



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/2/5

2018-02-09

MAYORAL COMMITTEE MEETING
WEDNESDAY, 2018-02-14 AT 10:00

TO The Executive Mayor, Ald G Van Deventer (Ms)

The Deputy Executive Mayor, Cllr N Jindela

COUNCILLORS PW Biscombe

J De Villiers

AR Frazenburg

E Groenewald (Ms)

XL Mdemka (Ms)

S Peters

Ald JP Serdyn (Ms)

Q Smit

Notice is hereby given that a Mayoral Committee Meeting will be held in the Council Chamber, Town House, Plein Street, Stellenbosch on **Wednesday, 2018-02-14 at 10:00** to consider the attached agenda.

EXECUTIVE MAYOR, ALD GM VAN DEVENTER (MS)

CHAIRPERSON

MAYORAL COMMITTEE MEETING

2018-02-14

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NONE

5.	STATUTORY MATTERS
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5.1	COMMUNITY DEVELOPMENT AND COMMUNITY SERVICES: (PC: CLLR AR FRAZENBURG)
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NONE

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

5.3	ECONOMIC DEVELOPMENT AND PLANNING: (PC: ALD JP SERDYN (MS))
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5.3.1	APPOINTMENT OF A STRATEGIC ADVISORY COMMITTEE: POLICY ON THE MANAGEMENT OF MUNICIPAL AGRICULTURAL LAND
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

NKPA 4

14 February 2018

1. SUBJECT:

APPOINTMENT OF A STRATEGIC ADVISORY COMMITTEE: POLICY ON THE MANAGEMENT OF MUNICIPAL AGRICULTURAL LAND

2. PURPOSE OF REPORT

To obtain Council's approval to appoint an Advisory Committee as a requirement of the approved Policy for the Management of Agricultural Land as published in the Western Cape Provincial Gazette, 27 March 2017.

3. DELEGATED AUTHORITY

Municipal Council.

4. EXECUTIVE SUMMARY

The item seeks council approval for the proposed members (government departments and relevant stakeholders) of the Strategic Advisory Committee as contained in the Policy for the Management of Agricultural Land which was published in the Provincial Gazette on 27 March 2017.

The aforementioned approval will be the final step in the process to establish a mechanism to make vacant municipal agricultural land available through leasing to prospective small farmers.

5. RECOMMENDATIONS

- (a) that Council confirm the positions from the respective organisations to be members of the Strategic Advisory Committee and Operational Committee as proposed in the tables below; and
- (b) that the Manager: LED initiate the process of convening the first committee meeting before end of May 2018.

Strategic Advisory Committee

Organisation	Position	Contact Details
Stellenbosch Municipality	Chairperson: Director: Community and Protection Services	021 808 8437
Stellenbosch Municipality	Director: Planning and Economic Dev.	021 808 8667
Stellenbosch Municipality	Director: Integrated Human Settlements and Property Management	021 808 8493
Stellenbosch Municipality	Director: Strategic and Corporate Services	021 808 8018
Stellenbosch Municipality	Legal Services	021 808 8018
Stellenbosch Municipality	Manager: LED	021 808 8179
Stellenbosch Municipality	Snr LED Officer: Rural Development	021 808 8173
Stellenbosch Agricultural Society	General Manager	021 886 4867
Department of Agriculture	Act: Chief Director: Farmer Support and Dev.	021 808 5103
Department of Rural Development and Land Reform	Deputy Director	079 880 9320
Land Bank	Provincial Manager Commercial Development Banking Division: W. Cape	021 974 2200 / 082 339 1626
Stellenbosch University	Professor and Chairman of the Department Agricultural Economics	021 808 4899
Department of Water Affairs	Deputy Director	021 941 6000
Winelands Water Board	CEO	021 887 6487
CASIDRA	CEO	021 863 5000

Operational Committee

Organisation	Position
Stellenbosch Municipality	Manager: LED
Stellenbosch Municipality	Manager: Municipal Property
Stellenbosch Municipality	Senior Legal Advisor
Stellenbosch Municipality	Environmental Manager
Stellenbosch Municipality	Senior LED Officer: Rural Development

6. DISCUSSION / CONTENTS

6.1. Background

The vision of the third generation Integrated Development Plan (IDP) indicates that Stellenbosch strives to be the “Valley for Opportunities“ and to create a place for “Dignified Living”. Agriculture has been identified as one of the key economic sectors through which economic growth and job creation can be achieved.

Council approved a Draft Policy on the Management of Stellenbosch’s Immovable Property (Council Meeting of 02/09/2014) on condition that a policy is developed for the management of municipal agricultural land.

The Draft Policy was advertised during 12 April – 6 May 2016 for public comment. Comments were received and compiled which served at the Formal Mayoral Committee meeting on the 10th June 2016. Council adopted the Policy on the Management of Municipal Agricultural Land on the 42nd Council meeting, 15 June 2016. (**ANNEXURE A**).

6.2 Discussion

In terms of the adopted Policy on the Management of Municipal Agricultural the proposed composition (clause 4.6.1) and function of the Advisory Committee are detailed. The composition (clause 4.3.2) and function (clause 5.2.2.1) of the Operational Committee (clause 4.6.1) are also contained in the policy. (**ANNEXURE B**).

Council must confirm the appointment of the persons holding the positions (as proposed in the policy) in their respective organisations as members of the Strategic Advisory Committee and the Operational Committee as set out below:

Strategic Advisory Committee

Organisation	Position	Contact Details
Stellenbosch Municipality	Chairperson: Director: Community and Protection Services	021 808 8437
Stellenbosch Municipality	Director: Planning and Economic Dev.	021 808 8667
Stellenbosch Municipality	Director: Integrated Human Settlements and Property Management	021 808 8493
Stellenbosch Municipality	Director: Strategic and Corporate Services	021 808 8018
Stellenbosch Municipality	Legal Services	021 808 8018
Stellenbosch Municipality	Manager: LED	021 808 8179
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Operational Committee

Organisation	Position
Stellenbosch Municipality	Manager: LED
Stellenbosch Municipality	Manager: Municipal Property
Stellenbosch Municipality	Senior Legal Advisor
Stellenbosch Municipality	Environmental Manager
Stellenbosch Municipality	Senior LED Officer: Rural Development

Pending the appointment of the Strategic Advisory Committee for Land Management, applications for land and projects cannot be evaluated, considered and implemented. Amongst others, this Committee may investigate the functional use of land in terms of lease agreements and make recommendations to Council on termination or cession thereof.

Currently the Municipality has 207 hectares of vacant agricultural land that can be utilised for the implementation of small farmer projects. A database has been created where small farmers can register to apply for municipal agricultural land.

This process has commenced in June 2017 and currently there are numerous potential small farmers that have registered and are waiting for the municipality to advertise the vacant agricultural properties. The individual business proposals will be received once the vacant properties have been advertised.

The registration process is in line with the National Department of Rural Development and Land Reform to ensure that the processes are aligned and that projects will financially benefit once approved by the Strategic Advisory Committee.

The Terms of Reference for the Strategic Advisory Committee are enclosed as **ANNEXURE C**.

6.3 Financial Implications

There are no financial implications should the recommendations as set out in the report be accepted.

6.4 Legal Implications

The recommendations in this report comply with Council's policies and all applicable legislation. Refer to **ANNEXURE D**.

6.5 Staff Implications

This report has no staff implications for the Municipality.

6.6 Previous / Relevant Council Resolutions:

None

6.7 Risk Implications

This report has no risk implications for the Municipality.

6.8 Comments from Senior Management:**6.8.1 Director: Infrastructure Services**

No comments requested

6.8.2 Director: Planning and Economic Development

Agree with the recommendations

6.8.3 Director: Community and Protection Services:

No comments requested

6.8.4 Director: Strategic and Corporate Services:

No comments requested

6.8.5 Director Human Settlements and Property Management

No comments requested

6.8.6 Chief Financial Officer:

No comments requested

6.8.7 Municipal Manager:

Agree with the recommendations

ANNEXURES

Annexure A: Council decision: adopted the Policy on the Management of Municipal Agricultural Land at the 42nd Council meeting, 15 June 2016

Annexure B: Policy on the Management of Municipal Agricultural Land

Annexure C: Terms of Reference

Annexure D: Legal Implications

FOR FURTHER DETAILS CONTACT:

<i>NAME</i>	WIDMARK MOSES
<i>POSITION</i>	<i>MANAGER: LED & TOURISM</i>
<i>DIRECTORATE</i>	<i>PLANNING AND ECONOMIC DEVELOPMENT</i>
<i>CONTACT NUMBERS</i>	<i>021 808 8974 / 082 879 8490</i>
<i>E-MAIL ADDRESS</i>	<i>Widmark.Moses@stellenbosch.gov.za</i>
<i>REPORT DATE</i>	<i>8 February 2018</i>

DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT

The contents of this report have been discussed with the Portfolio Committee Chairperson and the Councillor agrees with the recommendations.

ANNEXURE 1

7.6 DRAFT POLICY FOR THE MANAGEMENT OF MUNICIPAL AGRICULTURAL LAND*File number* : 7/P/2*Compiled by* : Manager: Local Economic Development*Report by* : Director: Planning and Economic Development*Delegated Authority* : Council**Strategic intent of item**

<i>Preferred investment destination</i>	X
<i>Greenest municipality</i>	
<i>Safest valley</i>	
<i>Dignified Living</i>	X
<i>Good Governance</i>	

1. PURPOSE OF REPORT

To obtain approval from Council for the Draft Policy for the Management of Municipal Agricultural Land which will govern the management and allocation of municipal agricultural land based on the principles of sustainable development and with the intent of promoting socio-economic transformation in the agricultural sector.

2. BACKGROUND

The vision of the third generation Integrated Development Plan (IDP) indicates that Stellenbosch strives to be the "Preferred Investment Destination" and to create a place for "Dignified Living". Agriculture has been identified as one of the key economic sectors through which economic growth and job creation can be achieved.

Last year, Council approved the Draft Policy on the Management of Stellenbosch Municipality's Immoveable Property (COUNCIL MEETING: 2014-09-02) on condition that a policy is developed for the management of municipal agricultural land.

To this end, an Ad-Hoc Committee was established comprising of representation from all political parties to devise recommendations on the way forward for the management of municipal agricultural land. Consequently, the Ad-Hoc Committee in collaboration with the administration (Property and LED Department) undertook to work together to implement the Council decision.

The purpose of this item is therefore to solicit comments from the Mayoral Committee regarding the policy for the management of municipal agricultural land and provide recommendations for the way forward.

3. DISCUSSION

In May 2014 the Draft Policy on Immovable Property was tabled and approved by Council. The decision was taken by Council that parallel to the process dealing with Immovable Property (overarching policy), an Agricultural /Land Reform Policy should be developed. The overarching policy was advertised for public comments which were incorporated into the draft for final approval from Council. However, the overarching policy will only be approved if it includes an Agricultural Land Reform Policy.

To this end, the Property Management and LED Department decided to work collaboratively on the development of the agricultural policy with the Ad-Hoc Committee providing strategic input including critical issues which need to be taken into consideration and playing an oversight role. In execution of the Council decision, the two departments agreed on the scope of work to be undertaken. It was decided that because of the complexity of such a policy, it would be better if such a policy is developed by competent, experienced service providers. To this end, at the same time in which the Ad-Hoc Committee was established, the administration appointed a group of experienced service providers through the supply chain management process to undertake the development of the policy.

Upon an extensive consultation process with the Ad-Hoc Committee, organised agriculture, government representatives and small farmers, a draft policy was developed based on the scope of work provided. In honouring the scope of work and given the complexity of such a contentious issue, drafting this policy was no easy task. However, the policy provides a balanced approach to guide the municipality in executing its responsibility to manage its property (agricultural land) in a manner that ensures that it achieves the overall developmental objectives of Council.

4. INPUTS BY OTHER DEPARTMENTS / COMMENTS BY RELEVANT DEPARTMENTS

The draft policy was circulated to the relevant departments (Property, Legal, Spatial Planning, Land Use Management, Community Services, Financial Services, Transport and Traffic Services) for comments on 20 October 2015. Since then numerous meetings and consultations occurred, leading to the Draft Policy being tabled herewith. No objections to the submission of this item were received.

The Draft Policy submitted herewith was also vetted by specialists from the University of Stellenbosch in keeping with the MOU and they made a significant contribution in preparing a workable policy.

Subsequent to the resolution as contemplated above, the comments of legal services was obtained and captured whereafter the policy was published for public comments (**APPENDIX 1**).

Thereafter the comments by the public and further inputs of the Manager Property Management were considered by the Municipal Manager, the Director Corporate Services and the Director Planning & Economic Development and where comments were appropriate,

applicable and relevant to the draft Policy for the Management of Municipal Agricultural Land were amended accordingly. (**APPENDIX 2**)

5. CONCLUSION

The Municipality can be pro-active in making land available for the purposes of land reform and ensuring that Council's objectives as the preferred investment destination is achieved through related socio-economic transformation.

RECOMMENDED

- (a) that the Draft Policy for the Management of Municipal Agricultural Land be adopted as Council's Policy for the Management of Municipal Agricultural Land; and
- (b) that the said Policy be published for public notice as Council's Policy.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

MAYORAL COMMITTEE MEETING: 2016-06-10: ITEM 6.1.1

RECOMMENDED BY THE EXECUTIVE MAYOR

- (a) that the Draft Policy for the Management of Municipal Agricultural Land be adopted as Council's Policy for the Management of Municipal Agricultural Land; and
- (b) that the said Policy be published for public notice as Council's Policy.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

42ND COUNCIL MEETING: 2016-06-15: ITEM 7.6

During deliberations on the matter, the DA requested a caucus which the Speaker allowed.

After the meeting resumed, it was

RESOLVED (majority vote)

- (a) that the Draft Policy for the Management of Municipal Agricultural Land be adopted as Council's Policy for the Management of Municipal Agricultural Land; and

(b) that the said Policy be published for public notice as Council's Policy.

Councillor F Adams requested that it be minuted that he supports the item with reservations.

The following Councillors requested that their votes of dissent be minuted:

Councillors DA Hendrickse and M Wanana.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

ANNEXURE 2



Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

**Provincial Gazette
Extraordinary**

**Buitengewone
Provinsiale Koerant**

7749

7749

Monday, 27 March 2017

Maandag, 27 Maart 2017

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*(*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)*

LOCAL AUTHORITY

Stellenbosch Municipality: Policy for Management of Municipal
Agricultural Land 2



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**THE STELLENBOSCH MUNICIPALITY: POLICY FOR
MANAGEMENT OF MUNICIPAL AGRICULTURAL
LAND, PUBLISHED UNDER NOTICE 54490 IN
PROVINCIAL GAZETTE 7744 ON 13 MARCH 2017 IS
HEREBY WITHDRAWN, AS IT WAS PUBLISHED
ERRONEOUSLY**

**POLICY FOR THE MANAGEMENT OF
MUNICIPAL AGRICULTURAL LAND**

STELLENBOSCH MUNICIPALITY

2016

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DEFINITIONS

"acquire" in relation to land includes, but is not limited to acquisition by purchasing, expropriation, exchange, donation or leasing, or as a result of the conclusion of any form of land availability agreement, and 'acquisition' has a corresponding meaning;

"Agricultural Land" means all land not used zoned or developed for urban purposes.

"Asset" means a tangible resource capable of ownership;

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

"Capital assets" in terms of this policy, means land and other immovable capital assets which vests in the Municipality;

"Constitution" means the Constitution of the Republic of South Africa, Act 108 of 1996;

"Contract" means a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of the seller.

"Lease Agreement" meaning a written agreement specifying the rights and duties pertaining to the exclusive use of property for a continuous period of time (30) thirty calendar days or longer, and which sets forth the terms and conditions the use of the property an outright Sales Agreement.

"Council" means the Council of the Stellenbosch Municipality as envisaged in chapter 3 of the Municipal Structures Act (Act No. 117 of 1998);

"Disposal" in relation to a capital asset, includes-

- (a) The demolition, dismantling or destruction of the capital asset; or
- (b) Any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

"Exempted capital asset" means a capital asset which is exempted by section (14)(6) or section 90(6) of the MFMA, as more fully dealt with in Chapter 5 of the MATR that is, an asset that is needed for the provisions of basic municipal services.

"Fair market value" in relation to a capital asset, means the value at which a knowledgeable willing buyer and a knowledgeable willing seller would sell the capital asset in an arm's length transaction;

"Granting of rights to use, control or manage" means where the granting of such rights do not amount to the transfer or permanent disposal of an asset, for example when a right is acquired through a leasing, letting or hiring out arrangement;

"HDI - Historically Disadvantaged Individual" is defined as meaning: "a South African citizen who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993); and/or who is a female; and/or who has a disability, provided that a person who obtained South African citizenship on or after the coming into effect of the interim Constitution, is deemed not to be an HDI"

"Integrated Development Plan (IDP)" means the Integrated Development Plan of the Municipality as envisaged in section 25 of the Municipal Systems Act (Act No. 32 of 2000);

"LED Strategy" means the Local Economic Development Strategy of the Municipality;

"long term" means a period of longer than ten (10) years;

"local agenda 21" principles of sustainable development and environmental preservation;

"MATA" means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in the Government Gazette No 31346 of 22 August 2008.

"MFMA" means the Local Government Municipal Finance Management Act (Act No. 56 of 2003);

"Municipality" means the Stellenbosch Municipality as envisaged in chapter 1 of the Municipal Structures Act;

"Municipal Manager" means the Municipal Manager of the Municipality as envisaged in section 82 of the Municipal Structures Act;

"Supply Chain Management Policy" means the Supply Chain Management Policy of the Municipality as contemplated in chapter 11 of the MFMA and the Supply Chain Management Regulations (No. 27636 of 30 May 2005);

"Transfer" in relation to a capital or subsidiary asset, means transfer of ownership in the asset as a result of a sale or other transaction. This Policy must be read with the Supply Chain Management Policy of the Stellenbosch Municipality and the Municipal Asset Transfer Regulations (R878 in GG No. 31346 of 22 August 2008) issued in terms of the MFMA.

ACRONYMS

CASP	Comprehensive Agricultural Support Programme
HDI	Historically Disadvantaged Individuals
IDP	Integrated Development Plan
LED	Local Economic Development
MATR	Municipal Asset Transfer Regulations
MFMA	Municipal Financial Management Act
NDP	National Development Plan
PACA	Participatory Appraisal of Competitive Advantage
SCM	Supply Chain Management
SDF	<i>Spatial Development Framework</i>

1 THE CURRENT SITUATION

1.1 Introduction

For all South Africans, irrespective of colour or creed, land is an emotive issue. Throughout our history one of the biggest bones of contention has been the right to ownership and use of land. Discriminatory practices in the past, a land reform programme that has not succeeded in transferring significant quantities of urban or rural land since 1994, a wide range of demographic pressures and the fact that most agricultural land is still in the hands of commercial, mostly white, farmers puts pressure on the country's socio-economic systems, and Stellenbosch municipal area is not immune to these pressures. History is replete with examples of what can happen when these pressures are not addressed.

Stellenbosch municipal area and its towns have a very colourful past whose history plays a particularly important role in giving the area the ambiance and character which makes it one of the outstanding tourist attractions in South Africa .

For this reason, it is imperative that the Stellenbosch Municipality have a comprehensive, fair and sustainable policy and implementation strategy for agricultural land reform.

Although land reform is a national competence, the Municipality has a duty to assist with land reform initiatives, but even more importantly, because the Municipality is the largest owner of agricultural land it has a duty to formulate and implement land reform within the bounds of its own competencies and capacity. This is a challenging and formidable task given that the greater portion of this land is held under long term leases that do not do justice to the guiding principles of economic optimization of agricultural land and fair and equitable distribution of what should be available.

Farming in the Stellenbosch Municipal area is heavily skewed towards viticulture. There is of course a close link between wine farming, the beautiful landscape, consisting of both the cultivated grapevines and the natural fynbos, and the tourist experience that the town and its surrounds offer.

As important as wine farming is, however, it is equally important to maximise the potential of the scarce but high quality agricultural land to ensure that appropriate land is set aside for tourism, the retention and conservation of the historical treasures that lie within the borders of the Municipality, and conservation, as these are also integral components of the Stellenbosch experience. The economic development of the area depends on the sensible use of its land resources.

In managing its agricultural land portfolio, a policy for the management of municipal agricultural land based on the principles of sustainability, equality, efficiency, fairness and good governance is required. It is widely acknowledged that policies that facilitate access to land play a significant role in reducing poverty and income inequality. As Stellenbosch Municipality owns large tracts of high value agricultural land, it is evident that it should become involved in the process of land reform.

However, there is very little of this land available since approximately 80% is currently under long term lease agreements. Furthermore, in the absence of a clear policy framework, the process for accessing municipal agricultural land has been very cumbersome in the past.

For this reason, Stellenbosch Municipality, through its Local Economic Development and Property Management Departments has embarked on a process of developing a policy and implementation strategy for the management of municipal agricultural land based on sustainability principles as part of its contribution to sustainable development.

1.2 The historical context

Stellenbosch is arguably one of the most beautiful parts of the country and its climate is conducive to excellent agriculture production. The municipal area comprises of the towns of Stellenbosch, Franschoek, Pniel, Klappmuts and some other smaller hamlets, and the rural hinterland between these settlements. Whilst its economy is primarily built on the financial and business services sectors, the area boasts a vibrant tourism industry. The Winelands are a major tourist draw card and are also well-known for the close linkages to the manufacturing and services sectors.

The area is also home to a vibrant education sector, including a leading world renowned university, and hosts a range of innovation industries, as well as the headquarters of major multinational and national companies.

The municipal area comprises 900 square kilometres with a population of 165,000 people. Some two thirds of agricultural production consists of wine grapes, followed by vegetables and eggs. Most of the arable land is used for the production of wine, and only a small proportion of the region's food is produced locally.

Whilst significant investments have been made in the farming sector, not all are related to productive uses of the land. This has led to fertile land being rendered unproductive, and this in turn has diminished employment opportunities for low skilled workers. The unemployment rate of 26% together with the steady rate of urbanisation adds to the pressure of the availability of jobs in the area.

Stellenbosch municipality is one of the municipalities in the country with the most municipal land under its control; however, due to the agriculture potential of farm land, most of the arable land has been leased to established farmers on long term lease contracts.

The capital investment required for developing and using the land required these long term leases to allow lessees the opportunity to redeem the large investments in water and other infrastructure.

To this end, 80% of the 1,300 ha of municipal land has been taken up by established farmers whilst another 10% is being farmed by new entrants (small farmers) in various widely spread out locations. All other available land is to be made available to be leased to HDI's.

Properties, especially agricultural land (commonage) provide an enormous opportunity for Council to achieve its strategic objectives. Therefore this policy provides for the implementation of a process of identifying agricultural land which is currently available as well as land under long term lease which is not being optimally used and which is aligned to the Spatial Development Framework, LED strategy, the IDP and the objects of local government as set out in the Constitution.

2 SCOPE AND PURPOSE OF THE POLICY

2.1 Scope of the policy

The sound management of the Municipality's agricultural land resources is crucial if it is to be conserved for future generations. The scope of this policy is to set out decision-making guidelines for the management of municipal agricultural land with due regard to the relevant national, provincial and local policy and legislative provisions that govern land ownership, access to land and land use. Furthermore, the aim of the policy is to provide for the core principles, mechanisms, processes and procedures that are necessary to enable the Municipality to manage and administer municipal agricultural land, of which Council is the custodian.

In this regard, the policy allows for social and sustainable economic development and encourages the involvement of individuals, communities and community organizations and regulates the management and use of municipal agricultural land. It is, however, important that land disposal is treated on its own merits although alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority.

2.2 Purpose of the Policy

The purpose of the policy is to:

- 2.2.1 Provide a policy framework for the management of the Council's capital assets with specific reference to municipal agricultural land .
- 2.2.2 Promote the acquisition and use of municipal agricultural land mainly through leasehold preferably by historically disadvantaged individuals as envisaged in section 25(5) of the Constitution.
- 2.2.3 Regulate the use, acquisition and disposal of municipal agricultural land in accordance with the applicable regulations.
- 2.2.4 Ensure that municipal agricultural land held by it, which is not envisaged for or already used for public purposes and/or in the public's interest, be dealt with in a manner that will ensure the greatest benefit to the Council and the community.

- 2.2.5 Ensure current long term lease agreements pertaining to agricultural land are periodically revisited, especially where land is not currently being optimally used and provide for the necessary procedure for the disposal or awarding of rights of such land in terms of the applicable regulations.
- 2.2.6 Ensure fairness, equity, transparency, cost effectiveness and competitiveness.
- 2.2.7 Ensure speedy availability of land to qualifying residents.
- 2.2.8 Provide for a standard process to be followed for the application and allocation of municipal agricultural land in line with the Municipal Financial Management Act (MFMA) and the MATR.
- 2.2.9 Provide for the institutional arrangements for the management and administration of municipal agricultural land and guide the establishment of an intergovernmental and public/private sector body to monitor implementation and provide support.
- 2.2.10 Discourage the direct sale of municipal agricultural land. In this regard, the Council may dispose of land or other immovable capital assets only once it is satisfied that such an asset is not needed to provide the minimum level of basic municipal service and that it has considered fair market value for the asset and the economic and community value to be received in exchange for the asset, in accordance with section 14(2) of the MFMA and Council has complied with subsections (1) to (6) thereof. However, the above must be done with the greatest circumspection as it is imperative to keep a balance between righting the wrongs of the past with the conservation of the Municipality's greatest cultural and economic asset - its historical treasures that gives the town its special ambiance.

3 ALIGNMENT OF THE POLICY: THE NDP AND LEGISLATION

It is important that initiatives such as this are aligned with current government development policies and the realities of the market place. To this end the National Development Plan (NDP) proposals on employment in agriculture and on land reform are presented first. This is followed by a review of the relevant legislation that impacts on the management of agricultural land in Stellenbosch.

3.1 Alignment with the National Development Plan

Chapter 6 of the National Development Plan (NDP) recognizes that the end result of more than a century of racially discriminatory practices, policies and laws regarding access to, and ownership of land in South Africa is a profound inequality, basically between commercial farmers, who are still mostly white, and small scale, often subsistence and sometimes emerging, mostly black farmers. While the exact patterns of land access differ between the provinces, this strong dualism is still the most important characteristic of South Africa's rural areas.

As a result, the NDP identifies strategies to end the dualism in South African agriculture, which distorts the spatial organisation of the country's rural areas and makes access to markets for smaller scale producers all but impossible. The Chapter addresses three sets of strategies:

- a) Rural development and food security,
- b) Employment creation in agriculture and related upstream and downstream industries, and
- c) Land reform. The last of these three is of direct interest to this policy document.

Land reform, as proposed in the NDP, is a three step process that addresses some of the realities of land reform in South Africa as defined in the National Development Plan (NDP).

Step 1:

is to convene an area-based Land Committee with representation by all interest groups such as Departments and agents of the State, farmer organizations, financial institutions including the Land Bank. The first task of this area-based initiative is to decide on a short and long term vision for land reform in their area of jurisdiction: for example, do they want only small-scale farmers, do they want to encourage the production of any particular crop or livestock enterprise, can they identify agro-processing opportunities that are suited to their area, etc.? This vision will guide their selection of prospective farmers, as is shown below. Importantly, the District Committee also considers what farmer support services, from hard infrastructure to farmer support, is required in their area of jurisdiction in order to secure the success of their vision of land reform, and starts to negotiate its provision with the relevant stakeholders. Importantly, the NDP argues that successful land reform requires that the appropriate farmer support services (access to rights in land and to supply chains such as export licences; access to input and produce markets, the appropriate physical and institutional infrastructure, access to inclusive financial services and to research and extension services, et c.) should be in place *ex ante*. Without farmer support services, land

reform will fail. *Ex post* provision of services such as those produced via CASP and RECAP are invariably too little and too late, and are not a substitute for the real thing.

Step 2

is where the Committee identifies 20 per cent of the privately owned commercial farm land in their area of jurisdiction that is available for land reform. In the short term (the first year or so) this will most likely be state land, municipal commons, land already purchased for land reform but not settled, farms that are under severe financial stress and commercial farmers willing to offer land for sale, while in the longer term (around five years), other farms will be identified. The Committee then sets criteria for tenders for the beneficial use of the targeted farm land, and invites tenders that meet these criteria. It is important that this should be a transparent process, with well-reasoned criteria. The criteria could include factors such as the age and formal educational status of the prospective beneficiary, their farming experience, the presence of a mentor, the 'fit' between their business plan and the vision of the District Committee, etc. The successful tenders will immediately be put on a professionally managed performance monitoring system that will be in place for at least the first three years of their new venture.

Step 3:

would usually commence with a scheme to purchase land for land reform. However, in the Stellenbosch case, the land will stay in the possession of the Municipality, at least in the medium run. For this reason, the scheme will commence with the free provision, for the first three years, of farming requisites (seed, fertilizer, agro-chemicals, fuel, maintenance and repairs, packaging, etc.), working capital (machines, equipment, animals, buildings, etc.) and land rental once the successful beneficiaries are identified. To this end current commercial farmers can be partnered with the new farmers, and the Municipality can coordinate with the Provincial Department of Agriculture for access to CASP funding as well as other government agencies where support is already given. It is important, however, to note that the Municipality has no jurisdiction over land reform, and cannot be expected to finance this aspect of the scheme - it can at best voluntarily coordinate the provision of support. Next, if the farmer fails the performance appraisal in the third year, they lose their preferential access to the land. In the case that she or he passes this test, the Municipality is free to increase the length of the lease immediately, or in increments, and phases a market rate of rental in over four years at 25 per cent increments per year. In year 4 (i.e. after 7 years in total) the Municipality may, if it deems this to be in the best interests of the Stellenbosch community, sell the land to the beneficiary, who, under the NDP proposals, will have recourse to the Land Bank for financing of the mortgage. This means that the new farmer will now either pay a normal market rental in the event that the land remains under leasehold or a normal market premium in the event that title is conferred. From this point onwards (i.e. after seven years), the new farmer may exercise all the rights of ownership of the lease or the title deed that accrue to any farmer within the framework of Stellenbosch Municipality policies - they may sell, buy or hire additional land, etc. Finally, the NDP also provides detailed guidelines on how the new farmers can leverage their participation in the programme to access financing in a manner that allows them a fair chance of becoming successful.

Note that the NOP is in many respects not prescriptive and is encouraging of local initiatives to address local problems. In particular, the NOP proposals encourage experimentation with:

- 3.1.1 The criteria by which success in land reform should be measured, whether this be the number of hectares transferred, the number of beneficiaries assisted, the reduction in income inequality in the area, etc. This is something that should form part of the vision for land reform, as discussed under Step 1.
- 3.1.2 The sequence of land reform implementation: In particular, it does not prescribe that a representative, area-based land committee be set up prior to the implementation process. This would especially be the case where the democratically elected local government authority takes the lead. It also does not prescribe that step 1 should precede step 2, etc.
- 3.1.3 Who should participate in the land committee?
- 3.1.4 How the Committee is to arrive at a longer term vision for land reform in its area of jurisdiction, and what that vision should look like.
- 3.1.5 What farmer support services are required, who should provide them, and how should they be provided: as long as they are planned for ex ante, and actually implemented.
- 3.1.6 The nature and origin of land targeted for early implementation of the vision for land reform. In this case, it is municipal land that is not currently encumbered or that will become so in the near future. This could, in other words, form the vanguard of a wider land reform program in the Stellenbosch Municipal area.
- 3.1.7 The criteria by which beneficiaries will be selected: The NOP is, however, prescriptive about performance monitoring of the beneficiaries and about how access for them should be financed (see Steps 2 and 3) in order to improve the prospects of success.

3.2 Relevant legislation

The legislative framework for the management of the Stellenbosch municipal property is contained and governed in a number of laws, including but not limited to:

- The Local Government: Municipal Finance Management Act 2003, Act 56 of 2003 (MFMA), in particular section 14, which deals with disposal of capital assets;
- The Local Government : Municipal Asset Transfer Regulations, 2008 (M ATR), which governs
 - o The transfer and disposal of capital assets by municipalities and municipal entities; and
 - o The granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets;
- Any other applicable legislation, regulations and policies that may govern the disposal, letting or transfer of ownership of municipal land and related activities that are not in contradiction with the primary legislation referred to above.

Further relevant pieces of legislation governing property management include the following:

- Broad Based Black Economic Empowerment Act (Act No. 53 of 2003);
- Constitution of the Republic of South Africa, 1996;
- Extension of Security of Tenure Act (Act No. 62 of 1997);
- Local Government : Municipal Structures Act (Act No. 117 of 1998);
- Local Government: Municipal Systems Act (Act No. 32 of 2000);
- Preferential Procurement Policy Framework Act (Act No. 5 of 2000);
- Property Rates Act (Act No. 6 of 2004);
- Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993).

4 THE IMPLEMENTATION PLAN

4.1 Guiding principles

The following principles will guide the implementation of this Policy:

- 4.1.1 Promote social integration, provide redress to the Council's existing spatial inequalities, build strong and dignified communities and provide adequate infrastructure for easier access to places of work.
- 4.1.2 Optimizing property, in particular municipal agricultural land as a sustainable resource to provide better economic growth and improve agricultural diversity with regard to value adding to fresh produce.
- 4.1.3 Promote land reform by fundamentally changing unequal land ownership patterns through optimization and redistribution of long term leased land, especially that which is lying fallow.
- 4.1.4 Use property as a catalyst for economic development by establishment of agriculture beneficiation nodes.
- 4.1.5 Acquisition of additional municipal agricultural land to further the Municipality's strategic objectives.
- 4.1.6 No rights or usage of municipal owned land shall be sublet or ceded to a third party without the prior written approval of the municipality.
- 4.1.7 Under no circumstances should any mining of land, excavation of soil for selling purposes or any permanent damage to land be allowed.
- 4.1.8 No new buildings shall be permitted on leased municipal land whether long term or not unless with specific agreement of the Council and then for a use and in a style that complements the environment.
- 4.1.9 Utilization of land and other immovable assets is guided by the Municipality's Integrated Development Plan (IDP), the Spatial Development Framework and the Local Economic Development Strategy
- 4.1.10 Create an enabling environment to users of the land to participate meaningfully in agricultural activities to:
 - 4.1.10.1 Promote entrepreneurship
 - 4.1.10.2 Contribute to food production and economic opportunities
 - 4.1.10.3 Leverage the expertise and markets of existing commercial farmers to assist emerging farmers through partnerships and/or shareholding especially new entrants.

4.2 Bill of Rights - Equality

Fundamental human rights are entrenched in Chapter 2, sections 7 to 39, of the 1996 Constitution. *'The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.'*

Rural development is a central pillar of the struggle against unemployment, poverty and inequality. High levels of rural poverty and inequality inhibit the growth of the economy and undermine any efforts to ensure that growth is more equitably shared amongst citizens.

Although agriculture is not a local government mandate, Council has a developmental role to play in facilitating and advancing rural development to bring about sustainable change in the socio-economic situation of the area and to support economic growth. This developmental role is further emphasized in sections 152 and 153 of the South African Constitution.

The objects of Local Government in particular are set out in section 152 of the Constitution, which reads thus:

"{1} the objects of local government are-

- (a) to provide democratic and accountable government for local communities;*
- (b) to ensure the provision of services to communities in a sustainable manner;*
- (c) to promote social and economic development*
- (d) to promote safe and healthy environment and;*
- (e) to encourage the involvement of communities and community;*
- (f) Organization in the matters of local government.*

(2) A municipality must strive with its financial and administrative capacity to achieve the objectives as set out in this sub-section.

{3} The Constitution further determines that local government shall have the developmental duties as set out in section 153 that reads as follows:

'A municipality must-

- (4) 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; and*
- (5) Participate in national and provincial development programs .''*

A reformist policy, particularly incorporating previous disadvantaged groups, is to be implemented in line with the above objectives prescribed for local governments. This policy must at all times include the fair distribution of the land with particular reference to optimal production and allocation to suitable qualifying beneficiaries.

Considering the fact that the bulk of Stellenbosch municipal agricultural land has already been allocated in long term leases, there is limited agricultural land available which can be gainfully applied. A further hindrance is the availability of water without which agricultural land is virtually worthless as far as viticulture and fresh produce is concerned.

It is therefore incumbent on the administration of the Municipality to ensure that the limited land currently available is optimized for the benefit of the community as a whole without taking away from the historical heritage which ensures economic progress.

4.3 Sustainable development

Implicit in the concept of sustainable development is the requirement that a broader view of the Stellenbosch economy is always at the forefront of the process; the town and surrounds are highly dependent on the historical heritage and tourism and agriculture which are the main sources of job creation.

Sustainability in this instance implies the use of land to feed urban residents and to provide for additional economic value, but not to harm the aesthetic appearance and ambiance of the countryside which is the attraction for tourism income.

Due regard for the scarcity of water and prudent use of other resources together with the application of innovative new methods of farming lies at the bottom of these efforts.

Recognition should be given to the wealth of farming experience on the one hand but a lack of business acumen on the other which should direct any training efforts towards access to markets and proper planning for the longer term. It is also essential that new farmers pool their resources to obtain maximum value for their produce.

As the right Partner can add immeasurable value to particularly HDI beneficiaries it is incumbent on the Operational Committee to facilitate, where possible, that such a Partner is introduced and that the required steps is followed to ensure that an equitable arrangement is reached with the HDI not forfeiting more than 49% of the shares.

4.4 Council powers

The Council is permitted to:

- 4.4.1 Reserve and manage immovable property in its ownership for municipal purposes in a manner that supports its strategic objectives and permit such property to be enclosed and cultivated.
- 4.4.2 Reserve and manage immovable property in its ownership for municipal purposes aligned with operational needs.

- 4.4.3 Acquire immovable property and rights in property by way of private treaty, cession, donation and expropriation to support its strategic objectives.
- 4.4.4 Alienate immovable property and rights in property by way of direct sale, public tender, auction and donation.
- 4.4.5 Let immovable property in its ownership on a long term or short term basis by way of direct negotiation or public tender.
- 4.4.6 Acquire, use or dispose of any capital assets owned by the Municipality, unless it is precluded from so doing by law or the conditions under which such immovable assets were acquired by the Municipality.

4.5 Guidelines for land allocation

The Policy prescribes the following guidelines to be followed by Council for the allocation and management of municipal agricultural land within the framework of compliance with the applicable legislation and regulations:

- 4.5.1 In a bid for municipal agricultural land, where bidders are equally competitive; preference will be given to HDI's.
- 4.5.2 In this event cognisance should be taken of Chapter 7 of the Draft policy on the Management of Municipal Immoveable property that deals with "preference points".
- 4.5.3 Special affirmative measures towards HDI's may be applied by the Municipality to ensure fairness in the disposal process of agricultural land in accordance with the Preferential Procurement Regulations.
- 4.5.4 Ensure the protection or advancement of persons, or categories of persons, disadvantaged by previous unfair discrimination.
- 4.5.5 Market forces will always be the point of departure in any land or property transaction and this must be recognised and acknowledged.
- 4.5.6 Preference will be given to bids that support economic development initiatives on a macro scale, including tourism initiatives;

- 4.5.7 May enter into Public Private Partnership agreements but only in accordance with the provisions of Section 120 of the MFMA.
- 4.5.8 Aim to redress past land ownership patterns to reflect the population demographics of the Municipality.
- 4.5.9 Council reserves the right not to dispose of any portion of land.
- 4.5.10 Compliance with the Local Agenda 21 principles of sustainable development and environmental preservation.
- 4.5.11 Council will respect all current ownership and other vested rights to property.

Current long term lease agreements pertaining to agricultural land should be revisited, especially where land is not currently being optimally used, with the aim of achieving socio-economic development, providing access to land for eligible emerging farmers and in fulfilling council's strategic objectives. Local Economic Development should therefore on a continuous basis verify that land allocated on long term leaseholds to established farmers; industry and other bodies is used for the purpose for which it was allocated on a regular basis.

4.6 Institutional & Governance Structure

While the details can be worked out when appropriate, the institutional structuring for the implementation of this draft policy will consist of the following :



Figure 1: Institutional & Governance Structure

4.6.1 Compilation of a Strategic Advisory Committee:

It is suggested that a Committee be established to play a key role in municipal agricultural land administration and management in line with the applicable legislation as explained in section 3. The committee should ideally comprise of:

- The Municipal Manager (or assigned)
- Director: Planning and Economic Development (including officials from LED),
- Director: Integrated Human Settlements and Property Management (including officials from Property Management)
- Senior Legal Advisors of Legal Department;
- *Western Cape Department of Agriculture;*
- Department of Water Affairs
- Winelands Water Board
- Stellenbosch University
- Department of Rural Development and Land Reform
- Special Purpose Vehicle
- Organised stakeholders with formalised relationships, e.g. Agricultural Society
- Any other relevant stakeholder as approved by the Municipal Manager

Guided by the Policy principles as stated earlier, the responsibilities of the Strategic Advisory Committee are varied and include the following:

- Providing strategic land access management and information to Council (among others)
- Changing the existing land ownership patterns whilst respecting and upholding current property rights. This should be undertaken by terminating current leases where municipal agricultural land is not currently being used optimally;
- Ensure the productive and sustainable use of land to attain both household and food security as well as increase agricultural output;
- Provide sound and competent advisory service regarding municipal agricultural land allocations and matters of access;
- Identify where to acquire land from and identify eligible occupants based on specified criteria
- Ensure compliance with the relevant strategic plans, policies and legislation;
- Ensure equitable balance between interests of the public,
- Ensure that inter-departmental and inter-sectorial cooperation and alignment takes place;
- Ensure alignment with National Development Plan, Municipal Integrated Development Plan, Municipal Spatial Development Framework and other relevant development plans;
- Supporting the formulation and implementation of limitations on land holdings and monitor ownership patterns in the Stellenbosch Municipal area ;

Coordinate the municipal agricultural land allocation system to ensure the success of implementing this policy;

4.6.2 Compilation of an Operational Committee

Guided by the Policy principles as stated earlier, the responsibilities of the Operational Committee are varied and include providing land administration and information to the Strategic Advisory Committee. It is recommended that the following departments form part of the Operational Committee:

- Property Management
- Local Economic Development
- Legal Services
- Environmental Management

The functions of this Committee will be to:

- Facilitate partnerships between established and emerging farmers, industry and government to facilitate investment, sustainability and efficiency of farming enterprises.
- Coordinate local support services.
- Receive and review land applications and/or proposals in terms of principles and specified criteria as set out in this policy and the applicable legislation.
- Maintain a database or register of land inventory and conduct a land audit periodically.

4.7 Criteria to obtain access to land

Rural development and land reform are not municipal functions per se; however, rural development has a spatial dimension and is implemented in municipal spaces. Therefore, the role of local government cannot be overemphasized.

As the custodian to relatively large tracts of land, Stellenbosch can make a meaningful contribution to Government's efforts to correct disparities in land use as a result of policies of a previous dispensation. The Municipality has a core responsibility to acquire and avail land, 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.

The Municipality has a further responsibility in terms of acquiring, managing, developing and releasing its land and other immovable assets and 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) should be paramount in all land transactions that the Municipality enters into.

Beneficiaries will be selected from lists compiled from advertising in all the printed media in Stellenbosch. The advertisements will specify the size and type of land available and for which type of farming or land use the land is earmarked. Applicants for land lease must complete a set of documents obtainable from LED which will specify inter alia:

- What documents should be attached to the application (ID's etc.)
- Type of application (Cooperative, Trust or individual Farmer)
- Farming category: Community gardens; emerging farmers; commercial farmers
- Agricultural beneficiation: Development or use of existing or agreed infrastructure for value adding by refinement, bottling, packaging, processing, etc.
- A business plan covering:
 - o Proposed business model
 - o Production viability
 - o Market access
 - o Financial Viability
 - o Support Services
 - o Financial model.
- Further criteria as occasioned by the needs of the specific project, which may include, where appropriate:
 - o A residential requirement (e.g. must have been a resident of Stellenbosch for a period of 10 years or more);
 - o Experience in farming and/or business management at an appropriate level;
 - o A means test income requirement;
 - Monthly cash flow or banking statements
 - Assets owned without encumbrance
 - Assets available but encumbered
 - o Partnership and cooperation with a mentor if required;
 - o Attendance of human development opportunities as prescribed;
 - o Compliance with the policies of the Municipality and other applicable legislation and with the rules and regulations as set out by the Municipality from time to time.
- The criteria and process to be determined by the Municipal Manager and may vary on project to project basis based on the following principles:
 - o Must be a South African citizen
 - o Must be an adult.
 - o Must be of a previous disadvantaged group
 - o Must at least have been a permanent resident of Stellenbosch Municipal Area (minimum 5 years) on a sliding scale.
 - o Must have a proven agriculture track record weighted by the fact that such a person have been employed in an overseeing capacity.
- Supply chain guidelines to be followed.

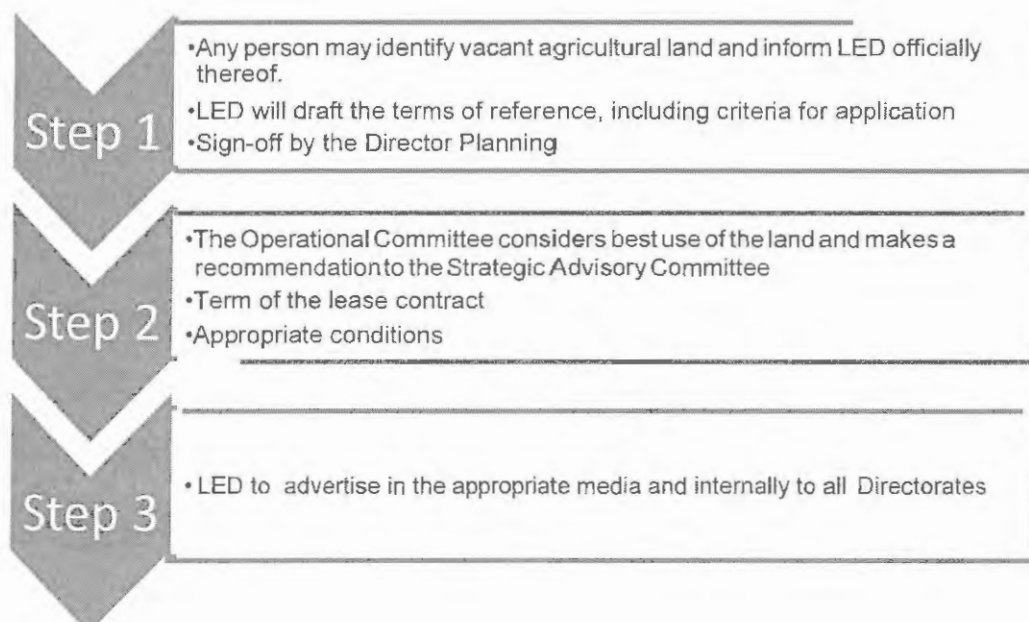
4.8 Exclusions

Land allocation will exclusively be made available for agricultural purposes and beneficiation of locally produced products. Due to the fact that the historical character and rural ambiance is important to maintain the status quo of Stellenbosch as destination of choice which is responsible for an important part of the local economy, all efforts must be made to conserve the natural environment. Unless by special decision of the Municipal Council, no agricultural land will be made available for industrial, residential, special nodal developments or any such developments that may take away from the charisma of the District or reduce farmland as a resource

- No permanent land rights for inefficient land users. Therefore continuous review, evaluation and increased productivity checks will be put in place;
- Immediate exclusion for any fraudulent activities by beneficiaries in application, during process or after allocation resulting in disqualification and prohibition of future participation (of the beneficiary or beneficiary group);
- Ensure land access only to capable, skilled, hardworking groups without farming activities in other regions of South Africa or internationally;
- Discourage speculative and unproductive land use.
- Save with prior approval, the municipal agricultural land may only be used for the purpose for which occupation was granted and purposes regularised by the relevant zoning schemes.

4.9 Process to acquire land or rights on agricultural land

The disposal of agricultural land and the awarding of rights in agricultural land will be dealt with in terms of this policy and the applicable legislation.



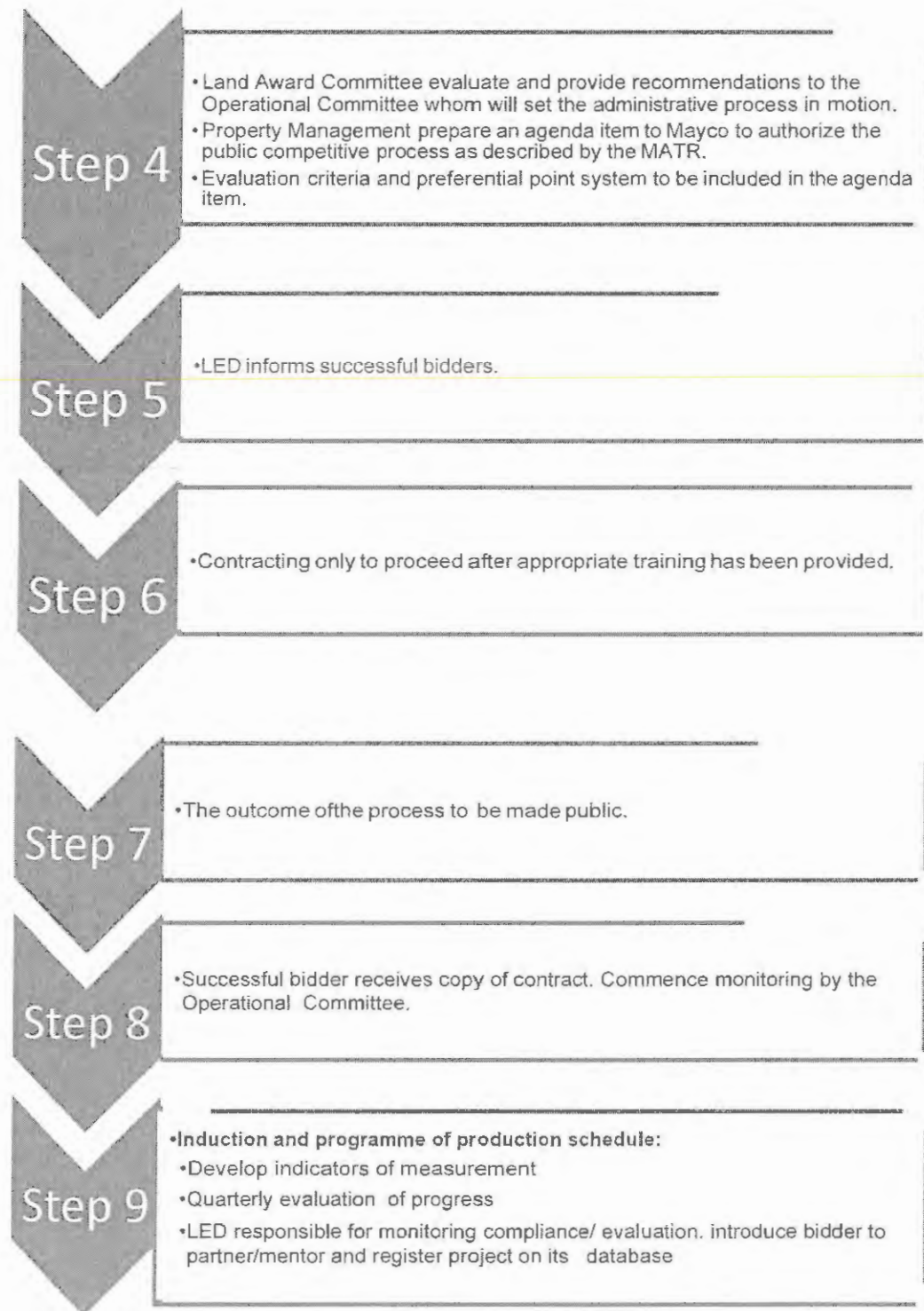


Figure 2: Process to acquire land or rights on agricultural land

4.10 Monitoring and evaluation

The municipality does not have the capacity to monitor and evaluate the progress of agricultural land and the farming practices in general. It is therefore imperative that Partners / Mentors must be found to assist in the process to not only mentor a new generation farmers but also take up the responsibility to oversee proper farming processes that is in the best interest of Stellenbosch.

It will however be in the best interest of Stellenbosch municipality to have its own database of Partners/ Mentors and therefore LED will set a process in motion to identify willing and able persons, with expertise not only in agriculture, but also in other aspects (e.g. beneficiation) relating to farming enterprises.

4.11 Policy Review process

- o This Policy shall come into effect on the date of the Council resolution;
- o This Policy may be reviewed annually and when required by way of Council resolution.

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6 ANNEXURE A: Municipal land under leasehold

6.1 Land currently under long term leasehold

Property description	Size	Lessee	Contract Period
29	40 ha, no water	Vacant	
165/1	0,14 ha, no water	Vacant	
165/1A	10,5 ha, no water	Vacant	
183	1,55ha, no water	Vacant	
183A	35,54 ha, 12,0 ha water	W.S Smit Boerdery (Edms) Bpk	01/04/1994-31/ 03/ 2044
1838	11 ha, 3 ha water	W.S Smit Boerdery (Edms) Bok	01/04/1994-31/03/2044
183C	8,5 ha, 2ha water	W.S Smit Boerdery (Edms) Bok	01/04/1994-31/03/2044
183D	24 ha, 8 ha water	Joretha Boerdery	01/04/1994-31/03/2044
183E	21,84 ha, 7 ha water	Devon Valley Boerdery (Edms) Bpk	01/04/1994-31/03/2044
183F	8,13ha, 3 ha water	Devon Valley Boerdery (Edms) Bpk	01/04/ 1994- 31/03/2044
183G	0,43 ha, No water	Devon Valley Boerdery (Edms) Bpk	01/ 04/1994- 31/ 03/ 2044
183/23	20,5 ha, 8 ha water	W.S Smit Boerdery (Edms) Bpk	01/04/1994- 31/ 03/ 2044
203/2A	4,36 ha, 2 ha water	Devon Valley Boerdery (Edm s) Bpk	01/ 04/ 1994- 31/03/2044
279A	6,8 ha, 5 ha water	Asara Properties(Pty) Ltd	01/04/1994-31/03/2044
2798N	25,3 ha, no water	Vacant	
279D	5 ha, no water	Vacant	
295/3 Remainder Erf 376 Remainder Erf 9190	70,4 ha, 10 ha water	Stellenbosch Golf Club	20/12/ 1994- 31/03/2041
352/2	.0297 ha, no water	Okkie Jooste Kampterrein	24/03/1934-23/ 03/2033
352/2 other	174,8 ha, no water	MTO	24/ 03/1934-23/03/ 2033
368/2	3,5 ha, no water	Vacant	
369/C	3,5 ha, no water	Vacant	
369F	8,5 ha, 2,5ha water	Paradyskloof Boerdery (Edms) Bpk	01/04/1991-31/03/2041
369P	60,5 ha, 25ha water	KWV(Pty) Ltd	01/04/1991-31/ 03/2041
369T	1,2 ha, no water	Paradyskloof Tennis Club	21/ 06/1999-20/06/2041
369U	0,31 ha, 0,1 ha water	Paradyskloof Boerdery (Edms) Bpk	01/ 04/ 1991-31/03/2041
369V	2,84 ha , 0,9 ha water	Paradyskloof Boerdery (Edms) Bpk	01/04/ 1991-31/03/2041
369W	38,1ha, 11,4 ha water	Paradyskloof Boerdery (Edms) Bpk	01/04 / 1991-31/ 03/2041
377A	9,42 ha, no water	Vacant	
3778	16,27 ha, no water	Goedvertrouw (Kirsten)	01/04/2007-31/03/2032
377C	36 ha, 10 ha water (Originally 39,4ha see erf 9190)	J.P.Roux & Son	01/09/1999-31/03/2041
Lease Area 2 of over Rem Erf 9190 (Originally part of 377 C)	3,4 ha, no water	J.P.Roux & Son	01/09/1999-31/03/2041

Lease area 1 over Rem Farm 377 (Originally	16,2241 ha, 12 ha water	Blaauwklippen Agricultural Estate	01/09/ 1999-31/03/2041
Portion 13 of 491/1	11,36 ha, 5 ha water	Spier Holdings (Pty) Ltd (Newshelf 31 (Pty) Ltd	01/04/1999-31/ 03/ 2041
502AA	11,1ha, 6 ha water	Spier Holdings (Pty) Ltd (Newshelf 31 (Pty) Ltd	01/04/1999-31/03/2041
502AB	17,5 ha, 9 ha water	Spier Holdings (Pty) ltd (Newshelf 31 (Pty) ltd	01/ 04/ 1999-31/ 03/ 2041
502AC	3,5 ha, 1 ha water	Roulou Boerdery Trust	01/ 04/ 1999-31/03/2041
502AD	8 ha, 3 ha water	Roulou Boerdery Trust	01/ 04/ 1999-31/03/ 2041
502AE	27,4 ha, 8 ha water	Roulou Boerdery Trust	01/04/1999-31/03/2041
502AF	14,1 ha, 4 ha water	Roulou Boerdery Trust	01/ 04/1999-31/03/2041
502AG	13,3 ha, 4 ha water	Roulou Boerdery Trust	01/ 04/ 1999-31/03/2041
502AH	7,2 ha, 2 ha water	Roulou Boerdery Trust	01/04/ 1999-31/03/2041
502AJ	10,7 ha, 3 ha water	Rou lou Boerdery Trust	01/04 / 1999-31/ 03/ 2041
502AK	22,5 ha, 8 ha water	Poker Hill Vineyards (Pty) Ltd	01/ 04/ 1999-31/03/ 2041
502AL	13,5 ha, 4 ha water	Poker Hill Vineyards (Pty) Ltd	01/04/ 1999-31/03/ 2041
502AM	8,56 ha, 3 ha water	Vacant	
502AN	28,5 ha, 9 ha water	Paul Roos Boerdery (Edms) Bpk	
502AP	7 ha, 2 ha water	Vacant	
502AQ	8 ha, 3 ha water	PaulRoosBoerdery(Edms)Bpk	
502AR	4 ha, 1 ha water	Paul Roos Boerdery (Edms) Bpk	
502AS	26,5 ha, no water	H. W Gebers	
502AU	8,9ha, no water	Vacant	
205AW	6 ha, no water	Vacant	
502AX	6,96 ha, 2,3 ha water	R Myburgh Boerdery	01/04/1991-31/03/2041
502AY	4, 28 ha, 1,3 ha water	H.C Myburgh Boerder y	01/ 04/ 1991- 31/ 03/2041
50288	18,84 ha, 6 ha water	Roulou Boerdery Trust	01/04/1991-31/03/2041
502BC	8,5 ha, 2,5 ha water	H.C Myburgh Boerder y	01/ 04/1991- 31/03/2041
50280	8,5 ha, 3 ha water	Roulou Boerdery Trust	01/ 04/1991- 31/03/ 2041
502BE	11 ha, 4 ha water	Roulou Boerdery Trust	01/04/1991- 31/03/2041
502BFN	15,5 ha, 6 ha water	Vacant	
502BH	65,5 ha, 26 ha water	Organic Small Farm Holding Trust	01/04/1991-31/03/2041
505BJ	5,9 ha, 3 ha water	Limberlost Berry Farm	01/0 4/ 1991- 31/03 / 2041
5028K	72 ha, 22 ha water	Roulou Boerde ry Trust	01/ 04/ 1991-31/ 03/ 2041
502BL	12 ha, 4 ha water	Medi-Prop cc	01/04/1991-31/03/2041
502BM	5,35 ha, 1 ha water	Vacant	
502E	15,5 ha, 5,2 ha water	Gielie Hanekom Trust	01/ 04/ 1991-31/03/2041
502L	28,2 ha, 2 ha water	Stellenbosch Vliegvel d Maatskappy	01/04/1991-31/03/202 1
502M	5,1 ha, 3 ha water	Higgs Trust (Pty) Ltd	01/ 04/ 2002- 31/03/ 2041
502N	4,2 ha, 1,5 ha water	Stellenbosch District Riding Club	01/04/1991-31/03/202 1
502R	28, 8 Ha, 8 ha water	Roulou Boerdery Trust	01/04/1991-31/03/2041
502S	23,6 ha, 7,9 ha water	Gielie Haneko m Trust	01/04/ 1991- 31/ 03/ 2041
502T	11,3 ha, 3,8 ha water	Gielie Hanekom Trust	01/ 04/1991-31/ 03/2041
502V	21,6 ha, 8 ha water	Vacant	
502W	9 ha, 3 ha water	Gielie Hanekom Trust	01/ 04/ 1991- 31/ 03/2041
502X	7,8 ha, 2 ha water .6855ha - sub -leased	Die Groothoek Trust Sub-lease of 6855 ha to Stellenbosch Restaurant CC	01/ 04/ 1991- 31/03/ 2041
527A	2 ha, lha water	G.JC Norval	

527E	14,78 ha, 7 ha water	Blaauwklippen Agricultural Estate	01/09/1999-31/03/2041
527F	53,5 ha, 8 ha water	Redlex 421(Edms) Bpk	01/04/1991- 31/ 03/ 2041
527J	28,3 ha, 9 ha water	Nietbegin Boerdery	01/04/1991- 31/ 03/ 2041
528A 529(529A	20,3 ha, 2 ha water	Mountain Breeze Caravan Park cc	01/ 04/1991-31/03/2021
5298	51,7 ha, 25 ha water	P.G Du Toit Boerdery	01/ 04/ 1991- 31/ 03/2041
619/1	17,4 ha, 9 ha water	Redlex 421 (Edms) Bpk	01/04/ 1991- 31/03/2041
1024/1 Franschoek	26 ha c/water	Vacant	
1135 /1	43,7 ha, no water	Franschoek Trust	11/ 08/ 2012
Lease area 1 over Rem Erf 9190 (Originally 377F)	127,2 ha, no water	Theewater Bevaria	20/ 06/ 2032
Total leased	6,418 ha, no water	Blaauwklippen Agricultural Estate	01/09/1999-31/03/2041
Total vacant	1416.79ha		
Total	286.34 ha		
	1703.13 ha		

6.2 Current vacant land

Property Description	Size	Total	Water
29(26)	40 ha No water	40	
165/1A	10.5 ha No water	10.5	
165/ I B	0.14 ha No water	0.14	
2798N	25.3 ha No water	25.3	
368/2	20ha	20	
369/C	3.5 ha No water	3.5	
377A	9.42 ha No water	9.42	
502AM	8.56 ha 3 ha water	8.56	3
502AP	7 ha 2 ha water	7	2
502AU	8.9 ha No water	8.9	
502AW	6 ha No water	6	
502BFN	15.5 ha 6 ha c/water	15.5	6
502BM	5.35 ha 1 ha water	5.35	1
502V	21.6 8 ha water	21.6	8
619/1	26 ha c/water	26	
Total		207.77 Ha	20 Ha

6.3 Stellenbosch municipal land under Empowerment projects

Farm Number	Size (approximate)	Owner	Water available
377c	36 Ha	Eerste Oorkant Boerdery	10 ha water
2/9190	3.4 Ha	Eerste Oorkant Boerdery	No water
502AX	TBC	TBC	TBC
502AY	TBC	TBC	TBC
502BC	TBC	TBC	TBC
502BH	65 Ha	Organic Small Farm Holding Trust	26ha water
502BL	12 Ha	Medi Prop	4ha water
502M	5.1 Ha (60%)	Higgs Trust (Pty) Ltd J de Munk	3 ha water
527F	53.5 Ha (51%)	Redlex 421 (Edms) Bpk	8ha water
529B	17.4 Ha (51%)	Redlex 421 (Edms) Bpk	9ha water
Total	212.16 Ha		

ANNEXURE 3

**STRATEGIC ADVISORY COMMITTEE: MANAGEMENT OF
MUNICIPAL AGRICULTURAL LAND - STELLENBOSCH
MUNICIPALITY**

Terms of Reference

1. Goal

- 1.1. To assist the Stellenbosch Municipality in its efforts to identify, review, discuss and make recommendations to Council on agricultural and agricultural related issues.

2. Mandate

- 2.1. The Stellenbosch Municipality Agricultural Land Advisory Committee is a volunteer advisory committee established by the Municipality of Stellenbosch in accordance with these Terms of Reference. Committee members are bound by these Terms of Reference and are ultimately responsible to the Stellenbosch Municipality Council.

3. Scope of Committee Activities

- 3.1. The scope of the Municipality Agricultural Land Advisory Committee shall include activities such as:
- a) To assist the Municipality in the implementation of its agricultural goals, objectives and policies;
 - b) Provide advice, comments and recommendations on issues and concerns of farmers and agricultural organizations;
 - c) Identify key issues of concern for farmers which can be addressed by municipal government;
 - d) Provide advice, comments and recommendations on alternative solutions, approaches, plans or studies dealing with agriculture and related rural issues which are within the responsibilities and financial capabilities of the Municipality;
 - e) Monitor and report on changes within the agricultural industry including agricultural land inventory;
 - f) Identify and implement programs which encourage public awareness, land stewardship and education of agricultural and rural issues;
 - g) Inform individuals, groups and businesses of the Municipality's agricultural goals, objectives and policies;
 - h) Provide advice, comments and recommendations as requested by the Stellenbosch Municipal Council on miscellaneous matters as they arise; and

- i) Consult with other community groups and committees on issues of mutual interest.

4. Committee Composition

- 4.1. The Stellenbosch Agricultural Advisory Committee shall consist of 14 members from various interest group, agencies or organizations as envisaged in the *Stellenbosch Municipality's Policy for the Management of Municipal Agricultural Land*, published under notice 54490 in the Provincial Gazette 7744 on 17 March 2017. These voluntary members will be appointed by Council for a term of 5 (5) years to coincide with the term of Council. A majority of the membership ten (10) shall constitute a quorum.
- 4.2. Members of the Committee are appointed as voluntary representatives of a particular or as members at large, as follows:

Organisation	Position	Proxy
Stellenbosch Municipality	Municipal Manager	Director/Manager
Stellenbosch Municipality	Director: Planning and Economic Development	Manager
Stellenbosch Municipality	Director Integrated Human Settlements	Manager
Stellenbosch Municipality	Vacant	Manager
Stellenbosch Municipality	Legal Advisor (Stellenbosch Municipality)	Manager
Stellenbosch Municipality	Widmark Moses	Delegate
Stellenbosch Municipality	Melissa Nel	Delegate
Stellenbosch Agricultural Society	Angelika van der Merwe	Delegate
Department of Agriculture	Mogale Sebopetsa	Delegate
Department of Rural Development and Land Reform	Vanessa Frantz	Delegate
Land Bank	Noko Masipa	Delegate
Stellenbosch University	Nick Vink	Delegate
Department of Water Affairs	Derril Daniels	Delegate
Winelands Water Board	Quinton Brynard	Delegate

- 4.3. The members shall possess expertise, experience and a willingness to devote the necessary time to the Committee. Members will be selected to provide an appropriate representation of various farming interests

- 4.4. The Municipal Manager or her secondi will be the Chair and a Vice-chair shall be appointed by the Committee and must be a member of the Committee.
- 4.5. A recording secretary shall be the duty of the Local Economic Development Department. Duties of the recording secretary shall include the taking of meeting minutes, and providing these minutes to the Municipal Manager for Council's information.

5. Meetings and Reporting

- 5.1. The Agricultural Advisory Committee shall determine the location and frequency of meetings. Committee members, if absent for three consecutive meetings *without reason being given at least 24 hours in advance of the meeting*, shall be considered to have lost interest in the Committee and will be informed of his or her being removed from the Committee. If any member is dropped from the Committee, or resigns from the Committee, the Municipal Manager shall be informed, and a new member shall be appointed by Council.
- 5.2. The Committee, by resolution or through its Chair, may invite any individual, interest group agency or staff to appear at a meeting as a delegation or to submit or present information that will assist the Committee in carrying out its mandate.
- 5.3. The Committee will be required to meet once every three months according to pre-determined dates as set out by Council.

6. Communicating with the Municipality

- 6.1. Minutes of the Committee shall be submitted by the recording secretary to the Director Planning and Development for inclusion in the Council agenda for information.
- 6.2. Recommendations from the Committee shall be submitted to the Director Planning and Development for inclusion in the Council agenda for direction.
- 6.3. The Council representative shall be the liaison person between the Committee and Municipal staff.

ANNEXURE 4

Melissa Nel

From: Karien van der Berg <karien@rufusdercksen.co.za>
Sent: 17 March 2017 03:53 PM
To: Melissa Nel; Widmark Moses
Cc: claudia@rufusdercksen.co.za
Subject: [EX] APPOINTMENT OF ADVISORY COMMITTEE AND OPERATIONAL COMMITTEE FOR IMPLEMENTATION OF MANAGEMENT OF MUNICIPAL AGRICULTURAL LAND POLICY

Dear Melissa, Widmark

1. We confirm your instruction that the authors of the policy used the term committee merely for its general meaning describing a group of people appointed for a specific function and not with a specific statutory meaning in mind.
2. Furthermore, the Council has already approved the appointment of the committees as part of the policy with the adoption of the policy on 15 June 2016.
3. Accordingly there are no considerations of a legal nature relevant at this point given the above.

Kind regards,

Karien van der Berg

Rufus Dercksen Attorneys

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Assisted by: K Hanekom B.A. LLB; K van der Berg B.Proc. LLB; N Müller LLB

Candidate Attorney: C van Coller LLB; I Burger LLB.

CONFIDENTIALITY NOTICE

5.3.2	IDENTIFICATION OF LAND FOR EMERGENCY HOUSING
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

D496

Mayco Meeting - 2018-02-14

1. SUBJECT:

IDENTIFICATION OF LAND FOR EMERGENCY HOUSING

2 PURPOSE

A report identifying land for emergency housing served before Council on 2017-10-25: ITEM 7.3.2. The item is attached for reference purposes as **APPENDIX 1**.

At the meeting it was resolved to arrange for a special workshop to discuss the issues contained in the report.

The purpose of this report is to provide feedback of the workshop, to resubmit the agenda item as per paragraph (c) of the decision and to propose a way forward.

3. DELEGATED AUTHORITY

Municipal Council.

4. EXECUTIVE SUMMARY:

WORKSHOP RE EMERGENCY HOUSING

Council resolved at the meeting of 2017-10-25: ITEM 7.3.2

- (a) that in order to understand and agree on the uncertainties (as listed in paragraph 7 of the report), it is proposed that a workshop be held amongst the relevant municipal directorates and Ward Councillors, to:
 - (i) discuss, agree and formulate a response to the questions listed in paragraph 7;
 - (ii) determine criteria for the selection of suitable emergency housing sites;
- (b) That the Director: Planning & Economic Development be mandated to coordinate the aforementioned workshop; and
- (c) That after the workshop envisaged in (a) above, the item be resubmitted to Council for consideration.

Subsequent to the above resolution a workshop was held on Monday 13 November 2017 in Council Chambers. At the workshop it was agreed that councillors, and particularly ward councillors, will identify suitable land for emergency housing within their wards and that the land so identified will be brought under the attention in writing to the Speaker within 14 days of the workshop.

No proposal was received during this period or since the workshop. Hence no new land for emergency housing was included in this report.

5. RECOMMENDATIONS

- (a) that the land identified in the report attached as **APPENDIX 1** be included for emergency housing purposes in the MSDF;
- (b) that the directorate Planning and Economic Development continues with the process to determine the magnitude of and need for emergency housing and subsequently the extent of land required to provide an adequate response to emergency housing;
- (c) that other possible appropriate sites also be included in the MSDF; and
- (d) that the Director: Planning & Economic Development be mandated to proceed with the process to rezone these properties for emergency housing purposes.

6. DISCUSSION / CONTENTS

6.1 FINANCIAL IMPLICATIONS

Obtaining the appropriate land use rights for identified land will have a financial impact as the land has to be rezoned and serviced to an agreeable standard. Depending on the size, location and state of the land identified, this process will entail obtaining environmental and/or heritage authorization and vigorous public participation.

No funds are currently available to undertake such applications. Financial implications will need to be dealt with in the upcoming financial cycle.

6.2 LEGAL IMPLICATIONS

The municipality is under an obligation to provide housing opportunities for the community and particularly to address emergency housing needs.

Planning legislation makes provision for a local authority to rezone and service land for the required use. The Spatial Planning and Land Use Management Act prescribe the legal process to be followed in order to obtain the appropriate land use rights which Council will have to adhere to during the process.

6.3 CONCLUSION

Dealing with emergency housing effectively is complex and difficult due to conflicting and often incommensurable development imperatives required of local governments grappling with addressing the emergency needs (of mostly poor people) and the long-term development of sustainable human settlements. The responsibility to build efficient and investment-friendly cities and to address other very relevant developmental concerns may result in a lack of alignment of urban policy.

Including and integrating emergency housing as part of the Spatial Development Framework will go a long way to achieve a proactive approach to providing such assistance.

However, to enable the inclusion of emergency housing and in order to make it an integral part of urban policy it is necessary to fully understand what constitutes “emergency housing” and what the response of the municipality should be planning

for it. Agreement amongst all role-players, including the broader community, is essential to obtain a focused approach in dealing with the matter once and for all.

7. ANNEXUTES

Appendix 1: Identification of land for Emergency Housing Assistance Policy: ITEM 7.3.2, 2017-10-25

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Appendix 1

IDENTIFICATION OF LAND FOR
EMERGENCY HOUSING: ITEM 7.3.2,
2017-10-25

7.3.2	IDENTIFICATION OF LAND FOR EMERGENCY HOUSING: PHASE 1
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1. PURPOSE OF REPORT

To inform Council on the processes followed to date with the identification of land for emergency housing in the WC024 municipal area; to propose a way forward to finalise the process for identifying appropriate land; and to gain authorisation for a workshop with Council regarding the matter.

2. BACKGROUND

Evictions in terms of the Extension of Security of Tenure Act, No. 62 of 1997 (ESTA) and other relevant legislation have increased over the past few years. Stellenbosch Municipality has received a significant number of notices for eviction. Council has a constitutional obligation to provide temporary relief to people in urban and rural areas who find themselves in emergency situations.

As was recently evident from the devastating fires in the Southern Cape and flooding on the Cape Peninsula it is clear that the term "emergency housing" does not relate only to evictions of the poor in communities, but a variety of mostly unforeseen incidents can create an unplanned need for emergency housing. It is predicted that climate change will contribute to a significant increase in the likelihood that disasters such as veld fires, flooding, droughts, tornadoes, hailstorms, extreme heat etc. will occur more frequently and potentially with greater vigour.

For the municipality to be in a position to render assistance effectively it has to plan for such eventualities (proactive) and be ready to assist once the need was identified (reactive). At the moment appropriate located land, zoned correctly and serviced to an acceptable standard is lacking and hampers the process of assisting those in need speedily. Notwithstanding the aforementioned the municipality, when and where possible, should seek to take preventative measures and should avoid using policies indiscriminately or in a manner that may incentivise negligence.

Section 26 (1) and (2) of the Constitution of the Republic of South Africa, (Act 108 of 1996) compels the municipality to provide for adequate housing or take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right to have access to adequate housing.

13TH COUNCIL MEETING: 2017-10-25: ITEM 7.3.2

RESOLVED (majority vote)

- (a) that in order to understand and agree on the uncertainties (as listed in paragraph 7 of the report), it is proposed that a workshop be held amongst the relevant municipal directorates and Ward Councillors, to:
 - (i) discuss, agree and formulate a response to the questions listed in paragraph 7;
 - (ii) determine criteria for the selection of suitable emergency housing sites;

-
- (b) that the Director: Planning & Economic Development be mandated to coordinate the aforementioned workshop; and
- (c) that after the workshop envisaged in (a) above, the item be resubmitted to Council for consideration.

Councillor F Adams requested that his vote of dissent be minuted.

Meeting:	13 th Council: 2017-10-25	Submitted by Directorate:	Economic Development & Planning Services
Ref No:	17/P/4 & 17/4/3	Author:	Manager: Spatial Planning
Collab:	544596	Referred from:	Mayco:2017-10-11

APPENDIX 1

<p style="text-align: center;">STELLENBOSCH MUNICIPALITY REVISED EMERGENCY HOUSING ASSISTANCE POLICY</p>

1. INTRODUCTION

The Municipality recognises that it has a shared obligation in terms of, among others, section 26(2) of the Constitution of the Republic of South Africa, 1996, Act 108 of 1996 (the Constitution) to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to have access to adequate housing.

The Municipality further recognises its shared obligation to assist persons who are destitute, in desperate need and crisis situations.

In fulfilment of these obligations the Municipality must endeavour to have a coherent program or policy in place within its available resources to assist persons who are destitute, in desperate need and crisis situations.

This Policy is implemented in furtherance and fulfilment of the Municipality's shared obligations in terms of the Constitution, other relevant legislation, related statutory instruments and case law to provide temporary assistance to persons who are destitute and in desperate need and/or crisis situations and to lay down guidelines in this regard.

The principles outlined in this Policy will be incorporated into the housing strategy/plan of the Municipality.

The Municipality in terms of this Policy aims to express itself on only emergency housing assistance which is a facet of the Housing Plan of Stellenbosch Municipal Council. It is thus clear that this policy of the National Housing Code only governs provision of housing in emergency circumstances described in Chapter 12, which is not tantamount to the progressive realisation of housing for all inhabitants.

2. AIMS OF THE POLICY

This Policy seeks to establish a basis for the implementation of all relevant and applicable legislation case law and statutory instruments which is utilised in the decision making process on the provision of emergency housing.

The aim is to provide temporary aid and assistance in the form of basic municipal engineering services and/or shelter in emergency situations as elaborated upon hereunder to persons who are destitute and in desperate need and/or crisis situations.

Note that the provision of this type of assistance does not detract from the municipality's overall objectives in terms of section 26 of the "Constitution," and does not promote queue jumping in that the provision of this type of temporary assistance is limited to emergencies.

3. DEFINITIONS

In this Policy, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings¹:

- | | |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 Basic municipal engineering services | Limited to potable water services, sanitation services, access roads and open lined storm water systems provided on a shared base in a dense settlement pattern; |
| 3.2 Beneficiaries / Victims | Persons who are resident in the jurisdiction of the municipality and find themselves in an emergency and who are desperately poor, homeless and unable to address their housing emergency from own resources or from other resources such as willing relatives or friends; |
| 3.3 Budget | The allocation of funds for emergency housing in any given financial year. These funds may differ from year to year; |
| 3.4 Emergency sites | Pieces of land in municipal ownership identified by Council from time to time for the provision of emergency housing. |
| 3.5 Emergency / Disaster | Disaster as contemplated under the Disaster Management Act (57 of 2002); Emergency as contemplated under the Disaster Management Act and called by the Disaster Management Department of Stellenbosch Municipality; |

¹ All definitions obtained and where necessary modified from WordWeb (<http://www.wordweb.info/>)

3.6 Eviction / (Orders)	An order granted by competent Court for an eviction. This document distinguishes between a formal eviction and an informal eviction, as explained in clause 3.9 and 3.10 hereunder;
3.7 Evictee	Person expelled or ejected without recourse to legal process or forced to move out by a legal process;
3.8 Evictor	Person expelling or ejecting another without recourse to legal process or forces another to move out by a legal process;
3.9 Formal eviction	Eviction in accordance with an eviction order from a competent Court;
3.10 Informal eviction	Persons are put out on the street without any Court proceedings or a judgement or an eviction order from a competent Court. (These evictions usually occur over weekends or at night)
3.11 Informal dwelling ²	A structure that is constructed with wood, iron, plastic or a combination of these materials, which does not meet the standards of safety in building and does not comply with the National Building Regulations. These structures can be found in backyards or in informal settlements;
3.12 Municipality	Stellenbosch Municipality;
3.13 Meaningful engagement	Municipality and representatives from both parties in the eviction matter negotiate the terms under

² Modified. Original defn available at www.capetown.gov.za/evicta/documents/informal%20Dwellings.htm
Accessed 8 March 2015

	which the court judgement must be executed;
3.14 Mediation	The act of intervening for the purpose of bringing about a settlement.
3.15 Policy	The policy set out in this document as amended from time to time;
3.16 Prescribed form	The application form/affidavit attached to this Policy for emergency housing assistance APPENDIX 1 ;
3.17 Professionally declared	The professional opinion and recommendation of a consultant or an official of Council who specialise in that field of expertise;
3.18 Relocation	The removal of people by the municipality from their place of residence to a suitable location in accordance with the prescribe(s) of various Court judgements;
3.19 Report(s) to Court	Municipality prepares a report for Court setting out the terms for meaningful engagement / mediation and/or the provision of alternative accommodation;
3.20 Settlement Agreement	Settlement Agreement is the agreement reached between the parties and is submitted as part of the Court proceedings;
3.21 "Surprise" Eviction	Where the evictee fails to inform the Municipality timeously of a formal eviction or when an informal eviction occurs over night or during a weekend without prior knowledge by the Municipality of said eviction;
3.22 Temporary Relocation Area	An area identified by Council where the persons affected by emergencies can be

accommodated on a temporary basis.

In this Policy words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*.

4. SCOPE, APPLICATION AND CRITERIA

This Policy will only apply to persons who are destitute and who find themselves in desperate need and/or crisis situations, such situations being referred to and defined below as "Emergencies", and only these persons will qualify for temporary emergency housing assistance (TEPA) under this Policy.

In the event of persons facing eviction, an eviction order must first be obtained from a competent Court before such persons will be assisted under this Policy.

The purpose of this Policy is ***not to:***

- assist landowners, in the absence of legal eviction proceedings, with the provision of alternative accommodation for occupiers of their properties;
- provide alternative accommodation to occupiers where such responsibility is on the landowners;
- Promote or foster queue-jumping by persons not listed on the Municipality's ordinary waiting list for housing.

Assistance provided under this Policy will only be of a temporary nature, and is not intended to provide a permanent solution and should not be considered as such.

4.1 Emergencies

An emergency exists when the Municipality, after application by the affected persons on the prescribed form, has confirmed that the persons affected qualify as a "Beneficiary". Table 1 (below) is a non-exhaustive list of possible categories of emergency.

Table 1: Categories of Emergency

Categories of Emergency		Competent Authority / Department / Directorate
4.1.1	Destitute and homeless as a result of a declared state of disaster , where assistance is required, including cases where initial remedial measures have been taken in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002) by government, to alleviate the immediate crisis situation;	1. Disaster Management
4.1.2	Destitute and homeless as a result of a situation which is not declared as a disaster / emergency, but destitution is caused by extraordinary occurrences such as floods, strong winds, severe rainstorms and/or hail, snow, devastating fires, earthquakes and/or sinkholes or large disastrous industrial incidents;	2. Disaster Management
4.1.3	Or live in professionally declared dangerous conditions such as on land being prone to dangerous flooding, or land which is dolomitic, undermined at shallow depth, or prone to sinkholes or an a landfill site;	1. Planning & Economic Development 2. Engineering Services
4.1.4	Or live in the way of engineering services or proposed services such as those for water, sewerage, power, roads or railways, or in reserves established for any such purposes;	1. Engineering Services
4.1.5	Or are legally evicted or threatened with imminent eviction in accordance with a final eviction order from a competent Court from land or from unsafe buildings, or are in unsafe situations where based on professional advice warrants proactive steps ought to be taken to forestall such consequences;	1. Human Settlements in consultation with Legal Services
4.1.6	Or whose homes are demolished , or who are in situations where proactive steps ought to be taken to forestall such consequences;	1. Planning & Economic Development 2. Disaster Management 3. Law Enforcement
4.1.7	Or are displaced or threatened with imminent displacements as a result	1. Law Enforcement 2. Disaster Management

	of a state of civil conflict or unrest, or are in situations where pro-active steps ought to be taken to forestall such consequences;	3. Planning & Economic Development 4. Human Settlements in consultation with Legal Services
4.1.8	Or live in professionally declared conditions that pose immediate threats to life, health and safety and require emergency assistance; or	1. Engineering Services 2. Planning & Economic Development 3. Disaster Management

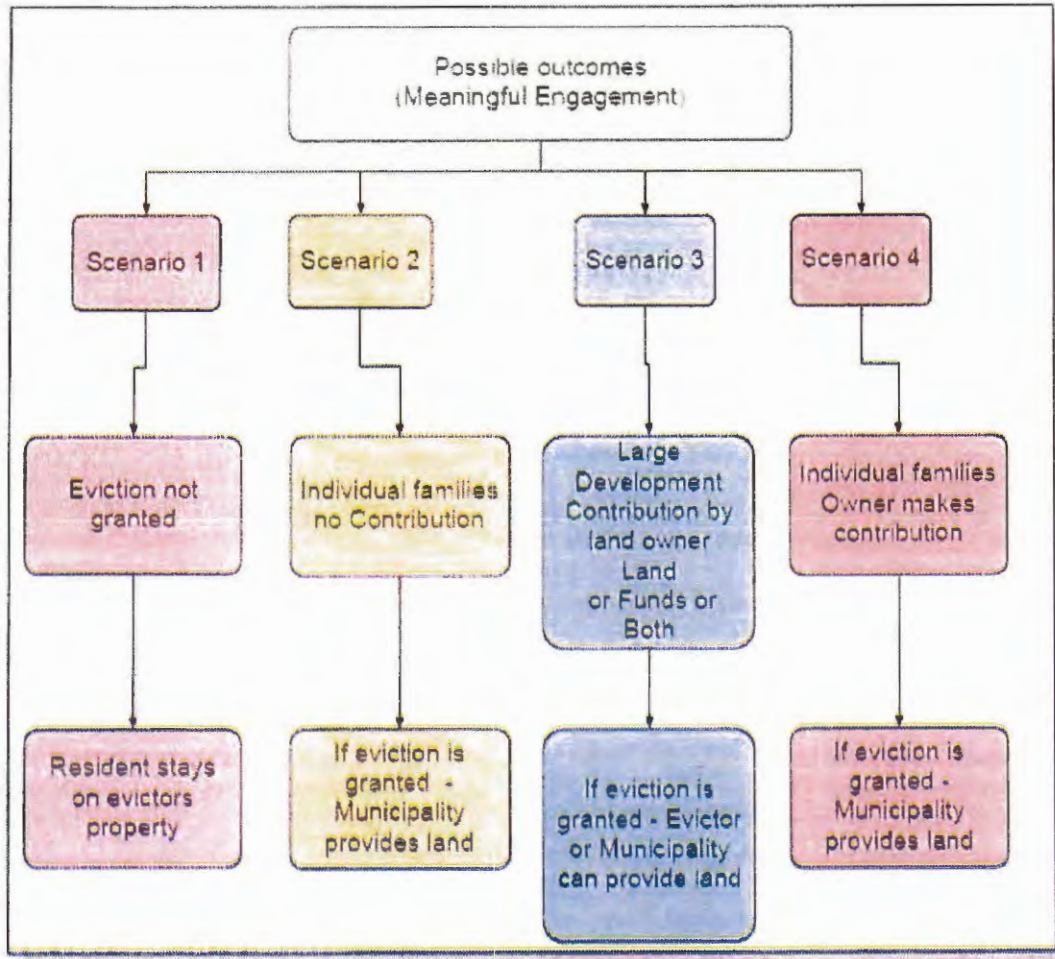
4.2 Meaningful engagement

The process of meaningful engagement was developed over time by various Court judgments to ensure that Municipalities are involved in the eviction process from an early stage. Therefor the purpose of the meaningful engagement process is to reduce the number of incidences where the municipality is "surprised" by a formal or informal eviction.

Effectively all parties negotiate the terms under which an eviction can occur and these terms eventually becomes the order of the court. In accordance with this process 4 scenarios are investigated, discussed and negotiated. The outcome of the meaningful engagement process becomes the order of the court.

Fig 1: Meaningful Engagement (scenarios)

5.



5. FUNDING / BUDGET

- 5.1 The Municipality recognises that it has a shared obligation, within its available resources, to implement this Policy and will, within its available resources and insofar as is possible, assist those persons who require immediate assistance, in terms of this policy.
- 5.2 The Municipality will also apply for any/all possible funding available from outside sources.
- 5.3 An emergency revolving fund will be established in which all funds including funds obtained from the relevant National/Provincial department in terms of the relevant application; funds from other sources of the Municipality as well as external funding contributions received will be deposited in order to address the objectives of this Policy.

6. CATEGORIES OF ASSISTANCE

Once an emergency has been declared by the relevant authority / Department / Directorate the Municipality provides various types and levels of assistance. Table 2 hereunder provides a non-exhaustive list of assistance. The list is compiled from observations by the ISD of assistance over the last 5 years.

Table 2: Categories of Assistance

Circumstance (category of emergency)	Type of assistance		By Whom / order of ascendance (delegation)	Example	
	Emergency Kit	Materials			
Minimal structural damage (at most)	Emergency Kit	Materials	1. Disaster Management	Vehicle accidents all areas ³	Fire / Flood
Declared Emergency by Disaster Management Department in accordance with the Disaster Management Act Total destruction of structure	Enhanced Emergency Kit Refer also clause 6.1 to clause 6.4 hereunder	Materials	1. Disaster Management 2. JOC 3. Council	Langrug Fire	Fire
Eviction Order	Wendy House	3x3, 6x3 or 9x3 structure, depending on family size Note: 3 x 3 for single or couples with no dependents 3 x 6 families up to and including 5 individuals 3 x 9 families up to and including 10 individuals Specifications determined from time to time.	1. Human Settlements in consultation with Legal Services 2. MM 3. Council	Kreefgat, Jamestown Zone A, Kayamandi Landfill	Fire Fire Eviction order
Relocation by Municipality	Wendy House	3x3, 6x3 or 9x3 structure, depending on family size Note: 3 x 3 for single or couples with no dependents 3 x 6 families up to and including 5 individuals 3 x 9 families up to and including 10 individuals	1. JOC 2. Council 3. Legal Section	Kreefgat / 7de Laan, Jamestown Zone A, Kayamandi Landfill	Fire Fire Eviction order

³ Taxis on a regular basis drive into informal structures

		Specifications determined from time to time.			
Evicted over weekend or at night	Community Halls		1. Disaster Management 2. Law Enforcement 3. Council		

The level of assistance by the municipality depends on various cases highlighted above and elaborated in above mentioned table.

The various categories of assistance provided under this Policy depend on the specific circumstances and are dictated by the specific situation, as the case may be. The various categories are the following:

6.1 Accommodation kept in reserve for possible disasters / emergencies

- This entails the accommodation of persons in community halls or other buildings designated for this purpose as a temporary measure.

6.2 Temporary accommodation that is readily available

- This entails the temporary accommodation of persons at any place as decided by Council from time to time.
- Persons assisted will be provided with a temporary residential unit of a dignified nature and have access to services, which may be communal.

6.3 Transitional accommodation

- This form of accommodation will be established under the relevant housing programme of national and provincial government by setting aside a minimum of 10% of the total number of sites for formal housing in human settlement projects, as identified and earmarked by the Municipality from time to time, or sites identified by the Municipality for emergency accommodation and applying for funding in this regard, depending on the need that may exist.
- Persons assisted will be provided with a structure that meets the requirements of the relevant chapter of the National Housing Code and have access to services, which may be communal.

6.4 Shelters

- This entails the temporary accommodation of persons at one of the shelters operated or funded by the Municipality; as showed in the above mentioned table.

It is in the discretion of the Municipality to determine which categories of assistance apply to specific persons and which category of assistance to use in a specific situation, depending on, and with reference and having regarded to, the specific circumstances of particular persons.

The assistance is only of a temporary nature and should not be considered as a permanent measure

The Municipality can and reserves the right to, in its discretion, temporarily move persons to another suitable site.

Any person assisted under this Policy will be required to enter into an agreement with the Municipality in order to regulate the terms and conditions of such person's accommodation, in particular the temporary nature thereof and any ancillary and/or related obligations.

7. **SHORT TITLE AND COMMENCEMENT**

This policy is the only document of Council/Municipality that regulates Emergency Housing needs and shall be called **Emergency Housing Assistance Policy (EHAP)** and shall come into operation on the date of the final adoption by Council.

APPENDIX 2

Item 5 – Properties Identified for Possible Emergency Housing

1. Erf 6887, Stellenbosch (Cloetesville) & Abutting Road Reserve - undeveloped



2. Erf 2, La Motte - undeveloped



3. Farm No. 1024/3, Paarl Division (Wemmershoek) - undeveloped



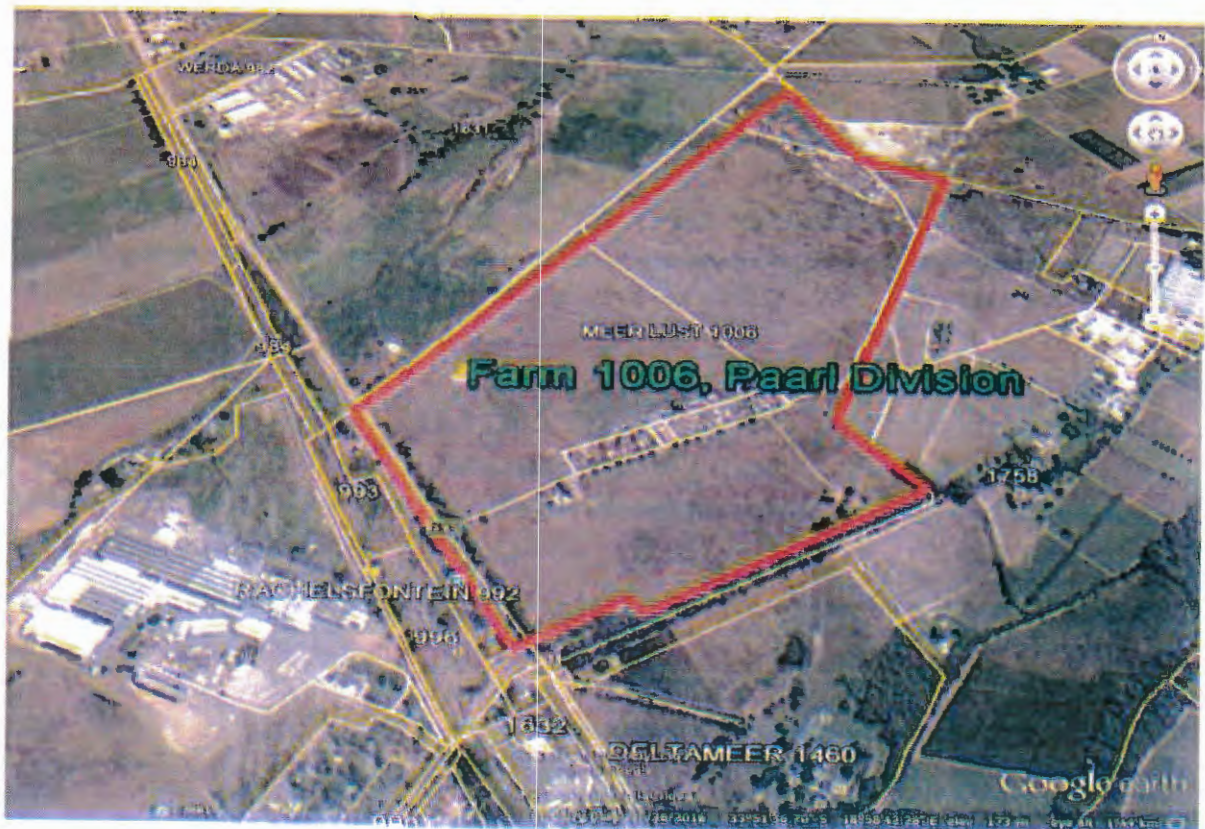
4. Erf 2183, Klipmuts – partially occupied



5 Erf 64, Kylemore – undeveloped state land



6. Farm 1006, Paarl Division (Meerlust) – state land under transfer.



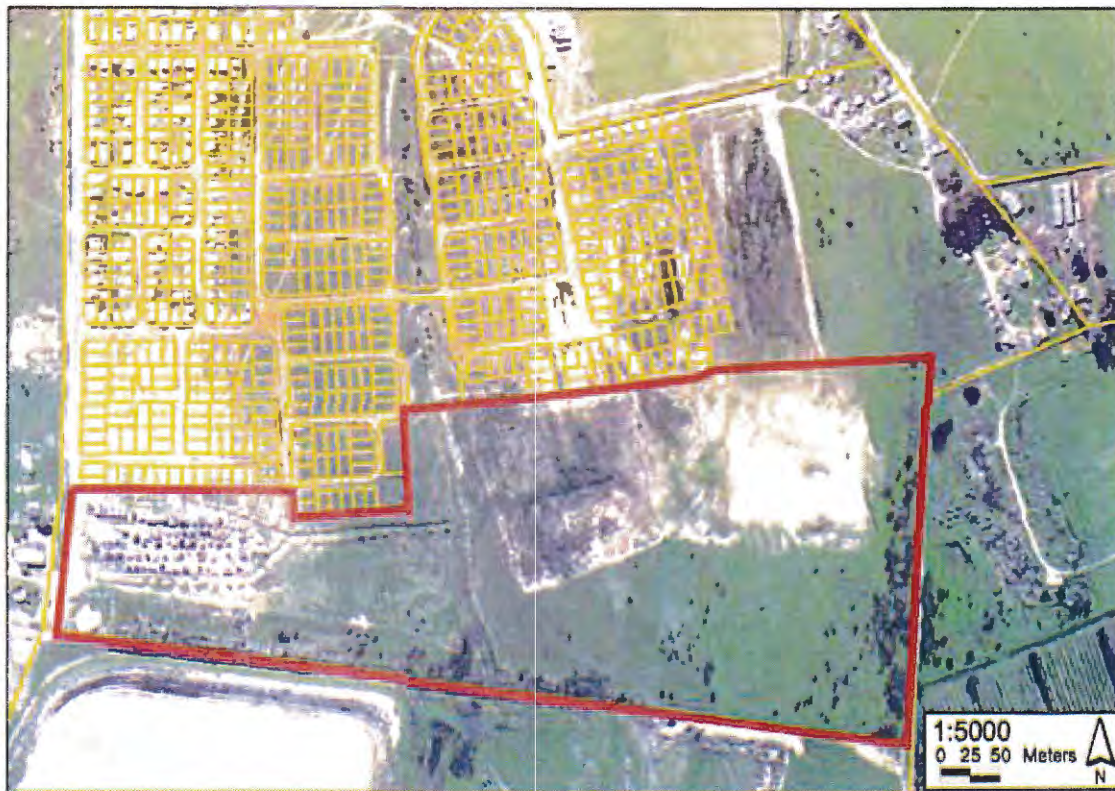
7. Jamestown (Farm 527, Stellenbosch) – partially developed.



8. Erf 6301, Stellenbosch (Cloetesville) - undeveloped



9. Klapmuts (Farm No. 744/3, Paarl Division) – Fully development since.



10. Koelenhof (Farm No. 66/9, 74/3, 74/23, Stellenbosch) – private land which is partially developed since



11. Vlottenburg (Farms 393/11, 1307/2 & 1307, Stellenbosch) – approved for but not yet developed private land



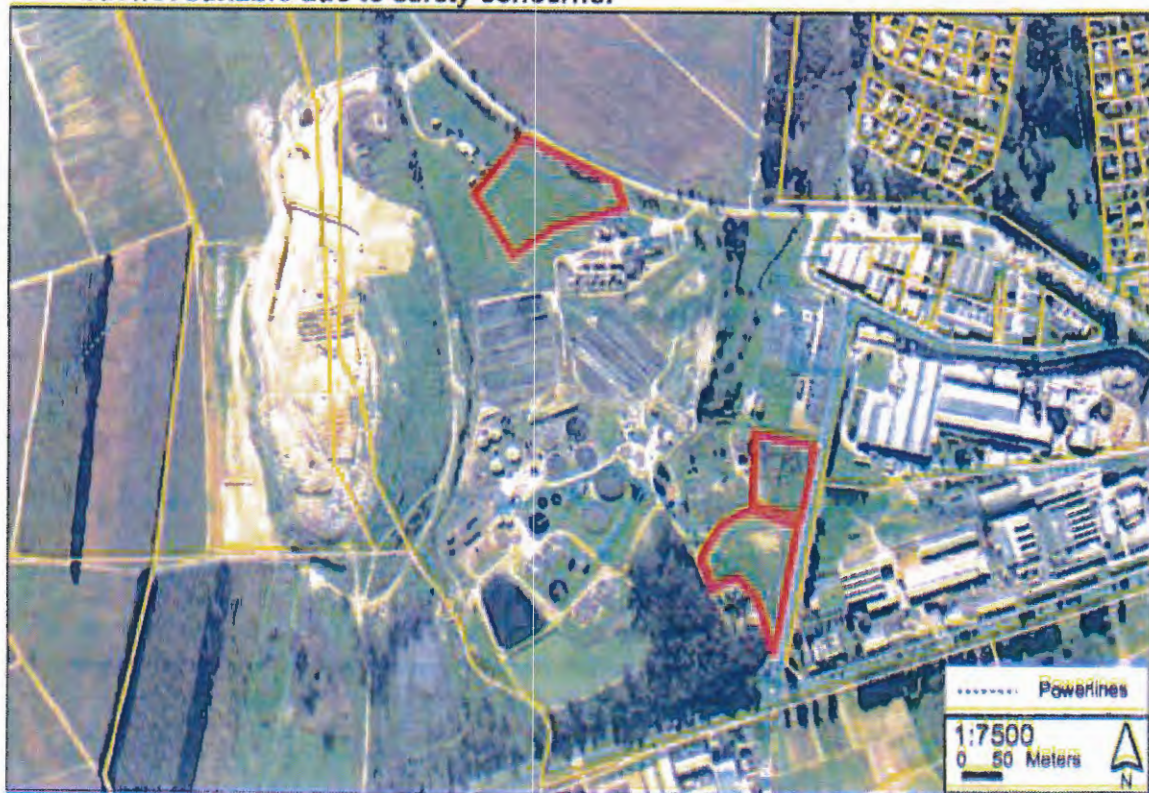
12. Lynedoch (Farm 468/28, Stellenbosch) – undeveloped private land



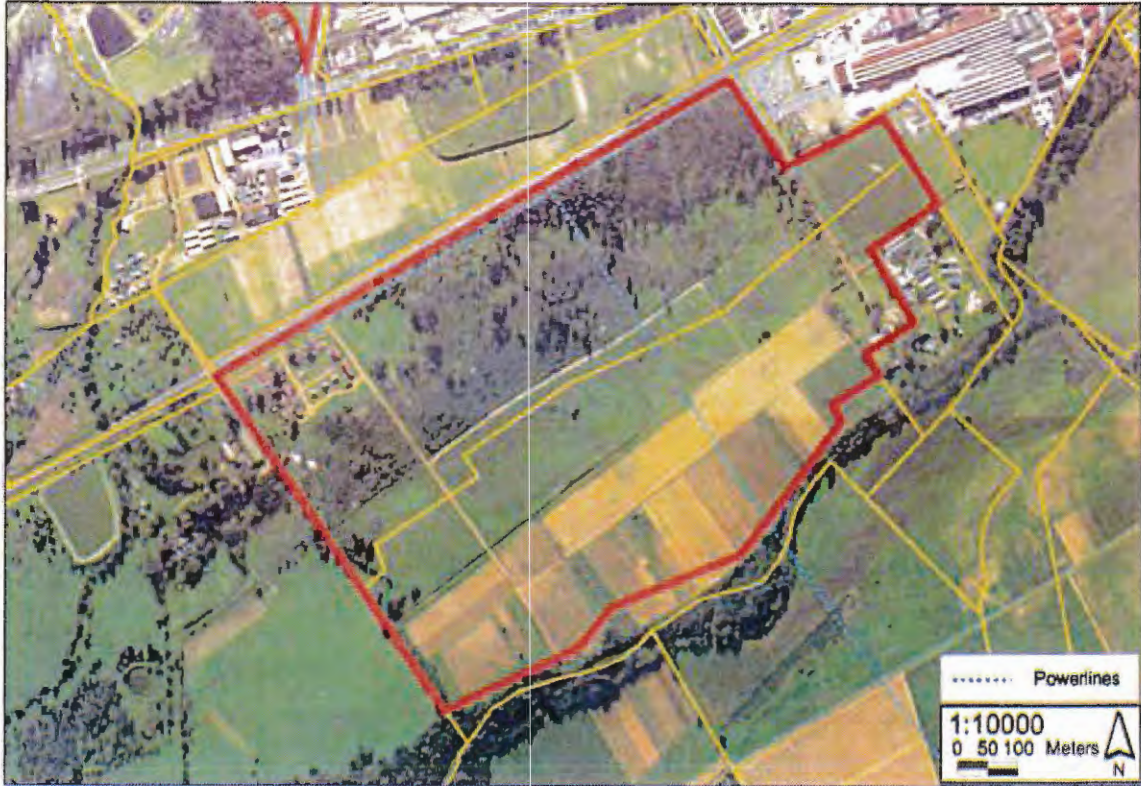
13. Idas Valley (Erf 11330, Stellenbosch) – *approved for development.*



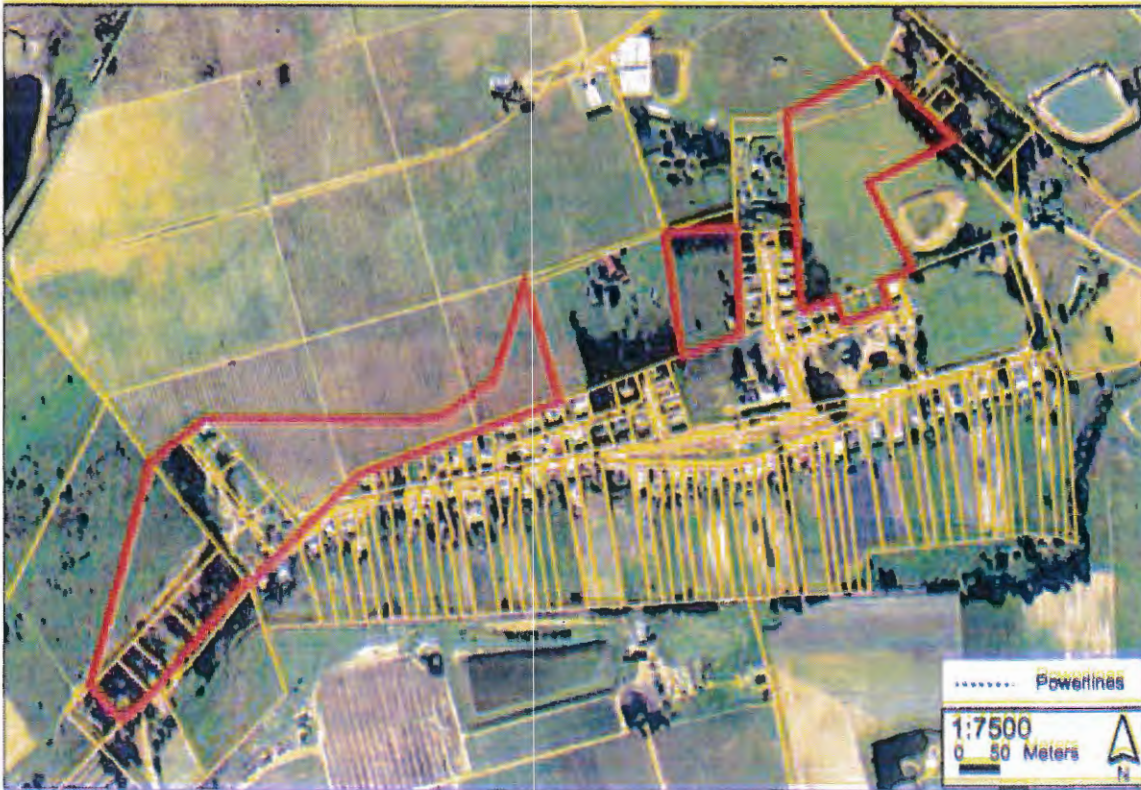
14. Devon Valley, Vredenburg Road sites (Farm 183, Stellenbosch) – *undeveloped but not suitable due to safety concerns.*



15. Vredenburg Farm (Farms 281, 281 & 283/8, Stellenbosch) – undeveloped state land



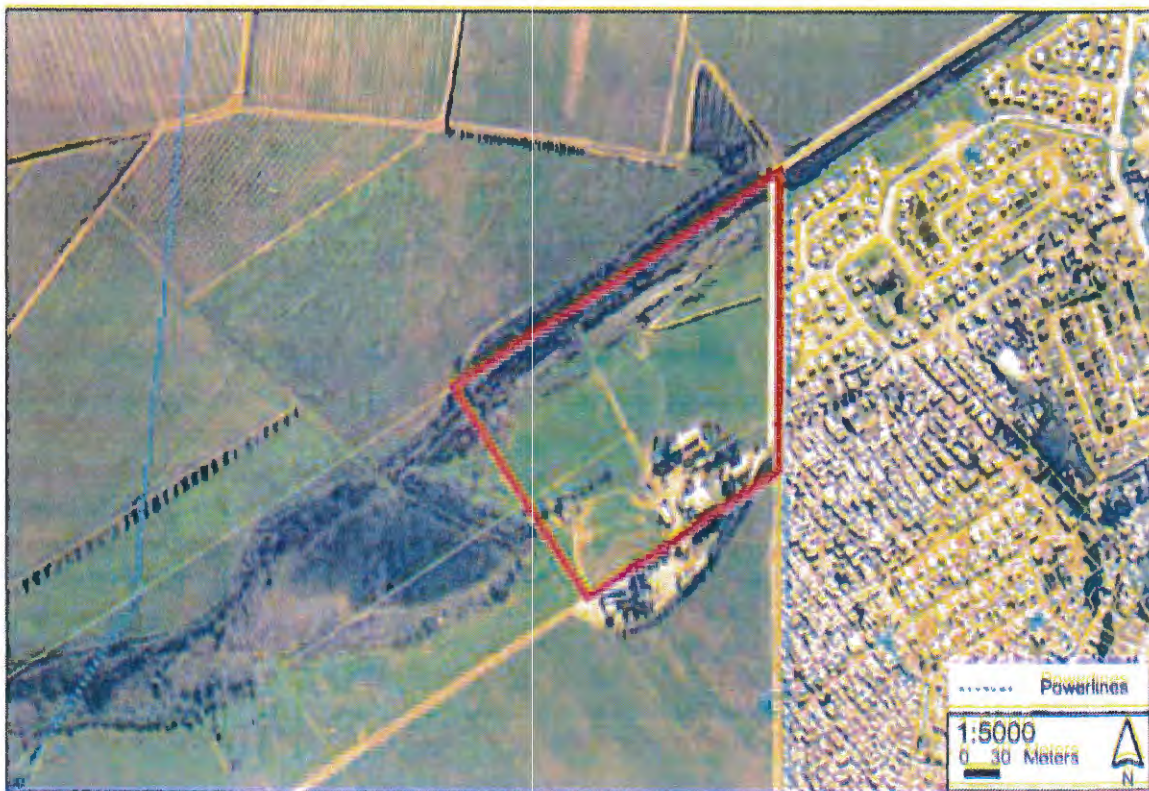
16. Raithby (Farm 616, Erf 151, 154) – partially developed private land.



17. Franschhoek (Langrug's existing informal residential areas was identified) – *fully occupied.*



18. Kaya Mandi (Farm 182 & 183, Stellenbosch) – *partially developed.*



19. Cloetesville (Erf 7272 and road reserve) – undeveloped land



20. Farm 527, Stellenbosch (Jamestown) – partially developed.



APPENDIX 3

Appendix 3

Comments from the Department Human Settlements & Property Management:

FURTHER COMMENTS

1. The item should also draw Council's attention to the temporary structures which are needed to relocate families in these proposed developments. The material used should be of a more durable nature e.g. Nu-tec and Council should budget for this.
2. The item should also (if possible) provide a comment on the availability of electricity in these areas.

POSSIBLE DISCUSSION POINTS

- 1.1 Access to electricity in these areas;
- 1.2 The leasing of these properties (rental agreements);
- 1.3 Water saving methods (pre-paid water meters, water tanks, etc.).

7.3.3	COMMENT ON THE FINAL ENVIRONMENTAL IMPACT ASSESSMENT REPORT AND ENVIRONMENTAL MANAGEMENT PROGRAM FOR THE PROPOSED VLOTTENBURG VILLAGE DEVELOPMENT, STELLENBOSCH
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1. PURPOSE OF REPORT

The purpose of this report is twofold:

- Firstly to inform Council as to the actions taken by the Directorate: Planning & Economic Development (DPED) following the resolution made by Council at the 39th Council Meeting of Stellenbosch Municipality (2016/03/30) regarding comment on the Draft Environmental Impact Report (DEIR) for the Proposed Vlotenburg Village Development submitted in terms of the National Environmental Management Act, 107 of 1998 (NEMA).
- Secondly, for Council to decide on the comment prepared on the Final Environmental Impact Assessment Report (FEIR).

Given the scale of the proposed development, the potential implications the proposed development may have on Vlotenburg, on Municipal infrastructure and the broader Stellenbosch area, the wide ranging comments and objections and potential sensitivity of the matter, the DPED's comment (paragraph 3) on the FEIR and Environmental Management Programme (Volumes 1 & 2) is herewith submitted to Council for approval before it is formally submitted as part of the above NEMA process.

Table 1: Abbreviations.

DEA&DP	Department of Environmental Affairs & Development Planning
DEIR	Draft Environmental Impact Report
DPED	Directorate: Planning & Economic Development
FEIR	Final Environmental Impact Report
NEMA	National Environmental Management Act, 107 of 1998
SDF	Spatial Development Framework
SM	Stellenbosch Municipality

2. COUNCIL RESOLUTION

In the absence of a clear delegation permitting the DPED to comment on applications submitted in terms of the NEMA comment on the DEIR for the proposed development was submitted to Council for consideration. The 39th Council Meeting of Stellenbosch Municipality (2016/03/30) resolved, in terms of Item 8.5:

- (a) *that the Delegation be granted to the Director: Planning and Economic Development to submit comment on environmental authorization application;*
- (b) *that Council does not support the proposed Vlotenburg Village development.*

The table below summarises the actions taken by the DPED prior to and following the above Council resolution.

5.4	FINANCIAL SERVICES: (PC: CLLR S PETERS)
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5.4.1	MONTHLY FINANCIAL STATUTORY REPORTING: DEVIATIONS FOR JANUARY 2018
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1. PURPOSE OF REPORT

To comply with Regulation 36(2) of the Municipal Supply Chain Management Regulations and Section 4.36.2 of the Supply Chain Management Policy 2017/2018 to report the deviations to Council.

2. DISCUSSION

Reporting the deviation as approved by the Accounting Officer January 2018. The following deviations were approved with the reasons as indicated below:

DEVIATION NUMBER	CONTRACT DATE	NAME OF CONTRACTOR	CONTRACT DESCRIPTION	REASON	TOTAL CONTRACT PRICE R
D/SM 29/18	15/01/2018	WREV Construction	Repairs to electrical fence at Klappmuts 1 pump station	1. Emergency 2. Exceptional case and it is impractical or impossible to follow the official procurement process	R 12 000.00
D/SM 27/18	19/01/2018	Mindspring	Additional software licences for managed engine active directory self-service desk plus	Exceptional case and it is impractical to follow the official procurement processes	R 491 601.00 (VAT INCL)

3. LEGAL IMPLICATION

The regulation applicable is as follows:

GNR.868 of 30 May 2005: Municipal Supply Chain Management Regulations

Deviation from and ratification of minor breaches of, procurement processes

36. (1) A supply chain management policy may allow the accounting officer—

- (a) To **dispense with the official procurement processes** established by the policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only—
- (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single provider only;
 - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) acquisition of animals for zoos; or

- (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
 - (b) to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of sub regulation (1) (a) and (b) and **report them to the next meeting of the council**, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.

4. FINANCIAL IMPLICATION

Not required

5. COMMENTS FROM OTHER RELEVANT DEPARTMENTS

Not required

RECOMMENDATION

that Council notes the deviations as listed above.

5.5	HUMAN SETTLEMENTS: (PC: CLLR PW BISCOBE)
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5.5.1	PROPOSED RENEWAL OF LEASE AGREEMENT: ERF 52, STELLENBOSCH, SUPERGROUP DEALERSHIP
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Collaborator No: **567103**
 IDP KPA Ref No:
 Meeting Date: **14 February 2018**

1. SUBJECT

PROPOSED RENEWAL OF LEASE AGREEMENT: ERF 52, STELLENBOSCH, SUPERGROUP DEALERSHIP

2. PURPOSE OF REPORT

To consider a request from Supergroup Dealership (Mercedes Benz, Stellenbosch) to renew the Lease Agreement in relation to erf 52 for a further period of 9 years and 11 months as part of a Settlement Agreement regarding the acquisition of a portion of erf 6094 for road widening purposes.

3. DELEGATED AUTHORITY

In terms of Delegation 530 of the approved System of Delegations the Executive Mayor has the delegated authority to grant a right to use control or manage a fixed asset of Stellenbosch Municipality, up to a contract value of R 5M, subject to compliance with Regulation 34(1) of the Asset Transfer Regulation.

4. EXECUTIVE SUMMARY

Supergroup Dealership (Mercedes Benz, Stellenbosch) is leasing erf 52 from Stellenbosch Municipality in terms of a 5-year Lease Agreement.

Stellenbosch Municipality (Engineering Department) planned to upgrade the Merriman/Adam Tas intersection. For this purpose we need to acquire a portion of erf 6094, the property of Supergroup Dealership. They have indicated that they will accept our offer to acquire the said portion of land, on condition that we renew their Lease Agreement for a period of 9 years and 11 months.

5. RECOMMENDATIONS

- (a) that approval be granted, in principle, for the renewal of the Lease Agreement: Erf 52, Stellenbosch, Supergroup Dealership, for a period of 9 years and 11 months;
- (b) that Council's intention so to act be advertised for public inputs;
- (c) that, should any objections be received as a consequence of such an advertisement, same be considered by Mayco before making a final decision; and
- (d) that, should no objections be received, the Municipal Manager be authorised to conclude a new agreement for a period of 9 years and 11 months (with the option of renewal for a further term), on the same terms and conditions as the current Lease Agreement.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1. Authorisation for tender process

On 2012-10-25 Council considered a report on the use of erf 52. Having considered the report, Council resolved as follows:

- (a) *that all previous Council resolutions with regard to the alienation of erf 52, be rescinded;*
- (b) *that erf 52 be identified as a property that is not required for the municipality's own use during the period for which the right is to be granted (5 years with 3 months' notice period);*
- (c) *that the Municipal Manager be authorized to follow a public tender process in awarding rights to interested parties for the use of the site; and*
- (d) *that a minimum rental be determined by means of fair market value with a minimum of R9200 per month.*

A copy of the report is attached as **APPENDIX 1**.

6.1.2 Awarding of tender and conclusion of Lease Agreement

Following a public tender process, the tender for the use of erf 52 was awarded to Sandown Motor Holdings (Pty) Ltd, whereafter a Lease Agreement was concluded, a copy of which is attached as **APPENDIX 2**.

Irrespective of the date of signature, the lease period was for the period 1 July 2013 to 31 June 2018.

At a later stage this Lease Agreement was ceded to Super Group Trading (Pty) Ltd. A copy of the Cession Agreement is attached as **APPENDIX 3**.

6.1.3 Need to acquire land for upgrading of intersection: Serving of notices

During August 2015 the Engineering Department requested this Department to acquire various portions of land, including a portion of ±87m² from the owner of Rem. Erf 6094, the property of Supergroup Dealerships. A copy of their memo is attached as **APPENDIX 4**.

During October 2015 Imperial Group (Pty) Ltd (the legal owner at the time) was informed of the Municipality's need to acquire the said portion of land. A copy of the letter is attached as **APPENDIX 5**.

During July 2017 a further letter was addressed to Supergroup (new legal entity) requesting the acquisition of the land under discussion, a copy of which is attached as **APPENDIX 6**.

6.1.4 Market valuation

During August 2017, Pendo Property Valuers was appointed to do a market valuation. A copy of the valuation report is attached as **APPENDIX 7**. They valued the portion of land at R174 300.00 (Exclusive of VAT). The cost of construction of a new parking bay (actual financial loss) were valued at R7000 (Exclusive of VAT, thus totalling an amount of R181 300-00 (Exclusive of VAT).

Supergroup were subsequently requested to indicate whether they would be willing to accept the amount of R181 300 as being a fair market value for the portion of land to be acquired. See **APPENDIX 8**.

On 5 October 2017, following a meeting with representatives of Supergroup, we received a self-explanatory letter from Supergroup Dealership, indicating that they would agree to the disposal of the portion of land, measuring 87/m², being a portion of Remainder Erf 6094, Stellenbosch, at a price of R181 300.00 (Exclusive of VAT), on condition that:-

- (a) Stellenbosch Municipality agree to sell Erf 52 (neighbouring land) to then at a market related price *, or
- (b) Agree to a 10 year (read 9 years and 11 months) lease agreement in relation to erf 52.

If approved by the Municipality they would, in turn, make improvements to the hard surface and boundary fence of erf 52, at their cost. A copy of their letter is attached as **APPENDIX 9**.

* See comment under paragraph 6.2.1 below regarding future needs.

6.2 Discussion

6.2.1 Property description

Erf 52 is located at Bird Street as indicated on Fig 1, 2 and 3, respectively.



Fig 1: Location and context



Fig 2: Extent of property



Fig 3: Street view

Erf 52 is zoned General Business in terms of the Stellenbosch Zoning Scheme and is approximately 1647m² in extent.

* Erf 52 was specifically acquired for the purpose of developing it as a public parking area. For this reason it would not be advisable to dispose of the land. It can, however, be leased on condition that the lease could be terminated on a 3-months written notice period.

6.2.2 Development rights

As indicated above, erf 52 is zoned for General Business. To use the area for parking purposes, no further development rights are necessary.

6.2.3 Legal requirements

6.2.3.1 Asset Transfer Regulations

In terms of Regulation 34 of the Asset Transfer Regulations, a Municipality may grant a right to use, control or manage a capital asset, only after:-

- a) the accounting officer has conducted a public participation process in terms of regulation 35*; and
- b) the municipal Council has approved in principle that the right may be granted

* Sub-regulation 1 (a) must be complied with only if-

- a) the capital asset's value exceeds R10M; and
- b) a long term right (longer than 3 years) is proposed to be granted, which is not the case with the current application.

In terms of Regulation 36 of the Asset Transfer Regulations, a municipal council, when considering the granting of a right to use, control or manage a capital asset, must take into account, *inter alia*:

- 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; and
- c) the risk and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;

6.2.4 Tariff Structure

In terms of Council's approved Tariff Structure, the fee for renting parking space in the CBD of Stellenbosch is R250.00 per parking bay per month. At approximately 40 parking bays, the minimum rental should be R10 000/month.

6.3 Financial Implications

Should Mayco approve the recommendations, the annual income would be approximately R120 000-00 (i.e.R1.2M over the contract period, exclusive of escalation).

6.4 Legal Implications

See paragraph 6.2.3

6.5 Staff Implications

Investigative study by staff from The Human Settlements and Property Management Directorate.

6.6 Previous / Relevant Council Resolutions

See paragraph 6.1.1.

6.7 Risk Implications

There are no risks at this stage apart from the risk of current projects being delayed as a result of not doing anything in respect of land acquisition.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

In support of the recommendations.

6.8.2 Director: Planning and Economic Development

No comments received.

6.8.3 Chief Financial Officer

No comments received.

FOR FURTHER DETAILS CONTACT:

NAME	Piet Smit
POSITION	Manager: Property Management
DIRECTORATE	Human Settlement & Property Management
CONTACT NUMBERS	021-8088189
E-MAIL ADDRESS	Piet.smit@stellenbosch.gov.za
REPORT DATE	2018-02-06

DIRECTOR: HUMAN SETTLEMENTS & PROPERTY MANAGEMENT

The contents of this report have been discussed with the Portfolio Committee Chairperson and the Councillor agrees with the recommendations.

APPENDIX 1

PLANNING & DEVELOPMENT COMMITTEE MEETING

2012-08

PROPOSED USE OF ERF 52 FOR PARKING PURPOSES

File number : 7/2/2/1
Report by : Director: Planning & Development
Compiled by : Manager: Property Management
Delegated Authority : Mayco

1. PURPOSE OF REPORT

The purpose of this report is to authorise the Acting Municipal Manager to follow a public tender process in order to utilise erf 52 for parking purposes.

2. BACKGROUND

An application has been received from Eikestad Motors, Stellenbosch, the owners of the adjacent property, to use erf 52 for additional parking space, a copy of which is attached as **APPENDIX 1**.

3. DISCUSSION

3.1 Property description

Erf 52 is located at Birdstreet as indicated on Fig 1, 2 and 3, respectively.



Fig 1: Location and context



Fig 2: Extent of property



Fig. 3 Streetview

Erf 52 is zoned General Business in terms of the Stellenbosch Zoning Scheme and is approximately 1647m² in extent.

Erf 52 was specifically acquired for the purpose of developing it as a public parking area. For this reason it would not be advisable to dispose of the land. It can, however be leased on condition that the lease could be terminated on a 3 months written notice period.

3.2 Development rights

As indicated above, erf 52 is zoned for General Business. To use the area for parking purposes, no further development right are necessary.

3.3 Legal requirements

3.3.1 Asset Transfer Regulations

In terms of Regulation 34 of the Asset Transfer Regulations, a Municipality may grant a right to use, control or manage a capital asset, only after:-

- a) the accounting officer has conducted a public participation process in terms of regulation 35*; and

- b) the municipal Council has approved in principle that the right may be granted

*Sub-regulation 1 (a) must be complied with only if-

- a) the capital asset's value exceeds R10M; and
- b) a long term right (longer than 3 years) is proposed to be granted, which is not the case with the current application.

In terms of Regulation 36 of the Asset Transfer Regulations, a municipal council, when considering the granting of a right to use, control or manage a capital asset, must take into account, *inter alia*:

- 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; and
- c) the risk and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;

3.3.2 Supply Chain Management Policy (SCM Policy)

In terms of paragraph 5.6 of Council's approved SCM Policy, following an in principle approval by Council, SCM must embark on the applicable process which process must be fair, equitable, transparent and competitive.

3.4 Tariff Structure

In terms of Council's approved Tariff Structure, the fee for renting parking space in the CBD of Stellenbosch is R230.00 per parking bay

per month. At approximately 40 parking bays, the minimum rental should be R9200/month.

4. INPUTS BY OTHER DEPARTMENTS

4.1 Planning & Development

This department is in support of the application, on condition that such agreement can be terminated with a 3 month written notice.

Erf 52 was acquired by the municipality for the provision of public parking facilities to support the efficient functioning of Du Toit Station. Erf 52 is seen as of strategic importance and potential catalyst for the redevelopment of the surrounding properties located at the main entrance to Stellenbosch as well as for the upgrading and potential widening of Bird Street. For this reason, the department is not in support of the alienation of Erf 52 for the purposes of development **unless** the development forms an integral part of an approved overall development plan for the total area.

4.2 Engineering department

The Directorate Engineering Services (Civil Engineering Section) has no objection to the application, but subject to the following conditions:

a) Water

No Municipal water connection has been installed.

c) Waste Water and Sewage

No municipal sewer connection has been installed.

d) Roads

No new access from Bird Street may be constructed.
Access to Erf 52 is from Porter Street.

e) Stormwater

Stormwater runoff from the property must be channelled to Porter Street in such a manner that it does not create a nuisance on the side walk or in the street.

4.3 CFO

The recommendations contained in this report is supported.

4.4 Legal Services

Attached as **APPENDIX 2.**

5. CONCLUSION

The proposed temporary use of the site for parking purposes pose no risks to the municipality. Should the site be needed for our own purposes, the lease can be terminated.

RECOMMENDATION:

- a) that erf 52 be identified as a property that is not required for the municipality's own use during the period for which the right is to be granted (5 years with 3 months notice period);
- b) That the Municipal Manager be authorized to follow a public tender process in awarding rights to interested parties for the use of the site;
- c) That a minimum rental of R9200/month be determined as a fair market rental, based on the approved tariff structure.

7.6 PROPOSED USE OF ERF 52 FOR PARKING PURPOSES

10TH COUNCIL MEETING: 2012-10-25: ITEM 7.6

RESOLVED (majority vote)

- (a) that all previous Council resolutions with regard to the alienation of erf 52, be rescinded;
- (b) that erf 52 be identified as a property that is not required for the municipality's own use during the period for which the right is to be granted (5 years with 3 months notice period);
- (c) that the Municipal Manager be authorized to follow a public tender process in awarding rights to interested parties for the use of the site; and
- (d) that a minimum rental be determined by means of fair market value with a minimum of R9200 per month.

The following councillors requested that their votes of dissent be minuted:

Cllrs JA Davids; N Gcaza (Ms); DA Hendrickse, S Jooste (Ms); N Mananga-Gugushe (Ms); C Moses (Ms); R Nalumango (Ms), L Ronoti; T Sitshoti (Ms); LN Siwakamisa (Ms) and M Wanana.

(MPM)

APPENDIX 2



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

LEASE AGREEMENT

Entered into by and between

STELLENBOSCH MUNICIPALITY

Herein represented by **PETRUS DU PLESSIS SMIT** in his capacity as
Manager Property Management, being duly authorised (herein after called the **LESSOR**)

AND

SANDOWN MOTOR HOLDINGS TRADING AS EIKESTAD MOTORS

Herein represented by **ROY MCALLISTER** and **NAEEM HAASIM** in their capacity as
CEO and Co-CEO, being duly authorised (herein after called the **LESSEE**)

For the lease of Erf 52 (herein after called the **PROPERTY**)

AGREEMENT OF LEASE

1. PARTIES

- 1.1 The parties to this lease are:-
- 1.1.1 (Stellenbosch Municipality) (“the **LESSOR**”); and
 - 1.1.2 (*Sundown Motor Holdings (Pty) Ltd, Stellenbosch*) (“the **LESSEE**”).

2. INTERPRETATION

- 2.1 In this lease agreement, except in a context indicating that some other meaning is intended,
- 2.1.1 “*the Lease Period*” means the period for which this lease subsists, including any period for which it is renewed;
 - 2.1.2 “*month*” means a calendar month, and more specifically;
 - 2.1.2.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
 - 2.1.2.2 in any other context, a month of the calendar, that is, one of the 12 months of the calendar, and “monthly” has the corresponding meaning;
 - 2.1.3 “*the parties*” means the parties to this lease, and “party” means one of them;
 - 2.1.4 “*the PROPERTY*” means Erf 52, Stellenbosch.;
 - 2.1.5 “*the Rates*” means the assessment rates payable on the **PROPERTY** and includes but is not limited to, refuse removal charges and sanitary fees;
 - 2.1.6 “*Rentable Area*” in relation to the Premises means the area of the Premises determined in accordance with clause 17;
 - 2.1.7 “*year*” means a period of 12 consecutive months, and “yearly” refers to a year commencing on the date on which the lease comes into operation or any anniversary of that date;
 - 2.1.8 references to notices, statements and other communications by or from the **LESSOR** include notices by or from the **LESSOR**’s agent;
 - 2.1.9 expressions in the singular also denote the plural, and vice versa;
 - 2.1.10 words and phrases denoting natural persons refer also to juristic persons, and vice versa; and
 - 2.1.11 pronouns of any gender include the corresponding pronouns of the other genders.

- 2.2 Any provision of this lease imposing a restraint, prohibition or restriction on the **LESSEE** shall be so construed that the **LESSEE** is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Premises or any other part of the **PROPERTY** or the Building through, under, by arrangement with, or at the invitation of, the **LESSEE**, including (without limiting the generality of this provision) its Associates and the directors, members, officers, employees, agents, customers and invitees of the **LESSEE** or its Associates.
- 2.3 Clause headings appear in this lease for purposes of reference only and shall not influence the proper interpretation of the subject matter.
- 2.4 This lease shall be interpreted and applied in accordance with South African law.

3. LETTING AND HIRING

- 3.1 The **LESSOR** lets and the **LESSEE** hires the Premises on the terms of this lease.

4. DURATION

- 4.1 This lease shall come into operation on *01 July 2013* and shall subsist for 5 years.

5. RENT

- 5.1 The rent shall be
- 5.1.1 R9975.00 p.m VAT inclusive (NINE THOUSAND NINE HUNDRED AND SEVENTY FIVE RAND)
- per month for the financial year ending 30 June 2014; and
- 5.1.2 shall thereafter, on an annual basis on the 1 July of each year escalate with 6.9%.
- 5.2 The **LESSEE** shall pay the rent monthly in advance on or before the (*7th*) day of every month.

6. RATES

- 6.1 In addition to paying the rent as per Clause 5, the **LESSEE** shall also be responsible for the annual Rates for the pro-rata portion of the **PROPERTY**, as determined by the **LESSOR**; and
- 6.2 Whenever the Rates are increased during the Lease Period, the **LESSOR** will increase the Rates for the **PROPERTY** by an amount which bears the same ratio to the increase in Rates in general.

7. PAYMENTS

- 7.1 The rent payable by the **LESSEE** to the **LESSOR** in term of this Agreement shall be payable monthly in advance on or before the *7th* day of each month free

of exchange at such address as directed by the **LESSOR** in writing from time to time.

- 7.2 The **LESSOR** shall have the right, notwithstanding any instruction given by the **LESSEE**, to appropriate any amount paid by the **LESSEE** hereunder to whatsoever indebtedness of the **LESSEE** as the **LESSOR** may decide upon in its absolute discretion.

8. INSURANCE

- 8.1 The **LESSEE** shall not keep or do in or about the Premises anything which is liable to enhance any of the risks against which the Building is insured for the time being to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.
- 8.2 Without prejudice to any other right of action or remedy which the **LESSOR** may have arising out of a breach of the foregoing provision, the **LESSOR** may recover from the **LESSEE** on demand the full amount of any increase in insurance premiums in respect of the Building attributable to such breach.
- 8.3 For the purposes of the above provisions, the **LESSEE** shall be entitled to assume that the Building is at all material times insured against such risks, on such terms, for such amounts, and at such premiums as are for the time being usual in respect of similar buildings in similar locations.

9. SUB-LETTING AND RELATED MATTERS

- 9.1 The **LESSEE** shall not, without the **LESSOR**'s prior written consent:
- 9.1.1 sub-let the whole or any part of the PREMISES or cede, assign, transfer, alienate, or otherwise dispose of any of its rights and/or obligations under this Lease or pledge or hypothecate this Lease;
- 9.1.2 give up, for either a definite period or at all, occupation or possession of the PREMISES or any part thereof to any person or permit any person whether as licensee, sub-tenant, agent, occupier, custodian or otherwise to take possession or occupation of the PREMISES or any part thereof either for a definite period or at all.
- 9.2 Should the **LESSEE** wish to sub-let the whole or any part of the PREMISES at any time during the currency Lease, then the **LESSEE** shall apply to the **LESSOR** in writing for its consent thereto given, in regard to the proposed sub-lease, the name of the sub-tenant, the guarantors if any of the sub-tenant date of commencement, the duration of the proposed sub-lease, the exact premises and the consideration payable there under. The **LESSOR** at its option may:
- 9.2.1 consent to the sub-lease, in which case the **LESSEE** may on receipt of written confirmation by the **LESSEE** sub-let the PREMISES or part thereof as the case may be in accordance with the written application submitted to the **LESSOR** in terms of this Clause 11.2, or
- 9.2.2 provided the proposed sub-tenant wishes to lease the whole of the PREMISES, give the **LESSEE** written notice of its intention to enter into a direct lease with the proposed sub-tenant in which event on the commencement date of the new written lease entered into between the **LESSOR** and the proposed sub-tenant this Lease shall be cancelled and of no further force or effect, provided that such cancellation shall in no way detract from the **LESSOR**'s rights to enforce performance of

any obligations of the **LESSEE** arising, prior to the date of cancellation, or the **LESSOR's** rights to recover arrear payments from the **LESSEE**.

10. GENERAL OBLIGATIONS OF LESSEE

- 10.1 The **LESSEE** shall care for and maintain the interior of the PREMISES, the electrical installations, drainage and sanitary works, carpeting, partitions and other fixtures and fittings therein during the currency of this Lease and return and redeliver the same to the **LESSOR** at the termination of this Lease in the same good order and condition in which they were at the commencement of this Lease, fair wear and tear excepted. The **LESSEE** shall be liable for the costs of replacing, repairing and making good any broken, damaged or missing article. Without derogating from the generality of the a foregoing, the **LESSEE** shall be liable to maintain and repair any damage caused to the doors, ceilings, windows, walls, floors or partitions of and/or within the PREMISES which may be occasioned by any cause, including forced entry.
- 10.2 The **LESSEE** shall not cause any obstruction or blockage of sewerage pipes or drains within or leading to or from the PREMISES and shall maintain the same free from any such obstruction or blockage.
- 10.3 The **LESSEE** shall at all times keep the PREMISES in a clean, tidy and sanitary condition.
- 10.4 The **LESSEE** shall at all times use and control the PREMISES in such a manner that the use thereof in no way interferes with or affects the rights and privileges of any other tenant in the BUILDING or causes any disturbances, nuisance or annoyance to any person or any damage of any kind whatsoever to the PREMISES, the BUILDING and/or the environment.
- 10.5 The **LESSEE** shall comply with and shall not contravene or permit the contravention of
- 10.5.1 any law, by-law, ordinance, proclamation, statutory regulation or the conditions of any licence relating to or affecting the occupation or use of the PREMISES or the carrying on of the **LESSEE's** business in the PREMISES;
- 10.5.2 the conditions incorporated in and/or noted on the Title Deeds of the LAND or the conditions of establishment of the township of which the LAND forms part; or any law, by-law or statutory regulation which the **LESSOR** is required to observe by virtue of the **LESSOR'S** ownership of the LAND and/or the BUILDING.
- 10.6 The **LESSEE** shall not drive or permit to be driven any nails or screws into the floor, walls, ceilings, partitions, doors or windows of the PREMISES other than for normal shop fitting or decorating purposes, nor shall the **LESSEE** in any manner whatsoever do or permit anything to be done which may damage the floor, walls, ceilings, doors, windows or partitions of the PREMISES or any fixtures or fittings therein.
- 10.7 The **LESSEE** shall not alter or interfere with any of the electrical installations in the PREMISES, and shall ensure that none of the electrical installations in the PREMISES are overloaded at any time during the currency of this Lease.
- 10.8 The **LESSEE** shall not obstruct or interfere or tamper with any thermostats or air-conditioning appliances in the PREMISES.

- 10.9 The **LESSEE** shall not bring into the PREMISES or place in the PREMISES any safe or other heavy article nor shall the **LESSEE** permit the loading of any portion of the PREMISES over and above such rate as may be specified by the **LESSOR**, without the prior written consent of the **LESSOR**, which the **LESSOR** may in its discretion grant subject to the construction by the **LESSOR**'s contractors under the supervision of the **LESSOR**'s architects and/or other professional advisers of such reinforcement to the PREMISES and/or the BUILDING as the **LESSOR** may require. All costs incurred pursuant to the provisions of this clause shall be borne.
- 10.10 The **LESSEE** shall not be entitled to install any air-conditioning, units or heaters or ventilation equipment in or about the PREMISES without the prior written consent of the **LESSOR**, provided that should any such consent be granted, the **LESSOR** shall be entitled to impose such reasonable conditions and standards in regard to the type of unit to be installed, the method and manner of installation and the maintenance thereof, as the **LESSOR** may require in its sole discretion, and upon the expiration or earlier termination of this Lease, the **LESSEE** shall be obliged, if called upon to do so by the **LESSOR**, to remove such items and to reimburse the **LESSOR** for the costs of making good any damage caused to the PREMISES and/or the BUILDING as a result of such installation or removal.
- 10.11 The **LESSEE** shall in no way obstruct, whether by storage or otherwise and whether temporarily or permanently, the pavements alongside the LAND or the lobbies, staircases or passages of the BUILDING or the yards or any other portion of the BUILDING or the LAND.
- 10.12 The **LESSEE** shall comply with and carry out, all reasonable rules and regulations, which may be made from time to time by the **LESSOR**, reduced to writing and submitted to the **LESSEE**, for the proper and efficient control of tenants in the BUILDING and their employees and the general management of the BUILDING.
- 10.13 The **LESSEE** shall be liable to the **LESSOR** for all costs incurred by the **LESSOR** in repairing any damage to the BUILDING caused by the **LESSEE**.
- 10.14 The **LESSEE** shall not without the prior written consent of the **LESSOR**, which shall not be unreasonably withheld, store, harbour or use, or permit the storage, harbouring or use in the PREMISES of any goods, chattels, furniture, fixture, fittings or effects which are subject to any hire purchase or lease agreement and which are not the **LESSEE**'s own **PROPERTY**.
- 10.15 The **LESSEE** shall reimburse the **LESSOR** on demand for the cost of any keys, locks, windows, doors, carpeting, partitions, fixtures, fittings toilets, washbasins or other installations or fittings in the premises which may be removed from the PREMISES by any person or which may be damaged or broken or destroyed by any person during the currency of this Lease.
- 10.16 The **LESSEE** shall at all times ensure that its employees do not cause any damage to the lifts, elevators, hoists, staircases, landings, foyers, drains, toilets, washbasins, light fittings or any other amenities or facilities in the PREMISES and/or the BUILDING.
- 10.17 The **LESSEE** shall not change or interfere with any of the installations in the PREMISES and/or in the BUILDING without the prior written consent of the **LESSOR**.

- 10.18 The **LESSEE** shall not be entitled to install or use in the PREMISES any computer or other electrical installations or appliances not constituting normal accounting and business machines, without the prior written consent of the **LESSOR**.
- 10.19 The **LESSEE** shall ensure that its employees at all times abide by all such reasonable security and fire protection programmes, systems, arrangements and installations as may be prescribed by the **LESSOR** and/or provided or installed in the BUILDING and/or the PREMISES from time to time and the **LESSEE** agrees itself to comply therewith. The **LESSEE** hereby acknowledges that its occupation of the PREMISES, including, but not limited to, the times and manner of access to and egress from the BUILDING and the PREMISES, shall be subject to and governed by such reasonable rules and arrangements as may be issued and made by the **LESSOR** from time to time in its discretion for the purpose of implementing, operating and maintaining such measures in respect of the LAND, the BUILDING and/or the PREMISES as the **LESSOR** may deem necessary from time to time. The **LESSEE** shall at all times ensure that its employees cooperate with any personnel employed by the **LESSOR** from time to time in respect of the installation, implementation and maintenance of any such systems and/or measures in respect of the LAND, the BUILDING and/or the PREMISES, and in particular that they shall at all reasonable times co-operate with and participate in any security exercises, exercises of fire fighting, prevention of fire and evacuation, which may be arranged by or through such personnel or which the **LESSOR** may order from time to time and the **LESSEE** itself shall co-operate and participate as aforesaid.

11. ALTERATIONS, ADDITIONS AND IMPROVEMENTS

- 11.1 The **LESSEE** shall not make any alterations or additions to the Premises without the **LESSOR's** prior written consent, but the **LESSOR** shall not withhold its consent unreasonably to an alteration or addition which is not structural.
- 11.2 If the **LESSEE** does alter, add to, or improve the Premises in any way, whether in breach of clause 14.1 or not, the **LESSEE** shall, if so required in writing by the **LESSOR**, restore the Premises on the termination of this lease to their condition as it was prior to such alteration, addition or improvement having been made. The **LESSOR's** requirement in this regard may be communicated to the **LESSEE** at any time, but not later than the (30th) day after the **LESSEE** has delivered up the Premises pursuant to the termination of this lease; and this clause 14.2 shall not be construed as excluding any other or further remedy which the **LESSOR** may have in consequence of a breach by the **LESSEE** of clause 14.1.
- 11.3 Save for any improvement which is removed from the Premises as required by the **LESSOR** in terms of clause 14.2, all improvements made to the Premises shall belong to the **LESSOR** and may not be removed from the Premises at any time. The **LESSEE** shall not, whatever the circumstances, have any claim against the **LESSOR** for compensation for any improvement to the Premises, unless such improvements were made with the **LESSOR's** prior written consent which compensation shall be limited to the costs of the improvement, or as otherwise agreed to in writing by the **LESSOR**, nor shall the **LESSEE** have a right of retention in respect of any improvements.

12. EXCLUSION OF LESSOR FROM CERTAIN LIABILITY AND INDEMNITY

- 12.1 The **LESSEE** shall have no claim for damages against the **LESSOR** and may not withhold or delay any payment due to the **LESSOR** by reason directly or indirectly of
- 12.1.1 a breach by the **LESSOR** of any of its obligations under this lease;
 - 12.1.2 any act or omission of the **LESSOR** or any agent or servant of, or contractor to, the **LESSOR**, whether or not negligent, wilfully wrongful, or otherwise actionable at law, and including (without limiting the generality of the foregoing) any act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard, or caretaker;
 - 12.1.3 the condition or state of repair at any time of the **PROPERTY**, the Building, or any part of the **PROPERTY** or the Building;
 - 12.1.4 any failure or suspension of, or any interruption in, the supply of water, electricity, air-conditioning, heating, or any other amenity or service to the Premises, the Building, or the **PROPERTY** (including, without generality being limited, any cleaning service), whatever the cause;
 - 12.1.5 any breakdown of, or interruption in the operation of, any machinery, plant, equipment, installation or system situated in or on, or serving the **PROPERTY**, the Building, or the Premises, and including (but without limiting the generality of the foregoing) any boiler, burglar alarm, or security installation or system, again regardless of cause;
 - 12.1.6 any interruption of, or interference with, the enjoyment or beneficial occupation of the Premises or any of the Common Areas of the **PROPERTY** or the Building caused by any building operations or other works to or in the Building or elsewhere on or about the **PROPERTY**, whether by the **LESSOR** or by anybody else; or
 - 12.1.7 any other event or circumstance whatever occurring, or failing to occur, upon, in, or about the **PROPERTY**, the Building, or the Premises, whether or not the **LESSOR** could otherwise have been held liable for such occurrence or failure, and the **LESSEE** indemnifies the **LESSOR** against all liability to any of the associates, directors, members, agents, customers, servants, guests and other invitees of the **LESSEE** or of any of its Associates, and all other persons who may enter upon the Premises or any parts thereof through or under the **LESSEE**, in consequence of any such matter as is referred to in clauses 15.1.1 to 15.1.7 above.
- 12.2 The **LESSOR** shall not, however, be excused from specific performance of any of its obligations under this lease, whether express or implied, and particularly (but not only) its obligations to afford the **LESSEE** occupation and enjoyment of the Premises as contemplated by this lease and to carry out such maintenance and repairs as are incumbent upon the **LESSOR** in terms hereof; and if the **LESSOR** fails to carry out any such obligation of maintenance or repair with reasonable speed or efficiency, and persists in such default after reasonable notice in writing requiring that it be remedied, the **LESSEE** may cause the necessary maintenance or repair (including any incidental or necessary replacement) to be carried out and may then recover the reasonable cost thereof from the **LESSOR** on demand.

- 12.3 The **LESSOR** does not warrant that the Premises are suitable for the purposes of the **LESSEE** or any of its Associates or that the **LESSEE** or any of its Associates will be granted any licence or consent which may be necessary for the carrying on of any business or activity in the Premises.

13. LESSOR'S RIGHTS OF ENTRY AND CARRYING OUT OF WORKS

- 13.1 The **LESSOR's** representatives, agents, servants and contractors may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the **LESSEE** or any other occupier of the Premises
- 13.1.1 enter the leased Premises in order to inspect them, to carry out any necessary repairs, replacements, or other works, or to perform any other lawful function in the *bona fide* interests of the **LESSOR** or any of the occupiers of the **PROPERTY**; or
- 13.1.2 carry out elsewhere in the Building or on the **PROPERTY** any necessary repairs, replacements, or other works, but the **LESSOR** shall ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the Premises by those in occupation thereof.
- 13.2 The **LESSOR** shall not, however, cause or allow any major building works to be carried out anywhere upon the **PROPERTY** unless
- 13.2.1 such works are necessary and do not merely involve additions to the Building, the construction of additional buildings, or redecoration of a solely aesthetic nature; or
- 13.2.2 the **LESSEE** has consented otherwise in writing.

14. AREA OF THE PREMISES

- 14.1 If it is necessary in terms of this lease to determine the area, in square metres, of the Premises or any other part of the Building, such determination shall be made according to the standard method for measuring floor areas. Any dispute between the **LESSOR** and the **LESSEE** as to any such area shall be determined by an independent architect, acting as expert and not arbitrator, whose certificate as to such area shall be final and binding on the parties. If the parties fail to agree on the identity of such architect, he shall be appointed by the Executive Director for the time being of the South African Institute of Architects.

15. RULES

- 15.1 The **LESSEE** shall at all material times comply with such reasonable rules and regulations as are laid down in writing by or on behalf of the **LESSOR** for observance by tenants and other occupiers of the **PROPERTY** and their invitees, including (without generality being limited) rules and regulations in connection with
- 15.1.1 the security of the **PROPERTY** and the protection of persons and **PROPERTY** thereon, including in particular (again without generality being restricted) any rules for the control and identification of persons and vehicles entering the **PROPERTY** or any parts thereof;
- 15.1.2 the driving and parking of vehicles on or about the **PROPERTY**;

15.1.3 the utilisation of common amenities and facilities on the **PROPERTY**;

15.1.4 the air-conditioning plant, if any, servicing the Building.

15.2 Clause 18.1 shall not be construed as implying that the **LESSOR** assumes any liability which it would not otherwise have had in connection with the subject matter of any such rule or regulation.

16. **PARKING**

16.1 The **LESSEE** shall throughout the Lease Period have the exclusive use for its directors, officers, members, partners, employees, clients, customers and invitees of parking bays on the premises.

16.2 All the terms of this lease relating to the Premises themselves shall apply *mutatis mutandis* to the parking bays/garages referred to in clause 19.1 except those which are obviously inapplicable.

16.3 The parking arrangement in terms of clause 19.1 shall at all events terminate simultaneously with this lease in so far as it relates to the Premises.

17. **DAMAGE TO OR DESTRUCTION OF PREMISES**

17.1 If the Premises are destroyed or so damaged that they can no longer be beneficially occupied, this lease shall terminate when that happens unless the parties agree in writing otherwise.

17.2 If the Premises are significantly damaged but can still be beneficially occupied, this lease shall remain in force and the **LESSOR** shall repair the damage without undue delay but the rent shall be abated so as to compensate the **LESSEE** fairly for the effects of the damage and repair work on the enjoyment of the Premises. Failing agreement on such abatement or on the applicability of this clause to any particular circumstances, the matter shall be referred to an expert appointed by the parties jointly or, if they do not agree on such appointment, nominated by the President for the time being of The Institute of Estate Agents of South Africa, and the decision of such expert shall be final and binding. The expert's fees and disbursements, including any inspection costs, shall be borne and paid by the parties in equal shares. Pending determination of the abatement the **LESSEE** shall continue to pay the full rent for the Premises as if they had not been damaged and as soon as the matter has been resolved the **LESSOR** shall make the appropriate repayment to the **LESSEE**.

17.3 Subject to clause 15, if any damage to the Premises or the destruction thereof is caused by an act or omission for which either party is responsible in terms of this lease or in law, the other party shall not be precluded by reason of any of the foregoing provisions of this clause from exercising or pursuing any alternative or additional right of action or remedy available to the latter party under the circumstances (whether in terms of this lease or in law).

18. **SPECIAL REMEDY FOR BREACH**

18.1 Should the **LESSEE** default in any payment due under this lease or be in breach of its terms in any other way, and fail to remedy such default or breach within (30) days after receiving a written demand that it be remedied, the **LESSOR** shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the **LESSOR** under the circumstances, to cancel this lease with immediate effect, be repossessed of the Premises, and

recover from the **LESSEE** damages for the default or breach and the cancellation of this lease.

18.2 Clause 21.1 shall not be construed as excluding the ordinary lawful consequences of a breach of this lease by either party (save any such consequences as are expressly excluded by any of the other provisions of this lease) and in particular any right of cancellation of this lease on the ground of a material breach going to the root of this lease.

18.3 In the event of the **LESSOR** having cancelled this lease justifiably but the **LESSEE** remaining in occupation of the Premises, with or without disputing the cancellation, and continuing to tender payments of rent and any other amounts which would have been payable to the **LESSOR** but for the cancellation, the **LESSOR** may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on account of the damages suffered by the **LESSOR** by reason of the unlawful holding over on the part of the **LESSEE**.

19. NEW TENANTS AND PURCHASERS

19.1 The **LESSEE** shall at all reasonable times:-

19.1.1 during the Lease Period, allow prospective purchasers of the **PROPERTY** or of any shares or other interests in the **LESSOR**; and

19.1.2 during the last (3) months of the Lease Period, allow prospective tenants or purchasers of the Premises, to enter and view the interior of the Premises.

20. COSTS

20.1 The legal costs incurred in the preparation of this lease and the stamp duty payable thereon shall be borne and paid by the **LESSEE**.

21. DOMICILIA AND NOTICES

21.1 The parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 24.2, provided that such *domicilium* of either party may be changed by written notice from such party to the other party with effect from the date of receipt or deemed receipt by the latter of such notice.

21.2

21.2.1 The **LESSOR**:
Town Hall Complex
Plein Street
STELLENBOSCH

21.2.2 The **LESSEE**:

Sandown Motor Holdings (Pty) Ltd
Bird & Adam Tas Street
Stellenbosch

21.3 Any notice, acceptance, demand or other communication properly addressed by either party to the other party at the latter's *domicilium* in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received

by the latter on the 5th business day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

22. WHOLE AGREEMENT

- 22.1 This is the entire agreement between the parties.
- 22.2 Neither party relies in entering into this agreement on any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this agreement as warranties or undertakings.
- 22.3 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.

23. NON-WAIVER

- 23.1 Neither party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this lease by reason of such party having at any time granted any extension of time for, or having shown any indulgence to, the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other party.
- 23.2 The failure of either party to comply with any non-material provision of this lease shall not excuse the other party from performing the latter's obligations hereunder fully and timeously.

24. WARRANTY OF AUTHORITY

- 24.1 The person signing this lease on behalf of the **LESSOR** expressly warrants his authority to do so.

25. SALE OF PREMISES

- 25.1 The validity of this lease shall not in any way be affected by the transfer of the Premises from the **LESSOR** pursuant to a sale thereof. It shall accordingly, upon registration of transfer of the Premises into the name of the purchaser, remain of full force and effect save that the purchaser shall be substituted as **LESSOR** and acquire all rights and be liable to fulfil all the obligations which the **LESSOR**, as **LESSOR**, enjoyed against or was liable to fulfil in favour of the **LESSEE** in terms of the lease.

26. BREACH

- 26.1 Should any payment of rent or any other amount due hereunder not be paid on or before due date or should the **LESSEE** commit or suffer or permit the commission of a breach of any of the other terms of this Lease, whether or not such breach goes to the root of this contract, and fail to remedy such breach within 7 (seven) days after having been required in writing to do so, or should the **LESSEE** be placed in liquidation, whether provisional or final and whether voluntary or compulsory, or under judicial management, whether provisional or final, or under sequestration, whether provisional or final, or should the **LESSEE** effect a general compromise with its creditors or any other arrangements with its creditors necessitated by the inability of the **LESSEE** to pay its debts, or should the **LESSEE** commit any act which is, or would if committed by a natural person be, an act of insolvency in terms of Section 8 of the Insolvency Act,

1936, as amended, the **LESSOR** shall be entitled but not obliged, notwithstanding any previous waiver or anything to the contrary herein provided and without prejudice to any other rights of the **LESSOR** in terms of this Lease or in law, to cancel this Lease forthwith, eject the **LESSEE** from the PREMISES and recover from the **LESSEE** any damages suffered by the **LESSOR** as well as all amounts which became due for payment by the **LESSEE** hereunder prior to the date of such cancellation.

- 26.2 Notwithstanding anything to the contrary herein contained, it is specifically recorded that in the event of that **LESSEE** failing at any time to comply with any of its obligations in terms of this lease, the **LESSOR** shall be entitled, but not obliged, and without prejudice to any other rights of the **LESSOR** in terms of this Lease or in Law arising from such breach, to carry out such obligations on behalf of the **LESSEE** and to incur any costs in connection therewith and to claim immediate reimbursement from the **LESSEE** of all such costs.
- 26.3 In the event of the **LESSOR** instructing its attorneys to take measures for the enforcement of any of the **LESSOR**'s rights under this Lease the **LESSEE** shall pay to the **LESSOR** on demand such collection legal and other costs, on the attorney and client scale, as shall be lawfully charged by such action in respect of or arising from the measures to taken by the said attorneys.
- 26.4 In the event of the **LESSOR** cancelling this Lease and the **LESSEE** disputing, the right to cancel and remaining in occupation of the PREMISES, the **LESSEE** shall, pending the determination of such dispute, continue to pay to the **LESSOR** an amount equivalent to the monthly rent and other sums payable hereunder on or before the dates on which such rent and other sums would have been due but for the cancellation and the **LESSOR** shall be entitled to accept and recover such payments and the acceptance thereof shall be without prejudice to and shall not in any ay whatsoever affect the **LESSOR**'S cancellation then in dispute. Should the dispute be determined in favour of the **LESSOR**, the payments made and received in terms of this clause shall be deemed to be amounts paid by the **LESSEE** on account of damages suffered by the **LESSOR** by reason of the cancellation of this Lease and/or the unlawful holding over by the **LESSEE**.

SIGNED at on this.....of.....2015 in

the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

.....

(Signature of LESSOR)

SIGNED at on this.....of.....2015 in

the presence of the undersigned witnesses

Witnesses:

1

2

(Signatures of witnesses)

.....

(Signature of LESSEE)

MEMORANDUM OF AGREEMENT FOR CESSION

entered into by and between

SANDOWN MOTOR HOLDINGS PROPRIETARY LIMITED

(“hereinafter referred to as “SMH”)

and


Stellenbosch Municipality

(hereinafter referred to as the “Service Provider”)

And

SUPER GROUP TRADING PROPRIETARY LIMITED

(Hereinafter referred to as the “Cessionary”)

Handwritten initials and a signature in the bottom right corner of the page.



PART I: INTERPRETATION

1 DEFINITIONS

In this Agreement, unless otherwise stated, or the context otherwise indicates, the under-mentioned words and expressions shall bear the meanings ascribed to them:

- 1.1 **"Agreement"** shall mean this Agreement and all annexures and schedules attached hereto;
- 1.2 **"Cessionary"** shall mean **Super Group Trading Proprietary Limited** a company incorporated in terms of the Companies Act, No. 71 of 2008, as amended, with registration number 1972/009559/07 duly represented by Graeme Watson who is duly authorised hereto and shall include its holding company and all other subsidiaries, which further details are set out in Annexure B;
- 1.3 **"Ceded Rights and Obligations"** shall mean all of SMH's rights and obligations and other responsibilities contained in the Service Level Agreement.
- 1.4 **"Cession"/ "Cede"** shall mean the cession and delegation (assignment) of the Ceded Rights and Obligations in terms of this Agreement.
- 1.5 **"Effective Date"** shall mean 1 September 2016;
- 1.6 **"SMH"** shall mean **Sandown Motor Holdings Proprietary Limited**, a company incorporated in terms of the Companies Act, No. 71 of 2008, as amended, with registration number 1982/002346/07.
- 1.7 **"Parties"** shall mean SMH, the Service Provider and the Cessionary and **"Party"** shall mean either of them as the context requires;

A handwritten signature in black ink, appearing to be "G.M.", located in the bottom right corner of the page.

APPENDIX 3

MEMORANDUM OF AGREEMENT FOR CESSION

entered into by and between

SANDOWN MOTOR HOLDINGS PROPRIETARY LIMITED

("hereinafter referred to as "SMH")

and

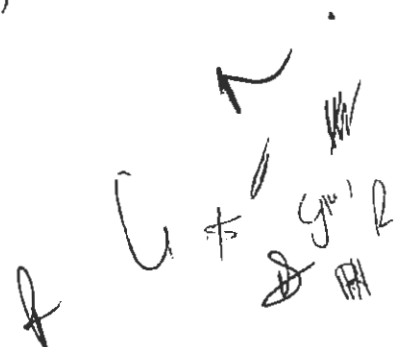
Stellenbosch Municipality

(hereinafter referred to as the "Service Provider")

And

SUPER GROUP TRADING PROPRIETARY LIMITED

(Hereinafter referred to as the "Cessionary")



Handwritten initials and signatures in the bottom right corner, including 'A', 'G', 'F', 'J', 'R', and 'M'.



PART I: INTERPRETATION

1 DEFINITIONS

In this Agreement, unless otherwise stated, or the context otherwise indicates, the under-mentioned words and expressions shall bear the meanings ascribed to them:

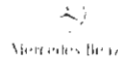
- 1.1 "Agreement" shall mean this Agreement and all annexures and schedules attached hereto;
- 1.2 "Cessionary" shall mean **Super Group Trading Proprietary Limited** a company incorporated in terms of the Companies Act, No. 71 of 2008, as amended, with registration number 1972/009559/07 duly represented by Graeme Watson who is duly authorised hereto and shall include its holding company and all other subsidiaries, which further details are set out in Annexure B;
- 1.3 "Ceded Rights and Obligations" shall mean all of SMH's rights and obligations and other responsibilities contained in the Service Level Agreement.
- 1.4 "Cession"/ "Cede" shall mean the cession and delegation (assignment) of the Ceded Rights and Obligations in terms of this Agreement.
- 1.5 "Effective Date" shall mean 1 September 2016;
- 1.6 "SMH" shall mean **Sandown Motor Holdings Proprietary Limited**, a company incorporated in terms of the Companies Act, No. 71 of 2008, as amended, with registration number 1982/002346/07.
- 1.7 "Parties" shall mean SMH, the Service Provider and the Cessionary and "Party" shall mean either of them as the context requires;

Handwritten initials and signatures in the bottom right corner, including 'G', 'SM', 'R', and 'AT'.



- 1.8 “**Service Level Agreement**” shall mean the Lease agreement entered into on 17 August 2015, more accurately described and attached in **Annexure A**, between SMH and the Service Provider.
- 1.9 “**Service Provider**” shall mean Stellenbosch Municipality, duly represented by _____ in his capacity as _____ who warrants that he is duly authorised.
- 1.10 “**Signature Date**” shall mean the date of signature of this Agreement by the Party signing last in time. This Agreement may be executed in counterparts by the parties, which signature date shall then be the date upon which the last party affixes its signature to this agreement;
- 1.11 “**writing**” or “**in writing**” shall mean any physical document, but excludes any communication by way of a data message.
- 1.12 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 1.13 Unless the context clearly indicates a contrary intention, any word connoting:-
- 1.13.1 any singular shall be deemed to include a reference to the plural and vice versa;
- 1.13.2 any gender shall be deemed to include a reference to the other gender; and
- 1.13.3 a natural person shall be deemed to include a reference to a legal or juristic person.
- 1.14 The expiry or termination of this Agreement shall not affect provisions which expressly provide that they will operate after such expiry or termination.

A handwritten signature in black ink, appearing to be "GJM" with a stylized flourish above it.



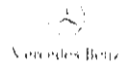
Provisions of necessity shall continue to have effect after expiry or termination of this Agreement, notwithstanding that the clauses themselves do not expressly provide for this.

- 1.15 The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.
- 1.16 Where figures are referred to in numerals and in words and there is any conflict between the two (2), the words shall prevail.
- 1.17 Any reference to any legislation is a reference to such legislation as at the Signature Date and as amended or re-enacted.
- 1.18 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on a Party, then notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in this Agreement.
- 1.19 The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.

2 INTRODUCTION

- 2.1 SMH will hereby Cede and assign to the Cessionary the Ceded Rights and Obligations in terms of this Agreement as of the Effective Date.
- 2.2 The Service Provider, subject to the aforementioned conditions, hereby unconditionally consents, accepts and grants its approval of the Cession by signing this Agreement.

A handwritten signature in black ink, appearing to be "SMH", located in the bottom right corner of the page.

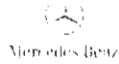


3 CESSION

- 3.1 SMH hereby irrevocably Cedes, assigns, delegates, transfers and makes over to the Cessionary, outright, and absolutely, with effect on and from the Effective Date, the Ceded Rights and Obligations. As a consequence, the Service Level Agreement shall be taken over on the same terms and conditions by the Cessionary.
- 3.2 The Cessionary and the Service Provider hereby irrevocably accepts such Cession.
- 3.3 The Parties confirm that it is their common continuing intention that the Cession provided for in this Agreement operates irrevocably so as to, subject to Clause 3.2:
- 3.3.1 divest SMH of the Ceded Rights and Obligations under and in terms of the Service Level Agreement; and
 - 3.3.2 transfer to and vest in the Cessionary the Ceded Rights and Obligations under and in terms of the Service Level Agreement.
- 3.4 The Service Level Agreement shall not be amended in any other form or substance other than the amendments and Cession contained in this Agreement.

SIGNATURE PAGE TO FOLLOW ON NEXT PAGE

A handwritten signature in black ink, appearing to be "Gin" with a stylized flourish above it.



SIGNED at..... on this the.....day of ~~2016.~~ 2017

FOR SMH

WITNESSES

1.NAME.....SIGNATURE.....

2.NAME.....SIGNATURE.....

SIGNED at.....on this the.....day of ~~2016.~~ 2017

For SUPER GROUP TRADING PROPRIETARY LIMITED

WITNESSES

1. NAME..... SIGNATURE.....

2. NAME..... SIGNATURE.....

Handwritten initials/signature



SIGNED at Stettin on this the 15th day of February, ~~2016~~ 2017 ^{GM}

[Handwritten Signature]

For SERVICE PROVIDER

WITNESSES

1. NAME P. Smith

SIGNATURE *[Handwritten Signature]*

2. NAME T. Benjamin

SIGNATURE *[Handwritten Signature]*



ANNEXURE A
LEASE AGREEMENT

**ANNEXURE B****SCHEDULE OF CESSIONARY'S DETAILS**

Name	Super group trading proprietary limited
Contact Details	27 Impala Road Chislehurst Sandton Email address: graeme.watson@supergroup.com Marked for the attention of: Graeme Watson.

APPENDIX 4



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY



DIRECTORATE: ENGINEERING SERVICES / DIREKTORAAT: INGENIEURSDIENSTE

MEMORANDUM

Att ▫ Aandag: PIET SMIT

From ▫ Van: EJ WENTZEL

Date ▫ Datum: 27 AUGUSTUS 2015

Re ▫ Insake: PRIVAAT EIENDOM BENODIG VIR PADVERBREDING

Hierdie department is tans besig met die beplanning om die R44/ Birdstraat interseksie op te gradeer. Die ontwerpe pas nie binne die bestaande reserve nie en noodsaak dit die afsny van privaat eiendom. Vind aangeheg sketse, wat die gedeeltes grond wat benodig word, vir die volgende eiendomme:

Erf 6372 ± 37.4 m²

Erf 81 ± 12.8 m²

Rem/ 6094 ± 87.1 m²

Vir duidelikheidshalwe sluit ons ook die konsep ontwerp van die interseksie in om vir u die agtergrond te gee. Kan u asb voortgaan om met die grondeienaars te onderhandel om die grond te bekom. Dit sal ook waardeer word as u vir ons 'n aanduiding kan gee van die kostes om die eiendom te bekom vir begroting doeleindes.

Byvoorbaat dank

EJ Wentzel
Bestuurder: Vervoer, Paaie en Stormwater

APPENDIX 5



STELLENBOSCH
 STELLENBOSCH • PNIEL • FRANSCHHOEK
 MUNISIPALITEIT • UMASIPALA • MUNICIPALITY



2015-10-30

IMPERIAL GROUP (PTY) LTD
 PO BOX 2811
 BEDFORDVIEW
 2008

Dear Sir/Madam

PROPOSED ACQUISITION OF A PORTION OF REMAINDER ERF 6094 FOR ROAD WIDENING PURPOSES

As you are probably aware, Stellenbosch has appointed a Consulting Team to plan and do the design for the upgrading of the Birdstreet/Adams Tas intersection. A copy of the conceptual design/layout is attached as **APPENDIX 1**.

In order to implement the proposed upgrading, a portion of your property, measuring 87.1m² in extend, as shown on **APPENDIX 2**, will be required.

The purpose of this letter is to enquire whether you would be willing to dispose of the 87.1m² portion of land, and if so at what price. Should you indeed be willing to sell the land to us, we will attend to the subdivision and rezoning thereof to enable the transfer to us.

Should we be unable to acquire the land in question on the basis of a Sales Agreement (willing seller, willing buyer) we will have to institute proceedings in terms of Section 29 of the Roads Ordinance, No 19/1976, i.e to expropriate the land in question.

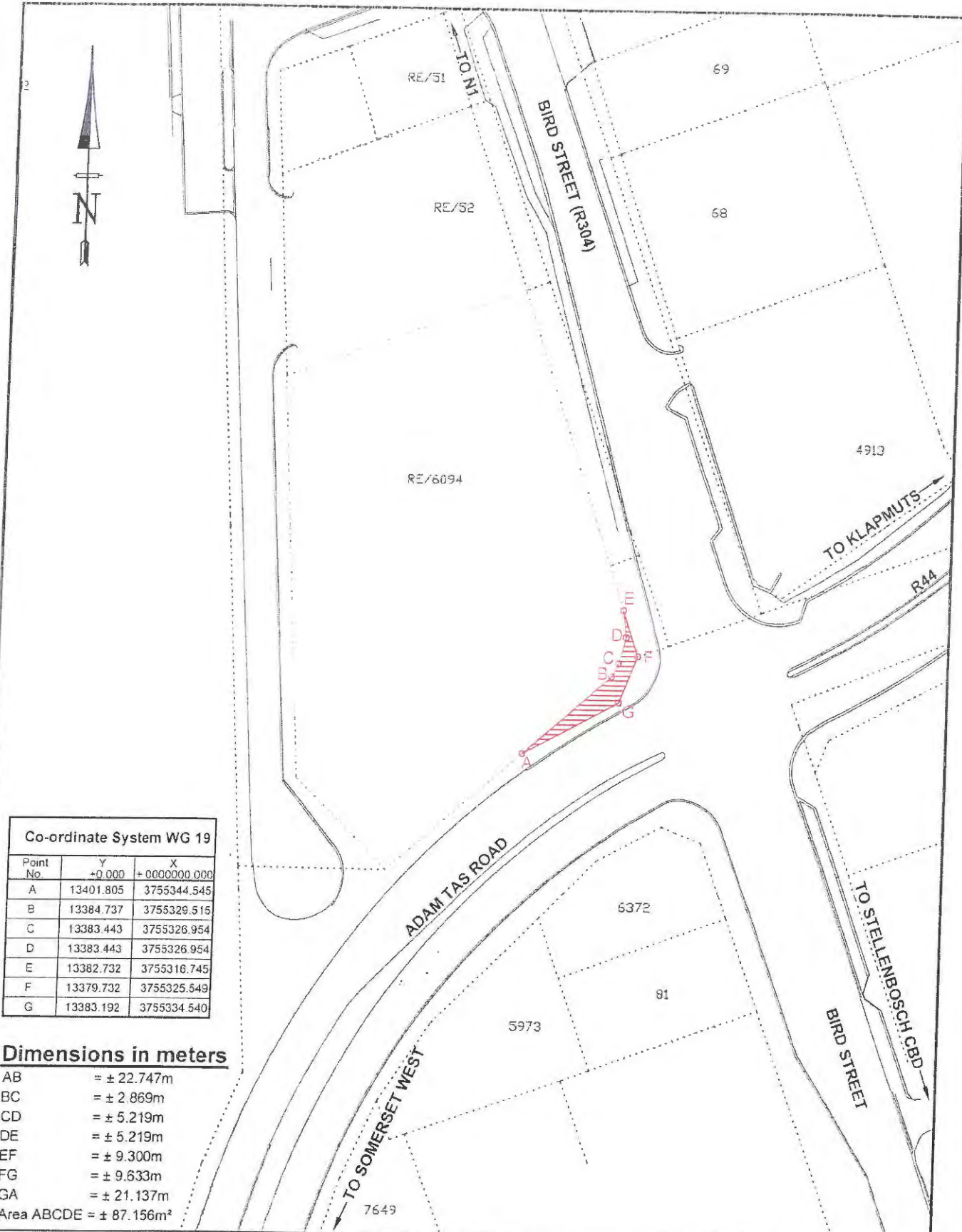
We would, however, prefer to settle this matter by way of a Sales Agreement.

We urgently await your feedback in this regard.

Yours faithfully

.....
PIET SMIT
MANAGER: PROPERTY MANAGEMENT

cc: EJ Wentzel



Co-ordinate System WG 19

Point No.	Y +0.000	X +0000000.000
A	13401.805	3755344.545
B	13384.737	3755329.515
C	13383.443	3755326.954
D	13383.443	3755326.954
E	13382.732	3755316.745
F	13379.732	3755325.549
G	13383.192	3755334.540

Dimensions in meters

AB	= ± 22.747m
BC	= ± 2.869m
CD	= ± 5.219m
DE	= ± 5.219m
EF	= ± 9.300m
FG	= ± 9.633m
GA	= ± 21.137m
Area ABCDE	= ± 87.156m ²

Posbus / PO Box 131
Stellenbosch 7599

Time Square Unit 8
9 Electron Street
Techno Park
Stellenbosch 7600

Tel. : 021 - 880 0443
Faks / Fax : 021 - 880 0390
e-pos / e-mail : piet@icagroup.co.za



Projek - Project

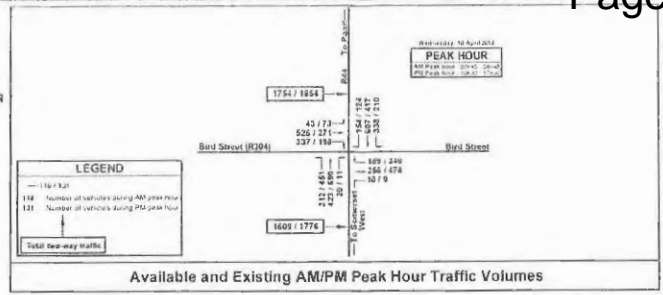
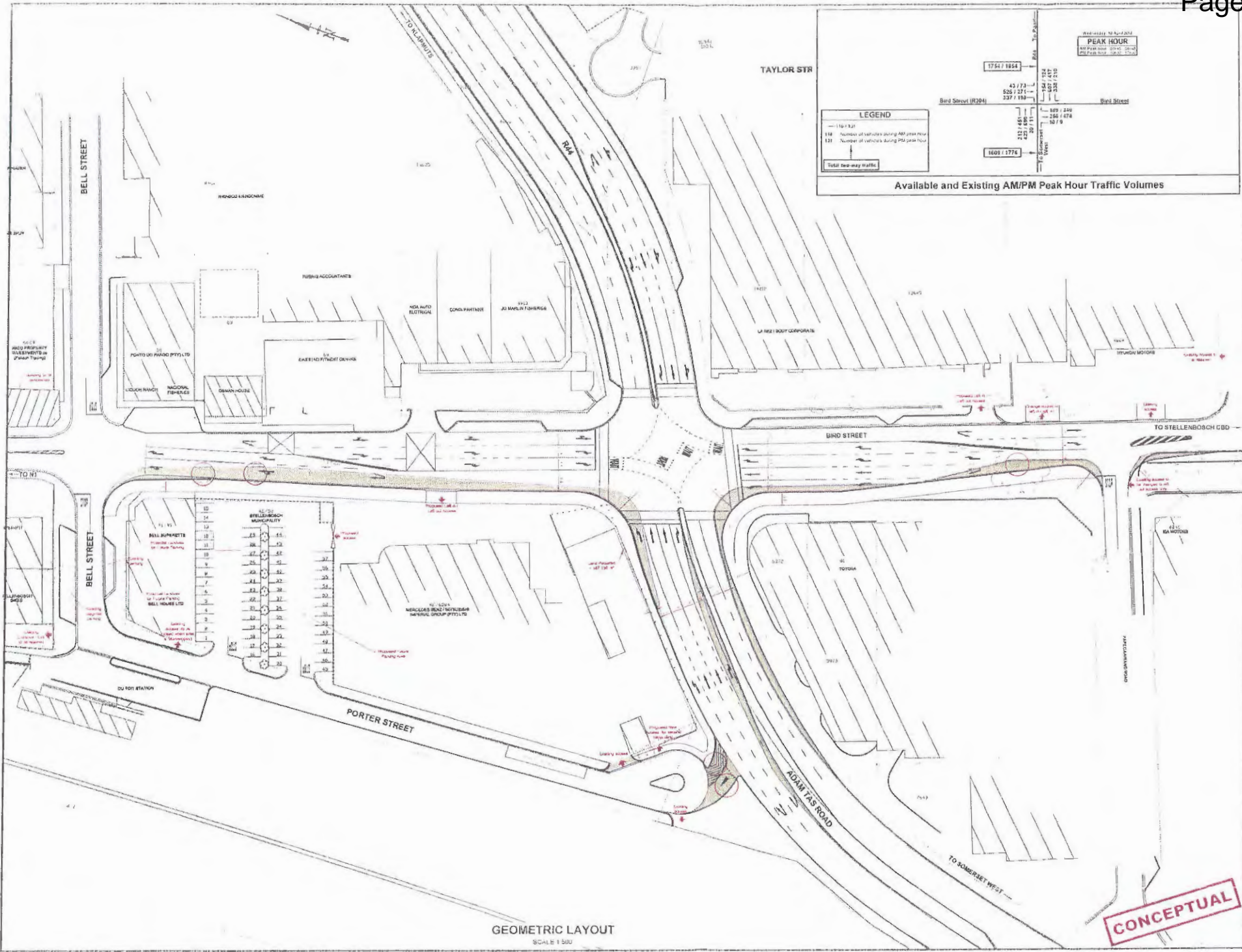
KOELLENHOF ROAD (MR174) (R304) / WELGEVONDEN ROAD TO ADAM TAS ROAD (MR27) (R44) / BIRD STREET INTERSECTION

Planbeskrywing - Plan Description

LAND REQUIRED FOR ROAD PURPOSES
ERF 6094, STELLENBOSCH

ICE/B/827/P20

SCALE 1:1000



Working Author:	Date:	Working / Description:
Project: R44 / ADAM TAS ROAD AND BIRD STREET INTERSECTION Phase: PHASE 1 Drawn: [Name] Checked: [Name] Approved: [Name]		
For: Client:	By: Author:	GROUP (Pty) Ltd
Checked: Checked:	Approved: Approved:	GROUP (Pty) Ltd
Drawn: Drawn:	Checked: Checked:	GROUP (Pty) Ltd
Approved: Approved:	Checked: Checked:	GROUP (Pty) Ltd
Stellenbosch Municipality Project: PHASE 1 UPGRADE OF INTERSECTIONS STELLENBOSCH Plan Description: PHASE 1 UPGRADE OF R44 / ADAM TAS ROAD AND BIRD STREET INTERSECTION Date: 10 JUN 2015 Scale: AS SHOWN Title: JUNE 2015 Production: PHASE 1 ICE/SI/1054/P06		

CONCEPTUAL

APPENDIX 6



2017-07-19

Supergroup Ltd
27 Impala Road
Chislehurst
Sandton

Dear Sir/Madam

PROPOSED ACQUISITION OF A PORTION OF REMAINDER ERF 6094 FOR ROAD WIDENING PURPOSES

As you are probably aware, Stellenbosch has appointed a Consulting Team to plan and do the design for the upgrading of the Birdstreet/Adams Tas intersection. A copy of the conceptual design/lay-out is attached as **APPENDIX 1**.

In order to implement the proposed upgrading, a portion of your property, measuring 87.1m² in extend, as shown on **APPENDIX 2**, will be required.

The purpose of this letter is to enquire whether you would be willing to dispose of the 87.1m² portion of land, and if so at what price. Should you indeed be willing to sell the land to us, we will attend to the subdivision and rezoning thereof to enable the transfer to us.

Should we be unable to acquire the land in question on the basis of a Sales Agreement (willing seller, willing buyer) we will have to institute proceedings in terms of Section 29 of the Roads Ordinance, No 19/1976, i.e to expropriate the land in question.

We would, however, prefer to settle this matter by way of a Sales Agreement.

We urgently await your feedback in this regard.

Yours faithfully

.....
PIET SMIT
MANAGER: PROPERTY MANAGEMENT

cc: EJ Wentzel

APPENDIX 7



VALUATION REPORT

DETERMINATION OF THE MARKET VALUE OF:
A ±87.156 m² PORTION OF ERF 6094 STELLENBOSCH,
STELLENBOSCH REGISTRATION DIVISION

Client:

STELLENBOSCH MUNICIPALITY

11 August 2017

Compiled by:

Johan Klopper

Professional Valuer

Member of the SA Institute of Valuers

BCom Law (University of Stellenbosch), NDip: Property Valuation (UNISA)



11 August 2017

Mr. Piet Smit
 Stellenbosch Municipality
 Property Management
 Plein Street
 Stellenbosch
 7600

VALUATION CERTIFICATE

I, the undersigned, Johan Klopper, Professional Valuer registered in terms of the Property Valuer's Profession Act, 2000 (Act No 47 of 2000) do hereby certify that I have inspected and valued the following immovable property namely:

<p>A ±87.156 m² portion of ERF 6094 STELLENBOSCH, STELLENBOSCH REGISTRATION DIVISION, in the WESTERN CAPE</p>

I consider the fair and reasonable market value of the abovementioned property to be as follows:

<p>R 174 300</p>	<p>One Hundred and Seventy Four Thousand Three Hundred Rand (Excluding VAT)</p>
-------------------------	-----------------------------------------------------------------------------------------------------

As at: **1 August 2017**

Signed at Stellenbosch this 11th day of August 2017.

A handwritten signature in black ink, appearing to read 'J. Klopper', written over a horizontal line.

J. Klopper
 Professional Valuer
 Registration Number: 6372/0

PENDO PROPERTY SERVICES CC T/A PENDO PROPERTY VALUERS
 Reg. No. 2009/230603/23 • VAT Reg. No. 4530269028
 Member: J. Klopper

Verified Level 4 B-BBEE Contributor

VALUATION REPORT

1. Instructions & Purpose of Valuation

Instructions were received from the Stellenbosch Municipality to determine to Market Value of a portion of Erf 6094 Stellenbosch, Western Cape (hereinafter referred to as the subject property), as at the effective date mentioned in paragraph 3.

The purpose of the valuation is to determine the market value of a portion of the abovementioned property in light of the proposed acquisition thereof by the Stellenbosch Municipality for road widening purposes.

2. Date of Inspection

7 August 2017

3. Effective Date of Valuation

1 August 2017

4. Definition of Market Value

The market value can be defined as the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms' length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

(International Definition – International Valuation Standards Council)

5. Valuation Methodology

The **Comparable Sales Method** is considered the most appropriate valuation method to determine the market value of the subject property. This approach is based on the principle of comparability and substitution. The assumption is that if similar assets in a similar market place have been sold at a particular value, then the comparable asset will also sell at a similar price.

Factors taken into consideration in determining the market value of the subject property include location, size of property, usage and rights of use, potential use, condition, cost, physical position and comparable properties.

When only a portion of a property is expropriated this portion is typically **valued as part of the whole**, i.e. the land affected is valued as part of the larger entities they form part of. Any diminution in the value of the remainder should be dealt with in terms of Actual Financial Loss.

6. Restrictive Conditions

Information regarding the subject property and comparable properties was received from local authorities and third parties. This information was received in good faith and it is assumed that the supplied information is correct, but the accuracy thereof is not guaranteed.

We did not undertake a structural survey of each building, nor did we arrange for tests or inspections to be carried out on any of the service installations. This valuation is based on the assumption that the buildings and assets are in a reasonable state of repair and condition, unless expressly stated otherwise in this report.

In this report, the market value and all other values referred to exclude VAT (unless clearly indicated).

We did not take into account any possible contamination of the subject property as a result of an environmental incident, nor did we examine the cost of any remedial measures involved.

The property is valued wholly owned, with no account being taken of monies due in respect of mortgage bonds, liens, loans or other charges.

Neither all nor any part of this report shall be conveyed to the public or anybody other than the addressee or their principles through advertising, public relations, news sales or any other media without the written consent of the author.

This valuation was performed to determine the market value for the acquisition of the affected portions of the subject property for road purposes and should not be used for any other purpose.

7. Title Deed Information

Description:	ERF 6094 STELLENBOSCH, STELLENBOSCH REGISTRATION DIVISION, WESTERN CAPE
Registered Extent:	5303 m ²
Title Deed number:	T5756/2017 (Refer to Annexure A)
Registered owner:	SUPER GROUP TRADING PTY LTD
Registration date:	2017/02/09
Purchase date:	2016/10/26
Purchase price:	R 45 300 000
Mortgage bonds:	None noted
Endorsements:	None noted that materially affects the area to be valued
LPI Code:	C06700220000609400000

8. Local Government Information

Local Authority	Stellenbosch Municipality
Zoning	General Business / Light Industrial
Municipal Valuation	R 15 369 000 (GV2017)

9. Physical Characteristics

Location	The subject property is located at the corner of the R44 and Bird Street, on the northern periphery of Stellenbosch. The immediate vicinity is characterised by commercial and light industrial properties, with showrooms prevalent on the western side of Bird street. The location affords excellent visibility and access to a high volume of passing trade. Refer to Annexure D for a location map.
Site description (Mother property)	The 5303 m ² tract of land represents the Mercedes Dealership site. This site was redeveloped in recent years, and offers modern showroom and ancillary facilities.
Site description (Area to be valued)	The area to be valued represents a long narrow oblong shaped tract of land, measuring approximately 87.156 m ² , located along the southern and eastern boundaries of the subject property. It offers a level topography. The area is tarred. Refer to Annexure C for a map/sketch, Annexure E for an aerial photograph and Annexure F for photographs of the area to be acquired.
Improvements	The only improvement affected by the proposed acquisition appears to be a portion of a carport, with one parking bay affected. The remainder of the area to be acquired represents tarred areas utilised for vehicle display purposes.

10. Market Information

10.1 Comparable Sales

We liaised with the Cape Town Deeds Office to determine the recent sales and transfers in the direct vicinity of the subject property. Comparisons were then made in terms of size and quality of improvements, as well as size, utilisation and potential of the land, location and date of sale, after which the necessary adjustments were made.

Due to the scarcity of comparable sales in the direct vicinity of the subject property the valuer investigated other similar nodes to obtain relevant market information. The following transactions of properties sold in relative close proximity to the subject property give an indication of land values of agricultural units in the area and serve as good comparisons in determining the current market value of the subject property:

NO	DESCRIPTION	ZONING	SALES DATE	SALES PRICE	SIZE (m ²)	R/m ²	STATUS
1	Erf 21855 Brackenfell	GI1	2017/05/15	R 3 000 000	1244	R 2 411	Vacant
2	Erven 602 & 603 Rustdal	GI1	2016/12/02	R 3 135 000	2090	R 1 500	Vacant
3	Erf 690 Rustdal	GI1	2016/07/27	R 1 625 400	1204	R 1 350	Vacant
4	Erf 33290 Strand	GI1	2016/05/30	R 7 000 000	7727	R 906	Vacant
5	Erf 13488 Somerset West	GB1	2015/11/02	R 7 572 150	5607	R 1 350	Vacant
6	Erf 20085 Somerset West	GB4	2015/05/26	R 3 605 600	4540	R 794	Vacant
7	Erf 19658 Kuils River	GB2	2016/05/23	R 3 990 000	3726	R 1 071	Vacant
8	Erven 21798, 21799 & 21800 Brackenfell	GI1	2015/10/21	R 9 800 000	4900	R 2 000	Vacant
9	Erf 24166 Kuils River	GI1	2015/05/29	R 26 421 735	11440	R 2 310	Vacant
10	Erven 8339 & 8340 Stellenbosch	GR	2015/05/26	R 1 780 000	535	R 3 327	Improved
11	Erf 33289 Strand	GI1	2014/03/19	R 4 920 000	6002	R 820	Vacant
12	Erf 24167 Kuils River	GI1	2013/12/12	R 8 947 432	9235	R 969	Vacant
13	Erf 6128 Stellenbosch	GI1	2013/10/31	R 12 000 000	4144	R 2 896	Improved

10.2 Conclusion on Comparable Sales

The listed sales represent properties with similar land use rights, located in relative close proximity to the subject property in comparable nodes. These sales serve as a good indication of the land value of the subject property, and indicate to a land rate generally ranging between R 800 / m² and R 3 330 / m² to be applied to the subject property.

Sales 1 and 8 are located in the sought-after Brackengate Business Park and reflect the upper end of similar properties. Sale 1 furthermore serves as a good indication of the rate to be applied to smaller properties.

Sales 2 & 3 represent vacant industrial stands located in Saxenburg Industria near Kuils River. Sales 4 & 11 are located in the Asia Industrial Park of Strand, while Sale 5 is located in The Interchange commercial node of Somerset West. Sale 6 is located in the Mall Motor City node between the N2 and the R102 at the Somerset Mall, but with limited exposure. Sale 7 represents a vacant business site located along Van Riebeeck Road near the Zevenwacht Mall. Upward adjustments would be justified for the subject property due to the superior location and accessibility.

Sales 9 & 12 are located at the Stellenbosch Arterial and Van Riebeeck Road intersection in Kuils River, with good exposure. Sale 10 is located in the immediate vicinity of the subject property and represents a site that was improved at the date of sale, but has subsequently been demolished. Sale 13 is located in the immediate vicinity of the subject property. It represents an improved industrial property, which suggests a downward adjustment in the land rate to be applied to the subject property.

Analysis of the sale suggest a vacant land rate for the subject property ranging between R 1 350 / m² and R 2 310 / m². Based on the aforementioned, and after the necessary adjustments were made, with specific reference to the size, location and utility of the subject property, the valuer is of the opinion that a market rate of R 2 000 / m² can be applied to the area to be acquired.

11. Market value calculation

11.1 Market value

The value of the proposed areas to be acquired can therefore be estimated as follows:

Description	Size (m ²)	Rate/m ²	Value	Rounded value
Vacant land – Erf 6094 Stellenbosch	87.156 m ²	R 2 000 / m ²	R 174 312	R 174 300

Based on the available market information, the valuer determined the market value of the portion of the subject property required for road widening purposes, as at 1 August 2017, to be the sum of **R 174 300**.

11.2 Actual Financial loss

It was noted that one covered parking bay utilised for vehicle display purposes will be lost due to the proposed acquisition. In this regard the valuer is of the opinion that the cost to construct an alternative carport, at approximately R 7 000 (excl. VAT), would give a fair indication of the financial loss.

11.3 Solatium

The solatium should be calculated in terms of Section 12(2) of the Expropriation Act, 63 of 1975, based on the total compensation relating to the market value and actual financial loss incurred due to the proposed acquisition.

12. Declaration

I, Johan Klopper a registered Professional Valuer, declare that I have inspected the above property and that I have conducted this valuation assignment to the best of my knowledge and skills. I have no present or contemplated interest in this property, and accordingly certify that this valuation was undertaken on a completely independent basis.

Based on our research and experience, we are of the opinion that the **MARKET VALUE** of the portion of **Erf 6094 Stellenbosch** required for road widening purposes, as at 1 August 2017, amounts to:

Amount	In words
R 174 300	One Hundred and Seventy Four Thousand Three Hundred Rand

Signed at STELLENBOSCH on this the 11th day of August 2017.



J. Klopper

Professional Valuer (Reg. No. 6372/0)
Member of the SA Institute of Valuers
BCop (Law); NDip (Property Valuation)

ANNEXURES:

- A. TITLE DEED INFORMATION
- B. S.G. DIAGRAM
- C. ACQUISITION DIAGRAM
- D. LOCATION MAP
- E. AERIAL PHOTOGRAPH
- F. PHOTOGRAPHS OF THE SUBJECT PROPERTY

ANNEXURES:

A. TITLE DEED INFORMATION

Printed: 2017/08/03 09:38

Deeds Office Property

windeed
A LexisNexis® Product

STELLENBOSCH, 6094, 0 (CAPE TOWN)

GENERAL INFORMATION	
Deeds Office	CAPE TOWN
Date Requested	2017/08/03 09:37
Information Source	DEEDS OFFICE
Reference	-

PROPERTY INFORMATION	
Property Type	ERF
Erf Number	8094
Portion Number	0
Township	STELLENBOSCH
Local Authority	STELLENBOSCH MUN
Registration Division	STELLENBOSCH RD
Province	WESTERN CAPE
Diagram Deed	T28299/1978
Extent	5303.0000SQM
Previous Description	-
LPI Code	C08700220000609400000

OWNER INFORMATION	
Owner 1 of 1	
Company Type	COMPANY
Name	SUPER GROUP TRADING PTY LTD
Registration Number	197200955907
Title Deed	T5758/2017
Registration Date	2017/02/09
Purchase Price (R)	45,300,000
Purchase Date	2016/10/28
Share	
Microfilm Reference	
Multiple Properties	NO
Multiple Owners	NO

ENDORSEMENTS (4)				
#	Document	Institution	Amount (R)	Microfilm
1	B82231/1991	BOLAND BANK	100,000	1991 1514 1114
2	K48/1981L	MATIE MOTORS PTY LTD	UNKNOWN	1991 1514 1066
3	K784/1991L	MATIE MOTORS PTY LTD	UNKNOWN	1991 1514 1107
4	FROM 4884.55,5191.51	90	UNKNOWN	

HISTORIC DOCUMENTS (8)				
#	Document	Owner	Amount (R)	Microfilm
1	B11213/1971	-	UNKNOWN	2001 0217 0197
2	B97874/1993	BOLAND BANK LTD	200,000	2001 0217 0201
3	B97875/1993	BOLAND BANK LTD	500,000	2001 0217 0205
4	B97878/1993	BOLAND BANK LTD	UNKNOWN	2001 0217 0208
5	K783/1991L	-	UNKNOWN	1991 1514 1080
6	T28299/1978	DUNRIAL EIENDOMME PTY LTD	UNKNOWN	2001 0217 0184
7	T28299/1978	MATIE MOTORS PTY LTD	NIL	2001 0217 0184
8	T17288/2001	IMPERIAL GROUP PTY LTD	6,200,000	2001 0217 0179

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B. S.G. DIAGRAM

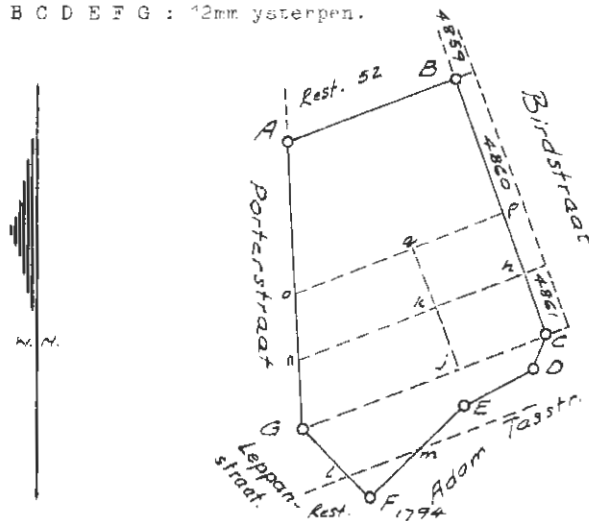
FRIEDLAENDER & BUNGER, Landmeters, STELLENBOSCH.

KANTOORAFSKRIF

SYE Meter	RIKTINGS- HOEKE	KOORDINATE		L.G. No.
		Y	X	
	Konst.	+ 15 000,00	+ 3755000,00	28497,13
AB	49,50 100 46 50	+ 387,18	- 26,97	Goedgekeur <i>[Signature]</i> Landmeter-generaal 10-5-1974
BC	74,33 188 42 20	+ 340,71	- 44,03	
CD	9,61 139 45 20	+ 316,69	+ 26,30	
DE	21,16 139 45 30	+ 320,19	+ 35,25	
EF	34,41 192 57 40	+ 338,81	+ 45,31	
FG	25,12 94 22 20	- 364,64	+ 68,04	
GA	77,61 137 40 20	+ 382,61	+ 50,51	
	027A	+ 302,27	+ 34,74	
	027C	+ 323,14	+ 200,68	

BAKENBESKRYWINGS

A B C D E F G : 12mm ysterpen.



FIGUUR	EFF Nr.	KAART Nr.	TRANSPORTAKTE
1. ABhkjG	Rest. 4884	10397/70	1971. 290. 14490
2. khOj	Rest. 55	1297/1862	1862-54- 90
3. GCDEml	5191	3496/1873	1976. 28297
4. lmF	5190	3226/72	1976. 28297

Skaal 1: 1500.

Die figuur A B C D E F G

stel voor ~~5303~~ vierkant meter

grond, synde

EFF 6094 STELLENBOSCH en bestaan uit erwe soos hierbo aangetoon

Du Toit Villa in
geleë in die Munisipaliteit en
van Stellenbosch
Saamgestel

Administratiewe Distrik

Provinsie Kaap die Goeie Hoop.

Opgemoot in Augustus 1973

deur my,

[Signature]
Landmeter

Hierdie kaart is gehog aan

No. *SVT 28299/76*

gedateer

t.g.v.

Registrateur van Aktes

Die oorspronklike kaart is

soos hierbo aangetoon.

No. ~~gehog aan~~

Transport/Grondbrief

No.

Lêer No. S.2641/68

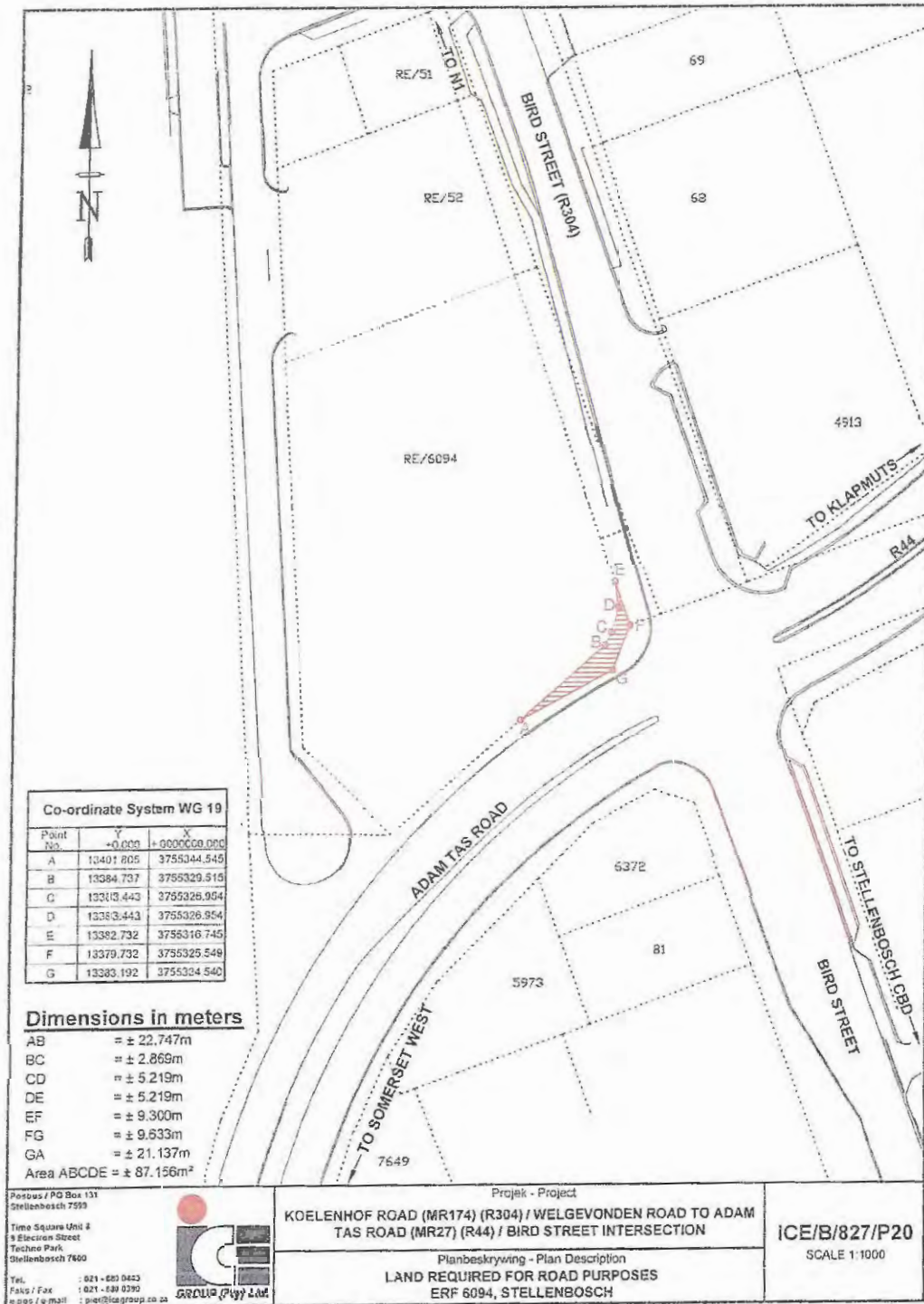
M.S. No. Saamgestel.

Komp. BH-8DA/Y.53 (1478)

BH52-1273 (6941)

6094

C. ACQUISITION DIAGRAM



D. LOCATION MAP



Subject property



E. AERIAL PHOTOGRAPH



F. PHOTOGRAPHS OF THE SUBJECT PROPERTY









End of report

APPENDIX 8

Lorelle Adams

From: Piet Smit
Sent: 22 August 2017 08:23 AM
To: Lorelle Adams
Subject: FW: Supergroup - Mercedes Benz Stellenbosch
Attachments: Valuation report - ERF 6094 STELLENBOSCH - 20170811.pdf

Druk uit en plaas op leer

Piet

From: Piet Smit
Sent: 22 August 2017 08:22 AM
To: 'Brett Rowlands'
Cc: Lorelle Adams; Estienne Cronje
Subject: RE: Supergroup - Mercedes Benz Stellenbosch

Dear Brett,
Please find attached a valuation received from Pendo Property Valuers.

Market value

In terms hereof the market value of the property under consideration ,being a ±87.156 m2 portion of Erf 6094, STELLENBOSCH, is valued at
R 174 300-00(exclusive of VAT).

Actual Financial loss

He also valued the replacement of the covered parking bay at approximately R 7 000 (excl. VAT).

Will you please indicate whether you are indeed willing to sell the portion of land at the price of R181300,being R 174 300-00 plus R7000-00(excl.of VAT).

I await your feedback in this regard.

Kind regards

Piet Smit

From: Brett Rowlands [mailto:brett.rowlands@supergrp.com]
Sent: 17 August 2017 02:47 PM
To: Piet Smit
Cc: Lorelle Adams; Estienne Cronje
Subject: [EX] RE: Supergroup - Mercedes Benz Stellenbosch

Dear Piet,

With respect to the communication received and the time spent at our last meeting on the 22nd of June 2017.

The process to be followed was:

1. We would receive new communication of request from Stellenbosch Municipality to Supergroup– Received 19 July.

2. We would receive communication from a your Outsourced supplier that has been contracted to investigate and evaluate the effect on the proposed widening and expropriation – Not yet completed.
3. Once the two processes were completed Supergroup would engage on the workable solution with the Municipality.

Please be so kind as to advise us who the supplier is so that we can move the process along.

Regards

Brett

Brett Rowlands

Dealerships Western Cape

mobile: 082 414 4268

Super Group Dealerships I 27 Impala Road, Chislehurst, Sandton

www.supergroupdealerships.co.za

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From: Lorelle Adams [<mailto:Lorelle.Adams@stellenbosch.gov.za>]

Sent: 19 July 2017 13:08

To: Brett Rowlands

Subject: RE: Supergroup - Mercedes Benz Stellenbosch

Brett

As discussed with Piet Smit hereto attached a letter with the correct address.

Kind Regards,

Lorelle

From: Piet Smit

Sent: 07 June 2017 03:35 PM

To: Lorelle Adams

Subject: FW: Supergroup - Mercedes Benz Stellenbosch

Reel asb afspraak

From: Brett Rowlands [<mailto:brett.rowlands@supergroup.com>]

Sent: Wednesday, June 07, 2017 12:49 PM

To: Piet Smit

Cc: Estienne Cronje; Bianca Fluckiger

Subject: [EX] RE: Supergroup - Mercedes Benz Stellenbosch

Dear Piet,

Please let me know when you can meet to discuss this issue, regards

Brett

Brett Rowlands

Dealerships Western Cape

mobile: 082 414 4268
Super Group Dealerships I 27 Impala Road, Chislehurst, Sandton
www.supergroupdealerships.co.za

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From: Brett Rowlands
Sent: 30 May 2017 18:06
To: 'Piet Smit'
Cc: Graeme Watson; Estienne Cronje
Subject: Supergroup - Mercedes Benz Stellenbosch

Dear Piet,

Thank you for agreeing to meet with me to discuss the Mercedes Benz Dealership site.

I was going to bring this communication with me tomorrow for the discussion, please let me know when you are able to reschedule the meeting.

Regards

Brett

Brett Rowlands
Dealerships Western Cape
mobile: 082 414 4268
Super Group Dealerships I 27 Impala Road, Chislehurst, Sandton
www.supergroupdealerships.co.za

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APPENDIX 9



27 Impala Road, Chislehurst, Sandton
PO Box 1545 Roosevelt Park 2129 South Africa

Tel + 27 11 523 4105
Fax +27 11 523 4108
www.supergroupdealerships.co.za

5th October 2017

Attention: Piet Smit

Property Manager

Stellenbosch Municipality

Dear Mr Smit,

PROPOSED ACQUISITION OF A PORTION OF REMAINDER ERF 6094 FOR ROAD WIDENING PURPOSES

We refer to the correspondence on the above mentioned issue and subsequent meetings. The following summarizes our discussion:

- The road widening project has had a severe impact on our operations, aside from the portion of land detailed (your appendix 1) the overall parking and our business signage across the front of our property facing Bird Street has been severely affected by the project.
- The short-term nature of our lease on the adjacent Erf RE/52 with the Municipality is a concern. In the light of the lost parking in front of the business and the impact of the sale of land on the corner of Adam Tas and Bird Street we are concerned that should this lease not be renewed in the future the viability of the overall business is at serious risk.
- We note that the overall precinct is in a poor state, we include our verge, the side walk, and covering of Erf RE/52.

We employ 44 people at the business and are proud to serve the community of Stellenbosch and surrounds. We believe that an agreement needs to be sought whereby the Municipality and our Mercedes-Benz Dealership achieve a fair and workable solution.

Alfa Romeo | Audi | Chrysler | Chevrolet | Dodge | Datsun | Fiat | Ford | GWM | Hino | Honda | Isuzu | Isuzu Trucks | Jaguar | Jeep | Land Rover | Lexus | Mazda | Mercedes-Benz | Nissan | Opel | Renault | Suzuki | Toyota | UD Trucks | Volvo | VW

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Company Registration Number: 1972/009559/07; FSB FSP Number 24929

Directors: P Mouniford (CEO) C Brown (CFO) P Smith

Divisional Executives: G Watson (Chief Executive Officer) S Rohl (Chief Financial Officer)
A Rawstone (Chief Operations Officer)

We hereby request that the Municipality consider the following proposal:

The Supergroup agrees to dispose of the required 87.1 m2 of land from RE/6094 for the value as proposed by the Valuator in return for this Municipality agrees to:

- a) Sell RE/52 to the Supergroup for a market related price as determined by the municipality valuator; Or
- b) Agree to 10 year lease on RE/52 with relevant extension options.

Supergroup will then undertake to:

- a) Make improvements to the hard coverings of RE/52 and RE/6094.
- b) Make improvement to the boundary fencing on RE/52 and RE/6094.

We believe that this solution will significantly improve the precinct and the prominent corner on the gateway to Stellenbosch and secure our continuity into the future. We look forward to finding a workable solution as responsible and proud business citizens of Stellenbosch.

We appreciate the dialogue and look forward to your response.

Regards,



Brett Rowlands
Executive Motor Franchises Western Cape

CC Graeme Watson CEO Supergroup Dealerships

constructed on land owned by Supergroup. Added to this pedestrians are using our business parking area as a side walk.

We are being asked by ICE (your civil contractor) to move our used car boundary and remove our external business signage on the side walk.

Please accept our bluntness but we need some feedback on our proposal to ensure that the current impact on our business does continue into the future. At this stage we cannot allow for any work to continue until we can reach agreement in principle on the land expropriation issue and a plan to accommodate our business requirements.

We look forward to urgent action and feedback on our proposal, I am happy to make myself available to meet as soon as possible.

It is not our intention to hinder progress however we are duty bound to defend our rights.

Regards

Brett Rowlands

On 15 Jan 2018, at 14:22, Piet Smit <Piet.Smit@stellenbosch.gov.za> wrote:

Dear Mr.Rowlands,

As indicated to you,I do not have the delegated authority to decide on the possible usage of the adjacent site.I therefore cannot commit to the renewal of the lease without a Council resolution.

Piet

From: Brett Rowlands [<mailto:brett.rowlands@supergrp.com>]

Sent: 15 January 2018 02:12 PM

To: Piet Smit

Cc: Graeme Watson; Nigell Winter

Subject: [EX] RE: RE/6094 - Stellenbosch; Mercedes-Benz

Dear Piet,

We have met with your contractors ICE this morning, they are requesting that we move our Mercedes Benz signage.

We urgently need to get finality on:

- ? The expropriation of our land – currently under construction.
- ? The adjacent site lease – expiring in 2018
- ? The cost of moving signage – now urgent to the Contractor
- ? Agreement on the overall precinct upgrade.

The business impact on our operation has been significant, we must secure of future in the interest of our viability, the wellbeing of our staff and the customers of Stellenbosch.

We would like to assist with the process in the absence of an agreement we may be forced to be obstructive to progress.

We look forward to hearing from you shortly.

Regards

Brett Rowlands

Dealerships Western Cape

mobile: 082 414 4268

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www.supergroupdealerships.co.za

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From: Piet Smit [<mailto:Piet.Smit@stellenbosch.gov.za>]
Sent: 15 January 2018 12:53
To: Brett Rowlands
Subject: RE: RE/6094 - Stellenbosch; Mercedes-Benz

Unfortunately I did not have a chance of taking this to Council.

Piet

From: Brett Rowlands [<mailto:brett.rowlands@supergrp.com>]
Sent: 15 January 2018 08:16 AM
To: Piet Smit
Cc: Lorelle Adams
Subject: [EX] RE: RE/6094 - Stellenbosch; Mercedes-Benz

Dear Piet,

I have a meeting with iCE this morning, thank you for this.

With respect to the proposal made in October regarding the expropriation and the leased land next door, do you have any feedback on our proposal?

Regards

Brett

From: Brett Rowlands
Sent: 13 December 2017 09:02
To: 'Piet Smit'
Cc: 'Lorelle Adams'
Subject: RE: RE/6094 - Stellenbosch; Mercedes-Benz

Dear Piet,

In following up on this issue, do you have any feedback on the this for us?

We have also been made aware that our Signage Pylons need to be moved to allow for the pavement to instated (See Cost Estimate from Mercedes-Benz's supplier).

We really need to get some direction on this issue, your response would be appreciated.

Regards

Brett

Brett Rowlands

Dealerships Western Cape

mobile: 082 414 4268

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From: Brett Rowlands

Sent: 05 October 2017 15:57

To: Piet Smit

Cc: 'Lorelle Adams'; Graeme Watson; Alistair Rawstorne

Subject: RE/6094 - Stellenbosch; Mercedes-Benz

Dear Piet,

Thank you for the dialogue on this issue, please find the attachment relating to discussions.

We look forward to your response.

Regards

Brett

Brett Rowlands

Dealerships Western Cape

mobile: 082 414 4268

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5.5.2	PROPOSED DISPOSAL OF A PORTION OF REMAINDER FARM 1653, PAARL (LA MOTTE) TO THE PROVINCIAL DEPARTMENT OF TRANSPORT AND PUBLIC WORKS FOR EDUCATIONAL PURPOSES
--------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------

Collaborator No: 567137
IDP KPA Ref No:
Meeting Date: 14 February 2018

1. SUBJECT:

PROPOSED DISPOSAL OF A PORTION OF REMAINDER FARM 1653, PAARL (LA MOTTE) TO THE PROVINCIAL DEPARTMENT OF TRANSPORT AND PUBLIC WORKS FOR EDUCATIONAL PURPOSES.

2. PURPOSE

To obtain Council's approval on the possible disposal of a portion of Remainder Farm 1653, Paarl (La Motte).

3. DELEGATED AUTHORITY

(FOR DECISION BY MUNICIPAL COUNCIL)

There are no delegations in place authorising the disposal of fixed capital assets in terms of Section 14 of the Municipal Finance Management Act.

The municipal Council is therefore the decision-making authority.

4. EXECUTIVE SUMMARY

At a previous Council meeting Council approved in principle the disposal of a portion of land to the Provincial Department of Transport and Public Works for the purpose of building a new school.

This decision, however, was subject to:

- a) the property being transferred to Stellenbosch Municipality; and
- b) a feasibility study being completed.

Both these conditions have now been met, paving the way for Council to make a final decision in this regard.

5. RECOMMENDATIONS

- (a) that a portion of Remainder Farm 1653, as identified in the Site Assessment Report, measuring approximately 1.8ha in extent (still to be determined), be identified as land not needed to provide the minimum level of basic municipal services;
- (b) that approval be granted for the transfer of said property to the Provincial Department of Transport and Public Works for the purpose of a school, at no cost (*gratis* transfer), taking into account the community value of the project, on condition:-

- i) that the Department be responsible for all cost related to the rezoning, subdivision and transfer, including, but not limited to, survey and legal costs;
- ii) that the Department be accountable for the upgrading of bulk infrastructure, should the need arise, and for making a contribution toward the Bulk Infrastructure Fund, as per the approved tariff structure at the time of approval of the site development plan, and
- iii) that the Department be responsible for all service connections at the prevailing rates;
- (c) that the Department be given occupancy of the land with immediate effect to enable them to attend to the planning/building plan approvals; and
- (d) that the Municipal Manager be authorized to sign all documents necessary to effect transfer of the land.

6. DISCUSSION / CONTENTS

6.1. Background

On 2017-03-29 Council considered a report from the Director: HS & PM, recommending the *gratis* transfer of a portion of Remainder Farm 1653. Having considered the report, Council resolved as follows:

“RESOLVED (majority vote)

that, subject to the transfer of Remainder Farm 1653, Paarl to Stellenbosch Municipality:-

- (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;*
- (b) *that Council, in principle, support the gratis transfer 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*
- (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 the above”.*

Following the above resolution, the Provincial Department of Public Works has been informed of the outcome and were requested to proceed with the feasibility study, as contemplated in their initial request.

6.2 Discussion

6.2.1 **Site assessment (feasibility study)**

Subsequent to the above decision, the Provincial Department of Transport and Public Works has appointed Revel Fox & Partners Architects and Planners to

undertake the site assessment of the land identified in their application, i.e. a portion of Farm 1653, Paarl (La Motte), measuring approximately 1.8ha in extent.

Gibb Consultant Engineers, in turn, was appointed by Revel Fox to assess the site from a construction point of view.

Gibb assessed the proposed site identified for the new Wemmershoek Primary School, as part of the Western Cape Education Department (WCED) School Site Assessment Program for the 2017/18 Financial year.

The purpose of the assessment was to determine the suitability of the proposed site for the construction of a new school. They advised as follows (executive summary):

6.2.1.1 Topography

“The site slopes from the southeast to the north-west with a gradient of approximately 6 meters over 210 meters (1:35 gradient). The site is split into two parts by a gravel access road. The northern part of the site is flatter than the southern part. Average gradient of the northern part is 1:45 and the southern part at 1:30 gradient”.

6.2.1.2 Geotechnical

The Geotechnical Investigation comprised the excavation of test pits, soil profiling, soil sampling and laboratory testing. DPL penetrometer tests were conducted to confirm the soil consistency.

The investigation determined the proposed school site is underlain by loose consistency sandy soils down to a depth in the order of 1.4 m below surface (sand fill and in situ sandy soils). Below this depth, the soils are of medium dense consistency. Groundwater seepage was not encountered within test pits.

The site is considered suitable for the construction of a new school, provided that the ground improvement measures detailed in the report are adhered to. Remedial measures require the partial excavation and stockpiling of the upper loose sandy soils to a depth of about 0.8 m, followed by in situ compaction using a heavy vibratory roller, and the subsequent re-compaction of the stockpiled soils in layers. After compaction, lightly reinforced conventional strip foundations can be placed as shallow as possible below surface.

The NHBRC Site Class Designation for the site was assessed to be “S2”, that is, “compressible soils with a total expected settlement exceeding 20 mm”.

6.2.1.3 Geohydrology

The school is underlain by alluvium, overlying basement rocks of the Malmesbury Group. The alluvium consist of sand and boulders, and if saturated, will be a good aquifer to target. The bedrock consists of quartzite of the Peninsula formation. The Peninsula formation is generally a good aquifer where it is fractured or faulted.

The Electrical Conductivity (EC) of the groundwater at the school should be low enough and suitable to be used for irrigation for typical grass types. It is expected that the groundwater will have a high iron concentration (familiar brown staining associated with use of ground water). Yield statistics of existing shallow boreholes are between 0.5 and 5 liters per second (l/s).

A borehole target site has been identified and groundwater appears to potentially be a viable source of water for irrigation at the school, with an estimate that there is a 60 % chance of finding sufficient groundwater for irrigation of soft landscape areas.

6.2.1.4 Stormwater Management Plan

The site is located in a region that receives an annual precipitation of approximately 880 mm. Almost 70 % of precipitation occurs in period between May to September. Hydrological soil characteristic indicates the site to be within a potential natural infiltration zone. Soils are permeable allowing good infiltration facilitating ground water recharging.

Due to proximity of the Robertsvlei River and sloping upstream topography a Local Storm Water Master Plan is to be compiled to identify the 1:50 and 1:100 flood lines and appropriate interventions to manage run-off discharging over the developed site respectively.

6.2.1.5 Traffic Investigation

Robertsvlei Road, situated along the site's western boundary, is a two lane undivided surfaced roadway. The preferred alignment for vehicle access to the site is opposite Bergendal Road. Parking and "Stop-and-drop" facilities are required on the site. A pedestrian walkway and speed bumps should be constructed to accommodate safe pedestrian movement along Robertsvlei Road and to reduce vehicular speed on the approach to allow safe crossing for pedestrian respectively.

6.2.1.6 Municipal Services

It is unlikely that the proposed school site can be connected to the municipal sewer system in La Motte residential area with a gravity system, because the Robertsvlei River is located between the proposed school site and La Motte. Sewage will have to be pumped from the proposed school site to a municipal sewer manhole on the La Motte periphery, alternatively, it can be stored in a septic tank on the proposed school site and emptied by the municipality or a private operator.

The proposed school site can be serviced off the municipal potable water reticulation that is located on the opposite side of Robertsvlei Road. A raw water pipeline suitable for irrigation and fire-fighting is located on the near side of Robertsvlei Road.

There is no piped stormwater reticulation in Robertsvlei Road. Stormwater run-off is collected in a swale adjacent to Robertsvlei Road and channelled towards Franschoek River to the north of the proposed school site.

Electrical and Telkom services are located in the area in overhead format.

6.2.1.7 Environmental Compliance

The proposed school site falls within the Critical Biodiversity Area and due to its proximity to the Franschoek River will require:

- (a) the area to be "ground-truthed" by a botanical specialist to confirm whether any endangered or threatened vegetation occurs on the site and*
- (b) In terms of the National Water Act the National Department of Water and Sanitation must be informed of the proposed/intended construction activity on the site.*

Should “ground-truthing” confirm the presence of endangered or threatened vegetation, in terms of the National Environmental Management Act, an environmental application process will be required.

In terms of the National Resources Act the rezoning of any site exceeding 10 000 m² will trigger a Notice of Intention to Develop (NID) application or a Heritage Impact Assessment (HIA)”.

They have subsequently indicated that they are still interested in the site.

6.2.2 Transfer of property

At the time of the previous Council resolution, the property (Remainder Farm 1653, Paarl) was not yet transferred into the name of Stellenbosch Municipality. The property has subsequently been transferred to Stellenbosch Municipality (2017-08-07).

6.3. Financial Implications

There are no financial implications should the recommendations as set out in the report be accepted.

6.4 Legal Implications

The recommendations in this report comply with Council’s policies and all applicable legislation.

In terms of Section 14(2) of the MFMA a Municipality may dispose of a capital asset, 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 Section 40 of the Municipal Supply Chain Management Regulations, a municipality’s supply chain management policy must, *inter alia*, specify the ways in which assets may be disposed of to another organ of state at market related value or, whether free of charge.

Such policy must stipulate that **immovable property may be sold only at market related prices, except when the public interest or the plight of the poor demands otherwise.**

Stellenbosch Municipality’s Supply Chain Management Policy, however, is silent on ways in which assets may be transferred to another organ of state.

In terms of Chapter 3 of the Municipal Asset Transfer Regulations (R878/2008) the transfer of certain assets to another organ of state may be **exempted** from the provisions of Section 14 of the MFMA.

Sub-regulation 20 (1) (a) to (e) of the Regulations define the circumstances in which such transfer is exempted. The property in question does not fall within these provisions.

In terms of sub-regulation 20 (f)(i), however, section 14 (1) to (5) of the MFMA does **not** apply if a municipality transfer a capital asset to an organ of state in any other circumstances not provided in (a) to (e) (above) , **provided** that –

- (i) the capital asset to be transferred is determined by resolution of the Council to be **not needed** for the provision of the minimum level of basic **municipal services** and to be surplus to the requirements of the Municipality; **and**
- (ii) **if the capital asset is to be transferred for less than fair market value**, the municipality has taken into account, *inter alia* the expected loss or gain that is to result from the proposed transfer.

Further, in terms of Section 29 of the Regulations, the value of a capital asset to be transferred to an organ of state (as contemplated in section 20) **must** be determined in accordance with the **accounting standards** that the Municipality is required by legislation to apply in preparing its annual financial statements.

In the absence of such guidelines, any of the following valuation methods must be applied:

- (a) **Historical cost** of the asset*
- (b) **Fair market value** of the asset;
- (c) Depreciated replacement cost of the asset; or
- (d) Realizable value of the asset.

From the above it is clear that, although the property under discussion does not fall in the categories described in section 20 (a) to (e) (exempted), Council can indeed regard it as being exempted, **provided** that the provisions of section 20 (f) (i) and (ii) have been considered.

6.5 Staff Implications

This report has no staff implications to the Municipality.

6.6 Previous / Relevant Council Resolutions:

As indicated under paragraph 5.1 this matter has already been considered by Council.

6.7 Risk Implications

This report has no risk implications for the Municipality.

6.8 Comments from Senior Management:

6.8.1 Director: Infrastructure Services

Agree with the recommendations.

6.8.2 Director: Planning and Economic Development

This Directorate cannot support the establishment of a primary school on the proposed site. It is not ideally located from an accessibility perspective. It does not consider the future growth needs of the area inclusive of road upgrading. A school should be located abutting the current residential area to the west of Robertsvlei Road.

6.8.3 Chief Financial Officer:

Agree with the recommendations / The Item is supported. The municipality did not pay for the land initially and it will now be used for the benefit of the community.

6.8.4 Municipal Manager:

Agree with the recommendations contained in the report.

ANNEXURES

- A: Previous Council Resolution dated 2017-03-29**
- B: Letter addressed to Dept. of Transport and Public Works**
- C: Site Assessment Report**

FOR FURTHER DETAILS CONTACT:

NAME	Piet Smit
POSITION	Manager: Property Management
DIRECTORATE	Human Settlement & Property Management
CONTACT NUMBERS	021-8088189
E-MAIL ADDRESS	Piet.smit@ Stellenbosch.gov.za
REPORT DATE	2017-09-19

DIRECTOR: HUMAN SETTLEMENT & PROPERTY MANAGEMENT

The contents of this report have been discussed with the Portfolio Committee Chairperson and the Councillor agrees with the recommendations.

APPENDIX 1

**PROPOSED DISPOSAL OF A PORTION OF REMAINDER FARM 1653,
LA MOTTE FOR EDUCATIONAL PURPOSE**

7TH COUNCIL MEETING: 2017-03-29: ITEM 7.5.3

RESOLVED (majority vote)

that, subject to the transfer of Remainder Farm 1653, Paarl to Stellenbosch Municipality:-

- (a) the portion of Remainder Farm 1653, measuring ± 2.14 ha in extent, as shown in Fig 3 above, be identified as land not needed to provide the minimum level of basic municipal services;
- (b) that Council, **in principle**, support the *gratis transfer* 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
- (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.

Councillors DA Hendrickse and LK Horsband (Ms) requested that their votes of dissent be minuted

APPENDIX 2



2017-04-21

The Deputy Director: Acquisitions
Department Transport and Public Works
P/Bag X9160
Cape Town
8000

Attention: Ruwaida Benjamin

Dear Sir/Madam

PROPOSED ACQUISITION OF A PORTION OF FARM 1653, PAARL (LA MOTTE, FRANSCHHOEK) FOR EDUCATIONAL PURPOSES

Your letter dated 10 February 2017 refers.

I am pleased to inform you that, having considered your request on 2017-03-17, Stellenbosch Municipal Council resolved as follows:

“that, subject to the transfer of Remainder Farm 1653, Paarl to Stellenbosch Municipality:-

- (a) the portion of Remainder Farm 1653, measuring ± 2.14 ha in extent, as shown in Fig 3 above, be identified as land not needed to provide the minimum level of basic municipal services;*
- (b) that Council, **in principle**, support the gratis transfer 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*
- (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”.*

A copy of the agenda item that served before Council is attached as **APPENDIX 1**.

You may therefor proceed with your feasibility studies. Should you require any further information, please contact the undersigned.

Yours faithfully

.....
PIET SMIT
MANAGER: PROPERTY MANAGEMENT

APPENDIX 3

Revel Fox & Partners

Architects and Planners

117 Waterkant . Cape Town 8001 . Telephone: +27 21 4251710 . Fax: +27 21 421 4469 . Website: www.revelfox.co.za

SCHOOLS SITE ASSESSMENT PROGRAMME

EXECUTIVE SUMMARY-ARCHITECT		WEMMERSHOEK PRIMARY SCHOOL	
emis	0108470589	District	Cape Winelands
GPS coordinates	19.443, -33.533	Address	Robertsvei rd, Wemmershoek
Erf & size	Portion of farm 1653 La Motte 1.8270Ha	Ownership	Stellenbosch Municipality
Zoning	Agricultural	Type of infrastructure	nil
Proposed size of school	Medium primary school	Site type	Green Fields
Planned site handover	2018-02-01	Planned practical completion date	2019-05-06
Scope of work	New medium size primary school		
Budget (incl. fees & VAT)	R60 million		

Revel Fox & Partners (RF&P) was appointed (2016.09.13) by the Department of Transport and Public Works: Education Directorate (DTPW: ED) to undertake the site assessment of a number of schools, including Wemmershoek PS School and was given a "project proposal" dated 2016.07.28. It is assisted in this undertaking by Gibb Engineering (Gibb). This site assessment is to be broadly equivalent to stage 1 of the PROCAP Procedural Guide.

The property, Farm 1653 La Motte is currently owned by the Stellenbosch Municipality and is in the process of being transferred. A portion of the property has been identified for the location of the new school.

Municipal district: Cape Winelands – Stellenbosch Municipality.

Size of property (portion of farm 1653): 1.8270Ha. Zoning:

The existing Wemmershoek PS situated on the R45 Franschoek rd has been classified as an inappropriate structure. It is proposed that a replacement school be built on an alternative site that is close to the La Motte Development. When completed the new school will be occupied by learners from Wemmershoek PS and the existing vacated school to be demolished and the site handed back to DTPW. The school is currently operational as a primary school catering for grades R and 1 to 7 with a total of 418 learners.

The proposed size of the new school is to be Medium – 418 learners (as per WCED Norms & Standards). The concept plan indicates the main vehicular and pedestrian entrance at the T-junction of Robertsvlei road and Rosendal street.

It is noted that whilst PROCAP 1 does not require any design, RF&P has included in the report a concept diagram of the proposed new school to test the various parameters on the site.

Gibb Consultant engineers has assessed the site to determine the suitability for the construction of a new school. Gibb's executive summary and reports are within the document.

The DTPW: ED noted in its brief a proposed site handover in April 2020 and practical completion in October 2021, with an estimated budget of R60 million (including demolition, professional fees & VAT).

5.5.3	APPLICATION TO RELAX DEED OF SALE CONDITION: ANTI-SPECULATION CLAUSE: ERF 9194, TECHNOPARK
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Collaborator No: 567123
 IDP KPA Ref No:
 Meeting Date: 14 February 2018

1. SUBJECT:

APPLICATION TO RELAX DEED OF SALE CONDITION: ANTI-SPECULATION CLAUSE: ERF 9194, TECHNOPARK

2. PURPOSE OF REPORT

To consider the written offer received from ENS Africa Attorneys, on behalf of Elsabe Daneel Properties (Pty) Ltd, in relation to erf 9194, TechnoPark, following Council's decision not to approve the request for the relaxation of the anti-speculation clause, i.e. to enforce the buy-back clause.

3. DELEGATED AUTHORITY

(FOR DECISION BY MUNICIPAL COUNCIL)

Although the Executive Mayor has the delegated authority to acquire immovable property or rights in immovable property, it is limited to a contract value of R5M (see delegation 526).

For this reason the Municipal Council must take the decision, as the property under discussion is valued in excess of R5M.

4. EXECUTIVE SUMMARY

Following Council's decision to enforce the buy-back clause in relation to erf 9194, due to non-performance by the owner (obligation to develop within a prescribed period), a written offer has been received from the owner indicating that he is willing to sell the property to Stellenbosch Municipality for R19M. Our own valuator has valued the property at R15M (excluding of VAT).

5. RECOMMENDATIONS

- (a) that Council consider the offer received from Elsabe Daneel Properties (Pty) Ltd, the owner of erf 9194, taking into account the valuation received from Cassie Gerber Property Valuers CC, valuing the property at R15M (exclusive of VAT);
- (b) that, should Council indeed decide to proceed with the transaction, provision be made on 2018/19 Budget; and
- (c) that the Municipal Manager be authorised to sign all documents necessary to effect transfer of the property.

Alternatively, Council could decide to reconsider its decision, i.e. to allow for the relaxation of the anti-speculation clause, as originally recommended to Council.

6. DISCUSSION / CONTENTS

6.1 Background

6.1.1 Council Resolution

On 2017-04-19, having considered a request to relax the anti-speculation clause contained in the Sales Agreement (obligation to develop within a specific period), Council resolved as follows:

“RESOLVED (*majority vote with abstentions*)

- (a) *that the request for the relaxation of the anti-speculation clause not be approved;*
- (b) *that clause 11 of the Sales Agreement be enforced, i.e. that the property be repurchased;*
- (c) *that an independent valuer be appointed to determine a fair escalation on the purchase price; and*
- (d) *that the necessary budgetary provisions be made on the 2017/18 budget”.*

A copy of the agenda item setting out the background is attached as **APPENDIX 1**.

6.1.2 Letter informing applicant of outcome

On 2017-05-16 Mr Daneel was informed of the outcome of the Council’s meeting. A copy of the letter is attached as **APPENDIX 2**.

6.1.3 Valuation

Following the above Council resolution, an independent valuer has been appointed to determine a fair escalation, as provided for in clause 12 of the Sales Agreement, and as per the Council resolution.

Hereto attached as **APPENDIX 3** is a valuation report compiled by Cassie Gerber Valuers, valuing the property at R15M (exclusive of VAT).

6.1.4 Written offer received from owner

Before the valuation could be made available to the owner of Erf 9194, a letter was received from ENS Africa Attorneys, on behalf of Elsabe Daneel Properties (Pty) Ltd, informing the municipality that, although they do not agree with Council’s opinion that they are entitled to exercise its’ right to repurchase, they are indeed willing to accept the Municipality’s offer to repurchase the property.

To ensure that the Municipality indeed has the capacity and is authorised and empowered to conclude a purchase agreement with the owner of Erf 9194, they requested that Stellenbosch Municipality provide a legal opinion from an external and independent, reputable law firm, which confirms that, having regard to all applicable legislation, the Municipality indeed has the capacity and is authorised to conclude a Purchase Agreement at the asking price.

Regarding the purchase price, they indicated that they would not accept less than R19M. A copy of their letter and Sales Agreement is attached as **APPENDIX 4**.

6.2 Discussion

Council should consider whether they would accept the written offer or whether they would like to reconsider their position, now that the market value has been determined, taking into account that proper provision was not made on the 2017/18 budget to buy back the property at the market value of R15M; only R4M was provided for in the budget.

6.3 Financial Implications

Should Council indeed proceed with the repurchase of the property, at the fair market value of R15M, then an additional amount of R11M (exclusive of VAT) will have to be budgeted for in the upcoming Adjustments Budget. The full financial implications (should the owner accept Council's financial offer) will then be R15M (exclusive of VAT).

Alternatively, Council could reconsider its position on the anti-speculation clause, in terms whereof the new owner would immediately be responsible to pay rates as liquidated damages as per clause 10 of the Sales Agreement, estimated at R469 248 per annum (based on a deemed development value of R22 200 000.00 plus the value of the land).

6.4 Legal Implications

The recommendations in this report comply with Council's policies and all applicable legislation.

6.5 Staff Implications

This report has no staff implications for the Municipality.

6.6 Previous / Relevant Council Resolutions:

As indicated above, this matter was considered on 2017-04-19, where Council decided not to approve the application to relax the anti-speculation clause.

6.7 Risk Implications

This report has no risk implications for the Municipality, except perhaps some legal risk, should the parties be unable to reach consensus on a way forward.

6.8 Comments from Senior Management:**6.8.1 Director: Infrastructure Services**

Agree with the recommendations.

6.8.2 Director: Planning and Economic Development

This Directorate supports the recommendation to buy back the property at fair market value in terms of the relevant clause, and for consideration of the property as a municipal asset and resource to satisfy various needs in TechnoPark.

6.8.3 Chief Financial Officer:

No comments received.

6.8.4 Legal Services:

The recommendations (a), (b) and (c) in paragraph 5 above, are supported. The alternative proposal is not supported.

ANNEXURES

- Annexure 1: Agenda item**
- Annexure 2: Letter of outcome**
- Annexure 3: Valuation Report**
- Annexure 4: Purchase letter and Sales Agreement**

FOR FURTHER DETAILS CONTACT:

NAME	PIET SMIT
POSITION	MANAGER: PROPERTY MANAGEMENT
DIRECTORATE	HUMAN SETTLEMENT & PROPERTY MANAGEMENT
CONTACT NUMBERS	021-8088750
E-MAIL ADDRESS	Piet.smit@ Stellenbosch.gov.za
REPORT DATE	2017-10-17

DIRECTOR: HUMAN SETTLEMENT & PROPERTY MANAGEMENT

The contents of this report have been discussed with the Portfolio Committee Chairperson and the Councillor agrees with the recommendations.

APPENDIX 1

ENGINEERING & HUMAN SETTLEMENT COMMITTEE MEETING

**APPLICATION TO RELAX DEED OF SALE CONDITION: ANTI-SPECULATION
CLAUSE: ERF 9194, TECHOPARK**

File number :
Report by : *Director: HS and Property Management*
Compiled by : *Manager: Property Management*

Delegated Authority : *Mayco*

Strategic intent of item

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

1. PURPOSE OF REPORT

The purpose of this report is to obtain the necessary authorisation to relax one of the conditions of sale (anti-speculation clause), allowing the owner to sell his property in the open market.

2. BACKGROUND

2.1 Sales Agreement

On 4 February 2008, following a public tender process, a Sales Agreement in relation to erf 9194, Technopark, was concluded with Elsabe Daneel Properties (Pty) Ltd, a copy of which is attached as **APPENDIX 1**.

2.2 Application to relax anti-speculation clause

On 25 April 2016 a letter was received from Mr J Daneel, indicating that, due to personal circumstances, he be allowed to sell erf 9194, a copy of which is attached as **APPENDIX 2**.

3. DISCUSSION

3.1 Anti-speculation clause

In terms of clause 12 of the Sales Agreement it was agreed that "*the PURCHASER will not be allowed to sell off to a business-unrelated third party, its entire interest in the PROPERTY in an act of property speculation, without having added value to it, i.e having developed it in terms of the proposal set-out in the PURCHASER'S tender*".

The purpose of this anti-speculation clause was to ensure that the successful tenderer indeed develop the property as per his tender proposal (diamond cutting factory), thereby adding value to the property.

3.2 Legal position

It is important to note that the provision of clause 12 (anti-speculation clause) of the Sales Agreement was not a Tender Condition, it was an administrative condition which was negotiated/imposed by the Property Management Department, and (by implication) approved by the Municipal Manager, when he signed the Sales Agreement on behalf of the Municipality.

In terms of clause 15 of the Sales Agreement, no alteration, cancellation, variation of/or addition to the Agreement shall be of any force and/or effect, unless reduced to writing and signed by both parties or their duly authorised representatives.

Please note that clause 12 of the Sales Agreement is silent on what should happen if the **purchaser** wants to sell the undeveloped property to a business related 3rd party. The only clause that might be of assistance is clause 11 (reversionary clause) which indicates that "*if building operations in respect of the development of the Property have not commenced within 3 (three) years after date of transfer.....then the SELLER shall have the right/option to repurchase the property at the same price that the PURCHASER has bought it from the SELLER, plus a fair escalation thereon.....to be determined by an independent property valuer*".

This means that we would indeed be in a position to buy back the property at R8 436 000 (inclusive of VAT), plus a reasonable escalation, for the period of 9 years since date of transfer, to be determined by an independent property valuer.

In terms of the current Valuation Role, however, the municipal valuation of the property is only R3.8M (Exclusive of VAT).

3.3 Application to Municipal Manager

Seeing that the anti-speculation clause was not a Tender Condition but merely an administrative condition imposed by the Municipal Manager and seeing that there is no need to buy-back property in Techopark (as we still own various undeveloped erven), the Municipal Manager was requested to approve the relaxation of the anti-speculation clause and/or reversionary clause, thereby allowing Elsabe Daneel Properties (Pty) Ltd to dispose of erf 9194, on condition that the Rates and Liquidated Damages clause (see clause 10 of Sales Agreement) be made applicable on the new purchaser, i.e. that the new purchaser be liable to pay rates and taxes as per clause 10 of the Sales Agreement, **as from date of transfer of the property into his/her name.**

Before the Municipal Manager could make a decision, the matter was referred to Mr Mervin Williams, Snr Legal Advisor. Mr Williams was of the view that the Municipal Manager **cannot** consider the matter, but that **Council** should consider the matter. A copy of the report as well as the legal inputs, is attached as **APPENDIX 3.**

4. INPUTS BY OTHER DEPARTMENTS

4.1 CFO

Not supported

4.2 Legal

See report attached as **APPENDIX 3.**

4.3 Planning Department

This directorate has reviewed its previous comment, which is reflected hereafter in brackets for record purposes:(The Directorate cannot support the item for the relaxation of the anti-speculation clause to permit disposal of the land by the current owner, due to a lack of information on the steps taken to recover rates and liquidated damages in terms of clause 10 of the sales agreement and likewise on the steps taken to apply clause 11 (reversal of the original sale).

Moreover, the Municipality is in dire need of land in Technopark to address specific needs, e.g. parking and economic development opportunities.

The Directorate would support recovery of the property through implementation and if need be enforcement of clauses 10 and 11 of the sales agreement and then disposal and use to resolve the needs in the area.)

After consultation with the proposed developers of the property, an alternative development proposal was submitted to the directorate for discussion on 28 February 2017. The development proposal is for an integrated development on the subject property as well as the abutting vacant properties. Aboveground it is proposed to develop three storey office blocks and basement parking over two storeys containing around 800 parking bays at a ratio of 6,5 parking bays per 100 square metres of gross floor area for the offices. This is more than 50% above the prescribed parking ratio and effectively creates a parking garage with offices above.

Given the severe shortage in parking in Technopark, the proposed development offers a solution, rather than a problem, hence the amended comment in support of the proposed disposal through the relaxation of the anti-speculation clause to allow for the purchaser of the property to develop according to the proposal attached hereto as an Annexure.

The removal of the anti-speculation clause must be subject to an amendment of recommendation “b)” below, by making it a condition of the amended contract that the relaxation applies only for purposes of the development of the site jointly with the abutting vacant properties to create a large underground parking area and a development in general providing parking at a ratio of 6,5 parking bays per 100 square metres gross floor area for any buildings erected on the property.

4.4 Engineering Services

The development of this specific stand in Technopark will not have any detrimental effect on the provision of engineering infrastructure services. Provision has been made for the anticipated use through our master planning.

5. CONCLUSION

From a property management perspective there is no need to enforce the reversionary clause, nor the anti-speculation clause, as there are more dire needs for land acquisition(s) elsewhere. The Planning & Economic Development Department, however, is of the view that the anti-speculation clause should be enforce, as the Municipality is in dire need need of land in Techopark.

In light of the above, Council could consider one of the following options:

Option 1:

- a) that approval be granted for the relaxation of the anti-speculation clause, i.e. that Elsabe Daneel Properties (Pty) Ltd be allowed to dispose of erf 9194 to a business-unrelated 3rd party, on condition that the new purchaser be responsible to pay rates as liquidated damages as per clause 10 of the Sales Agreement as from date of transfer of the property into his/her name or as from 31 October 2018, whichever comes first; and
- b) that the Municipal Manager be authorised to amend the Sales Agreement accordingly.

Option 2:

- a) that the request for the relaxation of the anti-speculation clause not be approved, and;
- b) that clause 11 of the Sales Agreement be enforced, i.e. that the property be repurchased; and
- c) that should the owner of Erf 9194 agree to sell the property back to the municipality, that an independent valuer be appointed to determine a fair escalation on the purchase price.
- d) that the necessary budgetary provisions be made on the 2017/18 budget.

For CONSIDERATION by Council

8TH COUNCIL MEETING: 2017-04-19: ITEM 5.5.5

RESOLVED (majority vote with abstentions)

- (a) that the request for the relaxation of the anti-speculation clause not be approved;
- (b) that clause 11 of the Sales Agreement be enforced, i.e. that the property be repurchased;
- (c) that an independent valuer be appointed to determine a fair escalation on the purchase price; and
- (d) that the necessary budgetary provisions be made on the 2017/18 budget.

<i>Meeting:</i> <i>Ref no:</i>	<i>8th COUNCIL: 2017-04-26</i> <i>Unfiled</i>	<i>Submitted by Directorate:</i> <i>Author</i> <i>Referred from:</i>	<i>Human Settlements</i> <i>Manager: Property Management</i> <i>Mayco: 2017-04-19</i>
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APPENDIX 2



2017-05-17

Mnr J Daneel
Dorpstraat 174
Stellenbosch
7600

Vir aandag: Mnr Daneel

AANSOEK OM VERSLAPPING VAN ANTI-SPEKULASIE KLOUSULE

U aansoek van 25 April 2016 verwys.

Die Raad het uiteindelik op 2017-04-19 u aansoek oorweeg. Na inagneming van al die relevante inligting tot hul beskikking het die Raad besluit:-

- a) om u aansoek om verslapping van die anti-spekulاسie klousule nie goed te keur nie;
- b) om klousule 11 van die Verkoopsooreenkoms af te dwing, d.i dat die eiendom terug gekoop word; en
- c) dat 'n onafhanklike waardeerder* aangestel word om die billike eskalاسie op die koopsom te bepaal, soos omskryf in klousule 11.1 van die Verkoopsooreenkoms.

*Ons is in die proses om 'n onafhanklike waardeerder aan te stel om die billike eskalاسie te bepaal, waarna ons weer met u in verbinding sal tree.

Die uwe

.....
PIET SMIT
BESTUURDER: EIENDOMSBESTUUR

APPENDIX 3

**CASSIE GERBER
PROPERTY VALUERS CC**

CK 98/22188/23

**C.L. Gerber, Registered Professional Valuer in Terms of Section 19 of Act 47 of 2000,
Registration No: 1717/4**

P.O. Box 2217
DURBANVILLE
7551

Telephone: (021) 9757240
Fax: 086 558 6933
E-mail-caslg@mweb.co.za
Cell phone- 082 416 2987

VALUATION REPORT

**ESCALATED MARKET VALUE OF ERF 9194, TECHNO PARK,
STELLENBOSCH**

OWNER: ELSABE DANEEL PROPERTIES PTY LTD



Market value: As per report
Date: 25 May 2017

=====

VALUATION REPORT

**ESCALATED MARKET VALUE OF ERF 9194, TECHNO PARK,
STELLENBOSCH**

OWNER: ELSABE DANEEL PROPERTIES PTY LTD

1. Instructions

- 1.1 The Head of the Department of property Management, Stellenbosch, instructed me to value the above-mentioned property.
- 1.2 The market value as well as the escalate growth rate of the above-mentioned property, from the date of purchased until October 2018, when the reversionary clause expires, is required.
- 1.3 Market value is defined in this report as a price, which the property might reasonably be expected to sell for, in a transaction between a willing, able and informed seller and a willing, able and informed buyer.

2. Date of valuation

25 May 2017

3. Description of property

The property is known as a portion of Erf 9194, Stellenbosch at Techno Park.

4. Title Deed

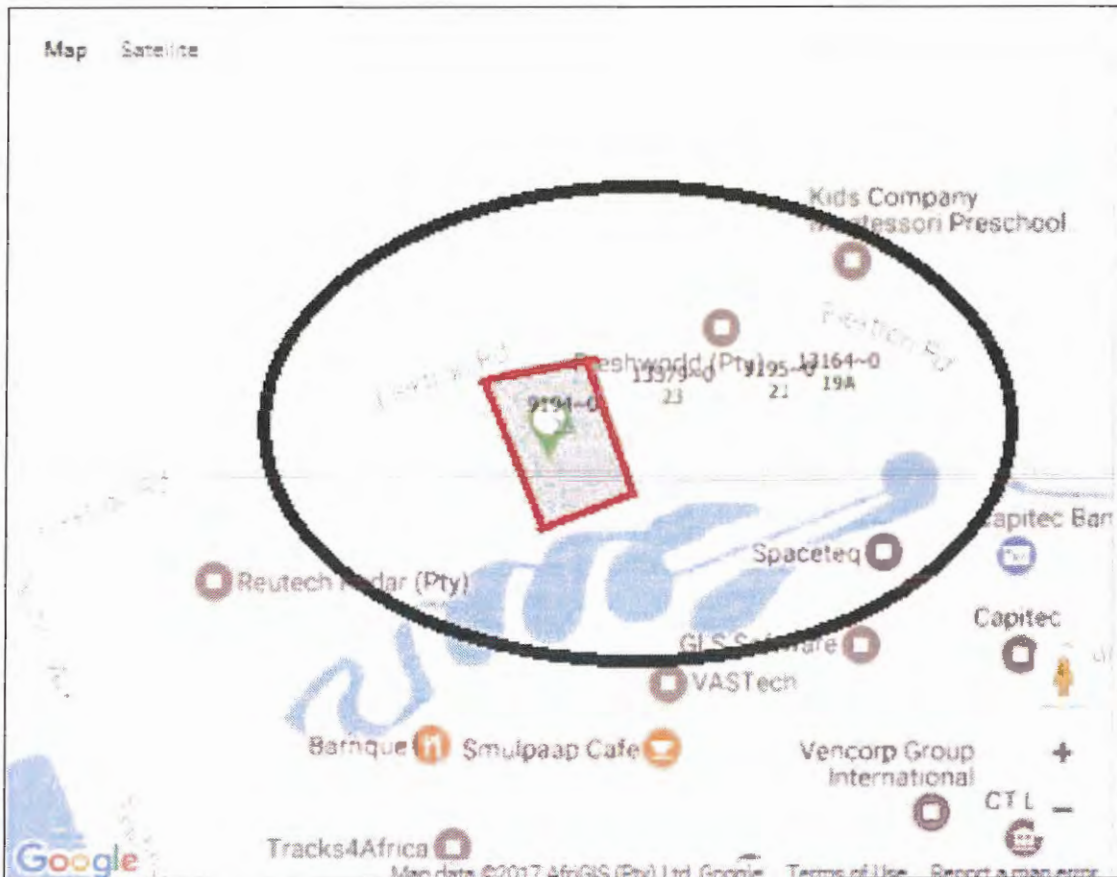
T19339/2008

5. Extent of property

3 800m²

6. Situation and physical aspects

- 6.1 The property is situated in Elektron Road, Techno Park in Stellenbosch.
Map page 3 below refers.
- 6.2 The property consists of vacant land, which is suitable for building purposes.



Location map



Aerial photo of the property

7. Town Planning

Techno Park has its own zoning regulations. The zoning makes provision for the following:

- Bulk: 85% of the extent of the property;
- Coverage: 40%
- Height: 11.25m, 4 stories, but should not exceed the height.

8. Highest and best use

The highest and best use of the property is for offices use.

9. Improvements

The site consists of vacant land.

10. History of the property

- 10.1 The property was sold by the Stellenbosch Municipality on 4 February 2008 to Elsabe Daneel Properties Pty Ltd.
- 10.2 The purchase price of the property was R7 400 000.00, excluding VAT.
- 10.3 The price amounted to ±R1 947.00/m², which was market related compared to Erf 9196, Techno Park, sold in the same year for R1 961.00/m².
- 10.4 The Deed of Sale made provision for a reversionary clause, with the following conditions: "If building operations in respect of the development of the property have not commenced within 3 years after transfer, or if building operations have not commenced but thereafter have ceased for a period of 12 months due to a wilful act or a wilful omission on the part of the purchaser then the seller shall have the right/option to repurchased the property at the same price that the purchaser has bought it from seller plus a fair escalation thereon, plus the cost of the development by the purchaser up to that point, to be determine by an independent valuator.
- 10.5 My information is that the reversionary clause has been extended, as a result of various reasons, until October 2018.
- 10.6 During inspection it was established that no development on the site has taken place and the market value of the vacant land of the property, is required.

11. Method of valuation

11.1 It would be appropriate to compare the subject property with similar properties and thus arrive at a market value on the basis of comparison.

11.2 Techno Park cannot be compared with other areas in Stellenbosch or in the Cape Peninsula. It is zoned Special Zone 1, Technology or Science Park in terms of the Zoning Scheme Regulations, Stellenbosch.

11.3 For valuation purposes only comparable transactions in Techno Park are, therefore, relevant.

11.4 A market research in the area was carried out and the following are the only vacant land transactions that took place since 2007:

12. Transactions

No.	Property/ Techno Park	Extent	Date	Purchase Price/Price/m ²
1	Erf 13168, Stellenbosch	3 000m ²	17.09.07	R3 375 000.00/R1 125.00
2	Erven 9206 & 9207, Stellenbosch	3 395m ²	21.12.07	R6 000 000.00/R1 767.00
3	Erf 13164, Stellenbosch	1 000m ²	01.12.07	R1 800 000.00/R1 800.00
4	Erf 9196, Stellenbosch	3442m ²	25.11.08	R6 750 000.00/R1 961.00
5	Erf 9194, Stellenbosch	3 800m ²	04.02.08	R7 400 000.00/R1 947.00
6	Erf 13572, Stellenbosch	1664m ²	27.10.14	R4 200 000.00/R2 524.00
7	Erf 9211, Stellenbosch	10 000m ²	21.12.15	R45 000 000.00/R4 500.00

13. Conclusions

13.1 Techno Park is practically fully developed and very few vacant land sales took place over the past 10 years. The demand for the last few vacant sites caused a great increase in the market value; transaction 7 refers.

13.2 Transaction 1 took place when property prices were in the upswing, which started in 2006 and peaked during the end of 2008.

13.3 Transactions 2, 3, 4 and 5 took place during 2008 when property prices reach their peak and before the prices started to level off for about 2 years, where after it started to escalate at a normal rate.

- 13.4 Transaction 7 was purchased by Capitec Bank, which is one of the fastest growing banks in the country. Their head offices are based at Techno Park, Stellenbosch. They purchased Erf 9211, Techno Park and paid R4 500.00 per m², which seems to be a premium price, but not unrealistically high.
- 13.5 During market research it was established that property prices in general have escalated between 7 % and 8% over the past 10 to 15 years.
- 13.6 The subject property was purchased for R1 947.00/m² during February 2008. The time from the date of purchase to October 2018 when the reversionary clause lapses is 10 years and 8 months. R1947.00 escalated for 10.66 years @ 7% = R4 006.00 per m².
- 13.7 Based on the above-mentioned comparable sales with the necessary adjustments for location, size, and the scarcity of land in Techno Park, a price of R4 000.00 per m², in respect of the subject property, is market related.

14. Valuation calculations

Market value: 3 800m² @ R4 000.00/m² = R15 200 000.00
 Market value rounded: R15 000 000.00

15. Market value

R15 000 000.00 (Fifteen million rand) Excluding VAT

16. Certificate

I inspected the subject property described herein. I have no present or prospective interest in the property.

The valuation is independent and impartial and complies with all the ethical standards of the South African Institute of Valuers of which I am a member.

All suppositions and data in this report are to the best of my knowledge, true and correct and I have not attempted to conceal any information.

The valuation has been made to the best of my skill and ability.

I, Casper Louis Gerber, consider rate of R4 000.00/m² to be fair and market related.



C.L. GERBER

Signed at Durbanville on 25 May 2017

QUALIFICATION TO VALUE

I, Casper Louis Gerber, certify with this my qualifications and experience as follows:

- Professional Valuer registered with the South African Council of Valuers in terms of Act 47 of 2000.
- Member of the South African Institute of Valuers since 1974.
- Served as a member on various valuation boards.
- I have been involved in valuing fixed properties since 1965. At present, I am making an average of 15 valuations per month spread over the whole spectrum of the property market.

APPENDIX 4

**ENSafrica**

La Gratitude 97 Dorp Street Stellenbosch 7600
 P O Box 940 Stellenbosch South Africa 7599
 doxex 43 Stellenbosch
 tel +2721 808 6620
 info@ENSafrica.com ENSafrica.com

Stellenbosch Municipality
 Plein Street
 Stellenbosch

L Elferink/0339911 our ref
 P Smit: Manager - Property your ref
 8 June 2017 date

Copy by email to: Piet.Smit@stellenbosch.gov.za

WITHOUT PREJUDICE

For attention: The Manager (Property)

Dear Mr Smit

RE: ERF 9194 TECHNOPARK STELLENBOSCH (THE "PROPERTY")

We address this letter to you at the instance of Elsabe Daneel Properties Proprietary Limited ("**our Client**").

We have been provided with a copy of the Deed of Sale concluded between the Stellenbosch Municipality (the "**Municipality**") and our Client on 4 February 2008, and the addendum thereto concluded on 1 November 2013, in terms of which the Municipality sold the Property to our Client (together, the "**Sale Agreement**"). We have also been provided with a copy of a letter dated 17 May 2017 from the Municipality to our Client, in terms of which the Municipality purports *inter alia* to exercise its alleged right to repurchase the Property in terms of clause 11 of the Sale Agreement.

Our Client denies that the Municipality is entitled to exercise its alleged right to repurchase the Property in terms of clause 11 of the Sale Agreement. To the contrary, our Client has the right to develop the Property and cannot be precluded, by the Municipality's actions in purporting to repurchase the Property, from exercising this right. Our Client does not intend to litigate by way of correspondence and therefore does not, in this letter, enumerate the various reasons for its aforesaid denial and assertion, but reserves its rights to do so at the appropriate time and in the appropriate forum, should this become necessary.

Notwithstanding that our Client has the right to develop the Property, our Client is willing to accept the Municipality's offer to repurchase the Property in terms of clause 11 of the Sale Agreement on the basis set out in this letter. However, our Client does not wish to find itself in a repeating cycle with the Municipality regarding the Property and, in this regard, refers specifically to the history and circumstances surrounding the sale by the Municipality of the Property to our client in the first instance (which commenced in 2007 and

was prompted by the 'Tender 34' saga), and to the administrative issues encountered in attempting to conclude the addendum to the Sale Agreement which was necessitated by the 'Tender 34' saga (which commenced in February 2012 and was only concluded in November 2013, after the Municipality had to ratify and re-sign the relevant addendum), all of which is well known to the Municipality.

In the circumstances it is not unreasonable for our Client, before it incurs legal and other costs to settle the purchase agreement for the purchase by the Municipality of the Property and to pass transfer of the Property to the Municipality, to seek comfort regarding the Municipality's power, capacity and authority to purchase the Property from our Client and to do so at the relevant purchase price (as discussed below). In this regard, our Client requires that the Municipality procure a legal opinion from an external and independent, reputable law firm, issued in favour of our Client and on terms acceptable to our Client acting reasonably, which confirms that, having regard to all laws and regulations which are applicable to the Municipality (including but not limited to the Public Finance Management Act 1 of 1999), as well as all approved budgets of the Municipality and spatial and/or town planning schemes currently in force in respect of immovable property in Stellenbosch (and the Municipality's ownership of immovable property in Stellenbosch), the Municipality has the capacity and is authorised and empowered to conclude a purchase agreement with our Client in terms of which it purchases the Property for the relevant purchase price (as discussed below), that the relevant proposed signatory is duly authorised to sign the purchase agreement on behalf of the Municipality and that such purchase agreement will be binding on and enforceable against the Municipality in accordance with its terms (the "**Legal Opinion**"). In this regard, a draft purchase agreement is attached hereto and can be completed and signed by the Municipality and our Client once the purchase price is determined (as discussed below) and the Legal Opinion is obtained and provided to our Client.

As regards the purchase price at which the Property will be sold back to the Municipality, clause 11 of the Sale Agreement provides that such purchase price shall be equal to (i) the purchase price paid by our Client to acquire the Property from the Municipality (namely R7,4 million) plus (ii) any development costs incurred by our Client in relation to the Property up to the date the Property is transferred back to the Municipality plus (iii) a fair escalation of such amounts, as determined by an independent property valuer. In this regard:

- kindly provide our Client with a list of no less than 4 alternative proposed independent property valuers ("**List of Proposed Valuers**"), who the Municipality proposes to put forward for appointment, in order that our Client may determine whether it considers one or more of such proposed valuers to be independent and, accordingly, agrees to the appointment of any such proposed valuers to determine the fair escalation in accordance with clause 11 of the Sale Agreement. Any dispute regarding the identity and appointment of the independent valuers will be required to be resolved in accordance with clause 15.5 of the Sale Agreement; and
- we point out that, without waiving its right to require the independent property valuer to be appointed and to determine the fair escalation in terms of clause 11 of the Sale Agreement as aforesaid and for the fair escalation as determined by the independent property valuer to be applied to determine the purchase price for the Property, and solely for purposes of enabling the Municipality to procure the

ENSafrica

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SALE OF PROPERTY AGREEMENT

entered into between

ELSABE DANEEL PROPERTIES PROPRIETARY LIMITED

(registration number: 2007/024963/07)

("Seller")

and

STELLENBOSCH MUNICIPALITY

("Purchaser")

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WHEREBY IT IS AGREED AS FOLLOWS:**1. INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

1.1.1. "**Agreement**" means the agreement set out in this document and includes all schedules and annexures hereto;

1.1.2. "**Attorneys**" means Edward Nathan Sonnenbergs Inc., Stellenbosch, who conducts business as a firm of attorneys at 2nd floor, La Gratitude, 97 Dorp Street Stellenbosch, 7600;

1.1.3. "**Binding Clauses**" means this clause 1 and clauses 11 to 17 (inclusive);

1.1.4. "**Business Day**" means any day other than a Saturday, Sunday or public holiday in South Africa and "**Business Days**" has a corresponding meaning;

1.1.5. "**Deeds Office**" means the office of the Registrar of Deeds at Cape Town;

1.1.6. "**Parties**" means the Seller and the Purchaser and "**Party**" means either of them, as the context may indicate;

1.1.7. "**Property**" means Erf 9194, Technopark, Stellenbosch, Stellenbosch Municipality, Province of the Western Cape, measuring 3800 (three thousand eight hundred) square meters together with all buildings, erections and fixed improvements thereon, held by deed of transfer number [•];

1.1.8. "**Prime Rate**" means the publicly quoted minimum lending rate of interest, calculated on a net annual compounded basis, charged by Nedbank Limited on unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager of any branch of the said bank, who's authority or appointment need not be proved and whose decision shall be prima facie proof of the said rate);

1.1.9. "**Purchase Price**" has the meaning given in clause 3;

1.1.10. "**Purchaser**" means the Stellenbosch Municipality;

- 1.1.11. "**Rates**" means all municipal assessment rates and taxes, levies, sewerage charges, electricity and water charges, licences, municipal service fees and charges including surcharge on fees, interest, insurance premiums and like items, together with VAT on same, payable in respect of the Property by the Seller or any owner of the Property to the local authority or to any other competent authority entitled to levy and claim payment of any such charges and expenses;
- 1.1.12. "**Seller**" means Elsabe Daneel Properties Proprietary Limited (registration number 2007/024963/07), a company duly incorporated in accordance with the company laws of South Africa, and/or any of its nominees;
- 1.1.13. "**Signature Date**" means the date of signature of this Agreement by the Party signing last in time;
- 1.1.14. "**Transfer**" means the registration in the Deeds Office of the transfer of the Property into the name of the Purchaser;
- 1.1.15. "**Transfer Date**" means the date on which Transfer occurs;
- 1.1.16. "**VAT**" means value-added tax levied in terms of the VAT Act; and
- 1.1.17. "**VAT Act**" means the Value-Added Tax Act, No. 89 of 1991
- 1.2. words importing
- 1.2.1. any one gender include the other of masculine, feminine and neuter;
- 1.2.2. the singular include the plural and *vice versa*; and
- 1.2.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

- 1.5 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.6. if figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.9. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.12. any reference in this Agreement to a party shall include a reference to that party's assigns expressly permitted under this Agreement and, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be;
- 1.13. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.14 any reference in this Agreement to any other Agreement or document shall be construed as a reference to such other Agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented; and

- 1.15. the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible.

2. **THE SALE**

The Seller hereby sells to the Purchaser, who hereby purchases, the Property subject to the terms of this Agreement.

3. **PURCHASE PRICE**

The purchase price payable by the Purchaser to the Seller in consideration for the Property is an amount of R19 000 000 (nineteen million rand) ("**Purchase Price**"), payable in accordance with the provisions of clause 4.

4. **PAYMENT OF THE PURCHASE PRICE**

4.1. The Purchase Price shall be paid by the Purchaser to the Seller in full on the Transfer Date against Transfer of the Property to the Purchaser.

4.2. The Purchase Price shall be secured by a bank guarantee ("**Bank Guarantee**") issued by a financial institution acceptable to the Seller. The Bank Guarantee shall:

4.2.1. provide that payment in terms thereof shall be made:

4.2.1.1. to the Attorneys (for credit of the Seller); and

4.2.1.2. against receipt by the said financial institution of the original Bank Guarantee and written confirmation from the Attorneys of the Transfer;

4.2.2. be delivered by the Purchaser to the Attorneys at their business address referred to in clause 1.1.2 above marked for the attention of Lorica Elferink, within 10 (ten) Business Days after the Signature Date.

4.3. All payments to be effected by the Purchaser to the Seller in terms of this Agreement shall be made in cash, by electronic funds transfer, free of any deductions, set-off, or charges of any kind into the Attorneys' bank account, which account details shall be provided to the Purchaser by the Seller in writing on or before the Transfer Date.

5. **PAYMENT OF TRANSFER COSTS AND RATES AND TAXES**

5.1 Notwithstanding the date of payment of the Purchase Price in terms of clause 4, the Purchaser shall nonetheless and within 5 (five) Business Days of receipt of demand from the Attorneys, pay all the costs of and incidental to the Transfer plus VAT, if any, including the conveyancing fees and transfer duty or VAT, if any, in respect of the Property to the Attorneys.

- 5.2. From the Transfer Date the Purchaser will be liable for all Rates in relation to the Property. If the Seller pays for any Rates in respect of the Property for any period after the Transfer Date, the Purchaser shall, within 5 (five) Business Days of receipt of written demand, refund to the Seller the amount of any Rates so paid by the Seller in respect of the Property for any period after the Transfer Date.

6. TRANSFER OF THE PROPERTY

Transfer of the Property shall be effected by the Attorneys as soon as reasonably possible after the Signature Date.

7. TRANSFER, POSSESSION AND OCCUPATION

- 7.1. Transfer shall be given by the Seller, and taken by the Purchaser, with effect from the Transfer Date, from which date:

7.1.1. ownership; and

7.1.2. the sole risk in and to the Property,

shall pass to the Purchaser

- 7.2. The Seller shall give and the Purchaser shall take vacant occupation of the Property on the Transfer Date.

8. VOETSTOOTS

- 8.1. The Property is sold as described in the existing title deed thereof, and is subject to all conditions and servitudes (if any) attaching thereto or mentioned or referred to in the title deed.
- 8.2. The Property is sold "*voetstoots*" and as it stands and the Seller gives no warranties in respect of the Property.
- 8.3. The Seller shall not be liable for any defects in the Property, either latent or patent.
- 8.4. The Seller shall not be required to indicate to the Purchaser the position of the beacons or pegs upon the Property and/or boundaries thereof, nor shall the Seller be liable for the costs of locating same.
- 8.5. The Seller shall not be liable for any deficiency in extent which may be revealed on any re-survey of the Property, nor shall the Seller benefit by any possible surplus.
- 8.6. In the event of the Property having been erroneously described herein, such error shall not be binding on the Parties but the correct description of the Property shall apply, and in such

instance the Seller shall be entitled to rectify such error by written notice given to the Purchaser advising him of such error and the required rectification.

9. WARRANTIES

9.1. Each of the Parties warrant to each other, to the extent applicable, as at the Signature Date:

9.1.1. it is duly incorporated and validly existing under the laws of South Africa;

9.1.2. it has the power and authority to sign this Agreement and all the necessary corporate, shareholder and other action will have been taken and not revoked to authorise such signature and the performance of its obligations under this Agreement;

9.1.3. this Agreement will create valid, legally binding obligations for the Parties (subject to applicable bankruptcy, insolvency, reorganisation, business rescue, moratorium, prescription or other laws affecting the enforcement of creditors' and shareholders' rights generally); and

9.1.4. the signature and terms of this Agreement do not and shall not:

9.1.4.1. contravene any law, regulation, directive, judgement or audit to which it is subject; or

9.1.4.2. result in any actual or potential breach or default under any obligation, agreement, instruction, or consent to which it is a party or by which it is bound or which is required for its business; or

9.1.4.3. contravene any provisions of its constitutional documents.

9.2. The Purchaser warrants to the Seller, as at the Signature Date:

9.2.1. Geraldine Mettler, in her capacity as municipal manager, is duly authorised to enter into this Agreement; and

9.2.2. all authorisations required to authorise the signature and performance of its obligations under this Agreement have been obtained or effected and are in full force and effect.

10. AGENT'S COMMISSION

It is recorded that this sale was not effected through the instrumentality of any agent.

11. BREACH

Should either Party (the "**Defaulting Party**") commit a breach of this Agreement and/or fail to comply with any of the provisions hereof, then the other Party (the "**Aggrieved Party**") shall be obliged to give the Defaulting Party 7 (seven) Business Days written notice to remedy such breach and/or failure. If the Defaulting Party should fail to comply with such notice, the Aggrieved Party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the Aggrieved Party may have in law (including the right to claim damages), to claim immediate performance and/or payment of all the Defaulting Party's obligations in terms hereof, provided that no Party shall be entitled to cancel this Agreement after it has been implemented.

12. DOMICILIUM CITANDI ET EXECUTANDI

12.1. For the purposes of the giving of notices and the serving of legal process in terms of this Agreement, each of the Parties chooses the address set out below:

12.1.1. Seller:

Address: 174 Dorp Street
Stellenbosch
7600
E-mail: pieter@daneeidiamonds.co.za
Attention: Pieter Daneei

12.1.2. Purchaser:

Address: The Town Hall Complex
Plein Street
Stellenbosch
Email: [•]
Attention: [•]

12.2. Any Party may at any time, by notice in writing to the other Parties, change its chosen address to any other address which is not a post office box.

12.3. Any notice given in connection with this Agreement shall, save where a particular form of notice is stipulated, be:

12.3.1. delivered by hand; or

12.3.2. sent by courier; or

12.3.3. sent by post; or

12.3.4. sent by email,

to the address chosen by the Party concerned.

- 12.4. A notice given as set out above shall be deemed to have been duly given (unless a disputing Party proves the contrary):
- 12.4.1. if delivered by hand, on the date of delivery; or
 - 12.4.2. if sent by courier, on the date of delivery by the courier service concerned; or
 - 12.4.3. if sent by post, on the 5th (fifth) Business Day after the date of posting; or
 - 12.4.4. if sent by email, on the 1st (first) Business Day after the date of transmission
- 12.5. Any written notice (including any electronic mail) actually received by a Party shall be valid, notwithstanding that it may not have been given in accordance with the preceding provisions of this clause 12.

13. **WHOLE AGREEMENT, NO AMENDMENT**

- 13.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
- 13.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 13.3. No oral *pactum de non petendo* shall be of any force or effect.
- 13.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of his/its rights under this Agreement, nor shall it operate so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

- 13.5. To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

14. APPLICABLE LAW AND COURT

- 14.1. This Agreement shall in all respects be governed by South African law.
- 14.2. Either Party shall be entitled to institute all or any proceedings against the other in connection with this Agreement in the Magistrates' Court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction and each Party hereby consents and submits to the non-exclusive jurisdiction of that court and agrees that any costs awarded against a Party be awarded or paid in accordance with clause 15.2. This clause 14 shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to section 45 of the Magistrates' Court Act of 1944 or any amendment thereof.

15. COSTS

- 15.1. Each Party shall be responsible for its own costs in relation to the drafting and finalisation of this Agreement and attendances incidental thereto.
- 15.2. All legal costs, including costs as between attorney and own client, charges and disbursements incurred by the one Party in successfully enforcing any of the provisions of this Agreement and in collecting and endeavouring to collect all or any amounts payable by the one Party, hereunder or otherwise, and all collection commission, and all other fees and charges of a like nature, shall be for the account of the Party against whom the agreement was successfully enforced and be payable on demand.

16. STIPULATIO ALTERI

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

17. COUNTERPARTS

This Agreement may be executed in counterparts and by each Party in a separate counterpart, each of which so executed shall be an original, but all of which shall together constitute one and the same instrument.

Seller: **ELSABE DANEEL PROPERTIES PROPRIETARY LIMITED**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Purchaser: **STELLENBOSCH MUNICIPALITY**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

5.6	INFRASTRUCTURE: (PC: CLLR J DE VILLIERS)
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NONE

5.7	PARKS, OPEN SPACES AND ENVIRONMENT: (PC: CLLR N JINDELA)
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NONE

5.8	PROTECTION SERVICES: (PC: CLLR Q SMIT)
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NONE

5.9	YOUTH, SPORT AND CULTURE: (PC: XL MDEMKA (MS))
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NONE

6.	REPORTS SUBMITTED BY THE MUNICIPAL MANAGER
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NONE

7.	REPORTS SUBMITTED BY THE EXECUTIVE MAYOR
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NONE

8.	MOTIONS AND QUESTIONS RECEIVED BY THE MUNICIPAL MANAGER
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NONE

9.	URGENT MATTERS
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10.	MATTERS TO BE CONSIDERED IN-COMMITTEE
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NONE