

# OUTSTANDING ITEMS

<b>7.2.5</b>	<b>FUTURE IN REGARD TO LEASE PORTIONS 528A AND 529CC: MOUNTAIN BREEZE CARAVAN PARK</b>
--------------	----------------------------------------------------------------------------------------

**Collaborator No:**

**IDP KPA Ref No:**

**Meeting Date:**

**GOOD GOVERNANCE**

**19 May 2021**

**1. SUBJECT: FUTURE IN REGARD TO LEASE PORTIONS 528A AND 529CC: MOUNTAIN BREEZE CARAVAN PARK**

**2. PURPOSE**

To inform council that, following the decision on 2021-03-31 to allow for an extension of the existing Lease Agreement on a month-to-month basis, the Mountain Breeze Caravan Park CC has decided not to proceed with the agreement beyond 30 June 2021.

Some of the current long term residents through an attorney has written a letter wanting to secure the right to continue with the lease, but they are not organised in any legal entity. Council must now consider a way forward.

**3. DELEGATED AUTHORITY**

The Municipal Council must consider the matter.

**4. EXECUTIVE SUMMARY**

Stellenbosch Municipality and Stellenbosch Caravan Park cc (Malan) concluded a long-term Lease Agreement during 1992 for a period of 30 years (1 April 1991-31 March 2021)

This Lease Agreement was later ceded to the Mountain Breeze Caravan Park CC (Visser).

The lease Agreement expired on 31 March 2021, but at a Council meeting held on 31-03-2021 Council has decided to extent the current Lease Agreement on a month-to-month basis. The Lessee has subsequently indicated that they will vacate the property by 30 June 2021 (**APPENDIX 4**).

Some of the current long term residents through an attorney has written a letter indicating that they are not going to vacate the property and requesting to secure the right to continue with the lease, but they are not organised in any legal entity (**APPENDIX 5**). Council has requested the municipal manager to assemble a TASK team to provide a report on the different types of properties owned by Council by December 2021. This is one of the properties that will then be discussed and taken a decision on. The task team is already busy with their process. The property fall in the over R10 million category and any disposal thereof will require a public participation process that involves the publication of an information statement.

From 1 July the Municipality will have to take over the security/access control of the facility/ collecting the rent and money for people who stay in the park as well as the bookings. There is no post on the organogram or warm body for this purpose. It can be dealt with by a temporary appointment until a decision is taken after the report on the properties was decided on. The other alternative is that discussions takes place with the current supervisor/janitor and his wife to be temporary employed by the municipality. Both of these options will have a cost implications. The municipality will also have to enter into agreements with the long term occupants to regulate the rent and other services payments directly to the municipality should they be allowed to stay on after 30 June 2021. They have been given notice by the lessee to vacate the property.

## 5. RECOMMENDATIONS

- (a) that Council take note of the fact that the current Lessee gave notice not to proceed with the month- to month contract as approved by council in March 2021 with effect from has 1 July 2021;
- (b) For consideration

## 6. DISCUSSION / CONTENT

### 6.2 Background

#### 6.2.1 Existing Lease Agreement

Stellenbosch Municipality and Stellenbosch Caravan Park cc (C.P Malan) concluded a long-term Lease Agreement on 18 May 1992 for the period 1 April 1991 to 31 March 2021.

This Lease Agreement, however, was later ceded to the Mountain Breeze Caravan Park cc (R.P. Visser) during 1995 and came to an end in March 2021.

#### 6.2.2 Council resolution authorising extension of agreement on a month-to-month basis

On 2021-03-31 Council considered the matter and resolved as follows:

***“RESOLVED*** (majority vote)

- (a) *that lease portions 528a and 529cc, known as Mountain Breeze Caravan Park, be identified as land not needed for own use during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulations;*
- (b) *that the lease agreement be extended on a month-to-month basis until a property register has been compiled and considered by Council to determine the future of Council properties per category;*
- (c) *that the lessee be informed to strictly adhere to the conditions of the lease agreement;*
- (d) *that the Caravan Park pay their municipal account and that the Municipal Manager be mandated to determine the lease amount;*
- (e) *that the Municipal Manager be mandated to take the necessary steps to ensure the drafting and finalisation of the property register and submit it to Council by not later than December 2021; and*

- (f) *that the item be brought back to Council as soon as the property register has been adopted by Council”.*

A copy of the agenda item that served before Council as well as the minutes are attached as **APPENDIX 1** and **2**, respectively.

Following the above decision, the Lessee was informed of the outcome. See letter addressed to the Lessee dated 2021-04-01, hereto attached as **APPENDIX 3**.

On 29 April the Lessee informed the Department that:-

- a) They do not accept the renewal on a month -to-month basis, for reasons set out in their letter; and
- b) That they will vacate the property by 30 June 2021, as from which date they will not take responsibility for the payment of rental, rates and taxes and/or services rendered or for the maintenance/access control of the facility;
- c) That they have informed the current tenants to vacate the premises by 30 June 2021. (See **Appendix 4**).

The long term residents then wrote a letter to indicate they do not want to vacate the property and want to take over the running of the caravan park. They are however not organised in any legal entity. A copy of their letter is attached as **APPENDIX 5**.

### 6.3 Discussion

- 6.2.1 Council now have to decide what is the way forward with the lease agreement. Some of the current long term residents through an attorney has written a letter indicating that they will not vacate the property and requesting to secure the right to continue with the lease, but they are not organised in any legal entity (**Appendix 5**). Council has requested the municipal manager to assemble a TASK team to provide a report on the different types of properties owned by Council by December 2021. This is one of the properties that will then be discussed and taken a decision on. The task team is already busy with their process. The property fall in the over R10 million category and any disposal thereof will require a public participation process that involves the publication of an information statement.

From 1 July the Municipality will have to take over the security/access control of the facility/ collecting the rent and money for people who stay in the park as well as the bookings. There is no post on the organogram or warm body for this purpose. It can be dealt with by a temporary appointment until a decision is taken after the report on the properties was decided on. The other alternative is that discussions takes place with the current supervisor/janitor and his wife to be temporary employed by the municipality. Both of these options will have a cost implications. The municipality will also have to enter into agreements with the long term occupants to regulate the rent and other services payments directly to the municipality.

In terms of the current Lease Agreement that was extended after 31 March 2021 the Lessee has the right to remove any or all temporary structures. To date the Lessee has not indicated whether she is going to remove any of the temporary structures. If the structures are not removed by 30 June 2021, all improvements will become the property of Stellenbosch Municipality.

The permanent structures are part of the caravan park's facilities that are rented out and used by temporary users of the resort. The 9 units put up by the long term tenants have been put up by themselves and does not carry any planning permission to the

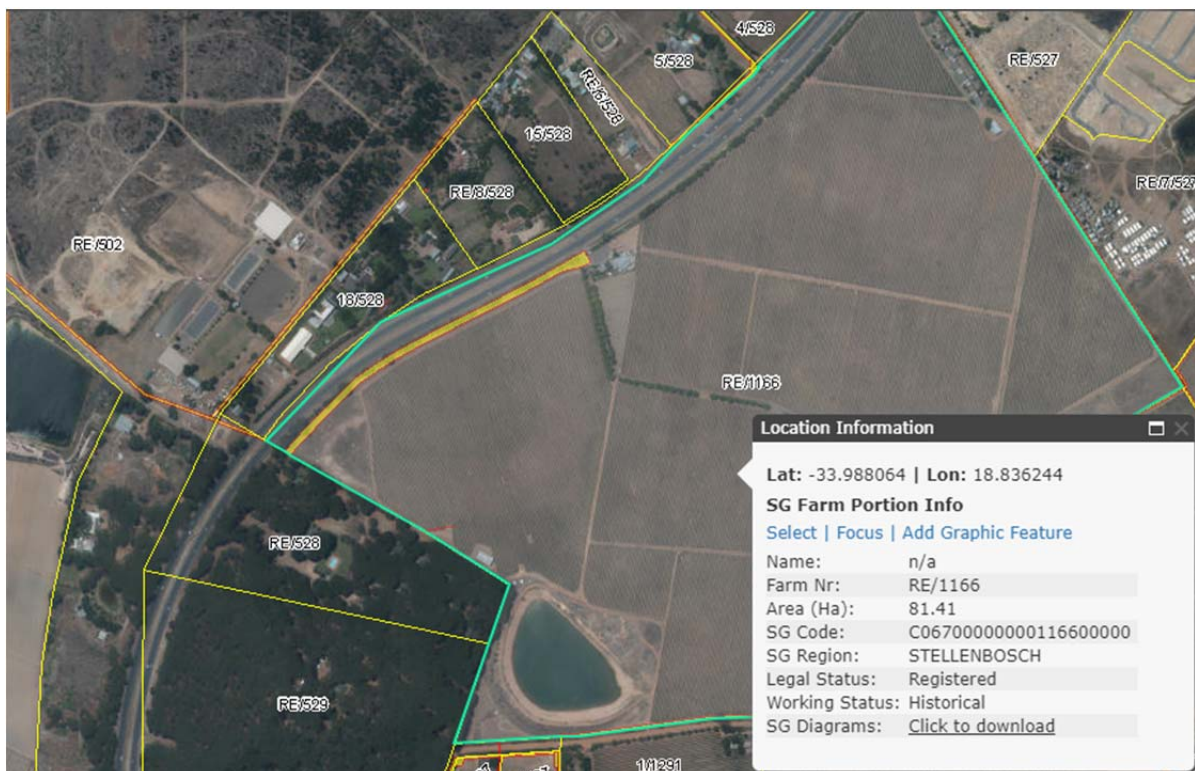
best of our knowledge. It is structures that can be relocated. These structures are in full time occupation. It is unclear if there is any rental agreements with the occupants as it was not provided to us by the lessee.

The staff houses are occupied by the workers currently employed by the lessee. It is an option to discuss with them their further employment by the municipality on a temporary basis. This will have cost implications for the municipality.

## 6.2.2 Access

Access to the property is *via* a registered servitude access off the R44, over a portion of Farm 1166, Stellenbosch as shown on Fig 3, below. A servitude was registered at the Surveyor General in 1985. The property has access to irrigation water (Theewaterskloof) and is getting drinking water from a borehole situated on the neighbouring farm 1166.

Electricity is supplied by Eskom.



**Fig 3: Access road**

## 6.2.3 Improvements

The following buildings were constructed by the Lessee during the lease period:

### 6.2.3.1 Temporary structures

#### 6.2.3.1.1 8 x Nutec Houses

Although the houses differ in size, the average size is about 150m<sup>2</sup>. The Reception Area is 1 of the houses. See figures 4-12 below. As far as we are aware the structures are not built in terms of approved building plans. House 1 is occupied by the current person who supervisor/janitor and his wife. They are employed by the lessee and will have to vacate the house if they no longer work there. The Lessee must give the

Municipality vacant occupation. The other houses are not occupied to the best of my knowledge, but an investigation will be needed to confirm that.

The 6 x Wood/Nutec Bungalows (4 small and 2 big) indicated below are also not occupied on a full time and/or long term basis, but an inspection will have to confirm their occupation. The same applies to the so call "plett caravans".



**Fig 4: Reception (part of house 1)**



**Fig 5: House 1**



**Fig 6: House 2**



**Fig 7: House 3**



**Figure 8: House 4**



Fig 9: House 5

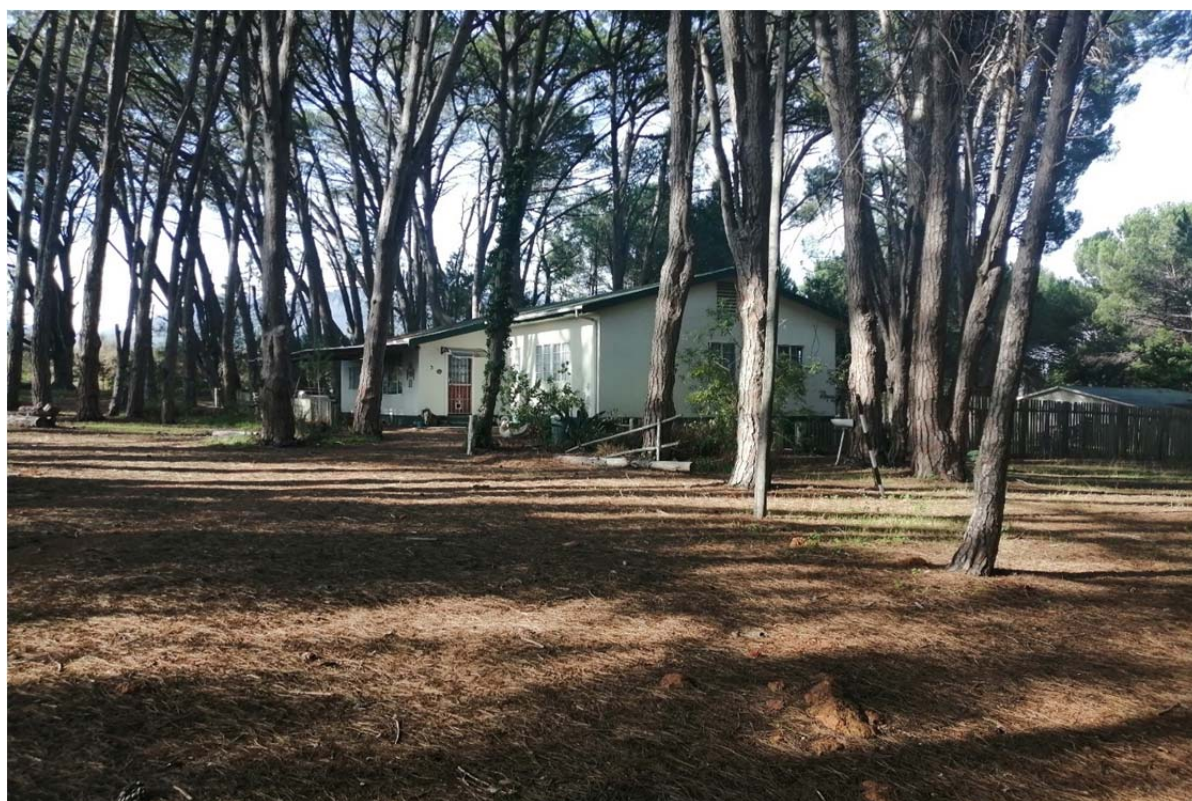




**Fig 10: House 6**



**Fig 11: House 7**



**Fig 12: House no 8**

**6.2.3.1.2 4 x Wood/Nutec Bungalows**

These units are 38m<sup>2</sup> each. See Fig 13-14



**Fig 13: Units 1 and 2**



**Fig 14: Units 3 and 4**

**6.2.3.1.3: 2 x Big Nutec Bungalows**

These units are 57m<sup>2</sup> each. See Fig 15.



**Fig 15: Units 1 and 2**

**6.2.3.1.4: 2 x Plett. Caravans**

These units are 52m<sup>2</sup> each. See Fig 16.



**Fig 16: Units 1 and 2****6.2.5.1.5 1 x Nutec Hall**

This facility is 860m<sup>2</sup> in size. See Fig 17.



**Fig 17**

**6.2.3.2 Permanent Structures****6.2.3.2.1 1 x Swimming pool with ablutions facilities**

The swimming pool is 104m<sup>2</sup>, whilst the ablution facilities are 102m<sup>2</sup>. See Fig 18.



**Fig 18: Swimming pool and ablution facilities**

**6.2.3.2.2 1 x Ablution facility**

This facility is 189m<sup>2</sup> in size. See fig 19 below.



**Fig 19: Main ablution facilities**

**6.2.3.2.3 6 X Chalets**

These units (2x3) are 80m<sup>2</sup> each. See Fig 20 and 21



**Fig 20: Units 1 and 2**



**Fig 21: Units 3 and 4**



**Fig 22: Units 5 and 6**

**6.2.3.4.1 2 x Staff houses**

**These units are 45m<sup>2</sup> and 130m<sup>2</sup> respectively. See fig 23 below.**



**Fig 23: Units 1 and 2**

### 6.2.5.3 Temporary Structures put up by tenants

There are 9 temporary units that were put up by tenants. See Fig 24-32



Fig 24: Unit 1



Fig 25: Unit 2





Fig 26: Unit 3



Fig 27: Unit 4



Fig 28: Unit 5



Fig 29: Unit 6



Fig 30: Unit 7



Fig 31: Unit 8



Fig 32: Unit 9

#### 6.2.5.4 Caravan/Camping stands

A total of 60 sites have been developed with electrical points and shared water points.  
See fig 33 below.



**Fig 33: Camping sites****6.2.6 Staff implications.**

There are 4 permanent staff members, being the maintenance Manager and his wife, working at Reception and two labourers. They are employed by the lessee. All the staff members are currently residing on the property, but were given notice by the current Lessee to vacate the property by 30 June 2021. The municipality do not have any staff to maintain the property or operate the operational aspects thereof and it is an option to negotiate with the staff to stay on, on a temporary basis until the finalisation of a decision on the future of the park.

**6.2.7 Current rental payable**

The current rental payable is R47 873.59 per annum. A valuer has, in the mean-time been appointed to advise Council on a new, market related rental. We await the valuation report.

**6.2.8 Legal requirements**

Depending on whether Council is considering the disposal of the asset or whether to award long term rights various sections/regulations of the Municipal Finance Act, No 56 of 2003, (MFMA), the Asset Transfer Regulations (ATR) and the Municipality's Policy on the Management of Council owned property, will apply.

**6.2.8.1 Disposal of fix properties****6.2.8.1.1 Municipal Finance Management Act (MFMA)**

In terms of the Section 14 of the MFMA,

*“A municipality may not transfer ownership as a result of a sale or other*

*transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.*

*(2) A municipality may transfer ownership or otherwise dispose of a capital asset*

*other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public—*

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

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

*(3) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.*

*(4) Municipal council may delegate to the accounting officer of the municipality its*

*power to make the determinations referred to in subsection (2)(a) and (b) in respect of movable capital assets below a value determined by the council.*

*(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111”.*

#### **6.2.8.1.2 Asset Transfer Regulations (ATR)**

In terms of Regulation 5 of the ATR

*“(1) A municipality 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 the 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.*

*(2) Sub regulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value capital asset” (i.e. in excess of R50M)”.*

#### **6.2.8.1.3 Policy on the Management of Council owned property**

In terms of paragraph 7.2.3 (general principles pertaining to the disposal of immovable property), of the policy;

*“Before alienating Immovable property or rights in Immovable property the Municipality shall be satisfied that alienation is the appropriate methodology and that reasonable economic, environmental and social return cannot be derived whilst ownership of the Immovable property or Property rights is retained by the Municipality”.*

Further in terms of paragraph 8 of the policy:

*“ 8.1 Before an Immovable property is declared as surplus, and earmarked for disposal or the awarding of rights, it must first be assessed for its most appropriate use.*

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

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

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

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

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

8.5 *Where appropriate, opportunities should be provided for community involvement in the assessment process”.*

*Further, Subsequent to determining the most appropriate use of a property and after the Municipality has decided that the Immovable property could be disposed of, or that rights may be awarded, the method of disposal or method of awarding rights should be determined”.*

In terms of paragraph 9.1 the Municipality may use any of the following methods, depending on the circumstances pertaining the specific Immovable property:

Tender process

- a) Auction
- b) Call for proposals (will include a tender process)

#### **6.2.8.2 Granting of rights to use, Control or Manage a Capital asset**

##### **6.2.8.2.1 Asset Transfer Regulations (ATR)**

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”.*

In considering options Council must treat the property as a property that falls within this category valued in excess of R10M.

- 
- “3)a) *Only a Municipal Council may authorise the public participation process referred to in sub-regulation*
- 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 must consider its options and decide on the future use of the property.

#### **6.2.8.2.2 Policy on the Management of Council owned property**

In terms of paragraph 7.2.1, *“unless otherwise provided for in the policy, the disposal of viable immovable property shall be affected by means of a process of public competition”.*

In terms of paragraph 9.1.1 of the Policy,

*“The type of a formal tender may vary, depending on the nature of the transaction:*

- i) *Outright tender may be appropriate where the Immoveable property ownership is not complex, and the Municipality is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.*
- ii) *Qualified tenders/call for proposals will be appropriate where the Immoveable property ownership position is complex or the development proposals for the Immoveable property are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.*
- iii) *Call for proposals on a build-operate transfer (B.O.T) basis will be used if a developer is required to undertake the construction, including the financing, of a facility on Municipal-owned land, and the operation and maintenance thereof. The developer operates the facility over a fixed term during which it is allowed to charge facility users appropriate fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract, to enable the developer to recover its investment and operating and maintenance expenses in the project. The developer transfers the facility to the municipality at the end of the fixed term.*

*Such a process may, depending on the nature of the transaction, include a two-stage or two- envelope bidding process (proposal call) in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.*



**6.6 Financial Implications**

The short term financial implications turns around the management of the property and involves staff to run the operations, the rent paid by the long term residents as well as the services on the property and the short term holiday makers/visitors to the park.

**6.7 Previous / Relevant Council Resolutions**

On 2021-03-31 as indicated in par. 6.1.2 (*supra*)

**6.8 Risk Implications**

The municipality must place a process in place to deal with the management of the caravan park after 30 June 2021. The municipality does not have human resources in place to manage the park. A temporary appointment of a supervisor can be put in place should the municipality need to deal with the management ourselves after 30 June 2021. The rights of long term residents are a complication that may involve some legal advice on how to proceed should council want to do away with the long terms occupations in the park.

The task team is already busy with their process and it might not be the right time now to make a long term decision on the future of the property. The property fall in the over R10 million category and any disposal thereof will require a public participation process that involves the publication of an information statement. To enter into an agreement with a group of people that are not organised in a legal entity might also be risky.

**6.7 Comments from Senior Management**

Due to the urgency of the item no comments was requested

**ANNEXURES:**

**APPENDIX 1:** Agenda item

**APPENDIX 2:** Minutes

**APPENDIX 3:** Letter to Lessee

**APPENDIX 4:** Letter from Lessee

**APPENDIX 5:** Letter from Attorney

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Annalene de Beer</b>
<b>POSITION</b>	<b>Director: Corporate Services</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088018</b>
<b>E-MAIL ADDRESS</b>	<b>Annalene.deBeer@stellenbosch.gov.za</b>
<b>REPORT DATE</b>	<b>13-05-2021</b>

# APPENDIX 1



Collaborator No:

*(To be filled in by administration)*

IDP KPA Ref No:

**GOOD GOVERNANCE**

Meeting Date:

17 and 31 March 2021

**1. SUBJECT**

**LEASE PORTIONS 528A AND 529CC: MOUNTAIN BREEZE CARAVAN PARK**

**2. PURPOSE**

The purpose of this report is to inform council that the current lease agreement comes to an end on 31 March 2021. Council has to resolve on a way forward.

**3. DELEGATED AUTHORITY**

The Municipal Council must consider the matter. The property is worth more than 10 Million Rand.

**4. EXECUTIVE SUMMARY**

Stellenbosch Municipality and Stellenbosch Caravan Park cc (Malan) concluded a long term Lease Agreement during 1992 for a period of 30 years (1 April 1991-31 March 2021) This Lease Agreement was later ceded to the Mountain Breeze Caravan Park cc (Visser). The lease Agreement will expire on 31 March 2021. The current Lessee send a letter attached as **APPENDIX 6** expressing her interest to continue with a lease provided that it is a 10 year period to get some returns on investment.

A letter and email was also received from a one of the persons occupying a stand on a long term basis requesting to rent the land from Council – **APPENDIX 7**.

Council must now decide on how to deal with this property, i.e. whether to dispose of it, or enter into a further rental agreement with the current lessee or someone else or use the property for another purpose. A decision also needs to be taken on the short term process (after March 2021) until a final decision has been reached.

The item was discussed at the January 2021 Mayco meeting and further information was requested and the item referred back.

Attached hereto please find **Appendix 8**, a further letter from Me Sonnekus, writer of appendix 7, is also attached providing some information on the people living on the land. **Appendix 9** is an email response received from the current lessee on the questions raised in Mayco. The rates are paid up and we could find no approval of building plans. We therefore have to deduct that the structures were not approved by the Building plan section. Proof of the current members of the close corporation is attached as **Appendix 10**. The Executive Mayor requested the Municipal Manager to provide a report categorising all council properties by December 2021 to enable the Council to make a determination on how the different categories of properties should be dealt with.

## 5. RECOMMENDATIONS

For Consideration

## 6. DISCUSSION / CONTENT

### 6.1 Background

#### 6.1.1 Existing Lease Agreement

Stellenbosch Municipality and Stellenbosch Caravan Park cc (C.P Malan) concluded a long-term Lease Agreement on 18 May 1992 for the period 1 April 1991 to 31 March 2021.

This Lease Agreement, however, was later ceded to the Mountain Breeze Caravan Park cc (R.P. Visser) during 1995.

Copies of the Lease Agreement, as well as the Cession and Assignment Agreement are attached as **APPENDICES 1 and 2**, respectively.

#### 6.1.2 Current Lessee

The current Lessee, Mrs Visser, she indicated that she would be interested in a further lease period.

The long term residents in the park has also expressed an interest to rent the properties they currently occupy.

Council must now decide on the most appropriate use of the property and should Council consider the disposal or awarding of long term rights (lease agreement). See paragraph 6.2.9 for a more detailed discussion on the various options.

# APPENDIX 2

11.2.1	<b>LEASE PORTIONS 528A AND 529CC: MOUNTAIN BREEZE CARAVAN PARK</b>
--------	--------------------------------------------------------------------

Collaborator No:	702286
IDP KPA Ref No:	Good Governance
Meeting Date:	24 March 2021

1. **SUBJECT: LEASE PORTIONS 528A AND 529CC: MOUNTAIN BREEZE CARAVAN PARK**

2. **PURPOSE**

To inform Council that the current lease agreement comes to an end on 31 March 2021. Council has to resolve on a way forward.

3. **DELEGATED AUTHORITY**

The Municipal Council must consider the matter. The property is worth more than 10 Million Rand.

4. **EXECUTIVE SUMMARY**

Stellenbosch Municipality and Stellenbosch Caravan Park cc (Malan) concluded a long term Lease Agreement during 1992 for a period of 30 years (1 April 1991-31 March 2021)

This Lease Agreement was later ceded to the Mountain Breeze Caravan Park cc (Visser).

The lease Agreement will expire on 31 March 2021. The current Lessee send a letter attached as **APPENDIX 6** expressing her interest to continue with a lease provided that it is a 10 year period to get some returns on investment.

A letter and email was also received from a one of the persons occupying a stand on a long term basis requesting to rent the land from Council – **APPENDIX 7**.

Council must now decide on how to deal with this property, i.e. whether to dispose of it, or enter into a further rental agreement with the current lessee or someone else or use the property for another purpose. A decision also needs to be taken on the short term process (after March 2021) until a final decision has been reached.

The item was discussed at the January 2021 Mayco meeting and further information was requested and the item referred back.

Attached hereto please find **APPENDIX 8**, a further letter from Me Sonnekus, writer of appendix 7, is also attached providing some information on the people living on the land. **APPENDIX 9** is an email response received from the current lessee on the questions raised in Mayco. The rates are paid up and we could find no approval of building plans. We therefore have to deduct that the structures were not approved by the Building plan section. Proof of the current members of the close corporation is attached as **APPENDIX 10**. The Executive Mayor requested the Municipal Manager to provide a report categorising all council properties by December 2021 to enable the Council to make a determination on how the different categories of properties should be dealt with.

**41<sup>ST</sup> COUNCIL MEETING: 2021-03-31: ITEM 11.2.1****RESOLVED** (majority vote)

- (a) that lease portions 528a and 529cc, known as Mountain Breeze Caravan Park, be identified as land not needed for own use during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulations;
- (b) that the lease agreement be extended on a month-to-month basis until a property register has been compiled and considered by Council to determine the future of Council properties per category;
- (c) that the lessee be informed to strictly adhere to the conditions of the lease agreement;
- (d) that the Caravan Park pay their municipal account and that the Municipal Manager be mandated to determine the lease amount;
- (e) that the Municipal Manager be mandated to take the necessary steps to ensure the drafting and finalisation of the property register and submit it to Council by not later than December 2021; and
- (f) that the item be brought back to Council as soon as the property register has been adopted by Council.

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

*Cllr F Adams; FT Bangani-Menziwe (Ms); G Cele (Ms); C Moses (Ms); RS Nalumango (Ms); N Sinkinya (Ms); P Sitshoti (Ms) and LL Stander.*

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Piet Smit</b>
<b>POSITION</b>	<b>Manager: Property Management</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088189</b>
<b>E-MAIL ADDRESS</b>	<a href="mailto:Piet.smit@ Stellenbosch.gov.za">Piet.smit@ Stellenbosch.gov.za</a>
<b>REPORT DATE</b>	<b>08.03.2021</b>

# APPENDIX 3





2021-04-01

Our Ref:M/Breeze

Mountain Breeze Caravan Park  
Post Suite 94  
Private Bag X4  
Die Boord  
Stellenbosch  
7613

Dear Mrs Visser

**RENEWAL OF LEASE AGREEMENT: LEASE PORTIONS 528 A AND 529CC: MOUNTAIN BREEZE CARAVAN PARK**

As you are aware, the Lease Agreement between Stellenbosch Municipality and yourself has lapsed on 31 March 2021.

I am, however, pleased to inform you that Council has considered your application for the renewal of the Lease Agreement on 31 March 2021, and has decided as follows:

***41<sup>ST</sup> COUNCIL MEETING: 2021-03-31: ITEM 11.2.1  
RESOLVED (majority vote)***

- “(a) that lease portions 528a and 529cc, known as Mountain Breeze Caravan Park, be identified as land not needed for own use during the period for which such rights are to be granted, as provided for in Regulation 36 of the Asset Transfer Regulations;*
- (b) that the lease agreement be extended on a month-to-month basis until a property register has been compiled and considered by Council to determine the future of Council properties per category;*
- (c) that the lessee be informed to strictly adhere to the conditions of the lease agreement;*
- (d) that the Caravan Park pay their municipal account and **that the Municipal Manager be mandated to determine the lease amount\***;*
- (e) that the Municipal Manager be mandated to take the necessary steps to ensure the drafting and finalisation of the property register and submit it to Council by not later than December 2021; and*
- (f) that the item be brought back to Council as soon as the property register has been adopted by Council”.*

**\*Please note** that the Municipal Manager has not yet made a determination in this regard. I will inform you as soon as a determination has been made in this regard.



Please indicate in writing whether you are in agreement with these interim arrangements. Should you be in agreement, a new Lease Agreement will be have to be concluded.

I await your feedback in this regard.

Yours faithfully

.....  
**PIET SMIT**

**MANAGER: PROPERTY MANAGEMENT**

cc: Municipal Manager

# APPENDIX 4

*Mountain Breeze Caravan Park**Post Suite 94, Private Bag X4, Die Boord, Stellenbosch, 7613**Tel:021 8800200 Cell: 0826822412**Email: mountainbreezeresort@adept.co.za**CC reg no: 1996/002627/23**V.A.T. 4950154866*

28 April 2021

Beste Piet,

**Mountain Breeze Karavaanpark – sluit op 30 Junie 2021**

Ek het werklik my bes probeer om die Raad se situasie met betrekking tot die Karavaanpark te akkommodeer en Mountain Breeze Karavaanpark, ten spyte van al die onsekerhede rondom die termynverlenging, steeds te bedryf.

Grotendeels as gevolg van die Raad se versuim om duidelike riglyne oor die toekoms te kan opstel, goedkeur en aan my te voorsien, is dit onmoontlik om, soos in die verlede, besprekings op langertermyn te kon aanvaar. n Maand tot maand termyn is beslis nie n aanvaarebare opsie in hierdie bedryf nie. Voornemende besoekers wil sekerheid hê ten opsigte van besprekings – veral vir die groot vakansietye. As dit nie gegee kan word nie, bespreek hulle elders.

My besprekingsboek is vorentoe leeg en daar is gevolglik nie genoeg inkomste waarmee die Karavaanpark bedryf kan word nie en salarisse betaal kan word nie. Covid het ook verdere negatiewe gevolge op die toerisme bedryf gehad en het nog steeds.

Kortom, die ongelukkige realiteit is dat Mountain Breeze Karavaanpark BK nie langer finansieël volhoubaar is nie.

Om hierdie redes lig ek die Raad in dat ek op 30 Junie 2021 Mountain Breeze Karavaanpark BK gaan sluit en die perseel ontruim. Vanaf 1 Julie 2021 is die BK dus nie meer aanspreeklik vir enige bedryfsake van die perseel nie. Dit sluit in (maar is nie beperk tot):

- Betaal van eiendomsbelastingbelasting en huurgeld nie.
- Elektrisiteitsvoorsiening.
- Sekuriteit en Beveiliging.
- Riolering.
- Vullisverwydering.
- Watervoorsiening (o.a. Wynlandse Streekdiensraad).
- Terrein instandhouding en ander bedryfsonkoste

Ek het, soos deur Piet Smit voorgestel, al die langtermyn inwoners in September 2020 reeds kennis gegee om die perseel teen einde Feb/Maart 2021 te verlaat aangesien die BK se huurtermyn dan sou verstryk. Die Munisipaliteit se onsekere uitsprake m.b.t. die Karavaanpark se toekoms, het egter tot gevolg dat hul steeds hier bly. (Terloops, hulle het nog geen ander heenkome nie.)

Ek vertrou dat die Raad my situasie sal verstaan en bedank ook graag die Raad van Stellenbosch Munisipaliteit, sowel as die amptenare van die Munisipaliteit met wie die Mountain Breeze BK oor soveel jare 'n goeie werksverhouding kon handhaaf. Dit was 'n voorreg en plesier om die Karavaanpark vir so baie jare in hierdie uitsonderlike deel van ons pragtige land te kon bedryf.

Vriendelike groete,

Jeanine Visser  
Nms Mountain Breeze Karavaanpark BK

# APPENDIX 5



---

<b>To:</b>	Stellenbosch Municipality	<b>Our Ref.:</b>	MBLR/107/01/ww
<b>Attention:</b>	Mr Piet Smit	<b>Date:</b>	12 May 2021
<b>Copy To:</b>	Ms Annalene de Beer	<b>Your Ref.:</b>	LEASE PORTIONS: 528A & 529CC
<b>Via Email:</b>	Piet.Smit@stellenbosch.gov.za Annalene.deBeer@stellenbosch.gov.za		

Dear Sir / Ma'am

**ITEM: PROPERTY: LEASE PORTIONS 528a AND 529cc: LONG TERM LEASE AGREEMENT: MOUNTAIN BREEZE CARAVAN PARK**

We refer to the above matter.

We hold instructions to write this letter on behalf of the permanent residents and staff of the Mountain Breeze Caravan Park, situated on Route 44, Stellenbosch ("our clients").

We refer to numerous email correspondence addressed to you from a concerned resident, Ms Dome Sonnekus. We were placed in possession of said correspondence, also copies of the minutes of Mayoral Committee Meetings.

It is our instructions that Ms De Beer indicated that she was willing to deal with the altering circumstances, should same be placed as an item before Mayco.

It is our instructions, to request from the Committee, as we hereby do, an opportunity for writer and Ms Dome Sonnekus to address the Committee during the next Mayco. Alternatively, since our clients have certain legit concerns and meaningful proposals, we believe it would be in all the parties' best interest for us to discuss this serious and urgent situation with you or Ms De Beer, prior to the meeting next week.

The current permanent residents and employees are all eager to be part of our proposal to rescue their homes and secure their employment. According to our instructions, they are all extremely concerned about the future of their homes and employment since the current lessee gave written notice of her intention to terminate the going concern on the 30<sup>th</sup> of June 2021.

Our request is for you and Ms De Beer to afford my clients an opportunity to salvage the situation and present you with a solution. We will assist our clients throughout the process and will ensure that all sections / regulations of the Municipal Finance Act, No 56 of 2003, the Asset Transfer Regulations, and the Municipality's Policy on the Management of Council owned property be adhered to.

Our clients herewith formally apply for the long-term rental proposal to be transferred to a new entity. Our clients appointed Ms Sonnekus to manage their concerns and it is consequently our instructions to immediately register a propriety limited company, should the application be approved. The detail still needs to be discussed. The new entity shall apply for the electricity privileges, to distribute to the residents and campers / visitors. The matter of electricity supply and management thereof became an urgent concern as the residents are completely unsure as to the supply of electricity following the current lessee's exit.

We respect that, under normal circumstances, a public participation process needs to be followed, whereafter Council considers the most appropriate way forward. However, considering the potential prejudice to our clients and the risk of damaging the business potential of the park, it is our respectful submission that due to urgency, it would be in public interest, permanent residents, and employees, should our clients be formally exempted from said process and to condone our client's application.

The purpose of this letter is to establish a direct line of communication and to apply for the long-term lease agreement between the Stellenbosch Municipality and the planned propriety limited company. It is further our instruction to discuss the proposals on the way forward, and to address the realistic concerns, i.e., the position of the permanent residence, some who have been residing on the property for more than 33 years.

Although the park was not intended to be a settlement, in the current lease agreement, it was agreed that 10% of the park be allocated for permanent occupation. Since permanent occupation was agreed to, it realistically led to permanent structures being erected. The lessor (your lessee) was at all material times aware of the structures and collected a monthly levy from the residents. The plots, on which the structures were erected, were rented out in terms of a written lease agreements, duly



signed by the lessor. This was confirmed by the lessor in her email to yourself dated 5 February 2021. The homes, even if it was considered movable property, were bought, and sold at market related prices.

With reference to the Mayco meeting held earlier this year, our clients have concerns regarding their immediate future. Our clients, some elderly, parents, young children, toddlers and disabled, are concerned as their livelihood depends on the committee's decision on how to deal with the property, *to wit* the premises on which the current entity know as Mountain Breeze Caravan Park, is situated.

The proposed options were as follows:

- (i) To dispose of it
- (ii) To enter into a further rental agreement with the current lessee
- (iii) Or someone else
- (iv) Or use the property for another purpose.

Ad Option (i) and (iv)

We believe that disposing of the park or using it for another purpose would not be in the public interest. There is sufficient potential for profit, justifying a new entity to continue with the park as an ongoing attraction.

Every town should have a caravan park, and the park, under new management, can function as a successful tourist attraction, a haven for locals and a fun place to visit. Large groups of caravan clubs and school groups used to support the park. Emphasis will be placed on developing more attractions, involving the local residents and current employees.

The possibility of attracting more day visitors, especially during the Winter season, is being considered (with due consideration of Covid-19 Safety Regulations). The entity is in the process of doing a proper due diligence and sustainability study. An investor showed interest in providing the necessary funding for this project.

We respectfully request the Committee, for the reasons provided above, not to dispose of the property or to use it for another purpose.

Ad Option (ii)

Since the current lessee indicated in writing her intention not to continue with management of the property, that this option is no longer possible. The current lessee was adamant that she no longer shows an interest to continue with the lease.

Ad Option (iii)

It is our instructions to place on record that, as stated above, the local residents democratically appointed representatives who are ready to register a company to deal with the Municipality, as a registered entity. The company will take full responsibility of the park's management and will upgrade the premises and develop new attractions, improve social media exposure, etc.

To continue with the park under new management will not only show to be a profitable venture, a tourist attraction, and a place of leisure for the locals, but it will ensure that plenty of people will be able to continue with their employment.

The new proposal will include positions that will involve the residents who show interest and capacity. We were instructed to be involved and assist the appointed representative, Dome Sonnekus, with the management, development, administration, and legal aspects pertaining to the park. Our clients are eager to sign a long-term lease agreement and to re-launch the property as a popular resort. The entity undertook to facilitate all expenses involved in the transfer of the contract, electricity privileges and other costs this agreement may entail.

Our instructions are that the entity is in a position, financially and otherwise to continue with the operations of the park. The employees, who we also represent, agreed to continue with providing their services until such time new contracts are signed with the new entity.

We were also instructed to assist with new contracts of employment which we will have in place within 7 days after launching of the new park. The new entity will comply with SA labour legislation.

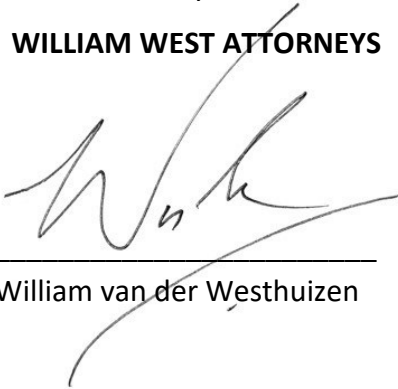
The new entity undertakes to strictly adhere to the conditions of the lease agreement and other relevant rules and regulations.

Since the current lease agreement comes to an end on the 30<sup>th</sup> of June 2021, our clients seek an urgent solution regarding the supply of electricity, safety of the premises, management of staff, etc. as there will be a need for same prior to a decision being made in December 2021. The new entity will adequately deal with all these concerns.

We ask that you give our requests your favourable consideration and await your response.

Yours faithfully

**WILLIAM WEST ATTORNEYS**

A handwritten signature in black ink, appearing to read 'WvdW', is written over a horizontal line. A long, sweeping flourish extends from the bottom of the signature across the line.

William van der Westhuizen

7.2.6	PROPOSED LEASE AGREEMENT: ERF 4, LA MOTTE: NEW APOSTOLIC CHURCH: LA MOTTE
-------	---------------------------------------------------------------------------

Collaborator No:

IDP KPA Ref No:

Meeting Date:

**GOOD GOVERNANCE**

**19 May 2021**

**1. SUBJECT:PROPOSED LEASE AGREEMENT: ERF 4, LA MOTTE: NEW APOSTOLIC CHURCH: LA MOTTE**

**2. PURPOSE**

To consider an application (unsolicited) from Mr James Eksteen, the Leader of the New Apostolic Congregation in La Motte, to use the facility on erf 4, La Motte, for church services.

**3. DELEGATED AUTHORITY**

In terms of the approved System of Delegations, the Executive Mayor, in consultation with the Executive Mayoral Committee, can consider applications for the lease of council-owned property for a period shorter than 10 years and a contract value of less than R5M.

**4. EXECUTIVE SUMMARY**

An application has been received from the La Motte New Apostolic Congregation to use the facility on erf 4, La Motte for church purposes.

The policy on the Management of Council-owned properties allow for direct leases without following the supply chain process under specific circumstances. Paragraph 9.3 (letting of immovable property to social care uses) list the types of social care uses where unsolicited bids can be entertained, this include "*Place of worship*". The application does not flow from any public participation process not have they occupied the property previously on a rental basis. The property was donated to the Stellenbosch Municipality by the Cape Winelands District Council, but have not been transferred to Stellenbosch Municipality. The Municipality therefore has no legal standing to award any short—or long term rights on the property and will have to ask the Cape Winelands District Municipality for authority to award short term rights until the property is transferred.

The municipality took possession of the property in 2007 and all risks passed to the municipality on taking possession. The transfer did not take place as the Seller is responsible for the transfer and appointing the transferring attorney. There has been issues with the payment of the transferring attorneys by Stellenbosch Municipality as we did not appoint the transferring attorney's. We have agreed with the District Municipality now to appoint the transferring attorneys and they will attend to the transfer shortly.

**5. RECOMMENDATIONS**

- (a) that it be noted that the old clinic site on the portion of erf 104 La Motte is not needed for the provision of municipal services for the period of the proposed lease;
- (b) that it is noted that the municipality is not the owner of the property yet and that the municipal manager be authorised to request the necessary authorisation from the Cape Winelands District Municipality to enter into a short term lease with the New Apostolic Congregation in La Motte until the transfer has taken place;

- (c) that a month -to month lease agreement be approved in principle until the transfer has been approved;
- (d) that the municipal manager be authorised to enter into negotiations with the church to determine a suitable rent taking into account any investment the church will make into the site as well as their status as a church under the provisions in the policy associated with non-profit organisations and churches.; and
- (e) that the item be brought back to council after the registration of the properties to Council.

## 6. Discussion

### 6.1 Ownership

Although Erf 4, La Motte, was donated to Stellenbosch Municipality by the Winelands District Municipality in 2009, the property has not yet been transferred to the Municipality. The Municipality therefore has no legal standing to award right on the property.

#### 6.1.1 Historic use of building

The Provincial Government (Public Health) used the facility as a clinic, but has recently indicated that they are not going to use it anymore, due to ongoing vandalism of the building. They are experiencing a lot of vandalism and do not want to continue use.

#### 6.1.2 Discussion

##### 6.1.2.1 Application for Lease Agreement

Hereto attached as **APPENDIX 1** a self-explanatory letter/application received from the New Apostolic Church in La Motte, requesting the use of the facility for church purposes.

##### 6.1.2.2 Location and context

The property is situated in the North-Western corner of La Motte,, as shown on Fig 1 and 2, below.

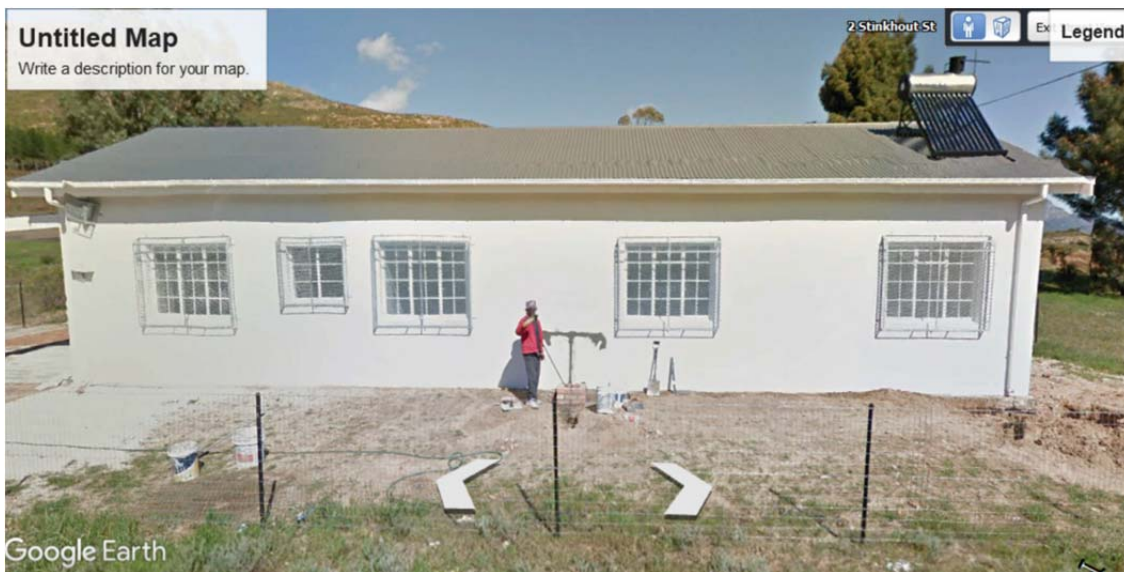


**Fig 1: Location and context**



**Fig 2: The site**

The site is 1061m<sup>2</sup> in extent. Improvements include a building of ±45m<sup>2</sup>, as shown on Fig 3, below.



**Fig 3: The building**

The current zoning of erf 4 is Local Business zone.

### 6.1.2.3 Legal requirements

#### 6.1.3.3.1 Asset Transfer Regulation

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- c) The Accounting officer has concluded a public participation process\*; and
- d) The municipal council has approved in principle that the right may be granted. \*Sub regulation (1) (a) (public participation process), however, must be complied with only if-
  - The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and

- A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- whether such asset may be required for the municipality's own use or to provide basic services during the period for which such right is to be granted;
- the extent to which any compensation to be received will result in a significant economic or financial benefit to the municipality;
- the risks and rewards associated with such right to use; and
- the interest of the local community

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality may grant the right only in accordance with the disposal management system\* of the municipality, irrespective of:-

- the value of the asset; or
- the period for which the right is granted

\*The policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's disposal management System.

#### **6.1.3.3.2 Policy on the Management of Council owned property**

In terms of paragraph 9.3.2 of the Policy, the Municipal Council reserves the right to entertain unsolicited bids for the lease of viable immovable property for social care uses. Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations and include homes/centres for indigent, battered or destitute persons.

In terms of par 22.1.1 the Municipality shall be entitled to adopt below market-related tariffs for properties leased to non-profit organisations.

In terms of paragraph 22.1.4 the fair market rentals will be determined by the average of the valuations sourced from service providers, unless determined otherwise by the Municipal Manager taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

Seeing that the applicant is a NPO it is recommended that they pay 10% of market rental, to be determined by the Municipal Manager.

#### **6.2 Financial Implications**

The maintenance and extreme vandalism at the site as well as the rent must be considered.

#### **6.3 Legal Implications**

The municipality is not the legal owner of the property and has no legal standing to award any rights in regard to the property.

**6.4 Staff Implications**

There are no staff in La Motte to maintain or supervise the property.

**6.5 Previous / Relevant Council Resolutions**

None

**6.6 Risk Implications**

Vandalism is apparently a major risk.

The Municipality is not the legal owner of the property.

**6.7 Comments from Senior Management.**

Item was not circulated for comments

**ANNEXURES:**        **Appendix 1: Application**  
                           **Appendix 2: Donation agreement**

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Annalene de Beer</b>
<b>POSITION</b>	<b>Director: Corporate Services</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088018</b>
<b>E-MAIL ADDRESS</b>	<b>Annalene.deBeer@stellenbosch.gov.za</b>
<b>REPORT DATE</b>	<b>2021-05-17</b>



# APPENDIX 1

**Verseok om Kliniek gebou tegebruik vir geestelike byeenkomste**

Geagte Meneer/Mevrou ,

Ons as die Nuwe Apostoliese gemeente in La Motte bosbou sit nou al vir amper 40 jaar sonder n geskikte gebou om vreedsaam Godsdienste en byeenkomste tehou. Ons ledetal het drasties verminder en die sosiale en ekonomiese toestand van ons lede kan nie effektief na gekyk word nie. Na vele versoek oor geboue en die gemeentskapsaal, het ons nou die kliniek as laaste opsie geidentifiseer omdat dit net Donderdae funksioneer en leeg staan ander dae en die gebou is blootgestel aan vandelisme ensvoorts. Ons versoek die volgende indien moontlik;

- Godsdienste Sondag en voorbereiding 7:30am – 10:30am
- Godsdienste Woensdae en voorbereiding 18:30pm – 20:30pm
- Dinsdae koor oefening 19:00pm – 19:45pm
- Indien moontlik Vrydae vir n uur voedingskema , jeug of berading 19:00pm – 20:30pm

Ons sal die volgende terugploeg indien die kans gegun word.

1. Opknapping van gebou en heining.
2. Skoonhou van terein (tuin begin) en toesig.
3. Sekuriteit opknop.
4. Kliniek area isoleer - GEEN TOEGANG
5. Skoonmaak en gebou gereeld saniteer as ook " Pest Control"
6. Herstelwerk waar nodig.

Ons hoop dat die versoek n positiewe terugvoering sal kry.

Groete

Priest James Eksteen

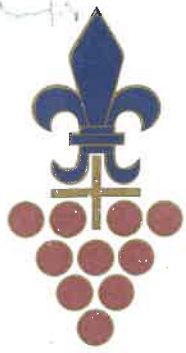
Gemeente Leier

( Tel ) 0214447829

( Sel ) 0824681040

[eksteen.jamnes@gmail.com](mailto:eksteen.jamnes@gmail.com)

# APPENDIX 2



Ons verw.: 7/2/1/1/residential franschhoek  
(Piet Smit tel.: 021-808 8028)

2007-05-24

Die Munisipale Bestuurder  
Kaapse Wynland Distriksmunisipaliteit  
Posbus 100  
STELLENBOSCH  
7600

Aandag: Faarieg Rhode

Geagte Meneer

**SKENKINGSAKTE: VERSKEIE EIENDOMME: LA MOTTE EN WEMMERSHOEK**

Aangeheg die getekende skenkingsakte, soos versoek.

In terme van klousule 2, neem ons okkupasie op datum van ondertekening van die ooreenkoms.

In dié verband het ek gereël dat Adv. Hanlie Linde, die verantwoordelike Direkteur vir gemeenskapsale, met u kontak om die fisiese oordrag-reëlings met u te bespreek.

Indien daar enige van die eiendomme is wat tans verhuur word, geliewe die inligting en kontakbesonderhede aan my deur te gee.

Baie dankie vir u moeite in die verband.

Ons verneem graag van u.

Die uwe

PIET SMIT

Kopie: Adv. Hanlie Linde  
Ian Kenned  
Kotie Kruger

## DEED OF DONATION

MADE AND ENTERED INTO BY AND BETWEEN

### CAPE WINELANDS DISTRICT MUNICIPALITY

(hereinafter referred to as "the Donor")

herein represented by **Gwebinkundla Felix Qonde**, duly authorized thereto in his capacity as **Deputy Municipal Manager** in terms of **Clause L.7.03** of the **System of Delegations** adopted by the Donor at **Item C.4.13** during the Council meeting on **31 March 2006**, to sign this deed on behalf of the said Donor; and

### STELLENBOSCH MUNICIPALITY

(hereinafter referred to as "the Donee")

herein represented by **David Peter Daniels** in his capacity as **Municipal Manager**, being duly authorised.

WHEREAS the Donor is the owner of certain immovable properties in the townships of La Motte and Wemmershoek which fall within the area of jurisdiction of the Donee;

  
Handwritten signatures and initials: a vertical signature, a signature with 'G.F.' below it, a signature with 'D.P.' below it, and the initials 'PT' at the bottom.

AND WHEREAS the Donee, in terms of Schedules 4B and 5B of the Constitution of the RSA of 1996, is the local authority responsible for the rendering of the services related to the functions earmarked for the various properties;

NOW THEREFORE the Donor hereby donates and the Donee hereby receives and accepts the properties, together with all erections and structures thereon, as indicated on Annexure "A" to the deed (hereinafter referred to as "the properties"), subject to the following terms of conditions :

1. The Donee receives the properties on a "voetstoots" basis and to the extent such as it now lies according to the General Plan or as physically identified in terms of the existing demarcations and the Donor gives no warranty in regard thereto. The Donee furthermore indemnifies the Donor against any material errors, encroachments or other deficiencies on or under any of the properties.
2. Occupation and possession of the property and improvements thereon shall be given by the Donor to the Donee and shall be taken by the Donee on the date of signing of the deed by the last party, as from which date the Donee will be liable for all applicable service charges and any other imposts in respect of the property which may become payable from time to time.
3. The risk attaching to the property and improvements thereon shall pass to the Donee on the date of signing of the deed by the last party and the Donor shall, under no circumstances, be liable for loss of, or damage to property, or for damage resulting from personal injury or death caused to the Donee or any other person on any of the properties, in whatever way such loss or damage, or personal injury or death was caused.

3/4. The...



Handwritten signatures and initials, including a large stylized signature, a smaller signature, and the initials 'GF' and 'NY'.

4. The Donee shall, at its own cost, arrange for any certificates required in terms of the Electrical Installation Regulations of 1992 to the effect that the electrical installations on the properties are safe and complies with the provisions of Regulation 4(1) of the said Electrical Installation Regulations.
5. The costs of the stamp duty as regards the deed and all costs of transfer of the properties in the name of the Donee as well as all matters incidental thereto, shall be borne by the Donee.
6. The parties hereby choose the following *domicilia citandi et executandi* for all matters that may arise from this deed including, but not limited to, the receipt of all notices and processes of court :
  - 6.1 The Donor hereby chooses **46 Alexander Street, STELLENBOSCH, 7600**, with the **Municipal Manager** as addressee.
  - 6.2 The Donee chosen *domicilium* is **Plein Street, Stellenbosch, 7600** with the **Municipal Manager** as addressee.
7. No indulgence, leniency or extension of the time which the Donor may grant or show to the Donee, shall in any way prejudice or preclude the Donor from exercising any of its rights in the future.
8. The parties hereto acknowledge that the foregoing provisions constitute the entire contract between them and that no conditions, stipulations, warranties or representations whatsoever, other than those herein contained, have been made by either party.

4/THUS...

Handwritten signatures and initials in black ink. There are four distinct marks: a large 'A', a large 'B', a signature that appears to be 'CAF', and another signature that appears to be 'BY'.

THUS DONE and SIGNED at CNOM on the 31 day of May 2007  
in the presence of the undersigned witnesses :

**AS WITNESSES:**

1. [Signature]

2. A. Ferreira

[Signature]

for **CAPE WINELANDS DISTRICT MUNICIPALITY**

THUS DONE and SIGNED at STELLENBOSCH on the 24 day of May 2007  
in the presence of the undersigned witnesses :

**AS WITNESSES:**

1. [Signature]

2. [Signature]

[Signature]

for **STELLENBOSCH MUNICIPALITY**



## ANNEXURE A

## NON-RESIDENTIAL PROPERTIES IN LA MOTTE FOREST VILLAGE

Erf No.	Zoning	Land Use	Size(m <sup>2</sup> )
4 115 116	Business Zone 2 Business Zone 2 Business Zone 2	Games Shop Shop (Vacant Erf) Shop (Vacant Erf)	1061 1106 1091
199 198	Open Space Zone 1 Open Space Zone 2 (Private Open Space)	Park Sport	8799 1,1720ha
5 105 104	Institutional Zone 1 Institutional Zone 1 Institutional Zone 1 (Consent Use: Place of Assembly)	Crèche Library (Vacant erf) Clinic (Currently Mobile Shop on the premises).	1604 910 963
103	Institutional Zone 3	Community Hall	1876
201 109 200 3	Public Road Public Place Public Place Public Place	Automatic transfer ito Ordinance 15 of 1985 to the Local Authority upon Township	2234 9810 2802 3851
2	Authority Zone 1	Sewerage works	1,2601ha

  
  
  
  
GF  
MT

**NON-RESIDENTIAL PROPERTIES IN WEMMERSHOEK FORESTRY VILLAGE**

<b>Erf No.</b>	<b>Zoning</b>	<b>Land Use</b>	<b>Size(m<sup>2</sup>)</b>
5 6	Business Zone 2 Business Zone 2	Shop (Building) Shop (Vacant Erf)	517 493
202	Open Space Zone 2 (Private Open Space)	Sport	8,2177ha
11 12 7	Institutional Zone 1 Institutional Zone 1 (Consent Use: Place of Assembly) Institutional Zone 3	Crèche/Library (Vacant erf) Clinic (Vacant erf) Community Hall	880 780 2807
103 149 160 173 196 200	Public Roads Public Places	Automatic transfer to Ordinance 15 of 1985 to the Local Authority upon Township Establishment.	283 185 502 840 202 3,3860ha
201 3	Authority Zone 1 Authority Zone 1	Sewerage Works Graveyard	2,0551ha 2405

*Handwritten signatures and initials:*  
 A A B.  
 erf AB  
 M

<b>7.2.7</b>	<b>PROPOSED LEASE AGREEMENT: PORTION OF ERF 104, LA MOTTE</b>
--------------	---------------------------------------------------------------

**Collaborator No:**

**IDP KPA Ref No:**

**Meeting Date:**

**GOOD GOVERNANCE**

**19 May 2021**

**1. SUBJECT:PROPOSED LEASE AGREEMENT: PORTION OF ERF 104, LA MOTTE**

**2. PURPOSE**

To consider an application (unsolicited) from the La Motte Neighbourhood Watch to use a portion of the facility on erf 104, La Motte for purpose of an office.

**3. DELEGATED AUTHORITY**

In terms of the approved System of Delegations, the Executive Mayor, in consultation with the Executive Mayoral Committee, can consider applications for the lease of council-owned property for a period shorter than 10 years and a contract value of less than R5M.

**4. EXECUTIVE SUMMARY**

An application has been received from the La Motte Neighbourhood Watch to use a portion of the building on erf 104, La Motte, for office purposes. This request does not follow from any public participation process not have they occupied the space before through any lease agreement. Although Erf 104, La Motte, was donated to Stellenbosch Municipality by the Winelands District Municipality in 2009, the property has not yet been transferred to the Municipality. A donation agreement has been signed between the Municipality and the owner of the property (Cape Winelands District Municipality) – **APPENDIX 2**. The Municipality currently have not legal standing to make a decision about the property and the District Municipality will have to give the municipality the authority to enter into lease agreement whilst we await the transfer otherwise the Stellenbosch Municipality has no legal standing.

The municipality took possession of the property in 2007 and all risks passed to the municipality on taking possession. The transfer did not take place as the Seller is responsible for the transfer and appointing the transferring attorney. There has been issues with the payment of the transferring attorneys by Stellenbosch Municipality as we did not appoint the transferring attorney's. We have agreed with the District Municipality now to appoint the transferring attorneys and they will attend to the transfer shortly.

**5. RECOMMENDATIONS**

- (a) that it be noted that the a portion (office) of the building the portion of erf 104 La Motte is not needed for the provision of municipal services for the period of the proposed lease;
- (b) that it is noted that the municipality is not the owner of the property yet and that the municipal manager be authorised to request the necessary authorisation from the Cape Winelands District Municipality to enter into a short term lease with neighbourhood watch in La Motte until the transfer has taken place;
- (c) that a month -to month lease agreement be approved in principle until the transfer has been approved;
- (d) that the property be leased to the neighbourhood watch free of charge provided that they pay for the services on the site; and

- (e) that the item be brought back to council after the registration of the properties to Council.

## 6. DISCUSSION

### 6.1 Background

#### 6.1.1 Ownership

Although Erf 104, La Motte, was donated to Stellenbosch Municipality by the Winelands District Municipality in 2009, the property has not yet been transferred to the Municipality. The Cape Winelands District Municipality therefore is the legal owner and Stellenbosch Municipality has no legal standing to decide and provide long- or short term rights over the property

#### 6.1.2 Historic use of building

The building was used as a ward office at one stage, but is currently vacant.

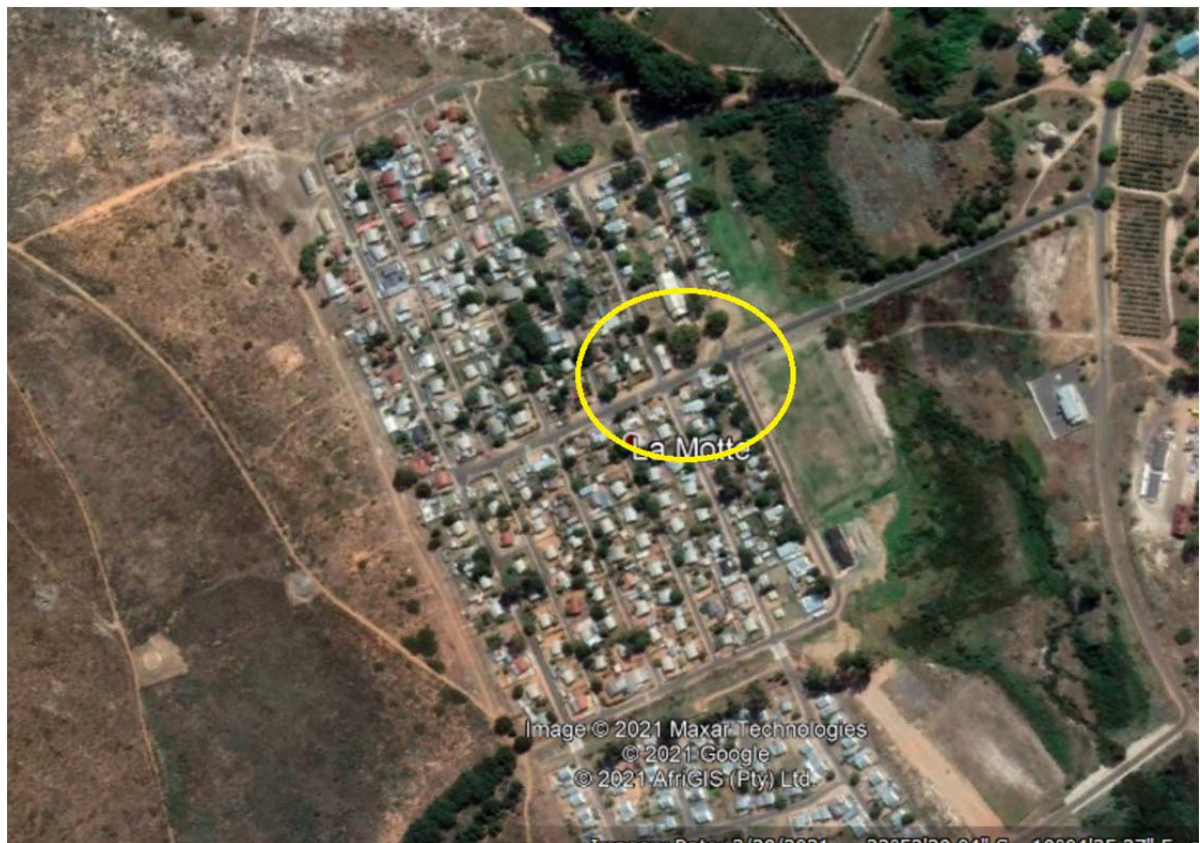
### 6.2 Discussion

#### 6.2.2.1 Application to use facility

Hereto attached as **APPENDIX 1** a self-explanatory letter/application received from the La Motte Neighbourhood Watch, requesting the use of the facility for office space.

#### 6.2.2.2 Location and context

The property is situated in the North-Western corner of La Motte, as shown on Fig 1 and 2, below.



**Fig 1: Location and context**



**Fig 2: The site**

The portion of the site is approximately 50m<sup>2</sup> in extent. The portion of the building referred to in the application is approximately 30m<sup>2</sup>, as shown on Fig 3, below.



**Fig 3: The building**

The current zoning of erf 104 is Educational zone.

**6.2.2.3 Legal requirements****6.1.3.3.1 Asset Transfer Regulation**

In terms of Section 34 (1) of the ATR a Municipality may grant a right to use, control or manage a capital asset only after-

- e) The Accounting officer has concluded a public participation process\*; and
- f) The municipal council has approved in principle that the right may be granted. \*Sub regulation (1) (a) (public participation process), however, must be complied with only if-
  - The capital asset in respect of which the right is to be granted has a value in excess of R10M\*; and
  - A long-term right is proposed to be granted (i.e. longer than 10 years).

None of the assets has a value in excess of R10M.

In terms of Regulation 36, the municipal council must, when considering such approval, take into account:

- a) whether such asset may be required for the municipality's **own** use or to provide basic services during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or financial benefit to the municipality;
- c) the risks and rewards associated with such right to use; and
- d) the interest of the local community

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality may grant the right only in accordance with the disposal management system\* of the municipality, irrespective of:-

- e) the value of the asset; or
- f) the period for which the right is granted

\*The policy on the Management of Council owned property is deemed to be Stellenbosch Municipality's disposal management System.

**6.1.3.3.2 Policy on the Management of Council owned property**

In terms of paragraph 9.3.2 of the Policy, the Municipal Council reserves the right to entertain unsolicited bids for the lease of viable immovable property for **social care uses**. Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations and include homes/centres for indigent, battered or destitute persons.

In terms of par 22.1.1 the Municipality shall be entitled to adopt below market-related tariffs for properties leased to non-profit organisations.

In terms of paragraph 22.1.4 the fair market rentals will be determined by the average of the valuations source d from service providers, unless determined otherwise by the Municipal Manager taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations. The property is not owned by the Stellenbosch Municipality.

**6.3 Financial Implications**

The maintenance of the building and any rent payable will have to be considered.

**6.4 Legal Implications**

The Stellenbosch Municipality is not the legal owners of the property and therefore has no legal standing to determine any short-or long term rights on the property. .

**6.5 Staff Implications**

There are no staff to maintain or clean the property nor is there any staff compliment on the structure.

**6.6 Previous / Relevant Council Resolutions**

None

**6.7 Risk Implications**

The Stellenbosch Municipality is not the legal owners of the property and therefore has no legal standing to determine any short-or long term rights on the property. The property has been vacant for some time and was intended for the use of the community services branch. It is unclear whether they will be occupying the property in the long run.

**6.8 Comments from Senior Management**

Due to the fact that the municipal manager requested the item to be placed on the agenda urgently no comments were requested.

**ANNEXURES:**

**Appendix 1: Application**

**Appendix 2: Donation agreement**

**FOR FURTHER DETAILS CONTACT:**

<b>NAME</b>	<b>Annalene de Beer</b>
<b>POSITION</b>	<b>Director: Corporate Services</b>
<b>DIRECTORATE</b>	<b>Corporate Services</b>
<b>CONTACT NUMBERS</b>	<b>021-8088018</b>
<b>E-MAIL ADDRESS</b>	<b>Annalene.deBeer@ Stellenbosch.gov.za</b>
<b>REPORT DATE</b>	<b>2021-05-17</b>

# APPENDIX 1



Geagte Mnr Smit

Ons as La Motte buurtwag wil graag toestemming vra vir die gebruik van die gebou agter die winkel te Bosbou, La Motte Franschhoek. Die gebou word tans baie gevandaliseer deur die gemeenskap en ons is opsoek Na n gebou Om ons vergadering en patrolies vanaf te doen.

U samewerking sal hoogs waardeur word.

Hoop vir n spoedige terugvoering vanaf U

Die Uwe

Voorsitter

Anneline Alkaster

Tel: 079 406 2212

: 063 250 0686

Handtekening:

A.AKASTER.....

# APPENDIX 2



Ons verw.: 7/2/1/1/residential franschhoek  
(Piet Smit tel.: 021-808 8028)

2007-05-24

Die Munisipale Bestuurder  
Kaapse Wynland Distriksmunisipaliteit  
Posbus 100  
STELLENBOSCH  
7600

Aandag: Faarieg Rhode

Geagte Meneer

**SKENKINGSAKTE: VERSKEIE EIENDOMME: LA MOTTE EN WEMMERSHOEK**

Aangeheg die getekende skenkingsakte, soos versoek.

In terme van klausule 2, neem ons okkupasie op datum van ondertekening van die ooreenkoms.

In dié verband het ek gereël dat Adv. Hanlie Linde, die verantwoordelike Direkteur vir gemeenskapsale, met u kontak om die fisiese oordrag-reëlings met u te bespreek.

Indien daar enige van die eiendomme is wat tans verhuur word, geliewe die inligting en kontakbesonderhede aan my deur te gee.

Baie dankie vir u moeite in die verband.

Ons verneem graag van u.

Die uwe

PIET SMIT

Kopie: Adv. Hanlie Linde  
Ian Kenned  
Kotie Kruger

## DEED OF DONATION

MADE AND ENTERED INTO BY AND BETWEEN

### CAPE WINELANDS DISTRICT MUNICIPALITY

(hereinafter referred to as "the Donor")

herein represented by **Gwebinkundla Felix Qonde**, duly authorized thereto in his capacity as **Deputy Municipal Manager** in terms of **Clause L.7.03** of the **System of Delegations** adopted by the Donor at **Item C.4.13** during the Council meeting on **31 March 2006**, to sign this deed on behalf of the said Donor; and

### STELLENBOSCH MUNICIPALITY

(hereinafter referred to as "the Donee")

herein represented by **David Peter Daniels** in his capacity as **Municipal Manager**, being duly authorised.

WHEREAS the Donor is the owner of certain immovable properties in the townships of La Motte and Wemmershoek which fall within the area of jurisdiction of the Donee;

  
Handwritten signatures and initials: a vertical signature, 'GFK', a signature, and 'DPO'. Below these is the number '117'.

AND WHEREAS the Donee, in terms of Schedules 4B and 5B of the Constitution of the RSA of 1996, is the local authority responsible for the rendering of the services related to the functions earmarked for the various properties;

NOW THEREFORE the Donor hereby donates and the Donee hereby receives and accepts the properties, together with all erections and structures thereon, as indicated on Annexure "A" to the deed (hereinafter referred to as "the properties"), subject to the following terms of conditions :

1. The Donee receives the properties on a "voetstoots" basis and to the extent such as it now lies according to the General Plan or as physically identified in terms of the existing demarcations and the Donor gives no warranty in regard thereto. The Donee furthermore indemnifies the Donor against any material errors, encroachments or other deficiencies on or under any of the properties.
2. Occupation and possession of the property and improvements thereon shall be given by the Donor to the Donee and shall be taken by the Donee on the date of signing of the deed by the last party, as from which date the Donee will be liable for all applicable service charges and any other imposts in respect of the property which may become payable from time to time.
3. The risk attaching to the property and improvements thereon shall pass to the Donee on the date of signing of the deed by the last party and the Donor shall, under no circumstances, be liable for loss of, or damage to property, or for damage resulting from personal injury or death caused to the Donee or any other person on any of the properties, in whatever way such loss or damage, or personal injury or death was caused.

3/4. The...



Handwritten signatures and initials, including a large stylized signature, a smaller signature, and the initials 'GF' and 'NY'.

4. The Donee shall, at its own cost, arrange for any certificates required in terms of the Electrical Installation Regulations of 1992 to the effect that the electrical installations on the properties are safe and complies with the provisions of Regulation 4(1) of the said Electrical Installation Regulations.
5. The costs of the stamp duty as regards the deed and all costs of transfer of the properties in the name of the Donee as well as all matters incidental thereto, shall be borne by the Donee.
6. The parties hereby choose the following *domicilia citandi et executandi* for all matters that may arise from this deed including, but not limited to, the receipt of all notices and processes of court :
  - 6.1 The Donor hereby chooses **46 Alexander Street, STELLENBOSCH, 7600**, with the **Municipal Manager** as addressee.
  - 6.2 The Donee chosen *domicilium* is **Plein Street, Stellenbosch, 7600** with the **Municipal Manager** as addressee.
7. No indulgence, leniency or extension of the time which the Donor may grant or show to the Donee, shall in any way prejudice or preclude the Donor from exercising any of its rights in the future.
8. The parties hereto acknowledge that the foregoing provisions constitute the entire contract between them and that no conditions, stipulations, warranties or representations whatsoever, other than those herein contained, have been made by either party.

4/THUS...

Handwritten signatures and initials in black ink. There are several distinct marks, including what appears to be a large 'A', a 'B', and some illegible scribbles and initials.

THUS DONE and SIGNED at CNOM on the 31 day of May 2007  
in the presence of the undersigned witnesses :

**AS WITNESSES:**

1. [Signature]

2. A. Ferreira

[Signature]

for **CAPE WINELANDS DISTRICT MUNICIPALITY**

THUS DONE and SIGNED at STELLENBOSCH on the 24 day of May 2007  
in the presence of the undersigned witnesses :

**AS WITNESSES:**

1. [Signature]

2. [Signature]

[Signature]

for **STELLENBOSCH MUNICIPALITY**

## ANNEXURE A

## NON-RESIDENTIAL PROPERTIES IN LA MOTTE FOREST VILLAGE

Erf No.	Zoning	Land Use	Size(m <sup>2</sup> )
4 115 116	Business Zone 2 Business Zone 2 Business Zone 2	Games Shop Shop (Vacant Erf) Shop (Vacant Erf)	1061 1106 1091
199 198	Open Space Zone 1 Open Space Zone 2 (Private Open Space)	Park Sport	8799 1,1720ha
5 105 104	Institutional Zone 1 Institutional Zone 1 Institutional Zone 1 (Consent Use: Place of Assembly)	Crèche Library (Vacant erf) Clinic (Currently Mobile Shop on the premises).	1604 910 963
103	Institutional Zone 3	Community Hall	1876
201 109 200 3	Public Road Public Place Public Place Public Place	Automatic transfer ito Ordinance 15 of 1985 to the Local Authority upon Township	2234 9810 2802 3851
2	Authority Zone 1	Sewerage works	1,2601ha


  
 GF



**NON-RESIDENTIAL PROPERTIES IN WEMMERSHOEK FORESTRY VILLAGE**

<b>Erf No.</b>	<b>Zoning</b>	<b>Land Use</b>	<b>Size(m<sup>2</sup>)</b>
5 6	Business Zone 2 Business Zone 2	Shop (Building) Shop (Vacant Erf)	517 493
202	Open Space Zone 2 (Private Open Space)	Sport	8,2177ha
11 12 7	Institutional Zone 1 Institutional Zone 1 (Consent Use: Place of Assembly) Institutional Zone 3	Crèche/Library (Vacant erf) Clinic (Vacant erf) Community Hall	880 780 2807
103 149 160 173 196 200	Public Roads Public Places	Automatic transfer to Ordinance 15 of 1985 to the Local Authority upon Township Establishment.	283 185 502 840 202 3,3860ha
201 3	Authority Zone 1 Authority Zone 1	Sewerage Works Graveyard	2,0551ha 2405

*Handwritten signatures and initials:*  
 A A B.  
 erf AB  
 M