10.3.4	DISPOSAL OF TRANSVALIA COMPLEX THROUGH A 30-YEAR LEASE TO MIDDEDORP PROPERTIES

Collaborator No:
IDP KPA Ref No: **Good Governance and Compliance**
Meeting Date: **25 August 2025**

1. SUBJECT: RETURN ITEM: DISPOSAL OF TRANSVALIA COMPLEX THROUGH A 30-YEAR LEASE TO MIDDEDORP PROPERTIES

2. PURPOSE

The purpose of this report is:

2.1 To inform Council of the comments received after a Public Participation process was followed indicating Council's in-principal decision to lease the properties to the preferred bidder. The preferred bidder was identified through a tender process on a 30-year lease.

2.2 To provide feedback to Council after the appeal process in terms of Section 62 of the Municipal Systems Act was finalised as per the previous Council resolution.

3. DELEGATED AUTHORITY

Council.

4. EXECUTIVE SUMMARY

On 30 October 2024 Council gave an in-principle approval for the lease of the Transvalia complex to Middedorp Properties (Pty) Ltd for a period of 30-years pending a public participation process. This process has now been finalised and Council needs to take into consideration the comments received from the public.

During the public participation process, and on resolution of the Executive Mayoral Committee taken in March 2025, an external legal opinion was also obtained on whether or not one of the unsuccessful bidders had a right to appeal. This opinion was brought to Council as an In-committee item and it was resolved that the appeal should be dealt with in terms of Section 62 of the Municipal Systems Act. This process has also been finalised.

The preferred bidder Middedorp Properties (Pty) Ltd submitted a bid with a capital cost amount of R22 028 250,00 (VAT included) which amount represents the estimated capital outlay. This would form part of the Capital assets and would remain Council's assets at the end of the lease term. The bidder will also be liable for all the maintenance costs over the 30 years, which amount is not included in the above amount. This amount was used for bid evaluation purposes after the responsiveness and functionality was evaluated, in terms of the tender specifications. The amount of monthly rental must still be agreed on and, in the tender, was indicated to be in three phases.

In this process, only one bidder complied with the specifications according to the technical evaluation and the Bid Evaluation Committee, namely Middedorp Properties. One of the unsuccessful bidder, GIST Technology Holdings (Pty) Ltd submitted an appeal in terms of Section 62 of the Municipal Systems Act, which appeal has now been finalised and was dismissed.

An Official Notice was published on 12 December 2024 in the Eikestad news and on 7 December 2024 in Die Burger. The closing date for comments was 7 February 2025. Several comments were received and are discussed in the item.

Council needs to consider the comments and inputs received from the public and approve the lease amount negotiations framework. After the lease amount is determined an Information Statement will be prepared for approval by Council.

5. RECOMMENDATIONS

(a) that Council takes note of the comments received after public participation; and

(b) that Council takes note that the appeal in terms of Section 62 of the Municipal Systems Act has been finalised;

(c) that Council approves the negotiation framework for the determination of the lease amount. The framework states that the negotiations team take the following into consideration:

1. The valuation report setting out the fair market value and rental of the property;
2. The capital investment to the property;
3. The maintenance costs and upkeep of the property over the thirty year lease period;
4. The economic benefit to the community and municipality.

6. DISCUSSION

6.1 Background

The Transvalia complex (alternatively Dorp Street Falts) as it is commonly known consists of erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160. Erven 1125 and 1130 are 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. When the tender was published erven 1129, 1124, 1125 and 1130 did not form part of the tender to lease as they provide access to the property and surrounding properties.

The “Dorp Street flats” is currently used as office space for the Informal Settlements Department and some of the Infrastructure Directorate (Project Management Unit) staff. The property is 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. An extract of the specifications that was included in the tender is attached as **APPENDIX 1**.

On 30 October 2024 Council resolved to in-principle, lease the premises to Middedorp Properties (Pty) Ltd for a period of 30 years pending the publication of an Information Statement. During this period a legal opinion was obtained on the appeal that was received which indicated that the unsuccessful bidder had a right to appeal and that the appeal should be finalised. The appeal has now been finalised and was dismissed.

6.2 Discussion

During the compulsory site meeting there was a healthy interest of around 15 companies that attended the meeting, but on the closing date only three companies put forward a tender. Two of the bidders were not considered as they were regarded as non-responsive.

The preferred bidder Middedorp Properties (Pty) Ltd submitted a bid with a capital cost amount of R22 028 250,00 (VAT included) which amount represents the estimated capital outlay which will form part of the Capital assets and which will remain Council’s assets at the end of the lease term. It also excludes all maintenance over the next 30 years, which will also be for their account. This amount was used for bid evaluation purposes after the responsiveness and functionality was evaluated, in terms of the tender specifications. The amount of monthly rental must still be agreed on and in the tender was indicated to be in three phases.

The planning stage of 12 months, the 2 years construction phase and the remainder of the lease agreement. Phase 3 – years 4 to 30 (Operational) during which they offer as an initial rental income R20 000 a month, but it is subject to negotiations. It must also

be borne in mind that they must invest the capital of R22 028 250,00 (VAT included) and do the management and maintenance of the property for the duration of the lease.

The investment in and alterations to the property remains the municipality's assets after the lease lapses. These amounts are subject to consultation and agreement with the municipality and will escalate over the period of the lease agreement. The municipality has in the past allowed a lower rental because the capital cost was set off against the rental amount. The rental income will be "supplemented" with the fact that the municipality will not have to provide any resources to manage or maintain the area.

In brief the preferred proposal entails the following key elements:

- Renovating the existing historic buildings along Dorp Street for the purposes of a 24-unit Boutique Hotel with an art-focused theme, incorporating a 60-seater restaurant, hotel, coffee and wine bar and a rooftop bar for guests, re-development of the courtyard and guest area behind hotel as well as an art and design shop in one of the historic buildings whilst preserving the architectural integrity of the buildings along Dorp Street.
- Demolishing the existing garages and providing upgraded public toilets. The proposed new structures comprises of a wooden deck for the proposed restaurant at 135 Dorp Street, steel frame clip-on staircase and corridor, swimming pool, paved hotel dedicated parking area, dedicated refuse area and security/parking kiosks. Repair and upgrading of existing public parking area, providing 143 paid public parking bays, 34 paved hotel dedicated parking bays as well as 10 non-motorised parking bays.
- It was a pre-requirement of the tender that the proposal that is made should take the historical overlay and the surrounding precinct into account and the design and concept should integrate into the area. All changes to buildings and any new structures will have to be approved through the planning department and most importantly by Heritage Western Cape.

In this process only one bidder was found to be responsive with the specifications according to the technical evaluation and the Bid Evaluation committee, namely Middedorp properties. The two bidders who were found to be unresponsive were:

Sutherland Quantity Surveyors: The bidder did not illustrate proposals as it relates to the site, but provided examples what the intention would be for a development. There was no attempt to illustrate how the site will adhere to the character of the area as it relates to architectural character or building parameters like height. The intention of their proposal was to develop an emporium/market similar to the Elgin Station market, Lourensford and Blaauwklippen markets on mostly undeveloped space. The historical buildings will be used to accommodate food and beverage shops. A new 54 room hotel is proposed on the corner of Dorp and Retief Streets. All the structures proposed reflect a modern design. The architectural language and character of the development is not in keeping with the Stellenbosch/Dorp street character and design, scale and proportion and constitutes foreign elements that do not fit in the historic centre of town. It was a key component of the tender that the proposals must allow for tourist accommodation and must fit in with the character of the area.

GIST Technology Holdings (Pty) Ltd's: The bidder's proposal included the full cost of the project instead of just providing the capital cost (value added to the property) as was requested, which according to the Bid Evaluation Committee and Bid Adjudication Eommittee makes then non-compliant without even considering the content of their proposal. In brief, their proposal however entails the following key elements:

Upgrading of the five top structure buildings on the property for a Hotel General Admin space, lounges, dining room and tourist related offices/shops. Demolish existing garages and erect a new three storey building comprising of 30 (thirty) bachelors' size rooms to complement the old houses. Construct new four-storey building comprising of 40 (forty) bachelors' size rooms to complement the old houses. These buildings will be

located behind the private dwelling houses along Louw Street, and adjacent to the public parking area.

Constructing a new parking garage comprising of 3 (three storeys) plus roof parking, in total providing 307 parking bays. The parking garage links with the existing basement parking located in the Isa Carstens Building.

No hotel rooms are provided for in the historical buildings. The parking structure will completely fill in the traditional open space behind the historical buildings in the form of a massive block with foreign proportions and scale. The single-storey private residential buildings along the western side of Louw Street will be overshadowed by this 4-storey structure which will dwarf them in scale, height, and character.

The height of the four-storey building will also exceed the maximum height of 10 m for structures in this area. According to the Bid Evaluation Committee, it would be ill-advised to allow such a tall development so close to a row of residential dwellings as it will overlook the private space behind the residential buildings and cast shade on their private space.

The accommodation will be "bachelor apartments which will serve as tourist accommodation, short and or long stay." This certainly opens the door to Air-b-and-b accommodation and will be impossible to police. It is unclear how the "bachelor apartments" will complement and function intimately as part of the hotel. This proposal therefore does not adhere to the pre-qualification to only provide tourist accommodation in the form of a type of boutique hotel and does not align with the character of the immediate area particular in terms of scale, massing and height which are out of character and will lead to the creation of a "superblock" which is a foreign element not complementing the historical character.

Throughout their proposal they make reference to “residential”. They indicate that they will have a residential block and that they will hire a manager to deal with the residential units. This is not in line with the specifications of the tender and the Council resolution on the use of the property.

GIST Technology requested reasons why they were found to be non-responsive. They were supplied with the reasons as indicated above. They subsequently submitted an objection in terms of Regulation 49 of the Supply Chain Management regulations.

In the previous item that served before the Executive Mayoral Committee, the administration advised that as this tender is not about the procurement of goods and services the normal rules as per regulation 49 does not apply and the decision by the Accounting officer is not a final decision to which an objection or appeal can be submitted in terms of section 62 of the Municipal Systems Act.

The item further stated that as this award is subject to the Council resolution after the public participation process, the objection should not be entertained as a bidder cannot submit an objection at this stage, as the process is not finalised yet.

Appeals can only be against a final outcome where the decision was taken in terms of delegated authority. The decision of the Accounting Officer regarding the preferred bidder is subject to Council resolution and the section 62 appeal process does not apply to a decision by a full Council only to a delegated decision maker.

Objections in terms of regulation 49 and 50 does not provide a bidder with a remedy to stop or alter the decision. Section 34(4) provides that a municipal Council may delegate to the Accounting Officer its approval power referred to in sub regulation (1)(b) excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.

The Executive Mayoral Committee resolved to refer the matter back to the administration with the instruction that the administration should obtain an external legal opinion on whether or not the unsuccessful bidder had a right to appeal. In terms of the legal opinion the bidder did in fact have a right to appeal. The appeal has been

finalised and was dismissed, which still leaves Middedorp Properties as the only compliant bidder.

6.2.1 Public Participation

An Official Notice was published on 12 December 2024 in the Eikestad news and on 7 December 2024 in Die Burger. The closing date for comments was 7 February 2025. Several comments were received and are discussed in the item. Proof of publication is attached hereto as **APPENDIX 2** and **APPENDIX 3**.

6.2.2 Ownership

The ownership of the properties vests with Stellenbosch Municipality.

6.2.3 Objections received during Public Participation Process following the publishing of Information Statements

Comments received from Provincial Treasury

Chapter 4 of the MATR and Regulation 40 of the SCM Regulations applies to the leasing of municipal property, which should be done in terms of a process that is fair, equitable, transparent, competitive, and cost-effective.

Council should be aware of the mandatory requirements as set out in Regulation 36 of the MATR before making an in-principal decision on leasing of municipal property to an individual.

The Municipality need to take cognisance of the following when considering leasing a property: The type of usage required;

a) The period of the lease agreement;

b) The manner in which it is to be granted;

c) The minimum compensation to be paid; and

d) A framework within which direct negotiations for the granting of the right must be conducted.

If the Council decides to grant approval for the leasing of the municipal property, the Municipality need to have assurance that **Middedorp Properties (Pty) Ltd** or **their successors in title** will provide adequate maintenance and safeguarding of the asset as stipulated in Regulation 41(4) of MATR.

A draft copy of the lease agreement needs to be submitted to the Provincial Treasury to establish if the proposed lease agreement will meet the criteria outlined in Regulation 45 of the MATR. Unfortunately, no comments could be provided in regard to the criteria outlined in Regulation 45 of the MATR.

Stellenbosch Municipality must ensure that the processes followed are in accordance with the disposal management system that makes provision for leasing of the asset and ensure that all other processes are followed as stipulated in Chapter 4 after approval has been granted in principle by the council.

The municipality should also consider if the asset should continue being leased for a long-term period by conducting a study, taking all future plans in consideration (e.g. property in a road reserve) to determine whether it will be more beneficial to dispose of the asset, instead of leasing the property.

If the CoCT decides to dispose of the asset, to ensure that the disposing process is followed in terms of Regulation 40 of the MFMA Supply Chain Management Regulation. The full input is attached as **APPENDIX 4.**

It seems as if there is some confusion. The last input refers to CoCT and not Stellenbosch Municipality and the Information statement indicates that the in principal decision was already taken. The recommendation that the lease agreement should be submitted to treasury is noted.

Comments received from National Treasury

They draw our attention to regulation 45 of the MATR which sets out the minimum requirements for the ensuing lease agreement, including the requirement for the private sector party to whom the right has been granted to maintain and safeguard the asset for its intended purpose. Since the existence of the lease will relieve the municipality of its maintenance burden for the assets, they trust that the obligations of the parties regarding the maintenance of the property, as well as other applicable conditions, will be duly addressed in the lease agreement. It is their understanding that the municipality will ensure that the transaction is finalised in line with Chapter 4 of the MATR as well as the applicable disposal management processes. The full comment is attached as **APPENDIX 5**.

Comments received from Franklin Adams:

Firstly, where the following applicable, legal and heritage law consider:

(a) Section 34 of the NHRA

(b) When will the Environmental Impact Assessment (EIA) take place under the National Environmental Management Act (NEMA)?

Secondly;

(c) What terms and conditions or necessary arrangements are in place for any irreversible alterations, that would still preserve historical integrity of the heritage site?

(d) Will the facility allow commercial viability with balanced public access to proposed multi-purpose tourist and leisure facility?

(e) What respect will the leaser have for the local heritage groups, historians, and indigenous communities taking in consideration the legacy of eviction of families under the group area act? Will the leaser incorporate historically displaced (Group Areas) people?

(f) Will an inclusive decision-making take place, that includes cultural, local and indigenous communities?

(g) If any developments are perceived as being harmful to the heritage site, what alternative solution will be offered?

(h) Will this property that's owned by the municipality have any efficient and effective economic development and social equity measures that benefit local and indigenous communities?

Thirdly;

(i) Additionally, Tender No 34, which includes, Proposal for development of erf 1123, Transvalia had irregularities of ±R432 million and was cancelled by the High Court. Why embark on this process again?

(ii) Was the irregularities addressed?

(iii) If addressed, how?

(iv) Specify?

Fourthly;

Any development in the area, will have a big impact on Dorp Street and its mobility, and cannot carry the traffic, as it will cause traffic jams. Will disfurnishment to the buildings cause inconvenience or any costs to the rates payers of Stellenbosch, perhaps an increase in rates to local citizens? A copy of the input is attached as **APPENDIX 6.**

Comments from GIST:

GIST was one of the tenderers on the tender whose tender was regarded as non-compliant. Their objection turns on the fact that they are of the view that their tender should not have been regarded as non-compliant. A copy of the input is attached as **APPENDIX 7.**

A full discussion on their tender and why it was regarded as noncompliant is under 6.2 above and a letter was also addressed to them by the Senior Legal advisor. A subsequent formal appeal was filed by the bidder which has been finalised and the appeal was dismissed.

Comments from Chief Letitia

We the USCK has appointed Chief Leatitia Timmie (February) as the mediator and negotiator in the Stellenbosch Region, to behalf our members in Stellenbosch. Our Communities are very unhappy and feel the the Municipality do not take the community of Stellenbosch in consideration, when discussions and decisions affecting our community are being taken.

We disaprove of the recent request for proposals /lease extentions of certain properties with in your purview.

Grounds of objections:

Lack of public participation and involvement.

No Transparency

Fair Participation

Non disclose

Proposals for leases

And disclosure of information

The copy of the input is attached as **APPENDIX 8 AND APPENDIX 9.**

Comments from Cathleen Booysen

Her comment is attached as **APPENDIX 10** and revolves around the following matters:

Lack of Public Participation

Inexcusable extension of the lease agreement

Social and Environmental issues

Conflict of interest

A different use.

Comments from Imari Moolman

Her objection and concerns are attached as **APPENDIX 11**. It relates to the same objection of GIST. These comments were also formally addressed in the response to appeal as mentioned above.

Comments received from John Andrews

Long-term Lease of Portion of Transvalia: I object to this lease due to concerns about the potential impact on the surrounding community and the environment.

As a concerned citizen, I believe that these proposals require further consideration and consultation with the community. I request that the municipality:

- Provides more information about the proposed disposal and leases
- Conducts public hearings and engages with the community to address concerns
- Considers alternative options that prioritize community benefit and public interest

I would appreciate the opportunity to discuss these objections further with the municipality.

According to the Municipal Finance Management Act, a public participation process is required for the disposal or long-term leasing of municipal properties. Additionally, leasing policies for municipally owned immovable property may require public participation for long-term leases or high-value assets. The comment is attached as **APPENDIX 12.**

Comments from Sylvia Bell

Mrs. Bell is of the opinion that the public participation time frame is not sufficient. She claims that she became aware of this in the Eikestad Nuus on Friday 31 January 2025 and she requests that the Municipality extend the timeframe for the comments. A copy of her objection is attached hereto as **APPENDIX 13.**

6.2.4 Lease amount negotiations framework

In terms of the specifications of the tender document the monthly rental amount is open for negotiations. Although an offer was made in the bid the lease amount has not been agreed upon and finalised. In order to determine the final lease amount a lease negotiations team will be appointed by the Municipal Manager. Council needs to approve the framework for the lease amount negotiations.

The proposed framework is for the team to take into consideration the following:

5. The valuation report setting out the fair market value and rental of the property;
6. The capital investment to the property;
7. The maintenance costs and upkeep of the property over the thirty year lease period;
8. The economic benefit to the community and municipality.

6.3 Financial Implications

In 2010 the property 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.

The capital cost value added is R22 028 250,00 (Vat Included). The rental is subject to negotiations and agreement with the municipality. The offer is:

Phase 1 = 0

Phase 2 = R10 000 pm

Phase 3 = R20 000 pm

For the next 30 years all maintenance to the buildings and area will be paid by the lessee. All rights and developments will be for the cost of the lessee.

6.4 Legal Implications

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 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.

6.5 Staff Implications

The staff that currently use the buildings as temporary office accommodation will have to be relocated. There are no other staff implications.

6.6 Previous / Relevant Council Resolutions

9TH COUNCIL MEETING: 2022-11-23: ITEM 11.3.3
RESOLVED (majority vote)

(a) that Council provisionally identifies the erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160 is not needed for Municipal Services; and
(b) that the information statement be approved for public participation.

Cllrs RB Hendrikse; C Noble and M Van Stade requested that their votes of dissent be minuted.

SPECIAL COUNCIL MEETING: 2023-09-27: ITEM 5.3.1

RESOLVED (majority vote with 5 abstentions)

(a) that Council identifies the erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160 is not needed for Municipal Services;

(b) that Council in principle approve of the disposal of the property to a qualified bidder sourced through a competitive supply chain process through a long-term lease; and

(c) that the tender specifications comply with the submissions in the information statement that was published and the content of this item.

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

Councillors J Andrews; N Mkhontwana; C Noble; and M van Stade.

26TH COUNCIL MEETING: 2024-10-30: ITEM 12.10

RESOLVED (nem con)

(a) that Council confirms that the erven 825, 1123, 1125, 1124, 1128, 1129 1130, 1133, 1134 and 1142 is not needed for the provision of basic municipal services;

(b) that council notes that erven 1124, 1125.1129, and 1130 is not included in the lease agreement as it acts as access roads to the area and to the businesses in the area.

(c) that Council in principle approves to lease erven 825, 1123, 1128, 1133, 1134 and 1142 to Middedorp Properties (Pty) Ltd for a period of 30 years subject to a public participation process during which the views/alternative proposals/ inputs and objections of the public is solicited as well as the views of Provincial and National Treasury;

(d) that Council notes that the lease amounts during phases 1 – 3 is subject to negotiation and will take the capital investment into account;

(e) that Council approves the Information statement attached as APPENDIX B;

(f) that the item return to Council after the public participation process and the views from National and Provincial treasury has been solicited for a final resolution by Council.

EXECUTIVE MAYORAL COMMITTEE: 2025-03-24: ITEM 7.3.9 RESOLVED

that this item be referred back to Administration for a legal opinion.

6.7 Risk Implications

The risks are addressed through the item.

6.8 Comments from Senior Management

6.8.1 CFO

My comment is specific on the compliance implications of the information statement already published in relation to the proposed allocation of a right of use and to provide guidance on the corrective steps required in terms of the Municipal Asset Transfer Regulations, 2008 (MATR).

The following Municipal Asset Transferring Regulations (MATR) were considered:

- Regulation 34: Requires disclosure of the expected proceeds in the information statement.
- Regulation 35: Requires public consultation, including publication of the proposal and information statement at least 60 days before Council considers approval, and consultation with National and Provincial Treasury.
- Regulation 36: Requires Council to assess whether the proposed compensation will yield a significant economic and financial benefit to the municipality.
- Regulation 40: Permits conditional approval provided that minimum compensation and a negotiation framework are clearly set.

An information statement was published for the proposed allocation of a right of use of municipal immovable property. However, the Council item for the approval of the information statement indicated that the monthly rental amounts are "subject to negotiations", without providing a definitive rental figure or minimum compensation framework. The approved tender specifications contained the following provision in the pricing schedule:

Monthly lease amount/s may be negotiated with the successful bidder and will not form part of the evaluation process of the bid. The lease amounts should be market related and may take development costs into account. Escalation will be CPI per financial year.

This approach raises compliance concerns, as the MATR requires that the information statement disclose the expected proceeds (rental/compensation). Leaving the rental indeterminate undermines the ability of the public, National Treasury and the Provincial Treasury to make informed submissions.

By indicating that the rental is subject to negotiation, in my opinion, it does not comply with Regulation 34(3)(b), as it omits the required disclosure of expected proceeds. A market related rental valuation is also outstanding. Furthermore, the initial in-principle approval by the Council did not set a framework within which direct negotiations for the granting of the right must be conducted, if the granting of the right is subject to direct negotiations as required in terms of Regulation 40(c).

Accordingly:

- The municipality should obtain an independent market-related rental valuation from a registered professional valuer.
- Based on this valuation, the municipality should either:
    1. Finalise the rental consideration and republish the information statement; or
    2. Reissue the information statement with a minimum compensation amount and negotiation framework in line with Regulation 40.

Failure to correct the process could possibly render the allocation invalid, expose the municipality to audit queries and may be challenged for non-compliance with the MATR.

ANNEXURES:

Appendix 1: Extract of specifications
Appendix 2: Proof of publication
Appendix 3: Proof of publication
Appendix 4: Comments from Provincial Treasury
Appendix 5: Comments from National Treasury
Appendix 6: Comments from Franklin Adams
Appendix 7: Comments from GIST Technology Holdings (Pty) Ltd
Appendix 8: Comments from Chief Laetitia
Appendix 9: Comments from Chief Laetitia
Appendix 10: Comments from Cathleen Booysen
Appendix 11: Comments from Imari Moolman
Appendix 12: Comments from John Andrews
Appendix 13: Comments from Sylvia Bell

FOR FURTHER DETAILS CONTACT:

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REPORT DATE	***19 August 2025***

APPENDIX 1

RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES

1. BACKGROUND AND PURPOSE OF TENDER

1.1 Stellenbosch Municipality, the second oldest town in South Africa, has identified one of its prime urban properties for re-development purposes to enhance economic activities in the historic Central Business District (CBD).

1.2 The Transavia Complex consists of erven 825, 1123, 1133, 1128, 1134, 1142 and 1160, hereinafter referred to as "the Property". Erven 1123,1133,1128,1134 and 1142 have top structures facing Dorp Street and the remaining erven provide for street access, on-site parking as well as public parking, serving the CBD of Stellenbosch and the business around the area.

1.3 The Property is made available for re-development via a long-term lease of not more than 30 (thirty) years and subject to Council approval of the term proposed by the successful bidder. The re-development must be for the purposes of tourism related facilities and accommodation to enhance the tourism potential of Stellenbosch CBD. No office space can form part of the development and the accommodation must be for tourism and not long term. The development requirements are set out in more detail in paragraph 3 below. The buildings on the property enjoy heritage status of a variety of gradings and the successful bidder will have to obtain, inter alia, approval from Heritage Western Cape.

1.4 Over and above the tourism related focus of the development, provision will also have to be made for public parking (143) on the property in its current form, which largely serves as public parking to surrounding private businesses in the CBD. The development itself will also attract on-site/client parking requirements as per the Municipality's bylaws and that will also have to be catered for on premises. Provision must also be made for public toilets and non-motorised transport like bicycles.

2. PROPERTY DETAILS

2.1 Ownership

The property is registered in the name of Stellenbosch Municipality.

2.2 Locality and context

The property is situated in Dorp Street Stellenbosch, with vehicular access form Piet Retief Street, Louw Street and Noordwal-Wes Road, as indicated on the attached locality and lease map.

2.3 Current zoning and size

The current zonings of the sites comprising the property are as follows:

Erf 825 – Public Roads and Parking Zone (2 577m²)
Erf 1123 – Public Road and Parking (2 881m²)
Erf 1128 – Multi-unit Residential Zone (1 328m²)
Erf 1133 – Multi-unit Residential Zone (868m²)
Erf 1134 – Multi-unit Residential Zone (2 674m²)
Erf 1142 – Multi-unit Residential Zone (1104m²)

NB
Note that erven 1129, 1124, 1125 and 1130 do not form part of the lease and provide access to the property and surrounding properties.

2.4 Property Valuation

The combined municipal valuation of the Property in 2021 amounts to approximately R 23 270 000.

2.5 Building Improvements

Double storey buildings are situated on erven 1123, 1128,1133,1134 and 1142 which are currently partially occupied for municipal/public service and office purposes. The Municipality will provide vacant occupation to the successful bidder at the time of the start of the construction.

3. DEVELOPMENT VISION AND SPECIFICATIONS

3.1. Stellenbosch Council has decided that the Property be made available on a long-term lease basis of not more than 30 years. The successful bidder must indicate the period of the lease over which the proposed re-development will run, and the term must be approved by Council. The properties and existing top structures must be used to maximise the economic development, job opportunities and to stimulate economic activity within the historic Stellenbosch CBD as well as the town as a whole. The development must compliment the architectural character of Stellenbosch and be sensitive to the historic character of the existing buildings and area. As such the development requirements for the area within which the erven are situated must be considered as far as height and depth of any above/underground development is concerned.

3.2. The bidders will have to contact Heritage Western Cape to obtain information regarding the process to apply for the re-development including what is possible when re-developing the site and the current existing structures. Whatever plans is finally submitted by the successful bidder is still subject to approval by Heritage Western Cape and other bodies further referred to in this special conditions of tender. Linkages to the rest of the central historical area must be indicated on the plan.

3.3. As re-development requirements, the Municipality envisage that tourist related

facilities and tourist accommodation such as, but not limited to, a restaurant/ boutique hotel/business opportunities/economic development opportunity be established on the Property. Parking, public toilets and space for non-motorised transport must be provided. All facilities and amenities proposed **must have a tourism focus** and must fit in with the historic character of Stellenbosch and the specific area and overlay zone for the area. The tourism focus must be clear from the proposals. No conventional short or long-term residential accommodation will be allowed and no office space.

3.4. No offers for the purchase of the Property will be entertained.

3.5. Bidders must take note of the fact that the erven comprising the Property, currently also provide for public parking serving other nearby private businesses with high volume customers. The successful bidder will therefore be required to make provision for/retain public parking facilities (143 spaces) on the re-developed property, over and above the provision of on-site/client parking as required in terms of the Stellenbosch Zoning Scheme By-Law that attaches to the re-development. Therefore, the minimum parking requirement will be 143 (existing) public parking bays **plus** the additional parking demand created by the proposed re-development. All parking must comply with the design specifications of the Municipality. There must also be secure facilities for non-motorised transport like bicycles.

3.6. The current parking structures (garages) on the properties have asbestos roof that must be replaced within the provisions of the legislation around handling and disposal of asbestos.

3.7. Provision must be made for public toilets.

3.8. To give effect to the parking requirements set out above, the successful bidder may make provision for a new parking garage as part of the proposed development package.

3.9. The top structures on erven 1123, 1133, 1128, 1134, and 1142 are protected by the National Heritage Resources Act, 25 of 1999, as amended. As such, any alterations to these building will require heritage conservation permission, hence the successful bidder will have to follow the necessary processes as per the aforementioned legislation to obtain the necessary approval permit form the heritage authority, at own cost. The buildings heritage status range between Grade II (significant) to Significant IIIA and IIIA. The grading information must be obtained by a bidder from the heritage Unit of Stellenbosch Municipality prior to bidding.

3.10. Prior to submission of an application to the heritage authority, the

Stellenbosch Municipality Conservation Advisory Committee as well as the local registered Conservation Bodies (Stellenbosch Heritage Foundation and Stellenbosch Interest Group) must be consulted by the successful bidder for comment.

3.11. In addition to public parking, Erf 825 also provides for vehicular access to the adjacent private property erf 824. This access must remain intact and provided for in the re-development proposal.

3.12. As the development will generate additional traffic, the successful bidder will be responsible to mitigate current parking challenges. As such a Traffic Impact Assessment or at least a Traffic Impact Statement prepared in accordance with the National Department of Transport guidelines for traffic impact studies, will be required by the successful bidder.

3.13. The erven may need to be rezoned and any application in this regard will have to follow the normal rezoning process by the successful bidder.

3.14. The successful bidder will be responsible, at own costs, for the undertaking and conclusion of all specialist reports and studies (e.g. heritage impact assessment, traffic impact assessment/statement, etc,) which may be required based on the successful bidder's development proposal.

3.15. The lessee (successful bidder) will be responsible for the maintenance of all infrastructure and facilities forming part of the lease, which includes the public parking, and for the payment of all municipal services to the Property at the approved tariffs for the duration of the lease and which lease will start after the final approval by Council of the lease.

3.16. All costs relating to the proposals submitted, as well as actual re-development costs will be for the account of the successful bidder.

It must be noted that no detail plans are required at this stage except a development plan indicating what the proposals regarding the re-development will consist of.

3.17. All relevant legislation applicable to the re-development must be complied with at own cost by the successful bidder.

3.18. Any re-development activities that do not form part of a building plan approval process or any other formal approval process, will require approval of the Municipality before implementation.

3.19. Information on the status of current services to the property are included in this document. Should additional information be required bidders will have to consult with the Infrastructure Services as well as the Planning and Economic Development Departments of the Municipality.

3.20. Bidders are required to arrange pre-submission consultations with the Infrastructure Services as well as the Planning and Economic Development Departments of the Municipality with regard to services availability/upgrading, public parking specifications, possible development charges, land use/rezoning and development rights, building plan approval processes, etc

3.21. Bidders are hereby invited to submit proposals for the lease of the Property and the development thereof for the establishment and running of the re-developed facilities as set out above for a period not longer than 30 years.

4. LEASE TERM AND SUB-LEASE

4.1 The Property is available for lease for a maximum lease term of 30 (Thirty) years which will be notarially registered at the cost of the lessee. The lease agreement will be entered into after the Municipal Council has approved the final lease. The award of the tender will be subject to this approval of council and no rights on the tender will take effect unless Council approve the lease.

4.2 The lease agreement will include agreed timelines for project implementation and milestones.

4.3 The lease agreement will be reviewed annually until the re-development is completed in accordance with the proposals submitted and approved. The review will focus on timelines and progress during development implementation. The lease agreement will stipulate remedies to manage possible lack of progress.

4.4 Tenderers are required to tender lease amounts for the first 12 months (planning phase), construction phase (estimated at around 24 months) and the rest of the duration of the lease. These amounts must be market related and may take the development costs into account as all developments on the property will become the property of the municipality and will remain on site after the lease expired. The tender will not be evaluated based on the lease amounts and the municipality reserve the right to negotiate the lease amounts with the successful bidder before the lease agreement takes effect.

4.5 The lease agreement will lay down a period of 36 months for completion of the re-development.

4.6 The final agreed rental amounts as tendered will escalate annually on the date of signing of the lease agreement at the latest Consumer Price Index (CPI) at the time of calculation.

4.7 The Municipality will consider application/s for the sub-lease of any one or more

elements of the development, once fully completed in terms of the approved re-development proposals. Any proposed sub-lease must be submitted and duly motivated in writing and will be subject to **prior** written approval of the Municipality. Any sub-lease period or terms and conditions may not exceed or contradict that of the master lease.

4.8 The lessee will not be responsible for paying property rates as ownership of the land resides with the Municipality. The Lessee however will be responsible for payment for all services used by the re-development.

4.9 The lease agreement with the successful bidder will be concluded after the final approval of the lease by the Municipal Council.

5. LEASE "VOETSTOOTS" AND SUBJECT TO CONDITIONS

5.1. The property is leased as it stands, "voetstoots", and the Municipality shall not be responsible for any defects in the property either patent or latent. The property is moreover leased subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the property and to all such other conditions and servitudes which may exist in regard thereto.

5.2. The Municipality shall not be required to point out the boundary beacons of the property and shall not be liable for any deficiency in the extent of the property which may be revealed on any survey or re-survey and shall not benefit from any excess.

6. PERMITTED LAND USE

6.1 The various sites comprising the Property, are currently zoned for Multi-unit Residential Zone and also Public Roads and parking Zone, as set out in Par 2 above. It should be noted that the envisaged use activities as per the Development Vision and Specifications set out in Par 3 above, will require rezoning of certain sites. It will therefore be required of the successful bidder to, at own cost, apply to the Municipality for the necessary land use rights, after the tender has been awarded to the successful bidder, to permit the envisaged use activities as per the Development Vision and Specifications.

6.2 Prospective bidders are advised to contact the Land Use Management Section of the Municipality **prior to submission of a tender** to acquaint itself with all aspects pertaining to the acquiring of land use rights. The Section's contact details are as

follows:

Land Use Management: Client Services: Annecke Hardouin

E-mail landuse.enquiries@stellenbosch.gov.za

Tel 021 – 808 8606

7. ENGINEERING AND ELECTRICAL SERVICES

7.1 All municipal services are available to the Property.

7.2 The successful bidder will be responsible, at own costs, for any alterations/upgrading to any municipal service that may be required to support the proposed development.

7.3 The successful bidder may also be responsible for development charges, if applicable in terms of the Development Charges Policy of the Municipality.

7.4 Electrical Services

- The Developer/Lessee must submit an Energy Management plan with their building plan application for consideration/approval by the Department: Electrical Services
- The Municipality equipped the Dorp Street Municipal Offices with a 100kVA Back- Up Generator which is utilized during load shedding. The municipal building at Dorp Street is supplied by a 150A three phase supply.

7.5 Water and Wastewater Services

- The Developer must follow due process i.t.o. development and building construction.
- A water and sewer capacity study must be done should the proposed development significantly differs from the current Masterplan.

7.6 Infrastructure Planning Development and Implementation (Development Services)

- Drawings are attached to indicate existing engineering services. All queries regarding drawings to be directed to Myra Francis Email: Myra.Francis@stellenbosch.gov.za

7.7 Waste Management

- Provision for refuse bins should be available in the form of refuse rooms which are easily accessible.
- The refuse collection frequency will be dependent on the type of development e.g. businesses and commercial properties receive a 3x per week collection service and residential properties once a week only. The developer/lessee will be responsible for the refuse collection charges.
- The developer/lessee should also implement recycling initiatives to reduce the waste generated from the development. These initiatives must be submitted to Infrastructure Services (Waste Management) for consideration and input.

7.8 Should additional information be required, prospective bidders are advised to consult with the Infrastructure Services Department of the Municipality. The contact person is:

E-mail: Shane.Chandaka@stellenbosch.gov.za
Tel 021 808 8213
Or
engineering.services@stellenbosch.gov.za

8. TOWN PLANNING AND BUILDING PLANS

8.1. The Stellenbosch Zoning Scheme will apply in respect of all land use and proposed structural additions (if any). The property is located in the historical centre which is governed by an overlay zone specific to the area.

8.2. Should new buildings/structures be proposed by the successful bidder, a formal Site Development Plan (SDP) will be required from the successful bidder (after tender award) indicating the nature/ type of the building structures proposed, which must be compliant with the permitted land use. Once an approved SDP has been obtained, building plans may be submitted for approval. No building work may commence without formal approval of such application/s by the Municipality.

8.3. As indicated above, the buildings on the Property enjoy heritage protection, therefore it will be the responsibility of the successful bidder to obtain the required permits to undertake building alterations. A Power of Attorney will be issued by the Municipality as property owner to submit the necessary applications to Heritage Western Cape. No building plans will be considered until the necessary

permits have been issued.

8.4. A building plan for structures less than 500m² should be concluded by the Municipality within 30 days from receipt of payment, and structures greater than 500m², 60 days. Building plans must be submitted and paid well in advance of planned construction to cater for any technical difficulties with the building plan application which may result in refusals or the resubmission of building plans with corrections. Once building plan approval has been obtained, the Municipality must be notified 7 days in advance of commencement of building works.

8.5. The successful bidder will be responsible for all costs for the compilation and submission of building plan applications, permits and approvals as well as construction and other costs.

8.6. Bidders are advised to consult with the Planning and Economic Development Department as to the availability of building plans for existing structures, and in relation to the mattes listed above.

Contact persons: Stiaan.Carstens@stellenbosch.gov.za

8.7. The successful bidder must ensure that all relevant legislation pertaining to construction work, occupational health and safety, town planning and other applicable legislation, are duly complied with when the project is implemented.

8.8. Cognisance must be taken of existing planning frameworks for the site and surrounding areas inter alia the preliminary Framework and Policy for the Piet Retief Street area.

9. LANDSCAPING

The successful applicant will be responsible, at his/her own costs, for the compilation and submission of landscaping plans/proposals.

10. TENDER EVALUATION: PRE-QUALIFICATION REQUIREMENTS

10.1 The bidders' re-development proposals must be in accordance with the Vision and Development Specifications as stipulated in Par. 3 above. The bidders are required to clearly indicate the detail of the proposals on the development plan to enable the Municipality to evaluate the compliance of the re-development proposal in line with the vision of the municipality in paragraph 3.

10.2 Bidders are required to submit a detailed breakdown of the total capital investment/value added to the Property because of the re-development proposed.

The capital investment/value add amount will be adjudicated as the tender amount on the 80/20 or 90/10 principle required by the Procurement legislation and regulations. For the purposes of calculation of the capital investment amount, all general tender/operational costs such as professional fees, rezoning costs, studies, building plan costs, heritage approvals, lease costs, etc, **must be excluded.**

10.3 Bids that fail to meet the pre-qualification requirements, will be regarded as non-responsive and their bid will not be further evaluated.

11. TENDER FUNCTIONALITY ASSESSMENT

Valid bid proposals relating to the lease and re-development of the Property, will be assessed in terms of a functionality assessment based on the evaluation criteria set out below. Bids are required to attain a minimum score of 80% for functionality. Bids that fail to score a minimum of 80%, will be regarded as non-responsive. This is a strategic property and has a strategic value and function for the area. We need to ensure that proposals are of a high quality and will be able to fulfil the brief, therefore the requirement for a 80% score.

Assessment will be undertaken by a panel of staff members as assigned for this purpose.

Criterion 1: Experience and financial sustainability.

1.1 Proof of the bidder's development experience in relation to similar or comparable projects/ventures.

No.	Description	Points
1	Successfully/substantially completed a similar or comparable project/venture during the last 5 years. Details of such project/s and the status thereof must be included.	10
2	Successfully completed a similar or comparable project/venture 5 to 10 years ago. Details of such project/s must be included.	6
3	Have not completed a similar or comparable project/venture during the last 10 years	0

1.2 Proof of the bidder's financial sustainability to successfully execute the development proposal.

No.	Description	Points
1	Bank letter of good standing which confirms the bidder's financial sustainability to successfully implement a project of this magnitude.	10
2	Other proof of bidder's financial sustainability to implement a project of this magnitude.	5
3	No proof of bidder's financial sustainability to implement the bid proposal.	0

1.3 Proof of the bidder's management experience in relation to similar or comparable projects/ventures.

No.	Description	Points
1	Successfully managed the facilities in a similar or comparable project/venture during the last 5 years	10
2	Successfully managed the facilities in a similar or comparable project/venture 5 to 10 years ago	6
3	Have not undertaken facility management in a similar or comparable project/venture during the last 10 years	0

Criterion 2: Site Development Plan

2.1 For the purpose of tender evaluation, a concept/informal Site Development Plan (SDP) must accompany the bid indicating the proposed application of each building as well as any new structures proposed. The concept SDP must include the following:

No.	Description	Points (18)	
		Yes	No
1	A clear indication of the purpose/s for which each existing structure on the Property will be utilised.	4	0

2	Basic detail of proposed alteration/addition/s to existing structures.	5	0
3	Newly proposed structures (if any) and purpose. If no structures are proposed, indicate accordingly in which case 1 point will be scored. The same applies to rows 4 – 6 below.	1	0
4	Location of any proposed new structures.	1	0
5	The approximate size/extent, in square meters (m^2), of any newly proposed structures.	1	0
6	Estimated date of commencement and completion of any newly proposed structures.	1	0
7	On site parking layout and surface finish	1	0
8	Public parking layout and surface finish demonstrating compliance to public parking requirements	2	0
9	Parking control measures proposed	1	0
10	Landscaping proposed.	1	0

Criterion 3: Development implementation plan.

3.1 The Bid proposal must be supported by an Implementation Plan with clear implementation milestones and time frames as well as a breakdown of the estimated operational and capital expenditure linked to milestones and also linked to each building and the public parking facilities.

No.	Description	Points
1	The Implementation Plan provides clear milestones and time frames for development implementation. The Plan includes a structured layout of the estimated capital investment and operational expenditures	10

	clearly linked to the implementation time frames and in respect of each building as well as the public parking area.	
2	The Implementation Plan with time frames and estimated capital investment/expenditures, provides elements of the information requested but does not cover all aspects and/or does not furnish the required level of detail.	5
3	No or scant information re time frames and/or estimated investment/expenditures.	0

Criterion 4: Operational plan

No.	Description	Points
1	The Operational Plan provides an indication of how the successful bidder intends to put the upgraded/redeveloped facilities into operation, facility management, the processes to be followed to identify suitable sub-tenants (if any) as well as the criteria for such sub-tenant/s and marketing of the facilities.	10
2	The Operational Plan shows limited information as to how the facilities will be put into operation, facility management, identification of subtenant/s and marketing.	5
3	No or scant information re intended day to day operations.	0

Criterion 5: Employment Creation.

The Bid proposal must be accompanied by an estimate of the number of permanent employment opportunities to be created.

1.	Indication of estimated number of permanent (for duration of lease) employment opportunities included in bid proposal.	1
2.	Indication of estimated temporary/casual employment opportunities.	1
3.	No indication provided.	0

12. SPECIFICATIONS CHECKLIST

Support documents that speak to the functionality assessment criteria set out in Par 11 above, must be included in bids. The onus rests on bidders to ensure that focussed and relevant support documentation are attached to enable the Municipality to perform the functionality assessment. The following documents/information are required as a minimum:

ACTIVITY/INFORMATION	X
1. Proof of the bidder's experience in relation to the successful implementation of similar or comparable projects.	
2. Proof of the bidder's financial sustainability to successfully implement the bid proposals, such as written good standing confirmation by a bank, financial loan agency, written confirmation by sponsor/donor, etc. Information regarding the source of funding should be clearly indicated.	
3. Proof of the bidder's experience in relation to the successful management of similar or comparable projects.	
4. A concept/informal Site Development Plan, which includes all elements of the proposals.	
5. Development Implementation Plan which sets out all proposals as well as a detailed description of the proposed implementation and time frames.	
6. Operational Plan detailing the operational implementation of the	

upgraded facilities, facility management, subtenant identification all linked to the implementation plan.	
7. A summary of the intended employment creation.	
8. The re-development proposals are in accordance with the Vision and Development Specifications as stipulated in **Par. 3** above.	
9. A detailed breakdown of the total capital investment/value to the Property as a result to the re-development proposed is included in the bid document.	

13. GENERAL REQUIREMENTS

13.1 The maintenance and repairs of the existing and new buildings (if any), parking area and infrastructure on site will be the sole responsibility of the successful bidder for the duration of the lease agreement.

13.2 The Municipality does not bind itself to accept the highest offer and reserves the right to accept any proposal, partial proposal or none of the proposals submitted.

13.3 All administrative and applicable legal and technical requirements must be adhered to.

14. COMPULSORY CLARIFICATION MEETING

14.1 A compulsory information session will be held at the Property) on ……at..... The Municipality may arrange more than one session depending on the number of the number of prospective bidders.

14.2 Applicants will be required to register for the clarification meeting at least 48 hours prior to the clarification meeting @annalene'deBeer@stellebosch.gov.za. Use the reference of Transvalia clarification meeting. Not more than 3 people per bidder is allowed at the clarification meeting. Prospective bidders must bring their own documentation and pens. All people who are ill must please wear a mask. Prospective bidders will be group to ensure that it is practical.

14.3 Applicants who fail to attend the entire compulsory information session will be disqualified.

15. OVERVIEW OF TENDER PROCESS

15.1 After the tender closing date, all proposals will be assessed by the Municipality in terms of the Development Vision and Specifications as well as the Evaluation Criteria, as stipulated above.

15.2 Bids will firstly be assessed in terms of compliance with the Development Vision and Specifications. Bids that do not comply with the development requirements and use specifications will be regarded as non-responsive and will not be evaluated further.

15.3 Bids that comply with the Development Vision and Specifications, will be assessed based on the evaluation criteria set out in **Par 11** above, in terms of which bidders are required to attain a functionality score of at least 80%. Bids that fail to attain the minimum score, will be regarded as non-responsive and will not be evaluated further.

15.4 Bids who pass the pre-qualification criteria and obtain at least 80% in the functionality criteria will be adjudicated on the 80/20 or 90/10 principle where the value added will be adjudicated in the 80/20 or 90/10 principle.

15.5 The Municipality reserves the right to clarify any aspect of the bid submitted or to request any omitted documents, during the evaluation phase. Any such clarification or omitted documents requested, will be duly recorded, and reported to the Bid Committees.

15.6 Bids that score a minimum of 80% in terms of functionality, will progress to be finally assessed in terms of bid price (total capital value added to the Property) as per the Form of Offer and the preferential points system as set out in the Tender Document. Bidders will also be required to indicate the monthly lease amount/s however this amount will not be used for tender evaluation purposes.

15.7 Following the assessment of the respective bid proposals, an assessment report will be submitted to the relevant Bid Committees of the Municipality for consideration and award. After award by the Bid Adjudication Committee, the matter will be submitted to the Municipal Council for final approval of the lease. Should the lease not be approved by Council, the award will automatically lapse.

15.8 The respective bidders will thereafter be informed of the outcome.

15.9 Tender prices must be valid for 180 days after closing of the tender.

16. CONTACT PERSON

The contact details of the technical staff are captured above. For general/administrative enquiries regarding the specifications of the tender and clarification meeting, Rozeeta Petersen, Corporate Services Department, may be contacted on Tel 021 808 8018 or email at Rozeeta.Petersen@stellenbosch.gov.za or Annalene.deBeer@stellenbosch.gov.za

APPENDIX 2

Publication	Publication Date	Section	Page
BMSTBEN (EikestadNuus)	12/12/2024	MAIN (Main)	-

STELLENBOSCH
STELLENBOSCH • IPHELA • IDANSTHOEK
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LOCAL AUTHORITY NOTICE
OFFICIAL NOTICE AS CONTEMPLATED IN REGULATION 35(a) OF THE MUNICIPAL ASSET TRANSFER REGULATIONS
PROPOSED AWARDING OF LONG-TERM RIGHTS: TRANSVALIA COMPLEX: ERVEN 825, 1123, 1128, 1133, 1134 AND 1142 STELLENBOSCH

1. **Introduction:**
Notice is hereby given in terms of Regulation 35(a) of the Asset Transfer regulations (ATR) of 22 August 2008 that Council is considering the awarding of long-term rights (by way of a 30 year lease agreement) for the Transvalia Complex situated in Dorp Street on erven 825, 1123, 1128, 1133, 1134 and 1142.

2. **Background / Reasons for proposed Awarding of Rights**

2.1 Vision of Stellenbosch Municipality

It has been a long time vision of the Municipality to use the property in a manner to create economic activity in the historic centre of Stellenbosch, whilst preserving and maintaining the historic buildings and architecture of the area. Some of the erven are also providing access to adjacent private properties as well as parking at the Stelkor centre and is excluded from the lease area (erven 1124, 1125, 1129 and 1130).

2.2 Tender process and successful bidder

Council went out on a tender process to identify a preferred bidder through a competitive process to lease the land on a long term lease (30 years) to Middedorp Properties (Pty) Ltd to re-develop the area. In brief the preferred proposal entails the following key elements:
Renovate the existing historic buildings along Dorp Street for the purposes of a 24-unit Boutique Hotel with an art-focused theme, incorporating a 60-seater restaurant, hotel coffee and wine bar and a rooftop bar for guests, re-developed courtyard and guest area behind hotel as well as an art and design shop in one of the historic buildings. Preserving the architectural integrity of the buildings along Dorp Street. Demolishing the existing garages and provide upgraded public toilets.
The proposed new structures comprise of a wooden deck for the proposed restaurant at 135 Dorp Street, steel frame clip-on staircase and corridor, swimming pool, paved hotel dedicated parking area, dedicated refuse area and security/parking kiosks. Repair and upgrading of existing public parking area, providing 143 paid public parking, 34 paved hotel dedicated parking bays as well as 10 non-motorised parking bays. No residential housing or office space were requested. A capital injection of R22 028 250.00 will be made into the land that will remain the Council's asset.

3. **Discussion**

3.1 Public Participation Process

In terms of Regulation 34 of the ATR, before Council can make a final decision on whether to award rights in Municipal property, i.e. to enter into long-term Lease Agreements, the Municipal Manager must first conduct a public participation process contemplated in Regulation 35.

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 an Information Statement referred to in Regulation 34.

Please note that an Information Statement as contemplated in Regulation 34(3)(b) of ATR as well as the agenda item that served before Council are available on the website together with this notice. The full Council item is in the agenda of 30 October 2024 that is also available on the website.

The Information Statement contains the following:
- The reasons for the proposal to grant a long-term right to lease.
- Any expected benefits to the municipality that may result from the granting of the right.
- Any expected proceeds to be received by the Municipality from the granting of the rights; and
- Any expected gain or loss that will be realised or incurred by the Municipality arising from the granting of the right.

3.3 Invitation to submit comments/inputs or alternative proposals

Interested and affected parties / individuals are hereby invited / called upon to submit comments / inputs or alternative proposals in respect of the possible granting of the rights of the long term lease of 30 years to Middedorp Properties.

Any such comments/inputs or alternative proposals must be in writing and must reach the office of Property Management by no later than 7 February 2025 at close of business at the address or e-mail listed below:

Physical address: 3rd Floor, NPK Building, cnr Plein and Rynevald Streets, Stellenbosch
Tel: 021 808 8073
Email: municipal.manager@stellenbosch.gov.za

3.4 Persons with disabilities

Notice is further given in accordance with Section 21 of the Local Government: Municipal Systems Act, No 32 of 2000 that anyone with disabilities or who is unable to write, but need to participate in the process, may present him/herself during office hours at the Property Management Office, where a staff member of the Municipality will assist such person to transcribe that person's comments/inputs or alternative proposals.

GERALDINE METTLER **DATE**
MUNICIPAL MANAGER: STELLENBOSCH MUNICIPALITY

APPENDIX 3

Publication	Publication Date	Section	Page
NETWBURGER (Netwerk24Burger)	07/12/2024	CLASSDSP (CLASSDSP)	-

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LOCAL AUTHORITY NOTICE

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TRANSVALIA COMPLEX: ERVEN 825, 1123, 1128, 1133, 1134 AND 1142 STELLENBOSCH

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Renovate the existing historic buildings along Dorp Street for the purposes of a 24-unit Boutique Hotel with an art-focused theme, incorporating a 60-seater restaurant, hotel coffee and wine bar and a rooftop bar for guests, re-developed courtyard and guest area behind hotel as well as an art and design shop in one of the historic buildings. Preserving the architectural integrity of the buildings along Dorp Street. Demolishing the existing garages and provide upgraded public toilets. The proposed new structures comprise of a wooden deck for the proposed restaurant at 135 Dorp Street, steel frame clip-on staircase and corridor, swimming pool, paved hotel dedicated parking area, dedicated refuse area and security/parking kiosks. Repair and upgrading of existing public parking area, providing 143 paid public parking, 34 paved hotel dedicated parking bays as well as 10 non-motorised parking bays. No residential housing or office space were requested. A capital injection of R2 028 250.00 will be made into the land that will remain the Council's asset.

3. **Discussion**

3.1 **Public Participation Process**

In terms of Regulation 34 of the ATR, before Council can make a final decision on whether to award rights in Municipal property, i.e. to enter into long-term Lease Agreements, the Municipal Manager must first conduct a public participation process contemplated in Regulation 35.

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 an Information Statement referred to in Regulation 34.

Please note that an Information Statement as contemplated in Regulation 34(3)(b) of ATR as well as the agenda item that served before Council are available on the website together with this notice. The full Council item is in the agenda of 30 October 2024 that is also available on the website.

The Information Statement contains the following:

- The reasons for the proposal to grant a long-term right to lease;
- Any expected benefits to the municipality that may result from the granting of the right;
- Any expected proceeds to be received by the Municipality from the granting of the rights; and
- Any expected gain or loss that will be realised or incurred by the Municipality arising from the granting of the right.

3.3 **Invitation to submit comments/inputs or alternative proposals**

Interested and affected parties / individuals are hereby invited / called upon to submit comments / inputs or alternative proposals in respect of the possible granting of the rights of the long term lease of 30 years to Middedorp Properties.

Any such comments/inputs or alternative proposals must be in writing and must reach the office of Property Management by no later than 7 February 2025 at close of business at the address or e-mail listed below.

Physical address: 3rd Floor, NPK Building, cnr Plein and Ryneveld Streets, Stellenbosch
Tel: 021 808 8073
Email: municipal.manager@stellenbosch.gov.za

3.4 **Persons with disabilities**

Notice is further given in accordance with Section 21 of the Local Government: Municipal Systems Act. No 32 of 2000 that anyone with disabilities or who is unable to write, but need to participate in the process, may present him/herself during office hours at the Property Management Office, where a staff member of the Municipality will assist such person to transcribe that person's comments/inputs or alternative proposals.

GERALDINE METTLER
MUNICIPAL MANAGER:
STELLENBOSCH MUNICIPALITY

APPENDIX 4

Western Cape Government

Provincial Treasury
Umar Salie
PT: LGSCM
Umar.Salie@westerncape.gov.za | Tel: 021 483 3090

Reference number: 24/2/1/5

Enquiries: Umar Salie

Stellenbosch Municipality
Plein Street, Stellenbosch
PO Box 17, Stellenbosch
7599

Tower Block Building,
2nd Floor,
4 Dorp Street,
Cape Town
8001

Dear Municipal Manager, Mr. Geraldine Mettler

Attention:
The Chief Financial Officer: Rochelle Nichols
The Head of Supply Chain Management: Mr. Dalleel Jacobs
Property Management

PROPOSED LEASE OF PORTION OF MUNICIPAL LAND, TRANSVALIA COMPLEX: ERVEN 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160, STELLENBOSCH

1. PURPOSE

1.1. To provide an opinion to the Stellenbosch Municipality on the application for the proposed lease of Municipal Land, in terms of the Municipal Asset Transfer Regulation (MATR).

2. BACKGROUND

2.1 The Stellenbosch Municipality has submitted a memorandum to the Provincial Treasury seeking comments and recommendations in respect of the leasing of Municipal Land, portion of Transvalia complex being **Erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160, Stellenbosch** to **Middedorp Properties (Pty) Ltd** with the objective of creating an **Economic Upliftment by creating Tourist Facilities including a Restaurant & Tourist Accommodation** as well as **Parking,** for a **period of 30 years,** in terms of MATR.

2.2 As per communication by the Stellenbosch Municiaplity, the following documentation was made available:
2.2.1 Information statement;
2.2.2 Public invitation notice

2.3 In terms of Regulation 35(b) of the MATR, the relevant Provincial Treasury should provide comments and/or recommendations on municipal assets that exceeds R10 million and/or if the asset will be leased for a long-term period.

top EMPLOYER SOUTH AFRICA 2024
CERTIFIED EXCELLENCE IN EMPLOYEE CONDITIONS

2.4 The Municipality has disclosed that the Capital Value of the land is **R22 028 250.00** inclusive of vat. The rental is subject to negotiations and agreement with the municipality. The offer in **Phase 1 = R0**, **Phase 2 = R10 000 per month** and **Phase 3 = R20 000 per month**, for a period of **thirty (30) years**.

2.5 It should be noted that a copy of the draft lease agreement was not submitted to Provincial Treasury and therefore could not establish if the draft lease agreement meets the criteria highlighted in Regulation 45 of the MATR.

3. ISSUE

3.1 The Stellenbosch Municiaplity hereby seeks comments and recommendations from the Provincial Treasury in respect of the leasing of Municipal Land**, being portion of Transvalia complex** which are **Erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160, Stellenbosch**, to **Middedorp Properties (Pty) Ltd** with the objective of **Creating an Economic Upliftment by Creating Tourist Facilities including a Restaurant and Tourist Accommodation as well as Parking, for a period of 30 years**, in terms of MATR.

4. COMMENTS

4.1. Chapter 4 of the MATR and Regulation 40 of the SCM Regulations applies to the leasing of municipal property, which should be done in terms of a process that is fair, equitable, transparent, competitive, and cost-effective.

4.2. Council should be aware of the mandatory requirements as set out in Regulation 36 of the MATR before making an in-principal decision on leasing of municipal property to an individual.

4.3. The Municipality need to take cognisance of the following when considering leasing a property:

4.3.1.The type of usage required;
4.3.2.The period of the lease agreement;
4.3.3.The manner in which it is to be granted;
4.3.4.The minimum compensation to be paid; and
4.3.5.A framework within which direct negotiations for the granting of the right must be conducted.

4.4. If the Council decides to grant approval in principle for the leasing of the municipal property, the Municipality need to have assurance that **Middedorp Properties (Pty) Ltd** or **their successors in title** will provide adequate maintenance and safeguarding of the asset as stipulated in Regulation 41(4) of MATR.

4.5. A draft copy of the lease agreement needs to be submitted to the Provincial Treasury to establish if the proposed lease agreement will meet the criteria outlined in Regulation 45 of the MATR. Unfortunately, no comments could be provided in regard to the criteria outlined in Regulation 45 of the MATR.

4.6. Stellenbosch Municipality must ensure that the processes followed are in accordance with the disposal management system that makes provision for leasing of the asset and ensure that all other processes are followed as stipulated in Chapter 4 after approval has been granted in principle by the council.

4.7. The municipality should also consider if the asset should continue being leased for a long-term period by conducting a study, taking all future plans in consideration (e.g. property in a road reserve) to determine whether it will be more beneficial to dispose of the asset, instead of leasing the

property, If the CoCT decides to dispose of the asset, to ensure that the disposing process is followed in terms of Regulation 40 of the MFMA Supply Chain Management Regulation.

5. RECOMMENDATIONS

5.1. In conclusion, the Stellenbosch Municipality must take cognisance of the above-mentioned comments and relevant pieces of legislation for the leasing of municipal Land, **Transvalia complex: Erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160, Stellenbosch, with the objective of creating an economic upliftment by creating tourist facilities including a restaurant and tourist accommodation as well as parking,** to **Middedorp Properties (Pty) Ltd** at a market related value, for a 30-year period in terms of MATR.

5.2. The Accounting Officer needs to be satisfied that all due processes and procedures stipulated in the legislative prescripts and in the SCM and Asset Management policies have been followed.

We trust that you find the above in order.

Yours Sincerely,

MR. REGINALD CLARKE
DEPUTY DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT
PROVINCIAL TREASURY

APPENDIX 5

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 • 40 Church Square, PRETORIA, 0002 • Tel: +27 12 315 5111, Fax: +27 12 406 9055 • www.treasury.gov.za

Email: mfma@treasury.gov.za

The City Manager
Stellenbosch Municipality
PO Box 17
STELLENBOSCH
7600

For Attention: Ms Geraldine Mettler **Fax: (021) 808 8111**

Dear Madam

RE: PROPOSED LONG TERM LEASE OF PORTIONS OF THE TRANSVALIA COMPLEX (ERVEN 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160 STELLENBOSCH)

The correspondence received on 22 January 2025 requesting the National Treasury's comments on the municipality's intention to lease various municipal capital assets for developmental purposes, has reference.

We have noted the contents of the documents including the copy of the council resolution. The municipality intends to dispose of various erven 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 and 1160 Transvalia for tourism development. The municipality has undertaken a public competitive process by inviting public offers.

Section 14 of the MFMA read with the Municipal Asset Transfer Regulations (MATR) sets the legal framework for the disposal and the granting of rights to use, control or manage municipal capital assets. In this instance, Chapter 4 of the MATR is applicable as the municipality intends to grant the right to use, control or manage a municipal capital asset.

According to the council resolution, the properties are not required for the provision of the minimum level of basic municipal services.

The municipality has indicated that it will receive a capital injection of R22 028 250 (inclusive of VAT). The development will take place in three phases. Phase 1 (Planning Stage) will last 12 months, during which the developer will be exempt from paying rent. Phase 2 (Construction Stage) will last 24 months, with a rental amount of R10 000 per month. Phase 3 (Operational Stage) will commence from the 4th year until the end of the 30-year lease, with a monthly rental of R20 000, subject to annual increases. The municipality has indicated that the value of the property will have to be re-evaluated. Please ensure that the valuation report is shared with us and maintained for audit purposes.

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

The council item indicates that the Unit 1 of the Dorp Street complex is currently leased to IEC and there are plans for renewal. On the council resolutions, the municipality has not confirmed whether it has given notice to the current tenant of Unit 1 at the Drop Street Complex, despite plans to renew the lease with them. To avoid potential breach of contract claims and litigation damages, the municipality should ensure that the proper processes and notice procedures are followed.

The lease will be for a period of 30 years. Regulation 36 of the MATR sets out the matters to be considered for granting the right to use, control or manage a capital asset. This regulation requires the municipality to consider the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests, amongst others. The municipality has affirmed that that it will not incur any losses through granting the leases and the municipality will retain ownership of the property, incur no maintenance costs, and offset rental income with savings on management and maintenance of the property.

We draw your attention to regulation 45 of the MATR which sets out the minimum requirements for the ensuing lease agreement, including the requirement for the private sector party to whom the right has been granted to maintain and safeguard the asset for its intended purpose. Since the existence of the lease will relieve the municipality of its maintenance burden for the assets, we trust that the obligations of the parties regarding the maintenance of the property, as well as other applicable conditions, will be duly addressed in the lease agreement.

It is our understanding that the municipality will ensure that the transaction is finalised in line with Chapter 4 of the MATR as well as the applicable disposal management processes.

We trust that you will be guided accordingly.

Yours sincerely

Wayne McComans
Chief Director: MFMA Implementation
Date: 24 February 2025

Cc: Chief Financial Officer
Cc: MFMA Coordinator: Western Cape Provincial Treasury

APPENDIX 6

FRANKLIN ADAMS PO BOX 12445 DIE BOORD 7613 oakcity2010@yahoo.com

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

COMMENTS

In relation to leasing a heritage building in South Africa, particularly in the Western Cape for the development of a multipurpose tourist and leisure facility would be exposed to have several legal, economic, and cultural implications. Taking into consideration the compliance of relevant heritage laws, zoning regulations, assets regulations and environmental considerations, many were not mentioned in the advertisement for comments.

Firstly, where the following applicable, legal and heritage law consider:

(a) Section 34 of the NHRA

(b) When will the Environmental Impact Assessment (EIA) take place under the National Environmental Management Act (NEMA)?

Secondly;

(c) What terms and conditions or necessary arrangements are in place for any irreversible alterations, that would still preserve historical integrity of the heritage site?

(d) Will the facility allow commercial viability with balanced public access to proposed multi-purpose tourist and leisure facility?

(e) What respect will the leaser have for the local heritage groups, historians, and indigenous communities taking in consideration the legacy of eviction of families under the group area act? Will the leaser incorporate historically displaced (Group Areas) people?

(f) Will an inclusive decision-making take place, that includes cultural, local and indigenous communities?

(g) If any developments are perceived as being harmful to the heritage site, what alternative solution will be offered?

(h) Will this property that's owned by the municipality have any efficient and effective economic development and social equity measures that benefit local and indigenous communities?

Thirdly;

(i) Additionally, Tender No 34, which includes, Proposal for development of erf 1123, Transvalia had irregularities of ±R432 million and was cancelled by the High Court. Why embark on this process again?

(ii) Was the irregularities addressed?

(iii) If addressed, how?

(iv) Specify?

Fourthly;

Any development in the area, will have a big impact on Dorp Street and its mobility, and cannot carry the traffic, as it will cause traffic jams. Will disfurnishment to the buildings cause inconvenience or any costs to the rates payers of Stellenbosch, perhaps an increase in rates to local citizens?

ALUTA CONTINUA !!!!

APPENDIX 7

Our Ref: EWK/lvs Your Ref: Date: 7 February 2025

Stellenbosch Municipality

Chief Legal Advisor

Attention: Mervin Williams

Via e-mail: Mervin.Williams@stellenbosch.gov.za

Municipal Manager

Attention: Geraldine Mettler

Via e-mail: municipal.manager@stellenbosch.gov.za

And via e-mail: scm.tenderawards@stellenbosch.gov.za

Office of Property Management

Via e-mail: municipal.manager@stellenbosch.gov.za

Re: **BID: B/SM 111/24 RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES**

1. We are instructed by GIST Technology Holdings (Pty) Ltd ("GIST").

2. GIST submitted a tender in response to the bid notice B/SM 111/24 concerning re-development and lease of Transvalia Properties issued by the Stellenbosch Municipality.

3. In a letter dated 10 October 2024, GIST was informed by the Municipality, that its tender was unsuccessful and that the bid was awarded to Middedorp Properties for a

re-development capital expenditure of R22,028,250 (VAT included) and rental payments over the period applicable amounting to R6,600,000.

4. In the same letter, the Municipality recorded that in terms of SCM Regulation 49 GIST had the right to lodge a written objection or complaint against the decision or action taken within 14 days and in terms of Section 62 of the Municipal Systems Act ("the Act"), GIST had the right to lodge a written appeal against the decision, if any rights were affected, within 21 days.

5. After GIST informally enquired as to the reasons why its tender, amounting to a re-development capital expenditure of R163,450,000 and rental payments over the period applicable amounting to R75,650,040, had lost out to a significantly lower tender, – that is more than 8 (eight) times less than our client's tender – it was provided with your response of 14 October 2024.

6. In your response of 14 October 2024, GIST was informed by your Manager: Demand Management and Strategic Sourcing, Bentley Louw, that GIST's bid was non-responsive. This decision was taken by the Municipality's Bid Adjudication Committee.

7. Our client disagrees with the decision of the Bid Adjudication Committee.

8. GIST proceeded, within the 14-day period, to lodge a formal objection (on 23 October 2024) and then filed an appeal in terms of Section 62 of the Act, within 21 days (on 31 October 2024).

9. Copies of the formal objection and of the Section 62 appeal are attached.

10. In terms of Section 62(2) of the Act, the Municipal Manager is obliged promptly to submit the appeal to the appropriate appeal authority and in terms of Section 62(5) the appeal authority must commence with an appeal within 6 (six) weeks and decide the appeal within a reasonable time – this has not yet occurred.

11. Subsequent to submitting the formal objection and the Section 62 appeal, on 8 November 2024 GIST received correspondence from the Municipality's Chief Legal Advisor, Mervin Williams, in which the Municipality attempted to retract its 10 October 2024 correspondence based on the submission that the "award" of the tender to Middedorp Properties will only be finalised once the Council provides final approval and that no objection or appeal to the tender award would accordingly be available as the award is not final until Council finally approves it (you also recorded that the administration had made recommendations to Council as to the successful tender).

12. We disagree with your last-mentioned conclusions (paragraph 11 above). GIST is clearly a person whose rights have been affected by the decision of the Bid Adjudication Committee. In concluding (incorrectly) that GIST's bid was non-responsive, the Bid Adjudication Committee has taken a final decision that determines GIST's rights. This is a decision contemplated in Section 62(1) of the Act.

13. In the circumstances, the Section 62 appeal process must follow its ordinary course and be decided promptly.

14. GIST also requires that that the Municipality's Council be formally informed of the pending Section 62 appeal and of the full details of our client's bid and that the Municipal Council's final determination of the tender be held over until after the Section 62 appeal process (and any further dispute process) has run its course. This is

because GIST's bid – from which the Municipality stands to benefit financially – is compliant with the tender specifications.

15. We require confirmation by 17h00 on Tuesday 11 February 2025 that:

    15.1. the Section 62 appeal will be dealt with in accordance with the applicable law;

    15.2. that the Municipal Council will be informed of the Section 62 appeal and the details of GIST's bid; and

    15.3. that the Municipal Council's final decision on the award of the tender will be held over until finalisation of the Section 62 appeal.

16. All of our client's rights remain reserved.

Yours faithfully

E W KEMP

TO: **Stellenbosch Municipality**

Date: 2024/10/23

Plein Street
Stellenbosch
7600

Per Email: scm.tenderawards@stellenbosch.gov.za

ATT: **Mr. B Louw on behalf of / for**
The Municipal Manager

cc.: Ms. A. De Beer, Mr. B. De la Bat, Ms. L. Pool, Mr. A. Marais

RE: BID: B/SM 111/24 RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES

SUBJECT: FORMAL OBJECTION TO OUTCOME, received dd. 2024/10/10

We refer to the above matter and your letter dated 10 October 2024 (attached hereto as Annexure A), aforementioned received on same date.

As an interested and affected party who submitted a compliant bid for this tender, we believe that the tender process and the subsequent award were not conducted in accordance with the applicable legal and regulatory framework. As per SCM regulation 49, we hereby formally **lodge our objection** against the decision of the municipality in awarding the bid to Middedorp Properties in the amount of R22 028 250.00 (Twenty-two million and twenty-eight thousand two hundred and fifty Rand).

We vehemently disagree with the content of your breakdown of our *"Non-compliance" and / or "non-responsive"* as set out in your email dated Monday, 14 October 2024 (attached hereto as Annexure B). After extensive consultation with professionals in the property, legal and hoteliering industries, we wish to correct the Municipality in your averments in said email. Our grounds for objection are listed below.

GROUNDS OF OBJECTION

1. The Tender Document does not require a detailed plan or layout of the proposed hotel. As per GIST Technology Holdings' tender bid that was submitted for your consideration, in our proposal ***the historical building will indeed be used for hotel facilities***, which includes but is not limited to Hotel General Admin, Lounges, Dining Room, Offices, perhaps even Rooms on the 1st floor (which does not require stating, as it forms part of the obvious and intended use of the Buildings and the purpose of the Tender).

As per our submitted tender document, a covered walkway to amenities and additional hotel rooms, to create a bigger and uniform use of areas and buildings.

Where the term "bachelor apartments" is used, it serves as a guide (common practise in Urban Design & Architecture) to the size of the hotel rooms in relation to design and will be used as both short and long stay accommodation ***by tourists***. In this regard we would like to draw your attention to Tender Clarification 1 dated 6 September 2024 (attached hereto as Annexure C) clearly indicating that the apartments will solely be utilised by tourists visiting the area. Therefore, the apartments will not be available to students or working persons, in the traditional sense.

2. GIST Technology Holdings' tender proposal falls within the municipality's bylaws and all legal parameters regarding land use, heritage, development concept and vision. The municipality's ***opinion*** that the tenderer may have overbulked, does not result in the tenderer not being compliant with the pre-qualification criteria. GIST Technology Holdings remain open to discuss the matter of overbulking and can easily ***tone down*** the development if needed.

3. Throughout the years precedent has been established in relation to the "foreign proportions and scale" of buildings within the area. This can be seen by the erection of Eikestad Mall, the ABSA building located in Plein Street and the Post Office on the corner of Bird and Plein Street, all examples where old meets new. A precedent in law is essential as it ensures that equity is achieved through consistency and predictability in each and every case. The proposed building is within the zoning regulations that allow for a four (4) storey building. The apex of the building is 12,9 meters, the building parameters allowed being a height of four (4) storeys with a maximum height of 15 meters. We refer to the Stellenbosch Municipality: Zoning Scheme By-law, 2019 (As amended 30 July 2024):

252. Provisions applicable to specific Urban and Rural Conservation Overlay Zones

(1) The provisions of this subsection shall apply to the Stellenbosch Urban Conservation Area, as defined on Map URC01:

(a) buildings may not exceed a height of 10 meter, measured from existing ground level to top of roof or top of parapet, which limit is applicable only to the first 15 meters measured from the public road.
(b) on the balance of the land unit (outside the 15 meters measured from the public road) the height of a building may not exceed 5 storeys or the maximum number of storeys permitted in the base zone, whichever is the lowest.

GIST Technology Holdings therefore comply with the above requirements.

4. During the site meeting, mention and discussions were held regarding the need for parking, additional parking for the greater Stellenbosch CBD, same needed to be included in the development proposal. We refer to the Aurecon Traffic Impact Assessment/Study conducted for Stellenbosch and the Parking Deck/Garage Feasibility Study (C1978-Eikestad-Parking-PPP-Feasibility-Study-Summary-Report-20240124). The parking garage is classified as a consent use and will be concealed by the two residential blocks.

5. The argument made by the municipality that the single storey private residential buildings located along the western side of Louw Street would be dwarfed, does not hold merit.

There is multiple high storey buildings located on the eastern side of Louw Street namely, the two (2) storey Batavia Boutique Hotel as well as the three (3) storey building situated on 14 Louw Street. The fact that the proposed development will overlook the private space of residential buildings cannot be considered a foreign occurrence as this happens to all erven situated within such a multi residential zone, which is also the case in this particular area. GIST Technology Holdings is most willing to scale/tone down to a two (2) or three (3) storey building. Furthermore, the Gist Technology proposal, has sufficient set back / building lines, as per bylaws (Refer to sketches by architect Chris de Hart on pg. 13, 15, 16, 20 of our submitted tender proposal). In addition to that, find a concept that shows a ***further*** setback in lieu of comments regarding the Louw Street property (attached hereto as Annexure D).

6. After thorough engagement with various professionals, we have been informed that an amount of R 19 155 000 excluding VAT is simply insufficient to cover the costs for the repair and upgrade needed to restore the historical building which is the subject of this tender bid. This amounts to **heritage neglect.** Economic development, job opportunities and the stimulation of economic activity remain paramount as stated during the site meeting, transcripts available upon request.

7. It is also evident that Ms. Geraldine Mettler and the 'successful' bidder, Middedorp Properties, currently serve together on the tourism board of Stellenbosch – Visit Stellenbosch / leadership. We refer you to the following link https://members.visitstellenbosch.org/leadership/. This is a clear conflict of interest and if Stellenbosch Municipality were to indeed award the Tender to Mr. Ben Carl Havemann (representative), it will not be in the best interests of the Stellenbosch Members and Community as a whole, when it comes to being stewards and custodians of assets within the realm of the Counsel.

CONCLUSION

GIST Technology Holdings has complied with the Development Vision and Specifications as required in terms of Par 15.2 of the Tender Document as illustrated in the points set out above.

Therefore, we pass the pre-qualification criteria and as such is indeed **compliant and responsive**.

In terms of the Section 217 of the Constitution, when an organ of state contracts for goods and services it must do so with a system which is fair, equitable, transparent, competitive and cost-effective. The Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and the regulations thereunder, as week as the Municipal Supply Chain Management Regulations (SCM Regulations), promulgated under the Municipal Finance Management Act must be considered to give effect to Section 217 of the Constitution.

It is clear from the points raised above that GIST Technology Holdings has submitted a tender, which in all respects, comply with the specifications and conditions as set out in the tender document and the submitted tender is therefore deemed to be an 'acceptable tender' as contemplated by Section 1 of the PPPFA.

BIDDER REQUEST

Our rights have been affected by the tender being awarded to the *'successful tenderer'* in circumstances when they should not have been based on the grounds listed above. In light of the above points, we demand a thorough and transparent review of the tender award decision.

We believe that a fair reassessment of the submitted tenders will demonstrate the merits of our proposal and therefore respectfully request the following action:

1. Stellenbosch Municipality's withdrawal of their incorrect non-compliance allocation to Gist Technology Holdings;
2. Stellenbosch Municipality's decision to award Tender No. **B/SM 111/24** be reviewed and overturned with immediate effect;
3. An independent review or re-evaluation of the tender process be conducted in line with the provisions of the Municipal Finance Management Act (MFMA) and other applicable laws;
4. Detailed reasons (proof) as per Section 11 of tender document that Middedorp Properties has indeed scored a minimum of 80% in terms of the functionality assessment;
5. GIST Technology Holdings tender bid be further evaluated and cleared based on the criteria set out in Par 11 of the Tender Document to obtain a functionality score and progress to be assessed in terms of Par 15.6 of the Tender.

THE RIGHT TO JUST ADMINISTRATIVE ACTION

Should we not receive a satisfactory response we reserve our rights to seek further legal recourse, including but not limited to judicial review in terms of the Promotion of Administrative Action Act 3 of 2000 (PAJA).

Section 33 of the Constitution of the Republic of South Africa, 1996, guarantees every individual the right to administrative action that is lawful, reasonable, and procedurally fair. This right is further reinforced by PAJA, which governs all forms of administrative action. It is trite law that the awarding of a tender by a municipality, as an organ of state, constitutes an administrative action. In terms of PAJA, any tender process is subject to judicial review if it fails to meet the criteria of lawfulness, reasonableness, or procedural fairness, provided that all internal remedies have been exhausted.

Nothing in this letter shall be construed as a waiver of any rights or remedies available to GIST Technology Holdings under applicable law or equity. GIST Technology Holdings retains the right to assert any claims or defenses in relation to this matter or any related matter, which rights we expressly reserve.

We trust that you will apply your mind to each and every point listed above and await your prompt response herein, by no later than **28 October 2024**.

Many thanks and kind regards,

GIST Technology Holdings (Pty) Ltd T/A **GIST Devco**

Mr. Eugene Yntema
Director

Contact Details:

Mobile: +27 84 800 5420
Email: eyntema@go-group.co.za

ANNEXURES:

A: Outcome of tender letter
B: Email from B. Louw
C: Tender Clarification 1
D: Concept of further setback

TO: **Stellenbosch Municipality**
Appeal Authority

Date: 2024/10/31

Plein Street
Stellenbosch
7600

Per Email: scm.tenderawards@stellenbosch.gov.za

ATT: **Mr. B Louw on behalf of / for**
The Municipal Manager

cc.: Ms. A. De Beer, Mr. B. De la Bat, Ms. L. Pool, Mr. A. Marais

RE: BID: B/SM 111/24 RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES

APPEAL IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000 – AGAINST THE DECISION TO AWARD TENDER NUMBER: B/SM 111/24

BACKGROUND

The Appellant is GIST Technology Holdings (Pty) Ltd ('GIST Technology Holdings'). The Appellant appeals against the decision of the Supply Chain Management Bid Adjudication Committee of the Municipality of Stellenbosch, taken under delegated authority, to award tender number B/SM 111/24 – *Re-development and Lease of Transvalia Properties* to Middedorp Properties.

Stellenbosch Municipality advertised the tender and the closing date was 26 August 2024. The Municipality received three (3) bids in response to this tender. One of the bidders subsequently withdrew post submission, the Appellant's bid was found to be unresponsive and ultimately the tender was awarded to Middedorp Properties.

The Appellant received notice of the tender outcome on 10 October 2024 and lodged an objection on 23 October 2024, setting out the grounds for being compliant with the tender document and the municipality's error in determining the Appellant's bid as unresponsive. No feedback from the municipality has been received to even date.

The Appellant formally challenges the decision of the municipality and demands immediate reconsideration of its decision in light of the Public Finance Management Act of 1999 (PFMA) and the Promotion of Administrative Justice Act of 2000 (PAJA), which obligates transparent, fair and lawful decision-making in public procurement.

In terms of section 62 of the Municipal Systems Act 32 of 2000 (MSA) and Section 55 of Stellenbosch Municipality's Supply Chain Management Policy 2023/2024, GIST Technology Holdings, as the party whose rights are affected by the tender award, has 21 days from the date of the notification of the Tender to appeal the tender award. Gist Technology Holdings accordingly appeals the tender award in terms of this appeal. The reasons for appeal, rights that have been affected and the remedy sought, is set out below.

GROUNDS OF APPEAL

1. Non-responsiveness of bid

It is a universally accepted principle of public procurement that bids which do not meet the minimum requirements as stipulated in a tender document are to be regarded as non-responsive and rejected without further consideration. The standard practice in the public sector is that bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria, such as functionality, pricing or empowerment. Bidders found to be non-responsive are excluded from the bid process regardless of the merits of their bids.

The Appellant argues that it passed the pre-qualification criteria as will be clearly seen in point 2 below. As such GIST Technology Holdings' tender submission does in fact qualify as a **responsive and compliant** bid as it met all the requirements set out in the tender document.

There is no single or simple test that may be applied to determine the issue of bid responsiveness. This determination calls for a careful weighing up of multiple factors through a process of fair-minded reasoning, rather than the adoption of a narrow, rigid or pedantic approach.

2. Compliance

GIST Technology Holdings has complied with the Development Vision and Specifications as required in terms of Par 15.2 of the Tender Document and has further, also complied with all legislative requirements. The following points set out below will illustrate the aforementioned:

i. The Tender Document does not require a detailed plan or layout of the proposed hotel. As per GIST Technology Holdings' tender bid that was submitted for the municipality's consideration, in its proposal ***the historical building will indeed be used for hotel facilities***, which includes but is not limited to Hotel General Admin, Lounges, Dining

Room, Offices, perhaps even Rooms on the 1st floor (which does not require stating, as it forms part of the obvious and intended use of the Buildings and the purpose of the Tender).

As per the submitted tender document, the hotel is connected to amenities and additional hotel rooms by a covered walkway, to create a bigger and uniform use of areas and buildings. Definition of "hotel" as per Stellenbosch Municipality: Zoning Scheme By-law 2019 means the use of an entire building, a portion of a building, or a group of buildings on the same land unit for the accommodation of transient guests in furnished bedrooms or suites, where the activity or buildings exceeds the scale and extent of a guest house.

Where the term "bachelor apartments" is used, it serves as a guide (common practise in Urban Design & Architecture) to the size of the hotel rooms in relation to design and will be used as both short and long stay accommodation ***by tourists***. Refer to Annexure A: Tender Clarification 1 dated 6 September 2024, clearly indicating that the apartments will solely be utilised by tourists visiting the area. Therefore, the apartments will not be available to students or working persons, in the traditional sense.

ii. GIST Technology Holdings' tender proposal falls within the municipality's bylaws and all legal parameters regarding land use, heritage, development concept and vision. The municipality's ***opinion*** that the tenderer may have overbulked, does not result in the tenderer not being compliant with the pre-qualification criteria. This opinion is in fact contrary to the zoning rights of the properties and is not a basis for non-compliance as it did not form part of the requirements set out in the Tender document. GIST Technology Holdings remain open to discuss the matter of overbulking and can easily ***tone down*** the development if needed.

iii. Throughout the years precedent has been established in relation to the "foreign proportions and scale" of buildings within the area. This can be seen by the erection of Eikestad Mall, the ABSA building located in Plein Street and the Post Office on the corner of Bird and Plein Street, all examples where old meets new. A precedent in law is essential as it ensures that equity is achieved through consistency and predictability in each and every case. The proposed building is within the zoning regulations that allow for a four (4) storey building. The apex of the building is 12,9 meters, the building parameters allowed being a height of four (4) storeys with a maximum height of 15 meters. Stellenbosch Municipality: Zoning Scheme By-law, 2019 (As amended 30 July 2024) read as follows:

252. Provisions applicable to specific Urban and Rural Conservation Overlay Zones

(1) The provisions of this subsection shall apply to the Stellenbosch Urban Conservation Area, as defined on Map URC01:

(a) buildings may not exceed a height of 10 meter, measured from existing ground level to top of roof or top of parapet, which limit is applicable only to the first 15 meters measured from the public road.

(b) on the balance of the land unit (outside the 15 meters measured from the public road) the height of a building may not exceed 5 storeys or the maximum number of storeys permitted in the base zone, whichever is the lowest.

GIST Technology Holdings therefore comply with the above requirements.

iv. During the site meeting, mention and discussions were held regarding the need for parking, additional parking for the greater Stellenbosch CBD, same needed to be included in the development proposal. Refer to the Aurecon Traffic Impact Assessment/Study conducted for Stellenbosch and the Parking Deck/Garage Feasibility Study (C1978-Eikestad-Parking-PPP-Feasibility-Study-Summary-Report-20240124). The parking garage is classified as a consent use and will be concealed by the two residential blocks without affecting the scale of the historical buildings. The bidder reiterates that the historical character of the existing buildings will remain preserved as required by the conditions set out in the tender document.

v. The argument made by the municipality that the single storey private residential buildings located along the western side of Louw Street would be dwarfed, does not hold merit.

There is multiple high storey buildings located on the eastern side of Louw Street namely, the two (2) storey Batavia Boutique Hotel as well as the three (3) storey building situated on 14 Louw Street. The fact that the proposed development will overlook the private space of residential buildings cannot be considered a foreign occurrence as this happens to all erven situated within such a multi residential zone, which is also the case in this particular area. GIST Technology Holdings is most willing to scale/tone down to a two (2) or three (3) storey building. Furthermore, the Gist Technology proposal, has sufficient set back / building lines, as per bylaws (Refer to sketches by architect Chris de Hart on pg. 13, 15, 16, 20 of the submitted tender proposal and attached hereto as Annexure B).

In addition to that, find a typical concept that illustrates what a ***further*** setback in lieu of comments regarding the Louw Street property could look like (attached hereto as Annexure C). Simple clarification or a meeting could have clarified such misinterpretation or misunderstandings from the municipality. The bidder requested such a meeting and was advised by Mr A. Marais that no meetings will be held with bidders during clarification, only the 'successful bidder', post award. Refer to Annexures D and E in this regard. It is a gross oversight by the municipality or its nominated contractors to not allow for fluid and transparent dialogue pre-award of tender. Similarly, the municipality have not exhausted all avenues to obtain accurate information and avoid any misinterpretation.

3. **Heritage, economic development, job opportunities and the stimulation of economic activity within Stellenbosch CBD**

After thorough engagement with various professionals, the Appellant has been informed that an amount of R 19 155 000 excluding VAT is simply insufficient to cover the costs for the repair and upgrade needed to restore the historical building which is the subject of this tender bid. This amounts to **heritage neglect.**

Economic development, job opportunities and the stimulation of economic activity remain paramount as stated during the site meeting, transcripts available upon request.

Refer to: GIST1 - Job Creation_Transvalia Rev 00 dd. 20240822

Specific mention is made to desperately needed job creation:

- Total Jobs During Construction: 315-430
- Total Jobs After Construction: 105-175

4. **Conflict of interest**

It is also evident that Ms. Geraldine Mettler and the 'successful' bidder, Middedorp Properties, currently serve together on the tourism board of Stellenbosch – Visit Stellenbosch / leadership. Refer to the following link https://members.visitstellenbosch.org/leadership/. This is a clear conflict of interest and if Stellenbosch Municipality were to indeed award the Tender to Mr. Ben Carl Havemann (representative), it will not be in the best interests of the Stellenbosch Members and Community as a whole, when it comes to being stewards and custodians of assets within the realm of the Counsel. As per MBD 4: Declaration of Interest points 2 and 3.9 of the Tender document, the Appellant requires the municipality to provide proof that the 'successful bidder' has indeed declared their interest with the municipal manager.

LEGISLATIVE FRAMEWORK

Section 217 of the South African Constitution requires all government procurement to be conducted in an equitable, transparent, fair, competitive, and cost-effective manner. This section of the Constitution underscores the foundation for all procurement-related laws and policies, ensuring that every tender decision aligns with these essential principles.

The PFMA explicitly mandates that all procurement decisions be based on equitable, transparent, and cost-effective criteria. Our proposal met all requirements and offered competitive solutions specifically designed to maximize value in line with the tender's objectives. We therefore assert

that our submission deserves a thorough and unbiased re-evaluation to ensure compliance with PFMA obligations.

Furthermore, PAJA entitles the Appellant to reasonable and fair administrative action. It is trite law that the awarding of a tender by a municipality (as an organ of state) amounts to an administrative action. In terms of PAJA, the tender is subject to **judicial review** if it is not lawful, reasonable and procedurally fair, subject to all internal remedies having been exhausted.

As such, the Appellant is exercising its right to a detailed breakdown of the decision-making process that led to the tender outcome. The Appellant demands access to a documented rationale that confirms alignment with PAJA standards, ensuring that the decision was made without bias or procedural flaw. Failure to provide this could indicate procedural impropriety, and the Appellant reserves the right to pursue further action if necessary.

RIGHTS THAT HAVE BEEN AFFECTED

The Appellant's constitutional right to administrative justice has been affected by the tender being awarded to the successful tenderers in circumstances when they should not have been based on the grounds of appeal outlined in this Appeal. Section 33 of the Constitution protects the right to lawful, reasonable and procedurally fair administrative justice. This right is reinforced by PAJA, which provides a legal framework for challenging administrative decisions that are unfair or lack justification.

REMEDY SOUGHT

Section 62(3) of the Municipal Systems Act empowers the Appeal Authority to:-

'...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 been accrued as a result of the decision.'

The Appellant therefore requests a reconsideration of their tender submission, with a clear and justifiable basis for any final decision. Further, the Appellant requests a formal response within 14 days, outlining the steps that will be taken by the municipality to address this demand.

Failure by the Appeal Authority to abide by the above request, the Appellant will seek further legal recourse as available to it.

CONCLUSION

The municipality's reasoning for finding the Appellant's bid to be non-responsive during the assessment of the pre-qualification criteria is as follows (refer to Annexure F):

"This proposal therefore does not adhere to the pre-qualification to align with the character of the immediate area particular in terms of scale, massing and height which are out of character and will lead to the creation of a "superblock" which is a foreign element not complementing the historical character."

The Appellant avers that it has set out a compelling argument that its bid was indeed responsive in light of the grounds stated above, proving that it has complied with all pre-qualification requirements. Whether the submitted proposal compliments the architectural character of Stellenbosch and historical character of existing buildings is based exclusively on subjective opinion and not on current applicable municipal bylaws.

Under the premise that the Appellant's bid is indeed responsive, from a financial point of view, the Appellant's bid is 7,4 times the amount of the 'successful bidder'.

Should the municipality indeed award the tender to the Appellant it would serve the best interests of both Stellenbosch Municipality and the broader community. A bid of R163,450,000.00 (one hundred sixty-three million four hundred and fifty rand) promises far greater value and potential for growth in the area than the R22,028,250.00 (twenty-two million twenty-eight thousand two hundred and fifty rand) bid.

It is unfathomable why the municipality would consider rejecting an offer that is seven times more beneficial/lucrative than the 'successful bid' (chosen bid), ***simply based on the opinion of officials (and subcontractors) rather than facts and figures***.

GIST Technology Holdings looks forward to receiving a rectified and favourable response from the Municipal Manager, the Appeal Authority/Committee and/or other senior officials before close of business on **14 November 2024**.

Many thanks and kind regards,

Mr. Eugene Yntema
Director

Contact Details:

Mobile: +27 84 800 5420
Email: eyntema@go-group.co.za

ANNEXURES:

A: Tender Clarification 1
B: Transvalia Tender Submission
C: Concept for further setback
D: Assumptions and Requests
E: Response to Requests
F: Municipality's Reasoning for Non-responsiveness

APPENDIX 8

2024/425786/08 NPC T/C

UNITED SOVEREIGN CAPE KINGDOMS

Est 2024

USCK Administrators Office Kraaifontein Western Cape

LETTER OF AUTHORITY Date 12 February 2025

Chief Leatitia Timmie (February)

Appointed Chief to represent USCK

Stellenbosch

For the Attention

The Municipality Stellenbosch

The following objections with reference to:

1) Longtem Lease on Transvalia Complex

2) Complex Erf 825, Erf 1123 , Erf 1130, Erf 1125. Erf 1133,Erf 1129,Erf 1160, Erf 1134 and Erf 1142.

3) Longterm lease Farm5021 Stellenbosch.

Dear Manager

We the USCK has appointed Chief Leatiria Timmie (February) as the mediator and negotiator in the Stellenbosch Region, to behalf our members in Stellenbosch.

Our Communitties are very unhappy and feel the the Municipality do not take the community of Stellenbosch in consideration, when discussions and decisions affecting our community are being taken.

We disaprove of the recent request for proposals /lease extentions of certain properties with in your purview.

Grounds of objections :

Lack of public participation and involvement.

No Transparency

Fair Participation

A

2024/425786/08 NPC T/C

UNITED SOVEREIGN CAPE KINGDOMS

Non disclose

Proposals for leases

And disclosure of information

Kind regards

Administrator USCK

High Commissioner

Bradley Kruger

Please contact above Chief on Email leatimmie@gmail.com Cell 074 970 0654

SPC Gqona King Cornelius Botha V

A

APPENDIX 9

[redacted]NPCT/C

UNITED SOVEREIGN CAPE KINGDOMS

Est 2024

USCK Administrators Office Kraaifontein Western Cape

LETTER OF AUTHORITY Date 12 February 2025

Chief Leatitia Timmie (February)

Appointed Chief to represent USCK

Stellenbosch

For the Attention

The Municipality Stellenbosch

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[redacted]

UNITED SOVEREIGN CAPE KINGDOMS

Non disclose

Proposals for leases

And disclosure of information

Kind regards

Administrator USCK

High Commissioner

Bradley Kruger

Please contact above Chief on Email leatimmie@gmail.com Cell 074 970 0654

SPC Gqona King Cornelius Botha V

A

APPENDIX 10

Yolande van den Berg

From: mm
Sent: Monday, 10 February 2025 10:52
To: Annalene De Beer
Cc: Nomie Tshefu; Yolande van den Berg; mm
Subject: FW: [EX] Public Participation Process: Objection to Disposal/Long term lease of Municipal Property

Good day Director

Herewith, please see sub-joined objection received on Mountain Breeze Caravan Park.

Kind regards,

Raydine Wenn
Personal Assistant
Office of the Municipal Manager

T: +27 21 808 8025 • F: +27 21 886 6749
71 Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599 www.stellenbosch.gov.za

-----Original Message-----
From: Cathleen Booysen <[redacted]>
Sent: Friday, 07 February 2025 11:06
To: mm <Municipal.Manager@stellenbosch.gov.za>
Subject: [EX] Public Participation Process: Objection to Disposal/Long term lease of Municipal Property

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This objection has reference to:

1. DISPOSAL: MOUNTAIN BREEZE- CARAVAN PARK. ERVEN 528, 529C

2. LONG TERM LEASE: FARM 502L, STELLENBOSCH

3. LONG TERM LEASE: PORTIONS OF THE TRANSVALIA COMPLEX (ERVEN 825, 1123, 1125, 1130, 1133, 1128, 1129, 1124, 1134, 1142 AND 1160 STELLENBOSCH)

Dear Municipal Manager

I'm writing to formally express my disapproval of the recent request for proposals and/or lease extensions for several parcels of property that fall within your purview. The following grounds form the basis of this objection:

1. Lack of Public Consultation and Transparency There has been a lack of transparency in the call for proposals and/or lease extension process. Fair participation from interested parties has been limited as a result of insufficient public consultation and disclosure of important information pertaining to the land in question.

2. Inexcusable Extension of Lease
There is no explicit justification for the proposed lease extension. To guarantee the most advantageous use of public land, proper due diligence should be carried out before to granting any lease extension, including public participation and a competitive bidding procedure.

3. Social and Environmental Issues
The land in question might be important to society and culture, or it might have environmental significance. Long-term harm could result from any lease renewal or allocation that does not include comprehensive environmental impact evaluations and stakeholder involvement.

The fourth is a possible conflict of interest.
There are worries that there might be conflicts of interest or partiality in the selection process for the proposals and/or lease renewal. To guarantee accountability and justice, a transparent and impartial review process should be put in place.

5. A Different and More Helpful Use
There may be a more advantageous use for the land that would meet the needs of the community, including housing, public amenities, or conservation. A reassessment should be carried out before proceeding with any decision.

Based on these concerns, I urge your office to: - Halt any further action regarding the call for proposals or lease extension until a thorough and transparent review is conducted.
- Conduct meaningful public participation and consider alternative options that best serve the interest of the community.
- Ensure fair and competitive processes in the allocation or lease of public land.

I appreciate your prompt attention to this matter and look forward to your response. Kindly acknowledge receipt of this objection and advise on the next steps to address these concerns.

Kind Regards
Cathleen Booysen
[redacted]

<https://lh3.googleusercontent.com/a/ACg8ocIg4Ixc_R20q4mxaVWhi_QDpT4JEdoMZ10J2KcCV4rczfMC0Q=s40-p-mo> ReplyForward

Add reaction

APPENDIX 11

Our Ref: EWK/lvs Your Ref: Date: 7 February 2025

Stellenbosch Municipality

Chief Legal Advisor

Attention: Mervin Williams

Via e-mail: Mervin.Williams@stellenbosch.gov.za

Municipal Manager

Attention: Geraldine Mettler

Via e-mail: municipal.manager@stellenbosch.gov.za

And via e-mail: scm.tenderawards@stellenbosch.gov.za

Office of Property Management

Via e-mail: municipal.manager@stellenbosch.gov.za

Re: **BID: B/SM 111/24 RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES**

1. We are instructed by GIST Technology Holdings (Pty) Ltd ("GIST").

2. GIST submitted a tender in response to the bid notice B/SM 111/24 concerning re-development and lease of Transvalia Properties issued by the Stellenbosch Municipality.

3. In a letter dated 10 October 2024, GIST was informed by the Municipality, that its tender was unsuccessful and that the bid was awarded to Middedorp Properties for a

re-development capital expenditure of R22,028,250 (VAT included) and rental payments over the period applicable amounting to R6,600,000.

4. In the same letter, the Municipality recorded that in terms of SCM Regulation 49 GIST had the right to lodge a written objection or complaint against the decision or action taken within 14 days and in terms of Section 62 of the Municipal Systems Act ("the Act"), GIST had the right to lodge a written appeal against the decision, if any rights were affected, within 21 days.

5. After GIST informally enquired as to the reasons why its tender, amounting to a re-development capital expenditure of R163,450,000 and rental payments over the period applicable amounting to R75,650,040, had lost out to a significantly lower tender, – that is more than 8 (eight) times less than our client's tender – it was provided with your response of 14 October 2024.

6. In your response of 14 October 2024, GIST was informed by your Manager: Demand Management and Strategic Sourcing, Bentley Louw, that GIST's bid was non-responsive. This decision was taken by the Municipality's Bid Adjudication Committee.

7. Our client disagrees with the decision of the Bid Adjudication Committee.

8. GIST proceeded, within the 14-day period, to lodge a formal objection (on 23 October 2024) and then filed an appeal in terms of Section 62 of the Act, within 21 days (on 31 October 2024).

9. Copies of the formal objection and of the Section 62 appeal are attached.

10. In terms of Section 62(2) of the Act, the Municipal Manager is obliged promptly to submit the appeal to the appropriate appeal authority and in terms of Section 62(5) the appeal authority must commence with an appeal within 6 (six) weeks and decide the appeal within a reasonable time – this has not yet occurred.

11. Subsequent to submitting the formal objection and the Section 62 appeal, on 8 November 2024 GIST received correspondence from the Municipality's Chief Legal Advisor, Mervin Williams, in which the Municipality attempted to retract its 10 October 2024 correspondence based on the submission that the "award" of the tender to Middedorp Properties will only be finalised once the Council provides final approval and that no objection or appeal to the tender award would accordingly be available as the award is not final until Council finally approves it (you also recorded that the administration had made recommendations to Council as to the successful tender).

12. We disagree with your last-mentioned conclusions (paragraph 11 above). GIST is clearly a person whose rights have been affected by the decision of the Bid Adjudication Committee. In concluding (incorrectly) that GIST's bid was non-responsive, the Bid Adjudication Committee has taken a final decision that determines GIST's rights. This is a decision contemplated in Section 62(1) of the Act.

13. In the circumstances, the Section 62 appeal process must follow its ordinary course and be decided promptly.

14. GIST also requires that that the Municipality's Council be formally informed of the pending Section 62 appeal and of the full details of our client's bid and that the Municipal Council's final determination of the tender be held over until after the Section 62 appeal process (and any further dispute process) has run its course. This is

because GIST's bid – from which the Municipality stands to benefit financially – is compliant with the tender specifications.

15. We require confirmation by 17h00 on Tuesday 11 February 2025 that:

    15.1. the Section 62 appeal will be dealt with in accordance with the applicable law;

    15.2. that the Municipal Council will be informed of the Section 62 appeal and the details of GIST's bid; and

    15.3. that the Municipal Council's final decision on the award of the tender will be held over until finalisation of the Section 62 appeal.

16. All of our client's rights remain reserved.

Yours faithfully

E W KEMP

TO: **Stellenbosch Municipality**

Date: 2024/10/23

Plein Street
Stellenbosch
7600

Per Email: scm.tenderawards@stellenbosch.gov.za

ATT: **Mr. B Louw on behalf of / for**
The Municipal Manager

cc.: Ms. A. De Beer, Mr. B. De la Bat, Ms. L. Pool, Mr. A. Marais

RE: BID: B/SM 111/24 RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES

SUBJECT: FORMAL OBJECTION TO OUTCOME, received dd. 2024/10/10

We refer to the above matter and your letter dated 10 October 2024 (attached hereto as Annexure A), aforementioned received on same date.

As an interested and affected party who submitted a compliant bid for this tender, we believe that the tender process and the subsequent award were not conducted in accordance with the applicable legal and regulatory framework. As per SCM regulation 49, we hereby formally **lodge our objection** against the decision of the municipality in awarding the bid to Middedorp Properties in the amount of R22 028 250.00 (Twenty-two million and twenty-eight thousand two hundred and fifty Rand).

We vehemently disagree with the content of your breakdown of our *"Non-compliance" and / or "non-responsive"* as set out in your email dated Monday, 14 October 2024 (attached hereto as Annexure B). After extensive consultation with professionals in the property, legal and hoteliering industries, we wish to correct the Municipality in your averments in said email. Our grounds for objection are listed below.

GROUNDS OF OBJECTION

1. The Tender Document does not require a detailed plan or layout of the proposed hotel. As per GIST Technology Holdings' tender bid that was submitted for your consideration, in our proposal ***the historical building will indeed be used for hotel facilities***, which includes but is not limited to Hotel General Admin, Lounges, Dining Room, Offices, perhaps even Rooms on the 1st floor (which does not require stating, as it forms part of the obvious and intended use of the Buildings and the purpose of the Tender).

As per our submitted tender document, a covered walkway to amenities and additional hotel rooms, to create a bigger and uniform use of areas and buildings.

Where the term "bachelor apartments" is used, it serves as a guide (common practise in Urban Design & Architecture) to the size of the hotel rooms in relation to design and will be used as both short and long stay accommodation ***by tourists***. In this regard we would like to draw your attention to Tender Clarification 1 dated 6 September 2024 (attached hereto as Annexure C) clearly indicating that the apartments will solely be utilised by tourists visiting the area. Therefore, the apartments will not be available to students or working persons, in the traditional sense.

2. GIST Technology Holdings' tender proposal falls within the municipality's bylaws and all legal parameters regarding land use, heritage, development concept and vision. The municipality's ***opinion*** that the tenderer may have overbulked, does not result in the tenderer not being compliant with the pre-qualification criteria. GIST Technology Holdings remain open to discuss the matter of overbulking and can easily ***tone down*** the development if needed.

3. Throughout the years precedent has been established in relation to the "foreign proportions and scale" of buildings within the area. This can be seen by the erection of Eikestad Mall, the ABSA building located in Plein Street and the Post Office on the corner of Bird and Plein Street, all examples where old meets new. A precedent in law is essential as it ensures that equity is achieved through consistency and predictability in each and every case. The proposed building is within the zoning regulations that allow for a four (4) storey building. The apex of the building is 12,9 meters, the building parameters allowed being a height of four (4) storeys with a maximum height of 15 meters. We refer to the Stellenbosch Municipality: Zoning Scheme By-law, 2019 (As amended 30 July 2024):

252. Provisions applicable to specific Urban and Rural Conservation Overlay Zones

(1) The provisions of this subsection shall apply to the Stellenbosch Urban Conservation Area, as defined on Map URC01:

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(b) on the balance of the land unit (outside the 15 meters measured from the public road) the height of a building may not exceed 5 storeys or the maximum number of storeys permitted in the base zone, whichever is the lowest.

GIST Technology Holdings therefore comply with the above requirements.

4. During the site meeting, mention and discussions were held regarding the need for parking, additional parking for the greater Stellenbosch CBD, same needed to be included in the development proposal. We refer to the Aurecon Traffic Impact Assessment/Study conducted for Stellenbosch and the Parking Deck/Garage Feasibility Study (C1978-Eikestad-Parking-PPP-Feasibility-Study-Summary-Report-20240124). The parking garage is classified as a consent use and will be concealed by the two residential blocks.

5. The argument made by the municipality that the single storey private residential buildings located along the western side of Louw Street would be dwarfed, does not hold merit.

There is multiple high storey buildings located on the eastern side of Louw Street namely, the two (2) storey Batavia Boutique Hotel as well as the three (3) storey building situated on 14 Louw Street. The fact that the proposed development will overlook the private space of residential buildings cannot be considered a foreign occurrence as this happens to all erven situated within such a multi residential zone, which is also the case in this particular area. GIST Technology Holdings is most willing to scale/tone down to a two (2) or three (3) storey building. Furthermore, the Gist Technology proposal, has sufficient set back / building lines, as per bylaws (Refer to sketches by architect Chris de Hart on pg. 13, 15, 16, 20 of our submitted tender proposal). In addition to that, find a concept that shows a ***further*** setback in lieu of comments regarding the Louw Street property (attached hereto as Annexure D).

6. After thorough engagement with various professionals, we have been informed that an amount of R 19 155 000 excluding VAT is simply insufficient to cover the costs for the repair and upgrade needed to restore the historical building which is the subject of this tender bid. This amounts to **heritage neglect.** Economic development, job opportunities and the stimulation of economic activity remain paramount as stated during the site meeting, transcripts available upon request.

7. It is also evident that Ms. Geraldine Mettler and the 'successful' bidder, Middedorp Properties, currently serve together on the tourism board of Stellenbosch – Visit Stellenbosch / leadership. We refer you to the following link https://members.visitstellenbosch.org/leadership/. This is a clear conflict of interest and if Stellenbosch Municipality were to indeed award the Tender to Mr. Ben Carl Havemann (representative), it will not be in the best interests of the Stellenbosch Members and Community as a whole, when it comes to being stewards and custodians of assets within the realm of the Counsel.

CONCLUSION

GIST Technology Holdings has complied with the Development Vision and Specifications as required in terms of Par 15.2 of the Tender Document as illustrated in the points set out above.

Therefore, we pass the pre-qualification criteria and as such is indeed **compliant and responsive**.

In terms of the Section 217 of the Constitution, when an organ of state contracts for goods and services it must do so with a system which is fair, equitable, transparent, competitive and cost-effective. The Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and the regulations thereunder, as week as the Municipal Supply Chain Management Regulations (SCM Regulations), promulgated under the Municipal Finance Management Act must be considered to give effect to Section 217 of the Constitution.

It is clear from the points raised above that GIST Technology Holdings has submitted a tender, which in all respects, comply with the specifications and conditions as set out in the tender document and the submitted tender is therefore deemed to be an 'acceptable tender' as contemplated by Section 1 of the PPPFA.

BIDDER REQUEST

Our rights have been affected by the tender being awarded to the *'successful tenderer'* in circumstances when they should not have been based on the grounds listed above. In light of the above points, we demand a thorough and transparent review of the tender award decision.

We believe that a fair reassessment of the submitted tenders will demonstrate the merits of our proposal and therefore respectfully request the following action:

1. Stellenbosch Municipality's withdrawal of their incorrect non-compliance allocation to Gist Technology Holdings;
2. Stellenbosch Municipality's decision to award Tender No. **B/SM 111/24** be reviewed and overturned with immediate effect;
3. An independent review or re-evaluation of the tender process be conducted in line with the provisions of the Municipal Finance Management Act (MFMA) and other applicable laws;
4. Detailed reasons (proof) as per Section 11 of tender document that Middedorp Properties has indeed scored a minimum of 80% in terms of the functionality assessment;
5. GIST Technology Holdings tender bid be further evaluated and cleared based on the criteria set out in Par 11 of the Tender Document to obtain a functionality score and progress to be assessed in terms of Par 15.6 of the Tender.

THE RIGHT TO JUST ADMINISTRATIVE ACTION

Should we not receive a satisfactory response we reserve our rights to seek further legal recourse, including but not limited to judicial review in terms of the Promotion of Administrative Action Act 3 of 2000 (PAJA).

Section 33 of the Constitution of the Republic of South Africa, 1996, guarantees every individual the right to administrative action that is lawful, reasonable, and procedurally fair. This right is further reinforced by PAJA, which governs all forms of administrative action. It is trite law that the awarding of a tender by a municipality, as an organ of state, constitutes an administrative action. In terms of PAJA, any tender process is subject to judicial review if it fails to meet the criteria of lawfulness, reasonableness, or procedural fairness, provided that all internal remedies have been exhausted.

Nothing in this letter shall be construed as a waiver of any rights or remedies available to GIST Technology Holdings under applicable law or equity. GIST Technology Holdings retains the right to assert any claims or defenses in relation to this matter or any related matter, which rights we expressly reserve.

We trust that you will apply your mind to each and every point listed above and await your prompt response herein, by no later than **28 October 2024**.

Many thanks and kind regards,

GIST Technology Holdings (Pty) Ltd T/A **GIST Devco**

Mr. Eugene Yntema
Director

Contact Details:

Mobile: +27 84 800 5420
Email: eyntema@go-group.co.za

ANNEXURES:

A: Outcome of tender letter
B: Email from B. Louw
C: Tender Clarification 1
D: Concept of further setback

TO: **Stellenbosch Municipality**
Appeal Authority

Date: 2024/10/31

Plein Street
Stellenbosch
7600

Per Email: scm.tenderawards@stellenbosch.gov.za

ATT: **Mr. B Louw on behalf of / for**
The Municipal Manager

cc.: Ms. A. De Beer, Mr. B. De la Bat, Ms. L. Pool, Mr. A. Marais

RE: BID: B/SM 111/24 RE-DEVELOPMENT AND LEASE OF TRANSVALIA PROPERTIES

APPEAL IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000 – AGAINST THE DECISION TO AWARD TENDER NUMBER: B/SM 111/24

BACKGROUND

The Appellant is GIST Technology Holdings (Pty) Ltd ('GIST Technology Holdings'). The Appellant appeals against the decision of the Supply Chain Management Bid Adjudication Committee of the Municipality of Stellenbosch, taken under delegated authority, to award tender number B/SM 111/24 – *Re-development and Lease of Transvalia Properties* to Middedorp Properties.

Stellenbosch Municipality advertised the tender and the closing date was 26 August 2024. The Municipality received three (3) bids in response to this tender. One of the bidders subsequently withdrew post submission, the Appellant's bid was found to be unresponsive and ultimately the tender was awarded to Middedorp Properties.

The Appellant received notice of the tender outcome on 10 October 2024 and lodged an objection on 23 October 2024, setting out the grounds for being compliant with the tender document and the municipality's error in determining the Appellant's bid as unresponsive. No feedback from the municipality has been received to even date.

The Appellant formally challenges the decision of the municipality and demands immediate reconsideration of its decision in light of the Public Finance Management Act of 1999 (PFMA) and the Promotion of Administrative Justice Act of 2000 (PAJA), which obligates transparent, fair and lawful decision-making in public procurement.

In terms of section 62 of the Municipal Systems Act 32 of 2000 (MSA) and Section 55 of Stellenbosch Municipality's Supply Chain Management Policy 2023/2024, GIST Technology Holdings, as the party whose rights are affected by the tender award, has 21 days from the date of the notification of the Tender to appeal the tender award. Gist Technology Holdings accordingly appeals the tender award in terms of this appeal. The reasons for appeal, rights that have been affected and the remedy sought, is set out below.

GROUNDS OF APPEAL

1. Non-responsiveness of bid

It is a universally accepted principle of public procurement that bids which do not meet the minimum requirements as stipulated in a tender document are to be regarded as non-responsive and rejected without further consideration. The standard practice in the public sector is that bids are first evaluated for compliance with responsiveness criteria before being evaluated for compliance with other criteria, such as functionality, pricing or empowerment. Bidders found to be non-responsive are excluded from the bid process regardless of the merits of their bids.

The Appellant argues that it passed the pre-qualification criteria as will be clearly seen in point 2 below. As such GIST Technology Holdings' tender submission does in fact qualify as a **responsive and compliant** bid as it met all the requirements set out in the tender document.

There is no single or simple test that may be applied to determine the issue of bid responsiveness. This determination calls for a careful weighing up of multiple factors through a process of fair-minded reasoning, rather than the adoption of a narrow, rigid or pedantic approach.

2. Compliance

GIST Technology Holdings has complied with the Development Vision and Specifications as required in terms of Par 15.2 of the Tender Document and has further, also complied with all legislative requirements. The following points set out below will illustrate the aforementioned:

i. The Tender Document does not require a detailed plan or layout of the proposed hotel. As per GIST Technology Holdings' tender bid that was submitted for the municipality's consideration, in its proposal ***the historical building will indeed be used for hotel facilities***, which includes but is not limited to Hotel General Admin, Lounges, Dining

Room, Offices, perhaps even Rooms on the 1st floor (which does not require stating, as it forms part of the obvious and intended use of the Buildings and the purpose of the Tender).

As per the submitted tender document, the hotel is connected to amenities and additional hotel rooms by a covered walkway, to create a bigger and uniform use of areas and buildings. Definition of "hotel" as per Stellenbosch Municipality: Zoning Scheme By-law 2019 means the use of an entire building, a portion of a building, or a group of buildings on the same land unit for the accommodation of transient guests in furnished bedrooms or suites, where the activity or buildings exceeds the scale and extent of a guest house.

Where the term "bachelor apartments" is used, it serves as a guide (common practise in Urban Design & Architecture) to the size of the hotel rooms in relation to design and will be used as both short and long stay accommodation ***by tourists***. Refer to Annexure A: Tender Clarification 1 dated 6 September 2024, clearly indicating that the apartments will solely be utilised by tourists visiting the area. Therefore, the apartments will not be available to students or working persons, in the traditional sense.

ii. GIST Technology Holdings' tender proposal falls within the municipality's bylaws and all legal parameters regarding land use, heritage, development concept and vision. The municipality's ***opinion*** that the tenderer may have overbulked, does not result in the tenderer not being compliant with the pre-qualification criteria. This opinion is in fact contrary to the zoning rights of the properties and is not a basis for non-compliance as it did not form part of the requirements set out in the Tender document. GIST Technology Holdings remain open to discuss the matter of overbulking and can easily ***tone down*** the development if needed.

iii. Throughout the years precedent has been established in relation to the "foreign proportions and scale" of buildings within the area. This can be seen by the erection of Eikestad Mall, the ABSA building located in Plein Street and the Post Office on the corner of Bird and Plein Street, all examples where old meets new. A precedent in law is essential as it ensures that equity is achieved through consistency and predictability in each and every case. The proposed building is within the zoning regulations that allow for a four (4) storey building. The apex of the building is 12,9 meters, the building parameters allowed being a height of four (4) storeys with a maximum height of 15 meters. Stellenbosch Municipality: Zoning Scheme By-law, 2019 (As amended 30 July 2024) read as follows:

252. Provisions applicable to specific Urban and Rural Conservation Overlay Zones

(1) The provisions of this subsection shall apply to the Stellenbosch Urban Conservation Area, as defined on Map URC01:

(a) buildings may not exceed a height of 10 meter, measured from existing ground level to top of roof or top of parapet, which limit is applicable only to the first 15 meters measured from the public road.

(b) on the balance of the land unit (outside the 15 meters measured from the public road) the height of a building may not exceed 5 storeys or the maximum number of storeys permitted in the base zone, whichever is the lowest.

GIST Technology Holdings therefore comply with the above requirements.

iv. During the site meeting, mention and discussions were held regarding the need for parking, additional parking for the greater Stellenbosch CBD, same needed to be included in the development proposal. Refer to the Aurecon Traffic Impact Assessment/Study conducted for Stellenbosch and the Parking Deck/Garage Feasibility Study (C1978-Eikestad-Parking-PPP-Feasibility-Study-Summary-Report-20240124). The parking garage is classified as a consent use and will be concealed by the two residential blocks without affecting the scale of the historical buildings. The bidder reiterates that the historical character of the existing buildings will remain preserved as required by the conditions set out in the tender document.

v. The argument made by the municipality that the single storey private residential buildings located along the western side of Louw Street would be dwarfed, does not hold merit.

There is multiple high storey buildings located on the eastern side of Louw Street namely, the two (2) storey Batavia Boutique Hotel as well as the three (3) storey building situated on 14 Louw Street. The fact that the proposed development will overlook the private space of residential buildings cannot be considered a foreign occurrence as this happens to all erven situated within such a multi residential zone, which is also the case in this particular area. GIST Technology Holdings is most willing to scale/tone down to a two (2) or three (3) storey building. Furthermore, the Gist Technology proposal, has sufficient set back / building lines, as per bylaws (Refer to sketches by architect Chris de Hart on pg. 13, 15, 16, 20 of the submitted tender proposal and attached hereto as Annexure B).

In addition to that, find a typical concept that illustrates what a ***further*** setback in lieu of comments regarding the Louw Street property could look like (attached hereto as Annexure C). Simple clarification or a meeting could have clarified such misinterpretation or misunderstandings from the municipality. The bidder requested such a meeting and was advised by Mr A. Marais that no meetings will be held with bidders during clarification, only the 'successful bidder', post award. Refer to Annexures D and E in this regard. It is a gross oversight by the municipality or its nominated contractors to not allow for fluid and transparent dialogue pre-award of tender. Similarly, the municipality have not exhausted all avenues to obtain accurate information and avoid any misinterpretation.

3. **Heritage, economic development, job opportunities and the stimulation of economic activity within Stellenbosch CBD**

After thorough engagement with various professionals, the Appellant has been informed that an amount of R 19 155 000 excluding VAT is simply insufficient to cover the costs for the repair and upgrade needed to restore the historical building which is the subject of this tender bid. This amounts to **heritage neglect.**

Economic development, job opportunities and the stimulation of economic activity remain paramount as stated during the site meeting, transcripts available upon request.

Refer to: GIST1 - Job Creation_Transvalia Rev 00 dd. 20240822

Specific mention is made to desperately needed job creation:

- Total Jobs During Construction: 315-430
- Total Jobs After Construction: 105-175

4. **Conflict of interest**

It is also evident that Ms. Geraldine Mettler and the 'successful' bidder, Middedorp Properties, currently serve together on the tourism board of Stellenbosch – Visit Stellenbosch / leadership. Refer to the following link https://members.visitstellenbosch.org/leadership/. This is a clear conflict of interest and if Stellenbosch Municipality were to indeed award the Tender to Mr. Ben Carl Havemann (representative), it will not be in the best interests of the Stellenbosch Members and Community as a whole, when it comes to being stewards and custodians of assets within the realm of the Counsel. As per MBD 4: Declaration of Interest points 2 and 3.9 of the Tender document, the Appellant requires the municipality to provide proof that the 'successful bidder' has indeed declared their interest with the municipal manager.

LEGISLATIVE FRAMEWORK

Section 217 of the South African Constitution requires all government procurement to be conducted in an equitable, transparent, fair, competitive, and cost-effective manner. This section of the Constitution underscores the foundation for all procurement-related laws and policies, ensuring that every tender decision aligns with these essential principles.

The PFMA explicitly mandates that all procurement decisions be based on equitable, transparent, and cost-effective criteria. Our proposal met all requirements and offered competitive solutions specifically designed to maximize value in line with the tender's objectives. We therefore assert

that our submission deserves a thorough and unbiased re-evaluation to ensure compliance with PFMA obligations.

Furthermore, PAJA entitles the Appellant to reasonable and fair administrative action. It is trite law that the awarding of a tender by a municipality (as an organ of state) amounts to an administrative action. In terms of PAJA, the tender is subject to **judicial review** if it is not lawful, reasonable and procedurally fair, subject to all internal remedies having been exhausted.

As such, the Appellant is exercising its right to a detailed breakdown of the decision-making process that led to the tender outcome. The Appellant demands access to a documented rationale that confirms alignment with PAJA standards, ensuring that the decision was made without bias or procedural flaw. Failure to provide this could indicate procedural impropriety, and the Appellant reserves the right to pursue further action if necessary.

RIGHTS THAT HAVE BEEN AFFECTED

The Appellant's constitutional right to administrative justice has been affected by the tender being awarded to the successful tenderers in circumstances when they should not have been based on the grounds of appeal outlined in this Appeal. Section 33 of the Constitution protects the right to lawful, reasonable and procedurally fair administrative justice. This right is reinforced by PAJA, which provides a legal framework for challenging administrative decisions that are unfair or lack justification.

REMEDY SOUGHT

Section 62(3) of the Municipal Systems Act empowers the Appeal Authority to:-

'...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 been accrued as a result of the decision.'

The Appellant therefore requests a reconsideration of their tender submission, with a clear and justifiable basis for any final decision. Further, the Appellant requests a formal response within 14 days, outlining the steps that will be taken by the municipality to address this demand.

Failure by the Appeal Authority to abide by the above request, the Appellant will seek further legal recourse as available to it.

CONCLUSION

The municipality's reasoning for finding the Appellant's bid to be non-responsive during the assessment of the pre-qualification criteria is as follows (refer to Annexure F):

"This proposal therefore does not adhere to the pre-qualification to align with the character of the immediate area particular in terms of scale, massing and height which are out of character and will lead to the creation of a "superblock" which is a foreign element not complementing the historical character."

The Appellant avers that it has set out a compelling argument that its bid was indeed responsive in light of the grounds stated above, proving that it has complied with all pre-qualification requirements. Whether the submitted proposal compliments the architectural character of Stellenbosch and historical character of existing buildings is based exclusively on subjective opinion and not on current applicable municipal bylaws.

Under the premise that the Appellant's bid is indeed responsive, from a financial point of view, the Appellant's bid is 7,4 times the amount of the 'successful bidder'.

Should the municipality indeed award the tender to the Appellant it would serve the best interests of both Stellenbosch Municipality and the broader community. A bid of R163,450,000.00 (one hundred sixty-three million four hundred and fifty rand) promises far greater value and potential for growth in the area than the R22,028,250.00 (twenty-two million twenty-eight thousand two hundred and fifty rand) bid.

It is unfathomable why the municipality would consider rejecting an offer that is seven times more beneficial/lucrative than the 'successful bid' (chosen bid), ***simply based on the opinion of officials (and subcontractors) rather than facts and figures***.

GIST Technology Holdings looks forward to receiving a rectified and favourable response from the Municipal Manager, the Appeal Authority/Committee and/or other senior officials before close of business on **14 November 2024**.

Many thanks and kind regards,

Mr. Eugene Yntema
Director

Contact Details:

Mobile: +27 84 800 5420
Email: eyntema@go-group.co.za

ANNEXURES:

A: Tender Clarification 1
B: Transvalia Tender Submission
C: Concept for further setback
D: Assumptions and Requests
E: Response to Requests
F: Municipality's Reasoning for Non-responsiveness

APPENDIX 12

Yolande van den Berg

From: mm
Sent: Wednesday, 12 February 2025 08:44
To: Annalene De Beer
Cc: Yolande van den Berg; mm; Nomie Tshefu
Subject: FW: [EX] Objection to Disposal / Long term Leases of Municipal Properties

Good day Director

Herewith, please see sub-joined email for your attention.

Kind regards,

Raydine Wenn
Personal Assistant
Office of the Municipal Manager

T: +27 21 808 8025 • F: +27 21 886 6749
71 Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za

From: JOHN ANDREWS [redacted]
Sent: Friday, 07 February 2025 12:38
To: mm <Municipal.Manager@stellenbosch.gov.za>
Subject: [EX] Objection to Disposal / Long term Leases of Municipal Properties

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Municipal Manager,

I John Andrews writing to express my objection to the proposed disposal and long-term leases of municipal properties, as advertised in the public participation process. Specifically, I object to:

1. Disposal of Mauntian Breeze Caravan Park, Erf 528/528C*: I believe that this property has significant recreational and tourism value, and its disposal may not be in the best interest of the community.

2. Long-term Lease of Farm 5021, Stellenbosch: I am concerned that this lease may compromise the municipality's control over this valuable asset and potentially lead to unintended consequences.

3. Long-term Lease of Portion of Transvalia: I object to this lease due to concerns about the potential impact on the surrounding community and the environment.

As a concerned citizen, I believe that these proposals require further consideration and consultation with the community. I request that the municipality:

- Provides more information about the proposed disposal and leases
- Conducts public hearings and engages with the community to address concerns
- Considers alternative options that prioritize community benefit and public interest

I would appreciate the opportunity to discuss these objections further with the municipality.

According to the Municipal Finance Management Act, a public participation process is required for the disposal or long-term leasing of municipal properties [1]. Additionally, leasing policies for municipally owned immovable property may require public participation for long-term leases or high-value assets.

Thank you for considering my objections

Sincerely

John Andrews

APPENDIX 13

Yolande van den Berg

From: mm
Sent: Wednesday, 12 February 2025 14:12
To: Annalene De Beer
Cc: Yolande van den Berg
Subject: FW: [EX] Objections has Reference to :

Good day Director

FYA

From: Sylvia Bell <[redacted]>
Sent: Friday, 07 February 2025 14:03
To: mm <Municipal.Manager@stellenbosch.gov.za>
Subject: [EX] Objections has Reference to :

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Disposal / Longterm Leases of
Mountain Breeze / Caravan Park.

Dear MM Stellenbosch Municipality.

Hope all is well with you.

I am writing to you to place my Objections about the Following
1.Disposal of Mountain Breeze / Caravan Park Erven 528 529 C

2.Long term lease of : Farm 5021 Stellenbosch

3.Long term lease : Portions of Transvalia Complex...the following ervens...825 , 1129 , 1130 , 1133 , 1123 , 1125 , 1128 , as well as 1125.

I am of the Opinion that the Public Participation time frame are not efficient for the broader Stellenbosch Communities to take in what plans are at Council to the abovementioned Properties.

I became aware of abovementioned through Eikestad Media Last Friday 31 St of January 2025.Some of these Ervens Time frames for Objections are closing today 7 th February 2025.

Please Consider an Extension of All the abovementioned ervens For the Broader Public Participation from the Stellenbosch Municipality side.
I Thank you MM
&
I wish to hear from you in this Regard.
S.Bell
[redacted]
Regards.