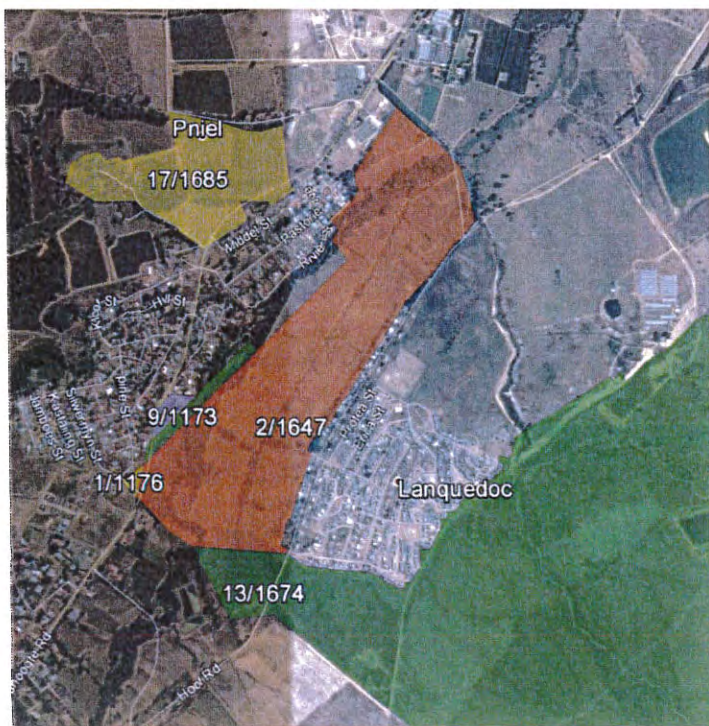
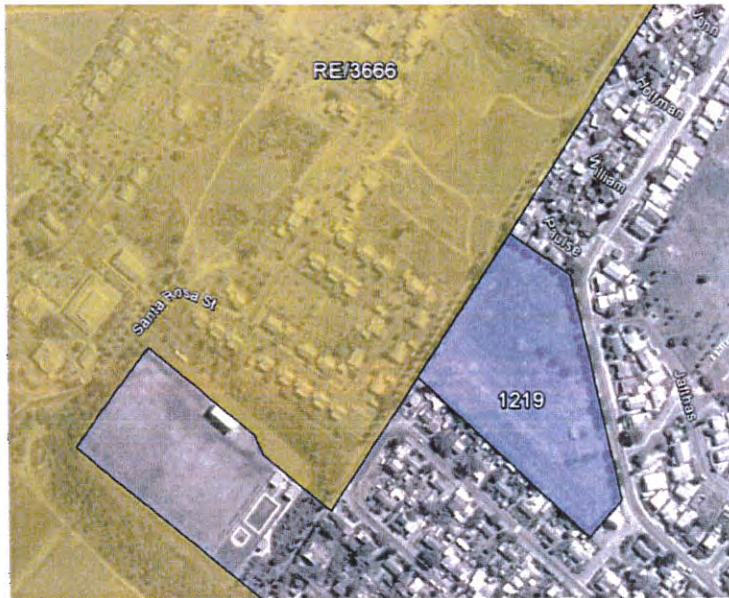


LEGEND

- fully occupied sites
- sites not considered
- cemetery extensions
- new cemetery sites

Sites on private land that could be investigated and serve as alternatives for extensions and are approved by Stellenbosch Municipality, are:

Extensions	Town/ Settlement	Property owned privately	Approved by Council
	Le Roux, Franschoek	RE/3666 Dennegeur	Approved
	Franschoek	Erven 516	No
	Languedoc	RE 13/1674	No
	Klapmuts	Farm 40/748	Approved

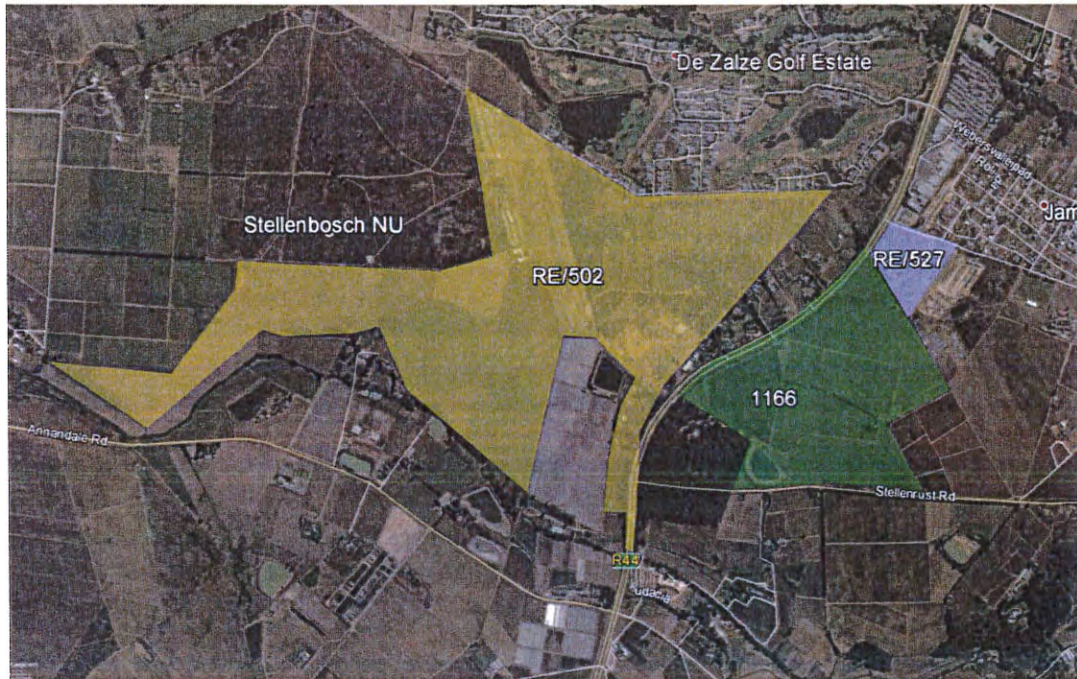


LEGEND

- fully occupied sites
- sites not considered
- cemetery extensions
- new cemetery sites

Sites on private land that could be investigated and serve as alternatives for regional cemeteries and are approved by Stellenbosch Municipality are:

Regional on land owned by privately	Town/ Settlement	Property owned privately	Approved by Council
	Jamestown	Farms 1166	Approved
	Lyndoch	RE 1/619	Approved
	Klapmuts	Farm 40/748	Approved



LEGEND

- fully occupied sites
- sites not considered
- cemetery extensions
- new cemetery sites

To proceed with the investigation, regional sites should be investigated and ground truthed to confirm suitability.

A strategy or strategies should be researched to consider the reuse/ alternative use of full cemeteries.

5.3 Sites for regional cemeteries

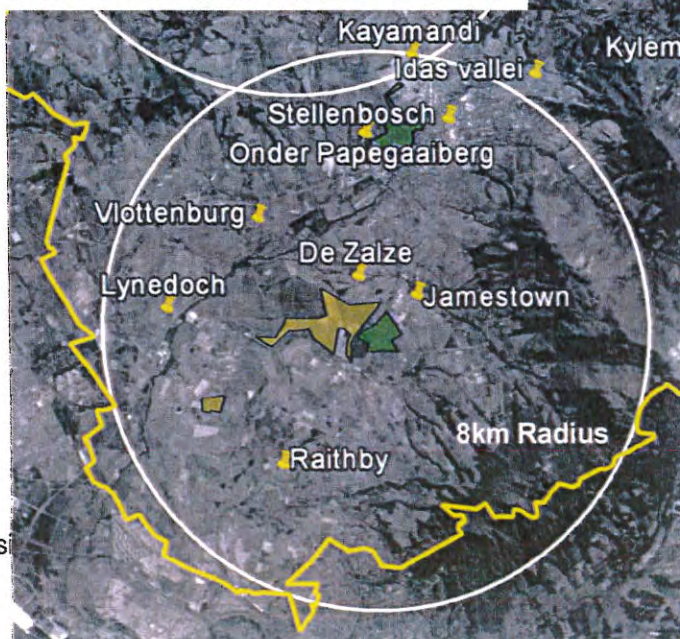
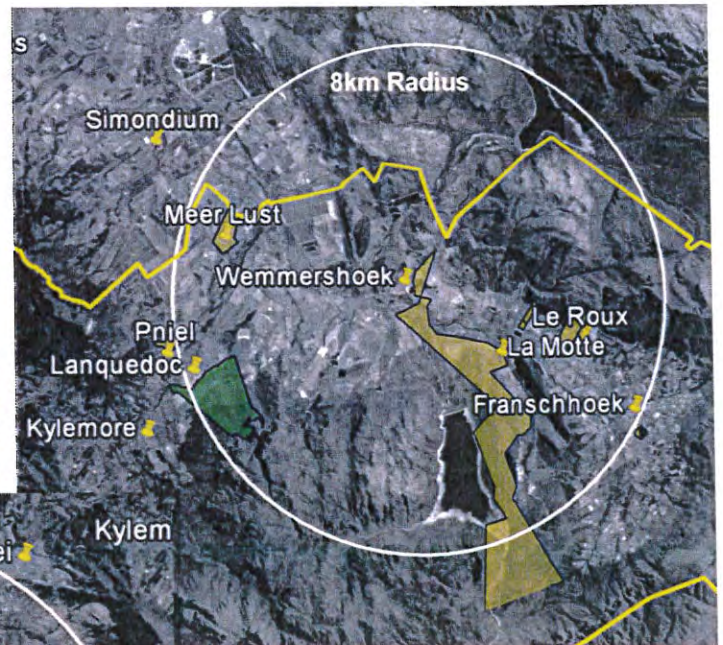
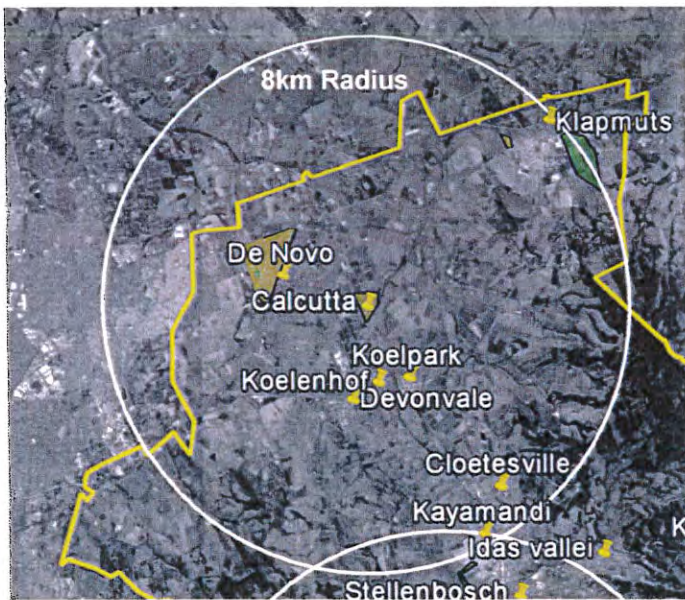
The following three regions were identified and sites per region are listed according to priority.

Region 1: Northern Stellenbosch (Klapmuts – Koelenhof)

Priority	Town/ Settlement	Property	Ownership	Approved by Council
1	De Novo	RE 10/727	State	Approved
2	Klapmuts	Farm 40/748	Private	Approved
3	Koelenhof	Farm 29	Stellenbosch Municipality	No

Region 2: Eastern Stellenbosch (Franshoek Valley)

Priority	Town/ Settlement	Property	Ownership	Approved by Council
1	Meerlust	'Farm 1/1006	State	No
2	Wemmershoek	RE/1/1024	Stellenbosch Municipality	Approved
3	Wemmershoek	Farm 1338	SA Government	No



Region 3: South Stellenbosch (Stellenbosch – Jamestown)

Priority	Town/ Settlement	Property	Ownership	Approved by Council
1	Jamestown	RE/502	Stellenbosch Municipality	Approved,
2	Lyndoch	RE 1/619	Private	Approved

5.4 Recommendations

Stellenbosch Council to approve the following sites to be investigated as regional cemetery sites in addition to the sites approved as per Council Meeting of 25 February 2015.

Town/ Settlement	Property	Ownership
Koelenhof	Farm 29, Region North	Stellenbosch Municipality
Meerlust	'Farm 1/1006, Region East	State
Wemmershoek	Farm 1338	Government of SA

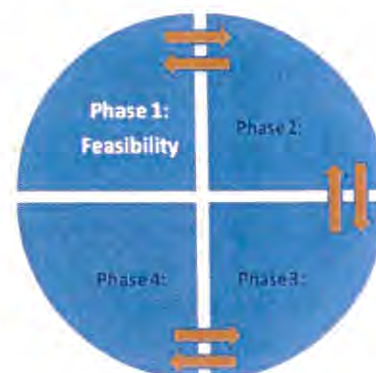
Stellenbosch Council to approve the following cemetery extensions in addition to the sites approved as per Council Meeting of 25 February 2015.

Town/ Settlement	Property	Ownership
Franschoek	Erf 739	Stellenbosch Municipality
Kylemore	Erf 36	Stellenbosch Municipality
Pniel	RE 9/1173 & RE1/1176	Stellenbosch Municipality
Franschoek	Erven 516	Private
Languedoc	RE 13/1674	Private

6. Project Status

The following Phase 1 (Set up and Feasibility) activities were completed:

- Activity 1: Professional team (as per tender document) confirmed.
- Activity 2: Representatives of professional team to meet with relevant officials to discuss assignment and outcomes
- Activity 3: Project plan was refined.
- Activity 4: Sites were visited and possible regional sites were identified
- Activity 5: A preliminary analysis (desktop feasibility) for existing and possible sites considering qualifying factors i.e. location, surrounding land uses, accessibility and capacity were conducted.
- Activity 6: Opportunities and constraints were identified. Recommendations were made.



Identify opportunities, constraints & make recommendations informed by Dennis Moss 2006 feasibility study and based on:	
a. Geotechnical & geohydrological information <ul style="list-style-type: none"> • Conditions of the soil, bedrock, groundwater, surface water and drainage (aquatic aspects, water resources, crossings of water ways and flood lines) and topography (i.e. detect any services crossing the area, physical features like rocks, wetlands, existing structures, steep slopes). • Soil excavatability, permeability including safe distance to domestic water source, soil type and predicted permeability ranges, safe distance to drainage features, site drainage, site topography in particular gradient, basal buffer zone (between source of pollution and water table), grave stability (sides and verges) and soil workability. 	Preliminary for some sites and completed for others
b. Services connections and options (i.e. water, sewerage, electricity, roads and storm water and costs estimates and designs. Obtain confirmation letters.)	Completed
c. Anticipated Waste and volume thereof (incl. preliminary costing).	To do
d. Access, traffic, transport infrastructure & modes of transport. (Trips to be generated, traffic direction, points of congestion and public transport services inclusive of needs.	Completed
e. Environmental constraints including natural vegetation and issues.	Completed
f. Heritage aspects and constraints.	Completed
g. Policy Alignment with IDP and SDF	Completed
h. Land use, ownership (title deeds), real rights (diagrams) i.e. servitudes incl. usufructs, leases or any other restrictive title conditions (including for adjacent & surrounding properties)	Completed
i. Location & capacity, legal, social & financial aspects and context.	Completed

Activity 7: A final report was compiled outlining cemeteries that

- cannot expand (& capacity)
- can expand 2 500m² or less
- can expand beyond 2 500m²
- Can be established as regional cemeteries (±30ha).

Activity 8: A regional scan and preliminary identifying alternative sites for regional cemeteries other than identified sites were conducted

7. Way Forward: Activities to Follow, Phase 2 and 3

Activity 9: Compile a cost benefit analysis. (Cost internal and external services, cemetery development including obtaining rights and analyse social and economic impact).

Activity 10: Obtain power of attorney and mandate to develop land and to negotiate for land not approved as yet. See point 5.2 of this report for Recommendations.

On completion of Activity 10, Phase 2 and 3 can start.

This report must be read in conjunction with the report as per Reference List.

List of References

- Dennis Moss Partnership Inc. October 2006: *Cemetery Feasibility Study, October 2006*
- Dennis Moss Partnership Inc. February 2005: *Municipal Land Management Policy Framework, February 2005.*
- Dennis Moss Partnership Inc. *Papagaaiberg Spatial Development Plan, October 2006, For Stellenbosch Municipality*
- Dirk Hatting and Associates. *June 2003: Strategic analyses: municipal apartment buildings known as Aurora, Lavanda and Phylaria situated in the wc24 municipal area (24 June 2003) (IDP 2002 – 2006, working document for Piet Smit).*
- Municipality of Stellenbosch: *Appendix 2: draft by-law relating to the management and administration of Stellenbosch municipality's immovable property*
- Municipality of Stellenbosch: *Franschoek Urban Design Study, July 2005: Addendum to the GAPP urban design framework study produced in 1997*
- Municipality of Stellenbosch: *Identification of state-owned land for possible housing projects: la motte, Wemmershoek and Maasdorp, Internal Memorandum, 2008-06-30*
- Municipality of Stellenbosch: *Towards a municipal land management policy, a discussion document, Stellenbosch Municipality: Municipal Land in process of alienation:*
- Municipality of Stellenbosch: Minutes*
- a) *With relevant municipal departments (August 2016)*
 - b) *With property management (May 2016)*
 - c) *With community services (September 2016)*
- Planning Partners. *Strategic Framework for Affordable Housing in the Franschoek Valley.*
- Smit, P. February 2008: *Stellenbosch municipality, land summit, a strategic analysis of Stellenbosch municipality's property portfolio (land and buildings) compiled by: Piet Smit, manager: property management and administration.*



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ANNEXURE 4

Motivation to obtain Stellenbosch Council's Endorsement of Regional Cemetery Sites in fulfilment of tender B/SM No 17/16

Motivation to obtain Stellenbosch Council's endorsement of Regional Cemetery Sites in fulfilment of tender B/SM No 17/16:

Identification and Acquisition of Authorisations and Approvals for the establishment of one or More Regional cemeteries for Stellenbosch Municipality (Project duration 2016 – 2018).

1. Background

Stellenbosch Municipality appointed CK Rumboll and Partners to identify and acquire Authorisations and approvals for the establishment of one or more regional cemeteries for Stellenbosch Municipality (Project duration 2016 – 2018) as per tender B/SM No 17/16. This tender has as its purpose the identification and approval of the necessary land use rights and environmental authorizations to expand exiting cemeteries and establish local and regional cemeteries in Stellenbosch Municipal Area.

Stellenbosch Council approved 9 sites for the above purposes on a council meeting on 25 February 2015: These are listed below:

	Property	Ownership	Use	Property size (ha)
1	Erf 619/1 Lyndoch	Municipality	Agriculture	25ha
2	RE 502 Louw's Bos	Municipality	Agriculture	240ha
3	Farm 727/10 De Novo	Department of Transport and Public Works	Agriculture (& existing cemetery)	190ha
4	Farm 1339/1 La motte	Department of Transport and Public Works	Agriculture	660ha
5	Farm 1024/1 Wemmershoek	Municipality	Agriculture	40ha
6	Erf 3666 Dennegeur	Private	Vacant / Residential	70ha
7	Farm 748/40 Klapmuts	Private	Agriculture (adjacent to existing cemetery)	110ha
8	RE/Farm 183 Onder Papegaaiberg	Municipality	Agriculture	126
9	Farm 1166 Jamestown	Private	Agriculture, adjacent to existing cemetery site	81h

2. Initial Desktop Assessment

The initial investigation conducted by CK Rumboll and Partners expanded the nine (9) sites to fifty four (54) sites and included:

- a) Sites selected in the 2006 Cemetery Feasibility Study conducted by Dennis Moss Partnership (19 sites).
- b) Sites identified during site visits by CK Rumboll and Partners in May and June 2016 (21 sites).
- c) Sites identified by the Property Management Department of Stellenbosch Municipality (24 sites).
- d) Existing cemetery sites in the Stellenbosch Municipal Area (24 sites)

The desktop assessment considered ownership and proximity (initial assessment) followed by environmental and policy considerations and ultimately a soil scan. The detail of the initial assessment is outlined below whilst the detail of the environmental and policy considerations is outlined in the next section. The initial assessment resulted in a preliminary list of sites as per the tables below:



Region 1: Northern Stellenbosch (Klapmuts – Koelenhof)

Priority	Town/ Settlement	Property	Ownership	Approved by Council
1	De Novo	RE 10/727	State	Approved
2	Klapmuts	Farm 40/748	Private	Approved
3	Koelenhof	Farm 29	Stellenbosch Municipality	No

Region 2: Eastern Stellenbosch (Franschoek Valley)

Priority	Town/ Settlement	Property	Ownership	Approved by Council
1	Meer Lust	'Farm 1/1006	State	No
2	Wemmershoek	RE/1/1024	Stellenbosch Municipality	Approved
3	Wemmershoek	Farm 1338	SA Government	No

Region 3: Southern Stellenbosch (Stellenbosch – Jamestown)

Priority	Town/ Settlement	Property	Ownership	Approved by Council
1	Jamestown	RE/502	Stellenbosch Municipality	Approved,
2	Lyndoch	RE 1/619	Private	Approved

Regional cemeteries are thus proposed at Jamestown, Lyndoch (southern Stellenbosch), Meer Lust (T junction of R45 (Paarl to Franschoek) and R310 (to Stellenbosch)) and Wemmershoek (R301) (eastern Stellenbosch) and De Novo, Klapmuts and Koelenhof (northern Stellenbosch).

2.1 Initial (Ownership and Proximity) Assessment

The following assessment criteria were applied and ownership records, zoning certificates and diagrams informed the assessment for each site:

1. Extent/ Cemetery Size: Can the property accommodate a 30ha site? Can engineering, geological & geotechnical investigation be justified?
 - 1.
2. Ownership: Does the property belong to Stellenbosch Municipality, a State Department or a private person.
3. Zoning: What is the official zoning of the property?
4. Current Land Use: What is the property used for?
5. Lease: Is the property leased. If yes, for how long is the duration of the lease.
6. Transfer: If the property is not owned by Stellenbosch Municipality, it has to be transferred.
7. Location: Is the proposed development an extension of the existing cemetery or is it a completely new cemetery.
8. Proximity: Is the cemetery accessible for the region or only for the settlement in which it is located?

Two sites, Calcutta and Louw's Bos belong to the Municipality of Stellenbosch and three sites, De Novo, Meer Lust and Keyersdrif belong to Department of Transport and Public Works or the State.

All the sites, except De Novo and Meer Lust, are vacant. De Novo and Meer Lust are each home to a small settlement yet have vast pieces of vacant land available. All sites are zoned Agricultural Zone 1.

Two sites, De Novo and Calcutta, are located in the Northern Region, Louw's Bos in the Southern Region and Meer Lust and Keyersdrif in the east.



Below follows a table detailing the initial assessment of each site:

Dir	Property	Ownership	Zoning	Current Land Use	Extent	Proximity
	Dir: Direction	SM, State, Private	As per SM	Used as	In Ha	Regional or Settlement; Within Settlement
N	RE 10/727 De Novo	RSA, Prov. Gov. W.Cape	Agriculture Zone 1	Fallow land & cemetery	192.28ha	Within close proximity of Kraaifontein, central for North Western region of Stellenbosch Municipal area
N	Farm Calcutta No 29	Municipality of Stellenbosch	Agriculture Zone 1	Woodlot (Eucalyptus)	39.64ha	Central, Northern Region
S	RE Louw's Bos No 502	Municipality of Stellenbosch	Agriculture Zone 1	Fallow land, Airfield and Former Waste Site	217.44ha	Central, Southern Region
E	Farm Meerlust No 1/1006	State, RSA	Agriculture 1	Village and Natural Veldt	67.05ha	Central, Eastern Region
E	RE Farm Keysersdrift No 1158 & 1/1158	State, RSA	Agriculture 1	Natural Veldt	77.13ha (RE) 54.8ha (Prt 1)	Within close proximity of Franschoek Valley

To prioritise the identified sites (as listed above) cemetery extensions forthcoming from the investigation were considered:

Town/ Settlement	Property	Ownership
Franschoek	Erf 739	Stellenbosch Municipality
Kylemore	Erf 36	Stellenbosch Municipality
Pniel	RE 9/1173 & RE1/1176	Stellenbosch Municipality
Languedoc	RE 13/1674	Private
Klapmuts	Farm 36/748	Private
Stellenbosch	RE 183	Stellenbosch Municipality

Thus the regional sites with the most central location to the region are Calcutta, Louw's bos and Meerlust.

3. Second Assessment and Field Visit

The sites that could accommodate a 30ha regional cemetery were subjected to the set of selection criteria below: A field visit enabled a more detailed second assessment as per criteria provided by tender B/SM No 17/16.

3.1 Environmental and Policy Assessment

The purpose of this assessment is to determine if there are any policies or natural aspects that may prohibit the expansion or development of cemeteries.

1. Intrinsic Value: What is good for the property? (Use & Heritage Value)



2. Instrumental Value: What is the property good for? (SDF alignment)
3. Systemic Value: Does the property contribute to the health of any eco system and or habitat? Is the property important for conservation purposes (does it form part of a sensitive ecological corridor which may include part of stream, drainage systems & wetlands and may be subject to ground water pollution.
4. Current status: Is there any indigenous Fauna and Flora habitats on the property and are there occurrence high or are there stands of rare endemic plants.
5. Ecological Rehabilitation: What should the property look like if restored to its pristine form? How did it look like? What are the likelihood/ potential of the property being rehabilitated?
6. Geology: What are the Solid features of Earth
7. Pedology: Status of soils in their natural environment
8. Hydrology: Are there any drainage lines
9. Accessibility: Is there physical access to the site? How easily can the site be accessed? What modes of transport can be used to reach the site? What modes of transport are available?
10. Land Availability: What are the competing uses in the area?

This information considered was gathered from data available, site visits, previous studies conducted (see Reference List) and a meeting with municipal officials representing different departments on 4 August 2016. Data available included zoning maps, ecological and hydrological data, geological data, roads network data, programmes & projects from other municipal departments.

The following departments participated in a meeting held on 4 August 2016 and outlined their concerns:

Planning and Economic Development	Competing conservation uses at Pappagaaiberg
Engineering	Access in general
Property	Farm 29, Calcutta, Koelenhof should be added
IDP	Proposals should form part of Spatial Development Framework.
Human Settlements	Competing residential uses at James Town and La Motte
Informal Settlements	None
Community Services	The existing cemeteries should be considered for re-burials

Below follows two tables detailing the assessment of each site considering Value (intrinsic, instrumental, systemic), Environment (Fauna & Flora, Ecological Rehabilitation, Geology, Pedology, Hydrology) and Policy Assessment (Access, Competing uses, SDF & IDP aligned):

Dir	Property	Intrinsic	Instrumental	Systemic	Competing Use	SDF & IDP Alignment	Access
	Dir: Direction	Good for property	Property good for	Contribution to health of Ecosystem (& habitats) / Conservation Importance	Land Availability	As per SM policies and plans	Physical Access, Access realignment & Modes of Transport
N	RE 10/727 De Novo	Agriculture	Agriculture (small holdings & land reform)	Low	Combine ownership and agriculture with future development	SDF IDP - yes	R101 Moderate access realignment
N	Farm Calcutta No 29	Agriculture	Agriculture and Agricultural	Low	Woodlot	SDF IDP - yes	Moderate access realignment



			Industry				
S	RE Louw's Bos No 502	Agriculture	Agriculture, Vineyards, Strawberries	Low	Agricultural Small Holdings	SDF IDP - yes	R44 Extensive access realignment
E	Farm Meer Lust No 1/1006	Agriculture & Village	Agriculture	Medium	Agriculture and or conservation	SDF IDP - yes	R45 and Minor road no 5232 Moderate access realignment
E	RE Farm Keyersdrift No 1158 & 1/1158	Conservation & Forestry	Conservation, Forestry, Agriculture	Medium	Conservation & Forestry	SDF IDP - yes	unregistered gravel road (access from Robertsvei Rd no 1351) Moderate access realignment

The sites with the best compliance between intrinsic, instrumental and systemic value are De Novo, Calcutta, and Louw's Bos.

The sites with best accessibility (including access realignment i.e. slip ways, widening roads, new roads), are Calcutta, Da Nova, Meer Lust and Keyersdrift, whilst extensive access realignment will have to be implemented at Louw's Bos.

Dir	Property	Fauna & Flora	Ecological Rehabilitation	Geology	Pedology	Hydrology
	Dir: Direction	Fauna & Flora CBA = Critically Biodiversity Area; ESA = Ecological Support Area	If restored to pristine form/ Did look like/ Potential to R	Solid features of Earth, rocks of which composed & processes by which rocks change	Soils in natural environment & Slopes	Drainage Lines; Ground water
N	RE 10/727 De Novo	S-Half & N Middle: CBA & CE; Middle: None	Low	Greyish, sandy excessively drained soils	Limited	Y, on-site
N	Farm Calcutta No 29		Low			Water courses off site, eastern side
S	RE Louw's Bos No 502	Scattered: CBA & CE	Low	Soils with a marked clay accumulation, strongly structured and a non-reddish colour. Granite & weathered deposits; occasional quartz sand	Strong texture contrast	No water courses
E	Farm Meer lust No 1/1006	N-half: CBA S-Half: Vulnerable	Medium	Colluvial and alluvial sand and gravel on granite	Rock with limited soils	No water course on site, Safe distance from Berg river
E	RE Farm Keyersdrift No 1158 & 1/1158	RE: W-Half: None E-Half: CBA & CA Prt 1: W & E half: Vulnerable & Critical Endangered; Middle: None	Medium	Quarzitic sandstone, quartzite, conglomerate, slate & phyllite	Rock with limited soils	No water course on site



Three sites, Calcutta, De Novo and Louw's Bos, have low environmental sensitivity.

Three sites, Calcutta, De Novo and Louw's Bos, have soils ideal for grave making followed by Meer Lust and Keyersdrift.

Four sites, Calcutta, Louw's Bos, Meer Lust and Keyersdrift have no water courses crossing the sites.

The regional sites with least environmental sensitivity and best policy compliance were Calcutta, De Novo and Louw's bos.

The final criterial applied covers the soil characteristics that determine the complexity of digging graves: Soil excavability, permeability (distance from domestic water sources, drainage features and soil type), drainage features, gradient, basal buffer, grave stability, soil workability and cemetery size

3.2 Soil Scan

The purpose of this assessment it to determine if the site will be functionally appropriate to dig graves and burry people.

1. Soil excavability: Is the soil medium dense and firm
2. Soil permeability: Safe distance from domestic water sources (No – too close; Conditional - Certain forms of burials only i.e. walls of remembrance; Developable)
3. Soil permeability: Soil type (Clay Gravel, Silty Sand, Clay Sand, Silt) and permeability ranges. Poor subsurface conditions, either high water table or clay layers - grave surface flooding or perched water tables
4. Soil permeability: Safe distance to drainage features and sources (No – too close; Conditional - Certain forms of burials only i.e. walls of remembrance; No - Adequate surface drainage difficult - flat topographical features)
5. Drainage features: Present, Partial or Absent
6. Topography: Gradient 2° - 6°. No when slope exceeds 9°.
7. Basal Buffer Zone: 2.5m between grave & water table. No when basal buffer is absent.
8. Grave Stability: Verges & Sides to stand up.
9. Soil Workability: Ability of soil to compact on return to grave

This information was gathered as per data available, site visits and previous studies conducted and a meeting with the Directorate Community Services on 21 September 2016; Data available included hydrological data, geological data, a full assessment of Wemmershoek as a housing development was proposed on the site.

Two sites, De Novo and Calcutta, have firm soils with good excavability, are most likely removed from domestic water sources, have low permeability (sufficient clay content), have drainage channels which guide away water.

Ons site, Louw's Bos has firm soils with good excavability, its location form domestic water sources should be determined, have low permeability (sufficient clay content) and has drainage channels which guide away water.

Two sites, Meer Lust and Keyersdrif, has medium excavability, are most likely removed from domestic water sources, have medium permeability and no drainable features.



Dir	Property	Soil Excavability	Soil Permeability	Soil Permeability	Soil Permeability	Drainage
	Dir: Direction	Medium dense & firm	Domestic Water Source	Permeability Ranges	Drainage Features	
N	RE 10/727 De Novo	Firm	To be determined, but unlikely	Low	Medium	
N	Farm Calcutta No 29	Firm	To be determined, but unlikely	Low	Minimal	
S	RE Louw's Bos No 502	Firm	To be determined	Low	Medium	
E	Farm Meer lust No 1/1006	Medium	To be determined	Medium Low	Minimal	
E	RE Farm Keyersdrift No 1158 & 1/1158	Medium	To be determined, but unlikely	Medium Low	Minimal	

The topography of all the sites is flat and soil workability is high. De Novo, Calcutta and Louw's Bos have high grave stability whilst Meer Lust and Keyersdrift have medium grave stability.

Dir	Property	Topography	Basal Buffer Zone	Grave Stability	Soil Workability
	Dir: Direction	Gradient 2° - 6° (max 9°)	2.5m between grave & water table	Verges & Sides to stand up	Ability of soil to compact on return to grave
N	RE 10/727 De Novo	< 9°	To be determined	High	High
N	Farm Calcutta No 29	< 5°	To be determined	High	High
S	RE Louw's Bos No 502	< 9°	To be determined	High	High
E	Farm Meer lust No 1/1006	< 5°	To be determined	Medium	High
E	RE Farm Keyersdrift No 1158 & 1/1158	< 5°	To be determined	Medium	High

The regional sites with best soil characteristic to dig graves are Calcutta, De Novo and Louw's bos followed by Meerlust.

4. Conclusion

The sites fitting the criteria best, and ranked from most centrally located, environmentally least sensitive, best compliant with policy and having the best soil characteristics to dig graves, are



- a) Calcutta
- b) De Novo
- c) Louw's Bos
- d) Meerlust
- e) Keyersdrift

5. Recommendation

Form the foregoing analysis of 54 sites reduced to 9 regional sites after subjected to three sets of criteria, it is recommended that Stellenbosch Council:

- a) Approves Farm Calcutta No 29 and Portion 1 of Farm Meer Lust No 1006 to be investigated as regional cemetery sites in addition to the sites approved as per Council Meeting of 25 February 2015.
- b) Notes that the process to obtain rights will proceed on two sites belonging to Stellenbosch Municipality i.e. Calcutta and Louw's Bos and one belonging to the state i.e. De Novo, as these sites were from an environmental, policy alignment and soil suitability perspective, the regional sites with least environmental sensitivity and best policy compliance.
- c) Grant power of attorney to the service provider to obtain land from the state for regional cemeteries on at De Novo and Meerlust.



List of References

Dennis Moss Partnership Inc. October 2006: *Cemetery Feasibility Study, October 2006*

Dennis Moss Partnership Inc. February 2005: *Municipal Land Management Policy Framework, February 2005.*

Dennis Moss Partnership Inc. *Papagaaiberg Spatial Development Plan, October 2006, For Stellenbosch Municipality*

Dirk Hatting and Associates. *June 2003: Strategic analyses: municipal apartment buildings known as Aurora, Lavanda and Phylaria situated in the wc24 municipal area (24 June 2003) (IDP 2002 – 2006, working document for Piet Smit).*

Municipality of Stellenbosch: *Appendix 2: draft by-law relating to the management and administration of Stellenbosch municipality's immovable property*

Municipality of Stellenbosch: *Franschoek Urban Design Study, July 2005: Addendum to the GAPP urban design framework study produced in 1997*

Municipality of Stellenbosch: *Identification of state-owned land for possible housing projects: la motte, Wemmershoek and Maasdorp, Internal Memorandum, 2008-06-30*

Municipality of Stellenbosch: *Towards a municipal land management policy, a discussion document, Stellenbosch Municipality: Municipal Land in process of alienation:*

Municipality of Stellenbosch: Minutes

- a) *With relevant municipal departments (August 2016)*
- b) *With property management (May 2016)*
- c) *With community services (September 2016)*

Planning Partners. *Strategic Framework for Affordable Housing in the Franschoek Valley.*

Smit, P. February 2008: *Stellenbosch municipality, land summit, a strategic analysis of Stellenbosch municipality's property portfolio (land and buildings) compiled by: Piet Smit, manager: property management and administration.*



7.4	FINANCIAL SERVICES: [CLLR S PETERS]
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7.4.1	NOMINATION OF COUNCILLOR TO PARTICIPATE AT MEETINGS OF SPECIAL RATING AREA (SRA) MANAGEMENT BODY
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1. PURPOSE OF REPORT

To nominate a councillor and one other person to participate, but not vote, at the meetings of Special Rating Area (SRA) management bodies.

2. BACKGROUND

Section 11(4) of the SRA By-Law determines as follows:

“The council must nominate the relevant ward councillor and one other person as representatives to attend and participate, but not vote, at the meetings of the (SRA) management body.

3. DISCUSSION

The municipality has two Special Ratings Areas in operation at present.

- Techstel SRA operating in Technopark, of which Councillor Badenhorst is the relevant Ward Councillor.
- JSRA operating in the Jonkershoek and surrounding areas, of which Councillor Hanekom is the relevant Ward Councillor.

It is proposed that Council nominates the two relevant Ward Councillors, and as the other person, nominate the same two councillors to act as alternates for the two SRAs.

This would ensure continuity as the same two councillors would be representing the Council at the management meetings of both SRAs.

4. LEGAL IMPLICATION

The nomination would ensure compliance with Section 11(4) of the SRA By Law.

5. FINANCIAL IMPLICATION

None.

6. COMMENTS FROM OTHER RELEVANT DEPARTMENTS

Legal Services

In terms of clause 11(4) of the Special Rating Area By-law one of the nominations for the management body by Council needs to be the ward councillor and one other person. The other person can be anyone, like a member of the public, including a councillor who is not the ward councillor of the Special Rating Area. The item and recommendations are in line with clause 11(4) of the Special Rating Area By-law and is supported.

7. CONCLUSION

Nomination of Councillors Hanekom and Badenhorst as the relevant Ward Councillors, as well as to act as alternates for one another, will ensure continuity from the Council's perspective with regard to representation of the municipality at the SRA management bodies.

MAYORAL COMMITTEE MEETING: 2017-03-22: ITEM 5.4.1**RECOMMENDED**

- (a) that Councillor Badenhorst be nominated as the relevant Ward Councillor to act as representative and attend, but not vote, at the meetings of the Techstel Special Rating Area (SRA) management body, with Councillor Hanekom acting as alternate;
- (b) that Councillor Hanekom be nominated as the relevant Ward Councillor to act as representative and attend, but not vote, at the meetings of the Jonkershoek Special Rating Area (JSRA) management body, with Councillor Badenhorst acting as alternate; and
- (c) that Councillor Q Smit be nominated to act as the other person in both the above-mentioned Special Rating Areas.

<i>Meeting:</i>	<i>8TH COUNCIL: 2017-04-26</i>	<i>Submitted by Directorate:</i>	<i>Chief Financial Officer</i>
<i>Ref no:</i>	<i>3/6/3</i>	<i>Author</i>	<i>Manager: Treasury Office</i>
		<i>Referred from:</i>	<i>Mayoral Committee: 2017-03-22</i>

7.4.2	ADJUSTMENTS BUDGET FOR 2016/2017
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1. PURPOSE OF REPORT

The purpose of this submission is to table the adjustments budget for the 2016/2017 financial year to Council for approval. The adjustments budget emanated from additional allocations from the Provincial Treasury.

2. LEGAL FRAMEWORK

Section 28 of the Municipal Finance Management Act states that:

“(1) The municipality may revise an approved annual budget through an adjustments budget.

(2) An adjustments budget -

(b) may appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for.”

Regulation 23 (3) of the Municipal Budget and Reporting Regulations states that:

“If a national or provincial adjustments budget allocates or transfers additional revenues to a municipality, the mayor of a municipality must, at the next available council meeting, but within 60 days of the approval of the relevant national or provincial adjustments budget, table an adjustments budget referred to in section 28 (2) (b) of the Act in the municipal council to appropriate these additional revenues.”

3. DISCUSSION

The Western Cape Government published a Provincial Gazette 7753 on 30 March 2017, in terms of section 30(3) (a) of the Division of Revenue Act, 2015 (Act 1 of 2015) (2015 DoRA), which allocated additional funds to the municipality.

The municipality received an additional R17 850 000 for the Human Settlement Development Grant.

4. FINANCIAL IMPLICATIONS

A net increase of R17 850 000 from the Provincial Government in the form of conditional grants.

ATTACHMENTS

- Appendix 1 - Budget documentation
- Appendix 2 - Adjustments budget 16/17 (B-schedule)
- Appendix 3 - Quality certificate

MAYORAL COMMITTEE MEETING: 2017-04-19: ITEM 5.4.1**RECOMMENDED**

- (a) that the Adjustments Budget for 2016/2017 as set out in **APPENDIX 2** be approved; and
- (b) that the Service Delivery and Budget Implementation Plan be adjusted accordingly inclusive of the non-financial information (performance measurement).

<i>Meeting:</i>	<i>8TH COUNCIL: 2017-04-26</i>	<i>Submitted by Directorate:</i>	<i>Financial Services</i>
<i>Ref no</i>		<i>Author</i>	
<i>Collab:</i>		<i>Referred from:</i>	<i>Mayco: 2017-04-19</i>

**APPENDICES WERE PREVIOUSLY
DISTRIBUTED UNDER SEPARATE
COVER WITH THE MAYCO AGENDA
(2017-04-19, ITEM 5.4.1)**

7.5	HUMAN SETTLEMENTS: [CLLR PW BISCOMBE]
7.5.1	PROPOSED CHANGES IN SHAREHOLDING: FARM 502BL: MEDIPROP CC

1. PURPOSE OF REPORT

To consider the change in majority shareholding of Mediprop cc, the Lessee of Farm 502BL.

2. BACKGROUND

2.1 Lease Agreement

On 2008-05-27 Council approved the ceding of the Lease Agreement in relation to Farm 502BL to a legal entity comprising of Mr L Arendse, F Adams and the Winelands Business Opportunity Forum, subject to the proposed ceding being advertised in terms of Section 124 of the Municipal Ordinance. A copy of the council resolution is attached as **APPENDIX 1**.

The proposed ceding was advertised in The Eikestad News on 2008-07-21, a copy of which is attached as **APPENDIX 2**. No comments and/or objections were received.

On 2008-10-03 a letter was received from Messrs Louis B. Arendse and Franklin Adams of Medi-Prop cc (Reg, No. 2002/098971/23) informing the Municipality that the Cession Agreement was to be made out in the name of Medi-Prop cc, with the directors with power of attorney being:

1. Mr Franklin Adams; and
2. Mr Louis B Arendse

A copy of their letter is attached as **APPENDIX 3**.

On 11 December 2008 a Cession Agreement was concluded with Medi Prop cc. The contract was signed by both Messrs Arendse and Adams. A copy of the agreement is attached as **APPENDIX 4**.

2.2 Notices of change in shareholding

Hereto attached as **APPENDIX 5** is a notice received from Mr Louis B Arendse, informing the Municipality:

- a) that Mr Franklin Adams has resigned from Mediprop cc;
- b) that Mr Arendse is now the sole member of Mediprop cc; and
- c) that Mr Arendse accept full responsibility for all rates and taxes owed to the Stellenbosch Municipality.

He further requests that the current rates and rental tariffs be approved retrospectively in line with other Black Emerging Farmers.

3. DISCUSSION

3.1 Contractual requirements

In terms of clause 13.1 of the Lease Agreement, the Agreement may not be ceded or sub-leased without the prior, written consent of Stellenbosch Municipality.

Further, in terms of clause 13.5 when the shareholding of members change, it will be deemed to be a sub-lease, i.e. it can only be done with the prior, written approval of the Municipality.

3.2 Financial implications

As this is merely a change in shareholding, it should not have any financial implications for the municipality.

Please note, however, the amount of R146 528.30 outstanding/payable to the Municipality as at 30 June 2014:

However, should the request for a reduction in tariffs (see par. 2.2 *supra*) be approved, i.e. 20% of normal tariffs, the financial implications for the Municipality would be a loss of ±R24338 p.a.

3.3 Motion by Councillor F Adams

Before the request for changes in shareholding could be considered by Council, Councillor F Adams tabled a Motion at the 19th meeting of Council on 2014-04-23, requesting:

- a) that the Lease Agreement in relation to Farm 502BL be cancelled, due to non-payment; alternatively
- b) that the lease agreement be ceded to Winelands Community Business Opportunity Forum, on condition that a reduced tariff be approved, similar to the Small Farms Holding Trust.

A copy of the motion is attached as **APPENDIX 6**.

Having considered the motion, Council resolved as follows:

- a) *that this matter be referred back to the Administration to obtain more information, whereafter same be resubmitted to Council for consideration.*

3.4 INPUTS BY MR ARENDSE

Following the above decision, Mr Arendse was requested to make input/comment on the motion. Hereto attached as **APPENDIX 7**, inputs received from Mr Arendse.

From this it is clear that, although the initial council resolution referred to Winelands Community Business Opportunity Forum, the contract was concluded with Medi-Prop cc with director being Mr F Adams and Mr L.B Arendse.

4. COMMENTS FROM OTHER RELEVANT DEPARTMENTS**4.1 Financial Services**

The item is supported.

4.2 Legal Services

Clause 13 of the written lease agreement provides as follows:

“13 ONDERVERHURINGS, SESSIES OF OORDRAGTE, ENS

13.1 Die HUURDER sal nie hierdie huurooreenkoms sedeer of oordra nie, en onderverhuur nie die EIENDOM of enige deel daarvan sonder die voorafverkree skriftelike toestemming van die VERHUURDER nie.

13.2 Die VERHUURDER kan 'n sertifikaat as bewys vereis dat 'n maatskappy, beslote korporasie of trust wat 'n HUURDER is, wel as sodanig geregistreer is.

13.3 Dit word op rekord geplaas dat die VERHUURDER toestemming verleen vir die sessie en delegasie van hierdie huurkontrak aan en ten gunste van 'n erfgenaam of erfgename van die HUURDER as sodanig deur die HUURDER benoem.

13.4 By verandering van die beherende aandeelhouding of beherende belange in 'n maatskappy of beslote korporasie wat 'n HUURDER is, of by verandering van direkteure of by likwidasië van die maatskappy of beslote korporasie onder geregtelike bestuur geplaas word, bly die oorspronklike borge ten behoeve van die maatskappy of beslote korporasie gesamentlik en afsonderlik en as medehoofskuldenaars teenoor die VERHUURDER aanspreeklik, tensy die VERHUURDER op skriftelike aansoek van die HUURDER toestem tot vervanging van sodanige borge.

13.5 Verandering van die beherende aandeelhouding of beherende ledebelang, direkteure of trustees van 'n maatskappy, beslote korporasie of 'n trust wat 'n HUURDER is, word geag 'n onderverhuring te wees”.

Councillor Adams's resignation as member of Mediprop CC (hereinafter referred to as “Mediprop”) amounts to the amendment of the controlling shareholding or director/member in a close corporation as provided in clause 13.4 of the written lease agreement (hereinafter referred to as “the Lease Agreement”). Clause 13.5 of the Lease Agreement further provides that such an amendment in the shareholding or controlling membership, directors of a close corporation which is the lessee, is regarded as a sub-lease. Clause 13.1 of the Lease Agreement provides further that the lease agreement shall not be ceded or transferred or sub-leased without the prior written consent of the Lessor.

Although this application is merely a change in shareholding, Mr Arendse, now owning 100% of the shares in Mediprop cc, it is regarded as a sub-lease, and therefore council's written consent needs to be obtained.

As a result of Councillor Adams' resignation from Mediprop results in his membership in the close corporation being available to the remaining member of Mediprop. This amounts to a sub-lease in terms of the Lease Agreement. No prejudice exists for the Municipality in approving the sublease subject to the recommendations of the Department. The current lessee should provide full surety in terms of the Lease Agreement. Furthermore it is Council's prerogative whether it wants to grant a reduction in the monthly tariff or not.

The recommendations are supported.

5. CONCLUSION

Although this application is merely a change in shareholding, Mr Arendse now owning 100% of the shares in Mediprop cc, it is regarded as a sub-lease, and therefore council's written consent needs to be obtained.

RECOMMENDED

- (a) that it be noted that Mr Franklin Adams has resigned from Mediprop cc;
- (b) that it be noted that Mr L Arendse will now own 100% membership of the Mediprop cc;
- (c) that it be noted that the outstanding lease amount and rates and taxes amounts to R146 528.30 as at 30 June 2014;
- (d) that approval be granted for these changes in membership; subject thereto that the outstanding debt first be paid in full;
- (e) that Council consider the request for the reduction in tariffs.

(ACTING DIRECTOR: HUMAN SETTLEMENT TO ACTION)

ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE MEETING: 2014-08-06: ITEM 5.1.6

RECOMMENDED

- (a) that it be noted that Mr Franklin Adams has resigned from Mediprop cc;
- (b) that it be noted that Mr L Arendse will now own 100% membership of the Mediprop cc;
- (c) that it be noted that the outstanding lease amount and rates and taxes amounts to R146 528.30 as at 30 June 2014;
- (d) that approval be granted for these changes in membership; subject thereto that the outstanding debt first be paid in full;
- (e) that Council consider the request for the reduction in tariffs.

(ACTING DIRECTOR: HUMAN SETTLEMENTS TO ACTION)

MAYORAL COMMITTEE MEETING: 2014-08-13: ITEM 5.1.9**RESOLVED** (nem con)

that this item be referred back to allow the Administration to provide this Committee with proper documentation whereafter same be resubmitted to this Committee for consideration and subsequent recommendation to Council.

(ACTING DIRECTOR: HUMAN SETTLEMENTS TO ACTION)**FURTHER COMMENTS BY THE ACTING DIRECTOR: HUMAN SETTLEMENTS**

Subsequent to the resolution depicted above, the appropriate **APPENDICES** are attached hereto.

FOR CONSIDERATION**MAYORAL COMMITTEE MEETING: 2014-09-17: ITEM 5.1.4****RESOLVED** (nem con)

that this item be referred back to allow the Administration to submit a report considering the following:

- (a) whether the lease agreement was cancelled;
- (b) whether the entity, Mediprop cc, still exists, or whether same was finally deregistered;
- (c) that the applicant indicate whether he intends to apply for the lease agreement to be entered into with a new company and not Mediprop cc; and
- (d) that the request for a discount in rental be substantiated by a detailed business plan to enable Council to consider the request;
- (e) that the report be resubmitted to this Committee for consideration and subsequent recommendation to Council.

(ACTING DIRECTOR: HUMAN SETTLEMENTS TO ACTION)**FURTHER COMMENTS BY THE MANAGER: PROPERTY MANAGEMENT**

Following the above resolution, Mr Arendse was requested to provide the requested information. See letters addressed to Mr Arendse on 2015-02-18; 2015-04-28 and 2015-05-13, hereto attached as **APPENDICES 8, 9 and 10**.

Eventually, on 2016-08-08 a letter was received from Mr Arendse, confirming:-

- a) That the legal entity, being Medi-Prop cc, was not fully deregistered;
- b) That the application was/is for the ceding of the Lease Agreement to a “new co”, now being registered as A3 Farms (Pty) Ltd;
- c) That A3 Farms (Pty) Ltd accept 100% responsibility for all outstanding monies and service charges owned by Medi-Prop cc;* and
- d) That the application for discounted rates be finalized/consider after the approval of the cession/assignment.

A copy of the letter, as well as the Registration Certificate of A3 Farms (Pty) Ltd, issued by the Commissioner of Companies & Intellectual Property Commission, is attached as **APPENDIX 11**, and **12**, respectively.

In terms hereof the new company, that is A3 Farms (Pty) Ltd, is owned by Louis Beresford Arendse and Dillan Arendse.

*The outstanding debt as at 2016-07-30 amounts to R199 519.61.

MAYORAL COMMITTEE MEETING: 2017-03-22: ITEM 5.5.1

RECOMEMNDED

- (a) that it be noted that Mr Franklin Adams has resigned from Medi-prop cc;
- (b) that it be noted that the outstanding debt, as at 2016-07-30, amounts to R199 519.61; and
- (c) that no approval be granted to any ceding of the Lease Agreement (Between Stellenbosch Municipality and Medi-Prop cc), and that Council takes steps to cancel any lease agreement with Medi-Prop cc.

<i>Meeting:</i>	8 TH COUNCIL: 2017-04-26	<i>Submitted by Directorate:</i>	Human Settlements
<i>Ref no:</i>	7/2/1/1	<i>Author</i>	Manager: Property Management
		<i>Referred from:</i>	Mayoral Committee: 2017-03-22

13th COUNCIL MEETING : 2008-05-27 : ITEM 7.5

RESOLVED (nem con)

- (a) that Council approve the ceding of the lease agreement of Farm 502 BL to a legal entity comprising of the applicants, ML Arendse, F Adams and the Winelands Business Opportunities Forum, subject to the proposed ceding being advertised in terms of Section 124 of the Municipal Ordinance, No 20 of 1974;
- (b) that, should any objections be received as a consequence of the advertisement contemplated in (a) above, such objections be referred to Council, before a final decision is made; and
- (c) that, should no objections be received, the Director Corporate Services be mandated to finalise a cession and delegation agreement with the applicant.

(HDM)

Handwritten signatures and initials at the bottom of the page, including a large signature on the left and several smaller ones on the right, some with a '2' below them.

21/7/2008

7/2/21/FARM 502BL

STELLENBOSCH
STELLENBOSCH • FNIEL • FRANSCHROEK
MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

7/2/21 Farm 502BL

STELLENBOSCH MUNICIPALITY
CEDING OF LEASE AGREEMENT: FARM 502BL

Notice is herewith given in terms of section 124 of the Municipal Ordinance 20 of 1974 read with the Supply Chain Management Policy of Council that Council intends to cede the long term lease agreement of farm 502BL, presently being leased by Roulou Boerdery, to F Adams, L Arendse and Winelands Business Opportunities Forum.

More detail is available during office hours from the Directorate Corporate Services. (Mr JJ Kruger at telephone 021-8088032)

Any objection against the intention of Council must be lodged in writing with the Director Corporate Services, PO Box 17, Stellenbosch 7599 on or before 28/07/2008.

MUNICIPAL MANAGER

Notice nr 58 dated 04/07/2008:

STELLENBOSCH
STELLENBOSCH • FNIEL • FRANSCHROEK
MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

7/2/21/Plaas 502BL

STELLENBOSCH MUNISIPALITEIT
SEDERING VAN HUUROOREENKOMS: PLAAS 502BL

Kennies geskied hiermee in terme van artikel 124 van die Munisipale Ordinansie 20 van 1974 saamgelees met die raad se Voorsieningtribunaal beleid dat die raad van voorneme is om die langtermyn huurooreenkoms van plaas 502BL, wat tans aan Roulou Boerdery verhuur word, aan F Adams, L Arendse en Winelands Business Opportunities Forum te sedeer.

Meer besonderhede is gedurende kantoorure by die Direkoraat Korporatiewe Dienste (Mnr JJ Kruger by telefoon 021-8088032) beskikbaar.

Enige besware teen die Raad se voorneme moet skriftelik voor of op 25/07/2008 by die kantoor van die Direkteur, Korporatiewe Dienste, Posbus 17, Stellenbosch ingedien word.

MUNISIPALE BESTUURDER

Kennisgewing Nr 58 gedateer 2008-07-04.

Medi – Prop

Medi-Prop cc Reg np. 2002/098971/23
PO Box 12445, Die Boord, Stellenbosch, 7613
mediprop@gmail.com

3 October 2008

The Director: Corporate Service
Stellenbosch Municipality
PO Box 17
Stellenbosch
7599

Dear sir :

Re: Session of Farm 502 BL

We herewith which to inform you that the above Session Agreement be drawn in the above legal entity with the directors with power of attorney being:

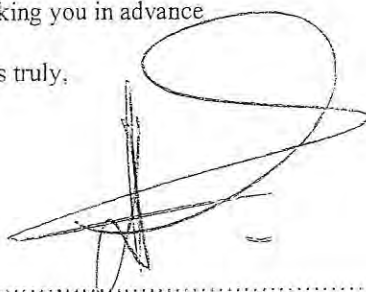
1. Mr Franklin Adams
2. Mr Louis B Arendse

We further request that the session agreement be finalised and submitted to us for perusal and that the official transfer of all rights and responsibilities be effective from 1 November 2008.

Urgently awaiting your response in this matter.

Thanking you in advance

Yours truly,



.....
LOUIS B ARENDSE



LOUIS B ARENDSE - 0799 055 232

FRANKLIN ADAMS - 073 590 2379





STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

SESSIE EN DELEGASIE OOREENKOMS

aangegaan tussen

DIE MUNISIPALITEIT STELLENBOSCH

("die VERHUURDER")

en

ROULOU BOERDERY

("die HUURDER")

en

MEDI-PROP CC

("die SESSIONARIS")

1. AANHEF

AANGESIEN die **VERHUURDER** en die **HUURDER** 'n huurooreenkoms ("die huurooreenkoms") gesluit het vir die huur van Gedeelte 502BL (soos aangedui op 'n kaart aangeheg aan die huurooreenkoms) vir 'n tydperk van 50 jaar tot 31 Maart 2041, welke huurooreenkoms hierby aangeheg is as Aanhangsel A);

EN AANGESIEN die **HUURDER** daarna vervang is deur die **SESSIONARS**, 'n Swart Ekonomiese Bemagtigingsgroep

EN AANGESIEN die **VERHUURDER** toegestem het dat die huurooreenkoms nou gesedeer word aan die **SESSIONARIS**;

kom die partye nou as voig ooreen;

2. PARTYE

Die partye tot hierdie ooreenkoms is:

2.1 DIE MUNISIPALITEIT STELLENBOSCH,

hierin verteenwoordig deur HAN BLUCE BOLAND LENNES in sy hoedanigheid as MUNISIPALE BESTUURER van die Munisipaliteit

Stellenbosch

("die VERHUURDER");

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are four distinct marks: a large, stylized signature, a smaller signature, and two sets of initials.

2.2 ROULOU BOERDERY

hierin verteenwoordig deur,behoorlik WILHEM ISAAC daartoe
gemagtig Kouw

("die HUURDER"); en



2.3 **Medi-Prop** verteenwoordig deur L. ARENDSE & F. ADAMS behoorlik
daartoe gemagtig

("die SESSIONARIS")

3. UITLEG

3.1 In hierdie ooreenkoms, tensy die konteks ander aandui, beteken:

3.1.1 "die Eiendom" GEDEELTE 502BL, Stellenbosch, in die Munisipaliteit en Afdeling Stellenbosch, Provinsie Wes-Kaap; GROOT: 12 (TWAALF) hektaar

Julie

3.1.2 "die Effektiewe Datum" 1 Januarie, 2009

3.1.3 "die Huurooreenkoms" die huurooreenkoms gedateer 1 April 1991.....aangegaan tussen die **VERHUURDER** en die **HUURDER** waarkragtens die **VERHUURDER** die Eiendom verhuur en die **HUURDER** dit gehuur het; en

3.1.4 "die partye" die partye tot hierdie ooreenkoms, en beteken "party" een van hulle;

3.2 Uitdrukkings in die enkelvoud dui ook op die meervoud, en omgekeerd.

3.3 Woorde en uitdrukkings wat dui op natuurlike persone, verwys ook na regspersone, en omgekeerd.

3.4 Voornaamwoorde van enige geslag sluit die ooreenstemmende voornaamwoorde van die ander geslag in.

- 3.5 Klousule-opskrifte verskyn in hierdie ooreenkoms slegs vir verwysingsdoeleindes en dit beïnvloed nie die behoorlike uitleg van die inhoud nie.

4. **SESSIE EN DELEGASIE**

- 4.1 Met ingang van die Effektiewe Datum, sedgeer die **HURDER** aan die **SESSIONARIS** al die **HURDER** se reg, titel en belang kragtens, in en op die Huurooreenkoms en deleger hy aan die **SESSIONARIS** al sy verpligtinge hierkragtens.

- 4.2 Die **SESSIONARIS** aanvaar die sessie en delegasie ingevolge klousule 4.1.

- 4.3 Die **VERHUURDER** verleen sy toestemming tot die sessie en delegasie ingevolge klousule 4.1.

5. **SPESIALE VOORWAARDE**

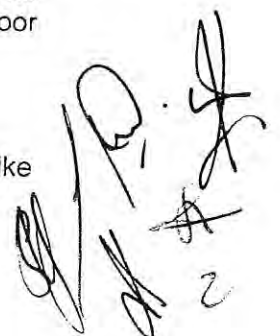
- 5.1 Hierdie sessie en delegasie ooreenkoms is onderhewig daaraan dat die **SESSIONARIS** na die Effektiewe datum alle regte en verpligtinge ten opsigte van die huurooreenkoms sal oorneem.

6. **WAARBORGE EN VRYWARING**

- 6.1 Die **HURDER** waarborg aan die **SESSIONARIS** dat die Huurooreenkoms op die Effektiewe Datum ten volle van krag sal wees met die oorspronklike bedinge soos weerspieel in die afskrif van die Huurooreenkoms ontvang deur die **HURDER** en dat die **HURDER** nie teenstrydig met enige van die **HURDER** se verpligtinge kragtens die Huurooreenkoms sal wees op die Effektiewe Datum nie.

- 6.2 In ieder geval vrywaar die **HURDER** die **SESSIONARIS** teen alle eise deur die **VERHUURDER** teen die **SESSIONARIS** ingevolge die Huurooreenkoms gegrond op aksiegronde wat sou ontstaan het voor die Effektiewe Datum.

- 6.3 Die **VERHUURDER** gee nie aan die **SESSIONARIS** enige uitdruklike



of stilswyende waarborge soos daardie vervat in klousule 6.1 nie, maar waarborg aan die **SESSIONARIS** dat op die datum van hierdie ooreenkoms die **VERHUURDER** nie bewus is van enige feite of omstandighede wat die **HUURDER** in kontrakbreuk ten opsigte van klousule 6.1 sou stel nie.

7. **NIE-AFSTANDDOENING**

7.1 Geeneen van die partye sal geag word afstand te gedoen het van of op enige wyse verhoed word daarvan om enige reg kragtens of voortspruitend uit hierdie ooreenkoms uit te oefen nie, omdat so 'n party op enige tydstip enige uitstel van tyd vir of enige ander toegewing getoon het aan enige van die ander partye met betrekking tot enige betaling of nakoming hierkragtens, of versuim het om enige aksiegrond teen enigeen van sodanige partye af te dwing of getalm het in die afdwinging daarvan nie.

7.2 In die besonder onthef 'n toegewing verleen deur die **VERHUURDER** aan die **SESSIONARIS** of enige ander borg vir die **SESSIONARIS** nie die **HUURDER** van sy verpligtinge teenoor die **VERHUURDER** kragtens klousules 4 en 5 nie.


7.3 Die versuim van 'n party om te voldoen aan enige nie-wesentliche bepaling van hierdie ooreenkoms onthef nie enigeen van die partye van volle en tydige nakoming kragtens hierdie ooreenkoms nie.

8. **VOLLE OOREENKOMS**

8.1 Hierdie is die volle ooreenkoms tussen die partye.

8.2 Geeneen van die partye maak by die aangaan van hierdie ooreenkoms staat op enige waarborge, voorstellings, openbaarmakings of meningsuitings wat nie by hierdie ooreenkoms ingesluit is nie.

8.3 'n Variasie of ooreengekome kanselliasie van hierdie ooreenkoms het nie enige krag uitwerking nie tensy dit op skrif gestel is en deur al die partye geteken is.

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are several distinct signatures, some appearing to be initials or names, written in a cursive style.

9. DOMICILIA EN KENNISGEWINGS

9.1 Partye kies as hulle *domicilia citandi et executandi* vir al die oogmerke en doeleindes van hierdie ooreenkoms en daardie van die huurkontrak die adresse gemeld in klousule 10.2 hieronder, maar so 'n *domicilium* van enige party kan verander word deur skriftelike kennisgewing van so 'n party aan die ander partye met ingang van die datum van ontvangs of geagte ontvangs deur albei van hulle van so 'n kennisgewing.

9.2 Adresse:

9.2.1 Die VERHUURDER: Steilenbosch Munisipaliteit, Pleinstraat, Stellenbosch, 7600;

9.2.2 Die HUURDER:

9.2.3 Die SESSIONARIS: 29 Tindallstraat, Idasvallei, Stellenbosch, 7600

9.3 Enige kennisgewing, aanmaning of ander mededeling behoorlik ge- adreseeer deur enige party aan enigeen van die ander partye by laasgenoemde se *domicilium* ingevolge hiervan en gestuur per voorafbetaalde geregistreerde pos word geag deur laasgenoemde ontvang te gewees het op die 4de (vierde) besigheidsdag wat volg op die datum waarop dit gepos is. Hierdie bepaling moet nie vertolk word om die gebruik van ander middele en metodes (met inbegrip van telefaksimilee) uit te sluit vir die oorsending of aflewering van kennisgewings, aanvaardings, eise en ander mededelings nie, maar 'n vermoede van aflewering ontstaan nie indien enige so 'n ander middel of metode gebruik word nie.

10. ALLE PARTYE MOET ONDERTEKEN

Hierdie ooreenkoms tree slegs in werking wanneer dit deur al die partye onderteken is.

11. KOSTE

Die regs-koste aangegaan in die voorbereiding van hierdie ooreenkoms en die seëlreg betaalbaar daarop moet gedra en betaal word deur die SESSIONARIS.

GETEKEN te Stellenbosch op 23 September 2008 in die teenwoordigheid van die ondergetekende getuies

Getuies:

1. _____
2. _____

NAMENS DIE MUNISIPALITEIT
STELLENBOSCH

GETEKEN te Stellenbosch op 21/05/2009 2008 in die teenwoordigheid van die ondergetekende getuies

Getuies:

1. _____
2. _____

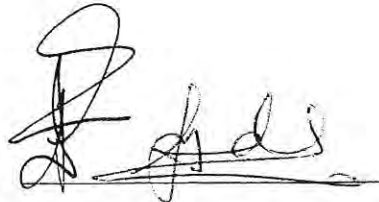
NAMENS DIE HUURDER

z

z



GETEKEN te Stellenbosch op 11 Desember 2008 in
die teenwoordigheid van die ondergetekende getuies

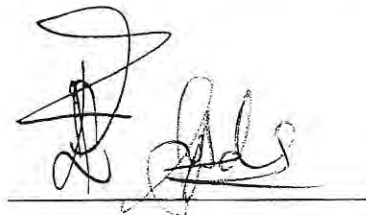
Getuies: 1. _____
2. _____



NAMENS DIE SESSIONARIS

GETEKEN te Stellenbosch op 11 Desember 2008 in
die teenwoordigheid van die ondergetekende getuies

Getuies: 1.  _____
2.  _____



as borg en hoofskuldenaar



PO Box 166

Lynedoch

7603

16 January 2014

The Stellenbosch Municipality

PO Box 17

Stellenbosch

7599

For attention: The Property/Finance Committee

The Property Manager: Mr Piet Smit

Re: Change of Majority Shareholding & Lease Session – Farm 502 BL

Herewith receive my application for the above changes and approval in favour of the following;

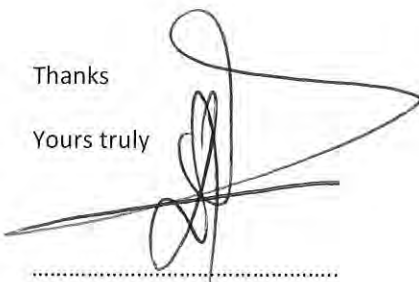
1. Mr Franklin Adams resigned from Mediprop cc Reg no: 2002/098971/23, a close corporation holding a longterm lease agree with Stellenbosch Municipality which expires 31 March 2041.
2. Mr Arendse now being the sole member of Mediprop cc, as per attached Annexure A.

Our application

3. That the said lease agreement be transferred and ceded to Mr Louis B Arendse as the change in ownership amounts to a change in the majority shareholding in terms of the provision of the said lease agreement.
4. The session be approved to and in favour of Mr Louis B Arendse and his dependants in a "newco" ("newco" to be beneficiary of lease agreement)
5. That the current rates and rental tariffs be approved retrospective and in line with other beneficiaries of small black emerging farmers.
6. That Mr Louis B Arendse and his dependants accept full responsibility for all rates & taxes owed to the Stellenbosch Municipality.

Thanks

Yours truly



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left. The signature is positioned above a dotted line.

.....
Louis B Arendse - 0799055232

Limited Power of Attorney for Amendments of a Close Corporation


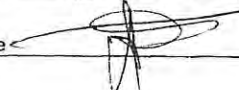
I/ We the undersigned being desirous of amending a Close Corporation under the name of:

MEDIPROP CC REG NO: 2002/098971/23

do hereby nominate, constitute and appoint:

- Yolanda Cupido, Jamie Hattingh, Anita April, Telana Swart, Douglas van der Merwe, Nomfuneko Njeza, Nobulungisa Mbaliseli, Thandiwe Bayi, Sihle Gantsho, Amber Louw, Jamie Martin, Samantha Davids and Leonie Vlotman and Jamie Martin with full power of substitution in my name place and stead.
- To amend the Close Corporation under the Close Corporation Act of 1969 of 1984 of the Republic of South Africa.
- To sign the CK2 appointing or amending the close corporation or any other documents or forms which might be required for the amendment of the Close Corporation.

I also indemnify Swiftreg CC (2000/033423/23) as well as the individuals to whom I give limited power of attorney, against any claims, loss, damage or liability arising from delay or errors occurring in the registration process.

Full Name(s) of Member(s)	% Member- ship after alteration	ID Numbers	Signature on behalf of current/new/resigning member (if under 18, signature of guardian)
1. FRANKLIN ADAMS	09%	6712175112089	Sign Here 
2. LOUIS BERESTORA ARENNE	100%	6503275128081	Sign Here 
3.			Sign Here
4.			Sign Here
5.			Sign Here
6.			Sign Here
7.			Sign Here
8.			Sign Here
9.			Sign Here
10.			Sign Here

Signed and executed at Stellenbosch on 12 DEC 2012

FRANKLIN ADAMS PO BOX 12445 DIE BOORD 7613

oakcity2010@yahoo.com

07 Desember 2012

Per hand:

Vir Aandag: Mnr. Piet Smit

Stellenbosch Munisipaliteit

In sake : Onttrekking van Medi –Prop en Plaas 502 BL.

Baie dankie vir die geleentheid om hierdie skrywe aan u te rig .

Ek wil graag van die geleentheid gebruik maak om u in kennis te stel , dat ek Franklin Adams, n vennoot in Medi-Prop alle aktiwiteite in die maatskappy staak en ook afstand doen van my gedeelde en regte in die huurkontrak van die Plaas 502 BL.

Die besluit is onmiddelik van krag en ek versoek dat u alle korrespondensie rakende Medi-Prop na bogenoemde adres moet staak.

Die ander vennoot Mnr. Loiu Arendse sal steeds voort gaan met die huur kontrak en ek versoek dat u vorentoe met hom skakel aangaande die huurgrond. Sy cell. No. is 0799055232 en e-pos mediprop@gmail.com .

Daar is verskeie faktore en redes vir my besluit, maar die grootste is die voortslepende onvermoe van die munisipaliteit en amptenare om redelike besluite te maak.

Ek is ook gatvol vir die kwaadwillige optredes en onbillike handelinge. Ons het van die staanspoor nog net teenkating gekry en geen ondersteuning soos ander kleinboere van u instansie ontvang nie.

Verbeterings: Ek wil u net inkennis stel dat Medi-prop veskeie verbeterings op grond aangebring het, bv. Die aanleg van water pype, 600 meter en elektrisiteit. Dit beloop duisende rande en dit moet in ag geneem word.

Ek het baie geld in die projek bele en sal dit as n verlies afskryf en hoop dat toekomstige opkomende boere met die nodige agting en respek behandel sal word.

Met dank


Franklin Adams

“Lank lewe die stryd teen ekonomiese onderdrukking”

23 April 2014

9.1 MOTION BY COUNCILLOR F ADAMS RELATING TO FARM 502BL

File number : 3/4/1/4
Report by : Office of the Speaker
Compiled by : Office of the Speaker
Delegated Authority : Council

A Notice of a Motion, dated 2014-02-20 was received from Councillor F Adams, regarding the cancellation of lease agreement, Farm 502BL and the writing off of the outstanding monies.

The said Motion is attached as **APPENDIX 1**.

FOR CONSIDERATION**19TH COUNCIL MEETING: 2014-04-23: ITEM 9.1**

The Speaker requested Councillor F Adams to put the Motion, duly seconded.

RESOLVED (nem con)

That this matter be referred back to the Administration to obtain all relevant information.

17TH COUNCIL MEETING: 2014-01-16: ITEM 9.3

The Speaker allowed Councillor FA Adams to motivate his Motion before he recused himself from the Council Chamber. After Councillor F Adams recused himself, the motion was debated.

The Motion was put to the vote, and it was

RESOLVED (majority vote)

that this matter be referred back to the Administration to obtain more information, whereafter same be resubmitted to Council for consideration.

**(DIRECTOR: STRATEGIC AND CORPORATE SERVICES
TO ACTION)**



9.1 MOTION BY COUNCILLOR F ADAMS RELATING TO FARM 502BL (Decisions)

Meeting:
Date:
Discussed by:
Meeting Minutes/Agenda Item:
Committee:
CIB Number:
Instruction:

Council Meeting
2014-04-23
Corporate & Strategic Services
9.1 MOTION BY COUNCILLOR F ADAMS RELATING TO FARM 502BL 19TH COUNCIL MEETING: 2014-04-23: ITEM 9.1 The Speaker allowed Councillor FA Adams to motivate his Motion before he recused himself from the Council Chamber. After Councillor F Adams recused himself, the motion was debated. The Motion was put to the vote, and it was RESOLVED (majority vote) that this matter be referred back to the Administration to obtain more information, whereafter same be resubmitted to Council for consideration. (DIRECTOR: STRATEGIC AND CORPORATE SERVICES TO ACTION)
Public
IMPLEMENT THE DECISION

ITEM 9.1

APPENDIX 1

MOTION BY COUNCILLOR F ADAMS
RELATING TO FARM 502BL

19TH COUNCIL MEETING:
2014-04-23

[Signature]
(CHIEF WHIP)

Stellenbosch People's Alliance

P.O.Box 12445
Die Boord
7613



blatgan

E-posl : oakcity2010@yahoo.com

20 Februarie 2014

Per Hand:

Vir Aandag :Die Speaker : Rdl.C Jooste

Stellenbosch Munisipaliteit

MUNICIPALITY - MUNISIPALITEIT
STELLENBOSCH

20 FEB 2014

OFFICE OF THE SPEAKER
RECEIVED BY: *[Signature]*

MUNICIPALITY - MUNISIPAL.
STELLENBOSCH

2014 -02- 20

OFFICE OF THE MUNICIPAL MANAGER
KANTOOR VAN DIE MUNISIPALE BESTUUR

In sake: Kennisgewing vir n Mosie:

Hiermee dien ek in n mosie in terme van die Orde Reels van die Raad en versoek dat dit by die Maart 2014 Beplannings Staande kommittee moet dien.

NB: Indien die te laat is, versoek ek dat dit by die April Mosie: vergadering dien

Die kanselering van die huurkontrak, plaas 502 BL en die afskrywe van die uitstaande skulde;

Motivering:

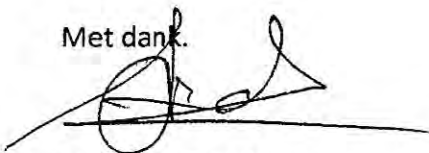
- Daar was op 5 Februarie 2008 in aansoek vir die sedering van die huurkontrak- Plaas 502BL, sowel die as 502 BFN. Die begunstigdes was nl. Mnr. Louis B Arendse, Mnr. Franklin Adams en Winelands Community Business Opportunity Forum (WCBOF)
- Die effektiewe datum van ondertekening van die Sessie ooreenkoms was, September 2009
- NB :Ten tye van die aansoek ,was Mnr. Arendse nog steed in diens van die Stellenbosch Munisipaliteit.
- Op 17 September 2010, was Medi-Prop se aansoek vir befondsing by die Dept. van Landbou goedgekeur en produksie het in Maart 2011 begin na intensiewe opleiding.
- Mnr. Arendse het ongeveer in September 2011, van die boerdery aktiwiteite op die plaas onttrek, en met n hout besigheid begin, wat deur my teengestaan was. Ek het ook n klag by die Departement, sowel Casidra aan hangend gemaak.
- Ek was vir byna twee jaar alleen besig op die grond, met die hulp van my eggenoot. Die department en Casidra was bewus van die situasie en sou Mnr. Arendse van die projek onttrek, wat nooit plaasgevind het.

- Ek moes alle kostes en uitgawes dra en Mr. Arendse het geweier om sy bydrae tot die uitgawes by te dra, bv. krag en maandelikse dienste gelde. Ons het na in onsuksesvolle poging vir afslag op die huur, agterstallig geraak.
- In Augustus 2012, het ek weer begin plant, nadat ek water van ongeveer 600 metre aangele het. Ek het ook in Oktober 2012, Mnr. Arendse versoek om afstand te doen van sy regte, maar hy het geweier.
- Ek moes toe noodgedwonge en onder protes myself van die proses en grond in Desember 2012 onttrek. Ek was ook in 2013 deur die Speaker in my persoonlike hoedanigheid aangekla vir die agterstallige skulde op die grond.
- NB : Ek kry nog steeds maandeliks ROOI BRIEWE na my persoonlike pos adres.
- NB : Ek verwys ook na die skrywe van Mnr. Piet Smit, gedateer 10 Oktober 2012, waar hy kennis gee van n finale aanmaning, nl. indien die rekening nie tenvolle vereffen word nie, voor of op 30 November 2012, die Huurkontrak met ingang van 1 Desember 2012 as gekanseleer beskou te word.
- NB: Na my onttrekking het Mnr. Arendse die boerdery as in besigheid op Gumtree bemark vir R175 000- 29/7/2013.

Aanbeveling:

1. Dat die huurkontrak van Plaas 502 BL summier (in ag geneem die kennisgewing op 30 nov. 2012, deur Mnr. P. Smit) gekanseleer word , om rede die uitstaande skulde en geen aktiwiteite op die grond deur Mnr. Arendse, alternatief:
2. Dat die kommittee oorweeg om die huurkontrak aan die die ander party, nl. Winelands Community Business Opportunity Forum (WCBOF) te sedgeer, met onderhandelinge vir in verlaagde tarief, soortgelyk aan Small Farmers Holding Trust.

Met dank.



Rdl. Franklin Adams

CC: Die Voorsitter van Beplanning : Rdl. J. Serdyn

Die Voorsitter van Ekonomiese Ontwikkeling : Rdl. N. Jindela

Seconded

C. D. A. Hendriks

"THE ROOTS OF ALL GOODNESS LIE IN THE SOIL OF APPRECIATION FOR GOODNESS" –Dalai Lama

"ALUTA CONTINUA"

Lorelle Adams

From: Lua Arendse <mediprop@gmail.com>
Sent: 20 May 2014 12:54 PM
To: Lorelle Adams
Subject: Fwd: Sessie: Plaas 502 BL
Attachments: CORRESPONDENCE IN RESPONCE TO LETTER OF OBJECTION.doc; TRANSFER OF SHARES - MEDIPROP.pdf; franklin adams - 11 DEC 2012 - EMAIL.doc; LETTER - DIRECTOR CORPORATE 16 FEB 2009.doc; LETTER - DIR CORP - RATES CONCESSION 30 MARCH 2010.doc

----- Forwarded message -----

From: **Lua Arendse** <mediprop@gmail.com>
Date: 2014-05-20 12:51 GMT+02:00
Subject: Sessie: Plaas 502 BL
To: Piet Smit <psmit@stellenbosch.org>
Cc: Lorelle Adams <LorelleG@stellenbosch.org>

Goeie dag. Vind hiermee aangeheg my reaksie/kommentaar op skrywe van Mnr F Adams

--
Louis
Mobile: [0799 055 232](tel:0799055232)
[021 882 8552](tel:0218828552)

--
Louis
Mobile: 0799 055 232
021 882 8552

Louis B Arendse
P.O Box 166
Lynedoch
7603

2014-05-20

Stellenbosch Municipality
Plein Street
Stellenbosch

To: Department: Property Management
Directorate: Human Settlements and Property Management
Stellenbosch Municipality
3rd Floor ABSA Building, Plein Street, Stellenbosch
P.O. Box 17, Stellenbosch, 7599

For attention: Mr Piet Smit – Manager: Property Management
The Office of the Speaker
The Office of the Municipal Manager

Re: Session of Lease Agreement: Farm 502 BL

I herewith acknowledge receipt of correspondence by Councillor Franklin Adams. I wish to respond in a factual manner and not scoop to this shocking behaviour of this public elected official and so - called activist.

Background

1. The lease agreement was drawn up in the names of Mr Louis B Arendse and Mr Franklin Adams. This was agreed to by both partners and correspondence sent to council to request such.
2. That Mr Franklin Adams specifically and consciously excluded the very organisation which he chaired at the time.
3. that Mr F Adams did so and claimed 7 hec of the 12h of Farm 502BL when we discussed the division of the land to enable each partner to continue its own operations separately. He mislead the Winelands Bussiness Opportunity Forum for his own gain in his quest as he always reminded me that he will be "die eerste bruin grond baron op Stellenbosch"

Application : Reduced rates for Small Black Emerging Farmers

4. I submitted an application – Annexure A – for concession in line with our neighbouring small farmers. This item was never concluded by council

Conclusion

5. Mr Franklin Adams resign as a member of the close corporation voluntarily and nominated Mr Louis B Arendse to hold 100% shareholding.
6. Mr Franklin Adams also expressed this in the email attached hereto – Annexure B

Finally, I wish to request the Office of the Speaker to investigate the abuse of council privileges afforded to councillors when addressing public matters. Mr Franklin Adams abused this and his position by addressing a private matter on a political party letterhead – Annexure C

Thank you

Louis B Arendse

0799055232

mediprop@gmail.com

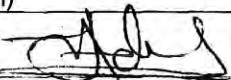

Limited Power of Attorney for Amendments of a Close Corporation

I/ We the undersigned being desirous of amending a Close Corporation under the name of:

do hereby nominate, constitute and appoint:

- Yolanda Cupido, Jamie Hattingh, Anita April, Telana Swart, Douglas van der Merwe, Nomfuneko Njeza, Nobulungisa Mbaliseli, Thandiwe Bayi, Sihle Gantsho, Amber Louw, Jamie Martin, Samantha Davids and Leonie Vlotman and Jamie Martin with full power of substitution in my name place and stead.
- To amend the Close Corporation under the Close Corporation Act of 1969 of 1984 of the Republic of South Africa.
- To sign the CK2 appointing or amending the close corporation or any other documents or forms which might be required for the amendment of the Close Corporation.

I also indemnify Swiftreg CC (2000/033423/23) as well as the individuals to whom I give limited power of attorney, against any claims, loss, damage or liability arising from delay or errors occurring in the registration process.

Full Name(s) of Member(s)	% Member- ship after alteration	ID Numbers	Signature on behalf of current/new/resigning member (if under 18, signature of guardian)
1. FRANKLIN ADAMS	0%	6712175112089	Sign Here 
2. LOUIS BERESFORD ARLENNE	100%	6503275128081	Sign Here 
3.			Sign Here
4.			Sign Here
5.			Sign Here
6.			Sign Here
7.			Sign Here
8.			Sign Here
9.			Sign Here
10.			Sign Here

Signed and executed at Stellenbosch on 12 DEC 2012

franklin adams <oakcity2010@yahoo.com>

11/12/2012

to me

Afrikaans
English

[Translate message](#)

[Turn off for: Afrikaans](#)

Loui.

Wat die uitstaande skulde betref, sal ek my gedeelte indien nodig hanteer. Ek sal net aanspreeklikheid aanvaar waar dit geregverdig is. Vanaf my bedanking, sal jy 100% die huur oorneem, so dit is logies dat jy daarvandaan verantwoordelikheid neem.

Ek sal my voornemens aan Piet bekend maak en ook aan Eskom n brief rig, om te verneem of die uitstaande kontrak gekanseleer kan word, anders sal ek reelings maak as n vennoot. Ek is ope vir jou voorstel.

Jy is seker gelukkig, want ek ontrek en cut my loses. Jy kan nou op daardie grond maak wat jy wil.

Dit is nie finansiëel viable om te kleef aan iets wat net destructie is nie.

NB: Ek wil so gou as moontlik my bedanking by CIPRO finaliseer. Jy moet die dokument teken dringend. Laat weet my waar ek jou kan kry.

Die nuuste Rekening vir munisipaliteit beloop R81000,00.

thanks.

Franklin

Medi – Prop

Medi-Prop cc Reg np. 2002/098971/23
PO Box 12445, Die Boord, Stellenbosch, 7613
mediprop@gmail.com

30 March 2010

The Director: Corporate Service
Stellenbosch Municipality
PO Box 17
Stellenbosch
7599

Dear sir :

Re: Monthly rental reduction – Farm 502 BL

We herewith which to request that our monthly rental for Farm 502 BL be reduced in accordance to the concession granted to **EMERGING SMALL BLACK FARMERS** in accordance to the committee decision: **Strategic, Finance and Corporate Services; dated 2008 – 11 -11: ITEM 6.1.1.5.**

The amount approved was R100/5ha/month as from 1 January 2009 and we therefore apply for the same concession.

Urgently awaiting your response in this matter.

Thanking you in advance

Yours truly,

LOUIS B ARENDSE

Medi – Prop

Medi-Prop cc Reg np. 2002/098971/23
PO Box 12445, Die Boord, Stellenbosch, 7613
mediprop@gmail.com

30 March 2010

The Director: Corporate Service
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Urgently awaiting your response in this matter.

Thanking you in advance

Yours truly,

LOUIS B ARENDSE



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

18 February 2015

Mr L Arendse
C/c Medi-Prop cc
PO Box 12445
Die Boord
Stellenbosch
7613

Dear Sir

LEASE AGREEMENT: PROPOSED CHANGES IN SHAREHOLDING: MEDI PROP CC:

My e-mail send to you on 13 October 2014, as well as my follow-up correspondence refers.

Thank you for your response and the information send to me on 17 February 2015. Unfortunately you have not dealt with all the matters set out in my letter dated 13 October 2014, i.e:

- a) *Whether the lease agreement was cancelled;*
- b) ***Whether the entity, Medi prop cc, still exists, or whether same was finally deregistered;***
- c) *that the applicant indicate **whether he intends to apply for the lease agreement to be entered into with a new company and not Mediprop cc;***
- d) *That the request for a discount in rental be substantiated by a detailed business plan to enable Council to consider the request; and*
- e) *That the report be submitted to this Committee for consideration and subsequent recommendation to Council”.*

Please provide me with answers to the question posed by Council, whereafter your application will be re-submitted to Council.

***Please note** that, should it indeed be the case that Mediprop cc was indeed deregistered, you will have to apply for the ceding of the agreement to the new legal entity (to be established?).

I also refer to my letter dated 2014/07/16 to which I had no feedback to date. I attached a copy of the said letter. Please note that the outstanding amount has subsequently raised to R153 880.64.

As previously mentioned to you, you must either take responsibility for this outstanding amount or you must ensure that it be paid before the agreement is to be ceded to the new entity.

I **URGENTLY** awaits your feedback.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. Smith', with a date '2014' written below it.

for **MANAGER: PROPERTY MANAGEMENT**



STELLENBOSCH
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Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

28 April 2015

Mr L Arendse
C/o Medi-Prop cc
PO Box 166
Lynedoch
7603

Dear Sir

LEASE AGREEMENT: PROPOSED CHANGES IN SHAREHOLDING: MEDI PROP CC:

My e-mails send to you on 13 October 2014 and 18 February 2015, as well as my follow-up correspondence refers. (**APPENDIX 1**)

Please indicate as a matter of **URGENCY**, when I can received the required information. Also note that you have not made any payments on the outstanding debt. This lack of progress may lead to you contract being terminated.

I **URGENTLY** awaits your feedback.

Yours faithfully

.....

PIET SMIT
MANAGER: PROPERTY MANAGEMENT



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

2015-05-13

Mr L Arendse
C/o Medi-Prop cc
PO Box 166
Lynedoch
7603

Dear Sir

LEASE AGREEMENT: PROPOSED CHANGES IN SHAREHOLDING: MEDI PROP CC:

My letter dated 13 October 2014, 18 February 2015 as well as 29 April 2015, of which copies are attached, refers.

To date I have not received any of the requested information.

Unless the requested information as well as confirmation that all outstanding rentals have been paid by 31 May 2015, it will be assumed that you are not interested in going ahead with the proposed changes in shareholding, in which case your contract will be deemed cancelled.

I urgently await your feedback.

Yours faithfully

.....

PIET SMIT
MANAGER: PROPERTY MANAGEMENT

29 Tindall Street

Idas Valley

Stellenbosch

7600

08 August 2016

The Stellenbosch Municipality

PO Box 17

Stellenbosch

7599

For attention: The Property/Finance Committee

The Property Manager: Mr Piet Smit

Re: Change of Majority Shareholding & Lease Session – Farm 502 BL

Hereby receive application for the session of the above lease agreement with the following provisions, namely

1. That the said legal entity being Mediprop cc is not fully deregistered and that all rights are hereby ceded
2. That this application is for a ceding of the said lease agreement between Mediprop cc and Stellenbosch to

2.1 A3 Farms (PTY)Ltd

3. That as per my correspondence dated 16 January 2014, my application clearly reads that “The session be approved to and in favour of Mr Louis B Arendse and his dependants in a “*newco*”(“*newco*” to be *beneficiary of lease agreement*), now being **A3 Farms (PTY)Ltd**.
4. That **A3 Farms (PTY)Ltd** hereby accepts 100% responsibility for all rates and service charges owed by Mediprop cc to Stellenbosch Municipality to the date of transfer of the said lease agreement and the transfer of such debt to **A3 Farms (PTY)Ltd**.
5. That the application for discounted rates be finalised after the successful concluding of a session agreement as to allow A3 Farms (PTY)LTD to be liable for the rates concession as per the concession granted to the Small Black Farmers and that such application before/to council be the sole responsibility of the management of **A3 Farms (PTY)Ltd, and that this is not a condition to this session application.**

I await your urgent response herein.

Yours

Louis B Arendse

For/on behalf

Mediprop cc Reg no: : 2002/098971/23

**Certificate issued by the Commissioner of Companies & Intellectual
Property Commission on Sunday, August 14, 2016 at 16:05**



COR14.3: Registration Certificate

Registration Number: **2016 / 340767 / 07**
Enterprise Name: **A3 FARMS**

ENTERPRISE INFORMATION

Registration Number **2016 / 340767 / 07**
Enterprise Name **A3 FARMS**
Registration Date **14/08/2016**
Business Start Date **14/08/2016**
Enterprise Type **Private Company**
Enterprise Status **In Business**
Financial Year End **March**

Addresses	<u>POSTAL ADDRESS</u>	<u>ADDRESS OF REGISTERED OFFICE</u>
	15 MUSCADEL ROAD SHIRLEY PARK STIKLAND WESTERN CAPE 7530	FARM 502BL LYNEDOCH STELLENBOSCH WESTERN CAPE 7603

ACTIVE MEMBERS / DIRECTORS

Surname and First Names	Type	ID Number / Date of Birth	Appointment Date	Addresses
ARENDSE, LOUIS BERESFORD	Director	6803275128081	14/08/2016	Postal: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530 Residential: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530
ARENDSE, DILLAN	Director	9702055143087	14/08/2016	Postal: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530 Residential: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530



7.5.2	PROPOSED POLICY ON THE MANAGEMENT OF STELLENBOSCH MUNICIPALITY'S IMMOVABLE PROPERTY
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1. PURPOSE OF REPORT

To consider the Draft Policy on the Management of Stellenbosch Municipality's Immovable Property.

2. BACKGROUND

Before the enactment of the Municipal Finance Act, No 56/2003 (MFMA) the disposal of Municipal Property was governed by Section 124 of the Municipal Ordinance, No 20 of 1974 and the directive(s) issued in terms thereof (circular LDC 4/1993). With the enactment of the MFMA in 2003, especially section 14 thereof, a new era dawned insofar as the disposal of Municipal (fixed) assets are concerned.

There were, however a number of uncertainties regarding the interpretation/applicability thereof, respectively taking into account that section 124 of the Municipal Ordinance was not repealed at that stage. (It has subsequently been repealed).

There was also uncertainty as to the applicability of the Preferential Procurement Policy Framework Act, No 5/2000 and the subsequent Preferential Procurement Regulations of 2001, insofar as it relates to the sale and letting of municipal immovable assets.

The Municipal Asset Transfer Regulations (August 2008) and New Preferential Procurement Regulations (2011), however provided much anticipated clarity on a number of issues.

Although the Municipal Asset Transfer Regulations deals in detail with the various aspects of Disposal Management, there are still grey areas which are not covered by the Regulations.

3. DISCUSSION**3.1 Legal Requirements****3.1.1 Constitution****3.1.1.1 Objects of Local Government**

In terms of Section 152(1), the objects of local government are (*inter alia*):

- to provide accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development; and
- to encourage the involvement of communities in the matters of local government.

3.1.1.2 Developmental duties of municipalities

In terms of section 153, a municipality must structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.

3.1.1.3 Bill of Rights

(a) Equality

In terms of section 9 everyone is equal before the law and has the right to equal protection. Equality includes the full and equal enjoyment of all rights and freedoms.

To promote the achievement of equality, legislative and other measures designated to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.

(b) Just administrative action

In terms of section 33, everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(c) Property

In terms of section 25(1), no one may be deprived of property, except in terms of law of general application, and no law may permit arbitrary deprivation of property.

Subsection (2) allows for the expropriation of land in terms of law of general application for a public purpose or in the public interest. Public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africans natural resources.

In terms of subsection (5), the state must take reasonable legislative and other measures to foster conditions which enable citizens to gain access to land on an equitable basis.

In terms of subsection (8), no provision of section 25 may impede the state from taking legislative and other measures to achieve land reform, in order to redress the results of past racial discrimination.

3.1.2 Local Government: Municipal Finance Management Act, No 56/2003

3.1.2.1 Disposal of Capital Assets

In terms of section 14(1) a municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services*.

*"Basic municipal service" is defined as a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment.

In terms of subsection (2), a municipality may transfer ownership or otherwise dispose of a capital asset other than those contemplated in subsection (1), but only after the municipal council, in a meeting open to the public-

- (a) has decided on reasonable grounds that **the asset is not needed to provide the minimum level of basic municipal services**; and
- (b) has considered the **fair market value** of the asset and the **economic and community value** to be received in exchange for the asset.

In terms of subsection (5), any transfer of ownership of a capital asset in terms of this section must be **fair, equitable, transparent, competitive** and consistent with the municipality's supply chain management policy (still to be developed).

3.1.2.2 Supply Chain Management

Section 62(1)(f)(iv) requires that the municipal manager must ensure that the municipality has and implements a supply chain management policy in accordance with Chapter 11 of the Act, which allows managers to manage, and make them more accountable.

In terms of section 112, the supply chain management policy of a municipality must, *inter alia*, comply with a prescribed regulatory framework*, which must cover (*inter alia*) the following:

- the range of supply chain management **processes** that may be used, including tenders, quotations, auctions and other types of competitive bidding;
- when a municipality may or must use a particular type of process;
- procedures and mechanisms for each type of process;
- procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- open and transparent pre-qualification processes for tenders or other bids;
- competitive bidding processes in which only pre-qualified persons may participate.

In terms of subsection (2) such a regulatory framework must be fair, equitable, transparent, competitive and cost effective.

*"Prescribed" is defined as prescribed by regulation in terms of section 168 of the MFMA. In this regard the Minister has published the Municipal Supply Chain Management Regulations.

3.1.3 Supply Chain Management Regulations (G.N.868/2005)

In terms of Section 40, a Municipality's Supply Chain Management Policy must provide for an effective system of disposal management for the disposal or letting of assets.

3.1.4 Municipal Asset Transfer Regulations (MATR)

The purpose of the Regulation is to give effect to the enabling provisions in the MFMA and to regulate all transfers and disposals of municipal assets, including transfers to private sector parties, other municipalities, municipal entities and national and provincial organs of state and the granting of temporary rights to use municipal assets (such as the leasing of assets).

3.1.5 Preferential Procurement Regulations

The new Preferential Procurement Regulations were promulgated on 8 June 2011. In terms hereof a new preference point system "*for acquisition of services, works or goods*" comes into operation on 7 December 2011, i.e. the Regulations is therefore not applicable insofar as it relates to the disposal of immovable property.

4.1 PROPOSED POLICY

4.1.1 Scope and Purpose

The purpose of the Policy is to provide a framework for the management and disposal of the municipality's land and other immovable capital assets that are not needed to provide the minimum level of basic municipal services and that are surplus to the municipality's requirements.

Hereto attached as **APPENDIX 1** is a copy of the Draft Policy on the Management of Stellenbosch Municipality's Immovable Property.

This Policy should be regarded as Stellenbosch Municipality's Disposal Management Policy (Section 40 of the Supply Chain Management Regulations), and once approved, will replace Chapter 5 of the Municipality's Supply Chain Management Policy, insofar as it relates to **immovable** assets.

4.1.2 Preference point system

Although municipalities are not obliged to implement a preference point system when disposing of immovable property or when awarding rights in immovable property, the achievement of equality is a fundamental goal to be attained. The policy therefore provides for a preference point system. The objectives of the preferred points system are to:

- (a) promote broad-based black economic empowerment;
- (b) promote the redress of current, skewed land ownership patterns;
- (c) enhance the economy of the municipal area;

-
- (d) give preference to marginalised groups in the society, including women and people with disability;
 - (e) give preference to people residing in the municipal area;
 - (f) ensure that the most appropriate developments take place; and
 - (g) further an integrated approach to development.

4.1.3 Management of competitive bids

For Property transactions above a contract value of R1 000 000-00 or where the Municipal Manager deems it appropriate, taking into account the specific nature of the transaction, the Policy provides for the establishment of committees for the preparation of bid documents, the evaluation and adjudication of such bids.

4.1.4 Deviations

In terms of the policy the disposal of viable immovable property shall be affected-

- (a) by means of a process of public competition; and
- (b) at market value,

except when the public interest or the plight of the poor demands otherwise.

The policy however also provides for deviations:-

- (a) in respect of non-viable properties; and
- (b) in cases of emergency; specific circumstances, exceptional cases, where it is impractical or impossible, and other circumstances where the Municipal manager authorise such deviations.

In such circumstances the Municipal Manager must report such deviations to Council and must first advertise Council's intention so to act.

4.2 INPUTS BY OTHER DEPARTMENTS

4.2.1 CFO

The recommendations contained in this report are supported.

4.2.2 Legal Services

The inputs received from the legal department have been implemented.

5. CONCLUSION

The Draft Policy is needed to provide a framework for the future management of the municipality's immovable property.

RECOMMENDED

- (a) that the Draft Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

**ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE
MEETING: 2013-10-07: ITEM 6.1.6****RECOMMENDED**

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2013-10-16: ITEM 5.1.4**RESOLVED** (nem con)

- (a) that this matter be referred back to allow the Administration to conduct a workshop on this matter and to allow the Chief Financial Officer to peruse the document with the view of submitting inputs; and
- (b) that this matter be resubmitted to this Committee during November 2013 for consideration and subsequent recommendation to Council following the above-mentioned workshop.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

FURTHER COMMENTS BY THE MANAGER: PROPERTY MANAGEMENT

Following the above resolution, the Policy was workshopped and discussed with the Chief Finance Officer. Find attached hereto as **APPENDIX 1** an updated version of the Policy following the above workshop and inputs by the Chief Financial Officer.

RECOMMENDED

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2013-11-27: ITEM 5.1.2**RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property; and
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

17TH COUNCIL MEETING: 2014-01-16: ITEM 7.4**RESOLVED** (nem con)

that the Policy be referred back to the Administration, inter alia, to consider the lease of agricultural land as a separate chapter as very particular criteria should be taken into account.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

FURTHER COMMENTS BY THE ACTING DIRECTOR: HUMAN SETTLEMENTS AND PROPERTY MANAGEMENT

The Manager: Property Management will report verbally at the meeting in this regard.

FOR CONSIDERATION**MAYORAL COMMITTEE MEETING: 2014-04-16: ITEM 5.1.2****RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property;
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations; and
- (d) that the Administration, concurrently with the above process, be tasked to draft an Agricultural Land Reform Policy, following a workshop involving all relevant stakeholders for subsequent consideration by Council.

(ACTING DIRECTOR: HUMAN SETTLEMENTS AND PROPERTY MANAGEMENT TO ACTION)**19TH COUNCIL MEETING: 2014-04-23: ITEM 7.3**

During debate on the matter, Councillor DA Hendrickse requested a point of explanation, which the Speaker denied. Councillor Hendrickse then requested a reason why his point of order was denied because the Rules of Order allowed it. The Speaker then gave his reason why he denied Councillor Hendrickse's point of explanation. While voting on the matter, Councillor Hendrickse again asked for a point of explanation, which the Speaker again denied. Councillor Hendrickse again asked why his point of explanation was denied and why he is not allowed to explain, whereby the Speaker requested Councillor DA Hendrickse to leave the Council Chamber. The Speaker then requested the law enforcement officials to remove Councillor DA Hendrickse from the Council Chamber, whereby Councillor DA Hendrickse left the Chamber at 16:35.

RESOLVED (nem con)

- (a) that the proposed Policy on the Management of Stellenbosch Municipality's immovable property, as per **APPENDIX 1**, be approved by Council as a Draft Policy, subject to a public participation process;
- (b) that Chapter 5 of the Supply Chain Management Policy be repealed insofar as it relates to immovable property;

-
- (c) that the attached Policy be regarded as Stellenbosch Municipality's Disposal Management Policy, as required by Section 40 of the Supply Chain Management Regulations; and
 - (d) that the Administration, concurrently with the above process, be tasked to draft an Agricultural Land Reform Policy, following a workshop involving all relevant stakeholders for subsequent consideration by Council.

**(ACTING DIRECTOR: HUMAN SETTLEMENTS AND
PROPERTY MANAGEMENT TO ACTION)**

COMMENTS BY THE MANAGER: PROPERTY MANAGEMENT

1. Notice calling for public inputs/comments

Following the above decision by Council, notices were published in the Eikestad News and Paarl Post of 15 May 2014, calling for public inputs/comments by not later than 17 June 2014. A copy of the notice is attached as **APPENDIX 1**.

At the closing date two sets of comments/inputs were received; that of the Friends of Stellenbosch Mountain (FSM) hereto attached as **APPENDIX 2** and the Stellenbosch Ratepayers Association (SRA), hereto attached as **APPENDIX 3**.

Hereunder a discussion on the two sets of inputs/comments received.

2. Friends of Stellenbosch mountain

As indicated in their document, the inputs/comments received from the FSM focus on the role of the Green Economy and Green Growth, i.e. environmental management issues.

2.1 Sustainable development

The FSM rightfully highlighted the importance of a balanced approach, i.e a sustainable development approach when dealing with such an important portfolio of land. They further pointed out the importance of long-term sustainability *vis-à-vis* short term operational requirements. This was indeed the approach when compiling the policy.

In this regard Council's attention is specifically drawn to clause 6 (Guiding principles), which make it clear that the following principles and values should underpin Immovable Property acquisitions and disposals:

- (a) *The use of the Municipality's Immovable Property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment.*

- (b) *The promotion of access by black people to the social and economic benefit of Immovable Property ownership, management, development and use.*
- (c) *The management of the Municipality's Immovable Property as a **sustainable resource**, where possible, by leveraging **environmental, social and economic** returns on such Immovable Property while the Municipality retains ownership thereof'.*

It is further important to note the content of clause 20, which deals with the "*Most Appropriate Use Assessment*", which must be done before any land is earmarked for disposal. Council's attention is specifically drawn to clause 20.2 and 20.3, which read as follows:

"20.2 The most appropriate use for a surplus property is one which achieves an optimum balance between the following three key elements of sustainable development:

- (a) *the **protection of ecological processes and natural systems**;*
- (b) *the **optimum financial return** to and economic development of the municipal area; and*
- (c) *the **enhancement of the cultural, economic, physical and social wellbeing of people and communities.***

*20.3 **The three elements of sustainability will apply to all surplus Immovable Properties, however their significance and the relationships between them will vary for individual Immovable Properties**".*

2.2 Spatial categories and the law

The FSM suggested that the Policy must take into account and must implement the so-called bioregional planning categories and listed eco systems in the policy.

Although it is indeed important to take cognisance of the various pieces of environmental legislation, it must be emphasized that the purpose of the Draft policy is first and foremost a policy dealing with the management of municipal owned land and not a spatial planning document.

The Department does not agree with the proposal regarding the special categorisation of municipal land.

2.3 Environmental sustainability and the local economy

The department agree with most of the sentiments spelled out by the FSM and want to reiterate that this (sustainable development) was indeed taken serious when compiling the Draft Policy and when compiling the amendments. (2nd Draft)

The department also agree with the FSM statement that sustainability should not be viewed as a threat or irritating burden, but as an opportunity.

2.4 Specific proposals for amendments

Although a number of proposals have been taken up in the 2nd Draft policy, a number of suggestions however, could not be entertained. Council's attention is specifically drawn to paragraph 4.b.5 of the FSM's document, which suggested that the following be inserted as a new clause 2.3.3.

"The Municipality shall not transfer ownership of, or lease out an Immovable Property which

- a) *Hosts a threatened ecosystem as listed in terms of Section 52 (1) of the Biodiversity Act and the Government Notice GN 34809 or*
- b) *Is classified as a Core 1, Core2, or Buffer 1 area in terms of the Western Cape Provincial Spatial Development Framework unless such transfer or lease maintains or enhances the conservation status and environmental sustainability of such eco system or Area on that property, as **determined in a Record of Decision** of the NEMA Competent Authority in terms of the NEMA EIA Regulations".*

After having discussed this specific matter with the Head: Environmental Management, the following compromise proposal was included in the 2nd Draft Policy:

"The Municipality shall not transfer ownership of, or lease out for a period exceeding ten (10) years, any Immovable Property, or portion thereof which is classified as a Core 1, Core 2 or Buffer 1 area in terms of the Western Cape Provincial Spatial Development Framework unless it is satisfied that such transfer or lease will at least maintain or enhance the conservation status and environmental sustainability of such eco system or Area on that property".

According to the FSM Section 21.2.2.1, dealing with deviations, attempts to circumvent important checks and balances. They subsequently suggested the scrapping of a number of these deviations. Although this was never the attention of the Draft Policy to circumvent important checks and balances, the Department agree that some of the deviations could be misused.

Accordingly a number of deviations were indeed deleted in the 2nd Draft Policy, as suggested by the FSM. According to the FSM the Points System in Chapter 7 is deficient because they do not differentiate between the bioregional categories and disregard the environmental and sustainability aspects and legislation. They subsequently proposed a new Points System.

This department do not agree with this assumption/proposal.

3. Stellenbosch Ratepayers Association**3.1 Need for a Broad Strategic and Financial Outlook**

A lot of emphasis is put on the issue of surplus property and the fact that Council has to decide thereon. It is further implied that the guiding principle must not be to sell immovable property, but to retain and utilise

it for the welfare of future generations, by creating sustainable, additional income streams through joint venture, ect.

The department support this notion, but want to emphasise that it was never the intention of the policy to allow for “*asset stripping*” or the disposal of property “*to solve short term deficits or assist political agendas*” as alluded to in the SRA’s input. On the contrary, the Draft Policy is clear that the Municipality should use its Immovable Property Portfolio as a sustainable resource. The municipality, however, also has an obligation to use its Immovable Property Portfolio to redress social injustices and promote economic growth and access to housing. In this regard, please see the Guiding Principles contained in clause 6 (see par.2.1, *supra*).

3.2 Need for decision making at the highest level

This department agree that the management of the municipality’s Immovable Property Portfolio called for “*wise minds and unbiased professional assistance*” and should definitely not be the job of so-called “*property management operatives*”. It is unclear why the assumption was made that the contrary is implied by the Draft Policy.

3.3 Need for public participation

This department agree that public participation is vital, as suggested by the SRA. For this purpose clause 16, dealing with mandatory consultation was specially inserted in the Draft Policy to deal with acquisition of property. The Asset Transfer Regulation, however, deals in detail with the public participation process insofar as it relates to the disposal of municipal owned property and awarding of rights in Municipal property. For this reason a separate clause, dealing with public participation in general, were not inserted in the Draft Policy.

3.4 Need for a Holistic Approach

The SRA states that “*market forces cannot in all circumstances be the point of departure*”. This department agree with this. The Draft Policy is also very clear, where it states in clause 19.2.1.

“Unless otherwise provided for in this policy, the disposal of Viable Immovable Property shall be effected

- (a) *by means of a process of public competition; and*
- (b) *at market value except when the public interest or the plight of the poor demands otherwise.*

Council’s intention is also draw to Chapter 7, dealing with a preference point System.

It is unclear why this issue is raised, creating the impression that the Draft Policy does not cater for exemption. Also see clause 44.2, which reads as follows:

“If the Municipality, on account of the public interest, particularly in relation to the plight of the poor, intends to Dispose of a Non-Exempted Immovable

Property for less than market value it must take into account the following factors:

- (a) *the interests of the State and the local community;*
- (b) *the strategic and economic interests of the municipality, including the long-term effect of the decision on the municipality;*
- (c) *the constitutional rights and legal interests of all affected parties;*
- (d) *whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and*
- (e) *whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.*

3.5 Need for Integrated Planning

The Department agree with the statement that the Draft Policy “*cannot be dealt with as if standing apart from a raft of other Municipal, Provincial and National legislation*”. For this purpose clause 4.1 is clear:

“The legislative framework for the management of the Municipality’s Immovable Property is contained in a number of legislation, including but not limited to:

4.1.1 the MFMA, in particular section 14, which deals with disposal of capital assets (i.e Immovable Property as defined herein);

4.1.2 the MATR, which governs –

a) the transfer and disposal of capital assets by municipalities and municipal entities; and

b) the granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets”

Further, clause 20.4 states the following:

“In determining the most appropriate use of surplus properties, regard should be given to:

- (a) *Spatial development framework(s);*
- (b) *Regional plans;*
- (c) *Sectoral studies/plans;*
- (d) *Government policies;*
- (e) ***Relevant legislation; and***
- (f) *the views of interested and affected parties”.*

3.6 Need for capacity

According to the SRA, after having *"carefully considered"* the Draft Policy, they came to the conclusion that there is a pressing need to provide the municipality with adequate capacity and suitably qualified personnel to carry out the important function of managing the municipality's property portfolio.

This department agree with the notion that suitably qualified staff should be employed for this important function. It is, however not clear how the SRA concluded from the Draft Policy that the current staff is not adequately qualified.

3.7 Need to manage Risk

The reference to the 1988 statutory Guide Plan and the fact that Stellenbosch *"cannot absorb much more development without destroying its asset"* is unclear.

3.8 Need for consultation

This department agree that public participation is vital. For this purpose clause 16, dealing with mandatory consultation was specially inserted in the Draft Policy to deal with acquisition of property. The Asset Transfer Regulation, however, deals in detail with the public participation process insofar as it relates to the disposal of municipal owned property and awarding of rights in Municipal property.

The SRA concluded by stating that *"in light of the above mentioned comments, the Draft Policy should be reviewed to address shortcoming"*, but they do not offer/suggest any specific amendments.

4. Idas Valley Community Development Forum (IVCDF)

Hereto attached as **APPENDIX 4** is a copy of the inputs received from the IVCDF.

Although the comments/inputs received from the IVCDF was received after the closing date of 17 June 2014 (it was hand delivered on 9 July 2014), it was accepted.

4.1 Negative input/results the policy will cause previously disadvantaged communities of Stellenbosch

It is unclear why the IVCDF assume that the policy will have a negative input/result for the previously disadvantaged communities of Stellenbosch.

In the Preamble of the Draft Policy, it is stated clearly that *"the inequitable spread of ownership of Immovable Property throughout the municipal area and the historical causes thereof are recognised and the municipality acknowledge that it has a leading role to play in redressing these imbalances by ensuring that the Immovable Property assets under its control are dealt with in a manner that ensures the greatest possible benefit to the Municipality and the Community that it serves"*

In clause 6 of the Draft Policy, it is stated that the municipality “*should use its Immovable Property to:*

- a) *promote social integration, to redress existing spatial inequalities to promote economic growth, to build strong, integrated and dignified communities and to provide for access to housing, services, amenities, transport and opportunities for employment.*
- b) *to promote access by Black people to the social and economic benefit of Immovable Property ownership, management, development and use”*

For this reason the municipality has introduced a separate Chapter dealing with a Preference Point System, where provision is made, under certain circumstances of a 60/40 points system, meaning that as much as 40 points (out of a total of 100) can be allocated for PDI’s.

4.2 It is a fact that previous disadvantaged communities have not enjoyed any benefit in the past

Although the Draft Policy acknowledges the injustices of the past, it is factually wrong to state that previously disadvantaged communities have not received any benefit from municipal land. Many housing projects were successfully implemented in the past, including projects in Idas Valley.

4.3 We cannot allow past apartheid legislation, policies and practices to be revived

This statement is totally unfounded and does not warrant further comment.

4.4 Citizens have the right to know what is happening under their noses

This department agrees with this notion. As a matter of fact the Preamble to the Draft Policy states that the Municipality wants to “*create a culture of accountability, openness and transparency in its administration and in the exercise of its power of the performance of its function, by giving effect to the right to just administrative action*”.

4.5 The majority of the population had to feed off the crumbs the municipality had to offer, a recent case in point being the open air gym in Ida’s Valley

This statement does not warrant further comments.

4.6 We refuse to participate in providing inputs into a unilaterally pre-authorised by-law

Noted.

4.7 At face value the proposed by-law (*sic*) appears to be just and equitable

This department agrees with this comment; this was indeed the purpose of compiling the Draft Policy, to ensure a “*just and equitable*” dispensation when it comes to the management of municipal-owned property. In

the Preamble to the Policy it is stated that "*Stellenbosch Municipality is required and committed to manage its Immovable Property in a fair, transparent and equitable manner*".

4.8 Specific questions

4.8.1 Does the municipality currently have a by-law (dealing) with the management of property management)?

No. For this reason, the other 3 related questions are not applicable. As it is mentioned in clause 4 of the policy, the disposal of municipal assets is currently governed by the MFMA and ATR as well as other property related legislation (e.g. dealing with contracts).

4.8.2 What is meant by a large number of immovable properties?

During 2005 a comprehensive audit of all municipal-owned properties has been compiled. This information is available on request.

4.8.3 Will PDI's have access to agricultural land?

Yes, if one look at the Preferential Points System, as much as 40 point will be allocated for PDI's.

4.8.4 Explain "*greater possible benefit to the municipality and the community*"

As indicated in clause 3.2 of the Draft Policy, this means that "*the key consideration, when considering the acquisition, management development or disposal of municipal property, should be the best interest of the municipality (and thus its residents) rather than that of individuals should be paramount in all Immovable Property transaction that the municipality enters into*"

4.8.5 Does custodian not imply that ownership resides with someone else, and that they (the community) should be consulted in this matter?

Please note, however that "*Local Black people*" means Africans, Coloured and Indians, as referred to in the B-BBEE Act, No. 53 of 2005. Yes, indeed the community should be consulted. For this reason the Community was indeed given an opportunity to make input. Also note that elected politicians were part of the consultation process.

4.8.6 Do you agree that public meetings are the only form of participation?

No, this is one way of public participation.

4.8.7 Please unpack the intention of the Municipality in respect of BEE

The intention of the policy is clear, as already described in detail under paragraph 4. The term "BEE" is further described in the definition Section as "the economic empowerment envisaged by the BEE Act of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to-

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers cooperatives and other collective enterprises;
- (c) human resources and skill development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investments in enterprises that are owned or managed by black people.

4.8.8 Provide examples of categories of Immovable Property which is not needed to provide the minimum level of basic municipal services

It is not clear what is meant by the question. "*Basic Municipal Service*" is described in the definition section as "a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment. '*All the agricultural land, e.g is not needed to provide basic municipal services*'".

4.8.9 Please define and explain "surplus".

In terms of Section 14(1) of the MFMA the Municipality may not dispose of any municipal land that is needed (or might in future be needed) to provide the minimum level of basic municipal services. By implication, all other Immovable Property is theoretically "*surplus*", i.e may be disposed of. However, the policy is clear that the Municipality shall only dispose of Immovable Property in "*circumstances where the Municipality is satisfied that it cannot derive a reasonable economic and/or social and/or environmental return from continued ownership of the Immovable Property*". Putting it differently, the disposal of an Immovable Property shall be the last resort.

4.8.10 Does the municipality owns enough land for the housing need of its citizens?

The municipality probably owns enough land, but the problem is that is not necessary situated in the right areas, i.e within the urban edge, earmarked for development. For this reason it might be necessary to dispose of some land and use the proceeds to buy alternative land that is situated within the urban edge.

4.8.11 Have the municipality considered all unintended consequences of disposing of all its farms?

No, because that it definitely not the intention of the Draft Policy to dispose of all its farms.

5. Proposed Amendments

After having studied the inputs/comments referred to above, a number of amendments have been made to the Draft Policy, in an effort to accommodate some of the specific proposals received. A copy of the 2nd Draft Policy, with track changes, is attached as **APPENDIX 4**.

RECOMMENDED

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association and the Idas Valley Community Development Forum be noted;
- (b) that the proposed amendments as indicated in the 2nd Draft Policy (**APPENDIX 1**), be approved;
- (c) that the 2nd Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, attached as **APPENDIX 1**, be approved as Council's Policy; and
- (d) that the Policy on the Management of Stellenbosch Municipality's be regarded as **Stellenbosch Municipality's Disposal Management Policy**, as prescribed by the Supply Chain Management Regulations.

(ACTING DIRECTOR: HUMAN SETTLEMENT TO ACTION)

**ENGINEERING SERVICES AND HUMAN SETTLEMENTS COMMITTEE
MEETING: 2014-08-06: ITEM 5.1.1****RECOMMENDED**

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association and the Idas Valley Community Development Forum be noted;
- (b) that the proposed amendments as indicated in the 2nd Draft Policy (**APPENDIX 1**), be approved;
- (c) that the 2nd Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, attached as **APPENDIX 1**, be approved as Council's Policy; and
- (d) that the Policy on the Management of Stellenbosch Municipality's be regarded as **Stellenbosch Municipality's Disposal Management Policy**, as prescribed by the Supply Chain Management Regulations.

(ACTING DIRECTOR: HUMAN SETTLEMENT TO ACTION)

MAYORAL COMMITTEE MEETING: 2014-08-13: ITEM 5.1.5**RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association and the Idas Valley Community Development Forum be noted;

- (b) that the proposed amendments as indicated in the 2nd Draft Policy (**APPENDIX 1**), be approved;
- (c) that the 2nd Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, attached as **APPENDIX 1**, be approved as Council's Policy; and
- (d) that the Policy on the Management of Stellenbosch Municipality's be regarded as **Stellenbosch Municipality's Disposal Management Policy**, as prescribed by the Supply Chain Management Regulations.

(ACTING DIRECTOR: HUMAN SETTLEMENT TO ACTION)

22ND COUNCIL MEETING: 2014-08-20: ITEM 7.7

During debate on the matter, the DA requested a caucus which the Speaker allowed.

After the meeting resumed, it was

RESOLVED (nem con)

that this matter be referred back to the Administration and that same be resubmitted at a next meeting for consideration.

(ACTING DIRECTOR: HUMAN SETTLEMENT TO ACTION)

23RD COUNCIL MEETING: 2014-09-23: ITEM 7.1

RESOLVED (nem con)

- (a) that an Ad Hoc Committee of Council be established;
- (b) that the latter shall comprise of a member of each political party;
- (c) that the Executive Mayor appoint the Chairperson;
- (d) that the investigation shall include a Policy for immovable property as well as a Policy for agricultural land;
- (e) that external experts be invited to advise the Committee; and
- (f) that an investigation and recommendations be submitted to Council at the meeting to be held on 26 November 2014.

**(ACTING DIRECTOR: HUMAN
SETTLEMENT TO ACTION)**

FURTHER INPUTS BY THE DIRECTOR: INTEGRATED HUMAN SETTLEMENTS & PROPERTY MANAGEMENT

Following the above Council resolution, consultants were appointed by the Director: Planning & Economic Development to compile a Policy on the management of Council-owned Agricultural Land. A draft policy has recently been approved by Council, whereafter it was advertised for public input/comments. A final draft policy will serve at Council on 15 June 2016.

Following a recent presentation to members of the Mayoral Committee and Directors on the Draft Policy for the Management of Stellenbosch Municipality's Immovable Property (Second Draft), the various Directorates were given an opportunity to make further comments/input.

Further comment/inputs were received from the Director: Strategic and Corporate Services and the Director: Planning and Economic Development, which were incorporated into the policy. (Now Draft 3)

Please find hereto attached as **APPENDIX 1** an updated 3rd Draft Policy, for consideration by Council.

Taken into account that Council has already approved the policy as a draft policy on 2014-04-23, subject to a public participation process, and seeing that the public inputs were discussed in detail above, it is

RECOMMENDED

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association, Idas Valley Community Development Forum, as well as the recent inputs received for the DS&CS and DPED, be noted;
- (b) that the 3rd Draft Policy on the Management of Stellenbosch Municipality's Immovable Properties, attached as **APPENDIX 1**, be approved as Council's Policy with immediate effect; and
- (c) that Chapter 5 of the Supply Chain Management Policy be replaced with the document attached as **APPENDIX 2**, with immediate effect.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)****MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 6.1.2****RECOMMENDED BY THE EXECUTIVE MAYOR**

- (a) that the comments/inputs of the Friends of Stellenbosch Mountain, Stellenbosch Ratepayers Association, Idas Valley Community Development Forum, as well as the recent inputs received for the DS&CS and DPED, be noted;
- (b) that the 3rd Draft Policy on the Management of Stellenbosch Municipality's Immovable Properties, attached as **APPENDIX 1**, be approved as Council's Policy with immediate effect; and

-
- (c) that Chapter 5 of the Supply Chain Management Policy be replaced with the document attached as **APPENDIX 2**, with immediate effect.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.7

Councillor Q Smit put a Procedural Motion that the matter be referred back to allow the Administration to give effect to the legal opinion (attached as **APPENDIX 3**).

RESOLVED (majority vote)

that this matter be referred back to allow the Administration to give effect to the legal opinion.

The following Councillors requested that their votes of dissent be minuted:

Councillors F Adams; DA Hendrickse and M Wanana.

**(DIRECTOR: HUMAN SETTLEMENT AND
PROPERTY MANAGEMENT TO ACTION)**

**FURTHER COMMENTS BY THE DIRECTOR: HUMAN SETTLEMENTS &
PROPERTY MANAGEMENT**

Following the above Council-resolution, a new Council was elected during August 2016. Following the election of the new Council, a presentation on the proposed, new Policy on the Management of Stellenbosch Municipality's Immovable Property was made to the Mayoral Committee during November 2016. Copies of the policy was also made available to Mayco members, to afford them the opportunity to study the draft policy.

On 08 March 2017, following further discussions between the Municipal Manager and the Executive Mayor, approval was granted to put the item back on the agenda, via the Standing Committee, seeing that the Draft Policy was approved by the previous Council.

On 2016-065-15 it was resolved to refer the matter back "*to allow the Administration to give effect to the legal opinion*". Hereunder a brief discussion on the issues raised in the legal opinion.

Ad. Par 1: Introduction and background

In Par. 1.2 it is indicated that they (Webber Wentzel) was approached by the Acting Municipal Manager to furnish it with advise in respect of the Policy, "*more particularly whether the proposed Preference Point System in chapter 7 meets the requirements in the Municipal Supply Chain Management Regulation*".

In par. 1.6 it is indicated that the Preference Point System “*appears to have various objections inter alia to promote broad-based black economy empowerment, to promote the redress of current land ownership patterns and to give preference to certain groups and people*”.

This conclusion is indeed correct, but it also has an objective to ensure “*that the most appropriate developments take place*” (See par.3.3.1 of the policy).

Ad par. 2: Relevant legislation

This department is in agreement with the legislative regime as set out in the opinion.

Ad par. 3.1.1 – 3.1.3: Preference point System

The department is in agreement with the conclusion that the proposed Preference Point System is permissible, although not prescribed by law.

Ad. Par 3.1.4.1: Current Chapter 5 of SCM Policy

Webber Wentzel express the view that the same aims (as in Chapter 7) can be achieved by merely implementing Chapter 5 of the current SCM Policy.

This department cannot agree with this view point.

Ad. Par 3.1.4.2 Doubt as to effectiveness

Webber Wentzel expressed their doubt whether the Proposed Preference Point System will indeed assist the Municipality in addressing the issue of BBBEE.

This department is of the view that it will indeed help towards the realization of the goal, but obviously it is the prerogative of Council to either amend the point system to make it more “progressive” or it can be done one an *ad hoc* (project specific) basis.

Ad par 3.1.4.3 Reference to Asset Transfer Regulation (ATR)

Agree, but references to certain regulations in the ATR was to emphasize matters of importance.

Ad par 3.1.4.4.1: Acquisition Management

Webber Wentzel expressed the view that Chapter 4 of the draft Policy is effectively not permitted, as they are of the view that acquisition management together with procurement of goods and services resorts under SCM and as such has to be done in accordance with the prescripts of the SCM Regulation and SCM Policy. This department does not agree with the opinion. Any reference to the acquisition of land and or buildings in the Preferential Procurement Regulations of 2017 has been removed. In the 2016 Draft Regulation, there was indeed an effort (see Chapter 11 of Draft Regulations) to include a chapter on the disposal, sale and letting of property or assets, but his was not included in the Regulations that was published on 20 January 2017.

Be that as it may, there is nothing in Chapter 4 of the Policy that is in conflict with the SCM Regulations or policy.

In the Second part of par. 3.1.4.4.1 reference is made to the various ways of referring to market value. All references were amended to read "*fair market value*".

Ad par 3.1.4.4.4: Lease Agreement

Reference is made to Chapter 8 of the policy, stating that all improvements will revert back to the municipality upon termination of a Lease Agreement.

This, Webber Wentzel believe is in contradiction with another clause indicating that the municipality reserves the right to cancel a lease agreement, when needed for *bona fide* municipal purposes, in which event the lessee shall be compensated for improvements.

This is not contradictory, as in the second scenario the Lessee is not in default, and should in our view, be compensated.

Ad par. 3.2 Procedural and related requirements

Webber Wentzel if of the view that the Draft Policy is, by implication, a "*budget-related policy*", and for this reason Council cannot approve it, unless it was advertised together with other "*budget-related*" policies.

We are not in agreement with this opinion. Nothing stops Council from developing/amending new policies, even if it is budget-related, during the course of a year.

They also argue that, since amendments was made to the Draft budget after it was advertised for public input, based on inputs received form two(2) Directorates, the Draft Policy (as amended) needs to be advertised again "*in the spirit of meaningful public participation*".

Although we are not in agreement with the above, taking into account:-

- a) the long delay since the Draft policy was first advertised for public input (May 2014); and
- b) the fact that a new Council has subsequently been elected, it is

MAYORAL COMMITTEE MEETING: 2017-04-19: ITEM 5.5.1

RECOMMENDED

- (a) that Council approves the attached updated Draft Policy on the Management of Stellenbosch Municipality's Immovable Property as a draft policy; and
- (b) that the Draft Policy be advertised for a further round of public participation.

Meeting: Ref no: Collab:	8 TH COUNCIL: 2017-04-26	Submitted by Directorate: Author Referred from:	Human Settlements Manager: Property Management Mayco: 2017-04-19
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STELLENBOSCH
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MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

POLICY ON

THE MANAGEMENT OF STELLENBOSCH MUNICIPALITY'S IMMOVABLE PROPERTY

Directorate: Integrated Human Settlements

Department: Property Management

3rd Draft (2017-03-13)

PREAMBLE

Stellenbosch Municipality is the owner of a large number of Immovable Properties. In the exercise of its powers, duties and functions the Municipality has the right to acquire, hold, enhance, lease and alienate Immovable Property. The inequitable spread of ownership of Immovable Property throughout the municipal area and the historical causes thereof are recognized, and the Municipality acknowledges that it has a leading role to play in redressing these imbalances by ensuring that the Immovable Property assets under its control are dealt with in a manner that ensures the greatest possible benefit to the Municipality and the community that it serves.

WHEREAS Stellenbosch Municipality is the custodian of the Immovable Property of the Municipality and is responsible for the proper management and administration thereof;

WHEREAS Stellenbosch Municipality is required and committed to manage its Immovable Property in a fair, transparent and equitable manner; and

WHEREAS Stellenbosch Municipality realise that Immovable Property held by it, should be dealt with in a manner which will ensure the greatest benefit to the Municipality and the public in a sustainable manner;

AND IN ORDER TO-

- make available economic opportunities in the municipality;
- promote an efficient administration and good governance; and
- create a culture of accountability, openness and transparency in its administration or in the exercise of its powers or the performance of its functions, by giving effect to the right to just administrative action,

NOW THEREFORE this policy provides, as follows:

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CHAPTER 1: INTERPRETATION, SCOPE, PURPOSE AND OBJECTIVES OF POLICY**1. DEFINITIONS**

1.1 In this policy, unless inconsistent with the context, the following expressions bear the meanings assigned to them below:

“acquisition” means to acquire by way of purchase or lease.

“adequate notice” means a notice period of not less than 30 days within which representations, comments or objections may be made.

“advertise” means the giving of adequate notice of the nature and purpose including the material substance of the proposed administrative actions, by publishing a notice in one or more of the local newspapers, and where deemed necessary by the Municipal Manager, any additional form of notice, which may include-

- (a) serving of a notice; or
- (b) displaying on a notice board; or
- (c) holding a public meeting.

“agricultural allotments” means portions of agricultural land, demarcated and set aside for *“bona fide”* emerging farmers.

“alienate” means to dispose with ownership of Immovable Property in favour of another person with the intention of transferring the ownership of the Immovable Property to the acquirer thereof.

“BBEE Act” means the Broad-Based Black Economic Empowerment Act, 53 of 2003.

“BEE” means the economic empowerment envisaged by the BEE Act of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to-

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers cooperatives and other collective enterprises;
- (c) human resources and skill development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investments in enterprises that are owned or managed by black people.

“basic municipal service” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment;

“bid” means a written offer submitted in a prescribed or stipulated form, in response to an invitation by the Municipality for a procurement or disposal, as part of the competitive bidding process of the Municipality;

“Black people” means Africans, Coloured and Indians, as referred to in the B-BBEE Act, No. 53 of 2005.

“Buffer 1” means endangered areas of biodiversity overlapping with extensive agriculture.

“calendar month” means a period extending from a specific day in one calendar month to the preceding day in the following month;

“chief financial officer” means a person designated in terms of Section 80(2)(a) of the MFMA.

“close” in relation to a public street or public place, means to close for all public purposes or for vehicular or pedestrian traffic only.

“Core 1” means proclaimed national parks, provincial and municipal nature reserves, mountain catchment areas, unprotected but critically endangered areas of biodiversity;

“Core 2” means river and ecological corridors outside areas earmarked for urban development

“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution;

“commercial service” means a commercial service as defined in section 1 of the MATR;

“competitive bidding process” means a process whereby prospective bidders are invited through public media to submit bids and such bids are administered in a fair, transparent, competitive and cost effective manner;

“constitution” means the Constitution of the Republic of South Africa, 1996

“Council” means the Municipal Council of the Municipality of Stellenbosch and includes any Political Structure, Political Office Bearer, Councillor or Official, acting under delegated authority.

“disposal”, means the sale, exchange, donation, or letting of Immovable Property, the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of Municipal land, including servitudes;

“EIA” means Environmental Impact Assessment in terms of the NEMA Regulations promulgated by G.N. R 543/2010

“emergency” means an emergency dispensation in which one or more of the following conditions are present –

the possibility of human injury or death;

the prevalence of human suffering or deprivation of rights;

the possibility of damage to property, or suffering and death of livestock and animals;

the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;

the possibility of serious damage occurring to the natural environment;

the possibility that failure to take necessary action may result in the municipality not being able to render an essential service; and

the possibility that the security of the state could be compromised.

“exchange” means the simultaneous acquisition and disposal of Immovable Property or any right in respect of Immovable Property in terms of an agreement between the Municipality and any other party or parties where the compensation payable by the parties to each other, are offset and only the difference, if any, is payable to the appropriate party.

“fair market value” means the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller after proper marketing wherein the parties have each acted knowledgeable, prudently, and without compulsion.

“fraudulent practice” means a misrepresentation of fact in order to influence a selection process and includes:

collusive practices among bidders (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the municipality of the benefits of free and open competition.

“high value” means that the fair market value of the Immovable Property exceeds R50 million or 1% of the total value of the capital assets of the Municipality as determined from the latest available audited annual financial statements of the Municipality, or such lower amount as may from time to time be determined by resolution of the Municipal Council;

“housing stock” means housing units that are leased to members of the public and or members of staff as well as subsidised housing units that are earmarked for disposal to qualifying beneficiaries.

“IDP” means the approved Integrated Development Plan of Stellenbosch Municipality, as provided for in Chapter 5 of the Systems Act.

“Immovable Property” includes, but is not limited to –

- (a) any land registered under separate title and includes the ownership therein, whether in full or reduced form, and any improvements in, on, over or under such land or unregistered land where the ownership can be determined/property or buildings or any share therein registered in the name of a person or entity,

including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person or entity;

- (b) a right to an exclusive use area held in terms of a notarial deed of cession;
- (c) a real right registered against Immovable Property in the name of a person or entity, excluding a mortgage bond registered against the Immovable Property;
- (d) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 59 of 1980;
- (e) a "public place" or "public street" as defined in this policy ;
- (f) Immovable Property as defined in section 107 of the Deeds Registries Act, 47 of 1937; and including property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it.

"Income tax act" means Act 58/1962

"land" means-

- (a) any land registered under separate title and includes the ownership therein, whether in full or reduced form, and any improvements in, on, over or under such land; or
- (b) unregistered land where the ownership can be determined.

"lease" means the letting of Municipal land/Immovable Property/buildings in terms of which the use and enjoyment of the land/property/building is granted for a specified period exceeding 1 month without ceding legal ownership in the asset or any form of land availability agreement in respect of Immovable Property and letting has a corresponding meaning.

"lease agreement" means a written agreement entered into between the Municipality and the lessee specifying rights and duties pertaining to the exclusive use of Immovable Property for a continuous period of time longer than thirty (30) calendar days, and which sets forth the terms and conditions of the use, management and control of the Immovable Property.

"Local Black people" means Africans, Coloured and Indians, as referred to in the B-BBEE Act, No. 53 of 2005, who normally reside within the municipal area of Stellenbosch Municipality;

"Local Disabled people" means people with disabilities who normally reside within the municipal area of Stellenbosch Municipality.

"Local women" means women who normally reside within the municipal area of Stellenbosch Municipality.

"MATR" means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in *Government Gazette* No. 31346 of 22 August 2008;

"MFMA" means the Local Government: Municipal Finance Management Act, 56 of 2003,

including any Regulations promulgated in terms thereof from time to time;

“municipality” means the Stellenbosch Municipality established in terms of Section 4 of the Establishment Notice (PN 489 of 22 September 2000), as amended;

“municipal area” means the area under the jurisdiction and control of Stellenbosch Municipality.

“municipal function” means any of those functions set out in Schedule 4 B and 5 B of the Constitution.

“municipal land audit (MLA)” means the audit of municipal owned properties which was conducted during 2003.

“municipal manager” means a person appointed in terms of Section 82 of the Municipal Structures Act, No 117 of 1998 as the head of the Municipality’s administration and accounting officer of the Municipality or his/her delegate.

“municipality’s property” or **“property”** means all the Immovable Property owned and managed by the Municipality in terms of this Policy;

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).

“NEMA” means the National Environmental Management Act no 107 of 1998

“Non-Significant Property Right” means a Property Right in respect of the following categories of Immovable Property –

- a) Property rights in the Immovable Property with a Value more than R10 million, where the Property right is requested for a period less than 3 years; or.
- b) Property right in the Immovable Property with a Value less than R10 million, where the Property Right is requested for a period more than 3 years.

“non-viable Immovable Property” means Immovable Property that, owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner’s Immovable Property;

“official” means an employee of the Municipality or a person seconded to the Municipality or contracted by the Municipality to work as a member of staff otherwise than as an employee as defined in section 1 of the MFMA;

“owner” in relation to Immovable Property, means the person in whose name that Immovable Property is registered in a deeds registry, which may include the holder of a registered servitude right or lease and any successor in title of such a person, and includes any person authorized to act as such by the registered owner, any person who in law has been entrusted with the control of such assets or a person to whom Immovable Property has been made available in terms of a land availability agreement.

“plight of the poor” means the needs of the people that are vulnerable and unable to meet their socio-economic needs independently or to support themselves and their dependents and are in need of social assistance.

“public interest” means disposal or letting to:-

- a) promote the achievement of equality by taking measures to protect or advance persons or categories of persons, disadvantaged by unfair discrimination;
- b) afford black people who are South African citizens a preference in respect of the disposal and letting of Immovable Property as envisaged in Section 9(2) of the Constitution;
- c) promote BBBEE through disposal and letting;
- d) ensure and promote first time home ownership and enterprise development of black people that qualify in terms of the Municipality’s GAP housing policy have access to adequate housing on a progressive basis;
- e) advance agricultural projects for land reform purposes;
- f) promote welfare and charitable purposes including non-profit rehabilitation facilities; shelters for the indigent and destitute, youth development and drug counseling; or
- g) foster equitable access to public amenities, social and/or sports clubs and similar organizations by providing discounted prices or rates in the event that the beneficiaries or the membership component of such institution or body consist of at least 50% black people and/or the membership or subscription fee of black people is less than 50% of the normal membership or subscription fee.

“property laws” means the relevant provisions of the MFMA and the MATR collectively;

“property right” means a right to use, control or manage an Immovable Property for a period exceeding a calendar month, as granted by the Municipality without ceding legal ownership in the Property. For the sake of clarity , a servitude, way leave or encroachment in, on, over or under Immovable Property granted by the Municipality, or a lease agreement entered into by the Municipality as lessor, constitutes a Property Right and it expressly excludes any reference to land use rights in terms of the Municipality’s Integrated Zoning Scheme/Bylaw;

“private treaty” means where the proposed disposal involves a disposal without public competition as defined in the MFMA to a non-government entity.

“property transaction” means either a Disposal of I m m o v a b l e Property or the granting of a Property Right in Immovable Property;

“public place” means any Immovable Property indicated on an approved plan, diagram or map as an open space of which ownership as such vests in the Municipality.

“public street” means-

- (a) any street which has at any time been-
 - (i) used without interruption by the public for a period of at least thirty years;

- (ii) declared or rendered such by a Municipality or other competent authority; or
 - (iii) constructed by the Municipality; and
 - (iv) constructed by someone other than the Municipality and which vests in the Municipality.
- (b) any Immovable Property, with or without buildings or structures thereon, which is shown as a street on-
- (i) any plan of subdivision or diagram approved by the Municipality or other competent authority and acted upon, or
 - (ii) any plan or diagram as defined in Section 15 of the Land Survey Act, 1997 (Act 8 of 1997), registered or filed in the office of the Registrar of Deeds or the Surveyor-General's office.
- unless such Immovable Property is on such plan or diagram described as a private street.

“real rights” means the rights to traverse privately owned property with servitudes which are notarially registered in the Deeds Office or contained in Title Deed Conditions

“SCM policy” means the Supply Chain Management Policy of the Municipality, as approved from time to time and implemented in terms of section 111 of the MFMA, read with the SCM Regulations;

“SCM regulations” means the Municipal Supply Chain Management Regulations promulgated in terms of the MFMA and published under GN 868 in *Government Gazette* No. 27636 of 30 May 2005;

“significant Property Right” means a Property Right with a value in excess of R10 million which is granted for a period exceeding 3 years;

“spatial development framework” means a spatial development framework referred to in Chapter 4 of Act No. 16 of 2013 Spatial Planning and Land Use Management Act, 2013 and the framework contemplated in Section 26(1)(e) of the Municipal Systems Act.

“Systems act” means the Local Government: Municipal Systems Act, 32 of 2000, including any Regulations promulgated in terms thereof from time to time;

“unsolicited bid” is a bid/proposal received from a developer to acquire Immovable Property, or rights in immovable property, that is owned by the Municipality, outside the normal bidding process, i.e. without the Municipality having asked for such proposal/bid.

“viable Immovable Property” means Immovable Property that can be developed and function as a separate entity capable of registration by the Registrar of Deeds.

- 1.2 Words not defined in this Policy have the meaning assigned to them in the MATR.

2. SCOPE AND PURPOSE

- 2.1 The purpose of this Policy is to provide a framework for the management and disposal of the municipality's Immovable Property that are not needed to provide the minimum level of basic municipal services and that are surplus to the municipality's requirements.
- 2.2 The Municipality's Immovable Property shall be disposed of in the manner as provided for in this policy. The Property Management Department is responsible for the administration of this Policy, and shall in this regard, in consultation with the Supply Chain Management Unit of the municipality, be responsible for the administration of the competitive bidding process relating to the disposal and leasing of the Municipality's Immovable Property.
- 2.3 In compliance with the provisions of section 14(1) of the MFMA, the Municipality shall not transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of an Immovable Property that is needed to provide the minimum level of basic municipal services. The following municipal services are classified as basic municipal services for the purposes of section 14(1) of the MFMA, and this classification must be used by the administration as criteria to compile a List of all Municipal Immovable Property and Buildings:
- a) Electricity services
 - b) Water services
 - c) Sanitation services
 - d) Refuse removal, refuse dumps and solid waste disposal services
 - e) Municipal Roads
 - f) Public Places
 - g) Cemeteries
 - h) facilities for the care and burial of animals
 - i) child care facilities
 - j) street lighting
 - k) traffic and parking
 - l) pounds
 - m) municipal airports
 - n) local amenities
 - o) local sport and community facilities
 - p) fences

3. RESPONSIBILITIES

- 3.1 The Municipality has a core responsibility to acquire and avail Immovable Property and buildings, in the first instance, for its own use for purposes of developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development and spatial integration. Immovable Property unrelated to these responsibilities are, by implication, surplus to the municipality's requirements although future requirements must be acknowledged and hence the need to hold Immovable

Property in reserve. For any given property the Municipality must nevertheless decide in a Council meeting open to the public whether the Immovable Property is needed to provide the minimum level of basic municipal services.

- 3.2 The municipality has a further responsibility in terms of acquiring, managing, developing and releasing its Immovable Property, buildings and Property rights on behalf of its residents and ratepayers. In this regard the key consideration is that the best interests of the municipality (and thus its residents) rather than that of individuals should be paramount in all Immovable Property transactions that the municipality enters into.
- 3.3 Immovable Property and buildings affect the municipality's entire organization. Therefore, the municipality's policy in this respect must act in support of sectoral policies such as economic development, management and conservation of the environment and nature areas, land use, housing, social and community infrastructure, physical planning and infrastructure, and culture and recreation.

CHAPTER 2: POLICY FRAMEWORK, APPLICATION AND GUIDING PRINCIPLES

4. LEGISLATIVE AND POLICY FRAMEWORK FOR THE MANAGEMENT OF THE MUNICIPALITY'S IMMOVABLE PROPERTY

4.1 The legislative framework for the management of the Municipality's Immovable Property is contained in a number of legislation, including but not limited to:

4.1.1 the MFMA, in particular section 14, which deals with disposal of capital assets (i.e. Immovable Property as defined herein);

4.1.2 the MATR, which governs –

- a) the transfer and disposal of capital assets by municipalities and municipal entities; and
- b) the granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets;

4.2 The object of this Policy is to provide a practical framework for the management of the Municipality's Immovable Property.

4.3 This Policy must be read together with and in accordance with the Property Laws and all other laws which deal with Immovable Property.

5. APPLICATION OF THE POLICY

5.1 Section 14 of the MFMA and the MATR apply to capital assets, which are defined in the MATR to include Immovable Property, as well as certain movable assets. This Policy only applies to Immovable Property.

5.2 This Policy does not apply to:

5.2.1 The municipality's housing stock or land for subsidised housing on municipal Immovable Property and the transfer of that municipal Immovable Property to beneficiaries of such subsidised housing.

5.2.2 Property owned by the Municipality which is subject to a Public Private Partnership.

5.3 In terms of section 40 of the Municipal Supply Chain Management Regulations, a Municipal Supply Chain Management policy must provide for an effective system of disposal management for the disposal and letting of assets. For that purpose of immovable assets of the municipality, this policy must be seen as the disposal management policy of the municipality.

6. GUIDING PRINCIPLES

6.1. The following principles and values should underpin Immovable Property acquisition and disposal activities:

- (a) The use of the Municipality's Immovable Property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment.
- (b) The promotion of access by black people to the social and economic benefit of Immovable Property ownership, management, development and use.
- (c) The management of the Municipality's Immovable Property as a sustainable resource, where possible, by leveraging environmental, social and economic returns on such Immovable Property while the Municipality retains ownership thereof.

CHAPTER 3: RESERVATION AND MANAGEMENT OF IMMOVABLE PROPERTY

7. AUTHORITY TO RESERVE AND MANAGE IMMOVABLE PROPERTY

- 7.1 The Municipality may reserve and manage Immovable Property in its ownership for municipal purposes aligned with its operational needs and long term needs and sustainable development

8. KEY PRINCIPLES PERTAINING TO THE RESERVATION AND MANAGEMENT OF IMMOVABLE PROPERTY

- 8.1 Unless it is precluded from doing so by law or by the conditions in terms of which Immovable Property was acquired and subject to observation of due statutory process and alignment with the Municipality's strategic objectives, the Municipality may:

- (a) use Immovable Property in its ownership to promote social integration, to redress existing spatial inequalities, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment on a temporary or permanent basis.
- (b) reserve for future use Immovable Property in its ownership.
- (c) enhance Immovable Property in its ownership by pursuing the amendment of existing rights, establishment of new rights and the provision of municipal services.
- (d) improve Immovable Property in its ownership by the erection of structures thereon.
- (e) permit Immovable Property to be managed on behalf of the Municipality, permit it to be enclosed and permit it to be cultivated.

- 8.2 When immovable property under the control or management of the Municipality is encroached upon, the Municipality may take such steps as may, in the opinion of the Municipality, be necessary to remove or regularize such encroachment. In such instances the Municipality may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater or lesser extent as may, in the Municipality's interest, be desirable.

9. SERVICE LEVEL AGREEMENTS BETWEEN DEPARTMENTS OF THE MUNICIPALITY

- 9.1 In all circumstances where an I m m o v a b l e Property or Properties is/are reserved for a purpose which falls within a functional responsibility of another line department within the Municipality, the Municipality's Property Management Department will enter into a service level agreement (SLA) with that line department.
- 9.2 An SLA shall regulate the respective roles and responsibilities of the Property Management Department and the line department in respect of the following reserved

Immovable Property(ies):

- a) Immovable Properties used by the line department itself, for example, where the line department uses the Immovable Property(ies) for provision of a municipal service (where the municipal service is provided through an internal mechanism as provided for in the Systems Act);
- b) Immovable Properties used by third party service providers, for example, where the line department appoints a service provider to provide a municipal service;
- c) Immovable Properties in respect of which the line department has appointed a private party to manage the Immovable Property, for example, in terms of facilities management agreements.

9.3 The SLA's shall include provisions dealing with:

- a) the purpose for which an Immovable Property is reserved;
- b) a clear description of the purpose for which a private party is being appointed by the Municipality and the private party's contractual obligations in respect of both the purpose of its appointment (such as the provision of the service), as well as in respect of any Property Rights it may have been granted in respect of the Immovable Property;
- c) the manner in which both the appointment of the private party and the Property Transaction will be procured in accordance with the applicable policy provisions below;
- d) the entering into of contract(s) with the private party, and the allocation of the respective responsibilities of the line department and the Property Management Department in respect thereof;
- e) the distinct responsibilities of the Property Management Department and the line department in respect of monitoring and oversight of the use, control and management of the Immovable Property once the private party has been appointed;
- f) the line department's responsibilities in respect of the hand-over of reserved Immovable Property back to the Property Management Department once the line department no longer requires the Immovable Property for the purpose for which it was reserved.

9.4 Given that the Property Management Department is the custodian of the Municipality's Immovable Property, it is the only department within the Municipality that may conclude a contract with a successful tenderer in respect of a Disposal and the granting of a Property Right. Other line Departments may conclude agreements ancillary to Immovable Property assets including but not limited to Management Agreements and Facilities Management Agreements so far as such agreements do not grant the third party the right of tenure. The authority to conclude agreements, however, is subject to the System of Delegations, approved by the Municipality from time to time. This clause is not applicable on

the transfer of subsidised housing units to beneficiaries or the conclusion of lease agreements with Lessees of the Municipality's housing rental stock.

9.5 Where it becomes necessary or appropriate to do so, the Property Management Department and the line department shall endeavour to enter into a transaction-specific SLA.

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CHAPTER 4: ACQUISITION OF IMMOVABLE PROPERTY AND RIGHTS IN IMMOVABLE PROPERTY

10. AUTHORITY TO ACQUIRE

- 10.1 The Municipality may acquire Immovable Property and rights in Immovable Property within or outside its municipal area by purchase, expropriation, exchange, donation, gift, lease or otherwise, subject to compliance with the procedures set out in this policy.;
- 10.2 The Municipality may expropriate Immovable Property in terms of the Expropriation Act (Act 63 of 1975), or any other applicable legislation from time to time, provided that such expropriation shall only be for public purposes or in the interest of the public and provided that such expropriation is necessary to fulfill a critical municipal function

11. GENERAL PRINCIPLES

- 11.1 The Municipality must ensure that decisions to acquire Immovable Property (land, property, buildings and land improvements) are based on sound business and planning principles which are fully in line with and compliant with:
- (a) The Municipality priorities and initiatives;
 - (b) Corporate and service plans;
 - (c) Planning Policies;
 - (d) Regional plans and area planning schemes; and.
 - (e) Sustainable development and management.
- 11.2 The Property Management Department undertakes the acquisition in conjunction with the service departments (purchase or expropriation) of Immovable Property (land) and rights in Immovable Property (servitudes) for municipal purposes on behalf of all the service departments.
- 11.3 It is the responsibility of a Service Department to timeously advise the Property Management Department of the Immovable Property or servitudes that are required in a particular financial year. The service department is required to furnish the Property Management Department with the full particulars of the Immovable Property or servitude(s) required. The particulars required must stipulate the erf or farm number if the entire erf or farm is required, or the coordinates and extent of the Immovable Property or servitude if a portion of a farm or erf or a servitude is required.
- 11.4 The Service Department is required to confirm that the acquisition is required for an approved municipal project and that funding has been approved on an approved budget for the payment of the purchase price and the costs that the Municipality will incur when transferring the Immovable Property or registering the Property right in the name of the Municipality in the Office of the Deeds Registry.

- 11.5 The municipality will purchase or acquire the Immovable Property or servitude at the fair market value of the Immovable Property or servitude as determined by an independent valuer or at such lesser amount as may be agreed to by the seller.
- 11.6 In the case of an expropriation the compensation payable for the Immovable Property or servitude shall be determined in accordance with prescripts of the legislation in terms of which the Immovable Property or servitude was expropriated.
- 11.7 Once the Immovable Property has been acquired, it will be reserved for the municipal purpose for which it was acquired and dealt with in accordance with the reservation procedures outlined above.

12. ASSESSMENT

- 12.1 Prior to arriving at a decision to acquire an Immovable Property the Municipal Manager is required to undertake a detailed assessment to ensure that:
- (a) the service delivery needs of the Municipality are best met by the proposed acquisition;
 - (b) that broader government objectives are also considered;
 - (c) the expenditure of public funds is justified and are approved; and
 - (d) the planned acquisition is in line with the approved Spatial Development Framework(s).
- 12.2 The Municipal Manager must ensure land acquisitions associated with infrastructure projects are consistent with (where relevant) Regional Plans, State Infrastructure Plans, Municipal Infrastructure Master Plans, or other plans that cover a significant proportion of the municipal area. This is to ensure strategic landholdings contribute to a range of social, economic and environmental outcomes sought by the Municipality, including the efficient, coordinated and timely provision of infrastructure.
- 12.3 In addition to the proposed acquisition being consistent with the objectives of planning policies and guidelines, the Municipal Manager need to consider other issues when undertaking the assessment, such as:
- (a) the reason why the preferred site or area best meets the Municipality's requirements;
 - (b) the Municipality's strategic land management plan;
 - (c) source of funding and value for money;
 - (d) alternative service delivery options;
 - (e) sharing of government resources e.g. co-location;
 - (f) method of acquisition;
 - (g) valuation of property;
 - (h) consultation with stakeholders;

- (i) availability of surplus government property;
- (j) risks associated with proposed transaction; and
- (k) site constraints e.g. cultural and heritage issues and servitudes.

13. SITE SELECTION

- 13.1 Evaluation criteria to allow assessment of the site for suitability for the intended purpose could include requirements for public transport, potential to meet future service demand, local support services, physical site requirements, size of site in proportion to service delivery strategies, financial benefits, municipal priorities and other future service requirements in proximity to the site and potential to collate or share facilities and services. A report should be prepared by the Service Department outlining the reasons for selecting the site as this will form the basis of the mandatory consultation process.
- 13.2 The Municipality's Municipal Land Audit (MLA) contains essential, surplus and under utilised properties. The Municipal Manager is required to review/consult the MLA to determine if suitable properties are available prior to any decision being made on seeking property on the open market.

14. VALUATIONS

- 14.1. Valuations are required in support of an acquisition decision and must be at fair market valuation as determined by a qualified valuer(s).

15. METHODS OF ACQUIRING IMMOVABLE PROPERTY

The Municipality may acquire Immovable Property by:-

15.1 Open market (selection in a particular area/location of a suitable site)

The Municipality usually acquire Immovable Property through the open market place by either public auction or private sale.

15.2 Private treaty agreement (for site specific acquisition)

Private treaty contracts are suitable where the property has clear title or where clear title is reasonably achievable and the owner is willing to negotiate on reasonable terms.

15.3 Acquisition by expropriation

This method should only be used under circumstances where acquisition by agreement has been rejected as being unsuitable, or the Municipality has been unsuccessful in concluding an agreement with the owner and it can be shown that the Immovable Property required is site specific and essential.

16. MANDATORY CONSULTATION

- 16.1 The Municipality shall not acquire Immovable Property unless it has-
- (a) advertised its intention to acquire such *Immovable* Property; and

(b) considered the objections (if any) lodged in accordance with the advertisement contemplated in sub clause (a).

16.2 When the Municipality advertises its intention as contemplated above, all material information relevant to the proposed transaction must be included in the advertisement, including, but not limited to the following:-

- (a) the description of the property, including the title description, street address and extent;
- (b) the contracting parties;
- (c) reason(s) for proposed acquisition;
- (d) the purchase price or lease amount of the Immovable Property;
- (e) market value of the Immovable Property;
- (f) how the acquisition is to be financed;
- (g) whether the transaction is reflected in the current budget; and
- (h) whether other alternatives have been considered.

16.3 If it is reasonable and justifiable under the circumstances, the Municipal Manager may depart from the above requirements. In determining whether such departure is reasonable and justifiable, the Municipal Manager must take into account all relevant factors, including-

- (a) the objects of the proposed transactions;
- (b) the nature and purpose of, and the need to take the decision;
- (c) the likely affect of the action;
- (d) the urgency of taking the action or the urgency of the matter; and
- (e) the need to promote an efficient administration and good governance.

17. APPROVAL PROCESS

17.1 Following the advertisement contemplated above, the Property Management Department shall compile an agenda item, motivating the acquisition of the Immovable Property(s) or rights in Immovable Property(s). The report should indicate which methods of acquisition was/will be used and why this specific method has been decided on.

17.2 The report must be considered by the person/committee who has the delegated authority to consider such application.

CHAPTER 5: DISPOSAL OF IMMOVABLE PROPERTY AND AWARDING OF RIGHTS IN IMMOVABLE PROPERTY

18. AUTHORITY TO DISPOSE OF IMMOVABLE PROPERTY

- 18.1 The Municipality may in terms of Section 14 of the MFMA, read with the MATR, dispose of Immovable Property or Property rights in Immovable Property by way of sale, letting or registration of a servitude once it is satisfied that such Immovable Property or Property rights is not required to provide the minimum level of basic municipal services and once it has considered the fair market value thereof as well as the economic and community value to be received in exchange for such Immovable Property or Property right.
- 18.2 The Municipality shall not transfer ownership of, or lease out for a period exceeding ten (10) years, any Immovable Property, or portion thereof which is classified as a Core 1, Core 2 or Buffer 1 area in terms of the Municipality's Spatial Development Framework- , unless it is satisfied that such transfer or lease will at least maintain or enhance the conservation status and environmental sustainability of such eco system or Area on that property.

19. DISPOSAL MANAGEMENT PRINCIPLES

19.1 Core Principles

In terms of section 14(5) of the MFMA, a Disposal of Immovable Property by the Municipality must be fair, equitable, transparent, competitive and consistent with the Municipality's SCM Policy.

19.2 General Principles pertaining to the disposal of Immovable Property and Property rights in Immovable Property

- 19.2.1 Unless otherwise provided for in this policy, the disposal of Viable Immovable Property shall be effected-
- (a) by means of a process of public competition; and
 - (b) at market value except when the public interest or the plight of the poor demands otherwise.
- 19.2.2 All transaction for the disposal of Immovable Property must be considered in accordance with this policy and other applicable legislation.
- 19.2.3 Before alienating Immovable Property or rights in Immovable Property the Municipality shall be satisfied that alienation is the appropriate methodology and that reasonable economic, environmental and social return cannot be derived whilst ownership of the Immovable Property or Property rights is retained by the Municipality.
- 19.2.4 The Municipality reserves the right to entertain unsolicited proposals for the development of Viable Immovable Property for development purposes, with the proviso that it is in line with the Municipality's strategic objectives and more specifically that it favours the promotion of black ownership, entrepreneurship and community upliftment.
- 19.2.5 The Municipality may grant occupation of its Immovable Property prior to the transfer thereof on condition that:

- 19.2.5.1 the land use rights have been determined and established;
 - 19.2.5.2 all required authorization and approvals in terms all relevant legislation have been granted;
 - 19.2.5.3 all conditions of the said approvals and authorisations have been met;
 - 19.2.5.4 a suitable sale has been entered into;
 - 19.2.5.5 the purchase price is paid in full or alternatively that an acceptable financial guarantee is provided to secure the purchase price;
 - 19.2.5.6 occupational rent is payable at a rate specified by the Municipality; and
 - 19.2.5.7 the Municipality is indemnified against any and all claims that may arise out of the occupation of the Immovable Property by the purchaser. Where an EIA assessment must be conducted, occupation before transfer may not be granted in terms of the NEMA EIA Regulations.
- 19.2.6 Viable Immovable Property purchased from the Municipality by a first time homeowner shall not, without the Municipality's prior written consent, and right of first refusal be resold within a period of 5 years of the date of transfer.

19.3 General principles and guidelines pertaining to the letting by the Municipality of Immovable Property

- 19.3.1 The Municipality's Immovable Property should be managed under the principles of sustainable development. Where possible, such management should synergize environmental, social and economic benefits on such Immovable Property while the Municipality retains ownership thereof.
- 19.3.2 Immovable Properties that have been let shall be inspected at reasonable time periods to ensure compliance with the terms and conditions of the agreement of lease.
- 19.3.3 No application for a lease agreement shall be processed by the Property Management Department unless;
 - 19.3.3.1 the land use rights have been determined and established by the Municipality through a process prescribed in the relevant By-law;
 - 19.3.3.2 all required authorisations and approvals in terms all relevant legislation have been granted;
 - 19.3.3.3 all conditions of the said approvals and authorisations have been met or the implementation thereof is made part of the specifications for the bid/ competitive process for the disposal.
- 19.3.4 No application for a lease agreement shall be processed by the Property Management Department unless the prescribed application fee as per tariff has been paid nor shall any proposed lease be advertised unless the application has confirmed, in writing , that it will adhere to land use conditions and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

20. MOST APPROPRIATE USE ASSESSMENT

- 20.1 Before an Immovable Property is declared as surplus, and earmarked for disposal or the awarding of rights, it must first be assessed for its most appropriate use.

- 20.2 The most appropriate use for a surplus property is one which achieves an optimum balance between the following three key elements of sustainable development:
- (a) the protection of ecological processes and natural systems;
 - (b) the optimum financial return to and economic development of the municipal area; and
 - (c) the enhancement of the cultural, economic, physical and social wellbeing of people and communities.
- 20.3 The three elements of sustainability will apply to all surplus Immovable Properties, however their significance and the relationships between them will vary for individual Immovable Properties.
- 20.4 In determining the most appropriate use of surplus properties, regard should be given to:
- (a) Spatial development framework(s);
 - (b) Regional plans;
 - (c) Sectoral studies/plans;
 - (d) Government policies;
 - (e) Relevant legislation; and
 - (f) The views of interested and affected parties.
- 20.5 Where appropriate, opportunities should be provided for community involvement in the assessment process.

21. METHODS OF DISPOSAL AND AWARDING OF RIGHTS

Subsequent to determining the most appropriate use of a property and after the Municipality has decided that the Immovable Property could be disposed of, or that rights may be awarded, the method of disposal or method of awarding rights should be determined.

The Municipality may use any of the following methods, depending on the circumstances pertaining the specific Immovable Property:

21.1 Competitive Processes

21.1.1 Formal Tender

- a) The type of a formal tender may vary, depending on the nature of the transaction:
 - i) Outright tender may be appropriate where the Immovable Property ownership is not complex, and the Municipality is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.

- ii) Qualified tenders/call for proposals will be appropriate where the Immovable Property ownership position is complex or the development proposals for the Immovable Property are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.
 - iii) Call for proposals on a build-operate transfer (B.O.T) basis will be used if a developer is required to undertake the construction, including the financing, of a facility on Municipal-owned land, and the operation and maintenance thereof. The developer operates the facility over a fixed term during which it is allowed to charge facility users appropriate fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract, to enable the developer to recover its investment and operating and maintenance expenses in the project. The developer transfers the facility to the municipality at the end of the fixed term.
- b) The nature of the formal tender process is that a legally binding relationship is formed between the parties when the Municipality accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents could include a contract for sale or lease which could be completed with the tenderer's details, the tender price and be signed by the tenderer. A binding legal agreement is created upon the acceptance in writing of a tender by the Municipality.
 - c) Such a process may, depending on the nature of the transaction, include a two-stage or two-envelope bidding process (proposal call) in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.

21.1.2 Public Auction

- a) Disposal by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best price can be obtained by auction.
- b) The decision to dispose of Immovable Property by way of public auction must be recorded in writing and must include-
 - (i) the reasons justifying a disposal by public auction;
 - (ii) the reserve price, if any, for the auction;
 - (iii) the authority for a staff member to attend the auction and to act on behalf of the Municipality.
- c) The contract for sale or lease must be ready for exchange at the auction.
- d) The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.
- e) The terms and conditions of each auction shall be determined on a project-by-project basis, appropriate to the specific characteristics and attributes of the Immovable Property, and to the Municipality's strategic objectives.

- f) Where the services of an auctioneer are utilised, the auctioneer's commission shall be payable by the successful bidder and shall not form part of the financial offer to the Municipality.

21.1.3 Closed Tender

- a) If a Non-Viable Immovable Property has more than one adjacent owner and if such an Immovable Property is capable of being consolidated with more than one of the properties owned by such adjacent owners, then a closed bid will be called from all the registered owners of all the adjacent properties with which the Immovable Property can be consolidated.

21.1.4 Unsolicited proposals

- a) It is important that the municipality is in a position to entertain unsolicited proposals in exceptional circumstances. Such proposals may *inter alia* include property development proposals, land sales and leases. In this regard the following principles will apply:
 - i) Proposals received will be analysed and evaluated by the municipality in compliance with the relevant legislation;
 - ii) Realistic propositions will be advertised in the media to elicit competitive proposals or objections from the public;
 - iii) Should the advertisement elicit a response from the market, then a competitive proposal call will be initiated by means of an invitation to bid;
 - iv) The final lease or sale transaction will be submitted to the Municipal council for approval;
 - v) The prudent control will be by way of the market valuation certificate.

21.2 Non-Competitive Processes: Private Treaty Agreements

21.2.1 Non-Viable Immovable Property

In respect of Non-Viable Immovable Property which can only be utilised by one adjacent land owner, a Property Transaction(s) may be approved without any competitive process having been followed, including in response to an unsolicited application, on the basis that no purpose would be served by a competitive process but subject to the determination of the fair market value and public notice of the intent to dispose of the property.

21.2.2 Viable Property: Deviation from a Competitive process

21.2.2.1 The Executive Mayor may dispense with the competitive processes established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised his or her intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining land owners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

- (a) due to specific circumstances peculiar to the property under consideration, it can only be utilized by the one person/organization wishing to enter into the Property Transaction;
- (b) an owner of fixed immovable property who leases Municipal-owned immovable property, may be substituted by a successor-in title as deemed necessary on the same terms and conditions and/or additional terms and conditions;
- (c) sport facilities and other public amenities may be let by Private Treaty to Sport boards, Sport Federations and other similar bodies Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by the Municipality from time to time. Professional sport bodies and bodies operating for profit shall be charged a fair market related rental based on the market value of the property to be leased.
- (d) where unsolicited applications are received for access servitudes, right of ways and way leaves over municipal land, subject to approved tariff structure.
- (e) in exceptional cases where the Executive Mayor is of the opinion the public competition would not serve a useful purpose or that it is in the interest of the community and the Municipality, and where none of the conditions as set out in the policy provides for such exception, is permitted, and where they are not in conflict with any provision of the policy. In such cases the Executive Mayor must record full reasons for preferring such out-of hand sale or lease to those by public competition;
- (f) where any immovable property is offered for sale or lease by public competition, any remaining immovable property may be sold or leased out of hand by the

Municipality at the upset price or higher, as long as it is satisfied that market prices are stable.

The upset price must be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs.

The position must be reviewed by the Municipality at least every six months. Not more than one erf may be sold out of hand to a purchaser where the demand for erven exceeds the number of erven available for sale;

- (g) where unsolicited applications/proposals are received from telecommunication companies to construct or put up communication infrastructure on Municipal owned Property, such as masts, dishes, ect, subject to approved tariff structure;
- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;
- (i) where the applicant is an organization receiving funding support from a government department-
which makes a substantial contribution towards the outputs of such a government department; or
whose contribution to such government departments outputs would depend upon or be substantially enhanced by gaining priority to a particular property;
- (j) where the applicant is an organization receiving funding support from the municipality for the rendering of a municipal function(s) within the municipal area, on behalf of the municipality;
- (k) where the land is part of a larger area of land that is proposed for development, redevelopment or regeneration. Also, the nature and complexity of the proposed development of the overall site is such that the Municipality's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area;
- (l) lease contracts with existing tenants of immovable properties, not exceeding ten(10) years, may be renegotiated where the Executive Mayor is of the opinion that public competition would not serve a useful purpose or that renewal is aligned with the Municipality's strategic objectives and in the interest of the Community, subject to such renewal being advertised calling for public comment. The existing tenant shall give notice of the intention to renegotiate the lease at least six months before the date of termination;
- (m) where agricultural allotments becomes available, it can be allocated to qualifying emerging farmers on the waiting list for a lease period not exceeding 9 years and eleven months, subject to the approved tariff structure.
- (n) In an emergency limited to the awarding of temporary rights for a period not exceeding 6 calendar months. Should circumstances necessitate the extension of

the 6 months period, the Municipal Manager shall compile a report and submit it, to Council, recommending such extension of time.

- 21.2.2.2 The Executive Mayor must record the reasons for any such deviation from the competitive disposal process in writing and report them to the Municipal Council within 60 days of the decision to deviate being taken.

21.2.3 Exchange of Land

- 21.2.3.1 Disposal by exchange of land will be appropriate when it is advantageous to the Municipality and other parties to exchange land in their ownerships and will achieve best consideration for the municipality.
- 21.2.3.2 The Municipal Council must authorise the disposal of land by exchange with another land owner for alternative land. Reasons for justifying this manner of disposal must be recorded in writing.
- 21.2.3.3 The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate. In such circumstances the Municipality must seek an independent valuation to verify that "*best consideration*" will be obtained.

22. DISPOSAL AND LETTING OF IMMOVABLE PROPERTY FOR SOCIAL CARE USES

- 22.3.1 Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations and includes, but is not limited to, the following types of uses :-
- (a) Place of Worship to the degree and for that portion of a facility being used for spiritual gathering by, and social/pastoral/manse/welfare caring and support to Worshippers and the broader Community;
 - (b) Child care facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis;
 - (c) Schools or centres – utilised as homes for the handicapped and disabled persons.
Non-profit rehabilitation centres;
Homes/centres for indigent, battered or destitute persons;
Organisations for the homeless and elderly;
Youth activity centres;
Facilities for the accommodation, care and burial of animals; and
Cemeteries, NPO funeral parlours and non-profit crematoria.

21.3.2 The Municipality reserves the right to entertain unsolicited bids for the purchase or lease of viable immovable property for social care uses with the proviso that it abides by the Municipality's IDP objectives.

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CHAPTER 6 MANAGEMENT OF COMPETITIVE BIDS

23 MANAGEMENT OF COMPETITIVE BIDS

23.1 For Immovable Property transactions above a contract value of R1 Million (incl. of VAT) or where the Municipal Manager deems it appropriate, taking into account the specific nature of the transaction, he/she shall establish committees for the preparation of bid documents the evaluation and adjudication of such bids, as set out hereunder.

24. BID DOCUMENTATION FOR COMPETITIVE BIDS

24.1 The criteria to which bid documentation for a competitive bidding process must comply, must -

- (a) take into account -
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) description of Immovable Property, including the erf number(s) and size thereof;
 - (iii) current zoning, land use and restrictive conditions;
 - (iv) nature of tenure to be granted;
 - (v) development parameter and guidelines;
 - (vi) an indication of whether the successful bidder will be responsible to apply for development rights, or whether such rights are already in place;
 - (vii) access to Immovable Property;
 - (viii) parking requirements;
 - (ix) time-frame for development and use;
 - (x) identification of suspensive conditions, if any, that will have to be met by the successful bidder before a legal binding relationship is formed;
 - (xi) availability of municipal services;
 - (xii) whether the successful bidder will have to make any contributions, over and above the tender amount, such as development contributions, contributions for the upgrade of services; ect.
- (b) include the preference points system to be used (if any), goals as contemplated in this policy and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) Competitive bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;

- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements-
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards the municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) particulars of any property contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

25. PUBLIC INVITATION FOR COMPETITIVE BIDS

25.1 The procedure for the invitation of competitive bids, is as follows:

- (a) Any invitation to prospective developers/bidders to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the Municipality, or any other additional, appropriate ways, as determined by the Municipal Manager; and
- (b) The information contained in a public advertisement, must include, *inter alia*:-
 - (i) the deadline for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by the Municipality; and
 - (iii) date, time and venue of any proposed site meetings or briefing sessions;

25.2 The Municipal Manager may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

25.3 Bids submitted must be sealed.

25.4 Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

26. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS

26.1 The procedures for the handling, opening and recording of bids, are as follows:

- (a) Bids-
 - (i) must be opened in public;
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) received after the closing time shall not be considered and returned unopened immediately.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical also each bidder's total bidding price;
- (c) No information, except the provisions in subsection (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The Municipal Manager must-
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website of the Municipality.
- (e) All original bid documents must be stored safely.

27. NEGOTIATIONS WITH PREFERRED BIDDERS

27.1 The Municipal Manager may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiations -

- (a) does not allow any preferred bidder a second or unfair opportunity;
- (b) is not to the detriment of any other bidder; and
- (c) does not lead to a lower price than the bidder has submitted, in a case of disposal of Immovable Property, or Property rights and;
- (d) does not lead to a higher price than the bidder has submitted, in a case of acquiring of Immovable Property, or Property rights.

27.2 Minutes of such negotiations must be kept for record purposes.

28. TWO-STAGE BIDDING PROCESS

28.1 A two-stage bidding process is allowed for-

- (a) large complex projects;

- (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
- (c) long term projects with a duration period exceeding three years.

28.2 In the first stage technical proposals on conceptual design should be invited, subject to technical as well as commercial clarifications and adjustments.

28.3 In the second stage final technical proposals and priced bids should be invited.

29. COMMITTEE SYSTEM FOR COMPETITIVE BIDS

29.1 A Committee System for competitive bids above a contract value of R1 Million (including of VAT) is hereby established, consisting of the following Committees for each Immovable Property transaction or cluster of transactions as the Municipal Manager may determine:

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee.

29.2 The Municipal Manager appoints the members of each committee, taking into account Section 117 of the MFMA.

29.3 A neutral or independent observer, appointed by the Municipal Manager, may attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

30. BID SPECIFICATIONS COMMITTEES

30.1 Before placement of any invitations to perspective developers/bidders for the acquisition or disposal of Immovable Property, Property Rights a bid specification committee must compile the specifications for each such transaction.

30.2 Specifications-

- (a) must be drafted in an unbiased manner to allow all potential developers/bidders to make a bid/proposal;
- (b) must indicate each specific goal for which points may be awarded in terms of the points system set out in this policy. Such goals must be measurable and must be specified in the documentation accompanying the invitation to submit a bid. The measurable must clearly indicated how the bidder will be awarded a score out of the maximum points allocated; and
- (c) must be approved by the Municipal Manager prior to publication of the invitation for bids.

30.3 The Municipal Manager must appoint a bid specification committee when such a need arise. A specification committee must composed of one or more officials of the Municipality preferably *inter alia* the Manager responsible for Immovable Property Management, and may, when appropriate, include external specialist advisors.

- 30.4 No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.
- 30.5 No Councillor may be a member of such a Bid Specification Committee.

31. BID EVALUATION COMMITTEE

- 31.1 The function of a Bid Evaluation Committee involves the technical evaluation of the proposals submitted, including clarification interviews with short-listed proponents and the formulation of recommendations to the Bid Adjudication Committee in respect of the award of the tender or proposal call. The Bid Evaluation Committee will meet as often as is required, to complete a technical evaluation of the proposals in accordance with the set evaluation criteria and associated weighting. The scoring of the criteria will be by consensus, failing which the weighed average will apply.

Depending on the complexity of the proposal call, the evaluation process may involve other stages such as the short-listing of proponents for an interview with the Bid Evaluation Committee after initial scoring has been finalised. The purpose of this interview is for the Bid Evaluation Committee to obtain clarification on elements of a proposal, and/or confirmation of implied intentions.

- 31.2 A Bid Evaluation Committee must-
- (a) evaluate bids in accordance with the specifications and the points system set out in the Bid Document;
 - (b) evaluate each bidder's ability to execute the contract from a technical, financial and commercial point of view;
 - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and
 - (d) submit to the Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter.
- 31.3 The Municipal Manager must appoint a Bid Evaluation Committee when the need arise. A Bid Evaluation Committee must as far as possible be composed of-
- (a) officials who were members of the Bid Specification Committee; and
 - (b) at least one supply chain management practitioner of the Municipality.
- 31.4 The Municipal Manager may, at the request of a Bid Evaluation Committee authorize the appointment of an specialist advisor(s) to assist the Bid Evaluation Committee in the technical evaluation of the bids. Such advisor will not take part in the drafting of recommendations to the Bid Adjudication Committee, but will only advise the Bid Evaluation Committee on the technical evaluation of the bids.
- 31.5 No Councillor may be a member of such a Bid Specification Committee.

32. BID ADJUDICATION COMMITTEE

- 32.1 A Bid Adjudication Committee must-

- (a) consider the report and recommendations of the Bid Evaluation Committee; and
 - (b) either-
 - (i) depending on its delegations, make a final award, or a recommendation to the Municipal Manager to make the final award; or
 - (ii) make another recommendation to the Municipal Manager how to proceed with the relevant transaction.
- 32.2 The Municipal Manager must appoint a Bid Adjudication Committee when the need arise. A Bid Adjudication Committee must consist of at least four senior Managers of the Municipality, which must include-
- (a) the Chief Financial Officer or, if the Chief Financial Officer is not available, another Manager in the Budget and Treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer; and
 - (b) at least one senior supply chain management practitioner who is an official of the Municipality; and
 - (c) a technical expert in the relevant field who is an official, if such an expert exists.
- 32.3 The Municipal Manager must appoint the Chairperson of the Committee. If the Chairperson is absent from a meeting, the members of the Committee who are present must elect one of them to preside at the meeting.
- 32.4 Neither a member of Bid Evaluation Committee, nor an advisor or person assisting the Evaluation Committee, may be a member of a Bid Adjudication Committee.
- 32.5 If the Bid Adjudication Committee decides to award a bid other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must, prior to awarding the bid notify the Municipal Manager.
- 32.6 The Municipal Manager may-
- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee;
 - (ii) if the decision on the Bid Adjudication Committee is rejected, refer the decision of the Adjudication Committee back to that Committee for reconsideration.
- 32.7 The Municipal Manager may at any stage of a bidding process, refer any recommendation made by the Evaluation Committee or the Adjudication Committee back to that Committee for reconsideration of the recommendation.
- 32.8 No Councillor may be a member of a Bid Adjudication Committee.

CHAPTER 7: PREFERENCE POINT SYSTEM

33. OBJECTIVES

33.1 Although municipalities are not obliged to implement a preference point system when disposing of Immovable Property or when awarding Property rights in Immovable Property, Stellenbosch Municipality is of the view that the achievement of equality is one of the fundamental goals to be attained. The objectives of the preferred points system are to:

- (a) promote broad-based black economic empowerment;
- (b) promote the redress of current, skewed land ownership patterns;
- (c) enhance the economy of the municipal area;
- (d) give preference to marginalised groups in the society, including women and people with disability;
- (e) give preference to people residing in the municipal area;
- (f) ensure that the most appropriate developments take place; and
- (g) further an integrated approach to development.

34. PUBLIC AUCTIONS

34.1 The Municipal Council may determine, on a project-by-project basis, appropriate to the specific characteristics and attributes of the Immovable Property involved, limitations on categories of people who may take part in a public auction with the view of furthering the objectives as set out above, without excluding any category of people to take part in such public auction.

35. OUTRIGHT TENDER / CLOSED TENDER

35.1 For Immovable Property transactions with a contract value up to R10 Million, the awarding of tenders shall be adjudicated on a maximum one hundred (100) points system, set out as follows:

- (a) **Price:** Sixty (60) points maximum. The highest financial offer shall score sixty (60) points, with lower offers scoring proportionally in relation to the highest.
- (b) **Status:** Forty (40) points maximum, which shall be measured and compiled as follows:
 - (i) Twenty (20) points maximum for local black people and local legal entities owned by black people. Points for legal entities will be proportionally allocated according to the percentage ownership by black people.

- (ii) Five (5) points maximum for local women and local legal entities owned by women. Points for legal entities will be proportionally allocated according to the percentage ownership by women.
 - (iii) Five (5) points maximum for local disabled people or legal entities owned by disabled people. Points for local legal entities will be proportionally allocated according to the percentage ownership by disabled people.
 - (iv) Ten (10) points maximum for local residents or legal entities owned by local residents. Points for legal entities will be proportionally allocated according to the percentage ownership by disabled people
- 35.2 For Immovable Property transactions with a contract value above R10 Million up to R50 Million, the awarding of tenders shall be adjudicated on a maximum one hundred (100) points system, set out as follows:
- (a) **Price:** Eighty (80) points maximum. The highest financial offer shall score eighty (80) points, with lower offers scoring proportionally in relation to the highest.
 - (b) **Status:** Twenty (20) points maximum for local black people and local legal entities owned by black people. Points for legal entities will be proportionally allocated according to the percentage ownership by black people.
- 35.3 For Immovable Property transactions with a contract value above R50 Million, the awarding of tenders shall be adjudicated on a maximum one hundred (100) points system, set out as follows:
- (a) **Price:** Ninety (90) points maximum. The highest financial offer shall score ninety (90) points, with lower offers scoring proportionally in relation to the highest.
 - (b) **Status:** Ten (10) points maximum for black people and legal entities owned by black people. Points for legal entities will be proportionally allocated according to the percentage ownership by black people.

36. QUALIFIED TENDERS/PROPOSAL CALLS

- 36.1 Unless otherwise determined by the Municipal Council for a specific transaction, the awarding of qualified tenders or proposal calls shall be adjudicated on a maximum one hundred (100) points system, set out as follows:
- (a) **Price:** Sixty (60) points maximum. The highest financial offer shall score sixty (60) points with lower offers scoring proportionally in relation to the highest offer.
 - (b) **Status:** Twenty (20) points for local black people and local legal entities owned by black people. Points for legal entities will be proportionately allocated according to the percentage ownership by black people.
 - (c) **Development Concept:** Twenty (20) points maximum, which shall be measured and adjudicated as per criteria to be agreed upon for the specific project.

37. MODIFICATIONS

- 37.1 The Municipal Council may adjust the scoring system set out in this section for a specific Immovable Property or group of Immovable Properties to enable it to achieve specific targets or a specific outcome.

38. NOTIFICATION OF PERFORMANCE POINT SYSTEM

- 38.1 The Tender/Call for proposal document(s) must stipulate the preference point system which will be applied in the adjudication of the specific tender.

39. EQUITY OWNERSHIP

- 39.1 Equity Ownership is tied to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.
- 39.2 Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with the degree of ownership.
- 39.3 Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.

40. TENDERS MUST BE AWARDED TO THE BIDDER SCORING THE HIGHEST POINTS

- 40.1 Tenders must be awarded to the bidder that scores the highest points in terms of the preference points system unless there are objective and reasonable criteria that justify the award of the tender to another tenderer.

41. QUALIFYING CRITERIA/TWO STAGE BIDDING

- 41.1 Criteria other than price, status and development concept, such as technical capability and environmentally sound practices, cannot be afforded points for evaluation. They can be specified in a call for tenders but they will serve as qualification criteria or entry level requirements, i.e a means to determine whether or not a specific tenderer is a complying tenderer in the sense of having submitted an acceptable tender. Only once a tender is regarded as a complying tenderer would it then stand in line for the allocation of points based on price, status and development concept.

CHAPTER 8 CONTRACTUAL OBLIGATIONS

42. TERMS AND CONDITIONS OF SALE

- 42.1 Regulations 17 and 30 of the MATR sets out the minimum terms and conditions that needs to form part of Sales Agreements. The terms and conditions listed below is supplementary to the above.
- 42.2 All costs pertaining to a transaction, inclusive of any costs relating to transfer, registration survey-, re-zoning-, sub-division-, consolidation-, advertisement- and relocation or provision of services cost shall be borne by an applicant, provided that the Municipality may waive its right to claim those costs if the reason for the sale is to rid the Municipality of a burden to maintain the Immovable Property or exercise control thereover.
- 42.3 Where applicable, existing services shall be secured by means of the registration of a servitude in favour of the Municipality.
- 42.4 When Immovable Property is sold, development must commence where, applicable, within 1 (one) year or such longer period as may be agreed to from the date of transfer or possession or in accordance with the provisions of the deed of sale or the development programme submitted by the purchaser and be completed in accordance with the provisions of the deed of sale or the development programme. The Municipality furthermore reserves the right to impose such conditions as deemed necessary, including a reversionary or penalty clause in the event that the development has not progressed as per the agreement, without limiting its rights to liquidated damage and reversionary clauses.
- 42.5 A reversionary clause must be inserted in the deed of sale if the Immovable Property is sold below market value or where the conditions of sale are not met.
- 42.6 Unless approved in writing by the Municipality, the Immovable Property may only be used for the purpose as approved by the Municipality and purpose regularized by the relevant by-laws and any applicable legislation.
- 42.7 Where a disposal agreement is subject to the implementation of land use and/or development conditions the agreement will incorporate suspensive conditions which could nullify the contract failing compliance with such land use or development conditions.

43. TERMS AND CONDITIONS OF LEASE

- 43.1 Regulation 45 of the MATR sets out the minimum terms and conditions that needs to form part of Lease Agreements. The terms and conditions listed below is supplementary to the above.
- 43.2 All cost pertaining to a transaction such as legal-, survey-, re-zoning-, sub-division-, consolidations-, advertisement-, relocation or provision of services cost shall be borne by the applicant.
- 43.3 The following deposits shall apply to leases where the rental is based on market value-
- (a) a deposit equal to 2 months rental for commercial transactions;

- (b) a deposit equal to 1 month's rental for residential and social services transactions.
- (c) No deposit are payable in respect of encroachment agreements.

- 43.4 An owner of fixed Immovable Property who leases an adjoining municipal Immovable Property may be substituted by his successor in title for the duration of the remainder of the lease term on the same terms and conditions or additional terms and conditions as deemed necessary.
- 43.5 Lessees shall be liable for payment of rates and service charges, unless otherwise agreed upon.
- 43.6 The letting of lanes, public open spaces, road reserves shall be subject to the following:
 - (a) closing off/securing to the Municipality's satisfaction;
 - (b) costs for the relocation or installation of services, where required, shall be for the account of the lessee; and
 - (c) securing of servitudes.
- 43.7 Lessees shall indemnify the Municipality against any possible claims arising from the lease or use of the Immovable Property.
- 43.8 No lessee of Immovable Property shall without the prior consent in writing of the Municipality, sublet such Immovable Property or any portion thereof or assign any right acquired by him in respect hereof and any such subletting or assignment without such consent shall be null and void.
- 43.9 Save with prior approval the Immovable Property may only be used for the purpose for which it was let and purposes regularized by town planning schemes.
- 43.10 Officials from the Municipality shall at all reasonable times be entitled to enter/inspect the Immovable Property, having regards for the right to privacy as contemplated in Chapter 2 of the Constitution.
- 43.11 All agreements shall contain a clause which requires the lessee to maintain the leased Immovable Property.
- 43.12 All agreements shall contain a clause which requires that improvements provided by the lessee and which the Municipality wishes to retain shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions by the lessee, has been cancelled. Provision must also be made on how to deal with such improvements should the Municipality terminate the contract prior to the lapse of the lease period, where the lessee has not been in default.

- 43.13 All agreements shall contain a clause which states that the municipality reserves the right, where necessary, to resume Immovable Property let, or a portion thereof, and to cancel an existing lease in its entirety where such Immovable Property is required for operational purposes, in pursuance of the municipality's strategic objectives or in the interests of the community. In such an event the lessee shall be compensated for improvements established by him/her on a basis to be determined by an independent valuator, taking into account the remaining period of the lease agreement.

2nd DRAFT

CHAPTER 9: FAIR MARKET VALUES/RENTALS

44. CRITERIA FOR DETERMINING COMPENSATION AND FAIR MARKET VALUES

- 44.1 Immovable Property may be Disposed of only at market-related prices, except when the plight of the poor or the public interest which impact on the economic and community value to be received by the Municipality demand otherwise.
- 44.2 If the Municipality, on account of the public interest, particularly in relation to the plight of the poor, intends to Dispose of a Non-Exempted Immovable Property for less than market value it must take into account the following factors:
- (a) the interests of the State and the local community;
 - (b) the strategic and economic interests of the municipality, including the long-term effect of the decision on the municipality;
 - (c) the constitutional rights and legal interests of all affected parties;
 - (d) whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and
 - (e) whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.
- 44.3 Subject to the Municipality's Section 14 Determinations and an In Principle Approval in respect of a specific Disposal, the Municipality shall Dispose of social care Immovable Properties at a purchase price of between 10% and 60% of fair market value subject to a suitable reversionary clause being registered against the title deed of the Immovable Property. In the event of the subject Immovable Property ceasing to be used for the purpose originally intended, reversionary rights are triggered and the Municipality reserves the right to demand compensation equal to the difference between the actual purchase price and the fair market value of the Immovable Property, or that the Immovable Property be transferred into the ownership of the Municipality at no cost to the Municipality.
- 44.4 If the Municipality appoints a private sector party or Organ of State through a competitive bidding process as the service provider of a Commercial Service, the compensation payable to the Municipality in respect of the Disposal of Immovable Property as an integral component of the performance of that Commercial Service to that service provider, shall reflect fair market value.
- 44.5 Fair market value of Immovable Properties will be calculated as the average of the valuations sourced from two independent valuers, unless determined otherwise by the

Municipal Manager, taking into account the value of the property *vis-à-vis* the cost of obtaining such valuations.

45. CRITERIA FOR DETERMINING OF FAIR MARKET RENTALS

- 45.1 Immovable Property may only be let at market-related rates, except when the plight of the poor or the public interest which impact on the economic and community value to be received by the Municipality demand otherwise.
- 45.2 In respect of certain categories of Immovable Properties the Municipality shall be entitled to adopt below market-related tariffs in respect of Immovable Properties, leased to non-Profit Organisations, NGOs, Sporting Bodies, *bona fide* small farmers, ect. Such tariffs must form part of the municipality's tariff structure, approved from time to time.
- 45.3 The Municipality shall be entitled, in its sole discretion and from time to time, to specify the types of Immovable Property Transactions in respect of which applications are permitted to be made to the Municipality and to impose application fees, charges, rates, tariffs, scales of fees or other charges relating to the Immovable Property Transaction.
- 45.4 In such circumstances, the Municipality shall also be entitled not to process the application for the Immovable Property Transaction unless the applicant has:
- a) confirmed in writing that it will pay the Charges and bear all such costs in respect of the Im m o v a b l e Property Transactions as the Municipality may require (for example legal costs, survey costs, costs of rezoning, subdivision, and consolidations, advertising costs, cost of relocation or cost of provision of services); and/or
 - b) if required by the Municipality, has paid a deposit as specified by the Municipality to cover such incidental costs.
- 45.5 The fair market rentals of individual Immovable Properties will be calculated as the average of the valuations sourced from two service providers, unless determined otherwise by the Municipal Manager, taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

CHAPTER 10 MISCELLANEOUS

46. MUNICIPAL LAND REGISTER (MLR)

- 46.1 The MLR is a computerized database that contains details of all municipal-owned Immovable Property.
- 46.2 The MLR database is electronically linked with the Geographical Information System of the Municipality to provide spatial information to complement the data stored in the MLR database.
- 46.3 As from date of commencement of this policy, all departments must record relevant details about their Master Infrastructure Plans and needs for Immovable Property in the MLR.
- 46.4 As a minimum requirement, sites for planned community infrastructure, municipal infrastructure, housing projects, ect must be recorded on the MLR.
- 46.5 All changes in the status of municipal-owned Immovable Properties must be recorded in the MLR.

47. STRATEGIC IMMOVABLE PROPERTY MANAGEMENT PLAN

- 47.1 As soon as possible after the approval of this policy the Municipality must, as part of its strategic planning process, develop and adopt a Strategic Immovable Property Management Plan.
- 47.2 Such a Strategic Immovable Property Management Plan must consist of at least-
- (a) A strategic analysis of the Municipality's Immovable Property portfolio (Land Audit), as well as state-owned Immovable Property within the municipal area.
 - (b) Categorisation of such Immovable Property-holdings, to include, but not limited to:-
 - (i) Immovable Property of strategic importance for, *inter alia*:-
 - (aa) housing purposes;
 - (bb) municipal infrastructure; and
 - (cc) public transport, -parking and related used
 - (dd) environmental conservation; and
 - (ee) heritage purposes
 - (ii) Immovable Property that should be retained for future generations;
 - (iii) Surplus Immovable Property, capable of being developed.
 - (iv) Immovable Property that should be acquired for strategic purpose.
 - (v) Immovable Property that should be exchanged for strategic purposes.
 - (c) A management plan for each category of Immovable Property.

- (d) A performance assessment of each category of Immovable Property.
- (e) The maintenance activities required for each category of Immovable Property.

- 47.3 The Strategic Immovable Property Management Plan must be developed within the context of approved spatial development frameworks, sectoral plans, planning related policies and regional plans.
- 47.4 When developing the SLMP, the public should be given ample opportunity to make inputs.
- 47.5 The Municipal Council must annually revise its Strategic Immovable Property Management Plan and must incorporate the revised plan into its IDP.

48. FRAUD AND CORRUPTION

- 48.1 Stellenbosch Municipality's policy is to require that bidders observe the highest standard of ethics during the selection and execution of contracts.
- 48.2 The Municipal Manager must reject a proposal for award if he/she determines that the person recommended for award, has engaged in corrupt or fraudulent activities in competing for the contract in question.
- 48.3 Where evidence in support of corrupt, fraudulent practices or criminal offences are reported and substantiated, the Municipal Manager is to initiate criminal proceedings against such business entity, official or other role player, and inform the Provincial Treasury and the Municipality of such measures.
- 48.4 Employees found guilty after a disciplinary process of conniving with bidders or contravening this Policy may be dismissed.
- 48.5 Bidders and their directors who have been found guilty of abusing this Policy will be barred/suspended from doing business with the Municipality and National Treasury will be informed accordingly.
- 48.6 The Municipality reserves the right to criminally prosecute any person found to have violated or abused this Policy.
- 48.7 The Municipality reserves the right to cancel or not to award bids to bidders found to:
 - a) have unfairly influenced the process of award and have been found guilty of improper conduct;
 - b) have been convicted of fraud or corruption during the past 5 years;
 - c) have willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - d) have been listed in the Registrar for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act No 12 of 2004.
- 48.8 All employees and/or officials are expected to assist the Municipality in fighting corruption and to this extent are encouraged to report all suspicious acts.

49. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO OFFICIALS AND OTHER ROLE PLAYERS

- 49.1 No person who is a tenderer or prospective tenderer for municipal Immovable Property may either directly or through a representative or intermediary promise, offer or grant -

- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
- (b) any reward, gift, favour or hospitality to any official of the Municipality or other role player who may affect the outcome of a tender process.

49.2 The Municipal Manager must promptly report any alleged contravention of clause 49(1) to the Municipality.

50. OBJECTIONS AND COMPLAINTS

50.1 Persons aggrieved by decisions or actions taken in the implementation of this policy may

lodge within 14 days of the decision or action, a written objection or complaint against the decision or action to the Municipal Manager, or if the Municipal Manager is involved to the Executive Mayor.

51. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

51.1 The Municipal Manager must appoint an independent and impartial person, not directly involved in the adjudication processes:-

(a) to assist in the resolution of disputes between the municipality and other persons regarding-

- (i) any decisions or actions taken in the implementation of this policy; or
- (ii) any matter arising from a contract awarded in terms of the Policy; or

(b) to deal with objections, complaints or queries regarding any such decisions or actions or any matter arising from such contract.

51.2 The Municipal Manager or another official designated by the Municipal manager or Executive Mayor is responsible for assisting the appointed person to perform his or her functions effectively.

51.3 The person appointed must -

(a) strive to resolve promptly all disputes, objections, complaints or queries received; and

(b) submit monthly reports to the Municipal Manager or the Executive Mayor as the case may be, on all disputes, objections, complaints or queries received, attended to or resolved.

51.4 This paragraph must not be read as affecting a person's rights to approach a court at any time.

EX PARTE: STELLENBOSCH MUNICIPALITY

IN RE: ASPECTS RELATING TO THE PROPOSED POLICY ON THE
MANAGEMENT OF STELLENBOSCH MUNICIPALITY'S
IMMOVABLE PROPERTY

OPINION

PRIVATE AND CONFIDENTIAL

This opinion contains private, privileged and confidential information and the content hereof may not be quoted, referred to, disclosed, disseminated, copied or in any way published, in whole or in part, without our prior written consent

Furnished by:

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Cape Town
Ref: RB Africa/ AE Esterhuizen
June 2016

1. Introduction and background

- 1.1 Consultant is the Stellenbosch Municipality.
- 1.2 We have been approached by Consultant on an urgent basis to furnish it with advice in respect of its proposed Policy on the Management of Stellenbosch Municipality's Immovable Property ("**the Policy**"), more particularly whether the proposed preference point system in Chapter 7 of the Policy meets the requirements in the Municipal Supply Chain Management Regulations ("**SCM Regulations**") and the Municipal Asset Transfer Regulations ("**the ATR**") promulgated in terms of the Local Government: Municipal Finance Management Act 53 of 2003 ("**MFMA**") and whether Consultant can proceed to approve the Policy as proposed. Put differently, whether, having regard to the relevant legal requirements, it is permissible for Consultant to include its own preference point system in Chapter 7 of the Policy.
- 1.3 To this end, we have been provided with and considered the following:
 - 1.3.1 a copy of Agenda Item 6.1.2 of Consultant's Mayoral Committee Meeting of 10 June 2016; which encloses the Policy as Appendix 1 and the proposed replacement of Chapter 5 of Consultant's Supply Chain Management Policy ("**SCM Policy**") as Appendix 2 ("**the Agenda Item**");
 - 1.3.2 a brief legal opinion by Consultant's Director: Strategic Support Services on whether Consultant can constitutionally provide for measures to achieve redress when it disposes of immovable property or provide for rights in immovable property;
 - 1.3.3 Consultant's 2016/2017 SCM Policy; and
 - 1.3.4 The City of Cape Town's Policy on the Management of Certain of the City of Cape Town's Immovable Property ("**the City Policy**").
- 1.4 We also received further instructions at a consultation with Consultant's Acting Municipal Manager on 10 June 2016.
- 1.5 Chapter 7 of the Policy appears to aim to employ a preference point system in respect of the disposal of immovable property or the granting of a property right in

immovable property by way of public auctions, outright or closed tender and qualified tenders or proposal calls.¹

1.6 This preference point system appears to have various objectives *inter alia* to promote broad-based black economic empowerment, to promote the redress of current, skewed land ownership patterns and to give preference to certain groups and people. To this end and dependent on the value of a specific transaction, a number of points are awarded for certain objectives apparently in addressing the aforementioned objectives such as points for local black people and legal entities owned by black people.

1.7 Kindly note that due to *inter alia* the urgency and associated time constraints and for the sake of brevity, this opinion is not intended to provide a full exposition or detailed discourse of the relevant legal framework and all possibly relevant legal and/or statutory provisions. It is furthermore focused on and limited to the issues set out in 1.2 above and is not proposed to address any related or derivative questions and/or to review and comment on any other aspect of the Policy and/or any possible shortcomings of the Policy itself, save to the extent that we may do so below.

1.8 Moreover, cognisance must be taken of the fact that that due to the aforementioned time constraints we have not had the benefit of requesting and/or considering all information and/or documentation that may be referred to in and/or related to the documents and instructions set out in 1.3 and 1.4 and we therefore reserve the right to revise, amend and/or supplement this opinion to the extent that any such information and/or documentation may have a bearing on any of the conclusions arrived at in this opinion.

2. Relevant legal provisions

2.1 Briefly summarised, the relevant legal framework mainly consist of the following provisions:

2.1.1 Section 14 of the MFMA which provides as follows:

"14. Disposal of capital assets

.....

¹ Although the relevant legal provisions refers to capital assets (which include movable and immovable capital assets), we will for purposes hereof as far as possible use the terminology in the Policy as it refers to immovable property.

- (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public -
- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
 - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
-
- (5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111....."

(emphasis supplied).

2.1.2 Regulation 40 of the SCM Regulations which provides as follows:

"40. Disposal management

- (1) A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 and 90 of the Act [the MFMA].
- (2) A supply chain management policy must -
- (a) specify the ways in which assets may be disposed of.....
 - (b) stipulate that -
 - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise.....
 - (c) provide that -
 - (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
 - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed....."

(emphasis supplied).

2.1.3 The provisions of the ATR which primarily aims to facilitate compliance with section 14 of the MFMA and regulation 40 of the SCM Regulations.

3. Consideration and discussion

3.1 Preference point system

3.1.1 We have previously advised Consultant, for reasons that need not be repeated for purposes hereof, that the Preferential Procurement Policy Framework Act 5 of 2000 ("PPFPA") and its Regulations ("Preferential Procurement Regulations") and therefore the preference point system in the

Preferential Procurement Regulations are not applicable to the sale and letting of immovable property.

3.1.2 Based on our previous views, which remain unaltered, and for reasons not necessary to be elaborated upon for present purposes, the preference point system in Chapter 7 of the Policy appears in principle to be permissible, in particular to the extent that it departs from the PPPFA and Preferential Procurement Regulations as to the specific weighting in its scoring system.

3.1.3 As the preference point system in the Preferential Procurement Regulations is not applicable, there is no express prohibition on Consultant, when embarking on a disposal process, from attaching greater weight to certain criteria, provided that it is not contrary to and within the framework of the legal provisions alluded to in 2.1.1 to 2.1.3 above.² Whether the Policy itself is in accordance with these provisions is a different question altogether which need not be addressed for purposes hereof and which can only be addressed by a full review of the Policy.

3.1.4 Nevertheless, in light of the further conclusions and reasons set out below, it is not necessary to elaborate further on the foregoing conclusions and observations and to express a final and conclusive view. We do, however, wish to make the following observations in respect of the Policy following a cursory perusal thereof:

3.1.4.1 Having regard to the Policy and the SCM Policy, it appears that what Chapter 7 of the Policy aims to achieve can be achieved in a less complex manner by merely implementing Chapter 5 of the SCM Policy as the latter allows for Consultant to determine the applicable scoring methodology and/or preference points and/or weights and/or specific goals it wishes to achieve and affords it more discretion.

3.1.4.2 It is also doubtful whether the preference points system and weighting in Chapter 7 will indeed meaningfully assist Consult in addressing the issue of broad-based black economic empowerment ("**B-BBEE**"). Only a maximum of 20 of the 40 points in the 60/40 scorecard are allocated to B-BBEE and/or B-BBEE legal entities and as such even the application of this scorecard may result in a non-B-BBEE entity, which can

² We have noted from paragraph 12.2.2 of the City Policy that the City shares this notion, however, it has resolved to apply the PPPFA when following a competitive bidding process in respect of a property transaction.

potentially achieve a score of 80 points without any black ownership, being awarded a tender. In this regard, a proper pre-qualification mechanism for prospective participants in a tender based on B-BBEE requirements will potentially serve a more useful purpose in meaningfully addressing the issue.

3.1.4.3 The Policy also seems to contain various direct references to certain regulations in the ATR which is strictly speaking not necessary as it must in any event be complied with regardless of the provisions of the Policy and it will only create practical difficulties when amendment of the Policy may be necessary in future if the ATR is amended.

3.1.4.4 As alluded to in 3.1.3 in order to determine whether the Policy itself accords with the relevant legal provisions and is therefore lawful, a full review of the Policy is required. However, during the aforementioned cursory perusal of the Policy, we have noted the following deficiencies and/or problematic aspects:

3.1.4.4.1 Chapter 4 of the Policy provides for the acquisition of immovable property and rights in immovable property through various methods such as open market, private treaty and expropriation. Acquisition management together with procurement of goods and services resorts under supply chain management and as such has to be done in accordance with the prescripts of the SCM Regulations and SCM Policy. Therefore, to the extent that the Policy, whose existence is founded in the need for a disposal management system as required by the SCM Regulations, which is vastly different from procurement, aims to provide for acquisition and/or procurement of goods and services outside of the prescribed requirements of the SCM Policy, it would be unlawful. In addition, some of the procedures to be followed in respect of acquisition, in particular in the event of expropriation, seem to curtail the powers afforded to Consultant by the legislation governing expropriation and to impose additional obligations upon Consultant which are not required by the aforementioned legislation.

3.1.4.4.2 The Policy appears to be unworkable as it *inter alia* contains various contradictions such as differences in the meaning and

determination of market value in respect of the various categories of property and property rights. For instance, the terms "reasonable market value", "market value", "fair market value", "upset price" and "current market valuation" are used interchangeably when reference is made to value and are to be determined in certain instances by a "professional valuer" and in others by either 2 service providers or an "independent valuator". The ATR only provides for "fair market value".

3.1.4.4.3 Essential terms and critical concepts are not defined in the Policy at all.

3.1.4.4.4 Furthermore, as regards the terms and condition of leases in Chapter 8 of the Policy, on the one hand it is stated that it will be required that all agreements provide for improvements to revert to Consultant free of charge upon termination whilst on the other hand it will also be required that all agreements contain a clause which provides that Consultant reserves the right to cancel a lease for various purposes in which event the lessee shall be compensated for improvements on a basis to be determined by an independent valuator.

3.1.4.4.5 In general and seemingly due to the amendment of the Policy at various stages, not all provisions of the Policy are consistent and as such will pose practical difficulties for Consultant when it comes to implementation of the Policy in its current form.

3.2 **Procedural and related requirements**

3.2.1 However, irrespective of the aforementioned, should Consultant decide to proceed with approving the Policy, there appears to be fundamental procedural issues which would in actual fact preclude Consultant from approving the Policy at this stage and in its current form, which issues are dealt with further below.

3.2.2 Section 22(a) of the MFMA provides that immediately after an annual budget is tabled in a municipal council, the accounting officer of a municipality must, in accordance with Chapter 4 of the Local Government: Municipal Systems Act 32 of 2000, make public the annual budget and the documents referred to

in section 17(3) of the MFMA, which documents include any proposed amendments to the budget-related policies of the municipality, and invite the local community to submit representations in connection with the budget.

3.2.3 Section 1 of the MFMA defines "budget-related policy" as a policy of the municipality affecting or affected by the annual budget of the municipality including the tariffs policy, rates policy and credit control and debt collection policy. In terms of section 20(1) of the MFMA the Minister of Finance, acting with the concurrence of the Cabinet member responsible for local government (collectively "**the Ministers**") must *inter alia* prescribe the form of the annual budget of municipalities and may prescribe the form of resolutions and supporting documentation relating to the annual budget. In terms of section 168 of the MFMA the Ministers may *inter alia* make regulations regarding any matter that may be prescribed in terms of the MFMA.

3.2.4 With effect from 17 July 2009 the Ministers published the Municipal Budget and Reporting Regulations of 2008 ("**the Budget Regulations**") of which regulation 1 defines "supporting documentation" in relation to an annual budget *inter alia* as documentation referred to in section 17(3) of the MFMA; therefore including budget-related policies. Regulation 7 of the Budget Regulations (in its footnote) lists the policies that affect or are affected by the annual budget of a municipality to include *inter alia* a supply chain management policy in (h) and any policies dealing with the management and disposal of assets in (i).

3.2.5 A supply chain management policy and a policy dealing with the management and disposal of assets, such as the Policy, are therefore budget-related policies and these policies as well as any proposed amendments thereto needs to be tabled and made public together with and as part of a municipality's annual budget process.

3.2.6 Even if it is assumed that the Policy is not a budget-related policy, it is readily apparent from the Agenda Item and the recommendation on page 587 thereof, that the Policy is aimed at and/or will necessitate an amendment, albeit arguably indirectly³, of the SCM Policy. It is common cause that Consultant's annual budget process for the 2016/2017 year has been completed and that

³ Although it may be argued that the wording in the recommendation refers to replacement of Chapter 5 of the SCM Policy it will substantially be an amendment of the SCM Policy and should Consultant proceed with the recommendation and ultimate approval, it will in effect have amended its SCM Policy without any public input.

the SCM Policy and the current Chapter 5 of the SCM Policy which Consultant intends to replace has been made public and adopted as part of its aforementioned annual budget process.

3.2.7 It is therefore not open to Consultant to either approve the Policy and to amend, albeit by replacement if the wording of the aforementioned recommendation is followed, the SCM Policy outside of its annual budget process in the manner proposed in the Agenda Item without embarking on a further public participation process. Even if one should argue that the extension of the definition of "budget-related policies" in the Budget Regulations is possibly *ultra vires* in this regard, the Budget Regulations remains in force until it is set aside. We are, however, doubtful that a compelling case can be made out for a challenge of the Budget Regulations on this basis having regard to the wide discretion for regulations afforded to the Ministers in terms of sections 20 and 168 of the MFMA.

3.2.8 Even if we are misguided and the approval of the Policy and amendment of the SCM Policy are not required to be dealt with as part of Consultant's annual budget process or do not require a further public participation process, there appears to be a further fundamental issue which militates against the approval of the Policy. On page 586 of the Agenda Item it is stated that further comments from Consultant were received and incorporated into the Policy resulting in the 3rd draft of the Policy, which draft is recommended and tabled for approval. We are not privy to these comments, however, it is clear that these comments did not form part of the Policy when it was published for comment as far back as 2014. Therefore, at the very least, by virtue of these incorporated comments the Policy in its current form and the amendment to the SCM Policy have to be published for comment before Consultant can approve the Policy and replace Chapter 5 of the SCM Policy in the spirit of meaningful public participation.

3.2.9 Lastly, we wish to point out that it has also become apparent during the consultation referred to in 1.4 above that Appendix 1 to the Agenda Item is not the 3rd draft alluded to in the Agenda Item but in fact the 2nd draft. We have not had the benefit of considering the 3rd draft, however, it appears that compared to the draft that was made public in 2014, even the 2nd draft incorporates further amendments which bear no relation to the comment received pursuant to the draft made public in 2014.

4. Conclusion

4.1 In the circumstances, we conclude as follows:

4.1.1 based on our previous views the preference point system in Chapter 7 of the Policy appears in principle to be permissible;

4.1.2 the Policy and the SCM Policy are budget-related policies and these policies as well as any proposed amendments thereto need to be tabled and made public together with and as part of a municipality's annual budget process, which process have already concluded for the 2016/2017 financial year;

4.1.3 even if it is assumed that the Policy is not a budget-related policy, the Policy is aimed at and/or will necessitate an amendment, albeit arguably indirectly, of the SCM Policy;

4.1.4 it is therefore not open to Consultant to either approve the Policy and to amend, albeit by replacement if the wording of the aforementioned recommendation is followed, the SCM Policy outside of its annual budget process in the manner proposed in the Agenda Item without embarking on a further public participation process;

4.1.5 even if the Policy and amendment of the SCM Policy are not required to be dealt with as part of Consultant's annual budget process or do not require a further public participation process, further comments were received from Consultant and incorporated into the Policy, which comments did not form part of the Policy when it was published for comment previously and therefore, at the very least, by virtue of these comments the Policy and the amendment to the SCM Policy have to be published for comment before Consultant can approve the Policy and replace Chapter 5 of the SCM Policy in the spirit of meaningful public participation; and

4.1.6 having regard to the aspects alluded to in 3.1.4 and although time constraints did not permit us to consider and address every aspect, we have serious reservations as to lawfulness of the Policy in its current form.

4.2 We so advise.