

ITEMS

7.4	FINANCIAL SERVICES: (PC: CLLR P JOHNSON)
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7.4.1	PREFERENTIAL PROCUREMENT POLICY
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance and Compliance

16 November 2022

1. SUBJECT: PREFERENTIAL PROCUREMENT POLICY

2. PURPOSE

That Council approves the New Preferential Procurement Policy and revisions to the Supply Chain Management Policy

3. DELEGATED AUTHORITY

Council.

4. EXECUTIVE SUMMARY

To give effect to the New Preferential Procurement Regulations (2022 Regulations) under the Preferential Procurement Policy Framework Act, 2000 (PPPFA) that were gazette by the Minister of Finance on 4 November 2022.

In light of this newly gazetted Preferential Procurement Regulations, The Stellenbosch Municipality are compelled like all other municipalities to table a New Preferential Procurement Policy that must comply with the newly gazette Preferential Procurement Regulations.

Further to the above Stellenbosch Municipality need to repeal its previously adopted and approved Preferential Procurement Policy.

Amendments to the current Supply Chain Management policy will also be drafted and included that will ensure the effective functioning of our Supply Chain Management system.

5. RECOMMENDATIONS

- (a) that the New Preferential Procurement Policy be advertised for public comment; and
- (b) that the revised Supply Chain Management Policy be advertised for public comment

6. DISCUSSION / CONTENTS

6.1 Background

Legislative Framework

Constitution of the Republic of South Africa

Local Government: Municipal Systems Act, No. 32 of 2000 and Regulations

Local Government: Municipal Finance Management Act, No. 56 of 2003

Preferential Procurement Policy Framework Act, 2000

Preferential Procurement Regulations 2022

Background

On 2 November 2020, the Supreme Court of Appeal (SCA) in the case of Afri- business NPC v The Minister of Finance declared the Preferential Procurement Regulation, 2017 invalid and set it aside. The SCA suspended the declaration of invalidity for 12 months. The Minister of Finance appealed to the Constitutional Court and by operation of section 18(1), the operation and execution of a decision of the SCA was suspended pending the appeal.

On 16 February 2022, the Constitutional Court in Minister of Finance Afri-business NPC dismissed the appeal against the SCA judgement

The Supreme Court of Appeal (SCA) declared that the Preferential Procurement Regulations , 2017 were inconsistent with the Preferential Procurement Policy Framework Act 5 of 2000 and ruled that the regulations were invalid .The court exercised its powers in terms of section 172(1)(b)(ii) of the Constitution of the Republic of South Africa , 1996 and suspended the order of invalidity for a period of twelve months and to allow the Minister to correct the defects because the main finding was that the regulations were ultra vires the Ministers regulatory authority as set out in section 5 (1) of the PPPFA.

6.2 Discussion

On 4 November 2022, The Minister of Finance gazetted new Preferential Procurement Regulations (2022 Regulations) under the Preferential Procurement Policy Framework Act, 2000 (PPPFA), and it is aimed at aligning the regulations to the February 2022 Constitutional Court judgement.

The Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)-[PPPFA] was promulgated by the Minister in response to the Constitutional provision and allow Municipalities to develop its own Preferential Procurement Policies and to implement such policies in line with the PPPFA framework.

Section 2 (1) (d) (i) and (ii) of the Preferential Procurement Policy Framework Act, 2000 refers to specific goals which may include:

- (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.
- (ii) implementing the programmes of the Reconstruction and Development Programme (RDP) as published in *Government Gazette* 16085 dated 23 November 1994.

In light of the above provisions within the PPPFA, Act 2000 , the Stellenbosch Municipality have drafted a new PPP Policy in conjunction with the other municipalities in the Western Cape as well as the Provincial Treasury and this new policy seek to give effect to the above mentioned sections within the Preferential Procurement Policy Framework Act. The New PPP Policy will be a combination of BBEEE points together with points for Local enterprises within the boundaries of the WC 024.

6.3 **Financial Implications**

None.

6.4 **Legal Implications**

The item is compliant with the relevant legislative framework.

6.5 **Staff Implications**

None.

6.6 **Previous / Relevant Council Resolutions:**

None.

6.7 **Risk Implications**

If the new Preferential Procurement Policy is not approved by 16 January 2023 the municipality will be non-compliant with the provisions of the Procurement Policy Framework Act, 2000 and Preferential Procurement Regulations 2022.

6.8 **Comments from Senior Management:**

6.8.1 **Chief Financial Officer:**

Supports this item.

6.8.2 **Municipal Manager:**

Supports this item.

Annexures:

A – Preferential Procurement Policy

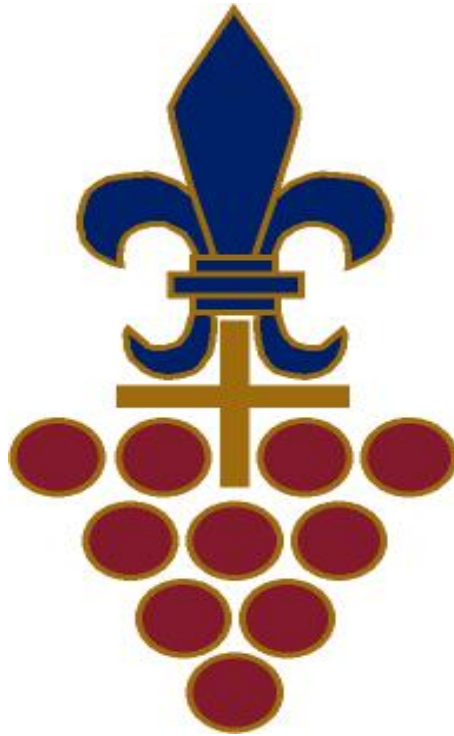
B – Supply Chain Management Policy

FOR FURTHER DETAILS CONTACT:

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REPORT DATE	<i>04 November 2022</i>

ANNEXURE A

STELLENBOSCH MUNICIPALITY



PREFERENTIAL PROCUREMENT POLICY

2022/2023



STELLENBOSCH MUNICIPALITY

PREFERENTIAL PROCUREMENT POLICY

TABLE OF CONTENTS

1.	Definitions	3
2.	Introduction	5
3.	Purpose, and Objectives	6
4.	Application of preference point system	6
5.	80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million	7
6.	90/10 preference point system for acquisition of goods or services with Rand value above R50 million.....	7
7.	80/20 preference points system for tenders to for income-generating contracts with Rand value equal to or below R50 million	8
8.	90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million	9
9.	Specified contract participation goals.....	9
10	Application of Specified contract participation goals in Various thresholds	11
11.	Criteria for breaking deadlock in scoring.....	11
12.	Award of contracts to tenderers not scoring highest points	11
13.	Remedies	11
14.	Performance Management	12
15.	Reporting.....	12
16.	Repeal of regulations.....	12
17.	Short title and commencement	12

1. Definitions

In this policy, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned—

"Acceptable Tender" mean any tender which, in all respects, complies with the specification and conditions of tender as set out in tender document

"Black designated groups" has the meaning assigned to it in the codes of good practice issued in terms of section 9 (1) of the BBBEEA.

"Black people" has the meaning assigned to it in section 1 of the BBBEEA.

"Designated group" means black designated groups, black people, women, people with disabilities; or small enterprises which are enterprises, owned, managed, and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid.

"Disability" means in respect of a person, a permanent means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.

"EME" means

- (1) exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the BBBEEA.
- (2) an entity with an annual turnover of R10 000 00.000 (ten million Rand) or less

"Historically disadvantaged individual (HDI)" means a South African citizen –

- (1) 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 No 110 of 1983); and / or
- (2) who is a female; and / or
- (3) who has a disability:

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI.

"highest acceptable tender" means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;

"lowest acceptable tender" means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;

"Locality" means the local suppliers and/or service providers that business offices are within the Municipal area.

"Large Enterprises" is a company with an annual turnover in excess of R50 million.

“Market Analysis” means a technique used to identify market characteristics for specific goods or services

“Municipal Area” means the Stellenbosch Municipality Municipal area (WC024)

“National Treasury” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Objective Criteria” for the purpose of section of 2(1)f of the procurement Act must be criteria other than the additional to criteria relating to equity ownership by HDI's or whether or not a bidder was located in a particular province or municipal area

“price” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

“Proof of B-BBEE status level of contributor” means the B-BBEE status level certificate issued by an authorized body or person

- 1) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- 2) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.

“Qualifying Small Enterprise (QSE)” “is a company with a turnover between R10 million and R50 million

“Rand value” means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;

“Region” means the district and/or Cape Winelands District Municipality.

“Rural area” means-

- 1) a separately populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- 2) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival and may have a traditional land tenure system.

“Specific goals” means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;

“SMME” means small, medium and micro enterprises namely Exempted Micro Enterprises and Qualifying Small Enterprises

“Tender” means a written offer in the form determined by a Municipality in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

“tender for income-generating contracts” means a written offer in the form determined by an organ of state in response to an invitation for the origination of

income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;

“**The Act**” means the Preferential Procurement Policy Act, 2000 (Act No. 5 of 2000).

“**Youth**” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

2. Introduction

The Constitution of the Republic of South Africa, 1996, provides in sections 152(1)(c) and 152(2) that local government must promote social and economic development and that the municipality must strive within its financial and administrative capacity, to achieve the objects set out in subsection 152(1).

The Constitution provides in section 217 that an organ of state must contract for goods or services in accordance with a procurement system which is fair, equitable, transparent, competitive, and cost effective and to implement a policy to grant preferences within a framework prescribed by National Legislation.

The Broad-Based Black Economic Empowerment Act, 2003 requires: “ (1) Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in (b) developing and implementing a preferential procurement policy

The Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)- [PPPFA] was promulgated by the Minister in response to the Constitutional provision and allow for a Municipality to develop a preferential procurement policy and to implement such policy within the PPPFA framework.

Section 2 (1) (d) (i) and (ii) of the Preferential Procurement Policy Framework Act, 2000 refers to specific goals which may include:

- (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
- (ii) implementing the programmes of the Reconstruction and Development Programme (RDP) as published in *Government Gazette* 16085 dated 23 November 1994.

The RDP (1994), as basis for development in South Africa, was meant to provide a holistic, integrated, coherent socio-economic policy that is aimed at mobilising people and resources to work towards the upliftment of the material and social conditions of local communities to build sustainable livelihoods for these communities.

In terms of Section 2 (1)(d)(ii), the following activities may be regarded as a contribution towards achieving the goals of the RDP, in addition to the awarding of preference points in favour of HDIs (published in *Government Gazette* No. 16085 dated 23 November 1994):

- (i) The promotion of South African owned enterprises;

- (ii) The promotion of export orientated production to create jobs;
- (iii) The promotion of SMMEs;
- (iv) The creation of new jobs or the intensification of labour absorption;
- (v) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
- (vi) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
- (vii) The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area;
- (viii) The promotion of enterprises located in rural areas;
- (ix) The empowerment of the work force by standardising the level of skill and knowledge of workers;
- (x) The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
- (xi) The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.

3. Purpose, and Objectives

- a) The purpose of this policy is to:
 - i) Provide for categories of preference in awarding of bids;
 - ii) Provide for the advancement of persons or categories of persons disadvantaged by unfair discrimination; and
 - iii) Clarify the mechanisms how the above items in par 1.1 (a) (i) and (ii) will be implemented.
- b) Objectives
 - a) Promote Black-Based Black Economic Empowerment (B-BBEE) - enterprises providing services and goods.
 - b) Promote Small Medium and Micro Enterprises (SMME's), Joint Ventures, Consortiums, and partnerships in the municipal area.
 - c) Implement recognised best procurement practises through effective planning, strategic purchasing, and contract management.

The policy rests upon certain core principles of behaviour as set out in the Constitution and ratified by the Constitutional Certification Judgements. In this context, the policy will be applied in accordance with a system, which is fair, equitable, transparent, competitive, and cost-effective in terms of Section 217 of the Constitution.

This policy strives to ensure that the objectives for uniformity in the supply chain management systems between Municipalities/Municipal entities, is not undermined and that consistency with the SCM and LED policies in line with sections 152(1)(c) and 152(2).

4. Application of preference point system

- 4.1 The Municipality will, in the tender documents, stipulate —
 - (a) the preference point system applicable; and

- (b) any specific goal as envisaged in section 2(1)(d) and (e) of the Preferential Procurement Act.

- 4.2 If it is unclear whether the 80/20 or 90/10 preference point system applies—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or;
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system..

5. 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million

- 5.1 The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{\min} = Price of lowest acceptable tender.

- 5.2 A maximum of 20 points may be awarded to a tenderer for the specified goals for the tender.
- 5.3 The points scored for the specific goal must be added to the points scored for the price and the total must be rounded off to the nearest two decimal places.
- 5.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tendering scoring the highest points.

6. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

- 6.1 The following formula must be used to calculate the points out 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{\min} = Price of lowest acceptable tender.

6.2 A maximum of 10 points may be awarded to a tenderer for the specified goals for the tender.

6.3 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places..

6.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

7. 80/20 preference points system for tenders to for income-generating contracts with Rand value equal to or below R50 million

7.1 The following formula must be used to calculate the points for price in respect of an invitation for tender for income-generating contracts, with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

$$P_s = 80 \left(1 + \frac{P_t - P_{\max}}{P_{\max}} \right)$$

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{\max} = Price of highest acceptable tender.

7.2 A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.

7.3 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

7.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

8. 90/10 preference point system for tenders for income-generating contracts with Rand value above R50 million

8.1 The following formula must be used to calculate the points for price in respect of a tender for income-generating contracts, with a Rand value above R50 million inclusive of all applicable taxes:

$$P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right)$$

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{max} = Price of highest acceptable tender.

8.2 A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.

8.3 The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

8.4 Subject to section 2(1)(f) of the Act, the contract must be awarded to the tenderer scoring the highest points.

9. Specified contract participation goals

9.1 The tendering conditions will stipulate the specific goals, as contemplated in section 2(1)(d)(ii) of the Preferential Procurement Act, be attained.

9.2 A maximum of 20 points (80/20 preference points system) or 10 (90/10 preference points system), must be allocated for specific goals. These goals are :

(a) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

(b) Promotion of enterprises located in the municipal area (WCO24)

- 9.3 Regarding par 9.2 (a) at least 50% of the 20/10 points must be allocated to promote this goal and points will be allocated in terms of the BBEE scorecard as follows.

B-BBEE Status Level of Contributor	Number of Points for 80/20 Preference Points System	Number of Points for 90/10 Preference Points System
1	20	10
2	18	9
3	16	8
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant contributor	0	0

- 9.4 A tenderer must submit proof of its BBEE status level contributor.
- 9.5 A tenderer failing to submit proof of BBEE status level of contributor –
- 9.5.1 may only score in terms of the 80/90-point formula for price; and
- 9.5.2 scores 0 points out of 10/5 BBEE status level of contributor, which is in line with section 2 (1) (d) (i) of the Act, where the supplier or service provider did not provide proof thereof.
- 9.6 Regarding par 9.2(b) a maximum of 50% of the 20/10 points must be allocated to promote this goal. Points will be allocated as follows.

Locality of supplier	Number of Points for 80/20 Preference Points System	Number of Points for 90/10 Preference Points System
Within the boundaries of the municipality	20	10
Outside of the boundaries of the municipality	0	0

- 9.7 The policy should not include Pre-qualification goals.
- 9.8 Any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.
- 9.9 A tenderer failing to submit proof of required evidence to claim preferences for other specified goals, which is in line with section 2 (1) (d) (ii) of the Act.
- (i) may only score in terms of the 80/90-point formula for price; and
- (ii) scores 0 points out of 10/5 of the relevant specific goals where the supplier or service provider did not stipulate.
- 9.10 The preference points scored by a tenderer must be added to the points scored for price.

- 9.11 The points scored must be rounded off to the nearest two decimal places.
- 9.12 The contract must be awarded to the tenderer scoring the highest procurement points.

10 Application of Specified contract participation goals in Various thresholds

- 10.1 The preference point scoring system will be applicable for all procurement in excess of R 30 000,00.
- 10.2 If the specific goal of locality is identified for a specific procurement, the delegated official/committee must approve the specific goal (locality), and the point scoring must be specifically indicated in the invitation to tender and scored accordingly.
- 10.3 If the specific goal of locality is not identified for a specific procurement, the maximum points for the specified goals for the tender must be allocated to BBBEE points.

11. Criteria for breaking deadlock in scoring

- 11.1 If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.
- 11.2 If two or more tenderers score an equal total number of points, the objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to the tenderer that scored the highest points in terms in accordance with section 2(1)(f) of the Act.
- 11.3 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

12. Award of contracts to tenderers not scoring highest points

- 12.1 A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.

13. Remedies

- 13.1 If a Municipality is of the view that a tenderer submitted false information regarding a specific goal, it must—
- a) inform the tenderer; accordingly, and
 - b) give the tenderer an opportunity to make representations within 14 days as to why the tender may not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part—

- 13.2 After considering the representations referred to in par 13 (1)(b), the Municipality may—
- (a) if it concludes that such false information was submitted by the tenderer—
 - (i) disqualify the tenderer or terminate the contract in whole or in part; and
 - (ii) if applicable, claim damages from the tenderer;

14. Performance Management

The specific goals achieved through the application of the Preferential Procurement Framework Act, 2000 will be monitored in terms of the elements embedded in the Supply Chain Management Policy.

15. Reporting

The Accounting Officer must align its reporting requirements to the Council as per SCM Regulation 6 to also report on progress with the implementation of this Policy

16. Repeal of regulations

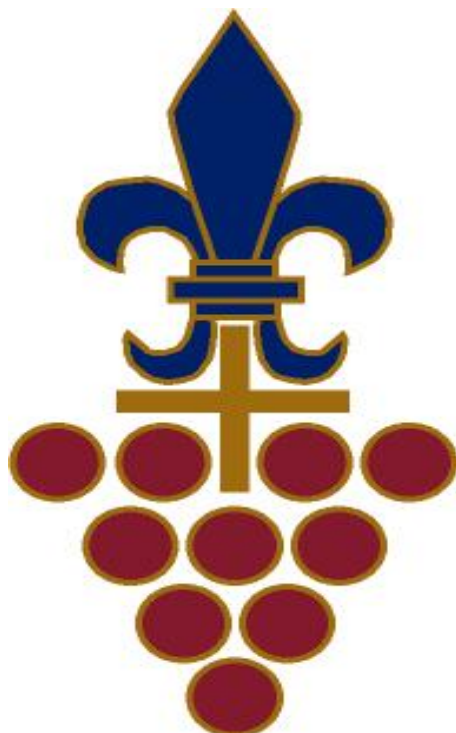
- 16.1 Subject to this regulation, the Preferential Procurement Regulations, 2017 published in Government No. 40553 of 20 January 2017, are hereby repealed with effect from the date referred to in subsection 17.
- 16.2 Any tender advertised before the date referred to in subsection 17 must be dealt with in terms of the Preferential Procurement Regulations, 2017.

17. Short title and commencement

This Policy is called the Stellenbosch Preferential Procurement Policy, 2022/23 and take effect on 16 January 2023.

ANNEXURE B

STELLENBOSCH MUNICIPALITY



SUPPLY CHAIN MANAGEMENT POLICY

2022/2023

Amended – Implementation 16 January 2023



STELLENBOSCH MUNICIPALITY

SUPPLY CHAIN MANAGEMENT POLICY

TABLE OF CONTENTS

1. Definitions

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. Supply chain management policy
3. Amendment of supply chain management policy
4. Delegation of supply chain management powers and duties
5. Sub-delegations
6. Oversight role of council
7. Supply chain management units
8. Training of supply chain management officials

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

9. Format of supply chain management system

Part 1: Demand management

10. System of demand management

Part 2: Acquisition management

11. System of acquisition management
12. Range of procurement processes
13. General preconditions for consideration of written quotations or bids
14. Lists of accredited prospective providers
15. Petty cash purchases
16. Written or verbal quotations
17. Formal written price quotations
18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations
19. Competitive bidding process
20. Process for competitive bidding
21. Bid documentation for competitive bids
22. Public invitation for competitive bids
23. Procedure for handling, opening and recording of bids
24. Negotiations with preferred bidders
25. Two-stage bidding process
26. Committee system for competitive bids
27. Bid Specifications Committees
28. Bid Evaluation Committees
29. Bid Adjudication Committees
30. Procurement of banking services
31. Procurement of IT related goods or services
32. Procurement of goods and services under contracts secured by other organs of state

33. Procurement of goods necessitating special safety arrangements
34. Proudly SA Campaign
35. Appointment of consultants
36. Deviation from and ratification of minor breaches of procurement processes
37. Unsolicited bids
38. Combating of abuse of supply chain management system

Part 3: Logistics, Disposal, Risk and Performance Management

39. Logistics management
40. Disposal management
41. Risk management
42. Performance management

Part 4: Other matters

43. Prohibition on awards to persons whose tax matters are not in order
44. Prohibition on awards to persons in the service of the state
45. Awards to close family members of persons in the service of the state
46. Ethical standards
47. Inducements, rewards, gifts and favours
48. Sponsorships
49. Objections and complaints
50. Resolution of disputes, objections, complaints and queries
51. Contracts providing for compensation based on turnover
52. Contract management
53. Contract having budgetary implications beyond three years
54. Increase/Extension in approved contract sum/period
55. Right of appeal
56. Notification of bid decisions
57. Unsuccessful bidder debriefing
58. Condonation of Policy contraventions

59. **General**

60 Cancellation of Tenders

61 Negotiating a fair market related price

62 Short Title

Definitions

- 1.1. In this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and
- 1.1.1. **“Act”** means the Municipal Finance Management Act, No. 56 of 2003;
- 1.1.2. **“Bid”** means a written offer in a prescribed or stipulated form in response to an invitation by the municipality for the provision of goods, services or construction works through price quotations, advertised competitive bidding process or proposals;
- 1.1.3. **“Bidder”** means any person submitting a competitive bid or a quotation;
- 1.1.4. **“Closing time”** means the time and day specified in the bid documents for the receipt of bids;
- 1.1.5. **“Competitive bidding process”** means a competitive bidding process referred to in paragraph 12(1)(b)(i) of this Policy;
- 1.1.6. **“Competitive bid”** means a bid in terms of a competitive bidding process;
- 1.1.7. **“Contract”** means the agreement which is concluded when the municipality accepts, in writing, a competitive bid or quotation submitted by a supplier;
- 1.1.8. **“Contract manager”** means an official of the Municipality who is responsible for the planning for the planning and execution of a transaction involving the procurement of goods, services or works;
- 1.1.9. **“Contractor”** means any person or entity whose competitive bid or quotation has been accepted by the municipality;
- 1.1.10. **“Delegated authority”** means any person or committee delegated with authority by the municipality in terms of the provisions of the Municipal Finance Management Act;
- 1.1.11. **“Department”** means a section within a specific directorate in terms of the municipal organigram;
- 1.1.12. **“Electronic format”** means a bid submitted by a bidder via email or made available through a cloud storage services;
- 1.1.13. **“Emergency dispensation”** means emergency as referred to in paragraph 36(1)(a)(i) of this policy under which one or more of the following is in existence that warrants an emergency dispensation;
- (a) The possibility of human injury or death;
 - (b) The prevalence of human suffering or deprivation of rights;
 - (c) The possibility of damage to property, or suffering and death of livestock and animals;
 - (d) The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;
 - (e) The possibility of serious damage occurring to the natural environment;

- (f) The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service;
 - (g) The possibility that the security of the state could be compromised; or
 - (h) The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.
- 1.1.14. **“Final award”**, in relation to bids or quotations submitted for a contract, means the final decision on which a bid or quote is accepted;
- 1.1.15. **“Formal written price quotation”** means quotations referred to in paragraph 12 (1) (d) of this Policy;
- 1.1.16. **“Green procurement”** means the procurement of environmentally friendly products and services;
- 1.1.17. **“in the service of the state”** means to be –
- (a) A member of –
 - (i) Any municipal council;
 - (ii) Any provincial legislature; or
 - (iii) The National Assembly or the National Council of Provinces;
 - (b) A member of the board of directors of any municipal entity;
 - (c) An official of any municipality or municipal entity;
 - (d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the public Finance Management Act, 1999 (Act No.1 of 1999);
 - (e) A member of the accounting authority of any national or provincial public entity; or
 - (f) An employee of Parliament or a provincial legislature;
- 1.1.18. **“Long term contract”** means a contract with a duration period exceeding one year and does not have the same meaning as contracts of a long term nature referred to in paragraph 22(1)(b)(vi) of this policy;
- 1.1.19. **“Long term nature contract”** means a contract as defined by section 33(1) of the Municipal Finance Management Act imposing financial obligations on the Municipality beyond the first three years covered in the approved annual budget;
- 1.1.20. **“List of accredited prospective providers”** means the list of accredited prospective providers in terms of Central Supplier Database (CSD) of National Treasury;
- 1.1.21. **“Other applicable legislation”** means any other legislation applicable to municipal supply chain management, including but not limited to the following –

- (a) The Preferential Procurement Policy Framework Act;
 - (b) The Broad-Based Black Economic Empowerment Act; ~~and~~
 - (c) The Construction Industry Development Board Act;
 - (d) The Local Government: Municipal Systems Act;
 - (e) The Competition Act; and
 - (f) The Promotion of Administrative Justice Act.
- 1.1.22. **“Policy”** means the Supply Chain Management Policy of Stellenbosch municipality as amended from time to time;
- 1.1.23. **“Parent municipality”** has the meaning assigned to it in section 1 of the Municipal Systems Act;
- 1.1.24. **“Petty Cash”**, means the procurement of goods and services through the supply chain management requisition and order system by means of one verbal and written quotation below a determined amount in relation with the Petty Cash Policy;
- 1.1.25. **“Single source”**: refers to when the competition exist in the market, but from a selected few suppliers due to technical capabilities and abilities comply with the requirements of the municipality;
- 1.1.26. **“Sole Supplier:”** It refers in instances where there is no competition and only one service provider exist in the market, with sole distribution rights and/or patent rights or manufacturer;
- 1.1.27. **“Strip and quote:”** When the repairs and maintenance on our machines, vehicles are done by one supplier and/or strip-and-quote, for example a municipal vehicle that needs repairs enters the workshop, however to do the repairs, the vehicle has to be send to a supplier that determines what repairs should be done;
- 1.1.28. **“Supplier database”** means the list of accredited prospective providers which the municipality or municipal entity must keep in terms of the Regulation 14 of the Supply Chain Management Regulations;
- 1.1.29. **“Treasury guidelines”** means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;
- 1.1.30. **“Trust”** means the agreement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person;
- 1.1.31. **“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person;
- 1.1.32. **“The Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- 1.1.33. **“The Regulations”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations published by Government Notice 868 of 2005;

- 1.1.34. **“The PPPF Regulations”** means Preferential Procurement Policy Regulations, 2017 Published under Government Notice R32 in Government Gazette 40553 of 20 January 2017; and
- 1.1.35. **“Written or verbal quotations”** means quotations referred to in paragraph 12(1)(b) & (c) of this Policy.

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**2. SUPPLY CHAIN MANAGEMENT POLICY**

- (1) All officials and other role players in the supply chain management system of the Stellenbosch Municipality must implement this Policy in a way that –
 - (a) Gives effect to –
 - (i) Section 217 of the Constitution; and
 - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
 - (b) Is fair, equitable, transparent, competitive and cost effective;
 - (c) Complies with –
 - (i) The Regulations; and
 - (ii) Any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
 - (d) Is consistent with other applicable legislation;
 - (e) Does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
 - (f) Is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The municipal entity must, in addition to complying with subparagraph (1), apply this Policy, to the extent determined by the parent municipality, in a way that is consistent with the supply chain management policy of the parent municipality.
- (3) This Policy applies when the Stellenbosch Municipality –
 - (a) Procures goods or services;
 - (b) Disposes goods no longer needed;
 - (c) Selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (d) Selects external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

- (4) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) Electricity from Eskom or another public entity, another municipality or a municipal entity.

3. AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY

- (1) The Accounting Officer must –
- (a) At least annually review the implementation of this Policy; and
 - (b) When the Accounting Officer considers it necessary, submit proposals for the amendment of this Policy to the Stellenbosch Council.
- (2) If the Accounting Officer submits proposed amendments to the Stellenbosch Council that differs from the model policy issued by the National Treasury, the Accounting Officer must -
- (a) Ensure that such proposed amendments comply with the Regulations; and
 - (b) Report any deviation from the model policy to the National Treasury and the relevant provincial treasury.
- (3) When amending this supply chain management policy, the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.

4. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

- (1) The Stellenbosch Council hereby delegates all powers and duties to the Accounting Officer, which are necessary to enable the Accounting Officer –
- (a) To discharge the supply chain management responsibilities conferred on Accounting Officers in terms of –
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) This Policy;
 - (b) To maximize administrative and operational efficiency in the implementation of this Policy;
 - (c) To enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and

- (d) To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an Accounting Officer in terms of subparagraph (1).
- (3) The Accounting Officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of Stellenbosch Municipality or to a committee, which is not exclusively composed of officials of the Stellenbosch Municipality.
- (4) This paragraph may not be read as permitting an official, to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. SUB-DELEGATIONS

- (1) The Accounting Officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
- (2) The power to make a final award –
 - (a) Above R 10 million (VAT included) may not be sub-delegated by the Accounting Officer;
 - (b) Above R 200,000 (VAT included), but not exceeding R 10 million (VAT included), may be sub-delegated but only to –
 - (i) The Bid Adjudication Committee of which the Chief Financial Officer or a senior manager is a member; or
 - (ii) Accounting Officer of the municipality, after due consideration of all facts was done; and
 - (c) Below R 200,000 (VAT included) to be disposed by delegated official according approved delegatory power and functions issued by Accounting Officer.
- (3) The Bid Adjudication Committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including –
 - (a) The amount of the award;

- (b) The name of the person to whom the award was made; and
 - (c) The reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –
- (a) To the Accounting Officer, in the case of an award by –
 - (i) The Bid Adjudication Committee of which the Chief Financial Officer or a senior manager is a member; or
 - (b) To the Chief Financial Officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) The Bid Adjudication Committee of which the Chief Financial Officer or a senior manager is not a member.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

6. OVERSIGHT ROLE OF COUNCIL

- (1) The Stellenbosch Council reserves its right to maintain oversight over the implementation of this Policy.
- (2) For the purposes of such oversight the Accounting Officer must –
- (i) Within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality, to the council of the municipality; and
 - (ii) Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to Council.
- (3) The Accounting Officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Executive Mayor.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

7. SUPPLY CHAIN MANAGEMENT UNIT

- (1) A supply chain management unit is hereby established to implement this Policy.
- (2) The supply chain management unit operates under the direct supervision of the Chief Financial Officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

8. TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS

- (1) The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

9. FORMAT OF SUPPLY CHAIN MANAGEMENT SYSTEM

- (1) This Policy provides systems for –
- (i) Demand management;
 - (ii) Acquisition management;
 - (iii) Logistics management;
 - (iv) Disposal management;
 - (v) Risk management; and
 - (vi) Performance management.

PART 1: DEMAND MANAGEMENT**10. SYSTEM OF DEMAND MANAGEMENT**

- (1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by Stellenbosch Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
- (2) The demand management system must –
 - (a) Include timely planning and management processes to ensure that all goods and services required by Stellenbosch Municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
 - (b) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
 - (c) Provide for the compilation of the required specifications to ensure that its needs are met; and
 - (d) To undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.
- (3) Green procurement must be incorporated as far as reasonably possible for all specifications of goods, services and construction works.
- (4) In the development of bid specifications, innovative mechanisms should be explored to render the service or product more resource and energy efficient.

PART 2: ACQUISITION MANAGEMENT**11. SYSTEM OF ACQUISITION MANAGEMENT**

- (1) The Accounting Officer must implement the system of acquisition management set out in this Part in order to ensure –
 - (a) That goods and services are procured by Stellenbosch Municipality in accordance with authorised processes only;
 - (b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) That the threshold values for the different procurement processes are complied with;
 - (d) That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - (e) That any Treasury guidelines on acquisition management are properly taken into account.
- (2) Unless otherwise indicated in the bid documents, the Municipality shall not be liable for any expenses incurred by prospective bidders in the preparation and / or submission of a bid or quotation.

12. RANGE OF PROCUREMENT PROCESSES

- (1) Goods and / or services may only be procured by way of –
 - (a) Cash purchases administered by the Expenditure Division up to a transaction value as defined in Council's Petty Cash Policy;
 - (b) Petty cash purchases through one verbal request and or verbal /written quotation for the procurement of goods through the supply chain management requisition and order system of a transaction value between R 0 and R 2,000 (VAT included);
 - (c) Written or verbal quotations for procurement of goods and/or services of a transaction value between R 2,000 and R 10,000 (VAT included);
 - (d) Formal written quotations for procurement of goods and/or services of a transaction value between R 10,000 and R 200,000;
 - (e) Procurements above a transaction value of R 200,000 (VAT included); and
 - (f) The procurement of long-term contracts.
- (2) The Accounting Officer may, in writing-
 - (a) Lower, but not increase, the different threshold values specified in subparagraph (1); or
 - (b) Direct that –
 - (i) Written quotations are obtained for any specific procurement of a transaction value lower than R 2,000;

- (ii) Written price quotations be obtained for any specific procurement of a transaction value lower than R 10,000; or
 - (iii) A competitive bidding process be followed for any specific procurement of a transaction value higher than R 200,000.
- .
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

13. GENERAL PRECONDITIONS FOR CONSIDERATION OF WRITTEN QUOTATIONS OR BIDS

- (1) A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
- (a) Has furnished that provider's –
 - (i) Full name;
 - (ii) Identification number or company or other registration number; and
 - (iii) Tax reference number and VAT registration number, if any;
 - (b) Has authorised the Stellenbosch Municipality to obtain a tax clearance by means of the Tax Compliance Status Pin from, from the South African Revenue Services and Central Supplier Database Number (CSD) that the provider's tax matters are in order; and
 - (c) Has indicated –
 - (i) Whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) If the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) Whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in sub-paragraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

14. LISTS OF ACCREDITED PROSPECTIVE PROVIDERS

- (1) The Accounting Officer must –
- (a) Keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations;
 - (b) At least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;

- (c) Specify the listing criteria for accredited prospective providers as stated within the database registration forms; and
 - (d) Disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services.
Prospective providers must be allowed to submit applications for listing at any time.
 - (3) The list must be compiled per commodity and per type of service.

15. PETTY CASH PURCHASES

- (1) The Accounting Officer must establish the conditions for the procurement of goods by means of cash purchases and petty cash purchases referred to in paragraph 12(1)(a) and (b) of this Policy, which must include conditions –
 - (a) determining the terms on which a manager may delegate responsibility for cash purchases and petty cash purchases to an official reporting to the manager;
 - (b) limiting the maximum number of cash purchases and petty cash purchases or the maximum amounts per month for each manager;
 - (c) excluding any types of expenditure from cash purchases and petty cash purchases, where this is considered necessary;
 - (d) requiring a monthly reconciliation report from each manager to the Chief Financial Officer, including –
 - (i) the total amount of cash purchases and petty cash purchases for that month; and
 - (ii) receipts and appropriate documents for each purchase; and
 - (e) any other conditions determined by the Chief Financial Officer.
- (2) Cash purchases will be dealt with in terms of the Petty Cash Policy of Council.
- (3) Petty cash purchases will be dealt with in terms of the Supply Chain Management Policy of Council.

16. WRITTEN OR VERBAL QUOTATIONS

- (1) The conditions for the procurement of goods or services through written or verbal quotations are as follows –
 - Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the Stellenbosch Municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 13 of this Policy;
 - (b) Where no suitable providers are available from the list of accredited

prospective providers, quotations may be obtained from other possible providers;

- (c) To the extent feasible, providers must be requested to submit such quotations in writing;
- (d) If it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the Accounting Officer or another official designated by the Accounting Officer;
- (e) The Accounting Officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (f) If a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

17. FORMAL WRITTEN PRICE QUOTATIONS

- (1) The conditions for the procurement of goods or services through formal written price quotations are as follows: -
 - (a) Quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the Stellenbosch Municipality. Quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 13 of this Policy;
 - (b) Where no suitable providers are available from the list of accredited prospective providers, quotations may be obtained from other possible providers not registered on the municipal supplier database;
 - (c) If it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Chief Financial Officer or an official designated by the Chief Financial Officer;
 - (d) The Accounting Officer must record the names of the potential providers and their written quotations; and
 - (e) For the obtaining of quotations for services, Stellenbosch Municipality will utilize their notice boards.
- (2) A designated official referred to in subparagraph (1)(c) must within three days of the end of each month report to the Chief Financial Officer on any approvals given during that month by that official in terms of that subparagraph.

18. PROCEDURES FOR PROCURING GOODS OR SERVICES THROUGH WRITTEN OR VERBAL QUOTATIONS AND FORMAL WRITTEN PRICE QUOTATIONS

- (1) The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations is as follows –
 - (a) When using the list of accredited prospective providers the Accounting Officer must promote on-going competition amongst providers by inviting providers to submit quotations on a rotation basis;
 - (b) Where no suitable providers are available from the list of accredited

prospective providers, quotations may be obtained from other possible providers not registered on the municipal supplier database;

- i. All requirements in excess of R 30,000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website and an official notice board of the Stellenbosch Municipality;
 - ii. The municipality will follow a preferred bidding process in the event that the market did not respond in terms of the sourcing of quotations on the website for seven (7) days and if no responsive bids was received.
- (c) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
 - (d) The Accounting Officer or Chief Financial Officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub-delegation;
 - (e) Offers below R 30,000 (VAT included) must be awarded based on compliance to specification and conditions of contract, ability and capability to deliver the goods and services and lowest price;
 - (f) Acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points; and
 - (g) Stellenbosch Municipality will maintain a proper record keeping system.

19. COMPETITIVE BIDS

- (1) Goods or services above a transaction value of R 200,000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R 200,000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

20. PROCESS FOR COMPETITIVE BIDDING

- (1) The procedures for the following stages of a competitive bidding process are as follows:-
 - (a) Compilation of bidding documentation as detailed in paragraph 21;
 - (b) Public invitation of bids as detailed in paragraph 22;
 - (c) Site meetings or briefing sessions as detailed in paragraph 22;
 - (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
 - (e) Evaluation of bids as detailed in paragraph 28;

- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of contracts;
- (h) After approval of a bid, the Accounting Officer and the bidder must enter into a written agreement;
- (i) Proper record keeping; and
- (j) Original / legal copies of written contracts agreements must be kept in a secure place for reference purposes.

21. BID DOCUMENTATION FOR COMPETITIVE BIDS

- (1) The criteria to which bid documentation for a competitive bidding process must comply, must –
 - (a) Take into account –
 - (i) The general conditions of contract and any special conditions of contract, if specified;
 - (ii) Any Treasury guidelines on bid documentation; and
 - (iii) The requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
 - (b) Include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
 - (c) Compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
 - (d) If the value of the transaction is expected to exceed R 10 million (VAT included), require bidders to furnish –
 - (i) If the bidder is required by law to prepare annual financial statements (AFS) for auditing, their audited AFS –
 - (aa) For the past three years; or
 - (bb) Since their establishment if established during the past three years;
 - (ii) A certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) Particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;

- (iv) A statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) Stipulate that disputes must be settled by means of mutual consultation, mediation, adjudication (with or without legal representation), or, when unsuccessful, in a South African court of law;
- (f) The period for which bids are to remain valid and binding must be indicated in the bid documents; and
- (g) A provision for the termination of the contract in the case of non- or under-performance and objections and complaints must be included in the bid documentation.

22. PUBLIC INVITATION FOR COMPETITIVE BIDS

- (1) The procedure for the invitation of competitive bids is as follows –
 - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in a newspaper commonly circulating locally, the website of the Stellenbosch Municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) The information contained in a public advertisement, must at least include
 - (i) The closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy; and
 - (ii) A statement that bids may only be submitted on the bid documentation provided by the Stellenbosch Municipality
 - (iii) Contact details for further enquiries.
- (2) The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed and must clearly indicate the bid number on the outside of the envelope for which the bid is being submitted.
- (4) Where bids are requested by the Municipality in electronic format, such bids must be supplemented by sealed hard copies.
- (5) The municipality may require bidders to submit section(s) of their bid in electronic format, but only after the bid closing date. If the electronic copy differs from the original hard copy, the original hard copy will be binding.

23. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF COMPETITIVE

BIDS AND FORMAL WRITTEN PRICE QUOTATIONS IN EXCESS OF R 30,000

- (1) The procedures for the handling, opening and recording of bids are as follows
- (a) Bids –
 - (i) Must be opened only in public;
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) Received after the closing time should not be considered and returned unopened immediately; and
 - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
 - (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award;
 - (d) The Accounting Officer must –
 - (i) Record in a register all bids received in time;
 - (ii) Make the register available for public inspection; and
 - (iii) Publish the entries in the register and the bid results on the website.
 - (e) The bidder shall choose a *domicilium citandi et executandi* in the Republic and unless notice of the change thereof has duly been given in writing, it shall be the address stated in the bid.
 - (f) Opening of bid procedures –
 - (i) At the specified closing time on the closing date the applicable bid box shall be closed;
 - (ii) The bid box shall be opened in public as soon as practical after the closing time by at least two officials from the Supply Chain Management Unit and the Security Officer on duty;
 - (iii) It is the responsibility of the bidder to ensure that their bid is placed in the correct bid box. The municipality will not on its own initiative redirect any bid if it is placed in an incorrect bid box before the closing time of submissions.
 - (iv) Immediately after the opening of the bid box all bids shall be opened in public;
 - (v) At the official opening of the bids, the bids shall in all cases be read out in terms of the name of the bidder and, if practical, the amount of the bid;
 - (vi) As soon as a bid or technical proposal has been opened the bid / proposal shall be stamped with the official stamps, and endorsed with the opening officials' signatures;
 - (viii) The name of the bidder, and where possible, the bid sum shall be

recorded in a bid opening record kept for that purpose; and The responsible officials who opened the bidding documentation received shall forthwith place their signatures on the bid opening record (register) and shall ensure that the bid opening record, indicating at least the bid price of each bidder, the BBBEE status level contribution of each bidder and where applicable the local content percentages of the goods offered are made available for public inspection and are published on the municipality's website.

(g) Site Inspections / clarification meeting –

- (i) Site inspections / clarifications meeting, where applicable, will be compulsory.
- (ii) If site inspections / clarification meeting are to be held, full details must be included in the bid notice. Service providers that are late for the commencement of the site inspection/clarification meeting will be disqualified.
- (iii) Minutes of all site inspection/clarification meetings must be kept for record purposes
- (iv) Any proposed Addendums to the advertised bid document must be tabled at the Bid Specification Committee Meeting for consideration and approval.

(h) Bid validity periods

- (i) The validity period is calculated from the bid closure date and bids shall remain in force and binding for a period of six (6) months as indicated in the invitation to bid and the bid documents, subject to any other applicable legislation and instructions from the National Treasury for specific types of procurement.
- (ii) The period of validity may be extended by the SCM Department, provided that the original bid validity period has not expired and that all bidders are given an opportunity to extend such period.
- (iii) Any such extension shall be agreed to by a bidder in writing.

Bidders who fail to respond to such a request before the validity of their bid expires, or who decline such a request shall not be considered further in the bid evaluation process.
- (iv) All bidders who indicated the acceptance of the extension of the bid validity period, bids will be considered for evaluation purposes.
- (v) If the validity of all bids expired without it being awarded within the bid validity period, including any extensions thereof allowable in terms of applicable legislation, the bid must be cancelled and published in the same media in which the original bid invitation appeared.
- (vi) All bidders must be notified in writing of the cancellation of a bid.

(i) Samples

- (i) The call for samples should be limited to where samples are called for in the bid documents, samples (marked with the bid and item number

as well as the bidder's name and address) shall be delivered separately (to the bid) to the addressee mentioned in the bid documents by no later than the closing time of the bid.

- (ii) Bids may not be included in parcels containing samples.
 - (iii) If samples are not submitted as required in the bid documents, then the part of the bid for which no sample is provided shall be declared invalid.
 - (iv) Samples shall be supplied by a bidder at his / her own expense and risk. Stellenbosch Municipality shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right to return such samples or to dispose of them at its own discretion.
 - (v) If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample.
- (j) Bid Sum
- (i) A bid will not necessarily be invalidated if the amount in words and the amount in figures do not correspond, in which case the amount in words shall be read out at the bid opening.

24. NEGOTIATIONS WITH PREFERRED BIDDERS

- (1) The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
 - (a) Does not allow any preferred bidder a second or unfair opportunity;
 - (b) Is not to the detriment of any other bidder; and
 - (c) Does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

25. TWO-STAGE BIDDING PROCESS

- (1) A two-stage bidding process is allowed for –
 - (a) Large complex projects;
 - (b) Projects where it may be undesirable to prepare complete detailed technical specifications; or
 - (c) Long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial

clarifications and adjustments.

- (3) In the second stage final technical proposals and priced bids should be invited.

26. COMMITTEE SYSTEM FOR COMPETITIVE BIDS

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the Accounting Officer may determine as issued within the directive and stating the terms of reference of each bid committee –
- (a) A Bid Specifications Committee;
 - (b) A Bid Evaluation Committee; and
 - (c) A Bid Adjudication Committee.
- (2) The Accounting Officer appoints the members of each committee, taking into account section 117 of the Act; and
- (3) The committee system must be consistent with –
- (a) Paragraph 27, 28 and 29 of this Policy;
 - (b) Any other applicable legislation; and
 - (c) The Accounting Officer may apply the committee system to formal written price quotations.

27. BID SPECIFICATIONS COMMITTEES

- (1) A Bid Specifications Committee must compile the specifications for each procurement of goods or services by the Stellenbosch Municipality.
- (2) Specifications –
- (a) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) Must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
 - (c) Must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (d) May not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
 - (e) May not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case

such reference must be accompanied by the word “equivalent”;

- (f) Must indicate the preference points system set out in the Preferential Procurement Regulations 2017;
 - (g) Must be approved by the Accounting Officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy; and
 - (h) The Accounting Officer may sub-delegate the requirements in sub-paragraph 2(g) above to the Chairperson of the Bid Specifications Committee.
- (3) A Bid Specifications Committee must be composed of one or more officials of the Stellenbosch Municipality preferably the manager responsible for the function involved, and may, when appropriate, include external and / or internal specialist advisors.
 - (4) No person, advisor or corporate entity involved with the Bid Specifications Committee, or director of such a corporate entity, may bid for any resulting contracts.

28. BID EVALUATION COMMITTEES

- (1) A Bid Evaluation Committee must –
 - (a) Evaluate bids in accordance with –
 - (i) The specifications for a specific procurement; and
 - (ii) The points system set out in terms of paragraph 27(2)(f);
 - (b) Evaluate each bidder’s ability to execute the contract;
 - (c) Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
 - (d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A Bid Evaluation Committee must as far as possible be composed of
 - (a) Officials from departments requiring the goods or services; and
 - (b) At least one supply chain management practitioner of the Stellenbosch Municipality.
- (3) The relevant user department's official shall carry out a preliminary evaluation of all valid bids received and shall submit a bid evaluation report to the Bid Evaluation Committee for consideration.
- (4) Any evaluation of a bid shall consider the bids received and shall note for inclusion in the evaluation report, a bidder –
 - (a) Whose bid does not comply with the provisions of paragraph 38 of this Policy;
 - (b) Whose bid does not comply with the provisions of paragraph 13 of this Policy;
 - (c) Whose bid is not in compliance with the specification;

- (d) Whose bid is not in compliance with the terms and conditions of the bid documentation;
 - (e) Who is not registered and verified on the municipality's supplier database within seven days of the closing time for bids. In this regard bid documentation shall state that the responsibility for registration and verification rests solely with the bidder;
 - (f) Who, in the case of construction works acquisitions, does not comply with the requirements of the Construction Industry Development Board Act regarding registration of contractors. Verification of compliance with this requirement shall be by means of Stellenbosch Municipality's Supplier Database;
 - (g) Whose tax status are non-compliant and cannot be verified with the South African Revenue Services (SARS) certifying that the taxes of the bidder are in order or that suitable arrangements have been made with SARS; and
 - (h) Who fails to comply with any applicable Bargaining Council agreement.
- (5) Bids shall be evaluated according to the following as applicable –
- (i) Bid price (corrected if applicable and brought to a comparative level where necessary);
 - (ii) The unit rates and prices;
 - (iii) The bidder's ability to fulfil its obligations in terms of the bid documents;
 - (iv) Any qualifications to the bid;
 - (v) The bid ranking obtained in respect of Preferential Procurement as required by Stellenbosch Municipality's Preferential Procurement Policy;
 - (vi) The financial standing of the bidder, including its ability to furnish the required institutional guarantee, where applicable; and
 - (vii) Any other criteria specified in the bid documents.
- (6) The Bid Evaluation Committee shall check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears.
- (7) The evaluation of bids on an equitable basis may be considered during the evaluation process.
- (8) Additional information or clarification of bids may be called for if required.
- (9) Alternative bids may be considered, provided that a bid free of qualifications and strictly in accordance with the bid documents is also submitted. Stellenbosch Municipality shall not be bound to consider alternative bids. The alternative offer is to be submitted with the main offer together with a schedule that compares the specifications of the bid documents with the alternative offer.
- (10) If a bidder requests in writing, after the closing of bids, that his/her bid be withdrawn, then such a request may be considered and reported in the bid evaluation report.
- (11) If, after bids have been brought to a comparative level, two or more scores equal

total adjudication points, regulation 11(5) of the Preferential Procurement Regulations of 2017 will apply.

- (12) If two or more bids are equal in all respects after applying regulation 11(5), the Bid Evaluation Committee shall draw lots to decide on the recommendation for award.
- (13) All disclosures of conflict of interest shall be considered by the Bid Evaluation Committee and if the conflict of interest is of a material nature, this shall be reported to the Bid Adjudication Committee.
- (14) The relevant User Department in consultation with the SCM Unit may, before the bid is considered by the Bid Evaluation Committee, provide a reasonable opportunity to a bidder who made an innocent error and / or omission in their bid document, to correct the innocent error and / or omission, provided that such opportunity will not unduly prejudice any of the other bidders.
- (15) In an event as described in sub-paragraph 14, bidders shall be afforded a minimum of two (2) working days up to a maximum of five (5) working days (in consultation with the relevant User Department or the Manager: Supply Chain Management) from time of notification to correct such innocent errors and / or omissions. If no response is received from such bidders at the deadline the bid may be deemed to be non-responsive.

29. BID ADJUDICATION COMMITTEES

- (1) A Bid Adjudication Committee must –
 - (a) Consider the report and recommendations of the Bid Evaluation Committee; and
 - (b) Either –
 - (i) Depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
 - (ii) Make another recommendation to the Accounting Officer how to proceed with the relevant procurement.
- (2) A Bid Adjudication Committee must consist of at least four senior managers of the Stellenbosch Municipality, which must include –
 - (a) The Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer;
 - (b) At least one senior supply chain management practitioner who is an official of the Stellenbosch Municipality; and
 - (c) A technical expert in the relevant field who is an official, if such an expert exists.
- (3) The Accounting Officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are

present must elect one of them to preside at the meeting.

- (4) Neither a member of a Bid Evaluation Committee, nor an advisor or person assisting the evaluation committee, may be a member of a Bid Adjudication Committee.
- (a) If the Bid Adjudication Committee decides to award a bid other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must prior to awarding the bid—
- (i) Check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
- (ii) Notify the Accounting Officer.
- (b) The Accounting Officer may –
- (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee referred to in paragraph (a); and
- (ii) If the decision of the Bid Adjudication Committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The Accounting Officer must comply with section 114 of the Act within 10 working days

30. PROCUREMENT OF BANKING SERVICES

- (1) A contract for banking services –
- (a) Must be procured through competitive bids;
- (b) Must be consistent with section 7 or 85 of the Act; and
- (c) May not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

31. PROCUREMENT OF IT RELATED GOODS OR SERVICES

- (1) The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a

competitive bidding process.

- (2) Both parties must enter into a written agreement to regulate the services rendered by and the payments to be made to SITA.
- (3) The Accounting Officer must notify SITA together with a motivation of the IT needs if –
 - (a) The transaction value of IT related goods or services required in any financial year will exceed R 50 million (VAT included); or
 - (b) The transaction value of a contract to be procured whether for one or more years exceeds R 50 million (VAT included).
- (4) If SITA's comments on the submission and the Stellenbosch Municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

32. PROCUREMENT OF GOODS AND SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE

- (1) The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if –
 - (a) The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
 - (b) There is no reason to believe that such contract was not validly procured;
 - (c) There are demonstrable discounts or benefits to do so; and
 - (d) That other organ of state and the provider has consented to such procurement in writing.
- (2) Subparagraphs (1)(c) and (d) do not apply if –
 - (a) A municipal entity procures goods or services through a contract secured by its parent municipality; or
 - (b) A municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.
- (3) If paragraph (1) is complied with, Stellenbosch Municipality must request at least the following documents from the relevant organ of state and service provider as referred to under subparagraph (1)(d) –
 - (a) A written declaration confirming –
 - (i) That the organ of state followed a competitive bidding process applicable to it;
 - (ii) That the organ of state has no reason to believe that the contract was not validly procured by itself;
 - (iii) That the organ of state evaluated the bid in terms of price and BBBEE and if applicable, in terms of functionality or quality, and concluded that the bid(s) that were accepted were in all aspects the best compliant and respective bid(s); and
 - (iv) That the organ of state gives formal written permission to

Stellenbosch Municipality to procure goods and / or services from the approved bid(s) as accepted by the organ of state;

- (b) Agenda and minutes of the organ of state's Bid Evaluation Committee at which the specific bid was evaluated;
 - (c) Agenda and minutes of the organ of state's Bid Adjudication Committee at which the bid was awarded or the approval of the Accounting Officer of that organ of state who approved the bid;
 - (d) A copy of the successful bidder(s) bid submissions; and
 - (e) Written consent from the service provider.
- (4) If Stellenbosch Municipality should enter into a contract secured by other organs of state, it shall enter into a contract with the successful bidder(s) on the same terms and conditions as accepted by the relevant organ of state.
 - (5) Contracts entered into by Stellenbosch Municipality under paragraph (4) shall not be deemed to be a deviation from the official procurement processes.
 - (6) The Accounting Officer shall report to Council on a monthly basis all contracts entered into in terms of paragraph (4) above.

33. PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS

- (1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided wherever possible.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

34. PROUDLY SA CAMPAIGN

- (1) Stellenbosch Municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from –
 - (a) Firstly: Suppliers and businesses within the municipality or district;
 - (b) Secondly: Suppliers and businesses within the relevant province; and
 - (c) Thirdly: Suppliers and businesses within the Republic.

35. APPOINTMENT OF CONSULTANTS

- (1) The Accounting Officer may procure consulting services provided that any Treasury guidelines in respect of consulting services, Construction Industry Development Board guidelines and Council's Cost-Containment Policy in respect of services related to the built environment and construction works are taken into account when such procurements are made.

- (2) Consultancy services must be procured through competitive bids if –
 - (a) The value of the contract exceeds R 200,000 (VAT included); or
 - (b) The duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
 - (a) All consultancy services provided to an organ of state in the last five years; and
 - (b) Any similar consultancy services provided to an organ of state in the last five years.
- (4) The Accounting Officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the Stellenbosch Municipality.
- (5) Where the estimated value of fees is less than R 200,000 and the duration of the appointment is less than one year, any National Treasury and, where applicable, Construction Industry Development Board guidelines in respect of consulting services are taken into account.

36. DEVIATION FROM AND RATIFICATION OF MINOR BREACHES OF PROCUREMENT PROCESSES

- (1) The Accounting Officer may –
 - (a) Dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
 - (i) In an emergency (as per definition);
 - (ii) If such goods or services are produced or available from a single source or sole provider only (as per definition);
 - (iii) For the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) Acquisition of animals for zoos and/or nature and game reserves; or
 - (v) In any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
 - (b) 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 subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

37. UNSOLICITED BIDS

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
 - (a) The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) The person who made the bid is the sole provider of the product or service; and
 - (d) The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.
- (3) If the Accounting Officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
 - (a) Reasons as to why the bid should not be open to other competitors;
 - (b) An explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The Accounting Officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
 - (a) Any comments submitted by the public; and
 - (b) Any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the

Stellenbosch Municipality to the bid may be entered into or signed within 30 days of the submission.

38. COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM

- (1) The Accounting Officer must –
 - (a) Take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) Investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) Take appropriate steps against such official or other role player; or
 - (ii) Report any alleged criminal conduct to the South African Police Service;
 - (c) Check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
 - (d) Reject any bid from a bidder –
 - (i) If any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the Stellenbosch Municipality or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) Who during the last five years has failed to perform satisfactorily on a previous contract with the Stellenbosch Municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - (e) Reject a recommendation for the award of a contract if the recommended bidder or any of its directors, or trust or its trustees has committed a corrupt or fraudulent act in competing for the particular contract;
 - (f) Cancel a contract awarded to a person if –
 - (i) The person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) An official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - (g) Reject the bid of any bidder if that bidder or any of its directors –
 - (i) Has abused the supply chain management system of the Stellenbosch Municipality or has committed any improper conduct in relation to such system;
 - (ii) Has been convicted for fraud or corruption during the past five years;

- (iii) Has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) Has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this Policy.

PART 3: LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT

39. LOGISTICS MANAGEMENT

- (1) The Accounting Officer must establish and implement an effective system of logistics management, which must include –
- (a) The monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
 - (b) The setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
 - (c) The placing of manual or electronic orders for all acquisitions other than those from petty cash;
 - (d) Before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
 - (e) Appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
 - (f) Regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
 - (g) Monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

40. DISPOSAL MANAGEMENT

- (1) A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act
- (2) A supply chain management policy must specify the ways in which assets may be disposed of, including –

- (a) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (b) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (c) Selling the asset; and
 - (d) Destroying the asset.
- (3) The Accounting Officer must ensure that –
- (a) Immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (b) Movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous, except when the public interest or the plight of the poor demands otherwise;
 - (c) Firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
 - (d) Immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
 - (e) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
 - (f) Where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
 - (g) In the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.
- (4) All matters relating to the alienation of movable and immovable assets shall be dealt with in terms of Council's Asset Transfer Policy and the Asset Transfer Regulations, 2008 and Council's adopted Immovable Assets Policy.
- (5) Notwithstanding the provisions of paragraph 3 hereof, the following statutory powers of Stellenbosch Council in respect of the alienation of immovable property, are reserved to be exercised by Council –
- (a) To decide on reasonable grounds that an asset is not needed to provide the minimum level of basic municipal services; and
 - (b) To considered the fair market value of the asset and the economic and community value to be received in exchange for the asset, and
- (6) Notwithstanding sub-paragraph (3)(b) & (g) above, the Accounting Officer must determine the most advantageous way for the disposal or letting of movable capital assets, i.e. written price quotations, competitive bidding, or auction, except when public interest or the plight of the poor demands otherwise.
- (7) The Accounting Officer is hereby authorized to dispose of movable capital assets:

- (8) (a) Up to a value of R 2 000 000.00
- (b) Up to a value of R1 000 000.00 (CFO and BAC Members)

41. RISK MANAGEMENT

- (1) The criteria for an effective risk management strategy within supply chain management system, should include the identification, consideration and avoidance of potential risks.
- (2) Risk management should include –
 - (a) The identification of risks on a case-by-case basis;
 - (b) The allocation of risks to the party best suited to manage such risks;
 - (c) Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
 - (d) The management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
 - (e) The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

42. PERFORMANCE MANAGEMENT

- (1) The Accounting Officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved. The retrospective analysis will link to the regulatory reports and submissions on the implementation of the supply chain management policy to the delegated authorities as prescribed in terms of supply chain management regulations and the delegation system of council, as amended from time to time.

PART 4: OTHER MATTERS**43. PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER**

- (1) No award above R 30,000 (including VAT) may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the Accounting Officer must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.
- (4) Where the recommended bidder is not tax compliant on the date of award, the bidder should be notified of the non-compliant status and be requested to submit written proof of tax compliance from SARS within 7 working days from the date of award. The proof of tax compliance submitted by the bidder must be verified by the Municipality. The Municipality will reject a bid submitted by the bidder if such bidder fails to provide proof of tax compliance within the timeframe as set out in this sub-paragraph.

44. PROHIBITION ON AWARDS TO PERSONS IN THE SERVICE OF THE STATE

- (1) Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –
 - (a) Who is in the service of the state;
 - (b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - (c) A person who is an advisor or consultant contracted with the Stellenbosch Municipality.

45. AWARDS TO CLOSE FAMILY MEMBERS OF PERSONS IN THE SERVICE OF THE STATE

- (1) The Accounting Officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R 2,000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –
 - (a) The name of that person;
 - (b) The capacity in which that person is in the service of the state; and
 - (c) The amount of the award.

46. ETHICAL STANDARDS

- (1) A code of ethical standards as set out in [subparagraph (2) / the “National Treasury’s code of conduct for supply chain management practitioners and other role players involved in supply chain management, which also include all other municipal officials not involved in supply chain management system”] is hereby established for municipal officials and other role players in the supply chain management system of the Stellenbosch Municipality in order to promote-
 - (a) Mutual trust and respect; and
 - (b) An environment where business can be conducted with integrity and in a fair and reasonable manner.

- (2) A municipal official or other role player involved in the implementation of this Policy–
 - (a) Must treat all providers and potential providers equitably;
 - (b) May not use his or her position for private gain or to improperly benefit another person;
 - (c) May not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R 350;
 - (d) Notwithstanding subparagraph (2)(c), must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
 - (e) Must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Stellenbosch Municipality;
 - (f) Must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - (g) Must be scrupulous in his or her use of property belonging to Stellenbosch Municipality;
 - (h) Must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
 - (i) Must report to the Accounting Officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - (i) Any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) Any alleged contravention of paragraph 47(1) of this Policy; or
 - (iii) Any alleged breach of this code of ethical standards.

- (3) Declarations in terms of subparagraphs (2)(d) and (e) –

- (a) Must be recorded in a register, which the Accounting Officer must keep for this purpose; and
 - (b) By the Accounting Officer must be made to the Executive Mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct and Schedule 2 of the Systems Act must be adhered to by supply chain management practitioners and other role players involved in supply chain management.
- (5) A breach of the code of ethics must be dealt with as follows –
- (a) In the case of an employee, in terms of the disciplinary procedures of the Stellenbosch Municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) In the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach;
 - (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act; and
 - (d) All cases of non-compliance to this Policy should be reported to the Accounting Officer.

47. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO MUNICIPALITIES, OFFICIALS AND OTHER ROLE PLAYERS

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) Any inducement or reward to the Stellenbosch Municipality for or in connection with the award of a contract; or
 - (b) Any reward, gift, favour or hospitality to –
 - (i) Any official; or
 - (ii) Any other role player involved in the implementation of this Policy.
- (2) The Accounting Officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R 350 in value.

48. SPONSORSHIPS

- (1) The Accounting Officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –
 - (a) A provider or prospective provider of goods or services; or
 - (b) A recipient or prospective recipient of goods disposed or to be disposed.

49. OBJECTIONS AND COMPLAINTS

- (1) Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action.

50. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

- (1) The Accounting Officer may, if deem so, appoint an independent and impartial person, not directly involved in the supply chain management processes –
 - (a) To assist in the resolution of disputes between the Stellenbosch Municipality and other persons regarding –
 - (i) Any decisions or actions taken in the implementation of the supply chain management system; or
 - (ii) Any matter arising from a contract awarded in the course of the supply chain management system; or
 - (b) To deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The Accounting Officer, or another official designated by the Accounting Officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed should, if appointed –
 - (a) Strive to resolve promptly all disputes, objections, complaints or queries received; and
 - (b) Submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
 - (a) The dispute, objection, complaint or query is not resolved within 60 days; or
 - (b) No response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at

any time.

51. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

- (1) If a service provider acts on behalf of a Stellenbosch Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Stellenbosch Municipality must stipulate
 - (a) A cap on the compensation payable to the service provider; and
 - (b) That such compensation must be performance based.

52. CONTRACTS HAVING BUDGETARY IMPLICATIONS BEYOND THREE FINANCIAL YEARS

- (1) Stellenbosch Municipality may not enter into any contract that will impose financial obligations beyond the three years covered in the annual budget for that financial year, unless the requirements of Section 33 of the Act have been fully complied with.

53. INCREASE / EXTENSION IN APPROVED CONTRACT SUM / PERIOD

- (1) Any increase and / or extension in the approved contract sum that may become necessary as a result of exceptional circumstances during the contract period must be approved by the appropriate bid committees prior to implementation.
- (2) Contracts may be expanded or varied by not more than 20% of the original contract value for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services.
- (3) Any expansion or variation in excess of these thresholds as stated under subparagraph (2) must be dealt with in terms of the provisions of section 116(3) of the Act which will be regarded as an amendment of a contract.
- (4) Where community participation has been a part of the project, the community must be advised of the proposed increase and be invited to provide written comment within a minimum period of seven (7) days.

54. RIGHT OF APPEAL

- (1) In terms of Section 62 of the Municipal Systems Act (Act 32 of 2000 as amended), a person whose rights are affected by a decision taken by the Municipality, in terms of a delegated authority, in the implementation of its supply chain management system, may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.
- (2) Notification of the decision in terms of sub-paragraph 55(1) of this policy must state that any appeal must be submitted in writing to the Municipal Manager and must at least contain the following information:
 - (a) The reasons and / or grounds for the appeal;

- (b) The way in which the appellants rights have been affected; and
 - (c) The remedy sought by the appellant.
- (3) No award, where a competitive bidding process was followed, shall be formally implemented until a ruling has been made on any appeal/s received. The Municipal Manager may however grant approval for the implementation of bid awards prior to the conclusion of the appeal process in respect of bids which in his / her opinion are deemed as urgent.
- (4) The Appeal Authority will provide the service provider with copies of the Bid Committee minutes applicable to the specific tender on request within the 21 days period, of the service provider to enable him/her to motivate his/her appeal. Should the service provider request other documentation a PAIA application should be submitted.
- (5) The appeal authority must consider the appeal and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

55. NOTIFICATION OF BID DECISIONS

- (1) The successful and unsuccessful bidders shall be notified in writing by the Supply Chain Management once a bid has been accepted.
- (2) The bidders shall, in addition, be advised of the 21 day appeal period in terms of section 62 of the Municipal Systems Act and be notified that no rights will accrue to him / her until the bid is formally accepted in writing.
- (3) Once the 21 day appeal period has lapsed and a decision has been made by the appeal authority, the appellant and the service provider who the tender was initially awarded will be notified in writing of the outcome thereof by the Supply Chain Management.
- (4) Every notification of decision shall be faxed or sent via electronic mail and ordinary mail to the address chosen by the bidder, with a copy of proof of transmission kept for record purposes, or shall be delivered by hand, in which case acknowledgement of receipt must be signed and dated on a copy of such notification to be kept for record purposes.

56. UNSUCCESSFUL BIDDER DEBRIEFING

- (1) The Municipality will offer an unsuccessful bidder debriefing service to unsuccessful bidders upon request.
- (2) During the debriefing unsuccessful bidders will be informed of how their proposal scored against required criteria and obtain comments from the evaluation team on their bid.
- (3) The debriefing should be a positive and constructive experience that explains how bidders can improve future submissions.
- (4) The debriefing is an opportunity for unsuccessful bidders to –
 - (a) Learn more about the procurement and evaluation process in an informal setting;

- (b) Find out how their proposal scored against the required criteria;
 - (c) Hear the overall comments from the evaluation team on their bid; and
 - (d) Gather information on how future submissions may be improved.
- (5) The debriefing is not part of the Supply Chain complaint or appeal process in terms of paragraph 49 or 55 of this Policy.
- (6) The debriefing is not a legal proceeding and no legal representation is permitted at the debriefing session.
- (7) At the debriefing session the unsuccessful bid is not compared to other bids, nor will information be provided to the unsuccessful bidder about other bids.
- (8) In scheduling a bidder's debriefings session upon the request of the unsuccessful bidder, the municipality must –
- (a) Confirm the date and time of the debriefing session in writing;
 - (b) Conduct separate debriefings with each unsuccessful bidder;
 - (c) Ensure that proper minutes are kept of each debriefing session; and
 - (d) Retain all correspondence and documentation relevant to the debriefing session as part of the procurement documentation.
- (9) In conducting bidders' debriefings, the municipality may –
- (a) Provide a general overview of the evaluation process set out in the bid documents;
 - (b) Discuss the strengths and weaknesses of the bidder's submission in relation to the specific evaluation criteria and the bidders evaluated score;
 - (c) Provide suggestions on how the supplier may improve future submissions; and
 - (d) Address specific questions and issues raised by the supplier in relation to their submission.

57. THE SUSPENSION OF SERVICE PROVIDERS FOR POOR PERFORMANCE AND OTHER BREACHES

- (1) Any failure to fulfil the deliverables in line with the contract or service levels constitutes a material breach or poor performance which will result in the termination of the contract and/or sanctions will be imposed in the form of suspension from the database.
- (2) Such sanctions will have variation in the periods of suspension based on the gravity of the breach.
- (3) The municipality must consider imposing following sanctions, subject to sub-clause (2) above:
- a) 6 months for non-declarations of relative/spouse within the municipality;

- b) 12 months for misleading information provided to the municipality; and
- c) 24 months for certain or above a certain threshold value based.
- d) All the above will be applicable based on the gravity of the poor performance and will be analysed on a case by case basis co-ordinated by the Contract Management Section.

58. CONDONATION OF POLICY CONTRAVENTIONS

- (1) Council may condone a contravention in terms of this Policy, provided that such contravention is also not a contravention of the Act or the Municipal Supply Chain Management Regulations, 2005
- (2) Any expenditure relating to such condonation by Council in terms of this Policy, will not constitute irregular expenditure as contemplated under section 1 of the Act.
- (3) Contraventions of the Act relating to supply chain management or the Municipal Supply Chain Management Regulations, 2005 must be dealt with in terms of section 32 and section 170 of the Act.

59. GENERAL

The Framework for Infrastructure Delivery and Procurement Management and relevant Circular is attached as Appendix 26, dDepending on the ability of Stellenbosch Municipality to implement the content of the Framework for Infrastructure Delivery and Procurement Management, only those parts that are practically implementable will be applied. The proper assessments will be done accordingly.

60. CANCELLATION OF TENDERS

The municipality may, prior to the award of a tender, cancel the tender if:

- 1) Due to changed circumstances, there is no longer a need for the goods or services requested; or
- 2) Funds are no longer available to cover the total envisaged expenditure; or
- 3) No acceptable tenders are received. [If all bids received are rejected, the municipality must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids]; or
- 4) Due to material irregularities in the tender process. If there are material irregularities that are committed during the tender process such that it renders the entire process unfair, the municipality may cancel the tender process and start afresh.

61. NEGOTIATING A FAIR MARKET RELATED PRICE

- 1) Tender documents must include a condition stating clearly that the award of the tender may be subject to price negotiation with the preferred tenderers.

- 2) The Bid Evaluation Committee may indicate in its report to the Bid Adjudication Committee that based on the evaluation the prices offered are above market related prices after factoring the premium to be paid in terms of the 80/20 or 90/10 preference point system and the findings of an objective market analysis conducted.
- 3) When the Bid Adjudication Committee considers the Evaluation report it must express itself on whether it agrees or disagrees with the Bid Evaluation Committee; if it disagrees, the decision must be recorded and reasons provided as part of the Bid Adjudication Committee report.
- 4) Where the Bid Adjudication Committee agrees with the BEC or on its own assessment is of the view that the tenderer is charging prices higher than the fair market price, the Bid Adjudication Committee may request from the AO/AA or delegated authority to subject the tender to price negotiations with the three preferred tenderers scoring the highest points (from first highest to third highest) before award is made.
- 5) Upon approval to negotiate, the AO/AA or delegated authority must appoint a cross functional negotiation team, with one member appointed to be team leader.
- 6) The negotiating team leader must ensure that all members of the negotiating team are clear on the negotiation strategy and desired outcomes.
- 7) Negotiations must be fair and objective and may not be used to unfairly prejudice the highest scoring / preferred tenderer or any other tenderer.
- 8) Members of the negotiating team must behave ethically at all material times during and after negotiations, may not divulge any information related to negotiations to third parties without prior consent from the accounting officer/ authority.
- 9) All negotiations must be officially closed with a decision communicated and agreed between parties before moving to negotiate with the next preferred tenderer.
- 10) Negotiating;
 - (a) May not allow any preferred tenderer a second or unfair opportunity
 - (b) Is not to the detriment of any other tenderer
 - (c) Does not lead to higher price than the bid as submitted.

62 SHORT TITLE

- (1) This policy is called the Stellenbosch Municipality Supply Chain Management Policy.

7.6	INFRASTRUCTURE SERVICES : (PC : CLLR Z DALLING (MS))
7.6.4	TRANSFER OF PORTIONS OF FARM 502 (PORTIONS OFF 502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF) OWNED BY STELLENBOSCH MUNICIPALITY, TO WESTERN CAPE GOVERNMENT FOR ROAD PURPOSES

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance and Compliance

16 November 2022

1. SUBJECT: TRANSFER OF PORTIONS OF FARM 502 (PORTIONS OFF 502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF) OWNED BY STELLENBOSCH MUNICIPALITY, TO WESTERN CAPE GOVERNMENT FOR ROAD PURPOSES

2. PURPOSE

The purpose of this item is to consider a request from the Provincial Government of the Western Cape (PGWC) to acquire from Stellenbosch Municipality, portions of Farm 502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF, for road purposes.

3. DELEGATED AUTHORITY

Municipal Council.

4. EXECUTIVE SUMMARY

Farm No. 502 has been subdivided into various portions and is located just south of Stellenbosch and surrounded by agricultural areas. Annandale Road, also referred to as Divisional Road (DR) 1050, runs through a portions of the subdivided portions (502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF) of Farm 502. **(APPENDIX 4)**

The Provincial Government of the Western Cape (PGWC) proposed the acquisition of the above mentioned portions of land along the road - to supplement the existing road reserve. The additional portions will have to be subdivided from the mentioned portions (502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF) and be incorporated into the new road reserve.

The Provincial Government of the Western Cape (PGWC) is prepared to compensate the Municipality, the market value of the properties that is required of Farms 502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF. **(APPENDIX 2)**

In addition to the financial gain, community value will be gained from the transfer of the portions of land which will increase mobility for commuters within the Municipal area.

The wider road reserve is required for upgrades to Annandale Road, these upgrades have been completed and the fence-line have been relocated to the new road reserve

boundary, the transfer of land will have minimum impact on surrounding agricultural operations.

5. RECOMMENDATIONS

- (a) that Council notes that the subject portions of Farms 502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF (**APPENDIX 4**) is not required for the provision of basic municipal services;
- (b) that new valuations be obtained for consideration when the item is returned after public participation (**APPENDIX 2**);
- (c) that Council considers the community value (increased mobility of commuters) that will be gained as a result of the transfer (**APPENDIX 4**);
- (d) that Council approves the transfer of the subdivided portions of Farms 502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF 502 (**Appendix 4**) in principle;
- (e) that the intention to transfer the subdivided portions of Farms 502AA; 502AB; 502AC; 502ADN; 502BH; 502BK; 502AE; 502AF, be advertised for public comment;
- (f) that, after the public participation process, the comments be considered by Council, before a final decision is made; and
- (g) that the Municipal Manager then be authorized to conclude the deed of sale. (**APPENDIX 3**)

6. DISCUSSION / CONTENTS

6.1 Background

Farm No. 502 is located just south of Stellenbosch and surrounded by agricultural areas. Annandale Road, also referred to as Divisional Road (DR) 1050, runs through a portion of Farm 502. Farm No. 502 has been subdivided into various portions and is located just south of Stellenbosch and surrounded by agricultural areas. Annandale Road, also referred to as Divisional Road (DR) 1050, runs through a portions of the subdivided portions (502AA; 502AB; 502AC; 502ADN; 502BH; 502BK; 502AE; 502AF). (**APPENDIX 1**)

The Provincial Government of the Western Cape (PGWC) proposed the acquisition of the above-mentioned portions of land along the road - to supplement the existing road reserve. The additional portions will have to be subdivided from the mentioned portions (502AA;502AB;502AC;502ADN; 502BH; 502BK; 502AE; 502AF) and be incorporated into the new road reserve.

6.2 Discussion

Independent valuers were appointed to assist in the determination of the market value of the subject portion. The transfer of land will have minimum impact on surrounding agricultural operations. Valuation results indicate a market value of, R650 000.00/ha

[0,2534ha cultivated land (grazing) & 0.0115ha cultivated land] and R450 000.00/ha [1,5820ha unimproved land].

0,2534ha cultivated land (grazing) at R650 000.00/ha	= R164 710.00
0,0115ha cultivated land at R650 000.00/ha	= R 7 475.00
1,5820ha unimproved land @ R450 000.00/h/a	= R711 900.00
Total (Sketch no 4)	= R884 085.00

The Provincial Government of the Western Cape (PGWC) is prepared to compensate the Municipality at a total amount of R884 085.00, however this valuation was carried out in 2016 and a new valuation will be required. (**Appendix 2**)

The Western Cape Government undertook road upgrades that will alleviate congestion experienced on Annandale Road. Community value is gained from the transfer of a portion of Farm 502 as the mobility for commuters within the Municipal area increases.

The following are impacted by the transfer of the subject property.

- Approximately 1.8m High precast wall (64m long razor fence on top)
- Approximately 171 small trees with irrigation along the fence (LHS)
- 34 Beefwood trees (LHS)
- An access road and a gate
- A signboard is within the existing road reserve

The above falls within the new Road Reserve and become the responsibility of the Provincial Government of the Western Cape (PGWC). The Provincial Government of the Western Cape (PGWC) is responsible for the re-establishment of boundary fences, the management of trees, and all structures falling within the new road reserve. A draft deed of sale is included as **APPENDIX 3**.

The upgrade to the road is complete, and the fence-line have been relocated to the new road reserve boundary.

6.3 Financial Implications

The municipality will receive income based on the latest valuation of the subject property. This can only be determined after the new valuations are obtained.

6.4 Legal Implications

6.4.1 MFMA

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

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

- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and

- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

6.4.2 Asset Transfer Regulation (ATR)

6.4.2.1 Transfer or disposal on non-exempted capital assets

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

- a) the accounting officer has in terms of regulation 6 conducted a public participation* process to facilitate the determinations a municipal council must make in terms of Section 14(2)(a) and (b) of the Act; and
- b) the municipal council-
 - i) has made determinations required by section 14(2) (a) and (b)* and
 - ii) has, as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

6.4.2.2 Consideration of proposals to transfer or dispose of non-exempted capital assets

In terms of Regulation 7 the municipal council must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 5(1)(b)(i) and (ii), take into account—

- (a) whether the capital asset may be required for the municipality's own use at a later date;
- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
- (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons; (if applicable)
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury; (if applicable)
- (k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

6.4.2.3 Conditional approval of transfer or disposal of non-exempted capital assets

Further, in terms of Regulation 11, an approval in principle in terms of regulation 5(1)(b)(ii) or 8(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, may be given subject to any conditions, including conditions specifying—

- (a) the way in which the capital asset is to be sold or disposed of;
- (b) a floor price or minimum compensation for the capital asset;
- (c) whether the capital asset may be transferred or disposed of for less than its fair market value, in which case the municipal council must first consider the criteria set out in regulation 13(2); and
- (d) a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.

6.4.2.4 Transfer or disposal of non-exempted capital assets to be in accordance with disposal management system

In terms of Regulation 12(1); if approval has been given in terms of regulation 5(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, the relevant municipality may transfer or dispose of the asset only in accordance with its disposal management system, irrespective of—

- (a) the value of the capital asset; or
- (b) whether the capital asset is to be transferred to a private sector party or an organ of state.

*In the case of Stellenbosch Municipality the Policy on the Management of Council-owned property is deemed to be the disposal management system.

6.4.2.5 Compensation for transfer of non-exempted municipal capital assets

In terms of Regulation 13, the compensation payable to a municipality for the transfer of a non-exempted capital asset must, subject to sub regulation (2)—

- (a) be consistent with criteria applicable to compensation set out in the disposal management system of the municipality or municipal entity; and

If a municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality must, when considering the proposed transfer, take into account—

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

6.4.2.6 Transfer agreements

In terms of Regulation 17, a municipality may transfer assets approved for transfer to a private sector party or organ of state, only by way of a written transfer agreement concluded between the transferring municipality and the receiving private sector party or organ of state.

A transfer agreement must set out the terms and conditions of the transfer, including, as a minimum—

- (a) a sufficient description of the capital asset being transferred in order to identify the asset;
- (b) particulars of any subsidiary assets that are transferred with the capital asset;
- (c) particulars of any liabilities transferred with the asset;
- (d) the amount of compensation payable to the municipality or municipal entity for the transfer of the asset or assets, and the terms and conditions of payment; and
- (e) the effective date from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.

6.4.3 Policy on the management of Council-owned property**6.4.3.1 General principles**

In terms of paragraph 7.2.1, unless otherwise provided for in the policy, the disposal of Viable Immovable property shall be effected-

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

6.4.3.2 Methods of disposal

In terms of paragraph 9 the type of tender may vary, depending on the nature of the transaction. The following options may be considered:

- a) Outright tender, e.g residential erven;
- b) Call for proposals, e.g social care erven.

6.5 Staff Implications

No staff is affected

6.6 Previous / Relevant Council Resolutions:

None

6.7 Risk Implications

The transfer of the subject property will not attract any additional risk and liabilities for the Municipality.

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

The recommendations are supported. The deed of sale must clearly identify the portions of the subdivided portions that are affected.

APPENDIX 1: INITIAL REQUEST WITH PLAN

APPENDIX 2: COMPENSATION OFFER

APPENDIX 3: DEED OF SALE

APPENDIX 4: MAPS IDENTIFYING THE PORTIONS AFFECTED.

FOR FURTHER DETAILS CONTACT:

Name	Shane Chandaka
Position	Director
Directorate	Infrastructure Services
Contact Numbers	021 808 8213
E-mail Address	Shane.Chandaka@ Stellenbosch.gov.za
Report Date	9 November 2022

APPENDIX 1



Reference: TPW 16/8/2/2-3/DR1050/4

The Municipal Manager

Stellenbosch Municipality

C/o Mr P Smit

Posbus 17

STELLENBOSCH

7599

[For Attention: Mr Piet Smit] [Piet.Smit@stellenbosch.gov.za]

Dear Sir

**CONTRACT C921: UPGRADING OF DIVISIONAL ROAD 1050, ANNANDALE ROAD WITH MR168
(NEAR LYNEDOCH): ACQUISITION OF LAND: REMAINDER OF THE FARM NO 502,
STELLENBOSCH**

1. You are hereby informed that this Department now requires an additional area of $\pm 1,8469$ ha (sketch No4) of Remainder of the Farm No 502, Stellenbosch, for the upgrading of Divisional Road 1050 (Annandale Road). The subject portion of land is indicated in red on the attached sketch plan No 4. According to information obtained from the Cape Town Deeds Office, the Remainder of the Farm No 502, Stellenbosch, is registered in the name of the Municipality Stellenbosch by virtue of Deed of Transfer No T36696/2006. In terms of the provisions of Chapter 3 of the Constitution it is clear that the acquisition of the subject portion of land should therefore be finalized in the spirit of co-operative governance.
2. Should your Council wish to claim any compensation in respect of the subject portion of land, this Department is prepared to compensate your Council according to the market value of the subject portion of land. Although I can (at this stage) not provide you with an indication of what the market value of the subject portion of land is, I can however mention that this Department is in the process of appointing independent valuers to undertake a thorough market research into the market value of properties in the area and to provide him with valuation reports in respect of the properties affected by the project. As soon as the valuation report in respect of the subject property has been received from the appointed valuer, your Council will be informed according to the findings contained there-in. This Department is in addition to the market value of the subject portion of land,

also prepared to pay all the costs associated with this transaction, e.g. survey-, transfer-, consolidation costs, etc

3. It would be appreciated if you could (as soon as possible) provide this Department with your indication as to whether or not your Council (in principle) has any objection to the alienation of the subject portion of land to this Department for road purposes.
4. Your Council early response with regard to this Department request would be appreciated.

Y. G. V.

for **CHIEF DIRECTOR: ROAD NETWORK MANAGEMENT**

DATE: *2016.06.13*

PROPERTY EIGENDOM REMAINDER OF THE FARM No. 502, STELLENBOSCH SKETCH SKETS No. 4

ROAD STATUS PADSTATUS DIVISIONAL ROAD 1050 RESERVE WIDTH RESERWEWYDTE 20m (Min.)

NAME OF JOB NAAM VAN TAAK ANNANDALE

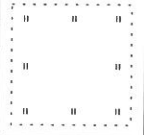
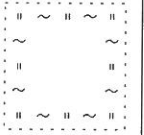
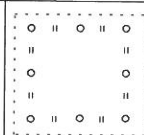
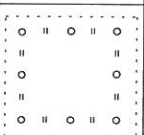
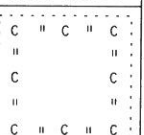
COMPILATION SAAMGESTELDE PLAN H1597 SURVEY OPMETINGS PLAN DR 1050 FULL SURVEY DRAWING 3D REV2.DGN

NOTA BENE

LET WEL

IN TERMS OF SECTION 35 (4) (a) OF ORDINANCE 19/1976 NO COMPENSATION IS PAYABLE FOR THE PORTION OF EXISTING ROAD RESERVE SITUATE WITHIN THE NEWLY EXPROPRIATED ROAD RESERVE. (SEE 2 BELOW)

INGEVOLGE ARTIKEL 35 (4) (a) VAN ORDINANSIE 19/1976 IS GEEN VERGOEDING BETAALBAAR VIR DIE GEDEELTE BESTAANDE PADRESERWE WAT BINNE DIE NUWE ONTEIENDE PADRESERWE GELEE IS NIE. (SIEN 2 HIERONDER)

1	TOTAL AREA OF NEW ROAD RESERVE TOTALE GROOTTE VAN NUWE PADRESERWE		4,5049 Ha	
2	PORTION OF EXISTING ROAD RESERVE WITHIN NEW ROAD RESERVE GEDEELTE BESTAANDE PADRESERWE BINNE NUWE PADRESERWE		2,6580 Ha	
3	DIFFERENCE BETWEEN 1 AND 2 ABOVE IN RESPECT OF WHICH COMPENSATION CAN BE CLAIMED AS SET OUT IN 4 BELOW. VERSKIL TUSSEN 1 EN 2 HIERBO WAARVOOR VERGOEDING GEEIS MAG WORD SOOS IN 4 HIERONDER UITEENGESIT.		1,8469 Ha	
4	ONVERBETERDE GROND UNIMPROVED LAND 1,5820 Ha	BEWERKTE GROND CULTIVATED LAND 0,2534 Ha (GRAZING) 0,0115 Ha		BESPROEIDE GROND IRRIGATED LAND 
	BOORDE ORCHARDS 	WINGERD VINEYARD 	PLANTASIE PLANTATION 	

NOTE:

THE FOLLOWING ARE AFFECTED:

- ± 1,8m HIGH PRECAST WALL (64m LONG RAZOR FENCE ON TOP).
- ± 171 SMALL TREES WITH IRRIGATION ALONG THE FENCE (LHS).
- 34 BEEFWOOD TREES (LHS).
- AN ACCESS ROAD AND A GATE.
- A SIGNBOARD IS WITHIN THE EXISTING ROAD RESERVE.

FIELD CHECKED BY VELD NAGESIEN DEUR P. SPENCE
DATE DATUM APRIL 2016

AA2

FILE NO. TPW 1618/22-3/DR1050/4
LEER

SKETCH NO. 4
SKETS

PROPERTY REMAINDER OF THE FARM No. 502
EIENDOM

SITUATE IN THE ADMINISTRATIVE DISTRICT OF STELLENBOSCH
GELEE IN DIE ADMINISTRATIEWE DISTRIK VAN

IN EXTENT 9,9894 Ha
GROOTTE

OWNED BY STELLENBOSCH MUNICIPALITY
EIENDOM VAN

TRANSFER NO. T36696/2006
TRANSPORT

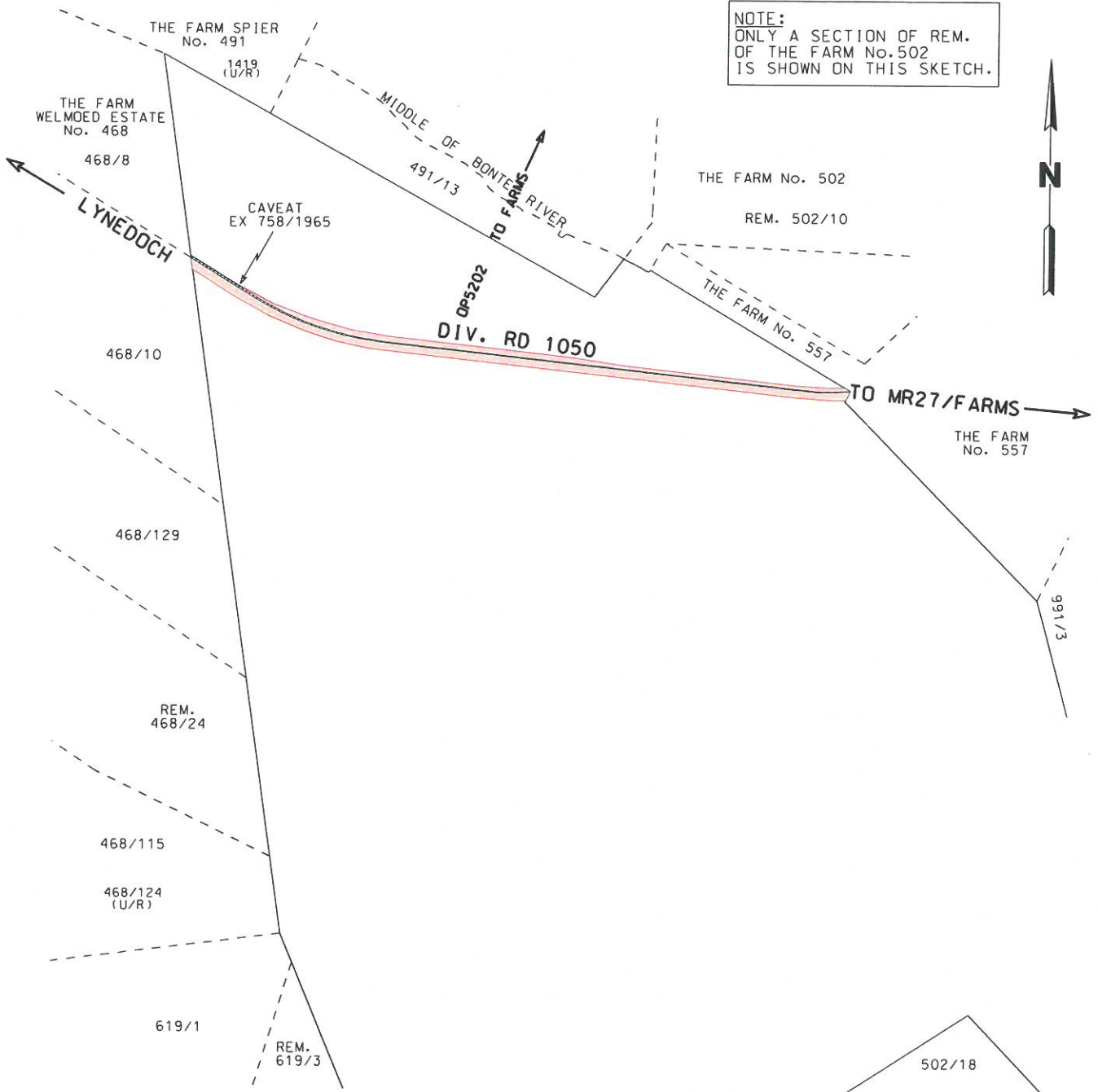
THE EXPROPRIATED PORTION, IN RED, IS APPROXIMATELY 4,5049 Ha
DIE ONTEIENDE GEDEELTE, ROOIGELEUR, IS ONGEVEER

IN EXTENT GROOT
GROOT

S.G. DIAGRAM NO. 9133/1957
L.G. KAART

S.G. COMPILATION NO. M3155; M3188; M3169
L.G. SAMESTELLING

NOTE:
ONLY A SECTION OF REM.
OF THE FARM No. 502
IS SHOWN ON THIS SKETCH.



SCALE 1:15000
SKAAL

COMPILATION BY C. DE BRAAK
SAMESTELLING DEUR
DATE JANUARY 2016
DATUM AA

ENDORSEMENTS

1. The District Roads Engineer
SUIDER PAARL

2. The Chief Engineer: Road Design
Mr WM Silbernagl [wally.silbernagl@westerncape.gov.za]

3. The Assistant Director: Road Rights
Mr PJ Pienaar [Pieter.Pienaar@westerncape.gov.za]

4. Mr JJ Rossouw [Johan.Rossouw@westerncape.gov.za]

5. WSP /Parsons Brickerhoff, Transport and Infrastructure, Africa
The Pavillion, 1st Floor

Corner Portswood & Beach Rd, Waterfront

CAPE TOWN

8000

Attention: Mr Jaco Louw [Jaco.Louw@WSPGroup.co.za]

Contract C921: Upgrading of DR1050: Annandale Road I/S Mr168 (Near Lynedoch)

6. TPW 16/8/2/2-29/DR1050

APPENDIX 2



Ref: TPW 16/8/2/2-3/DR1050/4

The Municipality Manager
Stellenbosch Municipality
C/o Ms Geraldine Mettler
P.O. Box 17
STELLENBOSCH
7599

[For Attention: Mrs Geraldine Mettler] [municipal.manager@stellenbosch.gov.za]

Dear Mrs Mettler

CONTRACT C921: UPGRADING OF DIVISIONAL ROAD 1050, ANNANDALE ROAD WITH MAIN ROAD 168 (NEAR LYNEDOCH): ACQUISITION OF LAND: REMAINDER OF THE FARM NO 502, STELLENBOSCH: COMPENSATION OFFER

1. I refer to this Department's even-numbered acquisition letter dated 13 June 2016 as well as Mr Piet Smit electronic message dated 17 June 2016 (copies attached).
2. To date no further response has been received from your Council. The Department is therefore eager to conclude this long outstanding matter and has subsequently decided to proceed by making your Council a compensation offer for the subject portions of land affected- should your Council of course require any compensation for the land.
3. Your Council may be aware of the fact that the Department appointed independent valuers, JJ Neethling Property Valuers to assist in the determination of the market value of the subject portions of the relevant property affected by this project. Based on the valuation report received, it is evident that the market value of the subject portions of land, on the date of the acquisition letter, viz 13 June 2016 amounted to tariffs of R650,000.00/ha [0,2534ha cultivated land (grazing) & 0,0115ha cultivated land] and R450,000.00/ha [1,5820ha unimproved land].
4. In view of the above, the Department is therefore prepared to compensate your Council at a total amount of R884,085.00, which is calculated as follows, in respect of the subject portions of land-

4.1 **Sketch no 4**

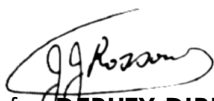
Land:

0,2534ha cultivated land (grazing) @ R650,000.00/ha	= R 164,710.00
0,0115ha cultivated land @ R650,000.00/ha	= R 7,475.00
1,5820ha unimproved land @ R450,000.00/ha	= <u>R 711,900.00</u>

Total (Sketch No 4) = R 884,085.00

5. Consequently, your Council is hereby requested to inform me whether your Council intends claiming compensation in respect of the subject portions of land or not? Should your Council wish to claim compensation, it will be appreciated if you could inform me whether the total amount of R884,085.00 is acceptable to your Council or not? This is to enable me to submit the matter to the Western Cape Provincial Minister of Transport and Public Works for consideration/approval. However, if this amount is not acceptable, a fully motivated valuation report for the tariffs/compensation amount claimed by your Council in this regard (which has been obtained at its own costs), should be forwarded to the Department for consideration.
- 5.1 Should the total amount of R884,085.00 be acceptable to your Council, I hereby attach a draft deed of sale [between Stellenbosch Municipality and the Roads Trustees] which was prepared by the Department in respect of the subject portions of the property, viz. Remainder of the Farm No 502, Stellenbosch which are required for the upgrading of Divisional Road 1050, Annandale Road for road purposes. It will be appreciated if you could study the draft deed of sale and let me know if it meets your Council's requirements and if there are any amendments required. Please return the draft deed of sale back to me in order for me to forward it to the Department's Legal Services department for vetting, whereafter the necessary submission to the Minister will be prepared for consideration/approval.
6. Your Council's response in the above matter, would appreciated.

Yours faithfully



for **DEPUTY DIRECTOR-GENERAL: ROADS**

DATE: 07-03-2022



ENDORSEMENTS:

1. The District Roads Engineer
SUIDER-PAARL
Mr Elroy Smith [Elroy.smith@westerncape.gov.za]

2. The Chief Engineer: Geometric Design
Mr M Hendrickse [Michael.Hendrickse2@westerncape.gov.za]

3. The Acting Deputy Director: Road Ownership & Expropriation
Mr PJ Pienaar [Pieter.Pienaar@westerncape.gov.za]

4. **Mr JJ Rossouw** [Johan.Rossouw@westerncape.gov.za]

5. JJ Neethling [jjneeth@breede.co.za]

6. TPW 16/8/2/2-3/DR1050

7. WSP Consulting
Cnr Portswood & Beach Rd, Waterfront
CAPE TOWN
8000

Attention: Mr Jaco Louw [Jaco.Louw@WSPGroup.co.za]



APPENDIX 3

DEED OF SALE

MADE AND ENTERED INTO BY AND BETWEEN



STELLENBOSCH MUNICIPALITY

(herein represented by **GERALDINE METTLER**
in her capacity as **MUNICIPAL MANAGER**
who has been duly authorised thereto by resolution
passed at a meeting of the Municipal Council on

(hereinafter referred to as the **SELLER**)

AND

THE ROADS TRUSTEES

[In terms of section 23(1) of the Roads Ordinance, 19 of 1976 represented herein by
JACQUELINE TAMARA GOOCH in her capacity as **HEAD OF DEPARTMENT:
TRANSPORT AND PUBLIC WORKS (WESTERN CAPE GOVERNMENT** and **LOUIS
GABRIEL FOURIE,**
in his capacity as **DEPUTY DIRECTOR GENERAL (ROADS): DEPARTMENT OF
TRANSPORT AND PUBLIC WORKS (WESTERN CAPE GOVERNMENT)]**

(hereinafter referred to as the PURCHASER)

WHEREAS the SELLER resolved under Council Resolution that the herein mentioned property is not required for municipal services and can therefore be alienated to the PURCHASER, to be utilised for the upgrading of Divisional Road 1050, Annandale Road with Main Road 168 (Near Lynedoch).

AND WHEREAS in terms of section 23 (1) of the Roads Ordinance, 19 of 1976, the Roads Trustees, may with the approval of the Administrator, acquire property for road purposes.

AND WHEREAS section 232(1) (c) (ii) of the Interim Constitution, 1993, provides that a reference in a law to an Administrator shall be a reference to the Premier of that Province.

AND WHEREAS no rights and/or obligations will be vested before the signing of this agreement by the Parties.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. THE PROPERTY

The PURCHASER hereby purchases the following immovable property, described in 1.1 below (collectively refer to as "The Property") from the SELLER, subject to the terms and conditions contained in this Agreement:

- 1.1 Remainder of the Farm No 502, Stellenbosch – (approximately 1,8469ha in extent) attached hereto as Annexure "A" sketch plan no 4

2. PURCHASE PRICE

- 2.1 The purchase price of the Property is a total amount of **R884,085.00 (Eighty Thousand Eighty Four Hundred and Eight Five Rand)**, payable to the SELLER on the date of the agreement was finalised.

3. CONDITIONS

3.1 The Property is sold subject to the following conditions:

3.1.1 The PURCHASER will be responsible for all costs (survey-, transfer-, and consolidation costs) associated with the transaction as well as all costs related to the relocation of services and fencing as well as repairs thereto, where applicable.

4. TRANSFER

4.1 The PURCHASER will be liable for all transfer costs, transfer duty and any other costs associated with transfer of the Property into the name of the PURCHASER by the conveyancers of the SELLER, and the conveyancing will only start after such costs have been paid by the PURCHASER.

5. POSSESSION AND OCCUPATION

5.1 Possession and vacant occupation of the Property by the PURCHASER shall take effect on date of occupation, from which date it shall be at the sole risk, loss or profit of the PURCHASER.

6. RATES AND TAXES

6.1 The PURCHASER shall be liable for the payment of all rates, taxes and other charges in respect of the Property from the date of possession and occupation.

7. DESCRIPTION OF PROPERTY IN THE TITLE DEED

7.1 The Property is sold as described in the existing title deed or deed thereof and subject to all conditions and servitudes (if any) attaching thereto or mentioned or referred to in the said title deed or prior deeds. The SELLER shall not be liable for any deficiency in extent which may be revealed on any resurvey, nor shall the SELLER benefit by a surplus in extent.

8. VOETSTOOTS

- 8.1 The Property is sold voetstoots. The SELLER shall not be liable for any defects in the Property, either latent or patent nor shall the SELLER be liable for any damages suffered by the PURCHASER by reason of such defects. The SELLER shall not be required to indicate to the PURCHASER the positions of the beacons or pegs upon the Property and/or boundaries thereof, nor shall the SELLER be liable for the costs of locating same.
- 8.2 The PURCHASER is responsible for compliance with any applicable provisions of the Municipal By-Law on Municipal Land Use Planning 2015 or any other relevant legislation.

9. MUNICIPAL SERVICES

- 9.1 The PURCHASER shall, without compensation, allow the SELLER or other statutory authority to convey any electricity, telephone or television cables or lines, and main and/or other water pipes, and sewerage and drainage infrastructure, including stormwater infrastructure in favour of any other erf or erven across the Property and that installations such as mini-substations, meter kiosks and service poles may be installed if deemed necessary by the SELLER or other statutory authority and in such manner and position as may from time to time be reasonably required, all of which will, however, be done with due consideration of the use of the Property by the PURCHASER, subject approval of the Western Cape Government in accordance with section 17 of the Roads Ordinance, 1976, or any legislation that repeals and / or replaces it. This shall include the right of access to the Property at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, furrow, conduit or other works pertaining thereto.
- 9.2 Should any municipal services be removed by the SELLER on request of the PURCHASER, the PURCHASER shall be liable for the costs.
- 9.3 In the event of the PURCHASER erecting any structures on existing municipal services, such services must be protected to the satisfaction of the SELLER.

9.4 Should the existing municipal services not be sufficient for the PURCHASER, the PURCHASER shall at his/her/their costs install the necessary services. Such services shall be installed to the satisfaction of the Director: Technical Services.

10. DISCLAIMER

10.1 The SELLER is not liable for any injury or loss or damage of any nature whatsoever, which the PURCHASER, and any of the PURCHASER's employees, visitors or invited guests, including members of the public, may suffer on Property.

11. BREACH

11.1 In the event of the PURCHASER failing to fulfil on any due date any of the terms and conditions of this Agreement or failing to rectify any other act in breach of this Agreement within fourteen (14) days after being requested to do so in writing, the SELLER shall have the right to either:

11.1.1 cancel the sale in writing addressed to the PURCHASER, in which event the PURCHASER shall forfeit all monies paid to the SELLER or his Agent in terms hereof, without prejudice to the SELLER'S other legal rights and remedies and the right to claim damages; or

11.1.2 claim fulfilment of all the terms and conditions hereof.

11.2 In the event of the SELLER failing to fulfil on due date any of the terms and conditions of this Agreement or to rectify any other act in breach of this Agreement within fourteen (14) days after being requested to do so in writing, the PURCHASER shall have the right to either:

11.2.1 cancel the sale in writing addressed to the SELLER and to recover from the SELLER such damages as he/she/they may have suffered; or

11.2.2 claim the immediate fulfilment of all the terms and conditions hereof on specific conditions.

12. VARIATION

- 12.1 This Agreement constitutes the entire agreement between the Parties and no modification, variation or alteration thereto shall be valid unless in writing and signed by both parties hereto.

13. DISPUTE CLAUSE

- 13.1 In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably, including the initiation of direct negotiations with senior management representatives or negotiations through an agreed upon intermediary.
- 13.2 Should the dispute contemplated in clause 13.1 remain unresolved for a period of more than 60 (sixty) days, either Party may declare such dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing, in which event the parties will follow the procedure as outlined in the Intergovernmental Relations Framework Act 13 of 2005.

14. DOMICILIA CITANDI ET EXECUTANDI

- 14.1 The Parties choose their *domicilia citandi et executandi* as follows:

The SELLER

P.O. Box 17

STELLENBOSCH

7599

Tel : 021 808 8111

Fax : 021 8088026

Email: municipal.manager@stellenbosch.gov.za

The PURCHASER

The Roads Trustees

P.O. Box 2603

CAPE TOWN

8001

- 14.2 Any notice to either party shall be addressed to it at its domicilium and sent by either prepaid registered post or email or facsimile or delivered by hand. In the case of any notice:
- 14.2.1 sent by prepaid registered post, it shall be deemed to have been received, unless the contrary is proved, on the fourth business day after posting;
- 14.2.2 dispatched by facsimile or email, on the date of dispatch of such facsimile or email, provided that the correct answer back code of the address or read receipt is received on the facsimile or email;
- 14.2.3 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a business day, or otherwise on the next following business day, save that if delivered by hand a receipt shall be obtained and kept as proof of such delivery.

15. WAIVER

- 15.1 Notwithstanding any express or implied provisions of this deed of Sale to the contrary, any latitude or extension of time which may be allowed by the SELLER in respect of any matter or thing that the PURCHASER is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of the SELLER'S right at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.

16. JURISDICTION

- 16.1 The Parties hereto, in terms of section 45 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), consent to the jurisdiction of the Magistrate's Court for the hearing of any

action which may arise directly or indirectly from this Agreement, without prejudice however, to the SELLER or his/her/their agents' right to institute such action in the High Court in the event of their choosing to do so.

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2022.

AS WITNESSES:

1. _____
_____ SELLER

2. _____

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2022.

AS WITNESSES:

1. _____
_____ PURCHASER

2. _____

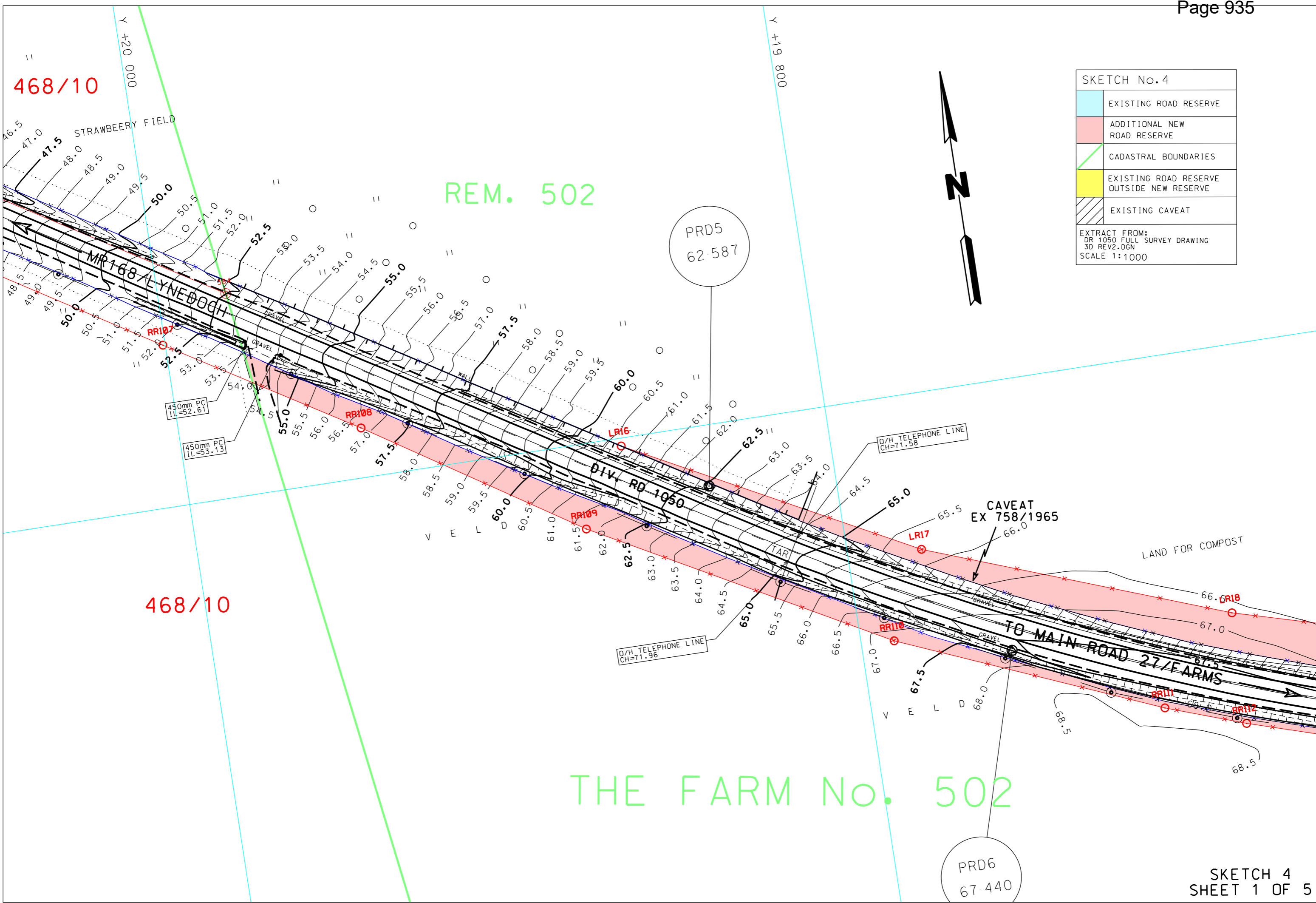
THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2022.

AS WITNESSES:

1. _____
_____ PURCHASER

2. _____

APPENDIX 4



468/10






468/10

REM. 502

THE FARM No. 502






PRD5
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PRD6
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SKETCH No. 4	
	EXISTING ROAD RESERVE
	ADDITIONAL NEW ROAD RESERVE
	CADASTRAL BOUNDARIES
	EXISTING ROAD RESERVE OUTSIDE NEW RESERVE
	EXISTING CAVEAT
EXTRACT FROM: DR 1050 FULL SURVEY DRAWING 3D REV2.DGN SCALE 1:1000	



SKETCH No. 4

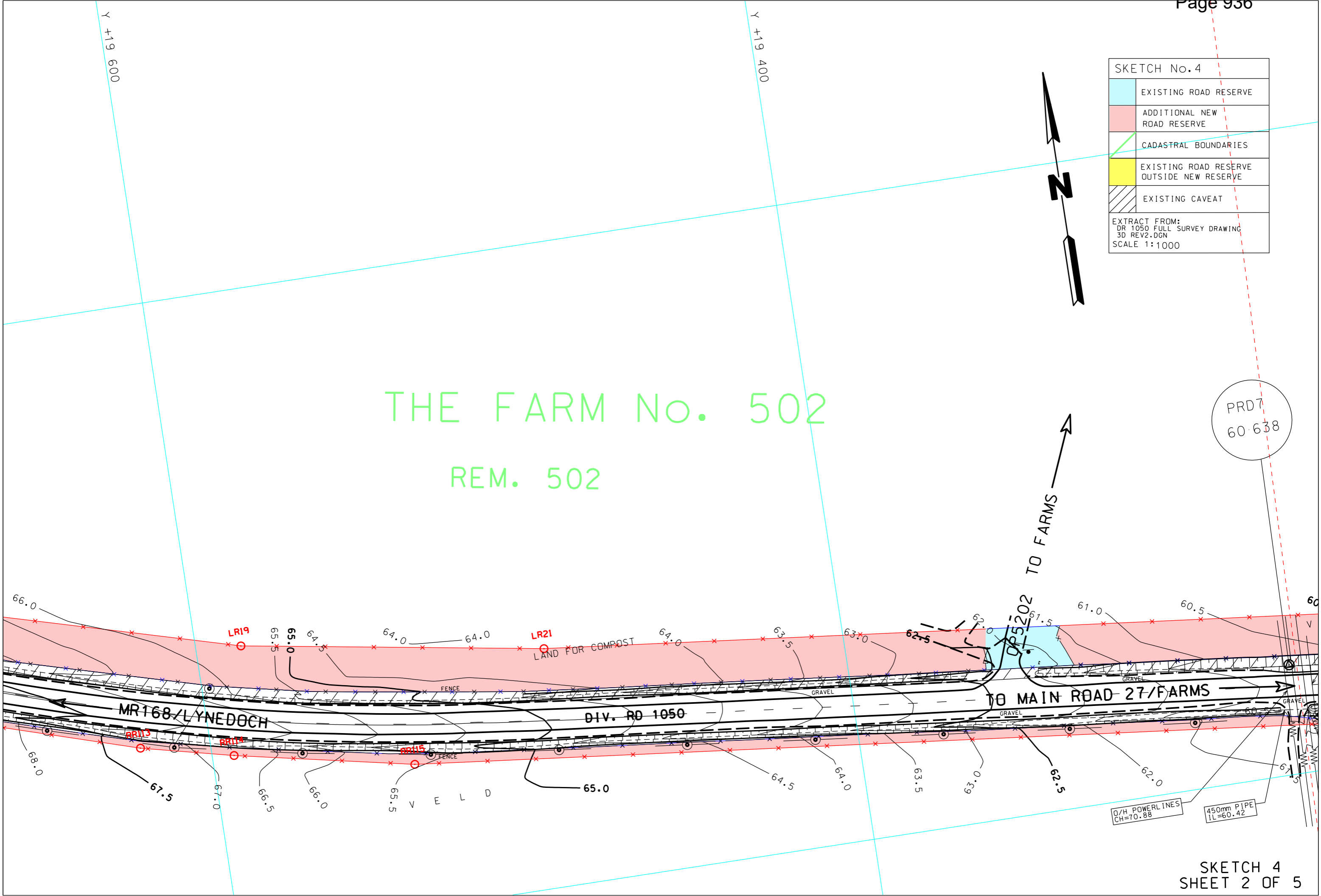
	EXISTING ROAD RESERVE
	ADDITIONAL NEW ROAD RESERVE
	CADASTRAL BOUNDARIES
	EXISTING ROAD RESERVE OUTSIDE NEW RESERVE
	EXISTING CAVEAT






EXTRACT FROM:
DR 1050 FULL SURVEY DRAWING
3D REV2.DGN
SCALE 1:1000

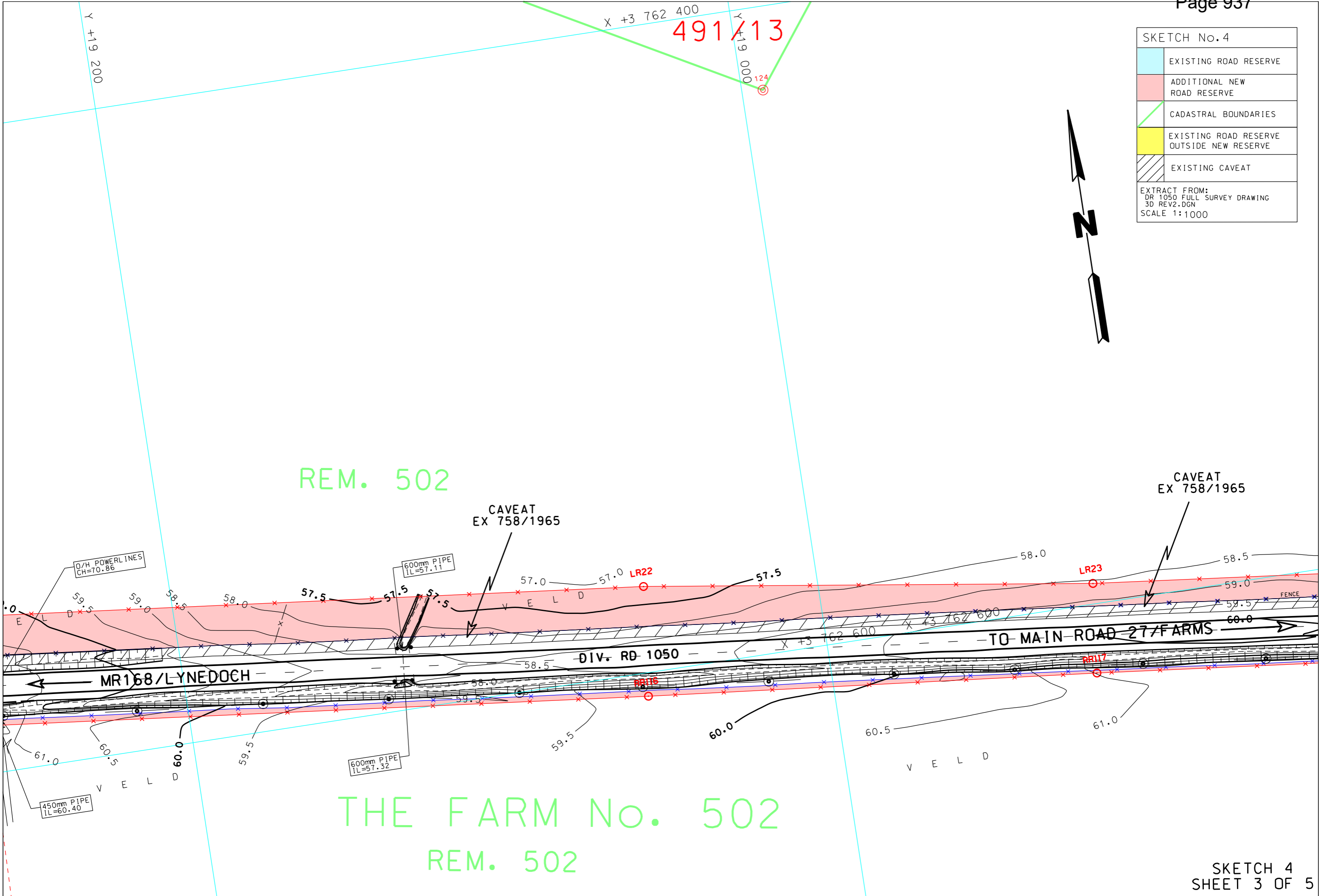


THE FARM No. 502
REM. 502

PRD7
60.638



SKETCH No. 4	
	EXISTING ROAD RESERVE
	ADDITIONAL NEW ROAD RESERVE
	CADASTRAL BOUNDARIES
	EXISTING ROAD RESERVE OUTSIDE NEW RESERVE
	EXISTING CAVEAT
EXTRACT FROM: DR 1050 FULL SURVEY DRAWING 3D REV2.DGN SCALE 1:1000	





THE FARM No. 557

REM. 502

THE FARM No. 502

REM. 502

PRD8
59-114

PRD
53

CAVEAT
EX 758/1965

O/H POW
CH=62.4

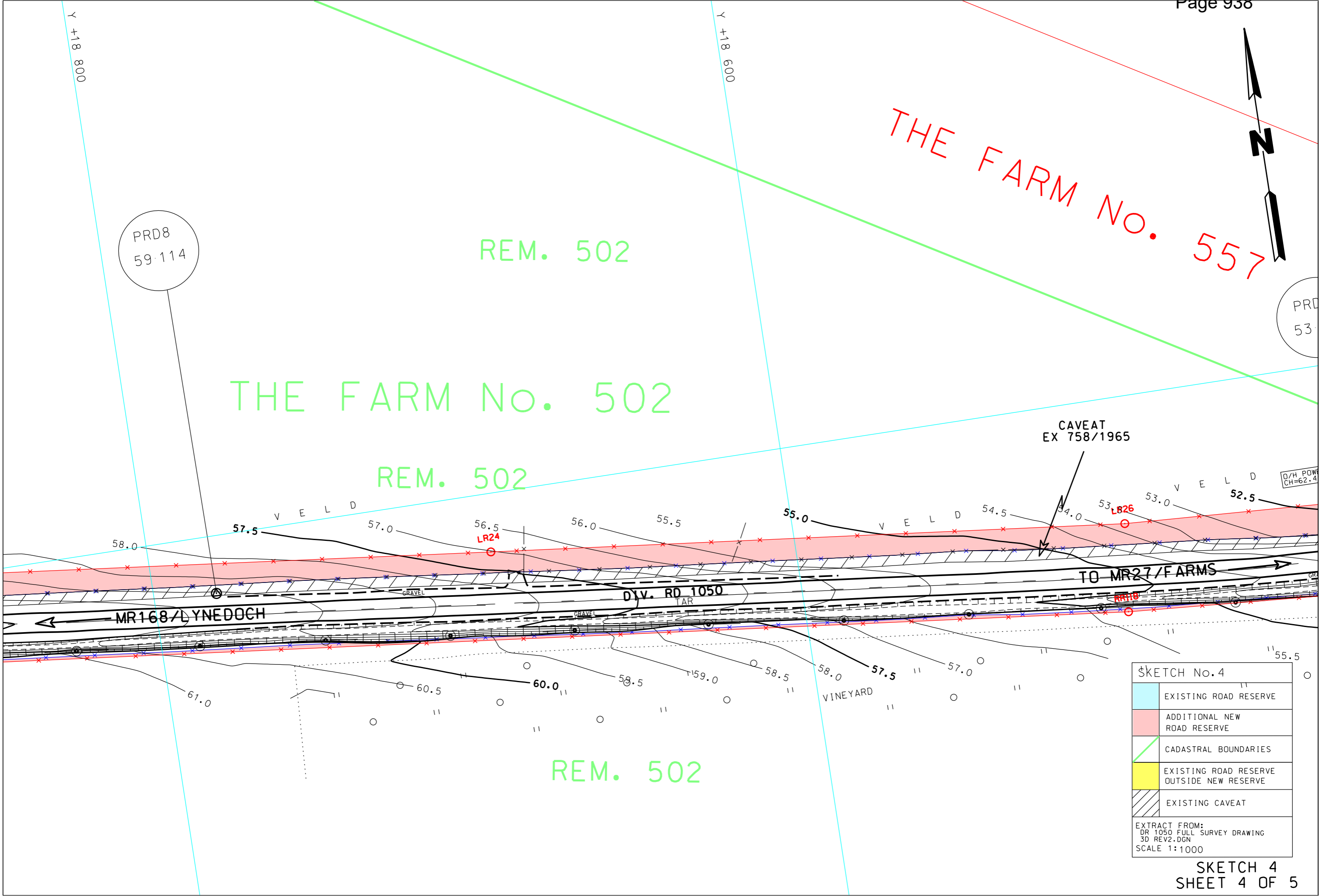
TO MR27/FARMS

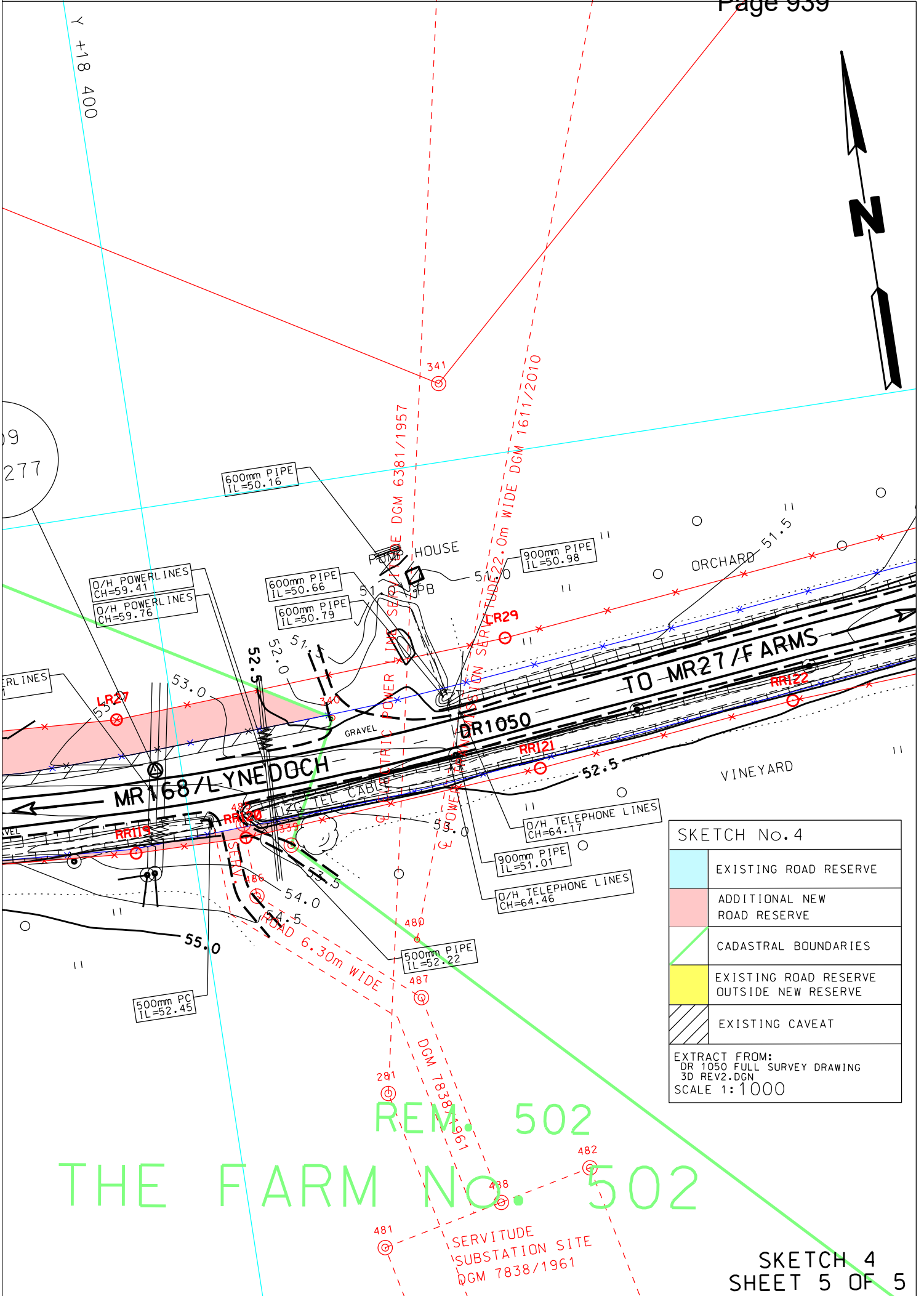
MR168/LYNEDOCH

DIV. RD 1050

SKETCH No.4	
	EXISTING ROAD RESERVE
	ADDITIONAL NEW ROAD RESERVE
	CADASTRAL BOUNDARIES
	EXISTING ROAD RESERVE OUTSIDE NEW RESERVE
	EXISTING CAVEAT
EXTRACT FROM: DR 1050 FULL SURVEY DRAWING 3D REV2.DGN SCALE 1:1000	

SKETCH 4
SHEET 4 OF 5





SKETCH No. 4

	EXISTING ROAD RESERVE
	ADDITIONAL NEW ROAD RESERVE
	CADASTRAL BOUNDARIES
	EXISTING ROAD RESERVE OUTSIDE NEW RESERVE
	EXISTING CAVEAT

EXTRACT FROM:
DR 1050 FULL SURVEY DRAWING
3D REV2.DGN
SCALE 1:1000

REM. 502
THE FARM NO. 502

ADDITIONAL ITEMS

7.11	MUNICIPAL MANAGER
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7.11.2	APPROVAL OF INFORMATION STATEMENT: TRANSVALIA COMPLEX
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

16 November 2022

1. SUBJECT: APPROVAL OF INFORMATION STATEMENT: TRANSVALIA COMPLEX

2. PURPOSE

Is for Council to approve the draft information statement to indicate Council's intention to dispose of the erven or portions thereof for economic development. The disposal will take the form of a long-term lease and the information statement must be published in terms of the Asset Transfer Regulations.

3. DELEGATED AUTHORITY

Council must consider the matter.

4. EXECUTIVE SUMMARY

The Transvalia complex as it is commonly known consists of erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160. A copy of the map indicating the erven is attached as **(APPENDIX 1)**. Erven 1125 and 1130 is used as a street and provides access to the private erven situated adjacent to it. Erf 825 provides access to the Stelkor complex and is mainly used for parking for the middle of town as the Checkers centrum lies across the street.

The "Dorp Street flats" currently rented to the IEC (unit 1) and used as office space for the Informal Settlements Department and some of Infrastructure Directorate (PMU) staff, are situated along Dorp Street and is located on portions of erven 1123, 1133, 1128, 1134, 1142. These buildings are heritage buildings and to make any changes to them will require approval from Heritage Western Cape. All heritage approvals will have to be obtained.

Any development will have to take the need of parking into account and will have to not only supply parking for the development, but also the same amount of parking that is currently available to the residents and visitors that make use of the parking area will still have to be available to the public. The areas that are used as streets and to provide access should ideally be subdivided from any area that is put out for development, consolidated, and not form part of any development proposals.

The development requirements for the area within which the erven are situated must be considered as far as height and depth of any underground development is concerned. It must compliment the architectural character of Stellenbosch and be sensitive to the historic character of the existing buildings. The Municipality does not want to dispose of the erven

in question by selling them, but rather providing a long-term lease to the developer that will be doing the development that will fit into the business district and will contribute to the economic upliftment of the area like for example restaurants, tourist accommodation.

As the development will mean additional traffic on that corner a traffic impact study will probably be required. How pedestrians can be incorporated, and the non-motorised transport plan must be indicated in any proposal. The development must maximise the economic development opportunities in the area and stimulate economic activity within the town and therefore allow for business, tourism, and accommodation. The erven will likely need to be rezoned and any application in this regard will have to follow the normal process.

5. RECOMMENDATION

For consideration.

6. DISCUSSION

6.1 Background

The Transvalia complex as it is commonly known consists of erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160. A copy of the map indicating the erven is attached as (**APPENDIX 1**). It is located within the central business district of Stellenbosch town and in the historic core of Stellenbosch. The front part adjacent to Dorp Street is zoned for general residential purposes and the “Dorp Street flats” is currently used as office space whilst unit 1 is leased to the IEC.

6.2 Discussion

Erven 1125 and 1130 is used as a street and provides access to the private erven situated adjacent to it. Erf 825 provides access to the Stelkor complex and is mainly used for parking for the middle of town as the Checkers centrum lies across the street. It is unclear why some of the erven was not consolidated especially the portions used for a road and access to other erven.

The “Dorp Street flats” currently rented to the IEC (unit 1) and used as office space for the Informal Settlements Department and some of Infrastructure Directorate (PMU) staff, are situated along Dorp Street and is located on portions of erven 1123, 1133, 1128, 1134, 1142. These buildings are heritage buildings and to make any changes to them will require approval from Heritage Western Cape.

Any development will have to take the need of parking into account and will have to not only supply parking for the development, but also the same amount of parking that is currently available to the residents and visitors that make use of the parking. The areas that are used as streets and to provide access should ideally be subdivided from any area that is put out for development, consolidated and not form part of any development proposals.

The development requirements for the area within which the erven are situated must be considered as far as height and depth of any underground development is concerned. It must compliment the architectural character of Stellenbosch and be sensitive to the historic character of the existing buildings. The Municipality does not want to dispose of the erven in question by selling them, but rather providing a long-term lease of 30 years to the developer that will be doing the development.

As the development will mean additional traffic on that corner a traffic impact study will probably be required. How pedestrians can be incorporated, and the non-motorised transport plan must be indicated in any proposal. The development must maximise the economic development opportunities in the area and stimulate economic activity within the town and therefore allow for business, tourism, and accommodation. The erven will likely need to be rezoned and any application in this regard will have to follow the normal process.

This complex was the subject of the infamous tender 34 and an initial decision by Council to sell the erven to Fusion Properties was not proceeded with on 23 April 2014 (**APPENDIX 2**). Fusion Properties instituted legal action against the Municipality after Council resolved not to continue with the sale and the provisional award of the tender, to the amount of R32 115 000 for alleged damages. The court case has still not been resolved.

6.2.2 Ownership

The ownership of the property's vests in Stellenbosch Municipality.

6.3 Financial Implications

In 2010 it was valued at R16 050 000 and the sell-out value was determined at R161 893 915 over three and a half years. The residual value was determined at R20 900 000. The properties that council resolve to form part of the lease will have to be re-evaluated as no reliance can be placed on the more than 10-year-old valuations.

6.4 Legal Implications

This complex was part of the infamous tender 34 and an in-principle decision by Council to sell the erven under discussion to was not proceeded with on 23 April 2014 (**APPENDIX 2**). Fusion Properties, to whom the bid was provisionally awarded, instituted legal action against the Municipality after Council resolved not to continue with the sale, to the amount of R32 115 000 million for alleged damages. The court case has still not been resolved.

In terms of Regulation 34, a municipality may grant a right to use, control or manage a capital asset only after:

- "1)
 - a) *The accounting officer has, in terms of Regulation 35, concluded a public participation process regarding the proposed granting of the right; and*
 - b) *The municipal Council has approved in principle that the right may be granted.*
- 2) *Sub-regulation (1)(a) must be complied with only if:*
 - a) *the capital asset in respect of which the proposed right is to be granted has a value in excess of R10m; and*
 - b) *a long-term right is proposed*".
- "3)
 - a) *Only a Municipal Council may authorise the public participation process referred to in sub-regulation (a)*
 - b) *a request to the Municipal Council for the authorisation of a public participation process must be accompanied by an Information Statement*, stating:*
 - i) *the reason for the proposal to grant a long term right to use, control or manage the relevant capital asset;*

- ii) *any expected benefit to the municipality that may result from the granting of the right;*
- iii) *any expected proceeds to be received by the municipality from the granting of the right; and*
- iv) *any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right”.*

Council also needs to resolve on whether the properties are needed for Municipal Functions before there can be a decision to dispose of them either through selling or a long-term lease.

Council is currently leasing unit 1 of the Dorp Street complex to the IEC and is in the process of renewing the lease agreement.

Staff from Informal Settlements Department and Infrastructure Directorate (PMU) is temporarily using the other units for office accommodation and some changes and upgrades were done to accommodate them.

6.5 Staff Implications

Apart from using it as temporary office accommodations there are no other staff implications.

6.6 Previous / Relevant Council Resolutions

See appendix 2.

6.7 Risk Implications

The risks are addressed through the item.

6.8 Comments from Senior Management

6.8.1 Director Planning and Economic Development

The development potential of the existing structures is limited whilst the retention of the “parking area” is critical in terms of its location in the centre of town and its role as public parking is self-explanatory. Should Council succeed in closing Church Street and other streets, in future, this public parking area will become even more important as it is in walking distance of all amenities and mostly tourist related business in the centre of the town.

6.8.2 Director Infrastructure Services

Infrastructure Services has no objection to the wording of the Information Statement above. Possible Traffic Impact Assessment (TIA) and consideration to the Non-Motorised Transport (NMT) principles are contained in the body of the text.

6.8.3 Director Financial Services

The item is supported. A service provider will be appointed to determine the market related rental.

6.8.4 Director Community and Protection Services

None received.

6.8.4 Municipal Manager

Supports the item.

ANNEXURES:

Annexure 1: Map Transvalia

Annexure 2: Item 2014

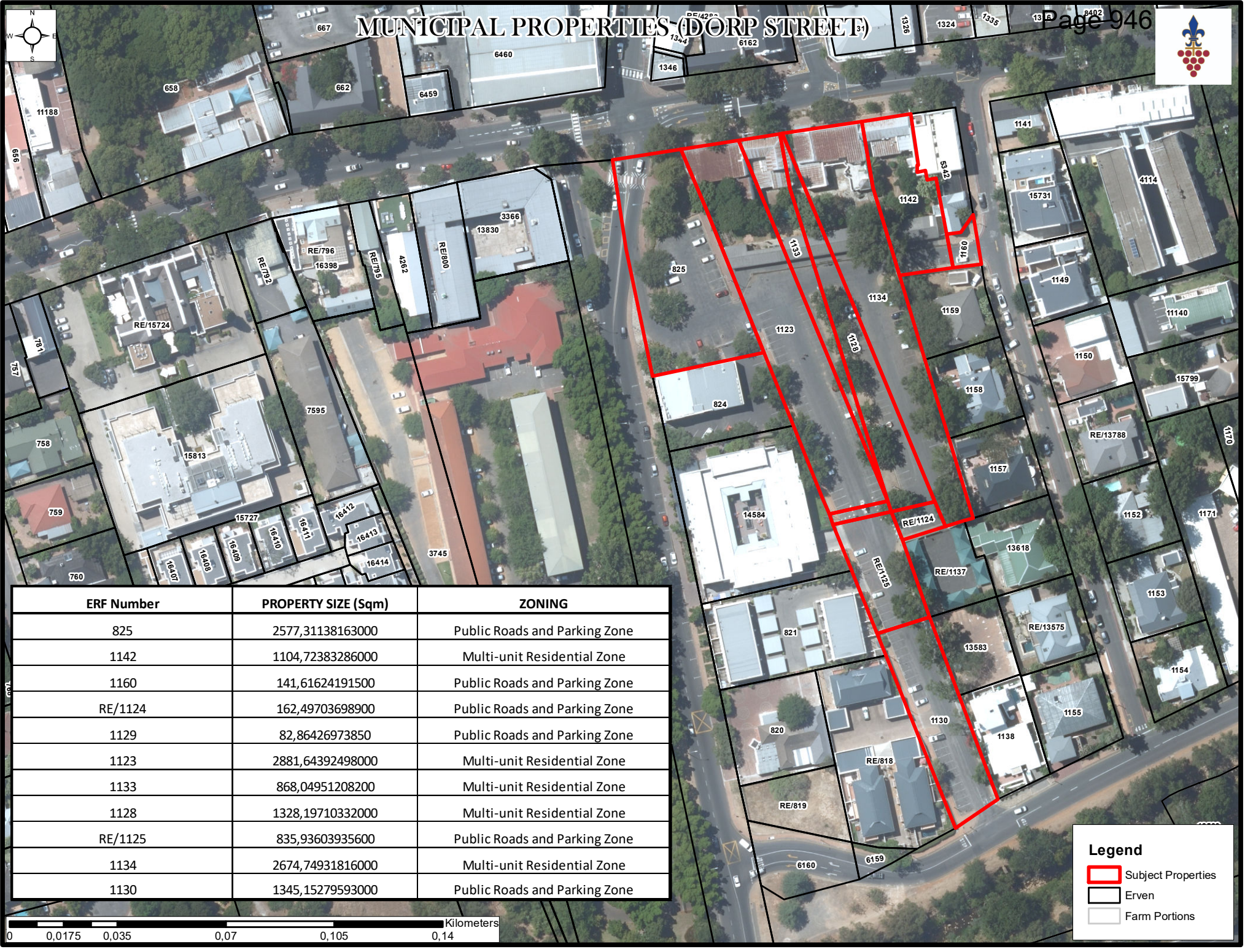
Annexure 3: Information statement

FOR FURTHER DETAILS CONTACT:

<i>NAME</i>	Annalene de Beer
<i>POSITION</i>	<i>Director</i>
<i>DIRECTORATE</i>	<i>Corporate Services</i>
<i>CONTACT NUMBERS</i>	<i>021-8088018</i>
<i>E-MAIL ADDRESS</i>	<i>Annalene.deBeer@ Stellenbosch.gov.za</i>
<i>REPORT DATE</i>	<i>2022 – 11 - 09</i>

ANNEXURE 1

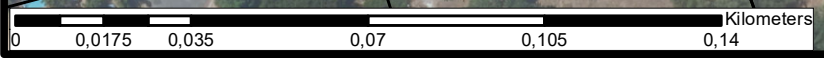
MUNICIPAL PROPERTIES (DORP STREET)



ERF Number	PROPERTY SIZE (Sqm)	ZONING
825	2577,31138163000	Public Roads and Parking Zone
1142	1104,72383286000	Multi-unit Residential Zone
1160	141,61624191500	Public Roads and Parking Zone
RE/1124	162,49703698900	Public Roads and Parking Zone
1129	82,86426973850	Public Roads and Parking Zone
1123	2881,64392498000	Multi-unit Residential Zone
1133	868,04951208200	Multi-unit Residential Zone
1128	1328,19710332000	Multi-unit Residential Zone
RE/1125	835,93603935600	Public Roads and Parking Zone
1134	2674,74931816000	Multi-unit Residential Zone
1130	1345,15279593000	Public Roads and Parking Zone

Legend

- Subject Properties
- Erven
- Farm Portions



ANNEXURE 2

8.3 **PROPOSED DISPOSAL OF ERVEN IN RESPECT OF TENDER 34 - ERF 825 AND OTHERS, TRANSVALIA: CONSIDERATION OF FINDINGS OF DUE DILIGENCE IN RELATION TO FUSION PROPERTIES 233 CC AND OTHER RELATED ISSUES**

File number : 7/2/1/1/Tender_34

Report by : Municipal Manager

Compiled by : Director: Corporate and Strategic Services

Delegated Authority : Council

1. PURPOSE OF REPORT

The purpose of this report is to consider the disposal of erf 825 and Others, Transvalia ("**erf 825**") to Fusion Properties 233 CC ("**Fusion**").

2. BACKGROUND

The background to this matter has already been extensively set out in the item which served before Council on 2014-01-16 and in respect of which Council resolved to take note of the developments of Tender 34 insofar as it related to Fusion and that the matter be considered thereafter as soon as practically possible. A copy of the agenda item and minutes of the Council meeting of 2014-01-16 is attached hereto as **APPENDIX 1** for ease of reference, the sake of completeness and to avoid unnecessary duplication.

3. DISCUSSION

Pursuant to the Planning, IHS and Property Management Committee's ("**Committee**") resolution of 2011-12-05 and in order to ensure that all relevant information is before Council when considering this matter, the Administration:

- (a) had a comparative analysis report prepared containing a comparison between the call for proposals, original proposal received and the final (new and updated) proposal submitted in column format as well as a comparison of the various differing clauses in the Deed of Sale and Co-operation Agreements followed by a summary of the differences. A copy of the comparative analysis report is attached as **APPENDIX 2**;
- (b) obtained an opinion from Advocate Ismail Jamie SC ("**Jamie**") on the Legal Memorandum of Advocate Michelle O' Sullivan commissioned by the Stellenbosch Ratepayers' Association ("**SRA**") dealing with *inter alia* the validity of the Sale and Co-operation Agreements entered into with certain preferred tenderers ("**SRA opinion**") (see **APPENDIX 3**). A copy of Jamie's opinion in respect thereof dated 31 May 2012 is attached as **APPENDIX 4**; and

- (c) appointed PricewaterhouseCoopers ("**PWC**") to perform a review of the shareholders and management team structure and other components of Fusion and PWC provided a report to the Municipality dated 2013-08-22, a copy of which is attached as **APPENDIX 5**.

Jamie was thereafter instructed to consider the aforementioned documentation and to advise the Municipality on how to proceed in respect of the disposal of erf 194. In this regard Jamie furnished the Administration with a memorandum advising on: (a) whether the agreement with Fusion has lapsed as contended for in the SRA opinion; (b) whether Council can be satisfied that the composition and management of Fusion is as stated in its tender; (c) whether Fusion has demonstrated its ability to carry out its obligations in terms of the agreement; (d) compliance with section 14(2)(b) of the Local Government: Municipal Finance Management Act 56 of 2003 ("**MFMA**"); and (e) whether Fusion has been advantaged by any post-award negotiations. The memorandum of Jamie is attached as **APPENDIX 6**. For ease of reference, the salient conclusions reached by Jamie are summarised below:

- (a) The Sale and Co-operation Agreement concluded between the Municipality and Fusion on 2006-05-03 contained suspensive conditions requiring *inter alia* that Fusion would attend to successfully rezoning and subdividing erf 825. Fusion has failed to satisfy this requirement and accordingly the Sale and Co-operation Agreement lapsed, although this conclusion is not dispositive of the matter.
- (b) Insofar as the composition and management of Fusion is concerned and having regard to the PWC report, (a) the 100% BEE compliant management team proposed by Fusion in its tender is no longer in place, (b) serious doubt exists on the accuracy and genuineness of the claimed BEE shareholding by the BEE members of Fusion, and (c) none of the shareholders appear to be actively involved in Fusion.
- (c) Fusion has failed to submit a business plan as part of its bid and has failed to submit information in relation to its financial standing and performance to PWC. In addition, it would appear that Fusion is dormant and/or that its shareholding has effectively changed and/or that no active planning has gone into the project, at least since the award of the tender.
- (d) In respect of compliance with Section 14(2)(b) of the MFMA, whereas the original Sale and Co-operation Agreement entered into with Fusion required 10% of the purchase price within 30 days of the signature of the Sale and Co-operation Agreement by the last party signing, and a bank guarantee in respect of the balance within 30 days after the fulfilment of the suspensive conditions, the proposed new Sale and Co-operation Agreement required a bank guarantee for the full purchase price only within 60 days of the fulfilment of the suspensive conditions (therefore no financial commitment need to be made before the fulfilment of the

suspensive conditions). Furthermore, whereas the signed Sale and Co-operation Agreement made provision for transfer of erf 825 to Fusion as soon as possible after the suspensive conditions had been met, the proposed new Sale and Co-operation agreement permits Fusion to waive the suspensive conditions regarding the successful rezoning and subdivision of erf 825. The effect of this is that Fusion could obtain transfer of erf 825 for purposes other than that intended by Council.

- (e) Fusion cannot be faulted for having negotiated and submitted a fresh proposal that complied with the call for proposals and cannot therefore be said to have been unfairly advantaged by the post-award negotiations. However, insofar as Fusion's new contractual terms in its proposed Sale and Co-operation agreement would negatively impact upon the Municipality, this would constitute an unfair advantage being conferred on Fusion.

The memorandum of Jamie, together with appendices, were made available to Fusion and on 2013-12-15, and after having been afforded a further indulgence to submit its representations, Fusion submitted its representations to Jamie's memorandum and the accompanying documentation, a copy of which is attached and marked as **APPENDIX 7**. The main submissions by Fusion can be summarised as follows:

- (a) With regard to the serious doubt as to the shareholding and the change in management structure, Fusion states that there is no doubt that the original members at the time of submission of their tender are in fact the current shareholders, which has been confirmed by way of CIPRO documents submitted; the PWC report is unfounded to the extent that it seems to suggest that the actual shareholders are D and C Schoeman and G Khan as their status as legal and financial advisors has been disclosed at all times without any objection thereto; and the change in management cannot be a ground for not proceeding as Council has delayed the process and Fusion could not be expected to maintain the same team which was in any event not envisaged in the original tender. The fact is that a due and proper management team will be put in place once the agreement is signed and to raise this is mere delaying tactics.
- (b) Regarding the failure to submit a business plan and the documents which demonstrate their ability to implement the tender, Fusion contends that these issues were covered by the original tender process and evaluated at that stage; this is a veiled attempt to revisit the process and not competent; and it is impossible to comply with the requirement of cash flow projections etc as the actual development plan has not been approved, no binding contract is in place and the properties have to be rezoned and the final development concept has to be agreed upon.
- (c) As regards section 14(2)(b), [economic and community value to be received] these issues have been canvassed by Desai J; the properties were valued on two occasions and the value was lower than the agreed price; this was never raised by Council and, since the judgment, Council has created a reasonable expectation that

the disposal would proceed and that a legal and binding contract will be concluded.

These submissions/representations were then provided to the Municipality's external legal advisors and Jamie for consideration and analysis, in particular to determine the bearing thereof on the recommendations of Jamie in his memorandum.

Following a consideration of Fusion's submissions, the Administration has been informed that the external legal advisors and Jamie advise that Fusion's submissions have not changed any of their conclusions.

The essential difference between the legal opinions provided to Council appears to be the assertion by Fusion that Desai J's judgment disposed of both the due diligence requirements in the request for proposals, as also the requirements of section 14(2)(b) of the MFMA.

In the view of the Municipality's legal representatives, both these aspects need to be considered by Council, in light of the facts as they are known at present, before it finally decides on the disposal of erf 825.

In light of Jamie's memorandum, the Municipality's legal representatives are of the view that Council may decide not to proceed with the disposal of erf 825, for the reasons set out therein.

4. CONCLUSION

Having been furnished with all the above, it is considered that Council is now in a position to decide finally on the disposal of erf 825.

FOR CONSIDERATION

19TH COUNCIL MEETING: 2014-04-23: ITEM 8.3

RESOLVED (majority vote)

- (a) that Council take note of the submissions/representations made by Fusion; and
- (b) that Council, having regard to and after due consideration of the content of the agenda item and the accompanying appendices before Council, including the submissions/representations of Fusion and the recommendations of Adv Jamie, resolve not to proceed with the disposal of erf 825 and others to Fusion for the reasons depicted in the memorandum of Adv Jamie (**APPENDIX 6**) and in the report contemplated above.

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

ANNEXURE 3



INFORMATION STATEMENT IN RELATION TO A LONG TERM LEASE OF PORTIONS OF THE TRANSVALIA COMPLEX (ERVEN 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160 STELLENBOSCH)

1. PURPOSE

The purpose of this statement is to provide the prescribed information in terms of regulation 34 and 35 of the Asset Transfer Regulations, published in terms of Section 168 of the Local Government: Municipal Finance Act (R878, 22 August 2008), to the public to provide input on during the public participation process.

2. BACKGROUND

2.1 Existing Contractual arrangements

Stellenbosch Municipality owns erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160, Stellenbosch and is currently leasing unit 1 of the “Dorpstreet flats” to the IEC.

It has been a long time vision of the Municipality to use the land in a manner to create economic activity in the historic centre of Stellenbosch. Some of the erven is also providing access to adjacent private properties as well as parking at the Stelkor centre. Due to the historic area it is situated in any proposed development will have to take that into account.

3. DISCUSSION

3.1 Public Participation Process

Council intend to request proposals to lease the land on a long term lease to an entity/person to develop which development must include parking for the development as well as the same amount of parking currently available to the public, tourist accommodation, other tourist attractions like a restaurant taking the historic area and the historic nature of the existing buildings into account. Permission will have to be obtained for the development and any possible changes to the historic buildings from Heritage Western Cape. No office accommodation is intended as part of the development proposals.

The public may submit written inputs on the term of the lease as well as the proposed development that is intended before a final decision is made.

In terms of the Asset Transfer Regulations, before Council can make a decision on whether to make rights on Municipal property available to a party, the Municipal Manager must first conduct a public participation process in terms of the provisions of the MFMA.

The item that served before Council on 23 November 2022 is available on the website for perusal.

3.2 Information Statement

In terms of regulation 35, the Municipal Manager, when making public the proposal to grant the relevant long term right(s), must also make available the Information Statement referred to in regulation 34.

In terms of regulation 34 an Information Statement must consist of the following:

- i) the reason for the proposal to grant a long-term right to use, control or manage the relevant capital asset;
- ii) any expected benefit to the municipality that may result from the granting of the right;
- iii) Any expected proceeds to be received by the municipality from the granting of right; and
- iv) Any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.

3.2.1 Reason(s) for proposal to grant a long term right to use, control or manage the relevant capital asset

The Transvalia complex has long been regarded as ideal opportunity to breathe some economic upliftment of the area. It is situated in the centre of the historic area in Stellenbosch and the need for some tourist accommodation and other tourist attractions will benefit the greater Stellenbosch town.

3.2.2 Expected benefits to the municipality that may result from the granting of the right

The facilities will provide much needed space for economic activity like tourist accommodation, restaurants and parking for visitors to Stellenbosch. The residents can also benefit from using the facilities.

3.2.3 Expected proceeds to be received by the Municipality form the granting of the right

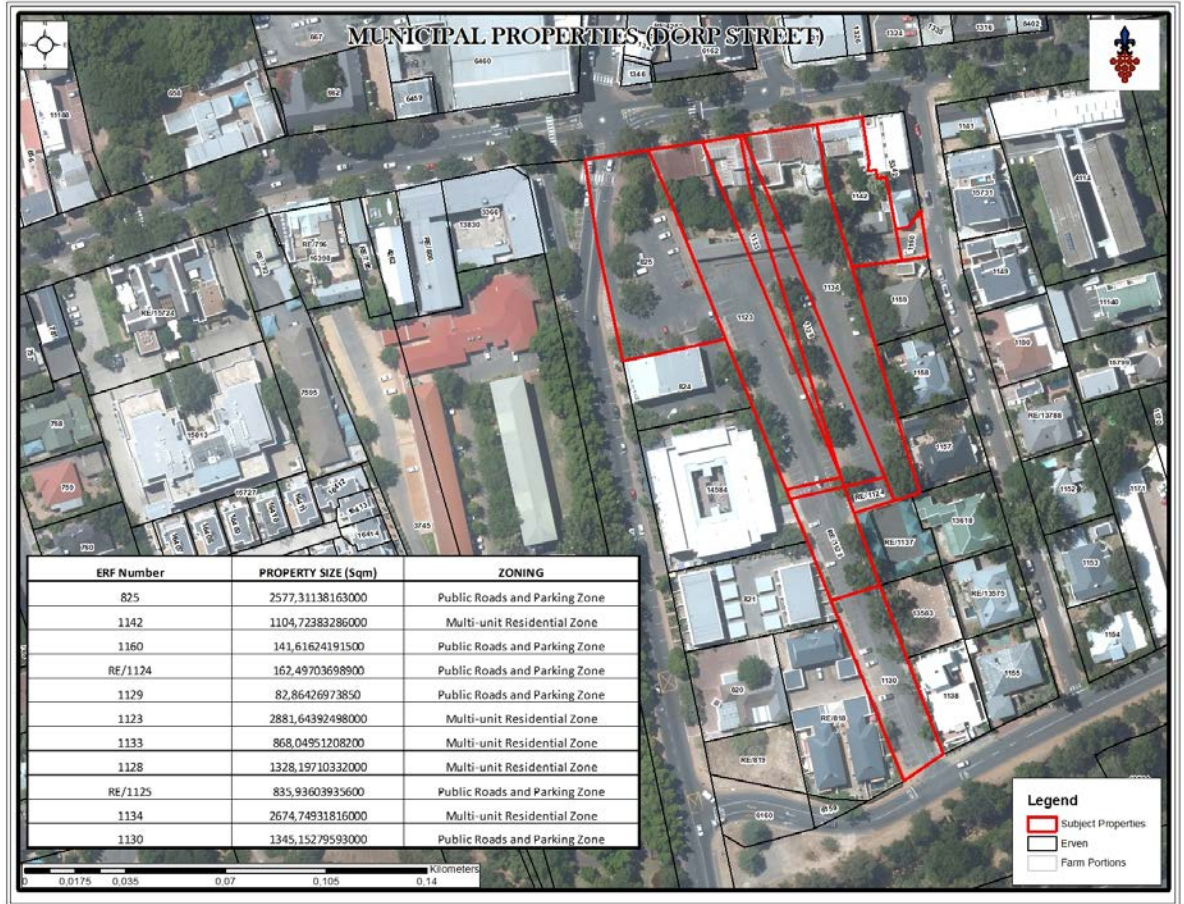
The erven will be much more efficiently used bringing economic activity to the area and will remain in the ownership of the municipality. Money from the leasing of the erven and the development will benefit the whole of the municipality.

3.2.4 Expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.

The aim of the proposed long-term lease is to use the facilities that is already there namely the "Dorpstreet flats" as possible tourist accommodation in an friendly amended form with the permission of Heritage Western Cape and provide better and safer parking to residents visiting the area as well as for the development in line of policies. The third party will be

responsible for the costs of the development and all the upkeep of the area and facilities as well as security around the area.

3.3 Location and context



3.4 Public Comment invited:

The public are herewith invited to provide input/comment/alternative proposals to the municipality on the intended proposal to request proposals for the development of The “Transvalia complex (erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142, and 1160 Stellenbosch) on the basis of a long term lease with the objective of creating an economic upliftment in the area by creating tourist facilities including a restaurant and tourist accommodation as well as enough parking for the development and the current parking on the site for teh public. Comment must reach the offices of the Municipality on or before and must be addressed to the Municipal Manager via email at Municipal.Manager@stellenbosch.gov.za. Any queries can be directed to Me A de Beer @ (021) 808 8018 or Annalene.deBeer@stellenbosch.gov.za

7.11.3	REQUEST TO RELEASE ERVEN 622 AND 623, STELLENBOSCH FOR RESTITUTION PURPOSES TO THE REGIONAL LAND CLAIMS COMMISSIONER: WESTERN CAPE
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

16 November 2022

1. SUBJECT: REQUEST TO RELEASE ERVEN 622 AND 623, STELLENBOSCH FOR RESTITUTION PURPOSES TO THE REGIONAL LAND CLAIMS COMMISSIONER: WESTERN CAPE

2. PURPOSE

To consider a request by the Regional Land Claim Commissioner: Western Cape (RLCC: WC) for the release of erven 622 and 623, Stellenbosch for restitution purposes (now part of erf 9672, Stellenbosch).

3. DELEGATED AUTHORITY

Council must consider the request.

4. EXECUTIVE SUMMARY

The Rynse Sending Gemeente Kerk lodged a claim when the RLCC: WC on 1997-03-25 and has indicated that they would prefer restoration of the properties as preferred method of compensation. The claim has subsequently been accepted by the RLCC WC as a *prima face* complaint.

They have requested Stellenbosch Municipality, the current owner of erf 9672, Stellenbosch, to release the property to the RLCC WC at a minimal cost or gratis, for restitution purposes. Council must consider the request.

5. RECOMMENDATION

For consideration.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Deed of Donation: Erf 9672

Erf 9672 was donated to Stellenbosch Municipality during 1995 by the Provincial Government of the Western Cape, subject to certain conditions.

Council's attention specifically drawn to the following restrictive conditions, as contained in the Title Deed of erf 9672(See page 9 and 10 of Title Deed) attached as **APPENDIX 1**:

- a) The property may only be used for community purposes, failing which the ownership will revert to the State; and
- b) The State has a right of use servitude in relation to the building marked ABCDEF (currently used by the Youth Trust); The Municipality may only dispose of the property with the approval of the Transferor (Provincial Government: WC).A copy of the Title Deed (T52595/1995) is attached as **APPENDIX 1**.

Should Council therefore decide to release the land (dispose of it) in question, the Provincial Government: Western Cape will have to consent to the waive the fall-back clause and remove the restriction.

6.1.2 Request to release Erf 622 and 623 for restitution purposed

Hereto attached as **APPENDIX 2** a self-explanatory letter received from the RLCC: WC, requesting Stellenbosch Municipality to release erven 622 and 623 (now part of erf 9672) to them for restitution purposes. In terms hereof the Rynse NG Sending Gemeente Kerk lodged a land claim with them on 1997/03/25. The claimant has indicated that they would prefer restoration of the properties as preferred method of compensation.

Should Council resolve to adhere to the request, it is requested that the Stellenbosch Municipality release them for restitution purposes at a minimal cost or gratis.

6.2. DISCUSSION

6.2.1 Location and context

Erf 9672 is situated off Mark Street, Stellenbosch, as shown on Fi.1 and Fig.2, below

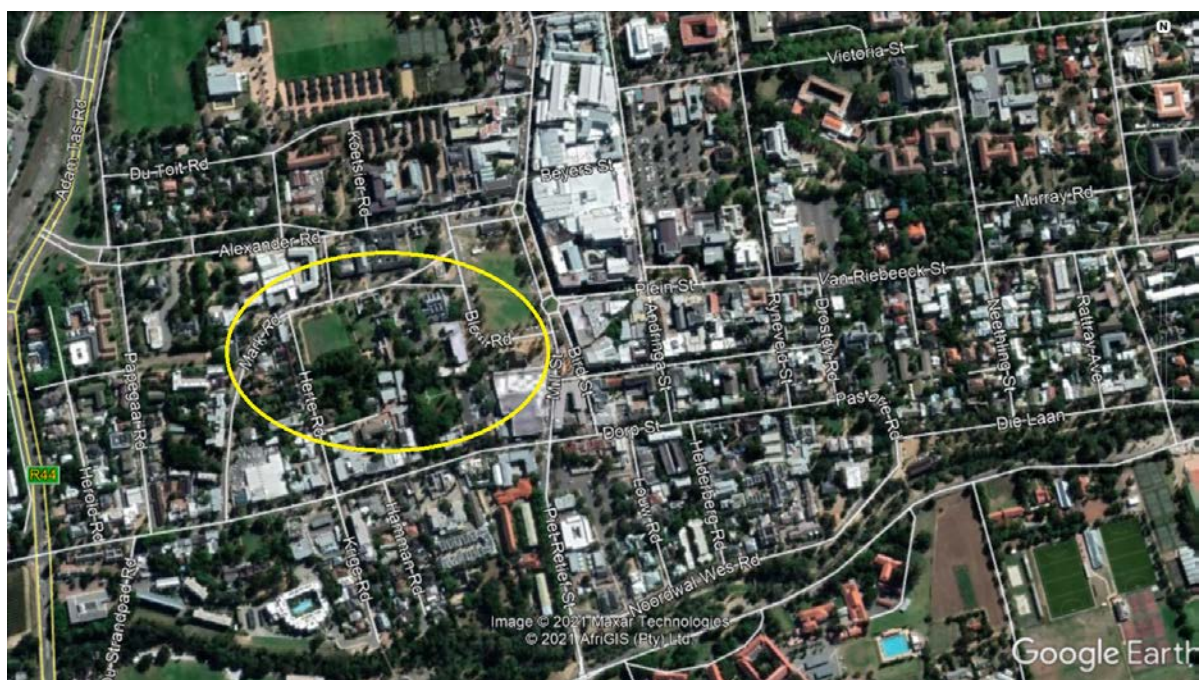


Fig 1: Location and context Erf 9672



Fig 2: The site Erf 9672

6.2.2 Extent of erven 622 and 623

Erven 622 and 623, measuring 8622m² and 8389m² in extent, respectively, forms part of erf 9672, as indicated on Fig 3, below.



Fig 3: Extent of erven 622 and 623

Should Council, therefore, decide to release erven 622 and 623, for restitution purposes, erf 9672 will have to be subdivided.

6.2.3 Ownership

As indicated above, erf 9672 was donated to Stellenbosch Municipality during 1995. Ownership therefore vests with the Stellenbosch Municipality by virtue of Title Deed T5295/1995. See copy of Windeed records attached as **APPENDIX 3**.

6.2.4 Improvements

Various buildings are situated on erf 9672, as shown of Fig 2, above.

6.2.5 Legal requirements

6.2.5.1 Constitution

Although land reform is a National Government Competency, it is expected of local government to "*participate*", in this program of land reform and "*contribute towards the progressive realization of the objectives contained in Section 25*" of the Constitution (see section 153 of the Constitution).

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

In terms of Section 14(2) 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.

6.2.5.3 Municipal Supply Chain Management Regulations

In terms of Section 40 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.

6.2.5.4 Municipal Asset Transfer Regulations (R878/2008)

In terms of Chapter 3 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 method 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, 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.

6.3 Financial Implications

Council has money on the budget and a project is planned for maintenance on this property. It is also part of the properties identified as heritage properties not to be sold off as per the Property Framework approved by Council in June 2022. It was also resolved that the MM bring a plan to Council as to how to ensure proper maintenance of these properties and discussions are currently underway to prepare this plan.

6.4 Legal Implications

See paragraph 6.2.5 above.

6.5 Staff Implications

This report has no additional staff implications to the Municipality.

6.6 Previous / Relevant Council Resolutions

6TH COUNCIL MEETING: 2022-07-27: ITEM 11.3.3

RESOLVED (majority vote with abstentions)

- (a) that the new list of categories be approved by Council;
- (b) that council identify and classify the properties under strategic properties (as discussed under 6.1.2 as strategic properties needed for municipal services and not to be disposed of (kept) unless specifically dealt with per property in future

(APPENDIX 1);

- (c) that Corporate Services investigate the possibility of adding this decision on the title deed of these properties;
- (d) that the Municipal Manager be requested to investigate how to maintain the heritage portfolio in a sustainable manner and make a proposal to Council;

(e) that the properties identified under Community Benefit be classified as properties to be used for community benefit and retained for that purpose until otherwise

determined by Council (APPENDIX 2);

(f) that the properties identified as Rural Properties be referred back for further refinement in sub-categories and be brought back to the next Mayco meeting for consideration;

(g) that the properties identified under non-core assets be referred back for further refinement, whilst council note the process approved to deal with encroachments during the June 2022 Council meeting; and

(h) that the properties identified under “other properties be referred back for further discussions and refinement.

6.7 Risk Implications

The risks have been addressed in the content of the document.

6.8 Comments from Senior Management

6.8.1 Director Planning and Economic Development:

It should be noted that the land in question is critical for unlocking the unlocking of the tourist economy and to activate the core of the historical precinct for tourist activity and preserving the cultural heritage of town. Being of significant historical value, the development of the property is limited, whilst on the other hand, the maintenance and preservation thereof is necessary and will come at great costs - something that only the municipality or an NGO will be able to afford.

In respect of the above, the Municipal Council at its 38th Council Meeting approved that the Directorate: Planning and Economic Development investigate the development of all the municipal owned landholdings within the Rhenish Complex Study area, that included the properties within the boundaries of Dorp, Herte, Alexander, Market, Bird, and Mill Street. This investigation was aimed at identifying potential economic opportunities that would kickstart the development of the Rhenish Complex, which included Erf 9672, Stellenbosch as a focal site in kickstarting such proposed development.

The Council decision resulted in the preparation of the final draft “*The Rhenish Complex and Surroundings, Stellenbosch: Unlocking its Potential, November 2021*”, compiled by Square One, Piet Louw Architect Urban Designer City Planner, Innovative Transport Solutions on behalf of the Stellenbosch Municipality.

The final draft Precinct Plan clearly identifies Erf 9672, Stellenbosch and its buildings and structures as the main development asset to unlocking the potential economic opportunities and therefore, the property is of utmost importance to be retained in respect of the draft planning policy.

6.8.2 Municipal Manager:

Supports the input by the Director Planning and Economic Development

ANNEXURES:

Appendix 1: Title Deed

Appendix 2: Self-explanatory letter received from Regional Land Claim Commissioner: Western Cape (RLCC: WC)

Appendix 3: Windeed Records

FOR FURTHER DETAILS CONTACT:

<i>NAME</i>	<i>Annalene de Beer</i>
<i>POSITION</i>	<i>Director Corporate Services</i>
<i>DIRECTORATE</i>	<i>Corporate Services</i>
<i>CONTACT NUMBERS</i>	<i>021-8088018</i>
<i>E-MAIL ADDRESS</i>	<i>Annalene.deBeer@stellenbosch.gov.za</i>
<i>REPORT DATE</i>	<i>09.11.2022</i>

APPENDIX 1



4701/93/A/S
/cib

TRANSPORTAKTE

REPUBLIEK VAN SUID-AFRIKA

ten gunste van

MUNISIPALITEIT VAN STELLENBOSCH

T52595/1995

**STAATSPROKUREUR
KONINGIN VICTORIASTRAAT 38
KAAPSTAD**

over

SEELREG DUTY	R.....
FOOI FEE	R.....

B75-00

REKENAAR VAN DIE REGERING VAN SUID-AFRIKA		
INHOUD	BYLAAT	BYLAAT
1000000000	<i>Jan</i>	<i>mo</i>

T 52595,95

Ø

Opgestel deur my,

J.E. McGregor
TRANSPORTBESORGER

McGREGOR I.E.

TRANSPORTAKTE

SY DIT HIERBY KENTLIK:

DAT MARIUS STOCKENSTRÖM voor my, REGISTRATEUR VAN AKTES te
KAAPSTAD verskyn het, hy die Komparant, daartoe behoorlik
gemagtig kragtens Volmag aan hom verleen deur die
REPUBLIEK VAN SUID-AFRIKA

gedateer die 24ste OKTOBER 1994 en geteken te KAAPSTAD.

EN die genoemde Komparant het verklaar dat sy genoemde Prinsipaal waarlik en wettiglik geskenk het op 16 JUNIE 1993 en dat hy, in sy voornoemde hoedanigheid, by hierdie Akte sedeer en transporteer, in volle en vrye eiendom, aan en ten behoewe van die

MUNISIPALITEIT VAN STELLENBOSCH

Die se Opvolgers-in-titel of regverkrygendes:

ERF 9672 STELLENBOSCH, in die Munisipaliteit van Stellenbosch, Administratiewe Distrik Stellenbosch, Provinsie van die Wes-Kaap.

GROOT: 1,5052 (Een komma Vyf Nul Vyf Twee)
Hektaar

AANVANKLIK GEREGISTREER EN STEEDS GEHOU KRAGTENS SERTIFIKAAT VAN VERENIGDE TITEL NR. T 525 96/95 MET KAART NR. 9669/93 WAT DAAROP BETREKKING HET.

I. INSOVERRE die figuur B n p f op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement soos volg lees:

"Endorsement in terms of Section 13(3) of Act 28 of 1969

In terms of Section 10(1) of Act 28 of 1969, the Historic Rhenish Parsonage Complex at Stellenbosch situate on the withinmentioned properties have been preclaimed a monument by proclamation No. 1374 dated 11.8.1972 published in the Government Gazette of the same date.

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For further particulars refer to said Proclamation from the Director N.M.C. filed with I. 895/75C."

II. INSOVERRE die figuur c1 b1 a1 d1 op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

III. INSOVERRE die figuur b1 x y a1 op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

IV. INSOVERRE die figuur e f q s op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27504/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27504/1965 welke endossement meer volledig

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uiteengesit is in paragraaf I.B. hierbo.

V. INSOVERRE die figuur x n m z op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

VI. INSOVERRE die figuur a b d l y z m G H g l op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG ten opsigte van die gedeelte gemerk a b c l d l e l en f l z F G H g l op gesege Kaart Nr. 9669/1993, aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die serwituut waarna verwys word in die Aantekening op Transportakte No. T 2460/1947, welke Aantekening soos volg lees:

"By Notarial Deed No. 301/1949 dated the 25th July, 1949, the owner of the property held hereby has granted to and in favour of the owners and their successors in title of the property held under Deed of Transfer No. 2459/1947 a Right of Way over the property held hereby, along the line of route as is described in the aforesaid Notarial Deed and together with the right of the owners of the property held under the abovementioned Deed of Transfer No. 2459/1947, to construct a bridge at the place where the abovementioned Right of Way crosses a certain Mill stream, all of which will more fully appear on reference to the said Notarial Deed a copy of which is hereunto annexed."

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C. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1953 gedateer 18 November 1994 soos na verwys in endossement gedateer 19 Desember 1994 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is in paragraaf I.B. hierbo.

D. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1953 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement soos volg lees:

"Endorsement in terms of Section 13(3) of Act 28 of 1969

In terms of Section 10(1) of Act 28 of 1969, the Historic Rhenish Parsonage Complex at Stellenbosch situate on the withinmentioned properties have been preclaimed a monument by proclamation No. 1374 dated 11.8.1972 published in the Government Gazette of the same date.

For further particulars refer to said Proclamation from the Director N.M.C. filed with I. 895/75C."

VII. INSOVERRE die figuur A a g l J K op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG ten opsigte van die figure A a e l h l en h l f l g l J K op Kaart Nr. 9669/1993 aan die voorwaardes waarna verwys word in Transportakte Nr. T 2459/1947.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1953 gedateer 18 November 1994 soos na verwys in endossement gedateer 19 Desember 1994 op Transportakte Nr. T 2459/1947 welke endossement meer volledig uiteengesit is in paragraaf I.B. hierbo.

C. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972

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soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 2459/1947 welke endossement meer volledig uiteengesit is paragraaf IV.D. hierbo.

VIII. INSOVERRE die figuur C D k h op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

IX. INSOVERRE die figuur c d u v w op die gemelde Kaart Nr. 9669/1993 betref:

A. NDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27504/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

X. INSOVERRE die figuur d e s u op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27504/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op

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Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

XI. INSOVERRE die figuur t r s q p x op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

XII. INSOVERRE die figuur b c w v u x cl op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

XIII. INSOVERRE die figuur j k E l op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig

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uiteengesit is paragraaf I.B. hierbo.

XIV. INSOVERRE die figuur u s r t op die gemelde Kaart Nr. 9669/1993 betref:

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T 27503/1965.

B. ONDERHEWIG VERDER aan die bepalings van Artikel 13(3) van Wet 28 van 1969 kragtens Proklamasie Nr. 1374 gedateer 11 Augustus 1972 soos na verwys in endossement gedateer 21 Maart 1975 op Transportakte Nr. T 27503/1965 welke endossement meer volledig uiteengesit is paragraaf I.B. hierbo.

~~XV. INSOVERRE die figuur B C h g op die gemelde Kaart Nr. 9669/1993 betref:~~

A. ONDERHEWIG aan die volgende voorwaarde vervat in Grondbrief gedateer 8 Januarie 1908 (Stellenbosch Eiendomsbriewe Volume 8 Nr.9) naamlik:

"On condition that the land hereby granted shall be set aside and

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used for the purpose of a Market Square under the control of the Municipality."

B. ONDERHEWIG VERDER aan die bepalings van Artikel 10(1) van Wet 28 van 1969 kragtens Proklamasie Nr. 747 gedateer 10 Mei 1940 soos na verwys in endossement gedateer 6 Mei 1977 op Grondbrief gedateer 8 Januarie 1908 (Stellenbosch Eiendomsbriewe Volume 8 Nr. 9) welke endossemente soos volg lees:

"Endorsement i.t.o. Section 13(3) of Act 28 of 1969

In terms of Section 101) of Act 28 of 1969 the Old Powder Magazine, Stellenbosch, situate on Remainder Erf 624 Stellenbosch, has been proclaimed a National Monument by Proclamation No. 747 dated 10/5/1940, published in the Government Gazette of the same date.

For further particulars refer to said proclamation and minute Ad/1/15 dated 13/11/75 from the Director of Archives, Pretoria, filed in file 24/4/6/16.

Endorsement i.t.o. Section 13(3) of Act 28 of 1969

In terms of Section 101) of Act 28 of 1969 the Braak, Stellenbosch situated on the property herein has been proclaimed a monument by proclamation No. 529 dated 6-4-1936 published in the Government Gazette of the same date. For further particulars refer to said Proclamation and minute no. AD/1/15 dated 5-12-1975 from the Director of Archives, Pretoria, filed in file 24/4/6/16."

XVI. INSOVERRE die eiendom as 'n geheel betref:

ONDERHEWIG aan die volgende voorwaardes opgelê deur en ten gunste van die Republiek van Suid-Afrika, naamlik:

1. Die eiendom moet vir Gemeenskapsdoeleindes deur die TRANSPORT-NEMER aangewend word. Indien dit nie as sulks aangewend word nie, val die eiendom terug aan die Staat. Indien die

MM

Transportnemer die eiendom verbeter het op enige stadium deur die aanbring van aanbouings en die oprigting van geboue kan die Staat in sy absolute diskresie besluit -

- (a) of hy die Transportnemer sal vergoed vir die aldus bedoelde aanbouings en opgerigte geboue teen die betaling van die dan geldende markwaarde van die aanbouings en opgerigte geboue;
 - (b) of die eiendom verkoop word en die Staat die Transportnemer vergoed vir die bedoelde aanbouings en/of opgerigte geboue en wel teen die dan geldende markwaarde van die aanbouings en geboue.
2. Die Staat n serwitutreg het ten opsigte van die gebou op die area voorgestel deur die figuur A B C D E F op serwitutkaart Nr. 9670/93 op voorwaarde dat sy gemelde reg beperk is tot die gebruik van die gemelde geboue.
 3. Die Transportnemer mag slegs die eiendom vervreem met die skriftelike goedkeuring van die Transportgewer.
 4. Vanaf 12 Maart 1993 is die Transportnemer verplig om op eie koste herstelwerk te doen aan die eiendom en dit in stand te hou ten minste in die toestand waarin die op 12 Maart 1993 was ten einde alle fasiliteite bruikbaar te maak vir die doeleindes van die Gemeenskap. Indien die Transportnemer in gebreke bly om dit te doen, dan is die Transportgewer geregtig maar nie verplig nie om dit namens die Transportnemer te doen of te laat doen en om die aangegane onkoste van die Transportnemer te verhaal. Vir hierdie doeleindes kan n amptenaar of ander persoon wat in die algemeen of spesiaal deur die Transportgewer gemagtig is te enige redelike tyd die eiendom binnegaan of betree om n inspeksie uit te voer of om werk te verrig. n Sertifikaat van die Transportgewer sal as prima facie bewys dien van sodanige instandhoudingsonkoste.

WESHALWE die Komparant, afstand doen van alle regte en aanspraak

AM

wat die

TRANSPORTGEWER

voorheen op genoemde eiendom gehag het en gevolglik ook erken dat dit, geheel en al van die besit daarvan onthef is en nie meer daartoe geregtig is nie en dat kragtens hierdie Akte, die bo genoemde

TRANSPORTNEMER

Die se Opvolgers-in-titel of regverkrygendes, nou en voortaan daartoe geregtig sal wees, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat.

TEN BEWYSE WAARVAN EK, genoemde REGISTRATEUR, tesame met die Komparant hierdie Akte onderteken en dit met die ampseël bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te KAAPSTAD op hede die 17^{de} dag van Julie in die Jaar van Ons Heer Eenduisend Negehoenderd Vyf-en-negentig (1995).

.....
q. q.

In my teenwoordigheid:

.....
.....

REGISTRATEUR VAN AKTES

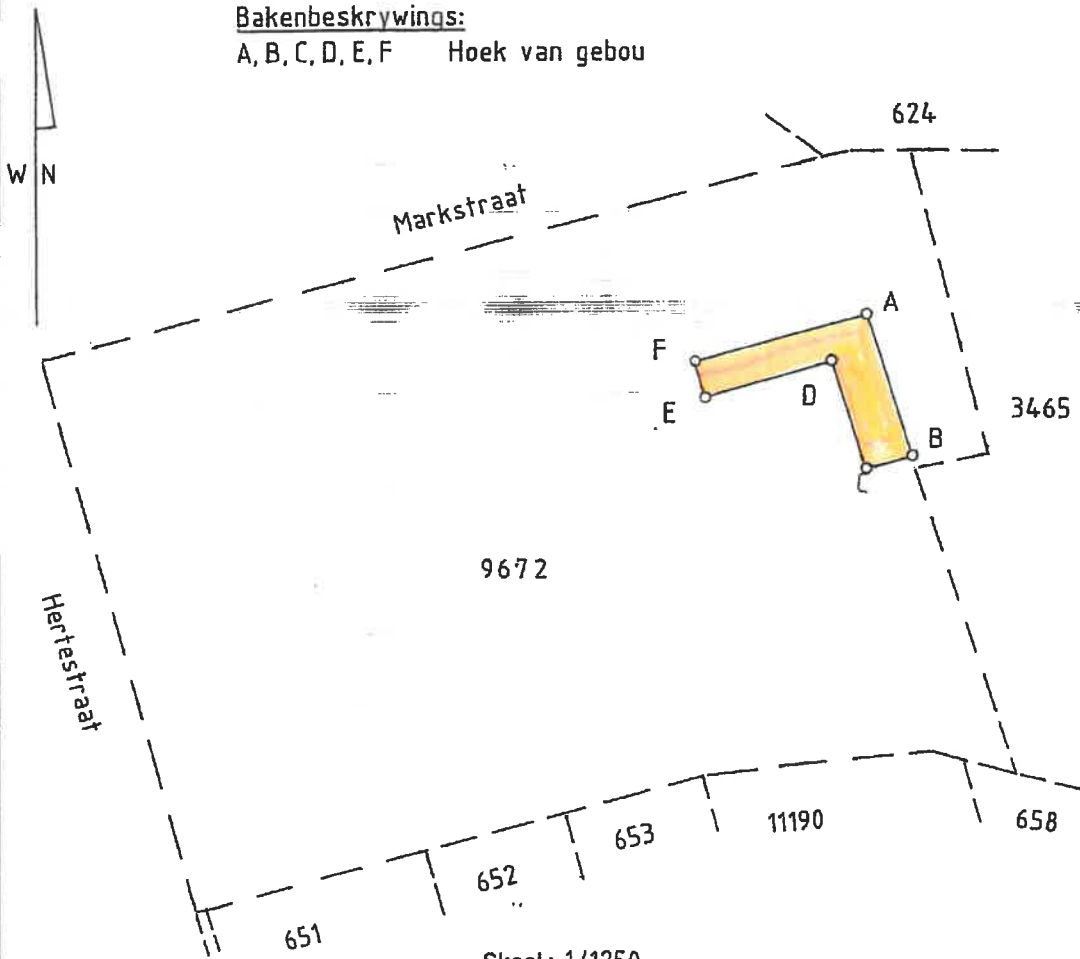
AM

SERWITUUTKAART

SYE Meter	RIGTINGS -HOEKE	KOÖRDINATE		L.G. No.
		Y	X	
	Konstantes	+10 000,00	+3750 000,00	9670-93
AB	25,83	342 31 10	A + 3 139,03	
BC	7,96	73 43 40	B + 3 131,27	+ 6 441,48
CD	19,49	162 48 40	C + 3 138,91	+ 6 443,71
DE	22,90	74 14 30	D + 3 144,67	+ 6 425,09
EF	6,27	162 10 20	E + 3 166,71	+ 6 431,31
FA	30,80	253 58 40	F + 3 168,63	+ 6 425,34
	N31B	⊕	+ 3 115,38	+ 6 371,96
	N32B	⊕	+ 3 217,41	+ 6 665,02

Goedgekeur
P. Roussell
 Landmeter-generaal
 1994-03-09

Bakenbeskrywings:
 A, B, C, D, E, F Hoek van gebou



Die figuur A B C D E F
 stel voor 'n SERWITUUTGEBOU op Erf 9672 Stellenbosch soos aangetoon. grond, synde

geleë in die Munisipaliteit Stellenbosch Administratiewe Distrik
 STELLENBOSCH Provinsie Kaap die Goeie Hoop.
 Opgemeet in Oktober 1993
 deur my, *N. Loubser* Landmeter

Hierdie kaart is geheg aan	Die oorspronklike kaart is.	Lêer No. S 2641/17
No. 52595 195	No. 9669/93 geheg aan	M.S. No. 3282/93
t.g.v. <i>1995-07-17</i>	Transport/Grondbrief	Komp. BHSZ-1441 (M2756)
Registrateur van Aktes	No.	SERWITUUTKAART 9670/93

11/133

25 29
158



Grant under § 10 Act 15 of 1887.

Government Letter No.

dated

In the Name and on behalf of His Majesty EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith Emperor of India.

UNDER and by virtue of the provisions contained in the 10th Section of the Act No. 15 of 1887, entitled an "Act for regulating the manner in which the Crown Lands of the Colony shall be disposed of,"

DO HEREBY GRANT, CEDE, AND TRANSFER unto the Commissioners for the time being of the Municipality of Stellenbosch, a certain piece of land containing two hundred and ninety three square rods and ninety nine square feet (293 sq. rds: 99 sq. ft.), being Lot No. LVIII, situated in the Town of Stellenbosch, Division of Stellenbosch, and represented and described in the diagram hereunto attached, on condition that the land hereby granted shall be set aside and used for the purpose of a Market Square under the control of the Municipality; and that a certain triangular shaped portion thereof, in extent about 88 square rods, bounded Northwards by the remainder, Southwards by the grounds of the Rhenish Institute and Westwards by a passage 14 feet wide, shall be transferred, under the provisions of Act 30 of 1893 to the said Rhenish Institute for the purposes of undenominational education.

with full power and authority henceforth to possess the same in perpetuity, subject, however, to all such Duties and Regulations as are either already or shall in future be established with regard to such Lands.

Given under my Hand and the Public Seal of the Colony of the Cape of Good Hope, at Cape Town, this

1908.

Walter Hely Hutchinson
Governor.

By His Excellency's Command,

[Signature]

W. H. B. [Signature]
Surveyor-General.

Exd. 1902.

I certify that the extent of the piece of land set aside is that which will be used for the use of the Rhenish Institute and is situated in the Town of Stellenbosch, Division of Stellenbosch, and is bounded Northwards by the remainder, Southwards by the grounds of the Rhenish Institute and Westwards by a passage 14 feet wide, shall be transferred, under the provisions of Act 30 of 1893 to the said Rhenish Institute for the purposes of undenominational education.

I certify that the extent of the piece of land set aside is that which will be used for the use of the Rhenish Institute and is situated in the Town of Stellenbosch, Division of Stellenbosch, and is bounded Northwards by the remainder, Southwards by the grounds of the Rhenish Institute and Westwards by a passage 14 feet wide, shall be transferred, under the provisions of Act 30 of 1893 to the said Rhenish Institute for the purposes of undenominational education.

The Rhenish Institute, Stellenbosch, undenominational

Plan 7/100

22

FOR FURTHER ENQUIRIES USE
THE PUBLIC OFFICE, STERLING ROAD,
CAPE TOWN.

BLADSY/PAGE 3
ENDOSSEMENT OF S.F. 9/9/1908
ENDORSEMENT ON
EINDOM/PROPERTY Erf 624
Stellenbosch

Erf 6194 meas. 213 sq. M.

GETRANSPOORTEUR: - 8-05-1977		Aan Die Trustvoed van	
TRANSFER: 0		To die Stellenbosch Museum	
No. 1.067.2	Restant	3293 sq. M.	
	Remainder		
<i>Shier</i> Asst.-Registrar/Asst. Registrar			

The following endorsements dated 8-12-1975 and 12-12-1975 appears on the D10 copy hereof:-

Endorsement i.t.o. Section 13(3) of Act 28 of 1969

In terms of Section 10(1) of Act 28 of 1969 the Old Lowder Magazijn, Stellenbosch, situate on Remainder Erf 624 Stellenbosch, has been proclaimed a National Monument by Proclamation No. 747 dated 10/5/1940, published in the Government Gazette of the same date.

For further particulars refer to said proclamation and minute Ad/1/15 dated 13/11/75 from the Director of Archives, Pretoria, filed in file 24/4/6/16.

Deeds Registry,
Cape Town

Shier
Asst. Registrar of Deeds

Endorsement i.t.o. Section 13(3) of Act 28 of 1969

In terms of Section 10(1) of Act 28 of 1969 the brick, Stellenbosch situated on the property herein has been proclaimed a monument by proclamation No. 529 dated 6-4-1936 published in the Government Gazette of the same date.

For further particulars refer to said proclamation and minute No. Ad/1/15 dated 5-12-1975 from the Director of Archives, Pretoria, filed in file 24/4/6/16.

Deeds Registry,
Cape Town.

Shier
Asst. Registrar of Deeds

- 8-05-1977

the owner under Deeds Erf 9889 the...
Created by...
by...

3

BLADSY/PAGE
ENDOSSEMENT OP S.F. 8/9/1908
ENDORSEMENT ON
EINDOM/PROPERTY Erf 624
Stellenbosch

4

BLADSY/PAGE
ENDOSSEMENT OP S.F. 8/9/1908
ENDORSEMENT ON
EINDOM/PROPERTY Remainder
Erf 624 Stellenbosch

Endorsement i.to. Sect 2(A)(2) of act 48/1961

By virtue of the consent of the Minister of Agriculture dated 6-4-1977 in terms of the said provision of the State Law Disposal Act the condition on page 1 hereof relating to land set aside and used for the purpose of a Market Square has been cancelled. Consent filed as BC 9004 /77

Deeds Registry,
Cape Town.
76-05-1977

Christ
West. Reg. of Deeds.

Erf 9670 = 92m²

GETRANSPORTEER VAN	TRANSFERRED TO
Republiek van Suid-Afrika	
RESTANT/REMAINDER	
T 4 52593 195	<i>[Signature]</i>
1995-07-18	REGISTRATEUR/REGISTRAR

Stellenbosch
a
1936
date.
d
tor of

Cape Town

[Signature]

29 NOV 67

S.G. folio 2641.

DIE GROND HIERIN BESKRYWE
THE LAND DESCRIBED HEREIN
IS GEREISTREER EN MOET IN DIE TOEKOMS BE-
IS REGISTERED AS, AND MUST IN FUTURE BE
SKRYWE WORD AS
DESCRIBED AS *Rem Est 624*
Stella bodt.
AKTEKANTOOR,
DEEDS REGISTRAR,
KAAPSTAD,
CAPE TOWN.
1-2-77
HOOF-REGISTRASIEAMPTENAAR,
CHIEF REGISTRATION OFFICER.

Reminders
By Notarial Deed No: 685/57 dated 10/12/1957 the
Municipality of Stellenbosch as owners of the Remains
of the property held hereunder, has given and granted
to the owner of Lot B-K held by Certificate of Standard
Title in Consolidation No: 10341 dated 4 July 1955
a proviso of encroachment 6 Cape feet wide over
the remains of the property held hereunder along the
Northern boundary marked E.D on diagram 2159/1107
thereof, subject to conditions and as will more
fully appear on reference to the said Notarial Deed
Deeds Registry
Cape Town.

[Signature]
Deeds Registrar of Deeds

28 DEC 1957

Endorsement (Remains)

The within Provisory Municipality having become
the owner of Est 3099 (Burgundy) containing 12,986 sq feet
more or less of area dated 15/11/1960 128 (200) 1/1960, the said
Est 3099 being a portion of Lot G-H held under Certificate of
Standard Title in Consolidation No: 10341/1955, the remains
created by not deed No 685/1957 are referred to as
the endorsed date 28/12/1957 herein, and refer
to the same.

[Signature]
Deeds Registry
Cape Town.

29 NOV 1960

GETRANSK
<i>Rep</i>
RESTANT/REI
<i>T</i>
<i>K</i>

[Signature]
1960

Stellenbosch L^{IV} 372

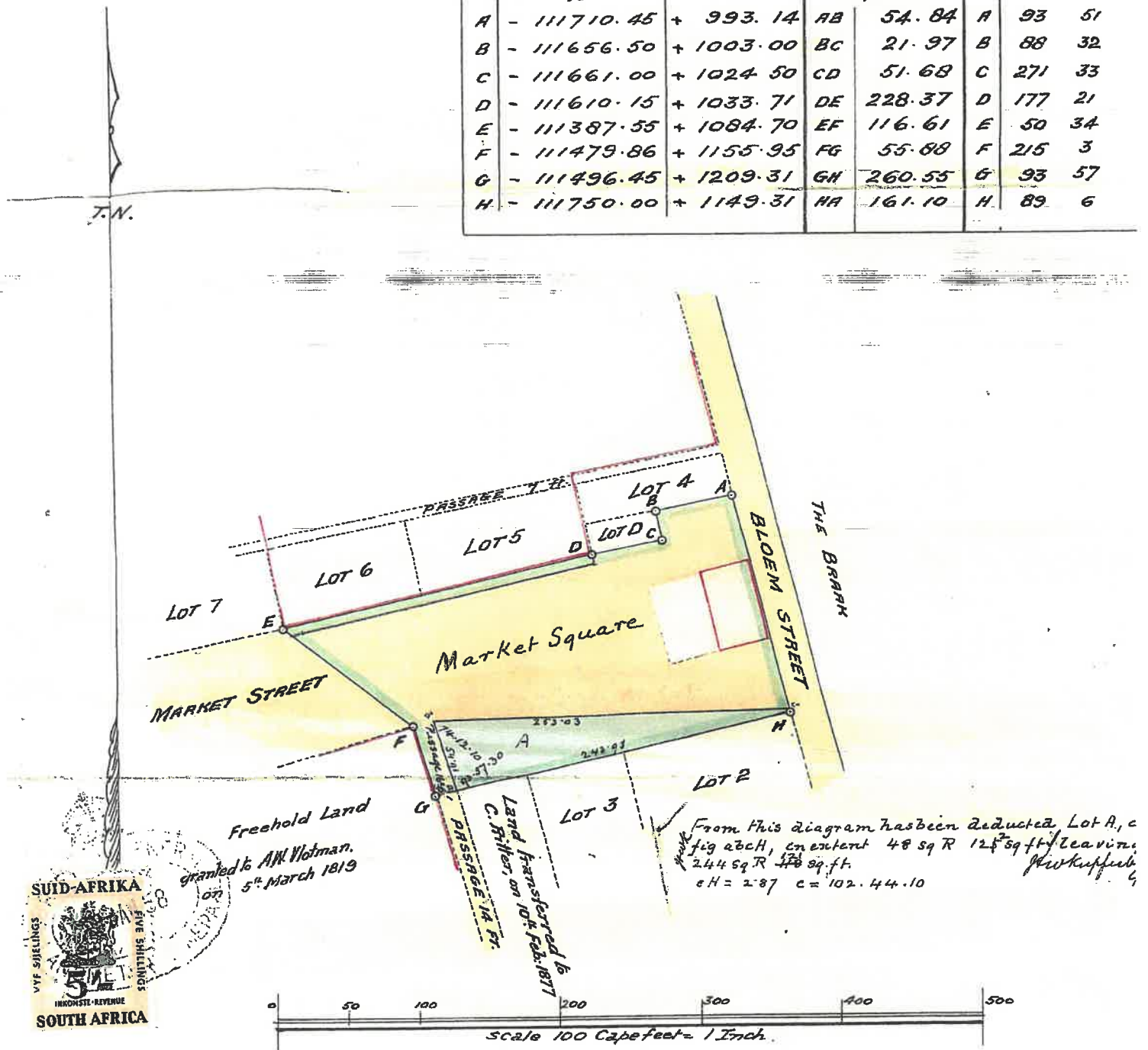
A1/33

The numerical data of this diagram are sufficiently cons

N^o 2159, 1907

M. W. W.
Examiner

Co-ordinates		Sides		Angles	
Y_s	X_s		Cape feet	°	'
A - 111710.45	+ 993.14	AB	54.84	A	93 51
B - 111656.50	+ 1003.00	BC	21.97	B	88 32
C - 111661.00	+ 1024.50	CD	51.68	C	271 33
D - 111610.15	+ 1033.71	DE	228.37	D	177 21
E - 111387.55	+ 1084.70	EF	116.61	E	50 34
F - 111479.86	+ 1155.95	FG	55.88	F	215 3
G - 111496.45	+ 1209.31	GH	260.55	G	93 57
H - 111750.00	+ 1149.31	HA	161.10	H	89 6



The above figure ABCDEFGH, represents 293 square roods 99 square feet of land in the Town of STELLENBOSCH being LOT No LVIII.

C 8

APPENDIX 2



OFFICE OF THE REGIONAL LAND CLAIMS COMMISSIONER: WESTERN CAPE

1st and 2nd floors. 14 Long Street, Cape Town, 8000 | Private Bag X9163, Cape Town, 8000

Tel: (021) 409 0300 | Fax: (021) 418 0205

ROUTE FORM

SUBJECT: LAND REQUEST MEMO

REF NO: D302

RANK/DESIGNATION	SURNAME & INITIALS	TO CLCC INITIAL / DATE
PROJECT OFFICER / AUTHOR	MS PORTIA MAZWAI	<i>PM</i> 3/11/2020
DEPUTY DIRECTOR: PRE- SETTLEMENT	MS KOLEKA MARTINS	<i>KM</i> 06/11/2020
CHIEF RESTITUTION ADVISOR: LEGAL UNIT	MR BEN MARS	<i>BM</i> 06/11/20
DIRECTOR: OPERATIONS	MR DAVID SMIT	<i>DS</i> 06/11/20
DIRECTOR: QUALITY ASSURANCE	MR R. JANSE VAN RENSBURG	<i>RJR</i> 06/11/20
CHIEF DIRECTOR: RESTITUTION SUPPORT	DR WAYNE ALEXANDER	<i>WA</i> 06/11/20

Note: Route form must be filed with completed documentation.



OFFICE OF THE REGIONAL LAND CLAIMS COMMISSIONER: WESTERN CAPE

1st and 2nd floors, 14 Long Street, Cape Town, 8000 | Private Bag X9163, Cape Town, 8000
Tel: (021) 409 0300 | Fax: (021) 418 0205

ENQUIRIES: Ms. Portia Mazwai

Ref No: D302

Mr Piet Smit
The Property Manager
Stellenbosch Municipality
PO Box 17
Stellenbosch
7600

Attention: Mr Smit

RE: REQUEST TO RELEASE ERVEN 622 & 623 STELLENBOSCH MEASURING 8622M² & 8389M², WESTERN CAPE FOR RESTITUTION PURPOSES.

1. PURPOSE

- 1.1 To request the Stellenbosch Municipality to release Erven 622 & 623 in Stellenbosch measuring 8622m² & 8389m² to the Office of the Regional Land Claims Commissioner: Western Cape (RLCC: WC) for restitution purposes.

2. BACKGROUND

- 2.1 The Rynse NG Sendinggemeente Kerk lodged a land claim with the RLCC: WC on 25/03/1997 which was before the cut – off date of 31st December 1998 for two ownership rights which were lost in Stellenbosch due to implementation of Group Areas Act. Research was conducted for this claim and the Commissioner was satisfied that it complies with the provisions of Restitution of Land Rights Act 22 of 1994 as amended. The Group Areas Act of 1957 made provisions on how to control occupation, removal and designation of “disqualified” persons and companies. The Group Areas Development Act of 1957 dictated acquisition, dispossession and compensation of the affected properties within the framework of the Group Areas Development Board. **(See attached as Annexure A the approved Research Report and a Government Gazette Notice)**
- 2.2 The Rynse NG Sendinggemeente Kerk has shown interest for restoration of the properties they lost in Stellenbosch as the preferred method of compensation.
- 2.3 Should the requested properties be available it is requested that the Stellenbosch Municipality release them for Restitution purposes at a minimal cost or gratis.
- 2.5 The RLCC in association with the Department of Agriculture Land Reform and Rural Development promote and support complete integrated development as a social

upliftment strategy and the Stellenbosch Municipality as an organ of State is required to allocate land for restitution purposes.

- 2.6 By releasing the requested properties to the RLCC: WC, it will assist in addressing the skewed patterns of land rights and redress the claimant's needs for the injustices caused by the dispossession.
- 2.7 Finally, it will be highly appreciated if this matter could receive urgent attention as the Commission is under pressure to finalise all claims that were submitted by 31 December 1998 as ordered by the Land Claim Court.

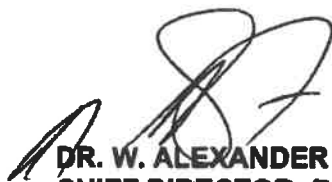
3. SUMMARY

- 3.1 The Land Restitution Programme (LRP) has been introduced in terms of and is governed by the provisions of the Restitution of Land Rights Act, Act No. 22 of 1994, as amended. This programme forms part of a comprehensive land reform strategy.
- 3.2 The key objective of the LRP is that it serves as the Government's instrument to redress the injustices of land dispossession. The injustices, in brief, refer to the dispossession of people of the land they occupied and the resettlement of such individuals at alternative locations. Under the previous legislative dispensation, the majorities of the people were not allowed to own property as this abolished previous legislation was utilized to dispossess and forcefully removed thousands of people to alternative locations.
- 3.3 The LRP thus aims to restore affected persons to their previous situations or to compensate them for their losses. In the case of the Rynse NG Sendinggemeente the Church opted for the restoration of dispossessed properties.

4. RECOMMENDATIONS

It is hereby recommended that the Municipality of Stellenbosch:

- 4.1. Releases Erven 622 and 623 Stellenbosch to the RLCC: WC, for restitution purposes.
- 4.2. Provides the office of the RLCC: WC with any requirements and or conditions pertaining to the possible release of the properties requested.



DR. W. ALEXANDER
CHIEF DIRECTOR: RESTITUTION SUPPORT
WESTERN CAPE

DATE: 06/11/20





OFFICE OF THE REGIONAL LAND CLAIMS COMMISSIONER, WESTERN CAPE
 1st and 2nd floors, 14 Long Street, Cape Town, 8000 | Private Bag X9163, Cape Town, 8000
 Tel: (021) 409 0300 | Fax: (021) 418 0205

ROUTE FORM

SUBJECT: RULE 5 RESEARCH REPORT

REF NO: D302

RANK/DESIGNATION	SURNAME & INITIALS	TO CLCC INITIAL / DATE
PROJECT OFFICER / AUTHOR	MS P.N MAZWAI	28/8/2019
DEPUTY DIRECTOR: PRESETTLEMENT	MS K. MARTINS	09/09/2019
CHIEF RESTITUTION ADVISOR: LEGAL UNIT	MR B. MARS	09/09/18
DIRECTOR: OPERATIONS	MR D. SMIT	09/09/19
CHIEF DIRECTOR: RESITUTION SUPPORT	DR W. ALEXANDER	16/11/19
REGIONAL LAND CLAIMS COMMISSIONER	MR H.L. MAPHUTHA	20/11/25

Note: Route form must be filed with completed documentation.



OFFICE OF THE REGIONAL LAND CLAIMS COMMISSIONER WESTERN CAPE
1st and 2nd floors, 14 Long Street, Cape Town, 8000 | Private Bag X9163, Cape Town, 8000
Tel: (021) 409 0300 | Fax: (021) 418 0205

RESEARCH (RULE 5) REPORT

LAND CLAIMS LODGED BY ANDRIES DANIELS AND D STEPHANUS AS MEMBERS OF THE DISPOSSESSED DIE RYNSE NG SENDINGGEMEENTE VAN STELLENBOSCH, ERVEN 622 & 623 CORNER OF MARK AND HERTE STREET, ERVEN 604 & 607 MARK STREET, ERVEN 602, 603, 605, 608 & 612 ALEXANDER STREET SITUATED IN STELLENBOSCH MUNICIPALITY WHICH FORMS PART OF THE CAPE WINELANDS, WESTERN CAPE.

REFERENCE NO: KRK6/2/3/9/77/0/17(D302)

**Compiled by: Ms. Portia Mazwai
RLCC: Pre-Settlement Unit
Date: July 2019**

Table of Contents

1. Introduction	3
2. Particulars of claimants	3
3. Property description and Locality Research – Rule 5(j)	3
3.1. Property as was and as is	3-4
3.2. Locality Research	4
4. History of acquisition of property of the claimed land – Rule 5(b)	4
5. Establish the nature if rights in land the claimants were dispossessed i– Rule 5(g)	4
6. Particulars of legislation or practice used to dispossess the claimants – Rule 5(f)	4
7. Establish which Government Department or Institution dealt with the Dispossession – Rule 5(f)	4
8. Date and circumstances of the dispossession of the rights in land – Rule 5(d)	5
9. Land use prior to removal and at the time of dispossession	5
10. Compensation received – Rule 5(e)	5-6
11. Hardship suffered by the claimants	6
12. Current owner(s) and land use	7
13. Mineral rights, servitudes and bonds	7
14. Parties having stake in the restitution of claim	7
15. Recommendations	8-9
16. Bibliography	10.

1. Introduction

- 1.1. This is an investigative research in terms of Section 11 and 2(1) and 2(2) of the Restitution of Land Rights Act 22 of 1994 (as amended) as read with Rules 3 and 5 of the rules regarding the procedure of the Commission on Restitution of Land Rights.
 - 1.2. These claims were lodged in the prescribed manner as stated in the Restitution Act.
 - 1.3. The claims were lodged against H/vof Mark en Hertestraat, Stellenbosch Erfnrns 622 en 623. Markstraat, Stellenbosch Erfnrns 604 en 607. Alexanderstraat, Stellenbosch Erfnrns 602, 603, 605, 608 & 612 situated in the Stellenbosch Municipality which forms part of the Cape Winelands, Western Cape (Annexure A¹: Claim forms)
 - 1.4. **Please Note:** A claim was also submitted for Erven (6589 & 6590) H/V Ryneveldt and Hammanshand Straat, research was approved by the RLCC on 20 February 2013. (Annexure A²: Approved Research Report)
 - 1.5. The office of the Valuer General be requested to make recommendations on the attached valuation reports.
 - 1.6. The purpose of this research is to advise the RLCC on the compliance of these Rights Act 22 of 1994 (as amended) in respect of the application of racially discriminatory laws and practices.
- ## 2. Particulars of claimants
- 2.1 Mr A Daniels and Mr D Stephanus, who are the members of the Rynse NG Sending Gemeente Stellenbosch, lodged the claims with the office of the Regional Land Claims Commission: Western Cape, on the 25/03/1997, which was before the December 31st 1998 cut-off date. (Annexure A¹: Claim Forms) Mr Brian Poole has since been appointed as the representative. (Annexure A³: Power of Attorney)
 - 2.2 The date is within the period for lodgment of claims as provided for in Section 2(1)(e) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994, as amended).

3. **Property description and Locality Research – Rule 5(j)**
 - 3.1 **Property as was and as is**
 - 3.1.1 These claims were lodged against H/vof Mark en Hertestraat, Stellenbosch Erfnrns 622 en 623. Markstraat, Stellenbosch Erfnrns 604 en 607. Alexanderstraat, Stellenbosch Erfnrns 602, 603, 605, 608 & 612. After an in-depth deed search it was established that the claimed properties are indeed Erven 622 & 623 measuring 8622m² & 8389m². Erven 604 & 607 measuring 112m² & 343m² and Erven 602, 603, 605, 608 & 612 Stellenbosch measuring 1069m², 1193m², 706m², 522m² and 659m² respectively. (Annexure A⁴: Erf Registers and calculators)
 - 3.1.2 Erven 622 & 623 were consolidated into Erf 9672, Erven 602, 603, 605, 608 & 612 were consolidated into Erf 613. (Annexure A³: Aktex Reports)
 - 3.2 **Locality Research**
 - 3.2.1. Erven 622 & 623 corner of Mark and Herte Street, Erven 604, 607 Mark Street, Erven 602, 603, 605, 608 & 612 Alexander Street are situated in the Stellenbosch Municipality which forms part of the Cape Winelands, Western Cape. (Annexure A⁴: Erf Registers)
4. **History of acquisition of property of the claimed land – Rule 5(b)**
 - 4.1 The dispossessed properties were acquired by the Rynse Sendinggemeente van Stellenboch, Erven 622 & 623, Erven 604 and 607 on 30/11/1931 through T9153/31, Erven 602, 603, 605, 608 & 612 on 15/08/1946 through 13542/46. (Annexure A⁴: Erf Registers)
5. **Establish the nature of rights in land the claimants were dispossessed of – Rule 5(g)**
 - 5.1 The dispossessed lost ownership rights. (Annexure A⁶: Deeds of Dispossession)
6. **Particulars of legislation or practice used to dispossess the claimants – Rule 5(f)**
 - 6.1 The area where the properties were dispossessed was declared a White area by the Group Areas Act through Proclamation 205 of 1962. (Annexure A⁴: Erf Registers)
7. **Establish which Government Department or Institution dealt with the Dispossession – Rule 5(f)**
 - 7.1 Municipality of Stellenbosch, The Republic of South Africa, The Council of the Municipality of Stellenbosch, The Onderwystrustees and The Government of the Union of South Africa. (Annexure A⁴: Erf Registers)

8. Date and circumstances of the dispossession of the rights in land – Rule 5(d)

8.1 The National Party came in to power in 1948 and their influence in Stellenbosch was substantial especially in education and administrative circles. Although the expropriation of the properties occurred in 1947 the conditions which prevailed politically did not favor non-whites. Although according to the documents the area was proclaimed white in 1962 but the conditions of non-tolerance already existed years before that and that was proven by the fact that pupils and teachers from the were disadvantaged and were forced to move to different other schools long before 1962. The Parishioners who were residing in some of the properties were also left without accommodation. (Annexure A⁷: Background Statement)

Erf no	Government Department or Institution	Date of Dispossession	Proclamation
Portion 1 of Erf 622 which is Erf 623	Onderwystrustees	15/02/1947 T2459/47	205 para a of 1962
Rem of Erf 622	Fritz.Paul Haldenwang	T2460/47	
Erf 604 & 607	The Council of the Municipality of Stellenbosch	13/08/1932 T5007/32	205 para a of 1962
Erven 602, 603,605,608 &612	The Government of the Union of South Africa.	8/05/1952 T6888/52	205 para a of 1962

9 Land use prior to removal and at the time of dispossession

9.1. The properties were used for residential, religious and educational purposes except Erven 604 & 607 they were vacant. (Annexure A⁷: Background Statement)

10 Compensation received – Rule 5(e)

10.1 Compensation was received by the Rhenish Church as given in the table below in lieu of the dispossessions for the nine rights lost. A historical valuation was conducted, See table below for the historical values and the under-compensation amounts. (Annexure A⁸: Valuation Reports)

10.2

Erf no	Dispossession date	Compensation received	Historical value	Under compensation	MVOC
Erf 622	15/02/1947	3000 pounds R6000.00	R6 250.00	R250.00	(CPI of 2016 / CPI of 1947) x R250.00 (122.0 / 0.9) x R250.00 = R33 888.89
Erf 623	15/02/1947	Not indicated on Title Deed	R3 660.00	R3 660.00	(CPI of 2016 / CPI of 1947) x R3 660.00 (122.0 / 0.9) x R3 660.00 R496 133.33
Erven 604 and 607	13/08/1932	50 pounds R100	R120.00	R20.00	(CPI of 2016 / CPI of 1932) x R20.00 (122.0 / 0.6) x R20.00 = R4 066.67
Erven 602,603,6 05,608 and 612	8/5/1952	15 000 pounds R30 000.00	R30 788.00	R788.00	(CPI of 2016 / CPI of 1952) x R788.00 (122.0 / 1.2) x R788.00 R80 113.33

The value of the property as determined through historical valuation falls below the housing subsidy, therefore according to the approved financial policy, the claim qualifies for **R160, 573.00.**

11 Hardship suffered by the claimants

According to the claimant approximately 20 properties known as the Ryne Hoek formed the nucleus of the historic portion of the town. A number of these properties were later legally transferred to the Rhenish Mission Congregation. The Rhenish Congregation during the 30s was affiliated to the NG Church (White) and this church acted as trustees of some of these properties on their behalf.

The church was later greatly disadvantaged mostly due to political pressures from the late 1930s until late 1970s during this time a substantial number of properties of the church were lost, mostly to the state. The Congregation also lost a considerable amount of land with little compensation. (Annexure A7: Background Statement)

12 Current owner(s)

- 12.1 Erven 622 and 623 were both consolidated into Erf 9672 and proclaimed National Monuments which is currently owned by the Republik van Suid Afrika. Erven 604, 607 currently owned by the Municipality of Stellenbosch. Erven 602, 603, 605, 608 & 612 were consolidated into Erf 613 which is currently owned by The Republic of South Africa. (Annexure A⁵: Aktex Reports)

13 Mineral rights, servitudes and bonds

- 13.1. Information relating to mineral rights, servitudes and bonds are stipulated as per the conditions in the deeds of registration nos T2459/47, T2460/47, T5007/32, T6888/1952 and the Aktex reports. (Annexure A⁵: Title Deeds and Annexure A⁵: Aktex Reports)

14 Parties having stake in the restitution of claim**14.1. Claimant Representatives:**

Rynse NG Sendinggemeente C/O Mr Brian Pool
27 Martin Street
Idas Valley
Stellenbosch
Tel: (021) 886 5724
076 7877785

14.2. Department Rural Development and Land Reform

The Minister
Ms. Thoko Didiza
Private Bag X833
Pretoria
0001
Tel: 012 312 9300
Fax: 012 323 3306

14.3. Department Rural Development and Land Reform

~~The Acting Director General~~
~~Ms. Rendani Sadiki~~ *M. S. A. A. A.*
Private Bag X833
Pretoria
0001
Tel: 012 312 8503
Fax: 012 323 6072

14.4. Current Owners:

The Municipality of the Stellenbosch and The Republic of South Africa.


15. Recommendations

Based on the information available, it's recommended that:

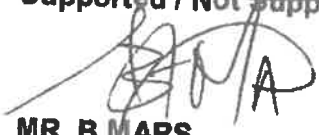
- 15.1. That the claim with **Reference Number D302**, be accepted as **prima facie compliant**, as it meets the Section 2 criteria.
- 15.2. Steps will be taken to Gazette the claim for Erven 622, 623 and Erven 602, 603, 605, 608, 612. The RLCC accepts the Gazette for Erven 604, 607. **(Annexure A⁹: Draft Gazette notice and Gazette Notice)**
- 15.3. The office of the Valuer General be requested to note and make recommendations on the attached valuation reports.
- 15.4. The RLCC signs the financial settlement offers. **(Annexure A¹⁰: Settlement Offers)**
- 15.5. That the claim be processed for settlement


MS P MAZWAI
PROJECT OFFICER: PRE-SETTLEMENT UNIT
DATE: 28/8/2019

Supported / Not-Supported →


MS. K. MARTINS
DEPUTY DIRECTOR: PRE-SETTLEMENT UNIT
DATE: 06/09/2019

Supported / Not-Supported



MR. B MARS
CHIEF RESTITUTION ADVISOR: LEGAL UNIT
DATE: 09/9/2019




15. Recommendations

Based on the information available, it's recommended that:


- 15.1 That the claim with **Reference Number D302**, be accepted as prima facie compliant, as it meets the Section 2 criteria.
- 15.2 Steps will be taken to Gazette this claim for Erven 622, 623 and Erven 602, 603, 605, 608, 612. The RLCC accepts the Gazette for Erven 604, 607. **(Annexure A⁹: Draft Gazette notice and Gazette Notice)**
- 15.3 The office of the Valuer General be requested to note and make recommendations on the attached valuation reports.
- 15.4 The RLCC signs the financial settlement offers. **(Annexure A¹⁰: Settlement Offers)**
- 15.5 That the claim be processed for settlement




MR. D SMIT
DIRECTOR: OPERATIONS
 DATE: 09/09/19

Recommended /Not Recommended


DR WAYNE ALEXANDER
CHIEF DIRECTOR: RESTITUTION SUPPORT
 DATE: 16/9/19

Approved/ Not Approved


MR. LH MAPHUTHA
REGIONAL LAND CLAIMS COMMISSIONER
 DATE: 2019/11/25

S.S Mabeza
 The Offers as attached
 here to are supported

 Acting National Director


16. Bibliography

- 16.1. Restitution of Land Rights Act, 22 of 1994, as amended
- 16.2. Claim form
- 16.3. Constitution of the Republic of South Africa
- 16.4. Deeds office: Aktex report, Erf Registers, Deed of Dispossession.

**DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
NOTICE 655 OF 2019**

**GENERAL NOTICE IN TERMS OF THE RESTITUTION OF LAND RIGHTS ACT
1994, (ACT No. 22 OF 1994) AS AMENDED.**

Notice is hereby given in terms of Section 11(1) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), as amended. This claim for the restitution of land rights have been submitted to the Regional Land Claims Commissioner for the Western Cape. The particulars regarding this claim are as follow:

Claimant : Mr Brian Pool
ODI : Rynse Sendinggemeente van Stellenboch
Date Submitted : 25 March 1997

Ref No	Property description	size
KRK6/2/3/9/77/0/17(D302)	Erven 622 and 623 Stellenbosch, Cape Winelands District, Western Cape	8622m ² & 8389
	Erven 602, 603, 605, 608 and 612 Stellenbosch, Cape Winelands, Western Cape.	1069m ² , 1193m ² , 706m ² , 522m ² , 659m ²

The Regional Land Claims Commission will investigate this claim in terms of provisions of the Act in due course. Any party who has an interest in the above-mentioned land is hereby invited to submit, within 30 days from the publication of this notice, any comments / information to:

The Regional Land Claims Commission: Western Cape
Private Bag X9163
Cape Town
8000

Tel: (021)409-0300

Fax: (021)409-0558

CHECKED.....


DATE..... 09/12/2019

APPROVED.....


DATE..... 16/12/19

APPENDIX 3

WinDeed Database Deeds Office Property

windeed

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STELLENBOSCH, 9672, 0 (CAPE TOWN)

GENERAL INFORMATION

Date Requested 2021/07/26 08:42
 Deeds Office CAPE TOWN
 Information Source WINDEED DATABASE
 Reference -



PROPERTY INFORMATION

Property Type ERF
 Erf Number 9672
 Portion Number 0
 Township STELLENBOSCH
 Local Authority STELLENBOSCH MUN
 Registration Division STELLENBOSCH RD
 Province WESTERN CAPE
 Diagram Deed T52594/1995
 Extent 1,5052HA
 Previous Description -
 LPI Code C06700220000967200000

OWNER INFORMATION

Owner 1 of 1

Type LOCAL AUTHORITY
 Name MUN STELLENBOSCH
 ID / Reg. Number -
 Title Deed T52595/1995
 Registration Date 1995/07/17
 Purchase Price (R) -
 Purchase Date -
 Share 0.00
 Microfilm 1995 0650 3358
 Multiple Properties NO
 Multiple Owners NO

ENDORSEMENTS (2)

#	Document	Institution	Amount (R)	Microfilm
1	FROM 614,618-623,626	-631,636,9670,	UNKNOWN	-
2	I-8043/2004LG	-	UNKNOWN	0000000*

HISTORIC DOCUMENTS (1)

#	Document	Owner	Amount (R)	Microfilm
1	T52594/1995	REPUBLIEK VAN SUID-AFRIKA	CCT	1995 0650 3334

DISCLAIMER

This report contains information gathered from the WinDeed database and we do not make any representations about the accuracy of the data displayed nor do we accept responsibility for inaccurate data. LexisNexis will not be liable for any damage caused by reliance on this report and for legal purposes encourage validation on ownership details with the Deeds Office. This report is subject to the terms and conditions of the [WinDeed End User Licence Agreement \(EULA\)](#).

SYE METER	RIGTINGS- HOEKE	KООRDINATE STELSEL Lo 19°	
		Y	X
	Konstantes	+ 10 000,00	+3750 000,00
AB	138,46	255 14 30	A +3 281,43 +6 424,97
BC	5,23	259 18 50	B +3 147,54 +6 389,70
CD	10,59	268 32 20	C +3 142,40 +6 388,73
DE	54,37	346 05 30	D +3 131,81 +6 388,46
EF	12,69	77 48 20	E +3 118,74 +6 441,24
FG	57,08	342 29 40	F +3 131,14 +6 443,92
GH	14,89	105 52 00	G +3 113,97 +6 498,36
HJ	39,71	84 32 20	H +3 128,29 +6 494,29
JK	90,75	74 28 50	J +3 167,82 +6 498,07
KA	100,84	164 57 30	K +3 255,26 +6 522,35

N31B	⊕	+3 115,38	+6 371,96
N32B	⊕	+3 217,41	+6 665,02

KOMPONENTE

- die restant van
- Die figuur B n p f stel voor Erf 614 Stellenbosch
Vide Kaart No. 241/1819 G/B Stel.F.1-1
 - Die figuur c1 b1 a1 d1 stel voor Erf 618 Stellenbosch
Vide Kaart No. 16/1819 T/A 1819. 2. 109
 - Die figuur b1 x y a1 stel voor Erf 619 Stellenbosch
Vide Kaart No. 15 /1819 T/A 1819. 2. 108 die restant van
 - Die figuur e f q s stel voor Erf 620 Stellenbosch
Vide Kaart No. 48/1820 T/A 1820. 4. 96
 - Die figuur x n m z stel voor Erf 621 Stellenbosch
Vide Kaart No. 17 /1819 T/A 1819. 2. 114 die restant van
 - Die figuur a b d1 y z m G H g1 stel voor Erf 622 Stellenbosch
Vide Kaart No. 388/1946 T/A 1947.50.2458
 - Die figuur A a g1 J K stel voor Erf 623 Stellenbosch
Vide Kaart No. 390/1946 T/A 1947.50.2459
 - Die figuur C D k h stel voor Erf 626 Stellenbosch
Vide Kaart No. 958/1910 T/A 1912.164.10561 die restant van
 - Die figuur c d u v w stel voor Erf 627 Stellenbosch
Vide Kaart No. 54 /1820 T/A 1820. 4. 155 die restant van
 - Die figuur d e s u stel voor Erf 628 Stellenbosch
Vide Kaart No. 4958/1880 T/A 1880. 75. 66 X 3716
 - Die figuur t r s q p x stel voor Erf 629 Stellenbosch
Vide Kaart No. 2451/1940 T/A 1940. 137. 6767

AB
AB
AB
BAC

Die figuur A B C D E F G H J K

stel voor 1,5052 hektaar grond, synde

ERF 9672 STELLENBOSCH en bevat 1) - 16) soos hierbo aangehaal

geleë in die Munisipaliteit Stellenbosch Administratiewe Distrik

STELLENBOSCH Provinsie Kaap die Goeie Hoop.

Opgemee in Oktober 1993

deur my,

N. Loubser
N. LOUBSER Landmeter

Hierdie kaart is geheg aan	Die oorspronklike kaarte is.	Lêer No. S 2641 / 17
No. 52594/95	soos hierbo aangehaal	M.S. No. E3282/93
gedateer	No. geheg aan	Komp. BHSZ-1441 (M2756)
t.g.v.	Transport/Grondbrief	BHSZ-1443 (M2759)
Registrateur van Aktes	No.	BAKEN G IS ERKEN.
		VIR ENDOSSEMENTE
		SIEN KEERSY VAN KAART

komponente vervolg:

- Die figuur b c w v u x c1 stel voor Erf 630 Stellenbosch
Vide Kaart No.2449 /1940 T/A 1940.137.6767 die restant van
- Die figuur j k e l stel voor Erf 631 Stellenbosch
Vide Kaart No. 130/1877 T/A 1877. 7. 141
- Die figuur u s r t stel voor Erf 636 Stellenbosch
Vide Kaart No.2450 /1940 T/A 1940.137.6767
- Die figuur B C h g stel voor Erf 9670 Stellenbosch
Vide Kaart No. 9667/93 T/A 52593/95
- Die figuur g j l F stel voor Erf 9671 Stellenbosch
Vide Kaart No. 9668/93 T/A 52592/95

L.G. No.

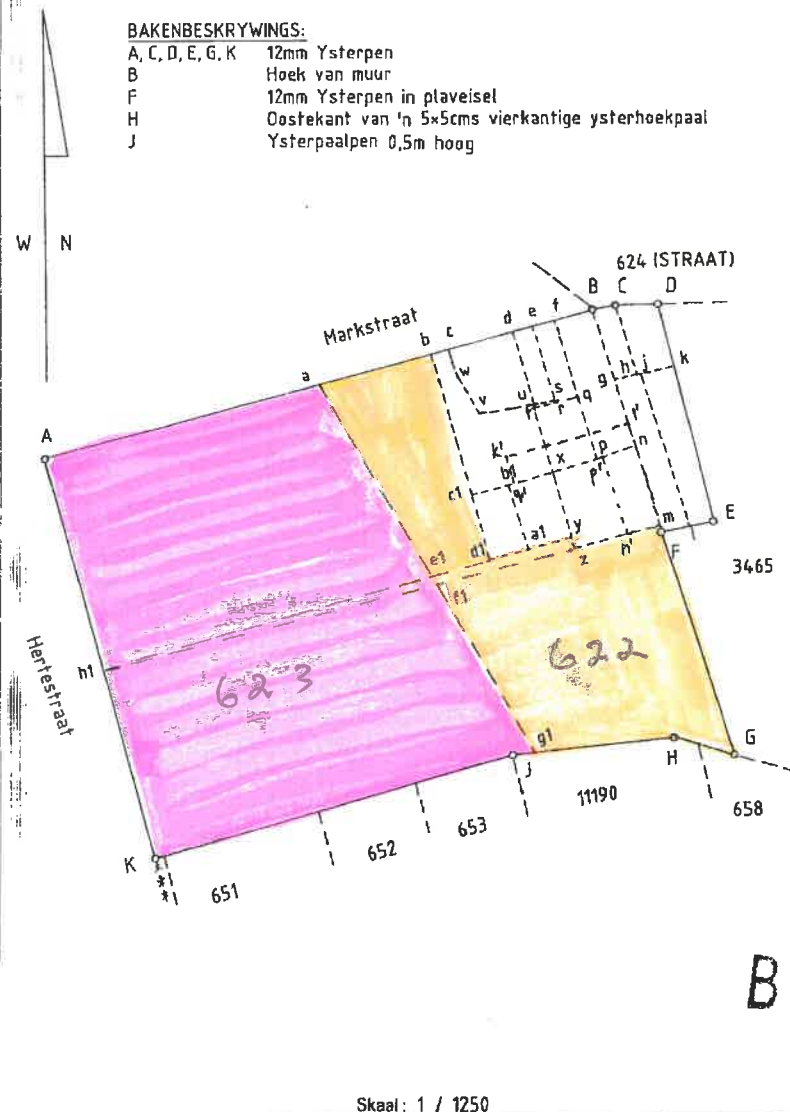
9669-93

Goedgekeur

P. Roumoff
Landmeter-generaal
1994-03-09

BAKENBESKRYWINGS:

- A, C, D, E, G, K 12mm Ysterpen
- B Hoek van muur
- F 12mm Ysterpen in plaveisel
- H Oostekant van 'n 5x5cm vierkantige ysterhoekpaal
- J Ysterpaalpen 0,5m hoog



B S

SERWITUTE; MUURKONTRAKCIEDE				
MEETSTUKKE	KAARTNO.	BESKRYWING	AKTE	GEPARAFEEF
E3282/92	9669/93	Die figuur k' 'm n p' q' stel voor h serwitoutgebou.	52595/95	WV